

CRIMINAL LAW JOURNAL

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EDITORIAL

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ARTICLES

A decision framework for judicial sentencing: Judgment, analysis and the intuitive synthesis – *Austin Lovegrove*

Decision making in sentencing, specifically the role of intuition and analysis in sentencing judgments, is a much contested matter. Against this background, this article proposes a decision framework representing the relationship between case fact, principle (sentencing aims) and sentence. It is the product of an attempt to discern a decision strategy in current judicial sentencing policy and practice. It involves staged thinking and non-intuitive (analytic) thought. Both are anathema to many judicial minds. However, in regard to the former, it is argued that the framework has features meeting such criticism. Moreover, in regard to the latter, the psychological literature, contrary to the judicial view, favours analysis as a basis for quality intuitive thought. Perhaps, then, the judiciary should give serious thought to better understanding sentencing as a decision problem. For this purpose – and, indeed, for those who would reform current sentencing policy – the proposed framework may offer a useful starting point. 269

The militarisation of Australia’s federal criminal justice system – *Richard G Fox and Jodie E Lydeker*

War has become the modern metaphor for the fight against illicit drugs, terrorism and other significant cross-border crimes. Hybridisation of crime and war threatens to erode the long-established distinction between the tasks of the defence forces in protecting Australia from enemies without and those of police in dealing with crime within. This article describes the actual or potential involvement of the Australian Defence Force (ADF) in providing assistance to the domestic criminal justice system under various heads of constitutional power. A tension exists between maintaining the ADF’s traditional role of defending Australia against external military threats and any further expansion of its secondary role of helping State or federal policing agencies enforce the law under a “whole-of-government” approach to serious crime. The article concludes by formulating the principles according to which that secondary law enforcement role should be restrained. 287

Therapeutic jurisprudence, child complainants and the concept of a fair trial – *Michael S King*

Therapeutic jurisprudence examines the impact of legal actors, legal processes and laws on the wellbeing of those affected by them. It does not turn judicial officers into counsellors; rather, it brings to light behavioural science findings to enhance their skills and to craft more effective legal processes. Therapeutic jurisprudence is relevant to all judicial officers and forms part of the national curriculum for judicial education. Judicial officers can, through a therapeutic approach, promote a more effective and less traumatic evidence-taking process for complainants in child sexual abuse related cases by, among other things,

taking pre-recorded evidence via CCTV, settling complainants, modelling proper methods of questioning and interacting with complainants, preventing inappropriate questioning and avoiding stereotypes in considering their evidence. Ensuring the fairness of a trial may require an active rather than reactive approach by a judicial officer and involves considerations in addition to the situation of the accused.	303
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