

CRIMINAL LAW JOURNAL

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EDITORIAL

- Effectiveness and Proportionality in Australia's Custodial Punishment – Hon Michael Kirby AC CMG** 181

ARTICLES

- Criminalising Fictional Child Abuse Material: Where Do We Draw the Line? – Hadeel Al-Alosi**

This article is concerned with the criminalisation of purely and obviously fictional material, such as comics and narratives, depicting or describing characters who appear to be children in a sexual context. There are legitimate concerns about the spread of material that glorifies child sexual abuse, regardless of whether it represents real or fictional children, which justifies prohibiting its dissemination. However, by drawing upon jurisdictions – Canada and the United States – this article highlights that the criminalisation of simple possession of self-created works of the imagination kept privately in Australia goes beyond what is justified in preventing a risk of harm to real children. 183

- A “Defence” of Pure Fantasy in Cases of Procuring or Grooming a Child for Sexual Activity? – Timothy Matthews**

Is it an answer to a charge of “procuring” or “grooming” a child for a sexual purpose that the accused was purely fantasising for their own sexual gratification? This comment argues that it is incumbent upon the prosecution in a grooming or procuring case to exclude the reasonable possibility that the accused was so fantasising. The “defence” of pure fantasy does not operate as an affirmative defence, rather it means the requisite intention, one of the elements of the offence, is absent. It demonstrates that this position is principally consistent with an understanding of grooming and procuring cases as preparatory criminal offences. This comment also suggests an alternative basis upon which an individual who engages in a sexually explicit conversation of that type may nonetheless be subject to criminal sanction, by punishing the conduct as an act of indecency per se. 198

- The Socio-demographic, Psychiatric and Criminological Characteristics of People Found Not Guilty by Reason of Mental Impairment in Victoria – Janet Ruffles**

The introduction, in 1997, of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) marked a dramatic reform of the system governing the management of people found not guilty by reason of insanity in Victoria. Yet despite the major reforms introduced by the Act, there has been little empirical analysis and evaluation of its operation. This study redresses the lack of empirical knowledge by examining the socio-demographic, psychiatric and criminological characteristics of all individuals placed on an order under the Act and managed by forensic mental health services since its enactment. As the Act approaches its 20th year of operation and at a time when there is acute demand for forensic psychiatric services in Victoria, the study may provide a valuable resource to inform forensic mental health policy and practice in Victoria. 203

Retaining and Expanding Breach of Peace – *Brendon Murphy*

In New South Wales, a breach of peace remains a residual source of power, justifying a range of interventions, including trespass and arrest. Those powers are aimed at the containment of violence and the preservation of public order. The power is controversial, however, because of the scope of power enlivened by a breach of peace and because of the retrospective declaration needed to confirm its legality. In recent years, there has been a shift towards statute as the basis for authorising intervention and calls for its abolition. This article argues for the retention of breach of peace as an essential source of power, based on its inherent adaptability and policy objectives. 222

DIGEST OF CRIMINAL LAW CASES 242