

CHAPTER 11

LAW AND ORDER

THE LAW IN AUSTRALIA

Nature and composition of law

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

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

These various laws relate to a number of subject-matters, including constitutional law, criminal law, civil law, family law and industrial law.

Federal and State responsibilities

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

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

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

Administration of the law

Administration of the law in Australia is undertaken by the responsible governments concerned, principally through Federal, State and Territorial Police Forces, and State and Territorial corrective or penal services. There is no independent Federal corrective service, and the relevant State or Territorial agencies provide corrective services for Federal offenders.

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

Reform of the law

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

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

The Australian Law Reform Commission

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

The ALRC has assumed the functions formerly undertaken by the A.C.T. Law Reform Commission, and has the responsibility for review of Territorial law operating in the Australian Capital 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 five full-time, and seven part-time members at 30 June 1983, makes extensive use of honorary consultants.

To 30 June 1983, the Commission has completed reports on the following references: complaints against police and criminal investigation; alcohol, drugs and driving; consumers in debt; defamation; sentencing of federal offenders; human tissue transplants; lands acquisition and compensation; insurance intermediaries; child welfare; insurance contracts and privacy. Legislation following the recommendations contained in these reports have been enacted in some cases. In other cases, the proposals made by the Commission are under consideration by Parliament or the appropriate Commonwealth Department. Current references include debt recovery laws, access to court (standing to sue and class actions), Aboriginal customary laws, evidence, service and execution of process, Admiralty jurisdiction, foreign state immunity, and community law reform. Other references are expected shortly.

COURTS: STRUCTURE AND FUNCTIONS

Federal Courts

The judicial power of the Commonwealth of Australia is vested in the High Court of Australia, in the Federal courts created by the Federal Parliament and in the State courts invested by Parliament with Federal jurisdiction. The nature and extent of the judicial power of the Commonwealth is prescribed by Chapter III of the Australian Constitution. For details of the Commonwealth of Australia Constitution Act see Year Book No. 67.

High Court of Australia

The Australian Constitution vests the judicial power of the Commonwealth in the High Court, in such other Federal courts as the Parliament creates, and in such other courts as it invests with Federal jurisdiction. The High Court consists of a Chief Justice and six other Justices. Sittings of the Court are now held mainly at its seat in Canberra. The High Court has both original and appellate jurisdiction.

The Constitution gives original jurisdiction to the High Court in all matters:

- (i) arising under a 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 a resident of another State; and
- (v) in which a writ of mandamus or prohibition, or an injunction, is sought against an officer of the Commonwealth.

The Constitution allows the Parliament to give the High Court additional original jurisdiction within limits. The Parliament has given the Court such jurisdiction in all matters arising under the Constitution or involving its interpretation and in trials of indictable offences against the laws of the Commonwealth (*Judiciary Act* 1903, s. 30). The Court is also 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*, s. 8A, and *Referendums (Constitution Alteration) Act* 1906, s. 29).

State Courts are excluded from exercising jurisdiction in relation to some matters over which the High Court has jurisdiction. These matters are:

- (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; and
- (v) matters in which a writ of mandamus or prohibition is sought against an officer of the Commonwealth or a Federal court.

Any matter before a State or Territory or Federal court which arises under the Constitution or involves its interpretation may be removed into the High Court (*Judiciary Act* 1903, s. 40).

The Constitution also gives the High Court appellate jurisdiction. Subject to such exceptions and regulations as are prescribed by the Parliament, the High Court can hear appeals from any decision 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 of any other State Court from which an appeal lay to the Privy Council at the time the Commonwealth was established.

As a general rule the High Court has to give special leave before an appeal can be brought to it from the Supreme Court of a State, any other Court of a State exercising Federal jurisdiction or the Federal Court of Australia. An appeal can, however, be brought *as of right* from the Full Court of a State Supreme Court if it involves the interpretation of the Constitution. Also, an appeal can be brought *as of right* from the Full Court of a State Supreme Court or of the Federal Court in the case of a judgment involving an award or claim of an amount or value of \$20,000 or more *except* an appeal on the quantum of damages in the event of death or personal injury. In the case of such an appeal special leave must be obtained.

Appeals to the Privy Council

The jurisdiction which the Privy Council formerly had to hear appeals from decisions of the High Court has, for all practical purposes, disappeared (see *Privy Council (Limitation of Appeals) Act* 1968 and *Privy Council (Appeals from the High Court) Act* 1975).

Federal Court of Australia

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

The Court consists of the Industrial Division and the General Division. Matters under the *Conciliation and Arbitration Act* 1904 are dealt with in the Industrial Division. All other matters are dealt with in the General Division. The Court sits as required in each State and in the Australian Capital Territory and the Northern Territory.

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

The Federal Court of Australia has appellate jurisdiction over decisions of single judges of the Court, decisions of the Supreme Courts of the Territories and certain decisions 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 the Federal Court of Bankruptcy

Matters in which a hearing had begun in the Australian Industrial Court or the Federal Court of Bankruptcy before 1 February 1977 continue to be heard in these Courts. Otherwise, the jurisdiction formerly exercised by these Courts is now vested in the Federal Court of Australia.

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 Act also created the Family Court of Australia as a specialist court dealing only with matrimonial and associated proceedings.

The main change made by the Act is that fault is no longer taken into account as a ground for divorce. The Act provides that there is only one ground for divorce—that of irretrievable breakdown of a marriage which is established 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.

Proceedings under the Family Law Act are dealt with by the Family Court of Australia and by certain other courts in the States and Territories. Except in certain areas of Western Australia, Magistrates' Courts and Courts of Petty Sessions have jurisdiction in all proceedings under the Act except for:

- proceedings for dissolution or nullity of marriage; and
- defended proceedings for custody or concerning property worth more than \$1,000, unless the parties agree to the matter being heard by a Magistrates' Court or the Court of Petty Sessions.

A State Family Court has been established in Western Australia to deal with family law matters 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.

Family Court of Australia

The Judges of the Family Court are chosen because of their suitability to deal with matters of family law by reason of their training, experience and personality. They do not wear wigs and gowns. Staff attached to the Court include trained counsellors and legally qualified Registrars and Deputy Registrars.

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. This 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 practitioner.

A Court exercising jurisdiction under the Family Law Act is required to have regard to the following principles:

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

In relation to the guardianship and custody of children, the Family Law Act provides that both parties to a marriage have, subject to a court order to the contrary, the joint guardianship and custody of any children of the marriage. However, one parent can ask the Court for sole custody of a child even if no divorce has been sought.

In disputes over custody, a child may be separately represented. The paramount consideration for the court in the determination of all such disputes is the welfare of the child. However, where a child has reached 14, the Court may not make an order contrary to his or her wishes unless there are special circumstances. In relation to the welfare of children a divorce decree usually will not become effective unless the Court is satisfied that proper arrangements have been made by the parties for the welfare of their children.

Under the Family Law Act, the right of one party to a marriage to maintenance from the other is based on the needs of the party seeking it and the ability of the other party to pay. An application for maintenance may be made by either husband or wife, and irrespective of whether the parties intend to divorce.

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 either party has to care for children;
- the extent to which the marriage has affected the earning capacity of the applicant; and
- the possibility of the applicant taking on a training course or further educational course to improve his or her employment prospects.

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

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 party has in the property, the contributions made by each party during the marriage, and the matters the Court is required to consider in dealing with maintenance applications. The Act directs the Court to look both at the financial contributions made by the parties and at the contribution made by either party in the capacity of homemaker or parent.

The Court has pamphlets printed in Arabic, Turkish, Italian, Greek, Serbo-Croat, Mandarin Chinese, Malaysian and Spanish to explain the operation of the new family law.

State and Territory Courts

Australian State and Territory courts have original jurisdiction in all matters brought under State or Territory statute laws, and in matters arising under Federal laws, where such matters have not been specifically reserved to courts of Federal jurisdiction. Most criminal matters, whether arising under Federal, State or Territory law, are dealt with by State and Territory courts.

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

Appeals

County and District Courts and State and Territory Supreme Courts have jurisdiction to hear appeals against the decisions of lower courts and some specialist tribunals.

The procedures concerning the right of appeal are laid down by statute in each State and Territory, and appeals may be lodged against matters such as the correctness of the verdict or the severity of the sentence imposed. However, appeals against Supreme Court decisions are heard in most States by a Full Bench of the Supreme Court which usually comprises three judges of the Supreme Court. Appeals from State Supreme Court decisions may be taken to the Federal Court of Australia or the High Court of Australia or the Privy Council depending on the nature of the matter involved. Appeals from decisions of Territory Supreme Courts are taken to the Federal Court of Australia or to the High Court if special leave is given by the High Court.

Special Courts and Tribunals

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

Courts of Marine Inquiry

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

When the Department of Transport is advised of an incident which may warrant the convening of a Court of Marine Inquiry, the Minister will appoint an officer to conduct a Preliminary Investigation. The officer will conduct interviews with the parties involved and based on the results of these interviews advise the Minister as to whether or not the circumstances warrant a request by the Minister for

a Court of Marine Inquiry to be convened. The Governor-General by proclamation establishes the Court of Marine Inquiry. Findings of the Court are forwarded to the Minister as well as any observations the Court thinks fit to make.

Statistics

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

Administrative Review

Administrative Appeals Tribunal

The Administrative Appeals Tribunal was established by the *Administrative Appeals Tribunal Act 1975* and came into operation on 1 July 1976. Its President is a Judge of the Federal Court of Australia. It is an independent tribunal whose function is to review decisions made by Commonwealth Ministers, authorities and officials under certain laws of the Commonwealth. The Tribunal is able to substitute its own decision in those areas in which it has jurisdiction. The Tribunal has jurisdiction under a total of 140 enactments including decisions under the *Social Services Act 1947*, *Compensation (Commonwealth Government Employees) Act 1971*, *Migration Act 1958*, *Customs Act 1901*, *Export Market Development Act 1974*, the Air Navigation Regulations and the *Freedom of Information Act 1982*. Further additions to the Tribunal's jurisdiction are made from time to time.

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

The Administrative Review Council was also established by the *Administrative Appeals Tribunal Act 1975*. The principal functions of the Administrative Review Council are to make recommendations to the Attorney-General on rights of review of administrative decisions and on the procedures of administrative tribunals.

Administrative Decisions (Judicial Review) Act 1977

The *Administrative Decisions (Judicial Review) Act 1977*, which came into operation on 1 October 1980, provides for judicial review in the Federal Court of Australia of administrative action taken under Commonwealth legislation. The Court is empowered where an order of review is sought by an aggrieved person to review the lawfulness of a decision, conduct leading up to the making of a decision or circumstances where there has been failure to make a decision. The grounds on which review may be sought and the powers of the Court are set out in the Act. In many cases, a person who is entitled to seek judicial review in respect of an administrative decision may seek a statement of reasons for the decision from the decision-maker.

Commonwealth Ombudsman

The office of the Commonwealth Ombudsman was established by the *Ombudsman Act 1976* and commenced operation in June 1977. Additional responsibilities have been given to the office through the *Complaints (Australian Federal Police) Act 1981* and the Ombudsman Amendment Act (passed in the 1983 Budget session of Parliament). The Ombudsman is empowered to investigate complaints about the administrative actions of Commonwealth Government departments and prescribed authorities, and complaints about the conduct of members of the Australian Federal Police, and its practices and procedures. Under the *Ombudsman Amendment Act 1983* the Ombudsman will also be empowered to investigate complaints from members or former members of the Australian Defence Forces relating to the service in the Defence Forces or as a consequence of a person serving or having served in the Defence Forces. Where the Ombudsman is of the opinion, after completing an investigation into a complaint, that remedial action is required he reports to the department or authority concerned and may include any recommendations he thinks fit to make. If the department or authority fails to comply with a recommendation contained in his report, the Commonwealth Ombudsman may report to the Prime Minister and to the Federal Parliament. The Commonwealth Ombudsman is represented in each State capital city and Darwin.

The Human Rights Commission

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

- The International Covenant on Civil and Political Rights;
- The Declaration of the Rights of the Child;
- The Declaration on the Rights of Mentally Retarded Persons;

- The Declaration on the Rights of Disabled Persons; and
- The International Convention on the Elimination of All Forms of Racial Discrimination.

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

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

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

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

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

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

Freedom of Information Act 1982

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

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

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

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

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

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

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

The public is not required to provide reasons for requesting access to documents. However, all requests under the Act should be in writing and provide such information concerning the document as is reasonably necessary to enable a responsible officer to identify the document. Where a person wishes to make a request or has made a request that does not comply with the provisions of the Act relating to requests for access it is the duty of the agency to take reasonable steps to assist the person to make the request in a manner that complies with the Act.

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

Royal Commissions—Commonwealth

Australian Governments have from time to time established Royal Commissions to inquire into, and report on, matters of public concern.

A Royal Commission is established by the Governor-General, on the advice of the Government, issuing a commission to a person or persons to inquire into and report on specified matters. At the end of its inquiry, a Royal Commission presents its report to the Governor-General for consideration by the Government.

The power to issue Letters Patent to inquire is a prerogative of the Crown. The *Royal Commissions Act 1902* confers powers on a Royal Commission to compel the attendance of persons, the giving of evidence, and the production of papers. It also creates a number of offences (e.g. failure to attend a Royal Commission when summoned, or to produce papers) and gives some protection to Commissioners and witnesses against legal liability. The constitutional foundation of the Royal Commissions Act is section 51 (xxxix) of the Constitution, which provides that the Commonwealth Parliament may make laws with respect to 'matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or office of the Commonwealth'.

LETTERS PATENT ISSUED FROM 1.7.78 TO 30.6.83

<i>Name of Royal Commission</i>	<i>Commissioner(s) °</i>	<i>Date of issue of Letters Patent</i>
Commission of Inquiry into the Efficiency and Administration of Hospitals (joint Commonwealth/ Tasmania/ Queensland/ Western Australia Royal Commission)	Mr J. H. Jamison, O.B.E. (Chairman) Mr C.W.L. De Boos Dr J. S. Yeatman	29 August 1979
Commission of Inquiry into the Viability of the Christmas Island Phosphate Industry	Mr W. W. Sweetland	20 December 1979
Royal Commission on the Activities of the Federated Ship Painters and Dockers Union (joint Commonwealth/Victoria Royal Commission)	Mr F. X. Costigan, Q.C.	10 September 1980
(a) Royal Commission of Inquiry into Drug Trafficking (joint Commonwealth/New South Wales/Victoria/Queensland Royal Commission)	The Hon. Mr Justice D. G. Stewart	(a) 25 June 1981
(b) Royal Commission of Inquiry into the Activities of the Nugan Hand Group (joint Commonwealth/New South Wales Royal Commission)		(b) 28 March 1983
Royal Commission into the Activities of the Australian Building Construction Employees' and Builders Labourers' Federation (joint Commonwealth/Victoria Royal Commission)	Mr J. S. Winneke, Q.C.	20 August 1981
Royal Commission into Australian Meat Industry (joint Commonwealth/Victoria Royal Commission)	The Hon. Mr Justice A. E. Woodward, O.B.E.	12 September 1981
Royal Commission on the Use and Effects of Chemical Agents on Australian Personnel in Vietnam	The Hon. Mr Justice P. G. Evatt, D.S.C.	13 May 1983
Royal Commission on Australia's Security and Intelligence Agencies	The Hon. Mr Justice R. M. Hope, C.M.G.	17 May 1983

FINAL ROYAL COMMISSION REPORTS PRESENTED FROM 1.7.78 TO 30.6.83

<i>Name of Royal Commission</i>	<i>Date of presentation</i>	<i>Tabled in the Parliament</i>
Royal Commission of Inquiry into Electoral Redistribution of Queensland in 1977	3 August 1978	15 August 1978
Australian Royal Commission of Inquiry into Drugs	21 December 1979	18 March 1980
Commission of Inquiry into the Viability of Christmas Island Phosphate Industry	15 February 1980	20 February 1980
Commission of Inquiry into the Efficiency and Administration of Hospitals	29 December 1980	25 February 1981
Royal Commission into the Activities of the Australian Building Construction Employees' and Builders Labourers' Federation	27 May 1982	20 October 1982
Royal Commission into Australian Meat Industry	17 September 1982	21 September 1982
Royal Commission of Inquiry into Drug Trafficking (Clark Reference)	28 February 1983	31 May 1983

Legal Aid

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

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

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

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

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

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

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

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

The Police

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

Australian Federal Police

The Australian Federal Police (AFP) was formed in October 1979. It performs normal police duties in the Australian Capital Territory, and is the principal agency for the enforcement of Federal

laws, and the protection of Commonwealth Government property, and property and interests at buildings and establishments under Commonwealth Government control, and co-ordinate some of the work of other investigation and law enforcement agencies in Australia. The AFP also attaches officers to the Commonwealth's Island Territories' Police Forces (the Territories of Christmas and Norfolk Islands) and the United Nations Peace-keeping Force in Cyprus.

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.

Police strengths

The active strengths of non-civilian police personnel in police forces in Australia are shown in the following table:

POLICE FORCES								
<i>Year</i>	<i>AFP</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>SA</i>	<i>WA</i>	<i>TAS</i>	<i>NT</i>
At 30 June—								
1980	2,614	9,400	7,603	4,387	3,423	2,643	1,041	534
1981	2,655	9,468	8,196	4,554	3,220	2,656	1,029	551
1982	2,702	9,532	8,329	4,543	3,249	2,693	1,041	566

Crime Statistics

Selected Offences

Since 1964, the ABS has published a series of 'Selected Offences reported or becoming known to Police'. This series is provided by police, and is based as far as possible on definitions and procedural arrangements agreed to by police authorities for all States and Territories.

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

Drug Offences

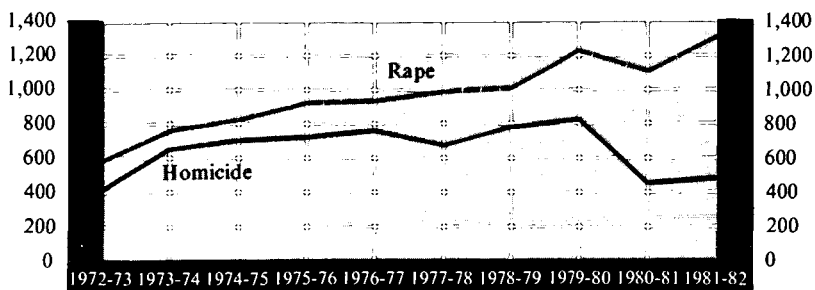
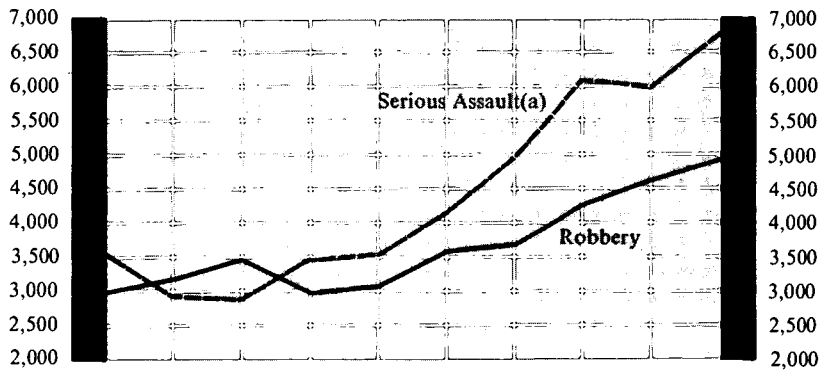
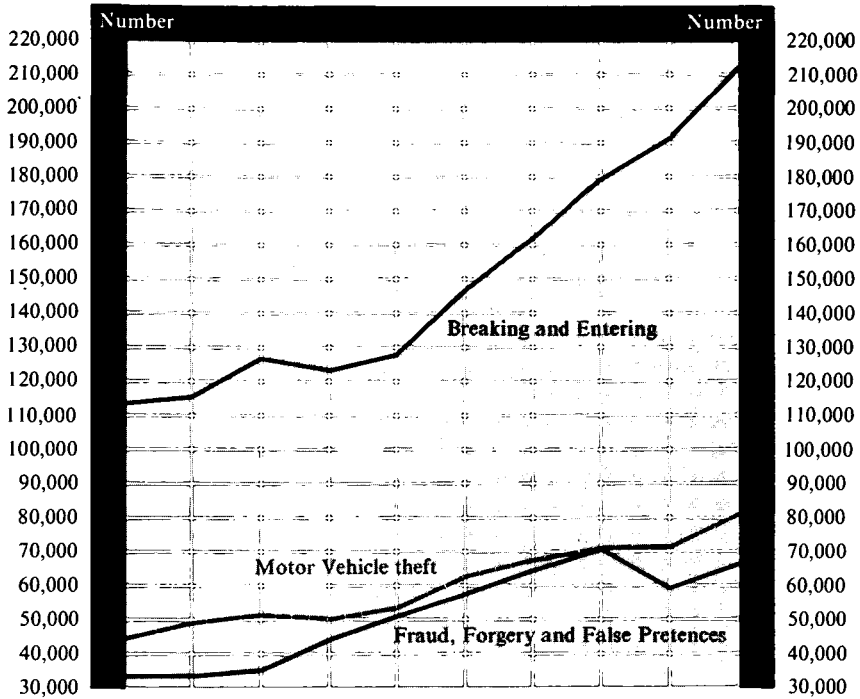
Australia is a signatory to the Single Convention of Narcotic Drugs which has as its main aim the limitation of narcotic drugs to legitimate medical and research purposes.

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.

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)*.

**SELECTED OFFENCES REPORTED OR BECOMING KNOWN TO POLICE,
AUSTRALIA, 1972-73 TO 1981-82**



(a) From 1980-81 defined as assaults causing grievous or actual bodily harm.

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

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

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

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

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

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

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

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

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

Correctional Treatment of Offenders

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

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

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

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

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

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

National Prison Census

The Australian Institute of Criminology in conjunction with State prison administrators conducted the first National Prison Census at 30 June 1982. The following table is an extract from the published results of that census.

NUMBER OF PRISONERS BY JURISDICTION, AGE(a) AND SEX, 30 JUNE 1982

Age-group	N.S.W.	Vic.	Qld	S.A.	W.A.	Tas.	N.T.	A.C.T.	Australia
Under 16 Years	1	5	..	..	1	..	..	..	7
16 Years	1	..	..	1	..	1	3	..	6
17 Years	13	29	23	3	13	3	10	..	94
18 Years	130	55	60	20	64	10	17	1	357
19 Years	189	72	76	45	86	22	21	1	512
20-24 Years	1,142	498	454	268	400	76	100	2	2,940
25-29 Years	831	417	352	184	351	57	69	..	2,261
30-34 Years	606	256	244	107	188	28	35	..	1,464
35-39 Years	330	184	186	74	103	14	31	..	922
40-44 Years	207	120	106	52	56	10	7	1	559
45-49 Years	126	42	58	30	47	5	9	..	407
50-54 Years	79	36	35	8	19	3	7	..	188
55-59 Years	31	26	30	11	15	3	3	..	119
60-64 Years	26	11	8	3	2	4	..	..	54
65 Years and over	7	2	6	6	5	..	..	..	26
Total Persons	3,719	1,753	1,638	812	1,350	237	312	5	9,826
Total Males	3,582	1,699	1,594	796	1,286	233	296	5	9,491
Total Females	137	54	44	16	64	4	16	..	335

(a) The tabulation shows the age-structure of the prison populations as at 30 June 1982. The age at which persons normally become liable to imprisonment in an adult prison varies from State to State, being seventeen years in Victoria, Queensland, Tasmania and Northern Territory, and eighteen years in the other jurisdictions, although younger persons who have been convicted of a particularly serious offence may also be sent to adult prisons. Persons in juvenile institutions were specifically excluded from this census.

(Source: Australian Institute of Criminology *Australian Prisoners 1982* by John Walker and David Biles)

Criminological Research

The Australian Institute of Criminology

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

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

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

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

Major publications of the Institute during 1982-83 included *Political Terrorism* by Grant Wardlaw, *Protecting the Protectors* by Bruce Swanton, *Australian Prisons 1982* by John Walker and David Biles, *Sentencing the Federal Drug Offender* by Ivan Potas and John Walker, and *Police Source Book* by Bruce Swanton; Garry Hannigan and David Biles.

Each year the Institute conducts from 15 to 20 national seminars. Topics covered by seminars during 1982-83 included: arson; delinquency prevention; retailers as victims of crime; compensation schemes; and research undertaken by criminologists and the police.

The Criminology Research Council

The Criminology Research Council, comprised of representatives from the Commonwealth and each State, is an independent body corporate also established under the *Criminology Research Act*

1971. The Council is responsible for the control and administration of the Criminology Research Fund, which is funded fifty percent by the Federal Government, and fifty percent by State Governments on a pro-rata population basis. Subject to the Council's assessment of a project, persons seeking to conduct criminological or related research may be provided with a grant from the Fund.

Since its establishment the Council has provided grants for over 100 separate research projects covering nearly all aspects of crime and criminal justice in Australia. Council-funded research is generally located in specific regions and may involve primary data gathering. By contrast, the research undertaken by the Institute itself is generally national and comparative in nature and makes use of existing data sources.

Bankruptcy and Copyright

Bankruptcy

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

Copyright

Copyright is regulated by the Commonwealth *Copyright Act* 1968 which came into force on 1 May 1969. The Act does not contain any provisions requiring or enabling the completion of formalities (such as publication, registration or the payment of fees) in order to obtain copyright protection in Australia. Protection is granted automatically from the moment of making a work or other subject matter.

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

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

BIBLIOGRAPHY

Australian Constitutional Law

The Australian Constitution Annotated, Attorney-General's Department, Australian Government Publishing Service, Canberra, 1980

Howard, Prof. Colin, *Australia's Constitution*, Penguin, Melbourne, 1978

Lane, Prof. P. H., *An Introduction to Australian Constitutional Law*, The Law Book Company Limited, Sydney, 1967

Lane, Prof. P. H., *An Introduction to the Australian Constitution*, 2nd ed., The Law Book Company Limited, Sydney, 1977

Sawer, Prof. Geoffrey, *The Australian Constitution*, Australian Government Publishing Service, Canberra, 1975

Federal Parliament

An Introduction to the Australian Federal Parliament, Angus and Robertson, Sydney, 1956

Crisp, Prof. L. F., *Australian National Government*, 4th ed., Longman Cheshire Pty Ltd, Melbourne, 1976

Odger, J. R. *Australian Senate Practice*, 5th ed., Australian Government Publishing Service, Canberra, 1976

Pettifer, J. A. (ed.), *House of Representatives Practice*, Australian Government Publishing Service, Canberra, 1981

Law and the Australian Legal System

Baalman, John, *Outline of Law in Australia* (4th ed. by Geoffrey A. Flick), The Law Book Company Limited, Sydney, 1979

Bates, Nicholas, *Introduction to Legal Studies*, 3rd ed., Butterworths, Melbourne, 1980.

Gifford, D. J. and Kenneth H. Gifford, *Our Legal System*, The Law Book Company Limited, Sydney, 1981.

Marsh, S. B., I. P. Predl and P. A. Ward, *Outlines of Law—Australian Edition*, McGraw-Hill Book Company, Sydney, 1972

Ross, Stan and Mark Weinburg (eds), *Law for the People: A Citizen's Guide to the Law in Australia and New Zealand*, Penguin Books, Melbourne, 1976

Sawer, Prof. Geoffrey, *The Australian and the Law*, Penguin Books, Melbourne, 1976

Twyford, John, *The Layman and the Law in Australia*, 2nd ed., Doubleday, Sydney, 1980

