

CRIMINAL LAW JOURNAL

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ARTICLES

THE ROLE OF GUIDELINE JUDGMENTS IN THE LAW AND ORDER DEBATE IN AUSTRALIA

Kate Warner

Guideline judgments have been a prominent sentencing issue in Australia since October 1998 when the Chief Justice of New South Wales handed down Australia's first "guideline judgment". Spigelman CJ went to some lengths to ensure that this event was given plenty of exposure in the press and guideline judgments were embraced by the New South Wales Government as a key element of its law and order policy. Guideline judgments have since been handed down in a further four cases. One of them, *Wong* (1999) 48 NSWLR 340; 108 A Crim R 531, went on appeal to the High Court where a number of judges strongly criticised numerical guidelines. The New South Wales Government reacted angrily with threats to introduce mandatory sentencing if the High Court continued to criticise guideline judgments. Subsequently, the Court of Criminal Appeal in *Whyte* [2002] NSWCCA 343 responded to *Wong v The Queen* (2001) 207 CLR 584; [2001] HCA 64 and endorsed the practice of numerical guidelines, but less than three weeks after this decision the New South Wales Government announced a new legislative sentencing scheme which has the potential to seriously undermine judicially created guidelines. While New South Wales is the only state to have actually promulgated "guideline judgments" in name, in Western Australia there is statutory provision for guideline judgments and they are under consideration in South Australia, Victoria and Tasmania. Although, in an election climate, guideline judgments are no longer seen by either the Labor Government or the Coalition Opposition as a sufficient means of meeting community demands for a tougher approach to crime, this article argues that they have considerable potential as a means of reinforcing public confidence in the integrity of the process of sentencing without the need to resort to punitive populist policy measures such as minimum sentences. 8

SENTENCING AND PRIOR CROSS-BORDER CONVICTIONS: ADMISSIBILITY AND DOUBLE CRIMINALITY

David Lanham

It is clear that prior convictions may be relevant to sentencing whether sentencing takes

place at common law or under some statutory regime. What is the position where the prior conviction is from another jurisdiction, either within Australia or from a foreign country? This article discusses the admissibility of such convictions at common law and under a number of statutory models. Where cross-border convictions are admissible, a further question arises as to whether the conduct leading to conviction must have been such that it would have been criminal in the sentencer's own jurisdiction. In other words, are cross-border convictions subject to a double criminality limitation? This article examines the position at common law and under statutory models and argues that a flexible double criminality requirement is desirable in the interests of justice.23

THE DECRIMINALISATION OF DOMESTIC VIOLENCE: EXAMINING THE INTERACTION BETWEEN THE CRIMINAL LAW AND DOMESTIC VIOLENCE

Heather Douglas and Lee Godden

The article examines the interaction of the Queensland *Criminal Code* with the Queensland domestic violence legislation and finds that domestic violence is rarely recognised as criminal behaviour and is generally dealt with outside the boundaries of the criminal law. The article illustrates this position by reference to an examination of Brisbane Magistrates' Court files relating to applications for domestic violence protection orders during 2001, and a discussion of interviews with Queensland domestic violence support workers. Although successful applications for, and prosecuted breaches of, domestic violence orders increase with each passing year, the domestic assaults and property damage associated with these breaches are rarely prosecuted as criminal offences. This article finds that the criminal law continues to fail to deal effectively with domestic violence.32

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