

# CRIMINAL LAW JOURNAL

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## EDITORIAL

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## ARTICLES

### **Recklessness: Awareness, indifference or belief?** – *Adam Webster*

Defining recklessness in criminal law has proved to be a great challenge for courts, legislatures and legal theorists. Currently, the mental element of recklessness encompasses several disparate states of mind and is defined differently in the offence of rape. However, it is desirable to have a single definition of recklessness which encapsulates all states of mind previously identified and is applicable to all offences. This article investigates whether reformulating the definition of recklessness in terms of the accused’s attitude or belief satisfies these criteria. It concludes that the current formulation of the subjective element of the definition of recklessness must be maintained. .... 272

### **Legal implications of the increased risk of homicide and serious violence in the first episode of psychotic illness** – *Olav Nielssen, Matthew Large, Christopher Ryan and Robert Hayes*

There is emerging evidence of a greatly increased risk of homicide, serious violence and suicide during the first episode of psychosis (FEP), which increases if there is a long duration of untreated psychosis. The period before the emergence of frank psychotic illness (the prodrome) has also been shown to be a period of increased risk. The finding of increased danger associated with the FEP has implications for civil, criminal and mental health law. In civil law, it could affect the assessment of the standard of care provided and the perceived duty to warn the patient’s close associates. In criminal law, first episode patients may be considered to have a lower level of criminal responsibility, including during the prodrome of illness. The FEP is now known to be a psychiatric emergency for which there should be a lower threshold for involuntary treatment. .... 287

### **Directions to convict** – *Peter Gillies and Andrew Dahdal*

This article explores the regularity of judicial directions to convict in a divided trial. Such directions are uncommon, yet current Australian authority sanctions directions of this type. The article will explore the reasons why other jurisdictions, most recently Canada, have limited the ability of judges to instruct juries to convict, and argues that it is time the Australian position is reappraised judicially or otherwise. .... 295

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