

Chapter Ten

Law and Order

Contents	Page
THE LAW IN AUSTRALIA	341
Nature and composition	341
Commonwealth and State responsibilities	341
Administration and expenditure	341
Law reform	341
The Australian Law Reform Commission	342
FEDERAL COURTS	342
High Court of Australia	342
Federal Court of Australia	343
Industrial Relations Court of Australia	343
Family law and Family Court of Australia	344
Child Support Agency	345
STATE AND TERRITORY COURTS	345
Appeals	345
Special courts and tribunals	345
Courts of Marine Inquiry	345
ADMINISTRATIVE REVIEW ACTIVITIES	345
Administrative Appeals Tribunal	345
Administrative Decisions (Judicial Review) Act 1977	346
Commonwealth and Defence Force Ombudsman	346
The Human Rights and Equal Opportunity Commission	347
Freedom of Information Act	347

Contents	Page
OTHER COMMONWEALTH BODIES	348
Commonwealth Royal Commissions	348
National Crime Authority	348
Consumer affairs	349
Australian Security Intelligence Organisation	350
LEGAL AID	350
THE POLICE	350
Australian Federal Police	351
Size of police forces	351
CRIME STATISTICS	352
Crimes recorded by police	352
Crime victims	353
Drug offences	354
CORRECTIVE SERVICES	355
Prisoners' offences and sentences	356
CRIMINOLOGICAL RESEARCH	358
Australian Institute of Criminology	358
Deaths in custody	358
Crime and Violence Prevention Unit	358
National Homicide Monitoring Program	358
BANKRUPTCY AND COPYRIGHT	358
Bankruptcy	358
Copyright	359
BIBLIOGRAPHY	361

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 judgments 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, together with the regulations, rules and orders made under such Acts and Ordinances;
- Acts passed by State Parliaments and the Legislative Assemblies of the Northern Territory 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, for example, 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 and expenditure

Administration of the law in Australia is undertaken by the responsible government concerned. Criminal law is administered 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.

In 1991–92, almost \$4.8 billion (or approximately \$278 per person) was expended by the Commonwealth, State, Territorial and local governments on law and order.

10.1 GOVERNMENT CURRENT AND CAPITAL EXPENDITURE: LAW AND ORDER (\$ million)

	1989–90	1990–91	1991–92
Police services(a)	2,355	2,554	2,684
Law courts and legal services(b)	1,113	1,141	1,257
Prisons and corrective services(c)	766	881	900
Total	4,234	4,576	4,841

(a) Includes outlays on police colleges, police training and police laboratories. (b) Includes outlays on legal representation and advice on behalf of the government and others, costs of crown prosecutions, trusteeship. Excludes outlays associated with industrial law and tribunals and appeal boards that can be classified to specific purpose categories. (c) Excludes residential child care institutions that are not places of secure detention.

Source: Unpublished ABS data available under the title *Government Financial Statistics* (5512.0).

Law reform

Commonwealth, State and Territory laws are altered and reformed principally by the relevant legislature. For Commonwealth laws and for the laws of the Territories (except the Australian Capital Territory, the Northern

Territory and Norfolk Island) the relevant legislature is the Commonwealth Parliament. Each State has its own State Parliament and the Australian Capital Territory, the Northern Territory and Norfolk Island each has their own House of Assembly. Each jurisdiction has established advisory bodies to advise governments and parliaments on reform of the law. Some of these bodies have a general law reform function; others are specialist bodies, restricted to particular areas of the law. General law reform commissions have been established as statutory authorities for the Commonwealth (the Australian Law Reform Commission) and all of the States except Victoria and South Australia. Specialist law reform agencies at the Commonwealth level include the Companies and Securities Advisory Committee (undertaking work in the area of corporate law) and the Copyright Law Review Committee (undertaking work in the area of intellectual property law).

The Australian Law Reform Commission

The Australian Law Reform Commission (ALRC) is the Commonwealth Government's general law reform advisory body. It commenced operation in 1975 under the *Law Reform Commission Act 1973*. Its principal objectives are:

- to influence reform of Commonwealth and Territory laws so that they accord with modern conditions;
- to promote increased opportunities for uniformity of law within Australia; and
- to reduce the duplication of law reform effort within Australia.

The Commission's primary task as a law reform agency is the development of legal policy advice on areas of Commonwealth responsibility referred to it by the Attorney-General. In some instances this means conducting joint projects with other law reform agencies.

The Commission encourages the community to contribute to its work and actively seeks input from the public and from interested groups by consulting widely throughout its references.

The Commission makes its recommendations in reports to the federal Attorney-General, which are tabled in the Federal Parliament.

Since June 1991, reports completed by the Commission have included:

- Censorship procedure, 1991 (ALRC 55);
- Multiculturalism and the law, 1992 (ALRC 57);
- Choice of law, 1992 (ALRC 58);
- Collective investments: superannuation, 1992 (ALRC 59);
- Customs and excise, 1992 (ALRC 60);
- Administrative penalties in customs and excise, 1992 (ALRC 61);
- Children's evidence, 1992 (ALRC 63); and
- Personal property securities, 1992 (ALRC 64).

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. Currently there are six other Justices.

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

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 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 jurisdictions 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.

Industrial Relations Court of Australia

The *Industrial Relations Reform Act 1993* repealed Part III of the *Industrial Relations Act 1988*, which gave jurisdiction to the Federal Court. All pending matters in the Federal Court arising under the *Industrial Relations Act 1988*, except those that are part heard, will be transferred to the Industrial Relations Court of Australia. Thereafter, the Federal Court will not deal with matters arising under that Act. The *Industrial Relations Reform Act 1993* also affects the Court's jurisdiction in matters under sections 45D and 45E of the *Trade Practices Act 1974*. Upon proclamation of the *Industrial Relations Reform Act 1993* section 45E is repealed, section 45D is amended and the Industrial Relations Court of Australia and not the Federal Court will have jurisdiction to hear cases dealing with boycott conduct as defined in Division 7 of Part VI of the *Industrial Relations Act 1988*. All pending matters in the Federal Court arising under sections 45D and 45E, except those that are part heard, will be transferred to the Industrial Relations Court of Australia upon the proclamation. The Federal Court will continue to have jurisdiction in relation to the new section 45D — dealing with conduct (not industrial) with anti-competitive purposes.

Family law and Family Court of Australia

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.

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.

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.

In 1992 there were 45,665 divorces granted, a 0.1 per cent increase over 1991. Of these, 24,174 (54.9%) involved children. The total number of children involved was 45,704.

Child Support Agency

The Child Support Agency was established on 1 June 1988 within the Australian Taxation Office, to collect and, where necessary, enforce the payment of maintenance under the Child Support Scheme. The scheme was implemented to ensure that, irrespective of their personal relationship, parents accepted prime responsibility for the support of their children.

Prior to 1 October 1989, the role of the Agency was to collect maintenance awarded by the courts and, through the Department of Social Security, forward payments to the parent with custody of the children. Since 1 October 1989, the Agency has become responsible for assessment of the amount of child support to be paid. The amount is derived from a formula which takes into account the incomes of both parents and the number of relevant dependent children each parent has in their care.

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 the function of which is to review the decisions made by Commonwealth Ministers and authorities. The tribunal may review only those decisions over which it has been given a specific jurisdiction by a Commonwealth Act. There are now more than 230 such Acts, including the *Social Security Act 1991*, the *Migration Act 1958*, the *Customs Act 1901*, the *Freedom of Information Act 1982*, the *Veterans' Entitlements Act 1986* and the *Civil Aviation Act 1988*. The tribunal may substitute its preferred decision for that originally reached by the decision maker.

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. An order of review may be sought by a person aggrieved by a decision. 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 separately seek a statement of reasons for the decision from the decision maker.

Commonwealth and Defence Force 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 (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.

10.2 COMMONWEALTH OMBUDSMAN COMPLAINTS RECEIVED

<i>Type of complaint</i>	1990 -91	1991 -92	1992 -93
	no.	no.	no.
Commonwealth Ombudsman (includes Freedom of Information)			
Written complaints	3,134	4,338	4,149
Per 100,000 of population	18.3	24.9	24.5
Oral complaints	9,086	11,664	10,318
Per 100,000 of population	52.9	67.0	61.0
Defence Force Ombudsman			
Written	298	305	308
Oral	663	513	405
Australian Federal Police	675	693	583

Source: *Commonwealth Ombudsman*.

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 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*.

10.3 COMMONWEALTH AND DEFENCE FORCE OMBUDSMAN JURISDICTIONS COMPLAINTS FINALISED

<i>Method of finalisation</i>	1990 -91	1991 -92	1992 -93
	no.	no.	no.
Written complaints			
Outside Ombudsman's jurisdiction	554	625	671
Discretion exercised	702	938	871
Withdrawn or lapsed	188	168	181
Substantially in favour of complainant	718	892	900
Partly in favour of complainant	444	578	659
Not substantiated	920	997	1,028
Total	3,526	4,198	4,310

... continued

**10.3 COMMONWEALTH AND DEFENCE
FORCE OMBUDSMAN JURISDICTIONS
COMPLAINTS FINALISED — continued**

<i>Method of finalisation</i>	<i>1990 -91</i>	<i>1991 -92</i>	<i>1992 -93</i>
	no.	no.	no.
Oral complaints			
Discretion exercised	3,266	3,652	3,635
Written complaint advised, withdrawn, etc.	1,775	2,544	2,067
Substantially in favour of complainant	1,600	1,854	1,699
Partly in favour of complainant	1,411	1,822	1,879
Not substantiated	1,697	1,792	1,443
Total	9,749	11,664	10,723

Source: Commonwealth Ombudsman.

The Human Rights and Equal Opportunity Commission

The Human Rights and Equal Opportunity Commission was established on 10 December 1986. It performs functions under the *Human Rights and Equal Opportunity Commission Act 1986*, *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984* and the *Disability Discrimination Act 1992*. A Commissioner is appointed under each of those Acts. In 1992, the Human Rights and Equal Opportunity Commission Act was amended to provide for an Aboriginal and Torres Strait Islander Social Justice Commissioner. The Privacy Commissioner, who performs functions under the *Privacy Act 1988*, is a member of the Commission and the Commission provides staff and administrative support to the Commissioner.

The Commission's functions include receipt and conciliation of complaints, the conduct of inquiries, and research and education programs to promote human rights.

The Commission is also responsible for monitoring and ensuring compliance with international instruments relating to civil and political rights, the rights of children, the rights of people with disabilities, the rights of intellectually disadvantaged persons, the elimination of all forms of racial discrimination,

the elimination of all forms of discrimination against women and the achievement of equal opportunity in employment.

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 ('agencies'); and
- to create a general right of access to documents in the possession of Commonwealth Ministers and agencies.

The Act establishes the 'legally enforceable right' of persons to obtain access to documents. The Act also sets out the responsibilities of Commonwealth agencies in dealing with requests.

The legally enforceable right of access may be subject to exemptions and exceptions, in relation to, for example, disclosure of:

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

Agencies exempt (either wholly or in relation to certain of their competitive commercial activities) include intelligence agencies, and those agencies 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 (for example, 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 1 January 1994 were:

- The Royal Commission into British Nuclear Tests in Australia;
- The Royal Commission of Inquiry into Alleged Telephone Interceptions;
- The Royal Commission of Inquiry into the 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, the Northern Territory and subsequently the Australian Capital 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 mission is to counteract organised criminal activity and reduce its impact on the Australian community, working in cooperation and partnership with other agencies. 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 of Commonwealth, State and Territory Ministers. 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 Federal 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*.

Statistics on the operations and results of NCA activities, such as numbers of investigations, persons charged, convictions obtained, and consequential taxation and proceeds of crime reclaimed are contained in its Annual Report.

At 30 June 1993, the NCA had a staff of 424 persons, including 97 police officers.

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 advice to the Minister for Consumer Affairs and Government agencies on consumer policy and consumer law matters;
- administers, enforces and educates consumers and business about the mandatory consumer product safety and consumer product information provisions of the Trade Practices Act;
- educates consumers about their rights and responsibilities;
- encourages consumer representation on government and private sector decision making bodies, and assists the development of industry dispute resolution schemes;
- works to provide consumers, and in particular, disadvantaged consumers with access to

information, education and effective dispute resolution; and

- advises the Government on the effectiveness of Part IVA (unconscionable conduct), Part V (consumer protection) and Part VA (product liability) provisions of the Trade Practices Act.

The Australian Consumers' Council (ACC) advises the Federal Minister for Consumer Affairs on strategies for more effective consumer protection and also monitors consumer opinion. The ACC replaced the National Consumer Affairs Advisory Council on 1 February 1993. Its main objective is to provide the Minister for Consumer Affairs with advice so that the Government may enhance the power of consumers in the marketplace. The Council has eleven members and each was appointed by the Minister for Consumer Affairs for a two year period.

The Trade Practices Commission is an independent statutory authority which has the responsibility for enforcing those anti-competitive provisions of the Trade Practices Act that prohibit price fixing, resale price maintenance and other practices that prevent the operation of a free market.

The Commission also enforces the unconscionable conduct and fair trading consumer protection provisions of the Trade Practices Act which prohibit misleading and deceptive conduct, false representations about goods, bait advertising, pyramid selling and other unfair practices and sales methods. It also researches and inquires into consumer matters, assists development of industry codes of conduct and educates business about the requirements of the Trade Practices Act.

Coordination of consumer affairs activities is undertaken by the Ministerial Council of Consumer Affairs and through meetings of the Standing Committee 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.

Australian Security Intelligence Organisation (ASIO)

The Australian Security Intelligence Organisation was established in 1949 as Australia's security organisation. Its functions are set out in the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act). Its main role is to:

- forewarn Ministers and appropriate agencies and authorities, of activities likely to place the security of Australian people, property or interests at risk; and
- provide Ministers and appropriate agencies and authorities with sound advice on how risks might be managed and harm avoided, countered or reduced.

The ASIO Act defines activities which could cause security harm to Australia as espionage, sabotage, politically motivated violence, promotion of communal violence, attacks on the defence system, and other acts of foreign interference.

ASIO carries out its functions largely by collecting information or 'intelligence' and analysing it to produce assessments of current and likely future situations. Intelligence is collected in the course of investigating people or groups whose activities are discernibly relevant to security. Intelligence may be obtained overtly or covertly, according to circumstance. Where authorised by warrant signed by the Attorney-General, ASIO may use special powers such as telephone interception to conduct intrusive investigations.

ASIO is only an advisory body, and has no powers to enforce measures for security. It cannot limit the rights of people to engage in lawful advocacy, protest or dissent, which in themselves are not actions that endanger security. It must stay free of any political or sectional bias. Its intelligence and advice is transmitted to government and to executive agencies of government as a basis for decision making and action if required to maintain the security of Australia.

ASIO has an additional role in contributing to foreign intelligence collection in Australia, and also contributes to Australia's counter-terrorism response capability.

ASIO's chief executive, the Director-General of Security, is responsible to the Attorney-General.

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 (for example, 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. They may perform a variety of additional 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 is a Commonwealth Statutory Authority brought into existence by the *Australian Federal Police Act 1979*. The AFP has its headquarters in Canberra. Its Criminal Investigations Program is conducted through six Regional Commands, its Headquarters Investigations Department and its numerous Liaison Officers in many overseas countries. 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.

Under Ministerial direction issued under section 13(2) of the *Australian Federal Police Act 1979* the AFP's priorities are to:

- provide the best in prevention, detection and investigation of criminal offences against the laws of the Commonwealth, with emphasis on:
 - (i) providing effective strategic intelligence on criminal matters;
 - (ii) attacking the financial base of criminal activity; and
 - (iii) assisting in the maintenance of the integrity of financial institutions and their trading activities;
- provide a quality community policing service for the Australian Capital Territory;
- enhance the AFP's capability to support its diverse international obligations; and
- provide leadership in the Australian law enforcement effort.

The Australian Federal Police is 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, for example, social security fraud and taxation fraud.

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.

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.

Size of police forces

The number of sworn police officers is shown in table 10.4. The figures have been supplied by the respective police agencies, and are not directly comparable (for example, the figures do not differentiate between full-time and part-time officers). Further detail on the operations of each force may be found in the respective police annual reports to their Ministers.

10.4 POLICE FORCES

At 30 June	AFP(a)	NSW	Vic.	Qld	SA	WA	Tas.	NT
1991	2,543	13,203	9,726	5,895	3,535	3,994	993	693
1992	2,453	12,593	9,877	6,271	3,673	4,112	1,018	669
1993	2,394	12,971	9,954	6,377	3,782	4,211	1,025	694

(a) Excludes protective services units.

Source: Various police authorities.

CRIME STATISTICS

Two recently introduced sets of statistics provide a national picture of crime in Australia. One set relates to a selected range of offences that became known to and recorded by police. The other comprises statistics on crimes reported to the police as well as unreported crimes, obtained from a survey of households. Both sets of statistics complement each other. Some of the main features of these statistics are given below.

Crimes recorded by police

From the crime statistics based on offences recorded by police, the most frequent crime in 1993 was that of unlawful entry with intent with more than 380,000 offences, representing a rate of 2,161 per 100,000 population. Motor vehicle theft was the next most common type of offence, with 112,508 stolen motor vehicles, a rate of 637 per 100,000 population. Among the violent crimes on which national statistics are available, the most common type of crime in 1993 was robbery, with 12,765 reports, a rate of 72 per 100,000 population. There were 12,390 sexual assault victims, which represents

a rate of 70 per 100,000 population, and 290 murder victims representing a rate of 1.6 per 100,000 population (table 10.5).

Most violent offences against the person (for example, murder, attempted murder, sexual assault) occurred in private dwellings (55.9% of murders; 42.6% of attempted murders; 58.8% of sexual assaults), followed by occurrences in streets/footpaths (11.0% of murders; 23.7% of attempted murders; 7.3% of sexual assaults). The majority of robberies were carried out in streets/footpaths (36.4% of robberies), followed by retail establishments (23.7% of robberies). Armed robberies differed from unarmed robberies in that the majority of robberies involving a weapon were carried out against retail establishments (40% of armed robberies), whilst unarmed robberies tended to occur in streets/footpaths (48.6% of unarmed robberies). The most common types of premises involved in unlawful entries with intent were private dwellings (51.8%), followed by retail establishments (14.9%). Motor vehicle thefts were most common in streets/footpaths (30.3% of thefts), followed by residential locations (16.9% of thefts). However, a significant proportion of motor vehicle thefts were not classified to a specific location.

10.5 CRIMES RECORDED BY POLICE, BY CATEGORY OF OFFENCE, 1993

Offence category	NSW	Vic.	Qld	SA	WA	Tas.	NT	ACT	Aust.
NUMBER									
Homicide	209	154	211	106	77	11	29	5	802
Murder	117	52	40	32	29	6	12	2	290
Attempted murder	82	65	133	52	14	3	7	3	359
Manslaughter	6	4	10	5	10	—	4	—	39
Driving causing death	4	33	28	17	24	2	6	—	114
Sexual assault	3,797	3,142	2,218	1,573	1,263	126	195	76	12,390
Kidnapping/abduction	313	68	121	75	33	13	3	17	643
Robbery	6,002	1,904	1,916	1,703	973	106	47	114	12,765
Armed robbery	2,313	990	929	490	475	45	14	52	5,308
Unarmed robbery	3,689	914	987	1,213	498	61	33	62	7,457
Blackmail/extortion	8	57	40	27	5	—	—	3	140
Unlawful entry with intent	110,448	80,463	75,021	41,579	52,766	11,943	3,687	5,710	381,617
Motor vehicle theft	39,066	27,578	15,625	10,292	16,208	1,328	751	1,660	112,508

... continued

10.5 CRIMES RECORDED BY POLICE, BY CATEGORY OF OFFENCE, 1993 — *continued*

<i>Offence category</i>	<i>NSW</i>	<i>Vic.</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas.</i>	<i>NT</i>	<i>ACT</i>	<i>Aust.</i>
RATE PER 100,000 POPULATION									
Homicide	3.48	3.45	6.78	7.25	4.59	2.33	17.23	1.67	4.54
Murder	1.95	1.17	1.29	2.19	1.73	1.27	7.13	0.67	1.64
Attempted murder	1.36	1.46	4.27	3.56	0.83	0.64	4.16	1.00	2.03
Manslaughter	0.10	0.09	0.32	0.34	0.60	—	2.38	—	0.22
Driving causing death	0.07	0.74	0.90	1.16	1.43	0.42	3.57	—	0.65
Sexual assault	63.19	70.42	71.26	107.61	75.29	26.71	115.86	25.43	70.15
Kidnapping/abduction	5.21	1.52	3.89	5.13	1.97	2.76	1.78	5.69	3.64
Robbery	99.89	42.67	61.56	116.51	58.00	22.47	27.93	38.14	72.28
Armed robbery	38.49	22.19	29.85	33.52	28.31	9.54	8.32	17.40	30.05
Unarmed robbery	61.40	20.48	31.71	82.99	29.69	12.93	19.61	20.74	42.22
Blackmail/extortion	0.13	1.28	1.29	1.85	0.30	—	—	1.00	0.79
Unlawful entry with intent	1,838.17	1,803.25	2,410.24	2,844.56	3,145.33	2,531.91	2,190.73	1,910.34	2,160.73
Motor vehicle theft	650.17	618.05	501.99	704.11	966.14	281.53	446.23	555.37	637.02

Source: *National Crime Statistics, 1993 (4510.0)*.

Crime victims

Based on the results of a household survey of persons aged 15 years and over, 489,200 people had been the victims of crime during the 12 months ending April 1993. The survey covered only those types of crime which can be measured by household surveys. Information was collected on these crimes whether or not they had been reported to police, together with socio-economic information on the victims. The results of this survey are not compatible with, but

complement the above national crime statistics compiled from police records.

In the 12 months to April 1993, an estimated 6.8 per cent of households in Australia were victims of at least one break and enter or attempted break and enter offence. An estimated 1.2 per cent of persons in Australia aged 15 years and over were victims of at least one robbery; 2.5 per cent of persons in Australia aged 15 years and over were victims of at least one assault; and 0.6 per cent of females aged 18 years and over were victims of at least one sexual assault (table 10.6).

10.6 VICTIMS OF CRIME(a) IN THE LAST 12 MONTHS TO APRIL 1993

<i>Type of offence</i>	<i>NSW</i>	<i>Vic.</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas.</i>	<i>NT</i>	<i>ACT</i>	<i>Aust.</i>
— '000 —									
Households									
Break and enter	79.1	51.7	57.1	28.1	45.6	6.8	3.4	5.2	277.0
Attempted break and enter	55.3	41.8	34.8	21.3	30.0	3.5	2.4	5.1	194.2
Break and enter or attempted break and enter(b)	120.4	86.1	82.2	45.4	67.2	9.6	4.8	9.3	425.0
Motor vehicle theft	42.2	27.0	14.2	9.5	13.7	1.7	(e)0.3	(e)0.9	109.6
Total household victims(b)	159.2	110.8	93.4	53.8	78.4	11.3	5.1	10.1	522.0
Persons									
Robbery	59.3	34.7	27.4	14.8	15.8	2.9	1.6	3.7	160.1
Assault	114.8	76.3	66.3	27.9	27.9	9.8	3.3	7.9	334.2
Sexual assault(c)	17.7	7.6	5.5	4.2	(e)2.0	(e)0.9	(e)0.1	(e)0.9	38.9
Total personal victims(b)	173.2	108.8	92.1	42.7	43.9	12.8	4.7	11.0	489.2

For footnotes see end of table.

10.6 VICTIMS OF CRIME(a) IN THE LAST 12 MONTHS TO APRIL 1993 — *continued*

Type of offence	NSW	Vic.	Qld	SA	WA	Tas.	NT	ACT	Aust.
VICTIMISATION RATE									
— per cent(d) —									
Households									
Break and enter	3.7	3.3	5.2	5.0	7.5	4.0	7.4	5.0	4.4
Attempted break and enter	2.6	2.6	3.2	3.8	4.9	2.0	5.4	4.9	3.1
Break and enter or attempted break and enter(b)	5.7	5.4	7.5	8.1	11.0	5.6	10.6	8.9	6.8
Motor vehicle theft	2.0	1.7	1.3	1.7	2.2	1.0	(e)0.7	(e)0.8	1.7
Total household victims(b)	7.5	7.0	8.6	9.7	12.8	6.6	11.3	9.7	8.3
Persons									
Robbery	1.3	1.0	1.2	1.3	1.3	0.8	1.7	1.7	1.2
Assault	2.6	2.2	2.9	2.5	2.2	2.8	3.6	3.5	2.5
Sexual assault(c)	0.8	0.5	0.5	0.8	(e)0.3	(e)0.5	(e)0.2	(e)0.9	0.6
Total personal victims(b)	3.9	3.2	4.0	3.8	3.5	3.7	5.2	4.9	3.7

(a) Refers to households or persons who were victims of any of the types of offence specified. (b) Because an individual household or person could be a victim of both types of offence, figures given for individual offence types do not sum to the figures in this row. (c) Sexual assault questions were asked only of females aged 18 years and over. (d) Of households/persons. (e) Estimate is subject to a relative standard error of between 25 per cent and 50 per cent.

Source: *Crime and Safety, Australia, April 1993 (4509.0)*.

The previous national crime statistics survey conducted by the ABS was in 1983. However, care must be exercised in the comparison of the results of the 1983 and 1993 surveys

because of significant methodological and definitional differences. Nevertheless table 10.7 provides a general comparison of certain types of offence during the two periods.

10.7 VICTIMS OF CRIME(a) IN THE LAST 12 MONTHS: TYPE OF OFFENCE, 1983 AND 1993

Type of offence	1983	1993	Victimisation rate	
			1983	1993
			— '000 —	
Households			— per cent(b) —	
Break and enter/attempted break and enter(c)	315.4	425.0	6.1	6.8
Motor vehicle theft(d)	..	109.6	..	1.7
Persons				
Robbery	65.3	160.1	0.6	1.2
Assault	390.9	334.2	3.4	2.5
Sexual assault(e)	26.7	38.9	0.5	0.6

(a) Refers to households or persons who were victims of any of the types of offence specified. (b) Of households/persons. (c) Not asked separately in 1983 survey. (d) Reported as a personal crime in 1983 survey. (e) Sexual assault questions were asked only of females aged 18 years and over.

Source: *Crime and Safety, Australia (4509.0)*.

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. 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.

10.8 SELECTED DRUG SEIZURES BY COMMONWEALTH AGENCIES(a)

<i>Type of drug</i>	<i>1991-92</i>	<i>1992-93</i>
Cannabis	r1,818	2,291
Cannabis resin	r797	450
Amphetamines	r76	117
Heroin	r256	187
Cocaine	r78	81
Opium	r12	15
LSD	r45	46
Other	r54	52
Total	r3,136	3,239

(a) Includes Australian Customs Service and Australian Federal Police, but excludes seizures involving the National Crime Authority.
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 Australian Drug Intelligence Assessment Report, by the Australian Bureau of Criminal Intelligence.

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 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 (that is, persons convicted of offences under Commonwealth laws) fall within the jurisdiction of State agencies for correctional purposes.

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

Prisoners' offences and sentences

The Australian Institute of Criminology conducts an annual prison census on the night of 30 June of all persons, convicted or not

convicted, who were held in custody in gazetted Australian prisons for adult offenders. This includes those prisoners temporarily absent from prison (for example, prisoners in hospitals, or away on work release schemes).

**10.9 NUMBER OF PRISONERS BY MOST SERIOUS OFFENCE/CHARGE(a)
BY AGE(b), 30 JUNE 1992**

<i>Offence/charge(a)</i>	<i>Age group (years)</i>								<i>Total</i>
	<i><20(b)</i>	<i>20-24</i>	<i>25-29</i>	<i>30-34</i>	<i>35-39</i>	<i>40-44</i>	<i>45-49</i>	<i>>49</i>	
Homicide	52	265	296	294	218	142	103	146	1,516
Assault	97	463	358	259	151	87	43	37	1,495
Sex offences	34	238	284	278	274	207	133	220	1,668
Other offences against the person	10	58	49	40	22	11	11	4	205
Robbery	112	579	451	332	185	97	41	28	1,825
Extortion	1	11	11	3	6	—	4	1	37
Break and enter	283	856	599	369	147	55	22	18	2,349
Fraud and misappropriation	8	67	96	96	69	69	57	87	549
Receiving	23	75	74	57	33	35	13	9	319
Other theft	196	478	287	185	89	47	22	24	1,328
Property damage	23	63	44	31	14	14	7	7	203
Environmental	—	3	2	—	—	—	—	—	5
Government security	—	—	—	—	1	—	—	4	5
Justice procedures	74	342	214	161	73	37	25	23	949
Unlawful possession of weapon	2	14	9	8	10	4	2	3	52
Other offences against good order	13	55	33	27	12	11	5	11	167
Possession, use of drugs	9	33	56	55	36	16	8	6	219
Deal/traffic drugs	5	98	194	266	232	166	93	72	1,126
Manufacture/grow drugs	—	25	33	40	26	20	13	16	173
Driving offences	11	101	113	112	74	52	33	23	519
Licence, registration	10	52	63	39	20	15	10	7	216
Other traffic offences	22	86	74	46	24	6	9	3	270
Other offences	9	29	42	68	64	41	29	45	327
Offences in custody	—	—	1	—	—	—	—	—	1
Unknown	10	5	5	8	4	2	1	1	36
Total persons	1,004	3,996	3,388	2,774	1,784	1,134	684	795	15,559

(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 the 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: The total number of prisoners shown in this table is greater than the total prisoners shown in the following tables. Data in this table include 1,854 remandees not convicted, awaiting sentence or deportation.

Source: Australian Institute of Criminology.

**10.10 NUMBER OF SENTENCED
PRISONERS BY TYPE OF SENTENCE
IMPOSED(a), 30 JUNE 1992(b)**

<i>Type of sentence</i>	<i>Number of prisoners</i>
Life	652
Governor's pleasure	70
Administrative(b)	5
Indefinite(c)	7,673
Fixed term	3,730
Fine default only	313
Periodic detention	1,257
Unknown	5
Total	13,705

(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.

**10.11 NUMBER OF SENTENCED PRISONERS BY MOST SERIOUS OFFENCE(a)
AND AGGREGATE SENTENCE(b), 30 JUNE 1992**

<i>Offence</i>	<i>Duration of aggregate sentence</i>							<i>Total</i>
	<i>Periodic detention</i>	<i>Under 3 months</i>	<i>3 months and under 2 years</i>	<i>2 and under 5 years</i>	<i>5 and under 10 years</i>	<i>10 years and over(c)</i>	<i>Not known</i>	
Homicide	27	—	32	83	200	291	663	1,296
Assault	154	53	569	292	144	58	12	1,282
Sex offences	86	5	130	453	590	267	27	1,558
Other offences against the person	3	3	40	40	44	16	2	148
Robbery	43	2	136	504	607	273	6	1,571
Extortion	2	—	7	9	11	1	—	30
Break and enter	113	30	922	759	228	28	2	2,082
Fraud and misappropriation	109	12	198	131	37	9	—	496
Receiving	45	17	134	55	17	1	—	269
Other theft	127	60	696	265	46	11	—	1,205
Property damage	21	11	49	53	26	6	—	166
Environmental offences	2	—	1	1	—	—	—	4
Government security	1	—	—	1	1	2	—	5
Justice procedures	63	131	446	158	50	15	9	872
Possession of weapon	5	1	17	9	4	—	—	36
Other offences against good order	4	37	57	28	12	3	2	143
Possession/use drugs	13	32	45	32	30	5	—	157
Deal/traffic drugs	127	10	210	289	219	115	4	974
Manufacture/grow drugs	33	4	40	51	19	5	—	152
Driving offences	131	90	266	11	2	1	—	501
Licence, registration	—	37	151	15	5	—	—	208
Other traffic offences	139	37	87	2	—	—	—	265
Other offences(d)	9	17	50	45	93	51	1	266
Offences in custody	—	—	—	—	1	—	—	1
Unknown	—	8	10	—	—	—	—	18
Total persons	1,257	597	4,293	3,286	2,386	1,158	728	13,705

(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) 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 (that is, 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.

Deaths in custody. The Institute has a program of monitoring the deaths in custody that occur throughout Australia. It publishes six monthly reports on trends in the deaths of people in the custody of the police, prison and juvenile justice/juvenile welfare authorities, doing so as part of the Commonwealth's response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody. During the 12 months to 30 June 1993, 72 custodial deaths were reported to have occurred in Australia, 30 in police custody and 42 in prison custody. Six of the deceased were Aboriginal people and 66 non-Aboriginal.

Crime and Violence Prevention Unit.

The Unit seeks to assist the community and government in Australia to reduce and prevent crime and violence through the provision of practical assistance and the dissemination of

information. The Unit provides information aimed at changing cultural attitudes which encourage violence and assists with the development of strategies for improving community safety within physical and social environments. The Unit includes the National Clearing House on Violence Against Women and administers the Australian Violence Prevention Award.

National Homicide Monitoring Program.

The Institute's Program describes and analyses the characteristics of all Australian homicide incidents, and the victims and offenders involved with them, on an annual ongoing basis. From 1994 it will also include information concerning New Zealand homicides. The aim of the program is to provide reliable data on the nature of homicide and to detect patterns and trends over time.

On behalf of the National Child Protection Council, the Institute hosts a Clearing House of information whose function is to collect and disseminate material on all aspects of child abuse prevention.

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* deals with matters relating to the insolvency of individuals and partnerships only. Both business and non-business bankruptcies relating to individuals/sole proprietors and partnerships are covered by the Bankruptcy Act. Company insolvencies are under the jurisdiction of the Australian Securities Commission.

The term 'insolvency' covers not only bankruptcies and orders for the administration in bankruptcy of the estates of deceased persons, but also persons who have entered into an assignment, arrangement or composition under Part X of the Bankruptcy Act. Part X of the Act involves a debtor placing before their creditors a 'Deed of Assignment', 'Deed of Arrangement' or a 'Composition' if the debtor is unable to meet their debts.

Under a Deed of Assignment, all the debtor's divisible assets are put up in full settlement of their debts. Creditors would receive less than 100 cents in the dollar.

Under a Deed of Arrangement, the debtor agrees to pay off debts over a period of time. This arrangement can be used, for example, where a debtor's business continues to trade. Creditors could, eventually, obtain 100 cents in the dollar.

A Composition is a combination of the Deed of Arrangement and the Deed of Assignment.

If creditors fail to accept an option under Part X, then the creditors or the debtor can petition for bankruptcy.

The Attorney-General's Department has the responsibility for the administration of the Act. The Minister for Justice and Consumer Affairs oversees the administration of the Insolvency and Trustee Service, Australia, a division of the Attorney-General's Department.

The administration is carried out through the Registrars in Bankruptcy (who are part of the Federal Court of Australia), the Inspector-General in Bankruptcy and the Official Receivers (who comprise the Insolvency and Trustee Service, Australia), and public accountants who are registered under the provisions of the Act as trustees in bankruptcy and who are primarily under the control and supervision of the Courts exercising jurisdiction in bankruptcy.

Bankruptcies increased in the late 1980s peaking in 1991-92 (16,780). In 1992-93, (14,852) bankruptcies were down 12 per cent

on 1991-92, but were still 14 per cent higher than in 1990-91 (13,091) and 74 per cent higher than in 1989-90 (8,552). Forecasts for 1993-94 were for a continued gradual reduction in the number of bankruptcies (table 10.12).

In 1992-93, economic conditions (36%) were by far the main cause of business bankruptcies, followed by personal reasons (19%) and lack of business ability (14%) (table 10.13). For non-business bankruptcies, 32 per cent were attributed to unemployment.

This is the first time unemployment has replaced excessive use of credit (25%) as the most frequent cause of bankruptcy.

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*.

Summary statistics on insolvencies are contained in table 10.15.

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.

10.12 BANKRUPTCIES AND ORDERS FOR ADMINISTRATION(a)

Year	Number administered(b)	Assets (\$m)	Liabilities (\$m)
1988-89	7,435	88.1	571.7
1989-90	8,552	145.4	643.5
1990-91	13,091	318.4	792.8
1991-92	16,780	n.a.	n.a.
1992-93	14,852	n.a.	n.a.

(a) Orders for administration of deceased persons estates. (b) These figures do not necessarily equal the sum of the totals in tables 10.13 and 10.14, mainly because proceedings involving two or more partners are treated as one administration whereas in tables 10.13 and 10.14 details are counted for each of the partners.

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

10.13 CAUSES OF BUSINESS BANKRUPTCY(a)

<i>Cause</i>	<i>1988-89</i>	<i>1989-90</i>	<i>1990-91</i>	<i>1991-92</i>	<i>1992-93</i>
Lack of sufficient capital(b)	491	562	534	533	558
Lack of business ability(c)	489	721	963	1,025	680
Failure to keep proper books	26	12	34	27	44
Economic conditions(d)	240	524	1,233	1,730	1,709
Seasonal conditions(e)	30	52	57	60	56
Excessive interest(f)	95	172	267	295	254
Inability to collect debts(g)	76	107	120	145	116
Excessive drawings(h)	129	78	102	118	140
Gambling	15	18	26	16	27
Personal reasons(i)	121	267	279	244	284
Other	465	435	588	1,194	928
Total	2,177	2,948	4,203	5,387	4,796

(a) The sum of business and non-business bankruptcies shown in the tables on the major causes of bankruptcy do not necessarily add to the totals shown in the table 10.12. This is chiefly because proceedings involving two or more partners are treated as one administration. However, in tables 10.13 and 10.14 details are published for each of the partners. The total is also affected by the lack of returns from registered trustees. (b) Lack of sufficient initial working capital. (c) Lack of business ability, acumen, training or experience resulting in such matters as under quoting, 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 (for example, 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.

10.14 CAUSES OF NON-BUSINESS BANKRUPTCY(a)

<i>Cause</i>	<i>1988-89</i>	<i>1989-90</i>	<i>1990-91</i>	<i>1991-92</i>	<i>1992-93</i>
Excessive use of credit(b)	2,560	2,098	3,203	3,845	2,445
Liabilities on guaranties	273	279	551	721	761
Unemployment	699	1,225	2,269	3,145	3,236
Gambling(c)	63	133	90	86	79
Ill health(d)	259	409	426	498	337
Adverse litigation	205	218	238	347	442
Domestic discord	245	362	623	418	547
Other	935	822	1,488	2,433	2,134
Total	5,239	5,546	8,888	11,493	9,981

(a) The sum of business and non-business bankruptcies shown in the tables on the major causes of bankruptcy do not necessarily add to the totals shown in the table 10.12. This is chiefly because proceedings involving two or more partners are treated as one administration. However, in tables 10.13 and 10.14 details are published for each of the partners. The total is also affected by the lack of returns from registered trustees. (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.

10.15 INSOLVENCIES(a)

Year	Deeds of assignment			Deeds of arrangement		
	Number	Assets (\$m)	Liabilities (\$m)	Number	Assets (\$m)	Liabilities (\$m)
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
1991-92	170	7.9	16.9	343	5.8	115.5
1992-93	125	6.4	64.3	301	15.1	319.9
Year	Compositions			Total		
	Number	Assets (\$m)	Liabilities (\$m)	Number	Assets (\$m)	Liabilities (\$m)
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
1991-92	440	2.8	99.1	953	16.4	231.5
1992-93	366	2.3	179.2	792	23.8	563.4

(a) Under Part X of the Bankruptcy Act.

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

BIBLIOGRAPHY

ABS Publications

*Crime and Safety Survey, Australia, April 1993 (4059.0)**Information Paper: National Crime Statistics (4511.0)**National Crime Statistics, January to December 1993 (4510.0)*

Other Publications

COMMONWEALTH ATTORNEY-GENERAL'S DEPARTMENT. Insolvency and Trustee Service, Australia

Australian Constitutional Law

*ATTORNEY-GENERAL'S DEPARTMENT. The Australian Constitution Annotated. AGPS, Canberra, 1980**HOWARD, PROF. COLIN. Australia's Constitution. Penguin, Melbourne, 1978**LANE, PROF. P.H. An Introduction to Australian Constitutional Law. The Law Company Limited, Sydney, 1967**— An Introduction to the Australian Constitution. 2nd ed., The Law Book Company Limited, Sydney, 1977**SAWER, PROF. GEOFFREY. The Australian Constitution. AGPS, Canberra, 1975*

BIBLIOGRAPHY — continued**Law and the Australian Legal System**

BAALMAN, JOHN. *Outline of Law in Australia*. 4th ed. by Flick, Geoffrey A. The Law Book Company Limited, Sydney, 1979

BATES, NICHOLAS. *Introduction to Legal Studies*. 3rd ed., Butterworths, Melbourne, 1980

GIFFORD, D.J. and GIFFORD, KENNETH H. *Our Legal System*. The Law Book Company Limited, Sydney, 1981

MARSH, S.B., PREDL, I.P. and WARD, P.A. *Outlines of Law - Australian Edition*. McGraw-Hill Book Company, Sydney, 1972

MILTE, K. *Police in Australia: Development, Functions and Procedures*. Butterworths, Sydney, 1977

ROSS, STAN and WEINBURG, MARK (eds). *Law for the People: A Citizen's Guide to the Law in Australia and New Zealand*. Penguin Books, Melbourne, 1976

SAWER, PROF. GEOFFREY. *The Australian and the Law*. Penguin Books, Melbourne 1976

TWYFORD, JOHN. *The Layman and the Law in Australia*. 2nd ed., Doubleday, Sydney, 1980

Crime Reports

ATTORNEY-GENERAL'S DEPARTMENT. *Annual Report on the Bankruptcy Act*

AUSTRALIAN FEDERAL POLICE. *Annual Report, Illicit Drugs in Australia*

AUSTRALIAN INSTITUTE OF CRIMINOLOGY. *Annual Report, and other publications listed in the 1991 and earlier Year Books*

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*.