

LAW AND ORDER

The Law in Australia

Nature and composition

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

- Acts passed by the 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 Legislative Assembly 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 still 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

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

The Australian States and Territories have independent jurisdiction in all matters not specifically invested in the Commonwealth of Australia, and it is the statute and the common law 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 normally applies only to persons who are residents of the State or Territory concerned and to things located, or events occurring, within that 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 wherever possible attempts are being made to enact uniform laws in areas of State and Territory jurisdiction.

Administration

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

The various Australian 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, charging and court appearance of the offender, and the subsequent provision of corrective treatment (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.

Law reform

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

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

The Australian Law Reform Commission

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

The Commission has assumed the functions formerly undertaken by the ACT Law Reform Commission, and has the responsibility for review of Territorial law operating in the Australian Capital Territory.

In undertaking its functions the normal procedure of the Commission is as follows. Upon receipt of a reference, the Commission advertises and calls for public submissions in relation to that reference, and prepares consultative papers examining the issues for distribution among groups thought to have a special interest in the subject matter under review. Public sittings are conducted, and, in the light of submissions received, a final report which usually contains draft legislation is prepared for submission to the Federal Attorney-General. The Commission, which consisted of three full-time, and nine part-time members at 30 June 1988, makes extensive use of honorary consultants.

To 1 September 1989, the Commission has completed reports on the following references:

- complaints against police;
- criminal investigation;
- alcohol, drugs and driving;
- consumers in debt;
- insolvency: the regular payment of debts;
- the recognition of Aboriginal customary law;
- unfair publication;
- defamation and privacy;
- sentencing of federal offenders;
- human tissue transplants;
- lands acquisition and compensation;
- insurance intermediaries;
- child welfare;
- insurance contracts;
- privacy;
- evidence;
- standing in public interest litigation;
- community law reform for the Australian Capital Territory (two reports);
- domestic violence;
- foreign state immunity;
- complaints against police (supplementary report);
- privacy and the Census;
- civil admiralty jurisdiction;
- contempt;
- matrimonial property;
- occupiers' liability;
- sentencing (Commonwealth Prisoners Act);
- general insolvency;
- grouped proceedings (class actions);
- enduring powers of attorney;
- criminal admiralty jurisdiction and prize;
- product liability.

Legislation following the recommendations contained in some of these reports has been enacted. In other cases, the proposals made by the Commission are under consideration by Federal Parliament or the appropriate Commonwealth department. Current references include customs and excise, multiculturalism, federal and territory choice of law rules, children's evidence, admiralty, and community law reform.

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.

High Court of Australia

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

The High Court was established in 1903 and was originally based in Melbourne. However, since 1980, it has been principally located in Canberra, although it continues to visit the States regularly.

The 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 in respect of:

- (a) matters arising directly under any treaty;
- (b) 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;
- (c) suits by the Commonwealth, or any person suing on behalf of the Commonwealth, against a State, or any person suing or being sued on behalf of a State;
- (d) suits by a State, or any person suing on behalf of a State, against the Commonwealth or any person being sued on behalf of the Commonwealth; and
- (e) 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 by section 44 of the Judiciary Act to remit to another court any matters under Section 38 of that Act. In addition, the High Court is the Commonwealth Court of Disputed Returns under section 354 of the *Commonwealth Electoral Act 1918*.

The appellate jurisdiction of the High Court 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:

- (i) State Supreme Courts;
- (ii) State courts exercising federal jurisdiction;
- (iii) the Federal Court of Australia; and
- (iv) the Family Court of Australia.

In considering whether or not to grant an application for leave to appeal from a judgment, the High Court may have regard to any matters that it considers relevant, but it is required to have regard to whether the application before it:

involves a question of law that is of public importance, or upon which there are differences of opinion within, or among, different courts; or

should be considered by the High Court in the interests of the administration of justice.

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

Federal Court of Australia

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

The 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 State, and in the Australian Capital Territory and the Northern Territory.

The Court has such original jurisdiction as is invested in it by laws made by the Federal Parliament. Except in cases where a hearing had actually commenced before 1 February 1977, the jurisdictions formerly exercised by the Federal Court of Bankruptcy and the Australian Industrial Court have been transferred to the Federal Court. Important jurisdiction in the Court includes matters under the *Administrative Decisions (Judicial Review) Act 1977* and certain matters under the *Trade Practices Act 1974*.

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

The full Federal Court of Australia has appellate jurisdiction in relation to decisions of single judges of the full Court, decisions of the respective Supreme Courts of the Territories (but not the Northern Territory), and certain decisions of State Supreme Courts exercising federal jurisdiction (for example, under the *Income Tax Assessment Act 1936* and the *Patents Act 1952*).

Family Law

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

The main change made by the Act is that matrimonial conduct and fault are no longer taken into account as grounds for divorce. The Act provides that there is only one ground for divorce, that of irretrievable breakdown of a marriage. This ground is established if the husband and wife have separated and lived apart from each other for 12 months and there is no reasonable likelihood of reconciliation.

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, South Australia, Tasmania, the Australian Capital Territory, the Northern Territory and Norfolk Island. In Queensland and 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 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);
- 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.

Under the Family Law Act, great emphasis is placed on the counselling services available through the Family Courts to persons involved in proceedings, as well as to any persons who have encountered marriage problems or difficulties relating to the resolution of custody and access questions. It is not necessary to start proceedings to make use of these services.

A court exercising jurisdiction under the Family Law Act 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 with each other and their children.

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 even if no divorce has been sought at any time.

In disputes in which the welfare of a child is in issue, a child may be separately represented. The paramount consideration for the Court in the determination of all such disputes is the welfare of the child. A court is guided by statutory considerations, which include, where appropriate, the wishes of a child. Parents of a child may agree on custody and guardianship matters, and register their agreement in a court. In relation to the welfare of children a divorce decree usually will not become effective unless the Court is satisfied that proper arrangements have been made by the parties for the welfare of their children.

Under the Family Law Act, the right of one party of a marriage to receive maintenance from the other is based on the needs of the party seeking it and the ability of the other party to pay. An application for maintenance may be made by either husband or wife, and irrespective of whether or not the parties intend to divorce.

There are certain 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 superannuation;
- the length of the marriage and what is an appropriate standard of living for each party;
- whether either party has 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.

The Act also provides for the registration of and court approval for maintenance agreements made by the parties.

Both parents of a child have a primary duty to maintain the child. This duty has priority over all other commitments of a parent other than commitments necessary for self support and support of any other person that they have a legal duty to maintain. The Court is

guided by statutory considerations in deciding what order to make. Those considerations relate to the financial support necessary to maintain the child and the contributions each party should make to that financial support. A court is required to disregard the entitlements of the child or their parents to income tested pensions. In limited circumstances a court may make an order that a step-parent maintain a stepchild.

Since 1 June 1988, the Child Support Agency, an office established within the Australian Taxation Office, collects periodic child maintenance and some spousal maintenance for a wide range of persons, including pension recipients, sole parents who have separated since that date, or who have never cohabited with the parent of a child born since that date. The Child Support Agency uses maintenance collection and enforcement methods similar to those used for the collection and enforcement of income tax.

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

The Court has power to settle disputes about the parties' family assets, including the power to order a transfer of legal interests in 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 Attorney-General on family law matters. They are the Family Law Council, an advisory body that is based in Canberra, and the Australian Institute of Family Studies, a research body that is based in Melbourne.

Family Court of Australia

The judges of the Family Court 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 people 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 exempted from this prohibition.

The Family Court aims to be a 'helping' court. The Principal Director of Court Counselling and a staff of court counsellors assist the parties to a marriage to settle their problems. This help is available whether or not the parties are contemplating divorce or other proceedings. These services complement those already provided by voluntary marriage counselling agencies. People may approach the Court counselling service by calling in person, by writing or telephoning, or by making an approach through a legal practitioner.

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 or Territory courts.

Each State and Territory court system is organised and operated independently. However, within each system, the courts are organised hierarchically according to the nature of the 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 which come within the jurisdiction of Courts of Marine Inquiry are contained in the federal *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.

When the Commonwealth Department of Transport and Communications is advised of an incident of the kind referred to above, the Minister for Transport and Communications may (and usually does) appoint an officer to conduct a preliminary investigation. The officer then conducts interviews with the parties involved and, based on the results of these interviews, advises 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.

Statistics

Information relating to the operation of courts in particular Australian States may be obtained from the respective State *Year Books* and from ABS publications relating to criminal matters finalised in the Courts.

Administrative Bodies

Administrative Appeals Tribunal

The Administrative Appeals Tribunal was established by the *Administrative Appeals Tribunal Act 1975* and came into operation on 1 July 1976. Its President is a judge of the Federal Court of Australia. This tribunal is an independent body whose function is to review decisions made by Commonwealth Ministers, authorities and officials under certain laws of the Commonwealth of Australia. The Tribunal is able to substitute its own decisions in those areas in which it has jurisdiction, which covers decisions made under more than 200 Commonwealth enactments, including the *Social Security Act 1947*, the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*, the *Migration Act 1958*, the *Customs Act 1901*, the *Export Market Development Act 1974*, the *Freedom of Information Act 1982*, the *Repatriation Act 1920*, the *Veterans' Entitlements Act 1986* and the *Civil Aviation Act 1988*. Further additions to the Tribunal's jurisdiction are made from time to time.

The Principal Registry of the Administrative Appeals Tribunal is situated in Brisbane 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

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

Commonwealth Ombudsman

The Office of the Commonwealth Ombudsman was established by the *Ombudsman Act 1976* to investigate complaints about the administrative actions of Commonwealth Government departments and prescribed authorities. The Commonwealth Ombudsman also has special powers to deal with complaints concerning the Australian Federal Police, ACT government bodies, matters relating to service in the Australian Defence Force from serving and former members, and the administration of Commonwealth freedom of information law.

Complaints may be made to the Commonwealth Ombudsman orally or in writing. The Ombudsman has a discretion not to investigate or to discontinue investigation if the matter is more than 12 months old; if the complaint is vexatious or frivolous; if the agency concerned has not been given a reasonable opportunity to resolve the matter; if another more appropriate means of review is available; or if, in his/her opinion, investigation is not warranted.

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 or improperly discriminatory, or, in all the circumstances, wrong. The Ombudsman may also assess and report on the reasonableness of any law, rule or policy under which the action was taken.

Should the Commonwealth Ombudsman conclude that remedial action is necessary, a report is made to the agency concerned and may include any recommendations he/she thinks fit to make. If the agency fails to comply with such a recommendation, the Ombudsman may report to the Prime Minister and to the Commonwealth Parliament.

The Commonwealth Ombudsman has regional offices in all States and Territories and a central office in Canberra. In Tasmania and the Northern Territory the Commonwealth Ombudsman is represented by the State Ombudsman.

The Human Rights and Equal Opportunity Commission

The Human Rights and Equal Opportunity Commission was established by the Commonwealth Government on 10 December 1986 and replaces the Human Rights Commission that had existed for the previous five years. The Commission's functions relate to the promotion of understanding, acceptance and public discussion of human rights in Australia, including those set out in the following United Nations instruments:

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

The Commission consists of a President, a Human Rights Commissioner, a Race Discrimination Commissioner and a Sex Discrimination Commissioner—the latter two Commissioners reflecting the basic human rights obligations and guarantees contained in the *Racial Discrimination Act 1975* and the *Sex Discrimination Act 1984* which confer specific functions on the Commission.

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

The *Human Rights and Equal Opportunity Commission Act 1986*, which established the Commission, also empowers the Federal Attorney-General to enter into arrangements with the Australian States in relation to the performance on a joint basis of any of the Commission's functions; the performance by a State of any of the Commission's functions; or performance by the Commission of any functions on behalf of a State relating to human rights or discrimination in employment or occupation.

Where the Commission considers an amendment in federal law or practice is needed, the Commission is required to report to the Attorney-General and such reports are required to be made public by tabling in the Federal Parliament. The Commission is also required to furnish annual reports to the Attorney-General.

Freedom of Information Act

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 1983* 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 1977.

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

- a person has a right of access to documents created before 1 December 1977, necessary to the understanding of a document already legally in that person's possession; and

- individuals have the right of access to documents which pre-date 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.

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

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 Prime Minister, by 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 tabled in the Commonwealth Parliament.

The power to issue Letters Patent to inquire is a prerogative of the Crown. The *Royal Commissions Act 1902* confers powers on a Royal Commission to compel the attendance of persons, the giving of evidence, and the production of papers. It also creates a number of offences (e.g. failure to attend a Royal Commission when summoned, or failure to produce papers) and gives some protection to Commissioners and witnesses against legal liability. The constitutional foundation of the Royal Commissions Act is section 51(xxxix) of the 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 office of the Commonwealth'.

LETTERS PATENT ISSUED FROM 1.7.84 TO 30.6.88

<i>Name of Royal Commission</i>	<i>Commissioner(s)</i>	<i>Date of issue of Letters Patent</i>
Royal Commission into British Nuclear Tests in Australia	THE HON J.R. McCLELLAND MRS J. FITCH DR W.J.A. JONAS	16 July 1984
Royal Commission of Inquiry into Alleged Telephone Interceptions	THE HON. MR JUSTICE D.G. STEWART	29 March 1985
Royal Commission of Inquiry into Chamberlain Convictions	THE HON. J.R. MORLING	2 April 1986
Royal Commission into Grain Storage, Handling and Transport	MR JAMES CARVELL McCOLL	13 October 1986

LETTERS PATENT ISSUED FROM 1.7.84 TO 30.6.88—*continued*

<i>Name of Royal Commission</i>	<i>Commissioner(s)</i>	<i>Date of issue of Letters Patent</i>
Royal Commission into Deaths in Custody of	THE HON. J.H. MUIRHEAD	16 October 1987
Aboriginals and Torres Strait Islanders	THE HON. J.H. MUIRHEAD	21 December 1987
	THE HON. J.H. MUIRHEAD	6 May 1988
	THE HON. E.F. JOHNSTON, QC	6 May 1988
	THE HON. J.G. WOOTTEN, QC	6 May 1988
	MR L.F. WYVILL, QC	6 May 1988
	THE HON. J.H. MUIRHEAD	27 October 1988
	THE HON. E.F. JOHNSTON, QC	27 October 1988
	THE HON. J.G. WOOTTEN, QC	27 October 1988
	MR L.F. WYVILL, QC	27 October 1988
	THE HON. D.J. O'DEA	27 October 1988
	THE HON. D.J. O'DEA	7 December 1988
	THE HON. J.H. MUIRHEAD	27 April 1989
	THE HON. E.F. JOHNSTON, QC	27 April 1989
	THE HON. J.G. WOOTTEN, QC	27 April 1989
	MR L.F. WYVILL, QC	27 April 1989
	THE HON. D.J. O'DEA	27 April 1989
	MR P.L. DODSON	28 June 1989

FINAL ROYAL COMMISSION REPORTS PRESENTED FROM 1.7.84 TO 30.6.88

<i>Name of Royal Commission</i>	<i>Date of presentation</i>	<i>Tabled in Parliament</i>
Royal Commission on the Activities of the Federated Ship Painters and Dockers Union	26 October 1984	22 February 1985
Royal Commission on Australia's Security and Intelligence Agencies	20 December 1984	22 May 1985
Royal Commission of Inquiry into Activities of the Nugan Hand Group	28 June 1985	27 November 1985
Royal Commission on the Use and Effects of Chemical Agents on Australian Personnel in Vietnam	31 July 1985	22 August 1985
Royal Commission into British Nuclear Tests in Australia	20 November 1985	5 December 1985
Royal Commission of Inquiry into Alleged Telephone Interceptions	30 April 1986	1 May 1986
Commission of Inquiry into Compensation Arising from Social Security Conspiracy Prosecutions	30 April 1986	10 June 1986
Royal Commission of Inquiry into Chamberlain Convictions	22 May 1987	2 June 1987
Royal Commission into Grain Storage, Handling and Transport	18 February 1988	15 March 1988

National Crime Authority—NCA

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

The NCA operates from three offices, in Melbourne, Sydney and Adelaide, and has a permanent staff of around 300, with qualifications and expertise in a variety of fields including law, accounting and information analysis. In addition, police investigators are attached to the NCA from the Australian Federal Police and the Northern Territory and State police forces, for varying periods.

The decision to establish the NCA was taken in response to the findings of several Royal Commissions conducted in the late 1970s and early 1980s, which revealed the extent of organised criminal activity in Australia. The NCA's primary aim is therefore to take effective action to combat organised crime in Australia, but the term 'organised crime' is not in fact used in the *National Crime Authority Act 1984*, which instead describes such activity in terms of 'relevant criminal activity' and 'relevant offence'.

A 'relevant offence' is defined as one involving two or more offenders and substantial planning and organisation, that involves the use of sophisticated methods and techniques, is of a kind ordinarily committed in conjunction with other like offences, and involves theft, fraud, tax evasion, currency and company violations, illegal drug dealings, bribery, illegal gambling, extortion, violence, passport forgery, armament dealings and other specified offences.

As required by the Act, the NCA carries out general and special functions in relation to relevant criminal activities.

General—The NCA is required to collect, analyse and disseminate information and intelligence; undertake general investigations; and initiate the establishment of and coordinate the work for Commonwealth, State and joint task forces.

Special—The NCA is required to investigate matters covered by references issued to it by members of the Inter-Governmental Committee, which is comprised of ministers of the Commonwealth, Northern Territory and State governments.

In conducting a general or special investigation, 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*. The NCA is required to submit to the Inter-Governmental Committee an annual report which is subsequently tabled in the Commonwealth Parliament.

Consumer affairs

The Commonwealth involvement in consumer affairs derives substantially from the *Trade Practices Act 1974*. The Federal Attorney-General has responsibility for Part V (Consumer Protection) of the Act which deals with unfair practices, provides private law rights against sellers, manufacturers and importers, and provides for product safety (including provision for the banning and/or recall of goods considered to be unsafe) and information standards.

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

- provides the Minister for Consumer Affairs with advice on the consumer protection provisions of the Trade Practices Act and on a range of consumer issues;
- reviews and develops Commonwealth policy on domestic food and beverage standards, recalls and consumer product safety;
- reviews and develops Commonwealth policy on packaging and labelling; and
- administers product safety and information standards of the Trade Practices Act, including monitoring and enforcing compliance with standards and initiating product recalls if necessary (Division 1A, Part V).

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

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

Coordination of consumer affairs activities is undertaken by the Standing Committee of Consumer Affairs Ministers and through meetings of Officers of Consumer Affairs. There is also a Commonwealth-State Consumer Products Advisory Committee to provide a coordinated approach to product safety and information matters.

In addition to this, the Australian Federation of Consumer Organisations receives an annual grant under the Commonwealth's Grant-in-Aid Scheme. The Australian Federation comprises a membership of 56 consumer and community groups and was established with Federal sponsorship to represent the consumer view to all levels of Australian government and industry. A grant-in-aid is also provided to the Australian Financial Counselling and Credit Reform Association which provides advice and information concerning credit, debt recovery, insolvency and law reform.

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.

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 of Australia in federal matters. The States continue to fund legal assistance provided in relation to State matters. Pursuant to agreements between the Commonwealth and the States, independent statutory commissions providing legal advice and assistance in both federal 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 federal 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 federal matters.

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 who have been illegally removed overseas).

Selected details of the income and expenditure of major Australian Legal Aid schemes and further information on the operation of these schemes are available from *Annual Reports of the former Commonwealth Legal Aid Council and the Commonwealth Attorney-General's Department*.

The Police

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

Australian Federal Police—AFP

The Australian Federal Police was formed in October 1979 and has its headquarters in Canberra, with regional offices in each capital city and in a number of provincial towns and cities.

The AFP is the primary law enforcement agency for the Commonwealth. It is responsible for providing police services in relation to the laws and property of the Commonwealth, and the safeguarding of Commonwealth interests. The priorities of the AFP as listed in its charter of objectives include investigations into drug trafficking, organised crime, large-scale fraud against Commonwealth revenue, specific references from the Government (e.g. corruption), Australian Capital Territory policing and counter-terrorism.

In the Australian Capital Territory, the AFP provides a full range of general policing services, including traffic control, special operations, search and rescue services and conventional crime investigations.

From 1984 to 31 July 1988, the AFP was also responsible for the direction and coordination of Australia's coastal surveillance, response and enforcement. Following a

Government decision the function was transferred to the Australian Customs Service with effect from 1 August 1988.

The AFP also posts officers for duty overseas. Officers are located in liaison posts in Bangkok, Buenos Aires, Chiang Mai, Hong Kong, Interpol in Lyons, Islamabad, Jakarta, Kuala Lumpur, London, Los Angeles, Manila, Nicosia, Singapore, Washington and Wellington. These liaison officers play a vital role in gathering and exchanging information. The Australian National Central Bureau of the International Police Organisation (ICPO—Interpol) in Australia is staffed by AFP officers as a service to all Australian law enforcement agencies. The AFP also has a contingent based in Cyprus and two members at the Thailand-Cambodia border as a component of the United Nations Peace-keeping Force, and officers serve as members of the police forces of the Australian Territories of Christmas Island and Norfolk Island.

Police strengths

The total active strength of the sworn police forces, expressed as a proportion of the population, has remained steady from 1982 to 1988 at approximately 220 police for every 100,000 people. The following table shows the active strengths of non-civilian police personnel in police forces in Australia from 1986 to 1988. Further detail on the operations of each force may be found in the respective police annual reports to their Ministers.

POLICE FORCES

<i>Year</i>	<i>AFP(a)</i>	<i>NSW</i>	<i>Vic.</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas.</i>	<i>NT</i>
At 30 June—								
1986	2,568	10,743	8,732	4,872	3,492	3,168	1,025	669
1987	2,642	11,608	8,796	5,072	3,646	3,287	1,010	681
1988	2,713	12,280	9,229	5,085	3,549	3,243	1,028	748

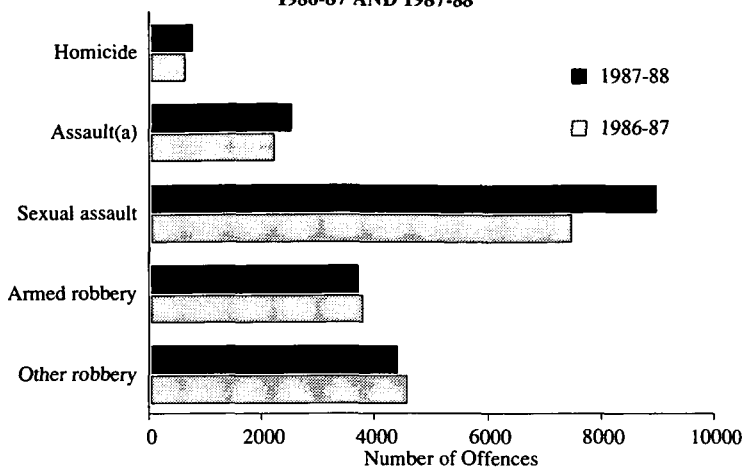
(a) Excludes protective services units.

Crime Statistics

The compilation of statistics on crime involves recording and classifying a diversity of acts considered to be criminal. Responses to the 1983 Crime Victims Survey, conducted by the Australian Bureau of Statistics, indicated that only about 59 per cent of household victimisations and 44 per cent of personal victimisations were reported to police, and although the extent of reporting of crime may vary from time to time according to the amount of public attention focussed on particular aspects of crime, there will always be some degree of underreporting.

The following charts of selected offences show the numbers of offences in certain categories of crime which were reported to the police for the two years to 30 June 1986 and 30 June 1987. Not all jurisdictions employ the same definitions when classifying offences and the figures should therefore be treated with caution. However, the movements in figures from year to year are an indicator of the movements in levels of crime reported to the police.

**SELECTED OFFENCES AGAINST THE PERSON, AUSTRALIA
1986-87 AND 1987-88**



(a) Assaults occasioning grievous bodily harm.

**SELECTED OFFENCES AGAINST PROPERTY, AUSTRALIA
1985-86 AND 1986-87**



Source: Taken from the Selected Crimes Statistics Australian series, compiled by the Police Commissioners' Australian Crime Statistics Sub-committee.

Drug offences

Australia ratified the Single Convention on Narcotic Drugs 1961 in December 1967, and the Protocol Amending the Single Convention on Narcotic Drugs on 22 December 1972. Australia is also a signatory to the Convention on Psychotropic Substances 1971, and there is cooperation between Federal, State and Territory Governments, the various police forces, and other agencies in order to combat the perceived serious and growing threat to good order which is posed by the traffic in and abuse of drugs of dependence. The Australian Customs Service has responsibility for the enforcement of laws controlling the illicit importing and exporting of drugs, but each police force has a drug squad or squads, staffed by selected officers with special training and ability to understand the complexities of drug abuse and drug trafficking. Drug laws incorporate the controls and penalties for offences as required by international drug conventions.

The following table provides information about selected drug seizures by Federal agencies during the period from 1982 to 1987.

SELECTED DRUG SEIZURES BY FEDERAL AGENCIES

Type of drug	1982	1983	1984	1985	1986	1987
	—grams—					
Opium	81.87	1,129.50	40.00	760.00	167.00	48.00
Heroin	32,014.40	97,071.65	101,550.00	57,886.00	30,937.00	60,202.00
Cocaine	8,924.87	8,797.49	13,100.00	12,801.00	21,581.00	10,226.00
Cannabis—all types(a)	2,530,066.37	1,725,455.28	6,912,860.00	3,129,588.00	2,987,766.00	540,046.00

(a) Excludes seizures of plants.

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

Correctional Treatment of Offenders

The term 'correction' (or 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 two 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, and 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 the 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.

All States and the Northern Territory operate prisons and other correctional services. 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 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.

Prison occupancy

The Australian Institute of Criminology publishes the results of an annual prison census which is coordinated by the National Correctional Statistics Committee. The census relates to all persons, convicted or not convicted, who were held in custody in gazetted Australian prisons, for adult offenders on the night of 30 June, and includes those prisoners temporarily absent from prison (e.g. prisoners in hospitals, or away on work release schemes).

Because the census measures prison occupancy at a particular point in time, care should be taken when comparing the results with other data produced on prison populations, which may be related to average daily occupancy rates. Discrepancies may also be found between the census figures and those produced from the same data by corrections departments, because of differences in counting rules.

Data for the following tables on prison occupancy were supplied by the Australian Institute of Criminology from the results of the 1988 prison census.

**NUMBER OF SENTENCED PRISONERS BY TYPE OF
SENTENCE IMPOSED(a), AUSTRALIA 1988(b)**
(Source: Australian Institute of Criminology)

<i>Type of sentence</i>	<i>Number of prisoners</i>
Life	616
Governor's Pleasure	97
Administrative(b)	2
Indefinite(c)	4,306
Fixed term	4,869
Fine default only	235
Periodic detention	422
Unknown	64
<i>Total</i>	<i>10,611</i>

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

NOTE: This table excludes all remandees.

**NUMBER OF PRISONERS BY MOST SERIOUS OFFENCE/CHARGE (a),
BY AGE (b), AUSTRALIA**
(Source: Australian Institute of Criminology)

Offence/charge(a)	Age group									Total
	Under 20	20-24	25-29	30-34	35-39	40-44	45-49	50+	Unknown	
	—Total persons—									
Homicide	48	227	252	219	160	147	93	138	11	1,295
Assault	95	272	212	132	91	53	26	33	11	925
Sex offences	55	200	215	203	153	136	80	102	13	1,157
Other against person	6	19	22	18	19	12	3	4	0	103
Robbery	96	483	433	300	152	68	22	13	1	1,568
Extortion	0	4	8	4	2	2	1	0	0	21
Break and enter	288	747	499	220	106	39	19	14	6	1,938
Fraud and misappropriation	14	69	112	95	79	70	47	57	0	543
Receiving	11	64	51	43	22	12	7	5	0	215
Other theft	218	430	217	131	63	43	16	23	5	1,146
Property damage	30	54	30	23	6	13	3	3	0	162
Environmental	—	—	1	—	—	—	—	—	—	1
Government security	—	—	—	—	1	2	1	—	—	4
Justice procedure	59	215	157	90	43	33	13	21	6	637
Offensive behaviour	1	2	6	3	0	1	0	2	0	15
Unlawful possession of weapon	4	9	18	11	7	1	2	0	0	52
Other offences against good order	8	29	19	14	12	3	3	3	3	94
Possession, use of drugs	12	35	56	61	32	24	12	6	0	238
Trafficking drugs	10	94	196	231	185	118	70	58	0	962
Manufacture drugs	1	15	26	33	27	22	13	14	0	151
Driving offences	27	99	84	83	55	41	24	18	11	442
Administrative offences	47	116	78	65	35	18	10	13	4	386
Other traffic offences	3	9	8	2	0	0	1	0	0	23
Other offences	10	4	15	15	9	11	6	7	2	79
Unknown	17	38	32	32	19	15	7	4	0	164
Total persons	1,060	3,234	2,747	2,028	1,278	884	479	538	73	12,321

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

NOTE: This table includes 1,638 remandees.

**NUMBER OF SENTENCED PRISONERS BY MOST SERIOUS OFFENCE (a) AND
AGGREGATE SENTENCE (b), AUSTRALIA 1988**
(Source: Australian Institute of Criminology.)

Offence	<i>Duration of aggregate sentence</i>						Total
	<i>Periodic detention</i>	<i>Under 3 months</i>	<i>3 months and under 2 years</i>	<i>2 and under 5 years</i>	<i>5 and under 10 years</i>	<i>10 years and over(c)</i>	
Homicide	14	2	11	48	129	861	1,065
Assault	52	26	307	189	145	71	790
Other offences against the person	17	2	62	264	495	284	(d)1,126
Robbery	10	—	36	241	586	435	(d)1,309
Extortion	1	—	—	8	3	4	16
Break and enter	35	13	591	649	330	67	1,685
Fraud and misappropriation	32	9	209	171	70	13	504
Receiving	7	9	103	41	22	7	189
Other theft	64	38	613	237	57	19	1,028
Property damage	8	6	48	41	20	6	129
Offences against good order	17	62	346	193	72	40	730
Drug offences	62	30	189	270	326	237	1,114
Driving offences	48	95	281	21	2	5	(d)453
Administrative offences	55	38	273	8	2	1	377
Other offences	0	3	37	23	25	8	96

(a) Most serious offence is that for which a prisoner received the longest sentence. (b) The longest period that a person may be detained under sentence in the current episode. (c) Includes sentences of Life and Detention at the Governor's Pleasure. (d) Total includes 'unknown'.

NOTE: This table excludes all remandees.

Criminological Research

Australian Institute of Criminology

The Australian Institute of Criminology, which is located in Canberra, was established as a statutory authority under the *Criminology Research Act 1971* and the *Criminology Research Amendment Act 1986*. The Institute is administered by a Board of Management comprising three members appointed by the Federal Attorney-General, four members representing the States and the Northern Territory, who are appointed by the Criminology Research Council and the Director, who is an ex officio member of the Board.

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

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

Since its inception, the Institute has actively assisted in and advised on an extensive range of criminological research projects either directly, or through the Criminology Research Council. The Institute 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 recent publications of the Institute include:

- *Australian Community Based Corrections* edited by David Biles and John Walker
- *Australian Prisoners, 1988* edited by John Walker
- *Death and Injuries on the Road* Paul Wilson and R. Homel
- *Information Bulletin 1986*
- *Ivory Scales: Black Australia and the Law* edited by Kayleen M. Hazellhurst (published in association with the University of New South Wales Press)
- *Migration, Ethnicity and Crime in Australian Society*, Kayleen M. Hazellhurst
- *Sex, Violence and Family Entertainment, An Analysis of Popular Videos* Stephen Nugent, Paul Wilson, Terry Brook and David Fox
- *Corrections in Asia and the Pacific* Proceedings of the Eighth Asian and Pacific Conference of Correctional Administrators, Kuala Lumpur, September 1987
- *Court Support and Advisory Services* edited by Jane Mugford
- *Crime at School* edited by Dennis Challenger
- *Intellectually Disabled Offenders*, edited by Dennis Challenger.
- *A Computer Forecasting Model for predicting requirements for beds in secure custody juvenile correction institutions* Joe Pasmore and John Walker
- *Armed Robbery* edited by Dennis Challenger
- *Australian Criminal Justice and Welfare Librarians Seminar* edited by John Myrtle
- *Australian Drug Laws* edited by Anita Scandia
- *Australian Institute of Criminology Annual Report*
- *Australian Prisoners 1987* edited by Francois Debaecker
- *Crime Prevention: Theory and Practice* Susan Geason and Paul Wilson
- *Criminology Research Council Annual Report*
- *Designing Our Crime: Crime Prevention through Environmental Design* Susan Geason and Paul Wilson
- *Developments in Correctional Policy: More Prisons?* edited by Julia Vernon
- *Fraud in the Public Sector* edited by J. Nethercote, D. Challenger and H. McKenna
- *Police Resources and Effectiveness* edited by Julia Vernon and Dorothy Bracey
- *Record of the 9th Annual Asian-Pacific Conference on Corrections*
- *Sentencing Drug Offenders in the ACT* Heather Dean
- *Source Book of Australian Criminal and Social Statistics: 1804–1988* edited by S.K. Mukherjee et al.
- *Sport, Recreation and Juvenile Crime* Gail Mason and Paul Wilson
- **TRENDS AND ISSUES**
 - No. 16: *Efficiency and Effectiveness in Australian Policing*
 - No. 17: *Research Brief: Missing Persons*
 - No. 18: *Alcohol and Crime*
 - No. 19: *Life Imprisonment in Australia*
 - No. 20: *Prison Sentences in Australia*
- *Victims of Violence* Peter Grabosky, Monograph No. 2 from the National Committee on Violence
- *Vietnamese Refugees: Crime Rates of Minors and Youths* Patricia Easta
- *Violence in Australia*: Monograph No. 1 from the National Committee on Violence
- **VIOLENCE TODAY**
 - No. 1: *Violence, Crime and Australian Society*
 - No. 2: *Domestic Violence*
 - No. 3: *Child Abuse*
 - No. 4: *Violence in Sport*
 - No. 5: *Violence and Public Contact Workers*

Criminology Research Council

The Criminology Research Council is comprised of representatives from the Commonwealth, each State and the Northern Territory and is an independent body corporate 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 per cent by the Federal Government, and fifty per cent by State governments on a proportionate 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.

In its first fifteen years of operation, the Council has provided grants for over 150 separate research projects, covering nearly all aspects of crime and criminal justice in Australia, to a total of approximately two million dollars.

Bankruptcy and Copyright

Bankruptcy

Particulars of bankruptcy in each State to the end of 1927 were incorporated in issues of the *Year Book* before No. 23. On 1 August 1928, the first Bankruptcy Act of the Commonwealth came into operation. This Act as amended was repealed by the *Bankruptcy Act 1966* which came into operation on 4 March 1968.

The Federal Court of Australia, and a number of State courts and the Supreme Court of the Northern Territory, are all invested with jurisdiction in bankruptcy. In practice, the Federal Court exercises bankruptcy jurisdiction in the districts of New South Wales and the Australian Capital Territory, Victoria, South Australia, Western Australia, and the Southern District of Queensland. In the Central and Northern Districts of Queensland, and in Tasmania and the Northern Territory, the jurisdiction is exercised by the respective Supreme Court of the State or Territory.

The Bankruptcy Act provides for an Inspector-General in Bankruptcy who has a range of statutory functions under the Act. In particular, the Inspector-General shall carry out inquiries and investigations at the direction of the relevant Minister, and such other inquiries and investigations as the Inspector-General thinks fit. The Act also provides for a Registrar in Bankruptcy to be appointed for each of the nine Bankruptcy Districts in Australia, and for so many Deputy Registrars in Bankruptcy as are necessary. Each Registrar and Deputy Registrar has such powers and functions as are conferred or imposed on a Registrar by the Act. Powers and functions of an administrative nature are exercisable by the court as the court directs or authorises the Registrar to exercise. The Registrar may examine a bankrupt, the spouse of a bankrupt, and a person indebted to a bankrupt or having in his or her possession any of the estate or effects of a bankrupt.

There is an Official Receiver for each District and the Official Receivers together constitute a body corporate known as the 'Official Trustee in Bankruptcy'. The Official Trustee is the trustee in bankruptcy in approximately 80 per cent of the bankrupt estates occurring each year. In the remaining 20 per cent the trustee is a registered trustee in bankruptcy from the private sector.

Comprehensive statistics on bankruptcy are included in the Annual Report on the Operation of the *Bankruptcy Act 1966* which is laid before each House of Parliament pursuant to section 314 of the Act.

Copyright

Copyright in Australia is administered by the Commonwealth Attorney-General's Department, and 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* and the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, in particular, contain substantial changes in a number of areas including fair dealings, copying by libraries and archives, and copying for educational purposes and for handicapped readers.

The *Copyright Amendment Act 1984* makes specific provision for copyright in computer software.

The Principal Act was further amended in 1986 and 1987 to, among other things:

- significantly strengthen the 'anti-piracy' provisions of the Act;
- increase access to copyright materials for the handicapped, as well as for libraries, archives and their clients;
- extend fair dealing;
- make clear the fact that broadcasts via satellite are subject to the Act; and
- provide for costs in Copyright Tribunal matters to be calculated on the Federal Court of Australia scale of costs.

Most recently, the Act was amended in a number of significant respects. A package of copyright reforms, described by the Attorney-General as the most substantial since 1968, was contained in the *Copyright Amendment Act 1989*.

The reforms include a new statutory licensing scheme to allow educational institutions and institutions for the intellectually handicapped to copy television and radio broadcasts. As well, the Act introduced a revised scheme for educational photocopying along the same lines as the television copying scheme.

The Act also contains a blank tape royalty scheme under which home taping of published sound recordings will be lawful. The royalty will be payable by manufacturers and importers of blank tape, to the copyright owners' collecting society which is currently being formed. These schemes will come into effect after collecting societies are established and the necessary regulations have been made.

The new legislation gives effect to the majority recommendations of the Copyright Law Review Committee in relation to performers' protection. Accordingly unauthorised commercial uses of live performances and recordings of live performances are prohibited under the Copyright Act. The new provisions will also enable Australia to accede to the Rome Convention for the Protection of Performers, Producers of Phonographs and Broadcasting Organizations, which is an important Convention in the international framework of copyright protection.

The Act also:

- limits copyright protection for artistic works industrially applied and designs registered under the *Designs Act 1906*;
- streamlines the operation of the statutory licence under the Act for the manufacture of records of musical works; and
- introduces a number of other reforms which will extend the right of the Australian Archives to copy works in its archival collection, standardises rights of review under the Act by the Administrative Appeals Tribunal and facilitates copyright protection for choreographic works made in the form of film or video.

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