

The response addresses the key aspects of the question and refers to some operations of the legal system with reference to case law. The inclusion of more legislation and cases relevant to the issues identified would enhance the response. More detailed analysis of the issue would have improved the response.

- 1 -

Start here. Q25.

Within criminal justice systems, individual rights and freedoms and community interests conflict. The criminal justice system looks to uphold the society's needs, as well as meet individual rights. It aims to balance justice upon victims, offenders, and communities interests through its rule of law and many applications. Sometimes, however, tension arises as a result of this balance and applications between the community and individual rights, particularly within accessibility, enforceability, resource efficiency and responsiveness.

In criminal justice systems, accessibility creates a tension between community interests and individual rights and freedoms. The many things community frowns upon, such as upholding child laws or rights of offenders, rehabilitation centres as opposed to correctional centres, are supported by many individuals as rights and freedoms. This creates a tension in justice systems in terms of balancing these needs. In particular, in terms of accessibility. It is in the best of community interests to have accessibility to law system, such as in cases of abuses, to be able to get help. However, this need for constant law interruption could also be argued to be restricting upon individual freedoms. Such as the uses of ADVOs in domestic violence, which imbreaches Criminal Law.

It is in society's interests to have easy access to ADGs and court orders, but could be argued to imbreach personal domestic life. Thus the community interests and individual freedoms create tension within the criminal justice system.

Another cause for tension is responsiveness. The community expects the law to respond to all offenders in society, particularly insisted by the victims, to see retribution against offenders, even child offenders. However, individual rights include a certain protection by the law which conflicts with community's interest. Child offenders are dealt by Child Offenders (Crime Procedures) Act 1987 (Cth), which aim at rehabilitation as opposed to retribution. Some could argue this is fair, however, it's unjust for the victims and the community as a result. One case involved R v LMW (1999), where a ten year old boy pushed a 6yr old boy over the bridge, causing his death. The case was dropped due to *doli incapax*, but created a tension because the parents of the 6yr old never saw retribution for this atrocity. This case provides an example of the justice system's reluctant response to child offenders. Adult offenders are also protected by the law and could be granted parole upon release date, which suggests the law is responsive to offenders. However, this is

Additional writing space on back page.

unjust for the victims and the community's interests.

In terms of enforceability, community interests and individual rights conflicted. Accused and offenders are granted individual rights, within criminal law, such as the right to fair humane treatment, right of silence and right of legal representation. This is an individual right that conflicts with community's needs of ~~has~~ seeing the offender harshly prosecuted. Therefore, the creation of such rights for criminals creates tension as the community doesn't see inhumane treatment, especially if the offender is one who committed an atrocious act. Enforceability, in this case, could be argued to be too soft and inconsiderate of the larger community's interests, creating tension within the criminal justice system.

Individual rights and freedoms and community's interests often create tension within the criminal justice system. In its balancing of victims', offenders' and community's rights, bias and disagreement between the parties often arise such as in regard to accessibility, enforceability and responsiveness, which in turn creates the tension in criminal justice systems.

You may ask for an extra Writing Booklet if you need more space.