

UN Torture Committee Blasts Australia



Goulburn's notorious 'Supermax' prison

by Michael Walton with Cameron Murphy

Recently in Geneva the United Nations Committee against Torture called for a review of Australia's supermax prisons, the abolition of mandatory immigration detention and for a referendum on a federal Bill of Rights. CCL endorses all of these calls.

In its report on Australia, the Torture Committee was critical of Australia's prisons, counter-terrorism laws, mandatory immigration detention and of the way Australian officials have ignored torture and mistreatment overseas in places like Abu Ghraib.

The Torture Committee expressed concern about conditions in Australian prisons, especially the so-called supermaximum prisons like the notorious HRMU

'Supermax' at Goulburn gaol.

The UN is right to be concerned about the state of Australia's prisons. You are 11 times more likely to be in prison if you are indigenous. The incarceration of the mentally ill continues to increase. Juveniles and adults are not necessarily being kept apart in NSW prisons. Our remand facilities are overcrowded.

CCL joins the Torture Committee in calling for a complete review of the regime imposed on detainees in supermax prisons. In the HRMU at Goulburn, inmates can be kept in inhumane conditions for an indefinite period. Last year, the NSW Coroner was also highly critical that mentally ill people are placed in isolation in the supermax prison.

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Journal deadline dates:

Material Deadline: 4 August 2008
We may not be able to accept documents that are not sent on disk or by email attachments. Digital images will be accepted.
Articles: 1000-2000 words, reviews:
500 words and letters: 200-300 words

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COMMITTEE MEETINGS

Meetings are usually held at 6.30pm on the fourth Wednesday of the month, at the Sydney Town Hall. Members are welcome to attend as observers.

SUBCOMMITTEE MEETINGS

Subcommittees usually meet monthly. For further information, please contact the Executive Secretary who can put you in contact with the relevant convenor.

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Convenor: *Michael Walton*

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Views expressed in this journal are not necessarily those of the editor or the New South Wales Council for Civil Liberties Inc.

NSWCCL HITLIST

The following are activities in which NSWCCL has recently been or is currently involved in. For more information, read the relevant subcommittee reports further in the journal, or contact the NSWCCL office:

office@nswccl.org.au - t: 02 9960 7582 or log on to the NSWCCL website at: www.nswccl.org.au

1.	United Nations calls for national Bill of Rights: The UN Committee against Torture has called for an Australian Bill of Rights, an end to mandatory immigration detention and a review of the Supermax prison at Goulburn.
2.	Charter of Human Rights: HREOC will be hosting an NGO round table to discuss engagement in the coming debate on a Commonwealth Charter of Human Rights, to be heard in early June. NSWCCL will attend.
3.	Against the Death Penalty: NSWCCL is heavily involved in assisting Martin Garnett, who has served 15 years of a 20 year sentence in Thailand for drug offences. (see Against the Death Penalty Report for details)
4.	Telecommunications (Interception and Access) Bill 2008: NSWCCL has given evidence to the Senate Legal and Constitutional Affairs Committee in relation to the part of the Bill which would allow Federal and State agencies to intercept telecommunications devices (including computers) without ever having to obtain a warrant in relation to the devices.
5.	Meeting with Attorney General: NSWCCL has met with Commonwealth Attorney General, Robert McClelland, to discuss a wide range of issues, including plans for Australia to fully implement the <i>Convention Against All Forms of Torture</i> .
6.	NSWCCL annual dinner: NSWCCL confirms guest speakers this year for the annual dinner are Stephen Keim and Peter Russo, the legal representatives for Dr Haneef. (see Fundraising Report for details)
7.	Broadcasting Codes of Practice: NSWCCL gave evidence to the Senate Environment, Communications and the Arts Committee in May in the inquiry sparked by reaction to the strong language used in the popular Gordon Ramsay cooking program.
8.	Submission: to the Clarke Inquiry into the Haneef affair. (see Civil and Indigenous Rights Report for details).
9.	Submission: underway into the inquiry into the Citizenship Test. (see Civil and Indigenous Rights Report for details).
10.	Intern: Ethan Lutske, a graduate law student from NYU, will be commencing a 10 week internship with NSWCCL on 26 May 2008.
11.	Interviewing for new Executive Secretary: Following the resignation of Michelle Toffolon, NSWCCL is currently interviewing candidates for the Executive Secretary role.

Message from the Editor

These are lean times for protesters. While watching the clashes of the Olympic torch on its leap yearly circumnavigation of the globe, the immovable stance and terse dialogue from the Chinese government sounded to the ears of Civil Liberty much like the official ravings of the NSW government when presented with the 'foolhardy and dangerous' actions of *The Chaser* when they pulled off one of their most celebrated stunts. At least we all slept more soundly

knowing that the state police and their political overlords are doing their best to change our license plate tagline to 'NSW, the police state'. All the more reason to keep that CCL membership ticking over and pushing the right to protest back into the public domain.

You know it makes sense.

Reports

CIVIL & INDIGENOUS RIGHTS SUBCOMMITTEE

In mid May, the CCL was asked if it would endorse a letter to the Federal Attorney General and the Ministers for Foreign Affairs and for Indigenous Affairs, asking them to withdraw Australia's objections to the United Nations Declaration on the Rights of Indigenous Peoples. Objections had been raised by the Howard Government that the Declaration might seem to require recognition of Indigenous rights to lands which are now lawfully owned by other citizens; that the Declaration supposed there is a right of indigenous peoples to unqualified consent on matters affecting them—thus implying that they might have a veto over national laws and administrative measures; that an exclusive right over intellectual and cultural property might conflict with the rights of third parties; and that the Declaration implies that indigenous customary law is in a superior position to national law, which might permit the exercise of practices such as customary corporal and capital punishment (I assume this is code for spearing). The objections were explained to the Australian Parliament not only by Mal Brough, but by Senator Marise Payne. Similar concerns were also expressed by Canada, New Zealand, and The United States.

However, the CCL notes that the Declaration is explicitly subordinated to the International Covenant on Civil and Political Rights; and that Article 28 of the Declaration allows for compensation for lands taken without free, prior and informed consent. Accordingly, the articles thought to be dangerous should be interpreted in ways that are unthreatening.

A declaration is not international law. It is, however, an international statement of what people's rights are believed to be, and so of what both international and domestic law ought to recognise.

A submission has been made to the Clarke Inquiry into the Haneef affair. Drafted by the CIR Subcommittee, it was endorsed by Liberty Victoria and lodged the day before this report was written. We asked the Inquiry to ascertain why the AFP failed to inform Dr. Haneef's lawyers that his SIM card had not been found in the burning jeep at Glasgow Airport, and why they failed to inform the lawyers of the email in which Kafeel Ahmed apologised to his brother Sabeel for what he intended to do—thus making it highly unlikely that Sabeel was part of any terrorist conspiracy. Failure to inform the defence in a criminal trial of material which would clear the accused is a serious breach of the rule of law. It is

a symptom of an organisation that is more concerned about obtaining convictions than it is about justice.

In addition, we have asked why so much time and money has been spent in pursuit of Dr Haneef. We have asked for an end to the procedure of cancelling a visa on character grounds; or failing that, for it to be limited to convictions where there is an Australian law which covers the same offence (at present, the Minister could cancel a visa because of a conviction for a religious crime, for example). And we want to see an end to the situation where a person who has been brought up in Australia but has not become a citizen can have his or her visa cancelled and be sent to the country of their citizenship. A person who has been in Australia and has broken the criminal law is *our* criminal, the result of our own failures. Moreover, the penalty of sending people to countries where they know nobody and cannot speak the language is bizarre. So is the alternative, of imprisoning the person for indefinite periods (and these penalties are not determined by any court).

The CCL has also called for an appeal to be available by leave, on the merits of the case as well as on legal grounds.

As I write, the Subcommittee is at work on a submission to the Inquiry into the Citizenship Test. The CCL opposed the introduction of the test, and it is likely that our submission in relation to the questions that are asked will reflect the original submissions to Kevin Andrews (then the Minister) and to the Senate's Legal and Constitution Affairs Committee (the LCAC). If so, we will argue that the test is a mistake and dangerous, that the questions should be vetted by the Parliament and be open to general scrutiny, that requiring people to adopt Australian values is contrary to their democratic rights, that people can have a clear moral obligation to argue for change in a country's values, and that the education of new citizens about the nature of Australian society, while a good thing, should not be mixed up with a mandatory requirement to know what are the rights and duties of Australian citizens.

The material in the 'text book' for the test—the booklet *Becoming an Australian Citizen: Citizenship—Your Commitment to Australia* is also likely to be criticised. It is strange to make a fuss about Phar Lap and Australia's cricketing record under such a heading. Are criticisms of Australia's cricket teams and of the game itself, or a refusal to know anything about cricket, now considered breaches of a citizen's duties?

Both of these submissions will soon be available on CCL's website.

As presaged in my previous report, submissions have been made to the LCAC on Bob Brown's private member's bill (*The Rights of the Terminally Ill (Euthanasia Laws Repeal) Bill*) on Andrew Bartlett's *Stolen Generation Compensation Bill*, and the Government's *Telecommunications (Interception and Access) Amendment Bill*. The CCL also gave evidence to the LCAC on the last of these. In its report, the LCAC rejected the assertions of the Federal Attorney General's Department and the AFP that the proposed changes to the *Telecommunications (Interception and Access) Act* are trivial. Indeed, they are not. Under what is proposed (and may be law before you read this), the AFP, ASIO, state police services and other agencies will be able to secure a warrant to intercept one telecommunications device, and then, *without further warrant*, intercept any other device that is likely to be used by the targeted person, including computers at internet cafes and universities.

The LCAC proposes that if a police service or agency uses this provision, it will have to get retrospective authorisation, or to destroy whatever information they have obtained. It remains to be seen if this restriction is adopted by Parliament. In any case, the record of members of the Administrative Appeals Tribunal in granting warrants is not grounds for optimism that privacy is treated seriously. Of 3,287 interception warrants sought in the year to June 2007, only 7 were rejected or withdrawn.¹ (In the previous two years, the figures are six out of 2,889 applications and 5 out of 2,934.) Of 71 applications for B-Party warrants (the most intrusive form of surveillance) none were rejected.² The total number of warrants issued in 2006-2007 is greater than that in the 2005-2006 year, when it exceeded the total number of equivalent warrants issued in the United States (2,929 in Australia as opposed to 1,839 in the United States).³ An analysis of the figures shows that in 2005-2006, on a *per capita* basis, an Australian telephone was 23 times more likely to be bugged than an American telephone.

The Subcommittee has been asked to develop a fresh policy for the CCL on rights and smoking. This promises to be an interesting exercise. The section on the rights of non-smokers to be free from exposure to smoke will be relatively easy. Claims about the rights of smokers to harm themselves provided no one else is hurt may not prove too difficult either. But what about the opportunity cost of using public funds to deal with self-inflicted illness?

Martin Bibby
Convenor
Civil & Indigenous Rights Subcommittee (CIR)

'You don't tell deliberate lies, but sometimes you have to be evasive.'

Margaret Thatcher

AGAINST THE DEATH PENALTY SUBCOMMITTEE

In March 2008, the federal parliamentary cross-party working group against the death penalty met for the first time since the change of government. The working group continues to have support from parliamentarians from the Coalition, ALP, Democrats and Greens.

The meeting began with the mention of the passing of Mr Peter Andren MP, the independent Member for Calare. Mr Andren was a founding member of the working group. Mr Andren was a committed and passionate advocate for human rights, and against capital punishment in particular. His energy and counsel will be sadly missed by the working group.

The cross-party working group has moved to garner the support of the new Attorney-General, Mr Robert McClelland. Mr McClelland briefly attended the meeting, as a guest, and expressed his support for the work of the group. Mr McClelland said he looked forward to working with members to promote and consolidate the abolition of capital punishment. Several initiatives emerged from the short collaboration and we hope to have some positive news in the future.

The working group discussed with the AG the adoption into domestic law of the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty. The working group prefers a bi-partisan cooperative model for federal legislation to integrate this human rights treaty into Australian law. The States and Territories governments and oppositions will be approached for their support of this initiative.

The working group also noted that the issue of capital punishment would be raised at the next meeting of Commonwealth Law Ministers in Edinburgh in July 2008. CCL's subcommittee has long championed the establishment of a group of eminent persons to examine the use of the death penalty in the Commonwealth. Such an investigation was first mooted by former Prime Minister, Mr Malcolm Fraser, and has received the support of another former PM, Mr Gough Whitlam.

Members of CCL also recently met with the Home Affairs Minister, Mr Bob Debus. Mr Debus listened to our concerns about the AFP and death penalty investigations overseas. We look forward to working with Mr Debus on this issue in the future.

Michael Walton
Convenor
Against the Death Penalty Subcommittee

¹ Attorney-General's Department, *Telecommunications (Interception and Access) Act 1979. Annual Report for the year ending 30 June 2007*, Table 1.

² *TIA Act Report (June 2007)*, n 1, Table 12.

³ Administrative Office of the United States Courts, *2006 Wiretap Report (April 2007)*, Table 2, <<http://www.uscourts.gov/wiretap06/contents.html>>.

'Irreverence is the champion of liberty.'
Mark Twain

AUSTRALIAN PRISONERS ABROAD

Cambodia – Gordon Vuong

We received good news from Gordon Vuong's lawyers that his appeal had been set down for hearing on 30 April 2008 (the lawyers had been given about two weeks notice of the appeal). Gordon's mother made arrangements to attend the appeal hearing in Cambodia and to visit Gordon while there. During her visit we received the news that the appeal hearing was to be delayed due to the unavailability of Gordon's counsel. This was extremely disappointing to both Gordon and his mother, especially with the added news that his appeal may not be heard until next year – an extraordinary state of affairs for a juvenile offender in a foreign jurisdiction.

Martin Garnett

We are now heavily involved in assisting Martin Garnett, who has served 15 years of a 20 year sentence in Thailand for drug offences. Martin's request for a transfer to an Australian jail has been previously refused on the basis that the US proposes to extradite him from Thailand in 2013 when his sentence is completed.

Martin's case is currently with the Home Affairs Minister, Bob Debus, and we are assisting in those deliberations.

*Kevin O'Rourke,
Convenor,
Australian Prisoners Abroad Subcommittee*

'I don't believe that the public knows what it wants; this is the conclusion that I have drawn from my career.'
Charlie Chaplin

FUNDRAISING SUBCOMMITTEE

The sub-committee is working on organising the NSCCL Marsden/Buckley Dinner. Our guest speakers this year are Stephen Keim and Peter Russo, the legal representatives for Dr Haneef. The dinner is to be held on 31 October 2008 at the Marigold Restaurant. Charles Firth of the *Manic Times* will again be our MC for the night. It should be an entertaining affair and members and their friends should lock it into their diaries. More information will be provided shortly.

In relation to the dinner, the sub-committee is appealing to members who may be able to donate raffle prizes. If there are members who are able to donate a raffle prize they should contact the NSWCCCL.

The sub-committee would also like to thank Billy Field who has been tirelessly and successfully contacting members to obtain membership renewals. We would also like to thank Joan Kersey who has indefatigably organised NSWCCCL lunches. Details of the next lunch can be found on the NSWCCCL website.

Rita Mallia
Subcommittee Convenor

'A state of war only serves as an excuse for domestic tyranny.'
Alexander Solzhenitsyn

SECRETARY'S REPORT

Meeting with Attorney General

Cameron Murphy and I attended a meeting with Commonwealth Attorney General, Robert McClelland, in April 2008. We were able to discuss frankly a wide range of issues, including plans for Australia to fully implement the *Convention Against All Forms of Torture*. In early May, the Government announced that Australia would accede to the Optional Protocol, which provides for individuals to be able to make complaints directly to the UN, and for UN inspection teams to visit Australian detention facilities.

Meeting with Privacy Commissioner

I attended the bi-annual NGO forum with the Federal Privacy Commissioner in May 2008. The issues raised included preparing for the introduction of a charter for human rights, the next round of legislation expected on *Anti-Money Laundering and Counter-Terrorism Financing* (AML – CTF), social networking websites and Google *Streetview*.

Telecommunications (Interception and Access) Bill 2008

Martin Bibby and I gave evidence to the Senate *Legal and Constitutional Affairs Committee* in relation to the part of the Bill which would allow Federal and State agencies to intercept telecommunications devices (including computers) without ever having to obtain a warrant in relation to the devices. The Committee's report recommends major amendments to the Bill to ensure that there is a measure of oversight in relation to device-based interceptions. Further, the Committee recommended regular major reviews of the TIA, as the present regime is a result of many incremental changes that have undermined the original intention of the legislation. Australians remain 23 times more likely

to be subject to a telecommunications interception warrant than US residents.

Broadcasting Codes of Practice

Michael Walton gave evidence to the Senate Environment, Communications and the Arts Committee in May in the Inquiry sparked by reaction to the strong language used in the popular Gordon Ramsay cooking program.

NYU Intern

Ethan Lutske, a graduate law student from NYU, will be commencing a 10 week internship with NSWCCCL on 26 May 2008.

Visits to CCL website

The number of visits to the NSWCCCL website has increased by around 50% over the past 3 months. It is difficult to say what this can be attributed to, although there have been many civil liberties issues which have been prominent in the media recently.

Charter of Human Rights

HREOC will be hosting an NGO roundtable to discuss engagement in the coming debate on a Commonwealth Charter of Human Rights, to be heard in early June. NSWCCCL will attend.

Attorney General's NGO Forum

The Attorney General's Department will be hosting its annual NGO forum in Canberra in June. I will be attending as a representative of the Australian Council for Civil Liberties.

Interviewing for New Executive Secretary

Following the resignation of Michelle Toffolon, NSWCCCL is currently interviewing candidates for the Executive Secretary role. I thank Michelle for her efficient work.

*Stephen Blanks,
Secretary, NSWCCCL*

'La vérité est en marche et rien ne l'arrêtera.'

Emile Zola

Feature Article

UN Torture Committee Blasts Australia

by Michael Walton with Cameron Murphy

(cont. from p. 1)

The Torture Committee wants an update in 12 months on the conclusions of the review into the supermax prisons. CCL calls on the NSW and Victorian governments to cooperate with the federal government when it conducts an open and independent inquiry into conditions in Australia's Supermax prisons at Goulburn and Barwon.

If there's nothing wrong with these prisons, then the States have nothing to fear from any federal inquiry.

The Torture Committee also called for the abolition of mandatory immigration detention. CCL supports the call for the abolition of mandatory immigration detention. It is okay to hold people for a short time to determine their identity and health status, however it is completely unacceptable to lock people up for extended periods of time when they have committed no crime.

Australia should implement the recommendations of the Torture Committee and end the inhumane policy of mandatory immigration detention.

The Committee against Torture expressed concern about Australia's counter-terrorism laws. The Committee was also concerned that Australians knew about what was happening in Abu Ghraib, but did not act to stop the mistreatment. In a thinly disguised reference to the cases of Mamdouh Habib and David Hicks, the Committee expressed concern that Australia has failed to investigate claims of torture.

Australia needs to overhaul all the draconian terrorism legislation introduced since September 2001. Australia also needs to investigate the very serious claims of torture made by Mamdouh Habib and David Hicks.

It is unacceptable that Australia keeps asking the torturers to investigate complaints of torture. That's like asking the wolves to investigate why the sheep went missing.

Australia should not have asked the US or Egypt to investigate whether they had tortured Mr Habib. Only a full Royal Commission can get to the bottom of all this.

The Australian government should be compensating victims of torture. Not fighting them every step in the courts. The Australian government should read the UN Torture Committee's report very carefully.

The Torture Committee also called on the federal government to adopt a constitutional Bill of Rights

protecting human rights in Australia. CCL has long advocated for a constitutional Bill of Rights to protect the most vulnerable in our society. This is the umpteenth time the UN has called for Australia to enshrine a Bill of Rights.

We welcome federal Attorney-General Robert McClelland's announcement that he will consult on how best to protect rights in Australia. We hope that the Rudd government will be true to its promise to listen to the UN and will hold a referendum to enshrine a Bill of Rights in Australia.

The Torture Committee welcomed Australia's announcement that it will ratify the Optional Protocol to the Torture Convention. The Optional Protocol will allow the UN and independent Australian bodies to do spot checks of places of detention like prisons and immigration detention centres.

CCL in turn welcomes the Rudd government's announcement that it will ratify the Optional Protocol to the Torture Convention. Federal parliament needs to move quickly to adopt the Optional Protocol into Australian law and implement the Torture Committee's recommendations.

Resources

The Torture Committee's report is available at:
<http://www2.ohchr.org/english/bodies/cat/docs/co/CAT-C-AUS-CO1.pdf>

read CCL's media release "Report to UN calls for Royal Commission on Habib" (6 August 2007):
http://www.nswccl.org.au/news/show_pr.php?relNum=6&relYear=2007

read CCL's media release "Torture Expert Should Visit Supermax Prison" (19 September 2007):
http://www.nswccl.org.au/news/show_pr.php?relNum=9&relYear=2007

download NSWCCCL's full Shadow Report at:
www.nswccl.org.au/docs/pdf/CAT%20shadow%20report.pdf
(including an Executive Summary).

download NSWCCCL's report on the HRMU at:
<http://www.nswccl.org.au/docs/pdf/CAT%20shadow%20report%20addendum.pdf>

read the Convention against Torture at:
www.ohchr.org/english/law/cat.htm

visit the website of the UN Committee against Torture at:
www.ohchr.org/english/bodies/cat/index.htm

read more about CCL's Shadow Reporting project at:
www.nswccl.org.au/publications/shadows.php

read more about the High Risk Management Unit (Supermax) at:
<http://www.nswccl.org.au/issues/prisoners/hrmu.php>

Civil Liberties Watch

By Dale Mills

Asleep on the job

Two men have been convicted of drug trafficking following a trial where there was the appearance that the presiding judge was asleep.

The High Court gave special leave to appeal from a decision of the NSW Court of Criminal Appeal which found that a judge being asleep did not mean that the men necessarily suffered a miscarriage of justice.

The amount of sleeping said to have been enjoyed by NSW District Court Judge Ian Dodd was not recorded, but it was suggested that the episodes were longer than "micro sleeps" and on one occasion left "an audible impression".

During the hearing to see whether the High Court would hear the case, Wendy Abraham QC for the Crown accepted that the sleeping was "Unfortunate to say the least" but that it was no different from other occasions where a judge's attention might occasionally "disengage" from a case. This prompted a sharp response from Chief Justice Heydon, who suggested that judges should be paying attention at all times - but that this might not be so "in the case of some barristers." (Ouch).

The High Court hearing into the merits will happen later in the year.

Haneef

Meanwhile, the Australian Federal Police poor treatment of Dr Haneef continues, with the cost to the taxpayer being \$7.5 million - and that only up till December 2007. This includes \$1.6 million in overtime payments for the 600 law enforcement officials involved in the case. The figure was released during a Senates Estimates Committee hearing, with Australian Federal Police Commissioner Mick Keelty saying he wouldn't change a thing in relation to the treatment of Dr Haneef. Haneef was held for 12 days before being charged with terrorism offences which later collapsed, only for the then Immigration Minister to cancel his visa.

Despite the Haneef case sounding like yesterday's news, nine police officers are still working full-time on the Haneef files.

Haneef's lawyers pointed out in March the restricted nature of an inquiry into Haneef's treatment, with John Clarke QC being unable to compel witnesses or order the disclosure of evidence. Critical reporting has continued in media outlets, with further reports that evidence showing Haneef's innocence was ignored by police.

The ongoing news over Haneef's treatment has kept the focus on Australia's anti-terrorism laws. Comments critical of the laws, said by some to needlessly antagonise Muslims, have come from the usual civil liberties, pinko, radical, latte-drinking, chardonnay-sipping trouble-makers. However, now even the Inspector-General of Intelligence and Security has been critical. Ian Carnell's view is that:

"My belief is that a key test for liberal democracies in the area of counter-terrorism is a willingness to revisit what was introduced when there was a sense of urgency and, if necessary, modify the measures to ensure effectiveness, balance and proportionality. This is particularly so if some aspect may be counter-productive, such as adding to the sense of alienation and discrimination which members of the Muslim communities can suffer."

Concretely, the Inspector-General suggests the repeal of the 'association' offences, which currently carry a maximum ten-year imprisonment sentence.

Tibet protests

The freedom to protest in Australia was tested when pro-Tibetan activists protested and assembled outside the Chinese consulate in Sydney on March 15. Police used capsicum spray and batons. A plain-clothes officer was set-upon by Tibetan protesters in the mistaken belief that he was working for the Chinese consulate. One woman, Gyaltzen Chadon, said "I was just protesting and it was painful when the police arrested me." Chadon was later released without charge.

The Olympic torch relay itself was dogged by apparent public disagreement between politicians, police and Chinese officials as to whether blue track-suited Chinese officials - members of the Chinese People's Armed Police - would or would not run with the torch, be in a van behind, or compromise by running with the Australian police who would be running with the torch.

The political temperature reached red hot as the torch relay date of April 24 approached. The International Olympic Committee Vice-President, Australian Kevan Gosper, went so far as to say that protesters against the torch were "evil plotters motivated by hatred."

Allegations were made that Chinese students in Australia were organised by the Chinese Embassy into intimidating pro-Tibetan activists.

Corruption

Police corruption in NSW has raised its head again with reports that the air wing was less than clean. A

former police officer has said that there was significant corruption at the senior levels of the NSW Police Aviation Support Branch, where one officer allegedly received a new car as a backhander for buying new helicopters from a French company. The officer is remaining anonymous till the publication of his book, based on his being a police officer for 11 years. He gave evidence to the Wood Royal Commission on Police Corruption in the 1990s.

Meanwhile, 26 police cadets and detectives on training courses have failed a random alcohol test at the Goulburn academy on the morning of April 24, perhaps contributing to the figure that 1 in 4 police officers from the Police Academy's class of 2007 failed their first on-the-job exam.

Sniffer dogs

Police have maintained that they will pursue the use of sniffer dogs around gay and other venues, despite increasing criticism. The newly appointed Commander at Surry Hills police station, Donna Adney, says that "If saying we're going to do drug dog operations causes people to not take drugs and not walk around with them, that's a good thing and it might also achieve something from a health point of view." She did not address the issue that most positive sniffs are false positives and that police routinely collect personal ID information even where no drugs are found.

Surveillance society

Parents of students at Kuringai High School alleged that they were intimidated into agreeing to their children being fingerprinted as part of a trial. Consent was presumed, with parents having to opt out if they didn't want their children fingerprinted. However, Alison Page, mother of a Year 10 girl at the school, said that teachers had said that parents who objected to the mass fingerprinting were "idiots." Some parents allege that fingerprints were taken even with their children carrying an exemption letter.

Rather than being an education department initiative, NSW Education Minister John Della Bosca said that it was not his department's initiative but that "in each case the department has ensured there [is] parental consent."

One of the school students who refused to cooperate with the fingerprinting was eventually said to be detained in an exam room but eventually let out when she refused to cooperate.

"My daughter was the only one who refused," explained parent Chris Gurman of his 17 year old daughter, Alex. "She's read 1984."

And finally....

Good news in the form of compensation for Cornelia Rau, 42, after she was wrongfully detained at a Brisbane prison and then Baxter immigration centre in South Australia during a 10-month period in 2004-5.

The government has agreed to pay \$2.6 million compensation.

And congratulations as well to *The Chaser* team for having charges against them dropped in relation to entering an APEC security area in September. They are part of a long list of people who are arrested by police at protests, only to be locked-up, searched and generally inconvenienced and then for charges to be dropped or dismissed for lack of evidence.

References

Asleep on the job

Go-ahead on judge snooze appeal by Michael Pelly The Weekend Australian 17-18 May 2008.

Haneef

Haneef case bill \$7.5m, rising by Paul Maley The Australian 19 February 2008; *Haneef: nine AFP staff still on his tail* by Tom Allard Sydney Morning Herald 4 April 2008; *Haneef lawyers criticise restricted powers of inquiry* by David Marr Sydney Morning Herald 19 March 2008; *Police ignored strong evidence showing Haneef's innocence* by David Marr Sydney Morning Herald 14 April 2008; *Push for overhaul of laws on terrorism* by Tom Allard Sydney Morning Herald 12-13 April 2008.

Tibet protests

Guards to travel on foot for torch leg by Paul Maley The Australian 17 April 2008; *Torch Guardians from Tibet crackdown unit* by Rowan Callick The Australian 16 April 2008; *Protests 'wont stop torch ruri'* by Paul Maley The Weekend Australian 12-13 April 2008.

Corruption

Police air wing corrupt: officer's claims by Sharri Markson Daily Telegraph 18 February 2008; *Police cadets fail alcohol test* by Geesche Jacobsen Sydney Morning Herald 1 May 2008; *1 in 4 police recruits failed exams*: NSW Opp staff report au.news.yahoo.com 28 April 2008.

Sniffer dogs

Drugs purge a "safety issue" by Harley Dennet Sydney Star Observer 27 March 2008; <http://www.nswccl.org.au/stories/story2006-03.php>

Surveillance society

Students 'forced' to accept ID scans by Brad Norington and James Madden The Australian 3 April 2008 and *School forced to halt fingerprint roll call* by Anna Patty Sydney Morning Herald 4 April 2008.

And finally....

Canberra to pay Rau \$2.6 million compensation by Chris Merritt The Australian Weekend Edition

Notes from the Frontline

with Dr Michael Kennedy

Taxi to the 'progressive' side

I recall vividly working as a New South Wales Detective in the mid 1980s. I was in the Organised Crime Squad and we had two major jobs. We were trying to find Russell Cox and in the process I got to know some colourful characters like Audrey Baartman, Tony Zizza and Tony Brizzi. We suspected that Cox was in Darwin. The problem was the Feds and Joint NSW Task Force appeared not to be interested. These days I have a good idea why we were ignored. The other job was trying to find out what Neddy Smith, Murray Riley, Roger Rogerson and Bill Duff were up to. Of course this matter is now mostly historical. These were very interesting times for many of us including the lawyer Val Bellamy. We had the usual betrayals from within the various criminal justice establishments at a State and Federal level. But apart from an incident at Port Moresby airport, which resulted in the termination of a plane being searched for heroin, most of what happened was in hindsight very predictable and it was not only corrupt NSW and Federal Police who made money from this network.

Whilst this was all happening an old colleague and I were asked to establish whether or not there was any organised crime links to the Sydney gambling scene. At that point it was not lawful or unlawful other than a few prohibited games. The State Government was thinking of handing out gambling licences. In our travels around Sydney's various gambling dens I saw lawyers, members of the judiciary, doctors, academics, journalists, members of the drama community, musicians, politicians and many other professionals mingling with Sydney's organised crime community and yes there were cops amongst the patrons as well.

In roughly the same time frame something else was also going on not too far away from the inner city gambling trade. The issue was touched upon briefly, as a matter of fact very briefly, during the Wood Royal Commission. It is probably best at this point in time for me to quote some evidence regarding the boys' brothel 'Costello's'.

'But it was an amazing place; there were lawyers there, judges.'

In this time frame there was a similar investigation involving Justice Yeldham and of course the failing memory of ex Chief Justice Lawrence Street...

So why do I trawl all of this history up again? Well, recently Jack Gibson the Rugby League coach of the century passed away. The Daily Telegraph journalist Ray Chesterton wrote a piece about Gibson's passing

on 9 May 2008. The article covered many of the more positive aspects of Gibson's life. It then completely trivialised or perhaps romanticised his involvement with the organised crime network and the Sydney gambling scene. To say that Chesterton has an agenda regarding NSW Police is stating the bleeding obvious. But in his article... *he also enjoyed the underground gambling houses with their baccarat and two up games protected by bribed police...*

Chesterton conveniently overlooks the involvement of others in the criminal justice establishment including senior politicians, lawyers, judiciary, medical profession and of course members of the media. What he also glosses over is the role that illegal drugs and prostitution played in all of this. Then again it is possible that Chesterton is totally unaware of Operation Lavender involving a drug importation and the same network of people that he romanticises, including a few additional players such as Dr Nick Paltos and Sydney Solicitor Ross Karp. I have not even mentioned the ruined lives and deaths of many young footballers who had serious drug and alcohol problems that were often fed by the network Chesterton insists on romanticising. Perhaps he should have simply focused on Gibson's positives and there were plenty of them.

Even more recently at a NSW Bar reading programme a member of the inner bar is reported to have said words to the effect:

'I must warn you, Police Prosecutors, you cannot, you cannot trust them, they are unethical.'

He apparently used one isolated anecdote to justify this generalisation. I lecture in Ethics at the University of Western Sydney and would enjoy a critical discussion with the author of these comments regarding their veracity. Does he mean that only Police Prosecutors fail to understand what 'The Rule of Law' means? Perhaps it is only Police Prosecutors who at times promote and practice the notion that 'The ends can justify the means'?

So how does the author of these remarks explain the practices that took place during the Wood Royal Commission? Or how does he explain the number of deaths that happened in the same time frame that heroin was distributed as an integrity testing strategy during the Wood Royal Commission? How does the author explain the ICAC investigation of some of these matters whereby not a single witness was spoken to and the investigation took the shape of a legal advising? I am not suggesting Police Prosecutors don't need a shake up or that there are not some serious

issues to be addressed. However in terms of criminal justice reform Police Prosecutors are not a vocational version of the Daniel Defoe character Robinson Crusoe and NSW is not the island of *Tristan da Cunha*.

And what does this all have to do with 'Taxi to the 'progressive' side'? Well recently I saw the magnificent Academy Award winning documentary *Taxi to the Dark Side*. One reviewer argues that Americans are thrilled about their country's name being associated many times over with episodes of prisoner abuse and torture that would have seemed downright abhorrent to their forefathers. Many corrosive factors are apparent principle operational strategies in this taxi ride. To name a few: the use of public humiliation, the withdrawal of *habeas corpus*, the complete dismissal of the rule of law philosophy and the redefining of what key concepts such as torture actually mean. Or more specifically making definitions so broad, and so elastic they can be applied to anyone, anywhere and at any time.

These highly politicised moral panic intrusions into the civil liberties of every global citizen do not just drop out of the sky. In *Taxi to the Dark Side* the administrative elites who make the rules and shape their application are exposed. Lawyers in the US Government such as John Yoo who drafted an infamous "torture" memo and former Attorney General Alberto Gonzales are portrayed for what they are. But what is really presented to the public is the manner in which the US criminal justice-legal establishment has reinforced the policies of former Secretary of Defence Donald Rumsfeld, Vice President Dick Cheney, and President George W. Bush. There has been almost no consideration for the rule of law and the concept that the ends can never justify the means. The documentary also reminded me that in fact both sides of the US party political system gave Bush a standing ovation for his 'tough talk' on these matters. We are also reminded that not one of over 86,000 detainees has been brought to trial. Yet not surprisingly Bush succeeded in getting Congress to pass a law that deprives detainees of the right of *habeas corpus* and at the same time those who have shaped these despicable acts and rules are exonerated from any future war-crimes charges.

Taxi to the Dark Side then reminds the public that despite the immunity for the administrative elites there are low levelled military functionaries (not a single commissioned officer) who are serving prison sentences for putting these awful strategies into place.

Perhaps by comparison the injustice and ironic immunity for administrative elites in NSW and Australia pale into comparison. However it is beyond belief that the same intellectual-legal community that shows such outrage towards these events in the USA can be so silent when similar things occur on our own doorstep and involves their institutions, vocations and professions.

Civil Liberties and Human Rights are for everybody, the good, the bad, the ugly and not just a privileged few. In the 1930s Italian intellectual Antonio Gramsci outlined the gross inadequacy of cultural elites in dealing with social injustice. At the recent 2020 summit in Canberra it appears the cultural elite publicly aligned themselves with the political arm of the state. In doing so they actually confirmed the suspicions of Gramsci along with many other progressive thinkers in Australia.

So whilst the US has *Taxi to the Dark Side*, we in Australia have our own micro version 'Taxi to the 'progressive' side'.

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Book Reviews

'Hate Speech and Freedom of Speech in Australia'

Eds. Katharine Gelber, Adrienne Stone
The Federation Press, 2007

Review by John Benson

In recent weeks, Australia made international headlines when a group of citizens in an outlying Sydney suburb managed to block the building of a Muslim school. Cameras zoomed in on hard-faced women wearing slouch hats emblazoned with dozens of Australian flags, screaming out their national pride and fear of Muslim 'foreigners'.

There can be no better time for publication of a book examining the topic of hate speech.



'Hate Speech and Freedom of Speech in Australia' is a comprehensive examination of the topic from every angle: legal framework, history, sociology, policy directions, perpetrators, legislators, comparative jurisprudence etc. The work is a considered and engrossing discussion of hate speech, free speech and the laws surrounding them both internationally and here in Australia since the first English

stepped off the boat and shot some aborigines in 1788. What is especially interesting is the sophistication of the thinking about this issue in many of the essays. The work goes beyond mere liberal condemnation of the wave of populist and isolationist law-making that has swept the Western world since 9/11. Typical of this is the first essay by one of the co-editors – Katharine Gelber – who examines the legal framework in Australia. As we all know, Australia has no bill of rights or free speech guarantee enshrined in legislation. Post 9/11 we have a hotch-potch of hate speech laws and, at least until recently, a government whose institutions were the source of hate speech in many instances.

Gelber cogently suggests that the laws are ineffective in practice – in many cases simply giving the hate-speaker another judicial platform from which to repeat the offending speech. Ultimately, Gelber suggests that policy should be more directed toward non-punitive remedies, targeting the actual harm occasioned by such speech acts.

However, for this reviewer, the heart of this book remains the socio-historical study by Dr Gail Mason on

'The Reconstruction of Hate Language'. Dr Mason examines the discourse adopted by a variety of contemporary white supremacist groups worldwide, comparing them with other historical groups such as the Nazis. Her suggestion that the source of hate speech can be found in the subject's excessive love for their own position, society, class etc. is a crucial insight into how this phenomenon comes to exist in any society.

And a first step in deciding how to tackle the problem.

'Hate Speech and Freedom of Speech in Australia' is that rare beast – a collection of essays on a legal subject that manages to both fascinate and function as a comprehensive reference. Recommended to all civil libertarians.

Hate Speech and Freedom of Speech in Australia'

Eds. Katharine Gelber, Adrienne Stone

The Federation Press, 256pp, RRP \$49.95

Released: Nov 2007

ISBN/Catalogue Number: 9781862876538

'Crime, Aboriginality and the Decolonisation of Justice'

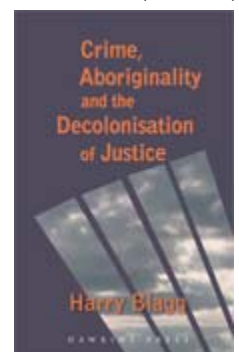
By Harry Blagg

Hawkins Press, 2008

Review by Fleur Beaupert

Harry Blagg has been a key player in law reform projects dealing with Aboriginal justice issues, and his vast knowledge of their legal, social and human aspects shine through in his most recent book, Crime, Aboriginality and the Decolonisation of Justice. But this book above all highlights the need for non-Indigenous Australians to learn from Indigenous knowledge. A central point is that Aboriginal people must be enabled to own the management of justice-related problems in their communities.

This examination of the relationship between Aboriginal people and the criminal justice system explores a range of topics, from youth involvement in criminal justice, through policing of Indigenous communities and Indigenous self-policing initiatives, to family violence. One of the most refreshing aspects of the book is the way in which it questions a number of widely held assumptions. The wholesale imposition of European and American criminology into the highly



unique space in which Aboriginal justice issues are located; demonising of traditional court approaches in this context; heralding of restorative justice as beneficial; collapsing of Aboriginal justice issues within other categories such as 'race', gender or class – all of these tendencies are criticised in a thoughtful fashion.

The author offers up a restorative vision involving systemic and structural change, in contrast to the focus of restorative justice on individual and institutional change. He argues for community-owned justice projects operating in the 'liminal space' between Indigenous and non-Indigenous domains.

I have suggested that we engage in partnerships with Aboriginal people in building hybrid initiatives within the labile and fluid meeting grounds between Aboriginal and non-Aboriginal domains which are not Aboriginal law in the traditional sense, but which allow Aboriginal values, beliefs and forms of cultural authority to intervene constructively in the shared space between domains.

Pipe dreams? Far from it. Numerous stories of successful community-owned justice projects are told, while reflecting on reasons why such projects have not always continued to flourish. There is the danger that Indigenous community justice initiatives will be co-opted by mainstream 'law and order' agendas. For example, Nyoongar community foot patrol workers saw themselves as providing a 'support service' for young people caught up in a cycle of crime, drug abuse and involvement in the sex industry. The Perth City Council and other local organisations saw the patrol as a way to solve the 'problem' of Aboriginal youth by removing them from the streets and imposing night time curfews. The patrol was required to discard their yellow T-shirts for a conservative uniform of blue shirts: the yellow T-shirts were considered too 'Aboriginal' and scruffy.

Criticisms that some Indigenous community justice projects curtail civil rights are also canvassed. How is this perspective to be reconciled with the view of members of the Koori community that disciplinary measures overseen by elders – whereby Indigenous communities may force young people into drug rehabilitation, for example – are the best way to solve tragic problems like petrol sniffing? Potential conflicts between customary law and international human rights principles are confronted rather than shied away from, although the oft-asserted link between customary law and violence is skilfully dismantled. A solution proposed to accommodate both spheres of law is negotiation within a human rights framework, grounded in the notion of self-determination for Aboriginal people. This is not a black and white solution. It involves working with uncomfortable grey areas.

Where does the Howard Government's Northern Territory 'intervention' stand in light of the new restorative vision the reader is invited to share? Widespread restrictions introduced by the 2007 emergency legislation will be largely retained by the

Rudd Government. At first glance, these measures fly in the face of the author's arguments. The 'intervention' is only discussed fleetingly in the concluding chapter. Yet by highlighting the different perspectives among Aboriginal communities on this issue, this discussion manages to exemplify the central thesis. In short, whatever the 'problem', dialogue with Aboriginal people is needed in order to develop workable solutions.

A dangerous, if often unintended, consequence of the current focus on law, culture and violence, lies in the potential for further eroding Indigenous forms of cultural authority and stripping Aboriginal people of capacity to deal with problems in their communities.

Crime, Aboriginality and the Decolonisation of Justice is well worth reading for its informative overview of key events shaping the relationship between Aboriginal people and the criminal justice system, with doses of humour and much humanity mixed in with the facts and figures. But this book makes an essential addition to any bookshelf because it provides a much needed re-envisioning of this vexed relationship, while making forward looking suggestions for the future. The solution lies in building partnerships and ending colonisation of a truly resilient people.

Crime, Aboriginality and the Decolonisation of Justice

By Harry Blagg

Hawkins Press, 236 pp RRP: \$49.95

Released Feb 2008

ISBN: 9781876067199

Editorial

Aren't the NSW government a scary bunch of boofheads? Like a drunk at the wheel at 3am, completely unaware how inebriated with power they are, lurching from footpath to footpath riding up the gutter from one side of the road to the other, leaving all manner of fence posts in their wake. How inevitable a serious accident appears sooner rather than later. Arrogant? Foolish? Certifiably insane? It would be funny if the consequences were not so grim for the unwary citizens of 'the Premier state'.

It is almost as if, upon finding that the condescending hooligans who used to run the federal government have now 'left the building', these state-size 'mini-mes' have decided to fill the breach as best they can. Not having recognized that fear-mongering and stretching the truth are no longer cutting it with the electorate, one would be excused for thinking that these party apparatchiks are living in a time warp of recent Australian history; except that where in Australia's past has a Labor government shifted to the right of its opposition?

Financial dealings, immoral stances and 'porkie pies' notwithstanding, they are building an impressive array of policies that demonstrates a complete lack of respect for the rights of the individual, not to mention the rule of law. Increasing police powers (for no reason), implementing an unprecedented vast range of anti-terrorism laws and diverting public roads to favour private thoroughfares are just the tip of the iceberg.

The way the Attorney General rubbishes and belittles the notion of a Bill of Rights as if chiding wayward children seems specifically designed to knee-cap an argument before it has a chance to take hold. And yet the logic in his arguments is so plainly self-serving that it can only serve to weaken his position.

Reinstating the APEC laws for an overblown church fete is not only arrogant, it is almost totalitarian. Is there anyone in the general public who feels that these laws are necessary? And what about the notion of jailing parents of recidivist truants? Have any of the cabinet seen even a semester of basic law, let alone an episode of *Law & Order*? Surely such a proposal is the act of a complete narrow-minded moron.

They do not realize that the only reason they won the last election was that their opposition paraded around with such insane brown-shirted fervour that even closet reactionaries were appalled. One doubts that they will be handed such a strong handicap again (although one should never overestimate the intelligence of state politicians). In any case let us hope that the good citizens of New South Wales heed the words of Bob Dylan when he croaked:

*"Searchin' high, searchin' low
Searchin' every where I know
Askin' cops wherever I go
Have you seen dignity?"*

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