

---

# Index

---

## Admissibility of evidence

- complaint evidence, 13, 14, 15
- hearsay evidence, 8, 16
  - reliability of representations, 16–17
- tendency evidence, 8, 13
  - interpretation approaches, 15
  - probative value, 13–16, 256–257
  - proposed reforms, 256–257

## Appeals

- application of proviso, 9, 25
- jury verdicts, 289, 291
  - unreasonable verdicts, 289, 291–292

## Art fraud

- expert evidence, 292–293
- Gant and Siddique* case, 285, 291–294
  - bail application, 287–288, 293
  - Court of Appeal, 288–290
  - original trial, 285–287
- jury directions, 291, 292
- jury verdicts, 289, 291
  - unreasonable verdicts, 289, 291–292
- McBride and Christie's Australia*, 290–291
- overview, 285, 293–294
- standard of proof, 294

## Artificial intelligence

- developing a sentencing algorithm, 262, 266, 271, 276–277
  - conducting research, 271–272
  - courts' role, 275–276
  - objectives of sentencing, 272–275
  - proportionality, 275
  - risk and needs assessment tools, 272–275
- legal process, and, 261, 263, 269, 276
  - current uses, 269–270
- overview, 261, 276
- sentencing, and, 261–263, 270, 276–277
  - current sentencing practice, 263–269, 271–272
  - developing an algorithm, 262, 266, 271–277
  - infringement notices, 262–263, 270–271
  - instinctive synthesis, 262, 264–265, 266–268
  - recommendations, 263

## Australian Capital Territory

- restorative justice, 358

## Australian Law Reform Commission

- evidence rules, 256
- mandatory sentencing, 351

## Autism spectrum disorder

- amalgamation of disorders, 152–153
- assessing culpability, 153–154, 155, 160, 163
  - aspects of character, 159–160
  - case examples, 155–160
  - causal connection, 155–156
  - childlike behaviour, 158–159, 161
  - relevance of condition, 153, 155, 156–157, 160
  - Verdins* principles, 154–155, 163
- criminal offending, and, 151, 153
- overview, 151, 152, 163
- permanency of disorder, 160–161, 162
- psychopathy, distinction, 161
- sentencing, and, 151–152, 154, 160
  - assessing culpability, 153–154, 155–160, 161, 163
  - causal connection, 155–156
  - community protection, 160, 161, 162
  - future risk of offending, 161–162
  - relevance of condition, 153, 155, 156–157, 160
  - Verdins* principles, 154–155, 163
- treatability of disorder, 160–161, 162
  - therapy and rehabilitation, 162–163

## Breach of peace

- arrest and detention, 231, 232–233
  - reasonable steps, 232
  - restraint, distinction, 231–232
  - statutory powers, 234–236
- case for abolition, 223, 238, 240
  - concurrent statutory powers, 239
  - convention incompatibility, 239–240
  - human rights, 239–240
  - uncertainty in scope, 238–239
- classes of breach, 230

**Breach of peace – continued**

- entry and trespass, 232–233
  - statutory powers, 236–237
- historical origins, 226–227
- imminent breach, 230
- intervention powers, 230–231
  - arrest and detention, 231–233, 234–236
  - entry and trespass, 232–233, 236–237
  - move on directions, 234, 237
- Kuru v NSW*, 223–224
  - High Court decision, 224–225
  - implications of decision, 225–226
- meaning, 227–228
- move on directions, 234
  - statutory powers, 237–238
- overview, 222–223, 226, 227, 240–241
- scope of breach, 228–230
  - uncertainty in scope, 238–239

**Canada**

- child abuse material, 183
  - private use of self-created material, 189, 196–197
- mental impairment acquitees, 205, 206, 216

**Child sexual abuse**

- acquittal rates, 86, 87
- archival studies of cases, 87, 88
  - California study, 87–88
  - content of closing arguments, 87–88
- complaint evidence, 13, 14, 15
- conviction rates, 87
- courtroom practice, 101
  - guidelines on memory, 101–102
- cross-examination strategies, 102
- doli incapax* doctrine, 9, 12–13
- expert evidence, 98
- features of offences, 97–98
- juror knowledge, 86, 88, 94–95, 103
  - aims of present study, 90
  - forensically relevant surveys, 89
  - implications for practitioners, 100–101
  - limitations of study, 102–103
  - method, 90
  - participants in study, 91, 92
  - preliminary analysis, 92–93
  - prior research, 89–90

- questions, 91, 94–95
- reliability of child witnesses, 93, 96, 99–100
- responses to questions, 94–96
- juror misconceptions, 96, 97
  - expert evidence, and, 98
  - implications for practitioners, 100–101
  - medical examinations, 97–98
  - post-abuse behaviour, 96–97, 100
  - reliability of child witnesses, 99–100
- jury directions, 257
- overview, 86
- procuring or grooming, 198–199, 353–354
  - ‘defence’ of pure fantasy, 199, 200–201, 202
  - distinction between offences, 199
  - indecent as alternative, 201, 202
  - intention, 199, 201
  - preparatory offences, as, 201
- reliability of child witnesses, 93, 96, 99–100, 102
- Royal Commission, 253, 259, 260, 350–351, 360
  - Jury Reasoning Study, 253–254, 257–259
  - tendency evidence, 253, 254, 256–257, 258, 259–260
- sentencing, 338, 340, 348–350
  - actus reus, 349, 350, 359–360
  - aggravating factors, 340
  - considerations, 342, 343
  - consistency, 343
  - current sentencing practice, 341–343, 344, 359
  - imprisonment, 343–344, 350
  - instinctive synthesis, 342
  - mandatory sentences, 351, 356–357
  - maximum sentences, 351–352, 354
  - procuring or grooming, 353–354
  - proposed reforms, 350–352, 357–358
  - victim impact statements, 358–359
- tendency evidence, 13, 253, 254, 260
  - fairness discretion, 257
  - jury directions, 257
  - probative value, 13–16, 256–257
  - proposed reforms, 256–257, 258, 259–260

**Child sexual abuse material**

- Canada, 183, 189, 196–197
- cartoon characters, 184, 185, 188–189, 192
  - harm in viewing, 194–195
  - Japanese ‘manga’, 192–193
- child pornography, definition, 184, 185
- definition, 185, 186, 187
- freedom of expression, 183, 189, 191, 196, 197
  - human rights legislation, 191–192
  - international convention, 191
- harm of fictional material, 193–195, 196
- overview, 183, 184, 195, 196–197
- private use of self-created material, 189–190, 195–196
  - Canada, 189, 196–197
  - United States, 190–191, 196–197
- rationale for criminalisation, 183
- statutory provisions, 185–186, 192
  - appearing to be a child, 188, 190
  - cartoon characters, 188–189, 192
  - child, definition, 186
  - depictions and descriptions, 186
  - human rights legislation, 191–192
  - offensiveness, determining, 187–188
  - person, meaning, 189
  - ‘pseudo’ images, 188
  - private use of self-created material, 189–190, 195, 196, 197
  - self-created material for private use, 189–190
  - written material, 193
- terminology, 184–185
- United States, 183, 190–191, 196–197
- virtual images, 184–185
- written material, 193

**Commonwealth offences**

- indictable offences, 8, 18
- trial by jury, 18–19, 27

**Comorbidity see Mental impairment****Complicity**

- elements of offence, 11
- New Zealand, 110
- withdrawal defence, 110–111

**Constitutional validity**

- parole orders, 344, 359
- Knight v Victoria*, 344–348

**Court interpreters see Interpreters****Criminal fraud see also Art fraud**

- test for dishonesty, 281, 284
- Ghosh* test, 281–282, 283–284
- Ivey v Genting Casinos*, 282–284

**Criminal law-making**

- decriminalisation, 5
- federal system, 4
  - cross-border borrowing by States, 4–5
- over-criminalisation, 3–4, 5
  - extended joint criminal enterprise, 11
- pre-emptive criminalisation, 3
- principles, 5–6
- scrutiny of legislation, 4

**Criminal procedure**

- jury verdicts, 9

**Criminal proceeds see Proceeds of crime****Definitions**

- child, 186
- child abuse material, 185, 186, 187
- child pornography, 184
- intention, 131
- intoxication, 320
- probative value, 14
- serious offender, 71
- serious sexual offender, 71

**Deterrence see General deterrence; Specific deterrence****Dishonesty**

- Ghosh* test, 281
  - Australian position, 282, 284
  - Ivey v Genting Casinos*, 282–284
  - subjective limb, 281–282, 283–284
- overview, 281

**Distribution of intimate images**

- recent reforms, 352–353

**Domestic violence see Family violence****Drug offences**

- New Zealand, 106
  - compulsion, 114–116
  - necessity defence, 114–116
  - wilful blindness, 106–108

**Escaping lawful custody**

- extra-territorial operation, 8, 11–12
- inmate requirement, 12

**Evidence *see also* Admissibility of evidence;****Expert evidence; Tendency evidence**

- Australian Law Reform Commission, 256
- overview, 9
- ‘simplified’ brief of evidence, 307–308
- unsworn evidence, 8, 17–18

**Expert evidence**

- art fraud, 292–293
- child sexual assault, 98
- mental illness and intoxication, 316, 318, 322, 325, 326, 330, 332–333, 336
- hybrid opinions, 327
- scientific uncertainty, 327–328

**Extended joint criminal enterprise**

- awareness of risk, 134–135
- jury directions, 134
- scope of doctrine, 8, 11, 134

**Fair trial**

- interpreters, and, 164–167

**Family violence**

- New Zealand, 104
- homicide, 104–106
- Law Commission report, 104–105

**Federal system**

- criminal law-making, 4
- cross-border borrowing by States, 4–5

**Fictional child abuse material *see* Child abuse material****Fraud *see* Art fraud; Criminal fraud****General deterrence**

- criticisms, 76–77
- ranking and weighting, 73, 74, 76–77, 84
- white-collar offences, 252

**Guilty pleas**

- sentencing discounts, 308–309

**High Court decisions, 2016**

- admissibility of evidence, 8
- complaint evidence, 13, 14, 15
- hearsay evidence, 8, 16–17
- tendency evidence, 8, 13–16
- appeals, 9
- application of proviso, 25
- child sexual offences, 12
- complaint evidence, 13, 14, 15
- doli incapax* doctrine, 9, 12–13
- tendency evidence, 13–16
- Commonwealth offences, 18
- indictable offences, 8, 18–19
- constitutional challenges, and, 25–26
- escaping lawful custody, 8, 11–12
- inmate requirement, 12
- evidence, 8, 9
- unsworn evidence, 8, 17–18
- extended joint criminal enterprise, 8, 11
- jury directions, 8
- self-defence, 9, 19–20
- unsworn evidence, 17–18
- jury service, 23
- jury verdicts, 9
- finality of verdicts, 20–21
- reasonableness, 21–22
- overview, 7–9, 26, 338
- sentencing, 9, 23, 338
- current sentencing practice, 24–25, 339–340, 359
- De Simoni* principle, 23–24
- excessive sentences, 25, 339
- re-sentencing, 24
- stay of proceedings, 22
- suppression orders, 9, 23
- transmission of serious diseases, 50, 55
- facts of case, 50–51
- intention, 8, 10–11, 50–51, 52, 53, 54
- recklessness, 51, 53

**HIV *see* Transmission of serious diseases****Homicide**

- New Zealand, 104
- Law Commission report, 104–105
- self defence, 105–106

**Human rights**

- breach of peace, and, 239–240

**Imprisonment see also Escaping lawful custody**

child sexual offences, 343–344, 350  
 conditions of imprisonment, 278  
   availability of review, 279, 280  
   broad principles, 278  
   judicial review, 278–280  
   relevant decision-maker, 279  
   young offenders, 67–68, 278  
 increases in rates, 181, 251  
 indigenous offenders, 181, 268  
 New South Wales, 181  
   Community Restorative Centre, 181–182  
 prisoner profiles, 181  
 recidivism, 181, 182  
 sexual offences, 343–344, 360–361  
 white-collar offenders, 251–252  
 young offenders, 67, 278  
   educational facilities, 68  
   indigenous offenders, 181  
   Scandinavia, 67–68

**Indigenous offenders**

imprisonment, 181, 268

**Insanity defence see Mental impairment****Intention**

awareness of risk, 131, 133–134  
 child sexual activity, 199  
   procuring or grooming offences, 199, 201  
 definition, 131  
 establishing through inferences, 54, 131,  
   133–134  
 meaning, 10–11, 53  
 overview, 53, 131  
 recklessness, and, 51, 53  
 transmission of serious diseases, 8, 10–11,  
   50–54, 131  
   policy perspectives, 53

**Intentionally causing serious injury**

sentencing, 24, 338  
   current sentencing practice, 24–25,  
     339–340  
   excessive sentences, 25, 339

**Interpreters**

overview, 164  
 Scotland, 164–165  
   fairness of proceedings, 164–167

**Intoxication**

definition, 320  
 mens rea, 313  
 mental illness, and, 312, 313,  
   314, 337  
   accepted disease of the mind,  
     319–324  
 causal impact, 317, 320, 323–324  
 causal nexus, 324–325, 333  
 concurrent comorbidity, 314, 319,  
   320–321, 322–323  
 consideration alongside impairment,  
   321–323  
 corroboration, 329–330  
 doctrinal inconsistencies, 315–325  
 drug-induced psychoses, 316–319  
 establishing defence, 315–316  
 expert evidence, 316, 318, 322, 325,  
   326, 327–328, 330, 332–333,  
   336  
 hiding the offence, 335–336  
 hybrid opinions, 327  
 knowledge and evidence, 325–332  
 law reform, 313–314  
 lay knowledge, 325–326  
 leaving intoxication aside, 323  
 ‘longitudinal approach’, 330–332  
 long-term intoxication, 315–316  
 moral fault, 314, 332–337  
 motive, 333–334  
 non-compliance with medication,  
   336–337  
 premeditation, 334  
 scientific uncertainty, 327–328  
 specific legislation, 319–321, 323  
 successive comorbidity, 314, 321  
 overview, 313

**Joint criminal enterprise see****Extended joint criminal enterprise****Judicial review**

conditions of imprisonment, 278–280

**Juror knowledge see Child sexual abuse**

**Jury directions**

- art fraud, 291, 292
- categories of directions, 36–37
- child sexual abuse, 257
- delay by complainant, 28–29, 35, 36, 38, 48–49
  - abolition of common law rule, 44
  - additional direction, 46
  - common law, 38–39, 41, 44
  - duty of trial judge, 45–46
  - justifications for reforms, 48
  - Kilby* direction, 38–39, 41
  - legislative reforms, 39–49
  - prohibited statements, 44–45
  - reasons for delay, 43–44, 47–48
  - role of jury, and, 46, 48, 49
  - Victorian reforms, 40, 41, 42–49
- extended joint criminal enterprise, 134
- factual evidentiary directions, 37
- overview, 28
- pre-trial publicity, 146–148, 149
- role of jury, 31, 46, 48, 49
- self-defence, 9, 19–20
- sexual offences, 28, 35–36
  - delay by complainant, 28–29, 35, 36, 38–49
  - ‘social framework’, 35
- special evidentiary directions, 37
- unsworn evidence, 8, 17–18

**Jury service**

- deaf persons, 23
- historical development, 29

**Jury trials *see also* Pre-trial publicity**

- benefits of system, 28
- Commonwealth offences, 18–19
  - indictable offences, 8, 18–19, 27
- composition of juries, 29
  - historical development, 29–30
- overview, 27–28
- role of judge, 29, 30–31
- role of jury, 29, 31, 46, 48, 49
  - complicated evidence, 32
- sexual offences, 28, 30, 34
  - conviction rates, 34
  - juror attitudes and beliefs, 32–34
  - responses to perceived bias, 34–35

**Jury verdicts**

- finality of verdicts, 9, 20–21
- reasonableness, 9, 21–22
  - unreasonable verdicts, 289, 291–292

**Magistrates**

- criminal justice reforms, 307, 308

**Mandatory sentencing**

- Australian Law Reform Commission, 351
- child sexual offences, 351, 356–357

**Mens rea *see also* Intention**

- attempts, 112, 113, 114
- coincidence with actus reus, 108–109
- intoxication, 313
- knowledge and belief, 131
- overview, 53, 131, 135
- recklessness, 131–132
  - awareness of risk, 132–133
  - intention, and, 51, 53
- wilful blindness, 106–108

**Mental impairment**

- establishing defence, 315–316
- M’Naghten* rules, 315, 324, 335
- overview, 312–313
- voluntary intoxication, and, 312, 313, 314, 337
  - accepted disease of the mind, 319–324
  - causal impact, 317, 320, 323–324
  - causal nexus, 324–325, 333
  - concurrent comorbidity, 314, 319, 320–321, 322–323
  - consideration alongside impairment, 321–323
  - corroboration, 329–330
  - doctrinal inconsistencies, 315–325
  - drug-induced psychoses, 316–319
  - expert evidence, 316, 318, 322, 325, 326, 327–328, 330, 332–333, 336
  - hiding the offence, 335–336
  - hybrid opinions, 327
  - knowledge and evidence, 325–332
  - law reform, 313–314
  - lay knowledge, 325–326
  - leaving intoxication aside, 323
  - ‘longitudinal approach’, 330–332
  - long-term intoxication, 315–316
  - non-compliance with medication, 336–337

**Mental impairment – *continued***

- moral fault, 314, 332–337
- motive, 333–334
- premeditation, 334
- scientific uncertainty, 327–328
- specific legislation, 319–321, 323
- successive comorbidity, 314, 321

**Mental impairment verdicts**

- characteristics of acquitees, 204, 216, 220–221
  - criminological characteristics, 206, 213–215, 218
  - dispositional options, 217–219
  - overseas research, 204–207, 216
  - present study, 207
  - previous research, 204–207, 216
  - psychiatric characteristics, 205–206, 210–213
  - results of study, 207–216
  - socio-demographic characteristics, 205, 208–210
- dispositional options, 204, 217–219
- former system, 203
- overview, 203–204, 312–313

**Necessity defence**

- New Zealand, 114–115
  - moral involuntariness, 115, 116
  - statutory defences, and, 115–116

**New South Wales**

- breach of peace, 223
  - arrest without warrant, 235–236
  - case for abolition, 223
  - entry and trespass, 232, 233, 237
  - Kuru v NSW*, 223–226
  - move on powers, 237–238
  - scope of breach, 229
  - statutory powers, 235–236, 237–238
- child abuse material, 185
  - definition, 185
- child sexual abuse, 357
  - proposed reforms, 357–358
  - victim impact statements, 358–359
- criminal justice reforms, 307, 310–311
  - community correction orders, 309–311
  - magistrates, 307, 308
  - mandatory case conferences, 308

- sentencing discounts, 308–309
- sentencing purposes, 309–310
- ‘simplified’ brief of evidence, 307–308
- suspended sentences, 309
- escaping lawful custody, 8, 11–12
- imprisonment, 181
  - Community Restorative Centre, 181–182
- mental impairment and intoxication, 313
  - drug-induced psychoses, 316, 317
- sexual offences, 356
  - victim impact statements, 358–359
- suspended sentences, 309, 356

**New Zealand**

- attempts, 111–112
  - proximity, 112–113, 114
  - test for attempts, 112
- complicity, 110
  - withdrawal defence, 110–111
- compulsion, 114–117
  - constraints of defence, 116
- family violence, 104
  - homicide, 104–106
  - Law Commission report, 104–105
- homicide, 104
  - self defence, 105–106
- mens rea, 106
  - attempts, 112, 113, 114
  - coincidence with actus reus, 108–109
  - wilful blindness, 106–108
- necessity defence, 114–115
  - moral involuntariness, 115, 116
  - statutory defences, and, 115–116
- sentencing, 117
  - ‘manifestly unjust’, 117–118
  - ‘three strikes regime’, 117–118

**Not guilty by reason of insanity *see* Mental impairment verdicts****Parole orders**

- constitutional validity, 344, 359
- Knight v Victoria*, 344–348

**Police powers *see also* Breach of peace**

- expansion, 3–4
- legislative powers, 234



**Pre-trial publicity**

- jury directions, 146–148, 149
- non-publication orders, 145–146, 149
- overview, 136, 137, 148–149
- pre-trial questioning, 136–137, 149–150
  - alternative measures, 145–147
  - burden on court resources, 139, 140–142
  - burden on jurors, 139, 142–145
  - comparison of systems, 139–145
  - effectiveness, 147–148
  - Queensland, 136, 137, 139–145, 147, 150
  - reasons for rejection, 137, 139
  - submissions, 138–139
  - United States, 137, 139–145
- sub judice contempt, 145–146, 149
- suppression orders, 145–146, 149

**Prison *see* Imprisonment****Proceeds of crime**

- forfeiture regime, 119, 121
- facts of case, 119–120
- fairness, and, 121
- hardship, 120–121
- ‘substantial connection’, 120

**Queensland**

- mental impairment and intoxication, 314
  - accepted disease of the mind, 319–320, 323
  - drug-induced psychoses, 317
- organised crime, 354, 357
- pre-trial questioning, 136, 137, 139–140, 147, 150
  - burden on jurors, 142, 143–144, 145
  - disclosure of unrelated information, 144
  - effectiveness, 147
  - frequency, 141
  - threshold tests, 141
  - United States, comparison, 140–145

**Rehabilitation**

- autism spectrum disorder, 162–163
- ranking and weighting, 73, 78–79, 84
- young offenders, 79

**Royal Commission into child sexual abuse**

- Jury Reasoning Study, 253–254, 257–259
- multiple allegations, 253–254

- overview, 253, 259, 260, 350–351, 360
- tendency evidence, 253, 254
  - fairness discretion, 257
- jury directions, 257
- proposed reforms, 256–257, 258, 259–260

**Scotland**

- interpreters, 164–165
- fairness of proceedings, 164–167
- rights and duties, 167

**Self-defence**

- jury directions, 9, 19–20

**Sentencing *see also* Imprisonment**

- aggravating factors, 263–264, 340
- artificial intelligence, and, 261–263, 270, 276–277
  - developing an algorithm, 262, 266, 271–277
  - recommendations, 263
- child sexual offences, 338, 340, 350
  - actus reus, 349, 350, 359–360
  - Chiro v R*, 348–350, 359–360
  - current sentencing practice, 341–343, 344, 359
  - DPP(Vic) v Dalglish*, 340–344, 359
  - imprisonment, 343–344, 350
  - mandatory sentences, 351, 356–357
  - maximum sentences, 351–352, 354
  - procuring or grooming, 353–354
  - proposed reforms, 350–352, 357–358
  - victim impact statements, 358–359
- community correction orders, 309–311
- current sentencing practice, 24–25, 263, 339–343, 344, 359
  - adequacy of sentencing practice, 341, 344
  - aggravating factors, 263–264, 340
  - considerations, 263–264, 342, 343
  - consistency in sentences, 266–268, 343
  - developing an algorithm, 271–272
  - instinctive synthesis, 84, 262, 264–265, 266–268, 342
  - judicial discretion, 268–269
  - mitigating factors, 263–264
  - proportionality, 275
  - shortcomings in process, 266–269
  - two-step approach, 265
- De Simoni* principle, 9, 23–24
- developing an algorithm, 262, 266, 271, 276–277



**Sentencing – *continued***

- conducting research, 271–272
- courts’ role, 275–276
- objectives of sentencing, 272–275
- proportionality, 275
- risk and needs assessment tools, 272–275
- distribution of intimate images, 352–353
- infringement notices, 262–263, 270–271
- instinctive synthesis, 84, 262, 264–265, 266, 342
- inconsistency in sentences, 266–268
- transparency, 266
- intentionally causing serious injury, 24–25, 338–340
- judicial discretion, 268–269
- mitigating factors, 263–264
- New Zealand, 117
  - ‘three strikes regime’, 117–118
- organised crime, 354, 357
- overview, 263, 359–361
- proportionality, 275
- re-sentencing, 9, 24
- restorative justice, 358
- sexual offences, 338, 350, 355, 360–361
  - imprisonment, 343–344, 360–361
  - non-custodial orders, 356
  - standard sentences, 355
- suspended sentences, 309, 356
- two-step approach, 265
- white-collar offenders, 252

**Sentencing discounts**

- guilty pleas, 308–309

**Sentencing purposes**

- community protection, 73, 81, 309–310
  - serious offender regime, 81–82, 83
- debate over purposes, 69–70
- denunciation, 73, 79–81
  - case examples, 79–80
  - just punishment, and, 75, 80
- developing an algorithm, 272
  - risk and needs assessment tools, 272–275
- general deterrence, 73, 74, 76–77, 84
  - criticisms, 76–77
- just punishment, 73, 74–75
  - other purposes, and, 75, 80
  - reluctance in using, 75–76
- overview, 69–70, 84, 263, 272

- ranking and weighting, 73–74, 84
  - community protection, 81–82
  - denunciation, 79–81
  - general deterrence, 76–77
  - just punishment, 74–76
  - ranking and weighting, 73–81
  - rehabilitation, 78–79
  - specific deterrence, 78, 83
- rehabilitation, 73, 78–79, 84
  - young offenders, 79
- serious offender regime, 71, 81, 84
  - community protection, 81–82, 83
  - disproportionate sentences, 82–83
- specific deterrence, 73, 78, 83, 84
- specific references to purposes, 72–73
- statutory statements, 69–70, 84–85
  - criticisms of approach, 70, 84–85

**Serious injury *see* Intentionally causing serious injury****Sexual offences *see also* Child sexual abuse; Transmission of serious diseases**

- consent, and, 56–57
  - United Kingdom, 57–58
- delay by complainant, 32–34, 35, 36, 38, 48–49
  - abolition of common law rule, 44
  - additional direction, 46
  - common law, 38–39, 41, 44
  - duty of trial judge, 45–46
  - jury directions, 28–29, 35, 36, 38–49
  - justifications for reforms, 48
  - Kilby* direction, 38–39, 41
  - legislative reforms, 39–49
  - prohibited statements, 44–45
  - reasons for delay, 43–44, 47–48
  - role of jury, and, 46, 48, 49
  - Victorian reforms, 40, 41, 42–49
- imprisonment, 343–344, 360–361
- jury directions, 28, 35–36
  - delay by complainant, 28–29, 35, 36, 38–49
  - ‘social framework’, 35
- jury trials, 28, 30, 34
  - conviction rates, 34
  - juror attitudes and beliefs, 32–34
  - responses to perceived bias, 34–35
- recklessness, 131–132
  - awareness of risk, 132–133

**Sexual offences – continued**

- sentencing, 338, 350, 355, 360–361
- imprisonment, 343–344, 360–361
- non-custodial orders, 356
- standard sentences, 355
- suspended sentences, 356

**South Australia**

- distribution of intimate images, 352–353
- sexual offences, 36
- delay by complainant, 36

**Specific deterrence**

- ranking and weighting, 73, 78, 83, 84

**Stay of proceedings**

- pending applications for special leave, 22

**Suppression orders**

- removal of orders, 9, 23

**Tasmania**

- child sexual offences, 356
- mandatory sentences, 356–357
- suspended sentences, 356

**Telecommunications offences**

- procuring or grooming offences, 198–199, 353–354
- ‘defence’ of pure fantasy, 199, 200–201, 202
- distinction between offences, 199
- indecent as alternative, 201, 202
- intention, 199, 201
- preparatory offences, as, 201

**Tendency evidence**

- admissibility of evidence, 8, 13–16
- interpretation approaches, 15
- proposed reforms, 256–257
- child sexual abuse, 13, 253, 254, 260
- fairness discretion, 257
- jury directions, 257
- probative value, 13–16
- proposed reforms, 256–257, 258, 259–260
- circular reasoning, 254
- current law, 255–256
- probative value, 13, 15–16, 256–257
- definition, 14
- reliability and credibility, 13–15

**Transmission of serious diseases**

- appropriate charges, 55
- consent, and, 56–57
- United Kingdom, 57–58
- criminalisation, 51–52
- alternative approaches, 55
- public policy, 54–55
- facts of case, 50–51
- intention, 8, 10–11, 50–51, 52, 53, 131
- establishing through inferences, 54
- policy perspectives, 53
- recklessness, and, 51, 53
- overview, 50, 51, 55

**Trespass *see also* Breach of peace**

- historical origins, 232
- necessity, 232

**Unfitness to stand trial**

- dispositional options, 204
- overview, 203–204

**United Kingdom**

- breach of peace, 223, 227
- arrest and detention, 231–232, 234–235
- case for abolition, 238–239, 240
- classes of breach, 230
- entry and trespass, 232–233, 236
- historical origins, 226–227
- intervention powers, 230–234
- meaning, 227–228
- move on directions, 234, 237
- scope of breach, 228–229
- statutory powers, 234–235
- dishonesty, 281, 284
- Ghosh* test, 281–282, 283–284
- Ivey v Genting Casinos*, 282–284
- interpreters, 164
- mental impairment and intoxication, 314
- sexual offences, 57
- consent, and, 57–58

**United States**

- child abuse material, 183, 190
- private possession, 190–191,
- child sexual assault, 87
- case studies, 87–88
- juror knowledge, 89, 90
- mental impairment acquitees, 205, 206

**United States – *continued***

- pre-trial questioning, 137, 139
  - burden on jurors, 143, 144, 145
  - disclosure of unrelated information, 144
  - frequency, 141
  - Queensland, comparison, 140–145
  - threshold tests, 140–141
- re-offending, 272
  - risk and needs assessment tools, 272–274

**Victoria**

- community correction orders, 310
- delay by complainant, 28–29, 35, 36, 40, 41, 42–43, 48–49
  - abolition of common law rule, 44
  - additional direction, 46
  - duty of trial judge, 45–46
  - justifications for reforms, 48
  - prohibited statements, 44–45
  - reasons for delay, 43–44, 47–48
  - role of jury, and, 46, 48, 49
- imprisonment, 181
- mental impairment acquitees, 205, 220–221
  - criminological characteristics, 213–215, 218
  - dispositional options, 217–219
  - present study, 207
  - previous research, 205
  - psychiatric characteristics, 210–213
  - results of study, 207–216
  - socio-demographic characteristics, 208–210
- mental impairment and intoxication, 313–314
  - drug-induced psychoses, 317
- mental impairment verdicts, 203–204, 220–221
  - characteristics of acquitees, 205, 207–216
  - dispositional options, 204, 217–219
  - former system, 203
- parole orders, 344, 359
  - Knight v Victoria*, 344–348
- pre-trial publicity, 137, 148
- sentencing, 355
  - standard sentences, 355
- sentencing purposes, 70, 84–85
  - community protection, 73, 81–82, 83
  - denunciation, 73, 79–81
  - general deterrence, 73, 74, 76–77

- just punishment, 73, 74–76, 80
- ranking and weighting, 73–81, 84
- rehabilitation, 73, 78–79
- serious offender regime, 71, 81–84
- specific deterrence, 73, 78, 83
- specific references to purposes, 72–73
- statutory statements, 71, 84–85
- serious offender regime, 71, 81, 84
  - community protection, 81–82, 83
  - disproportionate sentences, 82–83
- sexual offences, 29
  - delay by complainant, 28–29, 35, 36, 40, 41, 42–49
- unfitness to stand trial, 203–204
  - dispositional options, 204
- young offenders, 67
  - rehabilitation, 79

**Victorian Law Reform Commission**

- mental impairment acquitees, 204, 205
- mental impairment and intoxication, 313–314
- pre-trial questioning, 136–137, 149–150
  - alternative measures, 145–147
  - burden on court resources, 139, 140
  - burden on jurors, 139, 142, 145
  - reasons for rejection, 137, 139
  - submissions, 138–139

**Western Australia**

- mental impairment and intoxication, 314
  - accepted disease of the mind, 319, 320, 323
  - drug-induced psychoses, 317

**White-collar offenders**

- imprisonment, 251–252
- proportionate sentences, 252

**Young offenders**

- imprisonment, 67, 278
  - educational facilities, 68
  - indigenous offenders, 181
  - Scandinavia, 67–68
- overview, 67
- rehabilitation, 79
- ‘tough on crime’ policy, 67

