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CHAPTER 11

LAW AND ORDER

THE LAW IN AUSTRALIA

Composition

Law is the common body of rules, whether proceeding from formal enactment or from custom, which a State or community recognises as binding on its subjects or members, and enforceable by judicial means. In Australia, the law consists of

- Acts passed by the Commonwealth Parliament, within the scope of its constitutional powers (including Acts and Ordinances passed in respect of the Northern Territory and the Australian Capital Territory) together with regulations, rules, and orders, etc. made thereunder.
- Acts passed by State Parliaments together with regulations, rules and orders, etc. made thereunder.
- So much of the common or statute law of England, and Imperial law as remains unrepealed by subsequent Acts or practice.
- Case (Common) law, consisting of judicial decisions.

and relates to a spectrum of subject areas, including criminal, civil, family and industrial matters.

Federal and State responsibilities

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

The States and Territories have independent jurisdiction in all matters not invested in the Commonwealth, and it is the common law and statute laws made by the States and Territories which primarily govern the day-to-day lives of most Australians. With certain exceptions, such as traffic laws, State and Territorial law normally only applies to persons usually resident in the State and to things located or events occurring within the State.

Common law is uniform throughout Australia. However, statute law often varies between States and Territories. The problems arising from these differences have become increasingly recognised over recent years and moves are being made towards the enactment of uniform laws in areas of State/Territory jurisdiction where possible.

Administration of the law

Administration of the law is undertaken by the responsible governments, principally through Federal, State and Territorial police and judiciaries, and State and Territorial corrective or welfare services. There is no independent Federal corrective service, and the relevant State/Territorial agencies provide corrective services for Federal offenders.

The agencies involved in the administration of law operate as a continuum, such 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 apprehension, charge and court appearance of the offender, and subsequent provision of corrective (e.g. imprisonment, probation) or welfare services. The agencies involved, and the flows through and 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 a Statute Law Revision Committee, and a Chief Justice's Law Reform Committee; and in South Australia, a Criminal Law and Penal Methods Reform Committee also operate in the field of law reform, usually with more restricted terms of reference than State Commissions. None of these agencies have the power to implement recommendations for law reforms.

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 eight part-time members at 30 June 1980, makes extensive use of consultants' services in its operation.

To 30 June 1980, the Commission had completed reports on the following references—Criminal Investigation; Alcohol, Drugs and Driving; Consumers in Debt; Defamation; Sentencing of Federal Offenders; and Human Tissue Transplants. Legislation following the recommendations contained in these reports has been enacted in some cases, although the majority are still under consideration by Parliament or the Attorney-Generals Department. Current references include—Privacy; Consumer Debt, Stage II; Access to Courts (Standing to Sue and Class Actions); Aboriginal Customary Laws; Lands Acquisitions; and Child Welfare.

LAW ENFORCEMENT—CRIME, THE POLICE AND COURTS

Crime: Reported and Unreported Offences

The traditional source of information about crime and the criminal justice system has been information generated as by-product of administrative process. By its very nature, such information relates only to those matters known to, or dealt with by such administrations.

The following table, based on information from a national survey of Crime Victims conducted by the ABS in 1975, shows that in total, of those selected types of offences surveyed, less than half of the offences known to victims were reported, or otherwise became known to police.

NUMBER OF INCIDENTS OF SELECTED OFFENCES: AUSTRALIA

<i>Types of offences</i>	<i>Number of incidents (a) ('000)</i>	<i>Percentage of incidents reported or becoming known to police</i>
Break and Enter (dwellings)	146.5	62.1
Motor Vehicle Theft	62.7	89.3
Assault	191.0	44.0
Robbery	14.2	54.2
Theft	609.9	34.7
Fraud, Forgery, False Pretences	214.1	23.9
Rape	7.8	28.2
Total	1,246.1	40.4

(a) Reported by victims as occurring during the 12 months to May 1975.
More detailed results of this survey were published in Year Book No. 63.

Since 1964, the ABS has compiled a series of "*Selected Offences Reported or Becoming Known to Police*". This series is derived from police records, and is based as far as possible on definitions and procedural arrangements uniformly determined for all States and Territories. Definitions and explanatory notes relating to the following statistics are contained in Year Book, No. 61, p. 475-7.

The following table shows, for each State and Territory, the number of offences in each of the seven categories included in the series, reported or becoming known to police. The table includes offences reported to and investigated by the Australian Federal Police.

SELECTED OFFENCES REPORTED OR BECOMING KNOWN TO POLICE (a)
NUMBER OF OFFENCES (b)

<i>Type of Offence</i>	<i>N.S.W.</i>	<i>Vic.</i>	<i>Qld</i>	<i>S.A.</i>	<i>W.A.</i>	<i>Tas.</i>	<i>N.T.</i>	<i>A.C.T.</i>	<i>Aust. No.</i>	<i>Rate (c)</i>
Homicide (d)—										
1977-78	301	139	121	49	25	9	21	5	670	4.7
1978-79	303	183	167	65	39	8	18	1	784	5.5
1979-80	385	155	137	75	35	14	24	—	825	5.7
Serious assault—										
1977-78	1,076	1,531	738	262	367	85	42	53	4,154	29.3
1978-79	1,134	1,775	968	351	292	89	258	56	4,923	34.3
1979-80	1,274	1,910	1,263	482	445	142	530	52	6,098	42.0
Robbery—										
1977-78	1,716	1,110	318	213	155	26	24	15	3,577	25.3
1978-79	1,699	1,170	281	328	127	51	13	14	3,683	25.7
1979-80	1,990	1,227	312	494	143	49	16	24	4,255	29.3
Rape—										
1977-78	365	233	72	172	98	16	17	10	983	13.9
1978-79	419	215	61	165	96	22	13	7	998	14.0
1979-80	491	247	105	222	112	16	29	8	1,230	17.0
Breaking and entering—										
1977-78	49,392	45,573	16,366	15,273	14,550	3,145	1,111	1,746	147,156	1,039.1
1978-79	50,815	52,613	18,053	17,970	16,073	3,454	1,341	1,677	161,996	1,130.2
1979-80	54,706	57,382	20,023	23,873	17,009	3,614	1,457	1,689	179,753	1,238.2
Motor vehicle theft (e)—										
1977-78	27,018	15,487	5,709	5,516	6,394	933	645	593	62,295	894.2
1978-79	30,978	15,833	6,052	6,492	6,347	780	706	550	67,738	936.1
1979-80	33,237	16,906	5,991	5,850	6,427	972	712	456	70,551	944.9
Fraud, forgery and false pretences—										
1977-78	16,578	16,453	10,446	3,072	7,844	1,298	409	1,529	57,629	406.9
1978-79	19,723	16,423	11,476	4,644	9,160	853	615	1,753	64,647	451.0
1979-80	17,903	22,915	14,609	4,597	7,311	1,721	419	(f) 712 (f) 70,187	483.5	

(a) Figures shown for each State include offences reported or becoming known to the Australian Federal Police in that State. (b) Includes attempts and a relatively small number of unfounded reports. (c) Rate per 100,000 of population, except for Rape which is rate per 100,000 of female population, and Motor Vehicle Theft, which is rate per 100,000 registered motor vehicles. (d) Comprising murder, attempted murder, and manslaughter, including manslaughter arising from motor vehicle accidents. (e) Includes illegal, unlawful or unauthorised use, etc. (f) Excludes Commonwealth offences in A.C.T.



High Court of Australia, Canberra
PLATE 35

Offences cleared and persons involved

The tables which follow show for the various categories of offences, the numbers of offences reported or becoming known to police, the numbers cleared, by charge or otherwise, and the numbers of persons involved according to age and sex. Sub-divisions of the categories homicide, breaking and entering, and fraud, etc., are provided.

**HOMICIDE: OFFENCES REPORTED OR BECOMING KNOWN, OFFENCES CLEARED
AND PERSONS INVOLVED: AUSTRALIA**

	<i>Murder</i>			<i>Attempted murder</i>			<i>Manslaughter(a)</i>			<i>All homicide</i>		
	<i>1977-78</i>	<i>1978-79</i>	<i>1979-80</i>	<i>1977-78</i>	<i>1978-79</i>	<i>1979-80</i>	<i>1977-78</i>	<i>1978-79</i>	<i>1979-80</i>	<i>1977-78</i>	<i>1978-79</i>	<i>1979-80</i>
Numbers reported or becoming known . . .	243	258	268	130	179	187	297	347	370	670	784	825
Total number cleared . . .	212	227	234	119	171	170	292	350	364	623	748	768
Persons involved in offences cleared—												
males	181	186	198	98	135	130	245	300	307	524	621	635
females	30	42	28	19	23	24	12	17	17	61	82	69
Aged (b)—												
16 yrs and under . . .	3	16	8	2	8	10	5	9	7	10	33	25
17 and 18 years . . .	9	15	14	11	13	5	34	40	37	54	68	56
19 and 20 years . . .	32	15	20	11	7	12	40	51	47	83	73	79
21 years and over . . .	167	182	184	93	130	127	178	217	233	438	529	544
Total persons involved	211	228	226	117	158	154	257	317	324	585	703	704

(a) Includes manslaughter arising from motor vehicle accidents.

(b) Age last birthday at time of clearance.

**SERIOUS ASSAULT, ROBBERY, RAPE: OFFENCES REPORTED OR BECOMING KNOWN, OFFENCES
CLEARED AND PERSONS INVOLVED: AUSTRALIA**

	<i>Serious assault</i>			<i>Robbery</i>			<i>Rape</i>		
	<i>1977-78</i>	<i>1978-79</i>	<i>1979-80</i>	<i>1977-78</i>	<i>1978-79</i>	<i>1979-80</i>	<i>1977-78</i>	<i>1978-79</i>	<i>1979-80</i>
Numbers reported or becoming known	4,154	4,923	6,098	3,577	3,683	4,255	983	998	1,230
Total number cleared	3,059	3,618	4,465	973	1,017	1,118	496	454	548
Persons involved in offences cleared—									
males	2,902	3,200	4,162	1,060	1,134	1,180	572	522	565
females	184	231	328	97	69	124	1	3	4
Aged (a)—									
16 years and under . . .	262	300	424	187	176	216	67	56	76
17 and 18 years	355	402	565	224	203	258	103	108	97
19 and 20 years	393	425	579	206	199	195	111	94	97
21 years and over	2,076	2,304	2,922	540	625	635	292	267	299
Total persons involved	3,086	3,431	4,490	1,157	1,203	1,304	573	525	569

(a) Age last birthday at time of clearance.

**BREAKING AND ENTERING: OFFENCES REPORTED OR BECOMING KNOWN, OFFENCES CLEARED
AND PERSONS INVOLVED: AUSTRALIA**

	<i>Dwellings</i>			<i>Shops</i>			<i>Other buildings</i>			<i>All breaking and entering</i>		
	<i>1977-78</i>	<i>1978-79</i>	<i>1979-80</i>	<i>1977-78</i>	<i>1978-79</i>	<i>1979-80</i>	<i>1977-78</i>	<i>1978-79</i>	<i>1979-80</i>	<i>1977-78</i>	<i>1978-79</i>	<i>1979-80</i>
Numbers reported or becoming known	73,029	84,039	94,081	27,219	28,738	30,312	46,908	49,219	55,360	147,156	161,996	179,753
Total number cleared	10,433	11,732	12,161	5,094	5,728	5,895	7,073	7,820	8,338	22,600	25,280	26,394
Persons involved in offences cleared—												
males	6,427	6,871	7,471	5,056	5,307	5,484	6,322	6,760	7,685	17,805	18,938	20,640
females	693	660	698	147	196	195	207	187	245	1,047	1,043	1,138
Aged (a)—												
16 years and under	4,155	4,065	4,613	2,583	2,540	2,731	3,928	4,091	4,799	10,666	10,696	12,143
17 and 18 years	955	1,051	1,088	953	1,080	1,024	946	1,043	1,094	2,854	3,174	3,206
19 and 20 years	598	714	665	513	607	615	504	543	664	1,615	1,864	1,944
21 years and over	1,412	1,701	1,803	1,154	1,276	1,309	1,151	1,270	1,373	3,717	4,247	4,485
Total persons involved	7,120	7,531	8,169	5,203	5,503	5,679	6,529	6,947	7,930	18,852	19,981	21,778

(a) Age last birthday at time of clearance.

**MOTOR VEHICLE THEFT, FRAUD, ETC.: OFFENCES REPORTED OR BECOMING KNOWN,
OFFENCES CLEARED AND PERSONS INVOLVED: AUSTRALIA**

	<i>Motor vehicle theft (a)</i>			<i>Fraud, forgery, false pretences</i>		
	<i>1977-78</i>	<i>1978-79</i>	<i>1979-80</i>	<i>1977-78</i>	<i>1978-79</i>	<i>1979-80</i>
Numbers reported or becoming known	62,295	67,738	70,551	57,629	64,647	70,187
Total numbers cleared	10,962	10,550	11,804	35,780	42,538	46,817
Persons involved in offences cleared—						
males	11,765	10,583	11,021	7,182	7,183	8,220
females	378	407	461	2,243	2,303	2,857
Aged (b)—						
16 years and under	5,615	4,888	4,965	718	764	984
17 and 18 years	2,878	2,746	2,905	929	895	1,078
19 and 20 years	1,466	1,291	1,375	1,032	985	1,237
21 years and over	2,184	2,065	2,237	6,746	6,842	7,778
Total persons involved	12,143	10,990	11,482	9,425	9,486	11,077

(a) Includes illegal, unlawful and unauthorised use, etc. (b) Age last birthday at time of clearance
The number of stolen vehicles recovered was: 1977-78, 52,623; 1978-79, 60,050; 1979-80, 60,346.

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 Com-

mittee 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 OFFENCES: OFFENCE TYPE (a), CLEARED BY CHARGE: AUSTRALIA 1978 TO 1980

Year	Possess	Import	Use/ administer	Traffic	Steal	False pretences	Forged scripts	Other	Total
1978	10,527	156	5,044	1,379	311	114	570	1,847	19,948
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

(a) Includes drug and drug-connected charges.

DRUG AND DRUG-RELATED OFFENCES: NUMBER OF CHARGES (a) INVOLVING SPECIFIC DRUG TYPES: AUSTRALIA 1978 TO 1980

Year	Possess	Import	Use/ administer	Traffic	Steal	False pretences	Forged scripts	Other	Total
Narcotics—									
1978	1,394	30	1,469	483	222	89	257	318	4,262
1979	1,068	73	1,009	414	137	73	379	367	3,520
1980	877	36	783	352	85	114	136	228	2,611
Cannabis—									
1978	8,589	126	3,263	780	15	—	—	1,476	14,249
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
Amphetamines—									
1978	46	—	46	5	—	5	18	3	123
1979	94	1	57	12	12	20	37	12	245
1980	85	—	49	25	—	22	14	6	201
Barbiturates hypnotics—									
1978	200	—	156	46	12	8	51	30	503
1979	359	—	263	53	45	32	104	51	907
1980	224	—	197	59	11	30	65	44	630
Tranquilisers—									
1978	54	—	50	10	29	10	32	8	193
1979	79	—	40	29	34	12	36	18	248
1980	64	1	66	30	11	19	12	17	220
Hallucinogens—									
1978	191	—	46	45	1	—	—	3	286
1979	186	—	40	33	—	—	1	18	278
1980	183	3	32	58	—	—	2	12	290
Other—									
1978	53	—	14	10	32	2	212	9	332
1979	46	—	12	48	30	8	14	14	172
1980	50	—	23	51	24	74	41	22	285
Total—									
1978	10,527	156	5,044	1,379	311	114	570	1,847	19,948
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

(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 1978 to 1980

Year	16 years and under	17	18–25	26–30	31–49	50 years and over	Total
1978	313	534	7,081	1,526	568	48	10,070
1979	311	534	7,743	1,783	825	37	11,233
1980	338	558	7,939	1,909	923	49	11,716

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

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, and the police force in the Northern Territory, police forces in Australia are under the control of State 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-ordinates 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

Year/Rank	AFP	NSW	VIC	QLD	SA	WA	TAS	NT
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 ACT 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.

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 outlets and schemes (over 100 in all), operated by Federal and State governments, and private and volunteer agencies. In some cases, the agencies involved offer legal aid services as a subsidiary to their other functions, e.g. church groups, Citizen's Advice Bureaux, unions. However, the bulk of legal assistance provided is through agencies which have been established specifically for this purpose. Among these are the Aboriginal Legal Aid services, Australian Legal Aid Office, Law Society Legal Aid schemes, State and Territory Legal Aid Commissions and various voluntary and community agencies.

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, i.e. in matters involving Federal law or Federal persons such as migrants, aboriginals, ex-servicemen and other recipients of social service benefits.

The policy of the Commonwealth Government envisages that legal aid would be provided in each State and Territory through a single statutory commission, established by State and Territory legislation. The commissions would take over the operations and staff of the Australian Legal Aid Office, and State and Law Society schemes. Under the policy, the provision of legal aid through both salaried and private lawyers would be funded by the Commonwealth in federal matters while the States would continue to fund legal assistance provided in relation to State matters. Provision is made in the Commonwealth Legal Aid Act for the establishment of a Commonwealth Legal Aid Council having the function, broadly, of advising the Attorney-General on matters relating to the provision of legal aid in Australia. The Council Secretariat is located in the Commonwealth Attorney-General's Department.

Aboriginal Legal services, which operate in all States and Territories through funding provided by the Department of Aboriginal Affairs, and those private and volunteer agencies operating legal aid schemes, are not within the scope of the policy.

Pursuant to agreements entered into between the Commonwealth and the States in accordance with this scheme, 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, and in New South Wales, the Australian Legal Aid Office continues to provide legal advice and assistance in Commonwealth 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 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).

Selected details of the income and expenditure of major Australian Legal Aid schemes during 1979-80, are shown in the following tables. Further information on the operation of these schemes is available from Annual Reports of the Commonwealth Legal Aid Commission.

INCOME OF MAJOR LEGAL AID SCHEMES: 1979-80

Organisation	Period of operation (months)	Income (\$'000)					Total income
		C'wealth grant/ funding	State grant/ funding	Client contri- butions	Recovered costs	Other revenue	
New South Wales—							
Australian Legal Aid Office	12	5,720.2	—	23.7	6.8	1.4	5,752.1
Legal Aid Commissioner (a)	5	—	510.4	—	—	—	510.4
Legal Services Commission (b)	7	—	3,100.0	93.6	(c) 1,158.9	1,413.4	5,765.6
Aboriginal Legal Aid	12	1,142.0	—	—	—	—	1,142.0
Law Society (a)	5	130.0	—	91.6	(d) 1,154.6	1,077.8	2,459.0
Public Defender	12	—	567.0	—	—	—	567.0
Total		6,992.2	4,177.4	208.8	2,320.3	2,497.6	16,196.4
Victoria—							
Australian Legal Aid Office	12	4,432.3	—	5.1	113.6	44.4	4,595.4
Aboriginal Legal Aid	12	406.7	—	—	—	—	406.7
Law Institute	12	—	—	1,083.4	407.4	2,373.6	3,864.4
Public Solicitor	12	—	1,758.4	—	—	—	1,758.4
Total		4,839.0	1,758.4	1,088.5	521.0	2,418.0	10,624.9
Queensland—							
Australian Legal Aid Office	5	1,474.2	—	4.6	3.3	—	1,482.0
Legal Aid Commission	7	2,346.7	—	20.9	50.2	942.7	3,360.5
Aboriginal Legal Aid	12	1,047.5	—	—	—	—	1,047.5
Law Society (e)	5	—	—	—	117.9	767.5	885.3
Public Defender	12	—	1,541.1	—	—	—	1,541.1
Total		4,868.4	1,541.1	25.4	171.4	1,710.2	8,316.5
South Australia—							
Legal Aid Commission	12	2,017.8	441.5	77.3	140.4	346.8	3,023.9
Aboriginal Legal Aid	12	400.0	—	—	—	—	400.0
Total		2,417.8	441.5	77.3	140.4	346.8	3,423.9
Western Australia—							
Legal Aid Commission	12	2,987.8	374.2	120.9	32.3	359.9	3,875.1
Aboriginal Legal Aid	12	828.1	—	—	—	—	828.1
Total		3,815.9	374.2	120.9	32.3	359.9	4,703.3
Tasmania							
Australian Legal Aid Office	12	1,199.3	—	7.4	—	10.5	1,217.2
Aboriginal Legal Aid	12	122.3	—	—	—	—	122.3
Law Society	—	—	90.7	20.9	—	—	111.6
Total		1,321.6	90.7	28.3	—	10.5	1,451.1
Northern Territory—							
Australian Legal Aid Office	12	546.2	—	10.6	2.9	—	559.8
Aboriginal Legal Aid	12	1,036.8	—	—	—	—	1,036.8
Total		1,583.0	—	10.6	2.9	—	1,596.0
Australian Capital Territory—							
Legal Aid Commission	12	1,396.8	—	43.4	103.9	6.2	1,550.4
Total		27,234.7	8,383.4	1,603.4	3,302.8	7,338.9	47,863.1

(a) Incorporated into Legal Services Commission in December 1979. (b) Includes a full year of the Public Solicitors Office, and operations of the Law Society Legal Assistance Scheme from 21.12.1979. (c) Includes \$603,000 being a portion of clients verdicts and settlements retained. (d) Includes an estimated \$795,000, being a portion of clients verdicts and settlements retained to cover costs. (e) Ceased to operate on 2.12.1979 when incorporated into the Legal Aid Office (Qld).

EXPENDITURE BY MAJOR LEGAL AID SCHEMES: 1979-80

Organisation	Period of operation (months)	Salaries and related payments	Adminis- trative costs	Expenditure (\$'000)				
				Payments to private practitioners			Total expenditure	
				Legal assistance	Advice/ Duty Council			
New South Wales—								
Australian Legal Aid Office	12	1,674.3	417.2	3,660.7	..	3,660.7	5,752.1	
Legal Aid Commissioner (a)	5	..	..	510.4	..	510.4	510.4
Legal Services Commission (b)	7	2,339.8	504.6	2,519.4	528.2	3,047.6	5,892.0	
Aboriginal Legal Aid	12	n.a.	n.a.	n.a.	n.a.	n.a.	1,142.0	
Law Society (a)	5	159.0	126.2	2,224.3	383.8	2,608.1	2,893.3	
Public Defender	12	438.8	128.2	..	..	..	567.0
Total		n.a.	n.a.	n.a.	n.a.	n.a.	16,756.8	
Victoria—								
Australian Legal Aid Office	12	831.8	124.7	3,638.9	..	3,638.9	4,595.4	
Aboriginal Legal Aid	12	n.a.	n.a.	n.a.	n.a.	n.a.	406.7	
Law Institute	12	500.6	(d)481.9	2,392.3	..	2,392.3	3,374.8	
Public Solicitor	12	502.1	153.4	1,102.9	..	1,102.9	1,758.4	
Total		n.a.	n.a.	n.a.	n.a.	n.a.	10,135.3	
Queensland—								
Australian Legal Aid Office	5	321.7	115.7	1,044.6	..	1,044.6	1,482.0	
Legal Aid Commission	7	605.6	172.9	2,035.2	144.3	2,179.5	2,957.9	
Aboriginal Legal Aid	12	n.a.	n.a.	n.a.	n.a.	n.a.	1,047.5	
Law Society (c)	5	104.5	34.0	684.6	83.9	768.5	907.1	
Public Defender	12	845.4	..	695.8	..	695.8	1,541.1	
Total		n.a.	n.a.	n.a.	n.a.	n.a.	7,935.6	
South Australia—								
Legal Aid Commission	12	1,087.6	305.8	1,916.4	..	1,916.4	3,309.8	
Aboriginal Legal Aid	12	n.a.	n.a.	n.a.	n.a.	n.a.	400.0	
Total		n.a.	n.a.	n.a.	n.a.	n.a.	3,709.8	
Western Australia—								
Legal Aid Commission	12	1,041.2	379.6	2,205.3	85.0	2,290.2	3,711.1	
Aboriginal Legal Aid	12	n.a.	n.a.	n.a.	n.a.	n.a.	828.1	
Total		n.a.	n.a.	n.a.	n.a.	n.a.	4,539.2	
Tasmania—								
Australian Legal Aid Office	12	306.7	81.0	829.5	..	829.5	1,217.2	
Aboriginal Legal Aid	12	n.a.	n.a.	n.a.	n.a.	n.a.	122.3	
Law Society . . . . .	..	..	18.0	93.6	..	93.6	111.6
Total		n.a.	n.a.	n.a.	n.a.	n.a.	1,451.0	
Northern Territory—								
Australian Legal Aid Office	12	257.3	79.5	223.0	..	223.0	559.8	
Aboriginal Legal Aid	12	n.a.	n.a.	n.a.	n.a.	n.a.	1,036.8	
Total		n.a.	n.a.	n.a.	n.a.	n.a.	1,596.6	
Australian Capital Territory—								
Legal Aid Commission	12	636.8	163.1	720.0	..	720.0	1,519.8	
Total		n.a.	n.a.	n.a.	n.a.	n.a.	47,664.3	

(a) Incorporated into Legal Services Commission in December 1979. (b) Includes a full year of the Public Solicitors Office, and operations of the Law Society Legal Assistance Scheme from 21/12/1979. (c) Ceased to operate on 2/12/79 when incorporated into the Legal Aid Office (Qld) (d) Includes \$55,522 refunds and \$295,250 disbursements. *Note: Figures do not include expenditure by other organisations on behalf of Legal Aid Schemes.

Courts: Structure and Functions

STATE AND TERRITORY COURTS

State and Territory Courts have original jurisdiction in all matters brought under common and State/Territory statute laws, and in matters arising under Federal laws, where such matters are not specifically reserved to courts of Federal jurisdiction. Most criminal matters arising under Federal 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 types and severity of matters with which they may deal.

Courts of General Jurisdiction are courts empowered to adjudicate on civil and/or criminal matters—Civil matters are those involving an alleged breach of the laws governing private rights and liabilities which embrace the laws of contract and tort (compensation for civil wrongs).—Criminal matters are those involving an alleged breach of the statute, code or common law, which may render a person liable to prosecution, mainly at the instigation of the Crown and 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

Local Courts: these courts operating in South Australia and Western Australia only, have jurisdiction over civil matters involving claims of limited value. In other States and the Territories, local court functions are performed by Magistrates or District Courts.

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 alleged to have committed less serious offences, which may otherwise be dealt with by Children's Courts.

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

Higher Courts

County/District Courts: these courts have jurisdiction in matters involving more serious indictable offences, and civil matters (in some States) involving a claim above the limit allowable for lower court hearing. When hearing criminal cases, the Courts usually comprise a judge and jury, but usually comprise a Judge only for hearings of civil matters.

No County or District Courts operate in Tasmania, the Northern Territory or the Australian Capital Territory.

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

Appeals

Both County/District Courts and State and Territory Supreme Courts have jurisdiction to hear appeals against determinations of the lower courts or specialist tribunals. Appeals may be lodged against a verdict and/or the severity of a sentence. The procedures concerning the right of appeal are laid down by statute in each State and Territory.

Appeal courts are generally constituted by a single judge. However, appeals against Supreme Court decisions are heard in most States by a Full Bench of the Supreme Court, which 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, depending on the nature of the matter involved.

Special Courts and Tribunals

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

Statistics

Due to the lack of uniformity between States in the information currently available, it has not been possible to include statistics on the operation of State and Territory Courts. Information relating to the operation of courts in particular States may be obtained from State Year Books.

FEDERAL COURTS

The judicial power of the Commonwealth is vested in the High Court of Australia, in the federal courts created by 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 Year Book No. 62, pages 7-24.

High Court of Australia

The High Court 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. The first sitting of the High Court in its new building was on 3 June 1980. The seat of the High Court was moved to the seat of Government in the Australian Capital Territory on 1 September 1980.

Sittings of the High Court will now be held at the seat of the Court and at other places as required.

The 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, 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;
- (v) in which a writ of mandamus or prohibition, or an injunction, is sought against an officer of the Commonwealth.

The 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 (*Judiciary Act* 1903, s.30). 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 (*Commonwealth Electoral Act* 1918, s.184, *Australian Capital Territory Representation (House of Representatives) Act* 1973, s.21, *Northern Territory Representation Act* 1922 s.8A, and *Referendum (Constitution Alteration) Act* 1906, s.29).

The High Court's jurisdiction is made exclusive of the jurisdiction of State courts in:

- (i) matters arising directly under any treaty;
- (ii) 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;
- (iii) suits by the Commonwealth, or any person suing on behalf of the Commonwealth, against a State, or any person being sued on behalf of a State;
- (iv) 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;
- (v) matters in which a writ of mandamus or prohibition is sought against an officer of the Commonwealth or a federal court.

The High Court's exclusive jurisdiction no longer includes matters involving the limits *inter se* of the constitutional powers of the Commonwealth and those of the 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 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.

Subject to the exception mentioned below, an appeal may be brought as of right from a final judgment of a Full Court of a State Supreme Court where the interpretation of the Constitution is involved, from judgments for the sum of \$20,000 or upwards, and from judgments in any proceedings in which the matter in issue amounts to or is of the value of \$20,000 or upwards or which involve a claim, demand or question relating to any property or civil right amounting to or of the value of \$20,000 or upwards. The exception to the generality of this statement is that an appeal on a ground relating to

quantum of damages for death or personal injury lies only with special leave of the High Court. In all other cases in which the High Court has appellate jurisdiction, appeals lie only by special leave of the Court.

Appeals to the Privy Council

The *Privy Council (Limitation of Appeals) Act 1968* which came into operation on 1 September 1968 restricts appeals to the Privy Council. Section 3 of the Act provides that special leave to appeal from a High Court decision can only be asked in a matter in which the decision of the High Court was a decision that was given on appeal from a Supreme Court not exercising federal jurisdiction and did not involve the application of the interpretation of the Constitution or a law made by the Commonwealth Parliament or an instrument made pursuant to such a law.

The *Privy Council (Appeals from the High Court) Act 1975*, which came into operation on 8 July 1975, further limits the matters in which special leave to appeal from the High Court may be asked. Special leave to appeal can not be asked from a decision of the High Court unless the decision was given before 8 July 1975. An exception to the generality of the foregoing is that under the Australian Constitution an appeal lies to the Privy Council in cases involving the limits *inter se* of the constitutional powers of the Commonwealth and those of the 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 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.

For the purposes of its organisation and business, the Federal Court of Australia 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. All other matters are dealt with in the General Division of the Court. The Federal Court of Australia sits as required in each State and in the Australian Capital Territory and the Northern Territory.

The *Federal Court of Australia Act 1976* provides that the Court has such original jurisdiction as is invested in it by laws made by the Commonwealth Parliament.

In respect of matters the hearing of which commenced on or after 1 February 1977, the Court's original jurisdiction includes that formerly exercised by the Federal Court of Bankruptcy and the Australian Industrial Court. Important areas of original jurisdiction include jurisdiction in respect of matters under the *Administrative Decisions (Judicial Review) Act 1977* and certain matters under the *Trade Practices Act 1974*.

The Federal Court of Australia has appellate jurisdiction with respect to judgments of the Court constituted by a single judge, judgments of the Supreme Courts of the 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*).

Australian Industrial Court and Federal Court of Bankruptcy

Matters, the hearing of which had commenced in the Australian Industrial Court or the Federal Court of Bankruptcy before 1 February 1977, continue to be heard in those Courts. With the exception of part-heard matters, the jurisdiction formerly exercised by these Courts is now vested in the Federal Court of Australia and each of the Courts is to be abolished when there ceases to be a person holding office as a Judge of the Court.

Family Law

The *Family Law Act 1975* commenced operation on 5 January 1976. It 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 and by certain other courts in the 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 the defended custody proceedings and property proceedings regarding property worth more than \$1,000. A State Family Court has been established in Western Australia to administer family law in that State.

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 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 by the Act is that fault is no longer taken into account as a ground for divorce.

The Family Court of Australia

Applications can be made to the Family Court of Australia for custody and maintenance even if a divorce is not sought. People may approach the Court for counselling (and help) 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 chosen because of their suitability to deal with matters of family law by reason of their training, experience and personality. They do not wear wigs and gowns. Staff attached to the Court include trained counsellors and legally qualified registrars and deputy registrars.

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. Proceedings under the Act in the Family Court are heard in private. 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 professions, is exempted from this prohibition.

The Family Court aims to be a 'helping' court. A Principal Director of Court Counselling and a staff of court counsellors are attached to the Court to help parties to a marriage settle their problems. Their help is available to parties who are not even contemplating divorce or other proceedings, but who may need counselling assistance. These services complement those already provided by voluntary marriage counselling agencies. People may approach the Court counselling service directly—in person, in writing, by telephone or through a legal advisor.

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 of 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 contributions made by the parties and at the contribution made by either party in the capacity of homemaker or parent.

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 Court has pamphlets printed in Arabic, Finnish, German, Italian, Serbo-Croat, Spanish and Turkish to explain the operation of the new Family Law.

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. The function of the Tribunal is to review, on the merits, where jurisdiction has been specifically conferred upon it, decisions made in the exercise of statutory powers. A written statement of reasons can be sought from the decision-maker by a person affected by a decision within the Tribunal's jurisdiction. The Tribunal now has jurisdiction in respect of decisions made in the exercise of powers conferred by over one hundred separate statutory provisions including decisions under the *Social Services Act* 1947, the *Migration Act* 1958, the *Customs Act* 1901, the *Homes Savings Grant Act* 1964, the *Export Market Development Act* 1974 and the Air Navigation Regulations. Further additions to the Tribunal's jurisdiction are made from time to time.

The principal Registry of the Administrative Appeals Tribunal is in Canberra with District Registries in each State capital city and Darwin.

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 in mid-1977. The Ombudsman is empowered to investigate complaints concerning the administrative actions of Commonwealth Government Departments, statutory bodies and other authorities. Where the Ombudsman is of the opinion, after an investigation is completed, that an administrative action involved defective administration he is required to report to the body concerned and may include in his report any recommendations he thinks fit to make. In the event of a failure to comply with a recommendation contained in a report made by the Ombudsman, the Ombudsman may report to the Prime Minister and to the Parliament.

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.

Prisons

This section presents information about persons detained in adult prison establishments, and includes where relevant, persons detained pending court hearing, outcome or sentence.

'Prison establishment' refers to all establishments operated or administered by State or Territory correctional agencies, and includes prisons, jails, detention/corrective/training centres, remand centres, forestry camps, prison farms and certain youth training centres.

NUMBER OF PRISONERS IN PRISON ESTABLISHMENTS

at 30 June	N.S.W.	Vic.	Qld	S.A.	W.A.	Tas.	N.T.
1979—							
under sentence	3,464	(a) 1,498	1,529	690	1,332	291	217
not under sentence	422	(b) 166	157	136	122	14	33
Total	3,886	1,662	1,686	826	1,454	305	250
1980—							
under sentence	2,962	(a) 1,700	1,542	769	1,359	251	246
not under sentence	464	(b) 84	157	140	65	19	43
Total	3,426	1,784	1,699	909	1,424	270	289
1981—							
under sentence	3,004	n.y.a.	1,538	700	1,256	236	251
not under sentence	503	n.y.a.	175	111	114	26	45
Total	3,507	n.y.a.	1,713	811	1,371	262	296

(a) convicted (b) unconvicted

DAILY AVERAGE NO. OF PRISONERS; PRISON ACCOMMODATION AND STAFF

State	Daily average (a)			At 30 June 1981	
	Year ended 30 June			Prison accom-	Prison staff (c)
	1979	1980	1981	modation (b)	Number
New South Wales*	3843	3470	3384	3987	1789
Victoria	n.y.a.	n.y.a.	n.y.a.	n.y.a.	n.y.a.
Queensland	1612(a)	1648(a)	n.a.	2012(b)	947
South Australia	795	834	861	982	437
Western Australia	1368	1456	1447	1589	859
Tasmania	306	280	249	512	162
Northern Territory	202	255	280	259	177
Australia	n.y.a.	n.y.a.	n.y.a.	n.y.a.	n.y.a.

(a) Excludes periodic/weekend detainees, and prisoners serving sentences at attendance centres. (b) Permanent prisoner beds available in prison establishments, other than attendance centres and accommodations specifically for periodic/weekend detainees. (c) Actual strength of non-civilian prison staff (superintendents and wardens only). (d) Prisoners per staff member. * Includes prisoners convicted in A.C.T. courts.

Persons in Juvenile Corrective Institutions

Juvenile corrective institutions are those institutions designated by State/Territory welfare departments as residential child care establishments mainly for child offenders or children on remand for alleged offences, and that have, among their principal aims, the secure detention of the majority of their residents through active measures designed to prevent them leaving the grounds other than for the approved purposes. Excluded are establishments mainly for the detention of persons aged 18 years or over, even though these establishments may be called by names usually applied to establishments for children, eg: youth training centres.

The following tables present details of persons in juvenile corrective institutions as at 30 June 1981.

It should be noted, that these statistics relate only to those children detained in residential child care establishments as described above and not necessarily to all persons detained in residential child care establishments due to a proven or alleged offence.

PERSONS IN JUVENILE CORRECTIVE INSTITUTIONS BY AGE AND SEX: 30 JUNE 1981

Age	N.S.W.	Vic.	Qld	S.A.	W.A.	Tas.	N.T.	A.C.T.	Aust.
10	2	4	—	2	—	—	—	—	8
11	15	10	4	1	3	1	—	—	34
12	28	16	11	—	3	2	—	1	61
13	58	29	14	3	11	6	—	1	122
14	125	56	18	8	26	9	1	11	254
15	126	89	29	12	35	12	—	4	307
16	140	101	26	20	42	3	—	4	336
17	117	29	9	30	39	1	—	5	230
Total—									
10-17									
Males									
No.	521	253	89	71	145	26	1	13	1119
Rate(a)	147.4	89.6	55.1	75.6	154.2	81.4	10.1	75.6	107.2
Females									
No.	90	81	22	5	14	8	—	13	233
Rate(a)	27.1	30.2	14.3	5.7	15.8	26.1	—	80.9	23.6
Total persons	611	334	111	76	159	34	1	26	1352
18+	14	28	3	9	4	—	—	—	58
Total	625	362	114	85	163	34	1	26	1410

(a) Per 100,000 of population aged 10 to 17 years inclusive.

PERSONS AGED 10-17 IN JUVENILE CORRECTIVE INSTITUTIONS BY DETENTION STATUS (a), REASON FOR DETENTION (b) AND SEX: 30 JUNE 1981

	NSW	Vic.	Qld	SA	WA	Tas.	NT	ACT	Aust.
Detention status (a)									
Not awaiting hearing, etc—									
Males	420	226	58	48	129	21	1	13	916
Females	66	70	9	3	13	4	—	10	175
Awaiting hearing, etc—									
Males	101	27	31	23	16	5	—	—	203
Females	24	11	13	2	1	4	—	3	58
Reason for detention (b)									
Offender alleged offender—									
Males	476	204	68	70	143	26	1	12	1,000
Females	75	5	6	5	13	6	—	6	116
Non-offenders—									
Males	45	49	21	1	2	—	—	1	119
Females	15	76	16	—	1	2	—	7	117
Total—									
Males	521	253	89	71	145	26	1	13	1,119
Females	90	81	22	5	14	8	—	13	233
Persons	611	334	111	76	159	34	1	26	1,352

(a) Detention Status refers to whether or not, a person was detained awaiting the start, final outcome or penalty of a hearing or trial before a court or children's panel for a criminal (i.e. an offence) or other (eg: child welfare) type of matter. (b) Reason for Detention refers to whether the principal reason for a person being detained in a juvenile corrective institution was in respect of a criminal offence (alleged or proven), or for some other type of matter eg: a child welfare matter. (Australian Institute of Criminology)

Probation and Parole

The following table provides information on the number, and rates per 100,000 of population, of adult probationers and parolees under actual supervision.

ADULT PROBATIONERS (a) AND PAROLEES (b)

Year at 1 July	NSW	Vic.	Qld	SA	WA	Tas.	NT	ACT	Aust.
Probationers (a)—									
1979—Number	7,707	3,046	2,420	2,422	1,702	1,905	133	138	19,473
Rate (c)	151.8	79.0	110.7	187.3	136.8	456.8	113.7	61.9	135.1
1980—Number	8,082	2,952	2,711	2,434	1,563	1,784	229	159	19,914
Rate (c)	157.1	75.8	122.0	186.9	123.3	423.8	189.3	69.1	136.3
1981—Number	8,858	2,885	2,437	2,391	1,538	1,538	239	157	20,043
Rate (c)	169.8	73.5	106.0	183.2	119.4	359.3	186.7	67.9	135.2
Parolees (b)—									
1979—Number	2,067	635	373	200	465	56	48	29	3,873
Rate (c)	40.7	16.5	17.1	15.5	37.4	13.4	41.0	13.0	26.9
1980—Number	2,299	811	431	184	495	73	81	51	4,425
Rate (c)	44.7	20.8	19.4	14.1	39.0	17.3	66.9	22.2	30.3
1981—Number	2,240	651	319	202	547	65	88	49	4,161
Rate (c)	42.9	16.6	13.9	15.5	42.5	15.2	68.8	21.2	28.0

(a) Includes: in NSW, persons released from Children's Court, some of whom would not have attained adult status; in WA and NT, persons who were also subject to Community Service Orders; in Tas. persons who were released on probation after serving a term of imprisonment, but excludes juveniles who were also being supervised by the Adult Probation Service. (b) Includes licensees under supervisor other than Governor's Pleasure Licensees. (c) Per 100,000 of general population, as at 30 June of each year shown. (Source: National Probation and Parole Statistics, Australian Institute of Criminology.)

CRIMINOLOGICAL RESEARCH

The 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*. 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 (ie 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 has introduced a computerised bibliographic service, such that it now acts as a central agency for the collection, storage, exchange and dissemination of bibliographical data on Australian and related criminological material.

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.

Bankruptcy

For a description of the provisions of the *Bankruptcy Act* 1966, see Year Book No. 55, Pages 586-7. The Bankruptcy Act was amended in 1970 to remove any obstacle the Act might present to the operation of compositions or schemes of arrangement entered into under State or Territory legislation providing assistance to farmers in respect of their debts.

The following table shows the number of bankruptcies of the various types together with the disclosed assets and liabilities of the debtors. Details for each State are published in the Annual Report by the Minister for Consumer and Business Affairs on the operation of the Bankruptcy Act.

BANKRUPTCY PROCEEDINGS: AUSTRALIA

Year			Compositions	Deeds of assignment	Deeds of arrangement	Total
		<i>Bankruptcies and Orders for administration of deceased debtors' estates</i>				
1974-75	Number	2,061	63	128	80	2,332
	Liabilities \$'000	33,788	1,693	15,776	2,742	53,999
	Assets \$'000	13,529	1,069	5,129	2,034	21,761
1975-76	Number	1,900	67	118	92	2,177
	Liabilities \$'000	48,829	8,969	6,374	15,823	79,995
	Assets \$'000	14,188	490	3,864	11,667	30,209
1976-77	Number	2,196	72	109	75	2,452
	Liabilities \$'000	48,862	6,996	6,409	15,130	77,397
	Assets \$'000	20,936	723	4,389	9,947	35,995
1977-78	Number	3,134	75	163	89	3,461
	Liabilities \$'000	74,723	12,061	9,551	6,042	102,377
	Assets \$'000	27,524	646	5,152	2,521	35,843
1978-79	Number	3,857	137	255	168	4,417
	Liabilities \$'000	93,388	5,460	14,554	14,249	127,651
	Assets \$'000	25,394	1,184	6,690	6,073	39,341
1979-80	Number	4,953	176	259	193	5,581
	Liabilities \$'000	110,543	10,094	15,095	13,115	148,847
	Assets \$'000	37,169	2,977	6,709	4,522	51,377

Patents, Trade Marks and Designs

Patents

Patents for inventions are granted under the *Patents Act* 1952, which applies to Australia and to the Territory of Norfolk Island and which is administered by the Commissioner of Patents.

Either a 'petty patent' or a 'standard patent' for an invention may be applied for and granted under the Patents Act. A 'standard' patent has a term of up to sixteen years, while a 'petty' patent has a term of up to six years.

PATENTS: AUSTRALIA

	1975	1976	1977	1978	1979	1980
Total applications	14,082	14,117	14,246	14,131	14,640	15,936
Applications claiming priority of date under convention arrangements	8,483	8,666	8,675	8,542	8,656	9,354
Petty patents lodged . . . . .	..	..	..	..	57	84
Complete specifications lodged	10,929	11,003	11,087	10,910	10,032	10,697
Complete specifications accepted	11,473	10,850	9,911	8,445	8,761	7,327
Letters patent sealed	12,161	11,074	9,626	9,038	6,513	8,434
Letters patent renewed	51,034	51,028	57,850	56,878	59,455	52,989
Letters patent ceased	9,895	10,052	9,147	10,598	2,348	15,265

Trade marks and designs

The *Trade Marks Act* 1955 and the *Designs Act* 1906 are also administered by the Commissioner of Patents. These Acts provide for the registration of trade marks in respect of goods and services, and the registration of industrial designs.

TRADE MARKS AND DESIGNS: AUSTRALIA

	1975	1976	1977	1978	1979	1980
Trade marks—						
Received	9,046	10,195	10,888	11,001	16,127	13,567
Registered	7,087	4,941	4,881	4,243	4,437	4,583
Designs—						
Received	2,105	2,571	2,695	3,170	3,127	3,012
Registered	1,733	1,519	2,290	2,316	1,892	1,957

Copyright

Copyright is regulated by the Commonwealth *Copyright Act* 1968–1973, which came into force on 1 May 1969. On that date Australia ratified its adherence to the Brussels revision of the Berne Copyright Convention and to the Universal Copyright Convention whereby citizens of member countries are accorded protection by complying with the convention formality requiring proprietors to place on their works the symbol © together with their name and the year of first publication in such a manner and location as to give reasonable notice of their claim of copyright in the works so identified. The new legislation contains no provision for the registration of copyright, and the Copyright Office ceased to exist on 1 May 1969. Copyright is administered by the Attorney-General's Department.

