

# CRIMINAL LAW JOURNAL

Volume 44, Number 3

2020

EDITORIAL – *General Editor: Stephen Odgers SC*

**Ensuring the Reliability of Expert Evidence in Criminal Trials** ..... 151

## ARTICLES

**The Decision to Prosecute: A Comparative Analysis of Australian Prosecutorial Guidelines** – *Natalie Hodgson, Judy Cashmore, Nicholas Cowdery, Jane Goodman-Delahunty, Natalie Martschuk, Patrick Parkinson, Martine B Powell and Rita Shackel*

The decision whether to prosecute an individual can potentially impact a number of private and public interests. In Australia, the Office of the Director of Public Prosecutions in each jurisdiction provides written prosecutorial guidelines relating to the decision to prosecute. Little scholarly attention has focused on how these guidelines differ in form and impact across jurisdictions. This article undertakes a text-based comparative analysis of the guidelines to identify the key similarities and differences in how the decision to prosecute is articulated in the policies of different Australian jurisdictions. This analysis shows that the tests used across Australia are broadly similar, while also identifying a number of differences. We highlight the need for empirical research on the decision to prosecute, to provide an insight into how the decision to prosecute is operationalised in practice, and how different formulations of the same or similar tests might impact the decision-making process. .... 155

**The Devil You Know Is Not Better – The Non-Consensual Distribution of Intimate Images and Sentencing** – *Marilyn Bromberg*

The number of victims of the non-consensual distribution of intimate images (colloquially referred to as “revenge porn”) is significant and increasing. The victims may face severe psychological consequences, such as depression and they may commit suicide. This article is one of the few to examine the legislation in this area in both Australia and the United States. It is also one of the first articles written about the new criminal legislation in Western Australia concerning the non-consensual distribution of intimate images, and the first judgment concerning this legislation. This article alleges that the sentence handed down in the first judgment pursuant to the Western Australian legislation reflects outdated and concerning views regarding leniency when sentencing domestic violence offenders. This leniency does not reflect the seriousness of the crime nor the need for deterrence. .... 173

## CASE AND COMMENT

**Re Broes [2020] VSC 128** – *Dr Brendon Murphy* ..... 189

BOOK REVIEW

<b>Expert Evidence, by Dr Ian Freckelton QC – Reviewed by The Hon Justice Christopher Beale</b> .....	196
DIGEST OF CRIMINAL LAW CASES .....	197