

CRIMINAL LAW JOURNAL

Volume 35, Number 2

April 2011

EDITORIAL

Rape within marriage: A privilege past its use by date? 67

ARTICLES

Will the responsibility to protect principle improve enforcement of international criminal law? – *Grant Niemann*

The responsibility to protect principle is made up of well-recognised international humanitarian law norms but is packaged in new wrappers. It was introduced in order to replace the humanitarian intervention principle which is widely considered to have failed. Will the new look responsibility to protect principle fair better or is it destined to suffer the same fate as its predecessor? 70

Framing preparatory inchoate offences in the Criminal Code: The identity crime debacle – *Ian Leader-Elliott*

The Commonwealth Parliament recently enacted three new identity crimes, which lend their name to the omnibus Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2010 (Cth). The Act makes it an offence to engage in conduct preliminary to the adoption of an assumed identity with the intention that the assumed identity will facilitate the commission of an indictable offence against Commonwealth law. The identity crimes are instances of increasing legislative resort to inchoate crimes of mere preparation that supplement and extend the traditional categories of attempt, conspiracy and incitement in Ch 2 of the Criminal Code. This article compares the identity crimes with conspiracy, drawing on recent High Court decisions on federal conspiracy law. It is argued that the new crimes are vitiated by serious errors in their formulation that appear to have resulted from failure to realise their essential kinship with the inchoate offences of Ch 2. Various amendments are suggested. 80

Criminalising foreign bribery: Is Australia's bark louder than its bite? – *Dr Cindy Davids and Grant Schubert*

In 1999, Australia ratified the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, making foreign bribery an offence via an amendment to the Commonwealth Criminal Code and providing a framework for the prosecution of individuals and companies. This article discusses the Australian legislative response to the OECD requirements and examines a number of interpretive issues associated with the offence of foreign bribery. In particular the physical and fault elements of the offence are examined and questions are raised as to whether a test of recklessness may provide a more realistic frame within which to activate and pursue prosecutions. The operation of the principles of criminal corporate responsibility embedded in the Criminal Code and their impact on interpreting the relevant bribery provisions are considered. Australia's poor track record on prosecutions is contrasted with the success of enforcement regimes in comparative jurisdictions in the United States and the United Kingdom. 98

RECENT CRIMINAL CASES IN THE HIGH COURT

Control orders: Out of control? High Court rules South Australian “bikie” legislation unconstitutional – <i>Dr Greg Martin</i>	116
DIGEST OF CRIMINAL LAW CASES	123