

Law and order

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Law and order

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, 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 1993–94, \$4,842 million (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 (\$ million)

	1991–92	1992–93	1993–94
Police services(a)	2 685	2 794	2 840
Law courts & legal services(b)	1 257	1 159	1 134
Prisons & corrective services(c)	900	844	829
Total	4 842	4 797	4 803

(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 and 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 have 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) in all of the States except 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).

Australian Law Reform Commission (ALRC)

The 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.

Reports completed by the Commission in 1994 and 1995 have included:

- *Compliance with the Trade Practices Act 1974, 1994* (ALRC 68);
- *Equality before the law, 1994* (ALRC 69);
- *Child care for kids, 1994* (ALRC 70);
- *Aged care legislation for the Commonwealth, 1995* (ALRC 72);
- *Complex contract cases and the Family Court, 1995* (ALRC 73);
- *Designs, 1995* (ALRC 74); and
- *Costs shifting — who pays for litigation, 1995* (ALRC 75);

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 judgement, 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 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.

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 *Chapter 5, 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.

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

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 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 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.

10.2 Commonwealth Ombudsman — complaints received

Type of complaint	1990-91	1991-92	1992-93	1993-94
Commonwealth Ombudsman (includes Freedom of Information)				
Written complaints				
No. of written complaints	596	4 338	4 149	3 366
Per 100 000 of population	18.3	24.9	24.5	19.1
Oral complaints				
No. of oral complaints	9 086	11 664	10 318	10 291
Per 100 000 of population	52.9	67.0	61.0	58.3
Defence Force Ombudsman				
Written	298	305	308	299
Oral	663	513	405	397
Australian Federal Police	675	693	583	596

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

Method of finalisation	1990-91	1991-92	1992-93	1993-94
Written complaints				
Outside Ombudsman's jurisdiction	554	625	671	419
Discretion exercised	702	938	871	1 271
Withdrawn or lapsed	188	168	181	189
Substantially in favour of complainant	718	892	900	912
Partly in favour of complainant	444	578	659	667
Not substantiated	920	997	1 028	927
Total	3 526	4 198	4 310	4 385
Oral complaints				
Discretion exercised	3	3 652	3 635	4 437
Written complaint advised, withdrawn, etc.	1 775	2 544	2 067	1 742
Substantially in favour of complainant	1 600	1 854	1 699	1 503
Partly in favour of complainant	1 411	1 822	1 879	1 838
Not substantiated	1 697	1 792	1 443	1 408
Total	9 749	11 664	10 723	10 928

Source: Commonwealth Ombudsman.

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*, the *Racial Discrimination Act 1975*, the *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 (NCA)

The 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. 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*.

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

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)

ASIO 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 the principal law enforcement agency through which the Commonwealth pursues its law enforcement interests. The AFP is unique in Australian law enforcement in that its functions relate to both community policing and to investigations of offences against the Commonwealth law which involve law enforcement both in Australia and overseas.

The AFP's main office is located in Canberra. It has regional commands in every Australian State and Territory, including a community policing structure which serves the ACT under an arrangement with the ACT Government. The AFP has liaison posts in 15 cities in 13 countries and a representative attached to Interpol in Lyons. Recently, services have also been supplied for the Commonwealth Territories in Christmas and Norfolk Islands and Jervis Bay. Training services have been supplied to Vanuatu.

The AFP is a Commonwealth statutory authority brought into existence by the *Australian Federal Police Act 1979*, which was proclaimed on 19 October 1979. Section 13(2) of that Act empowers the Minister to direct the general policy to be pursued in relation to the performance of the functions

of the AFP after receiving advice from the Commissioner of the AFP and the Secretary of the Department responsible for administration of the AFP Act.

Since its establishment there have been five Ministerial Directions issued in which the Government has included the general policy it wishes the AFP to pursue in performing its functions.

The operational priorities contained in the 1992–1995 Corporate Plan and relevant to the 1991 Ministerial Direction 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.

Crime statistics

Two 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. The main features of these statistics are described below.

Crimes recorded by police

Within the scope of the national collection, the most frequently reported offence category in Australia in 1994 was that of unlawful entry with intent (UEWI). More than 380,000 UEWIs were reported, representing a rate of 2,130.5 per 100,000 population. Motor vehicle theft was the next most common type of offence, with 119,760 stolen motor vehicles reported to police, a rate of 671.2 per 100,000 population.

Among the violent crimes within the national collection, the most common types of crime reported to Australian police in 1994 were sexual assault and robbery. There were 13,277 sexual assault victims, which represents a rate of 74.4 per 100,000 population. Robbery comprised 5,060 reports for armed robbery, representing a rate of 28.4 per 100,000 population, and 8,923 reports for unarmed robbery, a rate of 50.0 per 100,000 population.

10.4 Crimes recorded by police, 1994

Offence category	NSW(a)	Vic.	Qld(b)	SA	WA	Tas.	NT	ACT	Aust.
No.									
Homicide									
Murder	107	56	42	26	39	5	10	3	288
Attempted murder	62	56	140	36	28	6	4	2	334
Manslaughter	10	5	6	—	11	—	—	—	32
Driving causing death	114	15	17	15	32	—	3	—	196
Sexual assault	4 608	3 388	2 009	1 481	1 372	140	180	99	13 277
Kidnapping/abduction	226	99	86	69	41	17	9	1	548
Robbery									
Armed robbery	2 218	788	863	467	584	62	14	64	5 060
Unarmed robbery	5 130	849	1 072	1 048	634	85	39	66	8 923
Blackmail/extortion	9	85	34	16	21	1	1	1	168
Unlawful entry with intent	120 008	72 260	73 399	35 822	55 911	13 243	4 512	4 997	380 152
Motor vehicle theft	45 477	27 701	16 528	9 350	16 625	1 706	767	1 606	119 760

For footnotes see end of table.

...continued

10.4 Crimes recorded by police, 1994 — continued

Offence category	NSW(a)	Vic.	Qld(b)	SA	WA	Tas.	NT	ACT	Aust.
Rate per 100 000 population									
Homicide									
Murder	1.8	1.3	1.3	1.8	2.3	1.1	5.8	1.0	1.6
Attempted murder	1.0	1.3	4.4	2.5	1.7	1.3	2.3	0.7	1.9
Manslaughter	0.2	0.1	0.2	—	0.7	—	—	—	0.2
Driving causing death	1.9	0.3	0.5	1.0	1.9	—	1.8	—	1.1
Sexual assault	76.2	75.7	62.8	100.8	80.6	29.6	105.2	32.9	74.4
Kidnapping/abduction	3.7	2.2	2.7	4.7	2.4	3.6	5.3	0.3	3.1
Robbery									
Armed robbery	36.7	17.6	27.0	31.8	34.3	13.1	8.2	21.3	28.4
Unarmed robbery	84.8	19.0	33.5	71.3	37.3	18.0	22.8	21.9	50.0
Blackmail/extortion	0.2	1.9	1.1	1.1	1.2	0.2	0.6	0.3	0.9
Unlawful entry with intent	1 983.1	1 614.4	2 295.9	2 437.2	3 285.2	2 803.3	2 637.1	1 660.7	2 130.5
Motor vehicle theft	751.5	618.9	517.0	636.1	976.9	361.1	448.3	533.7	671.2

(a) NSW introduced a new incident based reporting system in 1994. (b) Queensland introduced a new statistical system in December 1994.

Source: *National Crime Statistics, 1994* (4510.0).

The majority of violent offences against the person in the national collection occurred in residential locations (57.6% of murders; 55.7% of attempted murders; 62.0% of sexual assaults). In contrast, over one-third of armed robberies were carried out in retail establishments, whilst almost one-half of unarmed robberies occurred on streets/footpaths. The most common types of premises involved in reported unlawful entries with intent were residential (63.3% of UEWIs), followed by retail establishments (12.9% of UEWIs).

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% of households in Australia were victims of at least one break and enter or attempted break and enter offence. An estimated 1.2% of persons in Australia aged 15 years and over were victims of at least one robbery; 2.5% of persons in Australia aged 15 years and over were victims of at least one assault; and 0.6% of females aged 18 years and over were victims of at least one sexual assault (table 10.5).

10.5 Victims of crime(a) in the 12 months to April 1993

Type of offence	NSW	Vic.	Qld	SA	WA	Tas.	NT	ACT	Aust.
	No. ('000)								
Households									
Break & enter	79.1	51.7	57.1	28.1	45.6	6.8	3.4	5.2	277.0
Attempted break & enter	55.3	41.8	34.8	21.3	30.0	3.5	2.4	5.1	194.2
Break & enter or attempted break & 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	*0.3	*0.9	109.6
<i>Total household victims(b)</i>	<i>159.2</i>	<i>110.8</i>	<i>93.4</i>	<i>53.8</i>	<i>78.4</i>	<i>11.3</i>	<i>5.1</i>	<i>10.1</i>	<i>522.0</i>
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	*2.0	*0.9	*0.1	*0.9	38.9
<i>Total personal victims(b)</i>	<i>173.2</i>	<i>108.8</i>	<i>92.1</i>	<i>42.7</i>	<i>43.9</i>	<i>12.8</i>	<i>4.7</i>	<i>11.0</i>	<i>489.2</i>
	Victimisation rate (%) (d)								
Households									
Break & enter	3.7	3.3	5.2	5.0	7.5	4.0	7.4	5.0	4.4
Attempted break & enter	2.6	2.6	3.2	3.8	4.9	2.0	5.4	4.9	3.1
Break & enter or attempted break & 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	*0.7	*0.8	1.7
<i>Total household victims(b)</i>	<i>7.5</i>	<i>7.0</i>	<i>8.6</i>	<i>9.7</i>	<i>12.8</i>	<i>6.6</i>	<i>11.3</i>	<i>9.7</i>	<i>8.3</i>
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	*0.3	*0.5	*0.2	*0.9	0.6
<i>Total personal victims(b)</i>	<i>3.9</i>	<i>3.2</i>	<i>4.0</i>	<i>3.8</i>	<i>3.5</i>	<i>3.7</i>	<i>5.2</i>	<i>4.9</i>	<i>3.7</i>

(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.

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 10.6 provides a general comparison of certain types of offence during the two periods.

10.6 Victims of crime(a) in the last 12 months, 1983 and 1993

Type of offence	No. ('000)		Victimisation rate (%) (b)	
	1983	1993	1983	1993
Households				
Break & enter/attempted break & 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 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.

10.7 Selected drug seizures by Commonwealth agencies(a)

Type of drug	1991-92	1992-93	1993-94	1994-95
Cannabis	1 818	2 291	1 329	1 614
Cannabis resin	797	450	393	426
Amphetamines	76	117	153	93
Heroin	256	187	186	198
Cocaine	78	81	55	65
Opium	12	15	n.a.	n.a.
LSD	45	46	32	27
Other	54	52	87	48
Total	3 136	3 239	2 235	2 471

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

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). The Annual Prison Census will be conducted by the ABS from 1995 onwards.

10.8 Number of prisoners by most serious offence/charge(a), 30 June 1993

Offence/charge(a)	Age group (years)								Total(c)
	<20(b)	20-24	25-29	30-34	35-39	40-44	45-49	>49	
Homicide	29	269	305	270	233	146	98	142	1 492
Assault	144	555	403	283	156	90	57	48	1 736
Sex offences	34	234	309	302	316	261	180	257	1 893
Other offences against the person	16	43	50	35	29	11	4	5	193
Robbery	133	642	510	342	212	104	39	27	2 009
Extortion	2	9	11	12	6	2	1	3	46
Break & enter	268	808	543	367	155	57	17	16	2 231
Fraud & misappropriation	9	82	120	135	93	83	74	95	691
Receiving	14	75	70	53	34	19	13	10	288
Other theft	135	407	258	152	87	34	22	13	1 108
Property damage	20	66	45	32	19	10	6	10	208
Environmental	—	1	2	1	—	—	—	—	4
Government security	—	—	3	3	2	1	2	5	16
Justice procedures	52	255	202	130	76	29	39	28	811
Unlawful possession of weapon	2	7	12	11	17	8	4	7	68
Other offences against good order	6	20	12	15	10	2	3	6	74
Possession, use of drugs	4	21	37	48	32	24	12	9	187
Deal/traffic drugs	14	124	197	286	264	182	117	114	1 298
Manufacture/grow drugs	1	31	28	46	42	20	18	33	219
Driving offences	24	143	179	136	87	52	21	21	663
Licence, registration	9	60	55	47	33	15	9	7	235
Other traffic offences	2	1	3	2	—	—	—	1	9
Other offences	18	36	38	57	81	63	37	41	371
Offences in custody	—	—	—	1	—	—	—	—	1
Unknown	—	1	4	2	1	—	2	—	10
Total persons(c)	936	3 890	3 396	2 768	1 985	1 213	775	898	15 861

(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 17 years in Victoria, Queensland, Tasmania and Northern Territory, and 18 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. (c) The total number of prisoners shown in this table is greater than the total prisoners shown in the previous and following tables. Data in this table include 1 883 remandees not convicted, awaiting sentence or deportation.

Source: Australian Institute of Criminology.

10.9 Number of sentenced prisoners by type of sentence imposed(a), 30 June 1993(b)

Type of sentence	No. of prisoners
Life	601
Governor's pleasure	69
Indefinite(c)	8 718
Fixed term	3 045
Fine default only	310
Periodic detention	1 240
Total	13 983

(a) Type of sentence is determined by the cumulative effect of all sentences imposed. (b) This table includes unsentenced prisoners subject to deportation orders, and excludes all remandees. (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.

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.

Key research objectives for the Institute are to advise on exemplary methods for the prevention and control of crime; to contribute to the efficiency and effectiveness of the criminal justice system; to monitor crime trends; to assess the contexts and causes of crime; to address issues relating to access to justice; to enhance the usefulness of crime and criminal justice data; to translate research findings into recommendations for achievable social policy; and to communicate effectively the value of research products.

The Institute has four Research Programs. The Violent and Property Crime Program focuses on the causes, prevention and control of crimes against persons and property; the Sophisticated Crime Program focuses on the causes, prevention and control of white collar crime, organised crime, and other complex criminal activity, including emerging criminal threats; the Criminal Justice System Program focuses on the operation and impact of the criminal justice system; and the Data Support and Management Program analyses and interprets crime and criminal justice statistics.

Bankruptcy and copyright

Bankruptcy

Bankruptcy is a statutory regime for the release of debtors from 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 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 of about 90% of bankrupt estates, and most 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.

The Federal Court of Australia exercises jurisdiction in bankruptcy Australian wide. Officers of the Federal Court hold office as Registrars in Bankruptcy. Registrars in Bankruptcy issue bankruptcy notices, and the Act requires various documents, such as petitions, statements of affairs, authorities to trustees, resolutions of meetings of creditors and trustees accounts of receipts and payments to be filed with Registrars in Bankruptcy. These documents are available for public inspection at Federal Court registries. Registrars in Bankruptcy are responsible administratively to the Registrar of the Federal Court of Australia.

Bankruptcies increased in the late 1980s peaking in 1991-92 (16,780). In 1992-93, bankruptcies were down 12% on 1991-92 to 14,852, but were still 14% higher than in

1990-91 (13,091) and 74% higher than in 1989-90 (8,552). In 1993-94 the number of bankruptcies fell to 14,166 (table 10.10).

10.10 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.
1993-94	14 166	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 10.11 and 10.12, mainly because proceedings involving two or more partners are treated as one administration whereas in tables 10.11 and 10.12 details are counted for each of the partners.

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

In 1993-94, economic conditions (29.5%) were by far the main cause of business bankruptcies, followed by other (21.5%), lack of business ability (19.5%) and lack of sufficient funds (7.5%). For non-business bankruptcies, 28% were attributed to unemployment.

10.11 Causes of business bankruptcy

Cause	1988-89	1989-90	1990-91	1991-92	1992-93	1993-94
Lack of sufficient capital	491	562	534	533	558	324
Lack of business ability	489	721	963	1 025	680	847
Failure to keep proper books	26	12	34	27	44	46
Economic conditions(a)	240	524	1 233	1 730	1 709	1 281
Seasonal conditions	30	52	57	60	56	30
Excessive interest	95	172	267	295	254	173
Inability to collect debts	76	107	120	145	116	245
Excessive drawings(b)	129	78	102	118	140	117
Gambling	15	18	26	16	27	23
Personal reasons	121	267	279	244	284	318
Other	465	435	588	1 194	928	931
Total	2 177	2 948	4 203	5 387	4 796	4 335

(a) Including competition and price cutting, and changes in the character of business location (for example, by-pass roads). (b) Excessive drawings including failure to provide for taxation, either personal or wage tax deductions.

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

10.12 Causes of non-business bankruptcy

Cause	1988-89	1989-90	1990-91	1991-92	1992-93	1993-94
Excessive use of credit	2 560	2 098	3 203	3 845	2 445	1 946
Liabilities on guarantees	273	279	551	721	761	921
Unemployment	699	1 225	2 269	3 145	3 236	2 727
Gambling	63	133	90	86	79	81
Ill health	259	409	426	498	337	396
Adverse litigation	205	218	238	347	442	529
Domestic discord	245	362	623	418	547	634
Other	935	822	1 488	2 433	2 134	2 459
Total	5 239	5 546	8 888	11 493	9 981	9 693

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

10.13 Insolvencies(a)

	1988-89	1989-90	1990-91	1991-92	1992-93	1993-94
Deeds of assignment						
Number	228	197	185	170	125	84
Assets (\$m)	11.6	8.3	7.9	7.9	6.4	3.1
Liabilities (\$m)	40.7	28.1	54.6	16.9	64.3	19.1
Deeds of arrangement						
Number	263	156	279	343	301	250
Assets (\$m)	5.4	2.3	8.7	5.8	15.1	3.9
Liabilities (\$m)	30.0	5.4	60.1	115.5	319.9	140.2
Compositions						
Number	304	208	341	440	366	339
Assets (\$m)	3.0	1.9	2.9	2.8	2.3	3.6
Liabilities (\$m)	43.9	34.0	57.0	99.1	179.2	78.3
Total						
Number	795	561	805	953	792	673
Assets (\$m)	20.0	12.5	19.5	16.4	23.8	10.6
Liabilities (\$m)	114.6	67.5	171.8	231.5	563.4	237.6

(a) Under Part X of the Bankruptcy Act.

Source: Commonwealth Attorney-General's Department — Insolvency and Trustee Service, 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* which is tabled in Parliament and is available for purchase by members of the public.

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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