

THE AUSTRALIAN LAW JOURNAL

Volume 93, Number 8

August 2019

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ARTICLES

VULNERABILITY OF ELDERS TO PHYSICAL HARM AND DEATH: CRIMINAL LAW RESPONSES

John Anderson

Elder abuse can be of a nature and reach such a scale that it is of at least equal concern to society as family and domestic violence. Although the enigmatic concept of elder abuse is frequently given a broad definition, attention has largely been on financial crimes against older people in the criminal law context. This article will examine the less frequently considered issue of offences against the person, including assaults, detention, deprivation and death. Questions about the vulnerability of an older person as an aggravating factor in existing offences and the need for the creation of specific offences of elder abuse, including causing the death of an older person, will be explored. Some case studies will be considered in the context of the difficulties of evidence gathering and proof for

these forms of elder abuse translating to punishable criminal offences. Particular focus will be on inquests where hindsight has revealed disturbing examples of “hidden” elder abuse and neglect resulting in deaths. Important legal complexities and tensions at the intersection of criminal offences against the person and maltreatment of older people will be evaluated. 631

PREVENTING MISCARRIAGES OF JUSTICE: THE RELIABILITY OF FORENSIC EVIDENCE AND THE ROLE OF THE TRIAL JUDGE AS GATEKEEPER

Chris Maxwell

Eliminating unreliable forensic evidence is crucial to ensuring that criminal trials are fair. Recent experience, both in Australia and abroad, has demonstrated that flawed forensic evidence can lead to grave miscarriages of justice. Alarming, however, there has been no rigorous scientific validation of any forensic method other than DNA analysis. In a jury trial, the trial judge needs to assess the reliability of scientific evidence before it is led, as that task is beyond the capability of most jurors. The role of the trial judge as “gatekeeper” on questions of reliability is firmly established in other jurisdictions – the United States, Canada and the United Kingdom – but the current interpretation of the Uniform Evidence Act prevents judges (in jurisdictions governed by that Act) from performing that function. The purpose of this article is to underline the critical importance of the gatekeeper role, and to highlight the urgent need for legislative intervention to reinstate it. 642

RIGHTS AND FREEDOMS UNDER THE AUSTRALIAN CONSTITUTION: WHAT ARE THEY AND DO THEY MEET THE NEEDS OF CONTEMPORARY AUSTRALIAN SOCIETY?

Ashleigh Mills

The Australian Constitution is one of the six oldest written constitutions in the world. In approximately 12,500 words it prescribes a system of representative and responsible government, united under the Crown, which has presided over 117 years of relative stability. In its succinctness – and as a product of the context in which it was written – the Constitution does not contain a multitude of express rights and freedoms, many of which are now considered essential to a functioning and democratic citizenry. In examining the rights and freedoms that the Constitution does purport to guarantee, this essay will consider the gap between that which is provided, and that which contemporary Australian society needs. It will then further consider whether that gap can be bridged; what role (if any) the Constitution has to play in that process and – perhaps most importantly – why it all matters. 655

PRINTS, PROFILES AND TEMPLATES: ADDUCING BIOMETRIC EVIDENCE IN AUSTRALIAN COURTS

Marcus Smith and Gregor Urbas

This article discusses how Australian courts have responded to the use of biometric identification in criminal trials. While fingerprint and DNA evidence has been admitted as forensic evidence to assist with human identification for decades; facial recognition is a more recent development, and is likely to become an important biometric identifier. The article begins by discussing general principles relevant to adducing biometric evidence, followed by a more detailed analysis of Australian case law on fingerprint identification, DNA identification and facial and body mapping. While an overall trend towards the acceptance of biometric identification evidence can be observed, criticism from the judiciary, academia and government reviews will be considered. The discussion examines

standards for establishing whether biometric identification technology has achieved the level of scientific reliability necessary for legal admissibility, arguing that there is a need for a more rigorous and consistent approach to biometric identification evidence. 668

BOOK REVIEWS – Editor: Angelina Gomez

The Campaign against the Courts: A History of the Judicial Activism Debate, by Tanya Josev 682

Key Issues in Public Law, by Neil Williams SC (ed) 684

Judges, Judging and Humour, by Jessica Milner Davis, Sharon Roach Anleu and Palgrave MacMillan (eds)..... 685

Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Thomson Reuters

DECISIONS RECEIVED IN MAY/JUNE 2019

Australian Securities and Investments Commission v Kobelt (Corporations; Equity) ([2019] HCA 18) 743

Carter Holt Harvey Woodproducts Australia Pty Ltd v Commonwealth (Corporations; Equity) ([2019] HCA 20) 807

Commonwealth v Griffiths (No 2) (Aboriginal and Torres Strait Islander Peoples; High Court and Federal Court) ([2019] HCA 19) 803

Griffiths v Northern Territory (No 2) (Aboriginal and Torres Strait Islander Peoples; High Court and Federal Court) ([2019] HCA 19) 803

Masson v Parsons (Constitutional Law; Family Law and Child Welfare; High Court and Federal Court) ([2019] HCA 21) 848

Northern Territory v Griffiths (No 2) (Aboriginal and Torres Strait Islander Peoples; High Court and Federal Court) ([2019] HCA 19) 803

Plaintiff M47/2018 v Minister for Home Affairs (Citizenship and Migration; High Court and Federal Court) ([2019] HCA 17) 732

Spence v Queensland (Constitutional Law) ([2019] HCA 15) 643