ACR102 Exam Index

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ACR102 Notes

Colour key:

- **Blue** → Chapter titles
- **Green** → Major topics
- **Orange** → Definitions
- **Red** → Cases/examples

Chapter 14: Criminal justice system – aims and processes

Criminal justice system

- **Australian definition:** A convenient arrangement of a number of state-run bureaucratic institutions that deal with offending and persons who have offended
- **General definition:** A collection of institutions, agencies, and positions that are integral to the delivery of justice in Australia
- **Aims:**
  Safety, cohesion, fairness
- **3 arms: CCC (Cops, courts, corrections)**

1. *Investigative* (police/prosecution/specialist investigative agency, arrest, charge)
2. *Adjudicative* (criminal courts – plea, trial, sentence, due process)
3. *Correctional* arm (prisons, community corrections, probation/parole services, release/reintegration)

- **+ State based offices:**

1. DPP, State/Cth Attorneys-General department, standing justice agencies, anti-corruption commissions

- **+ Gov. based**

1. ASIC, police integrity commissions, State/Cth offices of Ombudsman

- **+ Judicial. based**

1. Policing of private security firms, watchdog by P.I advocates, civil libertarian groups, investigative journalists

- **Limitations:**
  - False belief of inter-connectedness
  - Responses are not limited to these organisations (should be citizens)
  - Should be: "loosely coupled collection of interdependent justice agencies"
- **Role of citizens:**
  - Elect decision-makers/enforcers
  - Detect/report crime
  - Witness/victims of crime + participation in evidence gathering
  - Jury
  - Participation in court diversion, pre-sentence/post-sentence schemes
  - Volunteering/paid work – agencies/organisations
- **Role of Politicians:**
  - Passing laws – 'truth in sentencing' (constrain discretion of sentencers, increase incarceration)
- **Role of Media organisations:**
  - Inform/educate the public → citizens learn agencies + form impressions
- **Adversarial criminal justice:** *Aus, NZ, US*
  - Common law systems having two parties in the case – prosecution and the defence – bring evidence before a magistrate, judge or jury, each of whom acts as a fact finder
- **Inquisitorial criminal justice:** *Germany, Sweden, France*
  - Prosecutor/police officer assembles the case, judge calls witnesses/examines them

- **Major criminal justice agencies, personnel and agency functions in Australia**

Police (Police officers) • Investigate crime • Prevent crime • Arrest and detain suspects • Maintain public order • Control traffic • Respond to criminal and non-criminal emergencies	**Prosecution (Prosecutors)*** • Filter out weak cases, keep strong cases • Prepare cases for prosecution • Prosecute cases in Youth/Children's Courts, Magistrates Courts, District Courts, and Supreme Courts, including preparing cases for trial
Courts (Justices of the peace, magistrates, and judges)** • Decide on bail and remands (whether there is to be detention or not in the pre-trial period) • Protect the rights of the defendant • Preside over the trial and plea process • Decide on guilt (magistrate, judge or jury) • Sentence the defendant • Hear appeals against conviction and sentence • Provide a public arena so that justice "can be seen" to be done	**Community corrections (Community corrections officers)** • Provide information to the court on a defendant's appropriateness for bail or probation • Prepare pre-sentence reports • Work with offenders with probationary orders or community service orders • Supervise released prisoners or pre-release work with persons in custody
Prisons (Corrections officers) • Hold people on remand (in custody in the pre-trial period) • Hold people who are sentenced to a term of imprisonment • Maintain appropriate conditions for those in custody • Provide activities (such as rehabilitation programs) that encourage learning and develop life skills • Prepare inmates for release	**Other key organisations and actors** **Victim support groups** • Counsel and assist victims at all stages of the criminal process, from arrest of the suspect, through bail applications, sentence and post-sentence. **Defence lawyers** • Provide advice to and advocate on behalf of suspects, accused persons, and sentenced individuals at all stages of the criminal process.

1. State or federal law

- State and territory governments → policing/justice functions of Aus
- Major areas → Cth (people smuggling, drug importation, customs fraud…)
    - Institutions/courts:
        - Federal Police (AFP)
        - Legislation: *Crimes Act, Family law Act, CCA, Bankruptcy*
        - High Court: court of appeal
        - **Limitations**: no Cth criminal court/correctional facilities

2. Criminal codes or common law

- Parliament (legislation) or judges (common law) governs criminal law
- QSL, WA, TAS, NT, Cth = **Criminal codes:**
    - Legislative document codifies a jurisdictions criminal law outlining general principles of criminal responsibility, defines offences, penalties
- SA, NSW, VIC = **Common law + Criminal law statutes**
- ACT = **Hybrid** (both of the above)
- **Limitations:**
    - Inconsistencies in charging, convicting, sentencing offenders
    - Different terminology/definitions → incompatibilities in data collection/statistical analysis

3. Due process or efficiency

- 2 conflicting value systems in criminal processes: Herbert Packer (1968)

Crime Control Model	**Due Process Model**
- Efficiency of the criminal process - Maintain public order - Early filtering of weak cases - Emphasis is placed on removing cases where there is a lack of evidence or an unlikely conviction as early as possible in the criminal process	- Accuracy/integrity of decisions made - Fairness prioritised - Presumption of innocence - Checks and balances - Distinguishes between factually/legally guilty - Reliance on fact finding (adjudication) - Presumption of innocence - District/supreme courts (serious)

➢ Does not distinguish between factually/legally guilty ➢ Ensure public safety ➢ Magistrates' courts (less serious) *Strengths* • **Efficiency** — Focuses on rapid processing of cases, reducing delays and backlog. • **Early case filtering** — Weak cases are removed early, saving resources and preventing unnecessary trials. • **Public safety** — Prioritises protecting the community by swiftly dealing with offenders. • **System practicality** — Works well in high-volume courts like magistrates' courts where speed is essential. *Weaknesses* • **Does discretion override fairness in some cases** • **Are week cases any less deserving of justice** • **Risk of inaccuracy** — Speed can come at the cost of thorough fact-finding. • **Presumption of guilt tendency** — Emphasis on efficiency may implicitly favour police/prosecution narratives. • **Limited rights protection** — Fewer procedural safeguards can increase wrongful convictions. • **No distinction between factual/legal guilt** — Focus is on "getting the offender" rather than ensuring the legal process is perfect.	➢ **Limitations**: less faith in reliability early in process *Strengths* • **Accuracy and reliability** — Decisions are based on careful fact-finding and legal safeguards. • **Fairness prioritised** — Protects individual rights, ensuring justice is not rushed. • **Presumption of innocence** — Core safeguard against wrongful conviction. • **Checks and balances** — Judicial oversight, procedural protections, and adversarial testing strengthen legitimacy. • **Distinguishes factual/legal guilt** — Ensures the state proves guilt properly. • **Appropriate for serious courts** — Works best in district/supreme courts where stakes are high. *Weaknesses* • **How is it upheld in practice** • **Access to justice, even was law is practiced accurately** • **Slower process** — Extensive safeguards can cause delays and backlog. • **Resource-intensive** — Requires more time, money, and judicial attention. • **Less faith in early reliability** — Early stages (police investigation, charging) are treated cautiously, slowing momentum. • **Potential for guilty to avoid conviction** — High standards of proof and procedural protections may allow offenders to escape punishment.

Factually guilty	**Non guilty cases**
Committed crime	Failed to prove 'beyond reasonable doubt' (legal guilt)

- **Limitations (**Andrew Ashworth (1998: 27-28)**):**
  - No relationship between the models
  - No discussion of financial pressures on state → responses to crime
  - No discussion of victims
  - Due process → unreasonable delay (not mentioned)

- Justice or injustice
  - Contested/political nature of just responses to crime, concerns in seeking justice
  - Injustice examples: harsh enforcement of laws, racial targeting, minority groups, disproportionate incarceration, too lax, not just punishment
- Criminal
  - Criminal act: defined by the state as a crime and subject to criminal penalties
  - Not criminal: conduct not dealt with by the criminal process
  - Criminal justice system: a loosely coupled collection of interdependent agencies, each having bureaucratic interests, and each having specific functions that are subject to legal regulations for which agency workers have great discretion in making decision when responding to harms defined as criminal by that estate and where conflicts exist within and across agencies and in the general population about the exact meaning of "justice".
- Flow of criminal process
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