

## Get ready for the CLA AGM...

The first notice for the CLA Annual General Meeting process goes out on 31 January: the calling for any notices of motion. In February and March, we'll vote for motions, if any, and for a board of directors, all done online.

Please make sure you've let us know if you have a new email address. Also, we need the email address of each person in a household membership so that everyone gets a chance to vote.

Please email [secretary@cla.asn.au](mailto:secretary@cla.asn.au) with changed/new email addresses, or extra addresses for your household.

## Gillard pumps up COAG to boost own standing

Prime Minister Julie Gillard has summoned premiers and chief ministers to Canberra next month, using COAG to bypass democracy in a bid to boost her political standing.

COAG is the Council of Australian Governments. It is a hodge-podge of the PM, State Premiers, Territory Chief Ministers and the President of the Australian Local Government Association, who are collectively known as the 'COAGulants'.

It was the invention of then-PM Paul Keating in 1992, conceived as a way of bringing recalcitrant States into line with his federal thinking. Its rationale was always centralised control, and making the PM look good nationally.

For the 14 February gab-fest, PM Gillard wants COAG to agree on work "in priority areas". This should take into account the business community's "support for a further round of micro-economic reform," she told the COAGulants in a letter late last year.

The grease of COAG is money. It operates by the big brother federal government having all the money, and doling out rewards – bribes – to states and territories if they do what the feds want.

Ms Gillard, in her letter, has announced \$108 million in reward payments for the states and territories for exceeding targets for elective surgery. As Victoria was the best-performing of the mainland states, 12.3% over target, it receives \$27 million 'reward' money, *The Age* reported.

The 14 February COAG meeting will apparently discuss a digital productivity agenda, regulatory reform, and skills to drive economic growth, as well as reports on health and hospitals reform, early childhood development, transport reform and climate change.

How do we know these items are on the agenda? A letter to one of the Premiers leaked.

Note: no voters – members of the Australian public – will be given any access to background papers on these topics before the COAGulants receive specially-crafted briefings pushing them in one direction...towards what the federal government wants. No elector will be given a chance to comment on the topics in the lead-up to the meeting.

Apart from being undemocratic, COAG is so poorly performing that it has generated its own 'reform council', a separate statutory authority.

The COAG Reform Council (the council) has been established as part of the arrangements for federal financial relations to assist COAG to drive its reform agenda.

"Independent of individual governments, we report directly to COAG on reforms of national significance that require cooperative action by Australian governments," the council says of itself. Such unfortunately-phrased claims produce a strong sense that the council is up itself, and believes it and COAG stand above and beyond the Australian democratic processes.

The chairman of the reform council, Paul McClintock (pictured, from the council's website), told *The Australian Financial Review* last year: "If COAG isn't seen to be effective in the coming year (2011), you will start to significantly erode the



confidence in the whole concept and the brand."

Hear, hear, CLA says. The sooner the "brand" dies and we return to parliamentary democracy in Australia, the better.

## **COAG is the problem, not the solution**

In her December 2010 letter to state and territory leaders, PM Gillard reaffirmed her faith in COAG, saying it had played a "critical role in advancing national reform".

She said COAG was the best mechanism to address reforms across state boundaries. "A productive and collaborative federation serves the nation well." [AGE report](#).

CLA disputes that COAG serves the nation well. We believe COAG, and the 40-plus other similar Ministerial Councils it has generated, have become the problem.

These non-representative bodies meet and make binding decisions, usually without a whiff of public consultation, sometimes as mere marionettes of the public service bureaucrats who staff them permanently or intermittently.

The real mechanism designed to serve the Federation well was called the Constitution, and it was to be given practical effect by a body called the Australian Parliament.

The more PM Gillard boosts COAG (as her predecessors have done increasingly), the more she weakens the Australian Parliament, which is where national decisions are meant to be aired, debated and decided. COAG processes also weaken state and territory parliaments...by similarly putting enormous power in the hands of Executive Government.

## **COAG & Co: secret business, secret clubs, under blackball rules?**

COAG says this of itself:

"The outcomes of COAG meetings are contained in communiqués released at the end of each meeting. Where formal agreements are reached, these may be embodied in Intergovernmental Agreements."

In other words, there are no formal agendas, and no formal minutes. The Australian public is kept in the dark about what COAG is considering, and what it decides...unless it suits the powers-that-be – Executive Government – to issue a 'communiqué', which is another word for 'media release'.

The most dangerous outcome nowadays has become 'model' legislation binding on all parliaments. This is introduced to the federal, state and territory parliaments, whose representative members are told: "you can't change the draft legislation...it's been agreed by COAG, or SCAG, or the Ministerial Council for Transport, etc."

SCAG, the Standing Committee of Attorneys-General, is a particularly anti-democratic body. Not only does it also include the NZ Minister of Justice (the equivalent of an attorney-general) as a full member, but the Executive Member for Legal Matters of Norfolk Island has observer status. Censorship Ministers are also members, as is the federal Home Affairs Minister.

SCAG operates to a blackball principle – if one member objects to an item being on the agenda, it is removed from discussion. So SCAG is, quite literally, a throwback to the gentleman's clubs of 18th century England, which also operated by blackball.

It is also more dangerous because it meets more frequently than some councils – three times a year – and it is where police have a disproportionate say in advising ministers, without community input, through spin-off ministerial police councils.

On top of that, SCAG is predisposed towards creating 'model' legislation, more so than other Ministerial Councils. A classic example of how it can be led down the wrong path was its eagerness to adopt South Australian anti-bikie legislation, since overturned by the High Court.

This is how the COAG website describes the Ministerial Councils:

"Over 40 Commonwealth-State Ministerial Councils and fora facilitate consultation and cooperation between the Australian Government and state and territory governments in specific policy areas. The councils initiate, develop and monitor policy reform jointly in these areas, and take joint action in the resolution of issues that arise between governments.

In particular, Ministerial Councils develop policy reforms for consideration by COAG, and oversee the implementation of policy reforms agreed by COAG.”

[http://www.coag.gov.au/ministerial\\_councils/index.cfm](http://www.coag.gov.au/ministerial_councils/index.cfm)

[http://www.scag.gov.au/lawlink/SCAG/ll\\_scag.nsf/pages/scag\\_index](http://www.scag.gov.au/lawlink/SCAG/ll_scag.nsf/pages/scag_index)

## **McClelland is in decline...more suited to fishing?**

The media eviscerated AG Robert McClelland for his stupid, ill-considered and unworthy (of the first law officer) inferences that WikiLeaks' Julian Assange had committed a criminal offence by passing on leaked US documents to newspapers around the world.

McClelland and PM Gillard appear to think that, when an Australian is in trouble overseas, the first thing you do is see if you can throw the Australian to the unsweet mercies of the US Government.

This is a US Government which, under both Republican and Democrat direction, has amply demonstrated over the past 10 years that it marches to no recognisable moral code other than self-interest, has no ethical base other than what works politically, and has no domestic or international law that cannot be broken if it is in America's interest, or cannot be adapted and/or re-interpreted if it is in the interest of the ruling elite.

If Mr Assange ends up in the hands of the USA, it will be the direct responsibility of PM Gillard and AG McClelland. Both have done Australia and Australians a disservice in their comments over WikiLeaks. They have 'shopped' an Aussie, which is politically stupid if nothing else.

McClelland has been bailed out by the Australian Federal Police, who say Assange has committed no Australian crime. But the AFP should never have been asked that question by the AG.

What right does an AG have to go fishing, using the resources of the AFP, to see whether any Australian can be charged with an offence when there is no allegation of criminal behaviour in train? Does the AG serve the American Administration, or the Australian people?

If McClelland can seek a crime to fit Mr Assange, he can chase a crime to fit any other Australian he doesn't like.

What gives him that power, to soothe the AFP on an innocent Australian for no reason? CLA contends that he does not have that power, and has acted inappropriately for his office in pursuing Assange.

Increasingly during 2011 it is likely there will be calls for McClelland to be sacked.

## **Who will be the new AG?**

The demise of McClelland, if it comes, will be partly because of his handling of Assange, where he could become the fall guy for Gillard's own incompetence on the issue.

Both lawyers, the AG and PM should have known when to shut up, and should have shown more Aussie gumption than to roll over because of a few harsh and inappropriate words from US politicians and grand-standers.

But the axe may fall on McClelland, if only to save Gillard...because another palace coup before 2011 was half-through would look excessive, even for the Labor Party.

But a perceived poor general performance by McClelland may be the catalyst for Gillard to hold a Cabinet reshuffle in the not-too-distant future, using his 'on-the-nose-ness' as catalyst.

In casting around for a replacement Attorney-General, there are two likely candidates, and one with inside running unlikely to get the nod.



The insider is Brendan O'Connor, Home Affairs Minister. Though this is how he is normally referred to, he is also Minister for Justice and the Minister for Privacy and Freedom of Information.

O'Connor has been less than impressive, and is more known for his incessant appearing on radio and TV programs than for solid portfolio performance. He is the government's 'pretty male face', trotted out to hose down issues on the box.

The two best contenders to take over as AG include Mark Dreyfus, a former top Melbourne barrister who is now Cabinet Secretary and Parliamentary Secretary

for Climate Change and Energy Efficiency, and Melissa Parke, a former UN lawyer.

Dreyfus, 54 years old and a QC, has carried the AG's baton in his knapsack since election to Parliament in 2007 as MHR for Isaacs in Melbourne. It is thought he would be a much more decisive AG than McClelland has been, and would be able to carry Cabinet with him in a way McClelland's weakness has not made possible.

The other possible choice for AG would be Melissa Parke, a 44-year-old lawyer with a Law Masters and also a Business degree who has worked in private practice, a community legal centre, as a law school academic and also as a lawyer for the UN, in Kosovo, Gaza, Lebanon, Cyprus and New York for eight years.



Parke represents Fremantle, winning the seat in 2007 on the retirement of Carmen Lawrence.

Both Dreyfus and Parke are West Australians by birth.

While Dreyfus has the inside running, his undoubted talents may be better employed by PM Gillard in the climate change and/or energy areas which are of such crucial importance to the government before the next election.

Parke has an inner steel about her, no doubt hardened in the UN trouble spots. She also has 'security' experience as current chair of the Joint Statutory Committee on the Australian Commission for Law Enforcement Integrity.

Both Dreyfus and Parke are more likely than not to put the idea of a national bill of rights back on the agenda. In fact, if either is the next AG, we could have a bill of rights sooner rather than later.

## McClelland issues his 'let-off-the-hook' media release

### ADVICE FROM THE AFP ON WIKILEAKS

*"The Australian Government has received advice from the Australian Federal Police into the leaking of official United States Government documents as part of the Wikileaks issue.*

*"The AFP noted a number of offences which could be applied in the circumstances depending on whether all the elements of the offence could be proven.*

*"Based on the information available to date, the AFP has not identified any criminal offences where Australia has jurisdiction and as a result have not commenced an investigation."*

*– media release in AG's McClelland's name, 17 Dec 2010*

## Police sit on funding bonanza

The Federal Labor Government has introduced a raft of new laws giving police even more power, including to:

- confiscate more criminal assets, and use extended anti-money laundering laws;
- make people prove that what they own was legally acquired (thus reversing the normal onus of proof);
- carry out much wider telephone tapping;
- put people away for much longer for money laundering, bribery and drug importation;
- to search without warrant and to seize people's goods on suspicion;
- allow undercover officers who infiltrate criminal organisations virtual carte blanche, including license to commit crimes; and
- prevent tablet presses being imported.

These new laws, and others introduced earlier, mean the government is raking in funds, a veritable funding bonanza, which it is handing out willy-nilly to make itself look good.

"Improvements to the Proceeds of Crime Act have already led to over \$30 million of confiscated assets in 2009-10, compared with \$12.8 million in 2005-06 under the previous government," AG McClelland and Minister for Justice, Brendan O'Connor, said in a media release last month.

“These funds are being reinvesting (sic) into local crime prevention, law enforcement, drug treatment and diversionary measures across Australia.”

– from media release ‘*A national approach to tackling organised crime*’,

issued by AG McClelland and Justice Minister Brendan O’Connor, 10 Dec 2010

NOTE: The media release repeated the unproven mantra that “organised crime costs Australia up to \$15 billion a year”. Nowhere has this figure been explained, itemised or justified.

## **Here’s the plan you’re having when you’re not allowed a bill of rights**

The Attorney-General’s Department has released a background paper on Australia’s new National Human Rights Action Plan.

“A new Action Plan is the next step in implementing Australia’s Human Rights Framework and will complement the Government’s undertakings in relation to human rights education, consolidation of Federal anti-discrimination legislation and increased Parliamentary scrutiny of Bills for consistency with human rights obligations,” according to the Assistant Secretary of the AG Department’s Human Rights Branch, Dr John Boersig.

“Development of a new Action Plan will allow systematic consideration of how Australia can continue to improve its human rights record. The Action Plan will be developed through 2011 in consultation with State and Territory Governments, and Non-Government Organisations.”

The Australian Government will initially work with the State and Territory Governments to develop an exposure draft of the Action Plan. At the same time the Australian Government will develop a draft report on Australia’s human rights status. Both will be released for public comment in April 2011.

The Government is asking for practical ideas to help protect human rights. The Background Paper and instructions for commenting on the proposed process are available at [http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination\\_NationalHumanRightsActionPlan](http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_NationalHumanRightsActionPlan)

Comments on the proposed process close on 10 February 2011.

## **Video violence: it’s what ministers do to democracy**

State and territory censorship ministers have ‘parked’ the federal government’s plan to establish a video game category for adults.

They rejected the plan at a meeting of the Standing Committee of Attorneys-General (SCAG) last month, asking for more time to think.

Federal Home Affairs Minister Brendan O’Connor had been backing calls from gamers and gaming industry stakeholders to introduce the new R18+ category.

He said that a review recently found that people who played violent computer games were not aggression-prone: review at [www.ag.gov.au/gamesclassification](http://www.ag.gov.au/gamesclassification) AGs had the review before them when they asked for more thinking time.

“More than 58,400 people responded to the call for submissions on the proposed new adult only category. That’s an enormous response and I thank everyone who gave their views,” Mr O’Connor said. “Of those who responded, 98.4% voiced support for an R18+ computer game classification.”

Apparently 98.4% of respondents in favour is not enough for state and territory ministers. They would appear to be further consulting the 1.6% not in favour before finalising their rubbery positions on an issue that has been debated at SCAG for well over two years...even though former SA AG Michael Atkinson had blackballed a vote on it.

## **How healthy is Australia’s electoral system?**

Federal Parliament’s Electoral Matters Committee is reviewing the conduct of the 2010 federal election, continuing a practice begun in 1983.



“The review provides Australians with an important opportunity to express their views and involve themselves in the scrutiny and improvement of our electoral system,” said Daryl Melham (pictured), chair of the committee.

Issues that have already emerged include increases in informal voting and court findings in the cases of *Getup Ltd v Electoral Commissioner* [2010] FCA 869 and *Rowe & ANOR v Electoral Commissioner & ANOR* [2010] HCA 46, respectively, extending the close of rolls period back to seven days and electronic enrolment

options. The Committee will also examine queuing times at polling booths, postal and early voting, and provisional voting.

Submissions are due by 16 February 2011. For more information: <http://www.aph.gov.au/em>

## ISPs toe the government line

The new ISP security code – imaginatively called the ‘iCode’ – under which the government dictates how ISPs can operate, has four main elements, which a government media release pronounced on last month:

- notification/management system for compromised computers (*dob in a client*);
- comprehensive resource for ISPs to access the latest threat information (*be afraid*);
- standardised information for users (*see below*); and
- quick alert system to the government’s Computer Emergency Response Team (CERT Australia) if there’s “extreme threat”.

Participating ISPs – currently more than 90 representing over 90% of the home user market – get told by the spooks about compromised computers on their networks.

The ‘iCode’ is available online at <http://iaa.net.au/images/resources/pdf/icode-v1.pdf> For ‘How to protect yourself online’, visit [www.staysmartonline.gov.au](http://www.staysmartonline.gov.au) and for copies of the publication Protecting Yourself Online [cybersecurity@ag.gov.au](mailto:cybersecurity@ag.gov.au)

## Vines appears in defence of youth at AFP’s global conference

Director Tim Vines represented CLA, appearing on a workshop panel on youth privacy, at the fourth international Virtual Global Taskforce Conference in Sydney last month.

The Australian Federal Police, in conjunction with the Virtual Global Taskforce, hosted the two-day conference of about 240 delegates from 23 countries. Delegates from law enforcement, academia, private enterprise, government and non-government organisations were able to learn from each other and to develop child sexual exploitation prevention strategies.

The Virtual Global Taskforce was established in 2003 to combat the increasingly prevalent crime of online child sexual exploitation. In December 2009, the AFP assumed the role of Chair and Secretariat for three years. This was the first time the conference was held in Australia. Previous conferences were held in Belfast, Washington and Vancouver. For more information: <http://www.vgtconference2010.com/>

## BillBoards will have to become proper WilliamSites

The new House of Representatives Standing Committee on Social Policy and Legal Affairs will conduct an inquiry into the classification – censorship – of billboard advertising.

“There has been a steady increase in complaints about this form of advertising over the last few years,” AG Mr McClelland said. “In 2008, outdoor advertising accounted for 16% of complaints about advertising and in 2009, outdoor advertising accounted for 23% of complaints.”

“Large-scale outdoor advertising is difficult for the public to avoid and concerns have been expressed about the appropriateness of some advertising for children. Parents in particular have experienced some difficulty explaining the content to their children.”

The committee will be chaired by Graham Perrett, the Member for Moreton in Brisbane. He is the squeaky wheel who has been complaining about billboards in his electorate for some time. The

committee is due to report by 13 June. Send any examples of 'dirty billboards' to them (copy to us please).

## SA to get law reform body

South Australia will have a new Law Reform Institute early this year, for the first time since the late 1980s, bringing it in line with all other states.

Attorney-General John Rau (pictured) said the new institute would help streamline SA laws and managing justice in the state. "The Institute will help modernise, simplify and consolidate laws and the administration of the justice system and, in doing so, improve access to justice for the community. (It) will also lead to the repeal of laws that are obsolete or unnecessary for the community today," he said.

The Attorney-General's Department is collaborating with the Law Society and the University of Adelaide to establish the new body, which will be governed by a board of senior law officers, legal academics and community representatives.



## Extra-curial approach may be used against bikies

SA AG John Rau says he is considering a range of proposals to tackle the gangs but says none is without risk, so careful consideration is needed.

Part of the SA Government's anti-bikie laws on control orders was ruled invalid by the High Court last month on the grounds that it undermined the constitutional independence of magistrates.

Mr Rau said one of the proposals outlined in a report by retired District Court judge Alan Moss could see the SA Parliament outlaw criminal organisations without involving the courts.

He says nothing in the report went against a presumption of innocence or right to a fair trial.

"My task over the next few months is to pick my way through the various options and try and find an option that maximises our ability to deal with these people and at the same time does minimal damage to the civil liberties of law-abiding citizens," he said. <http://snipurl.com/1ltl9k>

## ACT urged to extend nation's first Human Rights Act



A major research investigation into rights, liberties and the law in the Australian Capital Territory proposes broadening the nation's first Human Rights Act to protect a person's economic, social and cultural rights.

The ANU and UNSW were commissioned to examine how economic social and cultural rights could be protected in an Australian context in the light of the ACT introducing the first HR Act in Australia in July 2004.

One of the report's authors, Professor Hilary Charlesworth (pictured) of ANU, says a broader Human Rights Act would enshrine a person's right to housing, quality healthcare and education.

She said the report provided an important opportunity for the ACT to continue to demonstrate national leadership in the field of human rights. Full report: <http://acthra.anu.edu.au/>

## A-G in the ACT continues to trade human rights for ease and cash

More than 60 offences currently heard in the ACT Supreme Court will now be heard in the Magistrates Court to save money and time, Attorney General, Simon Corbell announced last month.

Mr Corbell tabled the *Courts Legislation Amendment Bill 2010* which comes after the introduction of the *Bail Amendment Bill 2010* in the November sitting.

The Courts Legislation Bill will allow the ACT Magistrates Court to hear criminal matters up to or including a maximum penalty of five years and civil matters up to \$250,000 (up from two years and \$50,000).

Mr Corbell said the Courts Legislation Amendment Bill also includes the establishment of a formal Family Violence Court for the ACT and a Galambany Court to provide a specialist Circle Sentencing Court for Aboriginal and Torres Strait Islander matters.

CLA – asked formally for advice by the A-G – rejected the new approach, which erodes fundamental human rights (trials before a magistrate are held without a jury). It is a continuation of legislatures throughout Australia trading off people's liberties and rights for bureaucratic ease and money saving. For a detailed rundown of CLA's response to Mr Corbell, see: <http://www.cla.asn.au/index.php/2010/a-g-targets-wrong-solution>

As a sop to CLA's criticism, the A-G also announced a review of case management practices in the ACT Supreme Court.

## **NSW Bar wants Indigenous prisoners' sentences cut**

Indigenous criminals should have short prison terms automatically suspended or converted to community service or rehab programs, and their culture and disadvantage should be considered in mitigation during sentencing, the NSW Bar Association is proposing.

The ideas, based on a call by District Court Judge Stephen Norrish for affirmative action in the courts, were contained in the association's criminal justice reform submission, released last month, the *SMH's* Geesche Jacobsen writes. It also calls for reform in dealing with mentally ill offenders and the introduction of sentence indication hearings.

Last year, Aborigines made up nearly 29% of prison inmates in NSW, yet accounted for just over 2% of the population. The number of Aboriginal prisoners in NSW rose 48% from 2001 to 2008.

The figures for Indigenous prisoners are worse in WA and the NT. <http://snipurl.com/1n7n2b>

## **DPP takes aim at anti-gang law**

NSW Director for Public Prosecutions, Nicholas Cowdery, is on the side of the bikies in their battle against excessive NSW laws.

Mr Cowdery last month called the legislation – rushed through state parliament after a brawl at Sydney Airport 15 months ago between Comanchero and Hells Angels bikie gangs in which one man died – "draconian" and a "giant leap backwards for human rights".

Mr Cowdery attacked the legislation – the *Crimes (Criminal Organisations Control) Act 2009* – in an address to a NSW Young Lawyers seminar.

"The placing of the burden of proof upon a controlled person to establish that an association with another controlled person falls within the exemptions under the Act – for example, close family members – is a draconian measure," he said. "[It is] reminiscent of reverse onus provisions that were in place for a time in Northern Ireland during the 'troubles' where extraordinary measures were considered appropriate in a time of general emergency."

Mr Cowdery said the legislation was wrongly described as being against "bikie gangs" and as "gang laws", but the Act was not confined to "outlaw motorcycle gangs" – the potential reach was much broader.

"Such legislation could apply, for instance, to political parties, labour unions, professional associations, clubs of all kinds, religious groups or charities," he said.

It had "a number of other troubling features", such as not applying to organised groups of shoplifters or street drug dealers.

Mr Cowdery said the legislation was rushed through without consultation with the DPP and with "insufficient community consultation and over the deep concerns and protests of the NSW Bar Association, the NSW Law Society, academics, the Council for Civil Liberties and many others."

<http://snipurl.com/1n7vt9>

## **NSW Police start their ambit 'Law'n'Orda' claims**

The NSW Police Association has started its ambit claims before the state election this year: it wants the right to silence to be watered down.

That's the right described by the Australian Bar Association as a pillar of the criminal justice system.

The association's President Scott Weber says the law should be changed, because it is being abused by hardened criminals "who launch ambush defences". Ambush defences? Which planet is Mr Weber from? Mr Weber says the law would be applied to everyone, not just his "hardened criminals". <http://www.abc.net.au/news/stories/2010/12/02/3082528.htm>

### **PIC's integrity to be scrutinised**

The NSW Police Integrity Commission looks set for a major overhaul this year, in its Act and its personnel, after the sudden resignation of the director nine months before his five-year term was due to expire.

Commissioner John Pritchard leaves this month to become an examiner with the Australian Crime Commission. Meanwhile there will be a review of the *Police Integrity Commission Act*. The review will consider criticisms levelled by PIC inspector, Peter Moss QC, over the body exceeding its brief, and by U. of Western Sydney academic, Dr Michael Kennedy, who wants a full investigation. <http://snipurl.com/1odv0m>

### **What's happy for the snappers is also snazzy for the coppers**

People protesting about police taking photos of peaceful protesters in Queensland should be careful...that's exactly the same right we all have as photographers to take shots on the street without needing permission.

Anti-coal seam gas protesters say they were photographed by a police officer at a demo.

But, as Queensland Civil Liberties Council vice president Terry O'Gorman pointed out, there are no restrictions on taking normal photos in such situations. He said State Parliament's Crime and Misconduct Committee (CMC) only audits covert recordings of criminal activity. <http://tiny.cc/6zqlq>

### **Magistrate castigates police for delay: 'outrage against liberty'**

A Darwin magistrate last month described holding suspected people smugglers for months without charge as an "outrage against liberty".

Indonesian Ayub Waang, 20, pleaded guilty in the Darwin Magistrates Court to damaging Commonwealth property while in detention.

He broke a plastic chair during unrest at the Darwin detention centre earlier this year, partly out of frustration over his uncertain future.

He has now been in detention in Australia for eight months since he was arrested on suspicion of people smuggling, according to a report on *ABC Radio* by Anna Henderson.

Magistrate Dick Wallace questioned the decision to continue holding Waang without charging him over people smuggling. He said "Commonwealth authorities don't seem to be perturbed" by "such an outrage against liberty".

A Commonwealth prosecutor told the court there is a backlog in police investigations into suspected people smuggling, including collecting statements.

Mr Wallace said he is concerned other detainees may be in a similar situation as Waang. "It is certainly the case that our forefathers would have been outraged that in a common law jurisdiction such a thing should happen it seems routinely to dozens if not hundreds of people."

Waang was convicted and placed on a \$1000 good behaviour bond.

<http://www.abc.net.au/news/stories/2010/12/17/3095705.htm>

### **CLA Director named Young Lawyer of Year**

Anthony Williamson, a CLA director since 2005, has been named Young Lawyer of the Year for the ACT for 2010/11. He is pictured receiving his award from Supreme Court Justice Richard Refshauge (right).



Mr Williamson has been honored by the ACT Law Society for extensive contributions to the law and the community in the ACT:

- While a law student at ANU, he worked in the office of a Member of the Legislative Assembly and was instrumental in improving numerous laws.
- With the Justice and Community Safety Department of the ACT Government, he was highly influential in ensuring compliance with human rights of ACT laws and departmental/agency actions.
- Anthony has been a member of the ACT Rural Fire Service for 12 years. He is a crew leader, and trains and mentors new ACT RFS recruits. He served on two deployments to the Victorian 2009 Black Saturday fires, and has also gone on deployment to major fires in other states in the past five years. He is a veteran of the 2001 and 2003 major ACT fires.
- He has been a director of CLA for five years, contributing extensively to submissions to the federal and ACT parliaments, and to inquiries of bodies such as the Australian Law Reform Commission and the Independent Commission Against Corruption. As well he has mentored students for CLA under the ANU's formal internship system, on subjects as diverse as DNA protocols/regulations, coronial inquiries, and environmental legislation.
- He has tutored for a year in Criminal Law at the University of Canberra.
- Since joining the staff of the Director of Public Prosecutions ACT in 2009, he has acted as instructing solicitor to the DPP himself in a murder trial and as counsel for the Crown in a Supreme Court jury trial.

## **CLA activities for December:**

### **Lectures:**

Centre for International and Public Law ANU, *Recent Developments in Chapter III: Kirk v Industrial Relations Commission of New South Wales*, Emeritus Professor Leslie Zines.

### **AGMs:**

Australian Republican Movement, Annual General Meeting.

Dying with Dignity, Annual General Meeting.

### **10 Dec: Human Rights Day:**

*What will human rights in the Territory look like in 2020?* Chair: Dr Helen Watchirs, ACT Human Rights and Discrimination Commissioner, who discussed the Territory's first Declaration of Incompatibility recently issued by the ACT Supreme Court. Speakers: Carrie Graf (coach Australian Opals and Canberra Capitals), Roslyn Dundas, (Director ACTCOSS), Professor Andrew Byrnes (Faculty of Law, UNSW).

### **Other:**

Speaker's Christmas Drinks, ACT Legislative Assembly (Shane Rattenbury, Speaker).

Crawford School ANU, launch of the UN Human Development Report: *The Real Wealth of Nations: Pathway to Human Development*, Dr Jeni Klugman

### **Meetings:**

Julie Dennett and Patrick O'Neill, Secretariat, Senate Legal And Constitutional Affairs Committee;

Noor Blumer and Phil Schubert re CLA Treasurer's position; and

Tim Vines and Saskia Vervoorn re CLA organisational arrangements.

### **Submissions in discussion/preparation:**

- Classifications (censorship): Senate Legal and Con. References Committee, by 4 March 2011 (Arved von Brasch).
- Human Rights Action Plan, by 28 Feb 2011 (Tim Vines)
- Inquiry into the proposed Parliamentary Budget Office, by 21 January 2011 (Dr Billy Jack).

- Patent Amendment (Human Genes and Biological Materials) Bill 2010, by 25 February 2011 (Tim Vines).

#### Media:

- Participant at the Virtual Global Taskforce Conference. Darling Harbour 2-3 December.
- Phone interview with journalist from The Independent (UK) re. Burnie council's (Tas) proposal to outlaw tobacco.
- Media release on Transport Security Administration (US) pat-downs and backscatter X-rays (run in News Ltd and Fairfax press)
- Interview with Canberra times re. Wikileaks and pressure applied to Columbia Uni students in US.

#### New Director:

President Kris Klugman has appointed Phil Schubert (*pictured*) as a member of the board of CLA. He will take over as Treasurer from Kevin Popple, who will step down from carrying the extensive load after four years.



Mr Popple, with Webmaster/Director Lance Williamson, helped create the new online joining renewal system, which has lightened the Treasurer's load, meaning Phil can concentrate on the financial side of the business rather than having to act at membership director as well. It is anticipated CLA will have a dedicated Membership Director in the near future.

## INTERNATIONAL

### Argentine is torture reporter

The UN's new Special Rapporteur on Torture is Juan Mendez (*pictured*) of Argentina.



A lawyer, his career has focused on defending human rights. For representing political prisoners, he was tortured during 18-month's detention by the Argentinean military dictatorship. In 1977, he was banished and moved to the USA, where he worked in different capacities, including as legal counsel for Human Rights Watch.

Mr Méndez is currently a Visiting Professor of Law at the American University – Washington College of Law, contributes as an advisor on crime prevention to the Prosecutor, International Criminal Court, and co-chairs the Human Rights Institute of the International Bar Association.

He was formerly the President of the International Center for Transnational Justice and the UN Secretary-General's Special Adviser on the Prevention of Genocide.

### US task force wants new privacy bill of rights

A US task force wants a "Privacy Bill of Rights" for online consumers and a new regulatory office to strengthen privacy within the USA and to coordinate initiatives with other countries.

The Commerce Department's Internet Policy Task Force said the new bill would increase transparency on how user information was collected online, place limits on the use of consumer data by companies and promote the use of audits and other forms of enforcement to increase accountability, Tanzina Vega reported in the *NYT*.

The new protections would expand on the framework of [Fair Information Practice Principles](#) that address data security, notice and choice – or the privacy policies many users agree to on web sites – and rights to obtaining information on the Internet.

"The simple concept of notice and choice is not adequate as a basis for privacy protections," said Daniel Weitzner, associate administrator for the office of policy analysis and development at the Commerce Department's National Telecommunications and Information Administration. <http://snipurl.com/1o08oy>

## Drug eventually produces truth: Cable backs down

Vince Cable, UK Secretary of State for Business Innovation and Skills, has agreed to ban export of sodium thiopental, a drug used for lethal injections in the USA but no longer available there.

Campaigners Reprieve and lawyers Leigh Day & Co proved to the UK High Court that no sodium thiopental was imported from Europe to the US for any medicinal use, and that it would be illegal to do so under the regulations promulgated by the US Food & Drug Administration (FDA).

Originally Cable refused to act based on the notion that sodium thiopental was exported to the US for medical purposes – but it was not. He also suggested that if Britain did not provide the drugs, someone else would. Reprieve argued that if something is immoral, it does not matter that someone else will commit the offence. <http://tiny.cc/j5d8i>

The latest is that US District Judge Stephen Friot has approved the use of pentobarbital, a drug used to euthanize animals, for executions in Oklahoma. <http://tiny.cc/aruej>

## Ex- US Vice President charged with bribery offences

Former US V-P Dick Cheney was last month officially a wanted man, just like Julian Assange.

However, a corporate payment of \$250m saw Mr Cheney's charges, among others, dropped.

Nigerian officials charged Mr Cheney and eight other individuals in a bribery and conspiracy scheme over the construction of a liquefied natural gas facility in the country that took place while Mr Cheney was chief executive of Halliburton.

Halliburton and its one-time subsidiary, Kellogg, Brown & Root (KBR), were also charged. KBR, which also has handled lucrative US government support contracts for US troops in Iraq and elsewhere, was spun off from Halliburton in 2007 into a separate company.

"It includes Dick Cheney," said Nigerian prosecutor Godwin Obla, about the 16-count charge filed in Abuja, Nigeria's capital. "There are conspiracy charges and giving gratification to public officers. There is also a charge for obstruction of justice...It is important to stress that the filing of this charge is just one out of many steps that would be taken by the prosecution.

"The illicit proceeds of that enterprise would be located. Properties acquired in consequence of this would be traced and forfeited and organizations associated with the criminal enterprise may be liable to forfeiture to the state of Nigeria," Mr Obla said.

Although Nigerian government officials said they would seek Cheney's extradition, it's all but guaranteed the US government won't entertain such a request. <http://snipurl.com/1ltmqo>

Authorities in the West African nation are probing most of the companies for allegedly paying \$182m in bribes to win a \$6 billion liquefied natural-gas contract. Panalpina is being investigated for alleged illegal payments to Nigerian customs officials on behalf of Royal Dutch Shell Plc. <http://tiny.cc/yzt5l>

## DATES:

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

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

**12-13 Feb, Canberra:** Conference on expert evidence, National Judicial College of Australia and ANU College of Law. Details: (02) 6125 6655 or [ExpertEvidence@njca.anu.edu.au](mailto:ExpertEvidence@njca.anu.edu.au)

**14 Feb, Canberra:** Reappraising the Judicial Role: Australian and European Comparative Perspectives, at the ANU Centre for European Studies. Details: <http://ces.anu.edu.au/events/reappraising-judicial-role-european-australian-comparative-perspectives>

**18 Feb, Sydney:** 10<sup>th</sup> 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>

**24 Feb, Brisbane:** *The Virtues of Mendacity: On Lying in Politics*, Professor Martin Jay, University of California, Berkeley. . 4-6pm, Richards Building, U. Queensland, details: [m.ure@uq.edu.au](mailto:m.ure@uq.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.](#)

**12 May, Brisbane:** *The Business of Ethics*, Mr John Briton, Legal Services Commissioner, 12-2pm, Seminar Room East, UQ Business School Downtown, L19, Central Plaza One, 345 Queen St, Brisbane. Contact: [k.hofmann@uq.edu.au](mailto:k.hofmann@uq.edu.au)

**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](mailto:sosmedical@ymail.com) Papers proposals by 25 Dec 2010.

**24 May, Brisbane:** *Love for Sale & Labour for Hire* (human trafficking), 2-4pm Terrace Room, top floor, Sir Llew Edwards Bldg, St Lucia. Contact: [a.schloenhardt@law.uq.edu.au](mailto:a.schloenhardt@law.uq.edu.au) or web: <http://www.law.uq.edu.au/humantrafficking>

**23-25 June, Canberra:** 19<sup>th</sup> annual Aust and NZ Society of Intntl Law (ANZSIL) conference, *the Promise and Limits of International Law*, University House, ANU. Paper proposals by 15 Feb to [anzsil@law.anu.edu.au](mailto: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](mailto:law-cccs@unimelb.edu.au)

**25-27 July, Canberra:** *Security in Government* conference, organised by Attorney-General's Department. Info: [SIG2011@ag.gov.au](mailto:SIG2011@ag.gov.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](mailto:Kim.Rubenstein@anu.edu.au) 9 Sept: Annual Geoffrey Sawer lecture to be delivered by the CJ of the Canadian Supreme Court, Beverley McLachlin. Conference opening by Professor Michael L'estrage, Director of the National Security College, ANU.

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

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