

CRIMINAL LAW JOURNAL

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EDITORIAL

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ARTICLES

THE ABOLITION OF SIX-MONTH SENTENCES, NEW HYBRID ORDERS AND TRUTH IN SENTENCING: WESTERN AUSTRALIA’S LATEST SENTENCING LAWS

Neil Morgan

After a series of false starts in 1999-2000, Western Australia has enacted new laws that are designed to bring about greater truth in sentencing and to reduce the State’s imprisonment rate. The main changes include the abolition of sentences of imprisonment of six months or less; the introduction of a new post-conviction but pre-sentence order (the Pre-Sentence Order); the abolition of remission; and the overhaul of laws relating to parole and other early release orders, including a system of parole administered by the Department of Justice (CEO Parole) for sentences under 12 months. Some facets of the legislation are welcome. However, the Pre-Sentence Order is unprincipled and almost unworkable and there are significant issues surrounding the abolition of six-month sentences. The concept of “CEO Parole” is open to numerous objections of principle (in that the very agency that runs prisons and community corrections will also control parole decisions). The conclusion is pessimistic: it suggests that there is a good chance that the imprisonment rate will increase rather than decrease; and concludes that Indigenous offenders are less likely to benefit from the changes. 8

“SMOKE GETS IN YOUR MIND”: THE LEGAL FRAMEWORK FOR THE CRIME OF ARSON

John Anderson

This article will explore the legal requirements in defining arson-type offences in New South Wales against the background of the Model Criminal Code provisions for arson, other forms of criminal damage and the recent creation of a specific offence of “causing a bushfire”. Analysis will be focused on the various mental states that constitute arson-type offences. Consideration will be given to the merits of consolidating the offence structure for these offences in New South Wales to accord with the scheme of the Model Criminal Code. In light of the analysis of the legal elements of arson-type offences, the framework of sentencing will be briefly examined to identify any specific interrelationship between individual culpability in this offence category and the appropriate forms and levels of punishment.....26

VIDEOTAPED EVIDENCE IN VICTORIA: SOME EVIDENTIARY ISSUES AND APPELLATE COURT PERSPECTIVES

Chris Corns

The pre-trial video and audio taping (VATE) of the evidence of child complainants in sexual offence cases has the potential to reduce the stressors of criminal proceedings for such complainants. However, the use of VATE raises significant evidentiary issues that have the potential to result in unfair trials for accused persons. These issues include whether the VATE should be provided to the jury during their deliberations and what factors influence the reliability of the taped evidence. This article examines a series of recent Victorian Court of Appeal decisions that have addressed these issues and provided some guidance for trial judges.43

DIGEST OF CRIMINAL LAW CASES54

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