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Sexual Assault Law Reform in New South Wales: Why the Lazarus Litigation Demonstrates No Need for s 61HE of the Crimes Act to Be Changed (Except in One Minor Respect) – *Andrew Dyer*

This article argues that Parliament should make only one, relatively minor, change to s 61HE of the *Crimes Act 1900* (NSW) because of the recent Lazarus litigation. If a provision such as s 2A(2)(a) of the *Criminal Code Act 1924* (Tas) were inserted into s 61HE, nothing much would be achieved – apart from, perhaps, jury distraction. Nor is an "affirmative consent" provision desirable. Any such provision would remove by stealth the s 61HE(3)(c) honest and reasonable mistake of fact "defence." Moreover, a reasonable person standard should not replace the current "reasonable grounds" test in s 61HE(3)(c). While Judge Tupman's decision to acquit Mr Lazarus was undoubtedly unpopular with the press and public, it would be a mistake for Parliament significantly to reform the law in response to populist excitement. It should, however, reverse the New South Wales Court of Criminal Appeal's interpretation of what is now s 61HE(4)(a). 78

Compulsorily Obtained Material and Interference with Criminal Processes – *Simon Frauenfelder*

The use (and misuse) of the compulsory powers conferred on standing crime commissions and anti-corruption commissions has in a number of instances compromised the established processes of criminal justice, leading to courts overturning convictions or ordering temporary or permanent stays of prosecution. Potential for interference is particularly acute where compulsorily obtained material has been disseminated to prosecution witnesses or investigating and prosecuting authorities. Referring to intermediate appellate authority and the High Court's decision in *Strickland (A Pseudonym) v Commonwealth Director of Public Prosecutions*, this article argues that there is a significant conflict of authority between intermediate appellate courts on two important points of principle. The first is whether the companion rule is relevant to construing whether statutes authorise the post-charge dissemination of compulsorily acquired material. The second is whether courts should restrain conduct that, although lawfully authorised by statute, still has the potential to interfere with established processes of criminal justice. 101

United States Sentencing Developments: The World's Largest Mass Incarcerator Goes into Decarceration Mode – *Mirko Bagaric, Gabrielle Wolf and Daniel McCord*

In absolute and relative terms, the United States has become the most punitive nation on Earth, partly due to the introduction of increasingly harsh sentencing laws over the past four decades. In recent years, however, there has been a growing realisation that the high government expenditure on mass incarceration makes it unsustainable. This acknowledgment has led to legislative changes in many States that have, among other

amendments, reduced the severity of sentences for a number of offence categories, with a consequent slight decrease in prison numbers. Many of these steps have been taken in States that are regarded as conservative. Tellingly, the Trump administration has also implemented significant reforms at the federal level that will reduce prison numbers. This article discusses the main changes to sentencing in the United States that have occurred in recent years and then considers the possible lessons that these reforms may have for sentencing in Australia. 130

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