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EDITORIAL 125

ARTICLES

Proving that an organisation is a “criminal” organisation: R v Cluse, experiential occupational evidence and the rule against hearsay – *The Hon Justice Martin Hinton*

In R v Cluse, the prosecution led evidence of the nature and character of an outlaw motorcycle gang from a detective with extensive experience of policing such gangs. This article analyses the judgment in R v Cluse and the question of the admissibility of the detective’s evidence. Through the prism of this case, it explores the rules concerning the admissibility of what is called “non-scientific expert evidence” or “occupational experiential evidence” where the relevant witness not only gives evidence from their own knowledge and experience, but relies upon that of others working in the same field. Ultimately, this article concludes that, in relying upon the work of others, that work must be gathered in a way that contributes to its reliability and the witness relying upon it must be able to attest to its reliability. 129

“Pin the tail on the donkey”: The role of “role” in sentencing for large commercial drug offences in New South Wales – *Isaac Morrison*

With the vast majority of defendants in criminal cases entering pleas of guilty, sentencing law occupies a vital and prominent station in the criminal justice system. Much of the political and academic debate about sentencing has focused either on the legislative guidelines such as prescribed maximum penalties and standard non-parole periods or theoretical principles such as the conflicting rationales behind sentencing law. This paper looks at sentencing in practice, analysing the factors to which judges give the most heed when formulating sentences for large commercial drug offences. An analysis of case law and sentencing statistics for large commercial drug offences shows that the offender’s role in the criminal enterprise is the most important factor in determining the quantum of the sentence. Looking at the principles behind this and the interaction between the offender’s role and other relevant factors reveals that the emphasis on role is not justified and can result in imbalances in the sentencing process. 154

Post-sentence continued detention of high-risk terrorist offenders in Australia – *Charisse Smith and Mark Nolan*

In December 2015, the Council of Australian Governments agreed to implement a nationally-consistent post-sentence preventative detention regime for convicted terrorists. This scheme will allow for the continued imprisonment of high-risk terrorist offenders in a similar way as the existing sex offender and violent offender continuing detention order regimes. This article will assess whether the introduction of a continuing detention order regime for terrorism is possible and defensible, based on the requirements and justifications provided for the sex offender and violent offender regimes. Specifically, it will be considered whether psychometric risk assessment for terrorist offenders can validly estimate which offenders are at a high-risk of reoffending and pose a threat to the community and whether the introduction of an effective rehabilitation program for terrorism is possible. 163

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