

Crime

1. The nature of crime

The meaning of crime

A crime includes any act or omission that results in harm to society at large and is punishable by the state, including the court system and state or Commonwealth bodies.

‘Any conduct which violates the rights of the community at large, punishable by a recognised criminal sanction upon proof of guilt in a criminal proceeding initiated and presented by officers of the crown or its agencies’- S. Maratelli and C. Tikotin, the Australian Legal Dictionary

- Culture, history, legal traditions, social attitudes, religious beliefs and political systems are factors in every society that combine to determine how crime is defined and punished
- The criminal act is seen as an attack on the ethical and moral standards of society, so it is the responsibility of all to punish those found guilty. This is why the state (acting on behalf of society) brings criminal cases, even though it is also attempting to redress an injustice committed against a specific victim/s
- The government, courts and other statutory bodies are constantly reviewing legislation to ensure that it meets the expectations of the community and is as relevant as possible to our rapidly developing and changing social values
- Changes to criminal law usually have wide-ranging effects on the rights and freedoms of all members of society. As a result there is often tension between the rights of the community and the rights of individuals in the criminal justice system.

Criminal law has many aspects including investigation, enforcement, prosecution, defence, criminal trial, sentencing and punishment. Criminal law has a number of important characteristics that distinguish it from other areas of law:

- A crime is an offence against a state
- The decision is made by the police and/or the director of Public Prosecution. They are known as the state or the Crown.
- The standard of proof for criminal cases for a person to be found guilty is ***Beyond Reasonable Doubt***

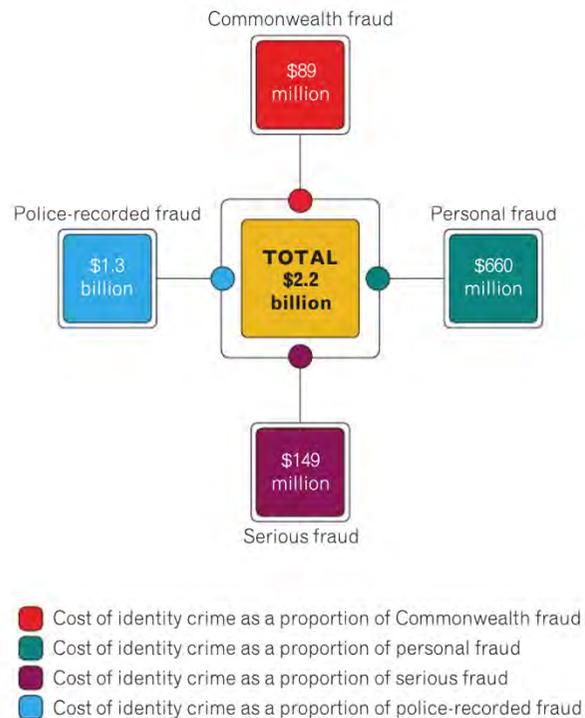


Figure 1.7 The estimated direct and indirect cost of identity crime in 2017.

Drug offences

drug offences relate to acts involving prohibited or restricted drugs. Illegal drugs are drugs that have been prohibited by law because lawmakers have deemed them unsafe for general use.

Some of the main offences are:

Fraud is the deceitful or dishonest conduct carried out for personal gain

-Common types of fraud include identity theft, internet phishing, or requesting funds or account details by email under fraudulent pretences

-The Attorney-General's department estimated that identify crime cost Australia approximately \$2 billion in 2017

Summary Offence Act 1988 (NSW) – Part 3A and the Crimes Act 1900 (NSW)- list a number of public order offences

The Crimes Act 1900 (NSW) also lists some more serious public order offences

Sect. 344A of the Crimes Act 1900 (NSW)- states that 'any person who attempts to commit an offence for which a penalty is provided... shall be liable to that penalty'

R v Whybrow (1951) 35 CAR 141, a husband

	<p>If charged, the police must either release the accused or bring them before a magistrates or authorised officer as soon as practicable after the end of the maximum detention period. Those kept in custody will be brought before the court for a bail hearing. The exception to this rule is the <i>Terrorism (Police Powers) Act 2002 (NSW)</i>, which allows police to make an application to the Supreme Court to detain a person in custody for a maximum period of 14 days if they reasonably believe the suspect is engaged in a terrorist act. - preventative detention</p>	<p><i>Terrorism (Police Powers) Act 2002 (NSW)</i></p>
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3. Criminal trial process

<p>Court jurisdiction</p>	<p>Australia has two overlapping jurisdictions of law:</p> <ul style="list-style-type: none"> - State - Federal <p>As a result, there are separate state and federal jurisdictions, each of which has its own court structure.</p> <p>Appeal- an application to have a higher court reconsider a lower court's decision, on the basis of an error of law.</p> <p>State and territory courts</p> <p>The state court system in NSW operates under the following hierarchy:</p> <ol style="list-style-type: none"> 1. Lower courts 2. Intermediate courts 3. Superior courts <p>Summary offence- criminal offence that can be dealt with by a single judge without jury and do not require a preliminary hearing</p>	
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	<p>Diminished responsibility also known as substantial impairment of responsibility; this defence is used when the accused is suffering from a mental impairment</p> <ul style="list-style-type: none"> - This defence can reduce the charge of murder to manslaughter <p>The defendant must be able to prove that they suffer from a mental abnormality that caused them to act in a certain manner and carry out a crime.</p> <ul style="list-style-type: none"> - This defence is more widely used than the insanity plea because it is easier to prove, and the person may be completely normal in every other aspect of their mental capacity and health. - Substantial impairment cannot be used as an excuse when the accused was drunk or under the influence of mind-altering drugs. 	
<p>The role of juries, including verdicts</p>	<p>In NSW, juries are to hear the most indictable offences where a plea of not guilty is entered and may be used in the District or supreme court.</p> <p>Many of the rules about juries are found in the <i>Jury Act 1977 (NSW)</i></p> <p>Challenging jurors</p> <p>In a criminal trial the prosecution and the defence have the right to challenge either the selection or the entire panel of jurors, or individual jurors. Both sides can also exercise a certain number of peremptory challenges of prospective jurors</p> <p>A peremptory challenge occurs when a legal team rejects a juror without needing to provide a specific reason.</p> <p>A challenge for cause occurs when the legal team rejects a juror because they believe that for some reason the juror will be prejudiced.</p>	<p><i>Jury Act 1977 (NSW)</i></p> <p>Amendment: ‘majority verdict’ is defined as:</p>

		maximum time a child can be sentenced to a control order is 2 years
<p>Alternatives to court</p>	<p>Youth justice conference is a measure under the <i>Young Offenders Act 1997 (NSW)</i> to divert young offenders from the court system through a conference that addresses the offender's behaviour in a more holistic manner</p> <p>The <i>Young Offenders Act 1997 (NSW)</i> provides the main alternative program for young offenders. The Act came into force in NSW in 1988 and was introduced to provide various diversionary measures for young offenders and police as an alternative to traditional criminal processes and court penalties. This aims to encourage rehabilitation, reduce rates of recidivism and reduce the burden of more minor youth offenders on the court system.</p> <p>The program only applies to summary offences and to indictable offences that can be tried summarily.</p> <p><u>Warnings</u></p> <p>A warning is an official notice given to a young offender by an investigating officer, without any conditions attached. The warning is relatively informal- it can be given in any place, but the officer must tell the offender the nature, purpose and effect of the warning</p> <p><u>Caution</u></p> <p>The caution is a formal, recorded alternative to prosecution where the young offender admits to the offence and consents to receiving a formal police caution.</p> <p>Although not a conviction, the caution may later be taken into account in the Children's Court and so can have important consequences.</p> <p><u>Youth Justice Conferences</u></p>	

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom

UN Security Council:

- The organ in charge with preservation of international peace and security.
- Exercises its power through legally binding resolution and can authorise military actions, sanctions or peacekeeping operations
- Has the power to intervene in the most serious of human rights abuses by states

UN General Assembly:

- Consists of representatives from all member states with equal voting power
- The main forum for international discussions, deliberations declarations and recommendations, many relating to issues of human rights.
- Runs numerous committees and programs such as the UN Development Program
- UN Human Rights Council - Complaints of victims of human rights abuses, compulsory periodic reviews and advisory committees to protect human rights

UN Secretariat:

- The main administrative body of the UN with over 44000 staff
- It provides the various information, studies, tasks and facilities for UN
- It includes the UNs department and offices including the office of High Commissioner for Human Rights (OHCHR)

An estimated 2.5 million people are in forced labour (including sexual exploitation) at any given time as a result of human trafficking. A large number of countries are reported to be affected by human trafficking by being a source, transit or destination country.

Domestically, human trafficking has become an increasing concern in Australia for both government and non-government organisations, however the extent of human trafficking in Australia is similarly difficult to quantify. However, the Global Slavery Index 2018 estimates that on any given day in 2016, there were 15,000 living in conditions of modern slavery in Australia, a prevalence of 0.6 victims of modern slavery for every thousand people in the country. Additionally, slavery referrals to the Australian Federal Police has increased substantially in recent years with figures more than doubling from 2013 (70 referrals) to 2016 (169 referrals). Sixty-nine of these offences related to forced marriage, 39 related to sexual exploitation, 36 concerned labour exploitation, and the remainder of referrals related to other forms of human trafficking and slavery.

Moreover, the extent of the issue domestically is seen as the United Nations Office on Drugs and Crime lists Australia as one of 21 trafficking destination countries in the high destination category as a result Australia is committed to combating this issue domestically, regionally and internationally.

Influence of the UN

This occurs as the UN general assembly adopted the Protocol to Prevent suppress and punish trafficking in persons, especially women and children in 2000, as part of the protocol to the UN's Conventions against Transnational Organised Crime. This protocol was the first legally binding instrument with an agreed definition of human trafficking and as of 2020 there are 178 state parties to the protocol however, only 117 are signatories.

This treaty aimed to provide protection, prosecution and prevention in order to effectively and more uniformly combat human trafficking. The protocol created greater global awareness of the issue, more conformity in national laws in tackling human trafficking and further cross-border cooperation in investigating and prosecuting violations.