

## **Program 1 – Legal Policy and Services to the Commonwealth**

### **PROGRAM OBJECTIVE**

To advance and protect the interests of the Commonwealth, its ministers and agencies by the provision of sound, constructive and timely legal policy advice.



## 1.1 Executive and Support

### CORPORATE SERVICES DIVISION

#### OBJECTIVE

To add value through the achievement of best practice in the provision of advice and a range of support services.

#### ROLE

The Division provides advice and services to the Attorney-General and the Minister for Justice and Customs, and provides general support to the Department. This support includes the management of human, financial and physical resources, information technology (IT) services, and support related to performance management and coordination.

The Division comprises the Executive Branch, the Financial Management Branch, the Information Technology Branch and the Audit and Evaluation Section which falls within the Division's administration. Additionally, the Trade Measures Review Officer function was transferred to the Department as a result of the Administrative Arrangements Order of October 1998.

The **Executive Branch** is responsible for employee relations, ministerial and parliamentary liaison and support, performance management program support and the coordination of strategic and performance planning, monitoring and reporting activities. It also provides a range of public relations support services, and project management services relating to accommodation and construction requirements.

The **Financial Management Branch** is responsible for financial and budgetary management, accounting policy and services, pay processing, pay and conditions advice, and a range of general support and office services for the Department.

The **Information Technology Branch** is to identify, deliver and support IT, library and legal information services. It is responsible for a range of business planning activities ensuring the provision of technical advice and support to maintain high levels of system performance and availability; the provision of legal reference, research and information services; and the review, development and coordination of IT training, including technical user and management training.

The **Audit and Evaluation Section** independently undertakes programmed reviews of all departmental functions, processes, systems, organisational arrangements and other audit tasks as determined and overseen by the Audit Committee.

The **Trade Measures Review Officer**, a statutory appointment by the Minister for Justice and Customs, provides an independent administrative appeal mechanism for parties affected by anti-dumping decisions. The Trade Measures Review Secretariat was established within the Department in February 1999 to support the role of the Trade Measures Review Officer.

## Resources Summary — Sub-program 1.1 Executive and Support

	1997-98 <i>Actual</i> \$(000)	1998-99 <i>Estimate</i> \$(000)	1998-99 <i>Actual</i> \$(000)
<b>Appropriation Bill No. 1</b>			
Running Costs			
Departmental			
• Salaries (120-1) (p)	7,592	11,825	9,995
• Other (120-1) (p)	6,357	18,115	15,797
Legal Practice			
• Salaries (121-1) (p)	16,047	-	-
• Other (121-1) (p)	6,639	-	-
<b>RUNNING COSTS APPROPRIATIONS</b>	<b>36,635</b>	<b>29,940</b>	<b>25,792</b>
Other Program Costs			
• Compensation & Legal Expenses (120-2-04) (p)	2,639	1,782	1,092
<b>Appropriation Bill No. 2</b>			
• Departmental Plant & Equipment (805-1-01) (p)	-	588	-
<b>TOTAL APPROPRIATIONS</b>	<b>20,558</b>	<b>24,866</b>	<b>20,459</b>
Adjustments affecting Outlays			
• Revenue			
– Miscellaneous	217	5	321
• Section 31 (FMA Act) Receipts	9	1,774	3,840
<b>TOTAL OUTLAYS</b>	<b>39,048</b>	<b>30,531</b>	<b>22,723</b>
STAFFING			
Staff Years	173.7	149.0	178.3
REVENUE AND/OR ITEMS NOT AFFECTING OUTLAYS			
Miscellaneous Receipts	850	-	-

These figures are expressed in cash terms. The accompanying audited Financial Statements are presented in accrual format.

Funding and staffing levels for this sub-program includes corporately funded projects and the Corporate Services Division.

1997-98 actual figures have been adjusted to reflect actual Support Group costs on the split of the AGS from the Department.

### STRATEGY

Provide sound, timely advice and effective strategic information, planning and documentation.

### PERFORMANCE MEASURE

*Meeting targets set by the Government and the Board of Management; positive feedback from management and clients and continued reliance on advice provided.*

### PERFORMANCE OUTCOME

A key management priority for 1998-99 was to redefine the role of the Department following the separation of the office of the Australian Government Solicitor. As part of this continuing process, project teams were established to examine in detail issues identified at the Department's 1998 Senior Executive Conference as being of critical importance to the strategic future of the Department.

### Attorney-General's Department

The project teams examined strategies for achieving greater flexibility to enable the Department to respond to changing circumstances and priorities, promoting a more collaborative and inclusive organisation, developing an effective strategic plan for people management and improving organisational efficiency and effectiveness.

The Flexible Organisation project team reported to the Board of Management and staff in March 1999. Its report included six major recommendations for change and numerous subsidiary recommendations. A strategic planning process has since been instituted in line with a recommendation of the project team, and work is progressing on other recommendations. The data and results from the research have assisted in subsequent reform processes.

The Collaborative and Inclusive Organisation team was convened to investigate the effectiveness of departmental communications, internal and external. As a result of those investigations, the Board of Management gave its approval for the conduct of a pilot project involving the assignment of a public affairs officer to both the Civil Law Division and the Office of International Law. Public Affairs will manage the media strategies for the major policy initiatives of the divisions, including the preparation of speeches for Ministers and all press releases. The pilot is continuing.

A survey of staff, clients and stakeholders was conducted to gauge the perception of the image of the Department. The results of that research, together with the results of a staff opinion poll, will provide valuable information to assist in the redefinition of the role of the Attorney-General's Department.

The People Strategy Project is premised on the principle that 'people are valued in a centre of excellence that is flexible, collaborative and inclusive'. A People Plan 1999–2001 was developed in consultation with employees in all States. The plan provides a set of focused strategies and actions to enable the Department to build the organisational values and behaviours it requires to achieve its people goals. Four other strategies were identified and will, with the People Plan, provide the focus for the Department's people management activities over the next three years.

Projects to improve efficiency and effectiveness included:

- The development of an outcomes/outputs framework for the Portfolio Budget Statement 1999–2000. Outputs were costed in accordance with accrual budgeting principles, which are due to be implemented in the 1999–2000 financial year.
- An improved process for handling ministerial correspondence. Ministerial response times are monitored to measure further improvement in this area.
- An increased awareness of health and safety issues and the preventative action staff can take. This was the result of a departmental workplace health and safety assessment which included workstation assessments and health seminars.

A Senior Executive workshop was held on 17 November 1998 to engage senior management of the Department in a discussion of future workforce needs, and to identify the business drivers, capability requirements and risks for the Department over the next few years. As a result a workforce planning strategy was developed in March 1999. It included initiatives and approaches to graduate recruitment, succession planning and people development in the Department. The new human-resource management system, SAP HR/Payroll, will supply the necessary data to underpin the workforce planning strategy.

The Department's Performance, Cooperation and Change Agreement, arrived at following extensive consultation with staff, was certified by the Australian Industrial Relations Commission on 28 September 1998.

A Year 2000 Coordination Office was established to manage and coordinate the Department's Year 2000 compliance activities and business contingency planning. The Division provided advice, developed

and supported Year 2000 administrative systems, and remediated operational systems. This included full compliance with Office of Government Online reporting requirements. The Department achieved Back Online/Compliance of 93 per cent of its business-critical systems by the end of the financial year. Advice was also provided on a range of other initiatives across divisions including PC implementations, SAP implementation and tailored services to the Australian Protective Service, the Protective Security Coordination Centre, the Law Enforcement Coordination Division and the Office of Legislative Drafting.

A security media strategy is being developed for the Sydney 2000 Games in partnership with the NSW Police Service. This strategy is due to be completed in November 1999.

Target dates for implementing the Government's accrual budgeting processes in respect of financial information were met.

#### **PERFORMANCE MEASURE**

*Meeting agreed timeframes for the release of corporate documents and reports.*

#### **PERFORMANCE OUTCOME**

The Department's annual report was tabled by the due date of 31 October 1998. The production of a corporate plan, scheduled for release on 1 July 1999, was deferred pending settlement of fundamental strategic issues associated with the redefined role for the Department following the separation of the Australian Government Solicitor.

Target dates were met in relation to internal reports on strategic IT matters, documentation and procedures for an efficient IT function, and reporting used for external purposes.

Portfolio Budget and Additional Estimates statements were produced by the due dates set by the Department of Finance and Administration.

#### **STRATEGY**

Provide and maintain credible and effective management information systems and processes.

#### **PERFORMANCE MEASURE**

*Reporting targets met and management information of a high standard provided over time to meet operational requirements.*

#### **PERFORMANCE OUTCOME**

Significant change occurred to key management information processes during the reporting period, with the introduction of the new computer systems SAP Financials and SAP HR/Payroll. The records management system, including ministerial and liaison correspondence, was also replaced. These significant changes were achieved with little disruption, and served to illustrate the extent to which the Department's management of business operations relies on corporate systems.

The payroll component of the SAP HR/Payroll system was successfully implemented within the scheduled timeframe. The second phase of implementation is scheduled to be completed by 30 September 1999.

**PERFORMANCE MEASURE**

*Users regard departmental corporate systems as the authoritative source of accurate and reliable information.*

**PERFORMANCE OUTCOME**

New systems have replaced key corporate systems which were not Year 2000 compliant. These systems will provide users with improved capability and better quality management information. Due to the recent implementation of these systems assessment of user satisfaction has not been undertaken.

**PERFORMANCE MEASURE**

*Enhanced accountability through the timely identification of operational and system anomalies requiring remedial action.*

**PERFORMANCE OUTCOME**

The Continuous Improvement Program was promoted throughout the Department. The program is aimed at improving organisational efficiency and developing teamwork and cooperation to meet the needs of clients more effectively. Broad program objectives are improved productivity and cost-effectiveness, and securing the commitment of staff by engaging them in the current reform process.

**STRATEGY**

Foster innovative, cost-effective and appropriately targeted operational support and services.

**PERFORMANCE MEASURE**

*Targeted, timely provision of reference and research services.*

**PERFORMANCE OUTCOME**

The Lionel Murphy Library assisted all areas of the Department by providing a collection of up-to-date material in electronic and hard copy, and by providing a high level of research and reference services. The library provided support and assistance with the separation of the AGS library from the departmental library. The library continued to support the law libraries of Western Samoa, Nauru and Tonga by providing legal materials and professional services and advice.

**PERFORMANCE MEASURE**

*Client satisfaction with service quality, availability, timeliness and cost.*

**PERFORMANCE OUTCOME**

The delivery of IT infrastructure services across a broader client base within the Department lowered unit costs through increased economies of scale, and led to greater consistency of service outcomes. Client surveys identified high levels of satisfaction with the IT services provided.

Feedback showed that the provision of general support services to the Department was regarded as cost-effective, timely and of a high quality. Service levels are also monitored through an ongoing review process.

**PERFORMANCE MEASURE**

*Comparative performance with public sector and industry best practice in the provision of support services.*

**PERFORMANCE OUTCOME**

Benchmarking against industry standards has yet to be undertaken. A survey to gauge the satisfaction of departmental clients with the Division's provision of general support services, including records management, building maintenance and internal conference facilities, indicated that client needs and expectations were fulfilled and in some cases exceeded. The results accorded with general feedback from clients regarding a variety of support services provided.

**PERFORMANCE MEASURE**

*Reviews of anti-dumping decisions conducted in accordance with legislative requirements and within the statutory timeframe.*

**PERFORMANCE OUTCOME**

Two reviews were conducted during the reporting period: a review of a decision by the Chief Executive Officer of the Australian Customs Service to reject an application for publication of a dumping duty notice, and a review of a decision by the Minister for Justice and Customs to publish a dumping notice in respect of woven polypropylene primary carpet-backing fabric exported from Saudi Arabia and Belgium. Both were completed within the statutory timeframe.

**PERFORMANCE MEASURE**

*The implementation of an effective individual performance monitoring program providing for regular performance feedback, and agreement to personal development plans.*

**PERFORMANCE OUTCOME**

As a provision of the *Performance, Cooperation and Change Agreement 1998*, the Program for Performance Improvement commenced on 1 March 1999 and was progressively implemented across the Department.

The program encompasses both the performance feedback and assessment processes. It is aimed at aligning individual goals with team performance and corporate objectives, identifying and addressing the developmental needs of staff and encouraging managers to engage in regular two-way performance feedback. The administration of the program has been devolved to divisions.

The Workplace Relations Committee will commence a review of the program by December 1999 and recommend any changes to it for the next certified agreement. The current certified agreement expires on 30 June 2000.

## 1.2 Civil Law Division

### SUB-PROGRAM OBJECTIVE

Protection of the rights of individuals and provision of access to justice through development of appropriate domestic and international laws and structures.

### ROLE

The Civil Law Division promotes and enhances the protection of the rights of individuals and their access to justice by developing appropriate legal structures. The Division provides advice and formulates legislative initiatives in the areas of administrative law, human rights and humanitarian law, legal procedure, judicial administration and alternative dispute resolution (except in family law). It is also responsible for international legal cooperation in matters of civil procedure.

The Division coordinates support for the Standing Committee of Attorneys-General (SCAG) and for the Secretary as a member of the Administrative Review Council (ARC). It provides research and secretariat support for the National Alternative Dispute Resolution Advisory Council and the Federal Costs Advisory Committee, and coordinates the Department's law and justice amendment legislation.

The Division is organised into the following components:

The **Civil Justice Branch** provides advice on matters relating to Commonwealth courts and tribunals, access to justice and administrative law issues. It administers a range of Acts including the *Judiciary Act 1903*, the *Jurisdiction of Courts (Cross-vesting) Act 1987*, the *Law Officers Act 1964*, the *Administrative Decisions (Judicial Review) Act 1977*, the *Administrative Appeals Tribunal Act 1975*, Part IV of the *Family Law Act 1975*, the *Federal Court of Australia Act 1976* (except parts IIIA and IVA) and the *High Court of Australia Act 1979*.

The branch is responsible for processing appointments to Commonwealth courts and a number of tribunals. The branch provides advice on alternative dispute resolution and supports the National Alternative Dispute Resolution Advisory Council. It also assists the Secretary in his membership of the Administrative Review Council and is responsible for consideration and implementation of ARC reports.

The **Human Rights Branch** provides advice on a wide range of human rights issues and administers discrimination legislation including the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* and the *Disability Discrimination Act 1992*, as well as the *Human Rights and Equal Opportunity Commission Act 1986*. The branch also provides advice on issues relating to humanitarian law.

The **Legal Procedure Unit** is responsible for the *Service and Execution of Process Act 1992*, the *Evidence Act 1995*, the *Evidence and Procedure (New Zealand) Act 1994*, censorship legislation and implementation of the Australian Law Reform Commission (ALRC) reports *Choice of Law* and *Costs Shifting: Who Pays for Litigation?* In addition, the unit is developing arrangements with New Zealand on a range of procedural

and enforcement matters.

### Resources Summary – Sub-program 1.2 Civil Law Division

	1997-98	1998-99	1998-99
	Actual	Estimate	Actual
	\$(000)	\$(000)	\$(000)
<b>Appropriation Bill No. 1</b>			
Running Costs (RC)			
• Salaries (120-1) (p)	12	3,871	3,390
• Other (120-1) (p)	177	2,019	1,300
Legal Practice			
• Salaries (121-1) (p)	3,498	–	–
• Other (121-1) (p)	1,545	–	–
<b>RUNNING COSTS APPROPRIATIONS</b>	<b>5,232</b>	<b>5,890</b>	<b>4,690</b>
Other Program Costs			
• Grants to Australian Organisations (120-2-01) (p)	212	253	211
• International Bodies-Membership Contributions (120-2-02) (p)	78	84	100
• Compensation & Legal Expenses (120-2-04) (p)	526	450	304
<b>TOTAL APPROPRIATIONS</b>	<b>6,022</b>	<b>6,677</b>	<b>5,305</b>
Adjustments affecting outlays			
• Revenue			
- Miscellaneous	4	10	7
• Section 31 (FMA Act) Receipts	22	17	60
<b>TOTAL OUTLAYS</b>	<b>6,022</b>	<b>6,650</b>	<b>5,238</b>
STAFFING			
Staff Years	57.5	59.7	42.5

These figures are expressed in cash terms. The accompanying audited Financial Statements are presented in accrual format. 1997-98 actual figures have been adjusted to reflect actual Support Group costs on the split of the AGS from the Department.

### STRATEGY

Pursue a range of measures for enhancing legal structures, processes and procedures in areas such as courts and tribunals administration and alternative dispute resolution.

### PERFORMANCE MEASURE

*The degree to which initiatives:*

- *increase equity and access to justice;*
- *implement government policy and take account of client group requirements;*
- *are effective and efficient.*

### PERFORMANCE OUTCOME

*Federal Magistrates Service:* The Division continued to develop a proposal to establish a Federal Magistrates Service as a lower level federal court to undertake the less complex matters currently handled by the Federal Court and the Family Court. In December 1998 the Government announced that it had made a decision in principle to establish the Federal Magistrates Service, and in May 1999 announced that it had allocated a

total of \$27.9 million over four years to do so.

Following consultation with the Federal Court, the Family Court, the Law Council of Australia and other stakeholders, legislation to establish the new court was drafted and introduced by the Attorney-General into the House of Representatives on 24 June 1999. The Division is working closely with the Federal Court and the Family Court to establish arrangements for the Federal Magistrates Service to share accommodation, staff and infrastructure wherever possible to avoid duplication and unnecessary cost.

*Restructure of merits review tribunals:* The Division continued work to implement the Government's decision to amalgamate four merits review tribunals to form a new tribunal to be called the Administrative Review Tribunal (ART). This amalgamation had been recommended by the ARC in its *Better Decisions* report. Drafting instructions were developed for the legislation to establish the ART, although other government priorities meant that the legislation was not ready for introduction by the end of the reporting year. Detailed planning continued of the practical aspects of the amalgamation, such as accommodation issues and information technology, in consultation with the tribunals and their departments.

*Small business access to the legal system:* The Division continued its review of small business access to the legal system. The review was one element of a package of measures announced in the Government's statement on fair trading, *New Deal: Fair Deal*, in September 1997.

The review team consulted widely with small business throughout Australia, small business advisers and peak organisations, the courts and other relevant bodies about the difficulties small businesses face in using courts and tribunals to resolve disputes. As part of the review the Attorney-General released two consultation papers which attracted 64 submissions. The review team also explored alternatives to litigation, with the National Alternative Dispute Resolution Advisory Council providing valuable advice on this aspect of the review.

The Division commissioned a survey of small business disputes to assist the review. The survey, conducted by Marsden-Jacob and Brian Sweeney and Associates as part of the Yellow Pages Small Business Index, sought information from small business operators about the nature of disputes and how they are handled.

*Administration of the federal court system:* The Division provided advice to the Attorney-General on the operation of the justice system and issues relating to jurisdiction of federal courts. The branch also assisted the Attorney-General in relation to the making of 35 appointments to federal courts and tribunals. This included 10 judicial appointments.

## STRATEGY

Develop effective policy and legislation.

## PERFORMANCE MEASURE

*Satisfaction of the Attorney-General and client groups with policy initiatives developed.*

## PERFORMANCE OUTCOME

*Cross-vesting decisions:* Cross-vesting arrangements, under which jurisdiction was cross-vested between federal, State and Territory courts to overcome uncertainties about the jurisdictional limits of those courts, were ended by the High Court decision in *Re Wakim* and other cases challenging the corporations law cross-vesting scheme and the general cross-vesting scheme. The High Court, in a decision handed down on 17 June 1998, held that federal courts cannot be given State jurisdiction.

The decision had great significance for the operations of the justice system. Such a decision was anticipated and considerable preparatory work was undertaken by the Commonwealth and the State and Territory governments. The Division's role included advising the Attorney-General on the broader implications of the High Court decisions and on the likely impact on the workloads of the Federal Court and the Family Court.

Cross-vesting issues are also addressed in the annual report contribution of the Office of Legal Services Coordination.

*Interpretation legislation:* On 27 August 1998 the Attorney-General issued a discussion paper seeking comments on the content and use of interpretation legislation. The paper, prepared by officers of the Attorney-General's Department and the Office of Parliamentary Counsel, followed a recommendation of the House of Representatives Standing Committee on Legal and Constitutional Affairs that the *Acts Interpretation Act 1901* be reviewed and rewritten. Nineteen submissions were received.

The Division prepared an urgent amendment to the Acts Interpretation Act to address the implications of a decision of the Federal Court in *Foster v Attorney-General*, handed down on 12 October 1998. That decision related to the validity of authorisation by ministers enabling other ministers to exercise powers, and had serious implications for government administration. The Acts Interpretation Amendment Bill 1998 was introduced into Parliament on 11 November 1998 and, following passage through both Houses, commenced on 21 December 1998.

*Asia-Pacific Judicial Forum:* In consultation with AusAID, the Division assisted the former Chief Justice of the High Court, Sir Gerard Brennan, to develop a proposal to establish an Asia-Pacific Judicial Forum. The forum, launched in September 1998, was established to enable judicial leaders in the region to discuss major international legal issues. The forum will also provide seminars aimed at the training needs of developing country members.

*Statute stocktake:* A Bill to repeal 96 Acts that had no further operation was introduced and passed by the House of Representatives. This Bill partly implemented the commitment given in the Government's 1996 law and justice policy to repair existing legislation and remove laws no longer required.

*Evidence Act:* Minor amendments to the Act were included in the Law and Justice Legislation Amendment Bill which was passed by the House of Representatives on 28 June 1998. The amendments:

- gave full effect to regulations, made since the commencement of the Act in 1995, providing for evidentiary effect for a ministerial certificate or other document;
- accommodated the Family Court's practice of taking evidence in chief by affidavit;
- extended the operation of some sections of the Act to proceedings in all Australian courts in relation to certain forms and similar documents received by Commonwealth departments and agencies.

Further amendments to the Evidence Act were developed in consultation with the Evidence Act Monitoring Committee.

*Costs shifting:* Consultations on, and analysis of, the 66 recommendations made by the Australian Law Reform Commission in its report *Costs Shifting: Who Pays for Litigation?* (ALRC 75) were completed. It is expected that further consultations with the judiciary and the legal profession will occur before reform proposals are finalised.

*Evidence and Procedure (New Zealand) Act:* Regulations under this Act were made prescribing the Supreme Court of Tasmania so that it may obtain evidence from New Zealand by video link or telephone, and officers of the court may assist New Zealand courts to obtain evidence by video link or telephone from Australia.

*Service and Execution of Process Act:* Proposals for amendment of the Act were formulated in consultation with the States and Territories to accommodate new State and Territory procedures and other matters.

*Censorship:* Legal policy advice was provided on a wide range of censorship issues. These included amendments to the *Classification (Publications, Films and Computer Games) Act 1995*, issues arising from the Government's censorship policies and introduction of full cost recovery for the Office of Film and Literature Classification.

*Hague conventions:* An issues paper was published, and consultations conducted with the legal profession, on proposals for a new Hague Convention on Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters. The Division also coordinated Australia's representation at meetings in November

1998 and June 1999 of the Special Commission of the Hague Conference on Private International Law, which is drafting the convention.

An issues paper on the proposed ratification of the 1996 Hague Convention on the Protection of Children was published. The Division also coordinated a Commonwealth–State working group developing proposals for implementation of the convention in Australia. Ratification is expected to be approved by relevant Commonwealth–State ministerial councils early in 1999–2000.

*Judicial cooperation:* Negotiations in Canberra with a delegation from South Korean government agencies resulted in a draft judicial cooperation treaty between Australia and South Korea. The draft treaty deals with the taking of evidence and the service of process in international civil litigation. Public consultation on the draft is taking place prior to finalisation of the treaty early in 1999–2000.

*Human rights legislation:* The Human Rights Legislation Amendment Bill (No. 1) 1999 was reintroduced into the Parliament in December 1998. The Bill responds to the High Court's 1995 decision in *Brandy v Human Rights and Equal Opportunity Commission* that the Human Rights and Equal Opportunity Commission (HREOC), as an administrative body, has no power to make a final determination of the rights of the parties to a dispute. The Bill proposes to maintain HREOC's conciliation role, but to provide parties with direct access to the Federal Court should conciliation prove unsuccessful. This will enable parties to obtain a timely and enforceable determination of their rights. The Bill also proposes to implement reforms of HREOC's management and complaints-handling process to promote consistency and best practice.

The Human Rights Legislation Amendment Bill (No. 2) was reintroduced into the Parliament in February 1999. The Bill aims to restructure HREOC so that it is comprised of a president and three deputy presidents. Each deputy president will be responsible for one of three particular areas — human rights and disability; social justice and sex discrimination; and equal opportunities. The Bill also proposes to rename HREOC the Human Rights and Responsibilities Commission.

The Bill will clarify the new commission's priorities, which are to educate Australians about human rights and discrimination and to issue practical guidelines to assist business and the community in understanding the issues involved.

*Disability issues:* The Australian Transport Council, consisting of Commonwealth, State and Territory transport ministers, referred to the Attorney-General draft disability standards for possible promulgation under the Disability Discrimination Act (DDA). The standards are designed to provide access to mainstream public transport for people with a disability. A regulation impact statement was prepared which contained a detailed cost and benefit analysis of the draft standards for all modes of public transport, particularly buses, trains, trams and ferries. The impact statement was made available to the Australian Transport Council for its consideration on 30 April 1999.

Regulations were made under s. 47(2) of the DDA to prescribe certain laws from South Australia and NSW. The effect of that prescription was to render actions not unlawful if those actions were done in direct compliance with those laws which would otherwise have been in breach of the DDA. A motion to disallow the regulations in the Senate was defeated on 24 May 1999.

At the request of the Australian National Council on AIDS and Related Diseases, the Division completed a status report on the implementation, at the Commonwealth and State and Territory level, of the recommendations of the Legal Working Party of the Intergovernmental Committee on AIDS. The report is the first review of the implementation of recommendations agreed as priority areas between the Commonwealth and the States and Territories.

The Division also made a significant contribution to the ongoing work of developing draft disability standards in the areas of education, physical access to premises and access to Commonwealth information.

*Pregnancy discrimination:* The Division provided an officer to assist HREOC to undertake a national

inquiry into discrimination on the grounds of pregnancy or potential pregnancy, and the management of such discrimination in the workplace. HREOC released an issues paper and presented a report to the Attorney-General for consideration.

*Consolidation project:* Work commenced to examine the Attorney-General's proposal to consolidate the Racial Discrimination Act, the Sex Discrimination Act, the DDA and the HREOC Act in a single Act. In the further development of this project, the Division worked closely with HREOC and regularly consulted with the Office of the Parliamentary Counsel and the Office of International Law. It is intended that an exposure draft will be available early in 2000.

*Human rights forum:* The fifth Attorney-General's human rights forum for non-government organisations was held on 11 March 1999. The purpose was to discuss domestic human rights issues and to provide advice to the Attorney-General and other relevant agencies on current domestic human rights concerns and their policy implications.

Non-government organisations from a broad spectrum of bodies interested in human rights in Australia attended the forum, which was opened by the Attorney-General. Formal agenda items included disability issues, human rights education, indigenous issues, racism and mandatory sentencing. The Division will issue a regular newsletter to non-government organisations about domestic human rights issues.

*Compulsory age retirement:* The Division worked to implement the Government's decision in February 1999 to abolish compulsory age retirement for Commonwealth statutory office-holders, subject to suitable exemptions. Currently a significant number of Acts with provisions for statutory appointments set an age, usually 65 years, beyond which a person cannot be appointed or continue to hold office.

*Development of international instruments:* An officer of the Division was part of the Australian delegation to the working group drafting an optional protocol to the United Nation (UN) Convention on the Elimination of All Forms of Discrimination Against Women. The Division also provided extensive briefing to the delegation. The working group and the UN Commission on the Status of Women adopted the text of the protocol at the meeting.

The Division coordinated and provided briefing to the delegation to the working group elaborating a draft declaration on the rights of indigenous peoples.

*International reports:* The Division coordinated the Department's input into Australia's combined tenth, eleventh and twelfth periodic reports under the Convention on the Elimination of All Forms of Racial Discrimination. The branch also provided briefing for Australia's response to the urgent request from the Committee for the Elimination of Racial Discrimination for information on the functions of the Aboriginal and Torres Strait Islander Social Justice Commissioner.

*Women's Policy Officers' Network:* The Division continued to provide a departmental representative to the Women's Policy Officers' Network. The network comprises representatives of most Commonwealth departments and is convened by the Office of the Status of Women. It meets several times

each year to share

information on issues relating to women and associated policy and program developments.

*Genetic information:* The Division continues to monitor and provide comment and input when required on international and domestic human rights issues which arise in relation to developments in genetic information.

## **STRATEGY**

Provide high-quality legal services, legal advice and legal policy advice to the Attorney-General and Commonwealth departments and agencies.

## **PERFORMANCE MEASURE**

*Satisfaction of the Attorney-General and client groups with service provided. Objective,*

*comprehensive, accurate and timely advice.*

**PERFORMANCE OUTCOME**

*Administrative law and administrative review:* The Division continued to advise Commonwealth departments and agencies on Commonwealth administrative review policy and on the adequacy of proposals for administrative review in draft legislation and Cabinet submissions.

*Legal procedure:* The Division advised the Australian Government Solicitor and SCAG about proposed State and Territory legislation relating to choice of law and jurisdiction, and litigation.

It also advised the Attorney-General on the implications of some judgments, and papers were written for the Evidence Act Monitoring Committee analysing particular provisions of the Act and some judgments.

In addition, the Division provided information about arrangements for service of process, taking of evidence and enforcement of judgments to Australian lawyers and to other countries.

It also arranged for taking of evidence in Australia and service of foreign process in Australia, pursuant to the Hague Convention on the Taking of Evidence Abroad and various bilateral treaties, and as a matter of comity.

*Appointments:* On 6 April 1999 Dr William James Jonas AM was appointed as the Aboriginal and Torres Strait Islander Social Justice Commissioner for a period of five years. Prior to this appointment Dr Jonas was the Director of the National Museum of Australia.

Dr Jonas has held a number of senior academic positions in Australia and abroad. These include Director of Aboriginal Education at the University of Newcastle and Principal of the Australian Institute of Aboriginal and Torres Strait Islander Studies.

Also appointed during the year were a number of part-time HREOC hearing commissioners, who hear those complaints unsuccessfully conciliated by HREOC.

*Human rights education:* Australia has taken a significant initiative with regard to the proclamation by the UN General Assembly of the years 1995 to 2004 as the UN Decade for Human Rights Education. A national committee on human rights education was announced and the Division allocated funding for the initial operations of the committee.

The committee is a tripartite organisation which brings together the expertise and experience of the business sector, the community and the Government with the purpose of enhancing human rights education in Australia.

*Protecting children:* In 1994 the UN Commission on Human Rights established a working group to draft an optional protocol on the sale of children, child prostitution and child pornography. The Division has contributed to the annual drafting meetings and attended the fifth session of the working group, held from 25 January to 5 February 1999.

*Australia–China human rights dialogue:* The Division participated in the second Australian dialogue with the People's Republic of China on human rights issues, held in Canberra on 10–11 August 1998.

*National action plan:* The Attorney-General and the Minister for Foreign Affairs and Trade approved the preparation of a new national action plan on human rights.

Australia's last plan was submitted to the Commission on Human Rights in 1994. The plan was subsequently updated but is now in need of more substantial review. The development of the new plan will be coordinated by a steering committee made up of officers from the Department and the Department of Foreign Affairs and Trade.



## 1.3 Criminal Law Division

### SUB-PROGRAM OBJECTIVE

A fair and effective criminal justice system at the national level, which responds to government priorities and current and emerging needs, and addresses the international character of much criminal activity.

### ROLE

The responsibilities of the Criminal Law Division relate to criminal law and the Commonwealth criminal justice system. The Division is responsible for legal and policy advice and for assisting the portfolio Ministers — the Attorney-General and the Minister for Justice and Customs — in the administration and improvement of relevant legislation and international arrangements, multilateral and bilateral. The division comprises the **Criminal Justice Branch**, the **International Branch** and the **Criminal Law Reform Unit**.

The Division assists the Ministers with their responsibilities for criminal law reform, including development of the Commonwealth Criminal Code and the model criminal code, and review of laws relating to law enforcement powers and safeguards, sentencing and administration of Commonwealth prisoners, penalty levels and proceeds of crime and other confiscation provisions. Relevant statutes administered by the Attorney-General include the *Director of Public Prosecutions Act 1983*, the *Financial Transaction Reports Act 1988*, the *Proceeds of Crime Act 1987*, the *Crimes (Superannuation Benefits) Act 1989* and the *Crimes Act 1914*, including its provisions relating to Commonwealth prisoners.

The Division's international functions extend to extradition, mutual assistance in criminal matters and business regulation, the status of foreign visiting forces and work on proposals with respect to international transfer of prisoners and an International Criminal Court.

The Division examines and advises on all draft legislation (including subordinate legislation) which impacts on Commonwealth criminal law, for example by creating or amending an offence, by conferring an intrusive power such as a power of entry or arrest, by affecting the privilege against self-incrimination or by raising issues relating to evidence or procedure in criminal matters.

The purpose of the Division's scrutiny of legislation is to ensure that any proposals accord with Commonwealth criminal-law policy and are in a form acceptable to the Parliament and its committees (principally the Senate Scrutiny of Bills Committee). The focus is on providing practical solutions to problems. The scrutiny process impacts on social justice by ensuring that different regulatory regimes do not apply different standards without justification. This is particularly important where personal liberty might be at stake.

### Resources Summary – Sub-program 1.3 Criminal Law Division

	1997-98	1998-99	1998-99
	Actual	Estimate	Actual
	\$(000)	\$(000)	\$(000)
<b>Appropriation Bill No. 1</b>			
Running Costs			
• Salaries (121-1) (p)	2,460	2,590	2,569
• Other (121-1) (p)	1,006	1,227	1,039
<b>RUNNING COSTS APPROPRIATIONS</b>	<b>3,466</b>	<b>3,817</b>	<b>3,608</b>
Other Program Costs			
• International Bodies - Membership Contributions (120-2-02) (p)	-		
• Compensation & Legal Expenses (120-2-04) (p)	30	20	341
<b>TOTAL APPROPRIATIONS</b>	<b>3,496</b>	<b>3,837</b>	<b>3,949</b>
Adjustments affecting outlays			
• Revenue			
- Miscellaneous	-	-	13
• Section 31 (FMA Act) Receipts	6	7	12
<b>TOTAL OUTLAYS</b>	<b>3,490</b>	<b>3,830</b>	<b>3,924</b>
STAFFING			
Staff Years	35.4	36.7	33.9

These figures are expressed in cash terms. The accompanying audited Financial Statements are presented in accrual format. 1997-98 actual figures have been adjusted to reflect actual Support Group costs on the split of the AGS from the Department.

### STRATEGY

Improve and update Commonwealth criminal laws.

### PERFORMANCE MEASURE

*Submission to the Attorney-General and the Minister for Justice and Customs of practical reform proposals in accordance with a timetable for progressive development of the Commonwealth Criminal Code. Progressive harmonisation of other statutes aiming at completion of harmonisation by 1999-2000.*

### PERFORMANCE OUTCOME

Proposals for implementation of the model criminal code report *Theft, Fraud and Related Offences* in the Commonwealth Criminal Code were approved by the Government for implementation when parliamentary time permits. The Office of Parliamentary Counsel commenced drafting the Bill but this task was not completed during the reporting period.

The harmonisation of other statutes continued but it is not expected the performance target of 1999-2000 will be reached. Steps have been taken to address difficulties being experienced in relation to this issue.

### PERFORMANCE MEASURE

*Timely submission of proposals for new or amending legislation, in accordance with the Attorney-General's priorities, with special priority given to urgent amendments. All legislative proposals developed through the appropriate consultative processes. Appropriate advice and support to Ministers and their offices in progressing Bills through the Parliament.*

## PERFORMANCE OUTCOME

A large amount of legislation for which the Division is responsible was introduced into, or passed by, the Parliament in 1998–99.

The War Crimes Amendment Bill 1999 was introduced on 23 June 1999. The Bill was originally introduced in June 1998, but lapsed as a result of the federal election in October 1998. The Bill is designed to remove impediments to the extradition of persons sought in respect of war crimes committed during World War II.

The *Crimes Amendment (Forensic Procedures) Act 1998* received Royal Assent on 23 July 1998 and commenced on 23 January 1999. The legislation regulates the authorisation and conduct of forensic procedures on persons suspected of indictable offences against Commonwealth law, and clarifies the powers available to police to conduct forensic procedures.

The Forensic Procedures Regulations were approved by the Federal Executive Council on 17 December 1998. The regulations prescribe the persons who are appropriately qualified to carry out a forensic procedure. The regulations commenced on 24 January 1999.

The Crimes Amendment (Fine Enforcement) Bill 1999 was introduced into the House of Representatives on 30 June 1999. The Bill amends the Crimes Act to allow court officers, as well as magistrates, to impose penalties on federal fine defaulters where there is some scope for an appeal to a magistrate from the officer's decision. The Bill is a significant step in the Commonwealth's ongoing efforts to ensure that federal fines are enforced at the least possible cost to the taxpayer and at the least cost and inconvenience to the States and Territories which enforce the fines.

The Australian Security Intelligence Organization (ASIO) Amendment Bill permits ASIO to access the Australian Transaction Reports and Analysis Centre (AUSTRAC) database of reportable transactions, with strict accountability and subject to the inspection of ASIO's records by the Inspector-General of Intelligence and Security. The Bill was introduced in March 1999.

The Director of Public Prosecutions (DPP) Regulations were amended to remove any doubt that the Commonwealth DPP has authority to give legal advice to Commonwealth authorities with respect to their law enforcement functions before that authority becomes party to a proceeding, and to State and Territory authorities with respect to matters relating to the investigation or prosecution of offences against Commonwealth law.

The Division was involved in the urgent preparation and passage of the *Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999* which was introduced into the Parliament on 10 March 1999 and passed by 3 June 1999. This followed extensive consultation between departmental officials and the Joint Standing Committee on Treaties. This committee reported on the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and on an exposure draft of the Bill, on 2 July 1998. The passage of the Act allows Australia to proceed with ratification of the convention.

The Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1999 was introduced into the Senate on 24 March 1999. The purpose of the Bill is to modernise offences that fall within the Commonwealth's jurisdiction relating to slavery, sexual servitude and deceptive recruiting for sexual services. The Bill was passed by the Senate on 29 June 1999 and is awaiting debate in the House of Representatives. The Bill is based on the model offences proposed by the Model Criminal Code Officers Committee which includes State, Territory and Commonwealth criminal law advisers. In January 1999, following nation-wide consultation, SCAG released the committee's report on model slavery and sexual servitude offences. It is important that the Commonwealth sexual servitude offences, which are based on the report's recommendations, be accompanied by similar State and Territory offences. This view has been conveyed to State and Territory governments through SCAG by the Minister for Justice and Customs.

#### PERFORMANCE MEASURE

*Relevant legislative proposals and draft legislation of other areas and portfolios scrutinised for conformity with Commonwealth criminal law policy.*

#### PERFORMANCE OUTCOME

The purpose of scrutiny is to ensure that offence provisions, enforcement powers and provisions relating to the proof of offences are framed in such a way as to meet the following objectives:

**Effectiveness** – offence, enforcement and related provisions should be framed to ensure that there is an adequate and effective deterrent to the conduct prohibited by the relevant offence provisions. For example, penalties should be sufficiently high and enforcement powers sufficiently broad to ensure that offence provisions are taken seriously.

**Civil liberties** – offence, enforcement and related provisions should be framed to ensure that civil liberties are not unnecessarily or unduly contravened, and that offence provisions are not unduly punitive. Such provisions should not go beyond what is necessary to achieve the aims that underpin them. Members of the community have a right to expect that they can go about their business without unjustified interference. They also have a legitimate right to expect that any punishment for misconduct will be proportionate.

**Clarity and coherency** – offence, enforcement and related provisions should be framed so that those who consult Commonwealth statutes are in no doubt as to what the law requires of them, and of the consequences of any contravention of the law. That is a fundamental requirement of the rule of law. To comply with this requirement the framing of offence, enforcement and related provisions must take account of established precedents and patterns of interpretation.

A large volume of legislation was scrutinised during 1998–99. In one fortnightly period, for example, the Division scrutinised the Taxation Administration Amendment (GST) Bill, the Australian Business Number Bill, the Trade Practices Act Amendment (Tax Reform) Bill, the Fringe Benefits Reporting Bill, the Financial Sector (Transfer of Business) Bill, the Ozone Protection Amendment Bill, the Private Health Insurance Incentive Bill, the Great Barrier Reef (Prohibition on Mining) Regulations and the A New Tax System (Bonuses for Older Australians) Bill.

Together with the Department of Communications, Information Technology and the Arts, the Division was involved in the passage of the *Broadcasting Services Amendment (Online Services) Act 1999* within a tight timeframe. The Act contains a framework for both self-regulation and external regulation with regard to the hosting of offensive and potentially offensive material by Internet service providers.

The Division also provided input to a number of parliamentary inquiries, including inquiries by the Senate Standing Committee on the Scrutiny of Bills regarding penalty levels for Commonwealth offences and entry powers under Commonwealth legislation.

#### STRATEGY

Contribute to the development of, and Australian participation in, international arrangements, programs and proposals in the criminal justice field.

#### PERFORMANCE MEASURE

*Extradition and mutual assistance casework handled in accordance with deadlines so that process does not break down for preventable reasons. Policy advice, legal advice, briefing and other support provided to the Attorney-General and the Minister for Justice and Customs as required.*

**Attorney-General's Department**

#### PERFORMANCE OUTCOME

Extradition casework is handled in accordance with statutory deadlines and international treaty obligations. During 1998–99 the number of new extradition requests made by Australia was significantly less than for 1997–98. The number of extradition requests made to Australia was similar to that for 1997–98.

However, the increasing use of procedural challenges to the extradition process in Australia and overseas, and the complexity of some extradition cases, meant that cases generally took longer to complete. Further details are at Appendix 11.

During 1998–99 there was an increase in the number of requests made to Australia for assistance in criminal matters, although there was a decrease in the number of requests made by Australia. The number of outstanding requests remained at a level similar to that of the previous year. Many of the outgoing requests involved major fraud or large-scale drug trafficking and money laundering, and were quite extensive in terms of the wide-ranging nature of the assistance requested. Several incoming requests involving major fraud and money laundering were particularly resource-intensive.

During 1998–99 Australia made mutual assistance requests to several countries to which requests had not been made before, including the Czech Republic, Fiji, Hungary and Kuwait.

Three of the requests handled during the year (one incoming and two outgoing) sought assistance in arranging for evidence to be taken via video link. This is a growing area in the field of mutual assistance in criminal matters. All of those requests were executed efficiently and effectively.

For the first time since 1991 the Division coordinated mutual assistance requests (one incoming and one outgoing) which involved arranging for the transfer of a prisoner to give evidence in prosecution proceedings. Both requests involved complex procedures and arrangements but were successfully executed within limited time frames.

The Attorney-General is authorised under the *Migration Act 1958* to issue Criminal Justice Certificates to non-citizens who are required in Australia for criminal justice purposes. A breakdown of the relevant figures is at Appendix 11.

The International War Crimes Tribunal remained active in seeking Australian assistance during 1998–99. The Division coordinates arrangements with other relevant departments and agencies to locate and interview potential witnesses and possible suspects.

The Attorney-General and the Minister for Justice and Customs were provided with policy and legal advice, as well as briefing and other support, in relation to extradition and mutual assistance matters. During the course of the year a number of extradition cases, such as the Oates request to Poland and the Foster request by the United Kingdom, received significant media coverage. Both cases are continuing. The Oates extradition request was complicated by a challenge to the validity of certain charges which were the subject of the extradition proceedings. In June 1999 the High Court upheld the validity of the charges.

#### PERFORMANCE MEASURE

*Treaties and other international arrangements updated and kept under review in accordance with current policies and programs and as developments require. Advice on current and proposed arrangements, briefing and other support provided to the Attorney-General as required.*

#### PERFORMANCE OUTCOME

The Division provided progress reports on Australian implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which was signed

on 7 December 1998 and came into force on 15 February 1999. With the passage of the Criminal Code Amendment (Bribery of Foreign Public Officials) Act, Australia is now in a position to ratify the convention.

Australia's international criminal justice interests were advanced by continuing efforts to increase the network of treaties on extradition and mutual assistance in criminal matters where appropriate.

During the year an extradition treaty with South Africa and a mutual assistance in criminal matters treaty with Sweden were signed. An extradition treaty with Paraguay entered into force, and regulations giving effect to a non-treaty extradition arrangement with Estonia commenced. A mutual assistance in criminal matters treaty with Indonesia was due to enter into force in July 1999, and three other signed mutual assistance treaties were expected to enter into force before the end of 1999.

Negotiations for extradition and mutual assistance treaties continued with several countries.

#### PERFORMANCE MEASURE

*Establishment of a Commonwealth-State scheme for the international transfer of prisoners progressed as far as possible within Commonwealth and State legislative programs and priorities.*

#### PERFORMANCE OUTCOME

A proposed scheme for the international transfer of prisoners will not commence until complementary legislation has been passed in each of the participating States and Territories (comprising all jurisdictions except the Northern Territory). During 1998-99 legislation was enacted in Victoria and the Australian Capital Territory, and a Bill was introduced into the Parliament of Western Australia. The other participating jurisdictions enacted appropriate legislation during 1997-98.

Once the domestic legislation is in place Australia will seek to enter into appropriate international treaty arrangements. In anticipation of this, Australia has resumed negotiations with Thailand on a draft bilateral treaty and is examining the possibility of accession to the Council of Europe Convention on the Transfer of Sentenced Persons.

#### PERFORMANCE MEASURE

*Australia's position on the proposed International Criminal Court developed and presented effectively at international meetings. Proposals for constructive participation in the United Nations criminal justice program, multilateral conventions and South Pacific technical cooperation developed and pursued to extent of available resources. Appropriate support provided for Australian representation at Commonwealth law ministers and senior officers meetings and the Pacific Islands Law Officers Meeting (PILOM).*

#### PERFORMANCE OUTCOME

The Division continued to play a key role in respect of Australia's participation in UN negotiations on the establishment of an International Criminal Court. The Division was represented on the Australian delegation to the Rome diplomatic conference in mid-1998, at which the statute for the court was adopted. An officer of the Division prepared draft rules of procedure and evidence for the court and participated as a member of the Australian delegation to the first meeting of the Preparatory Commission for an International Criminal Court in February 1999.

The 1998 Pacific Islands Law Officers Meeting was held in Canberra from 19-21 October, the first PILOM to be held in Australia since 1989. PILOM provides a forum for senior law officers to meet and discuss legal policy matters of mutual interest. The meeting was opened by the Minister for Justice

#### Attorney-General's Department

and Customs and chaired by the Secretary of the Department. The 1998 meeting was attended by 13 representatives of the South Pacific Forum countries and was highly productive.

The Attorney-General led an Australian delegation at the meeting of Commonwealth law ministers held in Trinidad and Tobago from 5–7 May 1999. This meeting considers legal and related issues of common interest, including cooperative law enforcement arrangements within the Commonwealth; support for human rights and good governance in Commonwealth countries; and assistance in relation to law and justice matters for smaller and less developed countries. The ministers' meeting was preceded by a meeting of senior officials of Commonwealth law ministries. An officer of the Division accompanied the Deputy Secretary at both meetings.

The Division played a key role in Australia's participation in UN negotiations for the elaboration of a Convention against Transnational Organised Crime and associated instruments. Officers from the Division were members of the Australian delegations at a series of meetings held between August 1998 and July 1999. The convention is intended to provide a legal framework for concerted action against organised crime. Negotiations are expected to conclude by the end of 2000.

The Division is also responsible for coordinating Australia's involvement in the UN Commission on Crime Prevention and Criminal Justice. Australia is an observer at the commission. At the eighth session, held in Vienna on 27 April – 6 May 1999, the Australian delegation achieved solid results in respect of resolutions on juvenile justice, community involvement in crime prevention and illicit manufacturing of, and trafficking in, firearms.

## **Strategy**

Support the Attorney-General and the Minister for Justice and Customs in the administration of relevant portfolio legislation and related responsibilities of office.

### **PERFORMANCE MEASURE**

*Setting up and maintaining a system for the efficient administration of matters relating to Commonwealth prisoners and applications by persons convicted of Commonwealth offences. Processing of such matters and applications within deadlines and to the satisfaction of the Attorney-General and the Minister for Justice and Customs.*

### **PERFORMANCE OUTCOME**

The Division provides advice to the Attorney-General, the Minister for Justice and Customs and senior departmental officers acting as delegates in relation to a range of matters concerning federal offenders. The matters on which the Division advises include applications for parole; for the early release of a prisoner on licence because of exceptional circumstances; for interstate transfer for trial and on welfare grounds; for permission to travel overseas while on parole or licence; for pardons; and for referrals to State Courts of Criminal Appeal for remission of sentences and remission of fines.

Some cases which are submitted to a departmental delegate for decision are initially submitted to the scrutiny of a panel. Such cases include release on parole where the offender was sentenced to 10 years or more imprisonment, certain applications for early release on licence and cases where the revocation of a parole order or licence is recommended.

The Attorney-General, the Minister for Justice and Customs and the delegates made decisions in 177 matters relating to federal offenders submitted to them by the Division during 1998–99. Ten other fine remission cases were finalised by alternative means. Five, for example, were closed due to the lack of response by the applicant.

The federal offenders database was upgraded during the year and checked for Year 2000 compliance. There were approximately 700 federal prisoners in custody at 30 June 1999.

#### PERFORMANCE MEASURE

*Timely and practical advice, briefing and other support provided to the Attorney-General and the Minister for Justice and Customs with respect to their statutory and other responsibilities, particularly in relation to prosecutions, proceeds of crime and cash transaction reporting.*

#### PERFORMANCE OUTCOME

The Minister for Justice and Customs was briefed in relation to her decision, under s. 30(4A) of the Proceeds of Crime Act, to authorise the Commonwealth to be registered as the owner of real property to the value of \$960 000 that had been forfeited under s. 30 of the Act.

The Minister was also briefed on and made, within the required time, a determination of the amount in the Confiscated Assets Reserve that could be transferred to the Consolidated Revenue Fund under s. 34D of the Proceeds of Crime Act.

The Minister was briefed in relation to her authorising the DPP, under s. 16 of the Crimes (Superannuation Benefits) Act, to apply for superannuation orders in respect of eight defendants who had been convicted of offences involving corruption and sentenced to imprisonment for more than 12 months. (A superannuation order cancels a defendant's entitlement to all Commonwealth-funded superannuation benefits.)

The Division is responsible for furnishing to the Minister certificates concerning controlled law enforcement operations conducted under the Crimes Act. A total of 148 certificates on controlled law-enforcement operations were provided to the Minister in the reporting period. Of those certificates, 55 related to 1997–98. The Minister must also table annual reports on criminal law related matters. In 1998–99 the Division prepared annual reports on controlled operations, war crimes and the operation of the *Witness Protection Act 1994*.

#### STRATEGY

Promote improvement and rationalisation of criminal laws of all Australian jurisdictions.

#### PERFORMANCE MEASURE

*Timely and practical advice, briefing and other support to the Attorney-General and the Minister for Justice and Customs with respect to the model criminal code project. Efficient provision of secretariat and other services to the Model Criminal Code Officers Committee to maintain progress in development of the code and other cooperative law reform projects.*

#### PERFORMANCE OUTCOME

A number of final reports were presented by the Model Criminal Code Officers Committee: *Non-fatal Offences Against the Person* (September 1998), *Serious Drug Offences* (October 1998), *Slavery and Sexual Servitude Offences* (January 1999) and *Sexual Offences* (July 1999). The committee also prepared a discussion paper, *Model Forensic Procedures Laws and the Proposed National DNA Database*, which was released in May 1999. The paper built on the 1995 Model Forensic Procedures Bill which was prepared by the committee and followed in the preparation of Commonwealth, Victorian and South Australian legislation. The new model provisions are designed to ensure there are appropriate and consistent procedures for the collection and use of DNA information on the national DNA criminal investigation database system, which is to form part of the Government's CrimTrac initiative. The committee was asked by SCAG to develop the model legislation as quickly as possible so that legislation can be introduced in each jurisdiction in time for the creation of the database system in 2000.

#### PERFORMANCE MEASURE

*So far as practicable, constructive participation in ministerial councils and related officers' meetings to promote adoption of uniform, cooperative or complementary approaches on criminal law issues.*

#### PERFORMANCE OUTCOME

The Division prepared a paper on the merits of uniform national controlled operations and proceeds-of-crime laws for the purposes of a Commonwealth initiative to place greater uniformity of law-enforcement legislation on the SCAG agenda. The Commonwealth will take joint responsibility with nominated States to develop proposals for draft uniform laws.

The Division also prepared a paper for SCAG detailing reform options for the transfer of prisoners under the Commonwealth *Transfer of Prisoners Act 1983* and complementary State and Territory legislation.

The Division was involved in the development within SCAG of draft model legislation governing crimes at sea.

A working group established by SCAG to develop model domestic violence laws completed its report in April 1999. The project was launched by the Prime Minister, premiers and chief ministers at the Domestic Violence Summit in November 1997. The public response was positive. Following consultation, a final report was released in April 1999.

The Division provided the secretariat for a working group to address problems associated with the prosecution of white-collar crime and general criminal trial procedures. The working group, a major SCAG initiative, will report by 30 August 1999. Issues being considered include sanctions for non-compliance with procedural reforms, improving the quality and timeliness of the preparation for trials, reducing the number of adjournments, 'right to silence' issues and resolving problems in relation to defence funding arising from the *Dietrich* case. The Division also completed significant work on other proposals designed to streamline the criminal justice system.

#### PERFORMANCE MEASURE

*Timely and practical advice, briefing, and other support to the Attorney-General and the Minister for Justice and Customs in responding to representations and proposals on criminal law issues generally.*

#### PERFORMANCE OUTCOME

During the reporting period the Division responded to 650 ministerial representations. This was significantly down on 1997-98 when 1989 responses were made, with a large proportion relating to a letter-writing campaign. The responses made within the required timeframe improved from approximately 70 per cent for non-campaign matters in 1997-98 to 81 per cent in 1998-99.

The Division prepared the Department's submission to the inquiry by the Parliamentary Joint Committee on the National Crime Authority (NCA) into controlled operations. The submission outlined existing laws and possible proposals for reform.

Urgent briefing was provided to the Ministers on a number of criminal law issues as they arose. The Division began work on a response to the report of the Australian Law Reform Commission entitled *Confiscation that Counts*. The Division also completed work on proposed amendments to the Crimes Act, the Financial Transaction Reports Act and the Crimes (Superannuation Benefits) Act. At 30 June 1999 these amendments had not been introduced.



## 1.4 Information and Security Law Division

### SUB-PROGRAM OBJECTIVES

To ensure that Australia's security interests are protected as a basis for the exercise of democratic rights and freedoms.

To facilitate the development of electronic commerce nationally and internationally by putting into place an appropriate legal framework and representing Australia's position at appropriate international forums.

To protect individual rights and freedoms in relation to copyright, privacy and information access.

### ROLE

The Information and Security Law Division provides advice on all aspects of information law including privacy protection, freedom of information, intellectual property law, the protection of sensitive information, electronic surveillance, telecommunications interception and legal aspects of the developing information society.

The Division consists of three branches. The **Information Law Branch** is responsible for the development of policy and administration of legislation relating to privacy, freedom of information and parliamentary privilege. The **Intellectual Property Branch** is responsible for copyright law and policy. The **Security Law and Justice Branch** is responsible for national security policy, including the administration of the *Australian Security Intelligence Organization Act 1979*, electronic surveillance, telecommunications interception and the legal framework for electronic commerce.

The Division was formed in February 1997 to bring together the disparate elements of information law and policy in the face of rapid developments in the information economy.

In addition to its security and law enforcement role, the Division has responsibility for monitoring Aboriginal justice issues, primarily through the Division's provision of secretariat support to the National Aboriginal Justice Advisory Committee which meets several times a year.

The Division collects statistics from all relevant agencies on the operation of the *Freedom of Information Act 1982* (the FOI Act) and the *Telecommunications (Interception) Act 1979*, and prepares annual reports for publication by the Attorney-General on the administration of those Acts, including those statistics.

**Resources Summary – Sub-program 1.4 Information and Security Division**

	1997-98	1998-99	1998-99
	Actual	Estimate	Actual
	\$(000)	\$(000)	\$(000)
<b>Appropriation Bill No. 1</b>			
Running Costs			
• Salaries (120-1) (p)	-	3,308	3,303
• Other (120-1) (p)	-	393	939
Legal Practice			
• Salaries (121-1) (p)	2,641	-	-
• Other (121-1) (p)	874	-	-
<b>RUNNING COSTS APPROPRIATIONS</b>	<b>3,515</b>	<b>3,701</b>	<b>4,242</b>
Other Program Costs			
• International Bodies - Membership Contributions (120-2-02) (p)	220	231	217
• Compensation & Legal Expenses (120-2-04) (p)	4	10	0
<b>TOTAL APPROPRIATIONS</b>	<b>3,739</b>	<b>3,942</b>	<b>4,459</b>
Adjustments affecting outlays			
• Revenue			
- Miscellaneous	-	5	1
• Section 31 (FMA Act) Receipts	150	130	353
<b>TOTAL OUTLAYS</b>	<b>3,589</b>	<b>3,807</b>	<b>4,105</b>
<b>STAFFING</b>			
Staff Years	38.8	40.0	46.5

These figures are expressed in cash terms. The accompanying audited Financial Statements are presented in accrual format. 1997-98 actual figures have been adjusted to reflect actual Support Group costs on the split of the AGS from the Department.

**STRATEGY**

Contribute to the development of a national and international framework to facilitate a secure global information infrastructure for the information society.

**PERFORMANCE MEASURE**

*Degree of acceptance by the national and international communities of policies which facilitate electronic commerce, protect privacy and meet law enforcement and national security requirements.*

**PERFORMANCE OUTCOME**

During 1998-99 privacy issues relating to the global information infrastructure were considered by the OECD Working Party on Information Security and Privacy and at an OECD ministerial conference in Ottawa in October 1998. The Division provided input to the OECD's Inventory of Instruments and Mechanisms Contributing to the Implementation and Enforcement of the OECD Privacy Guidelines on Global Networks. Privacy issues were also addressed through the Department's contribution to the development of Australia's strategic framework for the information economy, the development of the Government's public key infrastructure and the Business Entry Point initiative.

Substantial progress was made in developing a national legal framework that removes legal impediments to electronic commerce. The Electronic Transactions Bill 1999 was introduced into Parliament on 30 June 1999 after extensive consultation within the Government, with State and Territory governments and with the public. The Bill received international recognition as a leading example of appropriate framework legislation for electronic commerce.

**Attorney-General's Department**

The Bill is based on the report of the Attorney-General's Electronic Commerce Expert Group. The report, which was released for public comment in April 1998, recommended that the Government develop framework legislation for electronic commerce based upon the model law on electronic commerce developed by the UN Commission on International Trade Law (UNCITRAL). The report generated considerable public interest. Submissions were received from a range of government, professional and business organisations and were broadly supportive of the expert group's recommendations. In July 1998 the Attorney-General announced the Government's decision to implement those recommendations, with the exception of a recommendation on the form of the proposed legislation. The Government announced that it would instead develop a national uniform legislative scheme through SCAG. All Attorneys-General agreed in principle to the scheme in October 1998 and reaffirmed their commitment in April 1999. Work continued with the States and Territories on developing uniform legislation closely modelled on the Commonwealth's Bill.

The Attorney-General released a draft of the Electronic Transactions Bill for public comment in January 1999. Departmental officers conducted public seminars in Sydney and Melbourne to provide information on the draft and encourage feedback. Both seminars were well-attended. Seventy-three submissions on the draft were received, over half of which were from outside government. All submissions were broadly supportive of the intention, structure and content of the draft Bill. A number of changes were subsequently made to take into account comments received.

International consistency in the regulation of electronic commerce is of crucial importance in this area. As recommended by the expert group, the Bill is based on the UNCITRAL model law which is an internationally accepted template for electronic commerce that continues to grow in international importance. The model law forms the basis of legislation that has been enacted in a number of jurisdictions, including Singapore and Colombia. It is also central to the development of laws in a range of other jurisdictions, such as Hong Kong, and the uniform electronic commerce laws being developed in Canada and the United States.

The Division represents Australia at meetings of the UNCITRAL Working Group on Electronic Commerce. The working group is currently considering the development of uniform rules for electronic signatures. Involvement in the working group is important to ensure that the uniform rules are consistent with Australian policy on the information economy and do not disadvantage Australian business and consumers. The Division undertook public consultation in preparing for the February 1999 working group meeting. The Australian position at the meeting was consistent with the developing consensus.

Departmental officers were again elected to lead the OECD Working Party on Information Security and Privacy and the Asia-Pacific Economic Cooperation (APEC) Electronic Authentication Task Group. Both groups address policy aspects of electronic commerce and conduct international workshops. The contributions of both groups have received wide international acceptance by business, governments and other international bodies.

Departmental officers were invited to give presentations to a number of international conferences and seminars on aspects of electronic commerce.

## **STRATEGY**

Develop, promote and implement policy initiatives for the provision and regulation of telecommunications interception and the use of listening devices by law enforcement and national security agencies, while appropriately balancing individuals' privacy interests against other community interests.

#### **PERFORMANCE MEASURE**

*Satisfaction of the Attorney-General with development, promotion and implementation of policy initiatives.*

#### **PERFORMANCE OUTCOME**

The Division was closely involved in two reviews affecting telecommunications interception. The first was a review on telecommunications interception policy undertaken by the First Assistant Secretary of the Division, Mr Peter Ford. Amendments to the Telecommunications (Interception) Act in 1997 required a review to be carried out of the provisions conferring a power to issue warrants on nominated members of the Administrative Appeals Tribunal (AAT).

The review was also required to consider other amendments made in 1997. In addition, and independently of the statutory requirements, it was decided to extend the scope of the review to cover a number of other matters because the changing environment for telecommunications interception has given rise to other problems.

The second review, undertaken by Mr Dale Boucher, an associate member of the Australian Communications Authority, examined the longer term cost-effectiveness of telecommunications interception arrangements under the Telecommunications (Interception) Act. It is anticipated that the Division will be involved in the implementation of recommendations of both reviews.

On 21 April 1999 members of the Division presented a seminar on telecommunications interception at the Melbourne Town Hall. The seminar included speakers from the Division and guest speakers representing the Victoria Police, the AAT, the Commonwealth DPP and the Commonwealth Ombudsman. The seminar was attended by both State and Commonwealth government agencies.

#### **STRATEGY**

Provide prompt, high-quality legal and policy advice to ministers and other clients in the area of information, copyright and security law.

#### **PERFORMANCE MEASURE**

*Level of client satisfaction with timeliness and quality of advice provided.*

#### **PERFORMANCE OUTCOME**

There was a high level of acceptance of the advice provided to the Attorney-General and other agencies on the interpretation and application of the *Copyright Act 1968*. The Division advised other departments and agencies on the Commonwealth's obligations to pay equitable remuneration to owners of copyright under the government-use provision in the Copyright Act, and negotiated with copyright owners on behalf of other Commonwealth agencies.

Advice was also provided to the Attorney-General, other areas of the Department and other agencies on the interpretation and application of the *Privacy Act 1988*, the interpretation and administration of the FOI Act, the interpretation and administration of the *Parliamentary Privileges Act 1987*, defamation and a wide range of privacy and information access policy issues. These included the electronic information environment, health, law enforcement, FOI charges and the application of the FOI Act to an intranet facility used by Commonwealth and State agencies.

The Australian Security Intelligence Organization Legislation Amendment Bill 1999 was introduced into the House of Representatives on 25 March 1999. This Bill is intended to modernise the legislation to enable ASIO to meet its existing statutory responsibilities in more efficient and effective ways. The

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amendments reflect changes in ASIO's operational environment, particularly the impact of technological developments, and are not intended to extend ASIO's functions. The Attorney-General referred the Bill to the Parliamentary Joint Committee on ASIO which reported on 8 May 1999.

The Division assisted the Department of Defence in developing a revised policy regulating the call-out of the defence forces in aid of the civil power.

The UN *Ad Hoc* Committee on Measures to Eliminate Terrorism met in September 1998 and March 1999 to continue work on the development of conventions to suppress acts of nuclear terrorism and the financing of terrorism. The Division played an active and constructive role in these meetings. The committee made significant progress in March 1999 on a draft text for a convention on the suppression of terrorism financing.

The Division is involved in formulating legislation, for introduction in the Autumn 2000 session of Parliament, to implement the obligations of the Convention on the Safety of UN and Associated Personnel and the Convention against the Recruitment, Use, Financing and Training of Mercenaries, so that Australia may ratify these conventions.

The Division prepared briefings and Cabinet submissions for the Attorney-General in his role as a member of the National Security Committee of Cabinet. The committee considers matters of relevance to national security, including defence and intelligence matters. The Division also prepared briefings for the Secretary in his role as a member of the Secretaries' Committee on National Security. Most of the matters considered by the National Security Committee are first considered by the secretaries' committee.

The Division provided legal advice and assistance to ASIO, other intelligence agencies, the Australian Protective Service and other parts of the Department on a wide range of issues connected with national security.

The Division facilitated national counter-terrorism arrangements by providing legal and policy advice and assisting in the conduct of national exercises.

The Department was represented on the following inter-departmental committees connected with national security matters:

- Standing Interdepartmental Committee on Defence Exports;
- Biological Defence Advisory Committee;
- Interdepartmental Committee on Biological Weapons Convention Verification Protocol;
- National Civil Defence Advisory Committee.

The Department promoted consistency in statutory secrecy provisions by scrutinising proposed secrecy provisions for compliance with Commonwealth policy.

## STRATEGY

Promote Australia's interests in international forums and activities on information, copyright and security law relevant to Australia's interests.

## PERFORMANCE MEASURE

*Extent to which Australian objectives in international negotiations are reflected in the outcomes of negotiations.*

#### **PERFORMANCE OUTCOME**

Australia's position was successfully represented in meetings of the Standing Committee on Copyright and Related Rights convened by the World Intellectual Property Organisation (WIPO) in Geneva and in related regional consultations on possible new standards for copyright and related rights. The areas under consideration for possible new international standards are: performers' rights in their performances in films, television programs and other audio-visual productions; new legal protection for databases; and new protection for the rights of broadcasting organisations.

Several opportunities were taken to promote Australia's view of the future of copyright protection in the digital world. At the invitation of WIPO a representative from the Division presented papers to the regional workshop for Asia and the Pacific on copyright and the WIPO Internet treaties in Shanghai in October 1998, and to the Asian consultation on electronic commerce and intellectual property in Kuala Lumpur in June 1999.

The Division is represented on the delegation to the APEC Intellectual Property Experts Group. The Division's representative actively promoted progress on technical cooperation with APEC member economies in implementing the Trade-Related Aspects of Intellectual Property (TRIPS) agreement, in particular through papers addressing improved information exchange, enforcement of intellectual property rights and the design and sharing of public education efforts on intellectual property.

The Division arranged and participated in training requested by Thailand under a memorandum of understanding (MOU) on cooperation in intellectual property. The five days of training in June 1999 for the Thai Central Intellectual Property and International Trade Court involved 17 judges and a number of court officials. The team from Australia included the Hon. Justice Tamberlin of the Federal Court. The training was well received and both countries intend to participate in further cooperative ventures.

The Division was represented at a symposium in Noumea in February 1999 on the protection of traditional knowledge and expressions of indigenous cultures in the Pacific, a joint initiative of the UN Educational, Scientific and Cultural Organisation (UNESCO) and the Secretariat of the Pacific Community.

Australia's position on privacy was reflected in the declaration made by OECD ministers on the protection of privacy on global networks at their meeting in Ottawa. Officers of the Division also met with officials from the European Commission and the Council of Europe to discuss issues concerning privacy and the transfer of personal data. During 1998-99 an officer of the Division was re-elected chair of the OECD Working Party on Information Security and Privacy.

The Division continues to develop effective international contacts to discuss common issues relating to the telecommunications industry and law enforcement interests.

#### **STRATEGY**

Develop policy initiatives that appropriately balance the rights and interests of copyright owners, institutional copyright users and the community.

#### **PERFORMANCE MEASURE**

*Satisfaction of the Attorney-General with policy initiatives developed.*

#### **PERFORMANCE OUTCOME**

A number of wide-ranging reforms to the Copyright Act were passed in July 1998 implementing important copyright law priorities of the Government. The *Copyright Amendment Act (No. 1) 1998* included reforms to alter the ownership of copyright in the works of employed journalists and commissioned photographers; to allow importation of goods with copyright packaging and labelling without requiring the consent of

the copyright owner; and to improve the operation of the statutory licences in the Act for copying done by educational institutions, people with disabilities and the Government. The Government moved 28 amendments to the Bill. These were passed by Parliament and represented in part the Government's acceptance of recommendations made by the Senate Legal and Constitutional Legislation Committee in October 1997.

The Division also provided advice and assistance in the passage of the *Copyright Amendment (No. 2) Act 1998* in July 1998. The amendments remove the copyright owners' control over parallel importation of music compact discs (CDs), raising the possibility of lower priced CDs for Australian consumers. The reforms made by this Act were supplemented by the Copyright Amendment (Importation of Sound Recordings) Bill 1999 which was introduced into the Senate in April 1999. The amendments in this Bill will allow for the parallel importation of music CDs which include or incorporate other copyright material, such as film clips.

The Government's decision to amend the Copyright Act to assist the Australian software industry was implemented in the Copyright Amendment (Computer Programs) Bill 1999, which was passed by the Senate in June 1999. The amendments will encourage computer program copyright owners to provide the necessary program information in respect of compatible products and security testing computer networks. If the information is not reasonably available, the amendments will allow others to decompile programs to discover it for those purposes. Decompilation will also be allowed to correct errors if an error-free version of the computer program is not available.

An exposure draft of the Copyright Amendment (Digital Agenda) Bill 1999 was released in February 1999. The draft implements the Government's highest copyright reform priority, which is to update Australia's copyright law to meet the challenges posed by new communications technology, particularly the Internet. The reforms will ensure that copyright law continues to strike a balance between the promotion of creative endeavour and providing reasonable access to copyright through new technologies. The central reform is the introduction of a new technology-neutral right of communication to the public. This is complemented by a package of exceptions to the new right, amendments that clarify the liability of carriers and Internet service providers, and new enforcement measures. The Division was involved in an intensive consultation period with key stakeholders, and over 80 submissions were received and considered on the draft Bill.

The Copyright Law Review Committee (CLRC) completed both Part 1 (Exceptions to the Exclusive Rights of Copyright Owners) and Part 2 (Categorisation of Subject Matter and Exclusive Rights) of its report to the Attorney-General, *Simplification of the Copyright Act 1968*. The recommendations in the report are intended to make the Act more flexible to apply to new technologies. The Attorney-General gave the CLRC a new reference in April 1999 to inquire into the jurisdiction and procedures of the Copyright Tribunal. The Division provides the secretariat for the CLRC.

In response to the Government's commitment to provide for the effective enforcement of copyright, and following representations from affected interests concerning current enforcement remedies and procedures, in March 1999 the Attorney-General gave the House of Representatives Standing Committee on Legal and Constitutional Affairs a reference to inquire into the enforcement of copyright in Australia. Representatives from the Division appeared before the committee, lodged a comprehensive submission and provided the committee with ongoing assistance.

#### PERFORMANCE MEASURE

*Perception by copyright owners, institutional copyright users and the community of appropriate balance in new copyright law and proposals.*

#### **PERFORMANCE OUTCOME**

The extensive consultation processes for the draft Copyright Amendment (Digital Agenda) Bill 1999 gave affected interest groups the opportunity to comment on the draft Bill prior to its finalisation for introduction into the Parliament. Most groups considered that their views had been taken into account in finalising the legislation.

The Division organised a public forum on proposed moral rights for creators in Sydney in August 1998. Creators and owners and users of copyright were able to discuss their differing views on the Government's proposal to reintroduce moral rights legislation. The Attorney-General addressed the forum, which was attended by over 100 people. As a result of the forum affected interests consulted further and put an agreed position to the Government on how moral rights legislation should apply to the film industry.

#### **PERFORMANCE MEASURE**

*Effectiveness of liaison with copyright owners, performers, institutional users and relevant community groups.*

#### **PERFORMANCE OUTCOME**

There was extensive and ongoing liaison with copyright owners, institutional users, creators (including performers) and community groups throughout the year on key reform projects. Representatives of the Division were invited to speak at a number of seminars and conferences arranged by relevant copyright interests.

There were, in conjunction with the Department of Communications, Information Technology and the Arts, extensive consultations with all major stakeholders on the exposure draft Copyright Amendment (Digital Agenda) Bill. Key stakeholders in the computer software industry were consulted prior to the introduction of the Copyright Amendment (Computer Programs) Bill.

The CLRC consulted extensively during its reference on simplification of the Copyright Act and initiated consultations on its new reference on the jurisdiction and operation of the Copyright Tribunal.

The Division, with IP Australia, provided support for the Intellectual Property Consultative Committee. This meets twice yearly in Canberra to facilitate the exchange of information between government officials and representatives of intellectual property owners and users.

The Division issues a regular newsletter, the *AGD E-news on Copyright*, which is distributed electronically to a wide range of copyright owner and user representatives, legal practitioners and academics. It contains a compilation of extracts from announcements and speeches on government copyright reform, policy achievements, international meetings and other activities. Divisional contacts for policy issues are identified in each issue. The response from recipients of the newsletter continues to be very positive.

### **Strategy**

Develop, promote and implement policy initiatives in relation to access to information.

#### **PERFORMANCE MEASURE**

*Satisfaction of the Attorney-General with the development, promotion and implementation of policy initiatives.*

#### **PERFORMANCE OUTCOME**

Legislation is being developed to enable FOI requests to be made to government agencies for documents held by a private contractor, where the agency has a right of access to those documents.

Developments in relation to private-sector privacy will ensure that individuals can obtain access to, and seek correction of, personal information about them held by private contractors.

Accountability issues relating to government outsourcing are being considered by an interdepartmental committee which is developing a government response to the Administrative Review Council's 1998 report *The Contracting Out of Government Services*. Officers from the Division are participating in the committee in relation to information access issues.

The Secretary has written to all departmental secretaries to remind them of their obligations under the FOI Act and to seek their assistance in ensuring the effective and efficient discharge of those obligations by their departments and portfolio agencies. As part of the process of statute stocktake and repair, amendments to the FOI Act of a minor technical nature will be included in a forthcoming Law and Justice Legislation Amendment Bill. Some amendments to Schedule 3 of the FOI Act were included in the Statute Stocktake Bill 1999.

#### **STRATEGY**

Develop, promote and implement policy initiatives for the protection of privacy within the public sector and the private sector which appropriately balance individuals' privacy interests against other community interests.

#### **PERFORMANCE MEASURE**

*Satisfaction of the Attorney-General with the development, promotion and implementation of policy initiatives.*

#### **PERFORMANCE OUTCOME**

The Government announced in December 1998 that it would introduce light touch legislation to support and strengthen self-regulatory privacy protection in the private sector. The Division convened a consultative group including the Privacy Commissioner, business and consumer representatives, State and Territory officers supporting SCAG and the Online Council, the National Office for the Information Economy and privacy advocates. The Division also conducted direct consultations with a range of stakeholders. The Privacy Amendment Bill 1998 was referred to the Senate Legal and Constitutional Legislation Committee, but lapsed on the calling of the federal election in October 1998. The March 1999 report of the committee, which recommended that the Bill not proceed, was under consideration at 30 June 1999.

The Senate Legal and Constitutional Legislation Committee also reported in March 1999 on the Genetic Privacy and Discrimination Bill 1998, a private member's Bill. A response to that report is under consideration.

The Privacy Amendment (Office of the Privacy Commissioner) Bill 1998 was passed by the House of Representatives on 17 February 1999. It was introduced into the Senate on 10 March 1999 and was adjourned following the second reading speech. The Bill proposes the establishment of the Office of the Privacy Commissioner as a separate entity from the Human Rights and Equal Opportunity Commission.

During the year the Division conducted informal negotiations with the European Commission on a European directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The Division also assisted other agencies in developing policy initiatives

to ensure that privacy issues were appropriately considered in such areas as law enforcement, electronic commerce and the information economy, health, revenue, customs and financial sector regulation.

#### **STRATEGY**

Develop and promote parliamentary privilege policy initiatives.

#### **PERFORMANCE MEASURE**

*Satisfaction of the Attorney-General with the development and promotion of policy initiatives.*

#### **PERFORMANCE OUTCOME**

In response to recommendations of the Senate Committee of Privileges, the Division participated in developing and presenting a series of Public Service and Merit Protection Commission seminars on parliamentary privilege. Evaluation of the seminars consistently indicated a high level of satisfaction among participants. In addition, a large number of departmental officers received training in this area. The Division provided advice to the Attorney-General on the implications of court cases raising privilege issues and undertook preparation of a submission to the House of Representatives Committee of Privileges on the protection afforded to the records and correspondence of Members of Parliament.

#### **STRATEGY**

Support the Attorney-General in administration of relevant portfolio legislation and related responsibilities of office.

#### **PERFORMANCE MEASURE**

*Satisfaction of the Attorney-General with the administration of relevant portfolio legislation and related responsibilities of office.*

#### **PERFORMANCE OUTCOME**

The Division prepared an annual report to Parliament on the operation of the FOI Act for consideration by the Attorney-General.

In June 1999 the Division established an Internet-hosted database system for the collection of FOI statistics from agencies. This system has made it easier for agencies to submit statistics for inclusion in the annual report on the operation of the FOI Act.

The Division also provided advice and briefings to the Attorney-General and the Minister for Justice and Customs in relation to legislation for which the Division is responsible, as well as providing draft correspondence, speeches and answers to parliamentary questions for both ministers. The Division also provided advice to the Attorney-General on the appointment of a new Privacy Commissioner and the filling of four vacancies on the Privacy Advisory Committee. The Governor-General appointed a new Privacy Commissioner on 31 March 1999.

#### **STRATEGY**

Support the Attorney-General in relation to the Government's response to recommendations of the Royal Commission on Aboriginal Deaths in Custody and the continuing work of the National Aboriginal Justice Advisory Committee (NAJAC).

**PERFORMANCE MEASURE**

*Satisfaction of the Attorney-General with policy initiatives, including coordination arrangements to address recommendations of the royal commission.*

**PERFORMANCE OUTCOME**

The Division continued to provide secretariat and support services to NAJAC. Its current work focuses on the development of strategic plans to reduce the incarceration rate and consequently the death in custody rate of indigenous people. The plans arose as a result of the ministerial summit on indigenous deaths in custody held in July 1997.

At the summit it was recognised that underlying social, economic, cultural and justice issues contributed significantly to the over-representation of indigenous people in custody. The strategic plans will address these issues by focusing on the coordination of funding and service delivery for indigenous programs and services.

**STRATEGY**

Support in the development of policy initiatives to promote the accountability and effectiveness of law enforcement agencies.

**PERFORMANCE MEASURE**

*Acceptance by the Government of policy initiatives.*

**PERFORMANCE OUTCOME**

The Division initiated a number of reform proposals which have formed part of the telecommunications interception policy review.



## 1.5 Office of International Law

### SUB-PROGRAM OBJECTIVE

Further Australia's interests through the development and application of international law and the enhancement of opportunities for the export of Australian legal services.

### ROLE

The Office of International Law provides specialist advice on international law, including international trade law, human rights and treaties. In particular it provides advice on implementation of international law in Australia and on constitutional issues relating to such implementation. It also assists with developing and implementing projects in the international law field, and in international and domestic litigation involving international law.

The Office consists of two branches, the **Public International Law Branch** and the **International Trade and Environment Law Branch**. In addition to the more general functions of the Office outlined above, each branch has a number of more specific functions. In the case of the Public International Law Branch these include responsibility for the preparation of Australia's reports under a number of human rights treaties, and for responding to complaints by individuals made to international committees established by those treaties. The International Trade and Environment Law Branch is responsible for areas of international trade-law related policy, including international commercial arbitration. It is also responsible for the promotion of trade in Australian legal services.

### Resources Summary – Sub-program 1.5 Office of International Law

	1997–98	1998–99	1998–99
	<i>Actual</i>	<i>Estimate</i>	<i>Actual</i>
	<i>\$(000)</i>	<i>\$(000)</i>	<i>\$(000)</i>
<b>Appropriation Bill No. 1</b>			
Running Costs			
• Salaries (120–1) (p)		1,536	1,419
• Other (120–1) (p)		336	513
• Salaries (121–1) (p)	1,353	–	–
• Other (121–1) (p)	420	–	–
<b>RUNNING COSTS APPROPRIATIONS</b>	<b>1,773</b>	<b>1,872</b>	<b>1,932</b>
Other Program Costs			
• Grants to Australian Organisations (120–2–01) (p)	4	2	0
• International Bodies - Membership Contributions (120–2–04) (p)	65	60	68
• Compensation & Legal Expenses (120–2–04) (p)	–	–	25
<b>TOTAL APPROPRIATIONS</b>	<b>1,842</b>	<b>1,934</b>	<b>2,025</b>
Adjustments affecting outlays			
• Section 31 (FMA Act) Receipts	211	155	268
<b>TOTAL OUTLAYS</b>	<b>1,631</b>	<b>1,779</b>	<b>1,757</b>
<b>STAFFING</b>			
Staff Years	19.1	19.0	19.3

These figures are expressed in cash terms. The accompanying audited Financial Statements are presented in accrual format. 1997–98 actual figures have been adjusted to reflect actual Support Group costs on the split of the AGS from the Department.

## STRATEGY

Provide high-quality international law services, including both legal and policy advice.

## PERFORMANCE MEASURE

*Comprehensive, timely and accurate advice.*

*The achievement of optimum outcomes for clients in the provision of international law-related services.*

## PERFORMANCE OUTCOME

Informal and formal feedback from clients suggests a generally high level of satisfaction with the work of the Office. The work is often performed under very tight deadlines, and generally speaking advice is given within required timeframes.

The head of the Office, Mr Bill Campbell, was awarded the Public Service Medal in the Queen's Birthday honours list in June 1999 for outstanding service to the Commonwealth in relation to international law.

Areas in which advice was given by the Office in 1998–99 included:

### *Domestic implementation of trade agreements*

A major issue dealt with during the year was the compliance of Australian content broadcasting standards with provisions of the Australia–New Zealand Closer Economic Relations (CER) agreement. This followed the finding by the High Court of Australia, in *Project Blue Sky v Australian Broadcasting Authority*, that a broadcasting standard relating to Australian television content was in breach of CER market access and national treatment requirements. An inquiry was conducted by the Senate Environment Recreation Communications and the Arts Legislation Committee on the implications of amending the *Broadcasting Services Act 1992* in light of the High Court decision. The Office of International Law prepared a submission to that inquiry, and provided advice in relation to the formulation of a broadcasting standard which would be consistent with the CER.

### *Double tax agreements and investment promotion and protection agreements*

The Office provides advice in relation to a range of issues arising under treaties of this kind, and assisted in the negotiation of all current treaties. During 1998–99 representatives of the Office gave evidence to the Parliamentary Joint Standing Committee on Treaties regarding proposed investment promotion and protection agreements with India and Lithuania.

### *Implementation of environmental treaties*

The Office participates in the policy reference group which deals with domestic implementation of the Basel Convention on Transboundary Movement of Hazardous Wastes, and assisted in the preparation of Australia's negotiating position with respect to a protocol on liability. The Office gave a wide range of advice on issues relating to international environmental law.

### *Development of Multilateral Investment Agreements*

The Office assisted the Treasury in negotiations over the OECD's proposed Multilateral Agreement on Investment (MAI). The Office prepared a submission to the Parliamentary Joint Standing Committee on Treaties inquiry into the MAI, and officers gave evidence at public hearings in August and December 1998.

### *Maritime zones*

The Office assisted in the preparation of amendments to the Customs Act to implement Australia's contiguous maritime zone, which was proclaimed in March 1999. The Office also participated in the work

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of the Prime Minister's Coastal Surveillance Task Force, assisting in the formulation of recommendations to strengthen those aspects of Australia's domestic legal framework to apply in the contiguous zone.

#### *Law of the Sea*

Matters considered by the Office during the year included the designation of archipelagic sea lanes by Indonesia, a proposal by Indonesia to levy charges on ships for the purposes of maintaining navigation aids, and the legal status of draft regulations on prospecting and exploration.

#### *Shipping law*

The Office represented Australia at a diplomatic conference in Geneva, held under the auspices of the UN Commission on Trade and Development and the International Maritime Organisation, on 1–12 March 1999. The conference adopted a new International Convention on the Arrest of Ships, designed to facilitate maritime transport and world trade by laying down uniform international rules governing the arrest of ships. The question of accession is presently under consideration by Australia.

#### *International fisheries issues*

The Office continued to work closely with the Australian Fisheries Management Authority and Agriculture, Fisheries and Forestry—Australia in developing strategies to deal with illegal, unregulated and unreported fishing in the Southern Ocean, and with illegal fishing by Indonesian nationals. The Office assisted in the first round of negotiations for a new treaty on fisheries cooperation with France. This will be of considerable assistance in advancing Australia's interests in protecting its exclusive economic zone (EEZ) around the Territory of Heard Island and the McDonald Islands.

Advice was provided on necessary legislative measures to enable Australia to ratify a UN agreement relating to straddling and highly migratory fish stocks.

The Office provided advice in relation to Australia and New Zealand's dispute with Japan over total allowable catch limits for southern bluefin tuna under the Convention for the Conservation of Southern Bluefin Tuna, and the carrying out by Japan of an 'experimental fishing program' not agreed to by Australia or New Zealand. Consultations with Japan did not succeed in settling the dispute. Consequently, action is to be commenced in the International Tribunal for the Law of the Sea in 1999–2000 for declarations requiring the cessation of experimental fishing programs, reduction of catch to the levels sanctioned by the Commission for the Conservation of Southern Bluefin Tuna, and compensation in respect of quantities of fish taken by Japan above and beyond its quota allocation. The Office of International Law is responsible for the conduct of the dispute resolution proceedings.

#### *Air law and the law relating to outer space*

The Office assisted the Department of Transport and Regional Services in the negotiation of an air services agreement with Sweden, Denmark and Norway, and also advised on legal issues arising out of the proposed replacement treaty for the Warsaw Convention on International Carriage by Air.

Extensive work was done by the Office in relation to the development of the *Space Activities Act 1998*. The Act implements Australia's obligations under UN space conventions relating to liability for damage, rescue of astronauts, exploration and use of space and celestial bodies, and the registration of space objects.

#### *Application of treaty law and customary international law*

The Office provided a submission to the Senate Foreign Affairs, Defence and Trade References Committee inquiry into matters related to East Timor. The submission examined the possible application of the state succession doctrine in relation to treaties and MOUs between Australia and Indonesia in the event of East Timor becoming an independent state.

## STRATEGY

Promote Australia's interests at international forums and assist other departments and the Parliament in measures implementing Australia's compliance with its international legal obligations.

## PERFORMANCE MEASURE

*Effective presentation of Australian position in international forums.*

## PERFORMANCE OUTCOME

The Office represented Australia at a number of international negotiations likely to result in outcomes beneficial to Australia. A representative led the Australian delegation to the Legal Committee of the International Maritime Organisation. The committee agreed to recommend that diplomatic conferences be held on draft conventions on financial security (the Athens Convention) and on pollution from ships' bunkers. The latter is of particular interest to Australia, which has been the lead country in progressing the convention through the committee. Further work remains to be done on the draft wreck removal convention, which remains a priority item on the committee's agenda.

A member of the Office led the Australian delegation to an intersessional meeting on Antarctic Liability in The Hague, The Netherlands, in December 1988. Another officer attended the Antarctic Treaty Consultative Parties meeting. Unfortunately, little progress was made in the development of a regime because of firm differences between Antarctic Treaty members on the issue of liability.

The Office represented Australia at the Geneva conference which adopted the new International Convention on the Arrest of Ships. The Office also participated in the first rounds of negotiation of a new fisheries cooperation treaty with France.

The Office represented Australia at the annual session of the UN Commission on International Trade Law. That session continued the work of the previous year's annual session in considering a legislative guide to privately financed infrastructure projects. Australia presented a proposal for UNCITRAL to form a working group to develop a model law or legislative guide on corporate insolvency, following on the recommendations of the Prime Minister's Task Force on International Financial Reform. Agreement was obtained within UNCITRAL to the establishment of a one-off working group to explore the feasibility of undertaking further work in corporate insolvency, despite opposition from some European countries.

## STRATEGY

Report on Australia's compliance with human rights treaties and respond to communications under those treaties alleging violations of international human rights obligations.

## PERFORMANCE MEASURE

*Focused compliance reporting within realistic timeframes.*

## PERFORMANCE OUTCOME

The Office was involved in ensuring Australia's compliance with a broad range of international human rights treaties and agreements. The main areas of compliance activity are outlined below.

### *Reporting under international human rights treaties*

Australia's Third and Fourth Reports under the International Covenant on Civil and Political Rights (ICCPR) were approved by the Attorney-General and lodged with the UN on 28 August 1998.

A draft of Australia's combined Second and Third Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was submitted to the Attorney-General for

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approval. It is expected to be lodged with the UN in 1999–2000.

*Communications under international human rights complaints mechanisms*

One communication made under the optional protocol to the ICCPR was received during 1998–99. Submissions on admissibility and merits were prepared for the Human Rights Committee in three communications. The Government was notified of final decisions in three communications. In all of these communications the committee contended that the communication was inadmissible.

One communication under Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination was received during 1998–99. Submissions on the merits were prepared for the Racial Discrimination Committee in two communications. The Government was notified of a final decision in one communication in which the committee decided there was no violation.

Of the six communications under Article 22 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment made since Australia lodged its declaration of acceptance in January 1993, four were received during 1998–99. Submissions on admissibility and merits were prepared for the Committee Against Torture in three communications. One was discontinued and in another the committee decided there was no violation. In the third the committee decided that Australia would violate its obligations under the convention if it repatriated a Somalian citizen. At 30 June 1999 the Government was considering a response.

*Treaty body reform*

The Office continued to raise issues on an *ad hoc* basis as required. The Office coordinated and prepared Australia's response to a questionnaire from academics commissioned by the UN High Commissioner for Human Rights to undertake a study into improving the effectiveness of treaty bodies.

**PERFORMANCE MEASURE**

*Effective liaison with international human rights committees.*

**PERFORMANCE OUTCOME**

The Department maintained effective contact with the committees, both directly and indirectly. The Department maintained contact with the Office of the High Commissioner for Human Rights (which provides the secretariat to the human rights committees) through the Department of Foreign Affairs and Trade and the Australian Mission in Geneva.

**PERFORMANCE MEASURE**

*Secretariat assistance provided to the satisfaction of the International Legal Services Advisory Council (ILSAC) and ministerial satisfaction with progress achieved.*

**PERFORMANCE OUTCOME**

The Office provided the secretariat to ILSAC. Under the chairmanship of the Hon. Sir Laurence Street AC, KCMG, ILSAC continued its work to improve Australia's international performance in legal and related services in the final year of its third triennium (1996–99). Australia currently exports legal services valued at around \$160 million a year. Legal services generate the largest trade surplus in the category of professional and technical services.

The secretariat assisted ILSAC to undertake research; provided advice to ministers and departments in the main areas of its subject interest; disseminated information and facilitated consultation between the Government and the private sector on international legal services; and initiated, or participated in, a range of other activities.

ILSAC members expressed the view that they were fully satisfied with the work of the secretariat.

The secretariat assisted ILSAC in providing advice to ministers and departments regarding impediments to traded legal services in a number of countries and economies, and made significant contributions towards two of the major achievements of ILSAC during 1998–99: the development of a legal services market access matrix and the development of a strategy for legal services exports in the period 1999–2002.

In the area of international legal cooperation, the secretariat provided considerable support in organising a range of cooperative training activities with Indonesia. The secretariat also provided assistance to other bodies on legal cooperation activities, particularly in relation to Vietnam and the People's Republic of China.

In the area of international legal education and training, ILSAC maintains close links with the Australian Committee of Law Deans on matters of mutual interest. The secretariat provides briefings for the committee's meetings on ILSAC activities, particularly on aspects surrounding international legal education and training. The secretariat coordinated the publication of the 1999 edition of *Studying Law in Australia*. Efforts continued to have Australian law degrees recognised by Singapore, Malaysia and Brunei.

Membership and other information concerning ILSAC is available on the Internet at <http://www.law.gov.au/ilsac>.

## **Strategy**

Administer and update legislation for which the Office of International Law is responsible.

### **PERFORMANCE MEASURE**

*Complete reviews of the Marine Insurance Act 1909 by 30 June 1999.*

### **PERFORMANCE OUTCOME**

The aim of reviewing the Marine Insurance Act by the end of the financial year was not met. The reason for this was the decision taken to review the operation of the Act against national competition principles. This requires a particular review procedure to be followed and also requires settlement of terms of reference with the Office of Regulation Review. It is expected that this will be done early in 1999–2000. Consideration is being given to referring the cognate review to the Australian Law Reform Commission.

### **PERFORMANCE MEASURE**

*Declaration of the outer boundary of a contiguous zone under the Seas and Submerged Lands Act 1973.*

### **PERFORMANCE OUTCOME**

On 31 March 1999 the Governor-General made a proclamation under section 13B of the Seas and Submerged Lands Act defining the outer limits of Australia's contiguous zone.

### **PERFORMANCE MEASURE**

*Amendment of the exclusive economic zone boundary.*

### **PERFORMANCE OUTCOME**

Amendment to the current EEZ boundary is necessary to give effect to the EEZ boundary agreed in the maritime delimitation treaty between Australia and Indonesia, which was signed in March 1997. Changed

**Attorney-General's Department**

circumstances in Indonesia, and the possibility that East Timor might cease to be part of that country, may require an amendment to that treaty.

**PERFORMANCE MEASURE**

*Passage of legislation responding to the decision of the High Court in the Teoh case.*

**PERFORMANCE OUTCOME**

The Administrative Decisions (Effect of International Instruments) Bill 1997 lapsed with the calling of the 1998 federal election. A similar Bill will be introduced into the Parliament during 1999–2000.



## 1.6 Office of Legislative Drafting

### SUB-PROGRAM OBJECTIVES

To provide clients with high-quality drafting and advising services for legislative and other instruments.

To enhance access to the law.

### ROLE

The Office of Legislative Drafting is responsible for a broad range of functions associated with drafting regulations, ordinances for Australia's non-self-governing territories, disallowable instruments and a wide variety of other Commonwealth delegated legislation. The Office also provides tabling and gazettal services to client agencies and facilitates public access to the law through its consolidation of legislation and its publication of legislation and court decisions.

The Office is made up of three drafting units and the Legislative Services Unit, the CONSOL Unit, the SCALEplus Unit and the Business Operations Unit.

The **drafting units** are each responsible for drafting instruments for, and providing advice to, Commonwealth departments and agencies. Their core work is the drafting of regulations, proclamations, rules of court and laws of the non-self-governing territories. They also draft a broad range of legislative and administrative instruments.

The **Legislative Services Unit** provides support services to the Principal Legislative Counsel and the drafting units, and provides specialised information technology and documentation-writing services for the Office. The unit also manages the Office's editing quality assurance processes and its extensive continuous improvement program. In addition the unit is responsible for preparing the proposed Federal Register of Legislative Instruments (FRLI) and manages its precursor, the Legislative Instruments Database (LID), as well as the gazettal, printing and tabling of statutory rules.

The **CONSOL Unit** updates Commonwealth legislation and supplies consolidated legislation in electronic form to the SCALEplus Unit for publication on the Department's *Window on the Law* website and to AusInfo for printing and distribution to government bookshops. It also prepares annual volumes of Acts and statutory rules, and distributes printed legislation throughout the Department.

The **SCALEplus Unit** is responsible for the electronic publication of legislation, case law and related materials of the Commonwealth and some States and Territories.

The **Business Operations Unit** provides financial, human and physical resource management to both the Office and the Office of International Law.

Resources Summary – Sub Program 1.6 Office of Legislative Drafting

	1997-98	1998-99	1998-99
	<i>Actual</i>	<i>Estimate</i>	<i>Actual</i>
	<i>\$(000)</i>	<i>\$(000)</i>	<i>\$(000)</i>
<b>Appropriation Bill No. 1</b>			
Running Costs			
• Salaries (120-1) (p)		4,618	3,689
• Other (120-1) (p)		2,997	1,225
• Salaries (121-1) (p)	3,372	–	–
• Other (121-1) (p)	1,046	–	–
<b>RUNNING COSTS APPROPRIATIONS</b>	<b>4,418</b>	<b>7,615</b>	<b>4,914</b>
Other Program Costs			
• 05) (p)	984	1,443	1,341
<b>TOTAL APPROPRIATIONS</b>	<b>5,402</b>	<b>9,058</b>	<b>6,255</b>
Adjustments affecting outlays			
• Revenue			
- Miscellaneous	1	10	–
• Section 31 (FMA Act) Receipts	1,334	1,177	1,093
<b>TOTAL OUTLAYS</b>	<b>4,067</b>	<b>7,871</b>	<b>5,162</b>
STAFFING			
<b>Staff Years</b>	<b>54.4</b>	<b>68.8</b>	<b>60.3</b>

These figures are expressed in cash terms. The accompanying audited Financial Statements are presented in accrual format. 1997-98 actual figures have been adjusted to reflect actual Support Group costs on the split of the AGS from the Department.

**STRATEGY**

Meet client requirements for legislative drafting and related advising services.

**PERFORMANCE MEASURE**

*Extent of demand for the Office's drafting and advising services.*

**PERFORMANCE OUTCOME**

The total of 3075 pages of statutory rules made in 1998-99 was slightly less than the 3296 pages made in the previous financial year, but close to the average of 3142 pages of statutory rules made each year since 1988.

There was a decline in the Office's billable drafting work from the record high level of \$1 284 036 in 1997-98 to \$876 485 in 1998-99. The 1998-99 level appears more likely to be the norm, 1997-98 having been a peak year due to extensive changes in aged-care legislation.

The overall drop in demand for drafting work was largely attributable to the interruption to the ordinary business of government caused by the October 1998 election.

**PERFORMANCE MEASURE**

*Extent to which client requirements for services are met in a timely way.*

#### PERFORMANCE OUTCOME

In July 1998, as part of its continuous improvement strategy, the Office established performance standards for turn-around times for editing and dispatch processes on individual drafting matters. Measures were also implemented to monitor performance against these measures. Editing and dispatch performance is collated and is submitted to the Office's Executive Committee on a monthly basis for review. Performance against the dispatch standard was highly satisfactory and performance against the editing standard improved steadily so that the standard was consistently met. Of the 556 instruments (a total of 6553 pages) edited by the Office in 1998–99, 79 per cent were completed within 24 hours or within a timeframe specified by the drafter.

During 1998–99 the Office used a manual matter-tracking system to monitor drafting turn-around times. The standard applied is that 95 per cent of all drafting matters are completed in either a six-week period or within a timeframe specified by individual clients. The system has allowed the Office's performance against these measures to be collated and reviewed by the Executive Committee on a monthly basis. But the system, while useful, has proved to be insufficiently discriminating. A more sensitive, computer-based system is to be implemented during 1999–2000.

In September 1998 the Office adopted new drafting templates significantly more sophisticated than the previous templates. These have greatly increased the speed, efficiency and consistency of drafting within the Office. They underwent further refinement during the year, partly in response to the change-over within the Office from a Macintosh-based computer system to an IBM-compatible system.

#### PERFORMANCE MEASURE

*Level of satisfaction by clients with the quality of the Office's drafting and advising services.*

#### PERFORMANCE OUTCOME

In 1998–99 the Office implemented a reporting system to allow the systematic documentation of feedback received from drafting clients about the quality of drafting and advising services. The information received from each of the drafting units is submitted to the Executive Committee each month for review. Client feedback received in 1998–99 indicated a high level of satisfaction with the Office's drafting and advising services. The Office actively encourages feedback from clients and strives to address any client concerns as promptly as possible.

#### STRATEGY

Ensure that instruments drafted by the Office:

- are legally effective to meet client policy objectives in an efficient way;
- meet contemporary legal and parliamentary standards;
- are accurate, easy to read, easy to understand and as simple as possible.

Ensure that advice provided by the Office is legally accurate, client-focused and easy to read.

#### PERFORMANCE MEASURE

*Extent to which the Office develops and applies quality assurance processes for drafting and advising services.*

#### PERFORMANCE OUTCOME

As part of the adoption of new drafting templates in September 1998, the Office also implemented a number of significant drafting style changes. Since the implementation of the new styles, the Office has established

an internal Drafting Standards Committee to review the drafting practices of the Office systematically to ensure that instruments drafted by the Office are consistent in style, are of the highest possible standard and satisfy client expectations. A number of improvements to drafting practices decided upon at the committee in June 1999 will require the creation of additional templates. These improvements will be implemented in 1999–2000.

The Office continues to carry out two essential quality assurance processes for its drafting work: a strict two-counsel rule under which all instruments are fully checked by at least one legally qualified drafter, and editing quality assurance procedures which are carried out by drafters and trained editing staff at the end of the drafting process.

**PERFORMANCE MEASURE**

*Level of satisfaction by the Senate Standing Committee on Regulations and Ordinances with the quality of the Office's instruments.*

**PERFORMANCE OUTCOME**

Feedback from the Senate Standing Committee on Regulations and Ordinances is closely monitored by the Office and conveyed promptly to drafters. Overall feedback in 1998–99 was positive, with the committee providing constructive criticism of the policy basis of several instruments and analysis of several complex drafting issues. The Office assisted its clients to address a number of the committee's policy-related concerns and developed several responses to complex drafting issues raised by the committee, such as the legal distinction between administrative and legislative instruments.

**STRATEGY**

Maintain and develop an efficient and effective Legislative Instruments Database as a precursor to the proposed Federal Register of Legislative Instruments.

**PERFORMANCE MEASURE**

*Extent to which new legislative instruments are available on the LID in a timely way.*

**PERFORMANCE OUTCOME**

All new regulations were added to the LID database within the performance measure timeframes developed in 1997–98, which require them to be available on the Internet within one day of gazettal. The Office's performance against the measures is reported to the Executive Committee each month for review.

**PERFORMANCE MEASURE**

*Extent to which the Office develops and applies quality assurance processes for the LID.*

**PERFORMANCE OUTCOME**

The Office continues to maintain the quality assurance measures developed in 1998 to ensure the integrity of the LID and the accuracy of its contents. All scanned instruments are checked before being registered on the database, and index information is regularly checked and updated. In addition, staff undertake regular spot-checks of the data on the LID.

**PERFORMANCE MEASURE**

*Level of satisfaction by users with the operation of, and the extent of access to, legislative instruments provided by the LID.*

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#### **PERFORMANCE OUTCOME**

Despite its low profile, the level of public access to the LID via the Internet has doubled over the last two years, with high usage corresponding approximately with periods in which the Legislative Instruments Bill has been before Parliament. There is also a significantly higher level of interest on the days immediately following meetings of the Executive Council. The LID now contains images and index information for over 7500 instruments that have been backcaptured in anticipation of enactment of the Legislative Instruments Bill. The index contains useful information about registered instruments.

New regulations continue to be added to the database, generally within one day of being made. In addition, following negotiations with the Department of Health and Aged Care and the Australian Quarantine Inspection Service, the Aged Care Principles (48 instruments), the Quarantine Proclamation 1998 and a 1999 amendment (amounting in total to some 775 pages) were also added to the database. New Aged Care Principles and Quarantine Proclamation amendments will be added to the database as they are made.

Feedback received from users of the database has been positive.

#### **STRATEGY**

Maximise the efficiency and effectiveness of SCALEplus.

#### **PERFORMANCE MEASURE**

*Extent to which new legislation, case law and legal information is available on SCALEplus in a timely way.*

#### **PERFORMANCE OUTCOME**

Performance measures for SCALEplus were implemented in early 1998 and were consistently met or exceeded in 1998–99. For example, High Court and Federal Court decisions are usually published on SCALEplus within one hour and one day of receipt, respectively. Commonwealth legislation is usually published within five business days of receipt.

#### **PERFORMANCE MEASURE**

*Extent to which the Office develops and applies quality assurance processes for SCALEplus.*

#### **PERFORMANCE OUTCOME**

Quality assurance processes were maintained to ensure the integrity of SCALEplus data. All legislation and case law data is checked before being added to the database. A planned review of SCALEplus quality assurance processes was not undertaken, but will be addressed in 1999–2000 as part of an Office-wide project to document work processes.

#### **PERFORMANCE MEASURE**

*Level of satisfaction by users with the operation of, and the extent of access to, legislative and legal materials provided by SCALEplus.*

#### **PERFORMANCE OUTCOME**

SCALEplus, which has been available on the Internet since January 1997, recorded more than a million visits in May 1999. This represents a doubling in the number of visits per month in one year. Overall feedback from users was positive.

In addition to existing SCALEplus databases of legislation, during 1998–99 new databases of Commonwealth Bills and explanatory memoranda were released and the Administrative Arrangements Order was also made available. Work began to prepare databases of the legislation of non-self-governing territories and of legislative instruments that are not statutory rules.

#### STRATEGY

Ensure that up-to-date reprints and electronic consolidations are available for Commonwealth legislation.

#### PERFORMANCE MEASURE

*Extent to which, and the timeliness with which, up-to-date reprints and electronic consolidations for Commonwealth legislation are prepared and made available.*

#### PERFORMANCE OUTCOME

Over 1998–99 the Office reduced a significant backlog of consolidation work that had resulted from conversion to Word 6 format in 1997–98. CONSOL's output of consolidations this year (measured on a page basis) is expected to match or even exceed the record output for the previous year.

The Office began concentrating on the more timely preparation of electronic files for publication on SCALEplus. The output measure (number of pages) used in previous reports was regarded as no longer being a reliable indicator of the work of the unit, and new measures were being developed.

#### PERFORMANCE MEASURE

*Extent to which the Office develops and applies quality assurance processes for reprints and electronic consolidations.*

#### PERFORMANCE OUTCOME

The Office features comprehensive quality assurance processes to ensure that all legislation processed is thoroughly checked prior to publication. In 1998–99, as part of the Office's continuous improvement strategy, the unit reviewed and documented its procedures and quality assurance processes as part of the development of a unit manual.

#### PERFORMANCE MEASURE

*Extent of satisfaction by users with the quality and usefulness of reprints and electronic consolidations.*

#### PERFORMANCE OUTCOME

Although the level of demand for hardcopy reprints and electronic consolidations remained stable in 1998–99, this coincided with a marked increase in the use of SCALEplus to access electronic copies of consolidations via the Internet. This suggested that demand for electronic consolidations remains at a high level.

#### STRATEGY

Ensure that Commonwealth statutory rules are printed, published and tabled in a timely way.

#### PERFORMANCE MEASURE

*Extent to which Commonwealth statutory rules are printed, published and tabled in a timely way.*

**Attorney-General's Department**

**PERFORMANCE OUTCOME**

Performance measures that were developed and implemented in 1997–98 were consistently met, with monthly performance reports being made to the Executive Committee for review. These measures included, for example, a requirement that instruments are delivered to the printer within one business day of being made or received from the client.

**PERFORMANCE MEASURE**

*Extent to which the Office develops and applies quality assurance processes for the printing, publishing and tabling of statutory rules and other legislative instruments.*

**PERFORMANCE OUTCOME**

Performance measures that were developed and implemented in 1997–98 have been consistently met since their implementation and are reviewed on a monthly basis by the Executive Committee.

**PERFORMANCE MEASURE**

*Level of satisfaction by clients with the Office's printing, publishing and tabling services for statutory rules and other legislative instruments.*

**PERFORMANCE OUTCOME**

The Office regularly receives feedback from clients about its notification and tabling services for legislative instruments. Overall, client feedback in 1998–99 was positive.

**STRATEGY**

Ensure that annual volumes of Commonwealth Acts and statutory rules are available in a timely way.

**PERFORMANCE MEASURE**

*Extent to which annual volumes of Commonwealth Acts and statutory rules are prepared in a timely way.*

**PERFORMANCE OUTCOME**

Overall timeliness for the delivery of annual volumes improved over the last year, with the publication and distribution in 1998–99 of the annual volumes for 1997. The 1998 statutory rules volumes were in production and work commenced on the 1998 Acts volumes.

**PERFORMANCE MEASURE**

*Extent to which the Office develops and applies quality assurance processes for annual volumes.*

**PERFORMANCE OUTCOME**

The Office has adopted comprehensive quality assurance processes to ensure that all legislation processed is thoroughly checked prior to publication.

**PERFORMANCE MEASURE**

*Extent of demand for annual volumes.*

**PERFORMANCE OUTCOME**

Public demand for hard copy annual volumes of Acts and statutory rules remained stable in 1998–99.

**STRATEGY**

Develop initiatives to enhance the accessibility and comprehensibility of legislative instruments and the ability of all people to have access to the law.

**PERFORMANCE MEASURE**

*Extent of developments and their impact.*

**PERFORMANCE OUTCOME**

SCALEplus has an important role in enhancing access to the law by making the text of legislation and case law available to the community at low, or no, cost. It has been available on the Internet since January 1997.

The Administrative Arrangements Order, which was made available on SCALEplus in 1998, now contains automatically generated links from the legislation references to the text of the legislation in SCALEplus. The emphasis on legislation in SCALEplus ties into recent work done by Fujitsu Australia. Using style information in the original documents, or pattern-matching of text in documents that do not use styles, legislation can now be converted into HTML (the language of the Internet) and marked up for text retrieval in SCALEplus. This will allow SCALEplus to handle a substantially increased volume of data without an increase in staff while still meeting performance targets for timeliness.

Work began to make the legislation of NSW, Victoria, WA and Queensland available on SCALEplus as a result of the Fujitsu scripts. This legislation will complement existing databases of Commonwealth, Australian Capital Territory, Northern Territory and South Australian legislation. Databases of non-self-governing territories' legislation are being developed from source material within the Office.

## 1.7 Office of Legal Services Coordination

### SUB-PROGRAM OBJECTIVE

Sound policy direction and the achievement of the optimum outcome in the provision of legal services to the Government and to Commonwealth departments and agencies.

### ROLE

The Office of Legal Services Coordination (OLSC) provides advice to departments and agencies in relation to the supply and procurement of legal services to the Commonwealth. The advice takes into account the competitive contracting and tendering policies of the Government.

The OLSC is available to assist departments and agencies to obtain quality and cost-effective legal services, and to put appropriate monitoring systems in place. The OLSC also advises the Attorney-General in relation to any issues arising in relation to the provision of legal services and in relation to the Attorney-General's responsibilities for the Australian Government Solicitor (AGS).

### Resources Summary - Sub-program 1.7 Office of Legal Services Coordination

	1997-98 <i>Actual</i> \$(000)	1998-99 <i>Estimate</i> \$(000)	1998-99 <i>Actual</i> \$(000)
<b>Appropriation Bill No. 1</b>			
Running Costs			
• Salaries (120-1) (p)		1,242	924
• Other (120-1) (p)		694	767
• Salaries (121-1) (p)	295	-	-
• Other (121-1) (p)	52	-	-
<b>RUNNING COSTS APPROPRIATIONS</b>	<b>347</b>	<b>1,936</b>	<b>1,691</b>
Other Program Costs			
• Compensations and Legal Expenses (120-2-04)		455	70
Appropriation Bill No. 2			
• Payments to States and Territories(938-0-01)		7,000	0
<b>TOTAL APPROPRIATIONS</b>	<b>347</b>	<b>9,391</b>	<b>1,761</b>
Adjustments affecting outlays			
• Section 31 (FMA Act) Receipts	1	-	210
<b>TOTAL OUTLAYS</b>	<b>346</b>	<b>9,391</b>	<b>1,551</b>
<b>STAFFING</b>			
Staff Years	2.9	6.0	19.0

These figures are expressed in cash terms. The accompanying audited Financial Statements are presented in accrual format. Resource information for the Native Title Task Force is in Sub-program 1.7.

### STRATEGY

Advise the Attorney-General on the rules and policies relating to the delivery of Commonwealth legal services and, in particular, the conduct of Commonwealth litigation, and administer those rules and policies.

### PERFORMANCE MEASURE

*Preparation for the commencement of the Judiciary Amendment Act 1999 and the development of legal services directions.*

#### PERFORMANCE OUTCOME

The OLSC is responsible, within the Department, for the Judiciary Amendment Act. During 1998–99 it provided advice and assistance to the Attorney-General on the Act's passage through Parliament and on issues related to the Act's commencement.

The Act received Royal assent on 31 March 1999 and will commence on 1 September 1999.

The Act:

- establishes the AGS as a statutory authority separate from the Department, and sets out the constitution, functions and powers of the AGS (including those for whom the AGS may provide legal and related services);
- empowers the Attorney-General to issue legal services directions relating to the performance of Commonwealth legal work;
- sets out the rights, duties and obligations of the AGS's lawyers and the Department's lawyers;
- provides for the appointment and terms and conditions of a Chief Executive Officer and staff for the AGS;
- deals with arrangements for tax-equivalent payments by the AGS and the corporate governance of the AGS.

The Act gives effect to the Government's decisions to reform the Commonwealth legal services market in light of the recommendations of the review of the Attorney-General's Legal Practice (the Logan report) issued in March 1997.

During 1998–99 the OLSC provided advice and assistance to the Attorney-General in relation to the Act's passage through Parliament. Assistance and advice was also provided in relation to various issues arising from the Act's establishment of the AGS as a statutory authority.

The OLSC's website ([www.law.gov.au/olsc](http://www.law.gov.au/olsc)) was amended during the year in light of the passing of the Act, and to provide links to the Act, the explanatory memoranda and the Attorney-General's second reading speech.

The issuing of directions under the Act will enable the Attorney-General, as First Law Officer of the Commonwealth, to ensure that Commonwealth legal work is performed and delivered in a consistent and coordinated manner. The directions will set general rules and will be designed to ensure that the Commonwealth's interests are properly protected.

While the content and scope of application of the directions are matters for the Attorney-General, it is likely that they will take into account the various policies that already govern the conduct of Commonwealth litigation (available on the OLSC's website).

The OLSC, in consultation with departments and agencies, private firms and the AGS, carried out substantial work on the preparation of draft directions during the year. In November 1998 departments and agencies provided comments on issues relating to the draft directions and their application to agencies. In May 1999 the Department sought comments on the application of the directions to bodies subject to the *Commonwealth Authorities and Accountability Act 1997*.

At the end of the reporting year work was well advanced on the preparation of draft directions for approval by the Attorney-General.

#### PERFORMANCE MEASURE

*Timely and high-quality advice to the Attorney-General, Secretary and Deputy Secretary on directions and policies for Commonwealth legal services, especially litigation, and on the application of those directions and policies in particular cases; exercise various administrative delegations.*

**Attorney-General's Department**

## PERFORMANCE OUTCOME

The OLSC is responsible for a number of legal services policies which are described below. The details of these policies can be found on the OLSC's website.

*Progressive untying of litigation:* Until the commencement of the Judiciary Amendment Act, agencies subject to the *Financial Management and Accountability Act 1997*, and some bodies subject to the Commonwealth Authorities and Companies Act, can use private law firms for untied, non-litigation work and can seek permission for particular litigation to be conducted by private firms. These requests are considered in accordance with the policy on the progressive untying of litigation. The policy ensures that Commonwealth litigation involving whole-of-government issues and public-interest issues is dealt with in a coordinated manner.

During the year the OLSC dealt with 32 applications for litigation to be handled by private firms. All requests were approved.

*Counsel fees:* This policy applies to the engagement of counsel by agencies, the AGS or by private firms, and was approved by the Attorney-General in August 1998.

Under the policy, senior counsel may be paid up to \$2250 a day, and junior counsel up to \$1500, without approval by the Attorney-General or his delegate.

The First Assistant Secretary of the OLSC is authorised to give approval up to \$3200 per day. Requests for approval to pay counsel above \$3200 are referred to the Attorney-General for consideration.

The OLSC dealt with 230 applications for requests to engage counsel above the thresholds, of which two were considered by the Attorney-General.

*Statutes of limitation:* This policy deals with the circumstances in which the Commonwealth is to rely on statutes of limitation as a defence. It applies to the pleading of State and Territory limitation periods of general application. The policy provides that any available time-limitation defence should be taken and any applications for extensions of limitation periods should be resisted, unless approval is given by the Attorney-General or his delegate.

The OLSC dealt with four applications under this policy. Three applications sought approval not to oppose an application by the other party for an extension of time. The remaining application sought approval not to plead a statute of limitation defence.

*Monetary claims:* This policy provides for the handling and settlement of monetary claims against the Commonwealth, other than claims that need to be determined under a statute or under a mechanism provided by contract.

*The Commonwealth as a model litigant:* This policy places various obligations on Commonwealth departments and agencies to ensure that litigation is conducted according to proper standards. The essential element of the obligation to act as a model litigant is that the Commonwealth and its agencies must act honestly and fairly in handling claims and litigation brought by them and against them.

*Assistance to officials in relation to legal proceedings:* This policy covers the rules for the provision of assistance to officials by bodies subject to the Financial Management and Accountability Act, in relation to legal proceedings arising from their employment.

Amendments were made by the Attorney-General to the policy during the year to bring it into line with the scheme for providing assistance to ministers contained in the Parliamentary Entitlements Regulations.

*Legal assistance to ministers:* The OLSC is responsible for handling requests for legal assistance made to the Attorney-General by ministers under the Parliamentary Entitlements Regulations in relation to legal proceedings arising from their portfolio responsibilities. The regulations set out the criteria the minister

must satisfy to be eligible for assistance, the procedure to be followed in order to obtain assistance and what categories of costs will be covered if assistance is granted.

During 1998–99 six applications for assistance by ministers were considered. In compliance with the regulations, in each case the Secretary monitored the strategies adopted by the solicitors representing the minister in the legal proceedings and determined whether the costs of the minister’s legal representation and other related costs rendered for the proceedings were reasonable.

**PERFORMANCE MEASURE**

*Efficient separation of the AGS from the Department and the provision of high-quality advice on the purchase of legal services for the Department.*

**PERFORMANCE OUTCOME**

During the year the OLSC had the primary responsibility for advising on arrangements for the establishment of the AGS as a separate statutory body on the commencement of the Judiciary Amendment Act. Regular liaison meetings between senior management of the Department and the AGS were held to consider issues relating to the separation.

Two MOUs were signed between the AGS and the Department on 1 July 1998 to cover relations between the Department and the AGS for the year ending 30 June 1999. The MOUs were prepared by the OLSC and the AGS.

The first MOU dealt with a number of matters including cooperation in the handling of policy and administrative matters, international law work, information sharing and staff movements between the Department and the AGS. The second MOU contained arrangements for the purchase of legal services from the AGS during 1998–99.

During 1998–99 substantial work was done to prepare the two new MOUs to apply during 1999–2000.

A third MOU relating to the provision of library services was also prepared by the OLSC in close liaison with the AGS. It was signed on 7 June 1999 to commence on 1 July 1999. Under the MOU, the AGS will purchase library services from the Department and will have continued access to the library collection on the same basis as departmental staff.

Another agreement was being finalised between the Department and the AGS on maintenance and access to the shared opinions database.

**PERFORMANCE MEASURE**

*Effective liaison with the AGS and the Department of Finance and Administration on the development of corporate governance arrangements for the AGS.*

**PERFORMANCE OUTCOME**

Under the Judiciary Amendment Act, the Attorney-General and the Finance Minister, acting jointly and after consultation with the Chief Executive Officer of the AGS, will inform the Chief Executive Officer in writing of the governance arrangements applying to the AGS. This provision enables the establishment of policies for the operation of the AGS similar to those applying generally to government business enterprises, but taking into account the particular structure of the AGS and its unique function of providing legal services to the Commonwealth.

Extensive work was undertaken, in consultation with the Department of Finance and Administration and the AGS, to prepare draft governance arrangements for consideration by the Attorney-General and the Minister for Finance and Administration.

#### PERFORMANCE MEASURE

*Timely advice to, and effective consultation with, departments, agencies and the private sector on Commonwealth legal services.*

#### PERFORMANCE OUTCOME

During 1998–99 the OLSC was active in increasing awareness about the Judiciary Amendment Act and its implications for Commonwealth legal services, and about changes in the Government's legal services policies.

Departments and agencies were provided with information on the effects of amendments to policies on counsel fees and assistance to officials for legal proceedings, and were provided with copies of the amended policies.

In April 1999 departments and agencies, law societies and bar associations were advised of the enactment of the Judiciary Amendment Act and its implications for Commonwealth legal services.

In May 1999 the Department sought comments from departments and agencies on the application of the directions to bodies subject to the Commonwealth Authorities and Accountability Act.

The First Assistant Secretary of the OLSC spoke on the new arrangements on a number of occasions to representatives of major law firms operating in Canberra, and sought comment on the possible content of Commonwealth policies for legal services. In April 1999 the First Assistant Secretary's paper on how the Commonwealth should behave as a litigant was presented at a conference on the management of disputes involving the Commonwealth. The conference, organised by the Australian Competition and Consumer Commission, the Australian Law Reform Commission and the Commonwealth Ombudsman, was attended by private firms, departments and agencies and senior members of the legal profession. The roles and responsibilities of departments and agencies and Commonwealth legal services providers under the model litigant policy were discussed.

OLSC officers met with officers from various departments and agencies to discuss the operation of current policies and proposals for legal services directions.

In June 1999, following consultation with relevant departments and agencies, the OLSC completed a document to assist departments and agencies with the purchase of legal services. The document, *Purchasing Legal Services*, is available on the OLSC's website ([www.law.gov.au/olsc](http://www.law.gov.au/olsc)). The document outlines who can provide legal services to the Commonwealth, advises whether legal services are needed and sets out information to assist the agency in choosing the most appropriate legal services provider. The document also outlines the general requirements on legal services providers and agencies.

#### STRATEGY

Provide advice and assistance to the Attorney-General on developing and implementing proposals for constitutional reform and review, and related proposals.

#### PERFORMANCE MEASURE

*Advice and assistance provided to the Attorney-General, the Referendum Steering Group and the Referendum Task Force on the development of proposals and Bills for the constitutional referendum on whether Australia should become a republic.*

#### PERFORMANCE OUTCOME

Providing advice and assistance on the development of proposals and Bills for the referendum planned for November 1999 was a substantial task for the Constitutional Policy Unit of the OSLC during 1998–99.

The OSLC had carriage of initial preparations for the referendum legislation up to the establishment of the Referendum Task Force in the Department of the Prime Minister and Cabinet in November 1998.

The OSLC continued to provide assistance on legal issues arising in the preparation of the Constitutional Alteration (Establishment of Republic) Bill 1999, the Presidential Nominations Committee Bill 1999 and related legislation. Members of the OSLC attended all Referendum Steering Group meetings and the drafting meetings dealing with the preparation of the Bills.

The Bills were introduced in the House of Representatives in early June 1999 and were subsequently considered by the Joint Select Committee on the Republic Referendum.

#### PERFORMANCE MEASURE

*High-quality and timely advice and assistance to the Attorney-General, Secretary and Deputy Secretary in devising immediate and long-term solutions to the invalidation by the High Court of cross-vesting schemes, and liaison with the States on the development of a coordinated Commonwealth–State response.*

#### PERFORMANCE OUTCOME

An important task for the OSLC was to develop solutions to problems that would arise if, as anticipated, aspects of the cross-vesting scheme were invalidated by the High Court. The conferral of jurisdiction on federal courts by States had been challenged in *Re Wakim* and several other cases which were argued before the High Court in December 1998.

The general cross-vesting scheme was established in 1987 by the Jurisdiction of Courts (Cross-vesting) Act and by reciprocal legislation in the States and Territories. The purpose of the legislation was to establish a system of cross-vesting of jurisdiction between federal, State and Territory courts to overcome uncertainties as to the jurisdictional limits of those courts.

During 1998–99 the OSLC liaised closely with the Civil Law Division, the Solicitor-General and the AGS to identify potential problems resulting from an adverse High Court decision. The OSLC also liaised with State officers who were involved in preparing State legislation to ensure that decisions made by federal courts in the exercise of State jurisdiction would continue to have legal effect, and to provide for the transfer to State Supreme Courts of matters that federal courts would be unable to determine. Other Commonwealth departments were advised of the possible impact of the *Re Wakim* decision.

In its decision in *Re Wakim*, on 17 June 1999, the High Court held that States may not confer jurisdiction on federal courts. The OSLC prepared a briefing on the decision for the Attorney-General, who issued a press release outlining the action to be taken by the States and the Commonwealth in response to the decision.

The OSLC began work on draft legislation to remove invalid provisions from Commonwealth legislation, and provide for federal court jurisdiction with respect to the operation of Commonwealth administrative laws where Commonwealth officers exercise powers conferred by State courts.

The OSLC also responded to many inquiries from members of the public and the legal profession concerning the effect of *Re Wakim* on cross-vesting schemes.

#### Attorney-General's Department

**PERFORMANCE MEASURE**

*High-quality advice and timely assistance to the Attorney-General, Secretary and Deputy Secretary on proposals to amend constitutional and legislative provisions dealing with the qualification of members of the Commonwealth Parliament.*

**PERFORMANCE OUTCOME**

The OLSC had primary responsibility within the Department for the consideration of proposals to amend constitutional and legislative provisions dealing with the qualification of members of the Commonwealth Parliament.

The OLSC liaised closely with the AGS to identify issues arising from the High Court's decision in *Sue v Hill* and *Sharples v Hill* on 23 June 1999, in which the court held that Mrs Heather Hill was incapable of being elected to the Senate. The High Court decided that the United Kingdom is a foreign power for the purposes of section 44(i) of the Commonwealth Constitution, which disqualifies a subject or citizen of a foreign power from being elected.

The OLSC responded to inquiries from members of the public concerning the implications of the High Court's decision in *Sue v Hill*.

**PERFORMANCE MEASURE**

*Effective communications with individuals and public interest groups on a wide variety of constitutional issues.*

**PERFORMANCE OUTCOME**

Extensive work was undertaken by the OLSC on the preparation of responses by the Attorney-General, the Attorney-General's office and the Department to letters sent from the public, Members of Parliament and ministers relating to various constitutional issues.

**PERFORMANCE MEASURE**

*High-quality and timely advice to the Attorney-General, Secretary and Deputy Secretary on constitutional policy issues as they arise.*

**PERFORMANCE OUTCOME**

The OLSC advised the Attorney-General, Secretary and the Deputy Secretary on a wide range of constitutional policy issues during the reporting year. This included, in addition to the matters specifically mentioned above, advice and comments on issues relating to the implications for federal and Territory courts of the challenge to the jurisdiction of the ACT Supreme Court in the *Eastman* case.



## 1.8 Native Title Task Force

The Administrative Arrangements Order of 17 October 1998 transferred the Native Title Task Force to the Department from the Department of the Prime Minister and Cabinet. The transfer was effected on 1 December 1998.

### SUB-PROGRAM OBJECTIVE

Provision of policy advice on native title issues.

### ROLE

The Native Title Task Force is responsible for the formulation of policy advice on native title. This includes amendments to the *Native Title Act 1993*; liaison with State and Territory governments on the implementation of native title arrangements; and the development of conditions agreed with the States and Territories for the provision of native title financial assistance. The task force is also responsible for the management of Commonwealth involvement in native title litigation.

Resource information for the Native Title Task Force is included in sub-program 1.7.

### PERFORMANCE MEASURE

*Advice provided in accordance with ministerial requirements for relevance, content and timeliness, including:*

- *design and implementation of effective solutions as agreed with ministers;*
- *appropriate representation of the interests of the Commonwealth at meetings of State and Territory officials on native title issues.*

### PERFORMANCE OUTCOME

The Native Title Task Force assisted in achieving the passage of the *Native Title Amendment Act 1998* which was passed on 8 July 1998. Most of the provisions of the Act commenced on 30 September 1998. Even with the passage of the Act there were many issues that remained to be addressed during the implementation phase.

The task force's work was divided into three primary areas: native title policy (in particular the implementation of the 1998 amendments); native title litigation; and the development and implementation of financial assistance agreements with the States and Territories.

#### *Native title policy*

The task force had responsibility for managing the implementation of the amendments within the Commonwealth. This involved coordinating the work of a number of Commonwealth agencies to ensure that the necessary statutory instruments were in place when the amendments came into operation, and that a number of statutory obligations imposed on the Commonwealth were carried out.

The task force also had a role in assisting the States and Territories to implement the amendments. The amended Native Title Act provides greater flexibility for State and Territory governments to introduce alternative regimes to replace certain provisions of the Commonwealth Act in order to allow for native title to be dealt with in a manner that is both flexible and appropriate to each jurisdiction. When the Native Title Amendment Act was enacted, the Government expressed hope that States and Territories would be able to use the determination provisions available in the Native Title Act to implement alternative regimes.

The operation of these regimes is contingent upon a determination of the Attorney-General that the State and Territory legislation complies with the relevant statutory criteria. This work has been a primary focus of the task force and has required extensive consultation with the relevant States and Territories.

As at 30 June 1999 the Attorney-General had made three determinations under the Native Title Act in relation to alternative provisions in the Northern Territory. These determinations followed a lengthy consultation process between task force and Territory officials, as well as consultations with the Northern Land Council and the Central Land Council. A meeting took place between the Attorney-General and the Central Land Council in Alice Springs in April 1999.

The Native Title Task Force continues to be involved in discussions and consultations regarding potential determinations in a number of other jurisdictions.

#### *Litigation*

The Government has an interest in ensuring that the Native Title Act is interpreted in a way that is consistent with the parliamentary intention. To that end the task force advised the Attorney-General on the Commonwealth's involvement in a number of significant cases that raised issues about the operation of the Act. These included the determination of the validity of the Native Title Notices Determination 1998, and of the nature of appeals to the Federal Court from registration test decisions of the Native Title Registrar. Other cases where the task force has provided advice to the Attorney-General include the Croker Island sea claim and the Miriuwung Gajerrong appeal. The task force also advised the Attorney-General in relation to a number of other native title cases in which the Commonwealth had a direct property interest.

#### *Financial assistance to the States*

The Native Title Act provides for the Commonwealth to enter into financial assistance agreements with the States and Territories to contribute towards certain expenses associated with compensation for acts affecting native title, and the cost of certain functions of State and Territory arbitral bodies. The Government made an offer of financial assistance in 1997, and discussions with the States and Territories about the conditions for the provision of financial assistance arising from that offer have continued.

It is expected that these discussions will lead to the negotiation of bilateral agreements with most jurisdictions.