

Foley's February CPD: Tackling General Deterrence

Presented by Glenn Casement & Mietta McDonald

1. Proportionality
<ul style="list-style-type: none"> • <i>Jopar v The Queen</i> (2013) 44 VR 695, 704, [44] <ul style="list-style-type: none"> • <i>Bifel v The Queen</i> [2013] VSCA 8, [4] • <i>Boulton v the Queen</i> (2014) 46 VR 308, [67]
2. Non-custodial means of achieving general deterrence
<ul style="list-style-type: none"> • Community Correction Orders: <i>Boulton v the Queen</i> (2014) 46 VR 308, [88] <ul style="list-style-type: none"> • Suspended sentences: <i>DPP v Sims</i> [2004] VSCA 129, [31] <ul style="list-style-type: none"> • Fines: <i>DPP v Fucile</i> (2013) 229 A Crim R 427, [10]
3. General deterrence cannot overwhelm the sentencing exercise
<ul style="list-style-type: none"> • <i>Bifel v The Queen</i> [2013] VSCA 8, [4] • <i>Boulton v the Queen</i> [2014] VSCA 342, [67] • <i>DPP v Dalgliesh (a pseudonym)</i> (2017) 262 CLR 428
4. Delay
<ul style="list-style-type: none"> • <i>The Queen v Merrett, Piggot and Ferrari</i> [2007] VSCA 1, [34-35] <ul style="list-style-type: none"> • <i>DPP (Vic) v Buhagier</i> [1998] 4 VR 540 • <i>The Queen v Tiburcy</i> [2006] VSCA 244 [15-16] • <i>R v Todd</i> [1982] 2 NSWLR 517 at 519-520
5. Prevalence
6. Mental health and cognitive impairment
<ul style="list-style-type: none"> • <i>Boulton v the Queen</i> (2014) 46 VR 308 • <i>Muldrock v The Queen</i> (2011) 244 CLR 120
7. Age and ill health
<ul style="list-style-type: none"> • Children: <i>CNK v The Queen</i> (2011) 32 VR 641, [7]; <i>DPP v Anderson</i> (2013) 228 A Crim R 128, [47] <ul style="list-style-type: none"> • Young offenders: <i>R v Mills</i> (1998) 4 VR 235; <i>Azzopardi v The Queen</i> (2011) 35 VR 43 • Elderly offenders and offenders in poor health: <i>R v RLP</i> (2009) 213 A Crim R 461; <i>R v Saw</i> (2004) VSC 117
8. Childhood of disadvantage
<ul style="list-style-type: none"> • <i>Bugmy v The Queen</i> (2013) 249 CLR 571, [46]
9. Emotional Stress and otherwise good behaviour
<ul style="list-style-type: none"> • <i>R v Okutgen</i> (1982) 8 A Crim R 262
10. Cannot be directed towards a particular group
Bonus point: protection of the community
<ul style="list-style-type: none"> • <i>DPP (Vic) v Buhagier</i> [1998] 4 VR 540