



# CrimNet

Sydney Institute of Criminology



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**We acknowledge the tradition of custodianship and law of the Country on which the University of Sydney campuses stand. We pay our respects to those who have cared and continue to care for Country.**

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## Black Lives Matter: End Aboriginal and Torres Strait Islander deaths in custody

*Please note: Aboriginal and Torres Strait Islander people should be aware that this issue of CrimNet contains images, voices and names of deceased persons in photographs, film, audio recordings or printed material.*

'Racism is a pandemic'. 'Black lives matter'. 'My life matters'. 'I can't breathe'. These were some of the placards held up at demonstrations that numbered tens of thousands across Australia over the weekend. Protesters handed out a sheet headed '**Remember their names**', which recorded the names of some of the more than 400 Indigenous people who have died in custody since the *Royal Commission into Aboriginal Deaths in Custody* (RCIADIC) and some from before: Eddie Murray (1981), TJ Hickey (2004), Veronica Baxter (2009), Ms Dhu (2014), David Dungay Jr (2015), Wayne Fella Morrison (2016), Tanya Day (2017), Kumanjaji Walker (2019) and many more.

In generations of protests, advocacy and scholarship, Aboriginal and Torres Strait Islander families and communities have **called upon non-Indigenous Australia**

**to listen to First Nation voices and take action.** Action led by those most directly affected - the families of those who have died in custody. **In that spirit, CrimNet has compiled a few recent contributions as a starting point for listening and reading.**

## Listen

The family of Yamatji woman Ms Dhu hopes that a [song written about her death in custody](#) will draw international attention to their campaign for justice. Latoya Rule, sibling of Wayne Fella Morrison, [shares her concern that Aboriginal deaths in custody are 'normalised in prisons and police systems'](#)...and how recommendations are largely made to change practices within the prison and strengthen the prisons ability to accommodate more Aboriginal peoples, rather than abolish the systemic racism that supports the prison industrial complex in the first instance'. Rule, a Wiradjuri and Māori social worker, explains how 'When the white supremacist state murders an Aboriginal person, [Aboriginal people are burdened with the debt of this violence](#) both socially and financially'.

This year, families of Aboriginal and Torres Strait Islander people who have died in custody have [called for urgent action to prevent COVID-19 black deaths in custody](#) including the release all First Nations adults and children from prison and of those who are most vulnerable to contracting COVID-19.

Gomeri writer and legal scholar Alison Whittaker [explores the legal and institutional structures that produce silence](#) about Indigenous deaths in custody that 'leaves our public discourse full of black bodies but curiously empty of people who put them there'. Whittaker's [pilot study of 134 Indigenous deaths in custody](#) since the RCIADIC identified that the reasons why there were so few prosecutions and civil actions for deaths inside started with the coroners court itself.

Associate Professor Chelsea Bond, a Munanjahl and South Sea Islander health scholar, draws attention to the underpinning need to acknowledge the [connection between life, land and sovereignty in addressing deaths in custody](#): 'We refuse to talk about our lives independently of our land. We remind them every day that we are still here in this place – and it is their presence on our lands that poses the real problem, not our lives.'

For a more extensive guide to Indigenous scholars writing on crime and criminal justice, see Indigenous scholar Dr Amanda Porter's review essay 'Aboriginal sovereignty, 'crime' and criminology (2019) [Current Issues in Criminal Justice](#), vol. 31, no. 1, 122-142 and her writing on [decolonising policing](#). Dr Porter is a descendant of the Brinja clan of the Yuin Nation.

## Take Action

Government, civil organisations and individuals all play a part in bringing necessary change. As one placard at an Australian protest read, 'No one is free until we are all free'. Recent calls for action include contributing to the [National Aboriginal and Torres Strait Islander Legal Services](#) to fund a dedicated Aboriginal and/or Torres Strait Islander campaigner and advocate to work with families who have had their loved ones die in custody.

People may also make direct contributions to support the families of those who have died in custody through the following GoFundMe pages:  
<https://au.gofundme.com/f/day-family-fundraiser>,

<https://au.gofundme.com/f/d9gkb6-justice-for-david>,  
<https://au.gofundme.com/f/justice-for-yuendumu-inquiry-on-police-shooting> and  
<https://au.gofundme.com/f/in-memory-of-joyce-clarke>

CrimNet readers can follow and lend support to the repeal of Western Australia legislation that leads to imprisonment for unpaid fines. [This legislation will be debated on 11 June 2020.](#)

*The Sydney Institute of Criminology would like to thank Dr Louise Boon-Kuo, Sydney Law School for collating and sharing these resources. To share other resources or publications concerning the Australian Black Lives Matter movement in CrimNet, please email [law.criminology@sydney.edu.au](mailto:law.criminology@sydney.edu.au)*

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## Could Black Lives Matter and COVID-19 be the catalyst for change in Aboriginal imprisonment?

**Associate Professor Megan Williams**, Assistant Director and Research Lead of the **National Centre for Cultural Competence** at the University of Sydney, and member of the **Sydney Institute of Criminology**, speaks with journalist **Cate Carrigan** and others in a Croakey Voices investigative podcast about calls for prison reform in the wake of COVID-19.

The podcast investigation considers the global spread of COVID-19, the concurrent Black Lives Matter movement and how these events have combined to bring attention to overcrowded prisons and, in Australia, the high incarceration rates for First Nations people.

Associate Professor Williams, who has worked in prison health programs for 25 years, calls for change saying, “Things have gotten worse. Prison rates are double what they were when I started out.... there have been 400 or more deaths since the Royal Commission and that’s despite great projects like Croakey’s [#justjustice](#), publishing 90 articles from 70 authors, many of which offered solutions about how

to both reduce prison rates and stop people from going to prison in the first place.”

The podcast hears from [Change the Record](#) Co-Chair and Narungga woman, **Cheryl Axleby**, who says there’s been at least an 88 percent increase in incarceration rates for Aboriginal and Torres Strait Islander people over the last ten years. **Hopeful that the increased focus on incarceration could give the impetus for change, Axleby says we have to look at political goodwill and, “we need the rest of Australian society to stand with us.”** Axleby calls for the repeal of punitive bail laws, ending the offence of public drunkenness, raising the criminal age for juveniles and implementing [the 339 recommendations](#) of the 1991 Royal Commission into Aboriginal Deaths in Custody.

[Listen to the podcast investigation here.](#) The podcast is funded by the Judith Neilson Institute for Journalism and Ideas. Part 1 in this series is [also available](#), investigating how prisoners and their families are coping with the pandemic threat. CroakeyVoices has been produced by independent health media organisation Croakey Health Media at [croakey.org](#)

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## Circle Sentencing and Aboriginal reoffending and imprisonment

A study by the NSW Bureau of Crime Statistics and Research, *Circle Sentencing, incarceration and recidivism*, found that **Aboriginal people who participate in Circle Sentencing have lower rates of imprisonment and recidivism than Aboriginal people who are sentenced in the traditional way.** Circle Sentencing is an alternative sentencing method available under the [Criminal Procedure Regulation 2017](#) for Aboriginal offenders in 12 NSW Local Courts. Under Circle Sentencing, the magistrate works with Aboriginal elders, victims and the offender’s family to determine an appropriate sentence.

Three issues were studied: the probability of imprisonment, the probability of at least one reoffence within 12 months, and the number of days between sentencing and the offender’s first reoffence. After controlling for a variety of defendant-case characteristics (e.g. prior offending, offence severity, age, gender and socioeconomic status), the study found that, when compared to Aboriginal offenders sentenced in the conventional way, offenders participating in Circle Sentencing: are 9.3 percentage points less likely to receive a prison sentence; are 3.9 percentage points less likely to reoffend within 12 months; and take 55 days longer to reoffend if or when they do.

Commenting on the findings, BOCSAR Executive Director, Jackie Fitzgerald, said it was encouraging to find that Circle Sentencing has beneficial outcomes for participants given its strong support among Aboriginal communities. “Past research has shown that Circle Sentencing reduces barriers between Aboriginal communities and the courts and improves confidence in the sentencing process. This is the first study, however, to find an association between Circle Sentencing and reoffending and imprisonment.” [Report the full report here.](#)

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## COVID-19 Criminology

### SYDNEY BLACK LIVES MATTER

#### Raul Bassi v Commissioner of Police (NSW) [2020] NSWCA 109

In a judgement published on 9 June 2020, the NSW Court of Appeal set out its reasons for declaring the **Sydney Black Lives Matter protest on Saturday 6 June 2020** an authorised public assembly. The Court of Appeal acknowledged the potential difficulty in weighing up public interests in the context of Covid-19 and social distancing health measures, but its decision did not ultimately turn on that exercise. Rather, the appeal turned on narrow questions concerning the the operation of the *Summary Offences Act 1988* (NSW).

In reaching its decision to allow the appeal, the NSW Court of Appeal found that: the event organiser, Mr Raul Bassi, had given the required notice of intention for the public assembly in accordance with the *Summary Offences Act 1988* and in the required time; that the subsequent amendments to the notice to accommodate larger crowds did not amount to a new notice; and that the NSW Police Commissioner (or his delegate) had not opposed the holding of the public assembly in communications with Mr Bassi.

The Court held (Bathurst CJ, Bell P and Leeming JA), allowing the appeal: (1) The primary judge erred in concluding that the Appellant had not given notice on 29 May 2020 under section 23(1) of the *Summary Offences Act* in relation to the public assembly to be held on 6 June 2020, (2) The primary judge erred in holding that the amendment of the notice on 4 June 2020 had the effect that a new notice had been given, and (3) The primary judge erred in not granting the declaration sought to the effect that the Commissioner had notified the Appellant that the Commissioner did not oppose the holding of a public assembly as described in the notice amended on 4 June 2020. [Read the CCA judgement.](#)

Responding to the decision, the NSW Minister for Police and Emergency Services [expects that future protests will be opposed](#) by police and will become illegal should they not comply with public health orders.

## **Evidence not fresh and would not have led to lesser sentence**

The applicant in *Cabezuela v R* [2020] NSWCCA 107 was convicted after trial of 27 historical child sexual assault offences: 21 counts of indecent assault, three of carnal knowledge of a girl under 10 years, one of rape and two of buggery. They were committed against his four nieces whose ages ranged from 3 to 13 years at the time of the offences, which occurred between 1966 and 1981. The sentencing judge imposed an aggregate term of 28 years with a non-parole period of 18 years. The appellant appealed against his convictions and sentence to the Court of Criminal Appeal ('CCA'). The appeal against conviction was dismissed.

The applicant argued that the aggregate sentence was inflated as a result of manifestly excessive indicative sentences for the individual offences. The appellant had no other criminal convictions and was 79 years old at the time of sentencing. He also had poor physical health, including chronic heart failure, chronic renal failure and type II diabetes. However, as Walton J stated, 'The offences involved extreme examples of sustained historic child sexual offending. Over the course of 15 years, the appellant preyed upon and repeatedly sexually offended four different female children, who were his nieces. ... The offending was brazen, deliberate, determined and, at times, particularly disturbing. The offences on the indictment were not isolated and variously involved coercion, threats, manipulation and aggression': [107]. Furthermore, 'Each offence occurred in the complainants' home by a person the complainants were entitled to trust': [109].

The applicant also contended that the sentence was manifestly excessive having regard to the COVID-19 pandemic and its relationship to his advanced age, poor health status and custodial arrangements. He sought to rely on evidence that, having been classified as an 'at risk' inmate, he was subject to additional isolation and, because of his age and infirmity, he suffered from anxiety concerning the potential for transmission of the disease in prison. The Crown objected to the Court taking this evidence into account, unless it came to the point of re-sentencing – in which case, the Crown referred to evidence obtained from Corrective Services regarding the measures it was taking to minimise the risk of exposure to COVID-19: [123].

The CCA rejected the submission that the evidence should be received as fresh evidence in support of the ground that the sentence imposed by the sentencing judge was manifestly excessive. First, the evidence is not fresh, in the sense that there was any material relating to COVID-19 that was existing at the time of sentencing, the significance of which was not known or not fully appreciated: [126]. Second, although the CCA may consider 'new evidence' where it is necessary in order to avoid a miscarriage of justice, the sentencing judge already gave considerable weight to the additional burden that the applicant may suffer in custody due to his age and health issues: [127]-[131]. Third, the nature of the offences and the offending are so serious that no lesser sentence should be imposed even if substantially greater weight is given to the applicant's age, infirmity and additional custodial restrictions such as limitations on contact and exercise due to the effects of COVID-19: [132]. [Read the CCA judgment here.](#)

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## **DISTRICT COURT ARRANGMENTS IN NSW**

### **Personal appearances permitted in some cases**

The NSW District Court is permitting personal appearances in court in certain

circumstances from 1 June 2020. This does not mean that lawyers are obliged to attend court in person and the Court continues to encourage lawyers to use the virtual courtroom and to consider whether some of the participants in the proceedings could participate by remote means.

In-person appearances will be permitted in the Criminal Jurisdiction for appeals from the Local Court, sentencing, Judge alone trials, pre-trial argument, pre-recorded evidence hearings and contested applications for bail or contested changes in bail conditions. Arraignments and readiness hearings will continue to be heard by use of a virtual courtroom. As a general rule, the number of persons in a courtroom (including the judge, associate and court staff) should not exceed 10 persons. [Read about the District Court's policy regarding personal appearances here](#). These changes are in addition to the [announcement on 11 May 2020](#) of the intention to resume jury trials on a limited basis from 15 June 2020 in Sydney, Parramatta and Newcastle District Courts.

### **COVID-19 CRIMINAL LAW RESOURCES**

Criminal law-related COVID-19 resources have been compiled by several organisations, including the [NSW Public Defenders](#), [Legal Aid NSW](#) and the [Judicial College of Victoria](#). Updates and material about domestic violence are available through [Women's Safety NSW](#) and [ANROWS](#) (Australia's National Research Organisation on Women's Safety).



## **Sydney Law School Aboriginal and Torres Strait Islander Postgraduate Fellow in Law**

Pursue your own postgraduate research qualification while contributing to the Sydney Law School's teaching and research programs as an Aboriginal and Torres Strait Islander Postgraduate Fellow in Law. Identified for Aboriginal and Torres Strait Islander candidates, the position is full-time, up to 5 year fixed term - Academic Level A with a base salary of \$74K to \$91K p.a. plus leave loading and a generous employer's contribution to superannuation.

As a Fellow, you will be supported and guided by more senior academic staff to develop your research profile and education proficiency. In particular, Sydney Law

School and the University are committed to working with you to develop your local and international networks with other First Nation scholars, and to pro-actively facilitate opportunities for your research and career mentorship by leading Aboriginal and Torres Strait Islander scholars in both individual and group settings (such as the Sydney Law School Indigenous Legal Research workshop). With an expanding clinical and experiential student learning program, working at Sydney Law School also offers the opportunity for undertaking teaching in collaboration with Aboriginal and Torres Strait Islander communities. **Closing date is 11:30pm, Wednesday 1 July 2020.** [Full details about the position and how to apply are available here.](#)

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## Criminal justice news

### **In the media** Black Lives Matter Australia in the news

**Legal experts call for investigations into Indigenous deaths in custody to be reopened**, Lorena Allam, *The Guardian*, 10 June 2020: 'Legal experts in Australia have said it is "in the public interest" to reopen investigations into several high profile Aboriginal deaths in custody and that implementing recommendations made from 13 previous inquiries could immediately reduce Indigenous incarceration rates by 20-30%. Law professor at the University of Technology, Sydney, **Dr Thalia Anthony**, echoed the calls of Black Lives Matter protesters and the family of David Dungay, for state and territory public prosecutors to investigate past cases "where there has been insufficient coronial inquest and insufficient investigation... There needs to be criminal investigation, not only to re-examine the evidence, but in light of standards we have for the treatment of First Nations lives," Anthony said. "In the past, First Nations lives have been treated as though they don't matter, they're expendable. And therefore the standard of care expected of the officers who are responsible for their lives has been very low," she said. "We now need to revisit this evidence with the highest standard and bring prosecution, especially manslaughter, and apply this highest standard for officers." [Read the article in The Guardian.](#)

**Premier needs to act on model to save black lives**, Teela Reid, *The Sydney Morning Herald*, 10 June 2020, 'A draft agreement to reduce the rate of Indigenous young people in custody by 19 per cent as of 2028 is apparently to be junked. A higher target will be set in response to the well-attended Black Lives Matter protests around Australia over the weekend.' [Read the article in the SMH.](#)

**More guns and prisons are not a solution to racial disparity. Could defunding the police be the answer?** Professor Chris Cunneen, *The Guardian*, 9 June 2020: 'We need to stop investing in seemingly never-ending criminal justice responses and refocus our resources on community support.' [Read the opinion piece in The Guardian.](#)

**Australians to get their say on the Indigenous voice this year**, David Crowe, *The Sydney Morning Herald*, 9 June 2020: 'Australians will be given a say on an Indigenous "voice" within months as the Morrison government steps up the reform to create a new mechanism for community input following the Black Lives Matter protests.' [Read the article in the SMH.](#)

## Access Legal Aid NSW: Supporting access to justice for Aboriginal clients

In 2018–19, 15.7 percent of all Legal Aid NSW case and in-house duty services were delivered to Aboriginal people, up from 14.2 percent the previous year. Legal Aid NSW has this month announced a new resource aimed to support lawyers acting in legally aided matters to provide consistent, high-quality and culturally safe services to Aboriginal people. The new best-practice standards for representing Aboriginal clients are designed to help Legal Aid NSW staff and panel lawyers sharpen their cultural competency skills.

Aboriginal Services Branch Manager Scott Hawkins said, “These standards bring together practical information and guidance on such diverse topics as communication styles, legal issues that disproportionately affect Aboriginal people, and Aboriginal family structures and child-rearing practices.”

The standards were developed in consultation with the Aboriginal Legal Service (NSW/ACT) and representative bodies for Aboriginal communities such as AbSec. The standards will be made available to Legal Aid NSW panel lawyers and other partners soon, with additional training starting in July 2020. Registration for these sessions will open soon. [More information in Legal Aid News](#)

## Law Reform “Act Proven” to replace “Not guilty by reason of mental illness” in NSW

On 3 June 2020, the NSW Attorney General introduced the *Mental Health and Cognitive Impairment Forensic Provisions Bill 2020*. This Bill implements some of the changes that have been recommended by a major NSW Law Reform Commission review of mental incapacity in criminal law in 2013, and by a more recent review of the Mental Health Review Tribunal, completed in 2017.

In addition to updating the language used in this area (and defining key terms such as ‘mental health impairment’ and ‘cognitive impairment’), the Bill reforms the parameters of diversion in the Local Court and streamlines unfitness to plead procedures. It is to be hoped that these changes will improve processes for defendants, victims and courts.

Professor Arlie Loughnan, Co-Director of the Sydney Institute of Criminology said, “The Bill also provides a much-needed update to the language included in the offence/defence of infanticide. It will now refer to the defendant woman’s ‘mental health impairment’ rather than a disturbance in her balance of mind (and the anachronistic reference to ‘lactational insanity’ has been discarded).

“Significantly, the Bill will amend the centuries old verdict following what has been called the mental incapacity defence; the verdict will now be ‘act proven but not criminally responsible’ rather than ‘not guilty by reason of insanity’. While this change acknowledges demands of victims of crimes committed by those with mental impairments, it must be remembered that what is crucial in these cases is the treatment options available to individuals with such impairments. Ensuring the very best treatment options are available is in everyone’s interest as this reduces the likelihood of further offending in the future.” [Read the Bill and the Second Reading Speech](#)

## High Court of Australia High Court finds that an ‘accessory’ can be liable though the ‘principal’ is not

### *Pickett and Others v State of Western Australia* [2019] HCA 20

On 29 May 2020, the High Court unanimously dismissed five appeals from a judgment of the Court of Appeal of the Supreme Court of Western Australia. The appeals concerned whether ss 7(b), 7(c) and 8 of the Criminal Code (WA) (“the Code”) apply to render an enabler or an aider, or a party to an unlawful common purpose, guilty of murder where the deceased may have been killed by a child who was not proven to be criminally responsible for the killing under s 29 of the Code.

Reflecting on the High Court’s decision, Sydney Institute of Criminology Deputy Director Andrew Dyer said that, “Although this case turned upon the construction of certain provisions in the Western Australian *Criminal Code*, it is probably of some relevance to both Code and common law jurisdictions. As pointed out by Beech JA in his dissent in the WACA (at [478]-[486]), accessorial liability at common law remains derivative: only if the Crown can prove the principal offender’s guilt can secondary participants be held liable: see, eg, *Likiardopoulos v The Queen* (2012) 247 CLR 265, 276 [27]; *Stokes v R* (1990) 51 A Crim R 25, 37. But would this position be maintained at the cost of acquitting a person who intentionally assisted or encouraged a non-responsible actor to kill? The High Court’s approach in *Pickett* indicates that the answer to this question is ‘no.’ Justice Beech’s construction had some textual support: s 2 of the Code states that an ‘offence’ is conduct that renders a person ‘liable to punishment’, and s 1(1) equates ‘liab[ility] to punishment as for an offence’ with criminal responsibility. But their Honours seemed unimpressed by the consequences that would flow from that construction. ‘[O]n the approach urged by the appellants’, they said, ‘a person who aids an insane person intentionally to ... kill ... could not be held criminally responsible for murder’: [61]. It is true that this question about the nature of accessorial liability at common law might not arise soon. The doctrines of joint criminal enterprise and ‘innocent agency’ already facilitate the conviction of many culpable actors who are complicit in harms perpetrated by non-responsible perpetrators: see, eg, *Osland v The Queen* (1998) 197 CLR 316; *Pinkstone v The Queen* (2004) 219 CLR 444, 465 [59]. But it might be that neither doctrine applies to as broad a range of factual circumstances as does accessorial liability, and it is conceivable that the High Court might one day have to re-consider the rule that, if there is no crime by the principal, there is no liability for an accessory.” [Read the HCA judgement.](#)

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## New publications

**Article** More than a trivial pursuit: Public order policing narratives and the ‘social media test’

Justin R Ellis (2020) *Crime, Media, Culture: An International Journal*

Abstract: Social media has transformed public discourse on policing and the contest of control over the police image. This article draws on original, empirical research to conceptualise the phenomenon of the 'social media test' – the evolution of social media into a legitimate measure of police performance. Through in-depth interviews with police and non-police respondents the article maps the genealogy of, and provides perspective on, one of the first viral cases of bystander video of police excessive force in Australia filmed and uploaded to YouTube. The study shows the video's impact on hegemonic mainstream and police news media narratives, processes of criminalisation and police accountability and the merit of narrative criminology in unpacking these phenomena. Police alluding to the 'social media test' in in-depth interviews shows that digital media in general and social media in particular can no longer be dismissed as peripheral or subsidiary to public discourse on policing in a digital society. [Read the article here.](#)

## **Article** Special measures in child sexual abuse cases: views of Australian criminal justice professionals

**Nina J. Westera, Martine B. Powell, Jane Goodman-Delahunty and Rachel Zajac (2020) *Current Issues in Criminal Justice***

A number of special measures have been introduced to facilitate the giving of evidence by children in child sexual assault prosecutions, including the pre-recording of the child's evidence, the use of CCTV or video-links, the use of screens and other physical barriers, and the provision of support for the child while giving evidence.

In this study, the authors examine the views of criminal justice professionals (judges, prosecutors, defence counsel and witness assistance officers) on how well special measures for child complainants of sexual abuse are working in practice in select Australian jurisdictions. Overall, professionals perceived that special measures had improved evidence-giving processes for child complainants, particularly in relation to reducing the stress experienced by child witnesses, thereby improving the quality of their evidence. They nevertheless noted considerable room for improvement. The four overarching concerns that characterised the professionals' responses were: (1) a lack of skilled and well-informed personnel; (2) widespread problems with technology and logistics; (3) a lack of flexibility in recognising that every witness is different; and (4) potential negative effects of special measures on impact the fairness of trials. With the rise in child sexual assault prosecutions, the authors propose further investigation into the use of special measures to enhance procedures that will facilitate the most reliable and credible evidence. [Read the article here.](#)

## **Article** Irreducible Life Sentences, Craig Minogue and the Capacity of Human Rights Charters to Make a Difference (Advance)

**Andrew Dyer (2020) *UNSW Law Journal***

Abstract: Certain commentators have recently doubted whether, as a normative matter, an irreducible life sentence will always breach an offender's human rights.

This article argues that it will. Such commentators ignore the fact that certain punishments are ‘inhuman or degrading’ however proportionate they are, and however much suffering they cause. After noting that there is a clear trend against irreducible life sentences in Europe, the article then contends that a comparison of the relevant European jurisprudence with some recent decisions of the High Court of Australia demonstrates that charters of rights can improve protections for prisoners against laws that objectify and exclude them. The Victorian government’s recent disapplication of its charter for the purposes of legislation that removes the possibility of parole from certain named prisoners, however, also indicates that, if future Australian charters are properly to protect prisoners’ rights, they might have to be designed differently from existing Australian charters. [Read the article here.](#)

## **Article** The New Psychology of Expert Witness Procedure

**Jason M Chin, Mehera San Roque and Rory McFadden (2020) *Sydney Law Review***

**Abstract:** Can procedural reforms effectively regulate expert witnesses? Expert procedures, like codes of conduct and court-appointed experts, remain controversial among academics and courts. Much of this discussion, however, has been divorced from the science of the reforms. In this article, the authors draw from emerging work in behavioural ethics and metascience that studies procedures analogous to those that are being used in courts. This work suggests that procedures can be effective, as they have been in science, if directed at key vulnerabilities in the research and reporting process. The authors’ analysis of the metascience and behavioural ethics literature also suggests several nuances in how expert evidence procedure ought to be designed and employed. For instance, codes of conduct require specific and direct wording that experts cannot interpret as ethically permissive. Further, drawing on a recent case study, courts have an important role to play in establishing a culture that takes codes as serious ethical responsibilities, and not simply as pro forma requirements. [Read the article.](#)

## **Report** Rise in sexual assaults and domestic assaults: NSW Recorded Crime Statistics quarterly update March 2020

**NSW Bureau of Crime Statistics and Research**

The NSW Bureau of Crime Statistics and Research has released the NSW Recorded Crime Statistics quarterly update. BOCSAR reports that in the 24 months to March 2020, the number of recorded domestic assaults increased by 4.1 per cent, the number of sexual assaults rose by 7.9 per cent, and the number of incidents of robbery with a weapon not a firearm was up by 10.5 percent. One offence trended down over the last 24 months (steal from person; down 10.4%) and the remaining 13 categories of crime remained stable. Several areas of Sydney have seen significant increases in reports of domestic assault. Significant increases were seen in Sydney: Baulkham Hills and Hawkesbury (up 38.7%); Sutherland (up 31.0%); Inner West (up 14.9%); Eastern Suburbs (up 12.1%); Parramatta (up 8.0%); and Inner South West (up 4.4%). Sexual assault increased in two of the 15 Sydney Statistical Areas: Sutherland (up 50.7%, up 38 incidents) and Blacktown (up 16.6%, up 49 incidents). [Access the full report here.](#)

## **Report** LGBTQ programs for perpetrators and victims/survivors of domestic and family violence

### **Australia's National Research Organisation for Women's Safety**

Australia's National Research Organisation for Women's Safety (ANROWS) has published a Research Report, *Developing LGBTQ programs for perpetrators and victims/survivors of domestic and family violence*, based on a collaborative research project between Relationships Australia New South Wales (RANSW) and ACON (formerly the AIDS Council of NSW).

The study found that DFV and intimate partner violence (IPV) can be difficult to identify in LGBTQ relationships. Many community members who participated in the study assumed that relationships between LGBTQ people could avoid the inherent sexism and patriarchal values of heterosexual, cisgender relationships, and, by implication, avoid DFV/IPV. DFV/IPV in LGBTQ relationships can involve unique abuse tactics, such as identity-based abuse, and is likely to be under-reported. Shared experiences of trauma and stress related to being members of a minority group (minority stress) can make it hard for LGBTQ people to identify abuse within their intimate relationships, and also hinder communities, support services and other service providers from identifying LGBTQ victims/survivors and perpetrators as people in need of assistance. LGBTQ people who wish to change their violent and abusive behaviours, or seek support after experiencing violence and abuse, may struggle to find and access appropriate interventions.

The report includes recommendations for policy and practice, including improvements in the recognition and understanding of DFV/IPV in LGBTQ relationships and the development of programs to ensure that the unique and diverse needs among LGBTQ populations are addressed. Read the [Research Report here](#) and the [Key findings and future directions here](#).

## **Report** Judicial officers' understandings of DFV perpetrator interventions

### **Australia's National Research Organisation for Women's Safety**

New research published by ANROWS on 9 June 2020 reports that judicial officers are often unsure of the effectiveness of perpetrator interventions in domestic and family violence matters - in particular men's behaviour change programs. The report also provides that there is a lack of clarity around the role of judicial officers within the system of responses designed to hold perpetrators to account. The research team, led by Professor Kate FitzGibbon at Monash University, explored the information available to judicial officers when DFV cases are before them. The report finds that they have limited access to information about whether any interventions have previously been used with a perpetrator. The report also shows that judicial officers across Australia express a lack of knowledge about perpetrator program referral options, in relation to both the availability and nature of the programs. To assist in judicial decision-making, the ANROWS report recommends: the development of guidance on seeking and making use of a perpetrator's history of interventions (e.g. FVIOs, prior sentences, and program attendance) in all DFV matters, including in sentencing; the development and maintenance of a centralised online register of perpetrator intervention programs, coordinated through the relevant government departments; and the development

of guidance on the role of judicial officers in creating system accountability for perpetrators of DFV. [Read the full report.](#)

## **Report** Crossover Kids: Vulnerable Children in the Youth Justice System Report 3

**Victorian Sentencing Advisory Council**

The Victorian Sentencing Advisory Council has released the third and final report in its series on crossover kids: children sentenced or diverted in the Children's Court of Victoria who are also known to the Child Protection Service. The report considers the role of trauma in childhood offending and canvasses reforms to more holistically address causes of children's offending and better protect the community. The report series has found that children known to child protection are over-represented among sentenced and diverted children. The new report identifies possible changes to the youth justice system to more holistically and effectively address the causes of children's offending. [Access the full report here.](#)

## **Report** NSW Criminal Court Statistics January 2015 to December 2019

**NSW Bureau of Crime Statistics and Research**

The NSW Bureau of Crime Statistics and Research has released NSW Criminal Court Statistics for January 2015 to December 2019. In terms of volume, BOCSAR reports that NSW criminal courts finalised charges against 138,215 defendants in 2019, which is statistically unchanged from the previous year (140,080 in 2018). Over the past 5 years the volume of finalisations has grown in the District Court, up by an average of 5.1% a year from 3,883 in 2015 to 4,736 in 2019 due largely to an increase in sentence finalisations. Over the same period, BOCSAR reports that the volume of finalisations decreased in the Children's Court by an average 2.8% a year from 6,728 in 2015 to 6,006 in 2019 and Local Court finalisations have remained stable.

BOCSAR reports that NSW Sentencing reforms, which came into effect in September 2018, have significantly increased the proportion of proven offenders being sentenced to a supervised community order from 17.0% in 2018 to 22.0% in 2019. BOCSAR reports that the median time taken to finalise a trial in the District Court in 2019 was unchanged from 2018 but 65 days longer than in 2015 (median days from arrest to trial finalisation in 2015 was 658 days versus 722.5 days in 2019), and the median time to finalise defended criminal matters in the Local Court increased in 2019, up from 196 days in 2018 to 202 days. [Access the full BOCSAR report here.](#)

## **Book** Disability, Criminal Justice and Law: Reconsidering Court Diversion

**Linda Steele (2020) Routledge**

Through theoretical and empirical examination of legal frameworks for court diversion, this book interrogates law's complicity in the debilitation of disabled people. In a post-deinstitutionalisation era, diverting disabled people from criminal justice systems and into mental health and disability services is considered

therapeutic, humane and socially just. Yet, by drawing on Foucauldian theory of biopolitics, critical legal and political theory and critical disability theory, Steele argues that court diversion continues disability oppression. It can facilitate criminalisation, control and punishment of disabled people who are not sentenced and might not even be convicted of any criminal offences. On a broader level, court diversion contributes to the longstanding phenomenon of disability-specific coercive intervention, legitimates prison incarceration and shores up the boundaries of foundational legal concepts at the core of jurisdiction, legal personhood and sovereignty. Steele shows that the United Nations Convention on the Rights of Persons with Disabilities cannot respond to the complexities of court diversion, suggesting the CRPD is of limited use in contesting carceral control and legal and settler colonial violence. The book offers new ways to understand relationships between disability, criminal justice and law and proposes theoretical and practical strategies that contribute to the development of a wider re-imagining of a more progressive and just socio-legal order. [Published by Routledge.](#)

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## Jobs and opportunities

### **Job** Director, Criminal Law Specialist, NSW Department of Communities and Justice

The Department of Communities and Justice (DCJ) is offering a two-year contract for the position of Director, Criminal Law Specialist. This role is responsible for providing expert advice to the Attorney General and DCJ executive on matters concerning the review and reform of the criminal law in NSW. The main focus areas of this role include: providing expert, highly detailed advice and guidance on complex areas of criminal law in often very tight timeframes; recognising priority areas for review with respect to criminal law and its enforcement; liaising with DCJ staff to provide expert oversight on the development and implementation of criminal policy and law reform; identifying and mitigating risks and potential negative perceptions and consequences which can arise across the criminal law, including its reporting in the media; and establishing effective working relationships with Heads of Jurisdiction, Court Administrators, and other key stakeholders across the cluster and wider public sector. Applications close Sunday **14 June 2020**. [For more information and to apply, visit the 'I work for NSW' website here.](#)

### **Fellowship** Postdoctoral Fellowship in Ethics of Artificial Intelligence, Centre for Ethics,

The interdisciplinary **Centre for Ethics at the University of Toronto** (C4E) invites applications for its postdoctoral fellowship in ethics of artificial intelligence during the 2020-21 academic year. Applications are welcome by candidates from diverse disciplinary backgrounds - including philosophy, law, political science, and other social sciences and humanities, as well as computer science, engineering, statistics, and technology studies - to join C4E's interdisciplinary intellectual community to conduct research related to the ethics of artificial intelligence, in the

context of C4E's mission as an interdisciplinary centre aimed at advancing research and teaching in the field of ethics, broadly defined, by bringing together the theoretical and practical knowledge of diverse scholars, students, public servants and social leaders in order to increase understanding of the ethical dimensions of individual, social, and political life. Applications close 15 June 2020. [Full details about the opportunity and how to apply available here.](#)

## **Scholarship** PhD Scholarship – University of Wollongong

### **How Intoxication Evidence Operates in Australian Rape/Sexual Assault Trials**

Expressions of interest are sought from potential PhD students to work on a study of how intoxication evidence operates in Australian rape/sexual assault trials. The scholarship is associated with a new Australian Research Council project, 'Intoxication Evidence in Rape Trials: A Double-Edged Sword?' The project's Chief Investigators are Associate Professor Julia Quilter (School of Law, Faculty of Law, Humanities and the Arts, University of Wollongong) and Professor Luke McNamara (Faculty of Law, University of NSW). This project aims to assess the effectiveness of Australian criminal law reforms that have attempted to break the 'rape myth' nexus between intoxication and assumed consent. Focusing on intoxication evidence in sexual assault/rape trials in three Australian jurisdictions (NSW, Queensland and Victoria) this project will undertake qualitative analysis of appellate judgments, sexual assault/rape court transcripts and interviews with prosecutors and defence lawyers. It aims to produce significant new knowledge about whether existing laws and court room practices are optimally adapted to achieving the important objective of justice for sexual violence victims. The successful applicant will enrol in the Faculty of Law, Humanities and the Arts, University of Wollongong, where they will be supervised by Associate Professor Quilter (with external co-supervision from Professor McNamara).

One scholarship is available for commencement in Spring 2020 or Autumn 2021. Both domestic and international prospective students are encouraged to apply. The scholarship is for three (3) years full-time for doctoral candidates with a stipend of \$AUD 28,106 pa (2020 rate). A UOW top-up scholarship of \$10,000 may be available in the first year for an outstanding applicant.

This project would suit a candidate with LLB/JD qualifications with First Class Honours (or equivalent degree in allied discipline and demonstrated knowledge of Australian criminal law and evidence law). The applicant must be eligible to study for a PhD in the UOW Faculty of Law, Humanities and the Arts. The scholarship is available to new applicants and full-time candidates only. Applicants should submit a cover letter detailing relevant experience, a CV with the names and addresses of two referees, academic transcripts and a brief research proposal (maximum 3 pages) to A/Prof Julia Quilter at [jquilter@uow.edu.au](mailto:jquilter@uow.edu.au). The deadline for applications is **19 June 2020** or until a suitable applicant is appointed. For more information, please contact A/Prof Julia Quilter: [jquilter@uow.edu.au](mailto:jquilter@uow.edu.au).

## **Job** Research Assistant – University of Wollongong

### **How Intoxication Evidence Operates in Australian Rape/Sexual Assault Trials**

Expressions of interest are sought from appropriately qualified persons to work as a Research Assistant (RA) associated with a new Australian Research Council project, 'Intoxication Evidence in Rape Trials: A Double-Edged Sword?' The project's Chief Investigators are Associate Professor Julia Quilter (School of Law, Faculty of Law, Humanities and the Arts, University of Wollongong) and Professor Luke McNamara (Faculty of Law, University of NSW). This project aims to assess the effectiveness of Australian criminal law reforms that have attempted to break the 'rape myth' nexus between intoxication and assumed consent. Focusing on intoxication evidence in sexual assault/rape trials in three Australian jurisdictions (NSW, Queensland and Victoria) this project will undertake qualitative analysis of appellate judgments, rape/sexual assault court transcripts and interviews with prosecutors and defence lawyers. It aims to produce significant new knowledge about whether existing laws and court room practices are optimally adapted to achieving the important objective of justice for sexual violence victims. The RA will be involved in a range of tasks including obtaining appellate decisions and undertaking preliminary analysis of those decisions; liaison with courts, transcription services and lawyers; planning support for interviews and preliminary analysis of interviews; providing administrative support to the Chief Investigators; and referencing, proof-reading and editing in the final year write up period. The RA position is available for three (3) years from June 2020. Hours are negotiable, but approx. one day a week - at UOW Casual Rate 5 (currently \$47.42/hour).

The successful applicant will have an LLB/JD with First Class Honours (or equivalent degree in an allied discipline and demonstrated knowledge of Australian criminal law and evidence law), as well as demonstrated strong research skills and excellent communication skills. Applicants should submit a cover letter detailing relevant experience, a CV with the names and addresses of two referees and academic transcripts to A/Prof Julia Quilter at [jquilter@uow.edu.au](mailto:jquilter@uow.edu.au). The deadline for applications is **28 June 2020** or until a suitable applicant is appointed. For more information, please contact A/Prof Julia Quilter: [jquilter@uow.edu.au](mailto:jquilter@uow.edu.au).

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## Events, webinars and forums

### **Forum** Terrorism Offences Forum

**2.00 – 5.10pm, Friday 12 June 2020**

Join esteemed chair Nicholas Cowdery AO QC for an afternoon crash course on terrorism offences with experienced practitioners covering issues such as terrorism financing, anti-money laundering, terrorism offences, juvenile offenders, parole and sentencing.

- Terrorism Financing and Anti-money Laundering Offences, presented by Pauline David, Barrister. Topics include terrorism financing and money laundering defined, common typologies, legal frameworks, case studies and comparative experience.
- Assessing Terrorism Offenders for Court and Dealing with Juvenile Offenders, presented by Peta Lowe, Principal Consultant, Phronesis Consulting and Training; former Director of Countering Violent Extremism,

Juvenile Justice NSW. Topics include assessment for terrorism offenders to use in court considerations, considerations for juvenile offenders, trials, sentencing and parole considerations.

- Sentencing in Terrorism Matters, presented by Chris O'Donnell SC, Barrister. Topics include objective and subjective features in sentencing, sentencing patterns and special considerations.

[Tickets for the webinar may be purchased here.](#)

## **Webinar** New Law – Stopping Public Threats

**Monday 1 – 2pm, 22 June 2020**

Hosted by Legal Aid NSW, this webinar will discuss the new laws in NSW surrounding public threats and incitement to violence based on race, religion, sexual orientation, gender identity, interSex status or HIV status. The webinar will discuss how these laws may be relevant in the time of Covid-19 and address how to identify these incidents, who can report them and what to do if you or someone you know witnesses or is the victim of such an incident. The webinar will also cover other related legal protections such as anti-discrimination law, anti-vilification law and the protections offered by the criminal law. [Register for the webinar.](#)

## **Roundtable** Rural Access to Justice Roundtable

**8.30 – 9:30am, Friday 26 June 2020**

The International Society for the Study of Rural Crime is hosting an online roundtable exploring Rural Access to Justice. The Roundtable will investigate challenges in international contexts and provides an opportunity for participants to promote their research and practice and build collaborations for future initiatives to promote access to justice. The Roundtable will focus on emerging issues in rural access to justice; potential responses or solutions to these problems; and future research and practice enhance access to justice. Expert scholars involved include Dr Danielle Watson (Queensland University of Technology), Dr Liz Curran (Australian National University) and Emeritus Professor Joseph F. Donnermeyer (Ohio State University). [Find out more and register for the free Roundtable event.](#)

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