

Probation and Community Corrections Officers' Association Incorporated

PO Box 684
BUNBURY WA 6230

WA Delegate: Wayne Voak
Telephone 08 9791 0100 Fax 08 9791 1404

Email: wayne.voak@correctiveservices.wa.gov.au

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The conference is almost upon us and the CJs (Conference Junkies) should have booked the flights to the delightful city of Adelaide. I was surprised to be informed that Glenelg is actually a suburb of Adelaide, so I am not as lost as I could have been. It remains winter so please rug up for this delightful opportunity to do compare and comparison with our interstate colleagues.

In this newsletter we conclude the first of the David Daley lectures. I was also approached to include a lost article that proves to be of significance and distressing. If there is any potential assistance available from the readers, comments and feedback will be included in the next newsletter.

From a slightly soggy and winter tired
Wendy Vernon
For the editorial committee

David Daley has kindly provided the series of lectures on the "Law" that he presented to Edith Cowan University. The final part of the first of these lecture papers follows.

Week 1 part 6: The Basis of the Criminal Law in Society

The Criminal Law in Australia The Criminal Law in Western Australia

The criminal law in Western Australia is contained in a number of acts of Parliament, most notably the *Criminal Code* and the *Police Act 1892*, as amended. Stated in its simplest terms the Criminal Code covers most of the serious offences which would ordinarily be dealt with before the Supreme or District

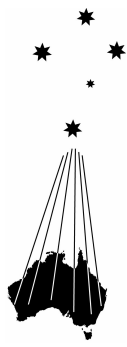
Court. The *Police Act* was introduced to consolidate the law in relation to the Police Force and its powers, but it also specifies a number of offences, most of which are capable of being dealt with by a Court of Petty Sessions.

Other Acts relating to the criminal law which it is useful for students to be familiar with include:

The *Misuse of Drugs Act 1981*
The *Justices Act 1902*
The *Sentencing Act 1995*
The *Sentence Administration Act 1995*
The *Prisons Act 1981*
The *Road Traffic Act 1974*
The *Bail Act 1982*
The *Young Offenders Act 1994*.

The terms **Indictable offence** and **Summary offence** are frequently encountered in relation to criminal offences. As a practical rule of thumb, an indictable offence is usually one of a more serious nature which will be tried in the Supreme or District Court before a judge and jury. In contrast, a summary offence will ordinarily be heard before a Court of Petty Sessions by a Magistrate sitting alone or in some cases by two Justices of the Peace.

In its strict legal meaning an indictable offence is one tried before a judge and jury after a written accusation of a crime, called an indictment, has been read out to the accused person. The trial most often follows a preliminary hearing or inquiry in a Court of Petty Sessions [*now referred to as the Magistrates' Court, ed.*]. Where an offender is charged with an indictable offence he or she usually goes first before a Magistrate who determines if there is a *prima facie* case to answer. If there is, the alleged offender (until found guilty the accused person is known as a defendant) will be committed for trial. In some cases, the offender may plead guilty before a



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magistrate and will then be sent forward to the higher court for sentencing.

A summary offence is usually a lesser offence. Under the Justices Act proceedings before a Magistrate or Justices of the Peace are commenced by a complaint, laid either by the complainant, his counsel or some other person authorised in that behalf. The person against whom the complaint is laid may be brought before the Court either by summons or by arrest.

Amongst the most common summarily punishable offences are those set out in Parts VI, and VII of the *Police Act*. Part VI specifies a wide range of such offences including idle and disorderly conduct, wilful damage, keeping of premises for prostitution and making false reports to Police. Drunkenness was also included in this section until it was decriminalised. Other important offences dealt with under the *Police Act* include drug possession (and distribution in some limited circumstances). Offences under the *Road Traffic Act* constitute the other main group of offences dealt with summarily.

Until 1976, possession of drugs with intent to sell or supply made an offender liable to summary conviction but he/she then had to be sent to the District Court for sentence. An amendment to the *Police Act* in that year made possession of drugs, other than cannabis, with intent to sell or supply become an offence providing for conviction on indictment. This illustrates the claim made earlier about statutory law being better equipped to express changes in community values than the common law.

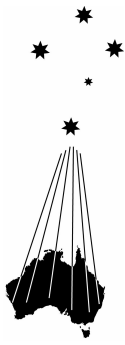
Some indictable offences may be triable summarily if the offender elects to be dealt

with in this manner. Under the *Criminal Code* several indictable offences give the defendant the right to summary jurisdiction. Indictable offences triable summarily include:

- Nuisance type offences specified within certain sections of the *Criminal Code*;
- Assaults may, except in certain circumstances, be dealt with summarily;
- Some break and entering, or break and enter with intent offences can be dealt with summarily subject to certain conditions;
- Stealing offences where the property value is below a certain threshold or if the person pleads guilty, can be punished summarily except in specified circumstances;
- Some types of forgery offences under the *Criminal Code* provide for summary conviction.

In Western Australia the Courts of criminal jurisdiction are shown in the table below in ascending order of authority.

COURT	JURISDICTION
Magistrates' Courts	<p>Under their criminal jurisdiction the Magistrates' Courts derive their authority from the <i>Justices Act</i>. It caters for matters of a criminal nature which do not require hearing by a superior court.</p> <p>The Magistrates Courts also have a civil jurisdiction to hear claims for recovery of debt up to \$25,000 and a Small Disputes Division, which includes a Residential Tenancy Disputes section.</p>
District Court	<p>The District Court of Western Australia is constituted under the <i>District Court of Western Australia Act 1969</i>.</p> <p>The District Court has both civil and criminal jurisdiction. In criminal matters, it may deal with</p>



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	any indictable offence except those that carry a penalty of life imprisonment or strict life imprisonment.
Supreme Court	<p>The Supreme Court is constituted under the <i>Supreme Court Act 1935</i>.</p> <p>The Supreme Court has unlimited criminal jurisdiction. It also has an appellate jurisdiction which means that it can hear appeals against the decisions of other courts. A single judge may hear matters of appeal against decisions of a Court of Petty Sessions. It also has an appellate jurisdiction through the Court of Criminal Appeal where three judges will hear appeals against decisions made in the District or Supreme Courts.</p>

More serious matters will be dealt with before the President of the Court.

Conclusion

This brief introductory overview has only been able to consider a few of the key issues which underlie the criminal justice system and to give the criminal law some form of social context. Following lectures will try to explore how the criminal justice process works from the investigative process which precedes the laying of charges through to the administration of the sentences imposed by the Courts. If and as time permits, it may be possible to set aside some time to also look at mechanisms of more recent origin that allow for the diversion of certain offenders outside the criminal justice system, and the principles behind such initiatives.

The Children's Court also has a Criminal jurisdiction. It is constituted under the *Children's Court Act of Western Australia* (as from 1 December 1989). The Children's Court is presided over by a President who has the status of a District Court judge, assisted by a number of Magistrates. Its functions are to:

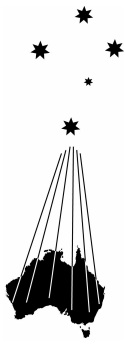
- Hear and determine cases involving offences by juveniles, defined as young people between the ages of 10 and 17 years. A person under the age of ten is not held to be criminally responsible. The Young Offenders Act contains the key provisions for the control and disposition of offending children.
- To exercise a non-criminal jurisdiction in respect child care and protection matters.

As with the Courts of Petty Sessions, there are limits in respect of the penalties that can be imposed by Magistrates to juvenile offenders.



References

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2. *Colvin, E and Linden-Laufer, S (1994)*. Criminal law in Queensland and Western Australia Cases and Commentary. *Sydney: Butterworths*.
3. *Findlay, M., Odgers, S., and Yeo, S. (1999)*. Australian Criminal Justice (2nd ed). Chapter 1. *Melbourne Oxford University Press*.
4. *W.A Ministry of Justice (1998)*. Courts, Boards and Tribunals of Western Australia. *Perth*
5. *Nettheim, G and Chisholm R (1974)*. Understanding Law: an introduction to Australia's legal system. *Sydney: Butterworth*



Probation and Community Corrections Officers' Association Incorporated

PO Box 479
BUSSELTON WA 6280

WA Delegate : Wayne Voak
Telephone 08 97 549650 Fax 08 97 546300

Email: wayne.voak@justice.wa.gov.au

LOST

Philosophical Underpinnings of our work: If found please return to them to your nearest Community Corrections Centre.

Our much loved Philosophical Underpinnings have been lost for some time now and are sadly missed by those old enough and experienced enough to remember them. The Philosophical Underpinnings have been replaced by self importance, rapid promotion; self centred arrogance and a fixation on the numbers of reports written and cases managed. It seems without our missing Philosophical Underpinnings our job is not worth doing unless it is about our own advancement. It is certainly no longer about the prisoner, the person before the court, their families or the wider community.

Our purpose for doing what we do has also gone missing. It left about the same time we lost our Philosophical Underpinnings. Now our clients suffer as much as we do, maybe more so.

With both our Philosophical Underpinnings and our purpose for what we do missing a new culture of CJS Centre politics has emerged in the guise of a new game called Rebound the Report (and sometimes case) where at each Centre seniors bounce reports and cases back and forth until one Centre is stuck with the unwanted case or report making the other Centre the winner.

I want my Philosophical Underpinnings and my purpose for what I do back. I want to again believe what we do is worthwhile and valuable. Many former colleagues disappointed and saddened by the loss of our philosophical underpinnings were so overcome by grief they have moved on and

many others are considering doing the same. We don't like the replacement culture, the self obsession and purposelessness.

If you find our missing Philosophical Underpinnings please return them no questions asked to a Community Corrections Centre near you. You may have to explain what it is you are returning because there are so few people left who would recognise our Philosophical Underpinnings, know why we need them or even care.

A reward for the return of the missing Philosophical Underpinnings was considered but was unable to be raised due to an overwhelming lack of interest.

If you can assist with this lost item please contact our local PACCOA delegate.

Reminders:

Next Meeting:

Victoria Park CJS
Wednesday 8 August 2007 at 12 NOON
A light lunch will be provided. Please advise Wayne Voak of your attendance for catering purposes.

PACCOA Conference 2007 24-26 October 2007

Domestic Violence and Aggression - Fear is not the only consequence

Including a day of training workshops for practitioners

Beachside Conference Centre, Glenelg, Adelaide