

CRIMINAL LAW JOURNAL

Volume 34, Number 5

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ARTICLES

The United Nations Human Rights Committee's views about the legitimate parameters of the preventive detention of serious sex offenders – *Patrick Keyzer*

Legislation that is presently in place in a majority of the Australian States adopts the radical approach of using prison as a venue for the preventive detention of sex offenders after the conclusion of their prison sentences. The High Court of Australia upheld the constitutional validity of Queensland's legislation in 2004. But the United Nations Human Rights Committee has recently found that the preventive detention regimes in the Queensland and New South Wales (and, by implication, Western Australia and Victoria) are in violation of the International Covenant on Civil and Political Rights, which provides for guarantees of due process and prohibits arbitrary detention and the retroactive infliction of increased punishment. This article reviews the Committee's decisions, and examines their implications.	283
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Determining "probative value" for the purposes of section 137 in the uniform evidence law – *Tim Smith and Stephen Odgers*

A divergence of view has developed in respect of one of the most important provisions in the uniform evidence law: section 137, which requires prosecution evidence to be excluded if its "probative value" is outweighed by the danger of unfair prejudice to the accused. In particular, different views have been taken regarding the proper approach to the assessment of probative value. For a number of reasons, the narrow construction of this term currently prevailing in New South Wales should be rejected. This will facilitate the effective operation of the provision and have potentially important implications for other areas of evidence law.	292
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Challenges in prosecuting child sexual assault in New South Wales – *Jennifer Zhou*

Recent amendments to the Evidence Act 1995 (NSW) were introduced to redress deficiencies in the rules applicable to children's evidence. Whilst these changes are a positive step in balancing the rights of the child complainant with the accused's right to a fair trial, problematic rules remain which inappropriately affect the admissibility and devalue the reliability of the child complainant's evidence. This article examines the appropriateness of these evidentiary limitations as well as other factors, including the adversarial process and its adverse impact on children and their willingness and ability to give evidence, that have contributed to unwarranted challenges in prosecuting child sexual assault in New South Wales. Proposals for further reform are recommended.	306
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CASE AND COMMENT

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The thematic edition that was scheduled for this issue of the journal did not proceed. Given the subject matters upon which recent submissions have been received, the Editors elected to proceed with a general edition of the journal.

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 - ¹ Hayton D, “Unique Rules for the Unique Institution, The Trust” in Degeling S and Edelman J (eds), *Equity in Commercial Law* (Lawbook Co, Sydney, 2005) p 284.
 - ² Hayton, n 1, p 286.
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