

AG admits: counter-terrorism priorities unclear for 10 years

In his final days as Attorney-General, Robert McClelland gave the game away while addressing the staff of the AG's Department during the annual "thanks from the boss" function early last month.

He admitted that for 10 years since 9/11 Australia has had no clearly articulated priorities in the fight against terrorism. Here is what he said:

"The (newly established) ASIO-led Counter Terrorism Control Centre has continued in its pivotal role in managing the priorities for Australia's counter-terrorism community, establishing for the first time a clear set of counter-terrorism priorities in the effort against terrorism."

Pretty sad really!

Tens of billions of dollars spent on security measures, thousands more spooks and police, CCTV cameras breeding everywhere, our email and internet use spied on, huge air travel inconveniences, dire warnings – Be Alert – about fearsome dangers..but, for a decade, no-one in government has had "a clear set of counter-terrorism priorities".

The picture that comes to mind is of Ministers, minders, bureaucrats, spooks and police running around like chooks with their heads cut off, all in different directions.

All that time – 10 years – they were assuring us that they had everything under control. Now we know that wasn't the case, courtesy of no less an authority than Australia's Attorney-General.

Why should we believe them now?

CLA plants National Liberty Tree in National Arboretum



CLA succeeded last month in planting Australia's National Liberty Tree in Canberra. Members and guests saw the 3m specimen, specially saved for the event, planted by human rights activist Jon Stanhope and a seven-year-old girl who has lived her entire life under Human Rights Act protection. See details under [CLA's main activities for December](#), below.

Photo shows CLA President Dr Kristine Klugman, Jon Stanhope, ACT Chief Minister Katy Gallagher and young Charli (Charlotte) Withers as the tree is ceremonially planted and watered.

Stanhope calls for corporations to be responsible for deaths

Former ACT chief minister Jon Stanhope used a Human Rights Week speech organised by Civil Liberties Australia to urge that all deaths in custody be covered by corporate murder laws.

Mr Stanhope said Australia should follow the UK and introduce laws to prosecute corporate negligence leading to a death in custody.

"There have been 27 deaths in immigration detention since 2000, with five in the last year, and there is a sense of growing concern about the mental health and treatment of detainees in privatised detention centres," he said. "These deaths are currently dealt with in coroners' courts and in an ad hoc manner, state by state or territory, and mostly in a highly reactive way."

Such laws would mean authorities in charge of prisons, police lock-ups, immigration detention centres and psychiatric facilities would be liable for prosecution if their negligence results in the death of detainees.

Mr Stanhope also criticised the CPSU – the union representing prison guards – for opposing needle exchange programs for prisoners in the ACT.

He was giving the Senate Occasional Lecture at Parliament House for December 2012 – with both topic and speaker resulting from a CLA proposal to the Clerk of the Senate, Dr Rosemary Laing, to which she very positively responded.

A woman cannot say ‘no’

The High Court has ruled a woman has no right to refuse to incriminate her husband, overturning more than a century of presumed common law tradition.

Louise Stoddart was called before an Australian Crime Commission tax fraud investigation into her husband Ewan Stoddart in 2009. But she refused to answer questions about the Gold Coast accountant, claiming “spousal privilege”, a purported doctrine well known to the legal system.

The full bench of the Federal Court backed up her stand, but a majority ruling of the High Court has upheld a challenge by the ACC. The HC ruled there is no such privilege under common law.

Mrs Stoddart could be jailed if she continues to refuse to give evidence.

The ruling means the relationships in legal terms between spouses is now open for question in a wide variety of circumstances. For example, police often ignore the validating statement of a spouse when a driver is questioned and/or charged over a road offence, because of “spousal affiliation”. The High Court ruling suggests the common police practice may be invalid. <http://tiny.cc/okur9> Full High Court transcript: <http://www.austlii.edu.au/au/cases/cth/HCA/2011/47.html>

ATO’s legal bill leaps 25% – why?

In just 12 months, the Australian Tax Office’s bill for legal services has soared 25% to \$92.6m. It has leapt from about \$75m in the previous two years to \$92,584,527m in 2010-11.

Why? What policy or procedural changes has the ATO made to cause the explosion in legal spending, Civil Liberties Australia is asking.

“It is meant to be a tax office, not a law office,” CLA’s CEO, Bill Rowlings, said. “If the ATO is suddenly spending this much extra money on legal services, you can bet your last tax return that thousands upon thousands of Australians are being put through more agony under the ATO’s ‘No Surrender - It’s Not Our Mistake’ policy.

“Perhaps the ATO should be renamed: Australia’s (Litigious) Tax Office – or ALTO – pursuing people and businesses ever higher and further.”

It is long past time there was a public inquiry into how the ATO operates, particularly on the legal side, but in general, Mr Rowlings said.

For example, CLA would also like to know how often the ATO fails to abide by the model litigant principles, under which it is supposed to treat people fairly and equitably. The Attorney-General’s Department should be “policing” whether the ATO is abiding by the mandatory model litigant principles, but it doesn’t, he said.

“AG’s method of policing is for government departments and agencies to self-report their failures. That is a farce: in effect, the Attorney-General is abandoning his – or now her – responsibility. Unless there is active investigation by the Attorney-General, no-one knows how frequently government departments and agencies act like a 200kg gorilla in legal dealings with the little guy and small business.

“Imagine if the ATO allowed taxpayers to self-report when they decided that they had done the wrong thing! That is exactly the free rein that the AG’s Department is giving to the ATO...and all other government bodies. It is a total failure of responsibility to protect the Australian people from being screwed (il)legally by government,” Mr Rowlings said.

The Legal Services Expenditure Report 2010-2011*, from which the figures for the ATO are taken, is available on the AG's Department website – <http://www.ag.gov.au/> – under Publications.

NAPpy release: the human rights 'plan' when you don't have a Bill

One of the final acts of a (politically) mortally wounded Attorney-General, Robert McClelland, was to release for public consultation the exposure draft 'National Action Plan' (NAPpy) on human rights.

The NAPpy is what Australia is getting, instead of the Bill of Rights that more than 80% want.

Deadline for comments on the NAP is Wednesday, 29 February 2012, to nhrap@ag.gov.au The NAPpy is at: <http://tiny.cc/mf6pf>

The (then) AG said the government would:

1. review Australia's reservations under human rights treaties
2. try to better measure human rights, and to develop a set of rights indicators
3. maybe ratify the Optional Protocol to the Convention Against Torture
4. review federal laws so older people can go back to work
5. maybe create a new Federal Children's Commissioner
6. maybe set up a National Disability Insurance Scheme
7. consider the regime governing sterilisation of women and girls with disability
8. think about how people with disability could communicate better in an emergency
9. think about how the justice system might better address mental illness and cognitive disability
10. research rates of imprisonment, looking at vulnerable groups and alternative sentencing, and
11. write a new National Anti-Racism Partnership and Strategy (Australian Human Rights Comm).

McClelland term lost opportunity: CLA calls the shots 8 months ago

What a lost opportunity was AG McClelland's term as AG: he could have brought in an Australian Human Rights Act, but was too politically weak to get it done, despite overwhelming public support.

He also gave far too much credence to police and security operatives' opinion, and devoted increasingly more of his time to emergency management, for which he is now the separate minister (which is a good thing, CLA says).

Below is what we said about the matter eight months ago: you might well think that CLA's comments about proper ministerial emergency management, and a female AG, were what prompted the sideways arabesque of McClelland and the installation pirouette of Nicola Roxon (pictured).



(lead item, CLArion, 1 April 2011) **McClelland is the Minister for Disasters**

Attorney-General Robert McClelland had issued 71 media releases from 1 January 2011 to 28 March – 38 of them, or 53%, related to disasters.

While there has been a preponderance of regional disasters recently, the imbalance reflects the problems of combining the "disasters" portfolio with a function as important as Attorney-General.

There was a time when being Attorney-General, the First Law Officer of the land, was a prestige position where the holder of a once-influential position gave virtually his** full time effort to improving the laws of Australia, monitoring and maintaining Australians' civil liberties and human rights, and ensuring we remained the "fair go" nation.

No more. The Attorney-General's job has been turned into chief police and emergency services spokesperson and spinner, promoter and apologist for the secret agencies, and dispenser of relief monies.

The way the AG position has been devalued under the current government and incumbent will need longer-term study and evaluation by legal history and political academics.

However, under McClelland and Rudd/Gillard, it is becoming obvious that the societal forces broadly captured by the term “uniformed” (including the police, military security and the spook agencies like ASIO and ASIS) have swamped government thinking. In general terms, they have been allowed to crowd out “civilian” community advice and counsel, even more so than under the Howard government.

This lack of balance in governance by the current government will warp Australian society for a decade or more unless the Prime Minister and other senior members of the Executive realise what damage is being done, and correct the scales, particularly in the area of justice and the law.

CLA expects to be saying and writing much more in future about this dangerous trend. Your comments would be welcomed.

*** Australia has only ever had male AGs*

Thank you, Prime Minister, for listening and responding to CLA’s counsel.

Instant capture? New Minister lauds the police

Jason Clare (pictured), the new Minister for Justice and Home Affairs from last month, lauded the Australian Federal Police in his first public appearance, appearing to be an instant new captive of the “uniformed” lobby (see above).



He told a passing out parade for new recruits last month that the AFP, in the past financial year:

- achieved a 99% conviction rate for cases brought before the courts;
- seized more than \$41m in criminal assets – more than double the previous year; and
- boosted the number of drugs and chemicals seized by more than 300%.

Perhaps, when he stops to reflect on his statements, the new Minister will realise that:

- a 99% conviction rate possibly indicates that the AFP are not putting enough people before the courts; and
- a 300% rise in seizures almost certainly means that massively increased volumes of drugs and chemicals are getting in to Australia.

And, of course the \$41m is the Gillard Government’s ‘brown paper bag’, full of “funny money” to dole out to local groups and public entities it chooses (see next story, where it seems the government is starting to rely on this type of funding income...which is very dangerous). <http://tiny.cc/rpxx3>

CLA points out that, in what the APF considers its major current responsibility (anti-terrorism), it has a 58% successful conviction rate: 16 of the 38 people charged – and held in supermax prisons locked up 23 hours a day for two years before their court decisions – have been proven innocent. (Reference: AG Robert McClelland speech to the Australian Parliament on 12 September 2011)

‘Secret squirrel’ agency gets funding from ‘brown paper bag’ funds

The federal government is committing \$2.56m of confiscated criminal assets – “funny money” – to allow its corruption watchdog to investigate law enforcement agencies.

The funding, from ‘brown paper bag’ funds seized under the Proceeds of Crime Act 2002, will “strengthen detection and investigative capability (by) the Australian Commission for Law Enforcement Integrity,” according to then-Minister for Justice, Brendan O’Connor, early last month.

ACLEI and its partners will be able to use covert investigation methods more widely. “This funding addresses a critical capability gap faced by ACLEI,” the Minister’s media release of 13 Dec said.

CLA says that any “critical capability gap” should be funded from normal government funds, not from funny money, which could – and should, if government agencies are effective – dry up entirely in a relatively short time.

Electoral reform to give parties ‘administrative’ funds?

The federal Electoral Matters Committee – well, the Labor part of it, anyway – has proposed reforms to ‘improve transparency and accountability of political financing’. The proposals include:

- Reducing the disclosure threshold from the current \$11,900 to \$1000;
- Single donations of \$100,000 to be disclosed to the Australian Electoral Commission within 14 days of receipt, with the disclosure publically available;
- Treating related political parties as the same party for the purposes of the disclosure threshold to prevent ‘donation splitting’ between different branches;
- Requiring detailed disclosure of expenditure above the threshold;
- Money raised from fundraising events to be counted as donations;
- Making disclosure reporting six-monthly instead of annually, and investigating options for real-time, online disclosure;
- Banning anonymous donations above \$50, and prohibiting foreign donations;
- Introducing administrative funding to assist with the increased workload of disclosing details of donations and expenditure above the threshold;
- Strengthening penalties for more serious funding and disclosure offences and introducing administrative penalties for more straightforward offences; and
- Extending AEC’s powers re compliance review and making outcomes public.

The report, which includes dissenting reports from the Coalition and the Australian Greens, is available at: <http://www.aph.gov.au/house/committee/em/political%20funding/report.htm>

Australia gets ‘framework’ rights: more gaps than substance

Australia’s new human rights “framework” – the structure with gaps in it that we are getting instead of a bill of rights – kicks in on 4 January.

The *Human Rights (Parliamentary Scrutiny) Act 2011* starts that day. The new act will:

- require that all new bills and disallowable legislative instruments be accompanied by an assessment of compatibility with human rights, and
- establish a new Parliamentary Joint Committee on Human Rights.

The *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Act 2011* also makes the President of the Australian Human Rights Commission an ex officio member of the Administrative Review Council to ensure that a human rights perspective is integrated into its discussions.

What the bill does NOT do is create an Australian Bill of Rights.

McMillan warns public servants over FOI legal ploys

Australia’s information watchdog, Professor John McMillan, has warned public servants against hiring lawyers to try to keep documents secret.

The latest annual freedom-of-information (FOI) report shows agencies spent \$5m on FOI-related legal fees in 2010-11, representing about \$1 in every \$7 agencies spent administering the FOI Act, Markus Mannheim reported in the *Public Service Reporter*.

Prof McMillan said the expenses concerned him, particularly after the Government’s decision last week to cut departments’ operating budgets by 4 per cent a year. In some cases, agencies paid more for advice on whether to waive FOI fees than the fees were worth. <http://tiny.cc/yh72b> He also committed last month to highlighting to government and the private sector the dangers to privacy possibly caused by new biometric security measures.

WikiLeaks reveal extent of surveillance industry

Julian Assange and WikiLeaks have provided access to hundreds of files revealing a global industry enabling governments to purchase tools to spy on their citizens.

About 160 companies in 25 countries facilitate tracking and monitoring of individuals by their mobile phones, email accounts and internet browsing histories, according to *Agence France Press* and *news.com.au*

The documents on the website, <http://wikileaks.org/the-spyfiles.html>, include manuals for surveillance products sold to repressive Arab regimes which have come to light in part from offices ransacked during rebellions in countries such as Egypt and Libya earlier this year, as well as investigative work by WikiLeaks and its media and campaigning partners.

Experts who worked on the release warned that at present the industry was completely unregulated, and urged governments worldwide to introduce new laws governing the export of such technology. <http://tiny.cc/gibfz>

State taxpayers pay \$24m to fund the Commonwealth

WA taxpayers paid more than \$24 million to help fund the Commonwealth Heads of Government Meeting (CHOGM) held in Perth in October.

Premier Colin Barnett tabled the figures in parliament, revealing \$9 million to update the state reception centre at Kings Park was included in the total. Updates to Government House cost \$3 million while the Big Aussie barbecue cost \$1.6 million.

He says the costs were justified. "I have received very positive feedback from numerous sources about how the state rose to the occasion to host CHOGM 2011 and the associated royal visit," he said. <http://tiny.cc/wrbs0>

Police use pepper spray more frequently

Lawyers in Victoria say they fear recent changes to the Victoria Police manual could lead police to use capsicum spray or foam more often.

Also known as pepper spray, it is a crowd control weapon which makes the skin and eyes sting and burn. Now guidelines for police on how it should – and should not – be used have been removed from the manual. The spray was most recently used en masse on Occupy Melbourne protestors when police were called to break up a demonstration in the City Square on 21 October.

A report by Victoria's Office of Police Integrity in 2009 found Victoria police were using capsicum spray more often: between 2004 and 2008 police in Melbourne's west went from using capsicum spray 28 times a month to 134 times a month. ABC Radio – <http://tiny.cc/znmv5>

Constables' lies revealed as coroner investigates police car chase death

Two Victorian senior constables' original statements after a deadly police car chase ended in death and maiming have been proved by scientific evidence to be false.

Investigators and international experts took GPS data from the officers' vehicle to prove they were going much faster than they told several inquiries – including an internal ESD inquiry, an OPI probe and a coronial hearing, the *Melbourne Herald-Sun* reported last month.

Only after hearing Coroner's Court GPS evidence did the officers admit their statements were wrong, and that they had been speeding at almost 180km/h through suburban streets. They were also forced to admit they had not stopped the chase when ordered by radio to do so.

The driver of the chased vehicle died when he crashed into a car driven by a woman, who suffered critical injuries. The two police officers may face charges, once the coroner makes his findings.

Woman dies following police pursuit

A woman has died in Victoria's north soon after her car was chased across the NSW border by police.

Victoria Police said the woman died when a car left the road and overturned on the Murray Valley Highway in Bandiana, near Wodonga, about 12.30am. The woman died at the scene, while two others suffered serious injuries.

Police said they chased the same car on the Hume Freeway in NSW, after it was allegedly seen driving erratically in Albury. NSW police claim the pursuit was terminated shortly after, before another police vehicle spotted the car. Another chase started after the car failed to stop.

NSW and Victorian police are both involved in an investigation. <http://tiny.cc/hlnr7>

State AG calls for review of consorting



NSW Attorney-General, Greg Smith (left), has ordered a review of the consorting offence to "ensure it is still effective for police operations".

NSW Police have resurrected an 80-year-law, brought in at the time of Sydney's notorious razor gang era, to target petty crime in the suburbs, Jim O'Rourke reported in the *SMH* last month.

Drafted to attack the cocaine, prostitution, sly grog and illegal gambling operations of the inner-city arch-criminals Tilly Devine and Kate Leigh and their blade-wielding henchmen, the legislation made it illegal for a person to "consort" with a criminal. Many police are invoking the law (546A of the Crimes Act) to rid the seaside suburb of a group of about 12 alleged petty thieves and drug users. They have charged one man with consorting and 11 others have received warnings.

Associate professor at the University of NSW Law School, Alex Steel, says consorting is "old-school policing" and the law should be repealed. "The offence is so broad that it captures all sorts of innocent behaviours," he says. "You can be locked up for simply talking to somebody." <http://tiny.cc/3f8tg>

Sniffer dogs on the nose: wrong four out of five times

Police sniffer dogs are wrong 4 out of 5 times when they indicate people have drugs on them, resulting in inappropriate and humiliating public searches being undertaken on average 40 times a day in NSW.

"No test which has an 80% error rate could be considered a reasonable basis on which to conduct an intrusive public search of a citizen going about their daily business," Greens Member of the NSW Legislative Council, David Shoebridge, said last month.

"In the first nine months of 2011 a total of 11,248 people (in NSW) were wrongly identified by dogs as carrying drugs. Every one of them was then subject to a humiliating public search, some were taken aside for a full strip search, only to be found to be carrying no drugs at all.

"These thousands of false positives mean there are thousands of innocent people being ritually humiliated on our public streets and public transport network. Because of where they operate, police sniffer dogs tend to target young people and Aborigines. If this was happening in the car parks of merchant banks there would be outrage," he said.

The dogs' abilities appear to be getting worse: in 15,779 searches conducted after police-dog identification in NSW in 2010, no drugs were found in 11,694 cases. Drugs were found in 4085 cases, resulting in a false positive rate of 74%. <http://tiny.cc/bwgud>

Supercop commission is acting illegally, govt inquiry finds

The NSW Crime Commission has been operating without adequate oversight and possibly in breach of the law for more than two decades, a government-backed inquiry has found.

The Special Commission found that possibly hundreds of secret financial deals it made with Sydney's crime figures may have been unlawful.

Retired Supreme Court justice David Patten's final report has called for sweeping reform to the agency, including governance structure, legislation, management of informants, complaint handling, auditing and oversight.

The changes include:

- creating an independent inspector and joint parliamentary committee to oversee the agency;

- no settling or "compromise" of asset confiscation proceedings without approval of the Supreme Court; and
- the commissioner to be a former judge, with a term limited to 10 years.

Mr Patten's major cause for concern was around the secret deals the agency has made with criminals, under which it regularly seized millions of dollars through proceeds of crime litigation. At the same time, it kept 15% of the money for its own legal/administrative costs. <http://tiny.cc/o21eb>

Drinker ban 'victory' is claimed

NT Police Commissioner John McRoberts said last month there had been a 16% reduction in the number of reported assaults in Alice Springs since the banned drinkers register started.

Mr McRoberts said there were more than 1,900 people on the register across the Territory. He says there has also been a significant drop in property offences and anti-social behaviour, proving the policy was working in Central Australia.

However, CLA understands there was a major spike in offences about six months ago – we believe it is too early to claim "victory" for a policy that makes some Territorians second-class citizens, with fewer rights than other citizens. The problem is that the register is de facto discrimination against Aborigines. <http://tiny.cc/oh5f0>

Innes calls for major review of imprisoning 'forgotten people'

"After more than 10 years in prison without a conviction, a 29-year-old Aboriginal man with an intellectual disability will finally be released," Australia's Disability Discrimination Commissioner, Graeme Innes, wrote in the *SMH* last month.

"Marlon Noble was deemed unfit to stand trial for alleged sexual assault in 2001 and, under WA's laws on the criminal mentally impaired, was imprisoned following an indefinite custody order. Although never convicted, Noble has spent most of his adult life in prison, including a period in maximum security after he pleaded guilty wrongly to an aggravated drug offence – the "drug" in question was later confirmed to be a Sudafed by an independent inquiry.

"The reasons provided for Noble's imprisonment? The community needed to be protected and there was nowhere else for him to go. He would have been released from prison years ago if he had been tried and found guilty of the sexual assault offences. He was never tried and therefore never found guilty, and yet he still remained in prison.

"What is really staggering though is that our prison numbers are growing at extremely rapid rates. (B)etween 1998 and 2008, prisoner numbers in Australia increased by 39% – and that is just in the adult population. It is probably no surprise that increases in indigenous prisoners and prisoners with a mental disability were the most notable.

"However, if we continue using prisons as back-door mental institutions, then we will have to be prepared to bear the substantial costs," Innes said. In 2007-2008 alone, Australia's expenditure on prisons exceeded \$2 billion, with average taxpayer costs per prisoner being \$269 a day (*now about \$300 a day – Ed*). Surely we could be buying some community support with this money.

"As for social costs, well, let me name a few - broken families, social exclusion and unemployment. And for those who didn't enter the criminal justice system with a mental health disorder, chances are they will have one when they leave.

"Perhaps it is finally time for us to reflect on what we are really doing to protect the rights of people with a disability," Innes said. <http://tiny.cc/os1cr>

Australian briefs

Chance to teach government about corruption: Here's your chance – make a submission to help develop the the National Anti-Corruption Plan. Public submissions can be submitted to anti-corruptionsection@ag.gov.au or by mail until 30 March 2012. Further information regarding the consultation process can be found at www.ag.gov.au/anticorruptionplan

AFP nab 14 traffickers: Since 2007, the Australian Federal Police have undertaken over 300 investigations into people trafficking, resulting in the successful prosecution and conviction of 14 people traffickers. Australia will submit a report on trafficking to the international Human Rights Council in June 2012.

InfoComm to get extended powers: Legislation in 2012 will give new powers and functions to the Information Commissioner, the Minister for Justice, Brendan O'Connor, announced last month. The commissioner will be able to approve external dispute resolution services, and to implement the proposed new credit reporting code of conduct. The minister was speaking at a privacy conference in Melbourne early in December.

NSW inquires into election: The NSW Parliament's Joint Standing Committee on Electoral Matters has a new brief, to inquire into how the 2011 NSW election was run. It will look at how well the election met the requirements under various election acts. The final report is due on 21 June 2012. <http://tiny.cc/ek4fo>

Statehood bid postponed: The NT won't make any more moves to become Australia's seventh state until the next parliament, late this year. The government put forward a bill for a delegate election in March, at the same time as the local government poll. But non-government members wanted to wait until after the NT election in August. <http://tiny.cc/y8k0w>

CLA's main activities for December:

Major activity: Planting the National Liberty Tree at the National Arboretum, by Jon Stanhope and seven-year-old Charlotte Withers. See CLA web site for report/video: <http://www.cla.asn.au/>

Chief Minister of the ACT, Katy Gallagher, introduced the former Chief Minister Jon Stanhope and outlined his role in promoting civil liberties and human rights as past president of the Council for Civil Liberties ACT, founder of Racial Respect, work in many aspects of legislative reform for women, gays and lesbians, indigenous peoples, young people, prisoners and the disabled.

Most significantly for this occasion, Mr Stanhope was the man responsible for the first Human Rights Act in Australia, as well as being the driving force behind establishing the National Arboretum in Canberra. Mr Stanhope acknowledged the role of Civil Liberties Australia in work to defend people's rights, and in initiating the National Liberty Tree.

Charlotte (Charli) Withers, who co-planted the tree with Mr Stanhope, has lived all her life protected by a human rights act: she was born the day the act became law in the ACT, 1 July 2004. A wide representation of CLA members who live in Canberra were able to attend the event. They and other guests were given specially-printed CLA memento cards with two seeds of a Kurrajong tree (*brachychiton populneus*) to plant themselves.

Any CLA member who was unable to attend is welcome to email for a special commemorative seed card to be posted to them: secretary@cla.asn.au

Picture shows some of CLA's older members and helpers who enjoyed a front-row seat at the tree planting.



Networking

ANU alumni function

Australian Republican Movement national meeting

Meetings with members

Rosemary Jennings re CLArion, Townsville initiative
Humphrey McQueen re Anzac takeover by OI-kers
Benjamin Smith re Crimes Legislation Amendment submission
Keith McEwan and Dawn Nusa re patients' rights in hospitals

Skype meetings

Rosita Luk, Anthony Stavrinou re ATO bullying approach costing jobs

Public lectures

Jon Stanhope, Senate Occasional lecture: *Who's Afraid of Human Rights?* To listen to the lecture, or for a transcript: http://www.aph.gov.au/senate/pubs/occa_lect/transcripts/index.htm Mr Stanhope made a special plea for more citizens to get involved in debating important issues: join CLA, he said or organisations like Friends and Families of Drug Law Reform for drug issues.
Human Rights Day Forum, ACT Legislative Assembly: reading of debate on introduction of ACT anti-discrimination laws: chair Dr Helen Watchirs, Rosemary Follett, Bill Stefaniak, Jon Stanhope, Simon Corbell, Michael Moore, Bernard Collaery.
Speaker Shane Rattenbury's Christmas function, ACT Legislative Assembly.

Correspondence

Letters to three main ACT parties, urging assurance NOT to run a law and order campaign.

New requests for submissions:

Australia:

- **Crimes Legislation Amendment (Powers and Offences) Bill 2011** (House of Reps Standing Cttee on Social Policy and Legal Affairs) www.aph.gov.au/spla – closes 9 Jan 2012. Benjamin Smith, CLA university coordinator, is managing this research, analysis and critical comment process.
- **Inquiry into the Electoral and Referendum Amendment (Maintaining Address) Bill:** JSC Electoral Matters, concerning updating elector details on roll <http://www.aph.gov.au/em> - 27 Jan 2012
- **Crimes Amendment (Fairness for Minors) Bill 2011** (Senate Legal & Constitutional Affairs Legn Cttee) http://www.aph.gov.au/Senate/committee/legcon_ctte/fairness_for_minors/index.htm 31 Jan 2012
- **Personally Controlled Electronic Health Records Bill 2011** (Senate Community Affairs Legn Cttee) http://www.aph.gov.au/Senate/committee/clac_ctte/pers_cont_elect_health_rec_11/index.htm – 12 Feb 2012
- **National Action Plan for human rights:** www.ag.gov.au/nhrap closes 29 Feb 2012 to nhrap@ag.gov.au

ACT:

Crimes Legislation Amendment Bill 2011 AG Simon Corbell wants judges to give longer sentences if the victim has "special occupational vulnerability as a provider of an important public service". In his presentation speech, he gives the example of a police officer, parking inspector, nurse, member of the emergency services or bus/taxi driver...but the Corbell Clause could also apply to prostitutes, priests and politicians! – 26 Jan 2012

Some 2012 plans

CLA's plans for specific activities in 2012 include:

- increased marketing, awareness-raising and speaking out about civil liberties;
- a focus on governance issues which adversely affect people, like tax, licensing and mandatory reporting, department or agency failure to meet legislated or regulated standards, and – particularly – effectiveness of outcomes by government entities;
- arresting the declining standards of “spin” instead of fact around bills/explanatory memoranda and similar processes;
- ensuring government bodies, including police and crime agencies, prove to parliament and committees why they require legislative change instead of merely wanting it for their own convenience;
- more emphasis on rights at state and local government level; and
- help in the Pacific (and Asia-Pacific where appropriate) with liberties, rights and freedoms.

International

Privacy breaches of private health records surge

As patient records have been digitized in the USA, health data breaches have surged.

The number of reported breaches was up 32% in 2011 from the previous year, according to the Ponemon Institute, a security research group. Breaches cost the industry an estimated \$6.5 billion in 2010. In almost half the cases, a lost or stolen phone or personal computer was responsible.

US health organizations are required by federal law to report data breaches that affect more than 500 people to the US Department of Health and Human Services. The department's Office of Civil Rights publishes the equivalent of a data breach “Wall of Shame” on its web site – which currently includes 380 breaches affecting more than 18 million people.

In October, a desktop computer containing unencrypted records on more than four million patients was stolen from Sutter Health, a non-profit health system based in Sacramento. A rock was thrown through a window to gain access to the computer. The theft is now the subject of two class-action suits, each of which seeks \$1,000 for each patient record breached. <http://tiny.cc/hfa7q>

NOTE: Australia is about to go down the same path as the USA. CLA says we need the same type of public reporting and corporate responsibility regime here, so that Australians are compensated if their private health records are breached.

Patients to get full rights to their health records?

National Health Service patients in the UK will be allowed to see and edit their medical records under proposals in a government-commissioned report.

An expert advisory group, headed by Professor Steve Field, is outlining the plan.

Proposed changes would let patients view their medical history, study diagnostic test results and see all the drugs they have been prescribed. They could also check on their next appointment and order a repeat prescription.

The NHS Future Forum will outline the significant extension of patients' rights in a report on how greater availability of information in the health service can improve treatment and make users of NHS services feel more involved and empowered. <http://tiny.cc/174og>

Mandatory sentences ‘unjust, outdated’, legal group finds

Mandatory life sentences for murder in England and Wales are both unjust and outdated, legal experts have said.

The Homicide Review Advisory Group, which includes judges, academics and former QCs, said neither mandatory sentences nor the system for setting minimum terms allow for prison terms to

match individual crimes. A 'mercy' killing attracts the same mandatory life penalty as serial killings, the group said.

It called for [sentencing](#) for murder to be discretionary.

The group's report added that the indefinite and misleading nature of life sentences – which may or may not involve a life spent behind bars – was unjust and incomprehensible. The time has come, it said, for a move to fixed sentences for murder so that the exact circumstances of offences can be properly reflected by the courts.

The mandatory life sentence replaced the death penalty in the UK in 1965. <http://tiny.cc/6v0xb>

'Financial house arrest'...without being tried

The UK's Independent Reviewer of Terrorism Legislation, David Anderson, has described asset freezing laws as "intrusive" and "humiliating".

"The Terrorist Asset-Freezing Act 2010 is an improvement on its predecessors. It reduces the chances that the wrong people will be caught. But it also enables the Government, without putting them on trial, to keep a few British citizens and their families in what amounts to financial house arrest – an intrusive and humiliating experience," he said.

The Anderson TAFE report says there are 34 people and eight groups designated by the UK Treasury under the 12-month old act at mid-December. The assets frozen totalled a mere \$156,000.



Clinton wants internet left open

US Secretary of State Hillary Clinton and other international leaders last month urged countries and private businesses to fight increasing efforts to restrict access to the Internet by repressive governments and even some democratic ones.

She was speaking at a two-day conference on digital freedom in The Hague sponsored by Google and the Dutch government.

Mrs. Clinton warned that restrictions on the Internet threatened not only basic freedoms and human rights, but also international commerce and the free flow of information making it possible.

"When ideas are blocked, information deleted, conversations stifled and people constrained in their choices, the Internet is diminished for all of us," Mrs Clinton said. "There isn't an economic Internet and a social Internet and a political Internet. There's just the Internet."

Mrs Clinton and others cited examples in which autocratic countries — often with the assistance of international technology corporations — cracked down on access to the Internet or the use of it, including Syria, Iran, China and Russia. But increasingly some democratic countries have tried to restrict information, a development that underscores the complexity of controlling an essential part of modern life, she said. <http://tiny.cc/k5cu1>

Hover bover: drones coming to a skyhook new you

The American Civil Liberties Union wants new rules and limits to protect privacy over domestic use of drones by police and other law enforcement agencies.

The ACLU says drones should not be deployed indiscriminately unless there are grounds to believe the unmanned aerial devices would collect evidence about a specific crime. The report calls for rules to effectively use the technology "without bringing us a large step closer to a 'surveillance society' in which our every move is monitored, tracked, recorded and scrutinized by the authorities"

"The prospect of cheap, flying video surveillance cameras will likely open the floodgates," said Jay Stanley, report co-author and senior policy analyst with the ACLU. Something similar is likely to happen in Australia: we also need new rules for the new technology. <http://tiny.cc/tsgxn>

International briefs

Aussie in strife in Saudi: An Australian man has been sentenced to 500 lashes and a year in a Saudi Arabian jail after being convicted of blasphemy, according to officials. The 45-year-old man, identified by family members as Mansor Almaribe of Victoria, was detained in the holy city of Medina in November 2011 while making the Muslim pilgrimage of Hajj. Family members said that Saudi officials accused him of insulting the companions of the prophet Muhammad, a violation of blasphemy laws. <http://tiny.cc/yc76v>

Sexting prevalence less in school-aged, study shows: One in 10 American children aged 10 to 17 has used a mobile phone to send or receive sexually suggestive images, but only 1 in 100 has sent images graphic enough to violate US child pornography laws, a new study has found. The study, published in the US medical journal *Pediatrics*, conducted detailed telephone interviews with 1560 children. An earlier study had estimated that as many as one in five teenagers engaged in sexting, but it included 18- and 19-year-olds, most likely increasing the overall prevalence. Despite sexting's reputation as a teenage pastime, it appears to be more common among young adults than children. <http://tiny.cc/ruu5n>

AFP funds Chinese public security officials: The Australian Federal Police established the first western foreign law enforcement presence in China in 1999 and now has posts in Beijing and Guangzhou. The AFP has established a scholarship to assist Chinese law enforcement agencies develop leaders. Three officers from China's Ministry of Public Security are currently studying for their Masters of Transnational Crime Prevention at U Wollongong – from a Justice Minister O'Connor media release.

Sri Lankan report ignores govt abuses: The report of the Sri Lankan government's Lessons Learnt and Reconciliation Commission (LLRC) disregards the worst abuses by government forces, rehashes longstanding recommendations, and fails to advance accountability for victims of Sri Lanka's civil armed conflict, Human Rights Watch said last month. The serious shortcomings of the 388-page report, which was posted on a government website in mid-December 2011, highlight the need for an international investigative mechanism into the conflict as recommended by the UN Secretary-General's Panel of Experts in April, the group said.

Indonesian police 'use choppers to kill Papuans': At least 17 people reportedly died last month after police using helicopters fired on houses in the Indonesian province of West Papua. Many of the dead are said to be members of the Free Papua Movement (OPM). Radio Australia's [Pacific Beat](#) reports more than 20,000 people are said to now be homeless after security forces torched the dwellings in the Paniai regency. Ferry Marisan said: "According to volunteer reports from Paniai, about 10 people there are members of the OPM and the rest members of the local community, not members of the OPM." <http://tiny.cc/22ps6>

EU tightens noose on US judicial killings: The European Union strengthened export controls last month on drugs used to administer the death penalty. EU companies producing drugs like sodium thiopental, a sedative legally required for lethal injections in the US, must now assure officials that their products will not be used for executions before they can export them. The move further tightened a drug supply shortage that has slowed executions in the US. The death penalty is banned in the European Union, and since 2008 the 27-member bloc has called for its abolition worldwide. <http://tiny.cc/4pd3c>

Business rights will be scrutinised: The recently-established United Nations Expert Working Group on Business and Human Rights is due to announce its work plan and start operating this month. The IHRB works to raise corporate standards and strengthen public policy around business-related human rights issues. Its top 10 list can be accessed at: http://www.ihrb.org/top10/business_human_rights_issues/2012.html#

DATES

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/>

2-4 Feb, Melbourne: *After Homosexual: The Legacies of Gay Liberation*. On the 40th anniversary of the publication of *Homosexual* and to mark Professor Dennis Altman's retirement from Latrobe U., a conference on the impact of the book and the legacy of gay liberation. Details: <http://www.latrobe.edu.au/humanities/about/events/after-homosexual>

12 Feb, Sydney: American playwright/women's rights activist, Eve Ensler, gives Australian Human Rights Centre annual public lecture, Sydney Theatre Company. Info: www.justiceforall.unsw.edu.au

14-15 Feb, Sydney: Justice for all? The International Criminal Court – Ten Years in Review <http://www.justiceforall.unsw.edu.au/>

17 Feb, Sydney: Gilbert and Tobin annual constitution law conference. Details: www.gtcentre.unsw.edu.au Speakers include Senator Marise Payne, Shadow Minister for COAG on 'The Role of the Commonwealth Parliament in the Age of COAG'.

17-18 Feb, Adelaide: 'Is social democracy exhausted?: Pathways, reflections, dilemmas' conference at Flinders U., Adelaide: <http://www.flinders.edu.au/sabs/saps/social-democracy/home.cfm>

20-21 Feb, Melbourne: International Conference on Human Rights in Closed Environments at Monash University Law Chambers. Details: info@conorg.com.au or +61 3 93492220 or at <http://www.law.monash.edu.au/castancentre/events/2012/closed-environments.html>

15-16 March, Sydney: Critical Infrastructure Resilience conference – another government fear-raising activity. Details: cirevent@ag.gov.au or phone 02 6141 2944

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

CLArion is the monthly e-newsletter of Civil Liberties Australia A04043, Box 7438 FISHER ACT 2611 Australia. Responsibility for election comment in *CLArion* is taken by CLA's Public Officer, Bill Rowlings, of Fisher, ACT. Please feel free to report or pass on items in *CLArion*, crediting CLA and/or the original source. We welcome contributions for the next issue: please send to: [mailto:secretary\[at\]cla.asn.au](mailto:secretary[at]cla.asn.au)

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