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# Criminal Procedure

## Underlying principles of CJS

<b>Fundamental principle</b> <ul style="list-style-type: none"> <li>Golden thread</li> </ul>	<i>Lee (No 1) [2013]</i> <ul style="list-style-type: none"> <li><i>Woolmington v DPP [1935]</i></li> </ul>	Prosecution bears onus of proof and accused cannot be compelled to give evidence for the Pros. <ul style="list-style-type: none"> <li>Duty of prosecution to prove prisoner's guilt</li> </ul>
<b>Fair trial</b> <ul style="list-style-type: none"> <li>Trial by jury?</li> <li>Right to legal rep?</li> </ul>	<i>Constitution s 80</i> <i>Dietrich (1992) HCA</i>	Cth offences only

## Ct hierarchy

<b>Supreme Ct</b>	All jurisdiction: <i>Supreme Court Act 1970 (NSW) s 23</i> All indictable offences: <i>CPA s 46</i>	Indictable offences that are not required to be dealt with summarily: <i>CPA s 8</i>	Judge and jury (not in all circumstances)
<b>District Ct</b>	Jurisdiction: <i>District Court Act 1973 (NSW) ss 9, 116</i> All indictable offences <u>except</u> murder and treason: <i>CPA s 46</i>	“	Judge and jury (not in all circumstances)
<b>Local Ct</b>	As conferred by law: <i>Local Court Act 2007 (NSW) s 9</i>	Offences permitted or required to be dealt with summarily: <i>CPA ss 6, 7</i>	Magistrate

## Discretion and diversion in the criminal process

<b>Offences must be dealt with on indictment, unless required to be dealt with summarily under CPA or another Act</b>	<i>CPA 1986 s 5</i>	
<b>Summary-only offences</b> <ul style="list-style-type: none"> <li>Dealt by Local Ct</li> </ul>	<i>CPA s 6</i> <i>CPA s 7</i>	Max. 2 years punishment Penalty limit?
<b>Elective/hybrid offences</b> <ul style="list-style-type: none"> <li>Table 1 offences</li> <li>Table 2 offences</li> </ul>	<i>CPA s 260</i> More serious elective offences Less serious elective offences	ss (1) Table 1 offences → <b>both P and D</b> have power to elect to proceed on indictment ss (2) Table 2 offences → <b>only P</b> has power of election

Summary hearings	Trial upon indictment
<ul style="list-style-type: none"> <li>Expedient for efficient enforcement of statutory regulations</li> <li>Maintenance of 'quiet and good order' of society</li> <li>Magistrate-only</li> </ul>	<ul style="list-style-type: none"> <li>Highest crimes, gravest liabilities</li> <li>Judge and jury</li> </ul>

	Defended hearing/trial	Guilty plea	% of defendants found guilty of at least one charge
Local Court	16,743 (13%)	79,133 (60%)	118,401 (91%)
District Court	861 (19%)	3,358 (74%)	3,876 (85%)
Supreme Court	58 (58%)	35 (35%)	78 (78%)

### Resisting police

<b>Admissions by suspects</b>	<b>CPA s 281</b>	<p>(1) Applies to an admission:</p> <p>(a) Made by an accused person who, at the time admission was made, was or could reasonably have been suspected by an investigating official of having committed an offence, <b>and</b></p> <p>(b) That was in the course of official questioning, <b>and</b></p> <p>(c) That relates to an indictable offence</p> <p>(2) Evidence of an admission is <b>not admissible unless</b>:</p> <p>(a) There is available to the ct:</p> <p>(i) A tape recording made by an investigating official of the interview (of admission), or</p> <p>(ii) Prosecution establishes that there was a reasonable excuse as to why a tape recording could not be made</p> <p>(b) Prosecution establishes that there was a <b>reasonable excuse</b> as to why a tape recording could not be made</p>
<b>Resisting police</b>	<b>Crimes Act s 546C</b>	Any person who resists or hinders or incites any person to <b>assault, resist or hinder</b> a police officer <b>in the execution of his/her duty</b> shall be liable on conviction before the Local Ct to imprisonment for 12 months or to a fine of 10 penalty units, or both.

### 'Reasonable suspicion': pre-req for police powers

<b>Defines 'reasonable suspicion'</b>	<b>Rondo (2001)</b>	<p>a) <b>Reasonable suspicion</b> = less than a reasonable belief but more than a possibility</p> <p>b) Reasonable suspicion is <b>not arbitrary</b>. Some factual basis for suspicion must be shown (can be based on <b>hearsay</b>/inadmissible material, but material must be <b>probative</b>)</p> <p>c) Need to focus on <b>information avail. to police at the time the power was exercised</b></p>
<b>Introduces 'believes on reasonable grounds'</b>	<b>Hyder v Cth [2012]</b>	Hearsay evidence acceptable, unless it is of an authority that should be relied on to provide correct info e.g. ATO
	<b>George v Rockett [1990]</b>	<p>It must appear to the issuing justice, not merely to the person seeking the search warrant, that reasonable grounds for the relevant suspicion and belief exist</p> <ul style="list-style-type: none"> <li>It follows that the issuing justice needs to be satisfied that there are <b>sufficient grounds reasonably</b> to induce that state of mind</li> </ul>

Has a person consented?	<b>S and J (1983)</b> (unlawful exercise of power)	If risk factors present, <b>onus lies on police officer to make it clear whether a suspect is under arrest or not</b> . Risk factors incl. youths, indigenous persons, disproportionate effects, disadvantaged class of peoples
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Search warrants

Power to search <b>with</b> warrant	<b>LEPRA (2002) NSW s 47</b>	(1) <b>Believes on reasonable grounds</b> that there is, or within 72 hours will be, a thing connected with a searchable offence in relation to the warrant
Power conferred by search warrants	<b>LEPRA s 47A</b>	(1) (a) enter subject premises, and (b) search premises for things connected to warrant

Selected search powers **without** warrant

Power to search persons and seize and detain things <b>without</b> warrant	<b>LEPRA s 21</b>	(1) <b>Without a warrant</b> , stop, search and detain a person, if <b>suspects on reasonable grounds</b> (a) Anything stolen, (b) Anything used/intended to be used for an offence, (c) In a public place a dangerous article to be used for an offence, (d) A prohibited plant or drug <b>Warning: higher threshold</b> to prevent abuse of power • Once s 21 conducted, you are being detained
Power to search vehicles and seize things <b>without</b> warrant (based on reasonable suspicion)	<b>LEPRA s 36</b>	(1) <b>Without a warrant</b> , stop, search and detain a vehicle, if <b>suspects on reasonable grounds</b> (a) Vehicle/person contains/has anything stolen, (b) Vehicle used in connection to commission of offence, (c) Vehicle contains anything used/intended to be used to commit offence, (d) Vehicle in public place/school and contains a dangerous article to commit offence, (e) Vehicle/person has prohibited plant or drug, (f) In public place/school likely to give serious risk to public safety
Searches generally ( <b>without</b> warrant)	<b>LEPRA s 30</b>	(a) Quickly run over outer clothing, and (b) Require remove clothing, and (c) Examine anything in possession, and (d) Pass electronic metal detection over, and (e) Do any other thing authorised by this Act for the purposes of the search
Strip searches	<b>LEPRA s 31</b>	(a) <b>Suspects on reasonable grounds</b> strip search is <b>necessary</b> <b>Warning:</b> potentially exposes you to officer and public, <b>increased protection</b> needed (suspects + minors)