

CHAPTER 11

LAW AND ORDER

THE LAW IN AUSTRALIA

Nature and composition of law

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 Federal Parliament acting within the scope of its powers under the Australian Constitution, together with regulations, rules and orders made under such Acts;
- Acts and Ordinances passed in respect of the Australian Capital Territory and the Northern Territory of Australia, together with regulations, rules and orders made under such Acts and Ordinances;
- Acts passed by State Parliaments and the legislature of the Northern Territory, together with regulations, rules and orders made under such Acts;
- so much of the common or statute law of England that applies to Australia and remains unrepealed; 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.

Federal and State responsibilities

The Commonwealth of Australia is empowered to make laws in relation to certain matters specified in the Australian Constitution, e.g. in relation to trade and commerce, taxation, defence and external affairs. In relation to some of these matters, the powers of the Commonwealth are concurrent with that of the Australian States and Territories in that they may be exercised by either the Commonwealth, the States or the Territories. In other areas the Commonwealth's power is absolute and in all areas of Commonwealth jurisdiction Commonwealth laws are binding on the Australian States and Territories.

The Australian States and Territories have independent jurisdiction in all matters not otherwise specifically invested in the Commonwealth of Australia and it is the common law and statute laws of the States and Territories that primarily govern the day-to-day lives of most Australians. With certain exceptions, such as traffic laws, State and Territorial law applies normally only to persons who are residents of the State or Territory concerned and to things located or events occurring within such State or Territory.

The common law is uniform throughout Australia although statute law often varies between the States and Territories. However, some of the problems arising from these differences have become recognised over recent years and attempts are now being made towards the enactment of uniform laws in areas of State and Territory jurisdiction wherever possible.

Administration of the law

Administration of the law in Australia is undertaken by the responsible governments concerned, principally through Federal, State and Territorial police and judiciaries, 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.

The various law enforcement agencies involved in the administration of law operate in such a way that the activities of one agency may affect the activities of another, e.g. a criminal offence reported to the police may lead to the arrest, charge and court appearance of the offender, and subsequent provision of corrective (e.g. imprisonment, probation) or welfare services. The agencies involved, and the relationship between them, may vary according to the laws, agencies and types of matters or offenders involved.

Reform of the law

Reform of the law is undertaken principally through State and Commonwealth Parliaments and Attorneys-General acting on recommendations provided by State and the Australian Law Reform Commissions, and by State Supreme and Federal Courts.

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

The Australian Law Reform Commission

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

The ALRC has assumed the functions formerly undertaken by the A.C.T. Law Reform Commission, and has the responsibility for review of Territorial law operating in both the Australian Capital Territory and Northern Territory.

In undertaking its functions, the Commission follows the normal procedure of law commissions where possible. Upon receipt of a reference, the Commission advertises and calls for public submissions in relation to the reference, and prepares a working paper examining the issues for distribution among groups thought to have a special interest in the subject matter. Public sittings are conducted, and in the light of submissions received, a final report containing draft legislation is prepared for submission to the Attorney-General. The Commission, which consisted of four full-time, and seven part-time members at 30 June 1982, makes extensive use of honorary consultants.

To 30 June 1982, the Commission has completed reports on the following references: complaints against police and criminal investigation; alcohol, drugs and driving; consumers in debt; defamation; sentencing of federal offenders; human tissue transplants; lands acquisition and compensation; insurance intermediaries; and child welfare. Legislation following the recommendations contained in these reports have been enacted in some cases. In other cases, the proposals made by the Commission are under consideration by Parliament or the appropriate Commonwealth Department. Current references include privacy, debt recovery laws, access to court (standing to sue and class actions), Aboriginal customary laws and evidence. Other references are expected shortly.

COURTS: STRUCTURE AND FUNCTIONS

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 Federal 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. For details of Commonwealth of Australia Constitution Act see Chapter I, pages

High Court of Australia

The High Court of Australia consists of a Chief Justice and six other Justices. The *High Court of Australia Act 1979*, which came into operation on 21 April 1980, provides for such matters as the constitution and seat of the Court, its administration and Registry. The new High Court building in Canberra was opened by Her Majesty the Queen on 26 May 1980 and the first sitting of the High Court in its new building was held on 3 June 1980. The seat of the High Court was finally established in the Australian Capital Territory on 1 September 1980 and sittings of the High Court are now held at Canberra and at other places as required.

The Australian Constitution itself confers original jurisdiction on the High Court in all matters:

- (i) arising under any treaty;

- (ii) affecting consuls or other representatives of other countries;
- (iii) in which the Commonwealth of Australia, or a person suing or being sued on behalf of the Commonwealth is a party;
- (iv) between States, or between residents of different States, or between a State and resident of another State; and
- (v) in which a writ of mandamus or prohibition, or an injunction, is sought against an officer of the Commonwealth of Australia.

In relation to each of these matters the High Court's jurisdiction is exclusive to the jurisdiction of Australian State courts.

The Federal Parliament may, under the constitution, confer certain additional original jurisdiction on the High Court. The High Court has been conferred with original jurisdiction in all matters arising under the constitution or involving its interpretation and in trials of indictable offences against the law of the Commonwealth. Since the Federal Court of Australia commenced to exercise Federal jurisdiction on 1 February 1977, the only other statutory original jurisdiction which is still conferred on the High Court is its jurisdiction as a Court of Disputed Returns for the Federal Parliament.

The High Court's exclusive jurisdiction no longer includes matters involving the limits *inter se* of the constitutional powers of the Commonwealth of Australia and those of the Australian States. However, a cause or part of a cause arising under the Constitution or involving its interpretation that is pending in a Federal court or in a court of a State or Territory may be removed into the High Court.

Under the Australian Constitution the High Court has jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders and sentences of:

- (i) any Justice or Justices exercising the original jurisdiction of the High Court;
- (ii) any other Federal court or court exercising Federal jurisdiction; and
- (iii) the Supreme Court of any State or any other State court from which appeal lay to the Privy Council at the establishment of the Commonwealth.

Appeals against High Court decisions

Leave to appeal to the Judicial Committee of the Privy Council from a decision of the High Court can now only be sought in cases involving the limits *inter se* of the constitutional powers of the Commonwealth of Australia and those of the Australian States if the High Court certifies that the question is one that ought to be determined by the Privy Council. No such certificate has in fact been granted by the High Court since 1913.

Federal Court of Australia

The Federal Court of Australia was created by the *Federal Court of Australia Act 1976* and commenced to exercise jurisdiction on 1 February 1977.

The Act provides that the Court has such original jurisdiction as is invested in it by laws made by the Federal Parliament including jurisdiction formerly exercised by the Federal Court of Bankruptcy and the Australian Industrial Court, matters under the *Administrative Decisions (Judicial Review) Act 1977* in relation to administrative action taken under Commonwealth legislation and certain matters under the *Trade Practices Act 1974*.

The Federal Court has appellate jurisdiction with respect to judgments of the Court constituted by a single judge; judgments of the Supreme Courts of the Australian Territories; and certain judgments of State Supreme Courts exercising Federal jurisdiction (for example, under the *Income Tax Assessment Act 1936* and the *Patents Act 1952*).

For the purposes of its organisation and business, the Federal Court consists of two Divisions: an Industrial Division and a General Division. Matters arising under the *Conciliation and Arbitration Act 1904* and under the *Stevedoring Industry Act 1956* are dealt with in the Industrial Division and all other matters are dealt with in the General Division of the Court. The Federal Court sits as required in each State, the Australian Capital Territory and the Northern Territory of Australia.

Family Court of Australia

The *Family Law Act 1975*, which came into 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.

The law is administered by the Family Court of Australia, which was created by the Act, and by certain other courts in the Australian States and Territories. Except in Western Australia, courts of summary jurisdiction in the States and Territories have jurisdiction in all matrimonial causes, except proceedings for principal relief, subject to the agreement of the parties in defended custody proceedings and property proceedings regarding property worth more than a certain sum. A State Family Court has been established in Western Australia to administer family law in that State.

In dealing with proceedings under the Act, the Family Court is required to have regard to the following principles:

- the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life;
- the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children;
- the need to protect the rights of children and to promote their welfare; and
- the means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationship to each other and to the children of the marriage.

The same principles apply to all courts exercising jurisdiction under the *Family Law Act 1975*. Proceedings under the Act in the Family Court are heard in private and no publicity about 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 profession, is exempted from this prohibition.

The Family Court has the important task of protecting and promoting the welfare and rights of children in proceedings regarding their guardianship or custody. The paramount consideration guiding the Court in all such proceedings is the welfare for the children. Further, a divorce decree will not become effective unless the Court is satisfied that proper arrangements have been made by parties for the welfare of their children.

A feature of the Act is that, in the absence of any court order, both the parties to a marriage have joint custody of a child of the marriage as a matter of law. However, one parent can ask the Court for sole custody of a child. In disputes over custody, the child may be separately represented. The wishes of children over 14 in such disputes must be taken into account unless there are special circumstances.

The right to maintenance under the Act is based on the needs of the party seeking it and the ability of the other party to pay. There are specific matters for the Court to consider when it is dealing with maintenance applications. These include:

- the age and state of health of the parties;
- the income, property and financial resources of each of the parties and their financial obligations;
- whether either party is entitled to a pension or superannuation;
- the length of the marriage and what is an appropriate standard of living for each party;
- whether persons seeking maintenance have to care for children;
- the extent to which the marriage has affected the earning capacity of the applicant; and
- the possibility of the applicant taking on a training course or further educational course to improve his or her employment prospects.

Both parties are liable to maintain their children according to their respective means and the Court is guided by similar considerations in deciding what order to make.

The Court has power to settle disputes about the family assets, including the power to order a transfer of legal interests in property. When dealing with these disputes, the Court considers the interest each of the parties has in the property and the contribution made during the marriage. The Act directs the Court to look at the financial contribution made by the parties and at the contribution made by either party in the capacity of homemaker or parent.

Under the Act, great emphasis is placed on the counselling services available through the family courts to persons involved in proceedings and to any persons who have encountered marriage problems. It is not necessary to start proceedings to make use of these services. The Act also provides that there is only one ground for divorce—that of irretrievable breakdown of a marriage. Irretrievable breakdown of a marriage is established under the law if the husband and wife have separated and have lived apart from each other for 12 months and there is no reasonable likelihood of reconciliation. The main change made to the previous law by the provisions of the Act is that fault is no longer taken into account as a ground for divorce.

Applications can be made to the Family Court of Australia for custody and maintenance even if a divorce is not sought. Persons may also seek the Court's assistance for counselling with regard to their marital problems whether or not they are contemplating proceedings for divorce or other relief.

The Judges of the Family Court are appointed because of their suitability to deal with matters of family law by reason of their training, experience and personality. The Judges do not wear wigs and gowns, and the staff attached to the Court include trained counsellors.

Specific provision is made in the Act for legal assistance to be given by the Australian Legal Aid Office to persons who are assessed to be unable to afford legal representation.

The Family Court has had pamphlets printed to explain the operation of the Act. These pamphlets are both in English and various European languages.

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 Federal, State or Territory law, are dealt with by State and Territory courts.

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

Courts of General Jurisdiction

These courts are empowered to adjudicate on civil and criminal matters, or civil or criminal matters, or criminal matters which embrace the laws of contract and tort (compensating for civil wrongs). Criminal matters are those involving an alleged breach of the statute, code or common law that may render a person liable to prosecution, usually at the instigation of the Crown, and which make persons liable to punishment if proof of such allegation is established according to law.

The various levels of State and Territory courts of general jurisdiction are outlined below.

Courts of Summary Jurisdiction

Magistrate's Court or Courts of Petty Sessions. These courts have jurisdiction over matters involving summary or less serious indictable offences and civil matters in some Australian States and Territories, and are generally presided over by a stipendiary magistrate or, in some circumstances, a justice or justices of the peace.

Preliminary hearing of matters involving more serious indictable offences (i.e. those offences triable before a judge and jury) are also undertaken by these courts. If the court determines that a prima facie case exists against the accused, the matter is committed to a higher court for trial. In certain circumstances, persons convicted of an offence in a Magistrate's Court may be committed to a higher court for sentence.

Local Courts. These courts, which operate in South Australia and Western Australia only, have jurisdiction over civil matters involving claims of limited value. In other Australian States and the Territories, local court functions are performed by Magistrates or County or District Courts (see below).

Children's Courts. These courts have jurisdiction over matters involving summary or less serious indictable offences, committed by, or against, children or young persons under a certain age (the age limit for hearing in a Children's Court varies between States). The jurisdiction of Children's Courts also includes matters involving neglected, uncontrollable or truant children.

Children's Panels have been established in South Australia and Western Australia to deal with children who are alleged to have committed less serious offences, which may otherwise be dealt with by Children's Courts.

Higher Courts

County or District Courts. These courts have jurisdiction in matters involving more serious indictable offences, and, in some Australian States, civil matters involving a claim in excess of the limit allowable for lower court hearing. When hearing criminal cases, the courts comprise a judge and jury, but usually comprise a judge only for hearings of civil matters.

No County or District Courts exist in Tasmania, the Australian Capital Territory or the Northern Territory of Australia.

State and Territory Supreme Courts. These courts are the superior courts of record in, and for, each Australian State or Territory. Their jurisdiction is unlimited in relation to both civil and criminal matters (except where a particular matter falls within reserved Federal jurisdiction) and they perform a variety of other judicial functions (e.g. in relation to equity, probate, administrative law, etc.). Supreme Courts are constituted in the same way as County or District Courts.

Appeals

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.

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. However, appeals against Supreme Court decisions are heard in most States by a Full Bench of the Supreme Court which usually comprises three judges of the Supreme Court. Appeals from Supreme Court decisions may be taken to the Federal Court of Australia or the High Court of Australia or the Privy Council depending on the nature of the matter involved.

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, Licensing Courts, etc. These courts or tribunals deal primarily with civil matters or matters of an administrative nature.

Courts of Marine Inquiry

Matters which come within the jurisdiction of Courts of Marine Inquiry are contained in the *Navigation Act 1912*. The principal areas of jurisdiction are to make inquiries into casualties affecting ships, or entailing loss of life on or from ships and to charges of incompetency or misconduct.

When the Department of Transport and Construction is advised of an incident which may warrant the convening of a Court of Marine Inquiry, the Minister will appoint an officer to conduct a Preliminary Investigation. The officer will conduct interviews with the parties involved and based on the results of these interviews advise the Minister as to whether or not the circumstances warrant a request by the Minister for a Court of Marine Inquiry to be convened. The Governor-General by proclamation establishes the Court of Marine Inquiry. Findings of the Court are forwarded to the Minister, as well as any observations the Court thinks fit to make.

Statistics

Information relating to the operation of courts in particular Australian States may be obtained from the respective State Year Books.

Administrative Review

Administrative Appeals Tribunal

The Administrative Appeals Tribunal was established by the *Administrative Appeals Tribunal Act 1975* and came into operation on 1 July 1976. It is an independent tribunal whose function is to review decisions made by Commonwealth Ministers, authorities and officials under certain laws of the Commonwealth. The Tribunal is able to substitute its own decision in those areas in which it has jurisdiction. The Tribunal has jurisdiction under a total of 119 enactments including decisions under the *Social Services Act 1947*, *Compensation (Commonwealth Government Employees) Act 1971*, *Migration Act 1958*, *Customs Act 1901*, *Export Market Development Act 1974*, the Air Navigation Regulations and the *Freedom of Information Act 1982*. Further additions to the Tribunal's jurisdiction are made from time to time.

The Principal Registry is in Canberra and there are Tribunal Registries in each capital city.

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 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*, which came into operation on 1 October 1980, provides for judicial review in the Federal Court of Australia of administrative action taken under Commonwealth legislation. The Court is empowered where an order of review is sought by an aggrieved person to review the lawfulness of a decision, conduct leading up to the making of a decision or circumstances where there has been failure to make a decision. The grounds on which review may be sought and the powers of the Court are set out in the Act. In many cases, a person who is entitled to seek judicial review in respect of an administrative decision may seek a statement of reasons for the decision from the decision-maker.

Commonwealth Ombudsman

The Office of the Commonwealth Ombudsman was established by the *Ombudsman Act 1976* and commenced operation in June 1977. In April 1981 the *Complaints (Australian Federal Police) Act 1981* gave the Ombudsman additional responsibilities in relation to the investigation of complaints against the Australian Federal Police. The Ombudsman is empowered to investigate complaints about the administrative actions of Commonwealth departments and prescribed authorities, and complaints about the conduct of members of the Australian Federal Police, and about its practices and procedures. Where the Ombudsman is of the opinion, after an investigation is completed, that remedial action is required, he reports to the body concerned and may include in his report any recommendations he thinks fit to make. If the organisation fails to comply with a recommendation contained in a report by the Commonwealth Ombudsman, he may report to the Prime Minister and to the Parliament. The Commonwealth Ombudsman is represented in each capital city of the States and the Northern Territory.

Each of the Australian States and the Northern Territory has an Ombudsman with the responsibility of investigating complaints about State Government departments and authorities and local government bodies.

The Human Rights Commission

The Human Rights Commission was set up by the Commonwealth Government in December 1981 to *promote* and *protect* human rights in Australia. The human rights with which it is concerned are those set out in five United Nations instruments:

- The International Covenant on Civil and Political Rights;
- The Declaration of the Rights of the Child;
- The Declaration on the Rights of Mentally Retarded Persons;
- The Declaration on the Rights of Disabled Persons; and
- The International Convention on the Elimination of All Forms of Racial Discrimination.

The Commission works under two Acts—the *Human Rights Commission Act* 1981 and the *Racial Discrimination Act* 1975.

Under the Human Rights Commission Act the functions of the Commission are fourfold:

- (i) to review legislation for its consistency with human rights;
- (ii) to inquire into and, where practicable, effect a settlement of issues, including complaints, that have come to its notice;
- (iii) to promote understanding, acceptance and public discussion of human rights; and
- (iv) to undertake and co-ordinate research and educational programs affecting human rights.

Where the Commission considers a change in Commonwealth law or practice is required, it is to report this to the Attorney-General, and its reports must be made public by tabling in the Parliament.

Under the Racial Discrimination Act, the Commission is charged with functions in relation to racial discrimination similar to those numbered (ii) to (iv) above in relation to human rights generally. Investigation and resolution of complaints made under the Racial Discrimination Act are carried out by the Commissioner for Community Relations on behalf of the Commission.

The Racial Discrimination Act applies regardless of whether the discrimination falls within Commonwealth, State or Northern Territory jurisdiction. The human rights function is related to Commonwealth laws and practices under those laws, although the Human Rights Commission Act provides for co-operation with State agencies in the promotion of human rights.

Freedom of Information Act 1982

The *Freedom of Information Act* 1982 which came into operation on 1 December 1982 has two objectives:

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

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

The right of access does not extend to all documents. Exempt are:

- certain documents to which the *Archives Act* 1982 applies;
- documents affecting national security, defence, international relations and relations with States;
- Cabinet and Executive Council documents;
- internal working documents (subject to certain limitations on what may be exempt);
- documents affecting enforcement of the law and protection of public safety;
- other documents exempt by reason of secrecy provisions of other enactments, financial or property interests of the Commonwealth, personal privacy, legal professional privilege etc.;
- documents made available for purchase or open access upon payment of a fee; and
- documents created before 1 December 1982.

However, there are two exemptions to this last restriction on access:

- a person has a right of access to documents created before 1 December 1982, necessary to the understanding of a document already legally in that person's possession; and
- individuals have the right of access to documents which predate the commencement of the Act by up to five years, providing that the documents relate to the individual.

The public is not required to provide reasons for requesting access to documents. However, all requests under the Act should be in writing and provide such information concerning the document as

is reasonably necessary to enable a responsible officer to identify the document. Where a person wishes to make a request or has made a request that does not comply with the provisions of the Act relating to requests for access it is the duty of the agency to take reasonable steps to assist the person to make the request in a manner that complies with the Act.

Provisions exist whereby a person may apply to have an amendment made to information relating to that person's own personal affairs.

Royal Commissions—Commonwealth

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 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.

The power to issue Letters Patent to inquire is a prerogative of the Crown. The *Royal Commissions Act* 1902 confers powers on a Royal Commission to compel the attendance of persons, the giving of evidence, and the production of papers. It also creates a number of offences (e.g. failure to attend a Royal Commission when summoned, or 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 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'.

LETTERS PATENT ISSUED FROM 30.6.77 TO 30.6.82

<i>Name of Royal Commission</i>	<i>Commissioner(s)</i>	<i>Date of issue of Letters Patent</i>
Australian Royal Commission of Inquiry into Drugs	The Hon. Mr Justice E. S. Williams	13 October 1977
Royal Commission of Inquiry into Electoral Redistribution of Queensland 1977	The Hon. Mr Justice D. G. P. McGregor	24 April 1978
Commission of Inquiry into the Efficiency and Administration of Hospitals	Mr J. H. Jamison, O.B.E.	29 August 1979
Commission of Inquiry into the Viability of the Christmas Island Phosphate Industry	Mr W. W. Sweetland	20 December 1979
Royal Commission on the Activities of the Federated Ship Painters and Dockers Union	Mr Frank Costigan, Q.C.	10 September 1980
Royal Commission of Inquiry into Drug Trafficking	The Hon. Mr Justice D. G. Stewart	25 June 1981
Inquiry into the Activities of the Australian Building Construction Employees' and Builders' Labourers' Federation	Mr J. S. Winneke, Q.C.	20 August 1981
Royal Commission into Australian Meat Industry	The Hon. Mr Justice A. E. Woodward	12 September 1981

FINAL ROYAL COMMISSION REPORTS PRESENTED FROM 30.6.77 TO 30.6.82

<i>Name of Royal Commission</i>	<i>Date of presentation</i>	<i>Tabled in the Parliament</i>
Royal Commission into Human Relationships	November 1977	28 February 1978
Royal Commission of Inquiry into Electoral Redistribution of Queensland in 1977	August 1978	15 August 1978
Australian Royal Commission of Inquiry into Drugs	January 1980	18 March 1980
Commission of Inquiry into the Efficiency and Administration of Hospitals	December 1980	25 February 1981
Commission of Inquiry into the Viability of the Christmas Island Phosphate Industry	February 1980	20 February 1980
Royal Commission into the Activities of the Australian Building Construction Employees' and Builders' Labourers' Federation	May 1982	20 October 1982

LEGAL AID

The purpose of providing legal aid is to ensure that no person involved in a legal dispute or action should be without legal assistance by reason of not being able to pay for it, and is based on the notion of justice and equity before the law.

Legal aid in Australia is delivered through a variety of schemes operated at Federal, State and local levels. The principal schemes are those of the Australian Legal Aid Office, the legal aid commissions (which operate in five States and the Australian Capital Territory) and the Aboriginal legal services. In addition there are numerous community based legal aid agencies and certain law society schemes.

Historically, legal aid schemes in Australia were initiated by State governments with Public Solicitor or Public Defender schemes in Queensland, Victoria and New South Wales. The Law Society in South Australia began a legal assistance scheme in 1933, and law society schemes followed in other States. In 1973 the Australian Legal Aid Office was established to provide legal assistance in the Federal area.

It is now the policy of the Commonwealth Government that legal aid other than that given by Aboriginal legal services and voluntary and community agencies be provided in each State and Territory through a single independent statutory commission, established by State or Territory legislation. Under this policy, legal aid is provided by both salaried and private lawyers and funded by the Commonwealth in Federal matters. The States continue to fund legal assistance provided in relation to State matters. Pursuant to agreements entered into between the Commonwealth and the States, independent statutory commissions providing legal advice and assistance in both Commonwealth and State matters have been established in Queensland, South Australia, Victoria, Western Australia and the Australian Capital Territory. A statutory commission has also been established in New South Wales, but its functions do not extend to Commonwealth matters. Legal aid commissions have not yet been established in Tasmania and the Northern Territory, and in these places, as well as New South Wales, the Australian Legal Aid Office continues to provide legal advice and assistance in Commonwealth matters.

Aboriginal legal services operate in all States and Territories and are funded by the Department of Aboriginal Affairs. Community law centres which also operate in most States are funded by Commonwealth, State and in some instances local government.

The Commonwealth Attorney-General administers a growing area of legal assistance in special federal areas outside the scheme of independent statutory commissions. This assistance is provided under various Commonwealth Acts, (such as the *Conciliation and Arbitration Act 1904*, *Administrative Appeals Tribunal Act 1975* and the *Trade Practices Act 1974*) and administrative schemes (e.g. aid for Public Interest and Test Cases and for cases involving the recovery of children removed overseas).

The Commonwealth Legal Aid Council, established pursuant to the *Commonwealth Legal Aid Act 1977* has the broad function of advising the Commonwealth Attorney-General on matters relating to the provision of Legal Aid in Australia. The Council Secretariat is located in the Australian Legal Aid Office Division of the Commonwealth Attorney-General's Department.

Selected details of the income and expenditure of major Australian Legal Aid schemes during 1981-82, and further information on the operation of these schemes are available from Annual Reports of the Commonwealth Legal Aid Council and the Commonwealth Attorney-General's Department or by writing to the Secretary, Commonwealth Legal Aid Council, Attorney-General's Department, Parkes, A.C.T. 2600.

THE POLICE

The primary duties of the police are the prevention and detection of crime, the protection of life and property, and the enforcement of law to maintain peace and good order. In addition, they may perform a variety of other duties in the service of the State, including the regulation of street traffic, acting as clerks of petty sessions, crown land bailiffs, foresters, mining wardens and inspectors under the Fisheries and various other Acts. With the exception of the Australian Federal Police, police forces in Australia are under the control of the State and Northern Territory Governments, but their members perform certain functions for the Commonwealth Government, such as aliens registration officers, and in conjunction with the Australian Federal Police and other Commonwealth officers, they police various Commonwealth Acts and Regulations.

Australian Federal Police

The Australian Federal Police (AFP) was formed in October 1979. It performs normal police duties in the Australian Capital Territory, and is the principal agency for the enforcement of Federal laws, and the protection of Commonwealth Government property, and property and interests at buildings and establishments under Commonwealth Government control, and co-ordinate some of the work of other investigation and law enforcement agencies in Australia.

The AFP operates the Australian Police College at Manly, N.S.W., to provide training for officers of various police forces and other agencies in Australia and New Zealand. The force has its head office in Canberra, and district offices in each State capital.

The active strengths and ranks of non-civilian police personnel in police forces in Australia, are shown in the following table.

POLICE FORCES

<i>Year/Rank</i>	<i>AFP</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>SA</i>	<i>WA</i>	<i>TAS</i>	<i>NT</i>
At 30 June—								
1979	(a)2,481	9,063	7,463	4,132	3,621	2,558	1,132	539
1980	2,614	9,400	7,603	4,387	3,423	2,643	1,041	534
1981—								
Executive officers	32	69	72	28	71	40	10	16
Inspectors	109	240	312	106	35	70	51	20
Sergeants	492	2,344	1,875	1,101	476	622	155	122
Constables including Trainees/ cadets/probationary constables	2,022	6,815	5,937	3,197	2,638	1,924	813	385
Total	2,655	9,468	8,196	(b)4,554	3,220	2,656	1,029	543

(a) From October 1979 the Commonwealth Police and the A.C.T. Police combined to form the Australia Federal Police. At 30 June 1979 there were 581 A.C.T. and 1,900 Commonwealth Police. (b) Includes 122 Technical and scientific officers not included in ranks.

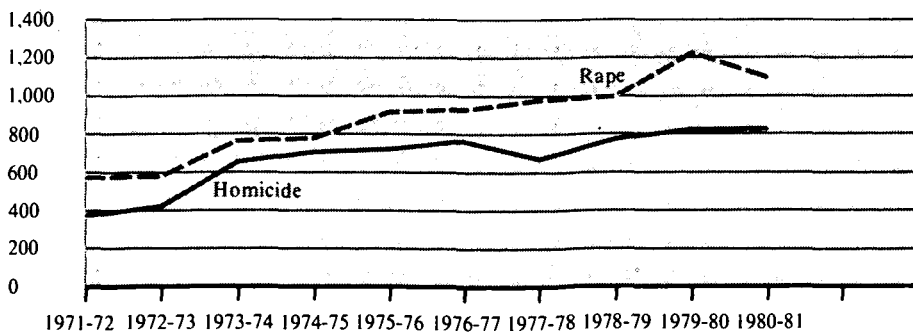
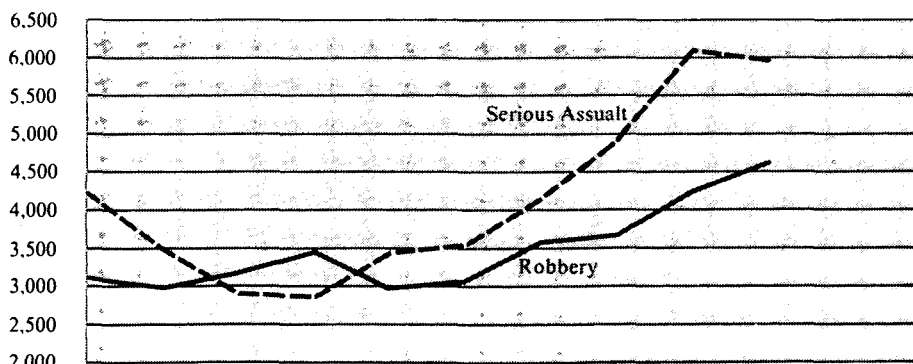
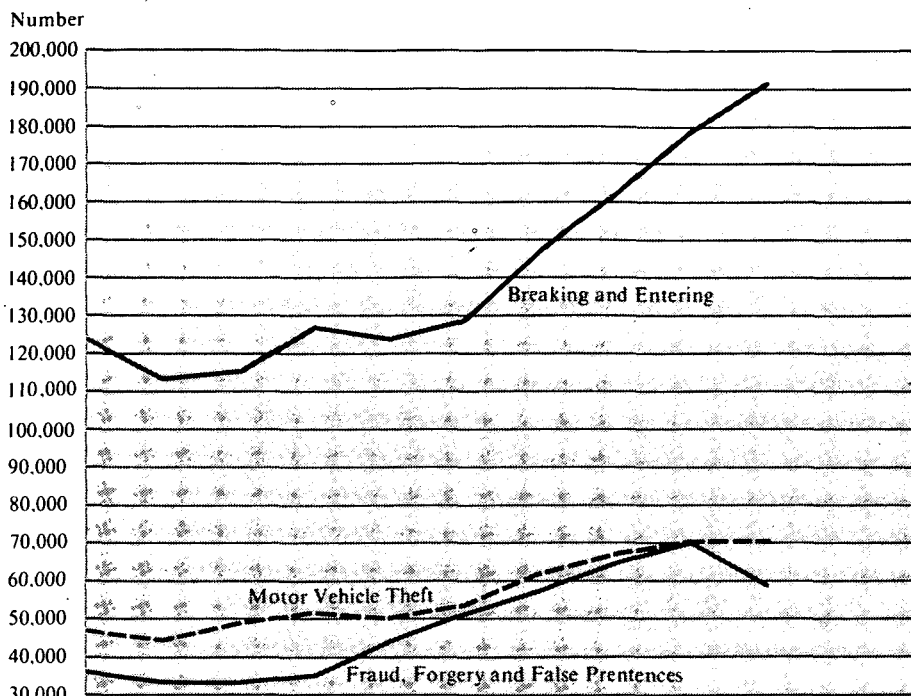
CRIME STATISTICS

Selected Offences

Since 1964, the ABS has published a series of 'Selected Offences reported or becoming known to Police'. This series is provided by police, and is based as far as possible on definitions and procedural arrangements agreed to by police authorities for all States and Territories. Explanatory notes relating to the statistics are contained in Year Book, No. 61, p. 475-7.

The following graph shows the number of offences reported or becoming known to police, including the Australian Federal Police, in Australia in each of the seven major categories included in the series.

**SELECTED OFFENCES REPORTED OR BECOMING KNOWN TO POLICE,
AUSTRALIA, 1971-72 TO 1980-81**



Drug Offences

Australia is a signatory to the Single Convention of Narcotic Drugs which has as its main aim the limitation of narcotic drugs to legitimate medical and research purposes.

As its name implies, the Single Convention of Narcotic Drugs covers only the so-called narcotic drugs including cannabis and its derivatives. In recognition that there are other drugs of dependence, the member nations met during 1970 and 1971 and drew up a further Convention to impose controls on psychotropic substances such as hallucinogens, amphetamines, other central nervous system stimulants, barbiturates, tranquillisers and certain other sedatives.

For details of legislative provisions *see* Year Book No. 63, page 218.

Law enforcement in respect of drugs in Australia is handled mainly by the following bodies:

- State and Territory police forces who police State and Territory laws and Commonwealth laws in conjunction with Commonwealth authorities.
- The Australian Federal Police who police Commonwealth laws.
- The Bureau of Customs in the Department of Business and Consumer Affairs which has responsibility for the enforcement of laws controlling importing and exporting of drugs.

The National Standing Control Committee on Drugs of Dependence was established in 1969 by the Commonwealth Government to co-ordinate the activities of the various Commonwealth, State and Territories' bodies participating in the administration of drug laws and control. The role of the Committee is to consider further steps that can be taken by the national and State Governments together to combat all aspects of drug abuse in Australia, including addiction, trafficking, treatment and education.

The Australian Federal Police serve as the national agency for the systematic collection, collation, evaluation and dissemination of information concerning the illicit drug traffic in Australia. The following extracts are from the detailed statistics published by them in the annual report *Drug Abuse in Australia (A Statistical Survey)*.

**DRUG AND DRUG-RELATED OFFENCES: NUMBER OF CHARGES(a) INVOLVING
SPECIFIC DRUG TYPES: AUSTRALIA 1979 TO 1981**

Year	Possess	Import	Use/ administer	Traffic	Steal	False pretences	Forged scripts	Other	Total
Narcotics—									
1979	1,068	73	1,009	414	137	73	379	367	3,520
1980	877	36	783	352	85	114	136	228	2,611
1981	1,186	103	1,003	565	148	287	103	350	3,745
Cannabis—									
1979	10,688	102	3,472	862	23	2	—	2,352	17,501
1980	12,269	95	4,027	1,266	37	—	—	2,584	20,278
1981	15,776	123	5,065	1,623	17	2	—	3,980	26,506
Amphetamines—									
1979	94	1	57	12	12	20	37	12	245
1980	85	—	49	25	—	22	14	6	201
1981	298	2	208	90	—	6	3	17	624
Barbiturates									
hypnotics—									
1979	359	—	263	53	45	32	104	51	907
1980	224	—	197	59	11	30	65	44	630
1981	143	—	77	26	20	12	37	21	342
Tranquillisers—									
1979	79	—	40	29	34	12	36	18	248
1980	64	1	66	30	11	19	12	17	220
1981	102	—	73	19	20	7	24	18	263
Hallucinogens—									
1979	186	—	40	33	—	—	1	18	278
1980	183	3	32	58	—	—	2	12	290
1981	171	3	39	38	1	1	—	10	263
Other—									
1979	46	—	12	48	30	8	14	14	172
1980	50	—	23	51	24	74	41	22	285
1981	89	1	24	31	16	12	14	17	204
Total—									
1979	12,520	176	4,893	1,451	281	147	571	2,832	22,871
1980	13,752	135	5,177	1,841	168	259	270	2,913	24,515
1981	17,765	232	6,489	2,392	228	327	181	4,333	31,947

(a) Charges arising from offences involving a number of different drug types have been counted under each drug type involved.

**AGE DISTRIBUTION OF PERSONS CHARGED (a) WITH DRUG AND/OR DRUG
RELATED OFFENCES: AUSTRALIA 1979 to 1981**

<i>Year</i>	<i>16 years and under</i>	<i>17</i>	<i>18-25</i>	<i>26-30</i>	<i>31-49</i>	<i>50 years and over</i>	<i>Total</i>
1979	311	534	7,743	1,783	825	37	11,233
1980	338	558	7,939	1,909	923	49	11,716
1981	520	778	10,052	2,636	1,333	49	15,368

(a) Persons counted only once, regardless of the number of occasions on which charged during the year.

CORRECTIONAL TREATMENT OF OFFENDERS

The term 'corrections' (and its derivatives) as used here refers to the treatment of offenders within the justice system.

While there is a variety in the types of correctional activities employed in each State and Territory, such activities can be broadly categorised into three groups:

- non-continuing forms of treatment, where, if the offender meets the requirements set by court, then correctional agencies would not normally become actively involved. Examples of these forms of treatment are fines, bonds, recognisances without supervision.
- continuing forms of treatment, where the offender is subject to some form of control by a correctional agency, usually for a specified period. This control may take form of—
 - (i) full time custody, as in the case of persons detained in prisons, or other institutions, or
 - (ii) non-custodial treatment involving conditions to be observed by the offender, e.g. probation and parole. In recent years there has been a trend towards the greater use by courts of non-custodial treatment of offenders. This has seen the development of a range of programs such as periodic/weekend detention, attendance centre programs, and community service, under which the offender is at liberty in the community, but is required to report for weekend detention, training, counselling, or to perform unpaid work in the community.

Separate provisions exist in each State and Territory for the treatment of juvenile offenders, and courts and correctional agencies have a wide choice in the types of correctional treatments available to them. Both custodial and non-custodial correctional activities are employed, but greater flexibility allows treatment to be more closely aligned to individual requirements.

Each State and the Northern Territory operates its own prisons and other correctional services. Convicted adult prisoners from the A.C.T. serve their sentences in N.S.W. prisons, but local provision is made for the short-term custody of remand prisoners, and for probation and parole services. The Federal Government does not operate any prisons or other correctional services, and Federal offenders (i.e. persons convicted of offences under Federal laws) fall within the jurisdiction of State agencies for correctional purposes.

Information relating to correctional services in each State is available from the annual reports of the respective authorities and certain data are also published monthly by the Australian Institute of Criminology on adults and juveniles in detention, and adult probationers and parolees.

CRIMINOLOGICAL RESEARCH

The Australian Institute of Criminology

The Australian Institute of Criminology, which is located in Canberra (telephone (062) 82 2111), was established as a statutory authority under the *Criminology Research Act* 1971. The Institute is administered by a Director and a Board of Management comprising three members appointed by the Federal Attorney-General, and three members representing the States, who are appointed by the Criminology Research Council.

Among the functions of the Institute as defined in the Criminology Research Act are:

- to conduct criminological research (i.e. research in connection with the causes, prevention and correction of criminal behaviour and related matters), and communicate the results of such research to the Commonwealth and States;
- to advise on the needs for, and programs of, criminological research, and give advice and assistance in relation to any research funded through the Criminology Research Council;
- to conduct seminars and courses of training and instruction for persons engaged in criminological research or work related to the prevention or correction of criminal behaviour;
- to provide advice in relation to the compilation of statistics in relation to crime; and
- publish material resulting from, or relating to its activities.

Since its inception the Institute has undertaken directly, or through the Criminology Research Council actively assisted and advised on, an extensive range of criminological research projects, and has conducted, or been represented at, numerous national and international conferences dealing with crime related matters. In addition, the Institute maintains a comprehensive library of criminological material which is available to researchers and criminal justice practitioners.

Major publications of the Institute during 1981-82 included *Crime Trends in Twentieth-Century Australia* by Satyanshu K. Mukherjee, *Source Book of Australian Criminal & Social Statistics 1900-1980* by Satyanshu K. Mukherjee, Evelyn N. Jacobsen and John R. Walker, and *Just Deserts for the Mad* by Ivan Potas.

Each year the Institute conducts from 15 to 20 national seminars. Topics covered by seminars during 1981-82 included: victimology; the role of forensic psychologists; the police and private security; and mentally ill offenders.

The Criminology Research Council

The Criminology Research Council, comprised of representatives from the Commonwealth and each State, is an independent body corporate also established under the *Criminology Research Act* 1971. The Council is responsible for the control and administration of the Criminology Research Fund, which is funded fifty percent by the Federal Government, and fifty percent by State Governments on a pro-rata population basis. Subject to the Council's assessment of a project, persons seeking to conduct criminological or related research may be provided with a grant from the Fund.

Since its establishment the Council has provided grants for over 90 separate research projects covering nearly all aspects of crime and criminal justice in Australia. Council-funded research is generally located in specific regions and may involve primary data gathering. By contrast, the research undertaken by the Institute itself is generally national and comparative in nature and makes use of existing data sources.

BANKRUPTCY AND COPYRIGHT

Bankruptcy

For a description of the provisions of the *Bankruptcy Act* 1966, see Year Book No. 55, pages 586-7. The Act was amended in 1970 to remove any obstacle the Act might present to the operation of compositions or schemes of arrangements entered into under State or Territory legislation providing assistance to farmers in respect of their debts. Details for each Australian State have been published in the Annual Report by the Minister for Consumer and Business Affairs on the operation of the Act.

Copyright

Copyright is regulated by the Commonwealth *Copyright Act* 1968 which came into force on 1 May 1969. 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.

The Act has been amended from time to time. The *Copyright Amendment Act* 1980, in particular, contains substantial changes in a number of areas including fair dealings, copying by libraries and archives, and copying for educational purposes and for handicapped readers.

Copyright is administered by the Attorney-General's Department.

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