

CRIMINAL LAW JOURNAL

Volume 33, Number 6

December 2009

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ARTICLES

Public interest immunity claims in national security trials and the role of special counsel – *Trent Glover*

Public interest immunity claims made in criminal trials involving national security issues often present a challenge to ensuring that an accused receives a fair trial. Other jurisdictions have sought to meet this challenge through appointing a “special counsel”, who views the material over which public interest immunity is claimed. The special counsel then represents the interests of the accused for the purposes of the claim but may not disclose to the accused the material disclosed to the special counsel, and is not in the ordinary sense professionally responsible to the accused. Thusfar, no special counsel has been appointed in any Australian criminal trial. This article considers whether the process of appointing a special counsel can improve fairness to an accused. 309

Hate crime laws in Australia: Are they achieving their goals? – *Gail Mason*

A number of common law countries have introduced legislation designed to respond to the problem of prejudice-related crime, commonly referred to as “hate crime”. This article examines recent developments in hate crime law in Australia. It outlines the general purpose of these laws and provides an overview of three different models: the penalty enhancement model, the sentence aggravation model, and the substantive offence model. Against this background, the article analyses several reported decisions under the sentence aggravation provisions that have operated in New South Wales since 2003. Four issues of significance emerge: whether the provisions apply to individual forms of hatred; whether intra-group conflict is covered; whether criminal conduct influenced by racial stereotypes comes within the ambit of the applicable motive test; and the question of which groups should be protected under the legislation. In terms of the last issue, the article argues that the recent decision of the New South Wales Court of Criminal Appeal in *Dunn v The Queen* to include paedophiles as a protected group under s 21A(2)(h) of the Crimes (Sentencing Procedure) Act 1999 (NSW) does little to further the social justice goals of hate crime laws. 326

Human rights, human dignity and the right to die: Lessons from Europe on assisted suicide – *Brendon Murphy*

In July 2009, the House of Lords ordered the Director of Public Prosecutions (for England and Wales) to publish a policy clarifying the exercise of discretion in cases of assisted suicide. In the United Kingdom, assisted suicide is a criminal offence, regardless of where it takes place. International travel for the purpose of medically assisted suicide is a reality. This article examines this landmark decision and considers the important legal and human rights lessons arising out of the case in the context of Australian law. 341

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 - ² Hayton, n 1, p 286.
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SUBSCRIPTION INFORMATION

The *Criminal Law Journal* comprises six parts a year.

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THOMSON REUTERS

© 2009 Thomson Reuters (Professional) Australia Limited
ABN 64 058 914 668

Lawbook Co.

Published in Sydney

ISSN 0314-1160

Typeset by Thomson Reuters (Professional) Australia Limited, Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW