



Friday, 16 October 2020

## Weekly Criminal Law

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

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### Executive Summary

**The Queen v Abdirahman-Khalif** (HCA) - criminal law - respondent convicted of 'intentionally being a member of a terrorist organisation' - respondent's conviction erroneously quashed - appeal allowed

**Re Toohey** (VSC) - custodial supervision order - review of custodial supervision order - application for 'extended leave' - held: the custodial supervision order confirmed - 'conditional grant of extended leave' made

**Fisher v O'Hehir** (WASC) - traffic law - appellant convicted 'in his absence' of three charges - leave to adduce further evidence refused - appeal dismissed

## Summaries With Link (Five Minute Read)

### **The Queen v Abdirahman-Khalif [2020] HCA 36**

High Court of Australia

Bell, Gageler, Keane, Nettle & Gordon JJ

Criminal law - respondent convicted of 'intentionally being a member of a terrorist organisation' - respondent's conviction quashed - whether Court of Criminal Appeal of South Australia erred in finding Crown's evidence 'incapable of sustaining' respondent's conviction due to its failure to establish how organisation's members 'were recruited or selected' or to establish process by which members inducted and accepted into organisation - s102.3(1) Criminal Code (Cth) - whether proof of intentional membership of terrorist organisation - adequacy of trial judge's directions to jury concerning evidence - held: appeal allowed.

[The Queen](#)

### **Re Toohey [2020] VSC 660**

Supreme Court of Victoria

Taylor J

Custodial supervision order - application for review of custodial supervision order - application for 'extended leave' - *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) (Act)* - safety of applicant and members of public - parsimony principle - factors in s40(2) Act - held: the custodial supervision order confirmed - 'conditional grant of extended leave' made.

[Re Toohey](#)

### **Fisher v O'Hehir [2020] WASC 353**

Supreme Court of Western Australia

Smith J

Traffic law - appellant convicted 'in his absence' of three traffic-related charges' - appellant sought to appeal, and sought to 'adduce additional evidence' - s55 *Criminal Procedure Act 2004 (WA)* - whether to admit medical report - whether sentence manifestly excessive - whether bias - whether conviction vitiated by prosecution's failure 'to disclose evidence' - held: leave to adduce further evidence refused - appeal dismissed.

[Fisher](#)



# Benchmark

## To the Nightingale

By: John Milton

O NIGHTINGALE, that on yon bloomy spray  
Warblest at eve, when all the woods are still;  
Thou with fresh hope the lover's heart dost fill,  
While the jolly Hours lead on propitious May.  
Thy liquid notes that close the eye of day,  
First heard before the shallow cuckoo's bill,  
Portend success in love; O, if Jove's will  
Have linked that amorous power to thy soft lay,  
Now timely sing, ere the rude bird of hate  
Foretell my hopeless doom, in some grove nigh;  
10  
As thou from year to year, hast sung too late  
For my relief, yet had'st no reason why:  
Whether the Muse or Love call thee his mate,  
Both them I serve, and of their train am I.

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[https://en.wikipedia.org/wiki/John\\_Milton](https://en.wikipedia.org/wiki/John_Milton)

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