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EDITORIAL

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ARTICLES

The nullum crimen, nulla poena sine lege principle: The principle of legality in Australian criminal law – *Guy Cumes*

In international and foreign domestic law, the principle of legality (POL) is a criminal law principle which is derived from and based on the nullum crimen sine lege, nulla poena sine lege principle. In the last decade, however, Australian law has stated the POL as a general principle of statutory interpretation that operates as a common law presumption against interference with fundamental rights, freedoms and immunities. The development of this “Australian meaning” of the POL in the High Court has overlooked its own jurisprudence which implicitly recognises the worldwide principle of legality (WWPOL) as a principle of Australian criminal law. These alternative versions of the POL confuse the importance and scope of the criminal law POL, and its application as a principle for which it is recognised in international and foreign criminal law. This position should be rectified, and the two versions of the POL should be distinguished. The High Court of Australia and Australian criminal law practitioners and academics should affirm the WWPOL as a fundamental principle of Australian criminal law and articulate its importance and application. 77

Problematic provisions: Trafficking in persons for organ removal under Australian Commonwealth criminal law – *Melanie O’Brien*

Trafficking in persons for organ removal is a crime and human rights violation that generally has gone undetected. Awareness of the crime is limited due to difficulty in confirming cases because of the challenge of identifying victims. As a consequence of the high demand for organs and insufficient supply thereof, a transnational black market in organs has been cultivated, preying on the desperation of both donors and recipients. The adoption and development of domestic criminal sanctions for such conduct remains in its nascence. This article will discuss challenges with the terminology of “organ trafficking” and introduce the issue of trafficking in persons for organ removal from an international perspective, before outlining the relevant international human rights law. The focus of this article is on Australian criminal law proscribing trafficking in persons for organ removal, analysing the relevant 2013 Australian Commonwealth Criminal Code provisions. 101

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