

CRIME

1. NATURE OF CRIME

• The meaning of crime

- **Crime**- An act or an omission of duty that is injurious to the public welfare, for which punishment is prescribed by the law, imposed in a judicial proceeding usually brought in the name of the state.

• Elements of a crime

- **Actus Reus – ‘Guilty Act’**- the physical act of carrying the crime.
- **Mens Rea - ‘Guilty mind’**- the intention to commit the crime, perpetrator knowing their actions were wrong.

• Strict Liability Offences

- A crime you are liable for without someone having to prove that your guilty ‘**mens rea**’. All that is to be shown is that you did it, committed the act ‘**actus reus**’. E.g. Speeding, possession of weapon in public.

• Causation

- **Causation** – When the defendants conduct or omission caused harm or damage. ‘What I did caused the act’. The link between the act and the crime in which an effect was produced
- Examples – X punches Y, Y falls to the ground and suffers a heart attack, Y dies  
X and Y fight on a beach, Y is knocked out, Y drowns when the tide comes in.

• Categories of Crime

- Offences against a person

Homicide - unlawful killing of another.

- **Murder** - unlawful premeditated killing of another person.
- **Manslaughter** – unlawful killing of another person in a manner which is less intentional than murder without premeditation and deliberation.
  - **Voluntary Manslaughter** – with intent but with mitigating circumstances which reduces the defendant’s culpability. **E.g.** Provocation as a defence.
  - **Involuntary Manslaughter**- Where the death occurred because the accused acted in a reckless or negligent way without intention to kill **e.g.** Killing a pedestrian while DUI, Michael Jacksons death.
  - **Constructive Manslaughter**- killing of person while the accused was carrying out another dangerous or unlawful act. **E.g.** Construction worker drops brick from building, hits someone in the head on-ground resulting in death.

- **Infanticide**- death of baby under 12 months at the hands of the mother. The court must take into account the state of mind of the mother at the time she committed the crime.
- **Death by reckless driving**- Includes DUI and excessive speeding.

**Assault** - Causing physical harm or threatening to cause physical harm to another person.

- **Aggravated Assault**- the assault of a person with an object/weapon.
- **Sexual Assault**- Someone is forced into a sexual act against their own will and without consent.
- **Indecent Assault**- An assault and 'act of indecency' on or in the presence of another person without their consent.
- **Aggravated Sexual Assault in Company**- Sexual assault performed with another person or people present together with aggravating circumstances. **E.G** Gang Rape

#### - Offences against the sovereign

- **Treason**- An attempt or manifest intention to levy war against the state, assist the enemy or cause harm of death to the head of state. **E.g.** attempted assassination of Prince Charles
- **Sedition**- Promoting discontent, hatred or contempt against the Govt. or head of state through slanderous use of language. Also includes urging force or violence against the Govt. **E.g.** Interfering in parliamentary elections

#### - Economic Offences

##### Crimes against Property

- **Larceny** - When one or more persons intentionally takes another's property without consent and without intention of returning it. **E.g.** Shoplifting
- **Robbery**- When property is taken directly from a victim, usually forcefully. **Armed Robbery** is with a weapon.
- **Break and Enter (Burglary)**- Occurs when a person enters a home with intent to commit an offence, offender usually commits **larceny**.

##### White Collar Crime

- **Embezzlement** - When a person steals money from a business over a period of time they are employed at that workplace.
- **Tax Evasion** - An attempt to avoid paying the full amount of taxes due to the concealment or underestimating a persons or business's income or assets.
- **Insider Trading**- When a person illegally trades on the share market to their own advantage using confidential information.

## Computer Offences

- **Fraud-** Deceitful or dishonest conduct carried out for personal gain. **E.g.** Identity Theft

## - Drug Offences

- **Possession-** Drugs is in the accused's custody/control and he/she must know about it, includes shared ownership or looking after it.
- **Use-** the intentional consumption of the illegal drug by any means.
- **Cultivation-** the growth or cultivation of a prohibited plant.
- **Supply-** offering or agreeing to supply. Includes possession for the purpose of supply.

## - Driving Offences – Speeding, driving without a license or registration, DUI etc.

## - Public Order Offences

- **Affray-** Using or threatening to use violence towards another that would cause a reasonable person present at the scene to fear for their safety. **E.g.** Public brawl/fight where bystanders around fear for their safety.
- **Riot-** Similar to affray, but with 12 or more people using or threatening violence for a common purpose.

## - Regulatory Offences

- Set out in delegated regulation such as regulations of local laws that address a range of day-to-day situations and standards. They are strict liability offences. **E.g.** Breach of water restrictions.

## - Preliminary Offences – Offences that precede the commission of a crime or where the crime has not been completed for some reason. Involves in attempting or planning to commit a crime.

- **Attempt-** A principle crime was attempted or failed or was prevented for some reason despite the intentional to complete it.
- **Conspiracy-** When two or more people plot to commit a crime together.

## • Summary and Indictable Offences

- **Summary Offence-** Minor offences that are heard and decided by a magistrate without a jury. **E.g.** Motor traffic offences, offensive behaviour.
- **Indictable Offence-** Serious criminal offences that are heard by a judge and jury, sometimes magistrate. **E.g.** Murder, sexual assault.

DIFFERENCES	Summary	Indictable
Courts	Local Court	District & Supreme Courts
Presiding	Magistrate	Judge and jury
Charges laid	Police or Govt. officer	DDP or prosecutor

<b>Punishments</b>	Fines, good behaviour, community service	Imprisonment, larger fines
--------------------	--	----------------------------

- **Parties to a crime**

- **Principal in 1<sup>st</sup> Degree**- the person/s directly responsible for the criminal act. **Example** – Bank robber directly pointing the gun and stealing the money
- **Principal in 2<sup>nd</sup> Degree**- the person, who assists the offender in the 1<sup>st</sup> degree to commit the crime. Example – Other Bank robber waiting in the car ready for escape
- **Accessory Before the Fact**- the person/s who helped to commit the crime. **Example** – Planned the bank robbery but didn't go to commit the offence.
- **Accessory After the Fact**- the person/s who knowingly assists the offender after the crime has been committed. **Example** – Hides the stolen money from the bank.

- **Factors affecting criminal behaviour**

- **Social Factors**- People, and in particular, their attitude to the law and the authority of the state, are shaped in part by the society they live in. E.g. Family situations, personal relationships.
- **Economic Factors**- People who suffer economic disadvantage, poorly educated/disadvantaged backgrounds are more likely to commit crimes. Factor leads to property offences.
- **Genetic Factors**- Although there is no evidence of this, people argue that there is DNA analysis that suggests there is an inherited genetic basis to some criminal behaviour.
- **Political Factors**- Individuals and organisations may oppose certain criminal laws, or even the whole notion of the state in the case of anarchists, on political grounds. They therefore believe that the law is wrong or unjust and may not feel compelled to comply with the law. Political motives cover the spectrum of criminal behaviour from public order type offences through to violent criminal behaviour. Some people believe that the law is wrong and its needs to be broken in order to meet a person's morals and ethics. This is civil disobedience.
- **Self-Interest Factors**- Self-interest and greed can motivate people to commit crime; it can be seen as an easy road to power or wealth.

- **Crime Prevention**

- **Social Crime Prevention**- How we can prevent crime from happening through social measures.
  - **Examples**- *job schemes*- help people get back to work so people can earn money, not steal it, *training schemes*- assist people to acquire skills so they can get a job, *income support schemes*- if people have money, they may not need to commit a crime. **Through raising literacy and income, prevents crime by promoting employment. Alcohol and drug programs for young people.**
- **Situational Crime Prevention**- Seeking to prevent crime where it occurs, place. **Examples**- *car and house alarms and better locks* to prevent break-ins, theft, *security cameras*, *"elevator style music" in shops* to keep young people away from stealing, *graffiti art on*

## 2. CRIMINAL INVESTIGATION PROCESS

- Police Powers

- Police Powers are defined and set-out by **Law Enforcement (Powers and Responsibilities.) Act 2002 (LEPRA)**
- A person suspected of committing a crime may not want to voluntarily provide information or access, thus police powers are necessary.
- **The Police have the power to –**
  - The power to **arrest**
  - **Investigate** crime- Carrying out research to discover evidence and examine facts surrounding a crime.
  - The power to issue cautions, warnings and infringement notices in relation to minor offences.
  - The right to **obtain and access identification information**.
  - The power to stop and **detain** a person for purposes of a **search** if the police have reasonable grounds to suspect the person is carrying illegal articles on their person or vehicle.
  - The power to enter premises to prevent a breach of peace, domestic violence or to arrest someone.
  - To **detain and interrogate** (question) suspects.
  - To search property and seize evidence. **Search and seizure**.
  - Use technologies to assist an investigation. This includes DNA and medical examinations.
  - Use **reasonable force** if necessary.
- The police have **discretion** in exercising their powers. For example - They may not have to arrest a person and may choose another alternative.

- Reporting crime

- Citizens have discretion regarding whether to report a crime or not.
- **Reporting crime**- to prevent harm, its right thing to do, to recover assurance, crime could be serious, reluctant to appear as a witness or become involved, fear of the consequences if not reported
- **Not reporting crime**- belief in police corruption, “it’s not my business”, not worth the trouble, belief that police will treat the victim poorly and unfairly e.g. sex crimes victims, black people

- Investigating Crime

- Once police are aware that a crime has allegedly occurred, they will commence the investigation process to establish whether in fact a crime has occurred and to gather evidence to support an arrest and, if applicable, to substantiate charges being proven in court, beyond a reasonable doubt.
- Police have the discretion as to whether to proceed with an investigation or take no further action. These decisions could be based on the severity of the offence, the likelihood of success and the available resources or priorities.
- Gathering evidence

- During the investigation process, gathering evidence is to support the prosecution's case. The prosecution has the burden of proof to prove beyond reasonable doubt.
- Evidence must be obtained lawfully otherwise the prosecution is at risk of it not being allowed to be relied upon in any subsequent hearing or trial as a judge may rule that the evidence is inadmissible. Contaminated, tampered or compromised evidence is inadmissible.
- Evidence gathered can be witness statements, telephone recordings, documents, DNA, fingerprints, objects, forensic evidence etc.

- **Use of Technology**

- Technology has advanced throughout the years, enhancing tools for police to investigate crime and gather evidence. DNA, surveillance cameras and cybercrime combat are examples.

- **Search and Seizure**

- Police do have the power to stop and detain a person for the purposes of a search if they have **reasonable grounds** to suspect that the person is carrying illegal articles, such as drugs, on their person or in their vehicle or boat.
- When police undertake a search of a person who is not under arrest, in the normal course this may involve a pat down and request to remove outer garments. Police can also use an electronic metal detection device and examine a person's hair and inside their mouth. A strip search must be justified by a genuine belief by police that it is necessary and as far as practicable should be undertaken by an officer of the same gender and with as much privacy as possible.
- Additionally, a person must be told the reason for the search and given details of the police officer performing the search.
- Police may use specially trained drug dogs in public places like railway stations and music concerts. If the dog's reaction indicates that a person might have drugs then that provides grounds for the police having 'reasonable suspicion' and authorises police to search that person.
- Once a person has been arrested, police have the power to search that person.

- **Use of Warrants**

- A warrant is a legal document issued by a magistrate or judge which authorises a police officer to perform a particular act, such as an arrest, conduct a search, seize property or use a phone tap.
- If acting pursuant to a **search warrant**, police are empowered to search any person at the premises and to use reasonable force to enter the premises.

- When applying for a search warrant, the police must give substantial reasons or evidence to the magistrate to justify the use of a warrant. Emergency warrants can be issued via phone in an event when an officer is unable to see a magistrate or the time of the investigation e.g. in the middle of the night.
  - Police may seize any item which they believe is connected with the offence they are investigating and, additionally, any other item which they have reason to believe is connected with a crime.
  - It is a criminal offence to obstruct police carrying out their duties pursuant to a search warrant. The offence is generally known as an obstruction of justice.
- **Arrest and charge, summons, warrants**
    - **Arrest**
      - **Arrest** - To seize a person by legal authority and take them into custody.
      - **A lawful arrest can only occur if:** The police inform the suspect that they are under arrest and why, the suspect is cautioned or the police have a warrant or the police believe that the suspect is about to commit a crime, has just committed a crime, or they witness the crime taking place.
      - An arrest requires a police officer to touch a person and advise they are arresting you.
      - Case to look at on illegal arrests - **Kuru V NSW [2008] HCA 26**
    - **Charge**
      - **Charging of the offender** is the formal process whereby the suspect is charged with the particular offence(s) and receives notification of their first Court date
      - Police exercise their discretion, within guidelines, in determining which specific offence(s) the suspect will be charged with.
      - A charge is laid when there is sufficient evidence that you committed the offence.
    - **Summons**
      - **Summons** – A legal document that states when and where a person must appear in court, if they are accused, the charge to which they must answer. Usually issued by the clerk of the court, now referred to as the Registrar of the court.
      - If the summoned person does not attend court, they are in contempt of the court which leads to an arrest.
    - **Warrants**

- **A warrant** is a legal document issued by a magistrate or judge which authorises a police officer to perform a particular act, in these terms, an arrest.
  - An arrest warrant is used when the police have suspicions based on reasonable evidence that they committed the crime or took part. For the courts, the suspect has a case to answer to in relation to the alleged crime and authorises the police to use their special powers to bring that person before the courts.
  - An arrest can be made without a warrant when the police believe that the suspect is about to commit a crime, has just committed a crime, or they witness the crime taking place.
  - Warrants provide a judicial safeguard for citizens against the misuse of police powers. Unlawful arrests breach the right to liberty.
- **Bail or remand**
    - **Bail** – “Authority to be at liberty for an offence”. The temporary release of an accused person awaiting trial, sometimes on particular conditions.
    - Bail is granted because a person who is charged with an offence has merely been accused of the offence. They have not been found guilty of the offence. Accordingly, you should have the right to liberty.
    - **The Bail Act 2011** sets out the process for how release and bail is granted.



- **Unacceptable Risk**- nature and seriousness of the offence, fail to appear, endanger the safety of victims and the community, interfere with witnesses or evidence, persons background including criminal history.
  - **Conditions**- Imposed for the purpose of mitigating an unacceptable risk. Conditions include – conduct requirements (requires a person to DO or NOT DO something), security (bond), character, enforcement conditions.
  - **Remand** – When the accused is refused bail and put into custody awaiting trial at a later date.
  - **Who makes this decision?** Magistrate or judge, A Sgt. or above police officer can make the decision if the accused is at the station
  - **What standard of proof is required?**- ‘On the balance of probabilities’ for bail.
- **Detention and interrogation, Rights of suspects**
    - **Detention**- the action of detaining someone or the state of being detained in official custody.
    - **Interrogation**- The act or process of **questioning** a suspect by the investigating officers.
    - Once a suspect is **detained for questioning** and for the purpose of investigating, , they can only be detained for 4 hours unless a warrant is obtained for another 4 hrs or if they are charged.
    - **Caution** – a statement issued by the police to a suspect when they are detained to inform them of their rights.
    - During questioning, the suspect has the right to a lawyer and the right to remain silent.
    - Any suspect under the age of 18 has the right to a responsible adult present with them at the interrogation.
    - Interrogation interviews must be recorded as well on audiotapes. This is to ensure that all policies and guidelines are adhered to by the police and as a record to be used in court.

### 3. **CRIMINAL TRIAL PROCESS**

- **Trial** – A legal process whereby a prosecutor seeks to prove a charge against an accused person
- **Court Jurisdiction**
    - **Local Court**-Deals with summary and less indictable offences, hears **committal proceedings**.
    - **District Court**- Appellate jurisdiction from Local Court, deals with majority of serious crimes e.g. armed robbery

- **Supreme Court**-Appellate jurisdiction from Local and District Court, deals with most serious crimes e.g. Murder and rape
  - **Court of Criminal Appeal**- Appellate jurisdiction from District and Supreme Courts, highest appeal court in NSW.
  - **High Court**- Highest appeal court in Australia. Deals with cases concerning the interpretation of the constitution and the constitutional validity of laws.
  - **Children’s Court**-Deals with Under 18 year old offenders or Under 21 years old if they were under 18 when accused was charged. Deals with matters relating to protection and care of children and criminal matters concerning children.
  - **Coroner’s Court of NSW**- Deals with unexplained deaths, fires. The coroner determines identity of deceased as well as date, place, manner and cause of death.
  - **Coronal inquest** -a court hearing conducted by the coroner to help decide the manner and cause of death.
  - **Drug Court**-A specialised court that tackles drug dependency which results in criminal offending by bringing a more focused approach to sentencing, the court aims to break the cycle of addiction and crime. Aims rehabilitation. Demonstrates remorse. Local and District court jurisdiction.
  - **Federal Court**- Decides disputes according to the law, exercising the judicial power of the Commonwealth under the Constitution
  - **Committal Hearing/Proceedings** –\_To determine if there is enough evidence for a case to proceed to trial in a higher court. A magistrate determines this. Usually heard in Local Court.
- **Adversary System**
    - **Adversary System**- Two parties against each other. Person wins by proving guilt (prosecution) or failing to have guilt proven (defence). Judge acts as an impartial referee deciding on evidence to be admitted. Guilt is decided by a jury.
    - **Inquisitorial system**- A system of law where two sides present their cases to a judge who directs the cases and calls for particular evidence. This system is used in civil cases, Local Court.
- **Legal Personnel**
    - **Magistrate**-Presides over Local Court and District Court. Determines the case and evidence presented. Decides sentencing. Specialised magistrates are used for Children’s Court, Family Court. Magistrates also preside over bail and committal hearings.
    - **Judge**- Presides over District, Supreme and High Courts. Determines evidence presented and enforces and ensures rules are followed in the courtroom. Decides sentencing. Judges make decisions about points of law and gives instructions to the

jury to make sure they understand the proceedings and evidence presented. Judges also decide verdict in non-jury trials.

- **Police Prosecutor**- Police as a prosecutor in Local Court for many less complex cases.
- **Director of Public Prosecution (DDP)** – also known as **Public Prosecutor**. State prosecution office, prosecutes indictable offences, considers whether to pursue a prosecution. Considers whether to appeal sentences/decisions.
- **Public Defenders**- Private lawyers employed case by case by **Legal Aid**. This is when the accused cannot afford legal representation in their case and is eligible for Legal Aid.
- **Defence Lawyers**- A lawyer who defends the accused/defendant.
- **Pleas & Charge Negotiation**
  - **Plea**-When the accused states if he/she is guilty or not guilty in front of a judge or magistrate in a court of law.
  - If a guilty plea is entered, the accused will be sentenced straight away. If a not guilty plea is entered, the case will be defended in court for trial.
  - **Charge Negotiation** –Where the accused agrees with the prosecution to plead guilty to a particular charge/s. This involves pleading to a lesser charge in exchange for other higher charges withdrawn or pleading guilty for a lesser sentence. A charge negotiation cannot guarantee a particular sentence due to the judge's discretion but the plea bargain must be taken into account.
  - Advantages for **plea bargaining**- saves time and costs, increases conviction rate, allows for the accused to have rehabilitation during this time, caters for the victim, saves the pain for a trial especially for sex crimes victims and domestic violence victims.
  - Disadvantages for **plea bargaining**- can be seen as a reward to the accused, forceful pleas which could be overturned, crimes may go unpunished, co-offenders may get better deals creating jealousy, victims may feel that their account is devalued, society see it as lenient.
- **Legal Representation**
  - **The right to Legal Representation**-Everyone in Australia has the right to a fair trial- with that is the right to legal representation. If you can't afford a lawyer, you don't get legal representation, meaning that you won't get a fair trial.
  - **Dietrich V Queen [1992] HC** – First time it was established a limited right to legal representation in Australia. Justice must be fair and equal for all parties but with lack of legal representation, it's unfair.
  - **Legal Aid**-Provides legal assistance and representation to people who are socially and economically disadvantaged. To have Legal Aid you must pass these tests:

### **1. Means Test, 2. Merit test, 3. Jurisdiction test**

- **Burden and Standard Of Proof**

- **Burden Of Proof**- Who must prove.
- The Prosecution has the responsibility to prove guilt of accused. Defence must prove any defence to liability. Prosecution might prove in reverse- only in cases of provocation- that the grounds claimed by the defendant do not apply.
- **Standard of Proof** – the level of proof required for a party to succeed in court.
  - The standard of proof in a criminal case is **Beyond Reasonable doubt**.
  - **Beyond Reasonable Doubt**- Requires the prosecution to show there is no doubt that the accused committed the offence.

- **Use Of Evidence, including witnesses**

- **Evidence**- Information that can be used as a fact. Can be provided through witnesses and may be oral testimony, documentary or physical.
- **Rules of Evidence**-Evidence must be legally obtained, but the court may allow illegally obtained evidence to be admitted.
  - **Relevant**-Must be relevant to the matter. The fact that the accused has committed a crime before is not relevant to whether they have committed this particular crime.
  - **Hearsay**- What another person says they heard. Evidence must be what a person directly saw and heard.
  - **Fact**- Evidence must be factual and not opinional. Only expert opinions may be admitted where the witness has expertise in the matter e.g. medical matters.
- **Privileged Evidence**
  - **Spousal**-A spouse cannot be compelled to give evidence about their other spouse. Can be volunteered though.
  - **Lawyer-client confidentiality**- A lawyer cannot divulge information that has come to their knowledge through a professional legal relationship.

- **Defences to criminal charges**

- A defence is a legally acceptable reason for committing an act or omitting a duty.
- **Complete Defences**- Justifies a defendant's actions and will result in an acquittal (defendant found not guilty).
  - **Mental Illness/Insanity**- Can be used if the defence can prove that the defendant has a mental illness at the time they committed the act. The defence has to demonstrate that their defendant was not aware of, or able to comprehend the nature or consequences of their act at the time it was committed.

- **Self Defence**- The defendant must believe that their life or the other persons was threatened and they could only use reasonable force to defend themselves. The defendant and jury may have different ideas about what constitutes reasonable force.
- **Necessity**- The defendant says that the act was committed to avert serious danger. The action taken must be proportionate to the danger that the defendant was trying to avoid.
- **Duress**- The defendant claims that they did the act but they were frightened by the threat of death or serious injury that they did the act anyway. The threat can be to the defendant or someone else.
- **Accident and error**- The defendant was under a mistake and because of that, a criminal act was committed. If the mistake was actually true, then no crime would have taken place.
- **Automatism**- When a person does not act voluntarily for reasons such as a blow to the head or an illness which renders the actions involuntary.
- **Partial Defences to murder**- Provides a limited defence and reduces a person's liability. For example- a person charged with murder will have the charge reduced to manslaughter.
  - **Provocation**- The defendant claims that the victim acted in such way that it would cause an ordinary person to lose control. Can only be used in the case of murder and it reduces the charge to manslaughter. New law makes it only available for extreme provocation cases.
  - **Diminished responsibility**- The defendant acted while mentally ill or disabled and is not entirely responsible. They are not mentally ill to the extent required for insanity. Example- retardation.
  - **Intoxication**- A person has to be so intoxicated that they did not know what they were doing. Example- Old lady takes medication and drives, impairs her, hits a pedestrian.
- **The roles of Juries, including verdicts**
  - Decides on guilt by – Listening to evidence in court, applying evidence to the law as advised by a judge.
  - Jurors must remain fair and open-minded when reaching a decision. They must not tell anybody about what happens in the courtroom outside the court.
  - Advantages for **juries**- representation of peers, accords with the principles of BRD, greater deliberation on issues, promotes confidence for justice.
  - Disadvantages for **juries**- hung juries, 'the rogue juror', corruption, influenced by outside factors such as the media, racism.

- **Majority verdicts**- A verdict agreed to by 11 jurors where the jury consists of 12 people at the time the verdict is returned or a verdict agreed by 10 jurors where the jury consists of 11 jurors at the time the verdict is returned. Only applies after 8 hrs of deliberation.
- In which the jury cannot agree to a unanimous verdict, the court must be satisfied that it is unlikely for that the jurors will reach a unanimous verdict.
- **Unanimous verdict**- A verdict agreed to by all jurors.
- Advantages of **majority verdicts**- Quicker, less pressure on jurors, negates the effect of a “rouge juror”, consistent with civil proceedings.
- Disadvantages of **majority verdicts**- Verdicts may be reached after insufficient negotiation, contrary to the required standard of proof, negates the views of small minority, and implies distrust in the jury system.

#### 4. SENTENCING AND PUNISHMENT

- **Sentence**- Is effectively the punishment that a judge determines for a crime committed. It's the process whereby the judge finds a sentence appropriate to the defendant in the defendant's circumstances.
- Statutory and Judicial Guidelines
  - Judges are expected to exercise **judicial discretion** in determining a sentence.
  - **Judicial Discretion**- the power of the magistrate/judge to make a decision within a range of possibilities based on particular circumstances of a case.
  - **The Crimes (Sentencing Procedure) Act 1999**- Statutory guidelines source of sentencing in NSW. Sets out the purposes for which a sentence may be imposed, the types of penalties that can be imposed and when they can be used, as well as factors and guidelines for sentencing.
  - **The Commonwealth Crimes Act 1914**- Statutory source of sentencing in Australia.
  - **Mandatory Sentencing**- Removes the discretion of the judge by legislation and requires the judge to impose a sentence that is minimum and mandatory for a particular offence or type of offence. Removes the link between circumstances and the sentence.
  - **Maximum Sentence**- set by Parliament, this is the maximum sentence available to a court to impose for an offence; maximum offences are rarely handed down.
- Purposes of punishment
  - **Deterrence**- to stop people from doing it.
    - **Specific Deterrence**- deter the actual person from committing the crime.
    - **General Deterrence**- deter society, the community, to make an example of the offender in order to send a message to the rest of the community.
    - **Example**- Capitol Punishment
  - **Retribution**- punished because you did it, it was morally right or deserved based on the nature of the crime. Works for harsh punishments. E.g. 15 years for sex crimes.

- **Rehabilitation**- Designed to reform the offender to prevent them committing offences in the future. To change their views, make better.
- **Incapacitation**- making someone incapable of committing a crime by restricting their freedom. E.g. imprisonment, life.
- **Factors affecting a sentencing decision**
  - The judge must take into account the following factors in determining a sentence.
    - **Aggravating factors**- circumstances that make the offence more serious which could lead to an increased sentence.
    - **Examples**- use of violence, risk to national security, sex crimes, planned or organised crime, committed without regard for public safety, victim was a child, criminal history
    - **Mitigating factors**- circumstances that make the offence less severe which could lead to a reduced sentence.
    - **Examples**- remorse shown by the offender, offender has good prospects of rehabilitation, plead guilty, good character, assisted law enforcement authorities, offender was provoked or under duress.
    - **Objective factors**- planning and premeditation, motive, use of weapon
    - **Subjective factors**- age, sex of offender, prior convictions cultural backgrounds.
- **The role of the victim in sentencing**
  - Victims can be involved in many ways- reporting crime, assisting police, testifying at trial as a witness and submitting a victim impact statement.
  - Sexual assault victims role can be difficult where confronting or distressing questions will be often required.
  - The victim includes the victim's parent, spouse, children and family.
  - **The Victims Rights and Support Act 2013** is designed to "recognise and promote the rights of victims of crime. It establishes a **Charter of Victims' Rights** which deals with how a victim is to be treated.
  - **Victim Rights**- Information and access to services, information about prosecution, your protection, special bail conditions, victim impact statements.
  - The Crimes (Sentencing Procedure) Act 1999 provides the provisions on how **victim impact statements** are used in the sentencing process.
  - **Victim Impact Statements**- a voluntary statement written by the victim about the impact that the crime has had on them.
    - It is at the discretion of the court for a statement to be admitted.
    - Only used for serious crimes- deaths, sex crimes, actual and threatened violence.
    - Only made by the victim or by a family member.
    - Can be read out in court if the victim so desires.
    - Can be taken in account by the judge in determining sentencing.

- **Victim Impact Statements** are very controversial. They can be seen a subjective yet have a very significant effect on sentencing.
- **Appeals**
  - **Appeal against conviction**- the appellant argues that they did not commit the offence they were found guilty for or there was prejudice, error of law (improper evidence, judge/jury discretion). The defendant usually appeals their conviction.
  - **Sentence Appeal**- an appeal against the severity or leniency of a sentence. Prosecution appeals this.
  - **Outcomes**- Sentence can be higher or lower, judges must reconsider, found not guilty or guilty, new trials, dismiss appeals.
  - **Court of Criminal Appeal- Appellate** jurisdiction from **District and Supreme Courts**, highest appeal court in NSW.
  - **High Court**- Highest appeal court in Australia. You need permission of the HC to appeal.
  - Example of appeals- Kevin Loveridge
- **Types of Penalties**
  - **No conviction record**- For less serious offences, young and first-time offenders.
  - **Caution**- A formal warning without charge issued by police for less serious offences.
  - **Fine**- monetary penalty imposed for infringement of the law. Most commonly used sentencing option. Amount of fine is based on **penalty units**.
    - **Penalty Units**- a specified unit of money used in legislation to describe the fine payable.
  - **Bond**- A compulsory condition imposed on the offender for a period of time which the offender undertakes to comply with. E.g. Good behaviour bond. Other conditions imposed could include: attending rehabilitation meetings, avoiding a particular place, attending counselling.
  - **Suspended sentence**- A sentence of imprisonment imposed but suspended on the condition of good behaviour. Breach of this bond can lead to reinstatement of original prison sentence.
  - **Probation**- a type of good behaviour bond where the offender is released on good behaviour but placed on supervision, such as daily reporting to a probation officer.
  - **Criminal infringement notice**- A notice issued by the police outside of court alleging a criminal infringement and requiring payment of a fine. E.g. larceny of goods under \$300, offensive language, obstruction traffic.
  - **Community service order**- where the offender is sentenced to serve specified hours of work in the community.
  - **Home detention**- imprisonment sentence where the offender is confined to their home under certain conditions of monitoring.



- **Periodic detention**- imprisonment sentence where the offender spends a period of each week or month in prison and the rest of the time at home.
- **Forfeiture of assets**- What an offender has obtained through their crimes are ordered to be recovered by the Courts
- **Imprisonment**- type of punishment where the restraint of a person's liberty, for any committing a crime, whether by authority of the government.
- **Diversionsary Programs**- designed to divert people from committing more crimes and to prevent repeat offending. Promotes rehabilitation.
  - **MERIT- (Magistrate Early Referral into Treatment)** - designed to show rehabilitative possibility. It lowers reoffending rates than non-participants.
  - **Drug Court**-A specialised court that tackles drug dependency which results in criminal offending by bringing a more focused approach to sentencing, the court aims to break the cycle of addiction and crime. Aims rehabilitation. Demonstrates remorse. Local and District court jurisdiction.
  - **Cannabis Cautionary Scheme**- Given at police discretion. Designed to provide medical diversion, compulsory medical training. Happens after 2 cautions. Resulted in less convictions and charges.
  - **Traffic Offenders Program**- Completion leads to lower sentencing, rehabilitation focused.
- **Alternative methods of sentencing**
  - **Alternative methods for sentencing** attempts to combat some of the issues associated with recidivism.
  - **Circle Sentencing**- a form of sentencing for some adult Aboriginal offenders where sentencing is conducted in a circle of local community members and a magistrate. Based on the idea that facing the consequences and victims in a session involving community leaders is an effective mechanism to divert aborigine people from crime. It is a more traditional indigenous form of dispute resolution.
  - **Restorative justice**- Involving a voluntary conference between the offender and the victim. It offers the chance for the offender to take responsibility for their actions and the impact they've had on others, while giving the victim a voice and an opportunity to confront the offender and work out a way for damage done to be repaired. Victims ask questions about the offence in an attempt to move forward and the offender is given the opportunity to apologise or make amends for their act.
- **Post-sentencing considerations**
  - **Security classification**- Depending on the crime and the seriousness, you are allocated to a prison e.g. Maximum security, medium security, and low risk. This has a big influence on the amount of privileges and the availability of rehabilitation.
  - **Protective custody**- If you are subject susceptible violence from other inmates- e.g. sex offenders, child and women killers, convicted police officers and celebrities

- **Parole**- When you are let out before the end of your sentence. The Parole Board consider factors such as safety and protection in community, rehabilitation and the offenders attitude. A parolee is required to report to their assigned officer, like probation. There are certain conditions while on parole such as no firearms, counselling.
- **Preventive detention**- detention of a person in custody without having committed any offence in case of future harm they may commit. There are two types- **post-sentence preventative detention** – when offender has served his sentence already, **preventative detention without charge**- terrorist suspects can be detained in a preventative capacity before a crime is committed.
- **Continued detention**-on-going detention of an offender who has already served the full sentence for the offence. Usually for a serious sex offenders or high violent risk offenders. If high risk of recommitting may be detained by discretion of judge. Keeps seriously dangerous people off the streets.
- **Sex Offenders Registry**- After sentencing, sex offenders are put on this register for monitoring by police.
- **Deportation**- the expulsion of a person or group of people who are not permanent residents of Australia, to their previous country due to the crimes that they have committed.

## 5. YOUNG OFFENDERS

- Age of criminal responsibility
  - **0-9 – doli incapax**, no child under 10 can be liable or guilty for an offence.
  - **10-13 – “doli incapax”**- incapable of harm, cannot be held legally responsible for their actions and cannot be guilty of an offence. Must prove that the offender knew right from wrong.
  - **14-15** – Fully liable for your criminal actions- no conviction recorded
  - **16-17** – Convictions are recorded.
  - **18-21** – Treated as an adult
  - **21 +** - will do sentence in adult sentences.
  - **Is 14 too high?**
    - **YES**- children are more developed emotionally today, more awareness of the world, greater understanding of what is right and wrong.
    - **NO**- Peer pressure to commit crime, research shows that children’s brains haven’t sufficiently developed emotionally and intellectually to understand.
  - **Justice of victims?**
- The rights of children when questioned or arrested

- **Identification-** Children can be stopped and required to give identification if suspected of carrying or consuming alcohol in a public place, otherwise, they have the right to remain silent.
- **Questioning-** Children have the right to remain silent like everybody else. They can request for a lawyer while in questioning. Parents must be notified if their child being questioned, they have a right to have an independent adult in interviews, child of 14 years can choose who is with them. If an adult is not present, evidence of the questioning can be inadmissible in court because children may be afraid and might not use their right to silence.
- **Searches-** Searches for children are the same for adults except for **strip searches**. Police can never perform a strip search on a child under 10. A responsible adult must be present.
- Children like adults must have caution of their rights, children have the same detention procedures as adults. For fingerprinting and photographs, if the child is under 14, photos can be only taken if they apply to the Children's Court to do so. The child must not be in custody when an application is being obtained. If under 18, no DNA sample can be taken without a Children's Court order.
- **Children's Court- procedures and operation**
  - **Children's Court-** deals with all crimes except for murder and other serious crimes that have been committed by children under the age of 18. Deals with care and protection issues. Magistrate is trained in children's issues. Imprisonment is a last resort. Must ensure that child understands the proceedings and answers child's questions.
  - **Procedures-** children have the equal right as adults and have a right to be heard and participate in proceedings that affect them, children are responsible for their actions but require guidance and assistance, and education of the child should proceed without interruption.
  - **Rehabilitation** is the main purpose.
  - No jury, magistrate makes decisions, closed court- no public access, prohibition on publishing names, must ensure child understands the proceedings and answers child's questions.
- **Penalties For Children**
  - **Young Offenders Act 1997 [NSW]** states a least restrictive sanction possible (prison does not assist rehabilitation), don't use the courts if there is an alternative, deal with children within their communities which promotes rehabilitation, parents to be involved, specific needs of ATSI peoples by harnessing the community nature of ATSI people.
  - **Penalties-** Cautions, bonds, fines, community service, conviction, **adjournment** (sentence deferred/adjourned for up to 12 months to assess the child's prospects of rehabilitation and reconsider at a later date), probation.
  - **Control order-** detention in a **juvenile justice centre**. The max. time a child can be sentenced to is two years. It is the most severe penalty for a child and is the last resort.
  - **Alternatives to court**

- **Warnings-** A notice is given to the young offender (usually minor offence) that is recorded by police but with no conditions attached; the offender must be told of the nature, purpose and effect of the warning.
- **Cautions-** A formal, recorded alternative to prosecution where the young offender admits to the offence and consents to receiving a formal police caution, it can later be taken into account at Children's Court.
- **Youth Justice Conference** – A measure to divert young offenders from the court system through a conference that addresses the offender's behaviour in a more holistic manner. Allows offender to take responsibility for his actions, show remorse for rehabilitation.
- **Circle Sentencing, Restorative Justice.**

## 6. INTERNATIONAL CRIME

- **International Crime-** Any crime punishable by a state within international origin or consequences, or a crime recognised as punishable by the international community.
- **Categories of International Crime**
- **Crimes against the international community-** A most serious crime of concern to the international community as a whole, and recognised as punishable by the international community.
  - **Genocide-** acts which have the intention of destroying all or part of a national, ethnic, racial or religious group. Very difficult to prove, needs large amounts of evidence.
  - **Crimes against humanity-** Must be towards civilians, committed as part as a widespread or systematic attack towards civilians.
  - **War crimes-** An action carried out during the conduct of war that violates accepted international rules of war. Outlined in Geneva Conventions.
- **Transnational crimes-** crimes that takes place across international borders either in origin or effect.
  - **Human trafficking-** the illegal movement of people across borders by deceptive means, force or coercion.
  - **International fraud, Internet crimes, Terrorism and Child pornography.**
- **Dealing with International Crime**
- **Domestic measures**
  - **War Crimes Act 1945, Geneva Conventions Act 1957, International Criminal Court Act 2002- ratification of Rome Statute-** Australian domestic laws comply with Statute, international crimes criminalised in Australia.
  - **Australian Federal Police-** takes care of various international criminal activities domestically and overseas.
  - **Commonwealth Attorney-General's Department-** provides and reports valuable advice on Australia's compliance with its international obligations.

Oversees the operation of legislation, provides advice on their implementation.

- **Australian Crime Commission**- combats serious and organised crimes internationally and domestically.
- **Australian Customs and Border Protection Service**- responsible for the security and integrity of Australian borders.
- **Australian High Tech Crime Centre**- serious technological crimes. Multi-jurisdictional.

- **International Measures**

- **Extradition**- legal surrender of suspect or convicted criminal from one jurisdiction to another to face criminal charges or sentences. Extradition Act 1998.
- **INTERPOL (International Criminal Police Organisation)**- prevents and combats international crime, improves transnational cooperation between police all around the world.
- **Convention Against Transnational Organised Crime**- human trafficking, people smuggling via land, sea, air, illicit manufacturing and trafficking of firearms.
- **Pacific Transnational Crime Network**- combats cross-border criminal activity, manages and coordinates law enforcement intelligence across the region.