

CRIMINAL LAW JOURNAL

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ARTICLES

Cross-examination of child sexual assault complainants: Concerns about the application of s 41 of the Evidence Act – *Russell Boyd and Anthony Hopkins*

Section 41 of the Evidence Act 1995 (NSW), the Evidence Act 1995 (Cth) and the Evidence Act 2008 (Vic) now requires judges to intervene to protect vulnerable witnesses, thereby reducing trauma, encouraging participation in the criminal justice system and ensuring that such witnesses have the opportunity to tell their stories. Some of the most vulnerable witnesses are child sexual assault complainants. For them and for others, the provision is intended to set a new standard for cross-examination. However, a study of experienced prosecution and defence barristers from the Sydney metropolitan region suggests that the provision could fail to meet its objectives. Whilst cross-examiners are required to take to their feet and pit their wits against child sexual assault complainants, the line between acceptable and unacceptable cross-examination will be difficult to draw. 149

Challenging the peremptory challenge system in Australia – *Jacqueline Horan and Jane Goodman-Delahunty*

References to explore reforms on jury selection processes are pending before the Law Reform Commissions in Western Australia and Queensland. The New South Wales Law Reform Commission's 78 recommendations addressing jury selection are being implemented. With so much reform activity in Australia, a thorough consideration of the relevance of the peremptory challenge process in the 21st century is timely. This article reviews peremptory challenge procedures in use in Australian jurisdictions. The authors argue that the rising popularity of empanelling by number and other new conditions under which the jury system operates obviate the need for peremptory challenges in contemporary trials. 167

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