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Sydney Institute of Criminology



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In this issue

- Self, Others and the State: Relations of Criminal Responsibility →
- Sentencing for historical child sexual offences →
- Identity crime and misuse in Australia: Results of the 2018 online survey →
- 'Crossover kids': Offending by child protection-involved youth →
- BOCSAR Bulletin: The long-term effect of routine police activity on property and violent crime in NSW →
- Events, seminars and conferences →
- New publications →
- Jobs and opportunities →
- Would you like us to feature information for you? →



Self, Others and the State: Relations of Criminal Responsibility

Professor Arlie Loughnan (2020)

'Criminal responsibility is having a brilliant career.' So begins the new book, *Self, Others and the State: Relations of Criminal Responsibility*, by [Arlie Loughnan](#), Professor of Criminal Law and Criminal Law Theory at the University of Sydney Law School and Co-Director of the Sydney Institute of Criminology.

Self, Others and the State examines the role of criminal responsibility in criminal law, arguing that criminal responsibility is significant because it organises key sets of relations - between self, others and the state - as relations of responsibility. Professor Loughnan adopts a socio-historical method for her study of criminal responsibility, examining developments in Australian criminal law since the turn of the twentieth century to demonstrate how responsibility has attained its high status as an organising framework for relations in criminal law. Key developments include the introduction of criminal legislation at the turn of the twentieth century, the emergence during the mid-century of distinctive Australian criminal law and textbooks, and the introduction of the *Commonwealth Criminal Code* towards the end of the century. Professor Loughnan then examines criminal responsibility via the three key sets of relations to explore changes in relations of responsibility as they unfold over time. In Chapter 6, for instance, Professor Loughnan undertakes a close examination of the law of homicide and criminal responsibility pertaining to women to demonstrate how violence perpetrated by women has been pathologised and treated as distinctive. More recently, the law has recognised the state's complicity in failing to protect women from violence through the development of partial defences to murder.

Appreciating the 'social life' of criminal responsibility facilitates a deeper understanding of criminal responsibility and exposes the complexity and dynamism of responsibility in criminal law. Among the possible future research trajectories identified by Professor Loughnan are a deeper analysis of the social dimensions of holding people to account in criminal law, the pursuit of an intellectual history of the concept of responsibility and undertaking an interdisciplinary exploration of concepts of responsibility beyond criminal law.

[The book is available for purchase here through Cambridge University](#)



Sentencing for historical child sexual offences

[Section 25AA](#) of the *Crimes (Sentencing Procedure) Act 1999* provides that a court sentencing for historical child sexual assault offences is to apply current sentencing patterns and practices and our modern understanding of the trauma caused to children by sexual abuse, rather than those that applied at the time of the offence. It was introduced in 2018 to reflect recommendation 76 made by the Royal Commission into Institutional Responses to Child Sexual Abuse in its 2017 *Criminal Justice Report*.

The NSW Court of Criminal Appeal considered s.25AA in the context of a [Crown appeal](#) against sentence in *R v Cattell* [2019] NSWCCA 297. The respondent pleaded guilty to seven historical child sexual assault offences committed against five victims between 1968 and 1990 while he was a priest. He was initially sentenced to an aggregate term of 2 years and 6 months with a non-parole period of 9 months.

The CCA held that the sentence was manifestly inadequate and re-sentenced the respondent to an aggregate term of imprisonment for 3 years with a non-parole period of 18 months. The community's understanding of the harmful effects of sexual offending against children has undoubtedly developed since the Royal Commission delivered its Criminal Justice Report. The sentencing judge's failure to refer to s.25AA(1) in his sentencing remarks led to the inference that he may have overlooked the requirement to sentence the respondent in accordance with the sentencing patterns and practices that applied at the time of sentencing. A sentencing judge should expressly state that the offender has been sentenced in accordance with s.25AA(1) and that the court has had regard to the trauma of sexual abuse on a child in accordance with s.25AA(3).

The respondent used his position of trust and influence as a Catholic priest to abuse vulnerable children and manipulate them into silence. As Price J observed, 'It is well known that the sexual abuse of children causes a reluctance on the part of victims to come forward and make a complaint.' In these circumstances, the sentencing judge was wrong to treat delay as a significant mitigating factor in sentencing.

The Court also found that the sentence failed to reflect the totality of the respondent's offending over a period spanning 22 years in relation to five victims aged between six or seven years and 11 years. Whilst one of the purposes of the totality principle is to avoid a 'crushing' sentence for multiple offences, the principle is 'not to be used as a cloak of convenience so as to impose a manifestly inadequate sentence.' The Court was satisfied that it should exercise its discretion to re-sentence the respondent despite his age (79 years), Price J noting that it is 'not uncommon for sentencing judges to be required to sentence offenders of an advanced age for sexual offences against children committed many years before and who have previous convictions for similar offending.'

[Read the CCA judgment here.](#)



Identity crime and misuse in Australia: Results of the 2018 online survey

Australian Institute of Criminology Statistical Report

Identity crime is one of the most prevalent forms of criminal activity in Australia and can have severe and lasting consequences for victims. This Australian Institute of Criminology (AIC) Statistical Report involved an online survey of almost 10,000 Australians between late December 2018 and early January 2019. One-quarter of respondents reported having experienced misuse of their personal information at some point in their lifetime, and almost 12% had their personal information misused in the last 12 months. This is relatively stable when compared to the results of the 2017 online survey. Around 30% of victims did not report the matter to a government agency or organisation, supporting the proposition that identity theft remains an under-reported crime.

Forty-seven percent of victims reported no adverse consequences, with the most common consequence being the refusal of credit. While the number of respondents who reported out-of-pocket expenses was similar to the number in 2017, the total losses in 2018 (approximately \$1.9 million) were substantially lower than those in 2017 (approximately \$2.9 million). Non-financial impacts were reported by 53% of victims, including mental or emotional distress requiring counselling or other treatment. Victims were most satisfied if they had reported their experiences to an organisation or government agency that assisted them in dealing with the consequences of identity theft or provided guidance to reduce their risk of further victimisation.

[Read the AIC Statistical Report here.](#)



‘Crossover kids’: Offending by child protection-involved youth

Australian Institute of Criminology: Trends and Issues in Criminal Justice

The over-representation of children from child protection backgrounds in the youth justice system is a significant concern. This Australian Institute of Criminology (AIC) paper, by Susan Baidawi and Rosemary Sheehan, presents selected findings of a detailed case file audit of 300 crossover children appearing before the Victorian Children’s Court between June 2016 and April 2017.

Twenty-two percent of all children appearing before the Court’s Criminal Division had current or historical statutory child protection involvement. Almost three-quarters of these children had been exposed to family violence and at least 20% had a deceased parent. Other adverse childhood experiences include physical, emotional and sexual abuse, neglect, household substance abuse and household criminal justice involvement. Greater cumulative adversity was apparent in relation to Indigenous crossover children in the criminal justice system compared to their non-Indigenous counterparts. Ongoing neglect was identified as a predictor of offending and recidivism. Compared to all children before the Children’s Court, crossover children encountered the criminal justice system at a younger age and received harsher sentencing outcomes. They were frequently charged with offences against the person and had a disproportionately high number of offences.

The study’s findings amplify the need for improvements in preventing, diverting and responding to crossover children’s criminal justice system involvement.

[Read the AIC’s Trends and Issues study here.](#)



BOCSAR Bulletin: The long-term effect of routine police activity on property and violent crime in NSW

Two common policing strategies utilised by the NSW Police Force are move-on directions under [s.197](#) of the *Law Enforcement (Powers and Responsibilities) Act 2002*, and person searches under [s.21](#) and other provisions of the same Act. This Bureau of Crime Statistics and Research (BOCSAR) *Crime and Justice Bulletin*, by Joanne JJ Wand, Don Weatherburn and Wai-Yin Wan, investigates the relationship between police activity and crime using data from 17 Local Area Commands between January 2001 and August 2013. Four common categories of crime were examined: break and enter, motor vehicle theft, assault and robbery.

The study found no evidence that increases in move-on directions and person searches have an immediate suppression on burglary, motor vehicle theft and robbery, although sustained high levels of police activity produced lower levels of these offences. There was no statistical evidence to suggest that move-on directions had any impact on assault, either in the long or short-term. The authors conclude: 'The finding that these forms of police activity have a positive effect on crime should not be read as obviating the need for discussion on whether and in what circumstances it is appropriate to move people on or search them. ... Move-on directions and person searches are intrusions on civil liberty whose value as crime control tools must be weighed against their costs.'

[Read the BOCSAR Crime and Justice Bulletin here.](#)

[Back to top ^](#)

Events, seminars and conferences

Seminar Reasonable Belief in Consent: Problems and Possibilities in Rape Law Reform

5.00 - 7.30pm, Tuesday 11 February 2020, Monash University Law Chambers, Melbourne

Join leading academics, legal practitioners and activists in a radical rethink of sexual consent law in Australia. This panel event is sponsored by Swinburne Law

School and Monash Law School. The panel includes Professor Jonathan Crowe (Bond University), Dr Rachael Burgin (Swinburne University of Technology) and Katrina Marson (Churchill Fellow and criminal lawyer). The discussion will be facilitated by Associate Professor Asher Flynn and Associate Professor Jacqui Horan from Monash University.

There will be a drinks reception after the session, where a new research and advocacy initiative will be launched by Ms Saxon Mullins. [Register here for this free event.](#)

Seminar Image-Based Sexual Abuse in the UK: Challenges and Lessons for Law, Policy and Practice

1.00 - 2.00pm, Tuesday 18 February 2020, University of Sydney

This presentation, delivered by [Professor Clare McGlynn](#) (Durham University) will examine the current state of laws and policies across the UK targeting image-based sexual abuse, as well as considering the challenges of engaging in the law reform process.

While there are a variety of criminal laws outlawing some forms of image-based sexual abuse, in general these provisions are piecemeal, inconsistent, out-of-date and unjustifiably discriminate between victim-survivors. Possible reasons for these shortcomings will be examined, including a failure of Government and policy-makers to properly understand the nature and harms of image-based sexual abuse, as well as the paradox of an initial 'rush to legislate' followed by political inertia. Most recently, political attention has turned to regulating social media and porn companies regarding their role in the distribution of image-based sexual abuse, with proposals to introduce a 'duty of care' on such companies, as well as demanding greater enforcement of their own terms and conditions. The term 'image-based sexual abuse' is used here to refer to all forms of the non-consensual taking and/or sharing of private sexual images, including threats and altered images, often known as 'deepfakes' or 'fakeporn'.

This event is hosted by the [Sydney Institute of Criminology](#) at the University of Sydney Law School. A light lunch will be served from 12.45. [Register for this free event here.](#)

Seminars Canadian Indigenous Over-Representation in Criminal Justice: Judicial and Aboriginal Legal Service

Director of Toronto Aboriginal Legal Service and award-winning author on Indigenous litigation, Mr Jonathan Rudin, with UTS discussant Professor Thalia Anthony will discuss Aboriginal initiatives for reducing over-incarceration in Canada and implications for Australia. Mr Rudin will focus on the reforms to the Criminal Code in Canada, cases flowing from those reforms and the introduction of Gladue Reports by the ALS to sentencing courts – which provide a strengths-based, historical and community-based account of the Aboriginal person's background. Professor Anthony will discuss some initiatives of this type by Aboriginal Legal Services in Australia. This talk is part of an Australian Research Council Linkage project with the Victorian Aboriginal Legal Service, Five Bridges Aboriginal and Torres Strait Islander Community Justice Group (Qld) and the Australasian Institute of Judicial Administration. This event will be held in

Melbourne and Sydney:

Sydney:

When: **Wednesday 12 February 2020**

Time: 12.15 for 12.30 to 1.30pm (light lunch provided)

Venue: UTS Faculty of Law Boardroom, Building 2, level 16, room 213 (CB02.16.213)

RSVP: https://forms.office.com/Pages/ResponsePage.aspx?id=JhyR6J_PnEqHjJ4B76HkUjOg_zGcBFHkMaozwSGi4NUM1JINFhRMVNJTUZIUzIXS1ZJR1k4Nk5YTSQIQCN0PWcu

Melbourne (Chaired by Mr Eddie Cubillo):

When: **Wednesday 19 February 2020**

Time: Pre-lecture drinks: 5:15pm–6:00pm; Lecture: 6:00pm–7:00pm

Venue: Ground floor, Room G08, Melbourne Law School

RSVP: <https://law.unimelb.edu.au/about/reconciliation/events/details?event=14069>

Seminars ALRC Review of Corporate Criminal Responsibility

In November 2019 the Australian Law Reform Commission (ALRC) released a [Discussion Paper](#) on its review of Australia's corporate criminal responsibility regime. The ALRC is holding a series of seminars in Perth, Melbourne, Sydney and Brisbane to provide an update on the review and to encourage additional feedback into the current inquiry. The seminars will be led by a panel of judges, academics and practitioners focusing on the ALRC's proposed model of corporate regulation, the attribution of criminal responsibility to corporations and individual liability for corporate fault.

The interactive seminars present the opportunity to highlight key issues identified in submissions received, indicate the ALRC's potential direction following those submissions and to seek further feedback on the position the ALRC may adopt in its Final Report.

The seminars are being held at 5.00 - 7.00 pm on the following dates:

- **Monday, 24 February 2020: Perth**
- **Wednesday, 26 February 2020: Melbourne**
- **Thursday, 27 February 2020: Sydney**
- **Monday, 2 March 2020: Brisbane**

[For more information and to register, visit the website here.](#)

Seminar Queer Law in Emotional Times

6.00pm, Wednesday 4 March 2020, University of Sydney

The Sydney Institute of Criminology will host a conversation between [Dr Senthoran Raj](#) (Keele University) and readers of his new book, [Feeling Queer Jurisprudence: Injury, Intimacy, Identity](#) (Routledge, 2020).

Drawing on emotions, queer theory, and case law, *Feeling Queer Jurisprudence* explores how LGBT rights have been made possible, and also circumscribed, by progressive legal interventions. This book catalogues a range of cases from Australia, the United States, and the United Kingdom to unpack how emotion shapes the decriminalisation of homosexuality, hate crime interventions, anti-discrimination measures, refugee protection, and marriage equality. This book shows that reading jurisprudence through emotions can make space in law to affirm, rather than disavow, intimacies and identities that queer conventional ideas about 'LGBT progress', without having to abandon legal pursuits to protect LGBT people.

Speakers include [Professor Kane Race](#) (University of Sydney), [Dr Renata Grossi](#) (UTS), and [Somali Cerise](#) (UN Women).

[Register here for this free event.](#)

Seminar Eggshell Skull by Bri Lee

5.45 – 7.00pm, Wednesday 4 March 2020, Sydney CBD

In this seminar, hosted by Women's Legal Services NSW, [Bri Lee](#) will discuss her book, which describes her journey through the Australian legal system. 'Eggshell Skull' has won several awards, including the Biography of the Year at the Australian Book Industry Awards, and was longlisted for The Stella Prize.

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

Seminar Legalwise 7th Annual Criminal Law Symposium

9.00 – 5.15, Saturday 14 March 2020, Sydney CBD

This Symposium includes a range of topics and speakers, including:

- Magistrate Brett Thomas, Insights from the Bench: the ten most important things to remember in the Local Court
- Anthony Bellanto QC, Preparation and Conduct of a Sexual Assault Trial
- Karen Weeks, The Rights of Clients with Cognitive or Mental Health Impairments and Criminal Law
- Rose Khalilzadeh, Discretion to Exclude Improperly or Illegally Obtained Evidence
- Robyn Richardson, Disqualification for Judicial Bias
- Alissa Moen, Dealing with Judicial Bullying
- Sam Macedone, Individual Dilemmas and How to Deal with Them
- John Masters, Proactive Litigation: Maximising Opportunities and Minimising Risk

[Visit the website here for more information and to register.](#)

[Back to top ^](#)

New publications

Article Newsmaking criminology in the 21st century: an analysis of criminologists' news media engagement in seven countries

Imogen Richards, Mark A Wood and Mary Iliadis (2020) **Current Issues in Criminal Justice**

Criminologists regularly contribute to news media discourses on crime and justice, whether through opinion pieces, interviews or media appearances. However, few studies have examined what drives criminologists to make media contributions and how frequently they do so. The authors of this mixed-methods study drew on 1211 survey responses and 27 semi-structured interviews with criminologists at universities in the United Kingdom, United States, Canada, Australia, New Zealand, Ireland and South Africa. The majority (64%) of survey participants made at least one media appearance in either local or national radio, newspapers or television within the previous two years (2016-2018). Appearing at least once in the media was positively and significantly correlated with seniority in career stage with early-career academics making fewer media appearances than those who were more senior. There was also a correlation between gender and media appearances; female scholars remain under-represented both generally and in terms of the frequency of engagement. The authors attribute this disparity to systemic gender status inequities within and outside academia.

A significant attitudinal predictor of newsmaking criminology is the moral-political motivation to inform media audiences, dispel mythology about crime and justice and promote evidence-based policy reform. However, engagement with the media also arises in response to the imperatives of academic capitalism, audit culture and the 'entrepreneurial university'. The desire to elevate an institution's profile was a significant motivating factor, more so in the United States than elsewhere, while occupational pressures and incentives were mentioned by several Australian and UK interviewees. The multiple and often converse or competing logics and imperatives that underpin engagement by criminologists with the media require further discussion.

[Read the full article here.](#)

[Back to top ^](#)

Jobs and opportunities

Job Executive Director, NSW Bureau of Crime Statistics and Research

Established in 1969, the Bureau of Crime Statistics and Research (BOCSAR) is a statistical and research agency responsible for the collation and analysis of crime data within NSW. The Executive Director is responsible for providing executive leadership to the BOCSAR team, ensuring they remain at the forefront of crime research and statistics within NSW. The main focus areas of the role include:

- providing authoritative advice and information on trends in crime and criminal justice to the Deputy Secretary, Secretary, Attorney General and

- other relevant Government stakeholders
- fostering public understanding of crime and criminal justice by disseminating reliable and timely information about trends in crime and criminal justice
- developing and evaluate policies and programs designed to improve public confidence in the criminal justice system
- promoting the Bureau as a transparent provider of accurate, timely and objective information and analysis
- managing the Bureau's finances, ensuring budgets are achieved and resources are effectively allocated.

Applications close **2 February 2020**. [For more information and to apply, visit the 'I work for NSW' website here.](#)

Job Diana Unwin Chair of Restorative Justice, Victoria University of Wellington, New Zealand

The Diana Unwin Chair in Restorative Justice in the Wellington School of Business and Government serves as the focus for collaborative, interdisciplinary research and teaching on restorative justice theory and practice, both within the justice sector and beyond. Applications are invited for the position of Chair, the Professor of Restorative Justice, to provide academic and professional leadership to a team of researchers and practitioners, and facilitate collaborative engagement between public sector agencies and civil society organisations on restorative justice issues.

Candidates are expected to hold a PhD in a relevant discipline and to have an established track record in research, teaching, postgraduate supervision and public engagement. Active involvement with the restorative justice practitioner community, locally and/or internationally, is also important. Experience in engaging with the wider policy environment or a strong interest in doing so in the future through the work of the Chair is also essential.

The position will become available in mid-2020 when the inaugural holder, Professor Chris Marshall, retires. **Applications close on 14 February 2020.** [Read the role description](#) and [visit the website here for further information](#).

Course Postgraduate Certificate Program in art crime and cultural heritage protection

29 May – 14 August 2020, Umbria, Italy

The [Association for Research into Crimes against Art](#) (ARCA) is a research and outreach organisation that works to promote the study and research of art crime and cultural heritage protection.

Applications are now being accepted to its 2020 postgraduate certificate program in the study of art crime and cultural heritage protection, which will be held from 29 May to 14 August in the heart of Umbria in Amelia, Italy. In its 12th year, this academically-challenging, eleven course postgraduate professional development program will provide in-depth instruction in important theoretical and practical elements related to art and heritage crime. By examining art crime's interconnected world, participants will experience an integrated curriculum in a

participatory setting. The program's courses will include comprehensive, multidisciplinary lectures, classroom-based discussions and presentations, and field classes that serve as the backdrop for exploring art crime, its nature, and its impact. Each course associated with the 2020 program has been selected to underscore the value of, and necessity for, a longitudinal multidisciplinary approach to the study of this type of criminal behaviour, as well as its trends and motivating factors. Designed to expose participants to an integrated curriculum in a highly interactive, participatory, student-centred setting, the ARCA professional development program utilises instructional modules that include both classroom and in situ field lectures as well as 'hands-on' learning from case studies, organised research, and group participatory assignments and discussions. At the conclusion of the program, participants will have a solid mastery of a broad array of concepts pertaining to provenance, art market due diligence, illicit trafficking, cultural property protection, and cultural security.

The general application deadline is **15 February 2020**, with a late application deadline, subject to availability, of 15 March 2020. As spaces on the program are limited, candidates are strongly advised to submit their application materials as soon as possible. Completed application files are reviewed on a rolling basis until census is achieved, after which candidates will be placed on the waiting list. The full prospectus and application materials may be obtained by emailing education@artcrimeresearch.org. **[For more information visit the ARCA website here.](#)**

Nominations Asian Criminological Society 2020 Distinguished Book Award

The Asian Criminological Society (ACS) is accepting nominations for the 2020 ACS Distinguished Book Award until **29 February 2020**. The Committee comprises ACS President Setsuo Miyazawa, Committee Chair Peter Grabosky and Aki Roberts.

Books on crime and criminal justice in Asia published in English in the calendar year of 2019 are eligible for nomination. In addition to single-authored books, co-authored books are eligible, but collected works are not.

Nominations, including self-nominations, must be submitted to the Committee Chair at Peter.Grabosky@anu.edu.au or PO Box 9054, Deakin, ACT, 2600. Nominators are required to ask the publisher or the author of the nominated book to send a review copy to each committee member by 29 February 2020.

Up to two Awards and up to two Honorary Mentions will be announced by 15 July 2020. An award ceremony will be held during the 2020 annual meeting of the ACS during the [Asian Criminological Society Conference](#) on 2-5 October 2020 in Kyoto, Japan. The ACS regrets that it is unable to provide travel grants.

Membership Centre for Rural Criminology: Research Associates

The Centre for Rural Criminology was established in 2019 at the University of New England and brings together interdisciplinary scholars, higher degree research students, practitioners, organisations and communities to support collaborative national and international multi-disciplinary research. The Centre

aims to lead research into social problems affecting rural communities, inform progressive policies related to rural crime and produce valuable information that can enhance the health and well-being of rural communities.

The Centre is now inviting interested researchers to become Research Associates. This is not a paid appointment; however, the Centre provides a number of important benefits to associates, including:

- affiliation to a quality research environment to support funding and Fellowship applications
- opportunities for collaboration on joint research, grant applications and workshops
- access to up-to-date information about events relevant to the study of rural crime and society.

Those interested in becoming a Research Associate can email their details (name, position title and affiliation) as well as a brief description of how your research aligns with the Centre to the Secretary, Jenny Wise at rucrim@une.edu.au. [For more information visit the website here.](#)

[Back to top ^](#)

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[Back to top ^](#)



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