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Update Summary

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**CRIMINAL LAW
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VICTORIA**

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UPDATED COMMENTARY

Homicide

Justice Priest has reviewed and updated commentary in the Homicide chapter. The following cases have been discussed: *Bouch v The Queen* (2017) 80 MVR 85; [2017] VSCA 86 and *King v The Queen* (2012) 245 CLR 588, at [HOM.5160] “Negligently”; and *George v The Queen* [2017] VSCA 152, at [HOM.6060] “Elements of dangerous driving causing death and necessary jury directions”.

Arrest

Tony Trood has reviewed and updated this chapter; significant amendments have been made to the following sections:

- The law of arrest: cases discussed *Kracke v Mental Health Review Board* [2009] VCAT 646 and *Woods v Director of Public Prosecutions* [2014] VSC 1, at [A.20];
- Communication of arrest: discussing policy set out in the Victoria Police Manual “Arrest and warrants for arrest”, at [A.100];
- The use of force to effect arrest: discussing Operational Safety Principles with reference to the Victoria Police Manual “Use of Force Rules and Responsibilities”, at [A.180];
- Police: specific powers of arrest – stalking and breach of bail conditions, at [A.1060];
- Investigatory organisations and officials: Office of the Department of Transport, Planning and Infrastructure, at [A1080];
- Mentally or intellectually impaired persons: with reference to case *Stuart v Kirkland-Veenstra* [2009] HCA 15, at [A.2020]; and
- Children: discussing policy set out in the Victoria Police Manual “Arrest and warrants for arrest”, at [A.2060].

Human Rights

Mirko Bagaric has reviewed and updated the annotations to the *Charter of Human Rights and Responsibilities Act 2006*. Section 21 “Right to liberty and security of person” has been updated to include the recent case decisions *Re HL* [2016] VSC 750 and *Director of Public Prosecutions (Vic) v SE* [2017] VSC 13, discussing the role of the Charter Act in relation to bail determinations involving children. See [CHRR.A.21.20].

Evidence

Mirko Bagaric has reviewed and updated the annotations to the *Evidence Act 1995*. The following case decisions have been discussed:

- *Director of Public Prosecutions (Vic) v Paulino (Ruling No 1)* [2017] VSC 343, at [EA.65.60] “Section 65(2)(b) – where the representation was made when or

shortly after the asserted fact occurred and in circumstances that make it unlikely that the representation is a fabrication”;

- *Taub v R* [2017] NSWCCA 198, at [EA.79.80] “Evidence wholly or substantially based on that knowledge”;
- *Director of Public Prosecutions (Vic) v Bass* [2016] VSCA 110, at [EA.114.20] “Identification parades preferred to photographs”; and
- *R v Dickman* [2017] HCA 24, at [EA.137.60] “Meaning of prejudice”.

Sentencing

Justice Priest has reviewed and updated the annotations to the Sentencing Act 1991. Amendments have been made to include amendments made by the Sentencing (Community Correction Order) and Other Acts Amendment Act 2016, which came into effect March 2017 (see s 11 “Fixing of non-parole period by sentencing court”, at [SA.11.20] and Pt 3A “Sentences – community correction orders”, at [SA.PT3A.20]).

Section 5 Sentencing guidelines: the following cases have been discussed in the commentary:

- *R v Kilic* (2016) 91 ALJR 131, at [SA.5.40], [SA.5.220] – discussing notion of just punishment and consideration of nature and gravity of an offence;
- *CNK v The Queen* (2011) 32 VR 641; *RAC v The Queen* [2011] VSCA 294 and *Webster v The Queen* [2016] VSCA 66, at [SA.5.60] – discussing the principle of deterrence when imposing sentence on a child;
- *Milk v The Queen* [2017] VSCA 237, at [SA.5.460] – discussing mitigation to offender injured in the commission of an offence;
- *Vanstone v R* (2012) 35 VR 526; 222 A Crim R 93, at [SA.5.540] – discussing injury, loss or damage resulting directly from an offence;
- *R v Newman* [1997] 1 VR 146, at [SA.5.600] – discussing aggravating and mitigating factors concerning an offender; and
- *Poursanides v The Queen* [2016] VSCA 164, at [SA.5.770] – discussing the course of conduct charge.

Appeals and References

Justice Priest has reviewed and updated the commentary of this chapter. The following cases have been discussed at [AAR.1140] “Unsafe and unsatisfactory verdicts”: *SKA v The Queen* (2011) 243 CLR 400; *Libke v The Queen* (2007) 230 CLR 559; *R v Klamo* (2008) 18 VR 644; *Greensill v R* (2012) 37 VR 257; *R v Baden-Clay* (2016) 258 CLR 308; 90 ALJR 1013; 256 A Crim R 132.

UPDATED LEGISLATION

Coroners Act 2008 (Vic)

Purpose of amendments

To amend the Act in relation to the establishment of the Victorian Systemic Review of Family Violence Deaths unit and in relation to the publication of findings and reports.

Amended provisions

Amended: ss 3, 73, 102

Inserted: Div 1C ss 102T – 102W

Amending legislation

Family Violence Protection Amendment Act 2017 (Vic) (Act No 19 of 2017) – with effect from 16 November 2017.

Crimes Act 1958 (Vic)

Purpose of amendments

To amend the Act in relation to failure to disclose a sexual offence against a child under the age of 16 years.

Amended provisions

Amended: ss 327

Inserted: s 632

Amending legislation

Family Violence Protection Amendment Act 2017 (Vic) (Act No 19 of 2017) – with effect from 16 November 2017.

Criminal Procedure Act 2009 (Vic)

Purpose of amendments

To amend the Act in relation to terminology.

Amended provisions

Amended: Sch 2

Amending legislation

Heritage Act 2017 (Vic) (Act No 7 of 2017) – with effect from 1 November 2017.

Drugs, Poisons and Controlled Substances Act 1981 (Vic)

Purpose of amendments

To amend the Act in relation to patients in police gaols, synthetic cannabinoids and synthetic substances.

Amended provisions

Amended: ss 31, 34F, Sch 11

Inserted: s 145

Amending legislation

Drugs, Poisons and Controlled Substances Miscellaneous Amendment Act 2017 (Vic) (Act No 40 of 2017) – with effect from 21 October 2017.

Evidence Act 2008 (Vic)

Purpose of amendments

To amend the Act in relation to exceptions to the hearsay rule.

Amended provisions

Amended: s 66, Sch 2

Amending legislation

Jury Directions and Other Acts Amendment Act 2017 (Vic) (Act No 37 of 2017) – with effect from 1 October 2017.

Evidence (Miscellaneous Provisions) Act 1958 (Vic)

Purpose of amendments

To amend the Act in relation to the giving of evidence by alternative means.

Amended provisions

Repealed: s 42V

Inserted: s 166

Amending legislation

Jury Directions and Other Acts Amendment Act 2017 (Vic) (Act No 37 of 2017) – with effect from 1 October 2017.

Juries Act 2000 (Vic)

Purpose of amendments

To amend the Act in relation to majority verdicts.

Amended provisions

Amended: s 46

Amending legislation

Jury Directions and Other Acts Amendment Act 2017 (Vic) (Act No 37 of 2017) – with effect from 1 October 2017.

Jury Directions Act 2015 (Vic)

Purpose of amendments

To amend the Act in relation to criminal proceedings without juries and in relation to directions on:

- previous representations;
- doubts regarding truthfulness or reliability of victim evidence;
- giving of evidence by an accused;
- whether a prosecution witness has motive to lie;
- differences in a complainant's account of a sexual offence and
- majority verdicts and perseverance to reach a unanimous verdict.

Amended provisions

Amended: ss 39, 51, 61, Sch 1

Inserted: s 4A, Pt 4, Div 7, ss 44A – 44E, Div 8, ss 44F – 44G, Div 9, ss 44H – 44K, Div 10, ss 44L – 44M, Pt 5, Div 3, ss 54A – 54D, Pt 7, Div 2, ss 64A – 64D, Div 3, ss 64E – 64G

Amending legislation

Jury Directions and Other Acts Amendment Act 2017 (Vic) (Act No 37 of 2017) – with effect from 1 October 2017.

Occupational Health and Safety Act 2004 (Vic)

Purpose of amendments

To amend the Act to improve the operation of Victorian health and safety in relation to penalties, definitions, notifications, preservation of sites where incidents have occurred, certain offences, rights of inspectors, extension of time for allow prosecutions to occur and other related matters.

Amended provisions

Amended: ss 16, 37, 38, 39, 64, 76, 78B, 85, 100, 115, 131, 132, 153

Amending legislation

WorkSafe Legislation Amendment Act 2017(Vic) (Act No 48 of 2017) – with effect from 26 October 2017.

Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic)

Purpose of amendments

To make miscellaneous amendments to the Act in relation to various matters including, the reporting requirements on the use of force by supervision officers, police officers and specified officers.

Amended provisions

Amended: ss 19, 92, 141, 142, 146, 152, 153, 158C, 158DB, 158F, 158G, 158H, 158L, 158P, 165, 166, 171A

Amending legislation

Corrections Legislation Miscellaneous Amendment Act 2017(Vic) (Act No 31 of 2017) – with effect from 1 November 2017.

Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic)

Purpose of amendments

To amend the Act in relation to the Dictionary.

Amended provisions

Amended: Sch 1A

Amending legislation

Crimes Legislation Amendment (Public Order) Act 2017(Vic) (Act No 32 of 2017) – with effect from 13 September 2017.

Supreme Court (Criminal Procedure) Rules 2008 (Vic)

Purpose of amendments

To amend the Rules in relation to forms.

Amended provisions

Amended: r 1.12

Inserted: form 6-1C

Repealed: form 6-1B

Substituted: form 6-1A

Reinserted: form 6-1B

Amending legislation

Supreme Court (Harmonised Subpoenas Amendment) Rules 2017 (Vic) (SR No 98 of 2017) – with effect from 1 November 2017.