

THE AUSTRALIAN LAW JOURNAL

Volume 96, Number 4

April 2022

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ARTICLES

A RATIONAL APPROACH TO VICTIM VULNERABILITY IN SENTENCING

Mirko Bagaric

Committing an offence against a vulnerable victim is an aggravating factor. It is intuitively appealing to increase penalty severity when a crime is committed against a victim who is classified as “vulnerable”. However, jurisprudentially this approach is questionable. The category of people who have been characterised as vulnerable is so large to make it nearly boundless. Moreover, the victim vulnerability aggravating factor is logically largely subsumed by another aggravating factor: significant harm caused by an offence. This article argues there is a need to provide definitional clarity to this consideration. The soundest approach is to significantly curtail the scope of the victim vulnerability sentencing consideration, such that it only applies in circumstances when there is no possible overlap with the significant harm aggravating factor. 237

A CRITICAL REVIEW OF AUSTRALIAN LAW REFORM ARCHITECTURE FOR DEVELOPING NATIONAL UNIFORM LEGISLATION: REINVENT, CREATE, OR STRENGTHEN?

Guzyal Hill and John Garrick

This article critically examines the institutional architecture for developing national uniform legislation with a focus on the functioning of National Cabinet, the Australian Law Reform Commission, and the Australasian Parliamentary Counsel's Committee. Federalism, which grounds our entire system of government has, for the past century, seen the Commonwealth as the ascendant power. We examine how the COVID-era has, to an extent, interrupted that trajectory. This research finds that Australia's nine jurisdictions would benefit from stronger national approaches, with ad-hoc responses occasionally suiting local vested political interests. Our findings show that the federation's architecture for national uniform legislation can be improved. Further, the significant roles played by the States and Territories during the pandemic should be acknowledged in planning new law reform architecture and in future assessments of when uniform action is required. Not surprisingly, resourcing and co-ordination are highlighted as keys. 256

RECURRING ISSUES IN CIVIL APPEALS – PART 2

Thomas Prince

This is the second part of a two-part article considering some of the most commonly recurring issues in modern civil appeals. The first part addressed the historical development of the civil appeal and the standard of appellate review. This part considers when an appellate court is justified in interfering with findings of fact made by a trial judge and when a new point can be raised on appeal. 273

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