

# CRIMINAL LAW JOURNAL

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## EDITORIAL

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## ARTICLES

### **Ten years of public nuisance in Queensland** – *Tamara Walsh*

In the 10 years since the offence of “public nuisance” was introduced in Queensland, the number of people receiving penalties for that offence has increased substantially. Concerns regarding the over-representation of vulnerable people as public nuisance offenders have repeatedly been raised. Yet, in 2008, the Queensland Crime and Misconduct Commission said that the offence was more focused on managing the behaviour of “party people” than “street people”. This paper examines the available evidence on the manner in which public nuisance has been policed, prosecuted and penalised in Queensland over the last 10 years. This evidence suggests that the standard of offensiveness set by the High Court is not being applied, particularly in relation to nuisance behaviour directed at police officers. However, an analysis of this evidence demonstrates that there is a role for the offence to play within the Queensland criminal law. .... 59

### **An analysis of the courts’ assessment of problem gambling in sentencing** – *Luke D Neal*

Australian courts have consistently stated that problem gambling will generally not reduce the severity of the punishment. This article examines the cogency of the reasons given by the Australian courts of appeal for assessing problem gambling in accordance with this general sentencing principle. It is suggested that the reasons should be more comprehensively based on the underlying gambling condition. It is further suggested that the basis for the courts’ reasons are uncertain, based on an unrealistic conception of the voluntariness of the offender’s choice to offend and, in application, lack coherence with the treatment of the analogous mitigating factor: the offender’s impaired mental functioning. This article proposes reform in the assessment of the problem gambling mitigating factor. .... 74

### **Penalties and punishment: People smugglers before Australian courts** – *Andreas Schloenhardt and Colin Craig*

Australia’s strategy to deter the smuggling of migrants, most of them asylum seekers, involves the uncompromising prosecution of migrant smugglers and the imposition of tough, mandatory sentences on persons convicted for offences relating to people smuggling. Based on the available case law, this article explores the convictions and sentencing of “people smugglers” by Australian courts, examines the rationale and operation of mandatory minimum penalties for people smuggling, and analyses the criticism expressed by the judiciary, international organisations, and academic experts. .... 92

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