
Australian Law Journal

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(2005) 79 ALJ [page]

The Australian Law Journal is a refereed journal.

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THE AUSTRALIAN LAW JOURNAL

Volume 79, Number 7

July 2005

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Chris Jessup QC

Acting as a private arbitrator to settle disputes arising under federal industrial agreements has recently become a significant activity for members of the Australian Industrial Relations Commission. This article considers some of the practical issues which arise, and have the potential to arise, with respect to the procedural and determinative powers of the Commission in, and with respect to the status of outcomes of, such proceedings. 427

DEFENCE OF SUPERIOR ORDERS REVISITED

Christopher Staker

A recent article in this Journal dealt with the question of whether members of armed forces who are charged with criminal conduct are able to plead as a defence that they were acting under the orders of a superior. The purpose of this article is to describe certain significant recent developments in international law relating to this question. It considers the present status of the defence of superior orders in relation to crimes under international law in the statutes of various international criminal courts and tribunals, including the International Criminal Court, the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone, as well as in national legislation enacted in a number of jurisdictions to implement the Statute of the International Criminal Court. 431

DETERRENCE IN SENTENCING: HANDLE WITH CARE

Jeremy McGuire

A consideration of deterrence in sentencing is fairly ubiquitous. Deterrence is a standard feature of State and Commonwealth legislation and has its counterpart in New Zealand law. The ostensible rationale for deterrence is to control criminal behaviour. Its ideal manifestation takes the form of an effective warning or threat to potential defendants about the consequences of offending and that sanctions can both be expected and imposed following a successful prosecution. Deterrence is a controversial subject. There is plenty of empirical evidence that suggests that it is ineffective. It might also be justifiably criticised on moral grounds. This article attempts to critically analyse the elusive concept of deterrence by highlighting its perceived problems and suggesting that there are some valid concerns about its legitimacy. 448

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5. Austin, n 4, p 56.

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7. Sheehy et al, n 6 at 221.

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THOMSON



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ISSN 0004-9611

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW