

Shield laws protect journalists, whistleblowers: see the CLA website

CLA member Rhys Michie has updated the impact of new shield laws for journalists, passed last month in Victoria and WA.

Victoria has created a special category of privilege, just for journalists, he says in an article on the CLA website: <http://www.cla.asn.au/>

WA's new shield laws protect journalists, professionals and whistleblowers from having to reveal sources to preserve confidentiality. WA Attorney-General, Michael Mischin, says protection for whistleblowers within the public sector has also been strengthened. <http://tiny.cc/py81kw>

Other new items on the website which you might enjoy include:

for one or more of these articles, go to: <http://www.cla.asn.au/>

- Promised the earth, delivered Atlas (Austen Tayshus)
- Feeling helpless (if police approach): Phone app to the rescue (ACLU)
- Top cop dismisses warrants as 'red tape' (CLA media release)
- Demo brings security lies in the open: living under a cyber-shadow (Bill Rowlings)
- How 'corruption' helps justice fall over (Barbare Etter)
- Come fly with me to the theatre (Kerry Cue)
- Eastman doubt shows need for permanent criminal review body (Greg Barns)

Police want 'control' over you forever

Police want everyone's emails, tweets, internet searches and phone call details kept forever, so they can troll through your life at their ease, when they choose.

Australian Federal Police Commissioner Tony Negus, NSW Police Commissioner Andrew Scipione and SA Police Commissioner Gary Burns gave evidence in Sydney last month to an inquiry into a proposal that would force communication companies to store phone and internet data for two years.

'Metadata' – the times, locations and durations of phone and internet communication – could be accessed by authorities with a warrant.

Commissioner Negus told the inquiry that police would "ideally" prefer the information be held by telecommunication companies indefinitely, so it could be accessed by police at any time. "The two-year proposal ... we could live with," he said. "It certainly wouldn't be ideal, but we could live with [it]." <http://tiny.cc/1ml8kw>

CLA joins group seeking better drug testing standards

Civil Liberties Australia, at the invitation of occupational physician Dr Andrew Keller, has joined business and community bodies wanting major improvements to the testing regime around drugs and drug impacts in society.

Currently the standards for testing equipment, and the training and certification of operators, leaves a lot to be desired.

In responding to the invitation to become involved, CLA said:

"We believe there needs to be a 'chain of trust' – if a crime has been committed – from the offence to a fine or jailing. This involves setting the correct legislation in place, which is based on scientific standards if upper or lower limits are to be invoked as measures.

“Whatever is involved in comparing proven standards against an alleged crime-collected sample needs to be accurate at every step of the way. Not only are the legal standards and the testing equipment important, but so are the training standards and qualification of operators, and the reliability and repeatability of common tests in field conditions.”

If you are CLA member with a particular interest in this area, and would like to be involved, the CLA CEO is keen to hear from you.

CLA calls for determination to ensure access to life-saving drugs

Civil Liberties Australia has called on the Productivity Commission to improve Australia’s intellectual property laws to ensure patients and the community can access life-saving medicine.

“At the moment courts decide Australia’s patent law in a vacuum,” said Tim Vines, CLA Director. “Despite the pleas of Senators and the Australian Law Reform Commission, our patent law still doesn’t have a statement of objectives – a short statement of what the law is meant to achieve.

“Because of this, we believe, the balance has tipped too far in favour of companies who can charge monopoly prices, restrict access to medicines and medical tests and undermine the right to health in this country.”

The Productivity Commission is inquiring into whether Australia’s compulsory licensing laws work and whether the ‘purpose’ of the Patents Act should be made clear.

“Compulsory Licenses are meant to be a safeguard for the community, in case a patent holder refuses to sell or make their invention available in Australia, or where they unreasonably refuses to licence their invention to another company. But the laws haven’t worked. In fact, since Federation, they have never been successfully used,” Mr Vines said.

CLA believes the Productivity Commission should put forward changes to the Patents Act that would allow the Government to intervene in support of an application for compulsory licence where the needs of the public were not being met.

“Patents can limit your choice of medicine, or make it too expensive to get an essential medical test performed. We believe that where a company is abusing their monopoly privilege a court should be able to send them back to the negotiating table.”

Civil Liberties Australia’s submission can be read at: <http://bit.ly/URhJbQ>

Australian needs a bigger, better whistle

Australia’s leading expert, as well as a Labor MP and an Independent, have called for beefing up of the nation’s whistleblowing laws.

They all believe that the case of former Reserve Bank/Securrency banknote executive, Brian Hood, has revealed major gaps in the laws.

Griffith University’s Law Professor, A.J. Brown (pictured), said the case highlighted "massive holes" in the protection for whistleblowers. The revelations about Mr Hood suggested there may have been a breach of corporate laws on whistleblowers. However, these laws were weak and had never been used, Fairfax quoted Prof Brown as saying.

He said the case highlighted the need for laws to protect public servants who raised the alarm. "This is the acid test now for this government as to whether it intends to introduce whistleblower protection laws or not," he said.

Victorian MHR Kelvin Thomson (Lab, Wills) said his government should introduce the whistleblower legislation – the Public Interest Disclosure Bill – it had promised since 2009 but had not yet tabled in Parliament. "It does seem to me to suggest that certainly in relation to whistleblowing, that the existing arrangements are not adequate," Mr Thomson said.



Tasmanian Andrew Wilkie (Ind, Denison), a former Office of National Assessments whistleblower himself, said he would introduce a private member's bill on whistleblowing this month if the government had not tabled its own bill by then.

Mr Wilkie has asked Professor Brown to help draft a law.

The pressure for new whistleblowing laws comes amid calls for a judicial inquiry into the note-printing bribery scandal. <http://tiny.cc/cxcpkw>

FOI reveals US military continues to hunt for Assange links

The US military has designated Julian Assange and WikiLeaks as enemies of the United States, legally in the same boat as al-Qaida and the Taliban.

The designation means Assange could be captured or killed by drone attack under American 'laws of war'.

Air Force documents, released under US FOI laws, reveal that military personnel who contact WikiLeaks or WikiLeaks supporters may be at risk of being charged with "communicating with the enemy", a military crime that carries a maximum sentence of death.

US Vice-President Joe Biden labelled Mr Assange a "high-tech terrorist" in December 2010 and US congressional leaders have called for him to be charged with espionage. <http://tiny.cc/hhcalw>

Gay marriage law bites dust in the upper house

The Upper House has voted down a bill which would have made Tasmania the first state to approve gay marriage.

The bill passed the Tasmanian lower house but lost 8-6 in the Legislative Council.

As one of the last states to throw out anachronistic homosexual laws, it was thought Tasmania might lead the way on the gay marriage issue.

But some of the honorable men and women of the upper house chose to listen to the free advice proffered by long-retired former state chief justice and governor, Bill Cox, who was also once the honorary colonel of the Royal Tasmania Regiment.

Mr Cox told MPs he believed the Commonwealth had primacy on marriage law, and any inconsistent state legislation would be struck down by the High Court.

If you would like to express your thanks for how anyone voted, here's the list:

- Rosemary Armitage (IND - Launceston) - AGAINST
- Ivan Dean (IND - Windermere) - AGAINST
- Craig Farrell (ALP - Derwent) - FOR
- Kerry Finch (IND - Rosevears) - FOR
- Ruth Forrest (IND - Murchison) - FOR
- Mike Gaffney (IND - Mersey) - FOR
- Vanessa Goodwin (LIB - Pembroke) - AGAINST
- Greg Hall (IND - Western Tiers) - AGAINST
- Paul Harriss (IND - Huon) - AGAINST
- Tony Mulder (IND - Rumney) - FOR
- Tania Rattray (IND - Apsley) - AGAINST
- Adriana Taylor (IND - Elwick) - AGAINST
- Rob Valentine (IND - Hobart) - FOR
- Jim Wilkinson (IND - Nelson) - AGAINST



Photo shows the club-like splendour of the Tasmanian upper house.

Anders wants to prove voting is a right, but not a duty

An Adelaide man plans to seek a ruling in the High Court to overturn Australia's compulsory voting system.

Anders Holmdahl, 65, who claims voting is a right, not a duty, lost an appeal in the Supreme Court last month. He was originally found guilty in magistrate's court of failing to vote in the 2010 federal election.

Mr Holmdahl said that he is contesting the meaning of the word vote, which is a free choice. "Since 1924, hundreds of thousands of people have turned up at the polling booth only because they want to avoid a fine and [they] have no interest, no real knowledge of what they want to vote for."

Former Liberal Senator Nick Minchin was in court to show support for Mr Holmdahl's point of view. <http://tiny.cc/u3r8kw>

ODD SPOT: Price of justice escapes the average citizen

CLA was interested in a Federal Court case with major public policy implications, and inquired how much the transcript of the four days of hearings would cost.

Bearing in mind that the High Court puts its transcripts online on the Austli site for free, the cheapest e-version only of the Federal Court case would have set us back \$5670. So much for the price of justice!

Recently in Adelaide, Law Society of SA president Ralph Bonig said a complicated District Court assault and robbery trial that took 10 days would cost as much as \$100,000.

A decade ago, that bill would have been about \$50,000, he said. <http://tiny.cc/aoeclw>

Government orders 'go easy' on junior boat crew

The government has dropped its hardline approach to juvenile and junior crew involved in people smuggling by giving judges back discretion in sentencing.

CLA, judges and many other groups had criticised the mandatory five-year term, with a minimum non-parole period of three years, for the charge of aggravated people smuggling. Judges complained the mandatory terms were often disproportionate to the culpability of the low level of offenders who came before the courts and their circumstances.

Attorney-General Nicola Roxon has now taken the unusual step of issuing a direction to prosecutors to allow charges to be laid under offences, other than those with a mandatory minimum term, for first-time offenders and low-culpability crew. <http://tiny.cc/c5afkw>

Public naming of 'suspect' pilloried by judge

The WA police decision to name barrister Lloyd Rayney as the "prime suspect" in his wife's murder came under fire at his Supreme Court murder trial in Perth last month.

Senior Sergeant Jack Lee, the former head of the major crime squad which oversaw the investigation into Corryn Rayney's alleged murder, gave evidence.

On 20 September 2007, Senior Sergeant Lee named Mr Rayney as the "prime and only" suspect in his wife's death at a press conference, a move Justice Brian Martin described as "highly undesirable" during an ongoing investigation, according to Anne-Louise Brown, covering the case for *WAtoday* website.

The public finger-pointing happened the same day Mr Rayney was charged with telecommunications offences and his Como home and city chambers were raided, just a month after Mrs Rayney's body was exhumed from Kings Park in Perth.

Senior Sergeant Lee, who was transferred to rural Karratha shortly after the public naming, denied he leaked information to media regarding the case and raids on the Rayney home.

He also denied police pursued Mr Rayney as their sole suspect in a bid not to appear "soft" in regards to the former Department of Public Prosecutions prosecutor.

Senior Sergeant Lee said at no point were Mr Rayney and his daughters "kept in the dark" about the progress of the investigation, despite a claim by Mr Rayney's lawyer, David Edwardson, that the family only found out key information through the media.

Mr Edwardson said statements made at the press conference proved "Lloyd Rayney was their [the police] target".

He also attacked the integrity of officers involved in the investigation and their treatment of key evidence, describing the investigation into Mrs Rayney's death as "biased and single-minded". "They had every motive to go down this path because they needed a particular result," Mr Edwardson said.

Senior Sergeant Lee admitted before the press conference he'd been coached by media advisers for about an hour. The allegations made at the press conference are part of ongoing defamation proceedings against the state government by Mr Rayney. <http://tiny.cc/c85blw>

CLA comments that the WA police, in particular, have consistently run into problems by naming people as "suspects" or "persons of interest" over the past decade. The practice, which is usually guesswork when police don't have enough evidence and are on 'fishing' expeditions, should have no place in Australia.

Law becomes a traveling circus

The Federal Magistrates Court is to become the Federal Circuit Court of Australia: Federal Magistrates will be called Judges, says a media release from AG Nicola Roxon.

Nonsense, says CLA. The court will – undoubtedly and instantly – become known as the 'circus'. Who knows what the presiding figures will then logically be known as?

"The new name for the court also highlights the important service it provides to rural and regional communities through its program of regular court circuits. From Bundaberg to Burnie, Alice Springs to Albury, the court undertook work in 33 regional locations last year. This amounts to 145 weeks of hearing matters in regional Australia," says the earnest but lexicologically-challenged AG.

Crotch-sniffing patrols aim to cut excesses of the Cross



NSW Police will deploy drug sniffer dogs on Kings Cross streets and metropolitan trains – for the first time without the need to secure a warrant – as part of the NSW Government's response to the fatal assault on teenager Thomas Kelly at Kings Cross.

Premier Barry O'Farrell last month announced a three-year ban on new liquor licences in the area and an ID scanner network for 150 licensed venues in the Cross, Potts Point and Elizabeth Bay. There'll be an extra 50 police on Friday and Saturday nights.

Transport Minister Gladys Berejiklian announced extra night time bus services from Kings Cross to the city to link up with existing Night Ride services. Six extra services an hour will operate to Central Station, while buses will operate between Kings Cross and Town Hall four times an hour. A sobering-up centre will also be trialled. <http://tiny.cc/ytgkqw>

Greens want police chases to be more measured to cut deaths

The ACT Greens want a two-year ban on high-speed police chases, except for serious crimes.

The trial ban is part of a \$5 million Greens justice policy for the ACT election on 20 October.

The party would set up a Community Legal Centre hub, boost funding to the Aboriginal Legal Service and lobby for more federal funds for Legal Aid.

Spokesman and current ACT Legislative Assembly Speaker, Shane Rattenbury, says seven people have died on ACT roads in the past eight years in connection with police chases.

"90 per cent of (chases) occur (for) minor traffic infringements or suspected stolen vehicles," he said. The Greens would trial a 24-month ban based on a Tasmanian model that limits the number of (chases) and that (catches) up with offenders later." <http://tiny.cc/8medlw>

New AG wants to lock up high-risk sex offenders forever

New NT Attorney General John Elferink plans to reintroduce the Dangerous Prisoners (Sexual Offenders) Restraint bill, which was rejected by the previous Labor Government.

Under the proposal, prisoners convicted of sexual offences and identified as having a high risk of re-offending can be kept behind bars indefinitely under a Supreme Court order.

"The intent of my bill was to allow the Supreme Court to place an order on a high-risk inmate convicted of a sexual offence for indefinite detention to protect the community," Mr Elferink said.

"The AG could apply to the Supreme Court for a 'public protection order', which would have allowed the inmate to stay in jail beyond the limits of their sentence. The onus would be on the AG to convince the Supreme Court there was a high chance the prisoner would re-offend.

"It is important the rights of the community are given a higher priority than the rights of the offender," he said – media release 15 Sept 2012, contact Camden Smith 0488 588 754

CLA comments that, while the Supreme Court involvement is encouraging, indefinite detention is against most human rights conventions, including ones to which Australia subscribes. We suspect that, if passed, the NT Supreme Court – or the High Court - might rule against the proposal.

Closing Murri courts will lead to greater jail costs, says priest

Queensland Catholic Social Services is warning the Queensland Government that its budget decision to close the Murri courts system will backfire.

The State Government says axing the Murri, Special Circumstances and Drug courts will save about \$35 million over four years.

Father Michael Lowcock says the Mount Isa Murri court has kept 130 people who were sentenced to prison, out of jail. "We've calculated their sentence to be saving the Government about \$13 million," he said.

Father Lowcock says a budget decision to close them will lead to a massive cost blow-out in the prisons' budget. He says he has raised his concerns with Queensland Attorney-General Jarrod Bleijie, but says has not received a response. <http://tiny.cc/6zv8kw>

Governments only solution? Come the heavy

The Youth Affairs Council and the Criminal Lawyers Association have both criticised the WA Government's proposed legislation to address out-of-control parties.

The government plans to increase maximum penalties for people who refuse to comply with police orders, and are offensive or violent towards police, to an \$18,000 fine or three years jail.

The Youth Affairs Council's Craig Comrie says the Government is demonising young people and creating fear. He says slapping young people with huge fines is absurd. "They'll never be able to pay them off, which means they'll end up in prison as part of our over-stretched juvenile justice system," he said.

The laws also give police the power to recover operation costs from irresponsible hosts, which the Criminal Lawyers Association has labelled stupid and an exercise in futility. The Association's Philip Urquhart says the changes are unworkable.

CLA urges governments across Australia, and the federal government, to seek less heavy-handed ways of solving social problems instead of opting for increased jail terms or massive fines (which themselves will lead to long jail terms if imposed on the penniless). <http://tiny.cc/bvmbwlw>

'Neanderthal' death law to be changed

WA is bringing in new legislation to treat Aboriginal people who die without a will equally.

Under current State laws, if an Aboriginal person dies intestate, their estate automatically goes to the Public Trustee.

Indigenous Affairs Minister Peter Collier told ABC Radio he was embarrassed that it has taken him two years as Minister to introduce the legislation to fix the discriminatory laws. "The legislation is Neanderthal," he said. <http://tiny.cc/wfmb1w>

Centre death preventable, caused by police errors: coroner

The death of an Aboriginal man in custody in Alice Springs was preventable and came after numerous police errors, a court has heard.

The man, known since his death as Kwententyaye Briscoe, died in police custody at the Alice Springs watch house hours after being arrested on January 4 for being excessively drunk.

"In my view the catalogue of errors was so extensive and involved so many police officers of various ranks as to suggest mismanagement for a period of time by police command at a level higher than just 'local'," Coroner Greg Cavanagh said in his findings into Mr Briscoe's death.

Mr Briscoe had committed no crime, but police thought he may have been a danger to himself and took him into protective custody.

Police admitted their errors, and promised an overhaul of procedures.

NT News report: <http://tiny.cc/tehclw>

Coroner's transcript: <http://tiny.cc/kbhclw>

Australian briefs

Capital-ists can play raunchy games: Gamers can play R18+ rated computer games in the ACT from New Year's Day 2013 after the Territory became the first to pass laws to create an R18+ rating. The Australian Parliament passed federal laws in June to create the new ratings category: states and territories must also legislate to enable the classifications, which will line up computer games with categories for films, etc. Tasmania and NSW have also introduced bills into their parliaments. – from various media releases.

Cutting to the chase: An attempt at reform around circumcision has been made by the Tasmanian Law Reform Institute, which recently released a report titled Non-Therapeutic Male Circumcision. The report recommends reforming the legal framework governing circumcision in Tasmania, and provides the most comprehensive formal law reform analysis of circumcision ever undertaken, writes Warwick Marshall on *The Conversation* blog. <http://tiny.cc/2651kw>

Report: <http://www.law.utas.edu.au/reform/documents/CircumcisionFinal.pdf>



CCC not about to dance the two-step with police: Will the Corruption and Crime Commission get to jointly investigate with police, or not? WA Premier Col Barnett wants it to, as part of new powers to crack down on organised crime, but former Police Minister Rob Johnson (pictured) has put a spanner into the crime works, saying he can't support the CCC, responsible for investigating police, also working on investigations alongside police. Watch this space. <http://tiny.cc/dfj4kw>

Doctors' boss takes pot shot: Australian Medical Association NT president Dr Peter Beaumont has called for the decriminalisation of cannabis and ecstasy to be trialled in the NT, the NT News has reported. "We definitely have to do something different to limit the damage caused to people because of these drugs," he said. "There's a lot of evidence that (decriminalisation) could help." His comments came after thinktank Australia21 released a report recommending governments

supplied drugs to users. Dr Beaumont called on governments to do a "closed controlled trial".
<http://tiny.cc/cp8lkw>

Scan plan aims to bug thugs: The NSW Government will install ID scanners in every pub, club and strip joint in Kings Cross, trying to reduce violence. The scanners, linked to prevent ejected patrons moving on to another venue, would be installed by mid next year. Newcastle's entertainment district got a similar system in July. The government plans to ban shots, doubles and drinks served in glasses in all licensed venues after midnight on Friday and Saturday nights, and provide extra late-night and early morning buses and taxi services to and from the area. <http://tiny.cc/uxctkw>

Drug bust cause for alarm: The AFP and Customs have seized about 70kg of methamphetamine, which they claim is worth up to \$42 million...presumably when broken down and sold in small amounts on the streets (the figures claimed by Justice Minister Clare indicate each kilo is worth \$600,000). The drugs were hidden in furniture shipped from Hong Kong to Sydney, with the find resulting from a tip-off from overseas police, it is believed. In 2011, Australian authorities seized almost 14 tonnes of illicit substances, indicating that massive amounts of drugs are being sent to this country – Minister Clare media release.

NT meeting aims to tackle alcohol issues: The Minister for Central Australia, Robyn Lambley, is holding a meeting in Alice Springs on 5 October to discuss alcohol policy in the NT. She will seek input about findings and recommendations from the Coroner's report into the death of Kwementyaye Briscoe at a lockup in Alice Springs in January (see story above).

CLA's main activities for September 2012:

Main correspondence:

John Dowd, Clerk of the Senate Rosemary Laing, Independent National Security Legislation Monitor Bret Walker, Chair Human Rights Committee Harry Jenkins, commentator Gwynne Dyer (Afghanistan), chairman Paul Barratt re Australia 21 annual report;
Questions on conditions in Victorian prisons: Keith McEwan

Projects:

- Gene patents: materials updated, submission to Productivity Commission;
- ANZAC: re avoiding jingoism: meeting held of SAO (Save Anzac Operation) inaugurators;
- University Canberra: Benjamin Smith investigating closer liaison with students;
- Drug and alcohol standards: upgrading all benchmarks: Dr Andrew Keller;

Lectures, seminars:

• DFAT NGO briefing on China Dialogues: In summary, atmosphere better, less bureaucratic, brought up issue of 34 political prisoners, freedom of speech, media, assembly, minorities, Tibet, death penalty. China raised all Universal Periodic Review criticisms of Australia. Question of organ harvesting, Arab Spring effect, Tibet most difficult topic. Dialogue process necessarily very slow, but does have some effect.

- State and Society in Melanesia, The PNG Constitutional Crisis, Dr Eric Kwa, ANU.
- ACT Human Rights Committee, workshop on Declaration Rights Indigenous Peoples.

Submissions:

Productivity Commission: Compulsory licensing provisions, Patents Act 1990 (Tim Vines)
Human Rights sub-committee of the Foreign Affairs, Defence and Trade Committee: inquiry into modern slavery in Australia (Thea Coventry)

INSLM (Independent National Security Legislation Monitor, Bret Walker): inquiry into questioning/ detention warrants/etc.: Rhys Michie

Parliamentary hearing:

Joint Standing Committee Law Enforcement: speaking to submission (*photo shows committee chair Chris Hayes – Fowler, NSW, Lab – and CLA CEO Bill Rowlings*)



Meetings

- Keith McEwan re prison reform;
- Songfa Liu re Falun Gong in China;
- Dr Helen Wiles, issues in aged care residences;
- Dr Melissa Parke MHR re gene patents legislation;
- Dr Helen Watchirs and Sean Costello, ACT Human Rights Commission, mutual briefing;
- Historians Margaret and Henry Reynolds and Humphrey McQueen re ANZAC project;
- Rosemary Jennings special birthday/proofreading celebration;
- Tim Vines and Rebecca Prior re CLA media management.

Media/associated activity:

Spokesperson Rebecca Prior:

- Interview, Bianca Olsen, Western Independent WA: Tasmania's smoking ban proposal.
- Inquiry from Jennifer Mattison, student journalist from Curtin U. Perth: Tasmania's smoking ban proposal.

National Spokesperson/Director Tim Vines:

- Media release regarding the Minister for Home Affairs' proposed 'Integrity Testing' legislation.
- Media Release regarding proposed Kings Cross laws
- Comment to 3rd Degree Journalist on WA 'Wild Party Laws'.
- Submission to Productivity Commission Inquiry into Compulsory Licensing (part of our Gene Patents Campaign). Read it here: <http://bit.ly/URhJbQ>
- Article in the Journal of Law and Medicine on Human Rights and the *Momcilovic Case*. Read it here: <http://bit.ly/QxFeUS>
- Article in the Journal of Law and Medicine on Public Vaccination. Read it here: <http://bit.ly/PxTABA>
- Updates to our Don't Patent Me [Facebook Page](https://www.facebook.com/freegenes) (<https://www.facebook.com/freegenes>) and [Twitter Account](https://www.twitter.com/freegenes) (<https://www.twitter.com/freegenes>)

INTERNATIONAL

Kiwi spooks may have done Dotcom down...illegally

The NZ PM, John Key, has launched a inquiry into "unlawful" spying by government agents leading to the arrest of Megaupload founder Kim Dotcom, who is fighting extradition to the US where he faces charges of internet piracy and breaking copyright laws.

In June a Kiwi court ruled that search warrants used in the raid on Dotcom's home earlier this year, requested by the FBI, were illegal.

PM Key has asked the government's intelligence and security division to investigate "circumstances of unlawful interception of communications of certain individuals by the government

communications security bureau", his office said in a statement last month. "The bureau had acquired communications in some instances without statutory authority," Key's statement said.

NZ authorities arrested Dotcom and his colleagues at his rented country estate near Auckland in January, confiscating computers and hard drives, works of art, and cars.

The FBI accuses Dotcom, a 38-year-old German national also known as Kim Schmitz, of leading a group that netted \$160m since 2005 by copying and distributing music, films and other copyrighted content without authorisation. <http://tiny.cc/dv54kw>

Blair war 'disaster' forces UK to open secret courts, says Minister

Former UK Justice Secretary Ken Clarke says that conflicts in Iraq and Afghanistan have prompted a rise in detainee compensation claims, which can only be heard in secret.

Mr Clarke has blamed Tony Blair's "disastrous war on terror" for the need to introduce the secret courts to protect sensitive intelligence material. In a Guardian article, the former Justice Secretary says that armed conflicts begun under Blair have prompted a rise in compensation cases from former detainees who allege mistreatment.

Mr Clarke uses language that is unlikely ever to be used by the current Prime Minister David Cameron. "Most people are aware that Tony Blair's disastrous war on terror has resulted in a substantial rise in individuals, often former detainees, bringing compensation cases against the UK government alleging mistreatment," Mr Clarke writes.

He brands critics of the government's justice and security bill, which will usher in secret courts, as "reactionary parts of the human rights lobby". He says it is necessary to introduce the new measures to ensure intelligence material can be admitted as evidence without risk of exposing it to the public domain.

Under Clarke's plans such intelligence would be heard by a judge but not by claimants or their lawyers. The judge would in effect be obliged to obey a minister's request for information to be kept secret on grounds of "national security". <http://tiny.cc/qgxykw>

Tutu attacks Bush, Blair over 'double standards on war crimes'

Archbishop Desmond Tutu of South Africa has called for former US President George W. Bush and British PM Tony Blair to be tried in The Hague.

Tutu, a Nobel peace prizewinner and hero of the anti-apartheid movement, accuses the two leaders of lying about weapons of mass destruction, and says the invasion left the world more destabilised and divided "than any other conflict in history".

Writing in [the Observer](#), Tutu also suggests the controversial US and UK-led action to oust Saddam Hussein in 2003 created the backdrop for the civil war in Syria and a possible wider Middle East conflict involving Iran.

"The then leaders of the United States and Great Britain," Tutu argues, "fabricated the grounds to behave like playground bullies and drive us further apart. They have driven us to the edge of a precipice where we now stand – with the spectre of Syria and Iran before us."

Claiming that different standards appear to be set for prosecuting African leaders and western ones, he says the death toll during and after the Iraq conflict is sufficient on its own for Blair and Bush to be tried at the International Criminal Court. <http://tiny.cc/m3qzjw>

Probe into CIA finds not enough evidence to convict

The US Justice Department has ended its investigation into CIA interrogations of terrorist detainees without bringing criminal charges.

The decision in the inquiries of the deaths of two terrorist suspects marks the end of a wide-ranging criminal investigation by federal prosecutor John Durham into interrogation practices during the presidency of George Bush. Durham probed the treatment of 101 detainees in US custody since the 9/11 terrorist attacks.

Jameel Jaffer, deputy legal director of the American Civil Liberties Union, called the outcome of the investigation "nothing short of a scandal." <http://tiny.cc/b3rwjw>

Drone killings are politically counter-productive, claim

The CIA's program of 'targeted' drone killings in Pakistan's tribal heartlands is politically counterproductive, kills large numbers of civilians and undermines respect for international law, according to a report by US academics.

The study by Stanford and New York Universities' law schools, based on interviews with victims, witnesses and experts, blames the US president, Barack Obama, for the escalation of "signature strikes" in which groups are selected merely through remote "pattern of life" analysis.

Families are afraid to attend weddings or funerals, it says, in case US ground operators guiding drones misinterpret them as gatherings of Taliban or al-Qaida militants.

"The dominant narrative about the use of drones in Pakistan is of a surgically precise and effective tool that makes the US safer by enabling 'targeted killings' of terrorists, with minimal downsides or collateral impacts. This narrative is false," the report, entitled Living Under Drones, states.

The "best available information", they say, is that between 2,562 and 3,325 people have been killed in Pakistan between June 2004 and mid-September this year – of whom between 474 and 881 were civilians, including 176 children. The figures have been assembled by the Bureau of Investigative Journalism, which estimated that a further 1,300 individuals were injured in drone strikes over that period. <http://tiny.cc/od36kw>

Liz and Charlie: British laws means precisely what we want it to mean

The British Government must reveal details of a secret power which allows two citizens, Elizabeth and Charles Windsor, to change proposed UK laws to suit themselves and their interests.

The UK Information Commissioner has ruled that the Cabinet Office must publish a public service guide to the way the senior royals are consulted before legislation is introduced to ensure it doesn't adversely affect them.

The manual details how the consent of "The Crown and The Duchy of Cornwall" is obtained before bills become law, and what criteria ministers apply before asking the royals for their opinions. <http://tiny.cc/agxxjw>

In a separate case, the FOI tribunal has ordered the British Government to disclose confidential letters that Charles Windsor wrote to Ministers, trying to influence government policy, between September 2004 and April 2005.

The release of the "black spider memos" – as they were named within the bureaucracy because of Mr Windsor's spidery handwriting – is likely to be a one-off. The government last year brought in a blanket ban on his correspondence being disclosed under FOI law in the future, regardless of whether it is in the public interest. The absolute block was imposed following pressure from the royal family, a well-placed source told the Guardian. <http://tiny.cc/ddwvkw>

Kiwis to tackle synthetic drugs by regulating them

New Zealand will introduce new psychoactive substances drug legislation that will make distributors and producers of party pills prove they are safe before they can sell them.

Associate Health Minister Peter Dunne said: "I have been driving this for a considerable time. None of these products will come to market if they have not been proven safe – and the cost of proving that will be on those who make and sell them, as it should be," he said.

Mr Dunne said that in the past year the NZ Government had put a serious dent in the synthetic cannabis market with the Temporary Class Drug Notices. "We have seen a 75% fall in emergency call incidents around synthetic cannabis products according to National Poisons Centre data." <http://tiny.cc/t21xjw>

Employees sue for right to cross-dress, but not homosexually

The freedom to wear crosses at work and to refuse to support same-sex relationships came under scrutiny at the European Court of Human Rights last month.

The four landmark test cases in employment law before judges in Strasbourg may define the limits of religious liberty across the EU.

All four cases, already examined extensively in the English courts, involve practising Christians who allege they were discriminated against in the workplace, *The Guardian* reported.

Nadia Eweida, 61, a British Airways employee and Pentecostal Christian, and Shirley Chaplin, 56, a geriatrics nurse, complain their employers prevented them from wearing crosses visibly at work.

Lillian Ladele, a registrar of births, deaths and marriages, and Gary McFarlane, a Relate counsellor, claim their dismissals constituted religious discrimination. Ladele, 52, declined to officiate at same-sex civil partnership ceremonies; McFarlane, 51, was accused of not providing counselling to same-sex couples. Both, according to the ECHR, believe "homosexual relationships are contrary to God's law".

All four applicants invoke article 9 (freedom of religion) and article 14 (prohibition of discrimination) of the European convention on human rights in their claims. <http://tiny.cc/2ja2jw>

In India, don't draw your own conclusions

An Indian cartoonist is being detained on sedition charges for satirical drawings highlighting corruption among India's political elite.

The charge is provoking a fierce debate on freedom of speech in the world's largest democracy.

Aseem Trivedi, 25, of Mumbai has published a series of cartoons, including one that depicts the parliament building as a lavatory buzzing with flies. Another shows 'Mother India' being raped (right).

Trivedi is being held in judicial custody after refusing bail. If found guilty, he could face a lengthy prison service.

The case against him was filed in a Mumbai court by a local advocate who said the pictures mocked national symbols. Also charged with posting seditious and obscene content on his website, which is now blocked, Trivedi declined to apply for bail in a sign of protest.

The sedition laws in India date back to the country's colonial days. Nationalist heroes such as Mahatma Gandhi were frequently charged with sedition during their struggle for independence.

<http://tiny.cc/xn9ekw>



Spot a homosexual: light clothing, large handbags

The Malaysian Government is holding seminars to help teachers and parents spot signs of homosexuality in children, underscoring a rise in religious conservatism in the country.

The Teachers Foundation of Malaysia has organised 10 seminars across the country. Attendance at one event last month reached 1,500 people, a TFM spokesman said. "It is a multi-religious and multicultural [event], after all, all religions are basically against that type of behaviour."

The federal government said in March that it is working to curb the "problem" of homosexuality, especially among Muslims who make up over 60% of Malaysia's population of 29 million people. According to a handout at a recent seminar, signs of homosexuality in boys may include preferences for tight, light-coloured clothes and large handbags. For girls, the details were less clear: girls with lesbian tendencies have no affection for men and like to hang out and sleep in the company of women.

Malaysia frowns on oral and gay sex, describing them as against the order of nature. Under civil law, 'offenders', both male and female, can be jailed for up to 20 years, caned or fined.

Prosecutions are rare, although former Deputy Prime Minister Anwar Ibrahim has twice been tried for sodomy, in cases he called political conspiracies. He spent six years in jail, but the courts have since cleared him on appeal or dropped charges for lack of evidence. <http://tiny.cc/uimmkw>

Afghans are fleeing...back home

More than 50,000 Afghan refugees have returned from exile in Pakistan and Iran to end-August 2012, up more than 10% on the first eight months of last year.

From January-August, the refugee agency UNHCR helped an average 213 refugees repatriate every day compared to 190 a year earlier, when 45,000 returned in the first eight months. Of the 50,000 returnees this year, some 40,000 came from Pakistan and just over 10,000 from Iran.

About a third went to the eastern provinces of Kabul and Nangarhar, with about 11% heading to Kunduz in the north. The other most popular destinations were Herat, Baghlan, Kunar, Kandahar, Paktya, Balkh, Logar and Laghman provinces.

More than 5.7 million people have returned to Afghanistan since the fall of the Taliban government in 2001, including some 4.6 million with UNHCR help. The return movement continues but more than 3 million people remain in exile, mostly in Pakistan and Iran. Many fled more than 20 years ago during the Soviet occupation, but large numbers were born in exile. <http://tiny.cc/vgeikw>

European Court rules indeterminate sentences illegal

The European Court of Human Rights has ruled "arbitrary and unlawful" the "open-ended" indeterminate sentences for the protection of the public (IPPs) currently being served by more than 6,000 prisoners in England and Wales.

Seven Strasbourg judges said, unanimously, that the prison system was "swamped" by IPP prisoners without a fixed release date after its introduction in 2005 and the inmates had "no realistic chance" of accessing the rehabilitation courses they need to qualify for release.

The ruling says that the three inmates who brought the case had been left in privately-run local prisons for two and half years where there had been few, if any, offending behaviour programs.

"The stark consequence of the failure to make available the necessary resources was that the applicants had no realistic chance of making objective progress towards a real reduction or elimination of the risk they posed by the time their tariff periods expired," the ruling said.

"Moreover, once the applicants' tariff had expired, their detention had been justified solely on the grounds of the risk they had posed to the public and the need for access to rehabilitative treatment at that stage became all the more pressing," it said. The judges said that in those circumstances their detention had been "arbitrary and therefore unlawful".

The IPP sentence is due to be replaced by a new "extended determinate sentence" later in 2012. It will not apply to more than 6,000 existing prisoners in jails in England and Wales whose release dates are to be decided on a "case by case" basis by the Parole Board.

The UK Ministry of Justice has three months to consider whether to appeal. <http://tiny.cc/wvvvkw>

Police target ex-criminals for DNA check

Thousands of ex-offenders in the UK are being targeted by 43 police forces to add their profiles to the national DNA database in a bid to solve "cold case" crimes.

The campaign focuses on 11,993 criminals convicted of serious offences such as murder, manslaughter and rape in the past 40 years, the Association of Chief Police officers said. A similar operation in Greater Manchester began last month, testing 2,000 people convicted before 1995. Forces are using powers under the *Crime and Security Act 2010*, which became law last year. The aim is to gather DNA profiles from criminals who were convicted before the database – which now contains 6.5m profiles – was set up in 1995. Meanwhile, the profiles of 1.1 million individuals who have been arrested but never convicted remain on the database.

Codenamed Operation Nutmeg, the sweep wants to add all those convicted of serious offences to the database. Their profiles will then be checked against unsolved crimes to check for matches. Many of those targeted over the next year will now be in their 70s. <http://tiny.cc/4dedlw>

International briefs

Sex offenders can appeal life registration: British sex offenders ordered to register with the police for life can now appeal against the requirement. The British Supreme Court has ruled it was a breach of offenders' human rights to be put on the register for life with no review. Currently prisoners have to wait 15 years after being released from jail to be able to apply to be removed from the register. <http://tiny.cc/rdrzjw>

Kidnap, torture, murder are OK, but speak out and you'll be prosecuted: Peter Van Buren, writing on the Kiriakou case: "He understands the role his government has chosen for him: the head on a stick, the example, the message to everyone else involved in the horrors of post-9/11 America. Do the country's dirty work, kidnap, kill, imprison, torture, and we'll cover for you. Destroy the evidence of all that and we'll reward you. But speak out, and expect to be punished." <http://tiny.cc/6z3lkw>

Men suffer unkindest cut of all: Two men have made history by being convicted under the *Serious Crime Act 2007* with importing legal substances, caffeine and paracetamol, into the UK. Both substances are legal, but Anthony Woodford and David Lewinson had 150kg ground up together – useable for cutting, or bulking out, heroin – when their car was nabbed at the Dover Docks on a trip back from Dunkirk. They will be sentenced this month. <http://tiny.cc/ctj4kw>

Jury wants death for arsonist: A US jury last month recommended death for an arsonist convicted of murdering five men who died of heart attacks during a wildfire that ripped through Southern California nearly a decade ago. The charges against Rickie Lee Fowler, 31, relate to the 'Old Fire', which scorched 37,000ha and destroyed 1,000 buildings while burning for nine days. The men died as their homes burned or as they tried to evacuate. Superior Court Judge Michael A. Smith ordered Fowler to return to court 16 Nov for sentencing, when the judge can accept the jury's recommendation or sentence Fowler to life in prison without parole – AP <http://tiny.cc/jagdlw>

DATES

OCTOBER:

4 Oct, Melbourne: 2012 CEPS Policing and Security conference, Novotel St Kilda, Rego: melanie.davies@griffith.edu.au

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/#>!

5 Oct, Canberra: Rise of Emergency International Law-Making: Security Council's Legislative Phase: Anna Hood, from U. Melbourne, at Staff Library, ANU College of Law. RSVP: rsvp@law.anu.edu.au Free.

16 Oct, Brisbane: Ass Prof Jacqui Ewart: *'The need to seriously re-evaluate police/media relations in Australia'*, 12.30-1.30pm, Room 5.01, Social Sciences Bldg (M10) Mt Gravatt Campus, Griffith U. RESP: vicki.ward@griffith.edu.au by 8 Oct. Details: <http://www.ceps.edu.au/events/62>

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>

19 Oct, Canberra: Inclusion and exclusion by law: accountability for genocide and state crime –Jennifer Balint, U. Melbourne. 1-2pm, **Hedley Bull Centre, Building 130, ANU** RSVP: rsvp@law.anu.edu.au http://law.anu.edu.au/sites/all/files/events/cipl_balint.pdf Free.



31 Oct, Brisbane: *Finding new ways of getting Intellectual Property put into use*, Dr Kevin Cullen (pictured), CEO NewSouth Innovations, UNSW. 5.30-6.30pm, Cinema, Griffith U. Film School, Dock/Vulture Sts, Southbank. RSVP m.adcock@griffith.edu.au

NOVEMBER:

7 Nov, Brisbane: Social Science and Family law – a complementary coalition or a clash of cultures. Zoe Rathus, Griffith U, Nathal Law School N61.1.02, with video link to Gold Coast Law School G36.3.82

DECEMBER:

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

11 Dec, Sydney: Comparative Constitutional Law – 2012 Final Courts Round-up seminar, 5.30pm, Court 18B, Federal Court of Australia, Queens Sq. Details: Gilbert and Tobin Centre, <http://tiny.cc/tfw8kw>

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

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/>

11-13 Dec, Parramatta, Sydney: Trans-Tasman Domestic Violence Conference, Rydges Parramatta Hotel, website: <http://www.gcadv.net/2013dvconference.htm> Call for papers (frst closing 30 Oct 2012) or details and registration form, email: chairman@gcadv.net

2015:

June, England: 800th anniversary of Magna Carta

Date, Place TBC: 2nd Global Domestic Violence Conference

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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