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Update Summary

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CRIMINAL PROCEDURE (NSW)

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COMMENTARY

In this update, Bev Schurr incorporates new material and updates existing commentary relating to **Young offenders; Mental illness and cognitive impairment; Summary procedure in the Local Court; Pre-hearing procedures; Hearings; Sentencing; Appeals**

Key updates include:

Sentencing – relevant factors

Age – Young offenders – Young offenders under 18 committing adult offences

In *KT v The Queen* (2008) 182 A Crim R 571; [2008] NSWCCA 51, McClellan CJ at CL said at [22]-[26] that the phrase “conducted him or herself in the way an adult might” has had a long history in NSW and has been used while sentencing young offenders to explain that the court has moderated the emphasis on rehabilitation in favour of deterrence and retribution. However, that emphasis has been challenged in cases in which it has been held that the child’s circumstances, and not just the gravity of the offence, should determine the sentence.

In *Carr v The King* [2024] NSWCCA 103, the court held that the offender’s moral culpability was reduced by reason of his age and deprived upbringing, and therefore placed less weight on deterrence and retribution. See [27.160].

Hearings

Contempt and other offences in court – Contempt of court

Where a person brings an application to the court for a warrant to arrest someone for contempt, strict compliance with the legislation is required: *Mohareb v Office of the DPP NSW* [2024] NSWCA 93. See [18.2300].

Hearings – role of judges and magistrates

Role of the judge or magistrate in hearings – Who decides a claim of judicial bias

All members of a multi-judge bench should determine an application that one of their number should disqualify themselves for bias: *QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2023) 97 ALJR 419; 409 ALR 65; [2023] HCA 15. This two-part process – consideration first by the individual judge and then the Bench as a whole – “should not be thought to place an undue strain on judicial collegiality” (at [31]). See [22.265].

Appeals – Local/District/Supreme and Court of Appeal

The Supreme Court – What is a question of law

According to Kunc J in *AW v WW (No 2)* [2024] NSWSC 146, there is no simple or universal definition of “a question of law.” See [29.900].

Appeals – Court of Criminal Appeal

Notice of appeal – The form of written submissions

An unrepresented appellant felt that he could not reduce his 4,200 pages or 650 pages of submissions to the 200 pages directed by a judge of the CCA, however there was no avenue appeal against the order to reduce the submissions to 200 pages: *Riddell v The King* [2022] NSWSC 1581; *Riddell v The King* [2024] NSWCCA 46; *Criminal Appeal Act 1912* (NSW) s 22(1); *Supreme Court (Criminal Appeal) Rules 2021* (NSW), r 4.1 (case management). The appeal against the orders limiting his written submissions to 200 pages was dismissed. See [30.270].

