

### Structure of the Criminal Courts System

- Lower courts handle 97% of cases; higher courts hear 3% of cases.
- Role of the Local courts has increased significantly due to the:
  - rapid increase in summary justice;
  - downward classification of many summary offences;
  - the increase in sentencing cap from 3 to 5 years.
- These changes have occurred because Local courts are:
  - quicker; no jury.

### Step 1: Committal Hearings

- Committal Hearing: Magistrate determines whether there is sufficient evidence for an indictable offence charge to be committed for trial before the District or Supreme Court.
- Carried out in Lower Court, before a Magistrate.
- Salmelainen: Functions of Committal Proceedings:
  - 1. Eliminate weak cases (approx. 10%);
  - 2. Disclosing the prosecution's case;
  - 3. Identifying guilty pleas early in the prosecution process;
  - 4. Rehearsing the case and clarifying the issues.

#### Procedure:

- Committal hearings are governed by the *Criminal Procedure Act 1986* (NSW), Division 2, where Magistrates must conduct a two-step process:
  - 1. s 62 (1): Requires a determination whether the **evidence produced by the prosecution: 'is capable of satisfying a jury:**
    - *properly instructed,*
    - *beyond reasonable doubt*
      - that the accused person has committed an indictable offence.
      - NO: Discharge accused (s 62(2));
      - YES: Defendant makes statement or call any evidence (s 63).
  - 2. Magistrate is to consider **all evidence by prosecution and defence (s 64)**, and either commit (s 65(1)) or discharge (s 66) them to trial according to whether: 'there is a **reasonable prospect** that a
    - *reasonable jury,*
    - *properly instructed,*
    - would convict the accused person of an indictable offence.

### Summary v Indictable Offences

- **Summary Offences:**
  - Heard in lower courts;
  - may be heard *ex parte*;
  - prosecuted by the police in their own capacity.
- **Indictable Offences**
  - Heard in higher courts.
  - cannot be heard *ex parte*; must be *inter partes*;
  - prosecuted by the DPP.

### The Structure and Jurisdictions of Courts

#### Lower Courts (Local Courts)

- The general jurisdiction in the *Local Court Act 2007* (NSW), as well as other statutes such as the *Crimes Act 1900* (NSW);
- Max sentence 5 years;
- Presided over by magistrate.
- No jury.

#### Higher Courts (District and Supreme)

- The Supreme Court exercises an original jurisdiction (a single judge) and an appellate jurisdiction exercised by the Court of Criminal Appeal (three or more judges of the Supreme Court) under s 3 of the *Criminal Appeal Act 1912* (NSW).
- The Supreme Court and the District Court (created under the *District Court Act 1973* (NSW)) have broadly concurrent jurisdictions.
- District Court judges preside over all serious indictable offences except for murder.
- In both Supreme and District Courts, the accused may elect for trial by judge alone (no jury) in certain circumstances.

### Appellate Structure Overview

1. From the Local Court to the District Court.
2. From the Local Court to the Supreme Court.
3. From the District and Supreme Courts to the Court of Criminal Appeal by way of the *Criminal Appeal Act 1912* (NSW).
4. From the Court of Criminal Appeal to the High Court by way of application for special leave against both or either conviction and sentence.

### From Local Court to District Court

**Legislation:** Pt 3 *Crimes (Appeals and Review) Act 2001* (NSW).

**Appeal Rights For Defendant:** Appeal as a right against conviction or sentence (s 11(1)).

**Appeal Rights For Prosecution:** Appeal against sentence (s 23).

**Restrictions/Limitations:** Made within 28 days of conviction or order (s 11(2)).

**Grounds for Appeal:** All grounds appeal, may be against both conviction and sentence or either or.

**What Happens to Sentence:** It is stayed by lodgement of appeal (s 63) except when defendant is in custody (s 63(2)©).

**Other Details:**

- Prosecution cannot appeal against an acquittal (s 11);
- Conducted de novo, and are re-hearings of the case if the District Court is of the opinion that it is in the interests of justice that fresh evidence be given (s 19).
- If not, then it is simply a review of the certified transcripts of evidence given in Local Court proceedings (s 18(1)).
- Court may order (s 20):
  - set aside conviction or sentence;
  - dismiss the appeal;
  - vary the sentence.

### From Supreme Court or COCA to the High Court

**Legislation:** *Judiciary Act 1903* (Cth) s 35(1), where leave must be given under s 35(2).

**Appeal Rights For Defendant:** Criterial must be satisfied under s 35A:

- Must have regards to and involves a question of law that is:
  - of public importance (s 35A(a)(i));
  - needed to resolve differences of opinion between different or between the same court(s) as to the state of the law (s 35(a)(ii)).
- in the interests of the administration of justice (s 35(b)).
- In *Veen* (Aickin J) noted: Can grant special leave to appeal against sentence only in very exceptional circumstances where there has been a departure from the settled practice.

### From Local Court to Supreme Court

**Legislation:** *Crimes (Appeals and Review) Act 2001* (NSW).

**Appeal Rights For Defendant:** Appeal on a:

- Question of law alone (s 52);
- In relation to a question of fact of a mixed question of law and fact (s 53).

**Appeal Rights For Prosecution:** Appeal against sentence as of right (s 56).

**Alternatively:** May Appeal under *Supreme Court Act 1970* (NSW) for common law prerogative writs (s 69):

- prohibition;
- mandamus;
- certiorari.

**Grounds for Appeal:** All grounds appeal, may be against both conviction and sentence or either or.

**Court may order (s 55):**

- set aside conviction or sentence;
- dismiss the appeal;
- vary the sentence (can only be increased on prosecution appeal, or decreased on defendant appeal).

### From Supreme Court to COCA

**Legislation:** *Criminal Appeal Act 1912* (NSW)

**Appeal Rights For Defendant:** Appeal on a:

- Question of law alone (s 5(1)(a));
- Conviction (b) or sentence (c) in relation to question of fact alone, or question of law or fact (s 5(1)(b) and (c)) **requires leave**.
- However, s 6 states that an appeal against conviction in a situation where **no substantial miscarriage of justice has occurred should be dismissed**.
- If it allows the appeal under s 5(1), it is directed to quash the conviction and direct an acquittal (s 6(2)).
- From *Mraz* (1955) on the Proviso in s 6(1): Every accused person is entitled to a trial where the relevant law is correctly explained to the jury and the rules of procedure and evidence are strictly followed. If no, it is a miscarriage of justice.

**Powers:**

- Order a new trial (s 8);
- May originate from conduct of counsel.

**Limitations:**

- This court is a creature of statute, and has no power to amend an indictment (*Burns*).
- The court is not bound by its previous decisions (*Johns*) but will only depart from them with caution and when justice requires it (*Mai*).

## Crown Appeals

No general right of prosecution appeal against an acquittal or finding of not guilty: inconsistent with double jeopardy.

**Legislation:** *Crimes (Appeals and Review) Act 2001* (NSW):

- s 100 - COCA may order retrial on application of the Director of the DPP if there is fresh and compelling new evidence.
  - (1): Only where the acquitted is to be tried for a life sentence offence.
  - 'Fresh' and 'compelling' defined in s 102:
    - (2): Fresh if:
      - (a): not adduced in original proceedings; AND
      - (b): could not have been adduced with exercise of reasonable diligence.
    - (3) Compelling if:
      - (a): reliable; AND
      - (b): substantial; AND
      - (c): in the context of the proceedings is highly probative;
- Evidence precluded from being admitted in initial proceedings is not necessarily precluded from admission in subsequent proceedings.
- s 101 - COCA may order retrial on application of the Director of the DPP if there was a tainted acquittal.
  - (1): Only where the acquitted is to be tried for 15 years or more.
  - 'Tainted acquittal' defined in s 103, where it is related to jury tampering.
    - (2): Tainted if:
      - (a): has been convicted of an administration of justice offence in any State;
      - (b) if it is more likely than not, but for the administration of justice offence that the accused would have been convicted.
    - (4): Does not matter of the administration of justice offence was quashed or lost on appeal.
- s 104 - COCA may order retrial if it is in the interests of justice for an order to be made against an acquitted person.
  - (3): Must have regard to:
    - (a): time since acquitted person allegedly committed the offence;
    - (b): whether police officer or prosecutor has failed to act with reasonable diligence or expedition in application for retrial.

## Crown Appeals (Cont).

s 107 - (1): Directed jury acquittals (jury acquits a person at the direction of the judge) or acquittals in trials without juries.

- (2): Appeal as of right to the CCA is given to the prosecution on a question of law in these circumstances.
- (3): Must be made within 28 days after acquittal.
- (5): COCA may quash acquittal and order a retrial (6).

Griffiths (1977): Should only be used for matters of great public importance where incorrectness of first instant sentence is manifest.