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Attorney-General wants media to self-censor

Attorney-General Robert McClelland is trying to fabricate a C-Notice (C as in Censorship) scheme in which the media would self-censor when reporting 'sensitive' information.

He has written to numerous organisations – but not Civil Liberties Australia as representatives of the public – asking for ideas on how C-Notices might work.

He denies the proposed scheme is an attempt to muzzle the media. The scheme would “strike a balance between national security and the public's right to know”. (*Note: CLA comments below on Mr McClelland's understanding of “balance”*)

"The arrangements would recognise that the public has an interest and a right to be informed of relevant national security and law enforcement matters," he said. "(They) would be designed to facilitate reporting that avoids risk . . . or compromises important investigations or operations."

Mr McClelland's letter seeks comments from organisations including the Australian Press Council, the ABC, Free TV Australia, the Media Entertainment and Arts Alliance and the Police Federation of Australia about how to formulate a workable protocol.

The question is, why aren't civil liberties groups among the groups listed for consultation? Who represents the public in this debate between the media, police and government... three of the most powerfully-organised groups in society.

In the overwhelming majority of incidents, police and security agencies closely control who knows what about any covert operation, and they themselves leak when it's in their interest to have media outlets turn up just at the right time to cover their 'secret' raids. <http://snipurl.com/1j6ai5>

Australian censorship regime to be reviewed

A wholesale review of censorship in Australia is under way, slipped in quietly last month.

It will cover material on or in TV, films and videos, literature, the internet, mobile phones, outdoor and billboard advertising and general advertising... through to music videos and song lyrics.

Under scrutiny will be classification of films, including explicit sex or scenes of torture and degradation, sexual violence and nudity. The review will examine the enforcement system, including call-in notices, referrals to state and territory police and any follow-up actions, as well as how censorship interacts with Customs regulations.

The Senate has tasked the Senate Legal and Constitutional Affairs (SLaCA) committee with the task of holding the wide-ranging inquiry, and given it six months for the mammoth job.

The committee is also being asked to consider whether there should be national standards for the display of restricted publications and films... which could call into questions the ACT's X-rated industry based on Australia's sexiest suburb, Fyshwick.

It will adjudicate on whether films rated X18+ have a role in sexual abuse of children, and try to come to grips with the interaction between censorship and artistic merit. It will examine the Government's reviews of the Refused Classification (RC) category, a lynchpin of its proposed internet censorship scheme.

SLaCA is calling for submissions by 04 March 2011. The initially-proposed reporting date is 30 June 2011...but CLA seriously doubts that the committee will meet that date on such a major undertaking. Full details of the inquiry, and

terms of reference: <http://snipurl.com/1jdzeg>

CLA plans to make an early and major contribution – a Placeholder Submission – on which other organisations could build by way of comment or critique.

Government hints new privacy law close

Australia may be on the path to having a legislated right to individual privacy in 2011.

Justice Minister Brendan O'Connor flagged his intention to act during a radio interview last month. His comments come as the right to privacy is increasingly being recognized in international jurisprudence in the context of human rights.

After an Australian Law Reform Commission major report on privacy law in Australia, the government announced a two-stage response: the first to focus on improving how the existing Privacy Act works, and the second to involve more controversial issues such as the creation of a statutory cause of action for breaches of privacy.

Speaking with Luke Grant on Melbourne Tonight Radio 1377, Mr O'Connor said: "...there's a whole public debate about privacy issues particularly in this new medium – who's responsible, what obligations do the networks have or the social network sites have to use information to store it, so there's a series of matters that need to be fully considered by, I think, the Australian community and the government.

"It's not a benign playground...there's a good public debate to be had on the responsibilities of those site owners on one hand, but also people taking personal responsibility about how they disclose their information. People need to be more cautious. And parents need to tell their kids to be more careful." – *MTR1377 Melbourne Tonight with Luke Grant, 23 November 2010*

New laws make Australia more fearful society

The new *National Security Legislation Amendment Bill 2010* is now in force. Here are some of the things that have changed:

- police can barge into your house without a warrant “in emergency circumstances relating to a terrorism offence” (which really means on the faintest “suspicion”, if they wish);
- if (IF) they get a search warrant, police can re-enter your house for 12 hours “in emergency circumstances”: it used to be a one-hour limit;
- the new Act dramatically extends the time for holding someone arrested for a terrorism offence, investigating them and ‘fishing around’ (the Act is couched in reverse wording, making it appear as if time is limited, but the effect is to make time stand still when it suits police/security services to have it so);
- there's a new right of appeal for the prosecution against a bail decision;
- the ‘urging violence’ offence is expanded to apply to individuals as well as groups who “incite violence” on the basis of race, religion, nationality, national or ethnic origin or political opinion (note: “political opinion” – this is a clear recipe for state repression);
- the new *National Security Information (Criminal and Civil Proceedings) Act 2004* means that national security and counter-terrorism court proceedings may be “expedited” (the hurried new system may well become known, in shorthand, as “Kangaroo Court proceedings”);
- sets up a Parliamentary Joint Committee on Law Enforcement which can – almost certainly in secret session only - investigate the Australian Federal Police and the Australian Crime Commission; and

- the new act extends the role of the Inspector-General of Intelligence and Security (IGIS) to inquire into an intelligence or security matter relating to any Commonwealth Department or agency...but in absolute secrecy, and with no mandatory public reporting.

As each month – and each new “anti-terrorism” bill like this one – passes, Australia more and more trends towards a police state. CLA believes there should be a national program to examine all “anti-terror” laws imposed since 9/11 to assess which have not been used; are unnecessary; are excessive; can now be wound back; and/or can now be repealed.

We've had 10 years of the police/security/laws pendulum swinging with increasing momentum towards repression: it is time the momentum stopped, and the pendulum started to swing back in the other direction, towards restoring civil liberties, and the traditional rule of criminal law.

Ten years of “terror” laws like this new one have made Australia a more closed, intimidated, fearful society. Perhaps that's what our politicians want? They subscribe to the Menckian view...

The whole aim of practical politics is to keep the populace in a continual state of alarm (and hence clamorous to be led to safety) by menacing them with an endless series of hobgoblins, all of them imaginary. – H. L. Mencken

Minister: what legacy did you envisage?

In a media release announcing passage of the *National Security Legislation Amendment Bill 2010*, Attorney-General Robert McClelland said:

“These measures are designed to give the Australian community confidence that our law enforcement and security agencies have the tools they need to fight terrorism, while ensuring the laws and powers are balanced by appropriate safeguards and are accountable in their operation.”

No, Minister. The agencies have far more tools than they need: the existing criminal laws of Australia were tools enough if enforced properly by the agencies.

These new laws and powers are not balanced, do not have appropriate safeguards, and do not hold police and security services sufficiently accountable.

Police and spook intrusiveness, government spying on citizens, surveillance generally, the planting of bugs, secretly accessing people's phones, computers and bank accounts... all are in epidemic proportions relative to what they were a decade ago.

Mr McClelland, this is the Australia you have been instrumental in creating: is this what you want your legacy to be, a national afraid?

Vigilance is therefore constantly required to preserve Australia's liberties...The struggle for civil liberties is a journey that is never-ending.
– former High Court Justice Michael Kirby

Tasmania extends time for Bill of Rights

Tasmania's Deputy Premier, Treasurer and Attorney General Lara Giddings has extended the community consultation process on the proposed Charter of Human Rights and Responsibilities until mid-January.

Ms Giddings said that there had been an overwhelming public response to the statewide consultation process, which was the reason for the extension until 14 January 2011. “We have been overwhelmed by the level of community interest and response,” Ms Giddings said, disclosing that more than 100 submissions were already in hand.

The Directions paper, a list of consultations dates and venues and background information are available on Department of Justice website: <http://www.justice.tas.gov.au>
Info: Andrew Rhodes on 03 6233 2757 or 0412 821 274.

Court shows why unelected judges needed

The High Court showed last month precisely why judges should be unelected: they brought down findings against the Australian Government and the South Australian Government.

In a system with less acute separation of powers, a top court's findings might have been different.

The HC found for two Sri Lankan asylum seekers (restoring their basic rights), and agreed with the legal claim of a couple of burly Adelaide bikies (restoring freedom of speech and association). The asylum seekers' decision will cause a radical overhaul of the Federal Government's offshore processing system. Basically, the court said, asylum seekers have robust rights to be heard on their claims: claims can't be arabesqued by smarty-pants, legal weasel words that try to deny Australian islands are part of Australia.

The court found the Australian Government cannot deny access to proper review of their case to those asylum seekers who arrive by boat on to an area excised from Australia's migration zone.

Bikies 1; Atkinson 0

The High Court found last month that Adelaide's bikies knew more about the law than that State's then Attorney-General, Michael Atkinson, when he introduced anti-association laws that were ultra vires...that is, beyond his powers.

Basically, Mr Atkinson wanted – and legislated for – a system where the Police Commissioner and the Attorney-General could conspire, based on information kept secret from everyone else, to ban any group and any individuals within a banned group. Using legislative trickery, they tried to dress up their excesses by forcing the magistrate's court to tick their executive sleight of hand.

The SA Supreme Court ruled that the legislation was invalid because a review court could not have access to examining the secret administrative decision on which the original banning was based. This problem effectively stripped the court of its the fundamental nature as a member of the Commonwealth hierarchy of courts, the High Court ruled, agreeing with the State Supreme Court.

Chief Justice French on why judicial independence matters

In the bikies case, French CJ (*pictured*) starts off very nicely:



1. *Courts and judges decide cases independently of the executive government. That is part of Australia's common law heritage, which is antecedent to the Constitution and supplies principles for its interpretation and operation. Judicial independence is an assumption which underlies Chapter III of the Constitution, concerning the exercise of the judicial power of the Commonwealth. It is an assumption which long predates*

Federation. Sir Francis Forbes, the first Chief Justice of New South Wales, stated the principle in uncompromising terms in 1827 in a letter to the Under-Secretary of State for War and the Colonies:

"His Majesty may remove the judges here, and so may the two Houses of Parliament at home; but the judicial office itself stands uncontrolled and independent, and bowing to no power but the supremacy of the law."

It is a requirement of the Constitution that judicial independence be maintained in reality and appearance for the courts created by the Commonwealth and for the courts of the States and Territories. Observance of that requirement is never more important than when decisions affecting personal liberty and liability to criminal penalties are to be made. Its application is in issue in this appeal, which concerns the validity of a provision of the Serious and Organised Crime (Control) Act 2008 (SA). ("the SOCC Act"). <http://www.austlii.edu.au/au/cases/cth/HCA/2010/39.html#fn4>>[4].

CLA says it is important to note that, to their credit, it was the judges of the Supreme Court of South Australia who first told AG Atkinson and the rest of the Rann 'Lor'n'Orda' gang that they were wrong. The High Court backed the judges up after the State Government appealed. If only we had unelected judges all round Australia safeguarding our individual liberties and rights under national legislation...we could call it an Australian Bill of Rights.

Bullies line up in court

It should also be noted that, in the bikies case, the SA Government was joined by the Australian Government, and the governments of WA, NSW, Victoria, Queensland and the Northern Territory.

These omni-powerful bodies were rooting for the unbelievably arrogant and extra-judicial legislation of SA to be declared valid. In other words, they lined up against their own citizens.

All these state governments, and the federal government, had been told constantly by law societies, civil liberties groups, human rights activists and anyone plumping for a fair go that the laws in question were technically flawed. Yet still they wasted many hundreds of thousands of dollars in trying to bully their citizens extra-legally.

The dirty law, now overturned, did not target only bikies: anyone could have been caught by its draconian provisions and prevented from communicating with 'controlled' people. All that was needed was for the government of the day and the state police commissioner to decide, in secret, that they were suspicious of a club and/or some of its people.

Law Council identifies dangerous trend

Law Council of Australia President, Glenn Ferguson (*pictured*), noted that the High Court was not concerned with evaluating the SA bikies legislation from either a public policy or human rights perspective.

The Law Council has a number of concerns with the SA legislation, and similar legislation in other jurisdictions, which the High Court was not required or even able to consider. "The so called anti-bikie laws, which have spread across Australia, are an unfortunate example of Australia's anti-terror laws creeping into and influencing ordinary law enforcement," Mr Ferguson said.

"These laws try to shift the focus of criminal liability from a person's conduct to their associations. As a result they have the potential to unduly burden freedom of association. They also have a disproportionately harsh effect on certain sections of the population who may be exposed to the risk of criminal sanction simply because of their family or community connections."

"The fight against organised crime is an important one, but it's vital we implement legislation that does not diminish the rights and freedoms of the Australian people or turn traditional notions of criminal justice on their head." Well



said, Mr Ferguson.

Let's hope Minister's belief is shared by PS

According to Home Affairs and Justice Minister Brendan O'Connor at the launch of the new Office of the Australian Information Commissioner last month: "What we are really doing here is shifting the culture. We are setting up a situation where there is an inclination toward disclosing information rather than an inclination not to disclose information."

"Today we see the actual establishment of a very important statutory agency. And in May (2011), we'll see the creation of a framework which I believe will lend itself toward agencies and departments of government providing information without even requiring FOI applications.

"We want to get to that point - rather than having a reactionary process, we're looking to have a pro-active, pro-disclosure approach, and I think these changes augur well for those advocates who believe in great transparency and greater accountability of government."

Hear, hear, CLA says. For details of what's new: <http://oaic.gov.au/foi/what.html>

Awareness of liberties/rights is on the rise

The Australian Human Rights Commission's 2010 Annual Report, tabled in the Australian Parliament recently, shows a massive increase in workload.

Over the 12 months, the AHRC:

- received 19,968 enquiries, a 76% increase over the past five years;
- received 2,517 complaints, 12% up on the previous year, and up 80% over 5 years;
- resolved 50% of finalised complaints through conciliation, a 2% rise on the previous year.

Details: http://www.humanrights.gov.au/about/publications/annual_reports/2009_2010/

Mandatory filter looks like 2013 election issue

Legislation to cement Labor's mandatory internet filtering in place is not likely until mid-2013, according to advice provided to Stephen Conroy by his department.

Such a timeframe could make mandatory filtering a major issue in the next election, the *Delimiter* website reported.

The Department of Broadband, Communications and the Digital Economy (DBCDE) provided the background briefing to Communications Minister Conroy, outlining the current state of affairs and the action he needs to take on significant matters, after the 2010 federal election.

DBCDE noted the government had postponed the legislation while a review of the Refused Classification category of content (which the filter is intended to block) was carried out by the Minister for Home Affairs for the consideration of federal and state Attorneys-General.

That process probably won't conclude before early 2012. "It may then take SCAG [the Standing Committee of Attorneys-General] a number of meetings before it reaches consensus on any recommendations from the review," wrote the department. "This suggests legislation for mandatory filtering may not be able to be introduced into Parliament before the middle of 2013." <http://delimiter.com.au/2010/11/17/filter-gets-a-new-date-mid-2013/>

Justice search for Indigenous youth ongoing

The new federal parliament's Committee on Aboriginal and Torres Strait Islander Affairs will resume an inquiry into the

massive over-representation of Indigenous juveniles and young adults in the criminal justice system.

The detention rate for Indigenous juveniles is currently 28 times higher than for non-Indigenous juveniles. Young Indigenous adults aged 17-24 years are 15 times more likely to be imprisoned.

The inquiry is focussing on prevention and early intervention to identify strategies to reduce the Indigenous Australians involved in the criminal justice system. Issues to be considered include:

- how the development of social norms and behaviours for Indigenous juveniles and young adults can lead to better social engagement;
- how alcohol and substance abuse contribute to Indigenous youth incarceration rates and the potential for health and justice authorities to address this;
- initiatives to improve the effectiveness of the education system and grow employment opportunity to reduce young Indigenous people's involvement with the criminal justice system; and
- best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime, and provide support for those returning home from centres.

The committee will hold more hearings before tabling its report and recommendations in the first half of 2011. It will accept further submissions – details: www.aph.gov.au/atsia or (02) 6277 4559.

WA's stop-and-search hits a dead end

The WA Government's controversial stop and search legislation is dead in the water after Upper House National Party MPs announced they would not support the laws.

In a blow for the government's "law and order" agenda, Nationals MLC and WA president Colin Holt announced last month that National MPs were unanimous that the powers were not required.

"I think it's been very clear from the report that came out from 159 hours of work through the (Upper House) committee that there is really no need for this Bill," he said. "The police already have some powers that they potentially haven't used up to this point. I think there is an ability for the police to go and test those (powers) before we introduce any new legislation that's really not needed at this point."



The Government had required the support of at least three Nationals for the laws to pass the Upper House. The five MLCs – Mia Davies (pictured), Colin Holt, Wendy Duncan, Max Trenorden and Phil Gardiner – instead agreed to reject them.

Police Minister Rob Johnson had offered the Nationals a swag of amendments to water down the Bill, including shortening the sunset clause from five years to two years and restricting the length of time an area could be declared to four hours. <http://snipurl.com/1je47e>

Australia lodges its self-marked report card

Australia has lodged a formal report to the UN Human Rights Council's Universal Periodic Review.

"The preparation of the National Report is an important part in our preparation for Australia's appearance before the Human Rights Council in January 2011," Attorney-General Robert McClelland said. The report describes the promotion and protection of human rights in Australia, achievements and challenges, and key national priorities.

The Universal Periodic Review is a new process undertaken by the UN Human Rights Council to review the human rights records of all 192 UN members once every four years.

Australia will appear in Geneva on 27 January 2011 to answer questions on its report, which is available at <http://www.ag.gov.au/upr>

Officers should be drug tested, union says

The WA police union wants all officers to undergo drug tests after a long-serving policeman was charged with drug offences, *ABC Radio* reported last month.

The officer, 46, has been stood down from all duties and is due in court on 10 December over allegations he used a police computer to access details of a drug dealer before visiting a house in Safety Bay and smoking methylamphetamine while off-duty.

He has been charged with using a prohibited drug (methylamphetamine), possessing a prohibited drug (methylamphetamine), possessing a smoking implement and driving with an illicit drug in his blood. He has also been charged with unlawfully accessing a police computer.

The police union's Russell Armstrong says all officers should have to undergo drug tests. "We as a police union and fellow police officers don't want to be working with someone who's using illicit drugs while they're driving police vehicles and in possession of firearms." The union has not offered assistance to the man, who has been an officer for 22 years. <http://tiny.cc/4kp01>

Premier accused of stun gun cover-up

Premier Colin Barnett has been accused of orchestrating a cover-up in the case of Kevin Spratt, the man stunned 13 times in the Perth watchhouse.

Speaking at a public rally in Perth last month, Shadow Attorney-General John Quigley called Mr Barnett the "Premier of cover-ups" over his handling of the release of a second video relating to Mr Spratt's being stunned. The second video allegedly shows Mr Spratt being stunned 11 more times.

Mr Quigley said Mr Spratt had suffered a ruptured lung and a dislocated shoulder in the second incident, but Mr Barnett had refused to release the video and had questioned whether Mr Spratt had suffered the injuries. <http://snipurl.com/1je4z2>

Pay the penalty...before being acquitted

The WA Law Society's Hylton Quail says the state's hoon laws should be scrapped after a man, who had the car he was driving seized for 28 days, was later acquitted on speeding charges.

Leone Magistro, a mechanic, was driving a client's Lamborghini at an alleged 160kph. But a Perth Magistrate found Mr Leone not guilty, saying police could not be certain of the speed.

Mr Quail says the trial proves the government's hoon laws are unfair because the car was seized before the man was tried. "The owner, Dr Nuguwela, lost his Lamborghini and, under the government's new laws, Mr Magistro would have lost his car under substitution, and then 11 months later, he's found to be not guilty." <http://snipurl.com/1h3t3f>

Cairns residents take fluoride fight overseas

Cairns Regional Council wants to delay the State Government ordering the adding of fluoride to water in the region's north so residents have time to prepare international court action.

Some residents of the former Douglas Shire plan action in the United Nations' International Court in the Hague to prevent fluoride being added to their supply, Brad Ryan reported on ABC Radio.

Councillor Julia Leu says the council will write to the Queensland Government asking for fluoridation to be deferred for two years, pending the outcome of the international legal action.

"The Douglas community is very opposed to chemicals in the water supply. They've done some research and they've informed me that they intend to take the Queensland Government to the Hague on the basis that it is a violation of human rights to be subjected to the forced medication of fluoride," she said.

Crime pays more in NSW

Anyone convicted of a criminal offence in NSW must now pay a levy into the NSW Victims Compensation Fund.

Previously, levies were only imposed on people convicted of an offence that carried a jail term. About 65,000 extra offences a year will be caught by the new rule, with the levy being either \$64 or \$148, depending on the seriousness of the crime.

The NSW Victims Compensation Fund can award up to \$50,000 to victims of violent crime including both psychological and physical harm. [SMH report](#).

Appealed conviction: CLA awaits answer

The conviction and sentencing of Susan Neill-Fraser to 26 years in prison for killing her sailing doctor partner was "unsafe and satisfactory" and "manifestly excessive", her lawyer said on lodging an appeal last month.

David Gunson has appealed to the Supreme Court of Tasmania on her behalf.

She had pleaded not guilty to murdering Bob Chappell, 65, a specialist radiologist at Royal Hobart Hospital, last seen alive on his yacht Four Winds on 26 January 2009. His body has never been found, while the sabotaged yacht was partially submerged but still secured to its mooring at Sandy Bay the following day.

The case caused CLA to ask the Tasmanian Government to review the state's bail laws through a Law Reform Commission inquiry. Neill-Fraser was held without bail for more than a year, hindering the preparation of her defence, before the case came to trial. CLA is awaiting a formal reply from the new Attorney-General Lara Giddings. [AAP and Fairfax report](#)

SA Liberals call for change to secret evidence

The Liberal Opposition in South Australia wants changes to use of secret evidence in trials.

The SA Government legislated in 2003 to let criminal prosecutors provide evidence without divulging it to the defence.

But, the Opposition says, recent briefings have shown there are inadequate guidelines for officers using the powers, and no record-keeping or review process.

Shadow Attorney-General Stephen Wade says the Liberals will push for better safeguards.

"Special powers need to have special accountability. We believe it's time, after seven years of using these powers, to take stock of where we are and make sure that (the powers) are doing more good than harm." [http://snipurl.com/1flkzp](#)

NSW Bail Act changes put on hold

NSW Attorney-General, John Hatzistergos, has shelved planned changes to the state's Bail Act after it was clear crossbenchers would not back the government.

He had wanted to ram legislation through before the end of 2010. Proposed changes include increasing the maximum adjournment time after a refusal of bail from 8 to 42 days

and removing from the act any mention of the rights of the accused.

Greens MP David Shoebridge said if the A-G had been serious about reforming the act he would not have produced such a flawed draft and expected the public to comment on it in just 14 days, according to a report in the *SMH*.

"The draft bill had no friends in the legal, community or social justice sectors of NSW," he said.

"It failed to address rising juvenile detention rates. It also sidestepped the major public interest debate this state needs to have on section 22A of the current act that prevents more than one bail application by most accused." [http://snipurl.com/1jj7wl](#)

ACT Human Rights Act 'bites' for the first time

The ACT has produced its first declaration of incompatibility after being in force for six years, the ACT Human Rights and Discrimination Commissioner, Dr Helen Watchirs (pictured), reported last month.



In the Matter of An Application for Bail by Isa Islam, Supreme Court Justice Hilary Penfold found a provision of the *ACT Bail Act 1992* was inconsistent with the *ACT Human Rights Act 2004*.

"The Human Rights Act creates a dialogue model, under which the Legislative Assembly has the final say on laws in the ACT," Dr Watchirs said.

The matter is now before Attorney-General Simon Corbell, who has to provide a full written analysis and recommendation to the ACT Legislative Assembly within six months. The politicians can confirm the incompatible law, or change the law to make the two provisions compatible.

Remote defendants languish without legal aid

Defendants in remote NT communities are facing court without proper legal representation because of cuts to legal aid funding.

NT Legal Aid Commission lawyer Ambrith Abayasekara told Darwin Magistrates Court last month that Legal Aid could no longer represent a Wadeye man facing serious charges of violence due to budget constraints. Legal Aid lawyers no longer operated at bush courts such as Wadeye because the service could not afford to, ABC Radio reported.

Magistrate Tanya Fong Lim asked if that meant people facing serious charges are going to court without legal representation. He told her that was correct.

The North Australian Aboriginal Justice Agency last month said a Legal Aid funding shortfall was so severe NAAJA was having to take over some clients and this was hurting its own budget. [http://snipurl.com/1ijxm1](#)

AUSTRALIAN BRIEFS

ALRC comes under Senate scrutiny: The Senate Legal and Constitutional Affairs References Committee is inquiring into the Australian Law Reform Commission (ALRC). It will look at the ALRC's role and responsibilities, whether it's adequately resourced, any overlap with other agencies and how it compares with interstate and overseas equivalents. The committee has asked for submissions by 28 January 2011, and it plans to report to the Senate on 31 March. Full details: [http://snipurl.com/1je0vp](#)

ACT proposes to give magistrates power over bail: The ACT Government is forcing defendants to apply for bail in the magistrates court to cut the Territory Supreme Court's workload after Supreme Court bail applications rose 82% in

2008. As well, magistrates may get wider jurisdiction, and be able to hear offences with a maximum penalty of up to five years (was 2 years), and civil matters up to \$250,000 (up from \$50,000). The moves are to save money, with the ACT forced to employ three temporary Supreme Court judges this year. CLA is vigorously opposing the moves.

Pull the other one, Commissioner! Police in Darwin have tapped into the mobile phone records of *NT News* journalist Justin O'Brien to try to identify a leaking police officer who tipped off a raid on Darwin Lord Mayor Graeme Sawyer's house. Commissioner John McRoberts says a police officer had allegedly committed a criminal offence and police accessed the records to "investigate a complaint". Police were not trying to curtail the freedom of the press, he said; it had nothing to do with trying to limit the number of police officers who provide commentary to journalists; it had nothing to do with whistleblowing. CLA hopes the next leak from the Commissioner's office, when it suits the police force, will be treated the same way. [ABC Radio report](#).

ACT moves to extend extraordinary, 'temporary' powers: An ACT Government review of the *Terrorism (Extraordinary Temporary) Powers Act 2006* has recommended that the ACT continue, ACT Attorney General, Simon Corbell, announced last month as he tabled the review. "The Terrorism Act was due to expire at the end of next year, however, the review I have tabled today recommends that this Act continue until 2016 to combat future possible terrorist attacks," Mr Corbell said. The Act will be reviewed again in 2015.

Police rack up their own charges: More than 100 NSW police officers have been charged with 320 criminal offences over the past two years, ranging from drug dealing to aggravated sexual assault, drink-driving and unlawfully altering official records, NSW Police data obtained by the *Sydney Morning Herald* reveals. Most common charges against 117 officers arrested during 2008-09 and 2009-10 were assault and drink-driving. Assault made up 27% of the main charges. Driving offences, mostly drink-driving, were second with 18%.

Preview of future society – you'll have to apply to NOT be bugged? WA's Parliamentary Inspector for the Corruption and Crime Commission is recommending that people previously under surveillance be allowed to apply to the Supreme Court to find out whether bugs have been removed from their homes. The proposal follows a complaint from someone who had been under investigation by the CCC. Inspector Chris Steytler wants the *Surveillance Devices Act* changed to allow people to apply to the court to find out whether their house is still bugged. [ABC Radio report](#)

Worldwide Indigenous domestic violence conference planned: Two Indigenous Australian applicants are being sought to form an international working group towards the first worldwide Indigenous domestic violence conference in 2013, which may be held in Australia. See **17-19 May** entry below, under **Dates**, for contact details.

New law scheme helps Indigenous bodies: A new scheme, LawHelp, will give corporations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* access to pro-bono legal advice from established law firms across Australia. Eligible corporations include medical services, native title bodies, community stores, art centres, media organisations and those delivering key environmental health, municipal and remote services. LawHelp has been developed by the Office of the Registrar of Indigenous Corporations and the Australian Government Solicitor.

WA's 'lock 'em up' approach goes over the top: At least five prisoners may have spent too long in jail because of an error calculating their sentences. Attorney-General Christian Porter says a prisoner's complaint to the Corrections Department that his sentence was longer than it should have been was upheld. Further investigation revealed four similar

cases. Mr Porter says more cases may come to light and the men may be eligible for compensation. <http://www.abc.net.au/news/stories/2010/11/25/3076735.htm>

Free speech is blessed by the court: Judge Simon Stretton has ruled that two by-laws restricting public speaking in the Adelaide City Council area are invalid – the council had exceeded its powers in making them. Preacher Caleb Corneloup from the group Street Church challenged by-laws used to prevent preaching, canvassing and distributing information. He argued in the District Court the rules restricted his right to free speech. Now it's back to the drafting computer for the council and the Rundle Mall Management Association, which is against street preaching with or without a loudspeaker. <http://snipurl.com/1j65w8>

Report on CLA activities in October:

by President Dr Kristine Klugman

Key event: Start of full online membership system: thanks to members who helped bed down the bugs.

Conference: Two-day conference, *Senate Committees and Government Accountability*, attended by President and CEO, see website for report.

Submissions in the recent period:

Censorship: Work is beginning on a major contribution by CLA to the Classifications/Censorship inquiry by the Senate Legal and Constitutional Affairs References Committee (see item above). Any CLA member who would like to contribute, or be part of the review/proofreading team, please contact the Secretary.

We are considering a submission to the Senate Legal and Constitutional Committee on: Patent Amendment (*Human Genes and Biological Materials*) Bill 2010: submissions by 25 Feb 2011, report by 16 June.

We are seeking clarification from the Department of Justice and Community Safety ACT on what is expected from further amendments to the *Sexual Assault Reform Program*.

Networking meetings with like organisations

- Australian Privacy Foundation, attended 'electronic' AGM and board meeting – observed technique;
- ACT Law Society lunchtime lecture by Tom Howe QC, Australian Government Solicitor, on Legal Service Directions and Model Litigants;
- Friends and Families of Drug Law Reform AGM;
- Australian Republic Movement, AGM.



Photo: ARM's John Warhurst and CLA CEO Bill Rowlings.

Book launch: ANU Ric Kuhn and Tom Bramble, *Labor's Conflict*, Cambridge Uni Press 2011.

Meetings:

- members Hans Kuhn and John Rogers re possible roles;
- Don Malcolmson re student liaison;
- Sarah Moulds, Law Council of Australia re joint action on Ministerial Councils;
- Member Darren Churchill re Membership officer role;

- Clare Carnell, barrister ACT Bar, and associate Sally Renouf;
- Members Dr Tony Lamb, Keith McEwan.

Cases: Robert and Ann Waldon, alleged police forced entry to their home and illegal ID demand, Moama NSW (rejected for legal aid by NSW Legal Aid Commission, CLA wrote letter supporting Waldon appeal).

Administrative:

Emailed 17 CLA members requesting expressions of interest in Treasurer's role. Please contact the President or Secretary/CEO if you would like more details.

Consolidation of new electronic financial/membership records system by Webmaster and Treasurer.

Board meeting held Sunday 21 November 2010.

- planning finalised for electronic AGM and board voting in early 2011.

- marketing and promotions scoped for 2011 and 2012.



Above: Some of the directors present at the 21 Nov 2010 meeting: L to R: Noor Blumer, Tim Vines, Kevin Popple, Kristine Klugman and Lance Williamson.

Media:

Airport scanners: early page lead in *Sunday Canberra Times*, with quotes from Tim Vines;

Bill Rowlings on DNA and privacy.

Inquiries to CLA – samples over the past month:

- Taking DNA of 10-year-olds, Adelaide;
- CCTV surveillance cameras, Gold Coast;
- New police checks: long-time employee, Perth;
- Cost of housing prisoners, Victoria;
- Charging, or not, of police over stun gun deaths, NSW.

INTERNATIONAL

Jails to empty as mentally ill get help

Thousands of UK criminals with serious mental illnesses or drug addictions will no longer be sent to prison but will instead be offered "voluntary" treatment in hospital.

The Ministry of Justice plans to divert offenders from jail to secure National Health Service units.

Justice Secretary Kenneth Clarke said 7 out of 10 prisoners had taken drugs in the 12 months before being jailed.

"And quite a lot of people take heroin for the first time while in jail," he said. "For those for whom drugs are the main problem, it is obviously sensible to tackle their addiction outside prison, if that is what is needed to stop them committing crime, rather than incarcerate them with more drug addicts."

He argues that the plans will provide the most effective way of reducing reoffending – currently, 61% of prisoners are reconvicted within a year of release.

There will be a "payment by results" scheme for providers who successfully cut reoffending rates. <http://snipurl.com/1f54om>

Authorities choose heavy hardware and 'crim intel' to control students

Defence firms are working closely with UK armed forces and contemplating a "militarisation" strategy to counter the threat of civil disorder, after the 57th person was arrested within a week of a riotous student march through London last month.

According to *The Observer*, the trade group representing the military and security industry says firms are in negotiation with senior officers over possible orders for armoured vehicles, body scanners and better surveillance equipment.

The move coincides with government-backed attempts to introduce the use of unmanned spy drones throughout UK airspace, facilitating an expansion of covert surveillance that could provide intelligence on future demonstrations.

Derek Marshall, of the trade body Aerospace, Defence and Security (ADS), said that such drones could eventually replace police helicopters. Military manufacturers had discussed police procurement policies with the government, as forces look to counter an identified threat of civil disobedience from political extremists, he said.

Meanwhile police sources say they have detected an increase in the criminal intentions of political extremists and are monitoring "extreme leftwing activity" in light of last month's student protest.

The office of the National Co-ordinator for Domestic Extremism (NCDE) said it was feeding information to Scotland Yard's National Public Order Intelligence Unit, which holds a database of protest groups. NCDE, which in turn works closely with the Confidential Intelligence Unit that monitors political groups throughout the UK, said it had already recorded a rise in politically motivated disorder. <http://snipurl.com/1geatl>

Bomb demonstrates scanner uselessness

The bomb inside a computer printer discovered at a UK airport last month, en route from Yemen to Chicago, was "one of the most sophisticated we've seen ... the naked eye won't pick it up, experienced bomb officers did not see it, x-ray screening is highly unlikely to catch it," an expert told *The Guardian* newspaper.

The bomb found in the UK was first missed by investigators and was only picked up during a second check. "The package was examined and declared safe," said a Metropolitan police spokesman. "It was subsequently re-examined as a precaution."

The explosive material used in the devices – Pentaerythritol tetranitrate, or PETN – can easily pass through all kinds of airport security: Qatar Airways said the bomb found in Dubai had travelled on two separate passenger aircraft without being picked up. The airline said the devices could not be picked up by x-ray screening or sniffer dogs. "There is no way of picking out PETN," said the British counter-terrorism official. "It is a continued vulnerability." [Report](#)

EU plans to overhaul privacy rules

The European Commission wants stronger protection of internet users' personal information, after data leaks at companies like Facebook and Google.

Justice Commissioner Viviane Reding announced the overhaul of the European Union's data protection rules to take account of the development of social networking, personalized advertising and other Web services that have raised privacy concerns. The new legislation will be introduced in 2011, replacing laws dating from 1995.

"The protection of personal data is a fundamental right," Ms Reding said.

The commission said consumers should be informed “in a clear and transparent way” about how their data will be used. They should also have the right to fully delete digital information, like social networking profiles, and should be informed when their data has been used in unlawful ways, the commission added. <http://tiny.cc/hcspt>

INTERNATIONAL BRIEFS

Gbay accused convicted on one charge only: The first former Guantánamo detainee tried in a US civilian court was convicted last month on one of 285 charges over the 1998 attack on US embassies in East Africa, in which 224 died. Ahmed Khalifan Ghailani, a 36-year-old Tanzanian, was found guilty of conspiracy to destroy US government buildings and property for helping an al-Qaida cell to buy a lorry and bomb parts in attacks on the American embassies in Kenya and Dar-es-Salaam. A US federal jury acquitted him of the more serious charges of murder and conspiracy. He faces 20 years-to-life in prison when sentenced in January 2011. <http://snipurl.com/1h6cqd>

Cameron on GBay detainee payouts: The British Government has begun talks with a view to paying compensation to former Guantanamo Bay detainees, held with British knowledge or complicity. Explaining the decision to open talks, Prime Minister Cameron said: “Our services are paralysed by paperwork as they try to defend themselves in lengthy court cases with uncertain rules. Our reputation as a country that believes in human rights, justice, fairness and the rule of law – indeed, much of what the services exist to protect – risks being tarnished.” [Guardian story](#)

Officer who drew pistol instead of stun gun gets two years: A judge sentenced former Bay Area Rapid Transport police officer Johannes Mehserle to the minimum two years jail last month for fatally shooting unarmed train rider Oscar Grant, saying he believed the former officer's testimony that he had confused his pistol for a stun gun. Mehserle, 28, was convicted in July of involuntary manslaughter and a separate charge of intentionally firing a gun at Grant at the Fruitvale Station in Oakland early on 1 January 2009. Judge Robert Perry threw out the firearm conviction before sentencing Mehserle in Los Angeles County Superior Court, saying there was no evidence to support it. [San Francisco Chronicle](#)

Crime in USA takes big fall: The US National Crime Victimization study, released last month, shows violent and property crime last year reached the lowest level ever recorded in the survey, first published in 1973. Violent crime dropped by 11.2% and property crimes 5.5% from 2008 levels. The survey is based on interviews with more than 135,000 US residents, so it captures not only crimes reported to the police but also some that went unreported. Studies show more than half of crimes are never reported to the police. <http://snipurl.com/1b5e1u>

Where the spliff comes whistling through the plains... Arizona voters have approved a measure that will legalise medical marijuana use in the US state for people with chronic or debilitating diseases. Final votes last month revealed that Proposition 203 won by a tiny margin of just 4,341 votes out of more than 1.67 million votes counted. Read more: <http://snipurl.com/1gipp3>

DATES:

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

1 Dec, Brisbane: Address by Ethan Nadelmann, Executive Director, Drug Policy Alliance of the USA, which promotes alternatives to the war on drugs. At the Ship Inn, Cnr Stanley & Sidon Streets. Southbank Parklands, from 6pm. Bill Rutkinph 041871 8586. Bookings and prepayment essential.

Limited places.

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 workshop panellist **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 or ph: 02 9284 9618 or <mailto:hrwards@humanrights.gov.au>

2011:

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

18 Feb, Sydney: 10th Constitutional Law conference, Art Gallery of NSW (dinner at NSW Parliament House), cost conference and dinner \$426. Details/register: <http://www.gtcentre.unsw.edu.au>

7-8 March, Melbourne: Young people, risk and resilience: The challenges of alcohol, drugs and violence conference. Austrn Inst. of Criminology and Vic Safe Communities Network, RACV Club, 501 Bourke St. [Details.](#)

17-19 May, Gold Coast, Qld: National Indigenous Domestic Violence conference, Sea World Resort, Gold Coast. Info: <http://ica-dv.webs.com> or email: sosmedical@ymail.com Papers proposals by 25 Dec 2010.

23-25 June, Canberra: 19th annual Aust and NZ Society of Intntl Law (ANZIL) conference, *the Promise and Limits of International Law*, University House, ANU. Paper proposals by 15 Feb to anzsil@law.anu.edu.au Further info: <http://law.anu.edu.au/ANZSIL/conferences.html> - [UpcomingConferences](#)

14-17 July, Melbourne: *Law and Religion: Legal Regulation of Religious Groups, Organisations and Communities*, Melbourne Law School. Contact Claire Hausler at law-cccs@unimelb.edu.au

9-10 Sept, Canberra: ‘10 years on from 9/11: the impact on public law’, conference, Centre for International and Public Law, ANU: contact Kim.Rubenstein@anu.edu.au

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

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)

ENDS ENDS ENDS

NOTE: The once-every-two-years election for the CLA Board will take place early in 2011 - more details in next CLArion, and by email notification. Members can also propose matters for online debate which can become matters for possible special resolution.