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Abolishing the Crime that is the Incarceration of White-Collar Offenders – *Professor Mirko Bagaric* 251

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Proposed Changes to the Tendency Rule: A Note of Caution – *Jill Hunter and Richard I Kemp*

The Royal Commission into Institutional Responses to Child Sexual Abuse has proposed major reforms to the tendency and coincidence rules for child sexual assault proceedings. These recommendations rest chiefly on a commissioned research study into juror reasoning examining 10 different trial types that reflect different evidentiary and procedural contexts. These variations include single complainant trials, some with and some without tendency and/or relationship evidence, and also joint trials where jurors hear from three child sexual assault complainants. This two-part article critically examines aspects of the proposed legislative reforms and the research study upon which it relies. Our conclusion is that there is grave danger that the proposed Bill risks converting well-intentioned aspirations into new injustices. 253

Can Sentencing Be Enhanced by the Use of Artificial Intelligence? – *Dr Nigel Stobbs, Dan Hunter and Mirko Bagaric*

Artificial intelligence is reshaping many aspects of law and legal practice. However, it is only now slowly starting to have a major impact on the more complex domains, which involve reaching a decision through the identification, sorting and calibration of numerous variables. In this article, we examine the feasibility of developing algorithms to make sentencing determinations. Although sentencing decisions are influenced by more than 200 considerations, sentencing law and practice is on its face amenable to automated decision-making because most of the relevant facts are established prior to or following a relatively short plea hearing. Moreover, it is generally relatively straightforward to identify the relevant sentencing objectives and aggravating and mitigating considerations. We recommend that sentencing algorithms should be developed and trialled by way of being used as an adjunct to existing sentencing practices. If the trial is successful, consideration should be given to the wide-ranging use of computer-assisted sentencing decisions. 261

CONTEMPORARY COMMENT

The Prisoner's Dilemma – *Michael Heath*

When and how can a prisoner challenge their conditions of custody? The topic is the subject of a recent decision of the Court of Appeal and has implications for civil and criminal proceedings involving prisoners. The decision clarifies the scope of judicial review and throws doubt on the application of existing principle in respect of criminal cases. 278

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