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ARTICLES

Aggravating and Mitigating Factors in Sexual and Non-sexual Violent Cases – *Kate Warner, Lorana Bartels, Julia Davis, Lynne Roberts, Caroline Spiranovic and Karen Gelb*

This article reports on the findings of a content analysis of judges’ sentencing remarks for 167 offenders from 159 trials. The results show the wide range of aggravating and mitigating factors considered by judges in sentencing sexual and non-sexual violent offences and identifies those factors that arise most frequently. The article sheds light on the sentencing practice of judges at first instance, which complements the understanding of sentencing practice derived from legislative and appellate guidance. In the interests of improving public understanding of sentencing practices, factors that would benefit from better explanation in sentencing remarks are highlighted. Factors that require clearer appellate guidance are also noted and some interesting jurisdictional differences in the treatment of some factors are discussed. 155

Expanding ADR in Our Courts: Mediation and the Judiciary – *Alexander Xynas*

Despite increasing levels of litigation, contemporary Australian courts have overarching obligations to facilitate a just, efficient, cost-effective and expedient resolution of the issues in dispute between parties. Accordingly, appropriate or alternative dispute resolution processes, including judicial mediation, have or should be extended to be part of courts’ case management approaches in order to meet these obligations. While there are concerns regarding constitutional validity and the maintenance of judicial integrity, judicial mediation has many advantages. It can be less costly than drawn-out litigation and also provides a forum for early settlement of cases, thus freeing up courts to deal with more difficult cases. In 2021, judicial mediation has once again become an important matter for consideration following the impact of the COVID-19 pandemic and thus should be recognised and supported as a legitimate part of Australian courts’ case management approaches. 180

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