

## **CLA asks Human Rights Committee for definitive outline of rights**

The President of CLA, Dr Kristine Klugman, has asked the chair of parliament's new Human Rights Committee to determine what the obligations under ratified International human rights instruments mean for Australia in practice.

The instruments are the Conventions relating to:

- Elimination of All Forms of Racial Discrimination,
- Civil and Political Rights,
- Economic, Social and Cultural Rights,
- Elimination of all Forms of Discrimination Against Women,
- Against Torture,
- Rights of the Child, and
- Protection of the Rights of Migrant Workers.

"Your Committee could produce a draft statement, outlining the existing rights under existing treaties that Australians can expect, demand, and must honour in dealing with each other," Dr Klugman said.

"A further round of submissions/consultation on the draft would produce a definitive guide to the rights of Australians under agreed international and national law. While not as good as a bill of rights, such an instrument would provide the missing benchmark against which all of us – parliament, judiciary, the executive and the Australian people – could measure existing and proposed laws relating to security, privacy and other areas where there is a possibility of infringement of individual rights and civil liberties.

"With the 'Jenkins Principles' agreed, the follow-up stage might be to put in place practical measures for Australia to take to ensure we live up to them. For example, what targets should Australia set to ensure compliance under the Convention Against Torture?"

"The Universal Periodic Review system of the international Human Rights Council conducts enquiries and writes reports. CLA is proposing a domestic evaluation system which involves states and territories and is instituted in an ongoing basis to protect the human rights of our citizens...and is based on the to-be-developed 'Jenkins Principles' which your Committee is perfectly placed to determine."

CLA is likely to meet with Mr Jenkins before receiving his formal response to the letter.

## **Quickstep to a police state, four at a time**

The Gillard Government has Australian civil society by the throat, and is proposing tightening its grip.

Since 9/11, more than 70 pieces of anti-terror laws, financial restrictions and expanded police and spook agency power have passed through the Australian Parliament. Each one of them nibbles away at the traditional rule of law in Australia, reduces your and my rights in one way or another, and intrudes on our privacy.

Now the government has three more hands at our throat, in addition to those it inherited in 2007 from former PM John Howard:

- a National Security Review, by the Parliamentary Joint Committee (PJC) on Intelligence and Security,
- a review of intelligence swapping and data retention by the PJC on Law Enforcement – yes, that's a separate committee of parliament – and
- a COAG Review of Counter-terrorism legislation.

All of these bodies are likely to report in late 2012, and none of them – not one – is therefore likely to take into account the first full-year review of the formal security legislation monitor that the Gillard Government has created but seemingly forgotten.



Bret Walker SC (left), a leading barrister from the Sydney bar, is the Independent National Security Legislation Monitor appointed in March 2012 for three years, part time.

He tabled an interim report (for the period from March through June 2012) on 16 December 2011, and his first full-year report is expected in December 2012. He is calling for submissions as a prelude to it, making the fourth – that's 4th – current inquiry into matters nefarious. His inquiry is into powers around questioning and detention warrants under ASIO legislation.

CLA has been asked what we think of these inquiries. Well, CLA thinks there should be one inquiry, not four.

All the other inquiries should await the first full-year report of Monitor Walker. The legislation passed in panic and disarray in the aftermath of 9/11 – from 2002 to 2011 – should be sweated down from its panicked drafting and consolidated into the normal criminal law of Australia.

There should be a new set of laws crafted by taking the exact opposite approach to that adopted after 9/11: that is, without panic and not in haste, and from the perspective of the people, not police, security and spook agencies.

The police and spook agencies should return to smaller cages on a tighter leash with fewer numbers, less money and more management of their effectiveness per dollar expended. When was the last time you saw any of these agencies asked to demonstrate or prove its worth?

Learning from our 2012 gold medal olympic sailors, we should take exactly the opposite tack. Australia, with an urgency reminiscent of immediately post-9/11, should define what rights ordinary Australians have to living our customary lives under the traditional rule of law, with privacy respected and protected, whistleblowers encouraged and financially rewarded when proven correct, and government so open and transparent that FOI is no longer needed.

Of course, you could possibly achieve a lot of these aims if you created an Aussie bill of rights.

By the way, as a little bit of icing on the cake, national politics should be re-newed and re-visioned.

What does CLA think will happen to these inquiries? They'll all produce reports which will be largely ignored by the government in the lead-up to the 2013 election. The police and spook agencies will keep on the boil those bits which say there should be tougher laws, less privacy, police should get more coercive powers, and spooks should operate with fewer restrictions.

At the present state of the opinion polls, these new laws will be rolled out by a Coalition Government in 2014, and Australia will advance further down the path of a police state.

That's precisely what has happened, year after year, since September 2001. Why would a current Gillard or future Coalition Government change their people-dismissive patterns of behaviour in the future?

– Bill Rowlings, CEO, Civil Liberties Australia

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=le\\_ctte/inquiries.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=le_ctte/inquiries.htm)

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=pjcis/nsl2012/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=pjcis/nsl2012/index.htm)

<http://www.coagctreview.gov.au/Pages/default.aspx>

<http://www.dpmc.gov.au/inslm/index.cfm>

## **Agreement wants to turn ISPs into copyright cops**

The draft chapter of the Trans-Pacific Partnership Agreement on Intellectual Property – as of its current leaked version, article 16 – insists that signatories provide legal incentives for Internet Service Providers (ISPs) to privately enforce copyright protection rules, the Electronic Frontier Foundation reports.

“The TPP wants service providers to undertake the financial and administrative burdens of becoming copyright cops, serving a copyright maximalist agenda while disregarding the consequences for Internet freedom and innovation.

“TPP article 16.3 mandates a system of ISP liability that goes beyond the US Digital Millennium Copyright Act (DMCA) standards and US case law. In sum, the TPP pushes a framework beyond ACTA[1] and possibly the spirit of the DMCA, since it opens the doors for:

- Three-strikes policies and laws that require Internet intermediaries to terminate their users’ Internet access on repeat allegations of copyright infringement
- Requirements for Internet intermediaries to filter all Internet communications for potentially copyright-infringing material
- ISP obligations to block access to websites that allegedly infringe or facilitate copyright infringement
- Efforts to force intermediaries to disclose the identities of their customers to IP rights holders on an allegation of copyright infringement.”

<http://tiny.cc/27hsjw>

## Federal government continues to welch on legal aid

About 1.7 million Australians can expect to encounter a legal problem each year, but a third of them will get no legal advice.

The figures were revealed by The Australia Institute in their ‘Justice for All’ report, which found 490,000 would not receive legal advice due to financial reasons or lack of knowledge.

“In practice, the tight rationing of legal aid means that only the poorest and the richest Australians can ever hope to receive legal representation,” the report said. “For those who inhabit the vast middle ground between very poor and very wealthy, the legal system can remain forever inaccessible.”

The Law Council of Australia's president Catherine Gale says it has been lobbying the Federal Government to restore its per capita funding to at least 50% share with state governments.

Before 1997, it was 55% federal to 45% state. In 2009-10 that had fallen to 32% federal with the states and territories picking up the remainder. <http://tiny.cc/dd4piw>

On 29 August, AG Nicola Roxon announced an extra \$1.6 million for 21 community legal centres (CLCs), to be shared with legal aid commissions (LACs) in Tasmania, the NT and the ACT.

The LACs money is to help those commissions meet the costs of providing assistance under the National Partnership Agreement on Legal Assistance Services.

While every bit helps, \$1.6m in total for all these groups is almost an insult to hard-working people from the CLCs and LACs.

## ODD SPOT:

### Security boosters compete to ramp up fear

Where will all this ramping up of fear lead, CLA asks? There’s a new short story competition based on the scariest scenario possible.

We quote: “To aid the national security community in imagining contemporary threats, the Australian Security Research Centre (ASRC) is organising *Australia’s Security Nightmares: The National Security Short Story Competition*. The competition aims to produce a set of short stories that will contribute to a better conception of possible future threats...”

In a bid to help the organisers – and to win some of their cash – CLA has written this scenario: go to the [CLA Home page](#) to read the plot...



## Urine drug tests at work ruled unfair

Fair Work Australia has upheld a decision prohibiting a NSW energy company from conducting urine tests on its employees.

A full bench said that it was "unjust and unreasonable" to test for drug use that may take place outside work hours.

FWA ruled in March that Endeavour Energy should not conduct urine tests as the tests could show positive from drugs taken days earlier or at the weekend, when the employee was not working.

FWA's senior deputy president, Jonathan Hamberger, said it would be more appropriate for the company to use oral swabs to test for drugs: these detect substances taken in the preceding hours and were a better measure of impairment at work.

Endeavour appealed, arguing that it had a legal and social responsibility to determine whether staff were chronic drug users.

Last month the full bench of FWA upheld the earlier ruling. "We have considered all that has been put in the appeal and we are not persuaded that Endeavour Energy has been able to establish any such error in relation to the senior deputy president's decision," they said. <http://tinyurl.com/8hylvx9>

## Committee wants big boost to human rights, internally and externally

Australia should train its diplomats and legal staff in human rights, as well as strive to meet clearly defined national principles, aims and benchmarks in our international relationships, a parliamentary committee says.

Our foreign affairs and legal bureaucrats must also open up to the community about what they're doing on human rights, a new report by the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) says.

The *Australia's Human Rights Dialogues with China and Vietnam* report comes out of the Human Rights sub-committee (HRSC, or Little Rights committee) of the JSCFADT. It used to be the closest our parliament had to a Human Rights watchdog: now there is also the Parliamentary Joint Committee on Human Rights (PJCHR, or Big Rights committee), set up in March 2012, under former Speaker Harry Jenkins.



*Photo shows CLA President Dr Kristine Klugman and MHR and "little" Human Rights Committee chair Laurie Ferguson.*

The Little Rights committee, led by MHR Laurie Ferguson\*, wants the Department of Foreign Affairs and Trade (DFAT) and the Attorney General's Department (AGD) to give human rights education and training "to all relevant staff". DFAT should also include human rights monitoring in the duty statements of its diplomatic staff.

The sub-committee wants the government to set up a biennial meeting, alternately in Melbourne, Sydney, and Brisbane, with non-government organisations, civil society, the diaspora communities in Australia, and concerned individuals to discuss Australia's human rights dialogues.

DFAT should convene a panel of experts to produce a report that outlines a clear set of principles, aims and benchmarks for each of Australia's human rights dialogues (that is, separate objectives for each country we hold formal dialogues with). The panel should review the overall effectiveness of the dialogue process every three years.

Australia should also help interested Asia-Pacific countries set up and develop a National Human Rights Institution within their country.

The report also recommends that the Australian Government and DFAT should:

- enhance reporting of Australia's human rights dialogues in the DFAT annual report;

- ensure that parliamentary participation in the dialogue process is ongoing, properly funded and facilitated;
- convene a panel of experts to produce a report that outlines a clear set of principles, aims and benchmarks for Australia's human rights dialogues; and
- create a human rights web portal as a central access point for all of Australia's human rights matters.

The report also recommends that the Australian Government re-establishes its human rights dialogue with Iran and asks the Sri Lankan government to open a formal human rights dialogue.

"Evidence received for this inquiry has shown that the Australian Community is actively engaged in human rights advocacy in Australia and internationally," Human Rights Sub-Committee Chair Laurie Ferguson said. "More needs to be done to involve the community. Establishing a human rights web portal will enable Government Departments and agencies to improve their reporting of human rights as well as increase the transparency of Australia's efforts to promote and protect human rights."

The report is available online at: <http://www.aph.gov.au/jfact>

\* Disclosure: Laurie Ferguson is a member of CLA.

## **New ginger group aims for more police accountability**

A new ginger group, the National Police Accountability Network, has been formed by community legal services throughout Australia: CLA is a member.

A telephone hook-up organised by solicitor David Porter of Redfern Legal Service last month involved representatives of legal aid centres in NSW, Victoria, NT and Canberra.

The main issues covered were:

- Participants gave an update on activities in their centre, including handling of complaints against police, specific cases under way, meetings with police and ombudsmen, police chases.
- Campaign for need for independent investigation of police malpractice: issue of media wanting specific instances. Hard data and case studies are needed to justify the call for an independent body to investigate complaints against police.
- Discussion on how to get national comparable data on complaints against police.
- Stun guns: Network should push for all police forces to have new model with inbuilt video which comes on automatically when gun drawn and which cannot be switched off by police.
- CCTV : Network should push for installation of CCTV in all watch houses. Some old country police stations do not have CCTV.
- Advice that DFAT-AG\* NGO human rights consultation was scheduled for Canberra on 14-15 August.
- Advice that the Centre for Excellence in Police and Security (associated with Griffith University) is a good source of data and support.
- A funding submission is being developed for administrative support for NPAN.

An NPAN meeting was scheduled for 28 August in Adelaide as part of the national conference of community legal centres.

– report Dr Kris Klugman, President CLA

\* Departments of Foreign Affairs and Attorney-General

## **Incompetent crime fighters demand more powers before acting**

The federal government wants to beef up unexplained wealth laws they passed just two years ago, grabbing even power centrally.

The reason? The highly-touted – but apparently incompetent – ACC is incapable of catching and convicting criminals they know about, and whose crimes they can accurately compute.

This is how Justice Minister Jason Clare described it: "To give you an idea of what we are talking about, the Australian Crime Commission estimates that 72 of their top organised crime targets each generated \$10 million or more in the past two years. Six of them have made more than \$100 million each in the last two years."

It seems quite extraordinary to CLA that these super-endowed crime fighters, like John Lawler who heads the ACC and who is Australia's equivalent of J. Edgar Hoover with extraordinary secret powers, can't catch criminals whom he clearly knows all about, down to who the crims are and how much money the crims make year by year.

After a March recommendation from the Joint Parliamentary Committee on Law Enforcement for referral of powers from the States and Territories to a national unexplained wealth scheme, a formal request has now gone to the States and Territories.

For goodness sake, if the ACC knows all about the crims, why doesn't it prosecute them? If it is not locking people up when it has all that information, it's incompetent.

CLA suggest the Minister might ask some pointed questions about the ACC's effectiveness, with a view to cutting staff and reducing budget, if it is not producing results: Mr Bigs in jail.

## **MPs propose new federal anti-corruption body**

The chair of a parliamentary committee says bribery scandals at the Reserve Bank's two banknote-making companies could prompt the government to establish an anti-corruption body for federal agencies.

Allegations were raised again last month about the bank's wholly owned subsidiaries, Note Printing Australia and the part-owned Securrency, where staff bribed foreign officials to gain contracts.

Labor MP Melissa Parke, chairwoman of the joint Australian Commission for Law Enforcement Integrity committee, said the government should canvass the option of creating a national anti-corruption body for commonwealth agencies.

"The recent revelations concerning the RBA have laid bare the gaping hole in the oversight of the commonwealth public sector," Ms Parke told *ABC Radio*.

Australian Greens leader Christine Milne said there should be a national oversight body similar to those in the states to address corruption in government agencies. "Whilst we need a national commission against corruption, it does not remove the need for the judicial inquiry into the RBA," Senator Milne said in a statement on Saturday. <http://tiny.cc/btjsjw>

## **Scandal-plagued Crime Commission undergoes reform**

The NSW Government will reform the scandal-plagued NSW Crime Commission.

Last year its former assistant director, Mark Standen, was jailed for 22 years over drug imports. It was also revealed the commission was doing deals with criminals and using the seized proceeds of crime to fund its operations.

A special commission of inquiry into the New South Wales Crime Commission has found the body's accountability mechanisms are inadequate and need to be overhauled.

Police Minister Mike Gallagher says an inspector will now be appointed to oversee the body and that inspector will report directly to Parliament. <http://tiny.cc/qgbyiw>

## **Mills bans the banned register as first CM move**

The banned drinker register will go, there will be 120 extra police, and no immediate cuts to public servants, the new NT Chief Minister Terry Mills said on winning office based on ballots from the bush.

CM Mills held his first wide-ranging press conference the day after the election, in the wash-up of a victory that has possibly reduced Labor to eight seats in a Parliament of 25.

His first meeting the day after the election was with Police Commissioner John McRoberts to discuss dismantling the Labor government's banned drinker register. <http://tiny.cc/icnojw>

## Tasmania to lead: ACT may now follow

Tasmania may lead the nation in legalising gay marriage. The ACT will be close behind.

Premier Lara Giddings believes it is time to end discrimination against same-sex partners, and that allowing visiting interstate gay couples also to marry will boost tourism.

Tasmania's Labor conference in Hobart last month heard that parliament would vote on the proposal this year. Labor and Greens support should be enough to pass it.

"Just as we have responded to other forms of discrimination throughout history, there comes a time when no amount of excuses should stand in the way of doing what is right," Premier Giddings told the conference.

Tasmania's Solicitor-General says that a state can introduce its own marriage legislation...if the new law does not conflict with federal law. The states legislated for marriage until 1961 when the power became concurrent with that of the Commonwealth.

In 2004, then PM John Howard amended the Marriage Act to define marriage as between a man and a woman. The amendment means the states can claim the power to legislate for same-sex marriage because it is not covered by Commonwealth law.

There is a Greens gay marriage bill before the Federal Parliament, but it is not likely to pass unless the Coalition allows a conscience vote.

The ACT Government had earlier this year announced a plan to pass a law permitting gay marriage: however, as a Territory, its law could be overturned by the federal parliament. If the Tasmanian law passes, that would make any federal intervention in the ACT unpalatable for the federal government, as it would highlight discriminatory treatment between states and territories under the Constitution.

At press time, the Tasmanian bill was in the lower house, where it is expected to pass easily. The upper house may be more of a battle. <http://tiny.cc/pwljw>

## Unused laws should get the chop



NSW Attorney-General Greg Smith plans to repeal a law banning violent offenders from sport venues, despite two brawls at recent western Sydney soccer matches.

The State Opposition says the O'Farrell Government is acting irresponsibly by overturning the law. But Mr Smith says it has never been used, and sporting bodies have found cheaper and more effective ways of barring thugs from their games. He says none of the major sporting codes wanted the law to stay in place.

CLA supports Mr Smith. Similarly, all those anti-terror laws passed in haste and fear after "9/11" – and never used – should be removed from the statute books. <http://tiny.cc/n1jsjw>

## Murderers to stay in prison longer

Convicted murderers in Queensland could now spend much more time behind bars.

The Queensland Parliament has passed a new law for the non-parole period to rise from 15 to 20 years.

Attorney-General Jarrod Bleijie said people convicted of multiple murders or killing a police officer will face tougher penalties. "Murderers will serve more time in Queensland prisons and people that commit double murders will serve at least 30 years," Mr Bleijie said. "Those that murder a police officer in the line of duty will serve at least 25 years non parole."

"Police officers perform a vital role in protecting our community in maintaining civil authority and this government recognises they perform their daily duties in the face of inherent dangers."

Mr Bleijie says the maximum punishment for seriously assaulting an officer will double from seven to 14 years in jail. <http://tiny.cc/7eksjw>

## **Treaties Committee recommends against Katter bill**

The Joint Standing Committee on Treaties (JSCOT) has recommended against passing the *Treaties Ratification Bill 2012*.

MHR Bob Katter proposed the bill to create a new system replacing what he says is the undemocratic nature of treaty negotiation and implementation.

Dipping his lid to the problem, Treaties Committee chair Kelvin Thomson said: "The way in which trade treaties are negotiated continues to be a matter of controversy and the committee recognises the community's concern. (In 2008) the committee recommended that a more thorough cost/benefit assessment of treaties be provided by the government. The committee reiterates that sentiment in this report with the following recommendation:

*That prior to commencing negotiations for a new agreement, the Government table in Parliament a document setting out its priorities and objectives, including the anticipated costs and benefits of the agreement.*

See JSCOT Report 128: <http://www.aph.gov.au/house/committee/jsct.htm>

## **AFP likes islands in the sun**

Is the Australian Federal Police a national corps of police officers...or is it government business enterprise looking for work around the world?

Rather than finding ways to stay in the Pacific, should the AFP not be pulling out after five clear and riot-free years of training local police?

Marni Cordell, editor of the online news magazine, [New Matilda](#), recently reported from the Solomon Islands where the Regional Assistance Mission to Solomon Islands (RAMSI) has operated for a decade: she indicated the AFP is keener to stay in the Solomons than leave.

"On this trip, when I asked about the AFP's strategic motivations in the Solomon Islands, one officer candidly told me the force's foray into the Pacific was part of an Australian Government push to shore up a spot on the UN Security Council.

"When I put this to (Police) Deputy Commander (Noel) Scobell, he didn't deny it. 'The [AFP's] International Deployment Group model is really well regarded by the UN and they are interested in how that's developed, so if they thought there was a role for us within the UN then I'm sure they'll speak to the appropriate people about that,' he said.

"The same officer told me that as RAMSI draws down, the AFP were actively 'looking for other work' in the region to strengthen Australia's position as a regional power," Cordell reported.

She reminded her readers that former AFP commissioner Mick Keelty once famously described the AFP as "the deployable arm of Australian government policy".

Defence Minister Stephen Smith announced on 25 April 2012 that Australia's military component of RAMSI would withdraw in the second half of 2013. There are about 150 troops in the Solomons, and about 200 police, not all of them Australian.

*New Matilda's* Cordell said she visited the Guadalcanal Beach Resort in Honiara, operational headquarters of RAMSI, as part of a four-day Defence Department tour.

She travelled with a group of Australian civilian bosses of Defence Reservists who are serving in RAMSI.

The ADF public relations machine regularly runs similar outings for employers, both as trips overseas and as "adventure" days in Australia involving try-outs of military equipment and service conditions.

Separate from the ADF, the AFP has a l-o-n-g track record of overstaying the brief.

There is a 15-person (13 male, 2 female) AFP group on the island of Cyprus, in the Mediterranean: an Australian contingent has been there since 1964. That is not a misprint...since 1964.



cluster munitions." Maybe we don't...but do we have strategic or tactical stockpiles anywhere? Perhaps the Defence Minister could clear the air.

**Police in two cities are racist - allegation:** Melbourne lawyer Tamar Hopkins says police themselves may be the ones breaking the law by racial profiling in their street patrols of ethnically diverse communities. And Sydney lawyer Adam Houda accuses some police of being "out of control", "zealots", and a "bunch of amateurs", according to ABC reports. In Melbourne police are stopping and searching young men of African background, sometimes several times a day. Ms Hopkins, from the Flemington and Kensington Legal Centre in Melbourne's inner-west, has handled about 200 complaints of police brutality, she said. <http://tiny.cc/rajsjw>

**New vilification laws proposed:** New ACT laws will make it illegal to vilify a person or group in the ACT over their religious beliefs or practices. Attorney-General Simon Corbell says proposed changes to the discrimination bill seek to make it unlawful for a person to publicly incite hatred towards another person based on their religion. Mr Corbell says a controversial pamphlet that was circulated about a proposed mosque in Canberra prompted the legislation. <http://tiny.cc/7gjsjw>

**New DNA to be taken for old murder case:** More than 100 people in NSW will be asked to provide DNA samples as part of a 20-year-old murder investigation. Penny Hill died in hospital after being found with head injuries near the central west town of Coolah in 1991, just days after taking a new job with Billy Thorpe and The Aztecs drummer, Colin Baigent, and his ex-wife Barbara. Police investigating the 21-year-old's murder will visit Coolah, Dubbo, Orange, Lithgow and Sydney to collect samples from people who have previously been interviewed or provided statements. <http://tiny.cc/49jsjw>

**ACT polities wants more mates:** All three political parties in the ACT are pushing for power to determine the parliament's own size. Currently only the Australian Government can change the numbers in the 17-member Assembly. A Legislative Assembly committee found the ACT's Self-Government Act needs updating. Committee chairman, Speaker Shane Rattenbury (Greens) says if the change came about, it would be up to the next Assembly to decide the number of members. The ACT goes to polls on 20 October. <http://tiny.cc/rojsjw>

## **CLA's main activities for August 2012:**

### **Board meeting 19 August 2012**

Main issues: revision of business plan agreed, reports on meetings held, media report, Treasurer's report, statistics/analysis of access/hits on CLA website, report on interstate activities, discussion on marketing plan, membership fees, use of social media, submissions made.

### **Meetings**

Gai Brodtmann MP - gene patents, national security legislation reviews;

Robert McClelland MP - culture in AGs, gene patents, drug law reform;

Malcolm Turnbull MP - security c.f. transparency, bill of rights, drug law reform, ADF;

Prof Gillian Triggs, Australian Human Rights Commissioner;

Laurie Ferguson MP;

Daryl Melham MP.

### **Public lectures:**

Corruption in Public Places - Adam Graycar;

Reforming Justice - Dr Livingston Armytage.

### **Forums:**

NGO DFAT-AG two-day consultation: report on web;

Parliamentary Drug Law Reform group: report on web.

### **Network meetings:**

Dying With Dignity;

Australian Privacy Foundation;

NSW CCL representative.

### **Organisational activities:**



Tim Vines Director and media spokesperson, President Dr Kristine Klugman and CEO meeting with Rebecca Prior (left), law student, new media spokesperson in support of Tim.

Ray Nickson, CLA member.

Emails to CLA interstate members to monitor/action letters to editors.

Letter to Australia 21 re absence of published annual reports A21 for 2010 and 2011.

Letter to author DL Piper Review of Sexual and Other Abuse in Defence.

### **Submissions**

Four parliamentary inquiries into security legislation, under consideration.

Slavery and Sexual Slavery: new Human Rights Committee investigation.

### **Media**

\* Stun guns: ABC Canberra (Online), ABC Canberra (Radio), Canberra Times

\* High Speed Police Chases: Triple J Hack (for background only)

\* Darwin ABC radio - Data Retention ('Ozlog') proposal and surveillance powers.

\* Computerworld Magazine - cloud computing, privacy and the PATRIOT Act

Other:

\* Article in recent issue of the Journal of Law and Medicine on the Momcilovic decision and the implications for a national charter of human rights.

\* Media release on Tasmanian Proposal to ban smoking for people born post-2000.

### **Campaign: CLA's Involvement in the Gene Patents Debate**

Since May 2012 CLA has been working with other NGOs to support a proposed amendment to the Patents Act 1990 that would exclude genetic information (e.g. DNA and RNA) from patentability.

The proposed amendment is being put forward by Labor Backbencher Melissa Parke (Fremantle). The Cancer Council of Australia is just one of the organisations who support this change (along with Cancer Voices Australia).

You can keep up with what's happening through:

Facebook page: [www.facebook.com/freegenes](http://www.facebook.com/freegenes) and

\* Twitter page: [www.twitter.com/freegenes](http://www.twitter.com/freegenes) and

\* YouTube channel: <https://www.youtube.com/dontpatentme>

CLA is also seeking access under FOI to documents held by the Department of Industry, Innovation, Science, Research and Tertiary Education and the Department of Health and Ageing.

We are hoping to find out what advice these departments provided to their respective ministers in 2011, when another attempt was made to ban gene patents. Innovation's Minister (then Kim Carr) and IP Australia strongly supported gene patents while the Department of Health and Ageing expressed concerns over the practice.

CLA's position is similar to that of the American Civil Liberties Union which is running a major case in the US (if only we had their resources!) challenging some existing patents over breast cancer genes. The ACLU has agreed to help our campaign by permitting use of their materials.

The Minister for Health convened a roundtable on 9 August to discuss the proposed Bill and the issue more generally. CLA was invited but was unable to attend (instead lodging a written submission).

## INTERNATIONAL

### **Manning wants WikiLeaks charges thrown out because of torture**

Bradley Manning, the suspected WikiLeaks source arrested in May 2010, has lodged a motion with the military court in Maryland requesting the appearance of seven medical and other experts at the next pretrial hearing scheduled for 1 October.

The defence team, led by civilian lawyer David Coombs, is trying to have all 22 charges against Manning thrown out of court on grounds that he was subjected to illegal pretrial treatment – torture, and being kept in inhumane conditions – in violation of the constitutional prohibition of cruel and unusual punishment.

As the late Gore Vidal put it, “a good deed never goes unpunished”. The treatment of Manning would appear to back up Vidal’s description of the USA as “a militarised republic”. <http://tiny.cc/hgi9hw>

### **Don’t look now! You’re about to be wire-trapped**

Papers released by WikiLeaks show the US Department of Homeland Security paid \$832,000 to deploy the spooky ‘Trapwire’ system in two cities, Washington DC and Seattle.

The ‘wiretrap’ system allegedly recognises people from their face or walk and analyses whether they might be about to commit a criminal act. According to documents released online by WikiLeaks last month, it is being used in a number of countries to try to monitor people and threats.

Former CIA agents have designed the system to use data from a network of CCTVs and numberplate readers to figure out the threat level in huge numbers of locations. That means security officials can “focus on the highest priorities first, taking a proactive and collaborative approach to defence against attacks,” say its creators.

The new system’s existence and its deployment in the US were apparently obtained in a hack of computer systems belonging to the intelligence company Stratfor at the end of last year.

Stratfor describes the wiretrap system as “a unique, predictive software system designed to detect patterns of pre-attack surveillance and logistical planning”, and cites the Washington DC police chief mentioning it during a US Senate committee hearing. It serves “a wide range of law enforcement personnel and public and private security officials domestically and internationally”, Stratfor says. <http://tiny.cc/ybj0iw>

### **Rerieved killer insists on his right to be executed**

A rerieved convicted killer in the USA has been granted the right to insist on being executed.

Oregon death row inmate Gary Haugen – who murdered his girlfriend's mother and also another prisoner – wants to die even though the anti-death penalty Oregon governor, John Kitzhaber, has granted him a reprieve.

Judge Timothy Alexander has granted Haugen, 49, the right to reject Kitzhaber's clemency move, even though the governor had vowed no death sentences would be carried out in Oregon while he was in office.

Alexander has ruled precedents exist for the prisoner’s right not to accept the stay of execution.

Governor Kitzhaber is expected to appeal to have the reprieve restored. If that appeal fails, a new execution date will be set. <http://tiny.cc/1dmkiw>

### **Tunisian women fight to retain equality**

Thousands of Tunisians are protesting against what they see as a push by the Islamist-led government for constitutional changes that would degrade women's status.

The protest last month by 6,000 mostly Tunisian women concerns the role of Islam in a constitution being drawn up by a new assembly. Tunisia's ruling Ennahda Movement is under pressure from both hardline Salafi Muslims, who are calling for the introduction of Islamic law, and secular opposition parties, who want to maintain the country's traditional liberal approach.

Activists are unhappy with a stipulation in a draft of the constitution that considers women to be "complementary to men" and want a pioneering 1956 law that grant women full equality with men to remain in place. <http://tiny.cc/ug40iw>

## **Judges protect accused identity in fear of assassination**

Judges in Northern Ireland have banned identifying alleged local drug dealers in the media because they could be assassinated by a republican vigilante terror campaign in Derry.

One judge in the city has already imposed an embargo on the media naming three men accused of possessing cannabis.



In response to the Republican Action Against Drugs (RAAD) threat, the Derry district judge Barney McElholm (left) took the unprecedented step of granting anonymity to the trio. RAAD has merged with the Real IRA, posing an even greater threat to those it labels "anti-social elements."

In a ruling in Derry magistrates' court last month, Judge McElholm said he made the order under section 2 of the European Convention of Human Rights, which protects the right to life. <http://tiny.cc/y912iw>

## **Pussy protestors face off against police**

French police swooped on people wearing multicoloured face-masks in solidarity with the band, Pussy Riot last month.

A senior officer said the protestors were wearing balaclavas in a public space. "It's illegal." He said the demonstrators would be questioned and a report written.

In April 2011, then-President Nicolas Sarkozy's government introduced a law banning women from wearing the niqab, or full face-veil, in public places. To circumvent accusations that the law singled out Muslims, the bill was officially called the law against covering one's face in public places.

Special exemptions were created for motorcycle helmets or sports equipment such as fencing masks. There are also exemptions for people appearing in parades, celebrations or places of worship...but not, apparently, for protestors. <http://tiny.cc/8dzdjjw> <http://tiny.cc/g3yqjw>

## **Germans aim to hold Facebook to higher privacy standards**

A German official wants Facebook to delete photos of users' faces stored without their consent, saying they breach European privacy rules.

Head of the Hamburg office for data protection, Johannes Caspar, called on Facebook to delete biometric profiles stored in its databases. He said talks with Facebook to bring its business practices in line with German and European Union privacy rules had failed.

Mr Caspar said in a statement that he is now re-opening a stalled probe of the California-based company "in order to find a legally sound solution with regard to the use of biometric data."

He is highly critical of Facebook's photo tagging feature, which asks users to attach the names of people in pictures they have uploaded. Facebook then uses the unique facial characteristics in each picture to automatically identify the same person in other photographs on its site. Users can opt out of the service, but Mr Caspar wants them to have to opt in.

"Facebook will be obliged to delete this data unless it obtains approval by all concerned users," he said, adding that "due to the immense potential of misuses of biometric data the explicit consent is a legal requirement for the collecting and processing of biometric data."

Facebook responded by saying that it believes the photo tagging feature "is fully compliant with EU data protection laws." – AP Report <http://tiny.cc/fnpjw>

## **Brit police keep massive data records...on the un-guilty**

British police hold massive intelligence records – more than 50 million items – about people who have not been charged or convicted of any crime.

About 14m Metropolitan police intelligence reports and 38m from other forces, gathered routinely because they may prove useful, are being made available to all of Britain's police agencies on the Police National Database (PND). Figures obtained by the *Guardian* show the PND – in 2011 – contains at least 317.2m records.

The Met intelligence files includes details about protesters who have attended demonstrations, unconvicted "persons of interest", associates of criminals, including lists of phone numbers stored on perpetrators' phones, allegations of crimes, and victims of sexual or domestic abuse. The database also contains almost 40,000 images.

Police say sharing intelligence on the database speeds up investigations, helping identify new patterns of crime. But civil liberties groups are concerned that it can criminalise innocent people.

The revelation has prompted calls for more police transparency about what kind of information about unconvicted people is being logged and shared.

"This has a profound impact on privacy and basic rule of law," said Guy Herbert, general secretary of NO2ID. "If something is 'intelligence' it is by definition composed of guesswork, speculation and hearsay. It has the capacity to criminalise the innocent and affect people's lives in all sorts of ways if they get flagged as 'of interest' to the police."

Before being entered on to the PND, Met intelligence records are entered on a Scotland Yard database named Crimint Plus, described as "the largest law enforcement intelligence system in the world" by former Met detective chief inspector Peter Ship. An estimated 2,000 reports are entered every day on Crimint, which was established in 1994 and since 2005 has doubled in size.

Most Crimint intelligence records are stored for a minimum of six years in accordance with police data retention policy. They are accessible by around 40,000 Met employees, plus up to 12,000 from 65 forces and agencies across Britain.

The police will soon hand the data over to private sector management. <http://tiny.cc/w75djw>

## **Gambia executes nine**

Reports indicate that Gambia executed nine death-row prisoners last month, the first executions since the country reinstated the death penalty in 1995.

The human rights organisation Amnesty said eight men and one woman were removed from their prison cells and killed, and warned that dozens more executions could be imminent.

The Civil Society Associations of Gambia said it was not clear how inmates were killed. "What is however clear is that inmates were rounded up at 9.30pm on Thursday 23 August and that by the morning of 24 August, the bodies were actually lying in the Mile Two Prison yard," it said.

Amnesty said there were 47 inmates on death row before the recent reports, and three of the nine who were reportedly executed had been sentenced for treason. Death sentences can be handed down for murder and treason, including coup-plotting, which means executions could be used to remove political opponents. In 2010 the death penalty had been introduced for individuals in possession of more than 250 grams of cocaine or heroine. <http://tiny.cc/rpoljw>

## **Smoke flies as courts duel over packaging rulings**

A Washington appeal court has ruled that the US Government cannot force tobacco companies to put large, graphic health warnings on packets of cigarettes...which the High Court in Australia has just endorsed.

The US Food and Drug Administration (FDA) planned to require images on cigarette packs, including a man smoking through a hole in his throat and a body with chest staples on an autopsy table, similar to those in Australia. But tobacco firms filed suit against the federal agency, arguing the images go beyond factual information and into anti-smoking advocacy.

The Washington court of appeal has backed them, saying the planned warnings are an unabashed attempt to evoke emotion and to get consumers to quit.

Judge Janice Rogers Brown also said the FDA "has not provided a shred of evidence" that graphic warnings directly reduced rates of smoking. She also said that the government "can certainly require that consumers be fully informed about the dangers of hazardous products."

"But this case raises novel questions about the scope of the government's authority to force the manufacturer of a product to go beyond making purely factual and accurate commercial disclosures and undermine its own economic interest." <http://tiny.cc/70isjw>

## International briefs

**Brotherly surveillance:** Licence plate cameras monitor who enters and exits more than 200 north American cities in a trend mushrooming in Australia also. If your home is your castle, your vehicle is rapidly becoming your surveillance tag. Read all about it in a major *Ars Technica* report: <http://tiny.cc/20f4iw>

**Children fear knock on door:** Reports indicate that people of the Bahai faith in Semnan, in Iran, are under constant and close surveillance and are followed regularly by agents of the Ministry of Intelligence, who then appear at their homes or summon them for questioning. This is occurring so frequently that young Bahai children in the town, about the size of Geelong or Gosford, have come to fear that a knock on the door will mean the arrest of their parents.

**Drones allow US to kill from afar:** The US reportedly has 7,000 drones operating – more than manned aircraft – with another 12,000 on the ground. The American Civil Liberties Union estimates strikes have killed 4,000 people, large numbers of them civilians, since 2002. Figures from the London-based Bureau of Investigative Journalism show that CIA drones struck Pakistan 75 times in 2011, causing up to 655 fatalities, [including as many as 126 civilians](http://tiny.cc/5gacjw).



**Burma's journos get a little more freedom:** Burma's head of the Press Scrutiny and Registration Department, Tint Swe (left), has told editors that journalists no longer have to submit their work to state censors before publication as they have for close to half a century. However, reporters must still send their stories to the Press Scrutiny Department after publication so government monitors can determine whether their work violated any publishing laws. <http://tiny.cc/5gacjw>

**Tracks ruling has a flip side:** In a 2-1 ruling, the Sixth Circuit US Circuit Court of Appeals has ruled that police may obtain location data from a mobile phone to track a suspect without getting a judicial warrant. The case involves a newly-convicted drug trafficker, who was part of a cross-country, large-scale drug operation organized by another man. The government used GPS location information from his phone, which led to his arrest, which constituted a warrantless search in violation of the Fourth Amendment, the defendant claimed. Judge John Rogers, in the majority opinion, said: "If a tool used to transport contraband gives off a signal that can be tracked for location, certainly the police can track the signal." The case contrasts with another in the USA earlier this year where a similar court ruled police could not use tracking data if they had actively planted tracking devices on a car. <http://tiny.cc/zt52iw>

**NZ gay bill passes first test:** The NZ Parliament has passed its gay marriage bill, under a conscious vote, by 80-40. The easy passage suggests it will pass later stages of the process, after committee consideration, and allow full marriage rights to gays about mid-2013. Labour MP Louisa Wall sponsored the bill, which was supported by both the Prime Minister John Key, and the Opposition Labour leader, David Shearer.

## DATES

### SEPTEMBER:

**4 Sept, Perth:** Free Speech, Public Discourse and the Moral Blameworthiness of Suffering Fools (Public Ethics series), AssPro Lawrence Torcello, Rochester Inst. of Tech. NY. 6-7pm, UWA> Details: <http://tiny.cc/knn8hw> RSVP: [ias@uwa.edu.au](mailto:ias@uwa.edu.au)

**5 Sept, Hobart:** A Common Purpose: Inching the Law towards Justice, the Sandy Duncanson Social Justice Lecture, by Andrea Durback, 6-8.30pm (includes film, A Common Purpose), Sandy Bay Campus, U. Tasmania. Info: E: [UTAS.Events@utas.edu.au](mailto:UTAS.Events@utas.edu.au); P: 03 6226 2521

**6 Sept, Sydney:** Corruption Prevention Network 2012 forum. <http://tiny.cc/1515bw>

**6 Sept, Melbourne:** Human Rights Limits and Implications of Online and Offline surveillance and Detection Technologies: Prof Martin Scheinin, European University Inst. 12.45-2pm, Wheeler Centre, 176 Little Lonsdale St. Cost \$20/10. Details: [www.hrlc.org.au](http://www.hrlc.org.au) Info: [tom.clarke@hrlc.org.au](mailto:tom.clarke@hrlc.org.au)

**12 Sept, Brisbane:** The Business of Maritime Law, David Taylor, Special Advisor, International Underwriting Association. Court 1, L7, Cwealth Law Courts, 119 North Quay, Brisbane. Info: [events@law.uq.edu.au](mailto:events@law.uq.edu.au) Part of the 39th annual conference of the Maritime Law Association of Aust and NZ, 12-14 Sept. Details: <http://www.mlaanz.org/Home/0,271,1132,00.html>

**12-14 Sept, Canberra:** Australasian Law Reform Agencies Conference, <http://law.anu.edu.au/coast/events/2012/ALRAC/conf.html>

**13 Sept, Sydney:** Is there still a role for the States in the Australian federation? Law School, 173 Phillip St Sydney. Details: 02 9351 0323 E: [law.events@sydney.edu.au](mailto:law.events@sydney.edu.au)

**17-18 Sept, Canberra:** *Participatory Justice and Victims: Achieving justice for victims in local, national and international settings.* Prof John Braithwaite, ARC Federation Fellow, Founder of RegNet ANU and CLA member; Liz Kelly London Metropolitan U. Prof of Sexualised Violence & Director of the Child and Woman Abuse Studies Unit; Kathleen Daly, Professor of Criminology & Criminal Justice, Griffith U; John Dussich, Prof Emeritus Victimology and Criminology at CalState U, Fresno. Details/rego: <http://tiny.cc/imhdhw>

**19 Sept, Brisbane:** *Voluntary Euthanasia: Your Right To Die* – Yuri Koszarycz from the Catholic U. and Neil Francis of Your Last Right, debated under the moderation of Prof Colleen Cartwright. Irish Club, 6.30 for 7pm, \$15/10. Info: Qld Council for Civil Liberties: E: [jeransley@bigpond.com](mailto:jeransley@bigpond.com) or phone Michael Cope on 0432 847 154 in bus hours. Book by 10 Sept at <http://www.stickytickets.com.au>



**20-22 Sept, Canberra:** Public Law Weekend (including International Law Day) at ANU: Law's Challenge to Democracy – Democracy's Challenge to Law. Details: <http://law.anu.edu.au/anu-college-law/public-law-weekend>

**20 Sept, Annual Kirby Lecture** on International Law at ANU to be presented by former International Court of Justice Judge Christopher Weeramantry, now at Monash U.

**21 Sept: 15th Geoffrey Sawer lecture** at ANU: to be presented by Professor Adrienne Stone, University of Melbourne, constitutional law expert currently engaged on a four-year project researching "Freedom of Expression in Democratic States".

**26 Sept, Brisbane:** Promoting Administrative Justice – Efficiency, Transparency and Fairness conference, Customs House, Brisbane. Details: <http://www.law.uq.edu.au/pajconf>

**OCTOBER:**

**4-6 Oct, Darwin:** War and Disaster 2012: 10 years on from Bali 1 (bombing), responding to crises. Darwin Convention Centre. Details: <http://www.waranddisaster.com/#!>

**18 Oct, Brisbane:** Unconscionable business conduct seminar, Prof Bryan Horrigan of Monash U, Banco Court, George St, Brisbane 5-6.30pm. Details: <http://www.law.uq.edu.au/current-legal-issues-series>

**DECEMBER:**

**5-7 Dec, Gold Coast, Qld:** 2012 National Indigenous Health Conference: *Many Pathways, One Outcome*. Conference website: [www.indigenoushealth.net](http://www.indigenoushealth.net) or email [admin@indigenoushealth.net](mailto:admin@indigenoushealth.net)

**13-14 December, Sydney:** International workshop on '[States of Surveillance – Counter-Terrorism and Comparative Constitutionalism](#)'. Gilbert and Tobin Centre, UNSW. Info: [f.davis@unsw.edu.au](mailto:f.davis@unsw.edu.au)

**2013:**

**15 Feb, Sydney:** 2013 Constitutional Law Conference and Dinner, Art Gallery of NSW, Details: Gilbert and Tobin Centre. Details: <http://www.gtcentre.unsw.edu.au>

**12-14 Mar, Brisbane:** NatStats Conference, "A better informed Australia: the role of statistics in building the nation". <http://blog.abs.gov.au/Blog/natstats.NSF/>

**2015:**

**June, England:** 800th anniversary of Magna Carta

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*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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