

# CRIMINAL LAW JOURNAL

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## EDITORIAL

**Law-makers Must Resist the Temptation to Impose Harsher Sanctions against Young Offenders** – *Mirko Bagaric* ..... 67

## ARTICLES

**The Purposes of Punishment: How Do Judges Apply a Legislative Statement of Sentencing Purposes?** – *Kate Warner, Julia Davis and Helen Cockburn*

Despite abundant academic debate about the justification for criminal punishment, the frequent revisiting of how to deal legislatively with the purposes of a sentence by law reform bodies and some legal analysis of appellate guidance on the purposes of sentence, little attention has been given to judges' reliance on the purposes of sentence in their sentencing remarks. This article attempts to close this gap by analysing the sentencing remarks in trials obtained for a study of jurors' views of sentencing in Victoria. Against the backdrop of the Victorian legislation, the article examines the extent to which judges advert to the purposes of sentence in their reasons and how they rank and prioritise the purposes including in cases where there was a statutory requirement to prioritise incapacitation. Explanations for judges' preferences are suggested including that purposes serve as proxies for statements about the seriousness of the crime. .... 69

**What Australian Jurors Know and Do Not Know about Evidence of Child Sexual Abuse** – *Jane Goodman-Delahunty, Natalie Martschuk and Annie Cossins*

A total of 1,931 non-empanelled jurors in the greater Sydney metropolitan area responded to a series of brief statements about forensically relevant issues common to many child sexual abuse cases. Jurors indicated the extent of their agreement with statements concerning typical evidential features of child sexual offences, children's responses to sexual abuse, and children's suggestibility and reliability as witnesses. From these responses, the prevalence of misconceptions about child sexual abuse among a large contemporary Australian jury sample was derived. The results clarified what jurors know, what they do not know, and topics about which they are unsure and require guidance. More than half of the jurors did not know or were uncertain of three issues central to child sexual abuse trials, namely evidence contemporaneous with the alleged abuse, the reliability of children's evidence, and children's post-abuse reactions. .... 86

**Recent Developments in New Zealand Criminal Law** – *Warren Brookbanks*

This review provides an analysis of a range of substantive, evidentiary and sentencing developments in New Zealand criminal law. Included in this review is discussion of planned reforms in the area of homicide prosecutions, which provide a valuable rationalisation of current laws governing intimate partners who kill their abusers; and case law developments surrounding "wilful blindness" – apposite to assessing mens rea in serious drugs offending. The principle of concurrence (suggesting a re-evaluation of the principle established in *Thabo Meli v The Queen*), as well as recent case law examining complicity and the status of the withdrawal defence, are also considered. The review analyses recent cases that have impacted on attempts theory and on the defence of

compulsion, with particular reference in the latter to whether normative involuntariness should be recognised as a principle of fundamental justice. The review concludes with a review of the 2016 appellate decision of *R v Harrison; R v Turner*, which focused on the meaning of “manifestly unjust” in the context of New Zealand’s controversial “three strikes” sentencing regime. .... 104

CASE AND COMMENT

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