

# MELBOURNE UNIVERSITY LAW REVIEW

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18 April 2019

Dear Professor Mirko Bagaric, Associate Professor Theo Alexander and Ms Brienna Bagaric

## **Acceptance of Submission for Publication**

We are delighted to inform you that your submission ‘Offenders Risking Deportation Deserve a Sentencing Discount — But the Reduction Should Be Provisional’ has been accepted for publication in the *Melbourne University Law Review*. Your piece is expected to feature in the second issue of volume 43. For academic reporting purposes, this is a 2019 publication.

As is our standard practice, your manuscript was reviewed by two independent referees who kindly provided comments on the article. Please find these comments attached for your review. In light of these comments, if you wish to make any further revisions to your article, we would be grateful if you could let us know your intentions by 3-4 days from date sent.

Once the manuscript is finalised, it will proceed through our rigorous editorial process. We draw your attention to the fact that on rare occasions further concerns may come to light during this process and we will inform you as soon as possible if any issues arise with your article.

We offer our congratulations and look forward to keeping you updated on the progress of your article.

Yours sincerely

Georgia Bourke, Sam Crock and Stuart Dixon

*Editors 2019*

## Referee 1:

Strength of claim for inclusion lies in the article's general competence and in the importance of the topic it raises.

Part IV, section A is weak and would profit from being strengthened – this part is surely highly relevant to the article's potential contribution. The phrase 'level of flourishing' is awkward.

## Referee 2:

I recommend that this article be accepted for publication in your journal (regular priority). Subject to the minor points that I raise below, it is well-expressed. The authors also clearly have a deep and sophisticated knowledge of sentencing law, and they have presented a cogent, thoughtful and persuasive argument here. My one negative comment is that the topic is a bit narrow. My first thought when I read the Abstract was that the article might be better-placed in a specialist journal. But the authors have persuaded me that, on balance, the topic is one that warrants discussion in a generalist journal like yours. Because state courts have taken no uniform approach to the question of whether the risk of deportation can mitigate, and because the High Court will therefore ultimately have to work out whether to follow the Victorian (etc) or the NSW (etc) approach (if the matter ever reaches it), the topic does seem to be of sufficient importance. The argument here seems to be rigorous, subtle and well-considered enough to give the Court some assistance about the relevant matter if it ever arises for decision. As is the case with all sound and well-argued academic articles, there were no obvious errors. And the authors have thought of possible objections to their theory, and possible holes in it. They have capably defended their theory against such objections, and they have ensured that readers are unlikely either to perceive any gaps in the argument, or to consider that the article leaves any pertinent questions unanswered.

Some minor stylistic points/typos etc.

p. 1: 'Minister for' is repeated (line 6, first para)

p. 1: start of second para: might 'not made prior' be replaced with 'made after'?

p. 2: second main para: "Part of the reason that" should be replaced with 'Part of the reason why'. Also, this sentence is possibly a bit long. I had to read it a couple times to work out exactly what was being said.

p. 7: there is probably no need for the sentence beginning with 'Accordingly'. It seems to be a bit repetitive. The same might go for the statement in fn 47 (p. 9) about the SA position.

p. 10: comma-splicing: i.e. there should be a semi-colon before 'however' in line 8. (see also p. 12 second line; first line of p. 22).

p. 10: footnote 50: there's a double negative proposition here. It's pretty clear what's being said, but it would be clearer if it were stated positively. (See also second line p. 12).

p. 12: 'deliberately imposed in a deliberative manner' seems a bit repetitious.

p. 14: 'if a coherent theory was developed' should be 'if a coherent theory were developed'

p. 19: three lines from the bottom: 'unwavering' is misspelt.

p. 20: fourth line: 'attracts' should be 'attract'.

p. 21: third line under the heading: 'but' should replace 'however'.

p. 23: last line: incorrigible is not the right word. Unavoidable?

p. 24: first line: replace foresights with foresight

p. 24: the first sentence under the heading is a bit long, and the expression here is probably not as elegant as it could be.

Some other points

p. 14: I wonder about the concession at the bottom of the page. There is intellectual honesty here, but it was a bit of a risk to say that, for all the authors know, the argument in this essay might be totally flawed! It is probably unfair now to require the authors to develop an ‘overarching jurisprudential theory’ of the type noted – but some readers might take the view that, if such an attempt had been made, the article would have had more depth.

p. 16: The authors say ‘How many years of imprisonment correlate to the pain endured by a rape victim?’ This seems apt to suggest that offence seriousness is determined purely by assessing the harm caused by the offender, but of course his or her culpability is also relevant here.

p. 17: Is it true to say that the suggested approach at sentence to the risk of deportation is in ‘harmony with the existing approach to incidental hardships’? The authors seem to show that, in fact, the approach to incidental hardships is not entirely settled.