

McClelland says vulnerable falling behind, praises NGO work

Attorney-General Robert McClelland admitted last month that vulnerable Australians were being left behind in terms of enjoying the human rights most people take for granted.

He mentioned specifically the report of the Standing Committee on Aboriginal and Torres Strait Islander Affairs of Indigenous youth and the criminal justice system. Tabled in parliament last month, it "highlights the pressing need for all governments to address these high levels of incarceration". (See below: **Indigenous justice: AG admits severity up, solutions down**)

Mr McClelland was speaking in late June at the 2011 Non-Government Organisations Forum on Human Rights, where President, Dr Kristine Klugman, represented Civil Liberties Australia. The forum is a joint effort of the AG-s Department and the Department of Foreign Affairs and Trade. Both the AG and Foreign Minister Kevin Rudd spoke to delegates.

"While most Australians enjoy rights that are not available in many other places, there is still more we can do, particularly for our most vulnerable," Mr McClelland said.

"I'd like to acknowledge upfront the contribution that NGOs make to Australian society. You play an important role in raising awareness on a range of issues in Australia through your contribution to public debate.

"You provide an independent voice to the disadvantaged, the vulnerable and marginalised. Respect for human rights is an essential element of social justice and underpins many of the values that contribute to an inclusive society.

"And if you look at the range of people and issues who are attending today's forum – it is important to recognise that your efforts make a real difference to the lives of the people you represent, and the broader community," the AG said.

SPECIAL REPORT: Authorities abusing seizure/confiscation laws

CLA is running a Special Report on the website – <http://www.cla.asn.au/> – describing how confiscation and seizure laws around Australia are running out of control.

The report outlines specific cases where justice departments and prosecutors are abusing the original intent of the laws, which was to shut down the financial assets of the Mr Bigs of crime and drugs. Instead, authorities are "spotlight shooting" the little guy – and little woman and her children – by using their new-found powers in relation to offences at the minor end of the scale.

The scale itself is a problem, as counsel in the NT demonstrated by tabling a 27-page list of offences which could lead to seized property...and the list left out a raft of Commonwealth and commercial offences.

The seizure laws also unfairly target Aborigines, who have their vehicles confiscated sometimes for carrying a few cans of beer into their home community, declared dry under the federal government's harsh and unbalanced Northern Territory Intervention legislation.

Special Report: <http://www.cla.asn.au/index.php/articles/special-report-australia-s-property>

Minister boasts of 'new era' confiscating women's and children's assets

Minister for Justice Brendan O'Connor (pictured) has told an international audience how lucrative for pork barrelling the Australian assets seizure program is.



"In Australia in the last financial year we confiscated assets totalling \$34.87m and this financial year over \$40m of assets have been restrained," he said.

"Confiscating the proceeds of crime allows governments to re-direct the confiscated funds into crime prevention programs."

...Or, in other words, to pork barrel in cities, towns and suburbs – such as by installing CCTV all over the place – where the ruling party wants to boost its stocks for the next election, CLA says.

Mr O'Connor went on to explain how he and his government had turned the traditional rule of law in Australia on its head, enabling the confiscation of assets of women and children in families.

"In Australia, we recently introduced new asset forfeiture provisions that target the unexplained wealth of criminals. This means that a person must prove that their money was lawfully obtained. If they cannot demonstrate this, a court may order that the person forfeit that money. The prosecution does not have to prove that an offence has actually been committed."

He explained that a Criminal Assets Confiscation Taskforce, involving police and prosecutors with specialised skills in tracing and seizing the proceeds of crime, was "a new and exciting era in criminal asset confiscation in Australia".

Mr O'Connor was speaking at the 2nd General Police Equipment Exhibition and Conference Asia 2011 in Putrajaya, Malaysia, in late June.

High Court rules hasty bikie law invalid

The High Court last month ruled a NSW law designed to break up bikie clubs was invalid.

The NSW government introduced the *Crimes (Criminal Organisations Control) Act* in 2009 very soon after Hells Angel associate, Anthony Zervas, died during a violent brawl at Sydney Airport.

Under the now-discredited law, the NSW Police Commissioner could ask a NSW Supreme Court judge to declare bikie gangs criminal organisations and then seek control orders banning individual members associating with one another.

Derek Wainohu, a Hells Angel Motorcycle Club member, launched a bid in 2010 on behalf of Sydney chapters of the club to have the law declared invalid. He argued that the act infringed individual liberty and undermined the integrity of the NSW Supreme Court, basically by turning it into an administrative, rather than judicial, body – which is not permitted by the Australian Constitution.

The NSW law was based on a South Australian law, parts of which were declared unconstitutional in late 2010. The SA law was 'mirrored' in legislation around the Australian States and Territories through processes associated with the Standing Committee of Attorneys-General (SCAG). Most of the state/territory law is therefore now flawed, and needs re-legislating.

The two High Court losses should give pause to the rushed SCAG system which hastens an over-reaction to media frenzy without consulting the people.

Civil liberties and legal bodies repeatedly warned various governments that the “anti-bikie” legislation was over the top, and severely infringed on basic liberties and freedoms of everybody, not just bikies. <http://tiny.cc/hmz72>

Indigenous justice: AG admits severity up, solutions down

Attorney-General Robert McClelland – the man most responsible for how Australia’s justice system operates – has admitted “law and order severity” is increasing.

“I think there has been an increasing trend with law and order severity...”

And even he thinks it has gone too far, when the most jailed people in Australia pro rata are Aborigines and Aboriginal children.

“I think that locking people up for minor things like driving offences in circumstances where Aborigines in remote communities, in particular, find it all but impossible to get a driver’s licence is taking that philosophy far too far.

“The point is that all the evidence suggests that particularly once a young person has experience with the justice system, they are more likely to reoffend. By not adopting a more sophisticated approach we’re actually adding to the increase in the future prison population...”

And Mr McClelland has finally admitted that solving the Aboriginal juvenile detention problem is taking too long: “The Attorney-General’s Department is currently undertaking a study and evaluation of a number of really good programs... The first leg of that report will be available by the end of the year.

“It must be said that this whole process of obtaining the information and then implementing the different approach is taking a very long time,” he admitted.

The AG was speaking with Naomi Woodley on *ABC Radio’s AM* program, after release last month of the report, *Doing Time - Time For Doing: Indigenous youth in the criminal justice system*. Report: <http://www.aph.gov.au/house/committee/atsia/sentencing/report.htm>

Feds start tackling Aboriginal jail issue...at last

A week after the AG’s comments on radio (above), the federal government has kicked in one-off funding of \$3.2m to try to solve the rampant, out-of-control problems of too many Indigenous Australians, particularly juveniles, being locked up.

“The rate of incarceration of Indigenous Australians is unacceptable and needs to be addressed as a national priority,” Mr McClelland said, announcing the urgent funding. His new-found largesse came one week after the House of Representative Standing Committee on Aboriginal and Torres Strait Islander Affairs’ *Doing Time* report into rates of Indigenous jailing.

“I firmly believe governments – state and federal – need to renew and redouble our efforts to turn around these alarming (Indigenous) statistics,” the AG said.

CLA and many other Indigenous and prison reform groups have been yelling from the rooftops about the need to take action for years, but both Liberal and Labor governments until now have been stone deaf to the pleas.

Young Indigenous – overwhelmingly Aboriginal – people account for 59% of the total juvenile detention population, and the detention rate for Indigenous young people is 28 times higher than the rate for non-Indigenous.

The emergency funding includes:

- \$1.6m for prisoner care projects and youth diversionary initiatives, which adds to funding in 2011-12 for the Indigenous Justice Program of \$11.4m.
- \$750,000 extra for the NT Aboriginal Interpreter Service to improve training for interpreters and service users, on top of funding of \$1.3m in 2011-12 and \$567,000 under the NT Closing the Gap National Partnership.
- An extra \$850,000 for Indigenous Legal Aid’s 2011-12 Budget of \$65.6m to increase legal assistance, early intervention, community legal education, use of interpreter services, community support and training.

ACT acts to cut number of juveniles in jail

The ACT Government is overhauling its youth justice system to cut the number of young offenders behind bars.

The ACT has Australia’s third highest juvenile detention rate, including an over-representation of Indigenous youth.

The ACT government is exploring parole periods for sentencing of juveniles, currently only granted for adult offenders. As well, each juvenile will have a single case manager so they no longer have to deal with numerous case managers as they move through the justice system.

Community Services Minister Joy Burch says an after-hours bail service will also help minors find accommodation so they are not kept in custody, *ABC News* reported. <http://tiny.cc/ymioq>

Cybercrime bill would see Europe control Australian law

The federal government’s *Cybercrime Legislation Amendment Bill 2011*, introduced last month, would see Australia give up local control to sign on to the Council of Europe Convention on Cybercrime, a binding international treaty on cybercrime.

The CoE convention structures international co-operation between signatory countries, by:

- allowing authorities to order ISPs* to preserve selected communications;
- letting one country collect data in another country;
- establishing an instant response network internationally for investigators; and
- allowing almost unfettered exchange of data between countries.

Forty countries have signed or become a party to the CoE convention, while more than 100 are basing their response to the threat of cybercrime on it.

The Australian bill would do three main things:

- Create ‘instant international guilt’ – selected agencies could demand a carrier instantly preserves any data, from anyone, anywhere in the world about anyone that the authorities plan to get a warrant about...before any charge is proven.
- Make ‘big brother’ international – provide agencies in all countries with easier access to data stored in another country for alleged ‘cybercrimes’ and crimes using the internet; and
- Make us lose control of our own laws – the bill would ramp up existing Australian laws and sentences to fully meet the offshore requirements of other countries’ CoE convention.

The *Cybercrime Legislation Amendment Bill 2011* amends the *Mutual Assistance in Criminal Matters Act 1987*, the *Criminal Code Act 1995*, the *Telecommunications (Interception and Access) Act 1979* and the *Telecommunications Act 1997*.

* ISP: internet service provider

ISPs opt for Interpol filter

Telstra, Optus and Prime have agreed to cooperate with the federal government to voluntarily filter a list of illegal child sexual abuse sites identified by Interpol.

The limited filtering will take place while a review is carried out into the Refused Classification category of content which the Australian government's mandatory filter project is slated to block.

The ISPs' filter will only block sites with child pornography, instead of those with illegal content in general, *Delimiter* reports. <http://feedproxy.google.com/~r/Delimiter/~3/bwppqJz4WV0/>

But Australia's peak internet industry body is distancing its child pornography filter from the federal government's mandatory filtering policy; its 'more limited' approach was more akin to ISPs cooperating with law enforcement authorities and would not constitute a form of censorship, according to the Internet Industry Association. <http://tiny.cc/yfnvd>

Commissioner Palmer hands down scathing report on Risdon prison

Risdon prison in Hobart is just five years old...but \$20m more will be urgently spent on the \$90m complex after a scathing report by independent commissioner Mick Palmer.

Palmer, a former Australian Federal Police

Commissioner and one of the four-person national human rights consultation team in 2009, described the jail as dysfunctional, in that staff had withdrawn from interacting with prisoners, which led to excessive lockdowns.

His inquiry, which cost almost \$0.5m, was commissioned after a number of incidents at the prison last year.

For years, CLA member and Prison Action Reform Group spokesperson Greg Barns has been highlighting how bad conditions at Risdon are. "The Palmer report set(s) out a chronicle of mismanagement and abuse of prisoners over the past decade," Mr Barns said.

Mr Palmer recommended a major revamp of how the prison operates. He said there was a lack of effective leadership and of staff training, poor commitment to occupational health and safety, low staff morale, industrial tension and a largely absent senior management team, according to a report in the *Mercury* newspaper.

He highlighted a lack of respect for prisoners among some prison officers and said that standard operating procedures at the prison were redundant, deficient or sometimes absent.



Tasmanian Corrections Minister Nick McKim, from the Greens, committed the government to the \$20m extra spending, but refused to sack, transfer or discipline any prison staff.

Report no surprise: now for the rest of Australia's jails

The Palmer report should not have surprised the government: exactly one year ago, the Tasmanian Ombudsman found that the treatment of Tasmania's most dangerous prisoners was "not humane" and that Risdon prison was poorly planned and did not meet basic international human rights standards.

Ombudsman Simon Allston conducted an extensive investigation of how prisoners were treated in Risdon's maximum security Tamar Unit and its Behaviour Management Program (BMP).

His 12-month-old report recommended a new unit be built to house the state's dangerous inmates and a specialised program be developed to rehabilitate them.

Tasmania spends more to house prisoners than any other state: \$366 a day, well above the national average of \$207 a day, David Killick reported in the *Mercury*.

CLA believes Mr Palmer's expertise, gained by the inquiry into a new jail in Tasmania, should be used for a rolling program to investigate and overhaul jail operating procedures in all States and Territories.

Record drug seizures...record drug use?

The Minister for Home Affairs, Brendan O'Connor, is talking up the fact that the Australian Federal Police have made record drug seizures over the past 12 months.

However, police acknowledge that seizures are only a small percentage of the drugs circulating nationally, so that record seizures probably mean record volumes of drugs in Australia.

Mr O'Connor said: "The AFP and its partner agencies have seized 1.77 tonnes of illicit drugs in 2010/11 - an increase of 523 kilograms. That's almost a 30% increase compared with 2009-10."

Among drugs seized over the 12 months were 334kg of heroin and 284kg of amphetamines. The largest amount of illicit substances seized was 710kg of cocaine, in 407 different seizures.

The AFP opened a post in Los Angeles earlier this year, expanding its international network to 31 locations across the globe.

The multi-agency Criminal Asset Confiscation Taskforce, launched in March, has already restrained more than \$43 million in profits derived from organised criminal activity.

Court cases over the coming few years will decide whether the restraint is appropriate or not, CLA says. CLA believes the confiscation regime has itself become a problem - see below.

Centrelink sweeps likely to produce diminishing returns

New web-sweeping and data-matching technology is allowing Centrelink to punish fraud...at the expense of separate records and possibly privacy.

The sweeps and matches can only occur because special legislation allows Centrelink to match data across virtually all government and other relevant records.

A report, *Detecting and Preventing Welfare Fraud*, says that in 2008-09:

- Four data-matching sweeps, involving 53,643 reviews, produced \$112.5m in recovered debts to Centrelink;
- Tip offs, data-matching and other triggers led to 26,084 formal investigations of possible fraud which recovered a further \$113.4m;
- Centrelink sent 5,082 matters to the Commonwealth Director of Public Prosecutions, who prosecuted 3,388 of them, with a conviction rate of 99%. Centrelink claims an average saving among these cases of \$4,347 per investigation, which makes it extremely questionable as to whether the recovery is cost effective, or just an exercise in Centrelink being punitive; and
- Centrelink's Identity Fraud Detection Team (IFDT) referred 166 cases for prosecution, which is about 0.3% of cases from the figures above.

IFDT investigates stealing, borrowing, fabricating or altering identity documents to obtain illegitimate payments using advanced computer software and hardware. Given that much of this technology is new, and so are the sweeps and matches, it is likely future activity will produce much-diminished returns. The report is available at www.aic.gov.au.

The prints of darkness – eyes don't have it

The Police Minister in NSW, Michael Gallagher, is proposing to fingerprint women wearing veils to confirm their identity when they make statements or complaints to police.

He said there could be a provision in legislation for the fingerprint to be wiped after the case concluded, at the request of the complainant, to protect privacy.

Sydney woman Carnita Matthews, 47 – sentenced in 2010 to six months' jail for falsely accusing a police officer of trying forcibly to remove her burqa – last month won an appeal. The mother of seven had allegedly made a criminal complaint to police three days after she was pulled over in her car for a random breath test.

Judge Clive Jeffreys overturned Ms Matthews' conviction in the NSW District Court. He said there was no evidence to confirm that it was Ms Matthews who had filed the complaint because the person who made it was wearing a face veil.

NSW may get recall option to empower people

Three constitutional experts are investigating whether to introduce California-style recall elections in NSW to give voters a "safety valve" to dump unpopular or corrupt governments.

NSW Premier Barry O'Farrell has appointed David Jackson, constitutional expert Prof George Williams and politics academic Prof Elaine Thompson to report on whether California-style 'recall' elections should be introduced to NSW.

Eighteen US states have a recall mechanism, including California, which saw Arnold Schwarzenegger become governor in 2003 as a result of a recall election.

The system also operates in the Canadian province of British Columbia.

Mr O'Farrell said the panel would report by September 30 on the viability of introducing a recall provision in NSW and requirements to force an early election. Establishing a recall procedure in NSW may need a referendum to amend the Constitution Act 1902. <http://tiny.cc/m2qts>

Religions are free to discriminate

The Victorian Government last month introduced a bill twice in one week so as to allow faith-based groups to discriminate on grounds such as religion, marital status or gender.

The Bailleau Government suspended the rules and held a second vote on the *Equal Opportunity Amendment Bill*, defeated a week earlier.

Liberty Victoria described the proposed changes to the equal opportunity laws and the way the bill was dealt with as "a tragedy". Vice-president Jamie Gardiner said the bill would wind back protections and increase inequality.

Law schools twin for dual recognition

Charles Darwin University and Universitas Gajah Mada (UGM) Yogyakarta, Indonesia, have signed a law twinning program memorandum of understanding.

Under the new arrangements, UGM law students will be able to complete a law degree at CDU and have their UGM law studies recognised for advanced standing towards the CDU degree.

Students will graduate from both universities with degrees in law that are recognised as the academic requirements to become legal practitioners in both Australia and Indonesia. The first students will arrive in Darwin in 2012.

Beware, your online freedoms will be curtailed

The government is producing a white paper on security online...an alarming development, CLA says, because it will almost certainly result in further restrictions on individual freedoms in Australia.

The paper will examine what is needed for online protection, and the role of government, industry and the public, and will cover consumer protection, safety, crime, security and defence.

Why is this necessary, you ask? There is already a 2009 Cyber Security Strategy as well as the Cyber Security Operations Centre, CERT Australia, the Cyber Safety Plan and the Digital Economy Strategy.

The Department of Prime Minister and Cabinet will be in charge of developing the paper, a cause for even greater civil liberties alarm. PM&C are no lovers of human rights... otherwise, Australia might have a Human Rights Act.

The government says there will be "extensive public consultations" from this month "via a public discussion paper".

What that means is that the government will publish its favourite thimble trick device – a "framework" – of what it wants to do, then ignore all sensible comments and advice from community groups. That's what it did over the Human Rights Act.

PM&C is due to publish the white paper in 2012, by 30 June.

Affidavit...it's the new swear word in Victoria

Victoria's plan to fine people who swear could be thwarted by the law, CLA says.

The legislation recently introduced to State Parliament gives police the power to issue on-the-spot fines of up to \$240 for people who use "offensive language".

CLA believes current law may come to the aid of Victorians: it remains legal to swear an affidavit. So, instead of using the 'f' word or the 'c' word, people can use the 'affidavit' word.

"Get affidavited", you can yell at an umpire, or even a policeman, hopefully without paying \$240. "Affidavit yourself",

you can tell a recalcitrant politician, and keep your money in your bank account, not the state's. "You're an affidavit", you can tell the bureaucrat behind the counter.

CLA congratulates the Bailleau government on doing more for expanding the Australian language than many other governments, like the federal government, which wants to cut back on what you can say and read by expanding censorship and internet filtering.

Victorian Greens MP Colleen Hartland (pictured) said last month the proposed Victorian law was silly and confusing. "Is fart poos a swear word? Is windy bottom a swear word?" she said. "I asked the Attorney-General to give me a list of swear words, because we don't know.



"I think the police have got a lot better things to do than be issuing \$240 on-the-spot fines for swearing. I think it's silly. But it's also about the race to the bottom on law and order in this state."

CLA swears that's the truth! <http://tiny.cc/l103q>

State starts election 'law and order' auction

The 'law and order' auction in the lead-up to the next Queensland election has begun, with Premier Anna Bligh reversing an earlier stance and promising satellite tracking of sex offenders following a newspaper-led campaign.

She promised almost \$14 million over the next four years to implement GPS monitoring of released sex offenders subject to supervision orders.

"These people are the worst of the worst," the Premier said, echoing the newspaper campaign.

The ruling Labor Party is behind in the polls and the Liberal National Party supports GPS tracking, reinforcing the probability that the move is part of an election 'auction'.

News Limited publication The Courier-Mail launched a petition, which gained support from other media. NSW has used the technology for four years. <http://tiny.cc/v7m4f>

Conroy spends big on anti-FOI push

Communications Minister Stephen Conroy's secrecy-obsessed department has spent more than \$268,000 on lawyers to challenge Freedom of Information requests, *News Limited* has reported.

One matter alone cost \$77,000.

While what the money was spent on is not known, Senator Conroy supervises the \$36 billion National Broadband Network and the \$308 million set-top boxes scheme.

Opposition communications and broadband spokesman Malcolm Turnbull said Mr Conroy and his department were using the outside law firm to challenge the release of information.

A spokesman said staff made decisions about the release of documents but \$268,000 was spent to "provide legal advice and related legal services to (department) staff involved in processing requests and making decisions." <http://tiny.cc/1rlfj>

US stores flight/personal details for 15 years

The personal data of millions of passengers who fly between the US and Europe, including credit card details, phone numbers and home addresses, may be stored by the US department of homeland security for 15 years, according to a

draft agreement between Washington and Brussels leaked to the *Guardian*.

A period of five and a half years has just been negotiated in a similar agreement with Australia.

A leaked opinion from the EU Council of Ministers' legal advisers warns that the EU's scheme is disproportionate and not in line with privacy requirements under human rights law. The German constitutional court ruled last years that six months was the maximum appropriate period for retaining personal telecommunications data.

Data collected involves 19 separate items relating to each airline passenger, including their billing details, contact numbers, the names of those they are travelling with and how much baggage they have, as well their itinerary. Similar data is being collected on Australians. <http://tiny.cc/ywhn4>

Australian briefs



Nominate 'Deadly' lawyer...but hurry:

Nominations are open for the second Indigenous Legal Professional of the Year award, worth \$5,000 to be spent on professional development. Any Indigenous barrister or solicitor in Australia can apply. Closes 4 July. Info: Jan Prowse

(researchstudents.cap@anu.edu.au) or

www.ag.gov.au/indigenouslegalaward or E:

IndigenousLegalAward@ag.gov.au Barrister Tony McAvo (pictured), a Wiri man from central Queensland, won the inaugural Deadly Lawyer award. "Deadly" is a generic name for top Indigenous person in a category, originally applied to music, screen and stage awards.

Nominate someone who is human, and right: Nominations are open for the Human Rights Medal, Young People's Human Rights Medal, Law Award, Business Award, Community Award – Individual, Community Award – Organisation, Literature (non-fiction) Award, and the Radio, Television and Print Media Award. Nominations close 9 September, with the presentation on 9 December 2011. www.humanrights.gov.au/hr_awards/index.html

Interpretation act passes: Federal parliament has passed the *Acts Interpretation Amendment Bill 2011*, which is claimed will make it easier for people to understand and interpret Commonwealth legislation. Attorney-General Robert McClelland said the new law was "the first comprehensive update of this legislation in more than 100 years".

Pro bono work up: The volume of pro bono work undertaken by the legal profession in Australia has increased by 30% from an average of 21 hours in 2008 to 27.6 hours in 2009-10, according to Attorney-General Robert McClelland. CLA estimates that it provided about 90-100 hours a week of similar pro bono work to the community in 2009-10.

ACT limits option of judge-only trials: The ACT has reduced the option of judge-only trials for people accused of murder or rape. Previously, defendants charged with an indictable offence in the ACT Supreme Court could choose a judge-alone or a jury. The Gallagher Labor government bill bans judge-only trials for people accused of homicide, culpable driving causing death, rape and child pornography.

First community cops take to remote beats: The first NT community engagement police have finished training in Darwin and are heading to remote communities as part of a two-year trial. The eight officers will be based in Alyangula, Maningrida, Wadeye and Lajamanu in the top end and Yuendumu, Hermannsburg, Ali Curung and Papunya further south. The \$3.4m pilot program is funded by the Australian Government and implemented with NT Police help.

Free service helps those in financial strife: Also in Darwin, a new, free, independent service has been launched to provide confidential advice to residents with debt or credit problems. The Credit and Debt Legal Service is a collaboration between the Darwin Community Legal Service (DCLS) and the Australian Government Solicitor. Credit and Debt Legal Service, 08 8982 1111 or 1800 812 953. Advice sessions are held at DLCS at 8 Manton Street every second Tuesday.

‘Curbs and gutters’ in the Constitution? Recently-retired Chief Justice of NSW, Jim Spigelman, heads a new panel to inquire into the possibility of recognising local government in the Australian Constitution. The panel will investigate the level of support for constitutional recognition of local government and identify possible forms recognition could take. Setting up the panel process is part of the Gillard government agreement with the Greens and Independent MP Tony Windsor. The Spigelman panel will report before the end of 2011. Details: www.regional.gov.au/local/crlg/

Student opportunities:

No 1: Indigenous prize

A new prize will recognise excellence amongst Indigenous students undertaking law studies.

The Indigenous Law Student of the Year Prize acknowledges the achievements and contributions of Indigenous legal students to Australia’s justice system.

The \$2500 prize for Indigenous Law Student of the Year, to be spent on further legal studies, will recognise an outstanding student with sound academic results who has also made worthwhile contributions to their community. Any Indigenous person enrolled in a law degree in Australia can nominate. Nominations are open to 4 July 2011. More information: www.ag.gov.au/indigenoulegalaward or Jan Prowse (researchstudents.cap@anu.edu.au)

No 2: Scope an IT/rights/liberties ethics code for uni projects

CLA is looking for a law student who may be interested in developing a “code of ethics” or a “responsibility protocol” for IT students undertaking pro bono projects in the rights/liberties field.

ANU information technology (IT), computer and economics students are planning to use their considerable IT and computer skills to work on credit-earning projects that will help human rights bodies and civil liberties organisations.

For example, they might build a website, or analyse existing membership or community data, develop an interactive online manga (comic) program, or re-interpret public government information to expose flaws or holes.

The students need a code or set of principles, to be agreed by the heads of the relevant departments and the university,

which will guide the type of projects they can work on, put some boundaries on ethical and moral limits, and provide a working checklist as projects are assessed, managed and reported,

Anyone who may be interested should email: secretary@cla.asn.au An ANU law student would be ideal, but students at other universities could also work with the group electronically.

CLA’s main activities for June:

The major activity of the President and CEO was a research and analysis visit to Darwin to encourage the formation of a CLA group there. The CLA Board has had in mind for several years to visit Darwin, as there is a need for a voice in NT to draw attention to unfair laws and bureaucratic actions.

With the considerable assistance of Carolyn Richards, NT Ombudsman, we met with representatives from a wide range of groups, including

- prominent members of the NT Legislative Assembly, (*photo shows Speaker Jane Aagaard with CLA President Dr Kristine Klugman*)
- the Northern Australian Aboriginal Justice Agency (NAAJA),
- Australian Lawyers for Human Rights,
- the Human Rights Education Committee,
- academics and students at Charles Darwin University,
- the Bar Association and members of the NT Bar,
- the Information Commissioner, Brenda Monaghan (*pictured*),
- the Anti-Discrimination Commissioner,
- the Community Legal Service,
- the Law Society,
- United Nations Association,
- union representatives...and various interested individuals.



We attended a ceremonial sitting of the NT Supreme Court to mark its 100th anniversary, and were impressed by a performance by Aboriginal group and NT lawyers which focused on the often inequitable operation of the judicial system from an Indigenous perspective.

In summary, we found people of good will and profound commitment, working to correct injustices in the “frontier society” which is Darwin and the NT, in the realms of Aboriginal rights, refugees rights and general civil liberties.

We formed some excellent networks to promote better communication in the interests of human rights...or as the Territorians would say, a fair go. (Fuller report will be available on the CLA website).

An all day DFAT NGO consultation on 22 June, attended by the President, Dr Kristine Klugman, was addressed by Foreign Minister Kevin Rudd and Attorney General Robert McClelland.

Discussion centred on the UN Human Rights Council Universal Periodic Review of Australia’s performance against

the UN treaty obligations, and the government's response to these criticisms/recommendations.

There was also debate around the human rights framework, and the action plan that the government has adopted in place of a human rights bill for Australia.

– Kristine Klugman, President

INTERNATIONAL

It's not cricket! Two of deadliest spots for women Test our resolve

Targeted violence against female public officials, dismal healthcare and desperate poverty make Afghanistan the world's most dangerous country in which to be born a woman, according to a global survey reported by Owen Bowcott in the *Guardian*.

The Democratic Republic of Congo, Pakistan, India and Somalia feature in descending order after Afghanistan in the list of the five worst countries, the poll among gender experts shows. The survey was compiled by the Thomson Reuters Foundation to mark the launch of a website, *TrustLaw Woman*, aimed at providing free legal advice for women's groups.

Australia plays Test cricket against two of the five deadliest: TV coverage of cricket would be a good place for national protest to be seen internationally.

Pakistan's human rights commission says about 1000 women and girls die in honour killings annually, while India is the fourth most dangerous country.

"India's Central Bureau of Investigation estimated that in 2009 about 90% of trafficking (of women for prostitution) took place within the country and that there were some three million prostitutes, of which about 40% were children," the survey finds.

Forced marriage and forced labour trafficking add to the dangers for women. "Up to 50 million girls are thought to be 'missing' over the past century due to female infanticide and foeticide," the UN Population Fund said, because parents prefer to have boys rather than girls. <http://tiny.cc/dkqy5>

Women harassed by state when pregnancies go wrong

In Mississippi, USA, Rennie Gibbs is accused of murder, and faces life in prison over the death of her unborn child.

Gibbs became pregnant aged 15, but lost the baby in December 2006 in a stillbirth at 36 weeks. When prosecutors discovered that she had a cocaine habit – though there is no evidence that drug abuse had anything to do with the baby's death – they charged her with the "depraved-heart murder" of her child, which carries a mandatory life sentence.

Gibbs is the first woman in Mississippi to be charged with murder relating to the loss of her unborn baby. But her case is by no means isolated, Ed Pilkington reported in the *Guardian* last month.

Bei Bei Shuai has been in jail for three months in Indianapolis on similar charges, while Amanda Kimbrough faces 10 years jail, having been convicted on a "chemical endangerment" charge in Alabama for allegedly taking drugs, which she has denied. She is appealing.

"Women are being stripped of their constitutional personhood and subjected to truly cruel laws," said Lynn Paltrow of the campaign National Advocates for Pregnant Women (NAPW).

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"It's turning pregnant women into a different class of person and removing their rights." <http://tiny.cc/6vw1z>

Dames, knights, top cops and ex-UN chief slam drug laws

Dame Judi Dench, Sir Richard Branson, and Sting, an ex-drugs minister and three former chief constables last month called for decriminalising the possession of all drugs in Britain.

The celebrities and leading lawyers, academics, artists and politicians signed an open letter to British Prime Minister David Cameron to mark the 40th anniversary of the 1971 *Misuse of Drugs Act*.

The letter was published as a full-page advertisement in *The Guardian* newspaper: it called for a "swift and transparent" review of the effectiveness of current drugs policies.

Its signatories say that all the past 40 years has produced is a rapid growth in illicit drug use in Britain, and significant harm caused by applying the criminal law to the personal use and possession of all drugs.

The letter launching the campaign, *Drugs – It's Time for Better Laws*, was organised by the national drugs charity Release. It points out that nearly 80,000 people were found guilty or cautioned for the possession of illegal drugs – most young, black or poor – in 2010. Over the past decade, more than a million people have ended up with a criminal record as a result of the drug laws.

The letter coincided with the launch in New York of the report of the Global Commission on Drug Policy, which counts three former South American presidents, the former secretary-general of the UN Kofi Annan and Sir Richard Branson among its membership.



"The war on drugs has failed to cut drug usage, but has filled our jails, cost millions in taxpayer dollars, fuelled organised crime and caused thousands of deaths," said Branson (pictured), founder of the Virgin Group.

"We need a new approach, one that takes the power out of the hands of organised crime and treats people with addiction problems like patients, not criminals," he said <http://tiny.cc/2e18t>

Stun guns OK...except when they're not

The US National Institute of Justice, a division of the US Department of Justice, has just put out a report saying using stun guns on people is OK, except...

The study concluded: "Field experience with CED (conducted energy device, that is, stun gun) use indicates that short-term exposure is safe in the vast majority of cases.

"There is no conclusive medical evidence in the current body of research literature that indicates a high risk of serious injury or death to humans from the direct or indirect cardiovascular or metabolic effects of short-term CED exposure in healthy, normal, nonstressed, nonintoxicated persons."

...Except, CLA says, that most problem people whom police confront are ill, drug or alcohol affected or stressed out from family disputes, mental health issues, being locked behind bars, or the like.

So the study really says: It's OK to stun fit footballers, but with anyone else you should be very careful. Report: <http://www.ncjrs.gov/pdffiles1/nij/233432.pdf>

www.cla.asn.au

7

UN supports your right to net and tweet until you're off your face!

The UN has endorsed your right to operate largely freely and unencumbered on the internet.

The UN report flies in the face of France and the UK, which have been pushing for new legislation to cut off internet access for anyone who does illegal downloads.

“The (UN) Special Rapporteur considers cutting off users from Internet access, regardless of the justification provided, including on the grounds of violating intellectual property rights law, to be disproportionate and thus a violation of article 19, paragraph 3, of the International Covenant on Civil and Political Rights,” the report says. <http://tiny.cc/r80pe>

Intactivists try to stitch up vote on unkind cuts

If anti-circumcision activists (they prefer “intactivists”) have their way, US cities may soon be voting on whether to criminalize a practice common in American – and Australian – hospitals.

Activists say the measures would protect children from an unnecessary medical procedure, calling it “male genital mutilation.”

In San Francisco, the intactivists have collected more than the 7,100 signatures needed to get a measure on the late-2011 ballot to make it illegal to snip the foreskin of a minor within city limits.

A similar effort is under way in Santa Monica to get such a measure on the ballot for November 2012.

Circumcision is an ancient ritual that Jews and Muslims believe fulfills a commandment issued by god. Heightened public debate over male circumcision follows attempts in the western world to stop female genital cutting, notably in the Middle East and Africa. <http://tiny.cc/hxk5z>

Government spying on citizens extended for four years

In late May, the US Congress extended three enhanced surveillance powers granted the government after the 9/11 attacks — two in the Patriot Act and one from a related intelligence law.

In doing so, lawmakers neatly managed to avoid any lapse in those powers. They failed miserably in their duty to carefully re-examine the provisions, trim back excesses, and add safeguards to protect civil liberties, according to an editorial in the *NY Times*.

“In other words, they ignored the whole point of requiring that the provisions be periodically reviewed,” the paper said.

One of the renewed provisions permits a roving tap on terrorism suspects who switch phone numbers or providers.

While this is a useful tool, the lax rules for specifying who is the subject of the wiretap could invite abuse, according to the *NYT*.

Another provision permits the government to examine library, bookstore and business records without having to show that the material is related to a terrorism investigation.

The third overly broad provision allows surveillance of “lone wolf” suspects with no known ties to a foreign power or recognized terror groups. It has never been used, but the low threshold for doing so is concerning.

The powers were extended for four more years, with no changes, because of a deal stitched up between Republicans and Democrats representatives.

The people were not consulted.

Google spills the private beans most of the time

Private information about Google users was demanded by governments or police a total of 14,201 times in 26 developed countries in the second half of 2010, according to figures released by Google last month.

Australia made 345 requests, and Google fully complied 81% of the time.

Google disclosed that it had received more requests from the USA (4601) than anywhere else, and that it fully complied with US authorities over 94% of them.

Tighter terrorist laws should be further tightened, parliament says

British peers and MPs have warned the Home Secretary, [Theresa May](#), that extra safeguards for new random counter-terror stop-and-search powers are needed in order to prevent further [human rights](#) breaches.

The more tightly-drawn powers were introduced in March after the European Court of Human Rights ruled that the original measures – known as section 44 – were illegal because they were too broad and lacked adequate safeguards against being abused.

Those powers, under section 44 of the Terrorism Act 2000, allowed police to stop and search anyone in a designated area without having to show reasonable suspicion. In 2009 the powers were deployed on more than 148,000 occasions.

The new powers – introduced through an urgent remedial order in parliament to replace section 44 – are far tighter. They also allow stop and search without suspicion, but can only be declared where a senior officer suspects an act of terrorism will take place. Authorisations have to be confirmed by the home secretary within 48 hours, and cannot last longer than 14 days.

A report by the parliamentary joint human rights committee late last month welcomed the tighter definition, but said the remedial order, in its current form, did not go far enough. <http://tiny.cc/4ii2f>

US Supreme Court defends free speech, gets ready for ‘blockbuster’ 2012

The US Supreme Court continued its work on two signature projects of Chief Justice [John G. Roberts Jr.](#): defending free speech and curbing big lawsuits, the *NY Times* reported late last month.

And the court dropped occasional hints about the blockbusters on the horizon, reported Adam Liptak wrote.

“The First Amendment dominated the term, with the court ruling for [funeral protesters](#), the makers of [violent video games](#), [drug marketers](#) and [politicians who decline public financing](#),” he reported.

“The American commitment to free expression, the court said, cuts across politics and commerce, requires tolerance of offensive speech and forbids the government from stepping in when powerful voices threaten to dominate public debate.

"In the just-completed term, the court's commitment to free speech and its growing business docket sometimes intersected, as in the cases on drug marketing and video games.

"For the conservatives," said Lee Epstein, a professor of law and political science at Northwestern (University), "the First Amendment continues to trump other values, especially if they can help business in the process."

"Next term is going to be the term of the century," said Thomas C. Goldstein, a leading Supreme Court advocate and the publisher of *Scotusblog*.

Mr Liptak wrote that the court could confront not only challenges to the health care law but also cases involving [same-sex marriage](#), [immigration](#) and affirmative action.

The next term's big decisions will land a year from now, just as the 2012 presidential election season kicks into high gear, the NY Times reported. <http://tiny.cc/pfогx>

ODD SPOT: Instant lawyer...just add credit card!

A new company, LawyerUp, can get lawyers on a case within 15 minutes in the USA.

"If I want a pizza, I can get a pizza in 15 minutes," says co-proprietor Chris Miles. "I can get a plumber in the middle of the night. Why can't I get a lawyer?"

He started operating last month in three eastern US states, Massachusetts, Connecticut and Rhode Island, after building a roster of criminal lawyers who do not mind late-night calls.

The personal plan, aimed at young people, costs about \$4.65 a month. Without a subscription, you can pay a flat \$100 for the first call, a "pay-in-a-pinch" plan. For all clients, an operator checks contact information and processes the lawyer's initial one-hour fee of \$235 on a credit card.

Apps* – basically a panic button – are available to speed dial the service. <http://tiny.cc/2878k>

* Apps is short for applications, basically a mini-software program which makes dialling quicker and easier in this case.

International briefs

State approves same-sex marriage: New York has become the latest and largest US state to legalise same-sex marriage. New York, the third most populous US state, joins Connecticut, Iowa, Massachusetts, New Hampshire, Vermont and the Washington capital district in allowing gay couples to wed. The Republican-controlled NY state senate voted 33-29 last month for the bill which had earlier been approved by the lower house, which has a Democratic majority. <http://tiny.cc/rau28>

Ban gets second term: South Korea's Ban Ki-moon has won a second five-year term as secretary-general of the UN. Ban, who is 66, signified his intention to stay on in a letter to the governments of the 192 UN member nations. The General Assembly voted last month to give him a second term that begins on 1 January 2012.

Right way to shrink prisons: Recently the US Supreme Court ordered California to reduce its prison population after finding that the state's penal system was so overcrowded that it constituted cruel and unusual punishment. But the court gave no guidance about how to do it. Frank McIntyre, an

economist, and Shima Baradaran, a law professor at Brigham Young University and chair of the American Bar Association Pretrial Release Task Force, have examined data from over 100,000 felony defendants over a 15-year period, and found very clear trends regarding which defendants are more likely to commit crimes while free on bail. <http://tiny.cc/gq03t>

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

25 June - 1 July, Bali: Criminal Lawyers Association of the NT, 13th biennial conference, 'Extremes in Justice', Bali Hyatt Hotel, Sanur, details: solusi@bigpond.com or 0437 710 090

4-8 July, Launceston: The History of Human Rights will be a key topic at the Australian Historical Society Regional Conference, History at the Edge. Convenor: Dr Tom Dunning - T.Dunning@utas.edu.au

11-14 July, Sydney: Commonwealth Law Ministers Meeting. Info: Ariane Malpas 02 6141 3245 or e: ariane.malpas@ag.gov.au

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

22 July, Melbourne: Castan Centre for Human Rights Law Conference, 9:15am – 4:30pm, 1 Spring Street, Melbourne. Info: <http://www.law.monash.edu.au/castancentre/events/2011/conference-2011.html>

25-27 July, Canberra: Security in Government conference, organised by Attorney-General's Department. Info: SIG2011@ag.gov.au

26 July, Melbourne: Reforming Australia's Equality Laws conference: best-practice models and frameworks for promoting equality. Storey Hall, RMIT, 342 Swanston Street, Melbourne. <http://www.equalitylaw.org.au/elrp/events/>

4 - 6 Aug, Noosa, QLD: Australian Psychologists Society Forensic Psychology conference. Contact: events@psychology.org.au

11 Aug, Sydney: Annual Hal Wootten lecture: speaker Martha Nussbaum, 6.30-8pm, GO2 Law Bldg, UNSW. She is Ernst Freund Distinguished Service Professor of Law and Ethics, Philosophy Dept of Chicago Law School, and Divinity School. She is also a Board Member of the Human Rights Program and founder and Coordinator of the Center for Comparative Constitutionalism.

7-9 Sept, Sydney: Criminal Justice in Australia and NZ - Issues and Challenges for Judicial Administration, E: ajja@monash.edu

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 (pictured)

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'Estrange, Director of National Security College, ANU.

12-13 Sept, Paris: New ICC Rules of Arbitration. Info: events@iccwbo.org or www.iccevents.org

13 Sept, Brisbane: Assoc Prof Katharine Gelber: Speech Matters; Free Speech in Australia, Level 1 Duhig Bldg, 3-4pm.



Info: Rebecca Ralph 07 3346 7407 <http://www.cccs.uq.edu.au/index.html?page=152146>

16 Sept, Canberra: Lunchtime lecture 1-2pm: Glen Patmore, Senior Lecturer in Law, The University of Melbourne Constitutional Change and Australian Republicanism. Venue: Staff Library, ANU College of Law

21 Sept, World: International Day of Peace

22 Sept, Melbourne: Democracy v Communism, Remembering the 1951 Referendum on the Banning of the Communist Party. Details: j.damousi@unimelb.edu.au

26-28 Sept, Brisbane: Crime, Justice and Social Democracy Conference, Queensland University of Technology (QUT) at Gardens Point (City Campus), Brisbane: Prof Pat Carlen, U. Kent, Prof Elliott Currie, U. California; Prof John Pratt (*pictured*), Victoria University of Wellington. Details: <http://www.crimejusticeconference.com/index.html>



26-28 Sept, Geelong: ANZ Society of Criminology conference, Sheraton Four Seasons Hotel. Details: <http://www.anzsoc.org/cms-conferences/conferences.php>

6-8 Oct, Brisbane: Change the World: Amnesty International Human Rights Conference, Royal on The Park Hotel, Brisbane. Details: <http://hrc.amnesty.org.au/>

27 Oct, Hobart: Continuing Legal Education Association Australasia (CLEAA) Annual Conference. Contact: www.cleaa.asn.au or cleaa@leocussen.vic.edu.au

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

15-17 Nov, Perth: 3rd Australian Public Sector Anti-Corruption Conference – conference organised by the corruption bodies of WA, Qld and NSW. Details: <http://www.iceaustralia.com/apsacc2011/index.html>

10 Dec, World: Human Rights Day.

10 Dec, Canberra: Planting of Australia's Liberty Tree, conceived and sponsored by Civil Liberties Australia, by former ACT Chief Minister, Jon Stanhope, at Australia's National Arboretum: http://www.nationalarboretum.act.gov.au/tree_stories/kurrajongs

2012:

19-22 April, Sydney: Commonwealth Lawyers Association regional law conference. Info: www.commonwealthlaw2012.org

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Responsibility for election comment in CLArion is taken by CLA's Public Officer, Bill Rowlings, of Fisher, ACT.

Please feel free to report or pass on items in CLArion, crediting CLA and/or the original source.

We welcome contributions for the next issue: please send to: [mailto:secretary\[at\]cla.asn.au](mailto:secretary[at]cla.asn.au)

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