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## Table of Contents

Vance case highlights how government agencies ignore model litigant rules.....	2
Committee recommends coupling human rights and free trade.....	2
507 secrecy provisions contained in 175 laws.....	2
LAST WORD: Denying women a voice .....	3
Aussie Bahais appeal for help over Iranian trial.....	3
National health ID to mix new and old in dangerous recipe .....	3
...but Health Minister says it will .....	4
Fleming writes on the legal profession.....	4
Democracy delayed .....	4
Bikie laws face first challenge .....	4
Bikie laws could ensnare Premier...or any of us .....	5
NSW A-G contends for national title .....	5
Feds beef up crime laws, following the States .....	5
State to combine privacy, FOI.....	6
Coroner's recommendations to get more bite .....	6
Prisoner van death sparks massive shake-up in WA .....	6
Police get master image control database, operated privately .....	7
Indigenous jail rates double...and treble .....	7
Remote homelands re-think urgently needed, group says .....	8
Queensland's stun gun inquiry might benefit nation .....	8
Worldwide cyberdefence may eat into privacy in Australia .....	9
Will women's increasing violence towards partners rise further?.....	9
STUDENTS: Inquiry looks into impact of violence on young Australians.....	10
Civil liberty groups effective, UK top lawyer says .....	10
CLA's main activities for June 2009 .....	10
A-G to provide limited support to retired lawyers doing pro bono work.....	12
Former A-G's bureaucrat says South Australia is a 'police state' .....	12
CLA helps Senate see the light.....	12
CARTOONS:.....	13
Fiji 'bans' Aussies speakers .....	13
Australia taps phones more than US does:.....	13
Submissions requested on enforcing foreign legal rights .....	13
Rights reorganised.....	14
Bugg become ILSAC chief.....	14
Senator Conroy nominated as world-ranking villain:.....	14
Supreme Court rules laboratory analysts must testify on results .....	14
US prisoners denied right to DNA to prove innocence.....	14
Whistleblowing can pay off big in the USA.....	15
Is the economic crisis causing social fracture worldwide?.....	15
NY highest reprimands NY finest for GPS monitoring breach of privacy.....	15
Britain's top cop wants human rights front and centre .....	16
Government's 'back door wiretap' is challenged.....	16
US exhibits selective indignation over its comms surveillance .....	16

British PM promises to hand power back to parliament.....	17
Law Lords stand up for fair trials .....	17
London Police accused of ‘waterboarding’ suspects .....	17
Bloggers opened to public naming.....	18
Police take DNA samples from kids ‘in case they commit crimes in future’ .....	18
Brits queue up to die in Switzerland, where it’s legal to help.....	18
Prisoner stunned to take DNA sample.....	19
Terrorism laws have strangled US rights to freedom.....	19
ACLU seeks details of border searches of laptop computers.....	19
Job applicants suffer under Bozeman ruling.....	20
Chinese extend censorship to medical research.....	20
Activist’s release is minor victory.....	20
Scotland Yard detectives live high on the public hog.....	20
US may change law to allow martyrdom .....	21
Yemeni suicides at Guantanamo prison .....	21
‘Habeased’ Uighurs fight for real release .....	21
PM Blair ‘knew about torture’, claim:.....	21
DATES.....	21
<i>LAST WORD:</i> Denying a voice to women who want to sing.....	22

## **Vance case highlights how government agencies ignore model litigant rules**

The Russell Vance case – a 15-year legal fiasco by the Defence Legal Office reputed to have cost \$15m and finally ending with a large out-of-court settlement to Vance – was settled recently.

The case highlights the importance of the two-year campaign, being led by CLA, to make federal agencies pay more attention to statutory legal services directions and model litigant rules. We’ll have more information on the CLA campaign next month: if you missed it, read excellent coverage of the Vance case by Paul Daley at: <http://www.smh.com.au/national/defence-loses-15m-fight-20090620-cruy.html>

## **Committee recommends coupling human rights and free trade**

The Australian Parliament’s Treaties Committee last month recommended that Australia include consideration of environment protection, protection of human rights, and labour standards in negotiating all future free trade agreements.

The committee, with a reputation for innovative thinking, was considering agreements with NZ-ASEAN and the Isle of Man when it produced the far-reaching recommendation.

“The AANZFTA (the ASEAN-NZ treaty) is the largest free trade agreement Australia has participated in,” Treaties Committee’s Chair, Mr Kelvin Thomson said. “It contains useful and innovative provisions that will liberalise trade with ASEAN countries, but the committee found that there is scope to improve some aspects of the free trade negotiation process.”

“For example, AANZFTA encourages trade with Burma without regard to the human rights situation there, and may also permit trade in tropical timbers, threatening endangered species. It is important for the Australian Government to commence each free trade agreement negotiation with an intention to address issues such as these,” Mr Thomson said.

Report 102 is available on the Committee’s website:

<http://www.aph.gov.au/house/committee/jsct/12march2009/report.htm> or contact the committee secretariat on (02) 6277 4002.

## **507 secrecy provisions contained in 175 laws**

The Australian Law Reform Commission (ALRC) has made 65 proposals of reform to secrecy laws in

Australia in a discussion paper, *Review of Secrecy Laws* (DP 74, June 2009).

The ALRC is seeking feedback about balancing a growing commitment to increased openness and transparency with the need to maintain the secrecy and confidentiality of some information.

ALRC President, Professor David Weisbrot, said: "Secrecy provisions are generally found in laws relating to national security and in areas in which citizens have a right to expect that their sensitive personal information will be protected from unauthorised disclosure – such as the information provided to the Tax Office or Medicare. That's appropriate and unsurprising.

"However, the ALRC's 'mapping' of the federal statute book has identified 507 secrecy provisions scattered across 175 pieces of legislation, including 358 distinct secrecy offences carrying a wide variety of criminal penalties. That's more reflective of the old culture of secrecy than the current preference for openness."

Submissions are due by 7 August, and the ALRC is due to report to the Attorney-General by 31 October. Order a copy of DP74: <http://www.alrc.gov.au/> CLA plans to comment on the DP: please [Email CEO/Secretary](mailto:Email CEO/Secretary) if you would like to contribute.

### **LAST WORD: Denying women a voice**

A young woman died last month because she wanted to sing in a country which doesn't allow females a public voice. *Read more at the end of this bulletin.*

### **Aussie Bahais appeal for help over Iranian trial**

The Bahai Community in Australia is asking for increased public support – letters to the editor, letters, emails, phone calls to the Iranian Embassy – in the lead-up to the trial of the seven members of the Iranian Bahai leadership this month.

"We greatly appreciate the support of Civil Liberties Australia in regard to the ongoing arbitrary detention and trial of the members of the former national Bahai leadership group in Iran," the Australian Bahai's Executive Officer - Government Relations, Tessa Scrine, wrote to the CLA last month. "The support of our NGO colleagues has complemented the efforts of the Australian Government, including statements at the UN Human Rights Council and a parliamentary motion on the 'Bahá'í detainees' on 25 May 2009."

The lawyers of the Defenders for Human Rights Centre in Iran, who are serving as legal counsel to the seven Bahaís, have been told by Iranian authorities that the trial will take place on 11 July 2009. It is understood that this action is being carried out under the jurisdiction of Branch 28 of Iran's Revolutionary Court.



[To Table of Contents](#)

### **National health ID to mix new and old in dangerous recipe**

With six months to the January 2010 deadline, details emerging of the planned national health identity system indicate hybrid ingredients of the latest technology coupled to the 30-year-old Medicare numbers system (*though that may be upgraded – see next item*).

The recipe is not promising, Karen Dearne indicates in an article in *The Australian*.

She says the \$98m Unique Healthcare Identifier (UHI) program of the National E-Health Transition Authority (NEHTA) will see health providers using PKI-based identification as verification, with consumer access through the old Medicare number. (*Public Key Infrastructure – PKI – is an electronic 'key' system used for secure transactions*).

Eventually, around 500,000 healthcare providers – doctors, specialists, pharmacists, community clinics, hospital administrators and even ambulances – will have their e-health transactions authenticated, up from 50,000 using Medicare's service today. Every Australian – 22m – will have to be involved in the system: there will be no option.

The Australian Health Ministers' Council (AHMC) is directing the project, which is funded by the Council

of Australian Governments

The reason for civil liberties concern is that no details of the privacy aspects of the project have been released. NEHTA says it is planning to release a third, independent, Privacy Impact Assessment report on the UHI scheme when it is completed; neither of the two previous PIAs have been made public.

The old Medicare card technology will not become a smartcard, Labor Human Services Minister Chris Bowen, is quoted as saying. <http://www.australianit.news.com.au/story/0,25197,25679209-15306,00.html>

### **...but Health Minister says it will**

However, in another item last month, the same reporter says a new Medicare smartcard is on the agenda, as policy makers grapple with how to give doctors and nurses secure access to patient information held electronically in either a centralised database or local and regional systems.

Federal Health Minister Nicola Roxon has indicated that a smartcard -- a plastic card containing a tiny chip -- will soon replace the old magnetic stripe Medicare card, to support the shift to widespread availability of e-health records.

The card will hold individual healthcare identifiers -- a unique number that will be issued to all Australians -- so that each person's records can be correctly identified and linked.

All healthcare providers will need new card readers, as well as access to a secure internet messaging system linking doctors' rooms, public and private hospitals, specialist and community clinics, pathology and radiology labs and even the aged-care sector.

According to the National E-Health Strategy, the identifier program will cost about \$400m over 10 years, while the associated authentication services and standards work will cost a further \$360m.

The strategy, developed by Deloitte and adopted by the Australian Health Ministers Conference last year, forecasts a total \$2.6Bn spend on new e-health services over the next 10 years, but says tangible benefits to patients and cost-savings would be about \$5.7Bn in current dollars.

<http://www.australianit.news.com.au/story/0,24897,25641261-15306,00.html>



### **Fleming writes on the legal profession**

CLA member Don Fleming, a lecturer at the University of Canberra, is on sabbatical as editor and lead author on a new book, *The Legal Profession and Its Work* (in Australia).

He and six other authors will explore topics related to professionalism, what has happened in the market for legal services, and has traditional research in the profession gone by the board.

The book will be published by The Law Book Company in 2010.

### **Democracy delayed**

*Australia: The State of Democracy*, by the Democratic Audit's Marian Sawer, Norman Abjorensen (a CLA member), and Phil Larkin, originally due in mid-June, will now be published on 3 July by Federation Press. 336pp, \$55 online.

<http://www.federationpress.com.au/bookstore/book.asp?isbn=9781862877252>

### **Bikie laws face first challenge**

Attorneys-General throughout Australia are being consulted before the South Australia's Supreme Court shortly considers a constitutional challenge to the State's new anti-bikie laws.

Two members of the Finks Motorcycle Club are challenging the laws, which allow bikie clubs to be formally 'outlawed', and prevent members associating with each other.

The SA Government is asking for a hearing as early as July: the control order process, part of the legislation, is on hold until the SA Supreme Court makes a decision.

It's likely that won't be the end of the matter either: CLA has always believed that the bikie laws will end up in the High Court...and the High Court will rule them unconstitutional – item supplied by VO

<http://www.abc.net.au/news/stories/2009/06/19/2602998.htm>



[To Table of Contents](#)

## **Bikie laws could ensnare Premier...or any of us**

As bikie laws head towards the High Court, commentators are increasingly coming forward to point out how poor conceptually, how draconian morally and how dangerous generically they are.

Writing in *The Australian*, Mark Le Grand paints a picture of how NSW Premier Nathan Rees could easily be caught up by laws of his own mis-manufacture.

Le Grand was the director of the official misconduct division of the Criminal Justice Commission and directed the investigation of organised crime for the National Crime Authority. He writes:

“NSW Premier Nathan Rees, when introducing the state's motorcycle gang laws on April 2 this year, told the NSW parliament: ‘The legislation is specific to outlaw motorcycle gangs and their members and to target outlaw motorcycle gangs.’

“This statement is patently incorrect. It is a law of general application that applies to any group of people the police suspect of ‘serious criminal activity’ as defined in the legislation. This definition covers a range of criminal activity that is satisfied by, among other things, information that the group has obtained material benefits from conduct that constitutes a serious indictable offence.

“Sufficient reason, in Rees's view, to strip any group so suspected of their right to a fair trial.

“The police can accuse and a selected judge can proscribe that group, not after a normal trial based on admissible evidence but on an application by police to a selected judge where the rules of evidence do not apply, where criminal intelligence on the balance of probabilities can be the mode of proof and where, if the police object, the judge is not allowed to tell the accused what that criminal intelligence is.

“In the 1920s Franz Kafka's famous novel *The Trial* was published. The main character, Josef K, is accused of an unspecified crime, is prosecuted but not told the evidence against him and is eventually executed by the state never knowing why.”

Mr Le Grand goes on to describe a scenario where someone in the Premier's position could easily be set up by criminal elements transferring money into bank accounts without his knowledge.

<http://www.theaustralian.news.com.au/story/0,25197,25656850-7583,00.html>

## **NSW A-G contends for national title**

NSW Attorney-General, John Hatzistergos, has slammed the proposal for national human rights legislation, calling it anti-democratic.

He also argued last month that a human rights charter would undermine parliamentary sovereignty, politicise the judiciary, create legal uncertainty, erode the federal system of government and be unconstitutional.

Mr Hatzistergos is the politician responsible for the bikie laws in NSW. He appears to be top contender for national champion of selective indignation in relation to anti-democratic legislation.

## **Feds beef up crime laws, following the States**

Attorney-General Robert McClelland last month introduced what he described as “strong, tailored and effective laws to combat serious organised crime”.

The Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009 implements measures agreed to by State and Territory Attorneys-General, that is by the Standing Committee of Attorneys-General (SCAG), the new supreme legal power in the land. The A-G says the law will:

- strengthen criminal asset confiscation regimes;
- introduce unexplained wealth provisions that require individuals to demonstrate their wealth was legally acquired;

- enhance police powers to investigate organised crime by implementing laws for controlled operations that allow law enforcement agencies to infiltrate criminal organisations and provide protection for undercover officers;
- extend criminal liability to all individuals who jointly commit an offence; and
- broaden the list of criminal offences for which appropriate telecommunications interception powers will be available.

“These measures will target the perpetrators and profits of organised crime and will provide our law enforcement agencies with the tools they need to combat the increasingly sophisticated methods used by organised crime syndicates.”

Basically, the federal move is a reaction to the SA and NSW anti-bikie laws, although the federal government had a review in train last year.

## **State to combine privacy, FOI**

NSW has introduced legislation for a \$3m Office of the Information Commissioner (OIC).

He or she will be able to direct government agencies to provide information, documents and records, and to call witnesses for formal inquiries.

“The office will review decisions of agencies about releasing information and will report to Parliament on compliance with the legislation,” NSW Premier Nathan Rees said. He said the Information Commissioner was a key part of a suite of three new bills introduced in June:

The Government Information (Public Access) Bill which replaces the Freedom of Information Act and promotes pro-active disclosure of information.

The Government Information (Information Commissioner) Bill which establishes a new, independent office of Information Commissioner.

The Government Information (Public Access) (Consequential Amendments and Repeals) Bill which amends and consolidates other related legislation.

NSW Attorney General John Hatzistergos said that the interaction of privacy and freedom of information is being examined by the NSW Law Reform Commission. “As part of the future reform of privacy legislation, the Government intends to bring the Privacy Commissioner and the Information Commissioner together within a single office.”



[To Table of Contents](#)

## **Coroner’s recommendations to get more bite**

A new Coroners Act in NSW virtually banishes the right to a jury hearing, but introduces a system to ensure that coroners’ recommendations are acted on, including by ongoing monitoring.

At present, the Coroners Act 1980 does not contain any guidance on the communication of recommendations. Clause 82 will provide that a coroner making a recommendation shall, as soon as practicable, forward a copy of the recommendation to the State Coroner, to any person or body to which the recommendation is directed, and to the Minister who administers legislation, or who is responsible for the person or body, to which a recommendation in the record relates.

The State Coroner’s primary responsibility will include the monitoring of coronial recommendations and ensuring that agencies respond to recommendations.

The new act permits only the State Coroner to decide to hold a jury inquest: previously a next-of-kin could demand a jury be involved. – from NSW Legislation Review Committee.

CLA is campaigning for a nationally-consistent coronial laws, and a national register of findings and recommendations, transparent and open to the public.

## **Prisoner van death sparks massive shake-up in WA**

Western Australia's prison watchdog says the death of an Aboriginal man in the back of a prison van in the Goldfields could have been avoided if the state's independent Inspector of Custodial Services had

greater powers.

The Deaths in Custody Watch Committee says the inspector warned the State Government in 2001 and 2007 – before the death of Mr Ward from heatstroke on a 350km journey from Laverton to Kalgoorlie – that its prison vans were not safe.

The committee's chairman, Marc Newhouse, says the inspector needs greater powers because the warnings were ignored. "The power to put enforcement notices, which means that the Government or the relevant organisation that it relates to legally has to act on those notices, and if they don't they can be taken to court," he said.

Mr Newhouse says the Inspector of Custodial Services should have the power to intervene.

"What the coroner recommends is that the inspector be given the power to put improvement notices," he said.

"That doesn't go far enough: we need enforcement notices, so that they have similar power to say what a workplace inspector has under the Occupational Health and Safety Act."

The company responsible for prisoner transport has sacked the two drivers and the State Government says it is upgrading the fleet.

<http://www.abc.net.au/news/stories/2009/06/24/2606775.htm?section=justin>

## **Police get master image control database, operated privately**

NSW police are setting up a master digital image database, operated by a private company.

The database will store and control more than 1 million digital photographs and pieces of video footage taken by police and the public. Unisys has won the \$6 million contract to manage the system as part of a three-year contract.

The Shared Imagery Management System (SIMS) can categorise, archive, search and distribute images taken by police officers at crime scenes or provided by the public in a central repository.

Original copies of photographs and footage will be saved in a digital vault; there will be another working copy of the image. SIMS will have the ability to track what happens to the image at every stage.

Police will now be able to use digital images, CCTV and mobile phone footage as reliable evidence in court, a media release claims. Under the first stage of the project, due to be operating in August, 700 forensic workers will be able to use the technology.

<http://www.smh.com.au/technology/biz-tech/state-police-images-go-digital-20090622-ctw1.html>

## **Indigenous jail rates double...and treble**

Indigenous imprisonment has almost doubled since the Royal Commission Into Aboriginal Deaths In Custody, a newspaper reported last month.

Major newspapers are now picking up on a problem CLA has been highlighting since January 2009, when we called in our Australia Day letters for the horrific rate of imprisonment of Indigenous people in WA to be formally targeted for reduction.

Eighteen years after the Royal Commission, the number of Indigenous women in prisons has more than trebled throughout Australia to make up one-third of all inmates; more than half of the 10 to 17-year-olds in juvenile detention are indigenous, the *SMH* reported.

In the NT, 83% of inmates are Indigenous; in Western Australia it is 41% in a State where Indigenous people make up single figure percentage of the population. NSW, with 20% Indigenous in jail, has the fourth highest proportion.

Drug and alcohol abuse is a major cause, according to the Australian National Council on Drugs, and more treatment programs for Indigenous offenders are sorely needed.

The council's National Indigenous Drug and Alcohol Committee says jail rates are destroying Indigenous communities and wasting public resources.

Almost 7 in 10 Indigenous adult detainees and up to 90% of juvenile detainees in NSW test positive to drugs, but many are disqualified from diversion programs because they have alcohol issues or a history

of violent offences.

The report, *Bridges And Barriers: Addressing Indigenous Incarceration And Health*, calls for increased investment in treatment such as residential rehabilitation, which costs less than half the \$269-a-day that a jail inmate costs.

The committee's chairman, Associate Professor Ted Wilkes, said governments persisted with ineffective law and order policies in pursuit of votes and ignored the remnants of structural racism in Australia's justice systems.

<http://www.smh.com.au/national/soaring-jail-rates-justify-change-of-tactics-report-20090624-cwvh.html>



[To Table of Contents](#)

## Remote homelands re-think urgently needed, group says

The NT Government has launched a new policy to direct funds to regional hubs – funding for homeland and outstation communities will be frozen and their futures placed in jeopardy, according to Australians for Native Title and Reconciliation (ANTaR).

ANTaR believes the NT Government's 'Working Futures' policy will mean "slow death by neglect of these unique and under-valued communities".

"Families should not be forced to move away from established communities on their traditional lands in order to access basic services. Nor should governments overlook the broader impacts on, and needs of, all Indigenous communities. The current policy will not contribute to closing the gap. It will simply increase dependency and disempowerment," ANTaR says.

## Queensland's stun gun inquiry might benefit nation

A Queensland Government investigation into the way police use stun guns could lead to major changes in procedure, Premier Anna Bligh has said – CLA hopes other police forces throughout Australia will learn from the Queensland inquiry.

Her warning comes after a north Queensland man died when police repeatedly stunned him with a weapon while trying to arrest him last month.

The 39-year-old man from Brandon, near Townsville, was the third death in Australia attributed to the use of stun guns, according to newspaper reports. However, CLA believes it is the fourth, with a man's death on a street in Perth still unexplained.

The Queensland Crime and Misconduct Commission and Queensland Police Service will jointly undertake the review. Training and further rollout of stun guns is on hold for four weeks while the review is under way but current use of stun guns will not be affected.

A man died in Alice Springs last month after police stunned him. In May 2002, a NSW man died of a heart attack about two weeks after being shot with a stun gun when he threatened police with a frying pan. The WA death occurred last year.

<http://www.news.com.au/couriermail/story/0,23739,25638853-3102,00.html>

**EDITORIAL, Courier-Mail:** Statistics indicate that police use stun guns at least once every three days in Queensland...But there are other disturbing reports of stun gun use. What of the handcuffed man zapped in his cell? Or the 16-year-old girl stunned for failing to obey a police direction? To what extent are police using stun guns not out of self-protection but out of annoyance? There are three additional questions Queenslanders want answered: How safe are Tasers? How necessary are they to law enforcement? And have stun guns moved from a next-to-last last resort to police's first response? Sadly, these questions don't look like being answered anytime soon.

<http://www.news.com.au/couriermail/oursay/editorials/>

Initial reports said the north Queensland man died just 30 minutes after receiving three 1200-volt Taser shocks. Reports suggest the man was drug-affected, brandishing an iron bar, and unaffected by capsicum spray. However, later reports from data automatically recorded by the stun gun indicated that the man was stunned 28 times. The inconsistency is not yet resolved.

## **Worldwide cyberdefence may eat into privacy in Australia**

Plans in Australia, the USA, the UK and Canada to create new computer defence systems are likely to steamroll personal privacy in the name of fighting online terrorism and preventing a national 'cyberattack'.

CLA believes plans for the coordinated worldwide announcements of the 'cybercentres' – just made in the past few weeks in three countries – were hatched at a secret meeting at the US Embassy in Canberra just before Anzac Day in late-April.

Communications, Defence and Attorney-General Ministers and officials are now holding meetings in Australia towards a new, beefed-up system, while in the USA a proposed Pentagon 'cybercommand' will be designed to prevent electronic warfare attacks.

In Sydney last month, the Defence Signals Directorate (DSD) led a briefing on how e-security challenges can potentially impact on Australia's critical infrastructure as part of the Trusted Information Sharing Network for Critical Infrastructure Protection (TISN). Info: [www.tisn.gov.au](http://www.tisn.gov.au)

In the USA, the equivalent plans are raising significant diplomatic concerns, as the Obama administration prepares for possible offensive operations against adversaries' computer networks, according to a report by Thom Shanker and David Sanger in the *New York Times*.

President Obama has said that the new cyberdefence strategy will provide protections for personal privacy and civil liberties. But senior Pentagon and military officials say the assurances may be challenging to guarantee in practice, particularly in trying to monitor the thousands of daily attacks on security systems in the USA that have set off a race to develop better cyberweapons.

There is simply no way, the officials say, to effectively conduct computer operations without entering networks inside the USA, where the military is prohibited from operating, or traveling electronic paths through countries that are not themselves American targets...including friendly countries like Australia.

<http://www.nytimes.com/2009/06/13/us/politics/13cyber.html?>

In the UK, a national cyber security centre to combat the growing threat of criminal gangs and foreign states hacking into Whitehall and big business was due to be announced by the Prime Minister Gordon Brown.

The organisation will be similar to an agency being created by Barack Obama who is appointing a cyber tsar to fight what the US president referred to last month as "weapons of mass disruption".

Britain has been holding talks with the US and Canada (and Australia, CLA says) to co-ordinate operations against cyber attacks by foreign powers and terrorists.

<http://www.guardian.co.uk/technology/2009/jun/14/government-security-cyber-crime-hacking>

## **Will women's increasing violence towards partners rise further?**

Figures from the NSW Bureau of Crime Statistics show the number of women charged with domestic violence-related assault has increased dramatically.

The figures show 2,336 women faced court on charges of domestic violence in 2007, mainly for bashing their husbands, compared with just 818 in 1999.

Research shows women tend to use guns, knives, boiling liquids and irons to attack their partners. The increase in violence, which is often fuelled by alcohol, has sparked calls for refuges for men.

CLA's commentator on family relations issues, Roger Smith, writes:

"How would a criminologist go about explaining a threefold increase in rates of female perpetration of domestic violence (DV) in just 10 years at the same time as other violent crime rates are either stable or decreasing?"

"Could it be partially due to discriminatory, federally-funded, print and TV campaigns like '*Violence Against Women - Australia says No*'? If so, we can expect even more increases in rates of violence once the Rudd Government's \$38 million National Plan to Reduce Violence against Women and Children comes into full swing over the next five years. The plan is designed to further institutionalise discrimination in DV policy.

“My prediction is that it could actually cause an increase in domestic violence, and certainly, will result in a sharp increase in rates of perpetration of DV by women,” Mr Smith said.

 [To Table of Contents](#)

## **STUDENTS: Inquiry looks into impact of violence on young Australians**

CLA student members are invited to help make submission to the federal parliament’s Standing Committee on Family, Community, Housing and Youth and its inquiry into the impact of violence on young Australians.

The committee chair, Annette Ellis (Lab, Canberra) said: “Committee Members have become increasingly concerned about the impact of violence on young Australians. We hope that this inquiry will enable young Australians to communicate their experiences and perceptions of violence to the committee.”

A Mission Australia 2008 survey of 45,558 Australians aged between 11 and 24 reported that 22% of respondents identified personal safety as a significant concern.

The committee will specifically examine:

- perceptions of violence and community safety among young Australians;
- links between illicit drug use, alcohol abuse and violence among young Australians;
- the relationship between bullying and violence and the wellbeing of young Australians;
- social and economic factors that contribute to violence by young Australians; and
- strategies to reduce violence and its impact among young Australians.

Further details: [www.aph.gov.au/fchy](http://www.aph.gov.au/fchy)

## **Civil liberty groups effective, UK top lawyer says**

The UK Independent Reviewer of Terrorism Legislation, Lord Alex Carlile, says civil liberties groups are effective in influencing events.

Lord Carlile of Berriew QC recently addressed an audience at the ANU on his role as the UK’s terrorism legislation monitor. He reviews and reports publicly on the operation of the anti-terrorism legislation, being cited in parliamentary debates, court cases and the media. He is critical or supportive of government, depending on the issue.

Lord Carlile argued that an independent person in this role can provide a level of public reassurance on the balance between civil liberties and regulation. He contended that national security is an important individual liberty in the context of current international terrorist activity.

In correspondence after the event, Lord Carlile praised the role that Liberty UK played in the ongoing debate in Britain.

He also agreed with CLA that the role of the media is essential. “I would advise a group like yours to engage closely with any legal correspondents of the Australian media at all levels, and seek opportunities to write op-eds and the like for influential newspapers and journals” (personal email communication 21/6/2009).

## **CLA’s main activities for June 2009**

### **Administration:**

Meeting to plan Treasurer’s job and new system of membership and financial records

Member Lynne Bliss volunteering half-day/fortnight to assist (anyone else have some time?)

Board meeting held 21 June 2009;

Developed WATZON, weekly report on CLA activities, for Board/spokespeople/helpers;

Distributed email: National Human Rights Consultation, 1-3 July meetings in Canberra.

### **Submissions**

National Human Rights Consultation: submission lodged

Supplementary submission on Medicare compliance auditing lodged: report received;

Invited to appear: Murder Bill inquiry ACT, 22 July;

Invitations received to make contributions/submissions into:

- House Standing Committee on Procedures, on improving parliamentary committees;
- Violence against students (see item above);
- Secrecy inquiry (DP74) by Australian Law Reform Commission.

### **Media:**

Continued efforts to find young, committed talent for CLA spokesperson(s);

Interviews:

- Channel 9 on medical cards;
- Print interview SA on monitoring mobile phones.

### **Networking:**

Ikebal Patel, President, Australian Federation of Islamic Councils;

Letter of support for National Europe Centre ANU for funding;

Contacted AGs re CLA to AG/ NGO briefing meetings;

Exchanged correspondence with Marcus Einfeld;

Andrew Podger, Institute Public Administration of Australia, re Model Litigants;

Lt-Gen John Sanderson, WA Indigenous issues;

Clare Martin, ACOSS and NT drugs/legal issues;

Presidents of State Motorcycle clubs, NSW (re tolls) and Vic;

Bill Stefaniak, President ACAT;

SA defence lawyer, re bikie laws;

all State CLs, re bikie law analysis.

### **Extension activities:**

Freedom song, score written by Perth member Jeff Carroll, words Kris Klugman, investigating recording, possibly with Trade Union Choir (ACT), Shiny Bum Singers (public servants) or House Howlers (parliamentary press gallery): more liberty/freedom songs required - any songwriters, musicians, or singers interested?

### **Inquiries/Cases:**

NT draconian drug laws;

General Inquiry subjects (Inquiries Manager, Phylli Ives) : Run from RBT stop; Have CL bodies failed; Qld Rail ticket; racial vilification; fluoride Qld (generic response written to cover: fluoride, abortion, euthanasia, folic acid); High School law student on bikie laws (2 from SA this month, handled by Raff Piccolo)

### **Promotion**

SBS free ads, CLA bid unsuccessful;

CLA Community Service Announcement available for regional TV.

### **Lectures:**

Lord Carlile QC, independent anti-terror laws monitor in UK (followed up by email correspondence, inviting his comment on how civil liberties organisations could operate);

Margaret Reynolds, Senate Occasional Lecture (follow-up correspondence, discussion on Tasmanian civil liberties activities).

### **Funding:**

Investigation of results of request to include CL and HR groups in Proceeds of Crime

### **Projects:**

Model Litigant project – progressed;

Rights of Territorians against Commonwealth overriding their legislatures – progressed;

6-month review of stun guns procedures in States/Territories: completed, see website.

### **Students:**

Member Don Malcolmson agreed to be take over student internships coordinator role;

Follow up on University of Canberra students;

Contact made with U. Notre Dame (WA) Law school.

**Vale:** ‘Mac’ West: a long-standing member of CLA, noted for his letter-writing and his willingness to volunteer to help others, died last month. Another esteemed member, Ann Gollan, wife of influential ‘left’ historian Bob who died a year earlier, has also died: both were members.



[To Table of Contents](#)

## **A-G to provide limited support to retired lawyers doing pro bono work**

For at least five years, CLA has been campaigning for a system to allow retired lawyers to work pro bono (without charge) to help people without resources fight important legal battles – the key issue is legal insurance.

A-G Robert McClelland last month announced a project to help retired lawyers and lawyers taking a break from their careers to become involved in pro bono legal work. Funding of \$40,000 is being given to the National Pro Bono Resource Centre.

The project has synergies with the Golden Gurus program, an idea arising from the Australian 2020 Summit, which encourages existing mentoring schemes and connects skilled mature-age people to mentoring opportunities.

However, CLA believes the A-G should also investigate providing legal insurance protection to existing civil liberties and human rights organisations .

## **Former A-G’s bureaucrat says South Australia is a ‘police state’**

A former senior bureaucrat acquitted of criminal charges has described South Australia as a police state, according to an ABC report.

Bernie Lindner claims he lost his job in the Attorney-General's Department after police fabricated charges against him, including refusing a breath test and assaulting police.

The charges were dropped in December and, in a court hearing last month, police were ordered to pay Mr Lindner's legal fees of \$16,000.

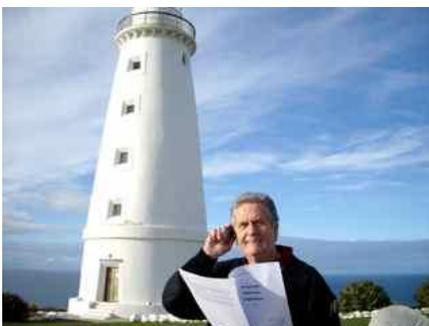
Mr Lindner believes police are too focused on meeting statistics and are hunting the public. "I think it's terribly unfortunate that a heavily spin-oriented approach to law and order in this state has led to unfortunate consequences," he said. "I'm sure [it's] not intended by the people at the top, but there hasn't been close enough attention to what has eventuated."

A police spokeswoman said that, if Mr Lindner believed the charges were fabricated, he should lodge a complaint. <http://www.abc.net.au/news/stories/2009/06/02/2587580.htm>

## **CLA helps Senate see the light**

A lighthouse on Kangaroo Island was the unusual backdrop recently for CLA taking part in a community consultation by a Senate Committee inquiring into possible changes to Medicare legislation.

Civil Liberties Australia’s CEO Bill Rowlings gave evidence from Cape Willoughby, the light station built in 1852 at the far south-east corner of the island named by explorer Matthew Flinders.



The Senate Community Affairs Committee was inquiring into whether new laws would permit Medicare to more closely monitor and audit how doctors billed the Australian Government for their services.

CLA and other organisations – the Australian Medical Association and Australian Privacy Foundation, for example – wanted the draft

laws amended so that the strictest privacy standards applied to patients' medical records.

As Mr Rowlings gave evidence, he could look out to where Australia's first diplomatic incident took place – when Matthew Flinders on the Investigator met Nicholas Baudin of France on the Geographe in Encounter Bay, which is named after the surprise meeting. Though Britain and France were at war, the two explorers exchanged survey information cordially. Mr Rowlings was on leave when the Committee met, so the only way to take part was by teleconference.

The committee's report was published in June: [http://www.aph.gov.au/senate\\_ca](http://www.aph.gov.au/senate_ca)

**CARTOONS:** *Revisiting Visions: a Romanian Retrospective on Human Rights*, illustrated by Romanian cartoonists, 16 – 24 July 2009 at CLA's networking partner at the ANU, the National Europe Centre, 1 Liversidge St. Opening 16 July 2009, 6pm – CLA members welcome to attend.

## **Fiji 'bans' Aussies speakers**

Australian Professors Brij Lal, Richard Naidu and Graham Leung were dropped from the speakers list of the Fiji Institute of Accountants Congress convention after police warned the permit to hold the convention would be dropped if they spoke, Mediafire reported last month.

Prof Leung's to-be-delivered speech, made available on the internet, said: "We have had five coups in twenty-two years. Dictatorship and arbitrariness has replaced the rule of law, democracy and human rights.

"We have a regime whose authority is based on force rather than the consent of the people. That is our reality. Who can say with certainty that this scenario will not continue beyond September 2014? The prospect is depressing. How do we climb out of this quicksand into which we are fast sinking? Fiji is not just in a political, but a deep financial crisis. The root of that crisis stems from the underlying political instability and coups which have ravaged the country over the last two decades.

"This crisis cannot be solved merely by getting the economic fundamentals right, because its origins lie in systemic political and governance issues. This crisis will not solve itself if we just ignore it. No matter how attractive the fiscal and policy incentives cobbled together by the regime, there will be few takers given the present political instability and uncertainty. And the confidence needed to restore the economy will only come if we make the right decisions going forward.

"The world has changed since 1987. Human rights concerns do matter. And in the world of real politick, we are vulnerable and small enough to be held accountable.

"Call it double standards, call it what you will. That is how international relations work. The regime may well think it can defy external pressures. But it will come at the expense of further decline in social services, our standard of living, decay in infrastructure, increased poverty, crime and other social ills."

Report: <http://www.mediafire.com/?jemzt3tjzni>



[To Table of Contents](#)

## **Australian BRIEFS**

**Australia taps phones more than US does:** A federal parliamentary estimates hearing was told last month that about 3000 Australians had their phone calls intercepted every year. Greens Senator Scott Ludlam said there was something "rather peculiar happening in Australia. We are per capita vastly more likely to have a telephone intercept than a citizen of the US." He said that on a per capita basis, Australians were 23 times more likely to have their phones bugged than Americans. He told the Legal and Constitutional Affairs committee that a comparison of data showed that 2929 warrants were issued in Australia in a 12-month period but in the US there were only 1800 during the same time.

**Submissions requested on enforcing foreign legal rights:** A-G Robert McClelland, has tabled the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and

Commercial Matters 1965. "Accession to the convention will help Australians enforce legal rights in foreign jurisdictions more efficiently and effectively," Mr McClelland said. The convention makes serving documents in foreign countries quicker and cheaper by enabling them to be provided to a designated central authority in participating countries. The Treaties Committee is seeking submissions on the implications for Australia of acceding to the convention by Friday 24 July 2009. Details: [www.aph.gov.au/jsct](http://www.aph.gov.au/jsct) or email [jsct@aph.gov.au](mailto:jsct@aph.gov.au) or phone (02) 6277 4002.

**Rights reorganised:** Catherine Branson has been appointed Human Rights Commissioner on top of her current role as President of the Commission. Graeme Innes has been re-appointed Disability Discrimination Commissioner and will also be Race Discrimination Commissioner. In the latter role, he replaces Tom Calma, who will focus on being Aboriginal and Torres Strait Islander Social Justice Commissioner only. The Branson and Innes appointments operate from 12 July 2009 for three years.

**Bugg become ILSAC chief:** Tim Bugg has been appointed Chair of the International Legal Services Advisory Council (ILSAC) which advises government on advancing the Australian legal profession's participation and performance internationally. Mr Bugg starts today – 1 July 2009 – for a four-year appointment, taking over from the Sir Laurence Street.

**Senator Conroy nominated as world-ranking villain:** Australia's Communication Minister Stephen Conroy is one of the nominees for the British ISP industry's worldwide 'internet villain of the year' award. The nomination came before he said he would use Australia's internet censorship regime to block websites hosting and selling video games not suitable for 15 year olds. <http://www.smh.com.au/digital-life/games/web-filters-to-censor-video-games-20090625-cxrx.html>

## INTERNATIONAL

### Supreme Court rules laboratory analysts must testify on results

The US Supreme Court has ruled that analysts responsible for crime laboratory reports must give testimony and subject themselves to cross-examination in criminal trials, or the analysis may not be used as evidence.

The 5-4 ruling extended a 2004 decision reconfirmed that a criminal defendant has the right "to be confronted with the witnesses against him", Adam Liptak reported in the *NY Times*.

In February, the National Academy of Sciences issued a sweeping critique of the nation's crime labs. It concluded, for instance, that forensic scientists for law enforcement agencies "sometimes face pressure to sacrifice appropriate methodology for the sake of expediency."

[http://www.nytimes.com/2009/06/26/us/26lab.html?\\_r=1&th&emc=th](http://www.nytimes.com/2009/06/26/us/26lab.html?_r=1&th&emc=th)

### US prisoners denied right to DNA to prove innocence

US prisoners have no constitutional right to DNA testing that might prove their innocence, the Supreme Court ruled last month in a 5-4 decision.

The majority emphasised that 46 states already had laws that allow at least some prisoners to gain access to DNA evidence. The case before the court concerned Alaska, which has no DNA testing law. Prosecutors there have conceded that such testing could categorically establish the guilt or innocence of William G. Osborne, who was convicted in 1994 of kidnapping and sexually assaulting a prostitute in Anchorage.

In a dissent, Justice John Paul Stevens said the US Constitution's due process clause required allowing Mr. Osborne to have access to DNA evidence in his case.

Chief Justice Roberts acknowledged the "unparalleled ability" of DNA testing "both to exonerate the wrongly convicted and to identify the guilty." Such testing has played a role in 240 exonerations, according to the Innocence Project at Cardozo Law School, which represents Mr Osborne. In 103 of

those cases, the testing also identified the actual perpetrator.

<http://www.nytimes.com/2009/06/19/us/19scotus.html?th&emc=th>



[To Table of Contents](#)

## **Whistleblowing can pay off big in the USA**

In the USA, exposing corruption can be a winning lottery ticket. Since 1986, more than \$40 billion has been paid out in fraud lawsuits brought by whistleblowers.

John Schilling, an accountant cum government witness who helped expose massive Medicare fraud by the hospital chain Columbia HCA, shared a \$200 million reward with one other man.

In May, President Barack Obama signed legislation making it easier to bring whistleblower suits and expanding definitions of fraud that had been on the books since the Civil War, and was last enhanced in 1986. Under the False Claims Act, the government can recover treble the amount of fraud. The so-called “qui tam” provisions of the law give whistleblowers — called “relators” — up to one-quarter of the recovery.

Settlements and judgments from the act have become staggering. In March, lawyers at Ashcraft & Gerel announced a \$250 million settlement with Network Appliance Inc., which was accused of skirting its “best prices” promise in its contract with the US General Services Administration.

The settlement – a record for GSA – paid Rockville analyst Igor Kapuscinski about \$40 million for exposing the fraud.

According to a 2006 study by the US Government Accountability Office, the median recovery from False Claims Act cases was nearly \$785,000; the median payout to whistleblowers was nearly \$124,000. Australia has no similar provisions that allow people reporting fraud to share in the savings or the fines.

– from a Bill Myers, *Washington Examiner*, story

## **Is the economic crisis causing social fracture worldwide?**

Repression of demonstrations, trade union members arrested, NGOs under surveillance: for years these are the signs of economic and social imbalance and inequity – and now, the rise in social discontent linked to the world economic crisis has increased the repression recorded in recent years, a combined report of torture/human rights groups says.

The Observatory Annual Report 2009 shows that, in inverse proportion to the fall of the stock exchanges, the inflation of freedom-killing practices and laws relating to the control of the social body was one of the significant characteristics of the problems of 2008.

Roberto Saviano, author of the report foreword, warns: “Crises” in 2008 have resulted in an increase in social protest movements. In Cambodia, Cameroon, South Korea, Tunisia, Colombia, Zimbabwe and elsewhere, women and men have poured onto the streets to demand respect for their social and economic rights, and the peaceful leaders of these demonstrations are too often the targets of repression. Is this a taste of what is in store for us in the framework of the current crisis and the social movements to which it will legitimately lead?”

<http://www.fidh.org/Steadfast-in-protest-human-rights-defenders-annual-report-2009>

## **NY highest reprimands NY finest for GPS monitoring breach of privacy**

In *People v. Weaver*, the New York Court of Appeals (the highest court of New York State) held that before attaching a GPS device to a suspect’s car and continuously monitoring the car’s whereabouts for 65 days, the police— often described as New York’s finest – should have obtained a search warrant.

In so holding, the court relied exclusively on the NY State Constitution’s analogue to the US Constitution’s Fourth Amendment right against unreasonable searches and seizures. The court thereby insulated its decision from reversal by the US Supreme Court (because a US state’s highest court has the final word on the construction of state law).

In reaching the result that it did, the NY court indirectly raised important questions about the US

Supreme Court's interpretation of the federal right to be secure against unjustified intrusions by the police. "While this case will not reach the US Supreme Court, its careful approach could prove influential for federal courts considering the parallel Fourth Amendment question," Sherry Colb wrote on the FindLaw blog for legal professionals.

<http://writ.lp.findlaw.com/colb/20090624.html>

## **Britain's top cop wants human rights front and centre**

The man who takes over as president of the Association of Chief Police Officers (ACPO) in September is calling for human rights to be put at the heart of British policing.

Pitting himself against other senior colleagues, Sir Hugh Orde wants to see a radical shakeup in policing, particularly in public order tactics and training, to put more emphasis on considering human rights.

Orde, the outgoing Northern Ireland chief constable, will be in a powerful position as ACPO chief to reshape British policing using the experience he gained in Northern Ireland, where he oversaw the implementation of the Patten review, which put human rights at the core of policing.

In his first interview since being appointed president, Orde challenged the view of some officers that the consideration of human rights was an obstacle to tackling crime. "There is a myth that human rights prevents good policing," he told the Guardian. "The Patten recommendations were underpinned with the human rights approach – starting with training."

<http://www.guardian.co.uk/politics/2009/jun/21/hugh-orde-acpo-human-rights>

## **Government's 'back door wiretap' is challenged**

The Electronic Frontier Foundation (EFF) and other civil liberties groups have filed an amicus brief in *Warshak v US*, urging the 6th US Circuit Court of Appeals to hold that the government's seizure of email without a warrant violated the Fourth Amendment and federal privacy statutes, as well as the Justice Department's own surveillance manual.

During its criminal investigation, the Department of Justice illegally ordered defendant Stephen Warshak's email provider to prospectively "preserve" copies of his future emails, which the government later obtained using a subpoena and a non-probable cause court order.

The government accomplished this "back door wiretap" by misusing the Stored Communications Act (SCA), which is only supposed to be used for obtaining emails already in storage with a provider.

In Wednesday's filing, EFF argues that the government's seizure violated federal privacy laws and Warshak's Fourth Amendment expectation of privacy in his email. As a result, the illegally seized emails should have been suppressed by the district court where Warshak was tried.

All told, the government acquired over 27,000 emails spanning over six months from Warshak's email provider, all without probable cause. <http://www.eff.org/press/archives/2009/06/11>



[To Table of Contents](#)

## **US exhibits selective indignation over its comms surveillance**

In another situation with allied concerns, the National Security Agency is facing renewed scrutiny by Congressional committees over its domestic surveillance program.

Critics in Congress say its recent intercepts of the private telephone calls and email messages of Americans are broader than previously acknowledged.

A former NSA analyst, in a series of interviews, described being trained in 2005 for a program in which the agency routinely examined large volumes of Americans' email messages without court warrants. Two intelligence officials confirmed that the program was still operating.

Email messages, more so than telephone calls, have proved to be a particularly vexing problem for the NSA because of technological difficulties in distinguishing between email messages by foreigners and by Americans, the *New York Times* reported.

CLA would like to know why Americans believe foreigners have lesser rights in relation to intercepts? Why is intercepting the emails of non-Americans legal, if it is not legal to intercept the emails of Americans. <http://www.nytimes.com/2009/06/17/us/17nsa.html?>

## **British PM promises to hand power back to parliament**

PM Gordon Brown last month endorsed radical measures to put a revived parliament back at the centre of British political life, in a reform package designed to restore MPs' lost credibility.

The prime minister set out ideas to curb the power of whips and surrender to MPs important controls over the way Westminster business is conducted. In future, MPs would elect all select committees, take control of the Commons' business program, and be given a greater chance to introduce legislation.

Brown has asked one of parliament's biggest advocates of reform, the Labour MP Tony Wright, to chair a quick all-party inquiry into parliament. It will examine:

- How parliament can be strengthened in its scrutiny of the government.
- How Westminster connects with the public.
- How control of parliament's daily business can be wrestled away from the government and its whips.

Wright, chair of the all-party public administration select committee, made the suggestion of a "new special committee of authoritative reform-minded MPs" in a private letter to Brown on 1 June, saying his ideas would not threaten the government's legislative program, but "would help make a more vital Commons from which other reforms would flow".

<http://www.guardian.co.uk/politics/2009/jun/10/gordon-brown-parliament-reform-labour>

## **Law Lords stand up for fair trials**

The Law Lords have dealt a major blow to the UK Government's controversial use of control orders on terror suspects, saying that the use of "secret evidence" denies them a fair trial.

The nine-judge panel, led by Lord Philips of Worth Matravers, the senior law lord, upheld a challenge on behalf of three Libyans (who cannot be named) on control orders. The control orders against the men have not been quashed, but the Law Lords have ordered that the cases must be heard again.

The three argued that the refusal to disclose even the "gist" of the nature of the evidence against them denies them a fair trial under the Human Rights Act.

The Home Office argued that it was sometimes possible to have a fair hearing without any disclosure, depending on the circumstances of the case. Security-vetted special advocates are supposed to represent the interests of those placed on control orders in each case.

The terms of the control orders imposed on individual suspects by the home secretary include curfews at their home address of up to 16 hours, a ban on travelling abroad, all visitors to be approved by the Home Office, monitoring of all phone calls, and a ban on internet and mobile phone use.

The judgment is a further blow to the government's control order regime after the law lords ruled in 2007 that 18-hour curfews were in breach of the European convention on human rights.

Lord Philips said: "A trial procedure can never be considered fair if a party to it is kept in ignorance of the case against him." Lord Hope said: "The slow creep of complacency must be resisted," and that, to protect the rule of law, courts must insist that the person affected be told what is alleged against them.

<http://www.guardian.co.uk/politics/2009/jun/10/control-orders-breach-terror-suspects-rights>

## **London Police accused of 'waterboarding' suspects**

Six Metropolitan police officers have been suspended from duty following allegations they used a form of water-based torture on suspected drug smugglers.

The Independent Police Complaints Commission (IPCC) said it was investigating the conduct of officers based in Enfield, north London, during drugs raids in the borough in November 2008.

Neither the IPCC nor Scotland Yard would comment on the nature of the allegations but sources said

the officers were accused of pushing suspects' heads into buckets of water.

One IPCC document is said to use the word "waterboarding" – the CIA technique condemned as torture by Barack Obama – in connection with the allegations.

The torture claims are part of an investigation which also includes accusations that evidence was fabricated and suspects' property was stolen. It has already led to the abandonment of a drug trial.

The IPCC is examining the conduct of six officers connected to drug raids in November in which four men and a woman were arrested in Enfield and Tottenham, north London.

Police said they found a large amount of cannabis and the suspects were charged with importation of a class C drug. The case was abandoned four months later when the Crown Prosecution Service said "it would not have been in the public interest to proceed".

<http://www.guardian.co.uk/uk/2009/jun/10/ukcrime>



[To Table of Contents](#)

## **Bloggers opened to public naming**

Blogging is a public activity with no right to anonymity, the British High Court ruled last month in a decision expected to have far-reaching repercussions for thousands of bloggers who keep their identities secret.

Richard Horton had obtained a temporary injunction against *The Times* after a reporter discovered he was the police officer behind the *NightJack* blog, which attracted hundreds of thousands of followers to its behind-the-scenes commentary on policing.

Horton, a detective constable with Lancashire police, prevented the newspaper from revealing his identity after arguing the paper would be putting him at risk of disciplinary action for disclosing confidential information about prosecutions within the force.

However, in a landmark judgment Mr Justice Eady overturned the injunction, stating that Horton had "no reasonable expectation of privacy. I do not accept that it is part of the court's function to protect police officers who are, or think they may be, acting in breach of police disciplinary regulations from coming to the attention of their superiors," Eady added.

The implications of the judgment for bloggers who rely on anonymity to reveal confidential information will be immediate, critics of the ruling have said.

<http://www.guardian.co.uk/media/2009/jun/16/nightjack-blogger-horton>

## **Police take DNA samples from kids 'in case they commit crimes in future'**

Hundreds of London teenagers are having their DNA taken by police in case they commit crimes later in life, an officer has disclosed.

Police are targeting children as young as 10 to put their DNA profiles on the national database. The practice is described as part of a "long-term crime prevention strategy" to dissuade youths from committing offences in the future, Murray Wardrop wrote last month in the London *Daily Telegraph*.

The claim comes amid widespread criticism of government proposals to store DNA profiles of innocent people, including some children, on the database for up to 12 years. British civil liberty campaigners have condemned the alleged new police tactic as "diabolical" and said it showed contempt for children's freedom. <http://www.telegraph.co.uk/news/newstoppers/politics/lawandorder/5444332/Police-arrest-innocent-youths-for-their-DNA-officer-claims.html>

## **Brits queue up to die in Switzerland, where it's legal to help**

Record numbers of British people suffering from terminal illnesses are queueing up for assisted suicide at the Swiss clinic Dignitas, Denis Campbell reported in the Observer last month.

Almost 800 have taken the first step to taking their lives by becoming members of Dignitas, and 34 men and women, who feel their suffering has become unbearable, are ready to travel to Zurich and take a lethal drug overdose. The tenfold increase in the number of Britons who have joined Dignitas since

2002 is raising questions about the law that bans assisted suicide in Britain.

An influential group of peers, led by two former ministers in former PM Tony Blair's Cabinet, want to end what they see as the outdated and inhumane situation in which relatives or friends risk up to 14 years in prison if they travel with a loved one undertaking assisted dying overseas.

The peers – led by Lord Falconer, a former lord chancellor, and Baroness Jay, a former leader of the House of Lords – are proposing an amendment to the Coroners and Justice Bill to lift the threat of prosecution from people who want to support someone in their final moments.

The 1961 Suicide Act criminalises anyone who aids, abets, counsels or procures someone else's suicide, and some relatives who have travelled have been questioned by police on their return.

However, government law officers have already admitted that no one who goes abroad for that purpose is likely to face prosecution.

<http://www.guardian.co.uk/society/2009/may/31/assisted-suicide-reform-uk-switzerland>

## **Prisoner stunned to take DNA sample**

It is legally permissible for police to zap a suspect with a stun gun to obtain a DNA sample, as long as it's not done "maliciously, or to an excessive extent, or with resulting injury," a county judge ruled last month in New York State.

Niagara County Judge Sara Sheldon Sperrazza decided that the DNA sample obtained last September from Ryan S. Smith of Niagara Falls — which ties him to a shooting and a gas station robbery— is legally valid and can be used at his trial.

Smith was handcuffed and sitting on the floor of Niagara Falls Police Headquarters when he was zapped with the 50,000-volt electronic stun gun after he insisted he would not give a DNA sample.

He had already given a sample, a swab of the inside of his cheek, without protest the previous month. But police sent it to the wrong lab, where it was opened and spoiled. Prosecutors who had obtained a court order for the first sample went back to Sperrazza, who signed another order without consulting the defense. <http://www.buffalonews.com/home/story/692141.html>

## **Terrorism laws have strangled US rights to freedom**

Poll results released last month show that 52% of American respondents oppose closing the detention "facility" at Guantanamo Bay; 39% thought it should be shut down, which left 9% who perhaps thought it should be a little bit open and a little bit closed, Richard Ackland wrote in the *SMH* last month.

Less than half (48%), according to *The Wall Street Journal/NBC* poll, supported moves by the US President, Barack Obama, to ban "harsh interrogation practices", ie torture; 41% thought torture of detainees is not such a bad idea.

Obama's promise to close Guantanamo by January is causing big headaches and is one of the reasons behind the slide in his job approval rating - down from 61% in April to 56%. Americans love their enemy combatants holed up in someone else's country and for the nasty interrogation to be done in offshore black-hole venues, Mr Ackland wrote.

They don't want "enemy combatants" tried in United States criminal courts or put away in homeland jails. No nasty terror people locked up in my parish, thank you very much. Cuba is just fine.

<http://www.smh.com.au/opinion/terrorism-laws-have-strangled-cherished-us-rights-to-freedom-20090618-clxl.html>



[To Table of Contents](#)

## **ACLU seeks details of border searches of laptop computers**

The American Civil Liberties Union has filed an FOI request to find out how many laptops and other electronic devices US border officials have seized from international travellers.

Customs and Border Protection (CBP) policy permits officials to search the laptops and other electronic devices of travelers without suspicion of wrongdoing, according to an FOI request filed last month

by the ACLU. The ACLU filed the FOI request with CBP, part of the Department of Homeland Security, to learn how CBP's suspicionless search policy, first made public in July 2008, is impacting the constitutional rights of international travelers.

"Based on current CBP policy, we have reason to believe innumerable international travelers – including U.S. citizens – have their most personal information searched by government officials and retained by the government indefinitely," said Larry Schwartztol, staff attorney with the ACLU National Security Project. "The disclosure of these records is necessary to better understand the extent to which US border and customs officials may be violating the Constitution."

<http://www.aclu.org/freespeech/gen/39818prs20090610.html>

## **Job applicants suffer under Bozeman ruling**

The city of Bozeman, with a population of 25,000 people in south-western Montana USA, probably isn't one you heard of recently. However, it's in the news after a city job requirement has drawn heavy criticism over possible privacy issues.

An anonymous citizen who applied for a city job alerted local media that he or she had to provide log-in information and passwords for any and all social networking web sites they use while applying for a job with the city. Along with the normal background check, criminal history, education and employment past, the following is written into the Bozeman city employment waiver statement:

"Please list any and all, current personal or business websites, web pages or memberships on any internet-based chat rooms, social clubs or forums, to include, but not limited to: Facebook, Google, Yahoo, YouTube.com, MySpace, etc."

The application also gives room for three different web sites, account names and passwords, according to the applicant.

<http://www.dailytech.com/City+Requests+Facebook+MySpace+Google+Logins+and+Passwords+of+Job+Applicants/article15465.htm>

## **INTERNATIONAL BRIEFS:**

**Chinese extend censorship to medical research:** The Chinese Health Ministry has ordered sharp restrictions on Internet access to medical research papers on sexual subjects. It is the latest move in what the ministry calls an anti-pornography campaign that many China experts see as a harbinger of a broader crackdown on freedom of expression and dissent.

<http://www.nytimes.com/2009/06/26/world/asia/26china.html?th&emc=th>

**Activist's release is minor victory:** Indian civil society activist, Dr Binayak Sen, was finally granted bail in May by the Supreme Court of India after spending almost two years in jail. He is accused under India's controversial anti-terrorism laws for passing messages to a Maoist leader whom he used to visit in jail as part of his civil society work. Before his arrest, Dr Sen was helping unearth official complicity in extra-judicial killings and other human rights violations by government forces and the state-sponsored militia group Salwa Judum in the conflict ridden province of Chhattisgarh. More info: <http://www.civicus.org/content/e-CIVICUS444-Release-of-Binayak-Sen.html>

**Scotland Yard detectives live high on the public hog:** More than 300 elite Scotland Yard detectives are suspected of defrauding the British taxpayer of many millions by abusing their corporate credit cards, according to the *Observer* newspaper. Auditors examining the American Express accounts of 3,500 officers involved in countering terrorism and organised crime have reported almost 1 in 11 detectives to the Metropolitan Police's internal investigators. One senior officer appears to have spent \$80,000 on his Amex card in one year, without authorisation. Items bought by others without permission include suits, women's clothing and fishing rods.

<http://www.guardian.co.uk/politics/2009/jun/14/expenses-fraud-detectives-scotland-yard>

**US may change law to allow martyrdom:** The Obama administration may change US law so that Guantánamo Bay detainees facing the death penalty could plead guilty without a full trial. It would turn the detainees into martyrs, which is what they want, and avoid airing the details of brutal US interrogation techniques, which is what the the US Administration wants. Draft legislation was floated last month under restrictions requiring secrecy.

<http://www.nytimes.com/2009/06/06/us/politics/06gitmo.html>

**Yemeni suicides at Guantanamo prison:** A man from Yemen held at the US-run prison in Guantanamo Bay, Cuba, for more than seven years without charge was found dead in an apparent suicide last month, the US military said. Muhammad Ahmad Abdallah Salih, 31, also known as Al-Hanashi, had been held at Guantanamo since February 2002. About one inmate a year commits suicide at the prison, which President Obama is trying to close.

<http://www.google.com/hostednews/afp/article/ALeqM5hzW2KRYp6eG4LyqcqAaJvMbZkcYg>



[To Table of Contents](#)

**'Habeased' Uighurs fight for real release:** The case with the all-African name (Kiyemba v Obama), although it involves only Chinese Uighurs, is being appealed to the US Supreme Court after the Court of Appeals reversed the District Court's order that the men be released into the US. The response of the Uighurs to the Obama administration's surprising brief – opposing the request that the Supreme Court grant certiorari (ie, an appeal) – is beautifully written in parts.

<http://www.scotusblog.com/wp/wp-content/uploads/2009/06/kiyemba-reply-6-4-09.pdf>

**PM Blair 'knew about torture', claim:** Former British PM Tony Blair knew about a secret interrogation policy which effectively led to British citizens and others being tortured during counter-terrorism investigations, *The Guardian* newspaper claimed last month. The policy was devised after the 11 September 01 Twin Towers aircraft attacks, and offered guidance to MI5 and MI6 officers questioning detainees in Afghanistan who they knew the detainees were being mistreated by the US military. British officers were given written instructions that they could not "be seen to condone" torture and that they must not "engage in any activity yourself that involves inhumane or degrading treatment of prisoners". But they were also told they were not under any obligation to intervene to prevent detainees from being mistreated. Australian Mamdouh Habib claims to have been tortured in similar circumstances, with Australian officials adopting a 'see no evil' stance similar to what is alleged was formally the Prime Minister-endorsed British policy.

## DATES:

**27 June - 3 July, Bali, Indonesia:** 'Criminal Justice - Diagnosis Terminal' conference, contact:

[jodi.truman@johntoohychambers.com.au](mailto:jodi.truman@johntoohychambers.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](mailto:cipl@law.anu.edu.au)

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

**7 July, Perth:** Un Assn of Australia (WA) quiz night, 7pm, Belmont Sports & Recreation Club, Cloverdale. Info: (08) 9221 9455; [unaawa@tpg.com.au](mailto:unaawa@tpg.com.au); convenor on 0421 316 7178.

**13 July, Melbourne:** Defence of Human Rights in Asia: Malaysian Bar's Long March for Justice, U. of Victoria in Canada Professor of Asia-Paific Law, Andrew Harding, 5.45 for 6, DLA Phillips Fox, 141 William St, RSVP by 6 July to [www.hrlsrc.org.au](http://www.hrlsrc.org.au)

**16-24 July** (official opening 16 July) **Canberra:** *Revisiting Visions: a Romanian Retrospective on Human Rights*, illustrated by Romanian cartoonists, at CLA's networking partner at the ANU, the National Europe Centre, 1

Liversidge St. Official opening 16 July 2009, 6pm – CLA members welcome to attend.

**17 July, Melbourne:** Castan Centre 2009 conference 'Changing Human Rights Landscape', State Library of Victoria, details: <http://www.law.monash.edu.au/castancentre/events/2009/conference-09.html>

**27 July, Melbourne:** 'Advancing Women's Rights and Gender Equality' with Justice Yvonne Mokgoro, a judge of the Constitutional Court of South Africa, and Elizabeth Broderick, Sex Discrimination Commissioner, 12.30-2.15pm, Mallesons Stephen Jaques, 50 Level, 600 Bourke St. RSVP by 20 July  
<http://www.hrlrc.org.au/content/events/upcoming-events/seminar-advancing-womens-rights-and-gender-equality-27-july-2009/>

**30–31 July:** Disability and Age Discrimination Law Reform Summit, Swissotel, Sydney: Info: [www.iir.com.au/disabilitylaw](http://www.iir.com.au/disabilitylaw)

**31 July–2 Aug, Queenstown NZ:** NZ Criminal Bar Assn annual conference. <http://www.criminalbar.org.nz/> **5-7 Aug, Rockhampton:** Aust. Inst of Judicial Administration (AIJA) Indigenous Courts conference. W: [www.aija.org.au](http://www.aija.org.au)

**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.

**13-15 August, Canberra:** Cultural and Religious Freedom under a Bill of Rights, organised by U. Adelaide Research Unit for the Study of Society, Law and Religion (RUSSLR), Details: Peter Burdon at: [peter.d.burdon@adelaide.edu.au](mailto:peter.d.burdon@adelaide.edu.au); Website: [www.adelaide.edu.au/lawandreligion/conference\\_2009](http://www.adelaide.edu.au/lawandreligion/conference_2009); Submissions: 500-word abstracts by June 15.

**23-26 Aug, Halifax NS, Canada:** Family Law and Children's Rights. W: [www.lawrights.asn.au](http://www.lawrights.asn.au)

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

**2–4 Sept, Darwin:** Aust. Law Librarians' Association conference.  
[http://www.alla.asn.au/index.php?option=com\\_content&view=article&id=222&Itemid=371](http://www.alla.asn.au/index.php?option=com_content&view=article&id=222&Itemid=371)

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

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

**2 Oct, Sydney:** Protecting Human Rights Conference, Art Gallery of New South Wales, details: [www.gtcentre.unsw.edu.au](http://www.gtcentre.unsw.edu.au)

**7–9 Oct, Canberra:** Aust and NZ Sports Law Assn conference: [www.anzsla.com.au](http://www.anzsla.com.au)

**4–9 Oct, Madrid, Spain:** Intntl Bar Assn annual conf.; <http://www.int-bar.org/conferences/Madrid2009/>

**29-31 Oct, Frankfurt, Germany:** World Religions and their Influence on Legal Systems: <http://globalday.legal-profession.org>

**9–12 Nov, London:** First Workshop in e-Healthcare Information Security <http://www.comp.dit.ie/e-HISec> in conjunction with The 4th International Conference for Internet Technology and Secured Transactions (ICITST-2009) <http://www.icitst.org/> Registration enquiries: Belinda McDonald [gtcentre@unsw.edu.au](mailto:gtcentre@unsw.edu.au)

**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](http://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](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:* Denying a voice to women who want to sing**

“Neda studied philosophy and took underground singing lessons — women are barred from singing publicly in Iran. Her name means ‘voice’ in Persian, and many are now calling her the voice of Iran.”

from a New York Times story on Neda Agha Soltan, a 26-year-old philosophy student who took 'underground' singing lessons, which led to her death in Tehran last month, by a sniper's bullet, during riots over alleged election fraud.

<http://www.nytimes.com/2009/06/23/world/middleeast/23neda.html?th&emc=th>

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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



[To Table of Contents](#)