

# THE AUSTRALIAN LAW JOURNAL

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## ARTICLES

### PUBLIC PERSPECTIVES ON JUDGES' REASONS FOR SENTENCE

**Kate Warner, Caroline Spiranovic, Lorana Bartels, Karen Gelb and Lynne Roberts**

In their sentencing remarks, judges aspire to make their reasoning accessible and to appropriately acknowledge victim impact. This article reports on the findings of the National Jury Sentencing Study in relation to the views of empanelled and unempanelled jurors about judges' sentencing remarks in a sample of sex and other violent offence cases. It found that most respondents endorsed the clarity and persuasiveness of the judges' reasons and there was a relationship between perceptions of the appropriateness of the sentence and the clarity and persuasiveness of reasons. However, there was less agreement in relation to questions about victim impact, perceived victim vindication and balancing victim and offender issues, with significant differences between empanelled and unempanelled jurors. It is argued that making sentencing remarks more accessible to jurors and the general public has the potential to improve public confidence in sentencing generally – particularly in sex offence cases, where it is most lacking. .... 685

### WAIVER OF PENALTY PRIVILEGE IN CIVIL PENALTY PROCEEDINGS

**Michael Pearce SC**

This article explores the circumstances in which the privilege against self-exposure to penalty can be waived in civil penalty proceedings, the consequences of such waiver and, in particular, whether the privilege, if claimed in a compulsory examination conducted by a regulator, can be subsequently waived. It concludes that a claim for privilege in respect of a statement in a compulsory examination under the corporations legislation does not necessarily prevent the subsequent tender in court of the statement against the examinee. .... 695

### CY-PRÈS REMEDIES IN CLASS ACTIONS – QUO VADIS?

**Georgina Dimopoulos and Vince Morabito**

The cy-près doctrine permits a damages award or settlement sum in a class action proceeding to be distributed to the “next best” alternative when all or some of the class members cannot, for various reasons, be compensated individually. This article presents the results of the first comprehensive empirical study undertaken in Australia of cy-près remedies granted in class actions. The empirical findings reveal that the cy-près doctrine is alive and well in Australia's class action regimes, particularly in relation to uncollected settlement proceeds. The findings also demonstrate that deterrence has become an accepted and integral policy goal in this context. But they also reveal that cy-près relief has been granted in an inconsistent manner by Australian judges. In light of these findings, the article recommends that an express legislative cy-près power be conferred on judges presiding over class actions. .... 710

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