

Reform and Codification of the Law of Homicide: Reflections on the Victorian Experience

Ian Leader-Elliott

Victoria has moved further and faster in its legislative transformation of the law of murder than most jurisdictions. This chapter examines the Victorian contribution to that transformation. It will commence with a discussion of the ‘fair labelling’ of homicide offences before outlining two alternative model codifications of the crime of murder and comparing them with the Victorian law of murder. The first is the Australian *Model Criminal Code* definition of the offence in Chapter 5, *Fatal Offences Against the Person 1998* (Model Criminal Code Officers Committee (MCCOC, 1998)). The second is the Law Commission proposal for codification of the law in England and Wales in its Report on *Murder, Manslaughter and Infanticide* (Law Commission, 2006).¹ The two model codes provide the background for a critical examination of the Victorian law of murder. With the recent legislative abolition of ‘defensive homicide’, Victoria has come close to accepting the *Model Criminal Code* recommendations for reform. The chapter concludes with a consideration of the effect of the abolition of the partial defences on the meaning of murder, labelling and punishment.

Introduction: Murder is a ‘highly emotive’ label

In their influential paper on ‘fair labelling’ in the criminal law, Chalmers and Leverick (2008: 238, 241–243) distinguish between ‘descriptive’ and ‘emotive’ labelling of criminal offences.² Murder occupies the apex of a structure of lesser homicides which, manslaughter aside, includes the vehicular homicides, ‘one punch’ killers,³ arson deaths,⁴ dangerous dog homicides⁵ and specialised offences of death caused by neglect.⁶ Most of these offences impose strict or absolute liability with respect to death. Though some carry maximum penalties as high as life imprisonment, sentences

¹ For brevity, references hereafter will be to ‘England’ as inclusive of England and Wales.

² See also Cornford (2014) for an acute discussion of the relationship between labelling and public opinion concerning the meaning of ‘murder’ and ‘manslaughter’.

³ See, for example, *Crimes Act 1900* (NSW) ss 25A, 25B.

⁴ *Crimes Act 1958* (Vic) s 197A.

⁵ *Ibid* s 319B; see Leader-Elliott, 2013.

⁶ *Criminal Law Consolidation Act 1935* (SA) s 14, ‘Criminal liability for neglect where death or serious harm results from unlawful act’.

This is a preview. Not all pages are shown.