

CRIMINAL LAW JOURNAL

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ARTICLES

Trafficking in persons for the purpose of organ removal: International law and Australian practice – *Andreas Schloenhardt* and *Samantha Garbutt*

In international law, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children is the principal instrument to combat trafficking in persons for the purpose of organ removal. In 2011, Australia’s first investigation involving organ trafficking made headlines, raising questions about the application of relevant criminal offences and their compliance with international law. This article outlines international requirements and explores Australia’s legislative approach to criminalising organ trafficking in Div 271 of the Criminal Code (Cth). These offences are analysed in close reference to international law and best practice guidelines. The article concludes by developing recommendations to combat trafficking for the purpose of organ removal more effectively.

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The capacity of criminal sanctions to shape the behaviour of offenders: Specific deterrence doesn’t work, rehabilitation might and the implications for sentencing – *Mirko Bagaric* and *Theo Alexander*

There is a considerable gap between the law and knowledge regarding the efficacy of state-imposed sanctions to achieve several key sentencing objectives. Two sentencing objectives which often carry considerable weight in the sentencing calculus are rehabilitation and specific deterrence, despite the fact that neither has been proven to be attainable. This article examines the empirical data on whether specific deterrence and rehabilitation are attainable, and consequently whether they should be retained or abolished as sentencing objectives.

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Raising the fourth pillar: Public participation in Australian sentencing – a comparative perspective – *Emily Kerr*

Sentencing captures the attention of media outlets and the imagination of the public like no other aspect of the Australian criminal justice system. In turn, the increased political salience of crime means sentencing judges now bear the weight of public scrutiny for the judiciary as a whole. This article analyses the contemporary “crisis” of public confidence in Australian sentencing judges, and examines the potential for recent developments in sentencing law and policy to resolve the crisis. In so doing, it proceeds from the basis that Australian criminal justice is held aloft by four pillars: state, offender, victim and public. Drawing on recent empirical research and international comparative analysis, the author calls for Australian policy-makers to raise the fourth pillar by institutionalising the public as a participant in sentencing individual cases.

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