

CRIMINAL LAW JOURNAL

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ARTICLES

CODIFYING THE CRIMINAL LAW: IMPLICATIONS FOR INTERPRETATION

Miriam Gani

The criminal law in Australia is currently in transition. More than a decade ago a national law reform process was commenced, which produced a Model Criminal Code. The Code, drafted by an inter-governmental committee called the Model Criminal Code Officers Committee, was intended to serve as a comprehensive model for adoption in all Australian jurisdictions. In line with that vision, many jurisdictions in Australia have recently started to implement aspects of the new Model Criminal Code. However, some common law jurisdictions are doing so by amending their existing Crimes Acts. This article raises questions about the interpretation both of Codes and of “codifications” within the context of statutes which have always been interpreted against the background of the common law. It uses as an example of the latter, the recent amendments to the self-defence provisions in *the Crimes Act 1900* (NSW), which were modelled on the self-defence provisions set out in the Model Criminal Code and which purport to codify the law on self-defence.

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A COMPARATIVE EXAMINATION OF FORENSIC DISADVANTAGE DIRECTIONS IN DELAYED PROSECUTIONS OF CHILDHOOD SEXUAL ABUSE

Penney Lewis

This article considers delayed prosecutions of childhood sexual abuse and the requirement to warn the jury that the defendant has suffered forensic disadvantage resulting from the delay. The Australian courts require such *Longman* warnings in the format of corroboration warnings, which are triggered simply by an assumption of forensic disadvantage. In contrast, the English courts have developed a new jurisprudence which does not use the old language of corroboration warnings. The need for a warning is triggered not by an assumption of forensic disadvantage, but by a showing of prejudice by the defendant as a result of the delay. This article considers these two approaches in turn, and concludes by examining which approach best protects the defendant's right to be presumed innocent.281

BAIL PENDING APPEAL AFTER CONVICTION AND SENTENCE ON INDICTMENT

John Willis

In Australia, there is a very restrictive approach to granting bail to persons convicted by a jury and sentenced to a term of imprisonment who are appealing that conviction and sentence. Bail will be refused unless there are "exceptional" or "very exceptional" circumstances. As a consequence, the great majority of persons convicted by a jury and sentenced to a term of imprisonment will spend the time before the determination of their appeal in custody. The length of time between sentence and the determination of the appeal will generally be significant – months and sometimes well over a year. Hence, an appellant, who is acquitted as a result of a successful appeal against conviction, will often have spent a considerable time in prison that turns out to have been unwarranted. Such an outcome is a blight on a criminal justice system. In particular, for the individual it can, and often will, be quite disastrous: loss of employment, family, friends and reputation. In this article it is argued that there should be a less restrictive approach to bail for persons who have been convicted by a jury and sentenced to a term of imprisonment.296

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