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(Marginal) general deterrence doesn't work – and what it means for sentencing – *Mirko Bagaric and Theo Alexander*

General deterrence is broadly understood as the theory that correlates increased sanctions with decreased crime rates. It is one of the principal objectives of sentencing in Australia; regularly used by courts to increase penalties in criminal matters in an endeavour to discourage others from committing offences. Imposing harsh sanctions on offenders, so the theory runs, discourages by example other people from breaking the law. General deterrence theory is a virtually unchallenged orthodoxy in Australian courts. Yet, it is in this area of the criminal law that the greatest discord between legal theory and social reality exists. The reality is that general deterrence, as universally applied, does not work. The overwhelming trends evident in empirical research suggest that higher penalties do not serve as disincentives to crime. The current practice of increasing penalties to give effect to general deterrence has no social utility. Accordingly, it is merely the infliction of additional punishment in the absence of any associated direct or indirect benefit. It is therefore socially and morally unjustifiable. There may yet be other justifications for imposing harsh penalties on offenders, but they must be found elsewhere than within the rubric of general deterrence. This article sets out the current relevance of general deterrence to the sentencing calculus. It then examines the empirical data regarding the efficacy of punishment to deter offenders, and makes suggestions for reform in light of these empirical findings. 269

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