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ARTICLES

Calibrating the Scales of Justice: Inferences on Prohibited Drug Manufacture –
Gary Edmond and D Brynn Hibbert

Following a scientifically informed review of issues pertaining to the manufacture of prohibited drugs, this article provides a critical assessment of evidence and proof in prosecutions under the *Drug Misuse and Trafficking Act 1985* (NSW). Focused on inferences pertaining to the amount of prohibited drug manufactured, and using the recent appeal in *Taub v The Queen* as a case study, the article explains how current approaches to admissibility and evaluation seem to be misguided. It illustrates how the failure to direct appropriate attention to “specialised knowledge” and the reasoning underpinning “expert” opinions, along with a tendency to exaggerate the value of “experience”, has allowed speculative opinions to enter serious criminal proceedings in order to satisfy proof. In the context of a wider discussion of prosecutions spanning the last decade, the article concludes with a range of reforms that could simplify prosecutions for commercial manufacture in ways more consistent with the fundamental goals of our criminal justice system. 208

Propensity Evidence Reform after the Royal Commission into Child Sexual Abuse –
David Hamer

The Royal Commission considers the exclusion of propensity evidence, including prior convictions and the evidence of other alleged victims, to be one of the most significant obstacles to child sex offence (CSO) prosecutions. As the Royal Commission recognises, propensity evidence is more probative and less prejudicial than traditionally understood. It recommends broader admissibility for CSO proceedings. The Royal Commission has done valuable work. However, confining reforms to CSO cases is problematic, and its proposed admissibility test is unduly complex. The Council of Attorneys-General (CAG) is considering other models for reform extending to all criminal prosecutions. The CAG should not adopt a minimalist approach to reform. As well as broadening admissibility, the reforms should address spurious and counterproductive complexities in the law, starting with the unhelpful distinction between tendency and coincidence evidence. The new legislation should provide clear guidance on the admissibility and rational use of propensity evidence. 234

LEGISLATION COMMENT

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