

## LEGAL STUDIES: *CRIME*

### Crime

<b>Role of Discretion in the Criminal Justice System</b>	
Changes to bail legislation have limited judge's discretion by leaning more towards a presumption against bail.	Bail Act 1978 was amended in 2002, adding s22A which including strict tests to receive bail, a move to presumption against bail for many offences and a limit on the number of times you could apply for bail. 32% increase in offenders held in bail because of 2002 addition – BOCSAR
Judge's discretion is further limited by precedent within common law.	NSW Sentencing Council determines guideline judgments which must be followed, eg. R v Henry 1999 (cases involving armed robbery)
Legislation is moving to limit discretion of judges, overcoming separation of powers outlined in the Constitution.	Crimes Amendment (Murder of Police Officers) Act 2011, no form of discretion, mandatory life sentence imposed. Is a Policeman's life worth more? SMH 2011  Crimes Amendment (Serious Sexual Offences) Act 2008 – can't have mitigating factors.
"Truth in Sentencing" introduced with minimum non-parole period legislation further limits discretion.	Crimes (Sentencing Procedure) Act 1999 (NSW) was amended in 2003 to outline a standard Non-Parole Period.
Judges still have a role in determining aggravating and mitigating circumstances and handing down an appropriate sentence.	Aggravating – involving violence, abusing a position of power.  Mitigating Factors – first time offending, good character.  Putting the Truth into Sentencing SMH 2010 – risk of running a courtroom like an arbitrary checklist.
Discretion is essential in determining the most appropriate sentence for each individual case.	Crimes (Sentencing Procedure) Act 1999 (NSW) outlines penalties. Eg. Fines not appropriate for young people, diversionary programs (Magistrates Early Referral into Treatment, MERIT) or alternative measures Circle Sentencing.

<b>Issues of Compliance and Non-Compliance in the Law</b>	
Situational and social crime prevention aim to encourage compliance with the law.	Situational (decreasing profits, increasing risk of being caught) leads to displacement theory so social (unemployment, education, poor living conditions) crime prevention is also necessary.
Police do not have unlimited powers however there is a public belief that society must do what they say.	Law Enforcement (Powers and Responsibilities) Act 2002, LEPPRA outlines powers in response to Wood Commission.  Search by Consent. DPP v Leonard (2001) – found a person may validly consent to a search even if they did not know they had the right to refuse
Compliance with the law is often difficult to judge due to the huge number of crimes which go unreported.	Less Crime but Fewer Reporting it says Expert, SMH 2008. Reasons: too trivial, felt there was nothing the police could do, knew the attacker, cultural barriers.  Crime Stoppers Annual Report 2009 found Neighbourhood Watch is helping but out of 50 000 calls only 300 were arrested.
Issues of non-compliance may stem further than arrest, investigation and sentencing. Post sentencing considerations continue as a result of non-compliance.	Sex Offenders Registration is one consequence of non-compliance. Australian National Child Offender Register (ANCOR).
Issues of non-compliance may stem not only from individuals but from entire states.	Rome Statute, ICC ACT 2002 (Cth) implemented domestically. However, relies on political will of world leaders to be utilised effectively.
The law reforms in order to encourage compliance.	Charter of Victims' Rights was amended in 2009 to ensure victims were consulted before charge agreement, now requires a certificate after Shane Miles case to ensure compliance of consultation.

<b>The extent to which law reflects moral and ethical standards &amp; The role of law reform in the criminal justice system</b>	
<p>The law aims to be a direct reflection of moral and ethical standards and reforms to do.</p>	<p>Crimes (Domestic and Personal Violence) Act 2007 (NSW) is a direct reflection of ethical standards, the law has formed as society now sees domestic violence as socially unacceptable.</p> <p>Crimes Amendment (Serious Sexual Offences) Act 2008 – removes mitigating factors for sexual offences.</p>
<p>Technology is one area in which society surges ahead, leaving the law to “limp behind”.</p>	<p>Crimes Act 1900 (NSW) was amended in 2001 to include a variety of computer crimes.</p>
<p>Often the law must act in particular instances, these rapid observable reforms are often an attempt to reflect moral standards.</p>	<p>Law Enforcement Legislation Amendment (Public Safety) Act 2005 following the Cronulla riots. Initially a “sunset clause” however these reforms may linger.</p> <p>Establishment of Ad hoc Tribunals (International Criminal Tribunal Rwanda) to deal with specific instances of internal justice issues.</p>
<p>Law reform often occurs to ensure protection of society however this may impose on moral or ethical standards.</p>	<p>Terrorism Legislation Amendment (Warrants) Act 2005 allows covert searches. The Thin Grey Line, Inside Story 2009 examines the impact of this legislation upon privacy rights. Now spread to LEPRA, few safeguards to prevent abuse. Preventative Detention, Haneef Case.</p>
<p>Agencies of law reform can include Law Reform Commissions, the media, NGOs or Parliamentary committees.</p>	<ul style="list-style-type: none"> <li>• VOCAL – Victims Support Group which advocated for victims’ rights, Charter of Victim’s Rights was amended in 2009 to ensure victims’ are consulted before charge negotiation agreements.</li> <li>• Evidence in Criminal Trials – Law Report 2010 outlines possible problems with usage of DNA evidence and suspect line ups.</li> <li>• Noetic Review 2010 - review into juvenile justice and how the “robust framework” provided needs to be utilised.</li> </ul> <p>Current Taser Review by the Ombudsman found their use may have been inappropriate in a third of cases.</p>
<p>“Extreme examples” of particular crimes may influence law reform too much, particularly as they are reported in media, causes social outrage.</p>	<p>Defence of provocation was removed in Victoria after R v Ramage (2004).</p> <p>NSW Law Reform Commission 2005: found majority verdicts improved judicial process but only by 7% of cases.</p>

<p>Law reform evolves to reflect concepts of justice as well as improve efficiency of legal system.</p>	<p>Juries (Amendment) Act 2006 (NSW) introduced majority verdicts. May jeopardize standard of proof as beyond reasonable doubt. NSW LRC Report, jurors did not understand.</p> <p>NSW Sentencing Council 2008 found periodic detention was ineffective and as a result it was removed in 2010 and replaced with “Intensive Correction Orders”.</p>
<p>Law reform also occurs to enhance the transparency and consistency of legislation.</p>	<p>Crimes (Sentencing Procedures) Act 1999 (NSW) was amended in 2003 to introduce a minimum parole period of a particular crime.</p> <p>Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) (LEPRA) to consolidate police powers to one piece of legislation.</p>

**The extent to which the law balances the rights to victims, offenders and society**

<p>Although the justice system overall attempts to balance the rights of victims, offenders and society specific legislation may err towards one group such as the police.</p>	<p>Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) (LEPRA) – Wood Commission consolidated powers but subsequent legislation thrown the balance towards police (eg.</p> <ul style="list-style-type: none"> <li>• Law Enforcement Legislation Amendment (Public Safety) Act 2005 for emergency public disorder</li> <li>• Covert searches The Thin Grey Line – Inside Story 2009, Terrorism Legislation Amendment (Warrants) Act 2005. Senate Committee Report 2007 said it would spread, then did to LEPR Amendment (Search Powers) Act 2009 for serious crimes.</li> <li>• Control of Weapons Amendment Act 2010 (VIC)</li> </ul> <p>Haneef Case, Preventative Detention</p>
<p>The role of Victims in the sentencing process has recently been increased, reflecting societal values.</p>	<ul style="list-style-type: none"> <li>• Charter of Victim’s Rights was amended in 2009 to ensure victims are consulted before charge negotiation procedures.</li> <li>• Victims’ Rights Act 1996 (NSW) Victim Impact Statements allow for a VIS.</li> </ul> <p>R v Slack 2004 said he would NOT consider VIS. Not enforceable limits effectiveness.</p>
<p>Offenders still maintain not only their Human Rights, but a myriad of other rights in the arrest, trial and sentencing processes.</p>	<ul style="list-style-type: none"> <li>• LEPRA outlines right to be issued with a caution both orally and in writing.</li> <li>• A suspect may only be held up to four hours before they must be either released or charged unless an extension is granted by a judge.</li> <li>• May maintain a right to silence (frustrating for victims)</li> <li>• Right to a fair trial under the Australian Constitution however this does not necessarily mean the right to representation (McInnes v R 1979)</li> <li>• Legal Aid Commission can provide advice for free.</li> <li>• Protective custody, Police v Power case.</li> <li>• Children (Criminal Proceedings) Act 1987 (NSW) outlines special rights for young offenders.</li> </ul> <p>Young Offenders Act 1997 (NSW), Notetic Review found a robust framework for protecting children, focusing on rehabilitation.</p>

<p>Rights of each group are protected under relevant legislation however other legislation may impede on these rights.</p>	<ul style="list-style-type: none"> <li>• Code of practice for Crime (NSW POLICE) outlines responsibilities of police to inform offenders of their rights.</li> <li>• Crimes (Appeal and Review) Act 2001 allowed double jeopardy rule to be ignored if there was new evidence (increased rights of victims).</li> <li>• Juries (Amendment) Act 2006 NSW allowed for majority verdicts which may impede on standard of proof.</li> <li>• Kable v DPP highlighted problems of abuse of offenders' rights in continued detention.</li> </ul> <p>Australian National Child Offenders Register (ANCOR) impedes on civil liberties but allows protection of society.</p>
<p>Society demands that their rights be protected, particularly in regard to protection and the rule of law in serving justice.</p>	<ul style="list-style-type: none"> <li>• Bail Act 1978 and subsequent s22A 2007 Amendment made bail more difficult for offenders, possibly impeding on their rights (One shot at Bail, SMH 2007).</li> </ul> <p>Defence of provocation is currently under review after R v Ramage 2004 (VIC) however cases such as Butler 2012 defence is still needed, Kill Case relied on Provocation, SMH 2012</p>

## The Effectiveness of legal and non-legal measures in achieving justice

<p>Achieving justice applies to society, victims and offenders.</p>	<p>Adversarial system results in a much lower conviction rate compared to the inquisitorial system, more lenient towards offenders, “better to let 10 guilty go free than 1 innocent be imprisoned”.</p>
<p>Charge negotiation is one major issue in assessing legal measures of achieving justice.</p>	<ul style="list-style-type: none"> <li>• Courts would be unlikely to cope without it, increases efficiency</li> <li>• Charter of Victims’ Rights, Victims’ Rights Act 1966 was amended in 2009 to ensure that victims are consulted before charge agreement.</li> <li>• Shane Miles case lead to further as certificate is now needed to prove consultation. Homicide Victim’s Support Group aided in this law reform.</li> <li>• VOCAL – advocated for victims who believe justice has not been served.</li> </ul> <p>May potentially be taken advantage of by lawyers. Putting the Truth into Sentencing, SMH 2010</p>
<p>Legal Representation and the right to a fair trial are important aspects in achieving justice for both offenders and society. This access to mechanisms for resolution is a fundamental part of achieving a just outcome.</p>	<ul style="list-style-type: none"> <li>• NSW Legal Aid Commission (LAC) provides legal aid and or representation which aids both defendant and the judge in achieving justice. Also cost effective, increases accessibility of the law.</li> <li>• Lawyers Weekly October 2012 found that over 11000 cases were turned away from community legal services annually.</li> </ul> <p>McInnes v R 1979 found that you do not have to have representation to have a fair trial.</p>
<p>Investigation process has a number of protocols in place to increase the likelihood of achieving justice for victims.</p>	<ul style="list-style-type: none"> <li>• Evidence Act (1995) outlines the type of evidence which can be collected, how it must be collected.</li> <li>• Blinded By Science, SMH, 2010 outlines how juries may accept scientific evidence too readily, may impede on serving of justice.</li> </ul> <p>LEPRA outlines search, seizure, use of force and subsequent guideline to ensure all evidence/arrests are conducted properly.</p>

<p>Jury system in the criminal trial process poses a number of issues concerning justice.</p>	<ul style="list-style-type: none"> <li>• Juries (Amendment) Act 2006 (NSW) allowed majority verdicts.</li> <li>• NSW LRC Review of this: Quicker, easier, less pressure to conform, gets rid of rogue juror. HOWEVER, may undermine standard of proof and only resolves an extra 7% of cases.</li> <li>• Potential to be misused Bilal Skaf case were jurors investigated themselves.</li> <li>• R v Leach 2010 jurors overruled the law in favour of common sense. Reflection of community values but may impede on application of the rule of law.</li> </ul> <p>BOS 2008 – found only 67% of jurors understood everything in the trial, particularly concerning with more scientific evidence being presented Blinded By Science, SMH 2010.</p>
<p>Defences play a crucial role in achieving justice for victims, society and offenders.</p>	<ul style="list-style-type: none"> <li>• Provocation, partial defence to murder, currently under review, removed from VIC after R v Ramage 2004 however cases such as Butler 2012 defence is still needed, Kill Case relied on Provocation, SMH 2012.</li> </ul> <p>Self Defence, amount of force must be proportional to perceived threat. Also utilised if you are defending someone else, McInnes v R 1971</p>
<p>Diversionary programs offer an alternative to other forms of penalties, and have had varying degrees of effectiveness.</p>	<ul style="list-style-type: none"> <li>• Cautions are an informal warning which can be issues by police, BOCSAR 2006 found to be effective by Noetic Review 2010 found they weren't used widely enough for ATSI youth.</li> <li>• Fines are the most common form of penalty, set out in penalty units. Ineffective for young offenders or financially disadvantaged. Work and Development Orders 2008 may allow for a similar penalty but more effective.</li> <li>• Diversionary programs have had varying effectiveness: Magistrates Early Referral Into Treatment Program (MERIT) been effective in breaking cycle of drug abuse. BOSCAR 2009 found it to be effective in reducing recidivism. Also found Youth Justice Conferencing to do the same but Noetic Review 2010 found it wasn't implemented widely enough.</li> <li>• Forum Sentencing only been trialed but BOSCAR 2009 found it to be ineffective.</li> </ul>



	<p>Circle Sentencing found by BOSCAR 2008 to be relatively ineffective in terms of recidivism however has longer term effectiveness in prevention value and community involvement. Circle Sentencing Expanded in NSW, SMH 2010.</p>
--	---