
Index

Aboriginal offenders

Canada, 317, 393

Gladue approach, 396-397

over-imprisonment, 317, 393, 396-397

sentencing discounts, 317-318

colonial Australia, 267, 396

provocation, 267-268

over-imprisonment, 317, 393, 396-397

sentencing, 390

application of principles, 394-395

Bugmy v The Queen, 391-395

Canada, 317-318, 393, 396-397

deprived background, 392-396

Fernando principles, 392, 395-396

Gladue approach, 393, 396-397

Munda v The Queen, 394-395

proportionality, 391-392, 396

relevance of Aboriginality, 391-397

restorative justice, 393

traditional punishment, 395

Acquittal

forfeiture rule, 409

posthumous acquittal, 405, 408, 410

facts of case, 405-406

fresh evidence, 406, 407

McDermott case, 405-408

petition process, 407-408

proceeds of crime, 409-410

test of forfeiture, 409

Admissibility of evidence

DNA evidence, 7, 14-15, 141-142

hearsay, 322, 324

prejudicial evidence, 7, 17-18

relevant evidence, definition, 142

similar fact evidence, 7, 13-14

third party confessions, 7, 16

Adverse inferences

right to silence, 75-78

Aggravated robbery *see* **Sentence discounts**

Anti-terrorism offences *see* **Terrorism offences**

Appeals against conviction

substantial miscarriage of justice, 3, 7, 19

burden of proof, 3-5

unreasonable verdicts, 3-4

Application of proviso

incorrect application, 8, 21-22

Assault

self-defence, 321

Australian Capital Territory

industrial manslaughter, 106-107

parole authorities, 374

Battered women

diminished responsibility, 89-91, 98

expert evidence, 91

homicide, 79-81, 97

attrition of cases, 94-95

confrontational circumstances, 92

diminished responsibility, 89, 91, 98

expert evidence, 91, 93

guilty pleas, 93-96

historical perspectives, 81-91

insanity defence, 89-90, 98

key assumptions, 80-81

mental impairment, 88-89, 91

mental state defences, 88-91, 98

non-confrontational circumstances, 91-93

plea-negotiations, 95-97

pre-trial stage, 93-97

provocation, 94

self-defence, 79-81, 92-97

historical perspectives, 81-88

proposed reforms, 79-80, 92

Beyond reasonable doubt

exacting standard, 7, 16-17

Bribery and corruption

corporate compliance, 293-294

corporate criminal responsibility, 290-291

corporate whistleblowers, 292-293

duty of parliamentarians, 259

enforcement, 284, 293

federal prosecutions, 291

foreign bribery, 289-290

public interest disclosures, 292-294

Qui Tam actions, 293

- recommendations, 294-295
- third party policing, 291-292
- foreign corruption proceeds, 285
- foreign public officials, 287, 294
 - enforcement activity, 289
 - enforcement deficits, 289-290
 - extraterritorial operation, 287-288
 - facilitation payment defence, 288-290
- international instruments, 259-260, 285-286
- international perspectives, 284
- leading authorities, 263-266
 - Canada, 265
 - Cooper v Slade, 263-264
- legal frameworks, 285-286
 - Commonwealth's power, 285, 287
 - co-operative federalism, 285-286
- legislative history, 261
 - Canada, 263
 - New Zealand, 261-262
 - United Kingdom, 262
- national anti-corruption plan, 286
 - development, 286-287
 - key objectives, 287
- New Zealand, 257, 266
 - Field v The Queen, 257-258, 260-261, 266
 - legislative history, 261-262
 - statutory provisions, 258-262
- overview, 257, 283-284
- public concerns, 284
- recommendations, 294-295
- United Nations conventions, 260, 285
- Burden of proof**
 - appeals against conviction, 3-5
 - terrorism offences, 7, 15-16, 202-209
- Burglary see Sentence discounts**
- Canada**
 - Aboriginal offenders, 317, 393
 - Gladue approach, 396-397
 - over-imprisonment, 317, 393, 396-397
 - sentencing discounts, 317-318
 - bribery and corruption, 263, 265
 - hearsay, 322
 - implied hearsay, 322-324

- informer privilege, 324-326
- journalist-source privilege, 324
- jury selection process, 326, 327
 - disclosure obligations, 327-329
 - guiding ethic, 327-328
 - vetting of jurors, 326-327
- mandatory minimum sentences, 315-317
- manslaughter, 318
 - intervening causes, 318-319
- provocation, 319-320
 - ordinary person test, 320
 - proportionality, 320
- purposes of punishment, 393
- self-defence, 320-322
 - application of direct force, 321
 - reasonableness of actions, 321

Causation

- illegal drug use, 335
- manslaughter, 318-319
- prescribed medication, 330, 332, 334
 - expert medical evidence, 332-333
 - medical evidence, 333-334
 - moral responsibility, 335, 337-339
 - relationship with conduct, 336

Child sex offences

- intellectually disabled children, 156
- jury sentencing, 249-250
- sentencing models, 48-49

Child witnesses

- competency testing, 166
- comprehension and communication, 158
- cross-examination, 156, 172-174
 - advance directives, 157
 - exploitation, 158-159
 - judicial intervention, 159-161
 - pre-recording testimony, 168-170, 173
 - pre-trial stage, 161-162, 176
 - questioning strategies, 158
 - reform measures, 156
 - right to a fair trial, 172
- expert assistance, 164
- human rights, 172, 173
- intermediaries, 164-167, 173-174

-
- flaws in measures, 165
 - overview, 155-158
 - pre-recording testimony, 167-168, 173
 - cross-examination, 168-170
 - practical constraints, 171
 - pre-trial stage, 161-162, 176
 - checklist of matters, 162-163
 - competency testing, 166
 - ground rules, 162-163
 - information to court, 163-164
 - pre-recording testimony, 167, 169
 - right to a fair trial, 157, 170-174
 - scrutiny of evidence, 7, 16-17
 - special measures, 155
 - practical constraints, 170-171
 - support persons, 164-166
 - Children's courts**
 - fitness to plead, 65-66
 - identifying information, 384-385, 389
 - expansive approach, 385-386, 389
 - judicial discretion, 385-386
 - presumption against naming, 388-389
 - serious offence exception, 386-388
 - overview, 384-385
 - Cognitive impairment** *see* **Intellectual disability**
 - Committal hearings**
 - benefits of hearings, 176, 182
 - rights of accused, 185-188
 - criticisms of process, 176, 179-181
 - legal aid recipients, 188-189
 - cross-examination, 189-190
 - delay, and, 179-181
 - impact of reforms, 182, 183
 - options for reform, 190
 - DPP's power, 183
 - discontinuance of prosecutions, 184
 - ex officio indictments, 183-184
 - Scotland, 184-185
 - duration of hearings, 179
 - full hand-up brief, 177, 181-183
 - United Kingdom, 181-183
 - oral hearings, 177, 181
 - availability of process, 188-189
 - overview, 175-176
 - procedure, 177-178
 - reforms, 176-178, 191-192
 - cross-examination, 189-190
 - delay, and, 179-183, 190
 - DPP's power, 183-185
 - full hand-up brief, 181-183
 - notice to stand trial, 190-191
 - options for reform, 189-192
 - Scotland, 184-185
 - Tasmania, 178, 182-183
 - United Kingdom, 183, 190-191
 - Western Australia, 179
 - rights of accused, 185-186
 - United States, 186-188
 - trial costs, and, 176, 179
 - Confessions**
 - third party confessions, 7, 16
 - Confiscation of property** *see also* **Drug-trafficker confiscation**
 - proceeds of crime, 296, 297
 - constitutional validity, 308-310
 - Constitution**
 - criminal organisations, 307-308
 - criminal proceeds confiscation, 308-310
 - drug-trafficker confiscation, 306, 308-312
 - declared drug-traffickers, 311-312
 - judicial discretion, 306, 310-311
 - institutional protection, 279
 - limits on states' powers, 10
 - parole conditions, 7
 - freedom of political communication, 8-9
 - parole eligibility, 7, 9-10
 - procedural rights, 279, 306
 - separation of powers, 306-307
 - Corporate criminal responsibility**
 - bribery and corruption, 290-291
 - Criminal Code (Cth), 290
 - Corporate manslaughter**
 - arguments for enactment, 107, 110-112
 - director's liability, 109-110
 - examples of disasters, 112
 - gross negligence, 110-111

- opposition to legislation, 110-111
 - penalties, 108-109
- attempts to enact legislation, 106-107
- industrial manslaughter, distinction, 107-108, 110
- need for legislation, 107
- overview, 99, 106
- United Kingdom, 99-100, 102, 106-107, 109, 112
 - assessment of effectiveness, 104-106, 112-113
 - duty of care, 102-103
 - establishing liability, 100-102
 - examples of disasters, 101-102, 111
 - gross breach, 103
 - organisations, 99, 102
 - penalties, 103-106, 108
 - previous regime, 100-102, 110
 - prosecutions, 103-105
 - statutory offence, 102
 - types of entities, 102
- Corporate whistleblowers**
- protection, 292-293
- Corporations**
- industrial manslaughter, 106, 107
- work safety obligations, 100
- Motor cycle gangs** *see* **Bribery and corruption**
- Courts** *see also* **Children's courts; Magistrates' courts**
- characteristics, 279
- delay, 39, 180
 - committal hearings, and, 179-183, 190
 - negative impacts, 180
- driving under the influence courts, 399
 - Victoria, 400-401
- drug courts, 401
- economic function, 38, 39
- institutional integrity, 279
- measurement of performance, 38-39
- social welfare, 38-39, 50
- trial costs, 176, 179
- Crimes at sea** *see* **Cruise ships**
- Criminal Code (Cth)**
- corporate criminal responsibility, 290
- foreign bribery, 287, 294
 - enforcement activity, 289

- enforcement deficits, 289-290
 - extraterritorial operation, 287-288
 - facilitation payment defence, 288-290
- terrorism offences, 207-208, 211, 234-235
 - evidential burden, 208-209
 - extra-territorial application, 235-236
 - terrorist act, definition, 205, 209-211
- Criminal justice system**
- government policy, 153
- Criminal negligence**
- medical treatment, 17
- standard of care, 17
- Criminal organisations** *see also* **Motor cycle gangs**
- procedural rights, 281-282, 307-308
- Criminal procedure** *see* **Motor cycle gangs**
- Criminal standard** *see* **Beyond reasonable doubt**
- Cross-examination**
- advance directives, 156-157
- child witnesses, 156-158, 172-174
 - exploitation, 158-159
 - judicial intervention, 159-161
 - pre-recording testimony, 168-170, 173
 - pre-trial stage, 161-162, 176
 - questioning strategies, 158
 - right to a fair trial, 172
- committal hearings, 189-190
- control, 160
 - judicial intervention, 160-161
- intellectually disabled witnesses, 156-158, 174
 - exploitation, 158-159
 - judicial intervention, 159-161
 - pre-recording testimony, 168-170, 173
 - pre-trial stage, 161-162, 176
 - questioning strategies, 158
 - right to a fair trial, 172
- judicial intervention, 159-160
 - duty to intervene, 160-161
 - mandated intervention, 160-161
- Cruise ships**
- crime rates, 221
- Dianne Brimble case, 239-240
- extra-territorial jurisdiction, 222-223, 227, 229, 238

- adjacent areas, 232-233
- Australia, 231-236
- clear intention, 229
- Criminal Code (Cth), 234-236
- co-operative scheme, 231-232
- Crimes at Sea Act (Cth), 232-236, 242-243
- effects ground of jurisdiction, 234
- New Zealand, 236-237
- offshore constitutional settlement, 231
- passive personality principle, 230-238
- state/territory laws, 232-234
- territorial sea, 232-233
- terrorism offences, 234-236
- United Kingdom, 237-238
- United States, 229-231, 238
- international law, 222-223, 229
 - extra-territorial jurisdiction, 222-223, 227
 - internal waters, 225-226
 - nationality of accused, 228
 - nationality of victim, 228-229
 - next port jurisdiction, 227
- jurisdiction, 221-222, 243
 - coastal states, 224-227, 232
 - extra-territorial, 222-223, 227-238, 242-243
 - flag states, 223-226, 241
 - internal waters, 225-226
 - multiple states claiming, 222
 - nationality of accused, 228
 - nationality of victim, 228-229
 - next port jurisdiction, 227
 - outside territorial waters, 226-227
 - passive personality principle, 228-238
 - territorial jurisdiction, 223
- Law of the Sea, 222-223
 - coastal state jurisdiction, 224-227, 232
 - flag state jurisdiction, 223-224, 241
- overview, 222, 244-245
- prosecution of crimes, 221-222
- recommendations, 243
 - co-operative approach, 243-244
 - report recommendations, 244
- regulation of industry, 222, 239-240
 - Crimes at Sea Act (Cth), 242-243
 - government response, 240-241
 - recommendations, 243
 - reporting of crimes, 241-243
 - right of innocent passage, 240-241
 - United States, 239-241
- reporting of crimes, 241-243
 - report recommendations, 244
- terrorism offences, 222, 234-236
- types of crimes, 222
- United States, 222, 239
 - crime prevention, 239
 - extra-territorial application, 229-231, 238
 - harm minimisation, 239
 - passive personality principle, 230-231, 238
 - regulatory measures, 239-241
 - reporting of crimes, 243
 - special maritime and territorial jurisdiction, 230
- Dangerous driving causing death**
 - alternative offences, 7
 - jury directions, 10-11
- Defences *see* Provocation; Self-defence**
- Definitions**
 - hearsay, 323
 - intellectual disability, 52
 - provocation, 24
 - relevant evidence, 142
 - special maritime and territorial jurisdiction, 230
 - terrorist act, 205, 209-211
 - unfitness to plead, 53
- Delay**
 - committal hearings, and, 179-181
 - impact of reforms, 182-183
 - options for reform, 190
 - measuring court performance, 39
 - negative impacts, 180
 - overview, 180
- Diminished responsibility**
 - battered women, 89, 91, 98
 - expert evidence, 91
- Director of Public Prosecutions**
 - committal hearings, and, 183-185
 - discontinuance of prosecutions, 184

ex officio indictments, 183-184

pre-trial processes, 184-185

DNA evidence

admissibility of evidence, 7, 14-15, 141

relevance, 141-142

exclusion percentages, 14-15

mixed DNA analysis, 138-139

database structure, 140-141

likelihood ratio, 139-140, 142

overloading, 141

possible contributors, 140

probabilities, 139-141

overview, 137, 143

presentation of evidence, 137, 142-143

probabilities, 137-142

assignment process, 138

Domestic violence *see also* **Battered women**

abusive relationships defence, 80, 92

forms, 32

overview, 32

proposed reforms, 80, 92

provocation, and, 32-33, 37, 94

Double jeopardy

sentencing, 8, 19-20

Drink driving

driving under the influence courts, 399

alcohol ignition interlock programs, 401

Victoria, 400-401

overview, 397

rehabilitation programs, 398-399

repeat offenders, 397, 404

alcohol ignition interlock programs, 398, 401

alcoholism, 397-398

driving under the influence courts, 399-401

sobriety programs, 401-404

sentencing, 390, 397, 404

deterrence, 397-398, 403

rehabilitation programs, 398-399

sobriety programs, 401-404

Drug courts

Victoria, 401

Drug-trafficker confiscation *see also* **Supply of drugs**

automatic confiscation, 301-302

constitutional validity, 306, 308-310, 312

declared drug-traffickers, 311-312

judicial discretion, 306, 310-311

separation of powers, 306-307

Crown practice, 312-313

deceased defendants, 301

declared drug-traffickers, 298-301

constitutional validity, 311-312

freezing orders, 303-304

included property, 302-303

gifted property, 303

innocent third parties, 303

innocent third parties, 303, 314

non-conviction basis, 300-301

objections to confiscation, 303-304

objectives of legislation, 299, 313

operation of provisions, 298-299

severity of sentence, 299

overview, 297-298, 313-314

release from confiscation, 304-306

conditions for release, 304

joint tenants, 305-306

statutory framework, 299-301

United Nations convention, 297

Evidence *see also* **Admissibility of evidence**

children, 7, 16-17

jury directions, 8, 20

Evidential burden

definition, 208

terrorism offences, 7, 15-16, 202-209

Expert evidence

battered women, 91, 93

Expert medical evidence

Parkinson's Disease medication, 330-332

impulse control disorders, 332-333

Eyewitness evidence

presentation of evidence, 137

Fair trial *see* **Right to a fair trial**

Family violence *see* **Battered women; Domestic violence**

Fingerprint evidence

presentation of evidence, 137, 142

Fitness to plead

common law, 53-54, 64-65

directions hearings, 55

intellectual disability, 51-55, 60

children's courts, 65-66

Commonwealth provisions, 62-63

determination by magistrate, 60-61

discretionary powers, 61-63

guilty pleas, 51-52, 55-59

overview of legislation, 63-64

pardon for convictions, 55-57

recommended framework, 66-67

mental illness, 54

overview, 53

presumption, 53

unfitness to plead, definition, 53

Foreign public officials

bribery, 287, 294

enforcement activity, 289

enforcement deficits, 289-290

extraterritorial operation, 287-288

facilitation payment defence, 288-290

Forensic evidence *see* **DNA evidence****Hearsay**

definition, 323

identification, 322-323

implied hearsay, 322-324

overview, 322

High Court

procedural rights, 279, 281-282

sentencing, 390

relevance of Aboriginality, 391-397

Motor cycle gangs, 2012

appeals against conviction, 3-4, 7, 19

application of proviso, 8, 21

incorrect application, 21-22

beyond reasonable doubt, 7, 16-17

dangerous driving causing death, 7

alternative offences, 10-11

DNA evidence, 7, 14-15

double jeopardy, 8, 19-20

individual judgment writing, 6

insider trading, 7, 11

jury directions, 8, 20

dangerous driving causing death, 7, 10-11

prejudicial evidence, 7, 18

manslaughter, 7

supply of drugs, 12-13

overview, 6-7, 22

parole conditions, 7

freedom of political communication, 8-9

parole eligibility, 7, 9-10

prejudicial evidence, 7, 17-18

prosecutorial discretion, 7, 18-19

similar fact evidence, 7, 13-14

spousal immunity to rape, 7, 11-12

terrorism offences, 7, 15-16, 201-211

Homicide *see also* **Manslaughter; Murder**

abusive relationships defence, 80, 92

battered women, 79-81, 97

attrition of cases, 94-95

confrontational circumstances, 92

diminished responsibility, 89, 91, 98

empirical data, 84-88

expert evidence, 91, 93

guilty pleas, 93, 95-96

historical perspectives, 81-91

insanity defence, 89-90, 98

key assumptions, 80-81

mental impairment, 88-89, 91

mental state defences, 88-91, 98

non-confrontational circumstances, 91-93

plea-negotiation, 95-97

pre-trial stage, 93-97

provocation, 94

defensive homicide, 29, 32

forfeiture rule, 409

historical perspectives, 81-82

empirical data, 84-88

evidence, 84-85

malice aforethought, 83-84

mental state defences, 88-91, 98

petit treason, 82-83

plea-negotiation, 95, 97

- guidelines, 96
- proposed reforms, 80
- provocation *see* **Provocation**
- self-defence *see* **Self-defence**
- Human rights** *see also* **Right to a fair trial**
- child witnesses, 172-173
- intellectually disabled witnesses, 172-173
- overview, 171-172
- Imprisonment**
- Aboriginal offenders, 317, 393, 396-397
- financial cost, 154
- government policy, 153
- mandatory minimum sentences, 315-316
 - exemption clauses, 316-317
- overview, 153
- rates of imprisonment, 153, 316
- social costs of crime, 43-44, 50
- statistical data, 153
- technology, and, 154
- Indigenous people** *see* **Aboriginal offenders**
- Industrial manslaughter**
- corporate manslaughter, distinction, 107-108, 110
- overview, 106, 107
- Informer privilege**
- Canada, 324-326
- Insanity defence**
- battered women, 89-90, 98
- Insider trading**
- false information, 7, 11
- Intellectual disability**
- definition, 52
- fitness to plead, 51, 54-55, 60
 - children's courts, 65-66
 - Commonwealth provisions, 62-63
 - determination by magistrate, 60-61
 - discretionary powers, 61-63
 - guilty pleas, 51-52, 55-59
 - overview of legislation, 63-64
 - pardon for convictions, 55-57
 - recommended framework, 66-67
- forensic orders, 55-56
- guilty pleas, 51-52, 55-58
 - acceptance of plea, 59
- consequences, 52
- prevalence, 53
- Intellectually disabled witnesses**
- competency testing, 166
- comprehension and communication, 158
- courts' orders, 166-167
- cross-examination, 156, 174
 - advance directives, 157
 - exploitation, 158-159
 - judicial intervention, 159-161
 - pre-recording testimony, 168-170, 173
 - pre-trial stage, 161-162, 176
 - questioning strategies, 158
 - reform measures, 156
 - right to a fair trial, 172
- expert assistance, 164
- human rights, 172-173
- intermediaries, 164-167, 173-174
 - flaws in measures, 165
- overview, 155-158
- pre-recording testimony, 167-168, 173
 - cross-examination, 168-170
 - practical constraints, 171
- pre-trial stage, 161-162, 176
 - checklist of matters, 162-163
 - competency testing, 166
 - ground rules, 162-163
 - information to court, 163-164
 - pre-recording testimony, 167, 169
- right to a fair trial, 157, 170, 172-174
- special measures, 155
 - practical constraints, 170-171
- support persons, 164-166
- International law** *see also* **Law of the Sea; United Nations conventions**
- crimes at sea, 222-223, 229
 - extra-territorial jurisdiction, 222-223, 227
 - internal waters, 225-226
 - nationality of accused, 228
 - nationality of victim, 228-229
 - next port jurisdiction, 227
- detention, 403-404
- right to liberty, 403

Interpretation

terrorism offences, 203-204

Journalist-source privilege

Canada, 324

Jurisdiction

cruise ships, 221-222, 243

coastal states, 224-227, 232

extra-territorial laws, 222-223, 227

flag states, 223-226, 241

internal waters, 225-226

nationality of accused, 228

nationality of victim, 228-229

next port laws, 227

outside territorial waters, 226-227

passive personality principle, 228-234, 237-238

territorial laws, 223

federalism, 285

international law, 222-223

extra-territorial laws, 222-223, 227

internal waters, 225-226

nationality of accused, 228

nationality of victim, 228-229

next port laws, 227

Law of the Sea, 222-223

coastal states, 224-227, 232

flag states, 223-224, 241

Juror decision-making

cognitive load, 118-122, 125-130, 134

comprehension of instructions, 116-117, 126-127, 130-134

cognitive load, 118-122

coherence based reasoning, 117-118

effect of misunderstanding, 116

plain language solutions, 117

pre-conceptions of law, 117-118

reform recommendations, 119-120, 122-123

jurors' subjective perceptions, 121, 128-129, 132-133

methodological challenges, 121-122

overview, 114-115

post-trial interviews, 115

question trails, 120-121

available research, 121

question trails study, 121, 134

aims, 123

cognitive load, 125-130, 134

comprehension, 126-127, 130-134

discussion of findings, 129-134

factual recall, 126-127, 130-132

future research recommendations, 134

hypotheses, 123, 129-130

instructional efficiency, 127-128, 132

jurors' subjective perceptions, 128-129, 132-133

limitations of study, 133-134

materials, 124, 135-136

participant mock jurors, 123

procedure, 124-125

results, 125-129

study rationale, 122-123

verdict choice, 133

Story Model, 115-117, 122

verdict categories, 116

theoretical models, 115-116

verdict alternatives, 116

Jury directions

dangerous driving causing death, 7

alternative offences, 10-11

evidence, 8, 20

overview, 114, 134

prejudicial evidence, 7, 18

reform recommendations, 119

written aids, 119-120, 122-123

terrorism offences, 206-208, 210

Jury selection process

disclosure obligations, 327-329

guiding ethic, 327-328

overview, 326-327

vetting of jurors, 326-327

Jury sentencing

advantages, 247

criticisms of proposal, 247-248

deliberative democracy, 246-247

different opinions of jurors, 250-251

natural justice concerns, 248-249, 256

overview, 246, 256

severity of sentence, 248-249, 255

Tasmanian study, 246, 249, 255-256

- aim and method, 249
- different opinions of jurors, 250-251
- major findings, 249
- responses to judges' sentence, 251
- responses to participation, 252-255
- willingness to participate, 251-256

unfairness to jurors, 248

Law of the Sea

continental shelf, 227

coastal state jurisdiction, 224-225, 232

- contiguous zone, 226-227

exclusive economic zone, 227

flag state jurisdiction, 223-224, 241

overview, 222-223

Magistrates' courts

fitness to plead, 51, 59-60

- common law, 64-65
- determination by magistrate, 60-61
- discretionary powers, 61-63
- intellectual disability, 51-52, 54-57, 59-63
- mental illness, 54
- overview of legislation, 63-64
- recommended framework, 66-67

Manslaughter *see also* **Corporate manslaughter; Negligent manslaughter**

establishing liability, 100

gross negligence manslaughter, 100, 104

industrial manslaughter, 106-108, 110

intervening causes, 318-319

murder, distinction, 82-83

supply of drugs, 7, 12-13

Medical evidence *see also* **Expert medical evidence**

Parkinson's Disease medication, 333-334, 336

- impulse control disorders, 333

Medical treatment

standard of care, 17

Mental illness

fitness to plead, 54

Mental impairment

battered women, 88-89, 91

Motor cycle gangs

mandatory sentences, 390

Murder *see also* **Sentence discounts**

domestic violence, 80

malice aforethought, 83-84

mandatory minimum sentences, 316

manslaughter, distinction, 82-83

plea-negotiation, 95

provocation *see* **Provocation**

self-defence *see* **Self-defence**

sentencing, 27

social costs of crime, 41

Naming young offenders

children's courts, 384-385, 389

- expansive approach, 385-386
- judicial discretion, 385-386
- presumption against naming, 388-389
- serious offence exception, 386-388

deterrence, 379-381, 383

- aims of deterrence, 380
- general deterrence, 379-380

effects of labelling, 381-383

- recidivism, 383-384
- reintegration, 382, 387-388

overview, 377, 384

reform proposals, 377, 389

- political expedience, 377-378

rehabilitation, and, 383-384, 389

stigmatism, 381-384, 389

Natural justice

jury sentencing, 248-249, 256

Negligence *see* **Criminal negligence**

Negligent manslaughter

gross negligence manslaughter, 100, 104

New South Wales

children's courts, 386

- naming young offenders, 386-388

criminal proceeds confiscation, 297-298, 409-410

- constitutional validity, 308-309

forfeiture rule, 409

jury sentencing, 246-247, 251

- criticisms of proposal, 247-248
- different opinions of jurors, 250

option to participate, 252

naming young offenders, 386

serious offence exception, 386-388

parole, 367-368, 390

recent developments, 368-369

review of system, 357, 368-369, 390

posthumous acquittal, 405, 408, 410

facts of case, 405-406

fresh evidence, 406-407

McDermott case, 405-408

petition process, 407-408

provocation defence, 23, 37

arguments for retention, 26-33

gender norms, 24-25, 31

jury' role, 29

objective test, 25-26, 33-34

offence labelling, 26-29

problems with defence, 24-26

proposed reforms, 24, 26, 33-37

structure of defence, 33-34

purposes of punishment, 393

right to silence, 75, 78

adverse inferences, 75-76, 78

impact of proposed changes, 77

legal advice, 76-78

qualification of right, 76

substantive changes to Bill, 77-78

sentencing reform, 353

proportionality, 353-355

report recommendations, 353-356

New Zealand

bribery and corruption, 257, 266

Field v The Queen, 257-261, 266

legislative history, 261-262

statutory provisions, 258-262

crimes at sea, 236-237

Northern Territory

children's courts, 385-386, 389

drug-trafficker confiscation, 297-298, 313-314

automatic confiscation, 301-302

constitutional validity, 306, 308-312

declared drug-traffickers, 299-301, 311-312

freezing orders, 303-304

included property, 302-303

innocent third parties, 303, 314

judicial discretion, 306, 310-311

non-conviction basis, 300-301

objections to confiscation, 303-304

objectives of legislation, 313

operation of provisions, 298-299

release from confiscation, 304, 306

statutory framework, 299-301

naming young offenders, 385-386, 389

parole authorities, 373

Pardons

posthumous pardons, 406

Parole

eligibility, 7, 390

legislative change affecting, 7, 9-10

overview, 357, 364, 374

purpose of parole, 358

Victoria, 357-358, 364, 390

Callinan report, 366-367, 390

recent developments, 365-366

review of system, 357-358, 365, 390

Parole authorities

availability of information, 375-376

Australian Capital Territory, 374

cancellation of parole, 357, 363-364

conditions on parole, 357-360

additional conditions, 362

core conditions, 361-362

special conditions, 362-363

standard conditions, 361-362

grant of parole, 357-359

key considerations, 359-360

New South Wales, 367-368

recent developments, 368-369

review of system, 357, 368-369

Northern Territory, 373

overview, 357-358, 364, 374-376

Queensland, 369-370

resources, 374-375

revocation of parole, 357, 363

South Australia, 370

recent developments, 371

Tasmania, 372-373

Victoria, 358-359, 364-365, 375

Callinan report, 366-367

cancellation of parole, 363

grant of parole, 359

jurisdiction, 364

recent developments, 365-366

Western Australia, 371

recent developments, 371-372

Parole conditions

additional conditions, 362

compliance with conditions, 362-363

constitutional validity, 7

freedom of political communication, 8-9

core conditions, 361-362

overview, 357-360

special conditions, 362-363

standard conditions, 361-362

Piracy

cruise ships, 222

Plea-negotiation

battered women, 95-97

guidelines, 96

overview, 95

Police questioning

right to silence, 75

legal advice, 76-78

Prejudicial evidence

admissibility of evidence, 7, 17-18

Prescribed medication

causation, 330, 332, 334

expert medical evidence, 332-333

medical evidence, 333-334

moral responsibility, 335, 337-339

relationship with conduct, 336

discontinuing medication, 340

knowledge of side effects, 339

sentencing, 330-334, 340-341

causal relationship, 336

moral responsibility, 335, 337-339

proportionality, 337-338

rehabilitation, 340

Tasmania v Martin, 331-338

Pre-trial processes

battered women defendants, 93-94, 97

attrition of cases, 94-95

plea-negotiations, 95-97

benefits, 175

child witnesses, 161-162, 176

checklist of matters, 162-163

competency testing, 166

ground rules, 162-163

information to court, 163-164

pre-recording testimony, 167, 169

committal hearings *see* **Committal hearings**

intellectually disabled witnesses, 161-162, 176

checklist of matters, 162-163

competency testing, 166

ground rules, 162-163

information to court, 163-164

pre-recording testimony, 167, 169

overview, 175, 179

Scotland, 184-185

United States, 177, 186

calls to reform or abolish, 187

criticisms, 186-187

rights of accused, 186-188

Probability evidence

DNA evidence, 7, 14-15

Procedural rights

criminal organisations, 281-282, 307-308

drug-trafficker confiscation, 306

statutory restriction, 279, 282

Kable v DPP (NSW), 279

Queensland, 281-282

United Kingdom, 279-282

Proceeds of crime *see also* Drug-trafficker confiscation

acquittal, and, 409-410

confiscation of property, 296

constitutional validity, 308-310

deterrence, 296

overview, 296-297, 410

test for forfeiture, 409

Propensity evidence *see* Similar fact evidence

Prosecutorial discretion

selection of charges, 7, 18-19

Provocation

arguments for retention, 23, 26

culpability, 29

development of defence, 30-31

domestic violence, 32-33

human frailty, 32-33

offence labelling, 26-29

sentencing, 27, 29-30

availability of defence, 23, 25

characteristics of defendant, 26, 320

common law, 27

cumulative acts, 30-31

definition, 24

development of defence, 26-27, 30, 37, 267

colonial Australia, 267-268

normative meanings, 30

scope of defence, 30-31

domestic violence, and, 32-33, 37, 94

gender norms, 24-25, 31

human frailty, 32-33, 267

jury' role, 29

objective test, 23, 25, 34

characteristics of defendant, 26

reasonable person standard, 25-26, 33-34

overview, 23, 37

problems with defence, 24-26

proportionality, 320

proposed reforms, 24, 33-34, 37

ending of relationships, 36

express exclusions, 35-37

gross provocation, 33-34

non-violent sexual advances, 36-37

normatively desirable cases, 33

objective test, 26

words alone, 36

reasonable person standard, 25-26, 33-34, 320

scope of defence, 30-31, 319

sentencing, and, 27, 29-30

structure of defence, 33-34

subjective test, 23

Queensland

children's courts, 386

naming young offenders, 386-388

criminal proceeds confiscation, 308

fitness to plead, 51, 53-54

directions hearings, 55

intellectual disability, 51, 54-57, 59-60, 66-67

mental illness, 54

need for reform, 60, 67

recommended framework, 66-67

forensic orders, 55-56

motor cycle gangs, 390

naming young offenders, 377, 382, 389

serious offence exception, 386-388

parole authorities, 369-370

procedural rights, 281-282

summary offences, 54

fitness to plead, 51, 53-54

Rape

spousal immunity, 7, 11-12

Real property

drug-trafficker confiscation, 302-303

Right to a fair trial

child witnesses, 157, 170, 172-174

intellectually disabled witnesses, 157, 170-174

jury sentencing, 248, 256

overview, 171-172

Right to silence

adverse inferences, 75-78

impact on crime, 77

justifications, 76, 77

legal advice, 76-78

qualification of right, 76

Scotland

committal hearings, 185

pre-trial processes, 184-185

Self-defence

application of direct force, 321

battered women, 79-81, 92-97

historical perspectives, 81-88

proposed reforms, 79-80, 92

Canada, 320-322

excessive self-defence, 32

Index

- historical perspectives, 81-83
 - empirical data, 84-88
- reasonableness of actions, 321
- Sentence discounts**
- Aboriginal offenders, 317-318
- analytical framework, 194-196
- criticisms, 194
- defendant conviction probabilities, 199-200
- empirical results and comment, 197-200
- overview, 193, 200
- size of discount, 199
- strength of Crown case, 199
- theoretical justifications, 193-194
- Sentencing** *see also* **Imprisonment; Parole; Punishment theories**
- Aboriginal offenders, 390
 - application of principles, 394-395
 - Bugmy v The Queen , 391-393, 395
 - Canada, 317-318, 393, 396-397
 - deprived background, 392-396
 - Fernando principles, 392, 395-396
 - Gladue approach, 393, 396-397
 - Munda v The Queen , 394-395
 - proportionality, 391-392, 396
 - relevance of Aboriginality, 391-397
 - restorative justice, 393
 - traditional punishment, 395
- calculus, 355-356
- deterrence, 38-39, 43-45, 50, 354, 397-398
- double jeopardy, 8, 19-20
- drink driving, 390, 397, 404
 - deterrence, 397-398, 403
 - rehabilitation programs, 398-399
 - sobriety programs, 401-404
- drug trafficking, 299
- instinctive synthesis, 48-50, 341, 393
- jury involvement *see* **Jury sentencing**
- mandatory sentences, 315-316
 - exemption clauses, 316-317
 - motor cycle gangs, 390
- murder, 27
- objectives of sentencing, 354
- overview, 390
- parity principle, 355-356
- prescribed medication, 330-334, 340-341
 - causal relationship, 336
 - moral responsibility, 335, 337-339
 - proportionality, 337-338
 - rehabilitation, 340
- proportionality, 337-338, 353-354, 381, 391-392, 396
 - elements of principle, 354
 - flexibility of principle, 354-355
- provocation, and, 27, 29-30
- purposes of punishment, 393
- rehabilitation, 38, 340, 354
- reform, 353, 356
 - proportionality, 353-355
 - proposed measures, 356
 - report recommendations, 353-354, 356
- retributivism, 38-39, 49
- sexual offences, 48-49
- social costs of crime, 42, 49-50
 - deterrence elasticities, 44-45
 - imprisonment, 43-44, 50
 - relative offence harms, 46-48
 - sentencing models, 48-50
 - simulation results, 45-46
 - utilitarian component, 42-43
- submissions, 256
- totality principle, 355
- two stage approach, 48, 393
- utilitarianism, 38-39, 42-43, 49, 193-194
- young offenders, 381
- Sentencing models**
- classification, 49-50
- instinctive synthesis, 48-50
- overview, 48
- two stage approach, 48
- Sex offences** *see also* **Child sex offences; Rape**
- jury sentencing, 250-251
- Silence** *see* **Right to silence**
- Similar fact evidence**
- admissibility of evidence, 7, 13-14

Social costs of crime

- estimates of cost, 41
- intangible victim costs, 41-42
- judicial valuations, 41-42
 - sentencing, 42-50
- marginal offenders, 39-40
- murder, 41
- overview, 38-40, 49-50
- sentencing, 42, 49-50
 - deterrence elasticities, 44-45
 - imprisonment, 43-44, 50
 - relative offence harms, 46-48
 - simulation results, 45-46
 - utilitarian component, 42-43
- sentencing models, 48
 - classification, 49-50
 - instinctive synthesis, 48-50

Social welfare

- courts, and, 38-39, 50

South Australia

- parole authorities, 370
 - recent developments, 371
- sentencing considerations, 48
- social costs of crime, 39, 48, 50

Sport

- boxing, 219
- rugby league, 219
 - violent conduct, 219-220
- self-regulation, 220

Spousal immunity

- rape, 7, 11-12

Summary offences

- fitness to plead, 51
 - children's courts, 65-66
 - common law, 64-65
 - Commonwealth provisions, 62-63
 - determination by magistrate, 60-61
 - discretionary powers, 61-63
 - intellectual disability, 51-52, 54-57, 60-67
 - mental illness, 54
 - overview of legislation, 63-64
 - recommended framework, 66-67

Supply of drugs *see also* Drug-trafficker confiscation

- manslaughter, 7, 12-13

Tasmania

- committal hearings, 178, 182-183
- jury sentencing study, 246, 249, 255-256
 - aim and method, 249
 - different opinions of jurors, 250-251
 - major findings, 249
 - responses to judges' sentence, 251
 - responses to participation, 252-255
 - willingness to participate, 251-252, 255-256
- parole authorities, 372-373
- sentencing submissions, 256

Terrorism offences

- connection with terrorist act, 205-206
 - meaning, 206-207
- Criminal Code (Cth), 207-208, 211, 234-235
 - evidential burden, 208-209
 - extra-territorial application, 235-236
 - terrorist act, definition, 205, 209-211
- cruise ships, 222, 234-236
- evidential burden, 7, 15-16, 202-209
 - definition, 208
- interpretation, 203-204
- legal burden, 204
- overview, 201, 207
- R v Khazaal, 7, 15-16, 201
 - facts of case, 201-203
- review of legislation, 201, 210-211
- terrorist act, definition, 205, 209-211
 - threat of harm, 210-211

Third party confessions

- admissibility of evidence, 7, 16

Trust property

- drug-trafficker confiscation, 302

United Kingdom

- bribery and corruption, 262-264
- committal hearings, 181-183
 - notice to stand trial, 190-191
- corporate manslaughter, 99-100, 102, 106-109, 112
 - assessment of effectiveness, 104-106, 112-113
 - duty of care, 102-103

- establishing liability, 100-102
 - examples of disasters, 101-102, 111
 - gross breach, 103
 - organisations, 99, 102
 - penalties, 103-106, 108
 - previous regime, 100-102, 110
 - prosecutions, 103-105
 - statutory offence, 102
 - types of entities, 102
- crimes at sea, 237-238
- gross negligence manslaughter, 100, 104
- procedural rights, 279-280, 282
 - closed material procedures, 280-281
- work safety obligations, 100
- United Nations conventions** *see also* **Law of the Sea**
- bribery and corruption, 260, 285
- drug-trafficker confiscation, 297
- United States**
- cruise ships, 222, 239
 - crime prevention, 239
 - extra-territorial application, 229-231, 238
 - harm minimisation, 239
 - passive personality principle, 230-231, 238
 - regulatory measures, 239-241
 - reporting of crimes, 243
 - special maritime and territorial jurisdiction, 230
- drink driving, 399
 - driving under the influence courts, 399
 - sobriety programs, 401-403
- grand juries, 177, 186
 - calls to reform or abolish, 187
 - criticisms, 186-187
 - rights of accused, 186-188
- mandatory minimum sentences, 317
- Unlawful and dangerous act**
- supply of drugs, 7, 12-13
- Utilitarianism**
- sentence discounts, 193-194
- sentencing, 38-39, 49
 - social costs of crime, 42-43

Victoria

- appeals against conviction, 3
 - substantial miscarriage of justice, 3-5
- children's courts, 388
 - presumption against naming, 388
- committal hearings, 176
 - cross-examination, 189-190
 - delay, and, 180-182, 190
 - DPP's power, 184
 - options for reform, 189-192
 - procedure, 177-178
 - rights of accused, 188
- defensive homicide, 29
- discontinuance of prosecutions, 184
- double jeopardy, 19-20
- driving under the influence courts, 399
 - Victoria, 400-401
- drug courts, 401
- jury sentencing, 246-247, 250-251, 255
 - natural justice concerns, 249, 256
 - willingness to participate, 252
- parole, 357-358, 364, 390
 - Callinan report, 366-367, 390
 - recent developments, 365-366
 - review of system, 357-358, 365, 390
- parole authorities, 358-359, 364-365, 375
 - Callinan report, 366-367
 - cancellation of parole, 363
 - grant of parole, 359
 - jurisdiction, 364
 - recent developments, 365-366
- parole conditions, 362-363
- sentencing submissions, 256
- sexual offences, 49
- trial costs, 176
- Western Australia**
- children's courts, 388
 - presumption against naming, 388-389
- drug-trafficker confiscation, 297-298, 313-314
 - automatic confiscation, 301-302
 - constitutional validity, 306, 308-312
 - Crown practice, 312-313
 - declared drug-traffickers, 298-301

- freezing orders, 303-304
- included property, 302-303
- innocent third parties, 303, 314
- judicial discretion, 306, 310-311
- non-conviction basis, 300-301
- objections to confiscation, 303-304
- objectives of legislation, 299, 313
- operation of provisions, 298-299
- release from confiscation, 304-306
- severity of sentence, 299
- statutory framework, 299-301
- parole authorities, 371
 - recent developments, 371-372
- preliminary hearings, 179, 183
- provocation, 32
- self-defence, 32
- Witnesses** *see* **Child witnesses; Intellectually disabled witnesses**
- Workplace safety** *see also* **Corporate manslaughter**
 - overview, 107, 111
 - United Kingdom, 100
- Young offenders** *see also* **Children's courts; Naming young offenders**
 - anti-social behaviour, 380
 - decision-making, 380
 - developmental characteristics, 378
 - cognitive control system, 379
 - puberty, 378-379
 - effects of labelling, 383
 - overview, 378, 384
 - reform approach, 378, 389
 - sentencing, 381
 - stigmatism, 383-384
 - United Nations minimum rules, 382