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**Changed style bring chance for better nation**

There’s a chance for historic change throughout Australia as the new federal parliament begins its first full week of sittings later this month.

The House of Representatives will sit from 18 to 21 October, while the Senate will be engaged in Supplementary Budget Estimates.

Much has been made of how the parliament could operate more harmoniously, and more in the interests of Australians rather than of the interests of the leaders of declining political parties with combined membership representing less than about 0.003% of the national population.

But precisely what changes could Australia make during 2011?

Imagine a parliament and a country more interested in civil liberties and human rights than in the economy. It sounds bizarre, because we have become so used to the economy being allowed to dominate everyone’s lives and most parliamentary discussion that it’s difficult to envisage a different perspective.

But an economy set fair, and equitable individual liberties and rights, should rank equally in any progressive, wealthy nation like Australia.

Here's a rundown of some of key issues that federal and some local parliaments could address to make for a better nation a year from now:

## **Australia:**

- introduce a bill of rights;
- whistleblower protection and shield laws for journalists (see story below), and compensation for Allan Kessing, the Customs/Sydney Airport whistleblower;
- uniform sentences/penalties for federal offences, such as evading Customs duty, instead of different outcomes in different states;
- review and winding back of decade-old, 'emergency' terror laws which have been unused;
- debate on Australia being at war (following an emergency Executive decision to go to war), and annual parliamentary reporting and budget votes for staying at war;
- reform of the Council of Australian Governments (COAG), Standing Committee of Attorneys-General (SCAG) and 40-plus Ministerial Council processes, and their secret agendas and decisions that usurp the rights of backbenchers, parliaments and communities;
- a review of censorship, including internet censorship, with opt-in as the basic principle;
- a national commission against corruption, able to investigate police, politicians, judges, members of the public service or anyone else exercising federal or federally-based authority;
- a review of police and security services, and a curb on their exponential growth in numbers and expenditure of the past decade;
- equal voting rights – or at least, more equal than now – for Australians living in the Australian Capital Territory and the Northern Territory; and
- restoration of non-discriminatory rights to all federal services and payments, in every state and territory.

## **Tasmania**

- bring in a State bill of rights, the third in Australia (after ACT and Victoria);
- introduce euthanasia legislation, showing a lead to the rest of Australia; and
- review of the powers of the Speaker of a parliament, as a lead State for similar reviews elsewhere and federally;
- review of bail laws and prisoner rules and regulations, including the need for one or more extra prisons.

## **WA**

- overhaul of remand and jail rules and regulations, in particular in relation to Indigenous people, and more especially in relation to juveniles, with the aim of reducing the Indigenous population of WA jails to less than 33% by 2015 (it is now about 43%);
- formal review, reform and re-creation of the parole system and parole board, as a lead to other States; and
- parliamentary review of the successes/failures of the Corruption and Crime Commission, from inception, and revision of its operating principles for implementation on its 10th birthday, 1 January 2014.

## **Queensland**

- review of state and federal fishing, land-sea interface and ocean-related legislation, as a lead to other states, and federally; and
- improvement in the situation of Palm Island residents, and equitable resolution of the Doomadgee Mulrunji case.

## NSW

- review and overhaul special event laws (such as those for APEC and the Pope's visit), and remove draconian and unnecessary elements, as a lead for other states and federally;
- review of amateur and commercial photographers' rights and liberties, by revisiting and improving the local government 'protocol' issued in 2009, also a federal/state lead; and
- a public consultation process on how to review, revise and improve all the laws of NSW, should a new A-G take over after the 2011 state election.

## SA

- redrafting of sensible state legislation (and also showing a lead for federal laws) to deal with organised criminal groups, after the High court decision is handed down in the "bikies" case;
- lead, under the Chief Justice, new ways of handling sentencing in relation to the internet and archiving, including taking into account the effect of an individual's name on the long-term 'penalty' involved in sentencing; and
- review and revision of CCTV (and similar, such as 'Mosquito' devices) legislation for capital city, local government and state authorities, with particular relevance to the rights of individuals, as lead for other states and federally.

## Victoria

- Update and expand Charter of Rights and Responsibilities after five years experience with it;
- amend privacy laws to prevent police 'spying' on protestors at major development sites and the like, and passing on information to developers and third parties; and
- institute an inquiry into links between police, security, crime and political interests statewide, but in Melbourne particularly.

## ACT

- include economic, social and cultural rights in the Human Rights Act, due for amendment in 2011 after operating for seven years.

## NT

- overhaul of state-based "serious and organised crime" legislation, as a lead to other states and federally, to provide some more equitable rights and protection for family members who have not been involved in criminal activity.

If you have a reform measure you'd like to propose federally or in your State/Territory, please email the secretary, CLA. We're particularly interested in promoting public service reform ideas.



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## Government planning 'dob in a neighbour' scheme?

Stand by for the Gillard Government to introduce in 2011 a "spy on your neighbour" program called the Suspicious Activity Reporting Scheme (SARS).

It could equally be called the "Dobber" program, as it is based on dobbing in people, and is a perfect vehicle for personal revenge, officially sanctioned.

Such a program is being launched in the USA and, under Attorney-General Robert McClelland, Australia has committed to a "Quintet" approach...where the USA, the UK, Canada, NZ and Australia mirror each other's anti-terrorism initiatives.

The US Justice Department's program is the Nationwide Suspicious Activity Reporting Initiative (NSARI). Federal, state and local law enforcement officials have set up "fusion centers" for the program in about a dozen cities, including Boston, Chicago and Houston, where reports of suspicious activities from citizens and local police are collected and analyzed for patterns.

AG McClelland announced a local “fusion centre” in the May 2010 Budget: he set aside \$14.5m extra for a Criminal Intelligence Fusion Centre within the Australian Crime Commission.

The SARS rationale in America is, that if potential attacks are to be prevented and not merely responded to, police and security services must focus on precursor conduct – surveillance or “casing” of bridges or train stations, for instance – that may not itself be criminal, but may signal a coming attack.

But a SARS approach is open to widespread abuse. As the American Civil Liberties Union (ACLU) says, it “increases the probability that innocent people will be stopped by police and have their personal information collected.” The ACLU believes SARS “moves the police officer away from his core function, to enforce the law, into being an intelligence officer gathering information about people.”

The ACLU is concerned about the program, even though it was consulted during its development. There has been no Australian Government consultation with CLA as yet: whatever is being developed here is being kept a close secret. The American program is entirely counter-cultural in Australia.

For a rundown on the US situation, read the OpEd piece by John Farmer Jr (*pictured*), a former senior counsel for the 9/11 commission, who is the dean of the Rutgers School of Law - Newark and the author of *The Ground Truth*.

<http://www.nytimes.com/2010/09/28/opinion/28farmer.html>



## **New shield laws likely to ripple around Australia**

The government has agreed to introduce stronger shield laws for journalists, prodded by Independent MPs Andrew Wilkie and Senator Nick Xenophon.

Effectively, the new law will be virtually identical to an earlier one proposed by Shadow AG George Brandis, and is to be based on the New Zealand system.

AG McClelland has written to state/territory AGs asking them to consider introducing identical laws. A positive response is likely, as Victoria has already led the way.

The proposed shield laws would only require a journalist to reveal a source if it was deemed to be in the public interest and it outweighed the potential harm to the source.

<http://www.abc.net.au/news/stories/2010/09/28/3024000.htm>

## **Government introduces legislation without consultation**


The government has re-introduced into federal parliament the Law and Justice Legislation (Identity Crimes and Other Measures) Bill 2010.

The bill passed the House of Representatives in February 2009 but lapsed in the Senate with the dissolution of parliament in July 2010.

The bill aims to clarify and improve how several different Commonwealth Acts operate, according to Minister for Home Affairs and Justice, Brendan O'Connor:

- The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 is being amended to establish a more consistent approach to restrictions placed on the disclosure of sensitive AUSTRAC information and to strengthen safeguards to protect against disclosure.
- The Crimes Act 1914 will be amended to increase the penalties for perverting the course of justice from five to 10 years jail.
- Director of Public Prosecutions Act 1983 amendments to make joint trial arrangements between the Commonwealth DPP and State and Territory DPPs easier. Changes will also provide immunity from civil suits for persons carrying out functions and powers under the Act.

**The bill has had no community consultation** – here’s what the Minister’s media release says: “The Bill was developed in consultation with stakeholders including the Commonwealth Director of Public Prosecutions, the AFP, State and Territory criminal justice stakeholders (*that is, state and territory police, CLA says*) and the Community and Public Sector Union”.

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## Massive increase in aviation penalties...without consultation

Minister O'Connor has also re-introduced – **again without public consultation** – the Aviation Crimes and Policing Legislation Amendment Bill 2010.

Under the bill, maximum penalties for aviation-related crimes will increase and such crimes will fall within four categories:

- 10 years jail for hoax offences such as calling an airline and saying a bomb is on a plane or threatening to bomb an airport (up from two years maximum);
- 14 years jail for offences against aircraft or aviation environments, such as damaging a runway or air traffic control facilities at a major airport (up from 7-10 years);
- 20 years jail for very serious offences that pose danger or cause harm to groups of people, such as assaulting a pilot or endangering an aircraft while in flight (up from 7-15 years); and
- Life in jail for offences such as hijacking or destroying an aircraft and being reckless as to causing death.

Three new offences are also proposed:

- Assault of an aircraft crew member: up to 10 years imprisonment
- Reckless endangerment of an aircraft involving danger of serious harm or death: up to 14 years; and
- Having dangerous goods on board an aircraft, where there is a risk of serious harm or death up to 14 years.

"Key aviation stakeholders have been consulted in the development of these proposed new laws and the Government will continue to consult the aviation sector," the Minister's media release said.

Note that there has been no public consultation.

## Australia is not fair go territory

It seems even people throughout the States of Australia appreciate the inequity of citizens of the ACT and NT not having the same local democratic rights as citizens of the founding States.

This Victorian-based poll (results below, from *The Age*) indicates there is wide support for equality and a fair go in Australia over local parliaments being able to make binding decisions.

Next major task is to inform the citizens of other States about how a federal election vote for a Member of the House of Representatives (MHR) is worth only 50% in the ACT of what it is worth in the NT, and about one-third less than what it is worth in most of the rest of Australia\*.

**POLL: Should the NT and ACT have the authority to legislate on the right to die?**

Yes: 78%

No: 22%                      Total votes: 7109. Poll closed 22 Sep, 2010

Disclaimer: These polls are not scientific and reflect the opinion only of visitors who have chosen to participate. <http://www.theage.com.au/polls/territory-rights/20100919-15hou.html#poll>

\* The two ACT MHRs are elected on the votes of about 120,000 electors; the two NT MHRs are elected on the votes of 60,000 electors; most MHRs in the rest of Australia are elected on the votes of 90,000 electors.

## Brown moves to restore rights to Territorians

Green leader Senator Bob Brown has reintroduced a bill to the Senate that would prevent the federal government overturning legislation passed in the ACT that it disagrees with.

"At the election in 2008, 220,019 voters in the Australian Capital Territory elected a legislature," he said. "Its laws should not be overridden by the federal government, in particular the Executive."

Debate on the Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2010 and Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010 was adjourned.

## Should free (extra-judicial) speech be curtailed?

It looks like the retire-at-70 “senility” rule cut in just in time with former High Court judge Michael Kirby.

Mr Kirby has reportedly criticised “Australian freedoms” for permitting people affected by bushfires to live in dangerous areas. He was giving the keynote address at the Firefighters and Emergency Services annual conference in Darwin last month.

"The real source of our problem lies in the larger freedoms that we ordinarily possess in Australia in our desire to enjoy our beautiful and unique landscape and in our wish to return when the fires are over and the lawyers are departed," he is quoted as saying. "They must limit individual freedoms where to pursue them will repeat the path of danger and expose the state and its personnel to unreasonable risks."

For consistency, perhaps Kirby would like to curtail some other “larger freedoms”, like walking across the road, swimming where there are sharks, bushwalking in rough places and dropping out of perfectly serviceable planes using parachutes.

Mr Kirby is in serial danger of speaking too often and too frequently on subjects where he has no specialised knowledge or first-hand experience.

CLA says that many improvements in all sorts of community policies are possible, but taking away personal freedom of choice is not the best starting point. There was a time, once, that Mr Kirby understood that, when he was Australia’s leading advocate for civil liberties and human rights.

<http://www.abc.net.au/news/stories/2010/09/09/3007379.htm?section=justin>

## Jail time and release supervision increases for sex offenders

Sex offenders face longer jail time - including more widespread use of indefinite sentences – and much tighter supervision on release under tough-on-crime laws passed by the Queensland Parliament last month.

Indefinite jail sentences now apply to more offences, there is a minimum supervision period of five years, and the government can ask for an extra period of supervision when a supervision order expires.

Attorney-General Cameron Dick said the reforms “enable judges to impose indefinite sentences for many more crimes, including torture, incest, maintaining a sexual relationship with a child, and indecent treatment of a child. Previously, indefinite sentences could only be imposed for violent offences and certain sexual offences that carried a maximum penalty of life imprisonment.”

<http://snipurl.com/117hd0>



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## Crims to get jail time cut for guilty plea

Criminals pleading guilty before trial would have their jail-time reduced under an SA Government scheme announced last month to slash court backlogs.

However, Opposition Justice spokesman Stephen Wade said indicated the Liberals would block the reform announced by Attorney-General John Rau.

The Government will need support from the Greens, Family First and independents in the Upper House to bring the policy into law. <http://snipurl.com/11qkx1>

## Prison may create more future crime

Prison does nothing to deter adult offenders convicted of burglary or assault – it may even increase the risk of re-offending, a new study by the NSW Bureau of Crime Statistics has found.

The Bureau compared 96 matched pairs of convicted burglars and 406 matched pairs of offenders convicted of non-aggravated assault. One member of each pair received a prison sentence, while the other received some form of non-custodial sanction. All offenders were exactly matched on offence type, number of concurrent offences, prior prison experience, number of prior appearances in court and bail status at final appearance.

Statistical methods were used to control for age, age of first conviction, gender, race, plea, number of counts of the principal offence, legal representation and prior breach of a court order. In the case of non-aggravated assault an additional control was included: prior conviction for a violent offence.

The study found that offenders who received a prison sentence were slightly more likely to re-offend than those who received a noncustodial penalty.

The difference was just significant for non-aggravated assault but not significant for burglary.

Commenting on the findings, the Director of the Bureau, Dr Don Weatherburn, said that they were consistent with a growing body of evidence suggesting that prison either does nothing to deter offenders or increases the risk of re-offending. "This does not mean that prison should be abandoned and all prisoners set free. Prison can be justified on other grounds, such as punishment and incapacitation."

"The present study simply shows that sending people convicted of assault or burglary to prison is no more effective in changing their behaviour than putting them on some form of community-based order. In fact it might be slightly worse."

Info: Dr Don Weatherburn 02 9231-9190 or 0419-494-408 Report: <http://www.bocsar.nsw.gov.au>

## Parole board processes found to be 'illegal'

Some of WA's worst criminals have had their cases bungled by the parole board when it applied the wrong laws to their reviews.

A Court of Appeal hearing has revealed errors in the Prisoners Review Board's statutory reviews in the case of a man who fatally stabbed a teenager at a high school almost 20 years ago. The Court of Appeal decision means community safety will no longer have to be "paramount" when cases are reconsidered under the correct legislation.

An audit showed 35 cases, mostly of prisoners serving life for murder, were incorrectly reviewed under 2003 legislation when they should have been considered under 1963 laws, which have different criteria. <http://snipurl.com/17d2ee>

## WA votes down euthanasia bill

WA parliamentarians last month voted against introducing a euthanasia law for the state.

MPs were granted a conscience vote on euthanasia legislation, introduced to the upper house by Greens MP Robin Chapple. The private member's bill would have allowed people over the age of 21 with a terminal illness and who were sound of mind to ask a doctor to end their life.

After two days of debate – the first on the issue in the WA parliament – the bill was defeated 24 votes to 11, Angie Raphael reported for AAP. <http://snipurl.com/17d02d>

## Premier to apologise for adoption practices

Western Australia will become the first state to apologise to women, children and families affected by its past adoption practices, according to Health Minister Kim Hames.



He said that Premier Colin Barnett (*pictured*) would put forward a motion in parliament on 19 October 19 that would let him make the apology on behalf of state institutions that engaged in adopting out children under past governments.

Dr Hames said from the 1940s to the 1980s, the legal, health and welfare systems of the day were unsupportive of pregnant unmarried women. There were also plans to create a memorial, he said. <http://snipurl.com/17d5un>



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## Parties agree to boost parliament to 35 MPs

The leaders of Tasmania's three main political parties have agreed to increase the size of Parliament before the next election.

Premier David Bartlett, Liberal leader Will Hodgman and Greens leader Nick McKim last month agreed to restore the House of Assembly to 35 members, up from the present 25, Damien Brown reported in *The Mercury*.

They will increase the size of the Lower House at the next state election, expected to be in March 2014, if legislation for a fixed-term parliament is tabled and ticked off by Parliament late this year or early next.

They have also agreed to consider further reforms, including to public donation levels, candidate expenditure, fixed terms, role/power of parliamentary committees, conflicts of interest, a code of conduct for MPs and the staffing/resources provided for MPs. <http://snipurl.com/17cmce>

## Tasmania steps out on road to bill of rights

Key dates for the statewide consultation process for a Tasmanian charter of rights are:

- Oct/Nov 2010 Consultation with the Tasmanian community
- March 2011 Release of Draft Human Rights Charter Bill
- March/April 2011 Consultation with the Tasmanian community
- Mid-2011 Introduction of Human Rights Charter Bill to Parliament

Further details are available from the Tasmania Government's project manager, Dale Webster, at: [legislation.development@justice.tas.gov.au](mailto:legislation.development@justice.tas.gov.au)

## Google allows users to ogle oligopolistic obligations

Google last month released an online tool showing where its services and products are being blocked around the world...including in Australia.

"We believe that this kind of transparency can be a deterrent to censorship," David Drummond, Google's chief legal officer, said. "When Google's services are blocked or filtered, we can't serve our users effectively," Drummond said in a blog post. "That's why we act every day to maximise free expression and access to information."

He said the new tool, which is called Transparency Report and located at [google.com/transparencyreport](http://google.com/transparencyreport), will "allow people to see where governments are demanding that we remove content and where Google services are being blocked." <http://snipurl.com/15ft9j>

Meanwhile, Google and its chief executive Eric Schmidt have been convicted of defaming a Frenchman through its "suggest" search function.

The man, who was not identified for legal reasons, sued Google, claiming the words "rapist", "rape", "prison" and "satanist" were suggested when his name was typed into the company's web search portal, a French legal website revealed.

He had been convicted of corrupting a minor and sentenced to three years' jail, but was still innocent under French law while appealing against his sentence. <http://snipurl.com/16z8rq>



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## Report on **CLA** activities in September: *by President Dr Kristine Klugman*

### Key meetings:

ANU Chancellor Gareth Evans.

Dominique Dalla-Pozza ANU on her recently completed PhD on counterterrorism

Human Rights Commissioner ACT, Dr Helen Watchirs re bill of rights for Tasmania, Sexual Assault Reform Program, five year review of ACT Human Rights Act, due shortly.

Teleconference with John Croll, CEO of Media Monitors, re media relations

### Submissions in the recent period:

Fol in the ACT: Lance Williamson, lead author



## **Inquiries to CLA:**

Cases further developed:

*Tasmanian bail laws*: re justice delayed in current murder case due to non-granting of bail: letter to A-G Lara Giddings asking for Law Reform Commission review: preliminary response, awaiting full response. Tasmanian lawyer members helped with background, drafting of letter.

*Moama case*: re police intrusion by foot into private home: in discussion with solicitor acting for Legal Aid NSW, opinions sought from two retired, eminent CLA lawyers: advice is case may succeed, is worth running because of the principle involved.

## **Board meeting – November:**

Planning under way: main extra issue will be promotion of CLA in 2011, securing of more members

## **Consultative meeting:**

Relations with other human rights groups

Phil Lynch, Human Rights Law Resource Centre, re CLA association for overseas lecturer visits

## **Treasurer/financial** (Treasurer Kevin Popple):

Helping to develop new online financial/membership system.

## **Website** (Director and Webmaster Lance Williamson):

Webmaster developing new online membership/financial system to cut (by half, it is hoped) administrative load of Treasurer; holding meetings with Frances Markham re this project and the electronic AGM due early in 2011.

## **Students:**

Internship Fleur Adcock, topic to be refined, supervisor to be found

National Indigenous Legal Conference. ANU, early October: CLA agreed to small sponsorship, and to support attendance of some Aboriginal legal students from James Cook Uni, Cairns. President and CEO to chair some of the NILC sessions.

## **Media and media-related** (Director and Media Spokesperson Tim Vines):

Interview with Radio Atticus (Sydney) on extension of the NSW Police Powers (Terrorism) laws;

Online article (CLA website) on sunset clauses, function creep and broken political promises in war on terror search laws.

Greg Barns is CLA spokesperson for Tasmania on relevant issues; Jim Collier is convenor and local spokesperson for Launceston; Rex Widerstrom is convenor in WA and local spokesperson in Perth.

## **Function:**

Book launch at National Library of Australia of CLA member Peter Stanley's book, *Bad Characters: Sex, Crime, Mutiny, Murder and the Australian Imperial Force*, published by Pier 9.

## **Social:**

CLA Spring BBQ planning completed; invitations sent out to members in ACT/surrounds.

## **AUSTRALIAN BRIEFS**

**Aussie re-appointed to UN body:** Professor Ron McCallum has been re-elected to the UN Committee on the Rights of Persons with Disabilities. The leading Australian legal academic was first elected to the committee in November 2008: he is the only Australian currently on a UN treaty body. Prof McCallum is the first totally blind person to become a full professor at an Australian

university – he has served as Dean of the Law School at Sydney University.

**Booze blacklist to tag NT drinkers:** Proposed new NT laws will ban the worst drink-drivers, domestic violence offenders and people charged with alcohol-related offences from buying alcohol for up to 12 months. And from next year everyone buying alcohol at NT bottle shops may have their licence scanned to check they are not on the blacklist. A register system has operated for two years in Alice Springs: alcohol-related violence offences have reduced by 21 per cent, police say. But the new system goes further, allowing police, magistrates and doctors to put problem drinkers on the list. Even relatives can apply to have family members put on the blacklist.

<http://snipurl.com/11awjr>



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## INTERNATIONAL

### Legalistic crisis shakes NZ in aftershock to Canterbury quake

Legal academics have called on the NZ Government to rethink its sweeping law assisting the Canterbury area earthquake recovery, saying it lacks constitutional safeguards and sets a dangerous precedent.

The earthquake's impact was centred on the south island city of Christchurch.

The legislation, passed unanimously by Parliament, allows government ministers to make exemptions to, or to suspend, almost every NZ statute law to help speed up rebuilding. There's even talk of having a permanent catch-all law for any natural disaster on a similar scale.

The 27 NZ and international academics with expertise in constitutional law and politics released an open letter to Parliament, *Radio New Zealand* reported last month. The list includes academics from universities including Oxford, Essex, New York University, Canterbury, Otago, Victoria, and Auckland. They say abandoning established constitutional values and principles to remove any inconvenient legal roadblock is a dangerous and misguided move. <http://snipurl.com/170cug>

### US security ability to tap the internet may arise here

US law enforcement and national security officials want sweeping new regulations for the Internet, arguing that their ability to tap the phones of criminal and terrorism suspects is "going dark" as people increasingly communicate online instead of by telephone.

There is little doubt that such legislation, enacted in America, would find its way to Australia under the Quintet Principle, where the Attorneys-General of the USA, UK, Canada, NZ and Australia mirror each other's legislation.

Essentially, Charlie Savage writes in the *NY Times*, US Administration officials want Congress to require all services that enable communications – including encrypted e-mail transmitters like BlackBerry, social networking web sites like Facebook and software that allows direct "peer to peer" messaging like Skype – to be technically capable of complying if served with a wiretap order. The mandate would include being able to intercept and unscramble encrypted messages.

The Obama Administration plans to submit the bill to lawmakers in 2011. <http://snipurl.com/16ypt6>

### EU court upholds journos' right to protect sources

The European Court for Human Rights (ECHR, see photo) ruled last month that police cannot search media premises or seize journalistic material – upholding the rights of journalists to protect their sources.

The initial ruling came in March 2009 in the case of *Sanoma v. the Netherlands*, in which the Finnish-owned Dutch magazine publisher was forced to give police a CD containing photographs related to a story in *Auto Week* magazine about illegal car racing. Sanoma took the case to the ECHR.

Police had applied severe pressure on the magazine publisher, and even arrested its editor briefly, compelling the publisher to hand over information about its sources to police investigating another crime. The magazine had strong objections to being forced to share information that would identify confidential sources.

The Grand Chamber of the ECHR has now ruled that there was a violation of the principle of protection of sources according to Article 10 of the European Convention of Human Rights, and that the police interference was not "prescribed by law". The ECHR held that police cannot search journalists' materials unless they can show it is absolutely necessary in the investigation of a serious crime and have obtained a judicial warrant.

The ruling "will force police and prosecutors across Europe, from Russia to France, to change their practices," said Geoffrey Robertson QC, counsel for a coalition of intervening organisations.  
[http://www.ifex.org/europe\\_central\\_asia/2010/09/22/source\\_protect/](http://www.ifex.org/europe_central_asia/2010/09/22/source_protect/)



## **Brits investigate decriminalising drugs**

British officials are examining a pioneering Portuguese anti-drugs program that decriminalises possession of substances, including heroin and cocaine.

The successful 10-year-old program has turned possession into an "administrative offence", which sends those caught with drugs for personal use to a 'dissuasion board' rather than having them prosecuted, the *Observer* of London reported.

The board consists of social workers and psychologists who interrogate users on their drug habit. It can impose a variety of sanctions, including fines, or recommend treatment. Users caught with drugs more than once are ordered to appear at police stations or a doctor's surgery.

<http://snipurl.com/11eupu>

For a rundown on the Portuguese system, read this article from the CLA website:  
[http://www.cla.asn.au/0805/index.php/articles/2009/portugal-tries-new-drugs-approach?zoom\\_highlight=drugs+portugal](http://www.cla.asn.au/0805/index.php/articles/2009/portugal-tries-new-drugs-approach?zoom_highlight=drugs+portugal)



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## **Obama Administration wants unwarranted GPS surveillance**

The Obama Administration is asking the full US Court of Appeals for the District of Columbia to reverse a controversial ruling that said law enforcement authorities must get a warrant to use a global positioning system (GPS) device to track a suspect.

A three-judge appellate panel ruled in August that law enforcement authorities violated a man's right to privacy in tracking him 24 hours a day for a month using a GPS secretly attached to his vehicle. At trial, the authorities used the GPS data to link the man, Antoine Jones, the co-owner of a nightclub in Washington, to an alleged drug house in Maryland. The appeals court vacated (threw out) Jones' conviction and life sentence.

Administration federal prosecutors last month criticized the DC Circuit's ruling, saying it was in conflict with other federal appellate court decisions and with US Supreme Court precedent. The government said the Supreme Court ruled in 1983 that a person traveling in a vehicle on public roads had no expectation of privacy in the USA. That case involved the use of a radio-controlled beeper to track a suspect.

The DC Circuit's decision "raises enormous practical problems for law enforcement," Assistant US Attorney Peter Smith said in the government's petition for a re-hearing. Investigative agents of the Justice Department, Smith said, use GPS tracking "with great frequency."

"The decision leaves unresolved precisely when the monitoring of a GPS device becomes a 'search' under the Fourth Amendment, and implicitly calls into question common and important

practices such as sustained visual surveillance and photographic surveillance of public places,” Smith said in court papers.

He said the DC Circuit’s ruling offered no guidance to investigators about how long visual monitoring must go on before it triggered the requirements of the Fourth Amendment.

“Investigators are left to speculate as to what is permissible,” he said. If the panel decision is left in place, Smith said, common investigative techniques – including photographic surveillance of people in public – could be called into question.

Good, says CLA...most new surveillance technologies have been introduced without any public questioning of their appropriateness. <http://snipurl.com/15epj3>

## **Torture victims barred from suing US Government**

An appeals court last month ruled that former prisoners of the CIA could not sue the US Administration over their torture in overseas prisons because a lawsuit might expose secret government information.

The sharply-divided ruling was a major victory for the Obama Administration’s efforts to advance a sweeping interpretation of executive secrecy powers. It strengthens the White House’s hand as it has pushed an array of assertive counterterrorism policies, while raising an opportunity for the Supreme Court to rule for the first time in decades on the scope of the President’s power to restrict litigation that could reveal state secrets, Charlie Savage of the *NY Times* wrote.

Among other policies, the Obama national security team has also authorized the CIA to try to kill a US citizen suspected of terrorism ties, blocked efforts by detainees in Afghanistan to bring habeas corpus lawsuits challenging the basis for their imprisonment without trial, and continued the CIA’s so-called extraordinary rendition – kidnapping, CLA says – program of prisoner transfers

By 6-to-5, the US Court of Appeals for the Ninth Circuit dismissed a lawsuit against Jeppesen Dataplan Inc., a Boeing subsidiary accused of arranging flights for the CIA to transfer prisoners to other countries for imprisonment and interrogation. The American Civil Liberties Union filed the case on behalf of five former prisoners who were tortured in captivity – and that Jeppesen was complicit in that alleged abuse.

Judge Raymond Fisher described the case, which reversed an earlier decision, as presenting “a painful conflict between human rights and national security.” But, he said, the majority had “reluctantly” concluded that the lawsuit represented “a rare case” in which the government’s need to protect state secrets trumped the plaintiffs’ need to have a day in court. <http://snipurl.com/15ydt>

Ironically, CLA says, because they cannot ‘have their day in court’, the former prisoners are free to eliminate words like ‘claim’ and ‘allege’ from any statements they make about their being tortured: presumably, it would now be up to the US Administration, if it chooses to challenge the statements, to take them to court to prove the former prisoners were NOT tortured!

## **French burqa ban passes Senate**

The French Senate has approved a law banning the wearing of a full Islamic veil in public.

It is likely to affect the 3.5 million Muslims living in France, representing about 6% of the population.

According to the new law, covering the face in public will be subject to a fine of \$190 and/or community service. Stricter penalties apply to anyone who forces someone else to wear the veil: about \$38,000 or a year in prison.

The law passed by 246 votes to 1, with 100 abstentions. However, a public poll found that the French people backed ban by more than 4 to 1.

The law may still face challenges at the European Court of Human Rights.



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## INTERNATIONAL BRIEFS

**South Africa deports neighbours:** Deportations home of Zimbabwe nationals will start again from 1 January 2011, the South African Government announced last month. Under a special dispensation, Zimbabweans had been allowed to enter SA and work for a total of three months before renewing the temporary permits. An estimated 4m Zimbabweans live in SA.

<http://snipurl.com/11dzag> <http://www.openyoureyesnews.com/>

**FBI spied on domestic groups unreasonably:** The FBI went beyond its powers in investigating left wing domestic groups after the 11 September 2001 terrorist attacks, and then lied to the US Congress, an Inspector-General's report said last month. For five years the FBI improperly investigated groups like Greenpeace, People for the Ethical Treatment of Animals, the the pacifist Thomas Merton Centre. The FBI classified the investigations as "domestic terrorism cases", but in fact they were inquiring into cases of trespassing and vandalism. *Source US Dept of Justice Inspector-General's Report.*

## DATES:

*(You may have to copy and paste URLs to reach these sites)*

**1 Oct, Brisbane:** LAWASIA Privacy Conference, Qld Law Society House. [www.lawasia.asn.au](http://www.lawasia.asn.au)

**1-2 Oct, Canberra:** Fifth National Indigenous Legal Conference, at ANU. Details:

<http://law.anu.edu.au/coast/events/indigenous/conf/htm>

**4-5 Oct, Canberra:** Criminal Justice Cooperation Conference, U. Canberra:

<http://www.canberra.edu.au/faculties/law/home>

**6 Oct, Brisbane:** Prof David Weisbrot of Macquarie Law School, Macquarie U. on 'DIY Genetics: Carbolic Smoke Ball meets the Internet', Griffith U., Rm 2.06, N54, Nathan campus with videolink to Room 1.04, G34, Gold Coast campus and Room 2.27, L03, Logan campus. <http://www.griffith.edu.au/law/socio-legal-research-centre/news-events/seminar-series-2010>

**7-8 Oct, Canberra:** 2010 CEPS\* international conference: At the Nexus: New paradigms and practices in policing and security. Info: <http://www.ceps.edu.au/?q=events-at-CEPS/2010-CEPS-International-Conference>. (\*CEPS: Centre of Excellence in Policing and Security, based at Griffith U., Brisbane).

**15 Oct, Sydney:** 2010 International Dispute Resolution conference, 8.30-5.15. More info: [www.afr.com/events/](http://www.afr.com/events/) or call 1800 032 577, run by Australian Financial Review, cost \$979-\$1249.

**15-17 Oct, Melbourne:** Defending Workers & Indigenous Rights: Building bridges and global resistance against Multinational Corporations. Contact. Marisol Salinas, Liaison Officer, Friends of the Earth, Ph: 03 9419 8700 or email: [marisol.salinas@foe.org.au](mailto:marisol.salinas@foe.org.au)

**18-19 Oct, Melbourne:** 1st International Serious and Organised Crime Conference (ISOC 2010), Convention Centre. <http://www.aic.gov.au/events/aic%20upcoming%20events/2010/isoc.aspx> \*Note: A conference about organised crime, not one held by organised crime: organised by Aust. Inst of Criminology.

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

**28 Oct, Perth:** Use of Information Technology in Criminal Trials, 4.30-6.00pm, Ceremonial Court, District Court of WA, 500 Hay Street, Perth. More info: <http://www.lawsocietywa.asn.au/cpdseminars.htm>

**4-6 Nov, Parramatta:** Human Rights Education Conference, Educating for Human Rights, Peace and Intercultural Dialogue, U. of Western Sydney, organised by Dr Sev Ozdowski, Register by 22 Oct. Details: <http://www.humanrightseducationconference2010.com.au>

**10 Nov, Adelaide:** Flinders Uni Law School seminar: Vivienne Brand, Jeff Fitzpatrick and Chris Symes: 'Fit and Proper' as a character requirement: a meaningless doublet? 1-2pm, Room 2.18 LWCM Bldg. Details: <http://www.flinders.edu.au/ehlt/law/>

**10-13 Nov, Bangkok:** 14th International Anti-Corruption Conference (IACC). Details: <http://14iacc.org/>

**19 Nov, Brisbane:** E-Democracy – Global Trends to Local Citizen Engagement, 2.30–4.30pm, Bldg 96, St Lucia Campus. Info: [juliemccredden@uq.edu.au](mailto:juliemccredden@uq.edu.au)

**2-3 Dec, Sydney:** Virtual Global Taskforce – ‘*Global Child Protection in Tomorrow’s Virtual World*’ – conference, hosted by Australian Federal Police, Sydney Convention Centre, featuring a hypothetical by Geoffrey Robertson and including **CLA Director and media spokesperson, Tim Vines**.  
<http://www.vgtconference2010.com/>

**10 Dec, Sydney:** HUMAN RIGHTS DAY and Human Rights Awards:  
[http://www.humanrights.gov.au/hr\\_awards](http://www.humanrights.gov.au/hr_awards) or ph: 02 9284 9618 or <mailto:hrawards@humanrights.gov.au>

**2011:**

**5-9 Feb, Hyderabad, India:** 17th C’wealth Law Conference. Info: <http://www.commonwealthlaw2011.org/>

**28-30 Oct, Perth: CHOGM** (Commonwealth Heads of Government Meeting): Biennial summit involving 53 leaders from Commonwealth nations

**ODD SPOT: Shot heard around campus, reverberating into the night**

On 28 September 2010, the University of Texas closed down suddenly because of a shooting in its library.

A man fired a weapon in the building (it appears to have been a suicide), but for the rest of the day there was concern another person with a gun might be loose on campus.

According to an online UT calendar of events, there was a lecture planned for that evening at the UT law school to be presented by US Second Amendment scholar and author John Lott, who wrote the book *More Guns, Less Crime*. According to the UT site, in his book Lott argues that crime rates drop when states allow citizens to carry concealed weapons.

According to the website, the sponsors of the night’s lecture were the University of Texas School of Law Federalist Society, Students for Concealed Carry on Campus, Libertarian Longhorns and The Objectivism Society.

However, the UT law school Federalist Society tweeted, *"In light of this morning’s events, John Lott’s talk at the law school has been canceled."*



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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\[at\]cla.asn.au](mailto:secretary[at]cla.asn.au)

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