
Index

Aboriginal offenders

payback, 294
sentencing circles, 140
sentencing conferences, 26
young offenders, 43

Aboriginal people *see also* Northern Territory Emergency Response

regional police co-operation, 341
 development of model, 342
 geographical area, 341-342
 mirror legislation, 342
victims of environmental crime, 141

Accounting

foreign bribery, 112-113

Acquittals

adverse pre-trial publicity, 12

Admissibility of evidence

illegally obtained evidence, 178
 common law position, 178
 courts' considerations, 179-181
 human rights, 178-181
 trial fairness, 179-180
similar fact evidence, 3
 another rational view test, 3-4
 probative value, 3-4
 Uniform Evidence Acts, 4

Adverse pre-trial publicity

acquittals, 12
community interest, 11
judge alone trials, 157-158, 163-165
judicial directions, 11-12
jurors, 11-12
overview, 10
permanent stay, 5, 10-11, 164-165
 conditions for grant, 11
right to a fair trial, 10-11

Agency

bank overpayments, 206-207
 ATM overpayments, 209, 216

Agents

foreign bribery, 107-109
 accounting provisions, 112-113

wilful blindness, 109

Aiding and abetting

causal connection, 172-173
 determining connection, 173-174
 nature and length, 173

Appeals against conviction

substantial miscarriage of justice, 131
 burden on appellant, 132-133
 fair trial, 134-135
 fundamental flaw, meaning, 134
 orthodox test, 131-132
 Weis v The Queen, 131-132
unreasonable verdicts, 131, 133
 authoritative guidance, 133-134
 independent assessment of evidence, 134

ATM overpayments

active account withdrawals, 210-211
 authority, 211
 bank's intention, 210-211
 consent, 210
agency principles, 209, 216
bank's intention, 208, 210-215
closed account withdrawals, 207-210
 agency principles, 209
 bank's intention, 208, 211
 consent, 207-209
 role of computer system, 209, 211
case law summary, 215-216
 banks' position, 216
 uncertainty, 216, 222
computer misuse, 218, 220
 deception, 218-219
 dishonest manipulation, 220
 dishonest use, 219
 United Kingdom approach, 220-221
conditions of use pamphlets, 210-211
consent, 207-211, 213-214, 216
 reform proposals, 216-217
 valid transactions, 212
deception, 217-218
 computer misuse, 218-219
 representations, 217-218, 221

Index

- fraud, 202, 209
 - computer misuse, 218-221
- overview, 202-204, 207, 222
- reform proposals, 216-217, 221-222
- risk, 216-217
- theft, 202, 208-209, 211-212
- underlying account balance errors, 212-213
 - bank's intention, 213-215
 - consent, 213-214
 - intention to repay funds, 214
 - legal status of balance, 215
- Attempted murder**
- transferred intent, 170
- Australian Capital Territory**
- judge alone trials, 154, 156, 162
 - excluded matters, 166
- police move-on powers, 47-48, 50
 - human rights, and, 48-49
 - vagueness of directions, 48
- Australian Crime Commission**
- federally relevant crime, definition, 399
- Northern Territory Emergency Response, 398-399, 401-402
 - background to role, 399
 - potential risk, 401
 - publicly funded computers, 400
 - relevant crime, definition, 399
 - scope of powers, 401
 - special intelligence operation, 400
- role, 398
- Australian Federal Police** *see* **Cross-border policing**
- Australian Law Reform Commission**
- similar fact evidence, 3-4
- Authorised teller machines** *see* **ATM overpayments**
- Bank overpayments**
- agency principles, 206-207, 209, 216
- ATM overpayments, 202-204, 207, 222
 - active account withdrawals, 210-211
 - agency principles, 209, 216
 - case law summary, 215-216
 - closed account withdrawals, 207-210
 - computer misuse, 218-221
 - conditions of use pamphlets, 210-211
 - reform proposals, 216-217, 221-222
 - uncertainty, 216, 222
 - underlying account balance errors, 212-215
 - valid transactions, 212
 - vicarious liability, 209, 216
- bank tellers or clerks, 203, 222
 - agency principles, 206-207
 - Australian cases, 204-205
 - authority, 204-205
 - banking practice, 205-206
 - consent, 204-206
 - English cases, 203-204
 - fundamental mistake, 204-205
 - vicarious liability, 206
- banking practice, 205-206
- EFTPOS facilities, 216
- overview, 203
- vicarious liability, 206, 209, 216
- Bill of rights**
- Kable doctrine, 197, 201
- Bodily harm**
- sexual activities, 174-176
 - consent, 174
- Bribery** *see* **Foreign bribery**
- Burden of proof**
- appeals against conviction, 132-133
- Canada**
- admissibility of evidence, 178
 - illegally obtained evidence, 178-181
- aiding and abetting, 172
 - causal connection, 172-174
- attempted murder, 170
- defence counsel, 187
 - withdrawal for non-payment, 187
- illegally obtained evidence, 178
 - common law position, 178
 - courts' considerations, 179-181
 - human rights, 178-181
 - trial fairness, 179-180
- murder, 172
 - causation, 171-172
 - provocation defence, 176-178

transferred intent, 170-172

police investigators, 326, 329

- duty to investigate, 326
- negligent investigation, 326-327

police discretion, 326-327, 329

- legal principles, 328-329
- obstructing justice, 327-328

privilege, 181-182

- case-by-case privilege, 182-184
- journalists' sources, 181-184

provocation defence, 176-177

- ordinary person, characterisation, 177-178
- suddenness, 178
- wrongful act or insult, 177-178

right to counsel, 184

- extent of right, 184-185
- purpose of right, 185-186
- role of lawyers, 186-187

right to silence, 184

sexual activities, 174

- bodily harm, 174-176
- disclosure of HIV status, 175-176

transferred intent, 170

- causation, 171-172
- underlying principles, 170-171

Child abuse *see also* **Northern Territory Emergency Response**

police discretion, 321

Children's evidence

pre-recorded evidence, 300, 303, 317

- advantages, 300-303
- delays and stress, 300-301
- disadvantages, 302-303
- freedom from testifying, 302
- jury reactions, 302-303
- pre-trial decision-making, 301
- quality of evidence, 301

Civil proceedings

- criminal proceedings, distinction, 351
- freezing notices, 351-352

Commercial practice

- foreign bribery, 98-99

Commonwealth offences *see* **Federal offences**

Community impact statements

- connections to offence, 25
- cross-examination, 23-24
- effect of offences, 24-25
- overview, 21, 23, 26, 33
- personal circumstances of victim, 24
- potential difficulties, 21-22, 23-26
- relevance of information, 25-26
- reliance on information, 23
- same offences, 24-25
- sentencing recommendations, 29-30
- sources of material, 23
- verification of content, 23

Company directors' liability

- corporate offending, 231
- duties to protect, 228
- manslaughter, 223-225, 230, 235
 - case examples, 224-225
 - causation, 226
 - convictions, 224
 - criminal negligence, 224-227, 235
 - degree of negligence, 226-227
 - duty to act, 229
 - industrial manslaughter, 229-232, 235
 - safety omissions, 229
- occupational health and safety, 223, 225, 235
 - culpability offences, 233-234
 - duties to protect, 228
 - duty of care, 227-229
 - separate entity principle, 227

Compensation

- environmental crime, 148

Computer misuse *see also* **ATM overpayments**

- fraud, 218, 220
 - deception, 218-219
 - dishonest manipulation, 220
 - dishonest use, 219
 - United Kingdom approach, 220-221
- unauthorised use, 219

Confiscation of assets

- conviction based regime, 347-348, 358
- criticisms of legislation, 346
- freezing notices, 316, 347, 357, 360

- applications for notices, 348
- civil and criminal elements, 351-352
- constitutional concerns, 357
- devolution to Local Court, 352-353
- diagram of operation, 351
- disposal of assets, 349-350
- hardship, 349-350, 355-356, 358, 360
- key provisions, 349-350
- motor vehicles, 350-351, 353
- publication of judgments, 352
- reform recommendations, 358-360
- safeguards to deter misuse, 354-357
- standard of proof, 351
- tainted property requirement, 348
- third parties, 353-354, 356-359
- historical background, 345
- overview, 360
- reasons for legislation, 345-346
- reform recommendations, 358-359
 - third parties, 358-360
- restraining orders, 197-198, 347
 - High Court decision, 197-198, 347-348
 - procedural fairness, 198
- safeguards to deter misuse, 354-355
 - costs, 356-357
 - discretionary criteria, 355
 - hardship, 355-356
 - proportionality, 355-356
 - undertakings, 356
- serious offence, definition, 347, 356
- statutory construction, 346, 354
- tainted property, definition, 347-348, 354
- third parties, 346, 353, 356-358
 - effective control, 353-354
 - human rights, 353-354, 358
 - motor vehicle example, 353
 - principle of legality, 354
 - reform recommendations, 358-360

Conspiracy

- elements, 5, 14-15, 90
- foreign bribery, 103
- inchoate offence, 81, 84, 91, 96-97
 - conditions of liability, 90-91

- defences, 86-87
- engaging in conduct, 85
- fault elements, 90
- foreign bribery, 103
- impossibility, 86
- intention, 85-86, 93-94
- parity of penalties, 85
- physical element, 90
- proof of intention, 86
- requirements of liability, 90-91
- special liability provisions, 87, 90-91, 95
- inconsistent state laws, 16-17
- overview, 81
- pre-requisites to guilt, 14-15, 90-91
- recklessness, 15
- Constitution**
- appeals against conviction, 135
- confiscation of assets, 197
 - freezing notices, 357
 - restraining orders, 197-198, 347-348
- defence power, 265, 268
- inconsistent state laws, 16-17
 - marital rape, 67
- military justice, 265
 - Australian Military Court, 266-268
 - military tribunals, 265-268
- right to trial by jury, 154
- separation of powers, 6, 116-118, 120-121, 198
 - Commonwealth control orders, 9, 119-121
 - independence and impartiality, 8-10, 116-121, 198
 - Kable doctrine, 6, 8-10, 116-117, 197-200, 357
 - limits of doctrine, 8
 - scope of doctrine, 8, 197

Control orders *see* Serious crime organisations

Corporate criminal responsibility

- foreign bribery, 106
 - agents' liability, 107-109
 - criminal corporate culture, 109-110
 - direct responsibility, 106
 - employees' liability, 107-108
 - indirect responsibility, 106-107
 - intermediaries, 109

- practical application, 107
wilful blindness, 109
- Corruption** *see* **Foreign bribery**
- Covert police investigations**
- controlled operations, 361, 370, 374-375
 applications for authorisation, 364
 approval, 363
 background to enactment, 363-364
 considerations for authorisation, 364-365
 entrapment, 362, 364, 366, 369-374
 exclusion of evidence, 362, 365-369, 373
 fair trial, 362, 370-375
 human rights, 362, 371-372, 374
 illegal conduct of investigators, 368, 370-372
 inducement test, 370-371
 judicial discretion, 365
 likelihood of risk, 365
 other laws, and, 365
 Ridgeway v R, 362-364, 369
 statutory legitimisation, 362, 370
- entrapment, 362, 364, 366, 370
 categories of entrapment, 366
 definition, 366
 exclusion of evidence, 367-369, 373
 fair trial, 368-374
 illegal conduct of investigators, 368-372
 inducement test, 370-371
 normative analysis, 366-367
 remedies, 367-370, 372-374
- overview, 317, 361
range of tools, 361
- Criminal assets** *see* **Confiscation of assets**
- Criminal Code** *see* **Inchoate offences**
- Criminal justice system**
- restorative justice, 139
 checks and safeguards, 152-153
- Criminal law**
- human agency, 51-53
 actual person, 55
 aspirational person, 54-55
 legal fiction, 53-54
 metaphysical being, 55-56
- retrospective application, 68-69, 237
- Criminal proceedings**
- civil proceedings, distinction, 351
freezing notices, 351-352
open court principle, 35
 deterrent effect, 35
 young offenders, 35
young offenders, 35
 limitations on publicity, 35-36
- Criminal records**
- employment discrimination, 35-36
- Criminal statutes**
- interpretation, 18-19
- Cross-examination**
- community impact statements, 23-24
- Cross-border policing**
- Aboriginal communities, 341
 development of model, 342
 geographical area, 341-342
 mirror legislation, 342
- challenges, 334-335
- CrimTrac, 342-344
 forensic DNA procedures, 342-343
 regular meetings, 343
- European Union, 333-334, 341-342, 344
- jurisdiction, 335
 state and federal agencies, 335-336
- international co-operation, 333-334
- memorandums of understanding, 342
 CrimTrac, 342-343
- mutual recognition, 334
 state-to-state level, 337
- overview, 316, 333
- regional co-operation, 333-335, 341
 Aboriginal communities, 341-342
- state and federal agencies, 316, 334-335
 drug offences, 335-336
 formal co-operation, 337
 jurisdiction, 335-336
 informal co-operation, 336-337
 legally binding initiatives, 336
 memorandums of understanding, 342
 negotiated competencies, 336
 overlapping competencies, 335

State-to-State level, 337, 343
 common legal frameworks, 340-341
 common standards, 338
 formal co-operation, 340-341, 343
 hot pursuits, 338
 informal co-operation, 339-341, 343-344
 model laws, 337-338
 mutual recognition, 337
 search warrants, 337-338
 sovereignty of the states, 338
 special constables, 338-339, 344
territoriality, 334-335

Death

consent, 174

Death penalty

marginal general deterrence, 274-275

Deception

ATM overpayments, 217-218

 representations, 217-218, 221

computer misuse, 218-219

definition, 219

Defences *see also* **Provocation defence**

conspiracy, 86-87

foreign bribery, 110

 facilitation payments, 111-113

 lawful conduct, 110-111

identity crimes, 94-95

special liability provisions, 89-91

Definitions

benefit, 104

deception, 219

discretion, 321

effective control, 353

entrapment, 366

federally relevant crime, 399

foreign public enterprise, 104-105

identification information, 84

intention, 105

murder, 172

public official, 104

relevant act, 389

relevant crime, 399

restorative justice, 137

serious offence, 347, 356

special liability provisions, 87, 90

tainted property, 347-348, 354

Domestic violence

police discretion, 321, 325

Duty of care

occupational health and safety, 227-229

police investigators, 326

Employees' liability

foreign bribery, 107-108

Employers *see* **Vicarious liability**

Employment discrimination

criminal records, 35-36

Entrapment

categories of entrapment, 366

definition, 366

fair trial, 368-374

illegal conduct of investigators, 368, 370-372

inducement test, 370-371

normative analysis, 366-367

overview, 362, 364, 366, 370

remedies, 367, 370, 374

 exclusion of evidence, 367-369

 fair trial, 368-369, 372-374

 illegal conduct of investigators, 368, 370

Environmental crime

offender responsibility, 146

 transformative outcomes, 150-151

restorative justice, 136, 153

restorative outcomes, 146

 civil pecuniary penalties, 148-149

 community service orders, 149

 compensation, 148

 future behaviour, 149

 harm prevention, 147-148

 remedial action, 147-148

 undertakings or agreements, 146-148

restorative process participation, 143-144

 choice of representative, 144

 governmental organisations, 144

 non-governmental organisations, 144

 surrogate victims, 145

transformative outcomes, 149

- community, 151
- environment, 151
- justice system, 151-152
- offenders, 150-151
- victims, 150
- victims of crime, 141
 - Aboriginal people, 141
 - biosphere, 143, 145
 - community members, 142-144, 151
 - future generations, 143, 145
 - non-human biota, 143, 145
 - participation in restorative processes, 143-145
 - persons' health or life, 141
 - property owners, 141-142
 - transformative outcomes, 150
- Environmental performance**
- foreign bribery, and, 101-102
- European Court of Human Rights**
- marital rape, 237-238, 247-248
- European Union**
- regional police co-operation, 333-334, 341-342, 344
- Evidence** *see also* **Admissibility of evidence; Children's evidence**
- inspection of evidence, 19
- police controlled operations, 362, 365-369, 373
- Extra-curial punishment**
- Einfeld case, 290-292, 298
 - loss of professional status, 290, 296
- employment loss, 295-296, 298
- family impacts, 296
 - exceptional circumstances test, 296-297
- imprisonment impacts, 297-298
- Nuttall case, 292-293, 296, 298
- overview, 289, 293, 298-299
- professional deregistration, 290, 295-296
- public opprobrium, 284, 289, 293, 298
 - Einfeld case, 290-292
 - High Court's approach, 289
 - Nuttall case, 292-293
- self-inflicted injuries, 295
- unlawful reprisals, 293-294
 - case examples, 294
 - payback, 294
- Fair trial**
- abuse of process, 369, 372
- adverse pre-trial publicity, 10
 - permanent stay, 11
- appeals against conviction, 134-135
- entrapment, 368-374
- international conventions, 135
- judge alone trials, 158-159, 164
- marital rape, 69
- police controlled operations, 362, 370-375
- Federal offences** *see also* **Inchoate offences**
- appeals against conviction, 135
- cross-border policing, 335
 - drug offences, 335-336
- expansion of offences, 335
- non-parole norm, 6, 13
- right to trial by jury, 154
- sentencing, 6, 13
- Federalism**, 335
- Foreign bribery**
- accounting provisions, 112
 - foreign agents, 112-113
- anti-bribery provisions, 102-103
 - jurisdiction, 103-104
 - territorial nexus, 103
- benefit, definition, 104
- commercial practice, 98-99
- corporate criminal responsibility, 106
 - agents' liability, 107-109
 - criminal corporate culture, 109-110
 - direct responsibility, 106
 - employees' liability, 107-108
 - indirect responsibility, 106-107
 - intermediaries, 109
 - practical application, 107
 - wilful blindness, 109
- criminalisation, 98
- defences, 110
 - facilitation payments, 111-113
 - lawful conduct, 110-111
- enforcement, 99, 114-115
- facilitation payments defence, 111-113
 - justification for defence, 111

OECD position, 111-112
requirements, 111
fault elements, 102, 105, 107-108
 imputed intention, 105-106
 intention to influence, 105
 intention, definition, 105
 recklessness, 103, 105-106, 108
 ulterior intent, 105
harms of foreign bribery, 101, 114
 environmental performance, 101-102
 public order, 102
international conventions, 98-99
 background to introduction, 100-101
 jurisdiction, 103-104
lawful conduct defence, 110
 Australian Wheat Board, 110-111
overview, 98-99, 114-115
penalties for breach, 113-114
physical elements, 102, 104, 107
 foreign public enterprise, 104-105
public official, definition, 104
United States, 99-100
 accounting provisions, 112
 corporate penalties, 113-114
 enforcement, 99, 114-115
 facilitation payments, 111
 jurisdiction, 104
 knowledge, 109
 reaction to measures, 100-101
Forfeiture of assets *see* **Confiscation of assets**
Fraud
ATM overpayments, 202, 209
computer misuse, 218, 220
 deception, 218-219
 dishonest manipulation, 220
 dishonest use, 219
 United Kingdom approach, 220-221
Freedom of association, 6-7, 122, 198
Freedom of information
legal professional privilege, 19-20
public interest test, 20
General deterrence
absolute general deterrence, 270, 280

empirical evidence, 281-282
 success of policy, 281-282
empirical data, 269, 273-274
 absolute general deterrence, 281-282
 complexity of inquiry, 274
 crime reduction trends, 275-276
 death penalty, 274-275
 imprisonment rates, 275-276
 research findings, 276-277
explanations for failure, 277, 279
 delay, 278
 sociological explanations, 277-278
 systemic failure, 278
 underlying causes of behaviour, 277-278
marginal general deterrence, 270, 283
 empirical data, 274-277, 283
 explanations for failure, 277-279
 failure of policy, 276-277
 logical argument supporting, 269, 278-280
 normative objection, 282-283
 reform proposals, 283
overview, 269-270
reform proposals, 270, 277, 283
role in sentencing, 270-271
 courts' approaches, 272-273
 legislative omissions, 272-273
 social security offences, 272
 taxation offences, 271-272
High Court
adverse pre-trial publicity, 10, 12
 permanent stay, 5, 10-11
 right to a fair trial, 10-11
confiscation of assets, 197-198, 347-348
conspiracy, 5, 14-15, 81
 inconsistent state laws, 16-17
decisions, 2010, 5-6, 20
freedom of information, 19-20
inspection of evidence, 19
interpretation of criminal statutes, 18-19
overview, 5
provocation defence, 5, 15-16
sentencing, 13
 instinctive synthesis approach, 6, 14

public opprobrium, 289
 separation of powers, 6-10, 20, 116, 197-201
 Commonwealth control orders, 9, 119-121
 independence and impartiality, 8-10, 116-121
 limits of doctrine, 8
 scope of doctrine, 8
 unsafe verdicts, 17-18

Human rights *see also* **Bill of rights**

freezing notices, 353-354, 358
 illegally obtained evidence, 178-181
 marital rape, 243, 251
 European Court of Human Rights, 237-238, 247-248
 principle against retrospectivity, 243-246
 police controlled operations, 362, 371-372, 374
 police move-on powers, 48-49
 policing, 318, 403-405
 principle of legality, 354
 provocation defence, 177
 right to counsel, 185-186

Identity crimes

absolute liability, 84, 95
 background to introduction, 80
 conditions of liability, 96
 dealing in identification information, 83-84, 92
 identification information, definition, 84
 intended use of information, 93
 defences, 94-95
 engaging in conduct, 93
 escaping from custody, 88
 impossibility, 94
 intention that offence be committed, 93-94
 need for offences, 91-92
 existing laws, 92
 overview, 83, 96-97
 parity of penalties, 92-93
 preparatory offences, 82
 requirements of liability, 96
 scope of conduct, 84
 special liability provisions, 95, 97
 absolute liability, 95
 actual and intended effects, 95-96
 victim's certificates, 84

Inchoate offences

absolute liability, 84, 87-91
 identity crimes, 84, 95
 ancillary offences, *as*, 82
 conspiracy, 81, 84, 91, 96-97
 conditions of liability, 90-91
 defences, 86-87
 engaging in conduct, 85
 fault elements, 90
 foreign bribery, 103
 impossibility, 86
 intention, 85-86, 93-94
 parity of penalties, 85
 physical element, 90
 proof of intention, 86
 requirements of liability, 90-91
 special liability provisions, 87, 90-91, 95
 culpability, 83, 88-89
 derivative liability, 82
 fault elements, 81, 87-88, 91
 defined by statute or legal rules, 89
 ulterior intention, 82-83
 foreign bribery, 103
 framing offences, 80, 91
 identity crimes, 80, 83, 91, 96-97
 absolute liability, 84, 95
 conditions of liability, 96
 dealing in identification information, 83-84, 92
 defences, 94-95
 engaging in conduct, 93
 escaping from custody, 88
 impossibility, 94
 intention, 93-94
 parity of penalties, 92-93
 preparatory offences, 82
 requirements of liability, 96
 scope of conduct, 84
 special liability provisions, 95-97
 victim's certificates, 84
 nature of offences, 80-81
 physical elements, 86-88
 bearing on culpability, 88-89
 conspiracy, 90

Index

- defined by statute or legal rules, 89
- preparatory offences, 82
 - ulterior intention, 82-83
- range of offences, 81-82
- special liability provisions, 87-88, 90-91
 - absolute liability, 87-90
 - conspiracy, 87, 90-91
 - definition, 87, 90
 - elements defined by statute or legal rules, 89
 - elements with little bearing on culpability, 88-89, 91
 - identity crimes, 95-96
 - special defences, 89-91
 - use of provisions, 88
- target offences, 81
 - facilitating commission, 82
 - intention, 82, 84-86, 93-94
- target offences, as, 82
- ulterior intention, 82-83
 - conspiracy, 85-86
 - examples, 83
 - intention, meaning, 83, 85

International conventions

- fair trial, 135
- foreign bribery, 98-99
 - background to introduction, 100-101
 - enforcement, 99, 114-115
 - jurisdiction, 103-104
- Geneva Conventions, 76
- Genocide Convention, 75
- human rights, 371-372
- principle against retrospectivity, 243-247

International Criminal Court

- jurisdiction, 71-72
 - complementarity principle, 71-72

International criminal law

- enforcement, 70
 - direct enforcement, 71
 - indirect enforcement, 71
 - jurisdiction, 71-72
- Geneva Conventions, 76
- Genocide Convention, 75
- humanitarian intervention, 70, 72, 74-75, 78-79

- colonisation, distinction, 73
- economic factors, 73-74
- historical background, 73
- military intervention, 78-79
- reluctance to intervene, 73-74
- sovereignty of states, 72-73
- states' right to protect, 75
- trigger for intervention, 76-77
- responsibility to protect principle, 70, 74-75, 78-79
 - acceptance of principle, 76
 - complementarity principle, 72
 - early intervention, 76, 78-79
 - military force, 76-77
 - positive features of principle, 77-78
 - react and prevent, 75
 - rebuild, 76
 - sovereign rights of states, 72
 - trigger for intervention, 76-77

International law

- law of the sea, 18

International police co-operation

- overview, 333-334

Interpretation

- criminal statutes, 18-19

Judge alone trials

- adverse pre-trial publicity, 157-158, 163-164
 - permanent stay, 164-165
- applications, 158, 163, 167
 - fair trial, 158-159, 164
 - lengthy trials, 165-166
 - prejudice cases, 160-162, 165
 - reasons for applications, 163-166
 - sex offenders, 160-162, 165
 - technical legal issues, 165-166
- appropriate orders, 157-158, 163
- community confidence, 168
- election by accused, 154, 156, 162, 167-168
 - courts' considerations, 157
 - excluded matters, 166-167
 - prosecutorial consent, 156-157, 162
- legal developments, 154-156
 - early approaches, 156-157
- opposing arguments, 155-156

overview, 167-169

Queensland, 154-156, 159, 163, 167

adverse pre-trial publicity, 164

application statistics, 159-160

excluded matters, 166

prejudice cases, 160-162

supporting arguments, 155

Western Australia, 156-158, 163, 167

adverse pre-trial publicity, 158, 164

application of discretion, 158-159

appropriate orders, 157-158

excluded matters, 167

Judicial directions

adverse pre-trial publicity, 11-12

Jurisdiction

cross-border policing, 335

state and federal agencies, 335-336

foreign bribery, 103-104

International Criminal Court, 71-72

international criminal law, 71-72

Jury trials *see also* Appeals against conviction

adverse pre-trial publicity, 11-12

children's pre-recorded evidence, 302-303

community confidence, 168

mode of giving evidence, 382

overview, 155

pre-recorded evidence, 382

rape trials, 380-381

presumption of jury trial, 162-163, 168-169

rape trials, 377, 380-381

right to trial by jury, 154

unsafe verdicts, 17-18

Larceny

lack of consent, 202-203

Law Reform *see* Australian Law Reform Commission

Legal history

Phillips' Brief, 317-318

Legal proceedings

open court, 34-35

Legal representation *see also* Right to counsel

withdrawal for non-payment, 187

Manslaughter *see also* Provocation defence

company directors' liability, 223-225, 230, 235

case examples, 224-225

causation, 226

convictions, 224

degree of negligence, 226-227

duty to act, 229

industrial manslaughter, 229-232, 235

safety omissions, 229

criminal negligence, 224-225, 235

causation, 226

degree of negligence, 226-227

Marital rape

European Court of Human Rights, 237-238, 247

distinguishing cases, 247-248

facts of case, 238

fair trial, 69

human rights, 243, 251

European Court of Human Rights, 237-238, 247-248

principle against retrospectivity, 243-246

immunity, 67-68, 237

abolition of immunity, 67, 237, 240-242, 249-251

evolution of common law, 239-240

existence of immunity, 68, 242

High Court ruling, 67, 241-242

historical origins, 68, 238-239

judgments in case, 242

dissenting judgment, 242-243

majority judgments, 243-244

overview, 67-68, 237, 250

public interest, 68, 250

retrospective application, 68-69, 237-238, 250-251

changes to legislation, 243

common law, 242-244

human rights, 243-246

international conventions, 243-245, 247

limits on principle, 246

South Australia, 68, 237, 248, 251

abolition of immunity, 67, 237, 241, 249-250

facts of case, 238

judgments in case, 242-246

- legal context, 249-250
- retrospective application, 68-69, 237, 242-246
- social context, 248-249
- Military justice**
- Australian Military Court, 266
 - constitutional validity, 266-267
 - interim legislation, effect, 267-268
- Constitution, 265-268
- criticisms of system, 265-266
- military tribunals, 265, 266
 - constitutional validity, 266-268
- overview, 265, 268
- Minors** *see* **Young offenders**
- Mistake**
- bank overpayments, 204-205
- Model Criminal Law Officers Committee**
- identity crimes, 80, 92
- Murder** *see also* **Attempted murder; Provocation defence**
- death penalty, 274
 - marginal general deterrence, 274-275
- definition, 172
- transferred intent, 170
 - causation, 171-172
- Negligence**
- criminal negligence, 224-225, 235
 - causation, 226
 - degree of negligence, 226-227
- police investigators, 326-327
 - duty to investigate, 326
 - negligent investigation, 326-327
 - police discretion, 326-327
- New South Wales**
- confiscation of assets, 346
 - conviction based regime, 347-348, 358
 - freezing notices, 316, 347-360
 - restraining orders, 197-198, 347-348
- cross-border policing, 340-341
 - special constables, 338-339, 344
- freezing notices, 316, 347, 357, 360
 - applications for notices, 348
 - civil and criminal elements, 351-352
 - constitutional concerns, 357
 - devolution to Local Court, 352-353
 - diagram of operation, 351
 - disposal of assets, 349-350
 - hardship, 349-350, 355-356, 358, 360
 - key provisions, 349-350
 - motor vehicles, 350-351, 353
 - publication of judgments, 352
 - reform recommendations, 358-360
 - safeguards to deter misuse, 354-357
 - standard of proof, 351
 - tainted property requirement, 348
 - third parties, 353-354, 356-359
- judge alone trials, 154, 156
 - DPP guidelines, 156-157, 163, 166
 - excluded matters, 166
 - prosecutorial consent, 156-157, 162
- police force, 338-339
 - special constables, 338-339, 344
- police move-on powers, 46, 50
 - CBD, meaning, 47-49
 - facts of case, 46-47
 - vagueness of direction, 47-48
- standard non-parole periods, 285-286
- Non-parole periods**
- federal offences, 6, 13
- standard non-parole schemes, 284, 299
 - baseline minimum sentences, 286-287
 - New South Wales, 285-286
 - Queensland, 287-288
 - Victoria, 284-287
- Northern Territory Emergency Response**
- Australian Crime Commission, 398-399, 401-402
 - background to role, 399
 - potential risk, 401
 - publicly funded computers, 400
 - relevant crime, definition, 399
 - scope of powers, 401
 - special intelligence operation, 400
- catalyst for response, 398
- legislative package, 398-399
- need for sustained action, 401
- overview, 317, 398
- police resources, 399

underlying reasons for violence, 400-401

Occupational health and safety *see also*
Manslaughter

company directors' liability, 223, 225, 235

culpability offences, 233-234

duties to protect, 228

duty of care, 227-229

separate entity principle, 227

corporate offending, 231

culpability offences, 223, 232-233, 235-236

company directors, 233-234

effectiveness of approach, 234-235

harmonisation of laws, 233

range of offences, 233

recklessness, 234

duty of care, 227

overview, 223, 235

public welfare offences, 230

Organised crime *see* **Confiscation of assets;**
Covert police investigations

Penalties

environmental crime, 148-149

foreign bribery, 113-114

proceeds of crime, 113

Permanent stay

adverse pre-trial publicity, 5, 10-11

Police discretion

accountability, 329-330

applicable areas, 320-321

centrality to policing, 323

main reasons, 323-324

codes of ethics, 323

decision to prosecute, 325

public interest, 325-326, 332

discretion, definition, 321

discrimination, 321-322, 324

domestic violence, 321, 325

duty to investigate, 326, 329

negligent investigation, 326-327

obstructing justice, 327-328

guidelines, 325, 329

high level policing, 320

interpretive judgment, distinction, 321

legal principles, 328-329

move-on powers, 329, 386, 389-390, 393-394

overview, 316, 319-321, 329-330, 390

political influence, 322

public attitudes, 321

public interest, 322, 325

relevant factors, 325-326, 332

statutory acknowledgment, 325

strict enforcement, 324

Police interrogations

right to counsel, 184

extent of right, 184-185

purpose of right, 185-186

role of lawyers, 186-187

Police interviews

cognitive interviews, 378, 380

pre-recorded interviews, 381

conduct of interviews, 382-383

content, 382

explanations to complainants, 383

quality of interviewing, 384

quality of recording, 381-382

rape victims, 317, 376, 378, 382-384

sexual elements of offence, 383-384

testing claims, 383

volume of information, 382

Police investigators *see also* **Covert police investigations**

case construction, 381

duty to investigate, 326, 329

negligence, 327

negligent investigation, 326

police discretion, 326-327

obstructing justice, 327-328

Police move-on powers

adverse impacts, 389, 395

CBD, meaning, 47-49

challenges to directions, 394

comparative analysis, 386, 388-389, 396-397

crime prevention, 392

discretionary nature, 329, 386, 389-390, 393-394

discriminatory impact, 390-391

grounds for directions, 50

guidance and training, 393-394
historical background, 387-388
homeless persons, 392-393
human rights, and, 48-49
increased criminalisation, 391-393
misuse of powers, 386, 395
non-compliance with directions, 392-394
notified areas, 388
overview, 46, 48, 50, 317, 386, 395
patterns of use, 389-390
Police v McMillan, 46, 48
 facts of case, 46-47
procedural safeguards, 387-388, 394-395
reasonable directions, 48
relevant conduct, 389
scope of directions, 49-50
time dimension, 49-50, 393
vagueness of direction, 47-48
Policing *see also* **Cross-border policing**
human rights, 318, 403-405
Northern Territory Emergency Response, 399
overview, 315
principles of policing, 323, 331
regulatory environment, 315
use of research, 315
Pre-trial publicity *see* **Adverse pre-trial publicity**
Privilege
case-by-case privilege, 182
 criteria, 182-184
journalists' sources, 181-182
 application of criteria, 183-184
overview, 181-182
Proceeds of crime *see also* **Confiscation of assets**
pecuniary penalty orders, 113, 356
Property
refusal to leave on request, 252
Provocation defence
elements, 15
ordinary person, characterisation, 177-178
overview, 176-177
sudden provocation, 5, 15-16, 178
wrongful act or insult, 177-178

Public trust doctrine
future generations, 145
Queensland
judge alone trials, 154-156, 159, 163, 167
 adverse pre-trial publicity, 164
 application statistics, 159-160
 excluded matters, 166
 prejudice cases, 160-162
police move-on powers, 317, 386, 395
 adverse impacts, 389, 395
 challenges to directions, 394
 crime prevention, 392
 discretionary nature, 386, 389-390, 393-394
 discriminatory impact, 390-391
 guidance and training, 393-394
 historical background, 387-388
 homeless persons, 392-393
 increased criminalisation, 391-393
 non-compliance with directions, 392-394
 notified areas, 388
 patterns of use, 389-390
 procedural safeguards, 387-388, 394-395
 relevant conduct, 389
standard minimum non-parole periods, 287-288
Rape *see also* **Marital rape**
public interest, 68, 250
South Australia, 241
Rape prosecutions
case construction, 384
difficulties in prosecution, 377
overview, 376
pre-recorded evidence, 317, 376-378, 385
 accuracy of recall, 379
 advantages, 378-379
 biased accounts, 380
 disadvantages, 380-381
 freshness of evidence, 379
 impact of testimony, 380-382
 interview format, 380
 mode of delivery, 381
 pre-trial availability, 379-380
 suitability, 384
rates of conviction, 377

-
- rates of prosecution, 376
 - special measures for complainants, 377
 - Reform** *see also* **Australian Law Reform Commission**
 - marital rape immunity, 67
 - Restorative justice**
 - authoritarian restorative justice, 138
 - checks and safeguards, 152
 - courts' role, 152-153
 - community conferencing, 139-140
 - community impact panels, 140
 - community reparative boards, 140
 - criminal justice system, 139
 - checks and safeguards, 152-153
 - definition, 137
 - democratic restorative justice, 138
 - environmental crime, 136, 153
 - offender responsibility, 146, 150-151
 - outcomes, 146-149
 - participation in processes, 143-145
 - transformative outcomes, 149-152
 - victims of crime, 141-145, 150
 - family group conferencing, 139-140
 - goals, 136
 - models of restorative justice, 138
 - offender responsibility, 146
 - transformative outcomes, 150-151
 - outcomes, 146, 153
 - civil pecuniary penalties, 148-149
 - community service orders, 149
 - compensation, 148
 - future behaviour, 149
 - harm prevention, 147-148
 - remedial action, 147-148
 - undertakings or agreements, 146-148
 - overview, 136
 - participation in processes, 143-144
 - choice of representative, 144
 - governmental organisations, 144
 - non-governmental organisations, 144
 - surrogate victims, 145
 - restorative justice programs, 136
 - types of programs, 138
 - underlying assumptions, 137
 - restorative justice interventions, 137
 - types of interventions, 138
 - restorative processes, 136-137
 - available processes, 139-140
 - checks and safeguards, 152-153
 - participation in processes, 143-145
 - sentencing circles, 140
 - transformative outcomes, 149
 - community, 151
 - environment, 151
 - justice system, 151-152
 - offenders, 150-151
 - victims, 150
 - undertakings or agreements, 146-147, 153
 - enforcement and monitoring, 147
 - remedial action, 148
 - unilateral restorative justice, 138
 - victim-offender conferencing, 139
 - victims of crime, 136, 140
 - Aboriginal people, 141
 - biosphere, 143, 145
 - community members, 142-144, 151
 - future generations, 143, 145
 - identification, 140-141
 - non-human biota, 143, 145
 - participation in processes, 143-145
 - persons' health or life, 141
 - property owners, 141-142
 - transformative outcomes, 150-151
 - Right to a fair trial** *see* **Fair trial**
 - Right to counsel**
 - extent of right, 184-185
 - purpose of right, 185-186
 - role of lawyers, 186-187
 - Right to silence**, 184
 - Search warrants**
 - cross-border policing, 337-338
 - Sentencing**
 - Aboriginal offenders, 26
 - sentencing circles, 140
 - baseline minimum sentences, 284, 286-287
 - community impact statements, 21, 23, 26, 33
-

- connections to offence, 25
- cross-examination, 23-24
- effect of offences, 24-25
- personal circumstances of victim, 24
- potential difficulties, 21-26
- recommendations as to sentence, 29-30
- relevance of information, 25-26
- reliance on information, 23
- same offences, 24-25
- sources of material, 23
- verification of content, 23
- consistency, 13
- extra-curial punishment, 289, 293, 298-299
 - Einfeld case, 290-292, 296, 298
 - employment loss, 295-296, 298
 - family impacts, 296-297
 - Nuttall case, 292-293, 296, 298
 - professional deregistration, 295-296
 - public opprobrium, 284, 289-293, 298
 - self-inflicted injuries, 295
 - unlawful reprisals, 293-294
- federal offences, 6, 13
- forum sentencing, 140
- general deterrence, 269-270
 - absolute general deterrence, 270, 280-282
 - empirical data, 269, 273-277, 281-282
 - explanations for failure, 277-279
 - marginal general deterrence, 270, 274-280, 282-283
 - normative objection, 282-283
 - reform proposals, 270, 277, 283
 - role in sentencing, 270-273
- instinctive synthesis approach, 6, 14
- mitigating factors, 284, 293, 298
 - employment loss, 295-296, 298
 - family impacts, 296-297
 - imprisonment impacts, 297-298
 - individualised justice, 299
 - principle of equal impact, 298
 - professional deregistration, 290, 296
 - public opprobrium, 284, 289-293, 298
 - relevant factors, 293
 - self-inflicted injuries, 295
 - unlawful reprisals, 293-294
- non-parole periods, 284, 299
 - baseline minimum sentences, 286-287
 - federal offences, 6, 13
 - New South Wales, 285-286
 - Queensland, 287-288
 - Victoria, 284-287
- public opprobrium, 284, 289, 293, 298
 - Einfeld case, 290-292, 296
 - High Court's approach, 289
 - Nuttall case, 292-293
- relevant factors, 14
- sentencing circles, 140
- victim education, 32
- victim impact statements, 21-22, 27, 30, 33
 - defendant, and, 31-32
 - determining weight, 27-28
 - effectiveness of amendments, 30
 - multiple victims, 31
 - pre-existing position, 22, 27-29
 - victims' knowledge of sentence, 29
- Separation of powers**
- bill of rights, 197, 201
- confiscation of assets, 197
 - freezing notices, 357
 - restraining orders, 197-198, 347-348
- freedom of association, 6, 122, 198
- Kable doctrine, 6, 8-10, 116-117, 197-199, 357
 - future application, 199-200
 - measurement of impact, 200-201
 - protection of rights, 200
 - scope of doctrine, 8, 197, 199-200
- independence and impartiality, 8-10, 116-118, 120-121, 198
 - Commonwealth control orders, 9, 119-121
- overview, 8, 20, 116
- serious crime organisations, 6, 9-10, 116, 198-199
 - control orders, 7-9, 116, 118-121, 198-199
 - declaration of organisations, 6-7, 9, 117-118, 120, 199
- Serious crime organisations**
- control orders, 7-9, 116, 118, 120-121, 198-199
 - Commonwealth orders, distinction, 9, 119-121

protecting public peace, 120-121
 United Kingdom, 121-122

declaration of organisations, 6-7, 9, 117-118, 120, 199

freedom of association, 6-7, 122

separation of powers, and, 6, 9-10, 116, 198-199
 Commonwealth control orders, 9, 119-121
 independence and impartiality, 8-10, 116-121, 198

Sex offences

similar fact evidence, 3

Sex offenders

judge alone trials, 160-162, 165

Sexual activities

bodily harm, 174-176
 consent, 174

disclosure of HIV status, 175-176
 fraud vitiating consent, 175
 risk of transmission, 176

Similar fact evidence

admissibility of evidence, 3
 another rational view test, 3-4
 probative value, 3-4

Australian Law Reform Commission, 3-4

sexual offence cases, 3

Uniform Evidence Acts, 4

Social security offences

general deterrence, 272

South Australia

judge alone trials, 154, 156, 162
 excluded matters, 166

marital rape, 68, 237, 248, 251
 abolition of immunity, 67, 237, 241, 249-250
 facts of case, 238
 judgments in case, 242-246
 legal context, 249-250
 retrospective application, 68-69, 237, 242-246
 social context, 248-249

rape, 241
 time limit on prosecutions, 241

sentencing, 21, 30
 Aboriginal defendants, 26
 community impact statements, 21-26, 29-33

effectiveness of amendments, 30

pre-existing position, 22, 27-29

victim education, 32

victim impact statements, 21-22, 27-33

serious crime organisations, 6, 9-10
 control orders, 7-9
 declaration of organisations, 6-7, 9

Standard of proof

freezing notices, 351

Taxation offences

general deterrence, 271-272

Telecommunications

inchoate offences, 81

Theft

ATM overpayments, 202, 208-209, 211-212

Torts *see* Negligence

Transferred intent

attempted murder, 170

causation, 171-172

murder, 170-172

underlying principles, 170-171

Trials *see* Judge alone trials; Jury trials

Uniform Evidence Acts

similar fact evidence, 4

United Kingdom

anti-social behaviour orders, 34, 37, 44-45
 aims of publication, 39-43
 deterrence, 40-42
 effectiveness as deterrent, 41
 enforcement, 39-40
 principles guiding publication, 38-39
 publication of details, 38-43
 reintegrative shaming, 42

control orders, 121-122

foreign bribery, 108, 115

fraud, 220-221

United States

absolute general deterrence, 281

foreign bribery, 99-100
 accounting provisions, 112
 corporate penalties, 113-114
 enforcement, 99, 114-115
 facilitation payments, 111

- jurisdiction, 104
- knowledge, 109
- reaction to measures, 100-101
- imprisonment rates, 275
 - crime reduction, 275
- marginal general deterrence, 275
- Verdicts** *see* **Jury trials**
- Vicarious liability**
- bank overpayments, 206
 - ATM overpayments, 209, 216
- Victim impact statements**
- injury, loss or damage, 22, 25, 27, 32-33
- overview, 21-22, 27, 33
- pre-existing position, 22, 27-29
- sentencing recommendations, 27, 30
 - defendant, and, 31-32
 - determining weight, 27-28
 - effectiveness of amendments, 30
 - multiple victims, 31
 - pre-existing position, 27-29
 - victims' knowledge of sentence, 29
- Victoria**
- appeals against conviction, 131
 - substantial miscarriage of justice, 131-132
- baseline minimum sentences, 284, 286-287
- controlled police operations, 361, 370, 374-375
 - background to enactment, 363-364
 - considerations for authorisation, 364-365
 - entrapment, 362, 364, 366, 369-374
 - exclusion of evidence, 362, 365-369, 373
 - fair trial, 362, 370-375
 - human rights, 362, 371-372, 374
 - illegal conduct of investigators, 368, 370-372
 - inducement test, 370-371
 - judicial discretion, 365
 - likelihood of risk, 365
 - other laws, and, 365
 - Ridgeway v The Queen, 362-364, 369
 - statutory legitimisation, 362, 370
- cross-border policing, 340-341
- human rights charter, 371
 - international norms, 371-372
- standard minimum non-parole periods, 284-285
- Western Australia**
- judge alone trials, 156-158, 163, 167
 - adverse pre-trial publicity, 158, 164
 - application of discretion, 158-159
 - appropriate orders, 157-158
 - excluded matters, 167
- presumption of jury trial, 162-163
- prohibited behaviour orders, 34, 37, 44-45
 - civil proceedings, as, 36-37
 - publication of details, 34-35, 37-38, 42-45
 - reassurance of community, 43
- Workplace safety** *see* **Occupational health and safety**
- Young offenders**
- anti-social behaviour orders, 34, 37, 44-45
 - aims of publication, 39-43
 - deterrence, 40-42
 - effectiveness as deterrent, 41
 - enforcement, 39-40
 - principles guiding publication, 38-39
 - publication of details, 38-45
 - reassurance of community, 42-43
 - reintegrative shaming, 42
- changing social attitudes, 43-44
- limitations on publicity, 35, 43
 - employment discrimination, 35-36
 - support for anonymity, 36
- prohibited behaviour orders, 34, 37, 44-45
 - Aboriginal youth, 43
 - civil proceedings, as, 36-37
 - publication of details, 34-35, 37-38, 42-45
 - reassurance of community, 43
 - reintegrative shaming, 42
- publication of details, 34-35, 44-45
 - anti-social behaviour orders, 38-43
 - current law, 35-36
 - prohibited behaviour orders, 34-38, 42-44
- right to anonymity, 34, 36, 43-44
- welfarist approach, 43
- Youth Justice Conferencing Scheme**
- overview, 140