

## **ASIO rising means liberties declining**

The number of ASIO counter-terrorism investigations and inquiries is now three times greater than it was – from just over 100 in 2004-05 to almost 300 in 2010-11.

To ASIO's established counter-espionage capabilities, a dedicated Cyber Espionage Branch was created to help Government and business respond to this increasing threat, ASIO said.

ASIO reports, including threat assessments and analytical advice to Government and business, reached almost 3,000 during 2010-11. As well, ASIO's legal team contributed to more than 50 litigation matters.

The annual report to parliament reveals ASIO's budget has grown by almost 500% since 2001. Next year, the spook agency will move into a \$500m Canberra headquarters, Dylan Welch wrote in the *SMH*.

The head of ASIO, Director-General of Security David Irvine, is claiming \$30 million cuts to its massive budget over the past two years "may affect its work". "ASIO will not be able to rely on current levels of funding to sustain its ongoing activities," Mr Irvine writes.

We can only hope, CLA says. The massive increase in domestic spying has been proved to be totally unjustified, and the spooks and police have an appalling record in relation to terrorism charges.

They have charged 38 people formally, of whom 16 have been proven in court to be completely innocent. Only 22 have been convicted despite the massive resources devoted to the task...and there are many people who believe a majority of those serving time may have their sentences reduced, or overturned, on appeal.

If ASIO's funding, numbers and activities are on the increase – as they have been for a decade – then prima facie the civil liberties of Australians are sure to be declining. <http://tiny.cc/93oow>

ASIO's unclassified report to parliament 2010-11: [www.asio.gov.au](http://www.asio.gov.au)

## **ODD SPOT: Do bankers piff you off?**

NSW Assistant Police Commissioner Mark Murdoch said the 'Occupy Sydney' protesters had been relieving themselves in Martin Place and abusing bankers on their way to work.

That is why police last month arrested 40 of the group, and charged some with breaking council regulations. CLA was unaware that abusing bankers was against council regulations: TV ads seem to indicate that it is a national sport. No bankers were arrested for relieving customers of excessive percentages of their money. <http://tiny.cc/hmqo2>

## **Minister Roxon plays fast and loose with your private health records**

Privacy and civil liberties advocates in Australia are pressing Health Minister Nicola Roxon to put in place better safeguards against incompetent loss of patient health records or data stealing...but she is resisting, even describing the advocates as "obsessive" about risk.

But every day, somewhere in the world, the advocates' concerns are proven right, and the Minister's irresponsibility towards properly protecting the personal and private health data of Australians is amply demonstrated in real-life cases.

For example, on 5 October 2011 it was revealed that private medical data for nearly 20,000 emergency room patients at California's prestigious Stanford Hospital were exposed to public view for nearly a year because a billing contractor's marketing agent sent the electronic spreadsheet to a job prospect as part of a skills test.

The hospital and contractors have confirmed the mistake.

The applicant then sought help by unwittingly posting the confidential data on a tutoring web site, so it became publicly available.

Reporting the Stanford release of private health records, the *New York Times* said that “breaches of private medical data have become distressingly commonplace, with two substantial ones disclosed in the last week alone.”

“In Orlando, officials with Florida Hospital reported that three employees had improperly combed through emergency department records of 2252 patients, apparently to forward information about accident victims to lawyers. The employees were fired, and law enforcement officials are investigating.

“Meanwhile, Science Applications International Corporation disclosed that computer backup tapes containing medical data for 4.9 million military patients had been stolen from an employee’s car in San Antonio. The data included Social Security numbers, clinical notes, laboratory test results and prescriptions. The company said the risk of harm was low because retrieving data from the tapes would require specialized knowledge, software and hardware.” <http://tiny.cc/pa2xq>

“The same types of disasters will happen in Australia if Minister Roxon continues to ignore the clear warnings she is being given,” CLA CEO Bill Rowlings said.

“It is a pity Ms Roxon is not ‘obsessive’ about looking after the private health information of the people of Australia...they are the people on whose behalf she is supposedly working.”

*This article appeared first on the CLA website: <http://www.cla.asn.au/index.php/articles/minister-roxon-plays-fast-and>*

## **Spooks counter by using their propaganda on the media**

Australia’s peak counter-terrorism body, the National Counter Terrorism Committee, has begun to ‘propagandise’ the media before any attack by any terrorist on the Australian mainland.

The *SMH* reported last month that journalists would be strongly encouraged to rely on government spokespeople instead of “ill-informed” academic or other unofficial “terrorism expert[s]”, in official NCTC guidelines. “Control the source, control the outcome” is the dictate to which the NCTC subscribes.

Also, the media are to be warned that “they are not just observers - they need to understand that the way they report the situation could affect the outcome of an incident,” says Australia’s newest ‘big brother’ group.

In particular, security officials will highlight “the dangers of live coverage of eyewitness accounts, which may create fear and alarm, of direct contact between the media and the terrorists, and of reporting police and, where relevant, Defence Forces’ movements or tactics.” <http://tiny.cc/7ftj6>

CLA believes the government should be promoting the widest possible discussion on terrorism as a means to a balanced outlook, instead of the debate being dominated by shadowy spooks, spurious security ‘experts’ and PR-spinning police.

The level of fear in Australia has already been officially ramped up to way beyond what is reasonable – see Dr Christopher Michaelsen’s analysis at: <http://www.cla.asn.au/index.php/articles/gigantic-policy-at-odds-with>



Note: Attorney-General Robert McClelland (pictured) said in a speech last month that the killing by Norwegian nutter, Anders Breivik, of 77 people by setting off a bomb in Oslo and by firing high-powered weapons on a nearby island in July was an example of a “terrorist” attack. By the AG’s revisionist definition, Tasmania’s Martin Bryant must also have been a “terrorist” when he killed 35 people at Port Arthur in 1996 – the AG could be reviving all the speculation that Bryant was “framed” if he links Breivik, and Martin, to “terrorism”.

When governments start to spin shadows, the world becomes a very dark place, CLA’s CEO Bill Rowlings said. At some stage, the public agencies become ‘terrorists’ when their major activity is constantly making people more fearful.

## **Beat corruption? Snare it in a framework, entangle it in a plan**

Eliminating federal public service corruption is hampered by the lack of whistleblower legislation, the just-resigned Commonwealth Ombudsman, Allan Asher, said last month.

"Everybody had expected that by now there would be a bill around to be talking about – there's a bit of a hole at the table," Mr Asher said.

An inquiry chaired by Labor MP Mark Dreyfus examined whistleblower protections in 2008-9 and found that Commonwealth provisions were "particularly thin and limited". It recommended new legislation to solve the problems...but three years later, no laws have emerged.

Instead, Home Affairs Minister Brendan O'Connor has announced that the government would spend \$700,000 on a "National Anti-Corruption Plan" to reduce the risk of graft and vice across the country. The government has avoided committing to an ICAC\*-style agency. <http://tiny.cc/dz3fo>

What is it with the Rudd-Gillard government, CLA says? We don't get a Human Rights Act – we get a Human Rights "Plan". We don't get whistleblower protection laws – we get a "National Anti-Corruption Plan".

Instead of action for human rights and against corruption in the public service, the government talks about a "framework" for a plan. Except for terror laws, where the government and its agencies like ASIO and the AFP continue to escalate fear, very little has been done to provide better protection for ordinary Australians and their dealings with bureaucracy.

Last month, Mr Asher launched the new guide called 'Whistling While They Work' with recommendations about managing internal reporting of wrongdoing in the public sector.

He said the guide sets out goals..."What are good practices, what are poor practices, what sort of language do you use, what about training, implementation and follow-up. Commonwealth agencies have had an obligation to have a whistleblower protection scheme in place but it's been really left up to individual agencies what they do and how they run them."

The guide's authors examined 175 sets of whistleblowing guidelines in NSW, Queensland, Western Australia and the Commonwealth. It found the federal agencies were far behind the states in protecting staff who blow the whistle on corruption or bad practice in their organisation.

"The Commonwealth public sector has not kept pace with other state jurisdictions in the integrity field," Mr Asher said.

He noted that the scheme as proposed in today's report is expected to see some 3000 public interest disclosures across the 250 Commonwealth agencies.

"Agencies should learn to love whistleblowers. They should learn to encourage internal disclosure because if they don't they won't spot the problems and these things will go outside the agency," Mr Asher said.

The government is expected to release public interest disclosure legislation shortly which will allegedly protect whistleblowers in the public sector. <http://tiny.cc/r004r>

\* ICAC: Independent Commission Against Corruption, a NSW organisation with a checkered history and success rate.

## **AG gets his own centre for running disasters**

Attorney-General Robert McClelland has opened a Crisis Coordination Centre (CCC) in Canberra, for better response to large-scale natural disasters or acts of terrorism.

The centre, which monitors risks to Australia and Australians 24 hours a day, seven days a week, can house 100 officers from federal, state and territory agencies during a crisis.

The \$14 million centre includes a large operational room, linked video conferencing and crisis coordination rooms.

Normally the CCC is staffed by about 20 people from Emergency Management Australia, reporting information to the Australian Government on all potential known hazards, and undertaking contingency planning and preparation for crisis response.

Last summer, the AG spent more than half his time running disasters, instead of operating as the First Law Officer of Australia. CLA believes Australia needs a separate Minister for Emergencies and Disaster Planning, rather than lumping the role in with that of the AG.

### **ACC figures out crime**

The Australian Crime Commission's annual report claims they disrupted 34 criminal groups and identified more than 50 previously unknown criminal targets in 2010-11.

Home Affairs Minister Brendan O'Connor, in a media release, said: "The ACC's major achievement in 2010-11 was the establishment of the National Criminal Intelligence Fusion Capability which has improved accessibility, analysis and sharing of criminal intelligence and resulted in the identification of more than 53 previously unknown criminal targets."

The Annual Report is available at the ACC website [www.crimecommission.gov.au](http://www.crimecommission.gov.au)

It will be interesting to find out how many new criminal targets the ACC identifies in the current 12-month period

### **Questions raised over DNA contamination**

DNA samples are potentially being contaminated at hospitals because of inadequate collection facilities, putting criminal prosecutions at risk, Geesche Jacobsen reported in the *SMH* last month.

A senior forensic specialist, Anne Smith, writing in the *Medical Journal of Australia*, called for urgent national guidelines for all labs and hospitals after several doubtful DNA cases.

Dr Smith is medical director of the Victorian Forensic Paediatric Medical Service. She said there is no agreement that anyone taking samples in hospitals, for example from rape victims, must wear gloves, masks or hairnets. Tamper-proof seals, cleaning standards or rules for restricted access for labs and other facilities are not universally required.

Risks of contamination and secondary transfer of genetic material were highlighted in several recent cases, she said, including that of a worker in a factory manufacturing swabs becoming the unknown "suspect" in a range of unsolved crimes overseas.

In another case, Canberra man Steven Hillier had his murder conviction overturned after six years in 2010 amid concerns about the secondary transfer of DNA. In the inquest into the death of toddler Jaidyn Leskie, it emerged his bib was contaminated with DNA from a rape victim. Scientists initially rejected the possibility of a lab error. <http://tiny.cc/rx7zy>

### **First, forced health questions, then...?**

People forced to take part in the Federal Government's compulsory Australian Health Survey have reported the experience was deeply intrusive and a stressful violation of their privacy.

A Queensland woman likened the process to having Big Brother knock on her door asking for urine, and said the line of questioning intruded into her grief over the recent death of a loved one.

And a Victorian woman told *ABC News Online Investigative Unit* that she felt strong-armed into giving private health and lifestyle details to a stranger.

Up to 50,000 randomly selected adults and children are compelled to take part in the survey, being conducted by the Australian Bureau of Statistics and the Department of Health and Ageing.

Aspects of the survey, such as blood tests and urine samples, are submitted voluntarily, but people can be fined \$110 a day – or prosecuted – for not taking part or for refusing mandatory questions.

The department is notorious for being the first to ban smokers in the open air outside its buildings. Who knows what they plan to mandate, or ban, once the survey results are in.

### **AG's lawyers don't have to charge by the minute**

The AG's Department has declined an FOI request for minutes of a closed meeting between ISPs and the entertainment industry over illegal online file sharing through avenues such as BitTorrent.

The AG's claim no-one took any minutes.

The late-September meeting was between major Australian ISPs and film, television and music industries representatives. They discussed a potential industry resolution to online copyright infringement.

The issue is topical because of the high-profile court case between iiNet and the Australian Federation Against Copyright Theft.

The nation's top telcos were invited to the meeting, *The Australian* reported, although the chief executives of Telstra and Optus met separately with the department secretary. Industry associations also attended, and content owners were represented by organisations like the Australian Federation Against Copyright Theft and the Australian Content Industry Group.

Under FOI laws, *Delimitter* asked for a copy of the minutes of the meeting. Responding to the request, the department's legal officer for FOI and privacy, Thuy Van Nguyen, declined.

"This letter is to advise you that this department does not hold documents of the type you are requesting," Van Nguyen wrote. "I am obliged, therefore, to refuse your request under section 24A of the [FOI] Act. That provision allows an agency to refuse a request if all reasonable steps have been taken to locate the documents sought and it is satisfied that the documents either do not exist or cannot be found." <http://feedproxy.google.com/~r/Delimitter/~3/jC6GJ5ySlw/>

AG: Attorney-General; FOI: Freedom of Information; ISP: Internet Service Provider

## **HIV epidemic in Aussie jails looms**

A Canberra corrections officer, former prisoners and health experts are warning of a looming HIV epidemic in Australia's prisons.

The alert comes as 40% of inmates at a correctional centre in Canberra tested positive to Hepatitis C in a voluntary testing program in August.

Canberra corrections officer Paul Cubitt says there are more dirty needles within the Canberra prison now than ever before. But the prison officers' union remains strongly against a proposed trial prison needle exchange program in the ACT's only jail.

The ACT Government is expected to make a decision about the trial by the end of the year. Sterile single-use injecting kits are freely available to drug users in the community, but not inside Australian prisons. <http://tiny.cc/zmjod>

## **Auditor-General wants to discriminate against unfranchised young drivers**

The NSW Auditor-General Peter Achterstraat wants young drivers banned for six hours on Friday and Saturday nights.

His new report makes several recommendations to the Roads and Traffic Authority, including considering banning P1-plateholders from driving between 11pm and 5am on Friday and Saturday nights and restricting them to one peer passenger at all times.

CLA believes there is something very unfair about discriminating on the basis of age when the affected party (typically 17-year-olds) can't vote. Perhaps Auditors-General should keep their noses to the accounts, and steer clear of fascist social policy. <http://tiny.cc/h49sk>

## **WA women prisoners suffer doubly, inspector says**

Female prisoners in WA are being discriminated against and could have a case against the State Government under the Equal Opportunity Act, the Inspector of Custodial Services, Neil Morgan, says in a report on Bandyup Women's Prison.

He said the Government had invested enormous sums on accommodating more male prisoners but had not done anything about the growing number of women in prison. At one stage in 2010, 90 women were sleeping on floors in Bandyup in cramped single cells.

Mr Morgan has warned the Government that if it does not ensure greater equality, it could find itself subject to a discrimination challenge under the Equal Opportunity Act.

The Minister for Corrective Services Terry Redman says he is confident the Government is not breaching equal opportunity laws in the way it treats women prisoners. "The Liberal National Government (has allocated) a record \$655 million into capital works in prisons in WA," he said. <http://tiny.cc/z6p8g>

## **Glass firm takes it on the chin as new law protects Minister**

Victoria is proposing to make it a criminal offence to "insult" Gaming Minister Michael O'Brien. Anyone found guilty of upsetting the minister and his staff will have to pay a fine of up to \$11,945. The Baillieu Government plans to change the Gaming Regulation Act with provisions which it says are "reasonably necessary to respect the rights and reputation of the minister and authorised persons". It will become an offence to "assault, obstruct, hinder, threaten, abuse, insult or intimidate" the minister or authorised persons exercising "due diligence" in monitoring gambling systems such as pokies.

The Labor Opposition gaming spokesman, Martin Pakula, is calling the minister "Windscreens O'Brien"...because he's got a glass jaw".

"Is the minister so precious that he now needs legislation to protect him from insults?" he said. "I thought I better make these comments before the Bill passes in case I breach the new rules and insult Mr O'Brien." <http://tiny.cc/3tlss>

## **Homes to become booze-free, but Aussie still Rules**

New laws will allow any house in Western Australia to be officially declared an alcohol-free zone. Amendments to the Liquor Control Act mean the Department for Child Protection can apply for the declaration. Homeowners or tenants can also ask for properties be recognised as alcohol-free. The DCP's director-general Terry Murphy says any such application would only be made in cases where families were known to the department – that's code for "Aboriginal", CLA believes – and there was an ongoing risk of harm.

Any application to declare a property alcohol-free would need to be approved by the Department of Racing, Gaming and Liquor, which can seek advice from the local government authority and the Police Commissioner.

There is of course a risk of harm to children from homes where they are encouraged to play Australian Rules football, but at this stage the WA Government is not believed to be moving to declare such homes as Aussie Rules-free zones. <http://tiny.cc/rg9t5>

## **Pay-in-haste scheme lets your data roam**

Australia's leading privacy advocate, Prof Roger Clarke, says the Commonwealth Bank's new mobile, social and near field communications payments application has the potential to eliminate much of the anonymity offered by paying for goods and services through cash.

The app, for Apple iPhones and the Android platform, will allow customers to make payments from their mobile phone to anyone with an email address, phone number or Facebook friendship, and to stores via the "near-field" communications standard (where you wave your phone at a device, and the transfer occurs).

Similar apps include ANZ Bank's goMoney system and the Pollenizer-backed Plygg, which focuses on Twitter payments.

Clarke, chair of the [Australian Privacy Foundation](#), told *Delimitter* that many people didn't necessarily want a complete payments trail collected by their financial institutions.

"Examples of such people," Clarke said, "include VIPs, celebrities, notorieties, different-thinkers, victims of domestic violence, people in sensitive occupations such as prison management and psychiatric health care, protected witnesses, and undercover law enforcement and security operatives". <http://tiny.cc/kxyh>

## SACAC looks like being an ICAC-lite

SA looks like getting an ICAC-lite after new Premier Jay Weatherill announced a backflip on the stance of former Premier Michael Rann.

The SA Government said last month that it would establish ICAC-lite at a cost of \$32m over five years, as well as an Office of Public Integrity, which will “refer appropriate allegations to an ICAC”. A commissioner will report to State Parliament and MPs will have to abide by a new code of conduct, ABC News reported.

Mr Weatherill said the ICAC would not hold public hearings but would accept public complaints.

The change of heart by the SA Government is a positive sign, CLA believes, but the “SACAC” will soon become a toothless body if budget and staffing does not increase over time beyond what has been announced. <http://tiny.cc/i8tch>

## NT’s multi-faceted Minister changes bikie laws after High Court ruling



The NT Government’s Deputy Premier, Treasurer, Minister for Justice and Attorney-General, Minister for Racing, Gaming and Licensing and Minister for Alcohol Policy, Delia Lawrie\*, is confident amendments to bikie gang legislation are constitutionally sound.

Amendments to the *2009 Serious Crime Control Act* have been introduced to the NT Parliament. The original law was modeled on NSW legislation, since challenged successfully by a member of the Hells Angels in the High Court of Australia.

Ms Lawrie says she had been waiting for the outcome of that challenge to alter the Territory laws, according to an *ABC News* report. <http://tiny.cc/tj5t6> \* Ms Lawrie holds all these positions.

## Australian briefs

**NSW gets board, Victoria legislates:** The new National Legal Services Board and National Legal Services Commissioner, part of reforms to the legal profession, will be hosted by NSW, AG McClelland announced last month. Victoria will introduce legislation to implement the reforms and it will be “mirrored” across the participating jurisdictions, NSW, Queensland and the NT. This reach will cover about 85% of Australia’s working lawyers.

**Teachers must proceed with caution:** The status of confessions to teachers is in doubt after a student was acquitted of a serious crime in NSW because he was not warned in advance and his conversation was ruled inadmissible as evidence. A District Court judge ruled it unfair to use the teenager’s confession that he had robbed a service station and stabbed the attendant, because he was not cautioned beforehand. Attorney-General Greg Smith says the Director of Public Prosecutions will seek to clarify the law. <http://tiny.cc/vi7fg>

**AG talks leadership, refuses to show it:** The government has yet another new propaganda tool, a *Resilient Communities* website, which it claims “brings together the work being done by communities to tackle extremism and radicalisation at the grassroots”. “We know that to effectively challenge violent extremism, community leadership is essential,” AG Robert McClelland said. Pity he didn’t show leadership when more than 80% of the Australian community – in a consultation process he commissioned – said they wanted an Australian bill of rights. The latest “new-speak” tool is available at [www.resilientcommunities.gov.au](http://www.resilientcommunities.gov.au)

**Neighbourhood Watch is rewound:** The federal government is opening its official “brown paper bag” – Proceeds of Crime funding – to bestow \$1.5m munificence on the near-dead Neighbourhood Watch scheme. NW had been abandoned by many police forces throughout Australia, who simply lost interest after all the promotional signs had been nailed to telegraph

poles: they refused to disclose meaningful crime statistics, and wouldn't allocate officers to attend local meetings for questioning by the community. Now there'll be a new national office, full-time staff, grants to spend money locally, and – you guessed it – a new website.

**Children's complaints rise dramatically:** Complaints to the ACT's children's rights commissioner nearly doubled in the past year...and only 47% were resolved on time. Red tape and corporate work takes up 35 per cent of the commissioner's workload, making it harder to focus on its statutory functions. Children and Young People Commissioner Alasdair Roy's annual report said the office investigated 71 complaints in 2010-11 – an increase of nearly 92%. Complaints dealt with issues such as bullying, a lack of services for children and young people, and delays in getting help. <http://tiny.cc/tjmxo>

**Games get the online treatment:** The *Classification (Publications, Films and Computer Games) Amendment (Mobile and Online Computer Games) Bill* is an interim measure to deal with games while the Australian Law Reform Commission conducts its comprehensive review of the National Classification Scheme, Home Affairs Minister Brendan O'Connor has announced. "The government is changing the treatment of computer games so that they are treated like other online content, and these changes will allow most mobile phone and online games to be supplied without classification for the next two years (while the ALRC finishes its task), while retaining safeguards to protect children from computer games that are of concern."

**Shop till your phone drops:** Shopping centres will monitor customers' mobile phones to track the number of visits, the stores entered and how long people stay. The new technology will surreptitiously sneak around privacy and telephone intercept regulations by logging the phone's ID, rather than the person who owns the phone. A Queensland shopping centre is expected this month to detect unique mobile phone radio frequency codes to pinpoint location within two metres. The company behind the new system says it is also in discussions with other major Australian sites. <http://tiny.cc/5cc4b>

**Greens' bid for rational sentencing fails:** The ACT Greens have failed in their bid to order a review of all sentences handed down in the Canberra courts. Their Sentencing Bill called for an assessment of how well sentences deter, punish and rehabilitate offenders, to guide future decisions about overhauling sentences. The proposal won support from key legal groups and Civil Liberties Australia, but the government and opposition voted the motion down. <http://tiny.cc/mqpw2> In the same session, the ACT Government extended temporary counter-terrorism laws for another five years. The laws allow police to detain a suspect for up to two weeks without explanation or charges. <http://tiny.cc/9sd8b>

**What price human rights in Australia?** From Senate Estimates hearings: *Senator George Brandis* (Lib, Qld, and Shadow Attorney-General): "So there is not a specific allocation for this Brennan education fund?" *Ms Elizabeth Branson*, Human Rights Commissioner: "Yes, there was. The HRC will receive a total of \$6.6 million over four years as a result of that: \$1.015 million for the 2010-11 financial year; \$1.433 million for the 2011-12 year; \$2.073 million for the 2012-13 year; up to \$2.09 million for the 2013-14 year." CLA says that the government allocates more than double this amount each year for CCTV cameras, lighting and the like under the "take" from proceeds of crime legislation. The human rights allocation is paltry, CLA says. For example, on the same day, Home Affairs Minister Brendan O'Connor said: "...last year we increased aviation security by \$200 million. We increased, for example, by 50% firearm and explosive detection dog teams. We've secured cockpits on flights. We've provided other resources. So we have actually now dedicated \$760m to aviation policing and security programs over the four years."

**Police target Aboriginal children:** WA Police Commissioner Karl O'Callaghan plans to target Aboriginal juveniles over summer, in what he says is an Australian first. Mr O'Callaghan says there is a hard-core group of about 380 juveniles who are repeat offenders, and most of them are Aboriginal children. If the juveniles cannot give a good account of themselves, they will be picked up, ABC News quoted him as saying last month. <http://tiny.cc/t13ll>

## **CLA's main activities for September:**

### **Lectures:**

Prof Vicky Mason, *Justice for Palestinians* ANU;

Ian McPhee, *Evolving Role & Mandate of the ANAO Since Federation*, Senate Occasional Lecture.

### **Symposium:**

Declaration Rights of Indigenous Peoples, Parliament House, address by President and CEO.

### **Parliament House hearing:**

Human Rights Subcommittee, China and Vietnam Human rights Dialogue

### **Meetings ACT Legislative Assembly:**

Vicki Dunne, Liberal – strict liability, COAG operation, release on licence, vulnerable people laws;  
Shane Rattenbury, Greens, and Speaker – review of terror laws, release on licence, sentencing, vulnerable people laws.

### **Private meetings:**

Alana Atlas, Vice Chancellor ANU Council;

Mick Gentleman – ACT elections;

David Mathews – local political issues;

Frank Cassidy – CLA radio ads, publicity.

### **Public meetings:**

Friends and Family of Drug Law Reform Remembrance gathering;

Australian Republican Movement policy launch.

### **Campaign:**

Support for Human Rights Council campaign for the Ratification of Migrant Workers Convention.

### **Other:**

CLA Spring BBQ.

## **International**

### **Nicely-drawn memo trumps US Bill of Rights**

The Obama administration's secret legal memorandum that opened the door to the killing of Anwar al-Awlaki, the American-born radical Muslim cleric hiding in Yemen, found that it would be lawful only if it were not feasible to take him alive, a report in the *New York Times* said last month.

The mid-2010 memo followed months of extensive inter-agency deliberations before one of the most significant decisions made by President Obama — to kill an American citizen without trial.

The secret document justified acting despite an executive order banning assassinations, a federal law against murder, protections in the US Bill of Rights and various strictures of the international laws of war, according to people familiar with the analysis, the *NYT* said.

The memo was narrowly drawn to the specifics of Mr Awlaki's case and did not establish a broad new legal doctrine to permit the targeted killing of any Americans believed to pose a terrorist threat, its supporters claim.

The Obama administration has refused to acknowledge or discuss its role in the drone strike that killed Mr Awlaki in September. The government has also resisted growing calls that it provide a detailed public explanation of why officials deemed it lawful to kill an American citizen, setting a precedent that scholars, rights activists and others say has raised concerns about the rule of law and civil liberties.

The document that laid out the administration's justification is a roughly 50-page memorandum by the Justice Department's Office of Legal Counsel. <http://tiny.cc/3ppzt>

## **Secret police agents authorised to lie to British courts**

London's police chiefs are facing pressure to explain the growing scandal in undercover policing of protest groups after the former director of public prosecutions said they had made a "monumental misjudgment" that could result in a host of miscarriages of justice.

A major inquiry into the use of police spies in the protest movement was thrown into chaos late last month after the *Guardian* newspaper alleged that police officers had authorised their undercover agents to give false evidence in court.

The government's official police inspectorate cancelled the planned publication of a report by Bernard Hogan-Howe, the new Metropolitan police commissioner, into the use of police spies. It had been due to be unveiled the next day.

The *Guardian* said documents showed an undercover officer had concealed his identity from a court when he was prosecuted alongside a group of protesters for occupying a government office.

Jim Boyling gave a false name and occupation when he was arrested and maintained the fiction even when giving evidence under oath. Boyling and his police handlers never revealed to the activists on trial with him that he was an undercover officer.

Boyling and the protesters, members of the Reclaim the Streets group, were represented by the same law firm, Bindmans, as they held sensitive discussions to decide how they were going to defend themselves in court. The activists allege that Boyling and his superiors broke the campaigners' fundamental right to hold legally protected consultations with their lawyers and illicitly obtained details of the private discussions.

"You don't send police officers into court to lie about who they are, about their identity, about what their role is in a series of offences," said Lord Macdonald, a former director of public prosecutions.

"You don't send them into solicitors' offices pretending to be defendants and being party to confidential legal conferences. They have crossed the line and it is a serious, serious issue." <http://tiny.cc/mm5xp>

## **USA puts extra thorns in hegemony**

The USA is re-writing legislation so that its laws become world laws.

Already, its surveillance laws allow phone tapping of international calls merely transiting the USA, and it demands data on airline passengers, which it holds for 15 years.

Now the US House of Representatives Judiciary Committee has passed a bill making it a federal crime for US residents to discuss or plan activities on foreign soil that, if carried out in the US, would violate the US Controlled Substances Act (CSA) – even if the planned activities are legal in the countries where they're carried out.

The new law allows prosecutors to bring conspiracy charges against anyone who discusses, plans or advises someone else to engage in any activity that violates the CSA, the US law that prohibits drugs like marijuana and strictly regulates prescription medication.

"Under this bill, if a young couple plans a wedding in Amsterdam, and as part of the wedding, they plan to buy the bridal party some marijuana, they would be subject to prosecution," said Bill Piper, director of national affairs for the Drug Policy Alliance, which advocates reforming US drug laws.

"The strange thing is that the purchase of and smoking the marijuana while you're there wouldn't be illegal. But this law would make planning the wedding from the US (or from anywhere else in the world, by Americans - ed) a (US) federal crime."

The law could also potentially make a US doctor working with overseas doctors or government officials on needle exchange programs subject to criminal prosecution. <http://tiny.cc/yj6g7>

## **Libel trials, online anonymity to be abolished in UK?**

Libel trials by jury should be abolished for all but exceptional cases involving public figures, a parliamentary committee has recommended for the UK.

The joint Commons and Lords committee on a draft defamation bill has proposed sweeping changes to the UK's libel laws, including new measures to curb online defamation and proposals that would make it more difficult for large corporations to sue newspapers.

MPs and peers recommended tackling the culture of anonymous online comments with a new notice and takedown procedure, proposing that unidentified commenters on blogs and social networks such as Facebook and Twitter should have allegedly defamatory material removed by internet hosts or service providers if they refuse to reveal their identity.

The report also proposes replacing the so-called "Reynolds defence" of qualified privilege for responsible journalism in the public interest with a new statutory defence. <http://tiny.cc/he4vl>

## **UK goes for opt-in system of porn access**

Subscribers to four of the UK's biggest internet service providers will have to "opt in" if they want to view sexually explicit websites.

The measures were announced as Prime Minister David Cameron hosted a meeting with the Mothers' Union, which earlier this year produced a raft of proposals to shield children from sexualised imagery.

The prime minister also announced other moves such as restrictions on aggressive advertising campaigns and certain types of images on billboards.

There will also be a website, Parentport, which parents can use to complain about television programmes, advertisements, products or services which they believe are inappropriate for children. The site is expected to be run by watchdogs including the Advertising Standards Authority, BBC Trust, British Board of Film Classification, Ofcom, Press Complaints Commission, Video Standards Council and Pan European Game Information.

The internet service providers involved are BT, Sky, TalkTalk and Virgin. Customers who do not opt in to adult content will be unable to access pornographic websites. <http://tiny.cc/fd62s>

## **Australia's UN stand wrong, Evans says**

Labor's longest-serving foreign minister, Gareth Evans, has warned that the Prime Minister, Julia Gillard, stands "on the wrong side of history" in opposing a Palestinian state joining the UN.

Mr Evans was speaking about the Palestinian bid for statehood, Daniel Flitton reported in *The Age* last month.

US diplomats were reportedly desperate to keep the bid stalled under consideration in the Security Council, saving Washington the need to wield its threatened veto.

But Mr Evans, who is president emeritus of the International Crisis Group, claimed changing direction on the Israel-Palestine conflict would hugely benefit the West in relations with the Islamic world, and said accepting a Palestinian state "once and for all" would bolster Israel's security.

"Being on the wrong side of history is never a comfortable position," Mr Evans wrote. "And that is exactly where the US, Israel and its closest friends – including Australia – will be if they resist the tide of international sentiment in favour of moving now to recognise Palestinian statehood."

Ms Gillard effectively ruled out Australian support for the Palestinians joining the UN after she told the Labor caucus the vote was not the path to peace. Foreign Minister Kevin Rudd recommended Australia abstain in the vote.

## **Brits ignore fate of asylum seekers forcibly removed**

The British Government has conceded that it is doing nothing to follow up what happens to scores of Tamils forcibly removed from the UK, despite concerns for their safety in Sri Lanka, according to a report in the *Guardian*.

A flight chartered by the UK Border Agency was due to depart late in September with up to 50 failed asylum applicants on board, 24 hours after several human rights groups warned that they could face detention without trial, torture or even death.

As lawyers for some of the individuals lodged last-minute appeals, the agency claimed that arrangements to monitor the welfare of the deportees had been sub-contracted to the International Organisation for Migration (IOM), an inter-governmental body.

When the IOM denied this, the agency conceded that the only measure being taken to ensure the safety of Tamils who are forcibly removed from the UK to Sri Lanka was to give them the telephone number and address of the British high commission in Colombo. <http://tiny.cc/bzf3g>

So far as CLA is aware, Australia adopts a similar attitude: there is no routine follow-up on those whom we forcibly remove from Australia to Sri Lanka, Afghanistan or anywhere else. Recently, CLA has had success in a campaign for follow-up on people whom Australia extradites, with annual reporting to occur in future, but the fate of removed asylum seekers apparently will continue to be ignored.

## **EDITORIAL: the NYT says...on the openness of high courts**

The Reporters Committee for Freedom of the Press proposed last week that the (US) Supreme Court adopt a new rule saying every document filed in or by the court "shall be available to the public for inspection" unless it orders that the document be sealed. That presumption of openness would be in the interest of everyone — the Supreme Court, lawyers who practice before the court, scholars who study the court and, of course, the American public.

It is sometimes necessary to restrict public access to court documents — to protect privacy, genuine secrets and people in danger, and for other reasons. But in the past 18 years, the court has gone from allowing records to be sealed in two cases per term to 24 last term out of 9,066 petitions for review. While the fraction remains tiny, the increase is disturbing.

The Reporters Committee urges the court to adopt a rule about the presumption of public access like that of the US Court of Appeals for the Seventh Circuit. Judge Frank Easterbrook of that circuit wrote, "The political branches of government claim legitimacy by election, judges by reason. Any step that withdraws an element of the judicial process from public view makes the ensuing decision look more like fiat." His argument is compelling. <http://tiny.cc/s1knu>

## **Saudi women become slightly more equal**

Saudi Arabia's women can vote and stand for office in future local elections and join the advisory Shura council as full members, King Abdullah announced last month.

The king did not address the issue of women being allowed to drive. Although there is no written law against women driving, they are not issued licences. Saudi women must also have written approval from a male guardian - a father, husband, brother or son - to leave the country, work or even undergo certain medical operations.

The very conservative country is ruled by an absolute monarchy supported by conservative Wahhabi clerics, and religious police patrol the streets to ensure public segregation between men and women. <http://tiny.cc/y8y9c>

## **Former MI5 boss attacks Iraq invasion**

Lady Eliza Manningham-Buller, the former head of Britain's MI5, last month delivered a withering attack on the invasion of Iraq, decried the term "war on terror", and suggested there should be talks with al-Qaeda.

Recording her first BBC Reith lecture on the theme, *Securing Freedom*, she made clear she believed the UK and US governments had not sufficiently understood the resentment that had been building up among Arab people, which was only compounded by the war against Iraq. She also said the 9/11 attacks were "a crime, not an act of war". "So I never felt it helpful to refer to a war on terror," she said. <http://tiny.cc/1pd5j>

### **Official blindness to new drugs compounds the problem**

New "legal highs" are being discovered at the rate of one a week in Europe, outstripping attempts to control their availability and exposing what some experts claim is the "ridiculous and irrational" government policy of prohibition.

Twenty new synthetic psychoactive substances were identified in the first four months of 2011, according to Paolo Deluca, co-principal investigator at the Psychonaut Research Project, an EU-funded organisation based at King's College London, which studies trends in drug use.

He said officials at the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), an early-warning unit, had detected the 20 new substances for sale by May this year. In 2010 the agency had noted 41 new psychoactive substances, a record number, many of which were synthetic cathinone derivatives that can imitate the effects of cocaine, ecstasy or amphetamines.

Deluca said that, given the plethora of new substances, government attempts to ban legal highs is not a feasible solution. <http://tiny.cc/m9qzv>

### **Stun guns continue to be used against children**

An inquiry is under way after Manchester police used a stun gun on a 16-year-old schoolboy.

They deployed the weapon after responding to an emergency call from the teenager's mother, who was locked out of the family home in Wythenshawe, Manchester, by the teenager following an argument.

The woman reportedly told the officers the age and name of her son. He came out of the property with his hands out, but there was a scuffle and the stun gun was used. He was then arrested on suspicion of assaulting two police officers but was later told he would face no charges.

His family, who do not wish to be named, want an apology and are considering taking legal action. <http://tiny.cc/j2vt0>

### **Targeted races pipped on the post-arrest paperwork**

British police forces with some of the worst records of targeting black people have stopped recording ethnicity of people stopped/asked to account for their movements, the *Guardian* says.

Five out of the 10 forces most likely to use stop-and-account powers disproportionately against black people – West Midlands, Avon and Somerset, Thames Valley, Sussex and Hertfordshire – don't record race any more. They have used a government change in the rules introduced in March, which was aimed at cutting bureaucracy.

In total, 21 out of 43 forces in England and Wales will stop recording details, according to responses to requests under the Freedom of Information Act. A high court challenge is being brought over the decision. <http://tiny.cc/bc2y8>

### **Senators claim justice officials are relying on secret judicial ruling**

US Senators Ron Wyden and Mark Udall are pressing senior Obama administration officials over secret interpretation of the Patriot Act, which appears to go way, way, way beyond what most in the public believe on simply reading the bill.

Apparently, US Department of Justice figures are relying on a secret court ruling – of the Foreign Intelligence Surveillance Court, whose opinions are classified – which says the government can spy on a ton of people under the Patriot Act, even though the text of the law seems to suggest otherwise. <http://tiny.cc/0vgh4>

## **Bahai serve long jail terms for teaching children**

Seven Bahai educators in Iran have each received four- or five-year prison sentences, according to reports received by the Baha'i International Community.

Branch 28 of the Revolutionary Court in Tehran sentenced Vahid Mahmoudi and Kamran Mortezaie to five years jail each, while four year sentences were given to lecturers Ramin Zibaie, Mahmoud Badavam and Farhad Sedghi, consultant Riaz Sobhani, and helper Nooshin Khadem.

The educators were detained for almost five months before trial in connection with their involvement in an informal community initiative – known as the Bahai Institute for Higher Education (BIHE) – in which Baha'i professors, debarred by the Iranian government from practicing their professions, teach young Bahai community members who are banned from university.

Two other Bahais associated with BIHE – husband and wife Kamran Rahimian and Faran Hesami, both psychology instructors – are still being held without charge. More than 100 other Bahais are currently behind bars in Iran because of their religion.

## **US Administration wants blinkers put on FOI laws**

A proposed addition to the Freedom of Information Act in the USA would allow federal agencies to tell people requesting certain law-enforcement or national security documents that records don't exist – even when they do.

Under current FOIA practice, the government may withhold information and issue what's known as a "Glomar denial" that says it can neither confirm nor deny the existence of records.

The new proposal – part of a lengthy rule revision by the Department of Justice – would direct government agencies to "respond to the request as if the excluded records did not exist."

Open-government groups object. "We don't believe the statute allows the government to lie to FOIA requesters," said Mike German, senior policy counsel for the American Civil Liberties Union. The ACLU – along with Citizens for Responsibility and Ethics in Washington and OpenTheGovernment.org – said the move would "dramatically undermine government integrity by allowing a law designed to provide public access to government to be twisted.

The Glomar denial arose in the mid-1970s when a *Los Angeles Times* reporter requested information about the CIA's Glomar Explorer, built to recover a sunken Soviet submarine and the CIA's attempt to suppress stories about it. <http://tiny.cc/pqbn3>

## **Extradition review called 'blatant whitewash'**

Controversial UK extradition legislation under which Gary McKinnon, who has Asperger's syndrome, faces being sent for trial in the USA on computer hacking charges is not "lopsided" or biased against British citizens, a judge-led review said last month.

The official review into the 2003 Extradition Act, conceived in haste in the aftermath of 9/11, has also come down against the introduction of a "forum bar" rule, which would ensure suspects were tried in the country where the bulk of their offences had been committed.

The independent review, led by Lord Justice Scott Baker, clears the controversial European arrest warrant, which enables suspects to be transferred to another EU state within 90 days of arrest.

McKinnon, 44 and from London, faces extradition to stand trial for hacking into secret military computers. McKinnon says he was looking for evidence of UFOs.

McKinnon's supporters said the Scott Baker report was a "whitewash" because it failed to conclude that the US-UK extradition treaty made it easier to send Britons to stand trial in the US than for Americans to be extradited to the UK. <http://tiny.cc/8yfcd>

**Lawsuit claims Microsoft continues tracking:** Microsoft allegedly tracks the location of its mobile customers even after users request that tracking software be turned off, according to a new lawsuit. The proposed class action in a Seattle federal court in the USA says Microsoft intentionally

designed camera software on the Windows Phone 7 operating system to ignore customer requests that they not be tracked, Dan Levine reported in the *SMH*. <http://tiny.cc/O1wk1>

**Dutch to fine for burka:** The Dutch government has banned the burka, joining France and Belgium. Women caught wearing a burka in public, on the streets or public transport and in schools or hospitals will be fined \$500. There will be exemptions for around mosques, and for foreign women in transit lounges of international airports. Cabinet ministers argue that the burka does “not fit into our open society and women must participate fully”. Anti-Islam politician Geert Wilders has campaigned for the ban for years. <http://tiny.cc/8jfvu>

**Banned faithful saved by fire:** Praying is now banned on the streets of Paris. Apparently, on two roads in the Goutte d'Or district of Paris's 19th arrondissement, more than 1000 people used to block the street every Friday. Under an agreement signed as the ban came in, believers can use the premises of a vast nearby fire station while a bigger mosque goes up. <http://tiny.cc/10sjo>

**UK laws to bring back ‘riot act’ provisions:** UK police will get a public order power to clear the streets and tell the public to leave an area during a riot or other disorder, under proposals for curfews outlined by the Home Office. A police superintendent will be able to declare a specific district a public “no go” area for a limited time – for the first time since the Riot Act was removed from the statute book for England and Wales in 1973. It would be an offence to refuse a police instruction to leave an area...but what penalty might be imposed is still an open question. <http://tiny.cc/st03u>

**Your shampoo is confiscated...but guns fly freely:** A handgun that fell out of a duffel bag at a major US airport has exposed a loophole in US flight safety precautions. For all the security improvements at airports after 9/11 — full-body scans, bans on liquids, pat downs — there is one check that airports aren't doing. Bags lodged at airline counters are scanned for possible explosives but not for loaded guns. The potential loophole showed up late last month at Los Angeles International Airport, when an undeclared, loaded, .38-calibre handgun went undetected from the airport and almost on to an Alaska Airlines flight to Portland. It was discovered by ramp workers, who said the gun fell out of a duffel bag as they were about to load it on the plane, Abby Sewell reported in the *LA Times*. <http://tiny.cc/l9mne>

## DATES

**3-4 Nov, Canberra:** Annual conference of the Independent Scholars Association of Australia. CEO Bill Rowlings will speak on the laws, surveillance and other excessive anti-terrorism measures which are the 10-year legacy...and counting...of “9/11”.

**10–11 Nov, Sydney:** International conference ‘Climate Change and Migration in the Asia-Pacific: Legal and Policy Perspectives’. NSW Parl House. Register online: <http://tiny.cc/wxv49>

**14 Nov, Sydney:** ‘The Politics of CCTV: Trajectories and Directions’, Sydney Law School, 6-8pm. Free registration: <http://sydney.edu.au/news/law/457.html?eventcategoryid=35&eventid=8363>

**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>

**17 Nov, Canberra:** *What comes after the NT Intervention expires in 2012?* CEO Of Aboriginal Medical Services Alliance NT, John Paterson, and Jon Altman from the Centre for Aboriginal Economic Policy Research at ANU. 7.15 to 9.30pm, Australian Centre for Christianity and Culture, Blackall St Barton. [anaract@yahoo.com.au](mailto:anaract@yahoo.com.au) Ph; 0429 850 423

**29 Nov-1 Dec, Sydney:** CCTV World 2011, at which CLA Media Director Timothy Vines will be a key speaker. Details: <http://www.acevents.com.au/cctv2011/index.html#about>

**9 Dec, Canberra:** Senate Occasional Lecture, organised by CLA: Former ACT Chief Minister, Jon Stanhope, on *Human Rights in Australia*. Details: [http://www.aph.gov.au/senate/pubs/occa\\_lect/index.htm](http://www.aph.gov.au/senate/pubs/occa_lect/index.htm)

**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](http://www.nationalarboretum.act.gov.au/tree_stories/kurrajongs)

**17-19 Dec, Taipei, Taiwan:** 3rd annual conference, Asian Criminological Society, at National Taipei U. <http://asia2011.ntpu.edu.tw/>

**2012:**

**TBA:** Planning is under way for a workshop on '*Critical and Historical Approaches to Rights*', to be held at UNSW in 2012 by the Gilbert and Tobin Centre of UNSW with the Philosophy Depts of UNSW and Sydney U. <http://www.gtcentre.unsw.edu.au/>

**19-22 April, Sydney:** Commonwealth Lawyers Association regional law conference. Info: [www.commonwealthlaw2012.org](http://www.commonwealthlaw2012.org)

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