

# CRIMINAL LAW JOURNAL

Volume 46, Number 3

2022

EDITORIAL – *Editor: Phillip Boulten*

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## ARTICLES

**Causing Psychological Harm: A Criminal Offence?** – *Dr Paul McGorrery*

This article explores how existing criminal legislation in Australia could be employed to prosecute offenders who wrongfully cause psychological harm to others. Such prosecutions are possible via injury offences across Australia that either expressly criminalise the infliction of psychological harm, or impliedly do so by criminalising the infliction of bodily harm, which the High Court has acknowledged is capable of including psychological harm. Given the existence of these legislative provisions, and the growing recognition of non-physical harms caused by behaviours such as bullying, stalking and coercive control, a criminal prosecution for causing psychological harm seems likely to occur sooner rather than later. In anticipation of such prosecutions, this article proposes a number of reforms that should be implemented in order to ensure they only capture genuine wrongdoing and do not become yet another form of overcriminalisation. .... 125

**New Jury Directions for Sexual Offence Trials in New South Wales: The Importance of Timing** – *Julia Quilter, Luke McNamara, Melissa Porter*

On 1 June 2022 the Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021 (NSW) commenced, making significant amendments to the *Crimes Act 1900* (NSW) in relation to sexual offences and the definition of consent. Amendments were also made to the *Criminal Procedure Act 1986* (NSW) with the introduction of five new jury directions designed to address common “rape myths”. This article considers how the new jury directions can best be deployed to achieve the legislative objective: to minimise the impact of misconceptions about consensual and non-consensual sexual activity on the conduct and outcome of trials. We argue that the timing of directions is important, and that for full effect, directions should be given contemporaneously with the evidence to which they relate, as well as during the end of trial summing-up to the jury. .... 138

**Inconsistencies, Improbabilities and Impossibilities in the Case of Cardinal Pell: A Reply to Memory Science** – *Fiona Hum and Andrew Hemming*

This article is a rejoinder to Goodman-Delahunty, Martschuk and Nolan’s article published in the *Criminal Law Journal* in 2020. In particular, the authors critically evaluate the arguments by the psychological researchers that the High Court decision in *Pell v The Queen* was based upon a misunderstanding of an application of memory science involving routine practices versus singular impactful events. The authors contend their narrow focus on memory science rather than other relevant issues associated with the mind, is flawed. Their approach also overlooked the sheer weight of evidence for the defence presented at trial and the forensic disadvantage faced by Pell after 22 years. The authors argue that the High Court’s reasoning was rightly based on concerns that an innocent person had been convicted because the evidence did not establish guilt beyond a reasonable doubt. .... 151

**The Legal Regulation of Information to and from the Royal Commission into the Management of Police Informants, and the Use of Public Interest Immunity to Limit Police Disclosure of Information to Appellants in Cases Relating to the Conduct of Nicola Gobbo – *Chris Corns***

This article describes how the competing considerations of prosecution disclosure duties (on the one hand) and public interest immunity (on the other) have been resolved in two related circumstances. Part I of the article discusses the role of the Royal Commission into the Management of Police Informants (Vic) and attempts by parties to revoke, invoke, or amend various “non-publication” orders. Part II considers tensions between the need for appellants (former clients of Nicola Gobbo) to obtain information needed to challenge their conviction, and the application of public interest immunities to prevent such disclosure. .... 170

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