

# CRIMINAL LAW JOURNAL

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## ARTICLES

### **Voluntary Assisted Dying and the Merits of Offence-specific Prosecutorial Guidelines in Australia** – *Kerstin Braun*

Over the past three decades jurisdictions in Australia and overseas have grappled with questions surrounding the regulation of Voluntary Assisted Dying (VAD). Most past law reform attempts in Australia have failed. Yet, in recent years Victoria and Western Australia have introduced specific VAD laws including protections from criminal liability. This article analyses what liability can arise from participation in VAD under current criminal law in Australia prior to providing an overview of past failed VAD law reform attempts. It ponders the merits of introducing offence-specific prosecutorial guidelines in the context of VAD, as available in England and Wales in relation to assisted suicide, in those Australian jurisdictions, where law reform has been continuously unsuccessful. It concludes that these guidelines are not an appropriate way of creating VAD reform in Australia and that, where reform is deemed necessary, this must be addressed by the democratically elected legislature through the enactment of statutory law. .... 81

### **Sexual Offending and the Meaning of Consent in the Queensland Criminal Code** – *James Duffy*

Recently, the law reform commissions of Queensland and New South Wales have produced reports on the topic of consent and sexual offending in the criminal law. There is consensus that the drafting of legislation in both States does not reflect current community values as to the meaning of sexual consent, and the situations in which a defendant may rely upon an honest and reasonable but mistaken belief that consent had been given. This article focuses predominantly on the meaning of consent in *s 348 of the Criminal Code Act 1899* (Qld). It argues that s 348 needs to be redrafted in more explicit terms, so that actors at each stage of the criminal justice process can benefit from this directness. Sexual offending continues to be underreported, attrition rates for cases are high, and when a matter does proceed to trial, conviction rates are low. Law reform plays one part in addressing these issues, but the potential of law reform will not be realised unless the meaning of consent, and its coherence with the substantive offences of rape and sexual assault and the excuse of mistake of fact are settled. .... 93

### **Sentencing Developments in the United States in 2020: The Pandemic, Black Lives Matter and Further Erosion of Mass Incarceration** – *Mirko Bagaric and Peter Isham*

The COVID-19 pandemic and to a lesser extent the Black Lives Matter movement have had a considerable impact on sentencing law and practice in the United States in 2020. In this survey of United States sentencing developments, we also explore key reforms in the federal jurisdiction and at State level and reflect on the likely impact of Joe Biden being elected President in November 2020. .... 114

**“Whether the Victim Wishes the Offender to Be Released or Not Is Unimportant”:  
Australia and New Zealand Parole Board members’ Views of the Role of Victims of  
Crime – Katherine J McLachlan**

Victims have participatory rights to have their views and concerns presented to Parole Boards regarding the release and parole of offenders. These rights are embedded in legislation across Australia and New Zealand. However, there is little research on whether victims’ views and concerns influence the decision-making of Australian and New Zealand parole board members. This article examines the weight and importance given to victim submissions by 24 members of Australian and New Zealand parole authorities. The findings were mixed, with very few members indicating an awareness of victims’ statutory rights. Recommendations to strengthen the role of victims in parole board processes are discussed. .... 122

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