

Law and Order

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THE LAW IN AUSTRALIA

Nature and composition

The laws of a country represent the common body of rules, whether proceeding from legislation, executive action, court judgements or custom, that a State or community recognises as binding on its citizens or members, and which are enforceable by judicial means. In Australia, the law consists basically of:

- Acts passed by the Commonwealth Parliament acting within the scope of its powers under the Australian Constitution, together with the regulations, rules and orders made under such Acts;
- Acts and Ordinances passed in respect of the Australian Capital Territory and the Northern Territory of Australia, together with the regulations, rules and orders made under such Acts and Ordinances;
- Acts passed by State Parliaments and the Legislative Assembly of the Northern Territory of Australia and the Australian Capital Territory, together with the regulations, rules and orders made under such Acts;
- so much of the common or statute law of England that still applies to Australia and remains unrevoked by Australian domestic legislation; and
- the common law, consisting of judicial decisions.

These various laws relate to a number of subject matters, including constitutional law, criminal law, civil law, family law and industrial law.

Commonwealth and State responsibilities

Under the Australian Constitution, the Commonwealth of Australia is empowered to make laws in relation to certain matters specified in the Constitution, e.g., in relation to trade and commerce, taxation, defence and external affairs. In relation to some of these matters, the powers of the Commonwealth are concurrent with those of the Australian States and Territories in that they may be exercised by either the Commonwealth, the States or the Territories. In relation to some other specified

topics the Commonwealth's power is absolute, and, in all areas of federal jurisdiction, Commonwealth laws are binding on the Australian States and Territories.

The Australian States and Territories have independent legislative power in relation to all matters that are not otherwise specifically invested in the Commonwealth of Australia, and it is the statute law and the common law of the States and Territories that primarily govern the day-to-day lives of most Australians.

Administration

Administration of the law in Australia is undertaken by the responsible government concerned, principally through the Commonwealth, State and Territorial police forces, the National Crime Authority, and State and Territorial corrective or penal services. There is no independent federal corrective service, and the relevant State or Territorial agencies provide corrective services for federal offenders.

Law reform

Reform of the law is undertaken principally through the Commonwealth Parliament and State Parliaments, as well as Attorneys-General acting in some instances on recommendations made by State or Australian Law Reform Commissions, and by State Supreme Courts or Federal Courts.

Law Reform Commissions have been established as statutory authorities in all Australian States (except South Australia) to undertake review of State laws, and to report findings and recommendations for the reform of those laws to State Parliaments and Attorneys-General. (In South Australia, a Law Reform Committee was established by proclamation to perform similar functions in that State.) Additionally, in Victoria there is a Chief Justice's Law Reform Committee and a Victorian Legal and Constitutional Committee established under the *Parliamentary Committees (Joint Investigatory Committees) Act 1982*. These agencies have functions to recommend reform of the law. Acceptance of their recommendations depends upon governmental and parliamentary reaction to the proposals.

The Australian Law Reform Commission

The Australian Law Reform Commission commenced operations in 1975 under the *Law Reform Commission Act 1973*. The Commission was established to report on the review, simplification and modernisation of those laws concerning matters assigned by the Australian Constitution to the jurisdiction of the Commonwealth Parliament, and to consider proposals for the uniformity of laws of the Australian States and Territories. The Commission is required to make reports arising out of such review or consideration to the Commonwealth Attorney-General, and to make such recommendations as it thinks fit.

Since 30 June 1990, the Commission has completed reports on the following references:

- Criminal Admiralty Jurisdiction and Prize; and
- censorship procedure.

See earlier Year Books for previous reports.

FEDERAL COURTS

The judicial power of the Commonwealth of Australia is vested in the High Court of Australia, in the federal courts created by the Commonwealth Parliament and in the State courts invested by Parliament with federal jurisdiction. The nature and extent of the judicial power of the Commonwealth is prescribed by Chapter III of the Australian Constitution.

High Court of Australia

The Australian Constitution provides that the judicial power of the Commonwealth of Australia should be vested in a 'Federal Supreme Court, to be called the High Court of Australia'. The Constitution requires that there shall be a Chief Justice and not less than two other Justices of the High Court. Today there are six other Justices. Originally, Justices were appointed for life. However, following an amendment to the Constitution in 1977, Justices appointed after that date retire at seventy years of age.

The Australian Constitution vests two types of jurisdiction in the High Court: appellate, under section 73; and original, under sections 75 and 76.

Original jurisdiction is conferred by section 38 of the *Judiciary Act 1903* in respect of:

- matters arising directly under any treaty;
- suits between States, or between persons suing or being sued on behalf of different States, or between a State and a person suing or being sued on behalf of another State;
- suits by the Commonwealth of Australia, or any person suing on behalf of the Commonwealth, against a State, or any person suing or being sued on behalf of a State;
- suits by a State, or any person suing on behalf of a State, against the Commonwealth of Australia or any person being sued on behalf of the Commonwealth; and
- matters in which a writ of mandamus or prohibition is sought against an officer of the Commonwealth of Australia or of a federal court. (However, the High Court shares some of its jurisdiction under this section with the Federal Court of Australia.)

The High Court is empowered to remit to another court any matters under section 38 of the Judiciary Act. In addition, the High Court is the Commonwealth Court of Disputed Returns.

The appellate jurisdiction of the High Court of Australia derives from the Judiciary Act, together with the *Federal Court of Australia Act 1976* and the *Family Law Act 1975*, and permits the High Court to grant leave to appeal from decisions of:

- State Supreme Courts;
- State courts exercising federal jurisdiction;
- the Federal Court of Australia; and
- the Family Court of Australia.

In considering whether to grant an application for leave to appeal from a judgment, the High Court may have regard to any matters that it considers relevant, but it is required to have regard to whether the application before it:

- involves a question of law that is of public importance, or upon which there are differences of opinion within, or among, different courts; or
- should be considered by the High Court in the interests of the administration of justice.

The High Court is now the final court of appeal in Australia.

Federal Court of Australia

The Federal Court of Australia was created by the *Federal Court of Australia Act 1976*.

The Federal Court consists of an Industrial Division and a General Division. Matters arising under the *Industrial Relations Act 1988* are dealt with in the Industrial Division and all other matters are dealt with in the General Division. The Court sits as required in each Australian State, in the Australian Capital Territory and the Northern Territory.

The Federal Court has such original jurisdiction as is invested in it by laws made by the Commonwealth Parliament. Except in cases where a hearing had actually commenced before 1 February 1977, the jurisdiction formerly exercised by, respectively, the Federal Court of Bankruptcy and the Australian Industrial Court have been transferred to the Federal Court.

The Federal Court has been invested with original jurisdiction, concurrent with that of the High Court of Australia, in relation to matters in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth of Australia.

The Federal Court has appellate jurisdiction in relation to the decisions of single judges of the Court, decisions of the respective Supreme Courts of the Australian Territories (but not the Northern Territory), and certain decisions of State Supreme Courts when exercising federal jurisdiction (e.g., under the *Income Tax Assessment Act 1936* and the *Patents Act 1990*).

Family Law

The *Family Law Act 1975*, which commenced operation on 5 January 1976, introduced a new law dealing with the dissolution and nullity of marriage, custody and welfare of the children, maintenance and the settlement of property between the parties to a marriage in Australia. The Act also created the Family Court of Australia as a specialist court dealing only with matrimonial and associated proceedings.

The Act provides that there is only one ground for divorce — that of irretrievable breakdown of a marriage — which ground is established if the husband and wife have been separated and have lived apart from each other

for 12 months and there is no reasonable likelihood of their reconciliation. Statistics on divorce are contained in the chapter, Demography.

The provisions of the Family Law Act dealing with the maintenance, custody and welfare of children of a marriage have, since 1 April 1988, applied to all children (including ex-nuptial children) in New South Wales, Victoria, Queensland, South Australia, Tasmania, the Australian Capital Territory, the Northern Territory, and Norfolk Island. In Western Australia, the Family Law Act does not apply to ex-nuptial children, who are subject to State laws.

Proceedings under the Family Law Act are dealt with by the Family Court of Australia and by certain other courts in the Australian States and Territories. Except in certain areas of Western Australia, Magistrates Courts and Courts of Petty Sessions have jurisdiction in all proceedings under the Act except for:

- proceedings for dissolution or nullity of marriage. (The courts in which an undefended application for dissolution may be instituted or heard have been limited by regulation.); and
- defended proceedings for custody or concerning property worth more than \$1,000, unless the parties agree to the matter being heard by a Magistrates Court or Court of Petty Sessions.

A State Family Court has been established in Western Australia to deal with family law matters in that State. That Court applies the provisions of the Family Law Act in dealing with matters related to dissolution and nullity of marriages, the custody and welfare of children of marriages, and maintenance and property settlements.

In relation to the guardianship and custody of children, the Family Law Act provides that both parents are guardians, and have, subject to a court order to the contrary, the joint custody of their children under 18 years of age. However, a parent or another interested person can apply to the Court for sole custody of a child at any time.

Since 1 June 1988, the Child Support Agency, an office established within the Australian Taxation Office, collects periodic child maintenance and some spousal maintenance for a wide range of persons, including pension

recipients, sole parents who have separated since that date, or who have never cohabited with the parent of a child born since that date. The Child Support Agency uses maintenance collection and enforcement methods similar to those used for the collection and enforcement of income tax.

Since 1 October 1989 the *Child Support (Assessment) Act 1989* has provided a formula for the administrative assessment of maintenance by the Registrar of Child Support. The purpose of an administrative assessment is the determination of maintenance. The scheme aims to ensure that parents share the cost of child support according to their capacity to pay and to provide for adequate support of their children. The Act applies only to children born after 1 October 1989, or those whose parents separate after that date. The new legislation does not, however, prevent parents from reaching their own child maintenance agreements, or from seeking a judicial review of an administrative assessment.

The court has power to settle disputes about the parties' family assets, including the power to order a transfer of legal interests in matrimonial property. When dealing with these disputes, the court considers the interest each party has in the property, the financial and non-financial contributions made by each party during the marriage, and the matters the Court is required to consider in dealing with maintenance applications.

The Family Law Act also established two statutory bodies that assist and advise the Commonwealth Attorney-General on family law matters. They are the Family Law Council, an advisory body that is based in Canberra, and the Australian Institute of Family Studies, a research body that is based in Melbourne.

Family Court of Australia

The Judges of the Family Court of Australia are chosen because of their suitability to deal with matters of family law by reason of their training, experience and personality. Staff who are attached to the Court include trained counsellors and legally qualified Registrars and Deputy Registrars.

Proceedings under the Family Law Act in the Family Court are heard in open court,

although persons may be excluded from the Court by court order. Some proceedings may be heard in chambers. No publicity that identifies the person or persons involved in any proceedings under the Act is permitted unless otherwise directed by the Court. The publication of law court lists and law reports, or other publications of a technical character directed to the legal or medical professions, is, however, exempted from this prohibition.

STATE AND TERRITORY COURTS

Australian State and Territory courts have original jurisdiction in all matters brought under State or Territory statute laws, and in matters arising under federal laws, where such matters have not been specifically reserved to courts of federal jurisdiction. Most criminal matters, whether arising under Commonwealth, State or Territory law, are dealt with by State or Territory courts.

Each State and Territory court system is organised and operates independently. However, within each system, which comprises both courts and general jurisdiction and certain specialist courts and tribunals, the courts are organised hierarchically according to the nature of the several matters with which they may deal.

Appeals

The various State County and District Courts and State and Territory Supreme Courts have jurisdiction to hear appeals against the decisions of lower courts and some specialist tribunals in their respective jurisdictions. The procedures concerning the right of appeal are laid down by statute in each State and Territory and appeals may be lodged against matters such as the correctness of the verdict or the severity of the sentence imposed.

Special courts and tribunals

Each Australian State and Territory administers particular areas of the law through specialist courts or tribunals, such as Small Claims Courts and Licensing Courts. These courts or tribunals deal primarily with civil matters or matters of an administrative nature.

Courts of Marine Inquiry

Matters that come within the jurisdiction of Courts of Marine Inquiry are contained in the Commonwealth *Navigation Act 1912*. The principal areas of these Courts' jurisdiction are to make inquiries into casualties, including missing ships and events entailing loss of life on or from ships. Courts of Marine Inquiry are convened by the request of the Minister for Transport and Communications.

ADMINISTRATIVE REVIEW ACTIVITIES

Administrative Appeals Tribunal

The Administrative Appeals Tribunal was established by the *Administrative Appeals Tribunal Act 1975*. Its President is a judge of the Federal Court of Australia. The Tribunal is an independent body whose function is to review the decisions made by Commonwealth Ministers of State, Commonwealth authorities and officials under certain laws of the Commonwealth of Australia. The Tribunal is able to substitute its own decision in those areas in which it has jurisdiction, which covers decisions made under more than 200 Commonwealth enactments, including decisions under the *Social Security Act 1947*, the *Migration Act 1958*, the *Customs Act 1901*, the *Export Market Development Act 1974*, the *Freedom of Information Act 1982*, the *Repatriation Act 1920*, the *Veterans' Entitlements Act 1986* and the *Civil Aviation Act 1988*.

The Administrative Review Council was also established by the *Administrative Appeals Tribunal Act 1975*. The principal functions of the Administrative Review Council are to make recommendations to the Commonwealth Attorney-General on rights of review of administrative decisions and on the procedures of administrative tribunals.

Administrative Decisions (Judicial Review) Act 1977

The *Administrative Decisions (Judicial Review) Act 1977* provides for judicial review by the Federal Court of Australia of administrative action taken under Commonwealth legislation. Where an order of review is sought by an aggrieved person, the Court is empowered to review the lawfulness of a decision, the

conduct leading up to the making of a decision, or circumstances where there has been failure to make a decision. The grounds on which review may be sought and the powers of the Court are set out in the Act. In many cases, a person who is entitled to seek judicial review in respect of an administrative decision may seek a statement of reasons for the decision from the decision maker.

Commonwealth Ombudsman

The Office of the Commonwealth Ombudsman was established by the *Ombudsman Act 1976* to investigate complaints about the administrative actions of Commonwealth Government departments and prescribed authorities.

The Ombudsman has special powers to investigate complaints against the Australian Federal Police and actions of agencies relating to freedom of information, and to inspect record-keeping procedures for telephone interceptions under the *Complaints (Australian Federal Police) Act 1981*, the *Freedom of Information Act 1982*, and the *Telecommunications Act (Interception) Act 1979* respectively.

The Ombudsman was designated the Defence Force Ombudsman in 1983 by amendment to the Ombudsman Act, with power to investigate matters relating to service in the Australian Defence Force by serving and former members.

The Commonwealth Ombudsman has extensive powers to require the production of documents and information. On completion of an investigation, consideration is given to whether the action in question was illegal, unjust, oppressive, improperly discriminatory, or wrong. The Ombudsman can also assess and report on the reasonableness of any law, rule or policy under which the action was taken.

If necessary, the Commonwealth Ombudsman can recommend to the agency concerned that it take appropriate remedial action. If the agency fails to comply with such a recommendation, the Ombudsman can report successively to the Prime Minister and to the Commonwealth Parliament.

The Ombudsman is also the Ombudsman for the Australian Capital Territory, a separate

position created by the *A.C.T. Ombudsman Act 1989*.

COMMONWEALTH OMBUDSMAN COMPLAINTS RECEIVED, 1990-91

<i>Type of complaint</i>	<i>Number</i>
Commonwealth Ombudsman (includes Freedom of Information)	
Written complaints	3,134
Per 100,000 of population	18.7
Oral complaints	9,086
Per 100,000 of population	53.6
Defence Force Ombudsman	
Written	298
Oral	663
Australian Federal Police	
Written	524
Oral	151

Source: *Commonwealth Ombudsman*.

COMMONWEALTH AND DEFENCE FORCE OMBUDSMAN JURISDICTIONS COMPLAINTS FINALISED, 1990-91

<i>Method of finalisation</i>	<i>Number</i>
Written complaints	
Outside Ombudsman's jurisdiction	554
Discretion exercised	702
Withdrawn or lapsed	188
Substantially in favour of complainant	718
Partly in favour of complainant	444
In favour of agency	920
<i>Total</i>	<i>3,526</i>
Oral complaints	
Discretion exercised	3,266
Written complaint advised	1,775
Substantially in favour of complainant	1,600
Partly in favour of complainant	1,411
In favour of agency	1,697
<i>Total</i>	<i>9,749</i>
Total finalised	13,275

Source: *Commonwealth Ombudsman*.

The Human Rights and Equal Opportunity Commission

The Human Rights and Equal Opportunity Commission was established by the Australian Government on 10 December 1986 and replaced the Human Rights Commission that had existed for the previous five years. The Commission's functions include the promotion

of understanding, acceptance and public discussion of human rights in Australia, including those set out in the following United Nations instruments:

- the Convention Concerning Discrimination in Respect of Employment and Occupation;
- the International Covenant on Civil and Political Rights;
- the Declaration on the Rights of the Child;
- the Declaration of the Rights of Mentally Retarded Persons;
- the Declaration on the Rights of Disabled Persons;
- the International Convention on the Elimination of All Forms of Racial Discrimination; and
- the Convention on the Elimination of All Forms of Discrimination Against Women.

The major functions of the Commission include: the examination of proposed Commonwealth legislation to ascertain whether any provisions are inconsistent with, or contrary to, human rights; inquiry into practices that may be inconsistent with, or contrary to, human rights, and the settlement of matters arising therefrom by inquiry and conciliation or report to the Commonwealth Attorney-General, as appropriate; undertaking research and educational programs relating to human rights; and the examination of international instruments to ascertain whether changes need to be made in domestic laws to comply with international agreements to which Australia is a party.

On 1 January 1990 regulations came into effect which enable the Commission to investigate and conciliate in relation to complaints of discrimination in employment or occupation on any of a number of new grounds. These grounds are: age; medical record; criminal record; impairment; marital status; mental, intellectual or psychiatric disability; nationality; physical disability; sexual preference; and trade union activity. Discrimination on these grounds is not, however, actually made unlawful by the regulations.

The Privacy Commissioner

The Office of Privacy Commissioner was established on 1 January 1989 when the *Privacy Act 1988* commenced. The Privacy Commissioner is an ex-officio member of the

Human Rights and Equal Opportunity Commission.

The Privacy Act:

- establishes standards for the handling of personal information by Commonwealth agencies (the Information Privacy Principles);
- establishes guidelines for protecting the privacy of tax file numbers (the *Tax File Number Guidelines*); and
- establishes a regime for protecting the privacy of individuals' consumer credit records.

The Privacy Act also defines the role, powers and functions of the Privacy Commissioner. The functions can be divided broadly into the following areas:

- the investigation of complaints about practices which may breach the Information Privacy Principles, the Tax File Number Guidelines, or the Act's provisions relating to credit reporting;
- ensuring, by way of audits, compliance with the Tax File Number Guidelines, the Information Privacy Principles, and the provisions relating to credit reporting;
- issuing Guidelines required by the Privacy Act and other Guidelines as necessary to assist agencies avoid breaching the Act; (under this power the Privacy Commissioner is preparing Guidelines relating to data matching by Commonwealth agencies);
- advising on developments in technology and privacy policy issues; and
- examination of proposed legislation and advising the relevant Minister of State on its privacy implications.

Freedom of Information Act

The *Freedom of Information Act 1982* has two objectives:

- to make available to the public information about the rules, practices and operations of Australian Government departments and authorities; and
- to create a general right of access to documents in the possession of Commonwealth Ministers of State and Commonwealth agencies.

In order to achieve these objectives the Act defines the rights of members of the public to obtain access to documents, and sets out a range of obligations and restrictions on

Commonwealth agencies and the public for exercising these rights.

The right of access does not extend to all documents or to all agencies. Exempt documents include:

- documents that affect the national security, defence, international relations and relations with States;
- Cabinet and Executive Council documents;
- unreasonable disclosure of internal working documents;
- documents that affect enforcement of the law and protection of public safety;
- other documents that are exempt by reason of secrecy provisions listed in Schedule 3 of the Act, financial or property interests of the Commonwealth of Australia, personal privacy and legal professional privilege;
- documents concerning business affairs or confidential material; and
- documents made available for purchase or open access upon payment of a fee.

Agencies which are exempt either wholly or in relation to certain of their competitive commercial activities include security intelligence agencies, and those agencies which are wholly or partly engaged in commercial activities in competition with the private sector. These agencies are listed in Parts 1 and 2 of Schedule 2 to the Act.

The Act contains extensive provisions for review of decisions made under the Act, including review by the Administrative Appeals Tribunal and the Commonwealth Ombudsman.

OTHER COMMONWEALTH BODIES

Commonwealth Royal Commissions

Australian Governments have, from time to time, established Royal Commissions to inquire into, and report on, matters of public concern.

A Royal Commission is established by the Governor-General, on the advice of the Australian Government, issuing a commission to a person or persons to inquire into and report on specified matters. At the end of its inquiry, a Royal Commission presents its report to the Governor-General for consideration by the Government. These

reports are usually also tabled in the Commonwealth Parliament.

The power to issue Letters Patent to inquire is a prerogative of the Crown. The *Royal Commissions Act 1902* confers powers on a Royal Commission to compel the attendance of persons, the giving of evidence, and the production of papers. It also creates a number of offences (e.g., failure to attend a Royal Commission when summoned, or failure to produce papers) and gives some protection to Commissioners and witnesses against legal liability. The constitutional foundation of the Royal Commissions Act is section 51(xxxix) of the Australian Constitution, which provides that the Commonwealth Parliament may make laws with respect to 'matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth'.

Royal Commissions conducted between 1 July 1984 to 30 June 1991 are:

- The Royal Commission into British Nuclear Tests in Australia;
- The Royal Commission of Inquiry into Alleged Telephone Interceptions;
- The Royal Commission of Inquiry into Chamberlain Convictions;
- The Royal Commission into Grain Storage, Handling and Transport; and
- The Royal Commission into Deaths in Custody of Aboriginals and Torres Strait Islanders.

National Crime Authority

The National Crime Authority (NCA) was established by the Commonwealth Government in July 1984 as provided by the *National Crime Authority Act 1984*. Similar legislation was passed in each State and the Northern Territory to underpin the work of the NCA in those jurisdictions, making the NCA the only law enforcement agency in Australia whose investigations are not limited by jurisdictional or territorial boundaries.

The decision to establish the NCA was taken in response to the findings of several Royal Commissions conducted in the late 1970s and early 1980s, which revealed the extent of

organised criminal activity in Australia. The NCA's primary aim is therefore to take effective action to reduce the incidence and impact of organised crime in Australia, but the term 'organised crime' is not in fact used in the *National Crime Authority Act 1984*, which instead describes such activity in terms of 'relevant criminal activity' and 'relevant offence'.

In conducting investigations, the NCA is required to assemble admissible evidence relating to offences against the laws of the Commonwealth, States or Territories to enable the prosecution of offenders and to provide that evidence to the appropriate Attorney-General or relevant law enforcement agency, such as the Director of Public Prosecutions.

Information may be passed to prosecution authorities to enable such agencies to pursue civil remedies or other action to confiscate the proceeds of criminal activity.

The NCA may also make recommendations to relevant ministers for law or administrative reform.

Apart from the normal powers of a law enforcement agency, the NCA may use special powers when it has been given a reference by a member of the Inter-Governmental Committee. These powers include the power to issue summonses and conduct in-camera hearings at which witnesses are required to give evidence or produce documents, and the power to seek the delivery to the NCA of the passport of a person who has been summonsed to appear at a hearing, but who is suspected of seeking to leave Australia.

The work of the NCA is monitored by the Inter-Governmental Committee and by the Parliamentary Joint Committee on the NCA. The Act provides for the review by the Federal Court of certain decisions, and other decisions are subject to review pursuant to the *Administrative Decisions (Judicial Review) Act 1977*.

Consumer affairs

The Commonwealth involvement in consumer affairs derives substantially from the *Trade Practices Act 1974*. The Commonwealth Attorney-General has responsibility for Part V (Consumer Protection) of the Act that deals with unfair practices, provides private law

rights against sellers, manufacturers and importers, and provides for product safety (including provision for the banning and/or recall of goods considered to be unsafe) and information standards.

The Federal Bureau of Consumer Affairs, located in the Attorney-General's Department:

- provides the Minister for Justice and Consumer Affairs with advice on the consumer protection provisions of the Trade Practices Act and on a range of consumer issues;
- reviews and develops Commonwealth policy on recalls and consumer product safety;
- reviews and develops Commonwealth policy on packaging and labelling; and
- administers product safety and information standards of the Trade Practices Act, including monitoring and enforcing compliance with standards and initiating product recalls if necessary.

The National Consumer Affairs Advisory Council provides independent advice to the Minister for Justice and Consumer Affairs on consumer affairs issues. The members of this Council have backgrounds in consumer affairs, industries, trade unions and government.

The Trade Practices Commission is generally responsible for the administration and enforcement of the Trade Practices Act, except for Division 1A of Part V of the Act. The Commission receives complaints from consumers but is primarily concerned with issues of national significance. The activities of the Trade Practices Commission are distinct from those of Australian State and Territory consumer affairs agencies, which administer their own legislation and provide the principal consumer complaint handling mechanisms.

Coordination of consumer affairs activities is undertaken by the Standing Committee of Consumer Affairs Ministers and through meetings of Officers of Consumer Affairs. There is also a Commonwealth/State Consumer Products Advisory Committee to provide a coordinated approach to product safety and information matters. The Commonwealth Government also promotes consumer awareness through financial support to two peak consumer organisations — the Australian Federation of Consumer Organisations and the Australian Financial Counselling and Credit Reform Association.

LEGAL AID

The objective of the Commonwealth's legal aid scheme is to maximise access to justice by all members of the community.

Legal aid policy and service development, evaluation and coordination is largely undertaken at the Commonwealth level by the Office of Legal Aid and Family Services and delivered throughout the country by independent Legal Aid Commissions, Aboriginal Legal Services and other community based legal centres and services.

The Commonwealth provides over half of the funding for legal aid, with the rest made up by State Government, Law Society trust account funds and contributions from clients. Legal aid services and advice are provided directly by staff lawyers or by way of subsidies to the private legal profession. Assistance is directed to those persons who are most in need by way of merit and means tests.

In addition to the provision of services in family, criminal, civil and administrative law matters by the agencies described above, the Commonwealth Attorney-General's Department also provides assistance for special interest and test cases, Royal Commission hearings, War Crimes cases, veterans matters, internal disputes in federal trade unions and actions under international conventions (e.g., relating to child abduction, overseas maintenance and civil and political rights).

THE POLICE

The principal duties of the police are the prevention and detection of crime, the protection of life and property, and the enforcement of law to maintain peace and good order. In addition, they may perform a variety of other duties in the service of the State, including the regulation of street traffic, acting as clerks of petty sessions, Crown land bailiffs, foresters, mining wardens and inspectors under the Fisheries and other relevant Acts. With the exception of the Australian Federal Police, police forces in Australia are under the control of the respective State and Northern Territory Governments, but their members perform certain functions on behalf of the Australian

Government, such as the registration of aliens, and, in conjunction with the Australian Federal Police and other Commonwealth officers, they enforce various Commonwealth Acts and Regulations.

Australian Federal Police (AFP)

The AFP was formed in October 1979 and has its headquarters in Canberra. Its Criminal Investigations Program is conducted through six Regional Commands, its Headquarters Investigations Department and its 18 Liaison Officer posts overseas. A group of AFP members is attached to the United Nations Peacekeeping Force on Cyprus. In the Australian Capital Territory, the AFP provides a full range of general community policing services, including traffic control, special operations, search and rescue services and conventional crime investigations.

The objectives of the AFP are:

- to enhance the Commonwealth's ability to prevent, detect, investigate, and present for prosecution, criminal offences committed against its laws, revenue and expenditure;
- to continue to improve the quality and responsiveness of police services provided to

the community of the Australian Capital Territory;

- to improve the quality of police services required to protect other Commonwealth interests;
- to provide leadership in developing effective relationships with other police services, law enforcement and related agencies to ensure cohesion and coordination in countering criminal threats and activities against the Australian Community;
- to maintain operational excellence through people, technology and leadership; and
- to foster a culture which demonstrates reliability, integrity and ethical behaviour and respects the rights of the individual.

Police strengths

The total active strength of the sworn police forces, expressed as a proportion of the population, was approximately 232 police for every 100,000 people at 30 June 1989. The following table shows the active strengths of non-civilian police personnel in police forces in Australia from 1987 to 1989. Further detail on the operations of each force may be found in the respective police annual reports to their Ministers.

POLICE FORCES

<i>Year</i>	<i>AFP(a)</i>	<i>NSW</i>	<i>Vic.</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas.</i>	<i>NT</i>
At 30 June								
1987	2,642	11,608	8,796	5,072	3,646	3,287	1,010	681
1988	2,713	12,280	9,229	5,085	3,549	3,243	1,028	748
1989	2,580	12,568	9,678	5,219	3,565	3,572	1,075	746

(a) Excludes protective services units.

CRIME STATISTICS

Crimes against the Commonwealth

The Australian Federal Police are responsible for the prevention, detection and investigation of criminal offences such as drug offences, money laundering, organised crime, identifying the proceeds of crime, and fraud against Commonwealth revenue and expenditure, e.g., social security fraud and taxation fraud.

During 1990-91 the Australian Federal Police undertook 11,687 matters involving drugs, minor fraud, general crime, currency offences and other significant referrals. In addition it had 29 major fraud matters referred totalling \$235.19 million.

**CRIMES AGAINST THE COMMONWEALTH
NATIONAL CRIMINAL INVESTIGATIONS, 1990-91**

<i>Analysis of investigations</i>	<i>Number</i>
Drugs	
Matters referred for investigation	4,717
Referred matters not investigated	965
Registered operations	
Initiated	195
Completed	127
Arrest, summonses and warrants of apprehension issued	771
Convictions	320
Large-scale fraud	
Matters referred for investigation	29
Operations completed	15
Arrest, summonses and warrants of apprehension issued	75
Convictions	10
Lesser fraud (under \$500,000)	
Matters referred for investigation	4,035
Referred matters not investigated	95
Investigations	
Initiated	3,940
Completed	2,320
Arrest, summonses and warrants of apprehension issued	2,275
Convictions	671
General crime	
Matters referred for investigation	2,152
Referred matters not investigated	37
Investigations	
Initiated	2,115
Completed	1,569
Arrest, summonses and warrants of apprehension issued	646
Convictions	143
Specific references	
Matters referred for investigation	13
Referred matters not investigated	—
Investigations completed	15
Arrest, summonses and warrants of apprehension issued	—
Convictions	—
Currency matters	
Matters referred for investigation	770
Investigations completed	724
Currency seizures	897
Arrest, summonses and warrants of apprehension issued	8
Convictions	15

Source: Australian Federal Police.

The *Proceeds of Crime Act 1987* came into force on 5 June 1987 and provides for the confiscation of assets derived from criminal conduct including drug trafficking. Similar provisions in the *Customs Act 1901* (which were enacted in 1979) provide for forfeiture and the imposition of pecuniary penalties in

narcotic related matters. At 30 June 1990, as a result of action taken under the *Proceeds of Crime Act*, recoveries totalling \$2.24 million had been made. In addition there were 81 current orders over property valued at \$39.1 million.

All States with the exception of Tasmania have enacted confiscation legislation. In the case of Tasmania, the *Poisons Act 1971* contains provision for the forfeiture of assets which have been acquired from narcotic-related activities.

The Cash Transaction Reports Act enacted in 1988 requires mandatory reporting to the Cash Transaction Reports Agency by cash dealers of cash transactions of \$10,000 or more (\$5,000 in the case of an international transaction), suspect transactions, and verification of the identity of anyone opening accounts with cash dealers.

Drug offences

Australia ratified the Single Convention on Narcotic Drugs 1961 in December 1967, and the Protocol Amending the Single Convention on Narcotic Drugs on 22 December 1972.

Australia is also a signatory to the Convention on Psychotropic Substances 1971, and there is cooperation between the Commonwealth Government, State and Territory Governments, the various police forces, and other agencies in order to combat the perceived serious and growing threat to good order which is posed by the traffic in and abuse of drugs of dependence. The Australian Customs Service has responsibility for the enforcement of laws controlling the illicit importing and exporting of drugs, but each police force has a drug squad or squads, staffed by selected officers with special training and ability to understand the complexities of drug abuse and drug trafficking. Drug laws incorporate the controls and penalties for offences as required by international drug conventions.

The following table provides information about selected drug seizures by Commonwealth agencies during the period from 1985 to 1990.

SELECTED DRUG SEIZURES(a) BY COMMONWEALTH AGENCIES(b)

Type of drug	Unit	1985	1986	1987	1988	1989	1990(c)
Cannabis(d)	gram	3,145,064	2,984,909	540,023	9,016,699	232,064	2,477,914
Amphetamines	. .	n.a.	n.a.	n.a.	290	35,576	2,548
Cannabis oil	gram	41	2,856	23	58,897	874	14,700
Heroin	gram	57,247	30,937	60,202	93,347	98,997	84,330
Morphine	gram	(e)8,225	640	470	10	139	12,232
Cocaine	gram	12,815	21,581	10,226	n.a.	45,295	66,309
Opium(f)	gram	764	166	48	116	13	899
LSD	gram	n.a.	n.a.	n.a.	n.a.	28	6

(a) Annual totals of illicit drugs seized cannot be regarded in isolation as a measure of enforcement performance, any more than they can be said to be indicative of the relative availability of illicit drugs. Not all weights have been confirmed by analysis. (b) Includes Australian Customs Service, Australian Federal Police and National Crime Authority. (c) Figures are partially based on estimated weights and will change following analysis. (d) Cannabis includes tops, seeds and resin. (e) The 1985 total of morphine included a seizure of 4,889gm of crude extract which had a total morphine content of only some 50gm. (f) Opium excludes seeds.

Source: Australian Federal Police.

Further information on the widespread problems arising from drug abuse in Australia, and how these problems are being approached, may be found in the annual report *Illicit Drugs in Australia*, by the Australian Federal Police.

CORRECTIVE SERVICES

The term 'correction' (or its derivatives) as used here refers to the objectives of the criminal justice system regarding detention and supervision of offenders.

The principal objectives of sentencing are to deter potential offenders, to express society's disapproval, to reduce the opportunity for further crime, to rehabilitate the offender, and to compensate the victim(s).

These objectives are reflected to varying degrees in the different forms of correctional options which are available to the courts in each State and Territory. These options fall broadly into three main categories:

- those that do not involve supervision or detention of the offender, such as fines, bonds and unsupervised recognisances;

- those involving supervision in the community, usually for a specified period, or until some educational or community reparative target is achieved, such as probation or community service orders; and
- those involving detention, either in prisons or other institutions, or at home subject to a home detention order.

In recent years it has become common for courts to impose sentences combining several different components, in order to ensure that the punishment is appropriate to the crime and the circumstances of the offender.

All States and the Northern Territory operate prisons and other correctional services. Separate provisions exist in each State and Territory for dealing with juvenile offenders. Convicted adult prisoners from the Australian Capital Territory serve their sentences in New South Wales prisons, but local provision is made for the short-term custody of remand prisoners, and for probation and parole services. The Commonwealth Government does not operate any prisons or other correctional services, and federal offenders (i.e., persons convicted of offences under Commonwealth laws) fall within the jurisdiction of State agencies for correctional purposes.

Characteristics of prisoners

The Australian Institute of Criminology conducts an annual prison census of all persons, convicted or not convicted, who were held in custody in gazetted Australian prisons, for adult offenders on the night of 30 June, including those prisoners temporarily absent from prison (e.g., prisoners in hospitals, or away on work release schemes).

**NUMBER OF SENTENCED PRISONERS
BY TYPE OF SENTENCE IMPOSED(a)
30 JUNE 1990(b)**

Type of sentence	Number of prisoners
Life	646
Governor's pleasure	90
Administrative(b)	9
Indefinite(c)	4,721
Fixed term	5,907
Fine default only	150
Periodic detention	828
Unknown	20
Total	12,371

(a) Type of sentence is determined by the cumulative effect of all sentences imposed. (b) Includes unsentenced prisoners subject to deportation orders. (c) Refers to cases where both a minimum and a maximum term are set and the actual sentence to be served lies somewhere between the two limits.

NOTE: This table excludes all remandees.

Source: Australian Institute of Criminology.

**NUMBER OF PRISONERS BY MOST SERIOUS OFFENCE/CHARGE(a)
BY AGE(b), 30 JUNE 1990**

Offence/charge(a)	Age group									Total
	Under 20	20-24	25-29	30-34	35-39	40-44	45-49	50+	Un-known	
Homicide	48	256	273	251	190	160	107	148	15	1,448
Assault	127	426	330	197	128	55	33	29	16	1,341
Sex offences	52	226	246	253	198	176	111	140	15	1,417
Other against person	10	34	38	32	19	9	5	5	2	154
Robbery	100	455	413	326	144	87	24	19	2	1,570
Extortion	3	10	6	7	—	1	2	—	—	29
Break and enter	270	828	527	311	156	49	20	20	13	2,194
Fraud and misappropriation	24	88	106	95	98	70	59	64	—	604
Receiving	23	80	73	50	33	20	11	10	—	300
Other theft	222	476	298	164	95	34	16	20	7	1,332
Property damage	24	60	43	25	16	14	5	5	3	195
Environmental	—	—	—	2	1	—	—	1	—	4
Government security	—	1	1	5	1	—	—	5	0	13
Justice procedures	94	263	195	118	59	55	16	22	29	851
Unlawful possession of weapon	4	10	12	13	9	2	4	3	0	57

For footnotes see end of table.

**NUMBER OF PRISONERS BY MOST SERIOUS OFFENCE/CHARGE(a)
BY AGE(b), 30 JUNE 1990 — continued**

Offence/charge(a)	Age group								Un- known	Total
	Under 20	20-24	25-29	30-34	35-39	40-44	45-49	50+		
Other offences against good order	10	37	34	18	15	8	8	6	2	138
Possession, use of drugs	5	19	48	38	32	18	6	3	—	169
Deal/traffic drugs	13	101	180	262	210	134	73	66	1	1,040
Manufacture/grow drugs	5	16	16	29	27	19	12	13	1	138
Driving offences	12	96	130	97	72	43	23	17	15	505
Licence, registration	9	49	55	48	26	21	5	11	5	229
Other traffic offences	23	80	69	37	14	16	7	5	—	251
Other offences	11	31	39	60	55	38	29	34	17	314
Offences in custody	1	1	—	—	—	—	—	—	—	2
Unknown	1	3	2	2	—	1	—	1	—	10
Total persons	1,091	3,646	3,134	2,440	1,598	1,030	576	647	143	14,305

(a) The most serious offence/charge is that offence for which a prisoner received the longest sentence, or that charge which carries the longest statutory maximum penalty. (b) The age at which a convicted person would normally become liable to imprisonment in an adult prison varies from State to State, being seventeen years in Victoria, Queensland, Tasmania and Northern Territory, and eighteen in other jurisdictions, although younger persons convicted of a particularly serious offence may be sent to an adult prison. Inmates of juvenile corrective institutions are not included in this census.

NOTE: This table includes 1,913 remandees not convicted, awaiting sentence or deportation, and 21 whose legal status was not known or stated in the prison census.

Source: Australian Institute of Criminology.

**NUMBER OF SENTENCED PRISONERS BY MOST SERIOUS OFFENCE(a)
AND AGGREGATE SENTENCE(b), 30 JUNE 1990**

Offence	Duration of aggregate sentence						Total
	Periodic detention	Under 3 months	3 months and under 2 years	2 and under 5 years	5 and under 10 years	10 years and over(c)	
Homicide	20	—	32	79	205	894	1,230
Assault	120	39	487	238	149	69	1,102
Sexual assault	59	1	114	323	516	251	(d)1,266
Other offences against the person	1	1	27	32	44	11	116
Robbery	13	1	57	349	586	338	1,344
Extortion	2	—	5	7	10	1	25
Break and enter	61	21	816	698	281	52	1,929
Fraud and misappropriation	40	19	251	160	49	11	530
Receiving	23	7	126	66	22	5	249
Other theft	89	53	718	238	54	12	1,164
Property damage	13	17	62	53	17	4	166
Offences against good order(e)	59	89	492	177	70	35	922
Drug offences(f)	101	25	235	349	264	148	1,122
Driving offences	118	72	274	22	1	3	(d)491
Other offences(g)	109	67	343	55	94	47	715
Total persons	828	412	4,039	2,846	2,362	1,881	(d)12,371

(a) Most serious offence is that for which a prisoner received the longest sentence. (b) The longest period that a person may be detained under sentence in the current episode. (c) Includes sentences of life and detention at the Governor's pleasure. (d) Total includes 'unknown' duration of sentence. (e) Includes environmental, government security, justice procedures, offensive behaviour and possession of weapon. (f) Includes possession, trafficking and manufacture of drugs. (g) Includes other offences and unknown offences.

NOTE: This table excludes all remandees.

Source: Australian Institute of Criminology.

CRIMINOLOGICAL RESEARCH

Australian Institute of Criminology

The Australian Institute of Criminology was established as a statutory authority under the *Criminology Research Act 1971* and the *Criminology Research Amendment Act 1986*.

The functions of the Institute, as defined in the Criminology Research Acts include:

- the conduct of criminological research (i.e., research in connection with the causes, prevention and correction of criminal behaviour and related matters), and the communication of the results of such research to the Commonwealth and States;
- the provision of advice on needs and programs relating to criminological research, and advice and assistance in relation to any research funded through the criminology research council;
- the conduct of seminars and courses of training and instruction for persons engaged in criminological research or work related to the prevention or correction of criminal behaviour;
- the collection and dissemination of statistics relevant to crime and criminal justice;
- the provision of advice in relation to the compilation of statistics in relation to crime; and
- the publishing of material resulting from, or relating to, its activities.

BANKRUPTCY AND COPYRIGHT

Bankruptcy

Bankruptcy is a statutory regime for the release of debtors from the payment of their debts and the repayment of creditors out of

the proceeds of realisation of the debtor's property. The *Bankruptcy Act 1966* is the current Commonwealth law dealing with the insolvency of individuals and partnerships.

The Bankruptcy Act provides for both voluntary and involuntary bankruptcy, and for insolvency administrations outside bankruptcy under Part X. The alternative administrations are the deed of assignment, the deed of arrangement and the composition. The Act also provides, in Part XI, for the administration of deceased estates in bankruptcy. It is a feature of bankruptcy and the alternative administrations that property or money belonging to the debtor, or given to the debtor for the purpose, is vested in a trustee for rateable distribution to creditors.

The Act establishes the Official Trustee in Bankruptcy, the functions of which are to administer bankrupt estates and bankrupt deceased estates. The Official Receivers in Bankruptcy, who are officers of the Attorney-General's Department and staff of their offices, perform the functions of the Official Trustee. The Official Trustee is trustee in excess of 90 per cent of bankrupt estates, and of all bankrupt deceased estates.

The Act also provides for registration of appropriately qualified persons, usually accountants, as trustees. Registered trustees administer some bankruptcies, but are responsible mainly for the administration of deeds and compositions under Part X of the Act. Registered trustees are registered by order of the Federal Court of Australia.

Comprehensive statistics on bankruptcy, and a more detailed account of the bankruptcy administration, are included in the Annual Report on the operation of the *Bankruptcy Act 1966*.

BANKRUPTCIES

Year	Bankruptcies and orders for administration(a)		
	Number administered	Assets \$m	Liabilities \$m
1986-87	7,534	49.6	434.9
1987-88	8,504	62.3	511.8
1988-89	7,435	88.1	571.7
1989-90	8,552	145.4	643.5
1990-91	13,091	318.4	792.8

(a) Orders for administration of deceased persons estates.

Source: Commonwealth Attorney-General's Department — *Insolvency and Trustee Service, Australia*.

CAUSES OF BUSINESS BANKRUPTCY(a)

Cause	1986-87	1987-88	1988-89	1989-90	1990-91
Lack of sufficient capital(b)	336	491	491	562	534
Lack of business ability(c)	652	581	489	721	963
Failure to keep proper books	27	12	26	12	34
Economic conditions(d)	510	339	240	524	1,233
Seasonal conditions(e)	44	28	30	52	57
Excessive interest(f)	151	145	95	172	267
Inability to collect debts(g)	78	63	76	107	120
Excessive drawings(h)	92	110	129	78	102
Gambling	13	20	15	18	26
Personal reasons(i)	198	147	121	267	279
Other	345	323	465	435	588
Total	2,446	2,259	2,177	2,948	4,203

(a) The sum of business and non-business bankruptcies shown in the tables on the major causes of bankruptcy do not add to the totals shown in the table 'Bankruptcies'. The discrepancy is due to the failure of some registered trustees to provide statistical returns. (b) Lack of sufficient initial working capital. (c) Lack of business ability, acumen, training or experience resulting in such matters as underquoting, mistakes in estimating, lack of supervision and failure to assess potential of business or to detect misrepresentations. (d) Economic conditions affecting industry, including competition and price cutting, credit restrictions, fall in prices, increases in charges and other overhead expenses, high cost of repairs and maintenance of equipment and changes in the character of business location (e.g., by-pass roads). (e) Seasonal conditions including floods and drought. (f) Excessive interest payments on hire purchase and loan monies and capital losses on repayments. (g) Inability to collect debts due to disputes, faulty work or bad debts. (h) Excessive drawings including failure to provide for taxation, either personal or wage tax deductions. (i) Personal reasons including ill health of self or spouse, domestic discord and other personal reasons.

Source: Commonwealth Attorney-General's Department — Insolvency and Trustee Service, Australia.

CAUSES OF NON-BUSINESS BANKRUPTCY(a)

Cause	1986-87	1987-88	1988-89	1989-90	1990-91
Excessive use of credit(b)	2,038	2,937	2,560	2,098	3,203
Liabilities on guarantees	297	249	273	279	551
Unemployment	1,019	1,214	699	1,225	2,269
Gambling(c)	67	72	63	133	90
Ill health(d)	242	285	259	409	426
Adverse litigation	177	171	205	218	238
Domestic discord	291	221	245	362	623
Other	862	716	935	822	1,488
Total	4,993	5,865	5,239	5,546	8,888

(a) The sum of business and non-business bankruptcies shown in the tables on the major causes of bankruptcy do not add to the totals shown in the table 'Bankruptcies'. The discrepancy is due to the failure of some registered trustees to provide statistical returns. (b) Excessive use of credit facilities including pressure selling, losses on repossessions and high interest rates. (c) Gambling, speculation and extravagance in living. (d) Absence of health insurance or extensive ill health.

Source: Commonwealth Attorney-General's Department — Insolvency and Trustee Service, Australia.

INSOLVENCIES(a)

Year	Number	Deeds of Assignment		Deeds of Arrangement		
		Assets \$m	Liabilities \$m	Number	Assets \$m	Liabilities \$m
1986-87	451	19.3	65.7	293	60.7	97.7
1987-88	400	12.5	93.9	434	10.8	36.7
1988-89	228	11.6	40.7	263	5.4	30.0
1989-90	197	8.3	28.1	156	2.3	5.4
1990-91	185	7.9	54.6	279	8.7	60.1

For footnotes see end of table.

INSOLVENCIES(a) — *continued*

Year	Compositions				Total	
	Number	Assets \$m	Liabilities \$m	Number	Assets \$m	Liabilities \$m
1986-87	483	5.1	48.5	1,227	85.1	211.9
1987-88	451	4.0	43.9	1,285	27.4	174.6
1988-89	304	3.0	43.9	795	20.0	114.6
1989-90	208	1.9	34.0	561	12.5	67.5
1990-91	341	2.9	57.0	805	19.5	171.8

(a) Under Part X of the Bankruptcy Act.

Source: Commonwealth Attorney-General's Department — *Insolvency and Trustee Service, Australia*.

Copyright

Copyright in Australia is administered by the Commonwealth Attorney-General's Department and is regulated by the Commonwealth *Copyright Act 1968*. The Act does not contain any provisions requiring or enabling the

completion of formalities (such as publication, registration or the payment of fees) in order to obtain copyright protection in Australia. Protection is granted automatically from the moment of making a work or other subject matter.

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FOR MORE INFORMATION

The ABS has a far wider range of information on Australia than that contained in the *Year Book*. Information is available in the form of regular publications, electronic data services, special tables and from investigations of published and unpublished data.

For further information contact ABS Information Services at one of the addresses listed on the page facing the Introduction to the *Year Book*.
