

Friday, 12 April 2019

## Weekly Criminal Law

A Weekly Bulletin listing Decisions  
of Superior Courts of Australia covering criminal

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### Executive Summary

**Clubb v Edwards; Preston v Avery** (HCA) - constitutional law - 'implied constitutional freedom of political communication' - challenges to validity of *Reproductive Health (Access to Terminations) Act 2013* (Tas) and *Public Health and Wellbeing Act 2008* (Vic) rejected

**Laughton v R** (NSWCCA) - criminal law - 'assault occasioning actual bodily harm in company' - 'aggravated break, enter and steal' - appeal against conviction dismissed - sentences adjusted

**DPP v Macarthur** (VSCA) - criminal law - sentence appeal - sentences for rape and attempted rape manifestly inadequate - appeal allowed - respondent re-sentenced

**R v Oake** (SASCFC) - criminal law - 'aggravated causing harm with intent to cause harm' - appeal against conviction - appellant adequately advised by counsel - miscarriage of justice not established - appeal dismissed

**Director of Public Prosecutions v Harwood** (TASCCA) - criminal law - grievous bodily harm - appeal against sentence - failure to make findings of fact - appeal stood over

### Summaries With Link (Five Minute Read)

**[Clubb v Edwards; Preston v Avery \[2019\] HCA 11](#)**

# Benchmark

High Court of Australia

Kiefel CJ; Bell, Gageler, Keane, Nettle, Gordon & Edelman JJ

Constitutional law - Tasmanian Parliament enacted *Reproductive Health (Access to Terminations) Act 2013* (Tas) (RHAT Act) - Victorian Parliament enacted *Public Health and Wellbeing Act 2008* (Vic) (PHW Act) - s185B(1) PHW Act prohibited, 'in certain circumstances', 'communicating by any means in relation to abortions' - s9(2) RHAT Act prohibited 'in certain circumstances', 'a protest in relation to terminations' - appellant (Clubb) convicted of offence under s185B(1) PHW Act - appellant (Preston) convicted of offence under s9(2) RHAT Act - whether provisions of RHAT Act and PHW Act were contrary to 'implied constitutional freedom of political communication' - 'test for invalidity' in *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 - held: Court not satisfied provisions of RHAT Act and PHW were invalid.

[Clubb](#)

## **Laughton v R [2019] NSWCCA 74**

Court of Criminal Appeal of New South Wales

Meagher JA; Schmidt & Button JJ

Criminal law - applicant was convicted of 'assault occasioning actual bodily harm in company' (count 2) and 'aggravated break, enter and steal' (count 1) - applicant sentenced, on count 1, to 6 years in prison with 3 years 6 months non-parole period - applicant sentenced, on count 2, to 3 years in prison - applicant sought to appeal against conviction and sentence - whether erroneous finding that 'Facebook message' was admission - whether erroneous failure 'to warn jury appropriately about complainant's evidence' - whether application for 'Murray direction' was 'not pressed' - whether *Murray* direction should have been given - whether miscarriage of justice due to directions concerning medical evidence - whether verdicts unreasonable or could not be supported with regard to evidence - whether sentence manifestly excessive - whether erroneous failure to take 'presentence custody' into account - held: appeal against conviction dismissed - sentences adjusted.

[View Decision](#)

## **DPP v Macarthur [2019] VSCA 71**

Court of Appeal of Victoria

Ferguson CJ, Kaye & Weinberg JJA

Criminal law - respondent pleaded guilty to common assault (18 charges), theft, (1 charge), rape (1 charge) and attempted rape (2 charges) - respondent sentenced to 7 years and 9 months' in prison with 5 year non-parole period - appellant appealed against sentence - appellant contended that the sentences for rape and attempted rape charges were manifestly inadequate - whether sentences 'wholly outside range of sentences' open to sentencing judge in the case's circumstances - held: appeal allowed - respondent re-sentenced.

[DPP](#)

## **R v Oake [2019] SASFC 3**



Full Court of the Supreme Court of South Australia

Peek, Nicholson & Lovell JJ

Criminal law - appellant convicted of 'aggravated causing harm with intent to cause harm' - judge granted appellant extension of time to appeal against conviction - appellant contended counsel did not advise appellant 'about important matters' - whether appellant was 'adequately advised' concerning 'trial by judge alone', 'decision not to give evidence' and 'character evidence' - whether miscarriage of justice - held: appellant had been adequately advised - appeal dismissed.

[R v Oake](#)

## **Director of Public Prosecutions v Harwood [2019] TASCCA 2**

Court of Criminal Appeal of Tasmania

Wood & Brett JJ; Parker J

Criminal law - respondent found guilty of count of 'causing grievous bodily harm' - judge imposed sentence of 12 months in prison with final 9 months conditionally suspended for 3 years - judge also made 12 month 'probation order' - appellant appealed against sentence - whether judge failed to make 'findings of fact' concerning conduct of respondent, narrative and case's circumstances - whether to adjourn hearing of appeal - whether to quash sentence and remit matter - whether Court should make own findings - s172 Criminal Code - held: appeal stood over.

[Director of Public Prosecutions](#)

# Benchmark

**A Midsummer Night's Dream, Act II, Scene I [Over hill, over dale]**

**By:** William Shakespeare, 1564 - 1616

*A wood near Athens. A Fairy speaks.*

Over hill, over dale,  
Thorough bush, thorough brier,  
Over park, over pale,  
Thorough flood, thorough fire,  
I do wander every where,  
Swifter than the moon's sphere;  
And I serve the fairy queen,  
To dew her orbs upon the green:  
The cowslips tall her pensioners be;  
In their gold coats spots you see;  
Those be rubies, fairy favours,  
In those freckles live their savours:  
I must go seek some dew-drops here  
And hang a pearl in every cowslip's ear.  
Farewell, thou lob of spirits: I'll be gone;  
Our queen and all her elves come here anon.

[https://en.wikipedia.org/wiki/William\\_Shakespeare](https://en.wikipedia.org/wiki/William_Shakespeare)

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