Life without parole in Australia: Current Practices, Juvenile Sentences and Retrospective Sentencing Reform

Chapter · November 2016

CITATION
1

READS
830

1 author:

Kate Fitz-Gibbon
Monash University (Australia)
72 PUBLICATIONS **282** CITATIONS

SEE PROFILE

Part II

Life without Parole around the World

3

Life without Parole in Australia: Current Practices, Juvenile and Retrospective Sentencing

KATE FITZ-GIBBON

I. INTRODUCTION

THE IMPOSITION OF a life sentence raises significant human rights issues that in recent years have animated scholarly, political and community debate. This debate has largely centred on whether the use of life sentences, and in particular terms of life without parole (LWOP), are in breach of international human rights standards which expressly ban inhuman or degrading treatment or punishment, and promote proportionality in sentencing. For this reason, the European Court of Human Rights (ECtHR) has often dealt with issues arising from the imposition and implementation of the life sentence (for example, *Hussain v United Kingdom* 1996; *Stafford v United Kingdom* 2002), particularly in relation to delays in parole reviews and mechanisms for recall (Easton and Piper 2012; Stone 2008). This body of case law has largely focused on adherence to, and potential breaches of various articles contained in the European Convention on Human Rights (ECHR), including Article 3 'Prohibition of torture', Article 5 'Right to liberty and security', Article 7 'No punishment without law' and Article 14 'Prohibition of discrimination'. In cases involving a juvenile offender the imposition of a life sentence raises additional and important concerns relating to the UN Convention on the Rights of the Child.

The 2013 judgment of the ECtHR's Grand Chamber in *Vinter and Others v United Kingdom* (2013) bought to the fore debates surrounding the viability of terms of LWOP. In *Vinter* the Grand Chamber ruled that all persons sentenced to life imprisonment have a right to both the prospect of release as well as a review of sentence, and that failure to provide both of these rights breaches international standards against inhuman or degrading treatment or punishment, namely the Article 3 right not to be tortured

or subject to inhuman or degrading treatment.[1] The *Vinter* case provides an important opening for debate surrounding the viability of LWOP in the Australian context.

Despite the rising level of debate in Europe, life imprisonment has been the subject of very little political scrutiny or legal scholarship in Australia (with the exception of Anderson 1999; 2006; 2012). Terms of life imprisonment have been implemented (and in some cases mandated) in Australia since the abolition of capital punishment (Potas 1989) and in recent decades have been extended beyond homicide offences to apply to non-fatal offences (for example, rape) and non-violent offences (for example, drug trafficking). In the two years since the ECtHR's judgment in *Vinter*, Australian courts have continued to impose LWOP sentences with little acknowledgement of international debate surrounding the viability of such terms of imprisonment. While this may be expected given the distance between Europe and Australia, it does illustrate that, at a time when support for this punishment is dwindling in other Western jurisdictions, it continues to be imposed with little debate across Australian state and territory jurisdictions.

This chapter provides a timely opportunity for Australia to join the international debate on life sentencing. In examining LWOP in Australia with a focus on human rights, it contributes to a broader body of research that has critiqued the imposition of life sentences from a principled, fair labelling and proportionality perspective (see Appleton and Grøver 2007; Anderson 2012; van Zyl Smit 1999; van Zyl Smit and Ashworth 2004). This chapter is structured in four sections. Section I looks at the practice of life imprisonment in Australia and section II examines the availability of LWOP as a sentence across the Australian state and territory jurisdictions. The second half of the chapter focuses on two specific issues—the imposition of LWOP in cases involving a juvenile offender (section III) and mechanisms of release for life sentence prisoners (section IV). Key case examples are provided throughout to illustrate the operation of current laws governing life imprisonment in Australia. The chapter concludes that the imposition of life sentences should be reviewed and the relevant law reformed to better align Australian state and territory domestic laws with international human rights standards.

II. LIFE IMPRISONMENT IN AUSTRALIA

Australia has six states, two territory and one federal criminal justice systems; each with their own sentencing legislation. Each state and territory jurisdiction adopts a different approach to which offences attract a

[1] For further discussion of *Vinter*, see Bild (2015); van Zyl Smit, Weatherby and Creighton (2014).

life sentence, whether such a sentence can be imposed upon juvenile as well as adult offenders, and whether life imprisonment is mandatory, presumptive or discretionary for serious offences. Consequently, an analysis of life imprisonment in Australia is complicated as there is no uniform national approach. Nor is there, as yet, any national agreement as to how or why a sentence of life imprisonment should be applied, in what circumstance and with what opportunities for release. As John Anderson (2012: 748) argues, 'variances [in legislation] highlight ambiguities and uncertainties that stymie any principle application and operation of the sentence' across Australia.

As of 30 June 2013, 5 per cent (1,090 persons) of the sentenced prisoner population in Australia was serving a term of life imprisonment or other indeterminate sentence (Australian Bureau of Statistics 2013). Research suggests that the majority are serving a life sentence following a conviction for murder (Anderson 2012; Potas 1989). This is somewhat unsurprising given that for the offence of murder all Australian state and territory jurisdictions prescribe a maximum penalty of life imprisonment. However, the extent to which this is imposed varies across the jurisdictions. In Victoria and Tasmania, life imprisonment is the maximum penalty, which can be applied on a discretionary basis with due consideration given to the individual circumstances of the offender and the offence.[2] In Queensland, South Australia (SA) and the Northern Territory (NT) murder attracts a mandatory life sentence regardless of the nature and circumstances of the offence or the offender.[3] In New South Wales (NSW), where most offences of murder attract a discretionary life sentence, in a case where the victim is a police officer the offence attracts a mandatory life sentence.[4] This variance in approaches to sentencing for murder means that the number of persons serving a life term for a homicide offence varies considerably across Australian state and territory jurisdictions, as illustrated in Table 3.1.

To examine in detail one jurisdiction, between 1990 and 2003 this approach to sentencing for murder resulted in sentences for life being imposed on 51 convicted murderers (Public Defenders Office of NSW 2014).[5] Details of these cases and the homicide offenders sentenced to life are presented in Table 3.2.

Beyond the offence of murder, while comparable international jurisdictions largely confine the term of life imprisonment to homicide offences, in Australia other offences also attract a discretionary maximum term of life

[2] Murder (Crimes) Act 1958 (Vic); Murder (Criminal Code) 1924 (Tas).

[3] Criminal Code 1899, section 305 (Qld); Criminal Law Consolidation Act 1935, section 11 (SA); Criminal Code 1983 sections 157(1)–(2) (NT).

[4] Crimes Amendment (Murder of Police Officers) Act 2011 (NSW).

[5] This includes one case where the offender (originally sentenced to life imprisonment with a non-parole period of 25 years) has since been acquitted after spending over eight years in a maximum-security jail. See *R v Tiwary* (2006); *Tiwary v R* (2008); *R v Tiwary* (2009); *Tiwary v R* (2012).

Table 3.1: Percentage of Prisoners with a Most Serious Offence of Homicide Serving an Indeterminate Sentence per State or Territory Jurisdiction as at 30 June 2013

Jurisdiction	Percentage of Homicide Prisoner Population Serving an Indeterminate Sentence
Australian Capital Territory	50
New South Wales	Less than 10
Northern Territory	Less than 10
Queensland	63
South Australia	Not reported
Tasmania	20
Victoria	Less than 10
Western Australia	72
National average	28

Source: Australian Bureau of Statistics (2013).

imprisonment, including incitement to murder (Victoria),[6] trafficking in not less than a large commercial quantity of a drug of dependence (Victoria),[7] accessory after the fact to murder (Queensland),[8] sexual intercourse without consent (SA, Queensland, NT),[9] serious heroin or cocaine trafficking offences (NSW)[10] and aggravated sexual assault in company (NSW).[11]

Beyond these offences, at a time when international jurisdictions (particularly across Europe) are seeking to eradicate or at least minimise the use of life imprisonment, several Australian jurisdictions have sought to expand the range of offences for which a life sentence can be imposed. For example, in Queensland in July 2012 the state government introduced the Criminal Law (two strikes child sex offenders) Amendment Act 2012 (Qld), which provides that an adult convicted of a serious child sex offence,[12] who has previously been convicted (while an adult) of another serious child offence must be sentenced to a mandatory term of life imprisonment.[13]

[6] Crimes Act 1958, section 3211(1)(ba)(i) (Vic).
[7] Drugs, Poisons and Controlled Substances Act 1981, section 71(a) (Vic).
[8] Criminal Code 1899, section 307 (Qld).
[9] Criminal Code 1899, section 349(1) (Qld); Criminal Law Consolidation Act 1935, section 48(1) (SA); Criminal Code, section 192(3) (NT).
[10] Drug Misuse and Trafficking Act, 1986 (NSW).
[11] Crimes Act 1900, section 61JA (NSW).
[12] The legislation defines 'serious child sex offence' as rape, incest, maintaining a sexual relationship with a child and sodomy.
[13] The legislation states that the offender is not eligible to apply for parole until they have served 20 years.

Table 3.2: Characteristics for Life Sentenced Murder Offenders in NSW, November 1990–October 2013

Age range	19–69 years old
Gender	Male (n = 49) Female (n = 2)[a]
Number of offenders with no prior convictions (pre-murder conviction)	11[b]
Number of offenders sentenced to life for a single count of murder	18
Means of case resolution[c]	Guilty plea (n = 16) Verdict (n = 35)
Defence appeal against sentence allowed[d] Crown appeal against sentence allowed	2 cases[e] 3 cases[f]
Defence appeal against sentence dismissed Crown appeal against sentence dismissed	15 cases[g] 1 case

Source: Public Defenders Office of NSW (2014).

[a] See R v Knight (2001); R v BW & SW (No 3) (2009).

[b] In five cases the prior record of the offender was not stated.

[c] In one case—R v Leonard (1997)—the offender entered a plea of guilty to one count of murder and was subsequently convicted after trial of a second count of murder. This case is therefore counted in both categories for the purpose of these two categories.

[d] In NSW both the defence and the prosecution have the right to appeal against the sentence imposed. The role of the appellate courts in sentencing appeals is to consider evidence of legal error but not to apply their own discretion to impose a different sentence where a legal error has not occurred. As noted by Freiberg (2010: 206) 'their role is not to substitute their discretion for that of the sentencing judge'.

[e] In these two cases the defence successfully appealed the original sentence imposed and the life sentence originally imposed was overturned in favour of a determinate sentence.

[f] In each of these three cases the offender was originally sentenced to a determinate sentence, however, following the Crown's successful appeal against the manifest inadequacy of the sentence imposed, the offender was sentenced to life. See R v Harris (2000); R v Miles (2002); R v Hillsley (2006).

[g] In two of these cases the appeal was lodged against conviction, not the sentence.

At the Commonwealth level in November 2014, the Australian Government introduced new counter terrorism legislation that changed the maximum term of 10 to 15 years' imprisonment for certain offences to a life sentence (see the Counter Terrorism Legislation Amendment (Foreign Fighters) Act 2014). These reforms were rushed through Parliament with limited scrutiny or consultation, on the justification of ensuring national security (Zifcak 2014).

While this chapter does not seek to examine the specific merits of the recent reforms introduced in Queensland or at a Commonwealth level, it does raise the question of the appropriateness or efficacy of an increasing

reliance on life imprisonment in Australia. This can be dangerous in terms of mission creep, as cautioned by English legal scholar Andrew Ashworth (2002: 2):

> We should remain aware of the danger that 'extraordinary' powers which are supported as necessary for 'the fight against terrorism' may come to be normalised by being applied progressively to other forms of serious crime.

From a critical perspective these recent reforms provide further justification for a reconsideration of how widely Australia should be willing to allow life sentencing to apply. As argued by Anderson (2012: 749), when life sentences are introduced for political 'law and order' purposes, too often 'fundamental criminal justice principles, such as proportionality, equality and human dignity, are relegated or trumped in the political quest for electoral popularity'.

Dissatisfaction with the current implementation of life sentencing legislation is evident at a state level, where members of the Supreme Court judiciary have criticised such terms. For example, in *R v Petroff* (1991, as cited in Anderson 2012: 758–59) Hunt J stated:

> Such a sentence deprives a prisoner of any fixed goal to aim for, it robs him of any incentive and it is personally destructive of his morale. The life sentence imposes intolerable burdens upon most prisoners because of their incarceration for an indeterminate period, and the result of that imposition has been an increased difficulty in their management by the prison authorities.

As is captured in this judicial excerpt, the viability of life sentences is particularly open to challenge where there is no opportunity provided for release or review. Such sentences can be challenged, not least because they deny the offender hope of release while simultaneously removing the possibility of rehabilitation and offering no finality to the punishment.

III. LIFE WITHOUT PAROLE IN AUSTRALIA

Most state and territory jurisdictions in Australia permit a sentence of LWOP to be imposed. Data revealing the number of prisoners currently serving life sentences without parole across Australia is difficult to access, however, various estimates have been made in recent research. For example:

— As of 2012 in Victoria, there were 12 prisoners currently serving LWOP (Robinson 2013).
— As of 2012, Tasmania had only imposed a LWOP sentence on one individual; the Port Arthur gunman, Martin Bryant (Anderson 2012).
— Between 1990 and 2006, approximately 30 persons were sentenced to LWOP in NSW (Anderson 2006).

In line with sentencing principles in other comparable jurisdictions, sentences of LWOP are imposed across Australia with the understanding that, given the gravity of the offence, there is a need to prioritise denunciation, just punishment and community protection. In this respect, terms of life imprisonment have come to be associated with the 'worst of the worst': criminals who have been convicted of the most heinous crimes by community standards, such as mass murder, the killing of a child or the killing of a public figure.

The erosion of an individual's human rights when that person has committed a serious offence has been extensively documented through the work of Andrew Ashworth (2002, 2006), as has the curtailment of the presumption of innocence and the right to a fair trial for persons accused of terrorism, serious violence and drug offences. Explanations for sentences of LWOP are typically underpinned by the same justification—that the severity of the offence committed legitimises the breach of the individual offender's human right to be free of inhuman or degrading treatment. Ashworth (2002: 1) has described this as the tension between 'the promotion of human rights and the struggle against serious crime'.

Within this punishment discourse the role and importance of the offender's rehabilitation is largely ignored despite Australia ratifying the International Covenant on Civil and Political Rights (ICCPR), which, in Article 10(3), expressly provides that the essential aim of prison should be to provide prisoners with treatment aimed at their reformation and reintegration. While it is well established in sentencing research that the principles of punishment and deterrence are likely to emerge most strongly in cases of fatal violence, public opinion research conducted in the United Kingdom by Barry Mitchell and Julian Roberts (2012) revealed that, even in murder cases, there was some public support for rehabilitation to be considered as the most important principle in sentencing. To provide a sentence that allows for no meaningful possibility of future release is to disregard all aims of rehabilitation and reintegration, and to breach Australian obligations under the Covenant.

In December 2014, the Australian High Court dismissed an application for appeal of a LWOP sentence imposed on convicted murderer Phuong Ngo. Ngo was convicted in 2001 for ordering the assassination of a political rival, Labour Party MP John Newman. In the original sentencing, the NSW Supreme Court imposed a sentence of LWOP, stating that only a life sentence without the possibility of parole would meet the 'community's interest in retribution, punishment, community protection and deterrence' (*R v Ngo* 2001: para 26, per Dunford J). In making this judgment the court cited an earlier decision, *R v Kalajzich* (1999), where Chief Justice Hunt stated:

> The maximum penalty of penal servitude for life, meaning for the term of the prisoner's natural life … is reserved for cases falling within the worst category

> of cases, but it is not reserved only for those cases where the prisoner is likely to remain a continuing danger to society for the rest of his life or for those cases where there is no chance of rehabilitation; the maximum may be appropriate where the level of culpability is so extreme that the community interest in retribution and punishment can only be met by such a punishment. (Cited in *R v Ngo* 2001: para 27.)[14]

While citing this judgment, the judge in *Ngo* (2001: para 43) also stated that he believed the sentence and the possibility of Ngo's release should be open to future review, albeit following a 'very long' period of detention. The case was subsequently of concern to human rights advocates in Australia who argued:

> As Australians, we claim the moral high ground about our record on human rights. Yet when it comes to sentencing laws, NSW is now seriously out of step with the international community and its human rights initiatives. When the NSW Supreme Court sentences an offender to life without parole or the possibility of review, then arguably there has been a breach of Article 7 of the International Covenant on Civil and Political Rights … (Anderson, Wardhaugh and Matas 2013: 11)

Mirroring Article 3 of the ECHR, Article 7 of the ICCPR provides that 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. To date, however, such concerns have proved fruitless and the *Ngo* case provides an example of the prioritisation of public sentiment and the community interest in retribution taking precedence over the individual rights of the offender.

Beyond NSW, and in the short time since the decision in *Vinter*, the Victorian Supreme Court has handed down terms of LWOP in at least two cases, with no debate arising over the possible breach of human rights (see *DPP v Hunter* 2013; *The Queen v Leslie Camilleri* 2013). While it is not the purpose of this chapter to debate the merits of the sentences imposed in these individual cases, it is interesting to note that, while the ECtHR has engaged in a debate on the extent to which LWOP sentences comply with modern human rights principles, the Victorian courts are yet to fully engage with the viability of such sentences from a rights-based standpoint.

IV. LIFE SENTENCES FOR JUVENILE OFFENDERS

Under current Australian state and territory legislation the imposition of LWOP sentences on juvenile offenders (under 17 years of age) is permitted

[14] In explaining which cases would be likely to attract a sentence of life without parole Dunford J cited 'killings which were sex related, thrill killings, killing involving extended suffering by the victim or extraordinary violence, multiple killings or cases where the prisoner is a continuing danger to the community' (*R v Ngo* 2001: para 28).

(O'Brien and Fitz-Gibbon 2016). For example, in NSW, section 61 of the Crimes (Sentencing Procedure) Act 1999 (NSW) states the circumstances in which an offender should be sentenced to life imprisonment for murder and does not provide 'a less or more stringent criterion dependent on age' (*R v Kanaan* 2001: para 51, per James J). Given this, the maximum penalty of life imprisonment—with or without a non-parole period imposed—is available in cases involving a young person and can be applied at the discretion of the judge.

In SA life imprisonment remains the mandatory sentence for murder, regardless of the age of the offender (Young Offenders Act 1993 (SA) section 29(4)). While homicide perpetrated by a child is a rare event (Chan and Payne 2013; Virueda and Payne 2010), as a result of this mandatory sentence, there are several examples in SA of children serving life sentences (see for example *R v A, D* 2011; *R v B, TB; R v J-M, AM* 2013). In some ways this punitive approach to maximum sentencing for child homicide offenders has been mitigated in SA by the scope permitted in setting the non-parole period—while adult offenders attract a mandatory minimum term of 20 years imprisonment, there is some discretion, if 'special reasons' exist, for a judge to impose a shorter non-parole period (Criminal Law (Sentencing) Act 1998, section 32A(2)(b)). While the Act does not list age as a 'special reason' to depart from the mandatory 20-year non-parole term,[15] this section of the legislation has been utilised by judges in this jurisdiction to justify the imposition of a significantly shorter non-parole period in cases of children convicted of murder. For example, in *R v A, D* the SA Supreme Court of Criminal Appeal upheld the term of life imprisonment with a non-parole period of six years imposed on a child who was 14 years old at the time of the offence (*R v A, D* 2011).

Beyond SA, in Queensland and NT life imprisonment for juvenile offenders is available to judges at their discretion and can be imposed with or without a non-parole period (Youth Justice Act 1992 (Qld), part 7(3)(b)(i)–(ii); Youth Justice Act 2014 (NT), section 82). Given the increasingly punitive approach to youth justice in Queensland (Hutchinson 2015; O'Leary 2014), the availability of LWOP for young offenders is highly concerning and illustrates the prioritisation of punishment and community protection over the welfare of the child and the sentencing principle of rehabilitation.

Beyond the individual states and territories, at a Commonwealth level, terms of federal life imprisonment can also be imposed upon a juvenile offender. Troublingly, in cases where the court is satisfied that 'the nature and circumstances of the offence or offences concerned' and the 'antecedents of the person' require it, a term of LWOP can be imposed (Crimes Act 1914, section 19AB(3)).

[15] See Criminal Law (Sentencing) Act 1998, section 32A(3) for a list of the special reasons.

From a human rights perspective, Australia is clearly out of step with international standards (O'Brien and Fitz-Gibbon 2016). As argued by Agyepong (2010: 84) in her examination of juvenile life without parole (JLWOP) in the United States:

> If the Court had used customary international law and international treaties like the Convention of the Rights of the Child (CRC), the Committee on the Elimination of Racial Discrimination (CERD), the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (Convention against Torture), and the International Covenant on Civil and Political Rights (ICCPR) to evaluate juvenile LWOP, it would have reached the decision that LWOP sentences for all children are unconstitutional.

Australia has ratified each of these international standards and treaties, including the Convention on the Rights of the Child, which states that

> No child shall be subjected to torture or other cruel, inhuman, or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility or release shall be imposed for offences committed by persons below eighteen years of age. (Article 37 para a)

In this respect, and to borrow from Ashworth's (2002: 82) examination of the integrity principle, Australia's continued legislation of JLWOP undermines its claim to uphold human rights. The integrity principle includes that

> A system which proclaims its adherence to the human rights standards in the European Convention must not contain any rules, whether introduced by statute or judicial decision, which are not consistent with the protection of one of the human rights declared. This is an aspect of the integrity principle—that states cannot claim to respect human rights if they have laws that are incompatible with those rights.

By adopting this principle, the very existence of the legislation permitting JLWOP undermines Australia's commitment to human rights, regardless of the extent of its operation—namely the number of juvenile prisoners currently serving LWOP.

Australia stands apart from at least 135 countries worldwide that have 'expressly rejected' sentencing children to life imprisonment without parole (JLWOP) (Agyepong 2010; de la Vega and Leighton 2008). Of the jurisdictions that do permit terms of whole life imprisonment on children, the United States has the largest population of JLWOP prisoners. However, in the last 10 years, at least 10 American states have introduced legislation that either restricts or expressly bans the imposition of whole life sentences on juvenile offenders (Gottschalk 2012). At a federal level, the 2012 judgment of the United States Supreme Court in *Miller v Alabama* (2012) that held that mandatory sentences of LWOP were unconstitutional for juvenile offenders has further propelled the reduction of JLWOP sentencing in

that country. This movement towards abolishing JLWOP has bought the law closer in line with the views of academics who have criticised JLWOP sentencing practices in the United States in recent decades (for example, Agyepong 2010; Kennedy 2014; Kloepfer 2012; Mallett 2013; Massey 2006) and in Canada (see Carmichael and Burgos 2011; Ruddell and Gileno 2013). In stark contrast, legislation that permits JLWOP in the Australian context has received little academic critique or attention.

In October 2014, however, a finding of the United Nations Human Rights Committee (UNHRC) that the life sentences imposed on two Australian juvenile offenders were in breach of several human rights obligations provided a timely opportunity to reconsider the injustice of LWOP sentences for juvenile offenders in Australia (UNHCR 2014). This finding confirms a fact that has often been overlooked in research on JLWOP: in Australia two persons currently serving whole life sentences were sentenced as juveniles. Significantly, this finding contradicts a statement often found in research in this field that the United States is the only jurisdiction worldwide that has current serving JLWOP prisoners.

In September 1988 Bronson Blessington and Matthew Elliott, along with three other offenders,[16] opportunistically abducted 20-year-old Janine Balding from a train station at knifepoint, following which they sexually assaulted and drowned her. At the time of the offence Blessington and Elliott were 14 and 16 years old respectively and both were homeless.[17] Given the gravity of the offence, it was decided that, despite their youth, Blessington and Elliott should be tried as adults. Both children pleaded not guilty to murder but were convicted following trial and sentenced in the NSW Supreme Court to LWOP for abduction, rape and murder (*R v Jamieson, Elliott and Blessington* 1992). In imposing this sentence, and in recognising their 'extreme youth', Newman J stated:

> In the case of the two youths, Elliott and Blessington, I find this to be a difficult task, difficult because of their extreme youth, difficult in terms of the principles of law which I have to apply. To sentence prisoners so young to a long term of imprisonment is, of course, a heavy task. However, the facts surrounding the commission of these crimes are so barbaric that I believe I have no alternative … So grave is the nature of this case that I recommend that none of the prisoners in the matter should ever be released. (Cited in *R v Bronson Matthew Blessington* 2006: para 5)

[16] The three other offenders, two male and one female, were aged 22 years old (Stephen Wayne Jamieson), 15 years old (Wayne Lindsay Wilmot), and 15 years old (Carol Ann Arrow) at the time of the offence. Wilmot and Arrow were convicted of accessory to murder and sentenced to maximum terms of nine years and four months' imprisonment and three years' good behaviour bond (plus 19 months served) respectively.

[17] Additionally, psychiatric evidence presented at the trial revealed that Blessington was illiterate and suggested that he had the mental capacity of a 9-to-10 year old.

By 1999, following the introduction of the Crimes (Administration of Sentences) Act 1999 (NSW), the only opportunity that either offender had for release was if they were granted compassionate release, that is, if they were close to death or so physically incapacitated that they were no longer capable of committing a crime. In 2006 the NSW Criminal Court of Appeal stated that, given the legislative changes 'the Applicants [Blessington and Elliott] will almost certainly never be released' (*R v Matthew James Elliott and Bronson Matthew Blessington* 2006: 1). In over two decades since their original sentencing, Blessington and Elliott have submitted a number of appeals to the NSW Supreme Court of Appeal and the Australian High Court in an attempt to have their LWOP sentences overturned. Each of these attempts at the state level has been unsuccessful and in 2007 the appeal to the High Court of Australia, citing an administrative error, was also unsuccessful.[18]

The UNHRC (2014: 17) found that given the 1999 Act, the sentences imposed on both Elliot and Blessington provided no genuine chance of release and were thus in breach of the UN Covenant on Civil and Political Rights in that they violated their right against 'cruel, inhuman or degrading treatment'. The UNHRC finding recognised that the retrospective sentencing legislation imposed not only removed the hope of release but also denied both the opportunity to rehabilitate and to have that rehabilitation recognised through release at a later date. For a jurisdiction to allow the removal of hope of release for a child sentenced to life, regardless of the offence committed, is quite clearly out of step with human rights obligations and international sentencing practice. The UNHRC (2014: 18) finding directed Australia to review its approach to JLWOP nationally. It stated:

> The State Party is also under an obligation to take steps to prevent similar violations in the future. In this connection, the State Party should review its legislation to ensure its conformity with the requirements of article 7, read together with articles 10, paragraph 3 and 24 of the Covenant without delay, and allow the authors to benefit from the reviewed legislation.

The Australian government was given 180 days to respond to the findings of the UNHRC. Shortly after the UNHRC's finding, the NSW Attorney-General Brad Hazzard provided a comment in the media. Hazzard stated:

> The (UN) has failed to acknowledge the human rights of Janine Balding and those of the community who are entitled to protection. I don't see any sign that the Human Rights committee weighed up the barbaric end to her life at the hands of these individuals … Whilst I have considered the Human Rights Committee's views in regard to the offenders, I am very disturbed it failed to weigh up the destruction of the human rights of Janine Balding nor did it give much regard to

[18] See O'Brien and Fitz-Gibbon (2016) for further analysis of these decisions.

> the necessity to give a clear message of deterrence to others who might consider this complete disregard of human rights of other individuals in the community acceptable. (Cited in Fife-Yeomans 2014: 2)

While disappointing for human rights advocates this response is unsurprising when read in the context of what Ashworth (2002) has conceptualised as 'techniques of avoidance'—responses used by government bodies to justify circumventing human rights in the name of crime and justice policy. Ashworth (2002: 94–96) lists the tendency for government officials to justify a breach of an individual prisoner's rights on the basis of developing a response to serious crime and ensuring the protection of the rights of the community. Both of which are implicit in the NSW Attorney-General's response. While not as flippant, the Australian government's response set out the existing sentencing legislation and did not agree to address the whole life prison terms imposed on Blessington and Elliott (Australian Government 2015, Response to Communication No 1968/2010). The response noted that the two offenders, Blessington and Elliott, would have the single opportunity to apply to the Supreme Court for parole after 30 years imprisonment and if denied, also have the Royal Prerogative of mercy available to them.

The *Blessington and Elliott* case raises significant concerns that Australia is in breach of the UN Convention on the Rights of the Child—a breach which should not be overlooked on the basis that no Australian jurisdiction has sentenced a juvenile offender to LWOP since the sentencing of Blessington and Elliott. As long as legislation makes provision for such sentences there is the inherent danger that it will be utilised by the courts and that Australia's disregard for the human rights of child offenders will be further extended. This is an unjustifiable risk. As argued by de la Vega and Leighton (2008: 983) there is no justification for the availability and use of this sentence for juveniles:

> The LWOP sentence condemns a child to die in prison … Imposing such a punishment on a child contradicts our modern understanding that children have enormous potential for growth and maturity as they move from youth to adulthood, and the widely held belief in the possibility of a child's rehabilitation and redemption.

To disregard the rehabilitative potential of a juvenile offender is particularly concerning given the body of research that has dispelled the deterrent value of such sentences, as well as studies that question the level of public opinion and support for this approach (de la Vega and Leighton 2008; Kubiak and Allen 2011; Mitchell and Roberts 2013). Beyond deterrence and juvenile offenders specifically, there is also an emerging body of research that critiques the use of whole life sentences in any circumstances and equates such terms with the death penalty (see, for example, Berry 2015; Van Zyl Smit, Weatherby and Creighton 2014).

V. RELEASE FOR LIFE SENTENCE PRISONERS

While Australia has remained relatively silent on the imposition of life sentences, in various Australian jurisdictions the potential release of high-profile life sentence prisoners has engendered community concern, media debate and, in some cases, political response. Legislation and processes for determining eligibility for the release of life sentence prisoners differ across Australian state and territory jurisdictions, particularly where the offender is not granted a minimum non-parole period. For example, in NSW LWOP prisoners must serve their sentences for the remainder of their natural lives, subject to the exercise of the prerogative of mercy (as established in *R v Harris* 2000), while in NT, following the commencement of the Sentencing (Crime of Murder) and Parole Reform Act 2003,[19] persons sentenced to mandatory life for murder can apply for parole after serving 20 or 25 years. The range of approaches taken across Australia point to the need for a review of release procedures to determine national best practice and the implications of divergent approaches.

Of greatest concern here is the introduction of retrospective legislation that expressly provides that individuals who were originally sentenced to life with a non-parole period cannot be released due to their perceived 'dangerousness' and/or ongoing public sentiment. Examples of such legislation are the aforementioned 1999 NSW Act, which retrospectively removed the opportunity for review in the *Blessington and Elliott* case as well as a select group of other serious offenders, and the Victorian government's response to applications for parole made by life prisoner, Julian Knight.

In August 1987, 19-year-old Julian Knight embarked on a 45-minute massacre in Melbourne (Victoria) killing seven people and seriously wounding 19 others. At the time of the offence Knight had no prior criminal history and was described by the sentencing judge as 'a highly intelligent, educated young man' (*R v Knight* 1988: para 3, per Hampel J). Just prior to the offence, he had left the Royal Military College Duntroon where he had been an Army Cadet. He had enrolled at Duntroon in an attempt to follow in the footsteps of his adopted father, who had rejected him (Wadham 2014). Knight later claimed that he was 'ill-treated and dealt with unjustly' at the College (Wadham 2014). Knight pleaded guilty in 1988 to seven counts of murder and 46 counts of attempted murder. At the time, Victoria did not allow persons to be sentenced to LWOP and consequently Knight was sentenced to a maximum term of seven life sentences with a non-parole period of 27 years. In setting this non-parole period the sentencing judge

[19] Prior to the 2003 Act, persons sentenced for murder were given a mandatory life sentence without the possibility of parole.

stated his belief that, despite the heinous offences committed, Knight could be rehabilitated over time:

> Your prognosis is undoubtedly better than that of someone with brain damage because it appears that your condition is likely to improve as you mature over a period of years when you will cease to be a danger to the public. It was common ground among the doctors that in 20–25 years time the degree of change and therefore the degree of danger which you present can be assessed. In that sense it is thought that your prognosis is reasonable, particularly as you are bright and have a desire to better yourself. (*R v Knight* 1988: para 24, per Hampel J)

Knight's non-parole period expired in May 2014. However, in February 2014 the then Victorian Premier, Denis Napthine, introduced new legislation into Parliament that would ensure that Knight would never be eligible for release. The resulting Corrections Amendment (Parole) Bill 2014 (Vic) gained bipartisan support and was rushed through Parliament. Introducing the new legislation, Napthine stated:

> This is guaranteeing that he [Knight] remains in jail until he's dead, or so seriously incapacitated he's no risk to other people in Victoria or indeed the community. (Cited in Wadham 2014: 1)

In many ways the 2014 Victorian Act mirrors the legislation introduced in NSW to prevent Blessington and Elliott, along with a select group of other serious violent offenders,[20] from ever being released. It states that the Parole Board may only release Knight if it is determined that he:

(i) is in imminent danger of dying, or is seriously incapacitated, and as a result he no longer has the physical ability to do harm to any person; and
(ii) has demonstrated that he does not pose a risk to the community;
(iii) is further satisfied that, because of those circumstances, the making of the order is justified.

The narrow terms under which Knight could be released infringe the right not to be tortured or subject to inhuman or degrading treatment as they arguably allow neither the hope nor the legitimate possibility of release. While this chapter does not seek to evaluate the merits of Knight's application for release, it does emphasise the importance of providing the possibility of release for life sentence prisoners as well as the need to illuminate concerns surrounding retrospectively applied sentencing legislation. Importantly, providing the possibility of release for life-imprisoned persons should not be misconstrued as adopting a lenient approach, as

[20] Section 154A of the 1999 NSW Act was also challenged in the High Court by Kevin Crump (*Crump v New South Wales* 2012). See Fitz-Gibbon and O'Brien 2016 for further discussion of the *Crump* case.

argued by Ivan Potas (1989: 7), writing in the Australian context, over 20 years ago:

> Such demonstrable compassion should not be viewed as a sign of weakness but one of strength—a working symbol of a tolerant society which tempers justice with mercy and gives more than passing recognition to the cruelty and ultimate futility of imprisonment until death. It exemplifies a society which places a high premium on human life, including that of a condemned murderer, and accepts that over time, even the most violent offender may reform in character, attitude and behaviour.

Returning to the concept of mission creep, by blurring standards of acceptable practice, there is a concern that this legislation could be extended to wider life prisoner populations or that individualised legislation could become the norm. As Gans (2014: 1) states, if allowed, this legislation opens the door for 'a future Bayley bill, Farquharson bill, Freeman bill, Hudson ….'.[21]

Beyond the importance of hope, the introduction of retrospective sentencing legislation is also problematic where that legislation has been designed specifically to target a single life prisoner and introduces special measures not otherwise applicable in that jurisdiction for prisoners seeking release. That this legislation could be introduced in Victoria is particularly concerning given that it is one of only two Australian state or territory jurisdictions that has introduced human rights legislation.[22] The Charter of Human Rights and Responsibilities Act 2006 (Vic) was introduced to protect 20 rights for all Victorians, including the right to humane treatment when deprived of liberty (section 22). This section of the Act mirrors that contained in Article 3 of the ECHR, and yet the Victorian government's legislative response to Knight's eligibility for parole puts it in breach of not only its international obligations and standards, but also its own domestic law. It is worth noting that Clause 4 of the Corrections Amendment (Parole) Bill 2014 (Vic) states that the Charter of Human Rights and Responsibilities Act in Victoria does not apply to the 'Julian Knight' section of the Act.[23] Consequently, while the Charter provides that each new piece of law in Victoria must be checked against the Charter and requires a Statement of Compatibility to tell Parliament how it relates to human rights, because the Knight legislation provides that human rights do not apply to that specific legislation, a Statement of Compatibility was not needed for that Act—a move allowed in 'exceptional circumstances' where Parliament can override the human rights declaration.

[21] This refers to four high-profile male murderers sentenced to life imprisonment with a non-parole period in Victoria between 2010 and 2013: *The Queen v Bayley* (2013); *R v Farquharson* (2010); *R v Freeman* (2011).

[22] In 2004 the Australian Capital Territory introduced the Human Rights Act 2004 (ACT), which was amended in 2005 by the Human Rights Commission Legislation Amendment Act 2005 (ACT).

[23] Now enacted in Section 74AA of the Corrections Act 1986 (Vic).

Beyond the human rights perspective, from a practical standpoint the extent to which a judge in sentencing should be expected to predict the likely future threat of a serious violent offender reoffending is questionable in itself. The impossibility of determining at sentencing whether a person will be a danger to the community in 20, 30 or 40 years is succinctly captured by Mitchell and Roberts (2012: 124), who argue:

> … predicting whether Offender X will be a threat to society 25 years hence is a notoriously difficult decision to make. If it is hard to predict with any certainty that an offender admitted to custody in 2020 will still constitute a threat to society in 2040, how much harder is it to predict the prisoner's likely level of threat in 2090, after the prisoner has been confined for, say 70 years?

This becomes an even more difficult exercise in the cases of juvenile offenders who, by reason of their youth are still developing. As Mackenzie and Stobbs (2010: 133) argue:

> How is the court to assess, for example, the potential for a very young offender to rehabilitate in the context of cognitive and emotional development which is still somewhat embryonic?

Consequently, judges should not be expected to assess whether a juvenile offender is ever capable of sufficient rehabilitation.

Whether examined from a human rights, proportionality or justice perspective, it is evident that Australia requires a system of automatic review for life sentence prisoners. In introducing a system of review for LWOP prisoners, Australian jurisdictions could take direction from the judgment of the Grand Chamber in *Vinter*, which provided that, for life sentence prisoners, there must be

> a review which allows the domestic authorities to consider whether any changes in the life prisoners are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds. (Cited in van Zyl Smit, Weatherby and Creighton 2014: 71)

The judgment proceeded to recommend that a formal review should occur no later than 25 years after the imposition of the life sentence, and should be followed by a system of periodic review. In the wake of the Grand Chamber's judgment, van Zyl Smit, Weaterby and Creighton (2014: 77–79) proposed that a 'Vinter review' would allow for sentences imposed on life prisoners to be reviewed to determine if ongoing detention was justifiable, and that under this proposed system justification for the original life sentence imposed would also be reviewable at the later date.

Beyond *Vinter,* there are several other international approaches (both in practice and proposed) that could be adopted in Australia, including the Canadian approach to late term review. At present, offenders sentenced to life imprisonment for first-degree murder in Canada are first considered for

parole after 25 years (although there is proposed legislation currently under consideration that would extend this to 35 years; see Fine 2015). This system of review was introduced in 2011 following the repeal of the 'faint hope' clause (section 745.6 of the Criminal Code), which provided that life sentence prisoners could apply for a jury review of their parole eligibility after 15 years' imprisonment (see Roberts 2002; 2009 for further explanation of the Canadian review approach). While the viability of applying the proposed 'Vinter review' or either the current or previous Canadian approaches to the Australian context would need to be carefully considered, the very existence of current and proposed models provides a starting point for a reconsideration in Australia of mechanisms of review of release for life sentence prisoners.

VI. THE NEED FOR REVIEW AND REFORM

While at present there appears to be little political will or public momentum to abolish the sentencing option of LWOP in Australia, the 2013 *Vinter* decision of the ECtHR as well as ongoing political debate surrounding life sentences in the United States and Canada should encourage Australian state and territory jurisdictions to reconsider the viability of this sentencing option. The use of LWOP in cases involving children undoubtedly breaches numerous human rights standards and international obligations. The injustice of JLWOP has long been recognised throughout Europe and more recently in the United States. That Australia remains one of few jurisdictions to impose this indeterminate sentence on juveniles undermines the integrity of Australian criminal justice systems and their approach to youth justice.

The *Blessington and Elliott*, *Ngo* and *Knight* cases highlight key issues arising across Australian jurisdictions in the use of life imprisonment. While these are individual examples, the cases demonstrate the current punitive climate and the extent to which the human rights of life sentence prisoners continue to be disregarded in the formulation and implementation of Australian legislation on life imprisonment. While to date the nation's use of life imprisonment has received relatively little attention, this chapter demonstrates why attention must be paid and why review and reform is so urgently needed. A national review of LWOP sentencing in Australia should seek to implement two key reforms to remedy Australia's violation of international human right standards: first, the introduction of legislation that expressly bans a sentence of LWOP from being imposed on children, and secondly, the introduction of a review mechanism for all life sentence prisoners. Both reforms are necessary to bring Australia in line with international human rights standards and the European sentencing debate.

REFERENCES

Agyepong, T (2010) 'Children Left behind Bars: Sullivan, Graham, and Juvenile Life Without Parole Sentences' *Northwestern Journal of International Human Rights*, 9(1), 83–102.

Anderson, J (1999) 'From Marble to Mud: The Punishment of Life Imprisonment' Paper presented at the *History of Crime, Policing and Punishment Conference: Australian Institute of Criminology*, Canberra (Australia), 9–10 December.

—— (2006) ' "Indefinite, Inhumane, Inequitable"—The Principle of Equal Application of the Law and the Natural Life Sentence for Murder: A Reform Agenda' *UNSW Law Journal*, 29(3), 139–72.

—— (2012) 'The Label of Life Imprisonment in Australia: A Principled or Populist Approach to an Ultimate Sentence' *UNSW Law Journal*, 35(3), 747–78.

Anderson, J, Wardhaugh, F and Matas, D (2013) 'Parole … Eventually' *The Sydney Morning Herald*, 28 December.

Appleton, C and Grøver, B (2007) 'The Pros and Cons of Life without Parole' *British Journal of Criminology*, 47, 597–615.

Ashworth, A (2002) *Human Rights, Serious Crime and Criminal Procedure. The Hamlyn Lectures* (London: Sweet & Maxwell).

—— (2006) 'Four Threats to the Presumption of Innocence' *The International Journal of Evidence and Proof*, 10, 241–79.

Australian Bureau of Statistics (2013) *Prisoners in Australia, 2013: Sentenced Prisoners* (Canberra: Australian Bureau of Statistics).

Australian Government (2015) *Response of Australia to the Views of the Human Rights Committee in Communication No. 1968/2010* (Blessington and Elliot v Australia).

Berry, WW (2015) 'Life-with-Hope Sentencing: The Argument for Replacing Life Without Parole Sentences with Presumptive Life Sentences' *Ohio State Law Journal*. 76, 1051–1085.

Bild, J (2015) 'The Whole-Life Sentence in England and Wales' *The Cambridge Law Journal*, 74(1), 1–4.

Carmichael, JT and Burgos, G (2011) 'Sentencing Juvenile Offenders to Life in Prison: The Political Sociology of Juvenile Punishment' *American Journal of Criminal Justice*, 37, 602–29.

Chan, A and Payne, J (2013) 'Homicide in Australia: 2008–09 to 2009–10: National Homicide Monitoring Program Annual Report' *Monitoring Report*, no 21 (Canberra: Australian Institute of Criminology).

De la Vega, C and Leighton, M (2008) 'Sentencing Our Children to Die in Prison: Global Law and Practice' *University of San Francisco Law Review*, 42, 983–1044.

Easton, S and Piper, C (2012) *Sentencing and Punishment: The Quest for Justice*, 3rd edn (Oxford: Oxford University Press).

Fife-Yeomans, J (2014) 'NSW will defy UN on killers' *The Daily Telegraph*, 25 November.

Fine, S (2015) 'Ottawa to introduce life sentences without parole under new legislation' *The Globe and Mail*, 4 March.

Fitz-Gibbon, K and O'Brien, W (2016) 'No prospect of release: Kevin Crump and the human rights implications of life imprisonment' *The Conversation*, 8 February, available online at https://theconversation.com/no-prospect-of-release-kevin-crump-and-the-human-rights-implications-of-life-imprisonment-51435

Gans, J (2014) 'News: one-person parole law enacted in Victoria' *Opinion on High*, 27 March, available online at http://blogs.unimelb.edu.au/opinionsonhigh/2014/03/27/news-one-person-parole-law-enacted-in-victoria/ (accessed 6 July 2015).

Gottschalk, M (2012) 'No Way Out? Life Sentences and the Politics of Penal Reform' in CJ Ogletree and A Sarat (eds), *Life without parole: America's new death penalty* (New York: New York University Press).

Hutchinson, T (2015) '"A Slap on the Wrist": The Conservative Agenda in Queensland, Australia' *Youth Justice*, 15(2), 134–47.

Kennedy, M (2014) 'The End of Mandatory Juvenile Life Without Parole' *Criminal Justice Policy Review*, 25(5), 553–78.

Kloepfer, A (2012) 'Denial of Hope: Sentencing Children to Life in Prison Without the Possibility of Parole' *Journal of Civil Rights and Economic Development*, 26(2), 387–413.

Kubiak, SP and Allen, T (2011) 'Public Opinion Regarding Juvenile Life Without Parole in Consecutive Statewide Surveys' *Crime & Delinquency*, 57(4), 495–515.

Mackenzie, G and Stobbs, N (2010) *Principles of Sentencing* (Sydney: The Federation Press).

Mallett, CA (2013) 'Juvenile Life without the Possibility of Parole: Constitutional But Complicated' *Social Work Faculty Publications*, Paper 11, 743–52 (Cleveland: Cleveland State University).

Massey, HJ (2006) 'Disposing of Children: The Eighth Amendment and Juvenile Life without Parole after Roper' *Boston College Law Review* 47(5) 1083–118.

Mitchell, B and Roberts, J (2012) *Exploring the Mandatory Life Sentence for Murder* (Oxford: Hart Publishing).

—— (2013) 'Bring Principles and Fairness to the Sentencing of Murder' *Criminal Law Forum*, 24, 501–26.

O'Brien, W and Fitz-Gibbon, K (2016, forthcoming) "Cemented in their cells": A human rights analysis of Blessington, Elliott and the life imprisonment of children in New South Wales' *Australian Journal of Human Rights*.

O'Leary, J (2014) 'Out of Step and Out of Touch: Queensland's 2014 Youth Justice Amendments' *Current Issues in Criminal Justice*' 26(2), 159–75.

Potas, I (1989) 'Life Imprisonment in Australia' *Trends and Issues in Crime and Criminal Justice*, no 19 (Canberra: Australian Institute of Criminology).

Public Defenders Office New South Wales (2014*) Murder—Life Summary.* Available online at www.publicdefenders.nsw.gov.au/Pages/public_defenders_research/Sentencing%20Tables/public_defenders_murder_life_summary.aspx (accessed 5 July 2016.

Roberts, J (2002) 'Determining parole eligibility dates for life prisoners: Lessons from jury hearings in Canada' *Punishment and Society*, 4, 103–14.

—— (2009) '"Faint hope" in the firing line: Repeal of section 745.6?' *Canadian Journal of Criminology and Criminal Justice*, 51(4), 537–45.

Robinson, E (2013) *Case notes: Irreducible life sentence breaches article 3 of the European Convention* 9th July (Melbourne: Human Rights Law Centre).

Ruddell, R and Gileno, J (2013) 'Lifers admitted as juveniles in the Canadian prison population' *Youth Justice*, 13(3), 234–248.

Stone, N (2008) *A companion guide to life sentences* 2nd edn (Kent, UK: Shaw and Sons).

Travis, A (2015) 'European judges uphold British courts' right to impose "whole life" tariffs' *Guardian*, 3 February.

United Nations Human Rights Committee (2014) *Views of the Human Rights Committee under article 5, paragraph 4 of the Optional Protocol to the International Covenant on Civil and Political Rights (112th session) concerning Communication No. 1968/2010.*

Van Zyl Smit, D (1999) 'Life Imprisonment as the Ultimate Penalty in International Law: A Human Rights Perspective' *Criminal Law Forum*, 9, 5–54.

—— (2012) 'Community Sanctions and European Human Rights Law' in L Zedner and JV Roberts (eds), *Principles and Values in Criminal Law and Criminal Justice: Essays in Honour of Andrew Ashworth* (Oxford: Oxford University Press).

Van Zyl Smit, D and Ashworth, A (2004) 'Disproportionate Sentences as Human Rights Violations' *Modern Law Review*, 67, 541–60.

Van Zyl Smit, D, Weatherby, P and Creighton, S (2014) 'Whole Life Sentences and the Tide of European Human Rights Jurisprudence: What is to Be Done?' *Human Rights Law Review*, 14, 59–84.

Virueda, M and Payne, J (2010) 'Homicide in Australia: 2007–08: National Homicide Monitoring Program Annual Report' *Monitoring Report*, no 13 (Canberra: Australian Institute of Criminology).

Wadham, B (2014) 'The ADF and Julian Knight: A Lesson on Defence's Culture Reform' *The Conversation*, 1 March.

Zifcak, S (2014) 'Proportionality lost, Australia's new counter-terrorism laws' *Arena Magazine*. Available online at http://arena.org.au/proportionality-lost-australias-new-counter-terrorism-laws-by-spencer-zifcak/ (accessed 5 June 2015).

TABLE OF CASES

Domestic Cases

Crump v New South Wales [2012] HCA 20 (4 May 2012)
DPP v Hunter [2013] VSC 440 (21 August 2013)
R v A, D [2011] SASCFC 5
R v B, TB; R v J-M, AM [2013] SASCFC
R v BW & SW (No 3) [2009] NSWSC 1043
R v Bronson Matthew Blessington [2005] NSWSC 340
R v Bronson Matthew Blessington [2006] NSWCCA 305
R v Farquharson [2010] VSC 462 (15 October 2010)
R v Freeman [2011] VSC 139 (11 April 2011)
R v Harris (2000) NSWLR 409
R v Jamieson, Elliott and Blessington [1992]
R v Kalajzich (1997) 94 A Crim R 41
R v Kanaan [2001] NSWSC 959
R v Knight 1988 VSC 530
R v Knight [2001] NSWSC 1011
R v Matthew James Elliott and Bronson Matthew Blessington [2006] NSWCCA 305
R v Ngo [2001] NSWSC 1021 (14 November 2001)
R v Petroff [1991] NSWSC (Unreported)
R v Tiwary [2006] NSWSC 1156
R v Tiwary [2009] NSWSC 1415
Tiwary v R [2008] NSWCCA 319
Tiwary v R [2012] NSWCCA 193
The Queen v Bayley [2013] VSC 313 (19 June 2013)
The Queen v Leslie Camilleri [2013] VSC 676 (5 December 2013)

European Court of Human Rights

Hussain v United Kingdom App no 21928/93 (21 February 1996)
Stafford v United Kingdom App no 46295/99 (28 May 2002)
Vinter and Others v United Kingdom App nos 66069/09, 3896/10 and 130/10 (9 July 2013)

USA Cases

Miller v Alabama 2012 No 10-9646 (25 June 2012), United States Supreme Court