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OVERVIEW OF THE CRIMINAL JUSTICE SYSTEM

INTRODUCTION

4 components of criminal justice system:

- Defining the crime (elements of the offence, defences)
- Rules and principles by which guilt or innocence is determined
- Mechanisms by which people are brought within the criminal justice system
- Sentencing

Adversarial system:

- Responsibility for gathering evidence rests with parties
 - o Prosecution must disclose damaging evidence
- “Trial” as the exclusive forum for determining guilt
 - o Independent evaluation of evidence by an impartial judge
- Discretion
 - o Prosecution can decide not to proceed
 - o D can plead guilty and avoid trial
- Nature of trial
 - o Parties determine who and what they present.
 - o Opposing party can cross-examine
 - o Court oversees
- Victim as witness
 - o Prosecution on behalf of State

Key features to safeguard individual rights:

- Confining arrest and search and seizure to limited circumstances
- Presumption of right to bail
- Judicial discretion to exclude unfair prejudicial evidence
- Judicial discretion to exclude unlawfully obtained evidence
- Presumption of innocence (prosecution must prove guilt beyond reasonable doubt)
 - o Prosecution must disclose evidence
- Right to silence
 - o Some reforms now for organized crime and terrorism
- Right to fair trial
 - o Legal aid can be ordered to provide counsel
- Therapeutic courts (Assessment and Referral Court)

JURISDICTION

Federal

- Drug trafficking and terrorism
- Responsibility for defence and trade and commerce

State

- Most criminal law and procedure

Time limits for prosecution:

- Victoria
 - o Indictable offences (including those triable summarily)
 - No time limit (*CP Act s 7*)
 - Some statutory limits / preconditions for specific offences
 - o If limitation period passed, accused cannot be convicted, even on pleading guilty (*R v Tait*)
- Federal (If not determined by specific Acts)
 - Individuals (*Crimes Act s 15B(1)*)
 - Max imprisonment for 1st offence > 6 months
 - o No time limit
 - Max imprisonment for 1st offence ≤ 6 months
 - o Within 12 months of offence
 - Corporations (*Crimes Act s 15B(1A)*)
 - Max penalty for 1st offence > 150 penalty units
 - o No time limit
 - Max penalty for 1st offence ≤ 150 penalty units
 - o Within 12 months of offence

Retrospectivity:

- Tried according to procedural and evidentiary rules at time of trial (*Rodway*)

CRIMINAL JUSTICE SYSTEM

Charging:

- Charges laid by police or OPP (Office of Public Prosecutions)
 - o OPP prosecutes serious crimes
 - o Police prosecutors prosecute less serious crimes
- Police can caution or fine for minor offences
- Before charging for serious crimes, police may consult OPP