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## Board sets priorities for CLA's 2010 campaigns: your input requested

The CLA Board, meeting last month, agreed on the likely priorities for CLA focus during 2010, with the three leading issues being liberties and rights issues around mental and aged health, water rights as climate change debate intensifies, and the worrying trend towards even greater dominance by the executives of the federal and state/territory parliaments.

"The priority list is 'likely' only because we need to be responsive to governments, police and other powers in society, much as we would like to be setting the agenda," CLA president, Dr Kristine Klugman said.

"For example, censorship is not listed...but we know that issue and internet filtering will be major battlegrounds over the coming 12 months, as will issues surrounding a federal election. They aren't issues that CLA is putting on the agenda, however.

"By deciding where we'll focus our limited resources, we plan to be more effective in 2010 even than we were in 2009, which the Board considers was a successful year. We'll run through full details of successes, and otherwise, in the annual report, out in March.

"In the meantime, members' input on the choice of priorities and becoming involved in working on priorities would be welcome,"

The priority focus list for 2010 is:

- Mental and aged health – liberties and rights issues;
- Water and human rights;
- COAG/SCAG/Quintet issues of Executive power and dominance (a multi-year program);
- War Powers: continue the campaign for decision-making by, and reporting to, Parliament;
- Human rights: Bill/Charter? Prepare for a PR campaign by federal government;
- Prisons: Indigenous youth particularly, but the increasing cost to the taxpayer;
- Model Litigant matters (final year of CLA's three-year campaign);
- Election?...and post-election strategy (change of Minister/s – undertake meetings); and
- New/replacement appointments? Prepare CLA's position/suggestions on Inspector-General of Intelligence and Security, Ombudsman, Privacy Commissioner, Australian Public Service Commissioner, etc.

Members input on these or other issues is welcomed: please email [secretary@cla.asn.au](mailto:secretary@cla.asn.au)

"In 2010, we're also looking for members to help with submissions to the Senate and government departments and agencies. Law students can be particularly helpful," Dr Klugman said.

"And we would welcome someone to take over the Treasurer's role, and another person to help regularly with office admin work, helping Lynne Bliss who already volunteers a half-day a fortnight."

**Note:** CoAG is the Council Of Australian Governments; SCAG is the Standing Committee of Attorneys-General. There are about 40 similar "ministerial councils" now running Australia.

'Quintet' is Attorney-General Robert McClelland's description of a new international "ministerial council" – involving A-G's from the USA, the UK, Canada, New Zealand and Australia – which appears to be deciding future Australian terrorism laws and public responses.

### **LAST WORD: Osama picked as 'Man of the Decade'**

Osama (Bin Laden) clearly knew what he was doing, didn't he? I mean, he hates our freedoms so much, he forces our respective governments to take them away from us. Clever, clever man. Man of the decade I'd suggest. – blogger 'Shring', commenting on a UK borders/passports issue <http://www.guardian.co.uk/commentisfree/libertycentral/2009/dec/18/illegal-eborders-disaster-it-profession>

### **Know any instances where internet censoring will cost Australia?**

CLA is looking for concrete examples of how internet filtering/censorship will harm Australia - if you think you have one, please let us know.

For example:

- will it make it harder for people studying anatomy to do research?
- how about those doing film/TV courses (will it mean films/TV shows can't be made here)?
- what about forensic science students, will their access to information be restricted?
- what of swimwear fashion designers, who need to keep up with the latest, skimpiest ideas?
- would a reproductive health website be banned?
- etc?

In each case, precisely how (which anatomy sites might be banned, or which films/TV won't be able to be studied).

If you have any suggestions for other area of work/life that will be affected, please email them to the Secretary, CLA. Particularly helpful would be any examples where filtering might mean that Australia's Olympic medal chances (or World Cup soccer, or AFL, etc) might be affected.

CLA is working on an angle related to politicians.

### **Pollies' thin skins create concerns for health...of freedom of speech**

It seems you can't poke fun at pollies without getting your knuckles cracked.

Operators of the satirical protest site [StephenConroy.com.au](http://StephenConroy.com.au) were given only three hours – much less time than usual – to justify their connection to the domain name.

Closing down the site shows how much power private domain name regulators have to silence speech without any public supervision or consultation. In 2006, Melbourne IT cancelled the domain registration for [JohnHowardMP.org](http://JohnHowardMP.org) for a site created by commentator Richard Neville which contained a fake apology for Australia's involvement in the Iraq war.

Labor and Liberal politicians are quite happy to use the 'bully's pulpit' of Parliament, but most reluctant to allow the common people to have their satirical say. Perhaps MPs need a new special allowance for treatment for thin skin?

### **Crime plummets, but L+O politicians still bray for harsher laws**

A new research paper from the Australian Institute of Criminology highlights, in passing, how crime in Australia and in western nations is down over the past decade, and declining.

The paper oints out how wrong and self-servingly tendentious are the caterwauling outbursts from politicians, usually shortly before an election, and the media over individual crimes.

"If you hear a politician declaiming for harsher laws and penalties because of the need for a 'law and order' campaign, you will know that he or she is someone who ignores facts and peddles personal propaganda, totally removed from facts," CLA CEO Bill Rowlings said.

“Such politicians are self-serving, and pandering to media proprietors’ interests, rather than concentrating on the interests of the Australian community. With crime down, imprisonment should be down, which would save all taxpayers hundreds of millions of dollars. That’s where politicians should be concentrating their efforts in the coming decade.”

The research paper, **Improving crime prevention knowledge and practice**, by Peter Homel, has just been released by the Australian Institute of Criminology (AIC). See the write-up on it at the CLA website: <http://www.cla.asn.au/0805/index.php/articles/2009/crime-plummets-but-l-o-pollieslbr-g-still-bray-for-costly-harsher-laws>



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## **And still the prison population rises...**

Between June 1999 and June 2009, the number of prisoners in Australia rose by 36%.

That is, we jailed an extra 7779 people – or an increase 780 a year more – taking the numbers in jail from 21,538 to 29,317.

It costs us about \$100,000 per prisoner to lock someone up, that is about \$3bn a year: when will state politicians wake up to the fact that their ideological and political “law and order” campaigns are costing too much?

Over the same 10-year period, men in prison increased by 35% (from 20,181 to 27,192) and females increased by 57% (from 1,357 to 2,125).

This steep rise occurred as crime trended down significantly (see item above).

And still the prison population rises...

Last year, Australia’s total prisoner population increased by 6%, from 27,615 on 30 June 08 to 29,317 on 30 June 09, greater than the 1% (391) increase recorded between 2007 and 2008.

Between the 2008 and 2009 Prisoner Census dates:

- men in jail were up by 6% (1,534) whilst women in jail increased by 9% (168); and
- the number of Indigenous prisoners increased by 10% (680);

Last year, WA and the NT jailed more people proportionately (17% and 11% respectively) and continued to have the highest imprisonment rates (260 and 660 prisoners per 100,000 adults respectively).

Indigenous prisoners comprised a quarter (25% or 7,386) of the total prisoner population: Indigenous people comprise less than 3% of the Australian population.

The highest ratio of Indigenous to non-Indigenous imprisonment rates in Australia was in Western Australia (20 times higher for Indigenous prisoners). Tasmania had the lowest ratio (three times higher for Indigenous prisoners).

<http://www.cla.asn.au/0805/index.php/articles/2009/and-still-the-prison-population-rises#more7664517.0> - Prisoners in Australia, 2009

<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4018E1E79924180CCA257687001CC2FC?opendocument>

## **WA adds heavily to taxpayer burden with 1200 more jail beds**

WA is providing for more than 1200 new beds in the State’s jails in 2010...even though crime in general has dropped consistently over the past decade throughout Australia.

The WA government will spend \$48m on temporary dongas and pre-fab buildings to create about 640 extra beds, while they will provide another 600 beds in new, permanent buildings.

At a cost of \$98,000 per inmate a year (a Productivity Commission estimate), WA taxpayers will pay about \$121m extra in 2010 – and future years – to satisfy the government’s political desire to be seen as tough. This amount is above and beyond the capital cost of the extra bricks, mortar and dongas.

"The previous government was law-and-order light," Attorney-General Christian Porter told *The Australian* late last year. "We're the full strength version of that and there's not going to be any change in those policy settings."

WA already jails more people proportionately than other states,

Between 2008 and 2009, WA had the highest proportional increases in prisoner numbers, up 17%, ahead of the NT at 11%, and NSW at 7%.

The increase (6%) in the national prisoner population was strongly influenced by the growth in the WA prisoner population, the Australian Institute of Criminology reported. While Western Australia accounted for 15% of the national prisoner population in 2009, it contributed 38% to the increase in prisoner numbers between 2008 and 2009.

## **Top Tassie cop undergoes sea change over police powers**

The un-disgraced Tasmanian Police Commissioner, Jack Johnston – acquitted by the High Court of a charge of disclosing investigation secrets to politicians - has undergone a sea change in thinking after being treated like a criminal for about a year and a half.

In a detailed interview in *The Australian* last month, he explained how he now understood why civil liberties campaigners sought safeguards in legislation (thought he didn't put it exactly like that):

"Life as an alleged criminal has transformed his attitude to policing," Matthew Denholm wrote.

"I don't think the family actually knew how hard it would get," he says, of wife Annette and a clan including two grown up daughters and sons-in-law, and three grandchildren. 'When you live your life in the belief that your home is potentially subject of listening devices, your telephone records are being checked on a regular basis and potentially there's a telephone intercept in place . . . that has all given me a new perspective on my life and on my job.'

"Once an advocate for greater police powers, Johnston has spent his suspension developing plans for a parliamentary oversight committee, a check on police access to private phone records and greater scrutiny of bugging. "I was regularly looking for more power for police, more tools and technology to allow police to do their job, and I became a little frustrated at the checks and balances in place to prevent excesses by the police,' he says.

"Now I don't think there are enough avenues available to people who are innocent to become aware of what is being done to them. I think some of the things that are happening are not subject to sufficient oversight and that should change." <http://tinyurl.com/yasntsb>

## **A-G Atkinson accused of corruption over land deal**

Attorney-General Michael Atkinson offered a benefit to a local councillor if he joined the Labor Party, the SA Parliament was told last month.

Independent MP David Winderlich made the allegation, winning support from the Upper House for an Ombudsman's inquiry into the St Clair land swap and detailed allegations that residents had been intimidated by Atkinson staffers.

Under parliamentary privilege, Mr Winderlich said complaints had been made to police about Mr Atkinson or "people closely associated to him". There was also testimony from people who feel "personally threatened" by the Attorney-General," Daniel Will reported in the *Adelaide Advertiser*.

Mr Winderlich said there were several allegations, one of which he considered "extremely credible", that Mr Atkinson "actively offers benefits to councils".

Mr Winderlich also relayed an allegation that "one councillor who had opposed the land swap recently changed his vote late in the piece". "Residents assert that this is because he has been promised the Honourable Michael Atkinson's support for a Labor seat," Mr Winderlich told parliament.

Mr Winderlich also revealed claims that one councillor was offered a position as chair of a council committee attracting payment of \$3000 if he rejoined the ALP.

Mr Atkinson said in an emailed statement, outside Parliament privilege, that "not one of these allegations has any substance and I deny them". He said if it was "necessary" to initiate legal proceedings "as a result of this horrible smear" he would do so at no expense to the taxpayer. (Mr Atkinson recently cost the taxpayer considerable legal fees and a compensation payout of about \$200,000 for allegedly derogatory comments he – as Attorney-General – made about a magistrate).

<http://www.news.com.au/adelaidenow/story/0,22606,26435966-5006301,00.html>



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## **What's your opinion on these proposed changes? No, or Yes?**

A new parliamentary report has recommended sweeping changes to how Australians are provided with information before a referendum.

The Legal and Constitutional Affairs Committee's report, *A Time for Change: Yes/No?*, found the written material provided to all electors before a referendum is insufficient, and that a greater range of communication is needed to properly inform the public.

Currently a Yes/No pamphlet with arguments for and against the proposed constitutional change is sent to each voter.

The Committee made 17 recommendations, including to establish a Referendum Panel prior to each referendum. The Referendum Panel would be independent of government and would be responsible for developing an overarching communications strategy for the referendum. The Panel would identify what material should be provided so that electors can make an informed vote.

The Committee also recommended that:

- The Yes/No Pamphlets be retained but should be sent to every household rather than every elector;
- Parliamentarians continue to authorise the Yes and No arguments;
- A national civics education program be developed to improve knowledge of the Constitution.
- The Machinery of Referendums Act provisions be consolidated and harmonised with the Commonwealth Electoral Act.

CLA comments that we can expect these proposals in a watered-down response to the call for a Human Rights Charter: a national PR/education campaign may be all we get.

## **Keim receives top Aussie Human Rights gong**

Stephen Keim of Brisbane, Mohamed Haneef's barrister, was awarded the 2009 Human Rights Medal last month.

A barrister from WA, Gregory McIntyre, won the Law Award category for a lifetime of work on Indigenous matters, including the seminal Mabo case in the High Court.

Melbourne's Human Rights Law Resource Centre received a Highly Commended certificate for consistently demonstrating an unreserved commitment to the protection and promotion of human rights in Australia.

## **Federal Police angry with Afghan deployment plans**

The Australian Federal Police Association (the police union) is angry about a plan to send more of its members to Afghanistan rather than deploy additional Defence people.

There are currently 22 AFP officers in Afghanistan involved in training and drug investigations, but Prime Minister Kevin Rudd has announced Australia will boost its police training effort in Afghanistan in response to an appeal by US President Barack Obama.

AFP Association chief executive Jim Torr says up to 10% of the Federal Police workforce has been posted overseas in the past, and that has a direct impact on domestic commitments.

"The bigger question here is what does the Government really want the AFP to be?" he asked. "I mean, we are gradually going down a path like a quasi sort of semi-military force.

"Being sent to locations like Afghanistan, that's appropriate to a degree. But we're a police force, and when you join the AFP you join a police force."

"The AFP often has 10 per cent of its police force working outside of Australia. Now that's unprecedented in policing, and I'm keen to see the science behind the decision and the protection for our members."

<http://www.abc.net.au/news/stories/2009/12/07/2763833.htm?>

## **Beale deal sealed in record time**

Roger Beale's audit of police capabilities, which began in February 2009, produced instant government action when released last month.

The Beale audit examined and reported on the AFP's capabilities to provide for current and future demands, looking forward up to five years, for policing and law enforcement services to the Commonwealth, including how the AFP will meet the Government's priorities.

The report on police capabilities – *New Realities: National Policing in the 21st Century (Federal Audit of Police Capabilities)* made 110 findings and 40 recommendations relating to a wide range of topics including the capabilities, operating arrangements and governance of the AFP, AFP budgets and programs, aviation security, international deployments and law enforcement interoperability across the Commonwealth.

Last month, in double-quick time, Minister for Home Affairs Brendan O'Connor released the Federal Audit of Police Capabilities report and outlined the government's response to it, including:

- a new funding structure providing flexibility to meet existing and emerging priorities including: counter-terrorism; serious and organised crime, including e-security crime; border protection; overseas deployments and peace keeping; criminal law enforcement in business regulation; and support to the enforcement of the anticipated Carbon Pollution Reduction Scheme.
- appointing a third Deputy Commissioner (since appointed), and
- improved arrangements for policing at Australia's eleven major airports: Adelaide, Alice Springs, Brisbane, Cairns, Canberra, Gold Coast, Darwin, Hobart, Melbourne, Perth and Sydney.

The AFP was established 30 years ago with an annual budget of \$63 million; it now has a budget of about \$1.4 billion.

[http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications\\_FederalAuditofPoliceCapabilities](http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_FederalAuditofPoliceCapabilities)

## **Accuracy/provenance of DNA samples called into question**

DNA evidence throughout Australia is in doubt after Victoria Police discovered errors in how it interprets DNA sample results.

The Victorian problem has shut down criminal cases until mid-January at the earliest. Chief Commissioner Simon Overland has banned forensic officers from testifying in court until a review into how samples are interpreted is completed.

Deputy Commissioner Ken Jones -- who has been asked by Mr Overland to lead the review on the scientific models used to interpret DNA data -- said Victoria was the first state in the country to introduce the new technology and he predicted other states would face similar interpretation problems.

Cases throughout Australia may be at risk; six cases are on hold in Victoria. It is likely that many convictions over recent years will go to appeal on the DNA issue.

The question of DNA use – and possibly abuse – is currently a hot topic in Australia. A national panel to examine all aspects of police and court use of DNA, the Ford Review, began last month. It has issued a discussion paper, and called for submissions. CLA will be making a submission: if you would like to be involved, please email the Secretary/CEO (see top of newsletter).

Details of the Ford Review of DNA provisions in the Crimes Act are at:

[http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews\\_ReviewofPart1DoftheCrimesAct1914\\_FurtherIndependentReviewofPart1DoftheCrimesAct1914](http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_ReviewofPart1DoftheCrimesAct1914_FurtherIndependentReviewofPart1DoftheCrimesAct1914)

## **Appeal court overturns conviction based on DNA**

The Victorian Court of Appeal has overturned the DNA-based conviction of a Melbourne man Farah Jama, jailed in 2008 for six years for raping a 48-year-old woman at a Doncaster nightclub. The appeal court heard evidence that the same forensic officer took two samples at the nightclub within 24 hours, and that it was improbable Jama was present on the night in question. There was also doubt whether a rape actually occurred.

Chief Justice Marilyn Warren ordered that a verdict of acquittal be entered and his sentence set aside. An investigation into whether or how the DNA was contaminated is ongoing.

<http://www.abc.net.au/news/stories/2009/12/07/2763775.htm>

## **Police to get new powers to shut down nightclubs?**

South Australian police, and the Liquor and Gambling Commissioner, will be given power to shut down nightspots.

The SA Government proposes the action in a paper on how to reduce alcohol-related crime in areas such as Hindley Street in Adelaide.

SA Attorney-General Michael Atkinson says police say that temporarily closing down a licensed venue could reduce offending, especially in the early hours.

"I'm not allocating blame as between the licensees and the patrons but things can get ugly here in the early hours of the morning in the pre-dawn and the government's warning to Hindley Street is 'Cool it, clean up your act or we'll clean it up for you'," he told ABC Radio.

CLA CEO Bill Rowlings responded: "If you shut down nightclubs, Adelaide could get a reputation for being a dull city...but you should be able to cut police numbers, because they will have less to do."

<http://www.abc.net.au/news/stories/2009/12/03/2761036.htm>

## **Do Not Call Register subjected to several reviews**

There is lots of activity regarding the Do Not Call Register (where people nominate to have their phones barred to marketers), writes CLA member Chris Connolly. It is a bit confusing, so here is a summary:

1. Three-year statutory review: There is a three-year statutory review, looking at big picture issues. Submissions have closed and should be published shortly at:

[http://www.dbcde.gov.au/telephone\\_services/do\\_not\\_call/statutory\\_review](http://www.dbcde.gov.au/telephone_services/do_not_call/statutory_review)

2. Senate Committee review: There is a new Senate Committee review of the Do Not Call Register Legislation Amendment Bill 2009. This is a completely separate process and is looking at the legislation that extends the register to cover faxes and small business calls. The legislation is very interesting (it includes a completely new approach to consent for 'categories' of calls). Submissions are due by 22 January 2010.

[http://www.aph.gov.au/senate/committee/eca\\_ctte/do\\_not\\_call\\_register/index.htm](http://www.aph.gov.au/senate/committee/eca_ctte/do_not_call_register/index.htm)

3. Campaign regarding 3-year renewals: In addition, privacy and consumer groups have been campaigning to repeal the three-year registration period, so that users do not have to renew their membership of the Do Not Call Register. (This campaign may have to be repeated for the Senate Committee). Some example submissions:

<http://privacy.org.au/Papers/DNC-091021.rtf>

[http://www.galexia.com/public/research/articles/research\\_articles-sub06.html](http://www.galexia.com/public/research/articles/research_articles-sub06.html)

## **Vic police take to strip searching their 'customers'**

A crackdown on drunkenness and violence will continue in Victoria with new laws brought in late last month, including extra powers for police to strip search people for weapons.



Police can also issue \$234 on-the-spot fines for people who refuse to leave pubs and clubs when asked. The laws give a new meaning to the phrase “police provide ‘customer service’”.

Under the new search laws – being ‘mirrored’ around Australia – police will be able to declare designated areas for searches if the locations have a history of violence involving weapons, or police believe such a violent incident is about to take place.

Police will be able to stop and search a person without a warrant in the areas, such as train stations or entire city blocks. The areas can be designated for 12 hours; the designation must be advertised in a government gazette and newspaper seven days in advance.

The new laws include the power to order people to move on, and a disorderly conduct offence.

<http://www.smh.com.au/national/victoria-police-get-extra-search-powers-20091216-kwnh.html>

## **Adult video gets its own special place**

New legislation in SA banning open display of adult DVDs and videos has resulted in the seamier material in some video stores being located right next to the games section, much frequented by children, because a special area had to be set aside.

Legislation sponsored by Family First party to ban the open display of DVDs and videos with a rating classification of R18+ passed the SA Parliament last month.

Family First’s private member’s bill required R18+ movies to be covered and displayed in separate areas...but often the only ‘separate’ area is adjacent to the children’s or games area.

Promoting films with the R18+ classification was also banned.

The new Act produced overtime for video shop workers, who had to spend the holiday break throwing out promotional material. It is not known if refuse collectors have received special counselling for the ‘disturbing’ posters and video cover displays that fell on to the backs of their trucks.

<http://www.abc.net.au/news/stories/2009/12/03/2760837.htm>

## **Finks seek Supreme Court’s help, again**

Finks Motorcycle Club wants the SA Supreme Court to rule in bikies’ favour for the second time – to rule invalid legislation which prevents club members associating with one another.

They are questioning consorting/control orders issued under Serious and Organised Crime Control Act. Police issued the notices to ‘remind the bikies they face criminal charges if they associate with one another’.

The orders were able to be issued because the SA Attorney-General, Michael Atkinson, issued a declaration under the act in May outlawing the bikie group.

In September, the Supreme Court refused to rule on whether that declaration was valid. However, the court found part of the control orders legislation unconstitutional, because magistrates had no discretion and the Attorney-General’s decision-making, based on secret “information” (not evidence) from the Police Commissioner, was not able to be reviewed by a court. The SA Government is appealing the SA Supreme Court decision to the High Court.

<http://www.abc.net.au/news/stories/2009/12/22/2778760.htm>



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## **Bikies, police at odds; A-G Atkinson breaches spirit of court ruling**

In SA, the police and bikies are even feuding about whether they’re fighting!

The United Motorcycle Council says anti-consorting orders handed out by SA police to every member of the Finks Motorcycle Club, including those with no criminal record, are an attempt to silence them.

But police claim the letters to 48 Finks members warn that they may be subject to criminal prosecution if they continue associating with each other; the letters simply explain the Serious and Organised Crime Control Act.

Council member Mick Macpherson says the orders make it illegal for club members to associate with each other more than six times in a year, either electronically or in person.

A spokesman for Police Commissioner Mal Hyde confirmed that letters have been sent to two people. Police first moved to 'outlaw' the Finks in May 09.

In December 09, police moved to outlaw the Rebels motorcycle club, as well as the Finks.

A-G Atkinson says that, if he agrees to the police request re the Rebels – on secret grounds contained in secret information nobody else is allowed to see – his decision cannot be challenged in the courts.

However, the very nature of the secrecy of such declarations has been ruled invalid in the SA Supreme Court, and remains so until the SA Government's challenge in the High Court is resolved.

This is a classic case of an Attorney-General breaching the spirit of a Supreme Court decision, if not the letter of it. Mr Atkinson might consider committing himself on a charge of contempt of court, CLA says.

<http://www.abc.net.au/news/stories/2009/12/08/2764738.htm>

## **Victoria sells out its citizens privacy and civil liberties**

Victoria Police's secret intelligence files on individuals and groups protesting about Victoria's \$3.5 billion desalination project are being provided to the private company building the plant to thwart legitimate protest.

Police are handing over photos, video recordings and other records to AquaSure to help it "manage" protests and potential security threats, *The Age* reported last month.

The Victorian Government signed a memorandum of understanding with Victoria Police and AquaSure on August 28, designed to protect the site at Wonthaggi as well as the electricity supply to the project and new pipelines from the plant to Cardinia Reservoir. The 20-page document states that Victoria Police "will release law enforcement data" to AquaSure, which comprises international and local companies Degremont, Suez Environment, Thiess and Macquarie Capital Group.

The memorandum says: "Law enforcement data may take the form of any text, images, audio and video, may be stored on computing devices, in hard copy, or on other storage media, and includes (but is not limited to) data related to individuals, aggregated data, written reports and correspondence, memoranda, police diaries, official notebooks, running sheets and other data repositories."

The Victorian Government and Police claim such agreements are commonplace for major events and projects. If that's the case, CLA says, it reinforces that the government is running a Big Brother, police state...and believes it has a duty to protect its contractors from its citizens, whereas the protection should operate the other way around.

## **Gooda replaces Calma as top ATSI bureaucrat**

Mr Mick Gooda has been appointed Aboriginal and Torres Strait Islander Social Justice Commissioner, one of the core positions comprising the Australian Human Rights Commission.

Mr Gooda is a descendant of the Gangulu people of Central Queensland and has 25 years experience working across Australia on Indigenous issues in the public and community sectors.

He is currently the CEO of the Cooperative Research Centre for Aboriginal Health and is a board member of the Centre for Rural and Remote Mental Health Queensland. He was also previously a member of the Western Australian Premier's Advisory Council on Racial Discrimination.

Mr Gooda's appointment will commence on 1 February 2010 for five years. He replaces Mr Tom Calma, who held the position since 2004.

## AFP beefs up top management

The Australian Federal Police has appointed three Deputy Commissioners (DC).

AFP Commissioner Tony Negus welcomed the appointments, which start 1 January 2010 and are for five years.

**DC Andrew Colvin** joined the AFP in 1990. His recent position was national manager of high tech crime operations, while other recent roles have also included Chief of Staff and Assistant Commissioner advising on the Street Review. Assistant Commissioner Colvin is currently completing a Masters in Public Policy at Harvard U.



**DC Peter Drennan** (pictured) joined the AFP in 1979. In 2009 he was national manager for counter terrorism. Other recent roles have included being responsible for Border and International and Economic and Special Operations portfolios. He has a Bachelor of Social Science and a Graduate Diploma in Human Resource Management.

**DC Michael Phelan** joined in 1985. In 2009 he was the ACT Chief Police Officer, and before that national manager Border and International and Human Resources portfolios. He holds Bachelor degrees in Laws and Commerce and is currently completing an MBA.

The third DC is aimed at alleviating the workload at the top.



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## Land lobbyist quits SA's development advisory body

SA's new Lobbyists' Register has produced a resignation within 18 days of starting to operate.

Davina Quirke resigned a week before Christmas from a major planning board to which she was appointed by the Labor Government.

A director and co-owner of private company Pallidon, she is also a registered lobbyist for developers of four projects that are being considered under major development status, including the \$2 billion Wakefield Waters and \$750 million Narnu Waters developments.

Planning Minister Paul Holloway appointed her to the Development Advisory Policy Committee in July 2009. The committee is a secret 'club': its deliberations, voting patterns and recommendations are not published and the advice is only made available at the discretion of the minister.

Ms Quirke is married to former Labor state MP and federal Senator John Quirke, who also is a director and co-owner of Pallidon. Ms Quirke initially told *The Advertiser* there was no conflict between her lobbying and planning responsibilities and that she would always declare an interest should any conflict arise.

But in a statement a day later, she said she had done nothing wrong and had been subjected to a smear campaign. "I have chosen to resign from the committee because I don't want to be made a political pawn in someone else's political game," her statement said.

Restrictions on lobbying in SA became active on 1 December 09. They require all lobbyists to register and identify themselves when they are contacting government sources on behalf of their clients.

<http://www.news.com.au/adelaidenow/story/0,22606,26496092-5006301,00.html>

<http://www.abc.net.au/news/stories/2009/12/18/2775841.htm>

## AUSTRALIAN BRIEFS

**Single security vetting agency to start:** The Australian Government has established a single security vetting agency in the Department of Defence for Commonwealth security clearances. It will operate from October 2010, with efficiencies from centralisation expected to save the Government at least \$5.3 million per year. Currently more than 100 agencies replicate the processes of security vetting while more than 50 agencies hold separate contracts with vetting service providers. Almost 50,000 security clearances were conducted across the Commonwealth in 2007/08. <http://www.safeguardingaustralia.org.au/?getp=340#7>

**ANU is home for first OzSpy school:** Australia's first National Security College will be established at the Australian National University, Canberra. Rhodes Scholar and former Secretary of the Department of Foreign Affairs and Trade Michael L'Estrange, who has been appointed founding executive director, said he looked forward to developing the NSC as a world-class centre of national security training and expertise, and to a close working relationship with the Australian national security community. Info: Jane O'Dwyer on 02 6125 5001.

**FOI reform progresses slowly through Parliament:** Progress of major federal FOI changes under way can be tracked at the ParInfo website: Information Commissioner Bill 2009 and Freedom of Information Amendment (Reform) Bill 2009. A summary of the main changes between the exposure draft and introduced FOI reform Bills can be downloaded from: [http://www.dpmmc.gov.au/consultation/foi\\_reform/index.cfm](http://www.dpmmc.gov.au/consultation/foi_reform/index.cfm) The Bills have been referred to the Senate Finance and Public Administration Committee for inquiry and report by 16 March 2010.

**ALRC swaps Presidents, loses Commissioner:** Prof Rosalind Croucher is the new President of the Australian Law Reform Commission. She has been on the ALRC since 2007 and has a distinguished career in teaching and management over 25 years, most recently as Deputy Vice-Chancellor of Macquarie U. since 1999. Prof David Weisbrod has retired after more than 10 years as Deputy Vice-Chancellor of Macquarie U's Centre of Research Excellence in Law and Legal Governance, and will also be professorial fellow at the US Studies Centre. Also departed, after four years, is Commissioner Prof Les McCrimmon, who becomes Chair of Law, Faculty of Law, Business and Arts at Charles Darwin University. *He is pictured with CLA President, Dr Kristine Klugman.*



**ACLEI gets secure ops HQ:** The Australian Commission for Law Enforcement Integrity (ACLEI) last month opened a new \$750,000 operations and investigations facility at its HQ in Canberra. ACLEI's brief, under Integrity Commissioner Philip Moss, is to independently assess and investigate corruption in the Australian Crime Commission and the Australian Federal Police. The high-security facility includes secure sections to host joint taskforces, to hold evidence and to undertake interviews. A separate operations area accommodates ACLEI's staff.

**Biometric matching proposed to beat refugee fraud:** People seeking asylum in Australia are being asked to provide biometric data to crack down on fraud and help identify those with overseas criminal records. A facial image and scan of fingerprints is part of a six-month voluntary trial, with the data to be checked against records in the USA, Britain, Canada and NZ in a search for multiple identities and criminal backgrounds. <http://www.theage.com.au/national/biometric-tests-for-asylum-seekers-20091204-kb34.html>

**Legal bodies unite to lobby for access to justice:** The Law Council and a coalition of legal bodies have called on the Government to restore access to justice for Australia's most socially disadvantaged citizens. The call comes in the wake of a new report on legal aid funding, which identifies the on-going decline in access to legal aid, and calculates that an injection of \$43.2m is needed to restore it to pre-1997 levels. <http://www.lawcouncil.asn.au/media/news-article.cfm?article=7AFEB916-1E4F-17FA-D262-7A84F05435D2>

**Burns new Chief Magistrate:** John Burns is the new Chief Magistrate for the ACT. Mr Burns has been a Magistrate and Coroner in the ACT since 1990. Before that, he practised as a solicitor and later barrister in Canberra. He replaces Ron Cahill, who resigned just short of his proposed retirement date for health and/or legal reasons, involving the briefing of an interstate magistrate brought in to handle a sensitive ACT case with political and legal connections against a person so far not named in public, alleging assault.

## CLA main activities – December 09

December was a relatively quiet time for CLA's campaigning action, influenced by everyone going into somnolent holiday mode, but busy in terms of administrative duties as CLA operates to a calendar year, so that 31 December means closing off the books.

**Rising issues:** Censorship is the main issue to escalate in the period. It is expected to be a core battleground during 2010 (see first item in this newsletter).

**Treasurer:** A new database system for managing membership data is being devised by Melissa Hines, and will be ready by March. CLA needs a new treasurer to relieve Kevin Popple, who has been in the position several years. Would any member with suitable skills please volunteer – please send an email to Secretary/CEO?

**Media:** Main media activity last month was on increasing police powers to constrain people, search them and charge them with new offences over minor matters. Particularly in WA and Victoria, new stop and search powers have alienated many people. The *Sydney Daily Telegraph* asked for a statement about banning people from public places on New Year's Eve: this was referred to the NSW Council for Civil Liberties.

**Student activities:** Three students so far have sought CLA out for help with their Honours projects in 2010:

- Emilija Beljic, U Canberra Honours (topic 'Breaking Waters: liberties/rights when water runs out');
- Carla Mazur U Canberra Honours (topic 'Reasonable Doubt');
- Kim Hubbard, U Canberra Honours (topic Coronial Inquests).

**Submissions:** current being prepared, or under consideration:

- e-health identifiers (Federal Health Dept): due 7 January 2010 (Bill Rowlings)
- FOI/Information Commissioner legislation (Senate), due 28 Jan (Prof. Johan Lidberg)
- Mental Health (ACT Health Dept), due end-January (Kristine Klugman)
- DNA/Crimes Act/Forensic Review – Ford Review (Federal A-G's Dept), due 5 Feb (Charles Nelson)
- Internet filtering/censorship (A-G's Dept) - Arved Von Brasch, due 28 Feb
- Campaign Finance Reform, ACT Parliament legal committee, due 12 March: no CLA submission.

Note: At the Board meeting held on 7 December, one of the decisions was to be more selective about responding to the increasing number of requests for CLA to provide submissions.

## Other Board outcomes:

**Administration:** Compilation of FAQs under way for website by CLA members Marilyn and Charles Nelson with Inquiries Manager, Phylli Ives.

**Networking:** A schedule is being drawn up for visits to MPs in the coming months, on issues particular to their interests.

**Media statements:** protocol surrounding statements by interstate groups endorsed.

**Board duties:** Revised duties document endorsed.

**CensorFree website:** Board decided to retain the site due to upcoming censorship campaign.

## Achievements 2009:

- Added 9 words to Serious and Organised Crime Bill, allowing for discretion by judges;
- Maintained membership;
- interstate members network - SA, WA, Queensland - Cairns;
- SA CCL renewed activity.

## Highlights:

Website revamped and refreshed, continuing to receive high praise;

New membership data base being developed;

Number of submissions very high;

Media releases and statements increased.

Speeches to

- Federation Forum
- Squalor Conference

Australia Day letters

Board Members: lost Anne Cahill Lambert and Melissa Hines, gained Tim Vines.

Monthly *CLArion* newsletter – continues to produce good feedback: one Supreme Court Justice thank CLA because he could find the source he was seeking for a speech on National Human Rights Day, after trying numerous other sites which had failed to report the speech.

**Possible topics for Australia Day letters:** comment invited

- Water 'war'
- Indigenous Prisoners
- Mental health
- COAG etc need to incorporate protocol for community consultation/input;
- Follow-up on Labor commitment to promote regional abolition of the death penalty.

**Management issues for 2010:**

- Introduce new membership/Treasurer/financial records system
- Charge basic costs to CLA, rather than 'charity' funding (to develop a pattern for tax reasons)
- Submissions: improve system for deciding on/responding to requests, be more selective
- Post FAQs initially, then regularly, to website
- Introduce audio capability: media releases, website, weekly radio spots
- Maintain membership growth rate
- Improve Secretariat practices (seek help one day/week)
- Improve Board Members communication/involvement
- Analyse and improve on proposed branch structures
- Increase number of speaking/lecturing engagements and CLA speakers
- Broaden number of CLA members networking with polities, etc
- Involve more students at ANU, Darwin U, U Canberra and one other
- Prepare for board elections/AGM in 2011
- Train junior media spokesperson/people, and seek people interested in all main positions

**Board meetings will be held in 2010 on:**

- 21 Feb 2010
- 23 May 2010
- 22 Aug 2010
- 21 Nov 2010

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## **INTERNATIONAL**

### **Police use of stun guns curbed to 'when under immediate threat'**

The US Court of Appeals for the Ninth Circuit last month ruled that police must face an "immediate threat" from an offender before using a stun gun to subdue them.

Sacramento County police officer Brian McPherson had shot Carl Bryan with a stun gun during a traffic stop causing him to fall face-first on the asphalt, fracturing his teeth and causing facial

contusions. The court held that because Bryan's actions posed no threat to McPherson or others, the use of the stun gun was unwarranted and unconstitutional. It said:

“Although Bryan had shouted expletives to himself while pulling his car over and had taken to shouting gibberish, and more expletives, outside his car, at no point did he level a physical or verbal threat against Officer McPherson. An unarmed, stationary individual, facing away from an officer at a distance of fifteen to twenty-five feet is far from an “immediate threat” to that officer. Nor was Bryan’s erratic, but nonviolent, behavior a potential threat to anyone else... The circumstances here show that Officer McPherson was confronted by, at most, a disturbed and upset young man, not an immediately threatening one.”

The case originated as a civil suit by Bryan against McPherson for the use of excessive force and assault and battery and intentional infliction of emotional distress, a violation of the California Civil Code. The court or original jurisdiction had also found in Bryan's favor.

<http://jurist.law.pitt.edu/paperchase/2009/12/ninth-circuit-upholds-ruling-limiting.php>

## **O'Connor calls for merit appointment of judges**

Former US Supreme Court Justice Sandra Day O'Connor and the Institute for the Advancement of the American Legal System (IAALS) have begun a campaign for US state governments to appoint judges on merit rather than giving them their positions by popular election.

IAALS says 33 US states select judges through direct elections, which it says have become characterized by unprecedented campaign spending and sensational advertising.

The O'Connor Judicial Selection Initiative (OJSI) will push legislatures to adopt a system similar to the one O'Connor helped to introduce in Arizona, where a state commission made up mostly of non-lawyers pick judges, Governors appoint judges selected by the commissions, and voters decide in future elections whether the judges stay in office.

O'Connor, the first female US Supreme Court judge, retired in 2006 after 25 years on the bench.

<http://jurist.law.pitt.edu/paperchase/2009/12/oconnor-urges-states-to-move-towards.php>

## **Next British election may break the law**

The coming general election in Britain may breach human rights laws because the government has delayed giving convicted prisoners the right to vote, the Council of Europe warned last month.

The Committee of Ministers, which supervises the European Court of Human Rights, said it was "seriously concerned" over the government's substantial delay in implementing a 2005 judgment stating it was illegal to deny prisoners the right to vote.

The resolution said the ministers were concerned that the delay risked the next UK general election, to take place by June 2010, being "performed in a way that fails to comply with the European convention on human rights".

<http://www.guardian.co.uk/society/2009/dec/08/ban-prisoner-votes-human-rights>

## **Campaign plans lifetime rights for 40m 'lost' people**

Global child rights organisation Plan International's five-year birth registration campaign has helped 'find' and register more than 40 million people, mostly children, across 32 countries.

The *Count Every Child* report highlights that an unregistered child can be denied access to many rights, such as education, health, and participation as active citizens in their country. It says as a result of the campaign, millions more children will:

- get access to life-saving medicine and health care, schooling, finance, voting and legal aid;
- be protected from becoming victims of various forms of sexual exploitation and abuse from human trafficking and the sex industry; and
- be guarded from illegal and extremely dangerous child labour and coerced lives as child brides and press-ganged child soldiers.

Details:

[http://www.plan.org.au/mediacentre/mediareleases/40\\_million\\_people\\_registered\\_through\\_plans\\_universal\\_birth\\_registration\\_campaign](http://www.plan.org.au/mediacentre/mediareleases/40_million_people_registered_through_plans_universal_birth_registration_campaign)

## **Indonesia censors critical film**

Indonesia has banned the film *'Balibo'*, which shows how six foreign journalists were assassinated in East Timor 35 years ago.

The Foreign Correspondents Club was forced to cancel a screening of the film on legal advice that they could face charges.

The journalists died as Indonesian troops invaded East Timor in 1975. Jakarta maintains they were killed accidentally in crossfire. But an Australian coroner found in 2007 that the journalists were executed.

The journalists – two Australians, two Britons and a New Zealander – were killed in the border town of Balibo as Indonesian forces entered East Timor. A sixth Australian journalist was killed in the East Timor capital, Dili, shortly after when Indonesian troops entered the city.

Successive Australian governments have accepted the Indonesian stance but Australian police announced earlier this year they were opening a war crimes inquiry into the deaths. *'Balibo'* depicts the journalists, working for Australian TV networks, being brutally murdered by Indonesian troops as they attempt to surrender. Report: <http://news.bbc.co.uk/2/hi/asia-pacific/8390075.stm>

## **UK puts healthcare on notice: disclose – don't hide – your mistakes**

Hospitals, GPs' surgeries and all other healthcare providers in the UK will in future have to disclose every time a patient is harmed or dies while receiving treatment, under a legally binding duty of openness in an attempt to improve patient safety.

Health organisations will have to detail every mistake, accident and incident that has led to a patient suffering pain, trauma, injury or death.

The change will end the system of voluntary reporting of patient safety incidents to the National Patient Safety Agency (NPSA), which critics say is inadequate and allows errors to be swept under the carpet.

From April 2010, all 400 NHS trusts in England – hospitals, primary care trusts, mental health services and ambulance services – will be under the new obligation. They will have to report to the NPSA "without delay" all incidents in which a patient has suffered an injury that has impaired their sensory, motor or intellectual functions; changed the structure of their body; involved prolonged pain or psychological harm; reduced their life expectancy; or caused their death.

Penalties for failure to comply will range from warning notices and instant \$7000 fines to the risk of prosecution.

Incidents such as a patient falling over on a wet hospital floor, or being given the wrong dose of a drug or suffering because of a surgical error would be included, as would an elderly person who falls out of bed in a care home and breaks their hip because of inadequate supervision.

The duty will also extend from next October to 24,000 providers of adult social care and 2,000 private healthcare operators, then to dental practices in April 2011 and doctors' surgeries in April 2012. In all some 44,000 healthcare providers will be covered by 2012.

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## **Police misuse powers, make the innocent feel like criminals**

Politicians, civil liberties groups and media bodies in the UK claim police officers are abusing anti-terror legislation to stop and question photographers taking pictures of famous landmarks. Police throughout the UK are misusing Section 44 powers granted to them under the Terrorism Act.



Photographers say they are regularly stopped while taking pictures and are treated like terrorists on reconnaissance missions. This is despite the act giving officers no power to seize cameras or demand the deletion of photographs.

London Metropolitan Police and British Transport Police, in the first quarter of 2009, were responsible for 96% of the Section 44 stop-and-searches in the country.

Civil liberties groups say the heavy-handed use of anti-terror laws is making innocent people feel like criminals.

<http://www.independent.co.uk/news/uk/home-news/photographers-snap-over-use-of-section-44-by-police-officers-1833839.html>

## **Zip it, block it, flag it**

Children aged five and above will be taught to "zip it, block it and flag it," under an internet safety code taught in every primary school in England.

Web safety skills will be a compulsory part of the curriculum to help tackle the problem of cyber-bullying and online grooming by pedophiles.

The move, which follows a major review of online safety, was planned by the UK Council for Child Internet Safety.

The "zip it, block it, flag it" code is based on the green cross code. Children will be advised not to disclose personal information, to block contact from people who are bullying or harassing them, and to flag up any problems up to parents, teachers or website providers.

<http://www.guardian.co.uk/education/2009/dec/08/code-online-safety>

## **Positional asphyxia arouses extreme suspicion**

"An inquest in the UK reached a shocking conclusion last month, though you'd be hard-pressed to have heard about it," Simon Hattenstone reported in *The Guardian*.

"In a damning 'narrative' verdict, the jury concluded that Mikey Powell had died from positional asphyxia following police restraint.

"He had been deliberately hit by a moving police car, sprayed with CS gas, struck with a baton and restrained on the ground while suffering a psychotic episode."

He was then put in a paddy waggon, and left unattended and unchecked for a considerable time...during which he suffered "positional asphyxia", Hattenstone reported.

CLA believes any report of "positional asphyxia" connected to a death in police custody should arouse extreme suspicion..

<http://www.guardian.co.uk/commentisfree/libertycentral/2009/dec/27/mikey-powell-inquest-death-in-custody>

## **Spook agencies clam up over FOI request about techniques**

The Electronic Frontier Foundation in the USA is suing the CIA, Department of Defense, Department of Justice, and three other government agencies for allegedly refusing to release information about how they are using social networks in surveillance and investigations.

The non-profit internet rights watchdog group formally asked more than a dozen agencies or departments in early October to provide records about federal guidelines on the use of sites like Facebook, Twitter, and Flickr for investigative or data gathering purposes, according to the lawsuit.

Published news reports about how authorities are using social networks to monitor citizen activities and aid in investigations prompted the requests. For example, according to the lawsuit, US government officials have:

- used Facebook to hunt for fugitives and search for evidence of underage drinking;
- researched the activities of an activist on Facebook and LinkedIn;
- watched YouTube to identify riot suspects;

- searched the home of a social worker because of Twitter messages regarding police actions he sent during the G-20 summit; and
- used fake identities to trick Facebook users into accepting friend requests.

The EFF needs access to the information to "help inform Congress and the public about the effect of such uses and purposes on citizens' privacy rights and associated legal protections," the lawsuit said. None of the agencies contacted had complied with the EFF's Freedom of Information Act (FOIA) requests and only one, the IRS, had asked for an extension, according to the suit.

[http://news.cnet.com/8301-1009\\_3-10407224-83.html](http://news.cnet.com/8301-1009_3-10407224-83.html)

## Supreme Court action challenges excesses of Patriot Act

The US Supreme Court will hear a challenge to a law that treats human rights advocates as criminal terrorists, and threatens 15 years jail for advocating non-violent resolution of disputes.

*Holder v Humanitarian Law Project* is the first to challenge part of the US Patriot Act before the Supreme Court. Originally brought in 1998, it claims as unconstitutional the law that criminalises "material support" to groups the Administration designated as "terrorist."

The Center for Constitutional Rights (CCR) leads the plaintiffs, who claim the law goes too far in making speech advocating lawful, non-violent activity a crime. Lower courts have unanimously declared several provisions of the law – including one added by the Patriot Act – unconstitutionally vague because they cover speech and force citizens to guess as to their meaning.

The case challenges those aspects of the "material support" statute that criminalize pure speech – specifically the prohibitions on providing "training," "personnel," "expert advice or assistance," and "service". Under the law, any speech falling within these terms – no matter how peaceable and non-violent – is a crime if communicated to, for, or with the collaboration of any organization on a list of "foreign terrorist organizations" maintained by the US State Department.

## EU citizens get telecoms – and internet – freedom rights

The European Parliament has approved a major overhaul of EU telecoms rules, which will strengthen the rights of phone users and internet surfers and boost competition among telecoms firms.

The rules, implemented over the next eighteen months, will enhance consumer rights, safeguard internet freedom, protect data, boost competition and modernise radio spectrum use.

Under the new EU rules, a user's internet access may only be cut off if "appropriate, proportionate and necessary within a democratic society" and only after "a prior, fair and impartial procedure" which gives users the opportunity to state their case and respects the principles of presumption of innocence and the right to privacy.

Members of the European Parliament succeeded in affording internet access an equivalent legal protection to that of a fundamental right by adding the world's first "internet freedom provision" to the EU framework law for electronic communications networks and services.

Member States will have to adapt their national legislation to comply with these safeguards by 24 May 2011. [http://www.europarl.europa.eu/news/public/focus\\_page/008-64472-320-11-47-901-20091113FCS64439-16-11-2009-2009/default\\_p001c002\\_en.htm](http://www.europarl.europa.eu/news/public/focus_page/008-64472-320-11-47-901-20091113FCS64439-16-11-2009-2009/default_p001c002_en.htm)



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## Detainee asks for charge dismissal due to five-year delay

Lawyers for Guantanamo detainee Ahmed Ghailani have asked a judge to dismiss charges against him over the 1998 bombings of the Tanzanian and Kenyan US embassies in Africa, which killed 224 people, including 12 Americans.

They said their client's case raised the question of whether national security can trump an indicted defendant's constitutional right to a speedy trial, claiming that the answer is emphatically and without qualification, 'No'.

Authorities allege Ghailani was a bomb-maker, document forger and aide to Osama bin Laden, according to AP reporter, Larry Neumeister. Captured in Pakistan in 04, he was held for two years in secret US prisons, probably in Europe, then at Guantanamo Bay since 06, making five years in US custody without being brought before a court to face charges.

Taken to the USA in June 09 for trial, Ghailani is the first Guantanamo detainee to go before a US federal court rather than a military tribunal.

## **UK government tries to sneak in control of the internet**

A bill before the British Parliament – the Digital Economy Bill [HL] 2009-10 sponsored by Lord Mandelson – will sneak in the power for the government to ban internet access whenever and wherever it likes to whatever it likes.

Purportedly about copyright, performers' rights and like matters, clause 11 of the bill would allow the Home Secretary to place "a technical obligation on internet service providers" to take action.

He or she could order that the ISP limits speed or capacity, cuts off access to "particular material" or limits the service to a subscriber in another way.

## **US court to decide if bosses can read staff textings**

The US Supreme Court is to decide whether employees have a reasonable expectation of privacy for the text messages they send on devices owned by their employers.

A federal appeals court decided a policeman in the City of Ontario, California, had a right to privacy regarding texts he sent on a department-issued pager, even though his chief found some were sexually explicit messages to his girlfriend.

The court said the chief's decision to read the messages without a suspicion of wrongdoing on the part of the officer violated US Fourth Amendment protections against unreasonable searches.

Most employers routinely tell their workers that they have no expectation of privacy when it comes to email and other communications that involve company equipment.

The police officer in the case, Sergeant Jeff Quon, said the department sent a different message when it handed out pagers to SWAT team members. The department said the devices were limited to 25,000 characters a month but that officers also using them for personal purposes could pay for any extra charges. <http://www.theage.com.au/world/us-court-to-decide-if-bosses-can-read-staff-texts-20091215-kugf.html>

## **Transportation Security gifts its secrets to the world**

In a massive security breach, the Transportation Security Administration in the USA inadvertently posted online its airport screening procedures manual, including some of the most closely guarded secrets regarding special rules for diplomats and CIA and law enforcement officers.

The most sensitive parts of the 93-page Standard Operating Procedures manual were apparently redacted (blacked out) in a way that computer savvy individuals easily overcame.

The document shows sample CIA, Congressional and law enforcement credentials which experts say would make it easy for terrorists to duplicate.

The improperly redacted areas indicate that only 20% of checked bags are to be hand searched for explosives and reveal in detail the limitations of x-ray screening machines. The document contains a list of items for which screening is not required including wheelchairs, footwear of disabled individuals, casts and orthopedic shoes.

<http://abcnews.go.com/Blotter/massive-tsa-security-breach-agency-secrets/story?id=9280503>

## INTERNATIONAL BRIEFS

**\$40 billion spent...but not on common sense:** The US Department of Homeland Security had already spent \$40 billion rebuilding aviation and airport security since the terror attacks of 2001 – before last month's attempted blowing up of a Detroit-bound aircraft from Amsterdam by a Nigerian. However, there seems to have been no training so that check-in staff might find it strange – and worth investigating – that a non-American with no luggage to declare presents a one-way ticket for a flight to the USA. For proof that administrative stupidity trumps conspiracy theories, go to: <http://www.nytimes.com/2009/12/29/business/media/29cnn.html?th&emc=th>

**New anti-porn software announced:** Microsoft claims to have developed new software for internet service providers to use against child pornography. The company is giving the US National Center for Missing and Exploited Children (NCMEC) software that uses unique "signatures" of pornography to find images of minors being sexually abused. Microsoft researchers worked with Dartmouth College computer science professor Hany Farid to create PhotoDNA software that pinpoints identifying characteristics in digital images that computers can scan for online.

**Belgium looks to neighbour to lock up crooks:** Belgium is in talks with the Netherlands to allow its prison inmates to serve out their sentences in Dutch jails. Belgium's jails have reached record levels of overcrowding, whereas its neighbour has around 4000 empty cells available. Housing inmates abroad only meant to be a stop-gap, as Belgium plans to build seven new jails by 2012, each with 2000 places. Copyright © 2009 euronews.

**British women prisoners to be cut:** British Justice Minister Maria Eagle has promised to reduce the number of prison places for women by 400 within two years. Some \$28m will be spent on expanding community sentences to provide a "tough and credible" alternative to short prison sentences for female offenders. Minister Eagle said most women offenders had mental health or drug and alcohol problems, backgrounds of abuse or welfare concerns about their children that meant they were better dealt with outside prison. Women in prison are down to 4277 from 4,398 a year ago...but against a background where the women's jail population in England and Wales has risen by 60% since 1995. <http://www.guardian.co.uk/society/2009/dec/14/women-prison-population>

**Excessive-repressive law wound back:** British laws forcing the 11 million people, including parents, who help out in schools and nurseries to undergo criminal record checks to prove they are not pedophiles are being dropped following a massive outcry. Ed Balls, the Schools Secretary, said that the vetting and barring scheme planned to start in July will be dramatically watered down. There was a storm of protest when it was realised parents who take children to sports events or drive them around on behalf of scout groups would be among those subject to checks. Nevertheless, the Big Brother-esque 'Independent Safeguarding Authority', created by law in 2006 and which came into being in 2009, will start full operation this year. <http://www.guardian.co.uk/education/2009/dec/13/schools-criminal-records-checks>



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**Breachers put on notice:** The US House of Representatives last month passed a national data breach notification Bill. The Data Accountability and Trust Act (DATA) requires businesses to notify customers and the Federal Trade Commission (FTC) if sensitive information has been exposed to a security breach. "Any person engaged in interstate commerce that owns or possesses data in electronic form containing personal information shall, following the discovery of a breach of security of the system maintained by such person that contains such data...notify each...citizen or resident of the US whose personal information was acquired by an unauthorized person as a result of such a breach of security; and notify the Federal Trade Commission.

**City legalises same-sex marriage:** Mexico City is the first city in Latin America to legalise same-sex marriage, giving gay couples more rights, including allowing them to adopt children. The bill passed the capital's local assembly by 39 votes to 20. The assembly has made several decisions that have been unpopular elsewhere in the deeply Roman Catholic country, including legalising abortion in the first 12 weeks of pregnancy. That sparked a backlash, with the majority of Mexico's other 32 states enacting legislation declaring that life begins at conception.

<http://www.guardian.co.uk/world/2009/dec/22/mexico-city-same-sex-marriage>

**Charter 08 dissident to face trial:** Liu Xiaobo, a prominent Chinese dissident and main author of Charter 08, a pro-democracy manifesto that has attracted more than 10,000 signatures from Chinese supporters, has been indicted for 'trying to subvert the state'. The trial is likely in January. Other Charter 08 signers said the government was using Mr Liu's case to send a strong message to Chinese intellectuals that it would not tolerate organized, independent efforts to foster democracy. <http://www.nytimes.com/2009/12/12/world/asia/12china.html?th&emc=th>

**Drugs fuel insurgencies:** UN Secretary-General Ban Ki-moon told the Security Council last month that drug trafficking was fueling brutal insurgencies in Afghanistan, Colombia and Myanmar, spreading violence in West Africa, Central Asia, Central America, in the Caribbean and threatening to reverse UN peace-building efforts in Afghanistan, Haiti, Guinea-Bissau, Liberia, Sierra Leone and elsewhere. "So far, cooperation between governments is lagging behind cooperation between organised crime networks," he said.

<http://www.un.org/apps/news/story.asp?NewsID=33180&Cr=drugs&Cr1=>

**3000 child soldiers to be released:** The UN, the Nepalese Government and Unified Communist Party of Nepal-Maoist (UCPN-M) have signed an action plan accelerating release of nearly 3000 child soldiers who served in the Maoist army during the country's decade-long civil war and remain in temporary camps three years after a peace deal ended the conflict. – *UNAA newsletter*.

**Gunmen try to assassinate ombudsman:** Papua New Guinea's anti-corruption boss has been shot and seriously wounded in an assassination attempt outside his home in Port Moresby, the Sydney Morning Herald reported last month. PNG's chief ombudsman, Chronox Manek, was left for dead after gunmen fired through the windscreen of his Nissan Patrol vehicle.

<http://www.smh.com.au/world/gunmen-try-to-kill-corruption-fighter-20091214-ksdi.html>

**What's in a name?** The controversial US military support company, Blackwater is now called Xe Services. The company acknowledges the old name was associated with negative impressions surrounding its work in Iraq. The company has not mentioned allegations that the CIA hired private contractors at Blackwater in 2004 as part of a secret program to kill top-level members of al-Qaida. If it was hired, the contractors were not successful, reports says.

**Germans will have new ID:** New identification cards containing radio-frequency (RFID) chips will be introduced for Germans, starting 1 November 2010. Information will be digitally stored on the RFID chip inside the card, in addition to two fingerprint scans that German citizens can choose to opt out of. The ID will also have a digital signature that can be used to complete official business with government offices and possibly beyond – accessed only by a six digit PIN number.

<http://www.thelocal.de/sci-tech/20091214-23931.html>

## **DATES:**

**12 Jan, Perth:** John Pilger (journalist, film-maker, author) speaks on The Media and Propaganda, 10-12noon, at UWA. Details: Peta Gale [newsflash-extension@uwa.edu.au](mailto:newsflash-extension@uwa.edu.au) or 08 6488 2433.

**30 or 31 January 2010:** Protest: Stop Mandatory Filtering of Australian Internet. Events taking place at noon in every major Australian city. Visit the <http://www.facebook.com/pages/STOP-MANDATORY>



[FILTERING-OF-AUSTRALIAN-INTERNET-Protest-Jan-31st-2010/202715479439](#) Facebook page nearer the date for local protest details. Note: debate continues over which is the better day to hold the event.

**6-7 Feb, Canberra:** Conference on Sentencing, ANU. Details: <http://www.njca.com.au/> or John McGinness (02) 6125 6655

**9 Feb - 4 April, Brisbane:** UnAustralian: Reimaging National Identity art exhibition investigates national identity, QUT Art Museum, free, details: [www.artmuseum.qut.edu.au](http://www.artmuseum.qut.edu.au)

**19 Feb, Sydney:** Constitutional Law conference, Art Gallery of NSW, dinner at NSW Parliament: details/bookings: Belinda McDonald 02 9385 2257 or E: [gtcentre@unsw.edu.au](mailto:gtcentre@unsw.edu.au)

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

**12-14 March, Melbourne:** Rise of Atheism conference, Atheist Foundation of Australia and Atheist Alliance International, Melbourne Convention and Exhibition Centre. Info: <http://www.atheistconvention.org.au/>

**16-17 March, Melbourne:** Human Rights Conference, Victorian Equal Opportunity and Human Rights Commission, at the Melbourne Park Function Centre. Call for abstracts open until 3 Nov. <http://www.humanrightsconference.com.au/>

**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)

**21 May, Melbourne:** Children, Young People and Privacy conference, Office of the Victorian Privacy Commissioner, <http://www.privacy.vic.gov.au/>

**9-10 June, Wollongong:** ISTAS 10 - Social Implications of Emerging Technologies conference, Novatel Northbeach, Details: Katina Michael at: [katina@uow.edu.au](mailto:katina@uow.edu.au) More info: [www.ieeessit.org](http://www.ieeessit.org)

**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> > click here.

**6 July, Sydney:** 'Better more cameras than more crime' debate on CCTV. Coty Recital Hall, Angel Place, 6.40pm, for later broadcast on ABC Radio. Details: <http://www.iq2oz.com/events/event-details/2010-series-sydney/05-july.php>

**15-18 June, San Jose USA:** Computers, Freedom and Privacy conference converges for the first time ever in Silicon Valley. Details: <http://cfp.acm.org/wordpress/?p=6>

**13 Aug, 2010, Sydney:** United Nations Association of Australia national conference 2010, NSW Parliament, with theme, *State of the World post Copenhagen*. Info: Peter Airey: [office@unaansw.org.au](mailto:office@unaansw.org.au)

**17-25 Sept, Brisbane:** IFIP Human Choice and Computers International Conference, part of the IFIP world conference, details: <http://www.wcc2010.com/HCC92010/index.html> Sessions include ethics and ICT governance, surveillance and privacy.

**21-22 Oct. Adelaide:** 2010 Institute of Public Administration Australia national conference, Adelaide Convention Centre, details: <http://www.ipaa.org.au/>

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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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