

# CRIMINAL LAW JOURNAL

Volume 36, Number 5

October 2012

## EDITORIAL

**The provocation partial defence to murder** ..... 263

## ARTICLES

**Sentencing by weight: Proposed changes to the Commonwealth Code’s serious drug offences** – *Ian Leader-Elliott*

Major increases in the punishment for Criminal Code offences of trafficking, commercial cultivation and manufacture of controlled drugs are under consideration by the Commonwealth government. The proposed increases would be effected by new model schedules of controlled drugs which would have two effects. First, the model schedules would extend the penalties of imprisonment for life and imprisonment for 25 years to a range of substances that are currently the subject of comparatively minor, regulatory penalties. Secondly, they would extend the penalties of imprisonment for life and imprisonment for 25 years to far smaller quantities of the existing class of controlled drugs. The model schedules are proposed as a model for uniform adoption in all Australian jurisdictions. They have already been adopted in South Australia. This article discusses the Commonwealth proposals with particular reference to the lack of evidence or argument to justify the dramatic increases in penalties proposed. .... 265

**The meaning of dishonesty in Australia: Rejection and resurrection of the discredited Ghosh test** – *David Lusty*

This article examines the meaning of “dishonesty” in Australia, focusing on the influence of the controversial test invented by the English Court of Appeal in *R v Ghosh*. Notwithstanding strong academic criticism and judicial rejection of the “Ghosh test”, including by the High Court, it continues to be applied in Queensland and has been adopted by legislatures in four other Australian jurisdictions. It is submitted that the Ghosh test is fundamentally flawed, its continued application in Queensland is erroneous, and its legislative reinstatement was a retrograde step taken without due consideration. .... 282

**Post-appeal review rights: Australia, Britain and Canada** – *Bibi Sangha* and *Robert Moles*

There are significant differences in the legal rights to post-appeal reviews between the jurisdictions of Britain, Canada and Australia. This article will examine the British and Canadian procedures and contrast them with the current Australian position on re-opening appeals. The Australian Human Rights Commission has stated that the Australian post-appeal review procedures may fail to comply with international human rights obligations. The question arises as to whether legislative reforms are required. .... 300

BOOK REVIEW – *Justice Gilles Renaud*

*Mitigation and Aggravation at Sentencing* by Julian V Roberts ..... 317

DIGEST OF CRIMINAL LAW CASES ..... 323

