CRIMINAL LAW JOURNAL

Volume 37, Number 3

June 2013

EDITORIAL

Australia – The increasingly not so clever country when it comes to imprisoning offenders 153

ARTICLES

Obtaining the best evidence from children and witnesses with cognitive impairments – "plus ça change" or prospects new? – *Terese Henning*

The purpose of this article is to consider some apparent lacunae in the current legal landscape for obtaining the best evidence from children and witnesses with cognitive impairments. The most critical and intractable problems facing these witnesses in testifying are comprehension and communication. The article considers whether particular measures that have been implemented elsewhere to improve the questioning of these witnesses and to enhance the prospect of obtaining reliable evidence from them might be available in those Australian jurisdictions that are yet to legislate specifically for them without the necessity for further statutory reform. The measures in question are the use of advance directives to control cross-examination, the video recording of witnesses' entire testimony in the absence of the jury and the use of intermediaries/interpreters to aid their communication with the court. The implications of these measures for the right to a fair trial are briefly considered. 155

A committal waste of time? Reforming Victoria's pre-trial process: Lessons from other jurisdictions – *Asher Flynn*

Court inefficiency is a significant problem confronting legal systems. In response, there has been a shift towards the implementation of law reforms that seek to speed up the delivery of justice. One such reform has centred on the modification, amendment and abolition of the pre-trial committal hearing, a move which has been subject to extensive criticism, particularly in regards to its impact on due process rights and its unintended contribution to increased court delays. Victoria appears to be following in the arguably problematic footsteps of national and international jurisdictions by considering abolishing or severely restricting the use of its committal hearing. This article examines the reignited debates surrounding the reformation of the pre-trial committal hearing and critically analyses the outcomes of several divergent approaches to reform that have been adopted in England, Scotland, California, Western Australia, South Australia, Queensland and Tasmania. In examining the implications arising from pre-trial law reform, this article considers whether any proposed changes will increase the effectiveness of the committal hearing by enhancing court efficiency levels, or whether reform can provide better protections to the most vulnerable accused who come before the law, by redressing the perceived exclusivity of the Victorian committal hearing. 175

The demand for sentence discounts: Some empirical evidence – *Andrew Torre* and *Darren Wraith*

Sentence discounts are now routinely used by Australian courts to encourage guilty pleas. In this article, the authors examine three populations of not on bail defendants who went to trial and were convicted in New South Wales in 2004 for the offences of aggravated robbery, burglary and murder respectively, with the objective of estimating the percentage reduction in sentence quantum that would have induced them to plead guilty. Since conviction (acquittal) probabilities following a trial are likely to be uniformly distributed between 0 and 1, the expected mean probability of conviction (acquittal) for a defendant pleading not guilty was 0.5. The average reductions in the prison sentence corresponding to this probability were: 21%, 23% and 27% respectively. The maximum (minimum) values were: 39% (1.3%), 40% (1.9%) and 39% (1.5%). This range of values reflects the wide dispersion of actual prison sentences handed down by the courts. The distribution of actual sentence discounts offered by the judges in exchange for a guilty plea is not available, consequently the authors cannot comment on why these defendants chose a trial. 193

CASE AND COMMENT

The Queen v Khazaal – *Miriam Gani* 201

DIGEST OF RECENT CRIMINAL CASES 212