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Update Summary

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AUSTRALIAN SENTENCING

Highlights

- New commentary for Judicial Reasoning and Mitigating Considerations.
- Legislative amendments have been made to the *Sentencing Act 1991* (Vic), the *Sentencing Act* (NT) and the *Penalties and Sentences Act 1992* (Qld).

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New and updated commentary and cases

New and updated commentary by **Mirko Bagaric** has been inserted into:

Judicial reasoning

- **[200.2200]** regarding minimum non-parole periods. The *Sentencing Act 1995* (NT) is discussed; and
- **[200.2440]** regarding the meaning of manifest inadequacy. The cases of *R v Wasson* [2014] NSWCCA 95; *R v O'Connor* [2014] NSWCCA 53; *Griffiths v The Queen* (1977) 137 CLR 293; [1977] HCA 44; *Green v The Queen* (2011) 244 CLR 462; [2011] HCA 49; *Bugmy v The Queen* (2013) 87 ALJR 1022; [2013] HCA 37; *Reeves v The Queen* (2013) 88 ALJR 215; 304 ALR 251; [2013] HCA 57 and *R v Flowers* [2014] ACTCA 13 are discussed.

Aggravating factors

- **[450.11600]** regarding prevalence of the offence. The case of *Wootton v The Queen* [2014] NSWCCA 86 is mentioned.

Mitigating considerations

- **[500.22200]** regarding restitution. The cases of *Williams v Tasmania* [2014] TASCCA 2; *Attorney-General v Saunders* [2000] TASSC 22; *R v Boian* (1997) 96 A Crim R 582; *Mickelberg v The Queen* (1984) 13 A Crim R 365; *R v O'Keefe* [1959] Qd R 395; *R v Whitnall* (1993) 42 FCR 512; 68 A Crim R 119; *Scott v The Queen* [1986] TASSC 81; *R v Phelan* (1993) 66 A Crim R 446 and *Job v The Queen* (2011) 216 A Crim R 521;
- **[500.22900]** regarding incidental injuries or harm stemming from offending. The case of *R v O'Connor* [2014] NSWCCA 53 is discussed;
- **[500.24600]** regarding a rational approach to aggravation and mitigation. The cases of *Director of Public Prosecutions v England* (1999) 106 A Crim R 99; [1999] 2 VR 258; *Marker v The Queen* (2002) 135 A Crim R 55; [2002] WASCA 282; *Director of Public Prosecutions v England* (1999) 106 A Crim R 99; [1999] 2 VR 258; *R v Currie* (1988) 33 A Crim R 7; *Baumer v The Queen* (1987) 27 A Crim R 143; *R v Laffey* [1998] 1 VR 155; *Director of Public Prosecutions v Martin* [2009] VSCA 316 and *R v Henry* (1999) 46 NSWLR 346; 106 A Crim R 149; [1999] NSWCCA 111; and
- **[550.1200]** regarding *Marrah v Director of Public Prosecutions (Vic)* [2014] VSCA 119 and *R v Grose* [2014] SASFC 42 are discussed.

SANCTIONS

- **[650.2430]** regarding imprisonment and hardship to others. The cases of *R v Wirth* (1976) 14 SASR 291; *R v Day* (1998) 100 A Crim R 275; *R v Carmody* (1998) 100 A Crim R 41; *Director of Public Prosecutions (Vic) v Coley* [2007] VSCA 91; *R v Nagul* [2007] VSCA 8; *R v Carmody* (1998) 100 A Crim R 41; *R v Hill* (2011) 110 SASR 588; [2011] SASCFC 109; *Markovic v The Queen* (2010) 200 A Crim R 510; [2010] VSCA 105; *MGP v The Queen* [2011] VSCA 321; *R v Rach* [2012] QCA 143 AND *R v Edwards* (1996) 90 A Crim R 510 are discussed; and
- **[650.2940]** regarding sentencing for multiple offences – totality principle. The cases of *Director of Public Prosecutions v Dickson* [2011] VSCA 222 and *Regina v The Queen* (2004) 149 A Crim R 583 are discussed.

Legislative amendments

New South Wales

The **Crimes (Sentencing Procedure) Act 1999** has been amended by:

- the *Crimes (Sentencing Procedure) Amendment (Family Member Victim Impact Statement) Act 2014* (Act 18 of 2014): ss 28(4), (4A), (6), 29(4), 107, and Sch 2 Pt 26 cl 71 with effect from 1 July 2014.

Northern Territory

The **Sentencing Act** has been amended by:

- the *Criminal Code Amendment (Identity Crime) Act 2014* (Act 9 of 2014): ss 3(1), 97AA, 97AB, 97AC, and Div 1AA with effect from 1 July 2014.
- the *Justice and Other Legislation Amendment Act 2014* (Act 11 of 2014): ss 64, 90(3), 104A, 107(1) to (6), (9) to (12), 134 to 136, and Divs 3 and 6 with effect from 1 July 2014.

Queensland

The **Penalties and Sentences Act 1992** has been amended by:

- the *Penalties and Sentences (Indexation) Amendment Act 2014* (Act 6 of 2014): ss 5(1), 52(2A), 5(5) and 5A with effect from 1 July 2014.
- the *Crime and Misconduct and Other Legislation Amendment Act 2014* (Act 21 of 2014): s 161M(3) with effect from 1 July 2014.

Victoria

The **Sentencing Act 1991** has been amended by:

- the *Mental Health Act 2014* (Act 26 of 2014): ss 3(1), 7(1), 16(3B), 16(3BA), 18(1), 18(2), 18A(7), 18E, 35(2), 90 to 94, 94A to 94I, Pt 5 and Pt 5 Divs 1 to 4 with effect from 1 July 2014.
- the *Victoria Police Amendment (Consequential and Other Matters) Act 2014* (Act 37 of 2014): ss 3(1), 69B(1), 69B(3), 83AG(2), 83AL(2), 83D(1), 87C, 94(3), 94(4), 100(2), 108F(1) and Sch 2 Pt A with effect from 1 July 2014.

Updated Tables

The Supplementary Table of Cases and Statutes have been updated to include recent additions to the service, as well as amendments to paragraph numbers.