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EDITORIAL

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ARTICLES

Understanding discretion in modern policing – *Simon Bronitt and Philip Stenning*

Discretion is a ubiquitous and legitimate aspect of modern policing, though its scope and limits are poorly understood. In this article, the authors seek to refine our understanding of discretion in modern policing by examining the historical evolution of the concept, and the modern challenges facing individual officers and police organisations in reconciling, on the one hand, the duty to enforce the law fairly and impartially, and on the other hand, the need to temper strict law enforcement for sound policy and operational reasons. The article reviews recent case law in Canada exploring these tensions within policing and the proper limits of police discretion. 319

Cross-border police co-operation: Traversing domestic and international frontiers – *Dr Saskia Hufnagel*

Cross-border police co-operation has increased significantly in recent decades. Law enforcement co-operation is now a global enterprise, no longer limited to neighbouring states or members of the same federal or regional political alliance. Considering that policing and criminal justice are matters located at the heart of national sovereignty, this evolution is striking. Closer examination of modes of co-operation focused on local rather than global networks of exchange, reveals a complex picture of legal, organisational and communication challenges. This article therefore explores practices of police co-operation not in the global, but within the Australian context, highlighting in particular the interaction of formal and informal co-operation mechanisms. A particular focus lies on assessing the impact of formal legal frameworks regulating police co-operation in the European Union in contrast with the informal mechanisms that have predominately characterised cross-border police co-operation in Australia. 333

Freezing notices and confiscation powers: New punitive roles for police?
– *Sebastian De Brennan*

This article examines the history of asset confiscation legislation, its rationale as well as the development of a freezing notice regime under Div 1A of the Confiscation of Proceeds of Crime Act 1989 (NSW) (COPOCA). It is argued that the power of a court to make an interim order – allowing the Police Commissioner to take control and dispose of assets pending the resolution of criminal law proceedings – operates harshly and in a way that circumvents the procedural safeguards that would ordinarily apply to conviction-based forfeiture under COPOCA. The article considers the impacts of freezing notices on innocent third parties, before concluding with some recommendations as to how COPOCA might be improved. 345

Entrapment under controlled operations legislation: A Victorian perspective – *Adam V Chernok*

The Crimes (Controlled Operations) Act 2004 (Vic) formed part of a raft of legislation intended to deal with serious and organised crime and corruption. A review of the law relating to entrapment offers an instructive set of principles for an examination of the Act. In particular, a normative analysis of the deception which is central to entrapment indicates that there is a substantial risk to individuals’ freedom from arbitrary interference by the state. Within the context of the Charter of Human Rights and Responsibilities Act 2006 (Vic), this article argues that the right to a fair trial in particular provides a basis upon which individuals accused of criminal offences may find some protection from arbitrary interference by law enforcement officers, where the evidence against them is derived from the use of controlled operations. 361

Promoting pre-recorded complainant evidence in rape trials: Psychological and practice perspectives – *Mark R Kebell and Nina J Westera*

In this article, the authors, a forensic psychologist and police officer, explore how pre-recorded police interviews with complainants may be presented as evidence-in-chief and used to support the prosecution case for alleged rape offences. They discuss the advantages and disadvantages of pre-recording, and how its introduction will necessitate a profound shift in police culture and the conventional “case construction” model used by police. The article concludes by identifying the range of reforms to current police practice required to address some of problems associated with using pre-recorded evidence in rape trials. 376

Move-on powers: New paradigms of public order policing in Queensland – *Helen Punter*

In this article, the author examines the operation of move-on powers. These powers, which have been adopted in all jurisdictions in Australia, were enacted to deal with a wide range of antisocial behaviours that do not necessarily constitute offence. The police powers were presented as a diversionary measure to nip crime and disorder in the bud. Using Queensland as a case study, the article traces the historical and incremental expansion of move-on powers over the past 15 years. The broad and discretionary nature of such powers poses challenges for both policy and practice perspective. The article examines a recent review by the Crime and Misconduct Commission, and assesses the effectiveness of existing procedural safeguards in preventing the misuse of move-on powers – particularly against members of vulnerable and disadvantaged groups. 386

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