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ARTICLES

THE MISALIGNMENT BETWEEN SENTENCING AND ARTIFICIAL INTELLIGENCE

Professor Mirko Bagaric and Maya Arguello Gomez

Artificial intelligence is being increasingly utilised in many industries. Potentially, artificial intelligence can have a significant role in legal decision-making. This article explores the desirability of using artificial intelligence in sentencing. While theoretically artificial intelligence can be used to make sentencing determinations, the instinctive synthesis approach to sentencing in Australia means that pragmatically artificial intelligence systems lack the sophistication to replace judicial determinations or even provide a coherent draft of these decisions. Artificial intelligence can yet have an important role in one aspect of

the sentencing landscape: determining the likelihood of recidivism. It can also have a beneficial role in informing defendants, victims, lawyers and the general public of the likely outcome of sentencing decisions. 459

THE DOCTRINE OF ELECTION BEFORE AND AFTER ALLIANZ – PART I

The Hon Kevin Lindgren AM KC and Elisa Holmes SC

This two-part article was prompted by the High Court decision in Allianz, which we discuss in Part II. Part I distinguishes between waiver, election and estoppel, and draws attention to some of the difficulties associated with the principle of election, that have often been acknowledged. In Part I, we consider termination and rescission, the distinction between rescission at common law and in equity, and, importantly, the role of affirmation in relation to each. Part II will be published in next month's issue of this Journal. 476

THE WELFARE OF AUSTRALIANS – PART 2

Donald Robertson

The previous part of this article considered the legal and economic background to the phrase “welfare of Australians” in s 2 of the *Australian Competition and Consumer Act 2010* (Cth), a provision that is central to the new compulsory notification regime coming into full effect in 2026. Having regard to that context, this part applies that learning to the proper reading of the phrase. An Appendix sets out the specific interpretative principles which apply to legislation which has “mixed economic and legal content”. 487

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