

CHAPTER 11

LAW AND ORDER

Law and order throughout Australia are administered by Federal, State and Territorial governments and authorities. The principal authorities are the Australian Federal Police (formed in October 1979 by the incorporation of members of the former Commonwealth Police with the Australian Capital Territory Police), State police and Northern Territory Police; the Federal, State and Territory judiciary; and State and Territory corrective services. There are, as yet, no independent Federal corrective services.

This chapter provides information about crime in Australia; namely selected crimes reported or becoming known to police, and drug offences. There is also a description of the police, the Federal courts, legal aid, and the administration of law. Information is also given on convicted prisoners, bankruptcy, patents and design and copyright.

Detailed information about State and Territory police, courts, corrections and other law and order functions are provided in State Year Books and other statistical publications and in annual reports of the relevant authorities. Information may also be obtained from the New South Wales Bureau of Crime Statistics and Research and the South Australian Office of Crime Statistics which have been established by the respective State Governments and from the Australian Institute of Criminology which has been established by the Federal Government.

CRIME IN AUSTRALIA

In 1975, the Australian Bureau of Statistics, as part of a general social survey of households and of persons aged 15 years and over, conducted a survey of crime victims in which questions were asked about the nature and circumstances of selected offences and whether the incident was reported to the police. The results of the survey were published in detail in the ABS publication *General Social Survey, Crime Victims, May 1975* (4105.0). Some basic information from this survey was published in Year Book No. 64.

In addition to the Annual Reports of the Police Commissioners which provide information on known crime in each State and Territory, there are two regular sources of information relating to crime in Australia on a national basis. The series published as "Selected crime reported or becoming known to police" relates to specific offence groups about which the police forces in Australia have been reporting on a regular basis since 1964. The annual report *Drug Abuse in Australia* is published by the Australian Federal Police from information supplied to them by law enforcement agencies throughout Australia. Extracts from both of these sources are included below.

Selected crime reported to police

The following tables show details of certain categories of offences reported or becoming known to police. This series, which commenced in 1964, is derived from police records and is based as far as possible, on definitions and procedural arrangements uniformly determined for all States. For definitions and explanatory notes relating to the following statistics see Year Book No. 61, pp. 475-7.

Offences reported or becoming known to police

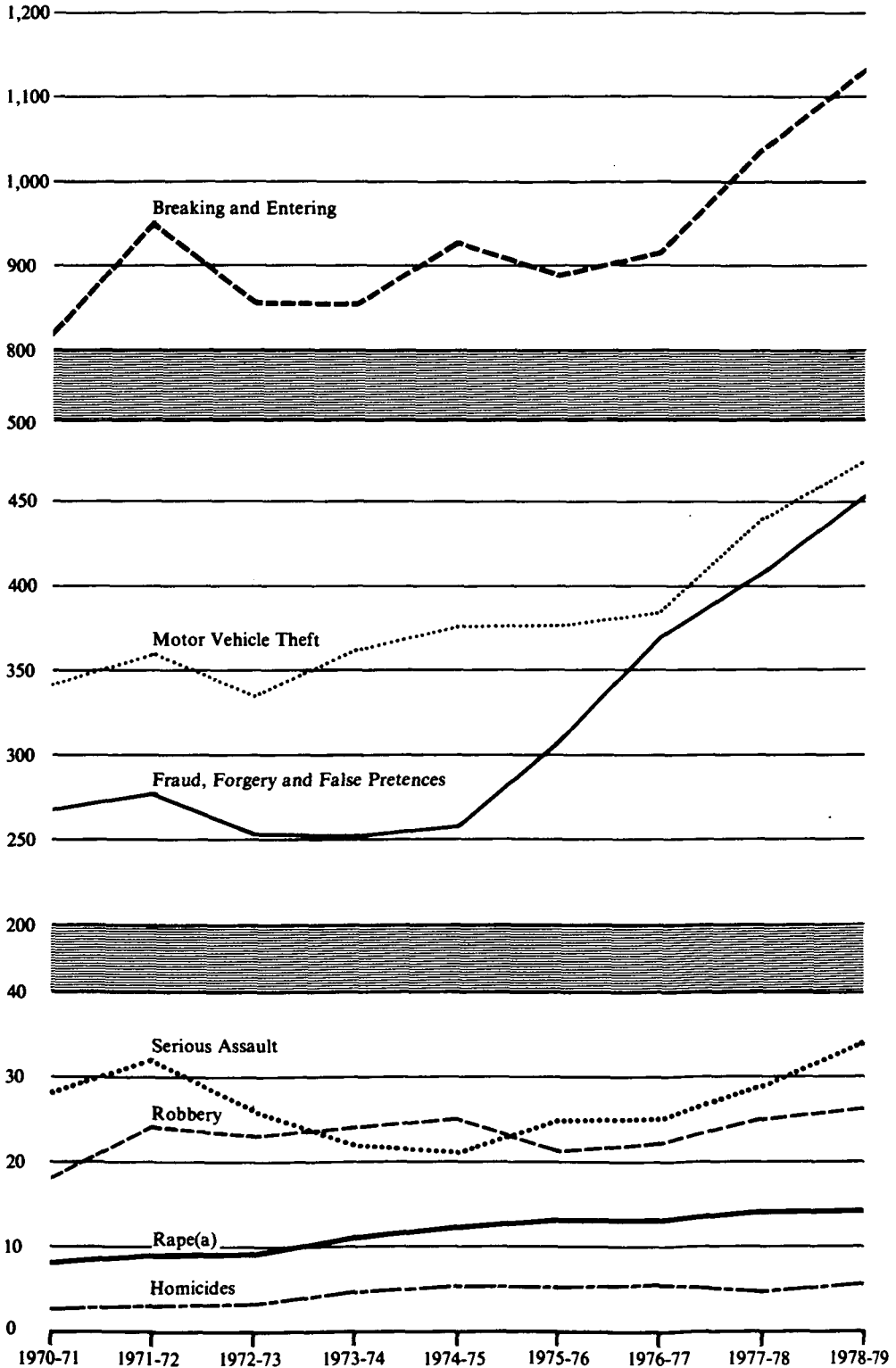
The following table shows, for each State and Territory, the number of offences in each of the seven categories covered by this series which were reported or became known to police. The table includes offences reported to and investigated by the Australian Federal Police.

**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.</i>
Homicide(c)—									
1976-77	314	171	136	57	39	11	33	4	765
1977-78	301	139	121	49	25	9	21	5	670
1978-79	303	183	167	65	39	8	18	1	784
Serious assault—									
1976-77	895	1,277	544	251	429	42	58	42	3,538
1977-78	1,076	1,531	738	262	367	85	42	53	4,154
1978-79	1,134	1,775	968	351	292	89	258	56	4,923
Robbery—									
1976-77	1,353	965	282	265	127	38	19	21	3,070
1977-78	1,716	1,110	318	213	155	26	24	15	3,577
1978-79	1,699	1,170	281	328	127	51	13	14	3,683
Rape—									
1976-77	307	264	77	148	93	17	15	7	928
1977-78	365	233	72	172	98	16	17	10	983
1978-79	419	215	61	165	96	22	13	7	998
Breaking and entering—									
1976-77	42,142	37,347	14,318	14,562	14,433	2,835	1,141	1,512	128,290
1977-78	49,392	45,573	16,366	15,273	14,550	3,145	1,111	1,746	147,156
1978-79	50,815	52,613	18,053	17,970	16,073	3,454	1,341	1,677	161,996
Motor vehicle theft (d)—									
1976-77	23,443	13,067	5,189	4,496	5,499	858	675	481	53,708
1977-78	27,018	15,487	5,709	5,516	6,394	933	645	593	62,295
1978-79	30,978	15,833	6,052	6,492	6,347	780	706	550	67,738
Fraud, forgery and false pretences—									
1976-77	18,349	14,166	8,946	3,604	3,524	984	503	1,695	51,771
1977-78	16,578	16,453	10,446	3,072	7,844	1,298	409	1,529	57,629
1978-79	19,723	16,423	11,476	4,644	9,160	853	615	1,753	64,647

(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) Comprising murder, attempted murder, and manslaughter, including manslaughter arising from motor vehicle accidents. (d) Includes illegal, unlawful or unauthorised use, etc.

OFFENCES REPORTED OR BECOMING KNOWN TO POLICE: AUSTRALIA, RATES PER 100,000 OF MEAN POPULATION



(a) Rate per 100,000 of mean female population.

Offences cleared and persons involved

The tables which follow show, for the various categories of offences, the numbers of offences reported, the numbers cleared, and the numbers of persons involved according to age. 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**

	<i>Murder</i>			<i>Attempted murder</i>			<i>Manslaughter(a)</i>			<i>All homicide</i>		
	1976- 77	1977- 78	1978- 79	1976- 77	1977- 78	1978- 79	1976- 77	1977- 78	1978- 79	1976- 77	1977- 78	1978- 79
Numbers reported or becoming known	252	243	258	148	130	179	365	297	347	765	670	784
Numbers cleared	231	212	227	143	119	171	362	292	350	736	623	748
Persons involved in offences cleared—												
Aged (b)—												
16 years and under	13	3	16	4	2	8	6	5	9	23	10	33
17 and 18 years	15	9	15	14	11	13	37	34	40	66	54	68
19 and 20 years	21	32	15	9	11	7	58	40	51	88	83	73
21 years and over	198	167	182	99	93	130	210	178	217	507	438	529
Total persons involved	247	211	228	126	117	158	311	257	317	684	585	703

(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**

	<i>Serious assault</i>			<i>Robbery</i>			<i>Rape</i>		
	1976-77	1977-78	1978-79	1976-77	1977-78	1978-79	1976-77	1977-78	1978-79
Numbers reported or becoming known	3,538	4,154	4,923	3,070	3,577	3,683	928	983	998
Numbers cleared	2,532	3,059	3,618	845	973	1,017	433	496	454
Persons involved in offences cleared—									
Aged (a)—									
16 years and under	209	262	300	183	187	176	74	67	56
17 and 18 years	293	355	402	210	224	203	109	103	108
19 and 20 years	357	393	425	193	206	199	95	111	94
21 years and over	1,763	2,076	2,304	460	540	625	249	292	267
Total persons involved	2,622	3,086	3,431	1,046	1,157	1,203	527	573	525

(a) Age last birthday at time of clearance.

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

	<i>Dwellings</i>			<i>Shops</i>			<i>Other buildings</i>			<i>All breaking and entering</i>		
	1976- 77	1977- 78	1978- 79	1976- 77	1977- 78	1978- 79	1976- 77	1977- 78	1978- 79	1976- 77	1977- 78	1978- 79
Numbers reported or becoming known	64,712	73,029	84,039	22,092	27,219	28,738	41,486	46,908	49,219	128,290	147,156	161,996
Numbers cleared	11,049	10,433	11,732	5,132	5,094	5,728	6,893	7,073	7,820	23,074	22,600	25,280
Persons involved in offences cleared—												
Aged (a)—												
16 years and under	3,951	4,155	4,065	2,494	2,583	2,540	3,787	3,928	4,091	10,232	10,666	10,696
17 and 18 years	884	955	1,051	864	953	1,080	827	946	1,043	2,575	2,854	3,174
19 and 20 years	552	598	714	509	513	607	466	504	543	1,527	1,615	1,864
21 years and over	1,319	1,412	1,701	1,125	1,154	1,276	1,034	1,151	1,270	3,478	3,717	4,247
Total persons involved	6,706	7,120	7,531	4,992	5,203	5,503	6,114	6,529	6,947	17,812	18,852	19,981

(a) Age last birthday at time of clearance.

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

	<i>Motor vehicle theft(a)</i>			<i>Fraud, forgery, false pretences</i>								
				<i>Valueless cheques</i>			<i>Other</i>			<i>All Fraud, etc</i>		
	<i>1976-77</i>	<i>1977-78</i>	<i>1978-79</i>	<i>1976-77</i>	<i>1977-78</i>	<i>1978-79(b)</i>	<i>1976-77</i>	<i>1977-78</i>	<i>1978-79(b)</i>	<i>1976-77</i>	<i>1977-78</i>	<i>1978-79</i>
Numbers reported or becoming known . . .	53,708	62,295	67,738	10,916	10,978	n.a.	40,855	46,651	n.a.	51,771	57,629	64,647
Numbers cleared . . .	10,866	10,962	10,550	6,894	7,534	n.a.	24,533	28,246	n.a.	31,427	35,780	42,538
Persons involved in offences cleared—												
Persons aged (c)—												
16 years and under . . .	5,064	5,615	4,888	88	95	n.a.	610	623	n.a.	698	718	764
17 and 18 years . . .	2,708	2,878	2,746	147	133	n.a.	721	796	n.a.	868	929	895
19 and 20 years . . .	1,333	1,466	1,291	159	188	n.a.	708	844	n.a.	867	1,032	985
21 years and over . . .	2,041	2,184	2,065	1,661	1,615	n.a.	4,711	5,131	n.a.	6,372	6,746	6,842
Total persons involved . . .	11,146	12,143	10,990	2,055	2,031	n.a.	6,750	7,394	n.a.	8,805	9,425	9,486

(a) Includes illegal, unlawful and unauthorised use, etc. (b) Not available separately for Victoria. (c) Age last birthday at time of clearance.

The number of stolen vehicles recovered was: 1976-77, 46,803; 1977-78, 52,623; 1978-79, 60,050.

Drug offences

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

As its name implies, the Single Convention 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.

Legislative provisions

For details 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 and who, in November 1979, took over the functions of the Narcotics Bureau from the Department of Business and Consumer Affairs.
- The Bureau of Customs in the Department of Business and Consumer Affairs which has responsibility for the enforcement of laws controlling importing and exporting of drugs.

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

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

DRUG OFFENCES: OFFENCE TYPE, CLEARED BY CHARGE, 1977 TO 1979

<i>Year</i>	<i>Possess</i>	<i>Import</i>	<i>Use/ administer</i>	<i>Traffic</i>	<i>Steal</i>	<i>False pretences</i>	<i>Forged scripts</i>	<i>Other</i>	<i>Total</i>
1977	11,711	163	5,982	1,255	91	184	616	2,203	22,205
1978	9,667	144	4,866	1,325	343	106	534	2,380	19,365
1979	11,233	166	4,604	1,298	216	131	513	2,910	21,071

DRUG OFFENCES: NUMBER OF CHARGES(a) INVOLVING SPECIFIC DRUG TYPES, 1977 TO 1979

Type of drug and Year	Possess	Import	Use/ administer	Traffic	Steal	False pretences	Forged scripts	Other	Total
Narcotics—									
1977	1,194	93	1,138	305	58	133	474	281	3,676
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
Cannabis—									
1977	10,923	91	4,640	878	1	—	—	1,444	17,977
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
Amphetamines—									
1977	53	2	47	13	1	7	27	6	156
1978	46	—	46	5	—	5	18	3	123
1979	94	1	57	12	12	20	37	12	245
Barbiturates hypnotics—									
1977	331	—	277	96	13	20	49	24	810
1978	200	—	156	46	12	8	51	30	503
1979	359	—	263	53	45	32	104	51	907
Tranquillisers—									
1977	29	—	18	8	11	3	4	13	86
1978	54	—	50	10	29	10	32	8	193
1979	79	—	40	29	34	12	36	18	248
Hallucinogens—									
1977	166	—	51	28	—	—	—	5	250
1978	191	—	46	45	1	—	—	3	286
1979	186	—	40	33	—	—	1	18	278
Other—									
1977	53	3	10	4	7	5	7	24	113
1978	53	—	14	10	32	2	212	9	332
1979	46	—	12	48	30	8	14	14	172
Grand total—									
1977	12,749	189	6,181	1,332	91	168	561	1,797	23,068
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

(a) If a number of different drug types have been involved in an offence, they are counted under each drug category.

AGE DISTRIBUTION OF PERSONS CHARGED (a) WITH DRUG AND/OR DRUG RELATED OFFENCES

Year	16 years or less	17–18 years	19–25 years	26–30 years	31–49 years	50 years and over	Total persons
1977	690	2,312	7,212	1,414	483	31	12,142
1978	313	1,502	6,113	1,526	568	48	10,070
1979	311	1,552	6,725	1,783	825	37	11,233

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

Convicted prisoners

There are prisons in all States and the Northern Territory. In the Australian Capital Territory there is a lock-up attached to the city police station in Canberra, as well as a remand centre in the Canberra suburb of Belconnen where offenders are held for short periods. Prisoners sentenced by a court in the Australian Capital Territory to more than five days are usually held in New South Wales prisons.

CONVICTED PRISONERS

30 June—	N.S.W. (a)	Vic.	Qld	S.A.	W.A.	Tas.	N.T.	Aust.
1975	3,009	1,488	1,305	632	867	361	158	7,820
1976	3,221	1,490	1,399	594	873	297	160	8,034
1977	3,272	1,386	1,393	618	1,032	267	175	8,143
1978	3,406	1,608	1,470	690	1,120	271	134	8,699
1979	3,574	1,647	1,583	688	1,332	305	226	9,355
1980	3,201	1,847	1,582	768	1,359	270	220	9,247

(a) Includes Australian Capital Territory prisoners held in New South Wales prisons.

Police

The primary duties of the police are to prevent crime, to detect and detain offenders, to protect life and property, to enforce the law, and to maintain peace and good order. In addition, they perform many duties in the service of the State, e.g. they act as clerks of petty sessions in small centres, as crown land bailiffs, foresters, mining wardens, and inspectors under the Fisheries and various other Acts. In metropolitan and large country areas they also regulate the street traffic. With the exception of the Australian Federal Police and the police in the Northern Territory, the police forces of Australia are under the control of the State Governments, but their members perform certain functions for the Commonwealth Government, such as acting as aliens registration officers and, concurrently with Australian Federal Police and other Commonwealth Officers, policing various Commonwealth Acts and Regulations.

Women police perform special duties at places where young women and girls are subject to moral danger, control traffic at school crossings and lecture school children on road safety as well as normal police duties.

Australian Federal Police

The Australian Federal Police was formed in October 1979 by the incorporation of members of the former Commonwealth Police (see previous editions of Year Book Australia) with the Australian Capital Territory Police. It is the principal agency for the enforcement of the laws passed by the Commonwealth Parliament; it performs normal police functions in the Australian Capital Territory and it is also responsible for the protection of Commonwealth Government property and interests at various buildings and establishments under the control of the Commonwealth Government. This force co-ordinates the work of other investigation and law enforcement agencies and acts on behalf of the United Nations Organisation for the suppression of obscene literature and trafficking in women.

Under the control of the force is the Australian Police College at Manly, New South Wales, which provides 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 capital city.

The strength of the police forces in Australia and the ranks of the personnel involved in the police forces in Australia are shown in the following table.

POLICE FORCES(a)

At 30 June—	C'wealth(b)	N.S.W.	Vic	Qld	S.A.	W.A.	Tas.	N.T.	A.C.T.(b)
1978	1,912	8,905	6,477	4,233	3,351	2,490	1,030	470	573
1979	1,900	9,063	7,463	4,132	3,621	2,558	1,132	539	581
1980	2,614	9,400	7,603	n.a.	3,423	2,643	1,041	534	(b)
Comprising in 1980—									
Executive officers . . .	26	57	63		44	39	10	10	
Inspectors	94	245	295	n.a.	64	68	53	22	
Sergeants	382	2,320	1,898		478	601	164	115	
Constables(a)	2,112	6,778	5,347		2,837	1,935	814	387	

(a) Includes trainees, cadets and probationary constables in all States and Territories. (b) From October 1979 the Commonwealth Police and Australian Capital Territory Police have been combined in the Australian Federal Police.

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 powers of the Commonwealth are 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, and has its principal seat in Canberra. However, sittings are held in every State capital as the need arises.

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

- (i) arising under any treaty;
- (ii) affecting consuls or other representatives of other countries;
- (iii) in which the Commonwealth of Australia, or a person suing or being sued on behalf of the Commonwealth of Australia, 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 of Australia.

In addition, the Federal Parliament may, under the Constitution, confer additional original jurisdiction on the High Court in certain classes of matters. The Court currently has original jurisdiction in all matters arising under the Constitution or involving its interpretation, in trials of indictable offences against the laws of the Commonwealth, and in respect of certain other matters specified in various laws made by the Parliament.

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 of Australia or any person suing on behalf of the Commonwealth of Australia 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 of Australia or any person being sued on behalf of the Commonwealth of Australia;
- (v) matters in which a writ of mandamus or prohibition is sought against an officer of the Commonwealth of Australia 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. Where the High Court has concurrent jurisdiction, it may remit a matter commenced in the High Court to a court of concurrent jurisdiction and remove a matter commenced in another such court into the High Court.

Under the Constitution the High Court has jurisdiction, with such exceptions and subject to such regulations as the Federal 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 or other court of any State from which appeal lay to the Privy Council at the establishment of the Commonwealth of Australia.

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 Australian 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.

Appeal to the Privy Council

In 1968 the Federal Parliament passed an Act, which came into operation on 1 September 1968, restricting appeals to the Privy Council. Under the Act no appeal can be taken to the Privy Council for a judgment of the Supreme Court of any Territory or a Federal court other than the High Court.

Until 1975, special leave of the Privy Council to appeal from the High Court could be sought only in matters that came to the High Court on appeal from the Supreme Court of a State exercising jurisdiction not derived from Federal legislation, and which did not raise in the High Court any question of the application or interpretation of the Australian Constitution, or of Federal or Territory legislation. In 1975 the right to apply for special leave in these cases was removed. 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 powers of the Commonwealth vis-a-vis 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.

HIGH COURT OF AUSTRALIA TRANSACTIONS

	1977	1978	1979
<i>Original jurisdiction</i>			
Number of writs issued	148	88	112
Number of matters heard	20	4	6
<i>Appellate jurisdiction</i>			
Number of appeals filed			
by plaintiff as appellant	29	31	35
by defendant as appellant	25	26	39
Number of applications for leave/special leave to appeal:			
filed	108	141	154
allowed	42	29	31
refused	41	46	75
Number of judgments			
reserved	86	79	81
oral	66	26	5
<i>Result of hearings</i>			
Verdict/judgments			
plaintiff/appellant	67	25	24
defendant/respondent	60	74	83
Otherwise disposed of	10	24	17
<i>Miscellaneous</i>			
Number of			
matters remitted to State Courts	46	19	14
matters removed into High Court under the Judiciary Act	5	13	15
demurrers set down and heard	5	2	—
cases stated for opinion of a Full Court	4	1	3
<i>Amount of fees collected</i>	\$16,637	\$34,803	\$32,733

Federal Court of Australia

The Federal Court of Australia was created in 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 Federal 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. Further, original jurisdiction has been conferred by a number of Acts, the most significant being the *Federal Court of Australia (Consequential Provisions) Act* 1976.

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, in certain circumstances provided for by legislation, with respect to judgments of State courts other than those of the Full Court of a State Supreme Court (e.g. *Patents Act* 1966, *Trade Marks Act* 1955, *Bankruptcy Act* 1966, *Income Tax Assessment Act* 1936).

Australian Industrial Court and Federal Court of Bankruptcy

The hearing of matters which had commenced in these courts at 1 February 1977 continues to be dealt with by these Courts. Subject to this, the respective jurisdictions 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 human problems in marriage, viz. the custody and welfare of the children, divorce, maintenance and the split up of property of the marriage.

The law is administered by the Family Court of Australia and by certain other courts in the States and Territories. 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.

Statistics relating to divorce are shown in Chapter 6 of this Year Book.

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 and have a competent back-up staff attached to the Court to assist them.

In dealing with a marriage problem, the Family Court is guided by 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, and no publicity about any proceedings under the Act is permitted.

Counselling

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 of 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 or by telephone—or through a legal advisor.

Children

The Family Court has a special task of protecting and promoting the welfare and rights of dependent children. The paramount consideration guiding the Court in all custody 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 parents of a child have joint custody of the child 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.

Maintenance

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 each 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 a marriage has affected the earning capacity of the marriage partners; and
- the possibility of the persons concerned taking on training courses or further educational courses to improve 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.

Matrimonial Property

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.

Legal Assistance

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 English, Arabic, Finnish, German, Italian, Serbo-Croat, Spanish and Turkish to explain the operation of the new Family Law.

Legal Aid

Australian Legal Aid Office

The Australian Legal Aid Office was established by the Australian Government in July 1973. It provides a general problem-solving service of legal advice for persons with an element of need. Each person seeking help from the Office is seen by a lawyer, the problem is identified and advice is given. Further assistance, including assistance in litigation, is available in matters arising under Federal law, including family law, to all persons, and in matters arising under State or Federal law to persons for whom the Australian Government has a special responsibility such as those in receipt of social services, Aborigines, ex-servicemen, students and newcomers to Australia. The assistance is provided by lawyers of the Office or by referral to private legal practitioners.

The criteria for the provision of further assistance are the merit of the applicant's case and the financial position of the applicant, i.e. whether he satisfies the means and needs test of the Office. In considering the merits, regard is had to all the circumstances, particularly to any advantage the applicant might gain from the provision of assistance and any disadvantage he might suffer if assistance is refused, and the likelihood that the proceedings will be terminated by a decision, settlement or otherwise so as to result in a proper and just advantage to the applicant. The means and needs test is the inability of the applicant to afford the cost of representation in the particular case. A system of contributions by applicants towards the cost of assistance has been in operation since August 1975.

The Office operates in New South Wales, Victoria, Tasmania and the Northern Territory.

The policy of the Commonwealth Government is for State and Territory legal aid commissions to be established which will absorb the functions of the Australian Legal Aid Office throughout Australia. Commissions have commenced operations in New South Wales, Queensland, South Australia, Western Australia and the Australian Capital Territory, and are expected to do so in Victoria shortly.

Administration of the Law

There have been a number of important developments in the field of the administration of the law:

Australian Law Reform Commission

In 1973 the Australian Government established the Australian Law Reform Commission to reform, modernise and simplify Australia's laws. The Attorney-General makes a reference to the Commission on matters requiring attention and, after examination and study, the Commission reports its findings to the Federal Parliament. The Commission has worked in close association with State law reform bodies and with similar agencies overseas.

Since starting formal operations at the beginning of 1975, the Commission has undertaken law reform studies in criminal investigation procedures; complaints against the police; alcohol, drugs, and driving; the legal protection of privacy; defamation; consumers in debt; insurance contract law; the law on organ transplants; the use of Aboriginal customary law in the Australian legal system; the right of access to civil proceedings; the provision of the *Lands Acquisition Act* 1955; and sentencing submissions. Legislative action has been initiated following reports on some of these references.

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 decisions made in the exercise of statutory powers where jurisdiction has been specifically vested in the Tribunal by statute. The Tribunal now has jurisdiction in respect of decisions made under over 70 statutes. Further additions to the Tribunal's jurisdiction are made from time to time.

The Administrative Review Council was also established under the Administrative Appeals Tribunal Act. The Council's functions include reviewing decision-making processes and the practices and procedures of administrative review bodies, such as tribunals or courts. The Council may make recommendations to the Attorney-General on any improvements in those areas that it considers might be made.

Administrative Decisions (Judicial Review) Act 1977

The *Administrative Decisions (Judicial Review) Act 1977*, which has yet to be proclaimed, provides judicial review in the Federal Court of Australia of administrative actions under statutes to which the Act applies. The Court's role is limited to reviewing the lawfulness of the action in question where application is made by a person aggrieved thereby. A person 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 maladministration 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.

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		<i>Bankruptcies and Orders for administration of deceased debtors' estates</i>	<i>Compositions</i>	<i>Deeds of assignment</i>	<i>Deeds of arrangement</i>	<i>Total</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
Total applications	14,082	14,117	14,246	14,131	14,640
Applications claiming priority of date under convention arrangements	8,483	8,666	8,675	8,542	8,656
Petty patents lodged	57
Complete specifications lodged	10,929	11,003	11,087	10,910	10,032
Complete specifications accepted	11,473	10,850	9,911	8,445	8,761
Letters patent sealed	12,161	11,074	9,626	9,038	6,513
Letters patent renewed	51,034	51,028	57,850	56,878	59,455
Letters patent ceased	9,895	10,052	9,147	10,598	2,348

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
Trade marks—					
Received	9,046	10,195	10,888	11,001	16,127
Registered	7,087	4,941	4,881	4,243	4,437
Designs—					
Received	2,105	2,571	2,695	3,170	3,127
Registered	1,733	1,519	2,290	2,316	1,892

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.

