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Queensland’s Anti-Association laws and Organised Crime

Dealing with organised crime presents a difficult task for law enforcement agencies. Laws in Queensland such as the *Criminal Organisations Act 2009* (Qld) have been enacted to dismantle the gangs. These laws rely on making it a crime for members of these gangs to associate with each other, rather than charging members with specific criminal offences. They also raise issues with regard to the fairness of legal procedures and the right of the accused to be able to question evidence brought against them. Where people are punished for membership of a group, rather than for a criminal offence, this discriminates against group members, and damages the presumption of innocence.

Legislation, Case and Summary Sheet


Media Articles

Freedom of the Press and Media Regulation

Freedom of the press is an essential element of the rule of law. Independent, rigorous evidence based journalism can promote issues in society that require action from government or support from the public. The phone hacking scandal which has gripped the United Kingdom over the last few years has had raised this as a topic of discussion in Australia.

The issue of media regulation is an ongoing topic of discussion despite the Government's proposed media laws being withdrawn in March 2013.

Reports


Media Articles


Journalist Shield Laws: protecting journalists sources

The public interest is at the centre of the work of journalists. They often provide an extra level of scrutiny which ensures that government and individuals follow the law.

Sometimes when covering particularly controversial or sensitive stories journalists receive information from sources. In several recent legal cases journalists have been called to reveal the identity of their source or face charge for contempt of court. Their code of ethics emphasises the importance of protecting the identity of sources under all circumstances.

Shield laws exist to protect journalists from prosecution except under rare circumstances. Nevertheless, many journalists feel the current laws are uncertain and do not go far enough to protect them and their sources. The public interest test used by judges can be interpreted in many different ways. At the moment the ‘public interest’ test operates in Federal law to decide whether a court will ask a journalist to disclose their sources.

Legislation


Media Articles


Mandatory Sentencing in Queensland

The Law Council of Australia’s Policy Statement on Rule of Law Principles says the following with regard to mandatory sentencing:

‘In criminal matters judges should not be required to impose mandatory minimum sentences. Such a requirement interferes with the ability of the judiciary to determine a just penalty which fits the individual circumstances of the offender and the crime.’

Parliaments pass laws for minimum mandatory sentences which take independence away from the judiciary often because they wish to respond to public expectations of punishment for certain crimes. This removes an essential aspect of the work of judges in deciding an appropriate sentence based on precedent and the particular circumstances of the case.

Legislation


Media Articles


Legal Aid and Self-Represented Litigants in Australia

The funding of legal aid and community legal centres is an area of debate about the amount of government funding that should be available for legal representation. Recently, State governments around Australia have cut funding to Legal Aid and Community Legal Centres. This limits access to legal advice and representation for many groups in Australian society.

There has also been a considerable amount of debate recently about the links between Legal Aid funding and discussion about self-represented litigants (SRLs) in the Family Court. Self-represented litigants are defined as people who are active in court or tribunal proceedings on their own behalf.

Deputy Chief Justice Faulks of the Family Court of Australia highlights the rise in SRLs, with SRLs involved in 27% of cases in the Family Court. The reasons for this are complex, but a lack of affordable legal representation, and limitations on the availability of Legal Aid are key factors in people being self-represented in court.

There have been indications that government will conduct a review of the system of Legal Aid in Australia toward the end of 2013. Ideally this review will examine what can be done to improve the system of Legal Aid and more broadly examine the issues surrounding barriers of cost that may limit procedural fairness and access to justice in an adversarial legal system.

Speech


Conference paper


Media Articles


- Community Law Australia, ‘Unaffordable and out of reach, the problem of access to the Australian legal system’, July 2012 - http://bit.ly/YcSTnS
Regulation of Sport and the Use of Coercive Powers

The release of a report into widespread drug use and doping in Australian sport has raised the issue of the use of coercive powers by regulatory agencies in Australia. Following the release of the report the government proposed a law to grant the Australian Sports Anti-Doping Authority (ASADA) wide ranging powers to question athletes suspected of doping with heavy fines if they do not answer questions or provide documents when required.

Reports and Digests


Media Articles


Free speech and Offensive Behaviour

There is no express right to freedom of speech in Australia. High Court decisions in the past have found an implied right to freedom of political communication, but have not gone further in protecting free speech. This year two cases involving freedom of speech or the implied freedom of political communication have been decided by the High Court.

Cases


Media Articles

- Dr Manhattan, 'Monis v The Queen; Droudis v The Queen [2013] HCA 4: offensive post is not protected speech, quis custodiet ipsos custodies, 28/2/13 - http://bit.ly/13KYjHg
Influence of Technology on the Law and the use of social media and the courts

To ensure fairness within the legal system, careful attention must be paid to technological developments which impact on the way courts operate. Across Australia there are many cases where the use of social media has raised concerns, especially with regard to prejudice against an accused, and a variety of perspectives on the position courts should take on the reporting of proceedings on social media websites. The presumption of innocence is essential to ensure the fair prosecution of accused people. How should freedom of speech and the press be balanced with the rights of those involved in criminal trials?

Legislation and Reports

- Court Security Act 2005 (NSW) Section 9 (amendments passed but not yet on force) link is to text of s9 on RoLIA's website - [http://bit.ly/1231N6W](http://bit.ly/1231N6W)

Media Articles

**Use of Social Media in Court Proceedings**


**Effect on Jury Trials**

Coercive powers and the Australian Crime Commission

A recent High Court case X7 v Australian Crime Commission [2013] HCA 29 challenged the powers of the Australian Crime Commission (ACC). The High Court recently restricted the ACC’s powers in this regard, finding in a majority judgment that the ACC could not compulsorily examine someone with regard to a subject on which they were yet to stand trial. The ACC have the powers to compel people to answer their questions and/or produce documents or face the potential of imprisonment. The majority of the High Court found that it was fundamental to our justice system that guilt or innocence for crimes is determined in courts and that by compelling an accused to answer questions regarding their charges prior to their trial was an erosion of the right to silence and the privilege against self-incrimination.

Legislation


Cases


Media Articles


Racial Discrimination and Human Rights in Australia

It is a key aspect of the rule of law that all people have equal access to rights according to the law, and that the law is the only way a person can be punished or have their rights taken from them.

In the case Maloney v the Queen [2013] HCA 28 the High Court made a decision about whether the law regulating the possession of alcohol on Palm Island, in Far-North Queensland, discriminates against the Indigenous community who live there. The High Court had to decide whether a regulation of the Liquor Act 1992 (Q) in Queensland was in conflict with the Racial Discrimination Act 1975 (Cth).

Racial discrimination is a legal term defined in international law by the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”) 1969 and in Australian law by the Racial Discrimination Act 1975 (Cth) (RDA). Racial discrimination is a specific legal term which is defined in the RDA. This means that the RDA (Statute Law) and decisions in cases such as Maloney v the Queen (Common law) define what racial discrimination is.

The High Court found that the regulation did not conflict with the RDA or ICERD as the alcohol restrictions on Palm Island were considered by the court to be special measures that allowed for the equal enjoyment, human rights and fundamental freedoms of the residents of Palm Island. See our booklet (linked below) for a detailed examination of this case.

Legislation


Case

Maloney v the Queen [2013] HCA 28 http://bit.ly/1bK0Bf6

Media Article

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