

## **Confected ‘Rights Action Plan’ spins fairy floss**

The Gillard/Roxon axis has released a National Human Rights Action Plan (NHRAP).

CLA calls it the Confected – or pretend – Rights Action Plan (CRAP).

This is the plan you have when you’ve “built” a human rights “framework” first...which is precisely the wrong way to fashion any robust structure that you want to last. Most strong buildings start with a plan and foundations, then a framework is built.

*“This delivers on another of the commitments made in Australia’s Human Rights Framework,”* the Attorney-General, Nicola Roxon, trumpets. Her statement furthers the spin of creating airy nothingness and calling it concrete.

Here are the claims: *“The NHRAP outlines what the government will do to improve human rights. It reaffirms our commitment to existing social policy initiatives and also highlights new priority areas for human rights across Australian governments. It also articulates, in detail, how the government will implement the commitments we made in 2011 during Australia’s Universal Periodic Review at the United Nations.”*

Rubbish. It is a collection of weasel words cobbled together to make it seem that a PR Spin approach to human rights is meaningful.

Whenever this government and its Coalition predecessor has faced a human rights issue of principle, it has sprinted away at the double in the wrong direction. Haneef? Habib? Hicks? Assange? A vote on peace in the Middle East? American interests in Afghanistan and the Asia-Pacific? US troops (including CIA and Joint Special Operations Command hit squads) in Australia? Drone assassinations?

Human rights has been the furthest thing from our governments’ considerations. Australia’s “stance” is to bend over, backwards.

You can bet your bottom dollar that this government will stand clearly and decisively against human rights principles most of the time. It will oppose individual, national and international liberties, in favour of the USA for example, at every opportunity. It will use weasel words to try to convince us, and itself, that it actually believes in liberties and rights. Which it doesn’t.

When forced to choose between the rights of an Australian citizen – say Julian Assange – and the wants of other nations, this government will elect to put the rights of non-Australians first.

Did anyone mention a Human Rights Act for Australia? Certainly the media release didn’t. If Roxon, Gillard and Labor (or Shadow AG George Brandis, Tony Abbott and the Coalition) want to demonstrate a real “national human rights action plan”, they would enact a Bill of Rights for Australia. Everything else, including this CRAP, is public relations spin.

*The National Human Rights Action Plan is available for download at <http://www.ag.gov.au/nhrap>. Further information at 02 6141 3086 or [daniel.abraham@ag.gov.au](mailto:daniel.abraham@ag.gov.au)*

## **Big fines potential, but actions won’t match the rhetoric**

The privacy supremo will next year be able to impose million-dollar fines – on both government agencies and private companies – under new laws which create one combined set of privacy principles.

The provisions will come into force in May 2014, the head of the Office of the Information Commissioner, Prof John McMillan, told CLA last month.

Under the new law, his office can investigate both groups at his discretion, in the same way they currently can individuals. Maximum penalty for both government agencies and private organisations will be \$1.1m. Changes will include:

- Companies can give customers' personal information to offshore counterparts, like call centres, but are responsible for the way they deal with it and secure the data;
- Credit providers can give customers' repayment history to other organisations if a loan hasn't been paid back two weeks after default; and
- Companies are required to give people an easy "opt-out" from direct marketing material, regardless of whether personal information was collected initially for direct marketing or for a secondary use.

The Australian Privacy Foundation's Nigel Waters said the new powers would make little difference to people's privacy protections because the law did not establish a right to force the Privacy Commissioner, Tim Pilgrim, to make a formal determination. In a classic case of wimpishness, current and former commissioners had made only 9 such determinations in 23 years.

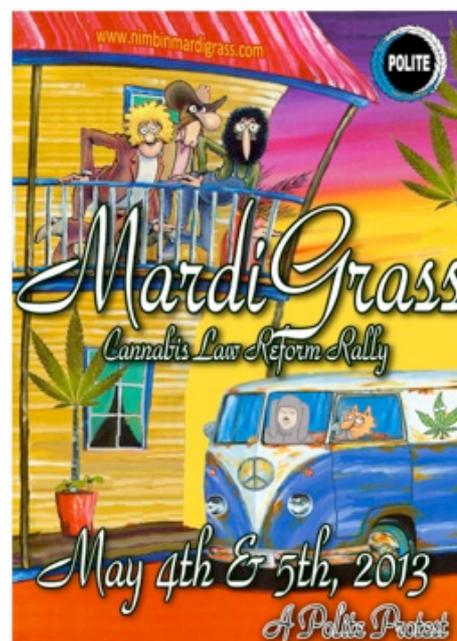
Without a determination, an individual can't go the courts. <http://tiny.cc/gyk5ow>

### **ODD SPOT: Go where the grass is greener**

MardiGrass will run in the home of hemp, Nimbin in northern NSW, on 4 and 5 May this year.

Main events, some held in Peace Park, will include the Hemp Olympix and the Joint Rolling contest.

Why should anyone go? Here's what the organisers say: "Because in years to come you can tell your grandchildren you were in the war on drugs." Details: <http://www.nimbinmardigrass.com/2013/program13.html>



### **Government agencies pry into 5800 phone and internet accounts each week**

Federal and state police and government agencies pried, without warrant, into the electronic lives of 20% more people in 2011-12 than the year before.

Government agencies accessed private telecommunications data and internet logs without warrants more than 300,000 times during the year, Philip Dorling reported in Fairfax media.

Attorney-General's Department statistics show that, on average, the agencies legally pried into people's lives through telecommunications and internet service providers 5800 times every week.

The data is contained in phone and internet account information, outwards and inwards call details, phone and internet access location data, and details of Internet Protocol addresses visited, but not the content. Senior police officers or officials can authorise the electronic searches, rather than a judge having to issue a warrant.

NSW Police used the access 103,824 times in 2011-12, more than 2000 a week. Victoria Police accessed data 67,173 times in the same period, while the Australian Federal Police did so 23,001 times. Other users include the Australian Crime Commission, the Australian Securities and Investments Commission, the Australian Tax Office, government departments, Medicare, Centrelink and Australia Post. It is also used by all state police and anti-corruption bodies and a growing number of state government departments and agencies, including the Victorian Department of Primary Industries, the Victorian Taxi Directorate and WorkSafe Victoria. Data is also accessed by the RSPCA in Victoria, Queensland and Tasmania.

"This is the personal data of hundreds of thousands, indeed millions of Australians, and it seems that just about anyone in government can get it," said Senator Scott Ludlam (Greens, WA). He said the current data access regime was out of control and amounted to the framework for a surveillance state. "There can't be much in the way of working checks and balances if we have a 20% surge in activity in one year, and more than 300,000 authorisations."

The latest statistics also show a 7.7% jump in the number of telecommunications interception warrants issued by judges to law enforcement agencies, with 3755 phone taps authorised in 2011-12. CLA says 7.7% is a worrying trend...but a 20% leap is frightening in terms of how un-private that makes our personal communications. <http://tiny.cc/jzknow>

## Halligan plays Solomon, by another name

Two children trapped in their warring parents' "poisonous" split have been ordered by a court to stop calling their step parents "mum" and "dad".

The extraordinary ruling in the Federal Magistrates Court permits the two boys, aged 5 and 6, to use the terms as a prefix only to their step parents' given names, Ainsley Pavey reported.

Federal Magistrate David Halligan said: "This is necessary to attempt to protect and recognise the unique positions of the mother and father, positions that cannot be filled by the step parents." He said the orders were in the "best interests" of the boys.

The decision to enforce the naming order follows a finding by Mr Halligan of a "significant deficit in the parenting capacity of both parents".

"The conduct of the mother and (stepfather) in facilitating (the eldest son's) use of the (stepfather's surname) at school and calling him Dad and the father by his given name – and the father's conduct in attempting to have (the eldest son) call (the stepmother) Mum – indicate that orders are necessary," Mr Halligan said. <http://tiny.cc/77sqpw>

## Aussie to chair treaty to regulate arms trade



Australia's UN ambassador, Peter Woolcott (left), will preside over a new conference aiming for agreement on a UN treaty regulating the arms trade.

The UN General Assembly has voted 133-0, with 17 abstentions, to bring the 193 UN member states back to the negotiating table in March following their failure to reach agreement on a treaty in July 2012.

The proposed treaty would prohibit states that ratify it from transferring conventional weapons if doing so would violate arms embargoes or promote acts of genocide, crimes against humanity or war crimes. Before authorising the export of arms, the draft says a country must evaluate whether the

weapon would be used to violate international human rights or humanitarian laws or be used by terrorists, organised crime, or for corrupt practices.

Many countries control arms exports but there has never been an international treaty regulating the estimated \$60 billion global arms trade. <http://tiny.cc/miawpw>

## Smith refuses aid to community groups

Community groups will have to seek private funding for public interest court cases against coalminers and gas drillers, after a crackdown on legal aid funding by the NSW government.

Attorney-General Greg Smith announced last month that the funding could not be used on behalf of "activists" and "lobbyists" who could impede minerals industries. But he refused to say what he meant by "lobbyist" and "activist", or say what means or merit tests would be applied.

The new rules will affect 36 community legal centres across the state. They received more than \$18 million last year, including \$5.26 million from the Public Purpose Fund.

The rule changes specify funding should primarily give legal advice to socially and economically disadvantaged people, who should undergo a means and merit test. <http://tiny.cc/isuqpw>

CLA believes this is a serious error by the NSW Government: legal aid should go to those who most need it. If an issue involving the defence of community rights is relevant and important, it is appropriate that it receives state help to prove its case in court. If money is the problem, we can suggest several ways that subsidies to mining companies could be reduced so that individuals can pursue their legal cases.

## NT Speaker prepared to sponsor euthanasia bill

The Speaker of the NT Legislative Assembly says she is prepared to propose a private members' bill to re-introduce voluntary euthanasia in the Territory.

The Greens are attempting to scrap Commonwealth legislation that overrode the NT's voluntary euthanasia laws 15 years ago.

The Country Liberal Party's Kezia Purick says she thinks it is inevitable euthanasia will be debated in the NT again. If the Greens succeed federally, she would be willing to present a private members' bill to legalise voluntary euthanasia in the NT. "From the feedback and the discussions I have in and around my electorate ... people are very supportive of the right to choose."

Federal Regional Development Minister Simon Crean says he supports voluntary euthanasia and the Territory's right to make its own laws. Speaking in Darwin, Mr Crean said he voted in favour of euthanasia laws the last time they came before federal parliament. He says it is a fundamental right for the Territory to determine its own laws, and he is not surprised the right to die debate is back on the agenda. <http://tiny.cc/0as0pw>

## Ethics kept in reserve: is this how the NSW Government operates?



Parents in NSW will be kept unaware that ethics classes are available for their children in state schools until after they have opted out of special religious education, or scripture.

The Education Minister, Adrian Piccoli (left), confirmed last month that ethics classes would be retained, but said parents will be first offered a place in scripture classes and only told about ethics in a follow-up letter if they opt out.

Greens MP John Kaye described the change as "a massive road block" to parents being informed of ethics classes, (due to) a deal with Christian

Democrats for their vote in the upper house." <http://tiny.cc/n34uow>

## Car chase perpetrators to get faster cars

NSW Police will spend an extra \$20,000 a vehicle to buy souped-up highway patrol cars.

In the past decade at least 16 people have been killed and more than 450 injured as a result of police chasing vehicles in NSW. Of the 30-odd chases a month in the state, officers have an amazing ability to stop chases just seconds before the ones which result in deaths, CLA notes.

Police are evaluating the Holden Special Vehicle Clubsport sedan, which has a 6.2 litre V8 engine, 20% more powerful than standard highway patrol cars and costing \$20K more per vehicle.

Greens MP David Shoebridge criticises the plan. "Instead of looking to safe, tried and true methods of reducing police chases and injuries, the NSW force is commissioning expensive high-speed vehicles to muscle-up," he said. "It makes no sense. It encourages hooners to take police on and it encourages police to engage in the chase." <http://tiny.cc/li9vpw>

## Police hide speed cameras

SA police are using hidden speed cameras in the Adelaide Hills to catch speeding motorcyclists.

Superintendent Bob Fauser, officer in charge of Traffic Support Branch, said motorists, particularly motorcyclists, speeding in the Hills should prepare to be caught. "Just because there's no camera in plain sight, that doesn't mean you haven't been detected, and won't be penalised," he said.

"We are using covert tactics...we won't be making apologies for that." <http://tiny.cc/hohzow>

## Government rules by edict, based on secret information

Lawyers for the Queensland Government have defended the use of confidential information that helped it declare a chapter of the Finks biker club a criminal organisation, saying the public has a right to live free of crime.

Pompano Pty Ltd, a company linked to the Gold Coast chapter of the Finks, is challenging the state's Criminal Organisation Act in the High Court in Canberra.

Queensland police want the chapter and the company declared criminal organisations, on the basis that their members associate for the purposes of engaging in or conspiring to engage in serious criminal activity.

But lawyers for the Finks say hearings on the issue have been limited to a small group of people, excluded the club's legal representation and dealt with criminal intelligence which came from untested information. They claim the Queensland legislation is unconstitutional, stripping courts of their independence and denying procedural fairness.

Police should use criminal law if they have evidence to lay charges, Finks lawyer Bret Walker SC told the court on Tuesday. "This is another scheme enacted by a state parliament which seeks to address the suppression of crime in ways other than by criminal trial," Mr Walker said. <http://tiny.cc/a9lsow>

## Police resort to ancient 'dobber' fear campaigns, says barrister Barns

Tasmania Police were PR spin and spreading fear to get the State Government to introduce anti-bikie legislation, barrister and CLA member Greg Barns said last month.

He said reported police statements over Rebels Motorcycle Club national president Alessio Emmanuel "Alex" Vella, buying property in Tasmania were akin to the half-century old, fear-based 'dob in a Commo' campaign.

The *Hobart Mercury* reported that Detective Inspector John Arnold – the Tassie rep on the Australian Federal Police's anti-Rebels taskforce Attero – said the Rebels played a key role in the distribution of methamphetamine in Tasmania. The policeman encouraged the public to make reports about Rebels' activities to the Crime Stoppers hotline.

Mr Barns, who has acted for a number of bikies, said the police comments were "extremely disturbing". "He is effectively saying to the public that if you see people who you think are members of bikie gangs, ring Crime Stoppers," Mr Barns said. "It reminds us of the days when ASIO used to tell us to dob in a Communist. It's an outrageous statement on his part.

Mr Barns said Inspector Arnold's comments about the Rebels were part of a Tasmania Police campaign to get "draconian" anti-association laws introduced in Tasmania. <http://tiny.cc/8663pw>

## ACT judges slammed by legal columnist



Newspaper columnist, uni law lecturer and lawyer Crispin Hull last month savaged the justice system in the national capital: "The ACT court system had become a national legal joke," he wrote in the *Canberra Times*.

"It has become so desperate that the ACT Bar Association has lodged a formal complaint with Attorney-General Simon Corbell about one judge, who reportedly has 20 cases with the judgment outstanding for more than 18 months, and one (judgement) for nearly four years.

"Some (of the judges) suffer from what might be called Magna Carta-ism – the urge to write the definitive judgment covering every bit of the law on an area going back to the Magna Carta. This is the ACT, not the High Court.

"Parties want expeditious decisions, not legal history," Hull wrote.

Two major appointment opportunities come up in the ACT in 2013. The Chief Justice, Terry Higgins (pictured) retires, as does the Master, David Harper. The ACT has four Supreme Court judges in total, but the judges have been actively campaigning for the appointment of two more to their number for years. <http://tiny.cc/i2ospw>

## NT Govt gives itself the big tick...but report card is mixed

The NT Government claims to have ticked off 40 of the 43 actions in its first 100 days plan, with the three remaining under way.

Under Attorney-General John Elferink, some actions include:

- getting rid of the banned drinker register;
- recruiting 120 new police to go on the beat;
- reintroducing release of quarterly crime statistics; and
- bringing in tougher laws like 'one-punch' homicide, drug testing of suspects, and mandatory sentencing for aggravated assault in workplace offences.

Chief Minister Terry Mills said the new government was trying to reduce debt, which would reach \$6 billion by 2016. "We are already paying more than \$750,000 in interest repayments every single day," Mr Mills said. – media release 3 Dec 2012

## Australian briefs

**NSW turns 50:** The NSW Council for Civil Liberties turns 50 in 2013. Congratulations from CLA. NSWCCCL hasn't announced its program of celebrations yet, but we'll bring them to you when they are revealed.



**Bromwich new OzDPP:** NSW barrister Robert Bromwich is the new Commonwealth Director of Public Prosecutions, the position which officially prosecutes federal offences. He replaces Christopher Craigie, who became a NSW District Court judge in October. "Mr Bromwich has gone full circle, starting as a legal officer in the office of the CDPP many years ago, he worked his way up to In-house counsel before going to the private bar and he now returns as its director," AG Roxon said. Media release, 12 Dec 2012.

**Coroner to check death in custody:** The WA Coroner is investigating the death of a 44-year-old Aboriginal woman in custody in the Broome Police Station lockup early in the morning of 30 Nov 2012. The Police Internal Affairs Unit is handling the inquiry. WA Police say it was a "reportable death within the meaning of the Coroners Act" and the investigation will lead to a report on the circumstances for the State Coroner. Police can't comment on cause of death before the investigation was done, Sgt Gerry Cassidy said.

**Police stun gun use unjustified, court says:** Magistrate Janet Wahlquist has found use of a stun gun to subdue Marcello Jimenez outside a Sydney hotel on 18 March, two hours before the death of the Brazilian, Mr Curti, was unwarranted. Police officer Hugh Michelson was identified as the man who pulled the trigger on Jimenez, a decision described by the magistrate as "very poor judgment". "I'm not satisfied that the use of the Taser was warranted. What flows is that the police were not acting in the execution of their duty," she said. She dismissed four charges against Jimenez, including resisting arrest and assault on police officers. <http://tiny.cc/m8lnow>

**Jail comes to the party:** New WA legislation – which defines an out-of-control party as a gathering of 12 or more where at least two are engaging in criminal activity – has passed Parliament. Under the laws, party guests who ignore police orders to disperse and are then offensive or violent towards officers could face an \$18,000 fine or three years jail. <http://tiny.cc/5gmnow>

**Double trouble as state turns back the clock:** Queensland is planning to further amend the state's double jeopardy laws to allow retrials in some historic cases. Qld Attorney-General Jarrod Bleijie says he is considering amendments to the state's law to permit retrials in cases of serious offences where either fresh and compelling evidence has come to light or where the acquittal is tainted. "Retrospectivity applies in NSW, WA, SA, Tasmania and Victoria, and changing the legislation in Queensland is something I am currently considering," he said. <http://tiny.cc/ic22ow>

**P-platers may face new night ban:** Victorian coroner Heather Spooner has recommended state authorities consider a ban on P-platers driving at night, as she says happens in WA. Her findings follow an inquest into the deaths of five teenagers killed in a crash at Mill Park, in Melbourne's north, two years ago. The driver was drunk and speeding: he lost control of the unregistered car and crashed into an oak tree. Of six teenagers in the Ford sedan, only a 15-year-old girl survived. <http://tiny.cc/wutqpw>

**State's senior lawyers to become 'Queen's' again:** AG Jarrod Bleijie has decided senior members of the Queensland Bar will again be commissioned as Queen's Counsel instead of Senior Counsel. "QC is more widely known and understood by the public as a mark of professional distinction at the Bar and this move will make the distinction much clearer. It is important that Queensland silks are competitive internationally particularly in Singapore and Hong Kong where the use of QCs is preferred," the AG said. Media release 12 Dec 2012.

**Sergeants get updated stun guns:** ACT Policing has issued video camera-enabled stun guns to frontline sergeants who are shift supervisors. The new stun gun replaces an older model, which did not have video cameras. Acting Deputy Chief Police Officer for the ACT, Paul Shakeshaft, said the new X2 model has optional additional safety features. "The new model has an audio recording feature, a warning arc capability, a dual cartridge option and a high definition video recording capability that can be activated to record once the Taser safety switch is drawn, aimed or discharged," he said. <http://tiny.cc/p0s1pw>



**Hiley benched in NT:** One of the NT's most experienced barristers, Graham Hiley, has been appointed to the NT Supreme Court. A co-founder of the NT Bar Association and nationally-accredited mediator, he replaces retiring Justice Mildren. Mr Hiley was among four high-profile justice appointments by the Attorney-General John Elferink. The others are: Wojciech Jacek Karczewski QC as the Director of Public Prosecutions, Sally Sievers as the Anti-Discrimination Commissioner, and Elizabeth Armitage as a permanent stipendiary magistrate.

## CLA report – for December 2012

### Meetings:

Colin Neave, Commonwealth Ombudsman re Administrative Review Council work, Anzac project  
Prof Don Rothwell, International Law expert re Australia Consular Operation Handbook project  
Rob Wesley-Smith, Charlie Wood re East Timor, Gurindji photo project  
Tim Vines media, computer issues

### Lectures/events:

Lecture: Prof Philip Alston of NYU on unauthorised drone attacks, 'academic-military complex'  
Law of the Sea conference ANU  
ACT Human Rights Forum on UN HR Day  
Upcoming: Australia Day letter

### Media:

Article: 'Juliar' may land you in court, News Limited, 12 Dec 2012  
Interview by Howard Sattler, Drive, 6PR Perth: proposed anti-discrimination laws, 13 Dec 2012  
Feature piece: The Punch, News Ltd online journal, 13 Dec 2012

Media release: Liberals curtail free speech of State election candidates (WA)

### **Submissions made:**

Senate Legal and Con. Cttee: Inquiry into Human Rights and Anti-Discrimination Bill 2012

Submissions under consideration:

Federal: Justice Reinvestment (one member has prepared personal submission already)

NSW: Performance Measures for Police/Security Agencies

*Very best wishes to all CLA members and other readers of CLArion for a liberty-filled year in 2013.*

## **INTERNATIONAL**

### **NZ internet filter encourages censorship expansion**

Tech Liberty NZ founder Thomas Beagle has recently provided an update on the NZ Government's internet filter...which is doing 1GB of traffic a day while blocking access to 450 sites for 2.5 million internet accounts (well over 90% of NZ's internet).

A recent survey conducted by InternetNZ showed that most people hadn't heard of it and only 9% knew whether their connection was filtered. "Something I found heartening was that only 23% thought that it should be the government deciding whether their connection was filtered or not," he said.

"It's good that the filter doesn't seem to be causing too many problems with Internet reliability and performance. It's good that the scope of what is filtered hasn't been expanded any further. I even guess it's good that they're starting to prepare for that new-fangled IPv6.

"What's not so good is how well our filter has become embedded into NZ's internet – I believe we've now lost the technical argument against it. What's not so good is that there are increasing pressures to provide more facilities for government censorship of the internet - and the filter is ready to be used," he said. <http://techliberty.org.nz/>

### **CIA kidnaps, renditions, tortures, detains the wrong man**

The European Court of Human Rights has ruled that Khaled El-Masri (right), a German citizen, was abducted, forcibly disappeared, and tortured by Macedonian authorities and the CIA nine years ago.

In a landmark case last month, the EU HR Court found that El-Masri's treatment at the Macedonia airport by US agents in cooperation with Macedonian officials "amounted to torture."

The court also found that while in CIA custody El-Masri was subjected to abuses including sodomy, forced nudity, total sensory deprivation, solitary confinement, force feeding, physical assault, sleep deprivation, inadequate food and water and denial of medical care in violation of the European Convention on Human Rights, and that his entire period of captivity constituted a "forced disappearance" in violation of international law. The court awarded him \$75,000 compensation from Macedonia.

El-Masri was mistaken for an Al Qaeda member with a similar name, Allison Frankel of the ACLU human rights program explained.

El-Masri was abducted at a border crossing while on holidays in Macedonia on New Year's Eve in 2003 and held incommunicado for 23 days. He was subsequently transferred into CIA custody and, as part of the US "extraordinary rendition" program, flown to Afghanistan where he was secretly held, tortured and abused for four months.



At the end of his detention, El-Masri was dropped on a roadside in Albania. He was never charged with any crime, never received an apology, and was never afforded an opportunity for redress. <http://tiny.cc/iyngpw>

## **UK urged to set up royal commission on drug laws**

British PM David Cameron should urgently set up a royal commission to consider all of the alternatives to Britain's failing drug laws, including decriminalisation and legalisation, an influential cross-party group of MPs has concluded.

The Commons Home Affairs select committee says, after taking evidence from all sides of the drug debate, including from Russell Brand and Richard Branson, that "now, more than ever" there is a case for a fundamental review of all UK drug policy. "This is a critical, now-or-never moment for serious reform," they say. The committee chair, Keith Vaz, told the BBC that a royal commission to look at every aspect of drugs policy and report back by 2015 is "not a big ask".

But government sources were dismissive of the move to a royal commission as "simply not necessary", insisting drug use in Britain was at its lowest level since records began.

Among the recommendations contained in a report published last month the MPs say Home Office and health ministers should be sent to Portugal to examine its system of replacing criminal penalties for drug use with a new emphasis on treatment. They say the Portuguese example reduced public concern about drug use and was backed by all political parties and the police.

The MPs also suggest the British government should fund a detailed research project monitoring the recent legalisation of marijuana in the US states of Washington and Colorado and the proposed state monopoly of cannabis production and sale in Uruguay. <http://tiny.cc/4gq3ow>

## **Mexico to emphasise human rights in fight against drugs**

Mexico's new president has outlined a security strategy aimed at reducing drug war-related violence in stark contrast to the emphasis his predecessor placed on using force against cartels. "Our primary objectives are reducing the violence and recuperating the peace and tranquility of Mexicans," President Enrique Peña Nieto told state governors, military and security chiefs at a public meeting of the national security council last month. "We are going to focus institutional efforts on attending to the [social] causes of the criminal phenomenon and not only its consequences," he said.

The president also promised special attention on human rights, and acknowledged abductions by the security forces, long a sore point around the previous administration. <http://tiny.cc/apckpw>

## **ODD SPOT – USA: Could the right to bear coffins become 28th Amendment?**

The US 2nd Amendment allows Americans to 'bear arms'.

There are about 85 fatal shootings a day (repeat, day) on average across the USA, of which 53 are suicides. But, of the 32 other fatalities, at least one each day is under 14. In the USA, there are 3.2 gun homicides per 100,000 residents every year\*.

Some 200 people a day (repeat, a day) in the USA rush to hospital emergency departments with gunshot-related problems. About 9000 Americans are murdered each year by firearms.

About 70 million American households have guns, averaging nearly two guns for each household with guns. The sale of legal guns averages about \$3.5bn a year. The week Barack Obama was elected president, gun sales leapt 50% on the year before.

The next vacancy in the American legal lexicon is for a 28th Amendment:

*A well regulated series of gun massacres and shootings being necessary to the prosperity of manufacturers and the media, the right of the people to bear coffins shall not be infringed.*

\* The figure in Australia is about 0.1 per 100,000.

## Internet defenders ward off government control

A handful of countries – not including Australia - has headed off a proposed global telecoms treaty giving national governments control of the internet.

The US and the UK, Canada, Costa Rica, the Czech Republic, Denmark, Egypt, Kenya, the Netherlands, New Zealand, Poland, Qatar and Sweden all said they would not sign the proposed final text of an agreement put before last month's International Telecoms Union (ITU) conference in Dubai.

"The internet has given the world unimaginable economic and social benefit during these past 24 years," said the head of the US delegation, Terry Kramer. "All without UN regulation. We candidly cannot support an ITU Treaty that is inconsistent with the multi-stakeholder model of internet governance." <http://tiny.cc/6d4apw>

## Thieves prove privacy complainants right, Supreme Court wrong

In 2007, astronomer Robert Nelson and 27 other scientists at the Jet Propulsion Laboratory sued NASA, arguing that the space agency's background checks of employees of government contractors were unnecessarily invasive and violated their privacy rights.

Robert Nelson, an ex-NASA scientist, and others who worked at the Jet Propulsion Lab sued NASA over background checks, Natasha Singer reported in the *NY Times*.

Privacy advocates chimed in as well, contending that the space agency would not be able to protect the confidential details it was collecting. The scientists took their case all the way to the Supreme Court only to lose last year.

In November, Dr Nelson opened a letter from NASA telling him of a significant data breach that could potentially expose him to identity theft. The very thing he and advocates warned about had occurred. A laptop used by an employee at NASA's headquarters in Washington had been stolen from a car parked on the street on Halloween, the space agency said.

Although the laptop itself was password protected, unencrypted files on the laptop contained personal information on about 10,000 NASA employees — including details like their names, birth dates, Social Security numbers and in some cases, details related to background checks into employees' personal lives.

Millions of Americans have received similar data breach notices from employers, government agencies, medical centres, banks and retailers. NASA in particular has been subject to "numerous cyberattacks" and computer thefts in recent years, according to a report from the Government Accountability Office, an agency that conducts research for Congress. <http://tiny.cc/c2ekow>

## New protections for whistle-blowers

EDITORIAL, New York Times

Daring to blow the whistle on government waste, fraud and mismanagement has never been an easy course for federal workers, who too often suffered retaliation by their superiors. Finally, after a 13-year trip through Congress, legislation more firmly protecting whistle-blowers' rights (has been) signed by President Obama.

The law makes it easier to take action against supervisors who punish whistle-blowers and extends coverage to Transportation Security Administration screeners at airports. Expanded rights will allow workers to challenge government policy decisions, and government scientists will be able to file challenges if they think regulations are being used to mask official mistakes.

One area that Congress declined to include in the new protections — the intelligence and national security agencies — was included by President Obama in a new policy directive issued in October. It extends whistle-blower rights to workers with access to classified information, who previously were silenced under a blanket of secrecy. The changes will substantially reduce the hazards for conscientious workers who come forward with information on potential abuse and misbehavior.

Proponents had argued that the rulings of the Court of Appeals for the Federal Circuit, the sole reviewer of federal whistle-blower decisions, often narrowed workers' rights. That court found for whistle-blowers only three times in 229 cases in 18 years, according to one study.

The new law includes a two-year experiment that will allow more federal courts to review whistle-blower cases. It also strengthens a worker's right to complain to Congress about workplace abuses and creates an ombudsman's job in federal agencies to educate workers about their new rights. Taxpayers should applaud the new law and wonder what took Congress so long. <http://tiny.cc/ab6kow>

## **Police pay compensation for flawed rape investigation**

The London Metropolitan police have paid compensation over a flawed investigation into the rape of a 15-year-old girl in 2005.

The case was given to a police constable who should not even have been investigating such allegations. An internal inquiry painted "a troubling picture of an inexperienced, over-burdened police officer with inadequate supervision working in an under-resourced unit", the Independent Police Complaints Commission said.

The woman, now a 23-year-old university student, sued the police, claiming its errors in the investigation had breached her human rights. She has accepted an offer of \$23,000 to settle out of court, made after two and a half years of legal wrangling, during which the police tried to get the case struck out.

Had she secured a court declaration that her human rights had been breached, it would have established in UK law that the police have a duty to properly investigate rape and sexual assault, setting a legal precedent.

The woman wanted to continue fighting for such a declaration, but felt forced to accept the settlement because rejection could have resulted in a liability to pay the police legal costs from the date the offer was made – even if she had won in court. <http://tiny.cc/0o88ow>

## **'War on Terror' officially ends**

The US is heading for a "tipping point" beyond which it should no longer pursue al-Qaida terrorists by military means, one of the Obama administration's most senior lawyers has said.

Jeh Johnson (photo right, and 'Jeh' is correct) suggested the group would become so degraded that a time would come when the legal authority given to the White House by Congress should no longer be used to justify waging the war that has been fought since 2001. Johnson said that when this happened, America had to "be able to say ... that our efforts should no longer be considered an armed conflict against al-Qaida and its affiliates".



Instead, the responsibility for tackling al-Qaida should pass to the police and other law enforcement agencies.

Johnson has been general counsel at the US Defense Department for the past four years and has given advice on every military operation that needs the approval of the President or Defense Secretary. <http://tiny.cc/vx2mow>

## **Brits pay for renditioning family to Libya, where father was tortured**

The British Government has agreed to pay \$3.4m to the family of a prominent Libyan dissident abducted with the help of Britain's MI6 and secretly flown to Tripoli where he was tortured by the security police of the former dictator Muammar Gaddafi.

Having sought for years to avoid the agents of the Libyan dictator, Sami al-Saadi was forced on board a plane in Hong Kong with his wife and four young children in a joint UK-US-Libyan operation. They were flown to Libya, where all were initially imprisoned. Saadi was held and tortured for years.

The government paid the sum as compensation and without admitting any liability.

Evidence of the UK's role in the operation – believed to be the only case where an entire family was subjected to "extraordinary rendition" – came to light after Gaddafi's fall in 2011.

When Sami al-Saadi was freed from Abu Salim prison on 23 August 2011, he weighed 44.5kg and was close to death. <http://tiny.cc/d098ow>

## **Amnesty splits over workers' rights**

A church hall in central London was standing-room only, the atmosphere charged: in a room draped in banners carrying the slogan "Workers' Rights are Human Rights", a union rep summed up the mood: "We are here and we are pissed off."

This was the staff of Amnesty International, their anger not focused on human rights abuse, but on their own management.

Amnesty staff and management are in a battle over proposals to restructure the organisation. Both the UK branch and the international secretariat headquarters in London have seen strikes. Staff have given management a vote of no confidence and – in response to more than 100 members expressing concern about changes taking place in the organisation – an extraordinary general meeting will be held this month (January).

The dispute stems from the decision, led by the secretary general, Salil Shetty, to take the organisation "closer to the ground", by opening 10 new regional hubs in hotspots where human rights violations occur. Some of Amnesty's 500 staff in London must move abroad: those affected argue that the shift is under-planned, ill-judged and risks muddying the purpose of the organisation. For them this is not an industrial dispute over job cuts, but a battle for the organisation's soul. <http://tiny.cc/e6rqow>

## **Boy, 7, to get cancer treatment against mum's wishes**

A seven-year-old British boy will receive radiotherapy for a cancerous brain tumour against the wishes of his mother after a judge ruled the mother's judgment had "gone awry" on the seriousness of his condition.

Neon Roberts, whose identity was made public after his mother, Sally, briefly disappeared with him last month, will begin the treatment this January after Mr Justice Bodey, sitting at the family division of the High Court in London, decided that doctors' concerns about the boy's health outweighed his mother's desire to seek alternative therapies.

Roberts, 37, argued that radiotherapy could impair Neon's IQ or make him infertile. Judge Bodey said he sympathised with Roberts' position and believed she was acting out of love for her son. He said: "The mother has been through a terrible time. This sort of thing is every parent's nightmare. But I am worried that her judgment has gone awry on the question of the seriousness of the threat which Neon faces."

The belief of doctors that Neon would die within months without the treatment was paramount, Judge Bodey said. "One cannot enjoy a quality of life if one is not alive." He refused Roberts any more time to investigate alternative treatments. <http://tiny.cc/oykrpw>

## **EU plans creepy use of asylum data**

The EU is planning to use Eurodac, a database with fingerprint information provided by asylum seekers, for a purpose beyond what it was collected for.

The database was established in 2000 so EU nations could check whether an asylum seeker had previously applied for asylum in another EU country or was receiving social benefits from another EU country.

But the politicians have noticed that this biometric data could be handy in quite different circumstances, to police officers during investigations. The commission's proposal envisions

national law enforcement agencies and Europe's supranational criminal police commission, Interpol, being able to access the database.

Of course, allowing the police to check people's fingerprints in this way would have serious implications for privacy. Indeed, Peter Hustinx, head of the European Data Protection Supervisor, has already weighed in on the subject: "Just because data is being collected doesn't mean that it should be used for another purpose, especially since that can have a hugely negative effect on the lives of individuals," said Peter Hustinx, head of the European Data Protection Supervisor.

And that really is the nub of the issue: people who agree to provide highly-personal data for one purpose, may then find it being used for another, without being asked. That is official function creep. <http://tiny.cc/m4pypw>

## Central database wrongly labels 12,000 as criminals

Nearly 12,000 people in Britain over the past five years were wrongly labelled criminals due to inaccurate record checks, leading to \$3m paid out in compensation, campaigners have revealed.

Privacy and civil liberties campaign group Big Brother Watch published the figures after a freedom of information request showed the most common errors involved information being disclosed by local police forces or the police national computer.

In 3,519 cases, the wrong person's entry on the police national computer was disclosed.

The figures were obtained from the Criminal Records Bureau (CRB), which recently merged with the Independent Safeguarding Authority to form now part of the Disclosure and Barring Service (DBS). According to the CRB's annual report in July, 4.1m checks were carried out in 2011.

BB Watch director Nick Pickles said: "Every error has the potential to ruin someone's reputation and career. The fact that thousands of cases have involved information held by local police forces, often never tested in court, shows how dangerous it is to create a culture of safety by database."

<http://tiny.cc/1sw0pw>

## Chairman shows moral courage to stand down, on principle

The chairman of Kick It Out, Lord Herman Ouseley, has launched a damning attack on the Football Association, the Premier League, Chelsea and Liverpool for a failure of "morality" and "leadership" over their handling of the racist abuse incidents by John Terry and Luis Suárez.

Lord Ouseley, who has decided to stand down from the FA Council and his other FA positions, said Chelsea and Liverpool protected their players because of their value as "assets", even when they were alleged, then proven by independent FA commissions, to have racially abused opponents. He describes the last year, when football has been rocked by repeated incidents of racism, as "12 months wasted in hypocrisy" by the authorities. <http://tiny.cc/gyk5ow>

## International briefs

**Do Not Resuscitate under scrutiny:** In the UK, Justice Nicola Davies has ruled out a judicial inquiry into how Do Not Resuscitate advices are placed on patient's medical files in hospital. The inquiry was requested after a woman, recently diagnosed with terminal cancer, suffered a broken neck in an accident. Family members differed on whether a DNR notice was appropriate.

**Innocent man freed after 15 years in jail:** Damon Thibodeaux walked out as the 300th prisoner in the US to be freed as a result of DNA testing and one of 18 exonerated from death row. With the help of science he has been proved innocent of a crime for which the state of Louisiana spent 15 years trying to kill him. He had been convicted by a jury of murder and aggravated rape, when his dead relative had not been raped at all, and he could not have killed her because he had cast-iron family alibis, including from the victim's mother. Academic studies suggest 2-4% of people on death row in America are innocent. <http://tiny.cc/j64xow>



**Criminals face lifetime monitoring:**

Dangerous, repeat violent offenders and sex offenders could be monitored for the rest of their lives after release from prison, NZ Police and Corrections Minister Anne Tolley (left, at left) has said. Asked about civil liberties concerns, Tolley said most offenders found it helpful to have that sort of structure in their lives "and know if something goes wrong, there is someone keeping track of them and they are not on their own out in the community". The NZ Government plans to send prisoners back to jail indefinitely if the High Court deems them dangerous enough. At present, the

maximum time a former prisoner can be supervised after release is 10 years – Otago Daily Times 12 Nov 2012, via NZCCL. <http://nzcccl.org.nz> Meanwhile, the Mr Kim Dotcom case is causing thoughtful NZers to ask about the state – and cost – of spying by NZ on its own citizens for the benefit of other nations. There are calls for the 'Five Eyes' electronic spying network of the US, UK, NZ, Canada and Australia to come out, or be forced out, into the open much more than has been the case. <http://tiny.cc/jms1pw>

**Compensation case in NZ raises hackles:** "I hadn't seen up close how the New Zealand police hierarchy behaves when backed into a tight corner. And I hadn't seen Crown Law stick to their guns arguing against all reason and clear facts. I didn't know then how the police play the media and how the public respect for the justice system is abused by those charged to uphold it." Excerpt from comment by former NZ Government Minister Rodney Hide, on the question of compensation for David Bain, wrongly jailed for 13 years for murdering his family. <http://tiny.cc/h84qpw>

**Welsh go positively organ-ic:** Wales plans to change its organ donation scheme to put the onus on citizens to opt out rather than opt in. The "soft opt-out system" would assume a person's consent to organ and tissue donation unless they had objected during their lifetime. The issue is controversial, with church leaders speaking against the proposed changes, to come into effect in 2015. <http://tiny.cc/cksvow>

**Ombudsman may be sacked or carpeted:** Papua New Guinea's Public Prosecutor, Pondros Kaluwin, has referred Ombudsman, John Nero, to the Ombudsman Appointments Committee, over allegations of misconduct in office. It is alleged he gave direction for an additional decision to be recorded on minutes of the Commission regarding Constitutional matters, and unlawfully called a Commission meeting twice in October 2007 and February 2008. He faces three other allegations relating to unlawfully claiming leave fares for his dependent children who reside in his home province at Goroka. <http://tiny.cc/edyjpw>

**Deputy PM wants drug laws changed:** UK Deputy Prime Minister Nick Clegg last month said Britain was "losing the war on drugs on an industrial scale", accusing politicians of "a conspiracy of silence" when they knew present policies were not working. He committed his Liberal Democrats to a major review of how to tackle the problem in the 2015 election manifesto. Mr Clegg said PM David Cameron should have the courage to look at issues such as decriminalisation or legalisation of drugs by holding a royal commission. <http://tiny.cc/5p4apw>

**Islands get human rights toolset:** A set of tools to help Pacific Island countries design and deliver actions to further human rights was launched last month in Suva, Fiji, by the UN

Development Programme (UNDP), the UN Office of the High Commissioner for Human Rights (OHCHR), and the Secretariat of the Pacific Community (SPC). They include the toolkit, Measuring Progress: Using the Universal Periodic Review Process for the Pacific; the report, Human Rights in the Pacific - Country Outlines 2012, which provides an overview of human rights issues in the Pacific; and a handbook that addresses the practical and political challenges of implementing human rights treaties, the Pacific Handbook on Human Rights Treaty Implementation. <http://tiny.cc/dxyjpw>

**Fiji may get 2014 election, envoy appointed:** “If Bainimarama\* is to be believed, elections are just around the corner as well. Around 400,000 people have already registered to vote in the projected September 2014 election. \$11 million (AU\$5,935,897) has been allocated to polling preparations and \$1 million (AU\$539,627) to refurbish Suva’s parliamentary complex.” – Lucas Smith, writing in *New Matilda*, 17 Dec 2012: <http://tiny.cc/6z6hpw> (\*Fiji’s interim PM, Commodore Voreqe Bainimarama, shown at right). In other news, Australia will send Margaret Twomey, the current Australian ambassador to the Russian Federation, to serve as high commissioner in Fiji from February, ending a three-year diplomatic hiatus triggered by the expulsion of the Australian envoy in 2009.



**Religious matters under scrutiny:** The Pew Forum of the USA has produced two interesting reports on religious matters recently: <http://www.pewforum.org/Government/Laws-Penalizing-Blasphemy,-Apostasy-and-Defamation-of-Religion-are-Widespread.aspx>  
<http://www.pewforum.org/Government/Global-Restrictions-on-Religion.aspx>

...and the Electronic Frontier Foundation claims blasphemy laws are silencing people around the world, quoting Pew: <https://www.eff.org/deeplinks/2012/12/2012-review-how-blasphemy-laws-are-stifling-free-expression-worldwide>

**Dutch skim the ‘scum’ into concentrated camps:** From this month, Amsterdam will use caravan and container villages with minimal services under constant police supervision as places of exile for nuisance neighbours and anti-social tenants. The new camps have been dubbed "scum villages". The Dutch capital already has a squad of municipal officials to identify the worst offenders for a compulsory six-month course on how to behave. Eberhard van der Laan, Amsterdam's mayor, says the new scheme will tackle 13,000 complaints of anti-social behaviour every year. He complained that long-term harassment often led to law-abiding tenants, rather than their nuisance neighbours, being driven out. <http://tiny.cc/32s0pw>

## DATES

**19-20 Jan, Hobart:** Animal Law Conference, UTAS. Keynote speaker Prof Marsha Baum, U. New Mexico USA. <http://www.utas.edu.au/law/utas-animal-law-conference>

**14 Feb, Sydney:** Prof Geoffrey Lindell delivers the 4th Annual George Winterton Lecture, 6pm, Banco Court, Supreme Court of NSW. Free but register via: [sydney.edu.au/law/events](http://sydney.edu.au/law/events)

**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>

**25 Feb, Sydney:** 3rd Human Rights Tertiary Workshop, 9.30–5pm, Faculty of Law, UNSW. <http://tiny.cc/5rlgow> Attendance is free.



**25-26 Feb, Melbourne:** Media and Communications Law. Keynotes: Dr Mark Andrejevic (Centre for Critical and Cultural Studies, UQ) on *Pre-emptive security: Policing, Security, and the Big Data*; Professor Tanya Aplin (Dickson Poon School of Law, King’s College London) on *Privacy Reform Post Leveson*; and Dr Alana Maurushat - pictured at left - (Cyberspace Law and Policy Centre, UNSW) on *Piracy*. Details and to register: <http://tiny.cc/x6cgow>

**27 Feb, Perth:** Former High Court Justice, Michael Kirby, on Statutory Interpretation: What on Earth Does it Mean? 9-9.45am, Ernst and Young Lecture Theatre (G89) Business School. Free.

**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/>

**4-5 April, Geelong:** Leadership for the Next Generation in PNG. Details: <http://www.deakin.edu.au/alfred-deakin-research-institute/png/>



**16-18 April, Canberra:** The Centre for Excellence in Police and Security (CEPS) at Griffith U. will hold a three-day Human Rights and Policing Conference commemorating the 50th anniversary of the United Nations Seminar on the Role of Police in the Protection of Human Rights, held in Canberra in 1963. Curators are Simon Bronitt (left) and Melanie O'Brien (right). To register interest, email [humanrights2013@griffith.edu.au](mailto:humanrights2013@griffith.edu.au)



**30-31 May, Sydney:** Biometrics Institute Asia-Pacific conference 2013. Details: <http://tiny.cc/l66eow>

**5-7 June, Canberra (TBC):** Sorcery and Witchcraft-related Killings in Melanesia: Culture, Law and Human Rights Perspectives conference, ANU. Info: [richard.eves@anu.edu.au](mailto:richard.eves@anu.edu.au) College of Asia and the Pacific. Scholarship applications from potential Melanesian speakers by 15 Feb 2013.

**25-28 August, Adelaide:** 8th Australian Women and Policing Conference. Deadline for abstracts/biogs is 25 Feb 2013 to [conference@acwap.com.au](mailto:conference@acwap.com.au) Info: <http://www.acwap.com.au>

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

## 2015:

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

**Date, Place TBC:** 2<sup>nd</sup> Global Domestic Violence Conference

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