

## LEGAL STUDIES

**Examine the role of discretion in achieving justice for victims, offenders and society within the criminal justice system.**

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Discretion has played a significant role in achieving justice for victims, offenders and society within the criminal justice system. Discretion is used by judges and police in order to ensure that penalties or sentencing decisions are fair for victims, offenders and society. Similarly, the jury play a role by using discretion as they may ultimately decide whether an offender is guilty or not guilty. Therefore, as judges, police and the jury are able to utilise discretion, discretion plays a significant role in achieving justice for victims, offenders and society within the criminal justice system.

Judges hold the largest amount of discretion in the criminal justice system and use it to achieve justice for victims, offenders and society. The use of discretion is located in the Crimes (Sentencing procedure) Act 1999, allowing a judge to give the harshest or minimal sentence to an offender. Discretion can also be seen in the use of plea bargaining where an offender admits to an offence for a lesser penalty, also known as “case conferencing”. As the judge views this as a mitigating circumstance, he/she is more willing to use their discretion and issue a lesser sentence, achieving justice for the offender. In a case where there are aggravating factors, a judge uses their discretion to worsen the penalty and achieve justice for the victim. In addition, a judge may also feel sympathetic when hearing the Victim Impact Statement, and help to achieve justice for the victim, demonstrating its significant role.

Police similarly use discretion in everyday actions and allow for the fairness of offenders and society. The discretion of police is highlighted in the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) allowing them to issue a fine, arrest or caution to offenders of the law. If a person is to commit a summary offence or a minor offence, police are able to use their discretion to achieve justice for society and the offender by issuing a caution. In a case where the police believe under reasonable grounds that an offender has committed a crime under the Crimes Act 1900 (NSW), they are able to use their discretion to make a lawful arrest. By achieving justice for society in this sense, the role played by discretion in achieving justice for society and an offender can be seen as significant.

Laws pertaining to juries are set out in the Jury Act 1977. Juries are able to achieve justice for society, offenders and victims as they represent a cross section of society. If an offender uses a partial defence such as provocation as seen in R V Campbell, the jury may not deem the offender as guilty, achieving justice for the offender. Also, the use of a complete defence can result in an acquittal as seen in R V Zecevic on the grounds of self-defence. As the jury decide what is reasonable in this circumstance, it is evident that discretion plays a large role in achieving justice for the offender.

Overall, the role played by discretion in achieving justice for offenders, society and victims is significant. Discretion can be seen in juries, judges and police who all help to achieve justice by effectively using and not abusing their discretion.