Assess the role of law reform in the criminal justice system in achieving justice

The New South Wales Law Reform Commission states ‘as society evolves; the law needs to change to reflect... economic and technological developments, different social values and new concepts of justice.’ Hence, law reform plays a pivotal role in achieving justice within the criminal justice system. However, despite some successes, due to the rapidly evolving nature of community values, recent reforms have only been partially effective in achieving justice for all parities. Thus, law reform’s role in the criminal justice system has had mixed effectiveness in achieving justice.

Law reform around bail has had mixed effectiveness in its role in the criminal investigation process. Under the former Bail Act 1978 there was a complicated system of presumptions against bail that hindered the effectiveness of the criminal justice system in making bail decisions. The Law Reform Commission’s ‘Report 133: Bail’ (2012) stated that, ‘the complexity of the current Act and its language means that it is unintelligible not only to ordinary citizens, but also to legal practitioners’, demonstrates that former bail legislation caused confusion for bail authorities. The enactment of the Bail Act 2014 that repealed the former act created a more consistent system of bail considerations through introducing the unacceptable risk test applying to all offences. Under s18 of the Act, bail authorities can exercise discretion on whether to grant bail, if the judge or magistrate believes that the accused will not endanger society, commit another serious offence, interfere with witnesses or fail to attend court.

These law reforms have allowed the equal right to have the presumption of innocence of all suspect protected effectively. However, the introduction of show cause offences into s16B of the Bail Act Amendment 2014 displays ineffectiveness as it reflects of the inability of the criminal justice system to protect the interests of the offender overtime. Under this statutory provision, suspects of indictable offences must prove, on the balance of probabilities, why they should be granted bail. This represents that the criminal justice system is ineffectively upholding the rule of the law principle of the presumption of innocence. Former DPP Nicholas Cowdrey argues that the criminal justice system ‘should provide fair and equal treatment to all accused persons and forcing them to show cause is a breach of this’, which affirms that the amendments to the Bail Act were ineffective and unjust. Therefore, law reform around bail has had mixed effectiveness in the role of achieving justice for the offender during the criminal investigation process.

Law reform can has played an imperative roll in statutory guidelines for mandatory sentences that hinders the criminal justice system to achieve justice. The Crimes Act 1900 (NSW) and the Crimes (Sentencing Procedures) Act 1999 identify the minimum and maximum sentences of offences. Through law reform, The Crimes Amendment (Murder of Police Officers) Act 2011 (NSW) was created, carrying mandatory sentence of life imprisonment for the manslaughter or murder of a police officer. Sydney Morning Herald’s ‘Cowdrey lashes on mandatory life for police killers’ (2011) states that former DPP Nicholas Cowdrey believes mandatory sentences limit justice achieved by offenders as it inhibit judges to effectively provide the most appropriate sentence. Judges cannot exercise
their discretion and this is making the ‘doing of justice...impossible as justice is not received for the offender’, as seen in R v Jacobs (2013), where a mandatory life sentence was imposed for the conviction of murdering a police officer.

Law reform for mandatory sentencing in other areas have occurred, and further displays ineffectiveness. The publics’ negative response to R v Loveridge (2013), a case of a one punch assault resulting in death, lead to the enactment of Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014 creating minimum penalties for assaults causing death (s25A of the Crimes Act 1900) and assaults causing death when intoxicated (s25B of the Crimes Act 1900). Both law reforms surrounding mandatory sentences may not reflect the culpability of offenders, inhibiting justice to be achieved for the offender. Nicholas Cowdery’s further states that ‘no crime is uniform in its nature, and it is the function of the courts to honour this principle instead of completely ignoring it’. Thus, the role of law reform in mandatory sentencing displays ineffectiveness in achieving justice as it shifts the focus of justice to society and victims.

Law reform around the sentencing of young offenders has effectively enabled justice to occur. When 13 year old was sentenced to 20 years and 10 years non-parole for murder in R v SLD (2002), Justice Wood CJ identified a need for an alternative sentencing option where there would be provision for review and re-sentencing at a later date. In 2009, The NSW Sentencing Council recommended the introduction of ‘Provisional Sentencing’. Their recommendations lead to law reform, with Crimes (Sentencing Procedure) Amendment (Provisional Sentencing For Children) Act (2013) enabling that children who murder from now on can get a ‘provisional’ sentence. The introduction of young offenders’ progress and rehabilitation in custody are taken into account in determining the final sentence imposed, effectively enables justice to occur.

The process of law reform has had moderate effectiveness in achieving justice of international crime. Coinciding with Australia’s ratification of the Rome Statute, the federal government reformed the law with the passing of the International Criminal Court Act 2002 (Cth) and the International Criminal Court (Consequential Amendments) Act 2002 (Cth). As the ICC plays a critical role in enforcing international law, Australia reforming their domestic laws to comply with the statute enables justice surrounding international crime to be achieved. The legislation introduced further law reforms, with the introduction of Criminal Code Amendment (Trafficking in Persons Offences) Act 2005.

The Australian Government’s media report ‘Human trafficking’ identifies that since these law reforms, ‘the government has provided more than $150 million to support a range of domestic, regional and international anti-trafficking initiatives’ including the increase of Australian Federal Police funding to strengthen its ability to detect and investigate transnational crime. Andrew Lynch’s ‘Human Trafficking and Slavery: Part 2’ identifies that this law reform was ‘a step in the right direction towards combating trafficking in persons’ as successful prosecutions of human trafficking such as the R v Tang (2008) would likely not have occurred. However, Kara Vickery’s ‘Australia’s human trafficking crisis: Forced marriage, labour exploitation are rising’ (2015) identifies that ‘93 human trafficking cases were investigated by federal police last year’, yet ‘no convictions were made’. The article states that even with improvements to Australia’s laws, prosecutions continue to inhibit the effectiveness of the role of law reform in international law as many victims are too scared to report the crime. Thus, the role of law reform in the criminal justice system relating to international crime has limited effectiveness in the access of justice.
Ultimately, law reform’s role in the criminal justice system is necessary, as in order for the law to be effective, the law must change & evolve to achieve new concepts of justice. However, it is clear that the role of law reform in some areas of the criminal justice system is limited in achieving justice due to the difficulty in balancing the interests of the victim, the offender and society. Thus, although the role law reform plays in the criminal justice system is essential if the law is to remain relevant, it displayed mixed effectiveness in achieving justice.