

CRIMINAL LAW JOURNAL

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In search of a model code provision for murder in Australia – Andrew Hemming

This article constitutes a search for a model code provision for murder using s 156 of the Criminal Code (NT) as the vehicle for analysis. The conclusion reached is that a broad definition of serious harm should be adopted and that recklessness should be included as a fault element in addition to intention. The “substantially contributes” test for causation in s 149C of the Criminal Code (NT) is expanded to encompass common law tests and is designed to make it very difficult for the accused to break the chain of causation. Finally, it is recommended that constructive murder, which was removed from the Criminal Code (NT) in 2006, should be reintroduced with the trigger offence set at any crime punishable by imprisonment for 14 years or more.	81
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“Testing” our counter-terrorism laws: The prosecution of individuals for terrorism offences in Australia – Nicola McGarrrity

In December 2003, Zeky Mallah became the first person charged with a terrorism offence in Australia. Since then, more than 30 others have been charged with individual terrorism offences or terrorist organisation offences. The first purpose of this article is to provide a stocktake of the prosecutions arising from these charges, highlighting, amongst other things, the problematic employment of the terrorism offences by Commonwealth intelligence and policing agencies, and the evidentiary difficulties faced by the prosecution at trial. The article goes on to consider several distinct lessons that may be taken from these prosecutions. It examines the important role played by trial by jury in the terrorism context, concluding that reform of the overly broad and vague terrorism offences would substantially improve the ability of juries to apply these offences. Finally, it seeks to demonstrate how both practical and legal aspects of Australia’s terrorism prosecutions have undermined the principle that an accused is innocent until proven guilty.	92
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