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Sydney Institute of Criminology



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COVID-19 Criminology marches on

NEW COVID-19 EMERGENCY LEGISLATION IN NSW

On 12 May 2020 the NSW Government introduced three COVID-19 related Bills. The Bills passed both Houses of Parliament within two days and commenced on assent on 14 May 2020. [Read the Second Reading speech here.](#)

The [COVID-19 Legislation Amendment \(Emergency Measures – Attorney General\) Act 2020](#) amends six Acts, including the *Court Security Act 2005*, the *Criminal Procedure Act 1986* and the *Evidence (Audio and Audio-Visual Links) Act 1998*.

Under new [Division 1A of Part 3](#) of the *Court Security Act 2005*, security officers have the power to require a person who is entering or is in court premises to submit to a thermal imaging scan or temperature check, or answer questions about their health or anything else that may determine whether the person is likely to be at risk of exposure to COVID-19. If the person fails to comply after a second request, the person must immediately comply with the requirement or leave the court premises for the remainder of the day. A failure to do one or the other amounts to an offence, punishable by a maximum penalty of a fine of \$550. The same penalty applies to a person who is entering or is in court premises and has exhibited or reported a sign of illness but refuses to leave after being asked twice by a security officer. These provisions do not apply to selected jurors.

[Section 182](#) of the *Criminal Procedure Act 1986* is amended to extend the option of lodging a written plea of guilty or not guilty beyond defendants served with a future Court Attendance Notice ('CAN') or non-bail CAN in s.182(4) to those defendants who have been granted or refused bail or for whom bail has been dispensed with.

[Section 22C](#) of the *Evidence (Audio and Audio-Visual links) Act 1998* is amended to allow for the accused to appear by way of audio-visual link if the parties consent, as well as if the court directs. The court may only make such a direction if it is in the interests of justice, having regard to the public health risk posted by COVID-19, the efficient use of available judicial and administrative resources and any other relevant matter.

COVID-19 NOT TAKEN INTO ACCOUNT IN RE-SENTENCING

Offender not at increased risk; temporary nature of restrictions

The applicant in *Maxwell v R* [202] NSWCCA 94 was sentenced to an aggregate term of 14 years with a non-parole period of 10 years and 6 months for 17 child sexual assault offences committed against his daughter over a nine-year period when she was aged from four to 14 years. The sole ground of appeal was that the sentencing judge wrongly attributed a standard non-parole period ('SNPP') to the offence of aggravated sexual intercourse with a child between the ages of 14 and 16 years which was committed shortly before the SNPP for that offence was introduced. The Crown Prosecutor in the appeal also pointed out two other errors in relation to SNPPs, including the attribution of a SNPP to an attempted offence of aggravated indecent assault; SNPPs do not apply to sentencing for attempts to commit substantive offences.

Having found that these errors occurred, the Court went to the next stage of exercising its independent sentencing discretion to determine whether to set a lesser sentence than what was originally imposed. The applicant relied on an affidavit setting out his subjective circumstances, including stress and anxiety due to the COVID-19 pandemic and more restrictive conditions in custody. He also referred to distress at the prospect of deportation to New Zealand at the end of his sentence. Counsel for the applicant relied on the likely deportation as a basis for finding special circumstances under [s.44\(2\)](#) of the *Crimes (Sentencing Procedure) Act 1999* to vary the proportion between the total term and the non-parole period. Johnson J rejected this submission, stating that the prospect of deportation is irrelevant to any aspect of a sentence, including the question of special circumstances: [123]. [*The law in other Australian jurisdictions may differ; see, the Report of the Victorian Sentencing Advisory Council, [Deportation and Sentencing: An Emerging Area of Jurisprudence](#) (2019)*].

With respect to the issue of COVID-19, his Honour noted that the applicant was 46 years old and was housed at a regional correctional centre. While there were some restrictions on visits and the availability of courses during the pandemic, 'it would be speculative to conclude that these restrictions will be in place for any more than a temporary period': [126]. Despite the finding of error and the nomination of different indicative sentences for the individual offences, Johnson J found that no lesser aggregate sentence was warranted in law. Adamson and Bellew JJ agreed. [Read the CCA's judgment here](#).

AMENDED PUBLIC HEALTH ORDERS IN NSW

Further easing of restrictions

The NSW Health Minister issued *Public Health (COVID-19 Restrictions on Gathering and Movement) Amendment (Real Estate) Order 2020* to amend the *Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020*, effective from 7 May 2020 to allow for on-site inspections and auctions relating to the sale or lease of real estate. This was followed by the *Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 2) 2020*, which commenced on 15 May 2020, to allow, among other things:

- public gatherings of up to ten people
- cafes and restaurants to seat ten patrons at any one time

- up to five visitors to another household at any one time
- up to ten guests at weddings excluding the celebrant and couple
- up to 20 mourners at indoor funerals and up to 30 at outdoor funerals excluding the celebrant and funeral director
- up to ten attendees at religious services, excluding the celebrant
- outdoor playground and exercise equipment to be used with caution.

The new Public Health Order also includes a positive requirement: 'The Minister directs that an employer must allow an employee to work at the person's place of residence where it is reasonably practicable to do so': cl.5. [Read the amended Public Health Order here.](#)

AVAILABILITY OF COVID-19 PRODUCTS ON THE DARK WEB

'COVID-19 cure vaccine. Keep quiet on this.'

The Australian Institute of Criminology ('AIC') commissioned the Australian National University's Cybercrime Observatory to undertake a scan of Tor darknet markets to identify the scale and scope of underground online sales of COVID-19 related products. The results are reported in the AIC's Statistical Bulletin, *Availability of COVID-19 related products on Tor darknet markets*. The scan, which took place on 3 April 2020 and was verified on 6 April 2020, identified 20 omnibus darknet markets, 12 of which returned at least one COVID-19 related product listing. Personal protective equipment ('PPE'), such as masks, sanitisers, gowns and gloves, accounted for the largest category of listings. After PPE, antiviral and repurposed medicines, such as antimalarial drugs and antibiotics, were the next most common products offered for purchase. Purported vaccines and antidotes were listed despite the absence of a vaccine for COVID-19, with one listing titled, 'COVID-19 CURE VACCINE. Keep quiet on this'. The most expensive purported vaccine was priced at almost A\$25,000. Testing kits and a single ventilator were also available. The AIC identified the underground sale of vaccines as the key risk presented by darknet sales of COVID-19 products. [Read the AIC Statistical Bulletin here.](#)

RECOMMENCEMENT OF JURY TRIALS IN NSW

District Court jury trials in some venues from 15 June 2020

The District Court of NSW has announced that it intends to lift the temporary suspension of jury trials in Sydney, Parramatta and Newcastle District Courts from 15 June 2020. Some of the steps to be taken by the Sheriff to reduce the risk of COVID-19 exposure and to ensure jury service is a safe experience will include temperature testing, social distancing, individualised jury meals, additional commercial cleaning and limiting public access in courtrooms. Not all jurors will be required to sit in the jury box but will be able to spread out across the courtroom and the empanelment of jurors will be conducted by audio visual link. The intention to re-commence jury trials in these venues is subject to any change in advice from the Department of Health. [Read the announcement here.](#)

NSW LOCAL COURT LISTINGS

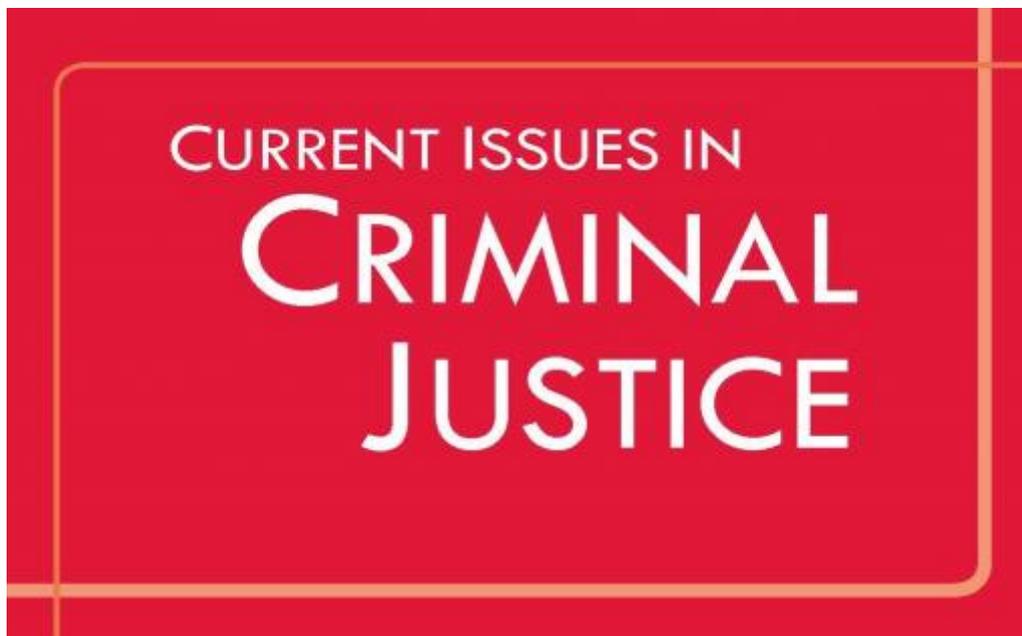
Preliminary steps for the return to normal sitting arrangements

The NSW Chief Magistrate has issued Memorandum (No. 10) – COVID-19 to

announce preliminary measures to enable a return to full sittings of the Local Court. There will be a staged return to sentencing of offenders where a sentence of full-time custody is a real prospect from 1 June 2020. Defended hearings will commence in August and September 2020 or earlier if there is a return to normal activity before those months. Parties will be required to complete a Notice of Readiness where the proceedings are to remain as defended hearings. [Read the Chief Magistrate's Memorandum \(No. 10\) here.](#)

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).



Current Issues in Criminal Justice: Special COVID-19 Issue

COVID-19, Criminal Justice & Carceralism: Critical Reflections & Change

Contributions are sought for a special issue of the Institute's Journal, [Current Issues in Criminal Justice](#). This special edition calls for papers internationally that critically reflect on changes to the criminal justice system and rethink more human practices into the future, including opportunities for decarceration and abolition. Reflections are sought on:

- The expanding scope of crimes and penalties
- Intensification of policing practices
- Changes to court operations
- Prison and youth detention measures to prevent and control COVID-19 in custody
- Differential impacts of criminal justice changes and the rise of particular crimes on particular cohorts (eg. women, children and young people, the

elderly and those with chronic health issues)

- Legacy issues, such as public policing of space, surveillance creep, the provision of alternatives to prison (e.g. public and private housing) and enhanced understanding of poor health conditions in prisons.

Contributions from academics, advocates and people with lived experience of the criminal justice system internationally are sought on the implications of COVID-19 for the criminal justice system and carceralism. The limit for articles is 6000 - 8000 words. The limit for contemporary comments is 2000 - 4000 words. Papers will be subject to review by two experts in the field.

Expressions of interest for abstracts (200 words) are due on **1 June 2020** and should be submitted to Guest Editors [Professor Thalia Anthony](#) at thalia.anthony@uts.edu.au and [Professor Lorana Bartels](#) at lorana.bartels@anu.edu.au. Notifications of the acceptance of abstracts will occur by 15 June 2020. The closing date for the submission of papers is 14 September 2020, with the completion of the peer review process (16 October 2020) and finalisation of papers (16 November 2020) prior to publication in December 2020.

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New publications

Statistical report Firearm theft in Australia 2018

Australian Institute of Criminology

In 2018 there were 847 reported incidents of firearm theft in which 2,425 firearms were stolen. This represents a 15 percent increase in incidents and a 35 percent increase in stolen firearms since 2008–09, the last year in which the National Firearm Theft Monitoring Program was in operation. Sizeable increases were recorded in Victoria, Queensland and Western Australia, while NSW recorded a decrease after a marked rise in reports of stolen firearms from 2010-11.

Most thefts targeted residential premises with an average of three firearms stolen in each incident. The largest proportion of thefts occurred in regional parts of Australia, indicating a shift from major cities as the primary site of theft incidents. The majority of stolen firearms were in firearm safes at the time of the theft. [Read the AIC's Statistical Report here.](#)

Report Legal perspectives on solitary confinement in Queensland

Solitary confinement occurs when a prisoner is locked in their cell for at least 22 hours a day with very limited or no association with other prisoners. Whilst the term 'solitary confinement' is generally not used in Australian legislation, many Australian prisoners are subjected to these conditions. In Australia, solitary confinement is referred to as segregation, separate confinement, isolation or non-association.

A joint research project was undertaken by the Queensland [Prisoners' Legal](#)

[Service](#) and [Professor Tamara Walsh](#) from the University of Queensland on legal responses to solitary confinement. The report arising from this research highlights the array of negative health outcomes that solitary confinement creates for the most vulnerable members of the prison population. The report urges an end to solitary confinement, with some alternative recommendations, including mental health assessments, improvements in conditions and the introduction of a requirement to obtain authority from a court to separate a prisoner from the general prison population for more than 48 hours. [Read the report here.](#)

Reports Inquiry into the use of strip search powers

Law Enforcement Conduct Commission

On 8 May 2020 the Law Enforcement Conduct Commission ('LECC') presented its reports to NSW Parliament as part of its ongoing inquiry into the use of strip search powers by the NSW Police Force. The reports arise from investigations and hearings conducted by the LECC in five matters concerning strip searches conducted either in police custody or in public places: Operations Brugge, Gennaker, Mainz, Sandbridge and Karuka. Three of these matters concerned the strip searching of children. None of the strip searches resulted in the discovery of any prohibited drugs. All resulted in complaints about the conduct of the involved police and, in one case, civil proceedings against the police.

In each report the LECC found that the involved police lacked the appropriate understanding of the legal requirements regarding the conduct of strip searches and had not received adequate training.

The LECC notes that measures are being taken by the Police Force to address its concerns and the progress of these measures will be further considered in a final report on strip searching which is expected to be presented in the second half of 2020. [The LECC's reports are available here.](#)

Resource Digital resource for victims of crime and abuse

The Victim Support Service of South Australia and Flinders University have launched a new digital resource for victims of crime and abuse: *After Crime and Abuse: Common Reactions to Trauma and Strategies for Coping*. This resource allows victims of crime and abuse to access information and strategies for coping with trauma, to understand they are not alone in what they are experiencing and see the types of things that have helped others re-establish their sense of wellness. It is available online in digital format and as a downloadable or print brochure. It covers:

- common reactions to crime
- ways to cope after crime
- self-medication
- how to find support
- client stories

The online resource contains links to further supports and information, including resources specific to COVID-19 and coping in uncertain times. [View the digital resource here.](#)

Jobs and opportunities

Job Senior Policy And Projects Officer, Youth Justice

NSW Department of Communities and Justice

Youth Justice supervises and cares for young offenders in the community and in detention centres in NSW. It provides diversionary and community-based services, as well as custodial services in detention centres for young people on remand and on control orders. The position holder will develop, manage, and implement innovative policies and programs to support and improve service delivery for young people in contact with the criminal justice system and provide specialist policy advice and high level analysis on issues and strategies.

Tertiary qualifications in a relevant discipline such as social work, law, psychology, sociology or criminology, or equivalent level experience is essential.

Applications close **24 May 2020**. [For more information, visit the 'I work for NSW' website here.](#)

Call for Abstracts UNSW Law Journal

Special Issue: Rights Protection amidst COVID-19

The UNSW Law Journal is currently welcoming submissions for Issue 44(1). The Issue will comprise of both a thematic component and a general component. The topic for the thematic component is 'Rights Protection amidst COVID-19'. Thematic submissions to Issue 44(1) of the Journal may fit under one of three broad categories: 1. practical-leaning submissions on the operation of substantive individual rights; 2. theoretical-leaning submissions on policy, constitutional issues and institutions; 3. comparative submissions on any legal right in Australia and a foreign context.

Among the issues authors may wish to examine in relation to criminal law rights are:

- whether dynamic and widely varying *actus reus* components of containment-related offences between Australian states pose potential difficulties in proving *mens rea* (and upholding the right to due process and a fair trial);
- the extent to which those in preventive detention are having their right to a fair trial undermined by court closures.

Publication of Issue 44(1) is set for late March 2021. The submission deadline for the thematic Issue 44(1) is **5 September 2020**. Submissions for the general component will be considered on a rolling basis, and will be published in a forthcoming Issue of the Journal. [For more information visit the website here](#) or contact the Journal at law.journal@unsw.edu.au.

Call for Papers Policing and Society: An International Journal of Research and Policy

Special issue - The Policing and Public Health Interface: Critical Issues from the COVID-19 Pandemic

The COVID-19 pandemic has both illuminated and transformed the many intersections between policing and public health. Both sectors deploy coercive as well as 'soft' tools to shape the behavior of populations and manage their flows in order to reduce the spread of disease and cool down outbreak hotspots. Joint efforts to promote public health and safety have confronted inequalities in access to common goods, including health and justice. Front-line workers across these sectors have experienced grave threats to their physical health and emotional wellbeing, while at the same time placing their families at risk when they bring 'the job home'.

Policing and Society is canvassing proposals for papers that advance both our global understanding of the many nexus points between law enforcement and public health during the COVID-19 pandemic in a special issue edited by Jennifer Wood and Patricia Griffin. These include, for example:

- Aspects of intersectoral or interdisciplinary cooperation in disrupting the spread of the virus at local, national and global levels.
- Impact on policing strategies: policing COVID-19 and police *during* COVID-19.
- The roles of both sectors in reproducing or mitigating health and justice disparities in their COVID-related practices, paying special attention to vulnerable populations.
- The criminalization of non-compliance and the unintended consequence to police and community relations.
- Risk, security management, and the expanded use of surveillance technology in both sectors.
- The impact of the pandemic on the health, wellness and resilience of officers, the family system, and policing organizations.

Conceptual, empirical and policy-focused papers are encouraged. Submissions are due **30 September 2020**. [For more information about manuscript submissions, visit the website here](#). To discuss a potential contribution, email [Professor Jennifer Wood](mailto:woodj@temple.edu) at woodj@temple.edu.

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Events, seminars and conferences

Webinar Overseeing the use of police powers during the COVID-19 pandemic

1.30 – 2.30pm, Friday, 22 May 2020

What should Victorians expect from police during COVID-19? How is the integrity sector working to ensure human rights are respected? Tune into this live panel discussion on Victoria Police's emergency response to COVID-19 and the

enforcement of the new public health directions made under the *Public Health and Wellbeing Act 2010* (VIC).

Victoria Police Deputy Commissioner Shane Patton, Victorian Equal Opportunity and Human Rights Commissioner (VEOHRC) Kristen Hilton, and Independent Broad-based Anti-corruption Commission (IBAC) Deputy Commissioner Katie Miller will discuss Victoria Police's approach to policing in a time of COVID-19, the human rights considerations, and how agencies like VEOHRC and IBAC are overseeing the use of police powers during a time of unprecedented restrictions on community activities. The event is facilitated by Lynne Haultain, Executive Director of Victoria Law Foundation and is co-presented by IBAC and the Victorian Equal Opportunity and Human Rights Commission, as part of Law Week 2020. [Register here for this free event.](#)

Webinars Criminal justice implications of COVID-19

[The Centre for Crime and Justice Studies](#) in London and the Open University have organised a series of webinars on the criminal justice implications of the COVID-19 virus. The webinars will look specifically at criminal justice in relation to lockdowns, social distancing and the use of digital technologies.

Webinar 1, 9.00 – 10.30am (UK) [6.00 – 7.30pm, AEST], Thursday 4 June 2020

The focus will be on the changes, practical challenges, and unintended consequences of instituting social distancing in various criminal justice settings. Speakers:

- Jon Collins, Magistrates Association
- John Podmore, former prison governor
- Fergus McNeill, University of Glasgow

Webinar 2, 9.00 – 10.30am (UK) [6.00 – 7.30pm, AEST], Thursday 11 June 2020

This session will explore the political dimensions to the COVID-19 changes, and the implications for criminal justice. Speakers:

- [John Pratt](#), Victoria University of Wellington, New Zealand
- Mary Corcoran, Keele University
- Lachlan Stuart, former advisor to Rt Hon Jeremy Corbyn MP

Professor John Pratt's talk is titled 'Immobilization, Covid-19 and an Antidote to Populism.' After a 30-minute presentation, there will be contributions from two commentators, followed by Q and A.

[To register for the webinar/s visit the website here.](#)

Webinar 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.](#)

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