

# CRIMINAL LAW JOURNAL

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## EDITORIAL

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## ARTICLES

### **The High Court on Crime in 2016: Outcomes and Jurisprudence** – *Mirko Bagaric*

This systematic analysis examines all Australian High Court decisions of 2016 that related to criminal matters. It explains the principles deriving from those cases and identifies the jurisprudential themes from the decisions. It also sets out the significance of the cases and the possible wider consequences of the decisions. This annual analysis of High Court criminal law judgments from the previous year commenced in 2010 in this Journal. .... 7

### **Educating Juries or Telling Them What to Think? Credibility, Delay in Complaint, Judicial Directions and the Role of Juries** – *John Willis and Marilyn McMahon*

The jury is endorsed for bringing community values into the legal system. However, there is considerable mistrust of juries in the trials of sexual offences and judicial directions have been a major strategy utilised to correct juror biases and erroneous beliefs. This has been very evident where complainants have delayed in reporting the alleged offence. Traditionally, common law judicial directions on this issue had the effect of protecting the accused; by contrast, more recent statutory reforms have been designed principally to protect complainants. These statutory reforms were introduced to counter anti-complainant, pro-defendant beliefs and have been adopted in varying forms throughout Australia. They have been most extensively (and problematically) developed in Victoria where they are given by the trial judge for the express purpose of educating juries and hence assisting them in their decision-making. This development raises important issues. Requiring the trial judge to give directions that can be seen as pro-complainant, and hence pro-prosecution, can create the appearance of a judge who is not impartial. Such directions present views on factual matters, an area that has conventionally been seen as the exclusive province of the jury. Additionally, the Victorian legislation has been interpreted as permitting, if not requiring that a trial judge suggest to the jury reasons for the delay in reporting even if such reasons have not been given by the complainant. This tends to blur the conventional distinction between the roles of judge and jury and involves the trial judge in the actual business of fact-finding. Finally, the Victorian developments cast doubt on the very legitimacy of the jury in the criminal justice system. These are matters of real concern that, at the very least, need explicit acknowledgement and careful examination. .... 27

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