



REPORT ON PERFORMANCE

REPORTING BASIS AND APPROACH

Performance reporting in this annual report is based on the outcomes and outputs structure and performance information depicted in the 2002–03 Portfolio Additional Estimates Statements (PAES). The structure and performance information varies slightly from that shown in the 2002–03 Portfolio Budget Statements (PBS). Details of those changes are set out in Appendix 2.

The approach to the report on performance has been modified to take account of feedback on the previous annual report. An attempt has been made to achieve a balance between assessments of progress towards the Department's outcomes and descriptions of the diverse activities of the Department. This acknowledges the dual role of the annual report—it is both a key accountability document to Parliament as well as an informative record of the year's activities.

The Department's outcomes are expressed in relatively broad, societal terms. While the Department is the primary driver of its two stipulated outcomes, it does not work in isolation in realising its achievements. The report refers to the extensive cooperative and consultative networks with other organisations, along with external factors that can impact on the Department, including significant domestic and international events or trends.

PERFORMANCE REPORT STRUCTURE

Each performance report for the Department's two outcomes contains a preliminary section giving an overview of the activities that contributed to that outcome, an overall assessment of the extent of progress towards the outcome, and significant issues for the year. Each outcome report also includes a resource summary table, a report on administered items, and separate reports on each of the departmental outputs contributing to the relevant outcome.

Each output report has an overview which aims to demonstrate the extent to which the Department fulfilled the output (and therefore achieved the related outcome in 2002–03), as well as present highlights for that output. Following the overview are comments that address the performance measures associated with the output. The results of evaluations or reviews undertaken during the year, especially those listed in the 2002–03 PBS, are included, as well as purchaser-provider arrangements where relevant. The output report concludes with an outlook statement that highlights particular activities or goals to be pursued next financial year and identifies areas for improvement.

OUTCOME 1

AN EQUITABLE AND ACCESSIBLE SYSTEM OF FEDERAL CIVIL JUSTICE

OVERVIEW

The Attorney-General's Department provides a diverse range of legal services and policy advice to achieve Outcome 1. The Department's responsibilities cover the broad areas of courts and tribunals, alternative dispute resolution, administrative law, human rights, evidence and procedure, family law, legal assistance, international law, information law and native title. The Department also provides specialised support for the Attorney-General as First Law Officer, and administers legal assistance and family law related programs, promotes Australian legal services internationally, and drafts and publishes legislative materials.

The Department works in cooperation and consultation with many other organisations to achieve Outcome 1. These organisations can be government agencies (Commonwealth, State or Territory) as well as non-government. They include advisory bodies, task forces, professional associations and community interest groups. As well as the inter-relationships with other organisations, the Department must maintain the flexibility to adapt its operations to the impacts of domestic and international events or trends.

During 2002–03 the Department made substantial and significant progress toward achieving Outcome 1, with many successes drawing positive comments from stakeholders, including the Attorney-General. The performance reports for each output contributing to Outcome 1, presented further on in this section, expand on these aspects.

HIGHLIGHTS FOR 2002–03

- The Age Discrimination Bill 2003 was introduced into the House of Representative on 26 June 2003. This Bill aims to eliminate unfair age discrimination and thereby ensure that all Australians, regardless of age, have equal opportunity to participate in the social and economic life of our country. It will protect the interests of individuals. It will also protect the interests of business—stereotypical views about the capacity of older Australians prevent businesses from getting the best person for the job. The community as a whole will benefit from having a more equitable society and an economy strengthened by the contribution of all Australians regardless of age.
- The Department played a leading expert role in relation to international trade in legal services and legal education services in the negotiations leading to the finalisation of a Free Trade Agreement (FTA) with Singapore. The agreement was concluded in November 2002 and included significant market access concessions by Singapore for the export of Australian legal and legal education services into that market. This was the result of devoting

- significant resources to promoting the liberalisation of transnational trade in legal services. This FTA was Australia's first since the conclusion of the Australia–New Zealand Closer Economic Relations Agreement nearly 20 years ago.
- The Department played a major role, working with other departments and agencies, in providing advice to the Government on the implementation of the Family Law Advisory Group's Report *Out of the Maze: Pathways to the future for families experiencing separation* (the Pathways Report). The Government released its response to the Pathways Report on 13 May 2003, underpinned by \$27.8 million in ongoing funding over four years that was announced in the 2003–04 Budget to support the response.
 - On 28 December 2002, the package of reforms to family law, superannuation, tax, social security and veteran's affairs legislation, enabling superannuation entitlements to be divided on marriage breakdown, commenced operation. The reforms are the most significant made to Australian matrimonial property law since the commencement of the *Family Law Act 1975*.
 - The provision of advice and other legal services on issues relating to Iraq and Solomon Islands were designed to ensure Australia's actions in those countries complied with both international and domestic law. For Solomon Islands, this included providing assistance in drafting that country's enabling law for the Australian actions.
 - The Department supported the Government in the passage of copyright amendments (the *Copyright Amendment (Parallel Importation) Act 2003*) to enhance competition by removing the ability of copyright owners to control the importation of legitimate computer software—a long-standing issue of micro-economic and copyright reform.
 - The Department coordinated the tabling and launch of the Australian Law Reform Commission and Australian Health Ethics Committee report on the protection of human genetic information on 29 May 2003. The report, *Essentially Yours*, is the result of a joint reference by the Attorney-General and the former Minister for Health. The 144 recommendations contained in the report cover a diverse range of areas including genetic privacy, unfair discrimination in employment and insurance, the use of genetic information (for example in forensic investigations or parentage testing) and ethical standards in genetic research and practice. In 2003–04, the Department will advise the Attorney-General on the recommendations in the report.
 - This year saw significant progress in native title policy and case law that will promote the workability and sustainability of the native title system. The Department contributed to a revised Commonwealth policy for the resolution of native title determination applications that will enhance the Commonwealth's involvement in applications. In addition, the Department provided instructions for the Commonwealth in decisions handed down by the High Court in the *Miriuwung Gajerrong (Ward)* (191 ALR 1) and *Yorta Yorta* (194 ALR 538) cases. The decisions were significant in that they confirmed the underlying principles of the *Native Title Act 1993*, and provided a firm foundation on which negotiated settlements about native title can be built.

RESOURCE SUMMARY

OUTCOME 1 – AN EQUITABLE AND ACCESSIBLE SYSTEM OF FEDERAL CIVIL JUSTICE

	(1) BUDGET ¹ 2002–03 \$'000	(2) ACTUAL ² EXPENSES 2002–03 \$'000	VARIATION (COLUMN 2 MINUS COLUMN 1)	BUDGET ³ 2003–04 \$'000
Administered Expenses (including third party outputs)	278 255	257 156	(21 099)	227 100
Special Appropriations	31 407	73 315	41 908	32 541
Total Administered Expenses	309 662	330 471	20 809⁴	259 641
PRICE OF DEPARTMENTAL OUTPUTS				
OUTPUT 1.1: Legal services and policy advice on courts and tribunals, alternative dispute resolution, administrative law, human rights, evidence and procedure	11 552	9 896	(1 656)	9 614
OUTPUT 1.2: Support for the Attorney-General as First Law Officer, advice on constitutional policy and promotion of Australian legal services internationally	5 276	5 776	500	3 113
OUTPUT 1.3: Legal services and policy advice on family law and legal assistance and the administration of government programs providing legal assistance and family law related services	11 660	14 793	3 133	12 843
OUTPUT 1.4: Legal services and policy advice on international law	2 959	4 299	1 340	3 606
OUTPUT 1.5: Drafting of legislative and other instruments, publication of legislative materials and provision of related legal services	11 245	8 628	(2 617)	10 066
OUTPUT 1.6: Legal services and policy advice on information law	5 176	7 427	2 251	4 685
OUTPUT 1.7: Legal services and policy advice on native title	5 685	5 994	309	5 903
TOTAL PRICE OF OUTPUTS	53 553	56 814	3 261	49 830
Revenue from Government (Appropriation) for Departmental Outputs	50 945	50 945	-	47 868
Revenue from other Sources	2 608	2 790	182	1 962
Total Departmental Revenue	53 553	53 735	182	49 830
TOTAL FOR OUTCOME 1 (Total Price of Outputs and Administered Expenses)	363 215	387 285	24 070	309 471

	2002–03	2003–04
Average Staffing Level	293.8	318.5

1 Full-year budget, including additional estimates and decisions of Government in the 2003–04 Budget impacting on 2002–03

2 Actual expenses include the capital use charge

3 Budget prior to additional estimates

4 The variation is primarily due to adjustments made to non-financial assets during the financial year

PERFORMANCE REPORT – ADMINISTERED ITEMS FOR OUTCOME 1

PAYMENTS FOR THE PROVISION OF LEGAL AID

PERFORMANCE MEASURE

Funds provided in accordance with formal agreements between the Commonwealth and the relevant States and Territories

COMMONWEALTH LEGAL AID PROGRAM

PERFORMANCE MEASURE

Funds provided in accordance with formal agreements between the Commonwealth and relevant State and Territory legal aid commissions

The Commonwealth provided legal aid funding to the States and Territories in accordance with the provisions of the legal aid agreements, under both the above administered items. Under the first item, the Commonwealth provided funding to State and Territory Governments for their legal aid commissions. Under the second item, the Commonwealth provided legal funding to legal aid commissions in those States where the Commonwealth had an agreement directly with the Commission.

Commonwealth funding was used to assist legal aid clients with matters arising under Commonwealth law. Family law is a key area of Commonwealth assistance. Services to clients included the provision of information, advice, duty lawyer services and community legal education.

In accordance with the Commonwealth's policy that more family law disputes should be resolved through non-litigious means, additional funds were provided to the commissions in 2002–03 to develop and enhance primary dispute resolution services.

FAMILY RELATIONSHIPS SERVICES PROGRAM

PERFORMANCE MEASURE

Funds provided in accordance with service agreements between the Commonwealth and individual service providers

The Family Relationship Services Program is jointly funded through the Attorney-General's Department and the Department of Family and Community Services (FaCS). The Program is administered by FaCS. In 2002–03, funding from the Attorney-General's appropriation was provided through FaCS to 65 community organisations. These organisations delivered family and child counselling and mediation under the *Family Law Act 1975*, conciliation services, children's contact services, primary dispute resolution services in rural and regional locations and a contact orders program.

To enhance the skills of practitioners working in family law, in 2002–03 the Department funded professional development programs for lawyers, counsellors and mediators working with separated families. The Department also continued to develop Family Law Online and the Family Law Hotline to ensure families are able to get the information they need about family law issues and support services.

COMMUNITY LEGAL SERVICES

PERFORMANCE MEASURE

Funds provided in accordance with service agreements between the Commonwealth and individual service providers

The Commonwealth Community Legal Services Program provided funds to general and specialist community legal services to provide legal assistance to disadvantaged members of the Australian community.

An achievement during the year was the implementation of a new service agreement on 1 January 2003. This agreement will run until 30 June 2005 and replaces an annual service agreement. The new agreement introduces service quality assurance measures and new data collection requirements and will save time and resources allocated to annual service agreement negotiations.

Funds were provided in the reporting period in accordance with service agreements.

FINANCIAL ASSISTANCE TOWARDS LEGAL COSTS AND RELATED EXPENSES

PERFORMANCE MEASURE

Assistance provided in accordance with relevant legislation and in compliance with the terms of individual grants

The Department administered assistance under 25 schemes for legal and financial assistance. These statutory and non-statutory schemes were established for matters where the Commonwealth has a special role and where legal aid is generally not available through legal aid commissions. They include schemes under the *Native Title Act 1993*, the *Federal Proceedings (Costs) Act 1981*, the *Workplace Relations Act 1996*, the *Aboriginal Land Rights (Northern Territory) Act 1976*, the Commonwealth Public Interest and Test Cases Scheme, the Overseas Custody (Child Removal) Scheme, and the Royal Commission Scheme that provides for assistance to persons appearing before the Royal Commissions into HIH and the Building and Construction Industry.

Assistance is provided under relevant legislation and guidelines. The Department is implementing measures to improve the administration of grants of financial assistance, including clarifying procedures for the assessment of invoices.

Assistance was provided under the Native Title Act scheme for respondents to the following significant matters:

- *Western Australia v Ward* (Full Court of the High Court)
- *Wilson v Anderson* (Full Court of the High Court)
- the Larrakia People's Claim
- the Wongatha People's Claim
- the Wanjina/Wungurr-Willinggin Claim, and
- Indigenous Land Use Agreement negotiations in South Australia.

FAMILY COURT OF WESTERN AUSTRALIA – OPERATING EXPENSES

PERFORMANCE MEASURE

Quarterly payment made in accordance with the agreement with the WA Government

The Family Court of Western Australia (FCWA) is a State court established under section 41(1) of the *Family Law Act 1975* and the *Family Court Act 1997* (WA). By agreement between the Commonwealth and the Government of Western Australia, made pursuant to section 41(1) of the Family Law Act, the Commonwealth contributes to the operating expenses of the FCWA.

The Commonwealth's funding of the FCWA ensures access for all Australians to the civil justice system.

Payments were made in accordance with the Commonwealth–State agreement.

REIMBURSEMENTS OR PAYMENTS ON ACCOUNT OF REIMBURSEMENT MADE FOR SERVICES UNDER THE *FAMILY LAW ACT 1975* AND THE CHILD SUPPORT SCHEME LEGISLATION

PERFORMANCE MEASURE

Funds provided in accordance with Commonwealth–State agreements

Subject to limitations, section 39(6) of the *Family Law Act 1975* invests each State court of summary jurisdiction with federal jurisdiction in family law matters. By agreement between the Commonwealth and State Governments, the Commonwealth meets the cost of Family Law Act and Child Support Scheme workload undertaken by courts of summary jurisdiction.

This funding ensures access for all Australians to the civil justice system.

Payments were made in accordance with Commonwealth–State agreements.

AUSTRALIAN ORGANISATIONS – GRANTS

PERFORMANCE MEASURE

Grants made in accordance with agreed funding arrangements

This year grants were made to the Australian Institute of Judicial Administration (AIJA), National Committee for Human Rights Education (NCHRE), Red Cross, National Judicial College of Australia, Asian Law Centre of the University of Melbourne, and Australian Centre for International Commercial Arbitration (ACICA).

The AIJA contributes to achieving an equitable and accessible system of federal civil justice through research and education programs, and the NCHRE through human rights education initiatives.

The Red Cross disseminates information on international law to our servicemen and women as well as aid volunteers and the general public.

The National Judicial College provides professional development for the Australian judiciary and thus plays an important role in achieving an equitable and accessible system of federal civil justice.

The Asian Law Centre promotes the teaching of Asian Law in Australia and the teaching of Australian law in Asia, encourages the linkage of law studies with other Asian studies, promotes exchanges with Asian institutions and seeks to improve Australia's knowledge of laws in our region.

ACICA is a not-for-profit organisation working to develop Australia's profile in international commercial dispute resolution and to promote Australia as a venue for international commercial arbitrations.

Other grant recipients during 2002–03 were:

- Centre for Environmental Law, Australian National University (for a moot court competition), and
- Law Council of Australia (in support of the Commonwealth Law Conference, April 2003).

Payments were made in accordance with agreed funding arrangements.

INTERNATIONAL BODIES – MEMBERSHIP CONTRIBUTIONS

PERFORMANCE MEASURE

Grants made in accordance with agreed rates of contribution

Hague Conference on Private International Law

The Hague Conference on Private International Law supervises the implementation of private international law conventions in civil and commercial matters. It is supported by the governments of 62 member countries.

Australia's participation is necessary to ensure the continued benefits for Australia resulting from the effective operation of international conventions concerning child abduction, custody, welfare and

protection, divorce, and international judicial cooperation between courts (including taking of evidence and the development of a consistent approach to the law applicable to rights in respect to securities held with an intermediary).

The payment was made in accordance with agreed funding arrangements.

WIPO – Berne Union

Australia's membership contribution to the World Intellectual Property Organisation (Berne Union for the protection of the rights of authors in their literary and artistic works) was \$224 117.11. The Berne Union comprises member countries of the Berne Convention on copyright, the foundation and most important treaty on international copyright standards. These standards are reflected extensively in Australia's *Copyright Act 1968*.

UNIDROIT

Through the Department, Australia contributed \$72 157.43 to the International Institute for the Unification of Private Law (UNIDROIT). UNIDROIT is an independent inter-governmental organisation based in Rome. Its purpose is to study needs and methods for modernising, harmonising and coordinating private, and in particular commercial, law between countries and groups of countries.

Membership of UNIDROIT is restricted to countries acceding to the UNIDROIT Statute. UNIDROIT's member countries are drawn from the five continents and represent a variety of different legal, economic and political systems as well as different cultural backgrounds. The Institute is financed by annual contributions from member countries, which are fixed by the General Assembly, as well as a basic annual contribution from the Italian Government.

UNIDROIT's statutory objective is to prepare modern and, where appropriate, harmonised rules of private law understood in a broad sense. Former Secretary to the Department, Mr A S Blunn is a member of the UNIDROIT Governing Council. A

significant activity of the Institute during the year was a brainstorming session that addressed the issues of the Institute's budget, the branches of its activities, the role of economic integration organisations such as the European Union and achieving better coordination among private law formulating organisations. This activity was moderated by Mr Ian Govey, General Manager of the Civil Justice and Legal Services Group.

PUBLICATION OF ACTS AND STATUTORY RULES

PERFORMANCE MEASURE

Expenditure in accordance with the Legislative Printing Program

This program deals with the publishing of Commonwealth legislation in printed form (including numbered Acts and Statutory Rules, reprints of Acts and Statutory Rules, bound volumes of Acts and Statutory Rules, tables and indexes). The program contributed to Outcome 1 by making legislation available to the Australian community after it was enacted or made. The high volume output of printed material prepared in 2002–03 included 158 numbered Acts, 365 numbered Statutory Rules, 23 titles of reprinted Acts, Statutory Rules and instruments (6900 pages), 18 bound volumes of Acts and Statutory Rules for calendar years 2001 and 2002 (26 062 pages) and tables (828 pages). In 2002–03, \$0.976 million was spent under the Program.

COMPENSATION PAYMENTS MADE UNDER PART 2 OF THE NATIVE TITLE ACT 1993

PERFORMANCE MEASURE

Payments made in accordance with the provisions of Division 5 of Part 2 of the Native Title Act 1993

The *Native Title Act 1993* provides that where an act done by the Commonwealth affects native title, compensation may be payable. Funds for such compensation

have been appropriated from the Consolidated Revenue Fund under section 54 of the Act. No payments have yet been made.

FINANCIAL ASSISTANCE TO STATES AND TERRITORIES UNDER PART 9 OF THE NATIVE TITLE ACT 1993

PERFORMANCE MEASURE

Funds provided in accordance with formal agreements between the Commonwealth and the relevant States and Territories

All States and Territories have been invited to enter into bilateral agreements with the Commonwealth to reimburse them for up to 75 per cent of some native title compensation costs and 50 per cent of the cost of tribunals performing native title functions. Funds for such assistance have been appropriated as a Specific Purpose Payment since 1997–98. However, pending the signing of financial assistance agreements, no payments have yet been made.

JUDGES' PENSIONS ACT 1968

PERFORMANCE MEASURE

Payments made in accordance with entitlements and agreed arrangements

The *Judges' Pensions Act 1968* (the Pensions Act) provides for the payment of pensions to former federal judges and a small number of former statutory office holders. The Attorney-General is responsible for the Pensions Act and processes payments under the Judges Pensions Scheme. The scheme is non-contributory.

Payments during 2002–03 were made in accordance with entitlements and agreed arrangements.

REMUNERATION AND ALLOWANCES ACT 1990 – JUSTICES OF THE HIGH COURT

PERFORMANCE MEASURE

Payments made in accordance with entitlements and agreed arrangements

The remuneration and allowances of Justices of the High Court are administered by the Attorney-General's Department. Determinations on remuneration and allowance related matters are issued by the Remuneration Tribunal.

Payments during 2002–03 were made in accordance with entitlements and agreed arrangements.

LAW COURTS LIMITED – CONTRIBUTIONS TO OPERATING EXPENSES AND COSTS OF THE JOINT LAW LIBRARY

PERFORMANCE MEASURE

Payments made in accordance with Commonwealth–NSW funding agreement

Law Courts Ltd is a company established to manage the joint Commonwealth–State Law Courts Building in Sydney. The company has a board of six people—three Commonwealth Directors who are appointed by the Commonwealth Attorney-General and three State Directors who are appointed by the New South Wales Attorney General. Contributions to the operating expenses of the Law Courts Building and the joint Law Courts Library are made on the basis of 47.5 per cent by the Commonwealth and 52.5 per cent by the NSW Government.

Payments were made accordingly by the Commonwealth. Additional funding of \$3.737 million was made available

in the Additional Estimates process during 2002–03 to fund the removal of asbestos from levels 15, 23 and 25 of the building as well as undertake required air-conditioning works.

ROYAL COMMISSIONS INTO THE BUILDING AND CONSTRUCTION INDUSTRY AND THE FAILURE OF THE HIH INSURANCE GROUP

PERFORMANCE MEASURE

Payments to creditors processed and expenditure recorded in accordance with directions of the Royal Commissioners

The payments under this item cover the costs of administration of the two Royal Commissions, including payments to staff and contractors involved in conducting the inquiries, and payments for the office accommodation, information technology and other administrative support costs.

The Commissions completed their inquiries and reported to Government during the financial year. Administration of the Commissions was wound up, payments to creditors were processed and expenditures recorded in accordance with the directions of the Commissions.

PERFORMANCE REPORT – DEPARTMENTAL OUTPUTS FOR OUTCOME 1

OUTPUT 1.1

LEGAL SERVICES AND POLICY ADVICE ON COURTS AND TRIBUNALS, ALTERNATIVE DISPUTE RESOLUTION, ADMINISTRATIVE LAW, HUMAN RIGHTS, EVIDENCE AND PROCEDURE



OVERVIEW

Output 1.1 is the particular responsibility of Civil Justice Division. By providing timely and sound advice to the Attorney-General, the Division made a significant contribution to ensuring an equitable and accessible system of federal civil justice.

HIGHLIGHTS FOR 2002–03

Age discrimination

The Age Discrimination Bill 2003 was introduced into the House of Representatives on 26 June 2003. This Bill aims to eliminate unfair age discrimination and thereby ensure that all Australians, regardless of age, have equal opportunities to participate in the social and economic life of our country. It will protect the interests of individuals as well as the interests of business—stereotypical views about the capacity of older Australians prevent businesses from getting the best person for the job. The community as a whole will benefit from having a more equitable society and an economy strengthened by the contribution of all Australians regardless of age.

Legislative instruments

The Legislative Instruments Bill 2003 was introduced into the House of Representatives on 26 June 2003. The Bill will greatly improve the accessibility of Commonwealth legislative instruments. It will establish a federal register of these instruments, comprising a database of legislative instruments that will be legally authoritative. For the first time Australians will be able to view an up-to-date and comprehensive

collection of Commonwealth legislative instruments and compilations, publicly accessible via the Internet. The Bill will ensure transparency in the making and maintenance of Commonwealth legislative instruments by enabling Parliament to be satisfied that appropriate consultation has been undertaken. It will also include a sunset mechanism to ensure that legislative instruments that are no longer needed are removed after a stipulated time.

Australian Human Rights Commission

The Australian Human Rights Commission Legislation Bill 2003 was introduced into the House of Representatives on 27 March 2003 and passed that House on 27 June 2003. The Bill aims to ensure that the Human Rights and Equal Opportunity Commission is efficient and focused on educating the community about human rights.

Federal Magistrates Service review

The capacity of the Federal Magistrates Service to deliver efficient and effective justice will be significantly enhanced by the Government's decision in May 2003 to create four additional federal magistrate positions. These magistrates are to be appointed in Adelaide, Melbourne, Newcastle and south-east Queensland.

The Service was established in 2000 to provide a quick, low cost, user-friendly forum for less complex litigation. A review of its first two years of operation was completed during 2002–03 by the Department, in conjunction with the Department of the Prime Minister and Cabinet and the Department of Finance and Administration. The review confirmed that the Service is meeting its objectives.

COMMENTS AGAINST PERFORMANCE MEASURES

PERFORMANCE MEASURE

Timely and sound assistance to the Attorney-General and the Government to:

- *maintain and develop institutional frameworks that deliver efficient and effective justice*



Photo: Geoff Comfort Photography.

Human Rights and Equal Opportunity Commission

The Department advised the Attorney-General on possible reforms to the structure of the Human Rights and Equal Opportunity Commission to ensure that it is efficient and focused on educating the broader Australian community about human rights issues. In February 2003 the Australian Human Rights Commission Legislation Bill 2003 was introduced into Parliament. It passed the House of Representatives on 27 June 2003. The reforms better equip the Commission to take on new areas of responsibility, such as age discrimination. The Bill replaces the current structure of five portfolio-specific Commissioners with a more flexible structure of a President and three Human Rights Commissioners. It also re-focuses the Commission's functions to give greater legislative priority to education and dissemination of information on human rights. This recognises that education is the most powerful way to produce widespread systemic change.

Federal Magistrates Service

The Federal Magistrates Service (FMS) continued to make a valuable contribution to the efficient and effective operation of the federal civil justice system, particularly in the area of family law. The separate annual report of the FMS provides details of matters that came before it.

A review of the operations of the FMS from 1 July 2000 to 30 June 2002 confirmed that the Service is meeting its objective of providing a quick, low cost, user-friendly forum for less complex litigation. The review was undertaken by the Department in conjunction with the Department of the Prime Minister and Cabinet, the Department of Finance and Administration, the Family Court, the Federal Court and the Service. A working group comprising officers of the three departments was advised by a reference group, chaired by the Department, that included representatives of the courts and

the relevant departments. The Attorney-General is considering the report of the review.

The appointment of four additional federal magistrates, which was announced by the Attorney-General in May 2003, will contribute further to the effective operation of the FMS. The magistrates will be located in Adelaide, Melbourne, Newcastle and south-east Queensland.

Additional jurisdiction was conferred on the FMS in 2002–03 under the *Marriage Act 1961* (the FMS now has the same jurisdiction as the Family Court in matters arising under that Act) and in civil matters arising under the *Copyright Act 1968*. These increases in jurisdiction enhanced opportunities for individuals to take advantage of this quick, low cost and user-friendly option for addressing their litigation needs.

WA courts with family law jurisdiction

The Department, in consultation with the Family Court of Western Australia and the WA Department of Justice, carried out a review of the workload and resources of the Family Court of Western Australia and its co-located Court of Petty Sessions in Perth. The review recommended that additional resources be provided and that the jurisdiction of the Court of Petty Sessions be expanded to correspond with the family law jurisdiction of the Federal Magistrates Service.

Appointments to federal courts and tribunals

An important facet of maintaining an accessible federal civil justice system is ensuring that appropriate appointments are made to federal courts and tribunals. The Department assisted the Attorney-General to make 44 appointments to federal courts and tribunals, including seven judicial appointments and 28 appointments to the Administrative Appeals Tribunal. During the reporting period, Justice Dyson Heydon was appointed to the High Court to replace Justice Mary Gaudron with effect from 11 February 2003.

Terms and conditions of office for federal judges and tribunal members

An independent judiciary and tribunal members are central to an equitable civil justice system. In Australia one of the key factors underpinning the independence of judges and tribunal members is adequate and appropriate terms and conditions of office, including remuneration. During the reporting year the Remuneration Tribunal concluded its first major review of judicial and related offices' remuneration since 1993–94 and also commenced its 2003 annual review for these offices. The Department assisted the Government in relation to both reviews.

The Department also provided the Government with advice about other terms and conditions matters, such as a request by the Federal Magistrates Service for increased Commonwealth contributions to magistrates' superannuation and to provide them with death and disability income protection and life cover. The Attorney-General referred these matters to the Remuneration Tribunal which at the end of the reporting period had not concluded its deliberations.

Development of a protocol for handling serious complaints against federal judges and magistrates

The Australian Law Reform Commission, in its report, *Managing Justice: A review of the federal civil justice system*, recommended that the Parliament develop and adopt a protocol for the receipt and investigation of serious complaints against federal judicial officers. During the year, the Attorney-General invited the Chief Justices and Judges of the High Court, the Federal Court and the Family Court, and the Chief Federal Magistrate and other federal magistrates, to provide comments on a draft protocol for handling serious complaints against federal judges and magistrates. The draft protocol was developed in consultation with the Department of the Prime Minister and Cabinet. Whether or not a protocol should be adopted, and the contents of such a protocol, are ultimately matters for the Parliament to determine.

National Judicial College of Australia

The Department continued to provide support and assistance with the establishment of the National Judicial College of Australia. The College is administered by a Council comprising four judicial officers from across the courts and two non-judicial officers, one chosen by the Commonwealth Attorney-General and one by State and Territory Attorneys-General. The nominee of the Commonwealth Attorney-General is the Secretary of the Department, Mr Robert Cornall.

The Commonwealth contributes at least 50 per cent of the funding for the College. At the end of the reporting period the College was finalising a number of judicial education and training programs to commence in August 2003. The College will enhance the delivery of effective and efficient justice by courts across Australia by providing professional development for judges, masters and magistrates.

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) refers to processes, other than judicial determination, in which an impartial person assists those in dispute to resolve the issues between them. ADR is provided through courts and tribunals, community agencies and private organisations. It is applied across a wide range of areas including family law, commercial matters, administrative law and native title.

The Department continued to provide secretariat support to the National Alternative Dispute Resolution Advisory Council (NADRAC), which provides independent advice on alternative dispute resolution to the Attorney-General. A senior Departmental officer is an ex officio member of NADRAC.

NADRAC prepares a separate annual report. During the reporting period NADRAC:

- produced a database on Commonwealth ADR statutory provisions and commenced work on a guide to ADR legislation

- convened a national round table on ADR research and published a background paper for that round table
- published a summary of submissions received in response to *ADR Terminology: a discussion paper*
- commenced a joint research project with the Australian Institute of Judicial Administration on the subject of court referral to ADR
- commenced a series of consultative forums to identify effective ADR practices applicable to disputes involving Indigenous people, and
- undertook preparations for a major conference on ADR in business, scheduled for September 2003.

Reform of the federal merits review tribunals

On 6 February 2003 the Attorney-General announced that, in light of the Senate's rejection of the Administrative Review Tribunal legislation in February 2001, the Government would not reintroduce that legislation in the current Parliament. In the interim, the Government has announced that it will undertake reform of the individual tribunals, starting with the Administrative Appeals Tribunal (AAT). The reforms will give the AAT greater flexibility to manage its workload, and will ensure that reviews are conducted as efficiently as possible. The Department worked closely with the AAT in developing proposals for reform. The Department continued to work with the AAT, the Social Security Appeals Tribunal, the Migration Review Tribunal, the Refugee Review Tribunal and the Veterans' Review Board and relevant departments to identify and implement measures to achieve efficiencies in the administration of these tribunals.

International arrangements

Australia is a member of the Hague Conference on Private International Law, a global inter-governmental association involved in promoting international judicial and administrative cooperation, especially in the fields of protection of the

family and children, commercial law and civil procedure. Australia is a party to a number of its multilateral treaties.

The Department participated in the Australian delegation at a Special Commission held at The Hague in December 2002, which successfully negotiated the text of a Convention on the law applicable to rights in respect of securities held with an intermediary. The objective of the Convention is to establish internationally agreed rules to identify what law determines the validity of a disposition, and what law the interested party (trader, investor, creditor, intermediary) has to comply with to be satisfied that their interest is enforceable.

Australia ratified the 1996 Convention on the Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children on 1 April 2003. The Convention, which is implemented in Australia by amendments to the *Family Law Act 1975* (which were made in 2002) and the *Family Law (Child Protection Convention) Regulations 2003* (which were made in April 2003), commenced in Australia on 1 August 2003. The Convention will further the protection and welfare of children involved in international custody cases.

Arrangements between Australia and New Zealand

Australian and New Zealand officials are engaged in developing a number of trans-Tasman proposals, including the establishment of the joint Trans-Tasman Therapeutic Products Agency (TTTPA). These proposals raise a range of civil justice issues including the appropriate means to facilitate service and procedure, recognition of judgments, administrative law and rights to seek merits review, and the implementation of treaty-authorised legislative instruments. The Department provided advice on the development of a treaty to establish the TTTPA and related legislative issues that will result in a coordinated trans-Tasman approach to regulating therapeutic products.

Government response to the Australian Law Reform Commission Report No.89: Managing Justice

The Government's response to the recommendations made by the Australian Law Reform Commission in its report, *Managing Justice: a review of the federal civil justice system*, was released in June 2002. This followed consultation with a wide range of organisations, including federal courts and tribunals, Australian Government departments with relevant interests and the Law Council of Australia. The Government response emphasises the importance of all parts of the legal system performing at their best in the interests of those people in need of legal services and of the entire community.

Service of process

The *Service and Execution of Process Act 1992* was amended by the *Crimes Legislation Enhancement Act 2003* to enable arrest warrants issued by prescribed State and Territory bodies to be served and executed interstate. The amendment will commence on the making of regulations prescribing the relevant State and Territory bodies.

PERFORMANCE MEASURE

Timely and sound assistance to the Attorney-General and the Government to:

- *develop policies that recognise*
 - *needs, rights and responsibilities of individuals and families*
 - *an appropriate balance of competing community interests*
 - *legitimate business and other economic interests*

Age discrimination

The Department assisted the Attorney-General to develop the Government's policy on age discrimination legislation which resulted in the introduction of the Age Discrimination Bill 2003 on 26 June 2003.

Extensive consultation took place to ensure that the interests of individuals and business and other community interests were appropriately balanced.

A Core Consultative Group of organisations representing business, employees, financial services, health services, youth, older people, and families, as well as relevant government departments was established in July 2002. Consultation with the Group built on the Department's previous consultations with business and community groups in early 2002. At that time, the Department met with over 90 organisations and wrote to a further 180 organisations. The issues that might be addressed by age discrimination legislation were canvassed in detail with the Group and working groups established under it. This consultative process ensured that the concerns of key sectors of the community were considered in the development of the legislation. On 9 January 2003, the Attorney-General released an information paper that set out the Government's proposals for age discrimination legislation, and invited submissions. The Department received 82 submissions from interested organisations, groups and individuals.

Sex Discrimination (Pregnancy and Work) Bill 2002

The Sex Discrimination Amendment (Pregnancy and Work) Bill 2002, which was introduced into Parliament in February 2002, passed the House of Representatives on 11 February 2003 and was introduced into the Senate on 3 March 2003. The Bill amends the *Sex Discrimination Act 1984* (the SDA) to provide clarity for all workplace participants about their rights and responsibilities in the workplace in relation to potential and actual pregnancy. The Bill will make it unlawful for job interviewees to be asked questions about pregnancy or potential pregnancy, to use information about pregnancy gained from medical examinations for discriminatory purposes except where appropriate such

as for genuine occupational health and safety reasons, or to discriminate against women who are breastfeeding.

In developing these amendments to the SDA, employer and employee organisations were consulted to ensure a workable and balanced approach. The amendments are a practical step toward removing workplace discrimination against pregnant women and women who may become pregnant.

Disability Standards for Accessible Public Transport

The *Disability Standards for Accessible Public Transport* (Transport Standards) commenced on 23 October 2002. The Transport Standards provide practical measures to be taken by transport operators and providers so that public transport will become more accessible, particularly for people with disabilities, as well as the elderly and those travelling with young children. The minimum accessibility requirements to be met by operators of public transport conveyances, infrastructure and premises also provide transport providers with certainty and flexibility. The Transport Standards and Guidelines are available electronically on the Department's website at <http://www.law.gov.au/DSFAPT/Welcome.html> and printed copies may be purchased. Braille, audio and large print copies may be ordered through the Department.

Disability Standards on Access to Premises

The Department has continued to work with the Australian Building Codes Board (ABCB) to enhance accessibility of premises for people with disabilities. This year, the ABCB, through its Building Access Policy Committee, has been developing amendments to the Building Code of Australia to allow the code to form the basis for a Disability Standard on access to premises (Premises Standards). The Department is an active member of this committee. The ABCB aims to commence public consultation on the package of proposals in early 2004,

and to make recommendations to the Commonwealth in late 2004.

Disability Standards for Education

The Department continued to provide advice and assistance to the Department of Education, Science and Training (DEST) in the development of disability standards for education. In July 2002, the Ministerial Council on Education, Employment, Training and Youth Affairs asked jurisdictions to resolve outstanding legal and costs issues. The draft standards were further refined this year, and DEST commissioned a cost benefit analysis that will inform a draft Regulation Impact Statement. The Department participated in the steering committee for the cost benefit analysis.

Proposed Convention on the Rights of People With Disabilities

The Department was represented on the Australian delegations to the first two sessions of the United Nations Ad Hoc Committee that is considering proposals for an international instrument to promote and protect the rights and dignity of persons with disabilities.

The first meeting of the Ad Hoc Committee took place in New York from 29 July 2002 to 9 August 2002. Subsequently, the United Nations General Assembly approved a draft resolution developed by the Committee that outlined a process to further examine and develop proposals for a convention. Among other matters, it requested the Secretary-General to seek the views of States on a range of issues prior to a further meeting of the Ad Hoc Committee.

The Department, in cooperation with the Department of Family and Community Services (FaCS), consulted with State and Territory governments, peak disability and business groups and human rights organisations on issues related to the proposed convention.

This consultation assisted the Government's preparations for the second session of the Ad Hoc Committee, held in New York from 16–27 June 2003. As well as government representatives,

the Australian delegation included representatives from the Human Rights and Equal Opportunity Commission and the National Disability Advisory Council.

Legislative Instruments Bill 2003

The Legislative Instruments Bill 2003, introduced into the House of Representatives on 26 June 2003, will enable all members of the community to easily access legislative instruments.

The Bill will establish a federal register of legislative instruments. The register will comprise a database of legislative instruments that will be legally authoritative and publicly accessible via the Internet. For the first time Australians will be able to access an up-to-date and comprehensive collection of Commonwealth legislative instruments, including compilations of legislative instruments. The Bill will enable Parliament to be satisfied that appropriate consultation has been undertaken, and improve parliamentary scrutiny. It will also include a sunset mechanism to ensure that legislative instruments that are no longer needed are removed after a stipulated time.

International arrangements in relation to recognition and enforcement of foreign judgments

In recognition of the needs of those with international business interests, the Department supported the work of an Informal Working Group that has been established under the auspices of the Hague Conference. The Working Group continues the development of a *Convention on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters*. The preliminary text from that working group is limited to choice of court agreements in commercial transactions and is not a comprehensive draft convention. However, Australia continues to be supportive of the developments in this area and in particular of convening a Special Commission to consider the preliminary text from the working group.

PERFORMANCE MEASURE

Timely and sound assistance to the Attorney-General and the Government to:

- *explain, implement and apply the Government's policies*
-

Litigation

Generally, the Department assists with the provision of advice on the question of the Attorney-General's intervention in legal proceedings, and the implications of such intervention for Commonwealth legislation within the Attorney-General's portfolio and for Commonwealth legal and constitutional policy. Proceedings in two matters were of particular relevance to Output 1.1.

The Solicitor-General appeared on 27 June 2003 for the Attorney-General in the full Federal Court appeal in *Toben v Jones* [2003] FCAFC 137, in which the Court upheld the constitutional validity of the racial hatred provisions in Part IIA of the *Racial Discrimination Act 1975* (RDA). The Court found that section 18C, which outlaws racial vilification, is reasonably appropriate and adapted to implementing the relevant articles of the *Convention for the Elimination of All Forms of Racial Discrimination (CERD)* and the *International Covenant on Civil and Political Rights (ICCPR)*.

The Attorney-General also intervened in *Purvis obo Hoggan v State of NSW and Human Rights and Equal Opportunity Commission* which was heard by the High Court on 29–30 April 2003. The case raised fundamental issues relating to the interpretation of disability and the construction of various provisions in the *Disability Discrimination Act 1992*.

Forums

The Department assisted the Attorney-General to explain the Government's policies through its participation in forums where human rights issues were canvassed, including bilateral meetings with other countries.

The *11th Attorney-General's NGO Forum on Domestic Human Rights* was held on 18 October 2002. The Forum provides a regular opportunity for the Attorney-General, the Department and community organisations to exchange information and discuss issues about human rights in Australia. The agenda is set by a committee comprising Departmental and NGO representatives. The Attorney-General answers questions on notice put forward by NGOs. A summary of the discussions held at the Forum is available on the Department's website.

The Department participated in meetings with other countries to explain the Government's policies. Meetings were held with officers of the Indonesian Ministry of Justice and Human Rights who were participating in an AusAid funded Human Rights Study Program; participants in the Indonesia–Australia Specialised Training Project (IASTP) Human Rights in Australia course; the sixth round of the annual Australia–China Human Rights Dialogue; the first round of the Australia–Iran Bilateral Human Rights Dialogue; and the second Australia–Vietnam Human Rights Dialogue.

Human rights education

The Government places great importance on the role of human rights education in protecting and promoting human rights. To ensure that such education is promoted, the Department supports the activities of the National Committee on Human Rights Education. This Committee was established in 1998 with seed funding from the Government to develop strategies for the effective and coordinated delivery of human rights education throughout Australia, in line with the objectives of the UN Decade of Human Rights Education. The Committee operates as a cooperative venture between government and non-government agencies, business and the community. In August 2002, the Committee organised a National Strategic Conference on Human Rights Education. The conference provided an opportunity

for different sectors involved in human rights education to meet and exchange ideas.

International arrangements

The Department is Australia's central authority under the 1970 Hague Convention on the Taking of Evidence Abroad in Civil and Commercial matters, and therefore assists in processing requests under that Convention. The Department also responds to queries from the public, including court registrars and members of the legal profession, about the service of civil and commercial documents abroad and the recognition of foreign judgments.

Assistance in the development of other agencies' legislative proposals

The Department assisted the Government to implement its civil justice system and administrative law policies by helping other agencies to develop their legislative proposals. This assistance meets the requirements of the Department of the Prime Minister and Cabinet's *Legislation Handbook*, which lists matters on which officers instructing on legislative proposals need to consult the Attorney-General's Department. These matters include, jurisdiction of courts, the conferral of discretionary powers upon ministers or officials, proposals affecting the operation of administrative review tribunals or administrative and judicial review of administrative discretions, and use of evidentiary certificates.

EVALUATIONS

Review of Disability Discrimination Act, under the Competition Policy Agreement 2002–03

A review of the *Disability Discrimination Act 1992* was commenced by the Productivity Commission in February 2003, in accordance with the Government's commitment to implement National Competition Policy. The Productivity Commission released an issues paper in March 2003, available on the Productivity Commission's website at <http://www.pc.gov.au/inquiry/dda/index.html>.

The Commission is conducting consultations with all interested parties and stakeholders as part of the review, including public hearings in June 2003, and expects to release a draft report for public comment in October 2003.

Review of the operations of the Federal Magistrates Service

A review of the Federal Magistrates Service (FMS) was conducted as part of the Government's commitment to maintain and develop institutional frameworks that deliver efficient and effective justice. The Review covered the period 1 July 2000 to 30 June 2002.

The primary purpose of the Review was to determine whether the FMS is meeting its objective of providing a quick and accessible forum for litigants involved in less complex family law and other general federal law disputes. The Review was conducted by a working group comprising staff of the Attorney-General's Department, the Department of the Prime Minister and Cabinet, and the Department of Finance and Administration. The working group was advised by a reference group chaired by the Department, which included representatives of the courts and the relevant departments, as well as a consultant, Mr Des Semples. The Review also sought information and views from the Family Law Section of the Law Council of Australia, legal aid commissions and, in relation to the use of primary dispute resolution in the FMS, community-based organisations and the National Alternative Dispute Resolution Advisory Council. The Attorney-General is considering the report of the review.

Review of the workload and resources of the Family Court of Western Australia

The review of the workload and resources of the Family Court of Western Australia to 30 June 2002 was conducted for the purpose of maintaining and developing institutional frameworks that deliver efficient and effective justice. The review was conducted by the Department in consultation with the WA Department of Justice and the Family Court of Western

Australia (FCWA). The Terms of Reference for the review required it to inquire into and report on the workload, resource levels and case management practices of the FCWA. The review recommended that additional resources be provided and that the jurisdiction of the Court of Petty Sessions be expanded to correspond with the family law jurisdiction of the Federal Magistrates Service. The results of the review have been provided to the Commonwealth Attorney-General, the Attorney-General for Western Australia, and the FCWA.

OUTLOOK FOR 2003–04

In the coming year the Department will continue to advise the Attorney-General on how the civil justice system might be further enhanced.

The Attorney-General has asked the Department to develop a strategy paper on the future of the federal civil justice system to address longer-term planning and policy development for the federal civil justice system. It will identify a long-range vision for the system and the key policy areas on which attention might be concentrated in the medium term.

The Department will advise the Attorney-General on whether there should be an expansion of the opportunities for litigation in the quick, low cost and user-friendly forum provided by the Federal Magistrates Services (FMS). The Government is currently considering additional areas of suitable jurisdiction for the FMS including some aspects of corporate insolvency, consumer protection matters in relation to financial services, matters under the manufacturers' liability provisions of the *Trade Practices Act 1974* and less complex intellectual property matters.

The 2003–04 Budget provided additional funding of \$4.1 million over four years for WA Courts with family law jurisdiction. The allocation is to fund additional family law judicial resources and to make provision for cost increases associated with current appointments. The increased resources will improve access to justice for Western Australians involved in family law disputes.

OUTPUT 1.2

SUPPORT FOR THE ATTORNEY-GENERAL AS FIRST LAW OFFICER, ADVICE ON CONSTITUTIONAL POLICY, AND PROMOTION OF AUSTRALIAN LEGAL SERVICES INTERNATIONALLY

OVERVIEW

Output 1.2 is the particular responsibility of the Office of Legal Services Coordination (OLSC). By providing assistance to the Attorney-General and coordinating with external stakeholders, the OLSC made a significant contribution to ensuring an equitable and accessible system of federal civil justice.

HIGHLIGHTS FOR 2002–03

OLSC's active participation in World Trade Organisation (WTO) negotiations under the General Agreement of Trade in Services (GATS) resulted in Australia being recognised by its trading partners as playing a leading role in promoting freer transnational trade in legal services. The Department's initiative to establish and chair a 'Legal Services Friends Group' since May 2003, under GATS, further enhanced Australia's position in promoting liberalisation. OLSC played a key role in the legal service trade opportunity debate under GATS. It advised the Department of Foreign Affairs and Trade (DFAT) on legal services matters and market access commitments by non-WTO members seeking to accede to the WTO, as well as bilateral and regional legal services market access and regulatory matters.

During the reporting period, Commonwealth, State and Territory ministers with responsibility for classification matters finalised the combined *Guidelines for the Classification of Films and Computer Games*. The guidelines were the result of extensive public consultation designed to inform government about current community standards for the classification of film

and literature. The combined guidelines significantly enhance the consistency and transparency of the classification system by providing plain English common guidelines for film and computer game classification categories.

In November 2002, the Attorney-General's Department and the Insolvency and Trustee Service Australia released an issues paper outlining suggested changes to the *Bankruptcy Act 1966* and *Family Law Act 1975*. These changes arose from the report of the Joint Taskforce on the Use by High Income Professionals of Bankruptcy and Family Law Schemes to Avoid Payment of Tax. The changes are also designed to address longstanding problems arising from the interaction between bankruptcy and family law.

OLSC worked with the Department of Finance and Administration on the Commonwealth's approach to the management of asbestos-related litigation. OLSC input is designed to ensure that there is a consistent approach to asbestos litigation across the Commonwealth in order to provide an equitable system of administering and responding to claims against the Commonwealth by people with asbestos-related diseases.

COMMENTS AGAINST PERFORMANCE MEASURES

PERFORMANCE MEASURE

Advancement of a national legal profession

During the reporting period, OLSC worked closely with State and Territory officers and the Law Council of Australia to enable the establishment of a national legal profession through the removal of barriers to interstate legal practice. Model provisions were close to being finalised by the end of the reporting period. The intention is that States and Territories will adopt many of these model provisions uniformly. The provisions deal with a range of areas including admission, legal practice, costs and costs disclosure, complaints and discipline, incorporated legal practices and multi-disciplinary practices.

Two rounds of consultation on the supporting policy were undertaken with a large number of targeted stakeholders. Drafting model provisions across such a wide range of subject areas has proved a complex process, but has been achieved through close cooperation between the Commonwealth and the States and Territories.

PERFORMANCE MEASURE

Policies, and their administration, maintain and develop an institutional framework for the efficient and timely delivery of high quality legal services to the Commonwealth

Legal Services Directions and counsel fees

The Legal Services Directions (LSDs) issued by the Attorney-General under the *Judiciary Act 1903* provide a framework for the delivery of legal services to the Commonwealth and its agencies. OLSC assisted the Attorney-General in administering the LSDs. The Attorney-General and OLSC monitored

compliance with the LSDs to ensure that Commonwealth agencies conduct litigation in a manner that promoted equity in the civil justice system. To promote awareness of the LSDs, OLSC delivered and participated in a number of training and education sessions to departments, agencies, law firms and private legal practitioners during the course of the year.

OLSC dealt with seven apparent breaches of the LSDs by departments and agencies. The breaches involved: payment of counsel fees above the approved Commonwealth rate without first seeking approval from OLSC, breaches of LSD 2 (tied work), a breach of LSD 4.6 (objection to jurisdiction) and LSD 10 (advice on legislation administered by other agencies). The breaches of LSD 2 concerned constitutional and public international law issues. In all completed cases the breaches were brought to the attention of the relevant department or agency and dealt with to the satisfaction of OLSC. OLSC also investigated seven complaints that the Commonwealth breached its obligation to act as a model litigant (four by legal service providers and three by individuals) and found none of the allegations of breaches to be substantiated. There are four complaints currently being investigated (two by legal practitioners and two by individuals). The complaints include unnecessary delay, failure to mediate, relying on technical defences, failure to make part payment of damages and taking advantage of a litigant who lacked resources.

OLSC continued to provide advice on legal counsel fees to departments and agencies seeking to brief counsel in Commonwealth matters. There were 63 requests for approval for the engagement of counsel at a fee higher than that specified in the Legal Services Directions. Of these, 22 applications were approved by OLSC on a 'one off' basis and 26 applications as ongoing rates. The remainder were either approved at a rate below the increase sought, or no increase was approved.



Photo: Geoff Comfort Photography.

Parliamentary Entitlement Regulations

OLSC has responsibility for processing claims by Ministers for legal assistance under the Parliamentary Entitlement Regulations. OLSC received (via the Attorney-General) five applications for legal assistance from Ministers. This is a decrease from the 17 submissions in 2001–02, and is lower than the number in previous years.

Australian Government Solicitor

The Australian Government Solicitor (AGS) provides legal services to the Commonwealth and its agencies on a fully commercial basis. The Commonwealth's two shareholder Ministers are the Attorney-General and the Minister for Finance and Administration. In 2002–03, OLSC, in consultation with representatives from the Department of Finance and Administration, advised the Attorney-General on the key areas of

AGS' performance and planning. In particular, OLSC reported on AGS' financial achievements and its proposed strategic imperatives and performance measures for 2003–06.

OLSC ensured that the Department continued to receive high quality legal services at a competitive price. To this end, OLSC continued to track data about billable and fixed fee services provided by AGS to the Department and ensured that the relationship with AGS remained transparent. Two Memoranda of Understanding were signed in June 2003 between AGS and the Department: the *Memorandum of Understanding on the Purchase of Legal Services Between the Attorney-General's Department and the Australian Government Solicitor 2003-2004* and the *Memorandum of Understanding on the Provision of Library Services Between the Attorney-General's Department and the Australian Government Solicitor*.

PERFORMANCE MEASURE

Development and advancement of legal services and legal cooperation between Australia and the Asia-Pacific and other regions

The Department continued to work closely with DFAT and other departments and agencies to promote Australia's interests in law and legal services in the Asia-Pacific and other regions.

Notable achievements for the year include:

- the successful conclusion of negotiations for a Singapore–Australia Free Trade Agreement which included market access improvements for Australia's commercial lawyers and law firms and a doubling of the number of recognised Australian undergraduate law degrees (from four to eight)
- the strengthening of Australia–Indonesia legal cooperation and the strengthening of links in law and legal services with a number of other countries in the Asia-Pacific Region
- the international recognition of Australia's role in the World Trade Organisation Doha Round of multilateral negotiations concerning legal services
- participation in, and support for, the successful International Legal Services Advisory Council (ILSAC) conference 'Buying and Selling Legal Services into Asia' in Sydney on 20 March 2003, which was attended by around 100 Australian and international lawyers, and
- the updating and a re-launch of ILSAC's *Australian Legal Services Export Development Strategy (2003 to 2006)*.

OLSC continued to supply secretariat services to ILSAC to support its members and operations. The secretariat assisted ILSAC by:

- organising the conference *Buying and Selling Legal Services into Asia*
- providing support to DFAT on the implementation of the Asia-Pacific Economic Cooperation sponsored initiative *Strengthening Economic Legal Infrastructure*
- coordinating the September 2002 visit to Australia of Ms Wiwiek Awiati, Director of the Indonesian Centre for Environmental Law, as a guest of ILSAC under the Indonesia–Australia Ad Hoc Legal Visits Program, and
- updating and publishing *Studying Law in Australia 2003*, which is distributed overseas to potential students wishing to study law in Australia and provides a comprehensive guide to undergraduate law degrees offered by all Australian university law schools.

PERFORMANCE MEASURE

Timely and effective coordination of the Commonwealth's involvement in the Standing Committee of Attorneys-General

The Standing Committee of Attorneys-General (SCAG) met three times during 2002–03. Among its major accomplishments was the achievement of constitutional references of power from all States and Territories to support federal terrorism offences of national application. These references of power have enabled the Commonwealth to pass the *Criminal Code Amendment (Terrorism) Act 2003*. SCAG also took an active role in addressing the public liability and medical indemnity insurance issues that arose the previous year.

OLSC plays an important role in assisting the Attorney-General and the Minister for Justice and Customs at these meetings. OLSC advises the Ministers, coordinates briefings from the Department and other agencies, liaises with officers from the States and Territories and develops

briefings and papers on those matters for which it has responsibility, including the constitutional references of power, the national legal profession and tort law reform. Departmental officers attended the SCAG meetings to provide support to the Attorney-General and the Minister for Justice and Customs.

PERFORMANCE MEASURE

Timely assistance and sound policy advice provided to government on constitutional issues in litigation and in policy development

The Constitutional Policy Unit in OLSC provided assistance to the Attorney-General in relation to constitutional and associated federal issues of interest to the Commonwealth. This included advice on the question of the Attorney-General's intervention in constitutional litigation and the implications of such intervention for Commonwealth legal policy. It also included advice on questions of Commonwealth constitutional amendment.

In 2002–03 assistance continued in the areas of the Commonwealth's response to:

- the High Court's constitutional decisions on co-operative legislative schemes in *Re Wakim* (1999) 198 CLR 511 and *Hughes* (2000) 202 CLR 535
- matters arising in relation to the work of the Building and Construction and HIH Royal Commissions, and
- references of constitutional power to further secure federal terrorism offences enacted in 2002 and re-enacted in 2003.

Assistance in the area of constitutional litigation covered a wide range of proceedings including the High Court proceedings relating to Western Australian electoral arrangements in *Attorney-General for Western Australia & the State of Western Australia v Marquet* [High Court Nos. P114 and 115 of 2002].

PERFORMANCE MEASURE

Commonwealth classification of publications, films and computer games policies recognise the rights and responsibilities of the public and industry members in the classification of film and literature

Since March 2002, OLSC and the Office of Film and Literature Classification (OFLC) have been jointly responsible for advising the Attorney-General on classification policy issues. The OLSC and the OFLC ensured that the Attorney-General was aware of and responsive to public and industry concerns about the operation of the classification scheme. They also progressed amendments to the *Classification (Publications, Films and Computer Games) Act 1995* and worked with States and Territories to finalise the *Guidelines for the Classification of Films and Computer Games*.

PERFORMANCE MEASURE

In consultation with Insolvency and Trustee Service Australia (ITSA) regarding personal insolvency laws:

- *provide regular advice to government on proposed changes to simplify the legislation and keep it up-to-date*
 - *consultation about personal insolvency legislation acknowledged by stakeholders as effective and constructive.*
-

Legislation to reform Australia's bankruptcy laws was passed in December 2002 and commenced on 5 May 2003. The reforms better balance the interests of creditors and debtors and ensure that those contemplating bankruptcy consider the seriousness of that step and are aware of the alternatives available to them. To achieve the introduction and passage of this legislation, OLSC and ITSA provided briefings on the various aspects of policy and the legislative process. They also provided briefings and policy advice on

the operation of Part X of the *Bankruptcy Act 1966*, the report of the High Income Professionals Taskforce and the possible adoption of the UNCITRAL Model Law on cross-border insolvency.

OLSC and ITSA continued to consult extensively with members of the Bankruptcy Reform Consultative Forum on proposals to reform the bankruptcy system. The Forum met in October 2002 and March 2003. The Attorney-General attended the second meeting. The Forum comprises representatives of the following key stakeholders:

- Law Council of Australia
- Insolvency Practitioners Association of Australia
- Australian Bankers' Association
- Australian Finance Conference
- Australian Financial Counsellors and Credit Reform Association
- Credit Union Services Corporation (Australia) Ltd, and
- Australian Taxation Office.

Extensive consultation was held with stakeholders as part of the review of Part X of the Bankruptcy Act. The consultation process included focus groups held in each State capital attended by trustees, lawyers, financial counsellors, creditors and academics. It also included submissions received in response to an issues paper. This consultation process was well received by stakeholders and the Department has been encouraged to use similar processes in considering future reforms. Less formal consultation was held regularly with private trustees, other insolvency practitioners and financial counsellors in each State. This provided further opportunities to discuss any new developments. OLSC and ITSA conducted a review of cooperative arrangements that were introduced in the previous year to further enhance the advice provided to the Attorney-General on matters relating to bankruptcy policy.

EVALUATIONS

Review of OLSC and Commonwealth legal spending

The Government made a commitment to review the impact of the *Judiciary Amendment Act 1999* on the capacity of Government departments and agencies to obtain legal services, and the extent to which OLSC meets its responsibilities under the Act. The Attorney-General wrote to Ministers at the end of 2002 seeking information about the purchase of legal services within their portfolio and their views on the performance and role of OLSC. An independent consultant, Ms Sue Tongue, was engaged in April 2003 to analyse the information received. The reviews have been completed and a copy of the consultant's report has been provided to the Attorney-General.

Implementation of the consultant's recommendations will be considered in the next reporting period.

OUTLOOK FOR 2003–04

Over the next reporting period, OLSC will continue its work towards a national legal profession, ensure the provision of high quality legal services to the Commonwealth and promote Australian legal services internationally. It will work with OFLC to progress amendments to the *Classification (Publications, Films and Computer Games) Act 1995*. In addition, with the assistance of ITSA, OLSC will examine the operation of section 271 of the *Bankruptcy Act 1966* (offence for rash and hazardous gambling leading to bankruptcy) as promised by the Government during the debate on the Bankruptcy Legislation Amendment Bill 2002.

OUTPUT 1.3

LEGAL SERVICES AND POLICY ADVICE ON FAMILY LAW AND LEGAL ASSISTANCE AND THE ADMINISTRATION OF GOVERNMENT PROGRAMS PROVIDING LEGAL ASSISTANCE AND FAMILY LAW RELATED SERVICES



OVERVIEW

Output 1.3 is the particular responsibility of Family Law and Legal Assistance Division (FLLAD). Through policy advice to the Government, and management of a range of legal assistance and other programs, the Division made a significant contribution to ensuring an equitable and accessible system of federal civil justice.

HIGHLIGHTS FOR 2002–03

Pathways Report

A major focus during the year has been the Family Law Advisory Group's Report *Out of the Maze: Pathways to the future for families experiencing separation* (the Pathways Report). The Department established a new branch in FLLAD with responsibility for working with organisations on the implementation of the Pathways Report. As part of the Government's Family Law Pathways Taskforce, the Department provided significant advice to the Government. The Government's response to the Pathways Report, released on 13 May 2003, was underpinned by the allocation of \$27.8 million over four years in the Attorney-General's Budget appropriation. This measure secured on-going funding for:

- children's contact services
- Family Law Online
- Family Law Hotline (both part of Australian Law Online)
- support services provided by the Victorian Court Network for clients of the Family Court and Federal Magistrates Service, and

- expanding the Contact Orders Program, an innovative program that helps separating parents experiencing high levels of conflict to establish better relationships and on-going contact with their children.

Central to the Pathways Report is the need for a more integrated family law system. As a result of the Pathways Report, government and non-government agencies have been developing cross-sector information products and more collaborative approaches to service delivery and referral. The Department encouraged the development of local networks of service providers to improve referral of clients to appropriate services. At the national level, the Department, with FaCS, brought together over 120 stakeholders from around the country for the forum, *Out of the maze: Steps towards a more integrated family law system*. Held on 19–20 June 2003 in Canberra, the forum examined how to build better linkages and overcome obstacles to achieve an integrated family law system.

Superannuation reforms

Amendments to the *Family Law (Superannuation) Regulations 2001*, containing much of the detail of the reforms (particularly in relation to valuation of superannuation interests held by spouses on marriage breakdown), were made in August and December 2002.

Shortly before the commencement on 28 December 2002 of the family law and superannuation reforms (that allowed splitting of superannuation on marriage breakdown), Parliament passed the *Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Act 2002* containing amendments largely relating to social security and veterans entitlements legislation.

The Attorney-General made the first of a series of approvals of scheme specific valuation methods and factors in relation to superannuation interests in funds administered by the Victorian Government Superannuation Office.

Marriage celebrants program

The *Marriage Amendment Act 2002* received Royal Assent on 8 October 2002. The provisions of the Act relating to the reform of the marriage celebrants program come into effect on proclamation or 12 months after Royal Assent. The reforms will raise the professional standards of celebrants appointed under the program. The Department has been consulting with stakeholders and developing the detailed regulations to support the implementation of the reformed marriage celebrants program.

Some of the provisions of the *Marriage Amendment Act 2002* commenced operation on 5 November 2002. Under these amendments, a Notice of Intended Marriage is now valid for 18 months, additional categories of persons can witness a Notice of Intended Marriage outside Australia, and a passport issued by the government of an overseas country

may be accepted as evidence of the date and place of birth of a party to a proposed marriage born outside Australia in the absence of a birth certificate or extract. Regulations prescribing the circumstances in which a request for a shortening of the minimum time for notice of an intended marriage can be considered came into effect on 9 April 2003. The minimum time is one month.

Family Law Amendment Bill 2003

The Bill was introduced in Parliament on 12 February 2003. The Bill was referred to the Senate Legal and Constitutional Legislation Committee with a report date of 13 August 2003. The Bill makes a range of amendments to the *Family Law Act 1975* (the Act), with particular reforms to clarify those provisions of the Act dealing with property and financial interests.

COMMENTS AGAINST PERFORMANCE MEASURES

PERFORMANCE MEASURE

Timely and sound assistance to the Attorney-General and the Government to develop and implement policies that recognise

- *needs, rights and responsibilities of individuals and families*
 - *an appropriate balance of competing community interests*
-

Pathways Report

The Department played a major role in advising the Attorney-General and the Government on the response to the Pathways Report. Central to this advice was the need for the family law system to put the interests of children at the forefront of delivery of services to separating families. The Government's response to the report reiterated this principle and provided on-going funding for children's contact services and for the innovative Contact Orders Program, both

of which assist children to re-establish and maintain contact with non-resident parents. As a result of the Pathways measure in the 2003–04 Budget, the Department will expand the Contact Orders Program in Sydney and establish new services in Melbourne and south-east Queensland.

Marriage celebrants program

Reform to the marriage celebrants program involved ongoing consultation to recognise the needs of existing celebrants while ensuring appropriate development and improved accountability of the profession. The resulting legislation balances these twin objectives. Several decisions relating to the program will be reviewable by the Administrative Appeals Tribunal.

Family Law Amendment Bill 2003

Many of the reforms contained in the Family Law Amendment Bill 2003 were developed in part as the result of consultations with community organisations, the legal profession and the Family Court. The reforms contribute to the Government's ongoing commitment to improve outcomes in family law, and simplify and better integrate the family law system.

PERFORMANCE MEASURE

Management of programs

- *successful negotiation of agreements/contracts which reflect the Commonwealth's requirements*
 - *effective monitoring of performance of funded programs*
 - *successful implementation of new or enhanced programs/projects within available budget*
-

The Family Relationships Services Program

The Attorney-General's Department and FaCS share policy and funding responsibility for the Family Relationships Services Program. FaCS administers the program on behalf of both Departments.

The Attorney-General provided on-going funding to a program of rural and regional primary dispute resolution. To implement the measure, the Attorney-General's Department and FaCS undertook a successful tender process to allocate funding to 25 community-based organisations to provide 35 primary dispute resolution services in high need regional areas around Australia. These new services will provide greater access for separating families to counselling and mediation rather than going to court to resolve their differences.

Two professional development programs commissioned by the Department were delivered to lawyers and mediators during 2002–03. Interim evaluation reports have shown that the program for mediators has been particularly effective. As a result the Department extended it into 2003–04 to continue to raise awareness of child-inclusive practice among counsellors and mediators working with separated families.

Seven partnership projects funded by the Attorney-General under the Family Relationships Services Program were completed successfully during 2002–03. In these projects, service providers trialled ways of working collaboratively. The Department is documenting the project to produce a resource for new partnerships and networks.

International family law

As part of its responsibility for managing international child adoption, the Department cooperates with the States and Territories to facilitate the development of adoption arrangements

with countries that are parties to the *Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption*. The Department also made enquiries with a number of other countries that have recently become parties to the Convention, and has continued to monitor compliance of other adoption programs with Australia's responsibility under the Convention.

The Department is assisting in the negotiation of an agreement with Lebanon similar to the *Bilateral Agreement regarding Cooperation on Protecting the Welfare of Children* between Australia and Egypt (which came into effect on 1 February 2002).

Legal aid agreements

The Department continued to manage legal aid agreements established between the Commonwealth and State and Territory governments and legal aid commissions. Staff of the Department met regularly with commissions to monitor workload and performance of commissions against Commonwealth priorities.

The Government committed \$4 million over four years in the 2002–03 Budget for the continuation of legal aid commission primary dispute resolution services to encourage the increasing use of those services to settle family law cases involving legal aid clients. This initiative will encourage applicants for legal aid to resolve their family law disputes through conferencing and mediation, rather than the emotionally and financially costly alternative of proceeding to court. The Attorney-General settled the distribution of funds to legal aid commissions for the first two years of the initiative.

A variation to the Commonwealth legal guidelines will assist the extension of the Family Court's Magellan project for the intensive management of child family law matters where there are allegations

of serious physical or sexual abuse. The variation will waive the cap on costs for separate representatives and legally aided parents of children, whose cases will be managed under the Family Court's Magellan project until 30 June 2004.

New legal aid guidelines were developed to cover the provision of assistance for proceeds of crime matters and matters involving national security. A further revision of the Commonwealth guidelines being undertaken is intended to provide greater clarity for legal aid commission staff who assess applications for legal aid in Commonwealth matters.

Community Legal Services Program

The Department's management of the Community Legal Services Program took a major step forward during the year with the implementation of a new service agreement with community legal services. From 1 January 2003, community legal centres funded through the Community Legal Services Program are now funded under a model three-year service agreement, replacing annual service agreements. The agreements put in place funding arrangements with centres to 30 June 2005, after which they are expected to run for the full three years. The new agreement introduces service quality assurance measures and new data collection requirements and will save the time and resources spent negotiating annual agreements.

The National Pro Bono Resource Centre was established during the year. Establishment of the Centre was a key recommendation of the Pro Bono Taskforce set up by the Government in 2000. It was also a recommendation of the Australian Law Reform Commission's *Managing Justice* Report. The Department contracted a consortium, led by the Public Interest Advocacy Centre, to establish the new Centre that was launched at a pro bono workshop in Sydney in August 2002.

PERFORMANCE MEASURE

Administration of programs

- *applications for assistance, or payments made, under special schemes, assessed in accordance with agreed arrangements or guidelines for financial assistance*

The Department administered assistance under 25 schemes for legal and financial assistance. These include schemes under the *Native Title Act 1993*, the *Federal Proceedings (Costs) Act 1981*, the *Workplace Relations Act 1996*, the *Aboriginal Land Rights (Northern Territory) Act 1976*, the Commonwealth Public Interest and Test Cases Scheme, the Overseas Custody (Child Removal) Scheme, and the Royal Commission Scheme which provided for assistance to persons appearing before the Royal Commissions into HIH and the Building and Construction Industry.

The schemes are administered directly by the Department and assistance is provided under relevant legislation and guidelines. Approximately 270 applications for financial assistance were assessed in the 2002–03 financial year. A single application may cover more than one person. In addition, approximately 1900 invoices relating to grants of assistance were processed during the period.

The bulk of applications received are for financial assistance in native title matters. The number of active native title grants increased from 397 at the end of 1999–2000 to 902 at the end of the reporting period. 2002–03 was the first full financial year in which applications were received for financial assistance for legal costs before the Royal Commissions into HIH and the Building and Construction Industry (152 new applications were received in the reporting period, 65 were received in the preceding year). These increases have led to delays in processing applications and invoices for work performed under grants of assistance for native title matters. The Department is seeking to overcome these delays by engaging additional staff to deal with outstanding applications and accounts.

PERFORMANCE MEASURE

Consultation/liaison with stakeholders

- *maintenance of effective partnerships and consultative arrangements with stakeholders*

Pathways

Consultation with government and non-government agencies, the courts and the legal profession was essential



Photo: Geoff Comfort Photography.

to the development of the Government response to the Pathways Report. The need for continuing consultation led the Department and FaCS to convene the Pathways Forum on 19–20 June 2003. The Forum included representatives of Commonwealth and State departments and agencies, community-based service providers, legal aid commissions, the courts, the legal and medical professions and researchers and enabled participants to identify and discuss ways of working together more closely.

Through the Family Relationships Services Program (FRSP), the Department and the Law Council of Australia funded a primary dispute liaison officer position with the Family Law Section of the Law Council of Australia, for 12 months. The officer is working with family lawyers to improve integration between sectors in the family law system and to ensure that appropriate referrals are being made to community family support services.

The Department is working closely with Contact Orders Program service providers to establish a professional development program. The program will notify the best practice of these services to other counselling and mediation organisations dealing with separated parents who are having difficulties with enforcement of contact orders. This work will also inform the development of tender specifications for two new Contact Orders Programs announced in the 2003–04 Budget.

Through FRSP, the Department funded a national workshop in April 2003, that consulted with representatives from the Family Court and the Federal Magistrates Service, the legal sector and Children's Contact Services. Discussions focused on problems for stakeholders and clients, and the implementation of contact orders where the contact occurs at a Children's Contact Service.

The Department participated in the Separation Support Network—a group of government and non-government agencies that works towards better cooperation and coordination in the family law system.

The Department continued its shared funding and policy responsibilities for FRSP and chaired jointly the Family Law Pathways Task Force, with FaCS.

The Department held regular portfolio liaison meetings to ensure that all stakeholders are informed about primary dispute resolution policy and initiatives and can work together more effectively.

Family law

The Department liaised regularly with stakeholders in the family law system, including community based service providers, the Family Law Council, the Law Council of Australia, legal aid commissions and community legal services, the courts and relevant government agencies. Reforms to the *Family Law Act 1975* were undertaken with extensive consultation with the Family Court, the Federal Magistrates Service, representatives of the legal profession, legal aid commissions, some community legal centres and representatives of organisations providing services to separating couples.

Marriage celebrants program

Consultation took place during the reporting period with marriage celebrants, celebrant representative organisations and other interested parties on aspects of the marriage celebrant reforms.

International family law

The Department encouraged debate and exchange of ideas for reform in the areas of inter-country adoption and international child abduction by organising biennial Commonwealth–

State meetings about adoption and international child abduction. Meetings took place in December 2002 and June 2003.

Legal aid program

Staff of the Department met with National Legal Aid and individual legal aid commissions during 2002–03 to discuss key issues with the legal aid program.

The Department assisted the Aboriginal and Torres Strait Islander Commission (ATSIC)'s Office of Evaluation and Audit with its report on the ATSIC Legal and Preventative Services Program. The Department was represented on the steering committee for the review and provided data on the legal aid commissions for inclusion in the report.

Community Legal Services Program

The Community Legal Services Program is managed as a partnership between the Commonwealth and State governments. State legal aid commissions or, in South Australia, the State Justice Ministry, are funded by the Commonwealth to employ State program managers. This example of cooperative government works well and results in an effective working relationship between the Commonwealth and the States in managing this important program.

The Department regularly consulted community legal services, both directly through the State program managers, and with over 120 service providers through the National Association of Community Legal Centres, which it funds.

Service providers under the Community Legal Services Program are able to keep in touch with the latest developments and provide feedback to the Department through a Commonwealth Community Legal Services Program website. The website was redesigned during the year to enhance communication between the community legal services, the Department and other stakeholders in the program.

PERFORMANCE MEASURE

International casework

- *process of international casework meets/satisfies requirements of Australian and foreign law*
-

International family law

The Department continued to undertake casework in relation to international family law issues to fulfil Australia's obligations under a number of international agreements and conventions. In relation to the *Hague Convention on the Civil Aspects of International Child Abduction*, the work of the Department resulted in the successful return of children to the country from which they had wrongfully been removed.

The Department further contributed to Australia's obligations under the Hague Convention by continuing the secondment of a senior officer to the Permanent Bureau at The Hague. The secondment was for a period of 12 months and was due to conclude in January 2003, but was extended to 30 June 2003.

EVALUATIONS

Review of the Community Legal Service Funding Program – Western Australia (continuing)

The review committee, comprising Commonwealth and Western Australian Government officials including from Legal Aid WA, and representatives of the Western Australian Association of Community Legal Centres, called for public submissions in December 2002. The committee conducted consultations with service providers, including specialist centres, rural and regional community legal centres and other relevant stakeholders, during 2002 and in early 2003. In the following months the

committee considered the submissions it received from interested parties as well as demographic mapping of areas of disadvantage in Western Australia. The final report will be submitted to the Western Australian and Commonwealth Attorneys-General in the first half of 2003–04.

Review of the Community Legal Service Funding Program – New South Wales

The terms of reference for the review of the Community Legal Services Program in New South Wales were settled, as was the composition of the review committee. At the end of the reporting year the chair of the review had not been finalised.

Review of the Primary Dispute Resolution provisions of the Family Law Act 1975

A stakeholder committee met in November 2002 to examine a paper that discussed key issues. An options paper is currently being developed as at the end of the reporting period.

Evaluation of the Primary Dispute Resolution Professional Development Programs

During 2002–03, the Department funded two programs in family dispute management, run in all capital cities of Australia, and in some regional centres. The first program was aimed at legal practitioners and the second at mediators and counsellors. The program for lawyers attracted 173 participants across 13 centres and the program for mediators and counsellors had 827 registrations across nine centres. The project was part of the Government's initiatives to promote the use of mediation and counselling as the primary means of dispute resolution, and forms one component of broader reforms to the Family Law Act.

The programs were independently evaluated by the Institute of Arbitrators and Mediators. The evaluation results show that each program achieved attitude change and an increase in knowledge.

Review of the distributive legal aid funding model

The Department, with the assistance of the Commonwealth Grants Commission and in consultation with National Legal Aid, is reviewing the model currently used to distribute legal aid funding. The model, developed in 1999 to predict the relative funding requirements of each State and Territory, is based on population distribution and adjusted to take account of specific factors within populations that impact on the demand and cost of providing legal aid services from jurisdiction to jurisdiction. The outcome of the review will inform decisions about the distribution of legal aid.

PURCHASER–PROVIDER ARRANGEMENTS

Business Partnership Agreement with Department of Family and Community Services

The Department has a Business Partnership Agreement with FaCS for the delivery of services to families, including dispute resolution and related programs, under the FRSP. Under this Agreement, administered expenses of \$23 757 322 were transferred to FaCS in 2002–03 to purchase these services from community based organisations.

Legal aid program

The Commonwealth has four-year agreements with the States and Territories and with the Queensland and Victoria legal aid commissions. These agreements specify targets for the numbers and prices of services to be delivered by legal aid commissions in Commonwealth law matters. The Department held regular meetings with the commissions to review performance under the agreements.

OUTLOOK FOR 2003–04

Pathways Report

The release of the Government's response to the Pathways Report in May 2003 was an important step in the process of implementing the report. The report sets out a vision of an integrated family law system that is flexible and builds individual and community capacity to achieve the best possible outcome for families. It provides a foundation for future development of the family law system. The Department is now jointly chairing, with FaCS, the Government's Family Law Pathways Taskforce. The Taskforce is responsible for coordinating the implementation of Pathways initiatives. In consultation with stakeholders, it will also be developing a coordinated and consistent framework for the future delivery of services for separating families and families in conflict.

Legal aid renegotiations

A key priority for 2003–04 will be the negotiation of new legal aid agreements with the States and Territories and legal aid commissions for the delivery of legal aid services for Commonwealth matters. The current agreements operate until 30 June 2004. If new agreements have not been finalised by this date the current agreements will continue to operate unless either party decides to terminate.

OVERVIEW

Output 1.4 is the particular responsibility of the Office of International Law (OIL). By providing legal advice and assistance, the Office made a significant contribution to ensuring an equitable and accessible system of federal civil justice.

HIGHLIGHTS FOR 2002–03

The legal services and advice provided on matters of international law contribute to the welfare, and promote the interests of the Australian community directly and through the implementation of international law in Australian domestic law.

Output 1.4 not only contributes toward achieving Outcome 1, but also directly contributes to outputs and outcomes of other departments. OIL provides legal advice on the broad spectrum of international law. This advice may concern treaties under negotiation for which other departments have policy responsibility. The Office represents Australia in the negotiation of a wide range of treaties and provides advice on the domestic implementation of the treaties to which Australia wishes to become a party. This often requires the provision of quality, timely advice on draft legislation being prepared by other departments. In providing this service to other departments and agencies, the Office assists them to meet the goals and priorities set by the Government.

Highlights of this year's work by OIL include:

- litigation in the International Tribunal for the Law of the Sea over the fishing vessel *Volga*
- the finalisation of the International

Unitisation Agreement for the Greater Sunrise field in the Timor Sea

- the conclusion of the Framework Convention on Tobacco Control, and
- significant advice provided on matters related to security and terrorism and on matters related to Iraq and Solomon Islands.

COMMENTS AGAINST PERFORMANCE MEASURES

PERFORMANCE MEASURE

Relevant, sound and timely legal advice on international law issues

The Office provided advice and other legal services on issues relating to Iraq and Solomon Islands that were designed to ensure Australia's actions in those countries complied with both international and domestic law.

The Office advised on the extent to which the external affairs power under the Constitution supported various proposed laws, thus enabling the development of legislation that would be constitutionally sound.

OIL gave advice on a wide range of matters concerning security issues, including in relation to aviation law and law of the sea.

The Office advised on many other international law matters throughout the year, including human rights, international organisations, space law, fisheries, trade and environment and law of the sea.

Ministers and other clients have expressed high levels of satisfaction with the quality and timeliness of advice provided by the Office and the assistance it gave for meeting the objectives of this and other portfolios.

The Office continued its role in clearing national interest analyses prepared for all treaties that the Government proposes to ratify, and appearing before the Joint Standing Committee on Treaties (JSCOT) to advise on international law issues. This ensures that there is a proper analysis available to the Parliament and the public of international obligations by which Australia proposes to be bound. The Chair of JSCOT wrote to the Attorney-General thanking the Department for its assistance to the Committee's work.

PERFORMANCE MEASURE

Development and implementation of sound and effective policy advice on international law issues

The Office, together with the Department of Foreign Affairs and Trade (DFAT), continued to advance the Government's agenda for reform of the international human rights treaty body system.

OIL contributed to the provision of sound policy and legal advice on a wide range of matters being considered at the UN Commission on Human Rights, to ensure consistency with Government policy on relevant domestic and international law matters.

The Office held a conference on International Trade Law in October which brought together key participants from public and private sectors to discuss policy and legal developments in trade law. OIL received favourable comment from participants.

PERFORMANCE MEASURE

Effective response to challenges to Australia's interests and rights in international courts

OIL conducted litigation in the International Tribunal for the Law of the Sea over the fishing vessel *Volga*, which Australia had apprehended for illegal fishing in the Australian exclusive economic zone around the Territory of Heard Island and the McDonald Islands. The Tribunal fixed a bond equal to the full value of the vessel as condition for its release. In addition, it determined that the proceeds of the sale of the catch that was on board the *Volga* when it was apprehended represented a separate guarantee to Australia relating to the enforcement of domestic law, and was irrelevant to the determination of the amount of the bond for international law purposes. This decision represented a welcome departure from earlier judgments in which the proceeds of sale of illegally taken fish was taken into account in setting the amount of the bond. As the owners have not yet paid the bond, the *Volga* remains in Australia pending the outcome of domestic litigation relating to it.

The Office contributed to the work of the DFAT in dispute settlement proceedings before the World Trade Organisation.

In addition, the Office contributed to significant cases in domestic courts involving international law issues, including *Petrotimor Companhia de Petroleos SARL and Anor v Commonwealth of Australia and Ors* and *Purvis v New South Wales*.

PERFORMANCE MEASURE

Treaties and arrangements negotiated, concluded and administered in a manner consistent with Australia's interests

OIL negotiated, or assisted other portfolios to negotiate treaties and other international agreements in a



Photo: Geoff Comfort Photography.

wide range of areas. These included the Framework Convention on Tobacco Control, concluded this year. This is the first international treaty to be negotiated under the auspices of the World Health Organisation, and is expected to make a significant contribution to curbing tobacco use.

The Singapore–Australia Free Trade Agreement (SAFTA) was concluded this year. SAFTA is a wide-ranging and comprehensive agreement, covering tariff-free access for goods, improved market access for services (including specific commitments on sectoral markets for telecommunications, financial services and professional services such as legal education services), and cooperation and trade facilitation in key areas such as e-commerce, standards, education, intellectual property protection, competition policy and customs procedures. SAFTA will assist Australian exporters through enhanced market opportunities and will provide investors with greater certainty regarding protection and promotion of investment. Cooperation arrangements in areas such as customs, standards, and e-commerce will facilitate commerce between the two countries. Negotiations for the

International Unitisation Agreement for Greater Sunrise were concluded in March 2003. The Agreement provided the legal certainty necessary for petroleum exploration to proceed in the Greater Sunrise field in the Timor Sea. The Timor Sea Treaty entered into force on 2 April 2003. This provides the basis for the development of the major oil and gas deposits in the Timor Sea between Australia and East Timor, generating major revenues and benefits for both countries. The Treaty is the fundamental document underpinning that development in the area of seabed referred to in the Treaty as the Joint Petroleum Development Area (JPDA).

Other negotiations in which OIL participated included:

- investment, promotion and protection agreements
- free trade agreements
- maritime delimitations
- amendments to International Maritime Organization conventions
- the UN Draft Declaration on the Rights of Indigenous Peoples
- negotiations on trans-Tasman arrangements

- instruments being developed in the UN Commission on International Trade Law, including on privately funded infrastructure projects, insolvency and the carriage of goods by sea, and
- fisheries treaties.

PERFORMANCE MEASURE

Compliance with reporting requirements of international treaties and appropriate responses to international committees

OIL responded to a number of communications to the UN human rights treaty bodies.

The Office concluded the drafting of Australia's report under the *Convention on the Rights of the Child*.

OIL contributed to the preparation of Australia's reports under the *Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention on the Elimination of All Forms of Discrimination Against Women*.

The content of the responses has been consistent with the guidelines laid down under the relevant treaties.

OUTLOOK FOR 2003–04

The principal role of the Office of International Law is to provide international legal advice to the Government, and its departments and agencies, and its work is driven to a very large extent by the requirements of its clients. OIL performed well in the year, providing consistently high quality legal and policy advice that enabled Ministers and client agencies to make decisions and develop or implement policy, aware of relevant international law. Ministers and client agencies have indicated high levels of satisfaction with the quality of the work produced by OIL. It is expected that the Office will be required to continue to focus on matters related to national security in the coming financial year. A key challenge will be to continue to manage the increasing workload generated by the heightened security situation.



OUTPUT 1.5

DRAFTING OF LEGISLATIVE AND OTHER INSTRUMENTS, PUBLICATION OF LEGISLATIVE MATERIALS AND PROVISION OF RELATED LEGAL SERVICES

OVERVIEW

Output 1.5 is the particular responsibility of the Office of Legislative Drafting (OLD). OLD provides a high quality legislative drafting service for Commonwealth legislative instruments. Drafting is done using a plain English style and with rigorous quality controls to make the legislation easy to read and understand, and consistent in style. OLD also publishes up-to-date Commonwealth legislation in electronic form on the Internet, on the SCALEplus website. These activities make a significant contribution to ensuring an equitable and accessible system of federal civil justice.

HIGHLIGHTS FOR 2002–03

OLD drafted a large volume of instruments in the year. There were several packages of instruments for major projects such as the Financial Services Reform Package; the Family Law Superannuation Reforms; the Regulatory Reform Program for civil aviation; and migration amendments. OLD also drafted a variety of instruments relating to counter-terrorism (Regulations under the Criminal Code and the *Crimes Act 1914*, instruments under the *Defence Act 1903* and arrangements under the *International Transfer of Prisoners Act 1997*).

The Office drafted legislation for Solomon Islands that enabled Australia to provide its security assistance to that country. OLD also continued to draft legislation dealing with money laundering, proceeds of crime and mutual assistance in criminal matters for Pacific Island nations (Tuvalu, Kiribati and Papua New Guinea) to help meet their commitments under the Honiara Declaration. One of the Department's drafting staff is part of a team drafting model provisions dealing with terrorist financing and transnational organised crime for the

Pacific Island Forum states. Staff also attended conferences and workshops on counter-terrorism and proceeds of crime in the region in Bali, Singapore, Colombo and Suva, and took part in a mutual evaluation of Palau's efforts to address money-laundering.

On 1 July 2002, OLD became responsible for managing the publication of the Commonwealth Government Notices Gazette, following the transfer of the function to the Department. The transfer went smoothly and OLD had a busy first year dealing with numerous enquiries from clients and the public and managing the publication of 1733 gazette notices. OLD also commenced work on developing a new website to provide on-line public access to the Government Notices Gazette and this was implemented in early July 2003.

OLD collaborated with the Civil Justice Division in the development of the Legislative Instruments Bill 2003, which was introduced into the House of Representatives on 26 June 2003. OLD commenced planning for the implementation of the proposed Federal

Register of Legislative Instruments under the Bill. When implemented, the electronic register will provide public Internet access to authorised versions of legislative instruments, compilations of legislative instruments, and explanatory statements.

COMMENTS AGAINST PERFORMANCE MEASURES

PERFORMANCE MEASURE

Level of demand for drafting and advising services (billable and non-billable)

Demand for OLD's drafting and advising services increased slightly in 2002–03, with 636 draft instruments completed, compared with 627 in 2001–02. Of these, 178 instruments were billable. The revenue earned by staff on billable matters during the year was \$615 000.

OLD's work includes drafting most instruments in the Statutory Rules series. During 2002–03, the number of Statutory Rules made increased to 365, from 336 in the previous year. The total of 4010 pages of Statutory Rules made in 2002–03 was significantly higher than the average of 3479 pages for each year since 1988–89. The drafting workload included an increased number of non-legislative instruments for the Attorney-General's portfolio, including appointments, delegations, authorisation and agreements.

Other agencies for which particularly large volumes of instruments were drafted included the Australian Communications Authority, the Civil Aviation Safety Authority, the Department of Agriculture, Fisheries and Forestry, the Department of Health and Ageing, the Department of Immigration and Multicultural and Indigenous Affairs, the Department of Transport and Regional Services, and the Treasury.

Various instruments relating to counter-terrorism also formed an important area of OLD's drafting work during the year. OLD continued its involvement

in preparing legislation (dealing with proceeds of crime, mutual assistance in criminal matters and money laundering) for Pacific Island nations.

PERFORMANCE MEASURE

Satisfaction of clients with the advice and service provided, and the quality of legislative instruments, as expressed in Parliament by the Senate Standing Committee on Regulations and Ordinances

OLD regularly receives positive comments from clients about the quality of its legislative drafting services. This is supported by results from an independent client survey conducted in late 2002 which found that, overall, OLD is meeting or exceeding client expectation across all its services.

Of 365 Statutory Rules made during 2002–03, one was disallowed and two were partially disallowed by the Senate. None of these instruments contravened the scrutiny principles of the Senate Standing Committee on Regulations and Ordinances.

PERFORMANCE MEASURE

Availability of reprints and electronic consolidations of Commonwealth legislation and compliance with publishing and tabling standards and the level of user satisfaction

OLD prepares electronic consolidations of all Acts and Regulations. In 2002–03, more than 13 000 amending items were incorporated, and OLD continued to meet its performance and publishing standards. OLD usually has amendments incorporated and loaded to SCALEplus within one or two days of receipt of the electronic copy, depending on the volume of legislation received. OLD also consolidates selected other instruments. There was an increased demand for such consolidations during the year. The Office completed a major project to consolidate electronic versions of Western Australian applied legislation to the Indian Ocean

Territories (Cocos Keeling and Christmas Islands), as modified by Commonwealth Ordinances. These consolidations have been made available on SCALEplus.

Because of public interest, OLD prepared and made available on SCALEplus a 'future law' version of the *Family Law (Superannuation) Regulations 2001* which incorporated amendments due to commence later in the year. A small number of reprinted Acts, Statutory Rules and instruments (23) were also made available in response to limited public demand. The decreasing demand for reprints probably reflects the ready availability of up-to-date electronic consolidations free-to-air. There is still a loyal subscriber base for hard copy reprints, mainly of legal professionals. Their needs are well met by this service.

PERFORMANCE MEASURE

Extent to which new and consolidated Commonwealth legislation, and related information, is available on SCALEplus in a timely way and the level of user satisfaction

OLD made available an estimated 2 800 items of new and consolidated Commonwealth legislation on SCALEplus and responded to numerous enquiries from the public seeking information about legislation. OLD aims to load to SCALEplus new numbered Acts and

Regulations within one business day of receipt, and electronic consolidations within three business days. These deadlines are generally met or bettered.

In August, the SCALEplus Internet site was updated with a new interface. From November 2002, access to the site increased, with site visits in excess of one million per month now being recorded. A large volume of email is received on the SCALEplus feedback link, with many users expressing gratitude for the assistance provided by OLD. Most comments received about SCALEplus have been positive, and any issues identified are quickly resolved.

PERFORMANCE MEASURE

Extent to which new legislative instruments, and related information, are available on the Legislative Instruments Database (LID) in a timely way and the level of user satisfaction

As with previous years, new Statutory Rules and some other legislative instruments continued to be loaded to the LID, generally within one business day of gazettal. The LID, which contains images and related information for more than 9 500 instruments, was established in 1995–96 as a precursor database for the proposed Federal Register of Legislative Instruments under the Legislative



Photo: Geoff Comfort Photography.

Instruments Bill. During 2002–03 an average of just over 31 500 LID web pages were viewed per month. Although feedback from users of the site is limited, comments have been positive.

EVALUATIONS

Empower Group conducted a client survey for OLD in late 2002. The survey measured clients' expectations, perceptions, concerns and areas of satisfaction with OLD, and identified areas for improvement. The results were reported to OLD in November 2002 and discussed at an OLD Planning Day. The survey found that, overall, OLD is meeting or exceeding client expectations across all service attributes. While there were no priority areas identified, consistency and timeliness were noted as areas for continuous improvement. OLD has adopted strategies to address these areas of its service, including ways to improve clients' understanding of OLD's operations.

OUTLOOK FOR 2003–04

OLD will continue planning for the implementation of the proposed Federal Register of Legislative Instruments (FRLI) under the Legislative Instruments Bill 2003. Areas of particular focus are likely to be the development of a new computer system to deliver the FRLI, the development of an education program for departments and agencies and the finalisation of the necessary staffing and administrative arrangements for the proposed scheme.

OLD will also make arrangements to ensure that printed copies of Commonwealth legislation and the Government Notices Gazette continue to be available to the public after the planned closure of the Government Bookshop Network in late 2003.

OVERVIEW

Output 1.6 is the particular responsibility of Information and Security Law Division. By providing advice to the Attorney-General and assisting Commonwealth, State and Territory agencies on copyright law and information law matters and private sector bodies on information law matters, the Division made a significant contribution to ensuring an equitable and accessible system of federal civil justice.

HIGHLIGHTS FOR 2002–03

At its February 2003 meeting, the Electronic Commerce Steering Group of the Asia-Pacific Economic Cooperation (APEC) agreed to an Australian proposal that common APEC information privacy principles and implementation mechanisms be developed. A working group chaired by Australia was developing and is considering various drafts, and will meet in August and September 2003.

In December 2002, a draft National Health Privacy Code prepared by a working group of Commonwealth, State and Territory officers was released for public comment. The Commonwealth's aim is to achieve a national framework for the protection of personal health information in the public and private sectors.

From 21 December 2002, the private sector provisions of the *Privacy Act 1988* were applied for the first time to small businesses that trade in personal information or provide services under a contract with the Commonwealth. The commencement of the legislation had been delayed to give small businesses additional time to prepare for the new obligations.

COMMENTS AGAINST PERFORMANCE MEASURES

PERFORMANCE MEASURE

Policies recognise rights and responsibilities of stakeholders

Copyright law

Significant amendments to the *Copyright Act 1968* were made by the *Copyright Amendment (Digital Agenda) Act 2000* and came into effect in March 2001. When introducing the reforms into the Parliament, the Attorney-General proposed that the operation of the legislation be reviewed within three years of commencement. In accordance with that commitment, in 2002 the Department conducted a competitive tendering process to select an external consultant to assist with the review. On 1 April 2003, the Attorney-General announced that law firm Phillips Fox had been selected to analyse the most controversial aspects of the reforms over the following nine months. By the end of the reporting period the drafting of issues papers for broad consultation with stakeholders was well advanced as were arrangements for



Photo: Geoff Comfort Photography.

various public forums that will provide stakeholders with opportunities to contribute their views to the review.

In March and June 2003 the Department participated in meetings of the Copyright and Publishing Roundtable, an initiative of the Human Rights and Equal Opportunity Commission. The Roundtable was convened to discuss and address the impact of legislation, procedures, protocols and technologies in the areas of copyright and publishing on people with a print disability.

The Copyright Law Branch led negotiations on arrangements for determining Commonwealth copyright liability in relation to copying and electronic communication of copyright materials. The Department, representing the Commonwealth, signed an agreement with the Copyright Agency Limited (CAL) that covers the period from 1 July 2001 to 30 June 2006. The agreement covers the obligations of the Commonwealth, extending beyond departments to a range of non-statutory and statutory bodies that are part of the Commonwealth administration.

The Department's employee relations advice on 'Acknowledging Authorship', to which the Division made a major contribution, requires due recognition

of the moral rights of authors, including those among Department staff as well as those outside the Department.

The passage of the *Copyright Amendment (Parallel Importation) Act 2003* on 27 March 2003 continued a process of legislative reform concerned with the control of importation. The Act extended prior reforms by enabling parallel importation of computer software (together with electronic versions of books, periodical publications and printed music). It limited the relevant copyright owners' control over importation to control against infringing copies, and strengthened provisions on the enforcement of their rights.

Substantial progress was made in the preparation of a possible legislative model on new rights for film directors and performers and on the extension of the term of photographic copyright. This work relates to the Government's 2001 election policy, *Arts for All*.

Information law

The private sector provisions in the *Privacy Act 1988* extended Australians' information privacy rights to the private sector from 21 December 2001. The Department worked closely with the Office of the Federal Privacy

Commissioner to ensure that private sector organisations understand and comply with the Act. The Department continued to provide policy advice to Commonwealth agencies to help them perform their functions in line with their obligations under the Privacy Act and the *Freedom of Information Act 1982*.

On 2 May 2003 the Attorney-General convened a meeting of the Privacy Core Consultative Group, which comprises specialists from business, industry, academia and privacy advocates. The Attorney-General sought views on a range of issues including the impact of the European Union Directive on Data Protection on cross-border transfers of personal information, the regulation of publicly available personal information, and the utility of privacy codes under the Privacy Act. While no significant problems were identified, the feedback received will be taken into account in any future consideration of these issues.

PERFORMANCE MEASURE

Policies provide solutions for, and recognise an appropriate balance of, competing interests

Copyright law

Much of the effort in preparing the legislative model on new rights for film directors and performers and extending the term of photographic copyright was devoted to addressing the impact on existing right-holders and users of materials affected by the proposed amendments.

The measures adopted in the *Copyright Amendment (Parallel Importation) Act 2003* ensured that copyright owners retained their rights to take action against infringing copies and uses while providing for a better competitive environment for software for the benefit of the public at large. Special consideration was given to the balance between enforcement provisions and the interests of persons accused of copyright violations, by

providing the opportunity to appropriately challenge the evidentiary presumptions provided. The Act was another step in the Government's program to ensure that Australian copyright law remains relevant, Australian copyright-based businesses remain adequately protected and competitive, and the Australian community benefits from trade and technology developments. A number of the measures in this Act implemented part of the Government's response to the House of Representatives Standing Committee on Legal and Constitutional Affairs report *Cracking Down on Copycats: the enforcement of copyright in Australia*. The response was tabled in Parliament by the Attorney-General in June 2003.

Information law

The Department continued to maintain and develop an information law framework that respects Australians' privacy and information access rights while at the same time promoting the efficient use of information by Commonwealth agencies and private sector organisations.

The Department advanced Australia's data protection interests in negotiations on bilateral trade agreements with Japan, Singapore, Thailand and the United States, and in a variety of regional and international forums including the Working Party on Information Security and Privacy of the Organisation for Economic Cooperation and Development, and the Electronic Commerce Steering Group of the Asia-Pacific Economic Cooperation.

A range of Commonwealth agencies required assistance in balancing privacy issues against program imperatives to ensure effective programs with minimal impact on privacy interests. For example, the Department worked with the National Office for the Information Economy in considering the privacy implications of the recommendations and findings in their report on spam. The report was released on 16 April 2003.

The Department also considered privacy issues involved in proposals to improve the client authentication processes of some agencies for service delivery. The Department began work on developing a Privacy Impact Checklist to assist consideration of privacy impacts at the developmental stages of proposals and projects.

PERFORMANCE MEASURE

Commonwealth laws (and State/Territory laws with which they interact) and Government policies are effectively explained, implemented and applied

Copyright law

Responses from people making telephone and email enquiries about copyright have been positive about the information provided, even though advice specific to the enquirers' circumstances is not provided.

The passage of the *Copyright Amendment (Parallel Importation) Act 2003* was widely publicised in the media. A staff member of the Branch spoke at symposiums in Sydney and Brisbane, convened to provide an overview of the legislation. Departmental staff delivered workshops and information sessions on copyright issues at various conferences and industry forums, including international meetings and seminars.

In addition, the Department also produced the *AGD e-News on Copyright*, a free departmental electronic newsletter regularly sent to a list of over 1500 subscribers. It provides regular detailed updates about copyright policy development, provides news about regional and international copyright developments and WIPO copyright initiatives, and includes occasional case notes on significant cases relating to copyright. It also provides contact details in the Copyright Law Branch for further information and assistance.

Information law

The Department responded to a large number of queries from private sector organisations and individuals seeking to understand the private sector provisions of the *Privacy Act 1988*. The Department also provided considerable advice and assistance to the Office of the Federal Privacy Commissioner and Commonwealth agencies in relation to how proposals in particular policy initiatives affected privacy and information access rights, and how an individual's privacy or information access rights could be better addressed.

The Department started to update references to agencies in the Schedules of the *Freedom of Information Act 1982* and the Freedom of Information (Miscellaneous Provisions) Regulations.

The Freedom of Information (FOI) web site at <<http://www.ag.gov.au/foi>> was maintained. This site provides general information for members of the public wishing to make an application under the FOI Act, as well as detailed guidance to Commonwealth agencies to assist with effective processing of FOI requests.

OUTLOOK FOR 2003–04

Subject to the Government's priorities, progress will be made on promised new legislation on new rights for film directors and performers and extending the term of photographic copyright.

The Department will continue to pursue the development of APEC Privacy Principles and to provide policy advice on Australia's information law framework, administered principally under the *Freedom of Information Act 1982* and the *Privacy Act 1988*.

The Attorney-General has foreshadowed that he will be asking the Federal Privacy Commissioner to conduct a review of the operation of the Privacy Act's private sector provisions after they have been in operation for two years. It is expected that the review and the Department's ongoing work with Commonwealth agencies will identify areas where Australia's information laws can be improved.

OVERVIEW

The Native Title Division (NTD) is responsible for providing advice to the Attorney-General and the Government about the formulation and implementation of native title policy. The advice reflects an increased focus on consent determinations and agreement-making. The Division has promoted native title outcomes that further the Government's aims for a future in which all Australians share in the social and economic opportunities that Australia offers.

HIGHLIGHTS FOR 2002–03

In 2002–03 the Commonwealth, through the Division, was involved in significant High Court decisions, progress in resolving native title issues by agreement and the development of the Government's position in relation to off-shore native title.

The native title system

Coordination of the native title system has been a particular focus this year. NTD chaired and provided secretariat support to the Native Title Coordination Committee and the Native Title Consultative Forum. Both provided opportunities for the exchange of information on native title operations and developments between stakeholders in the native title system. The Coordination Committee is conducting a review of funding within the native title system to consider the performance of the native title system for Government consideration.

High Court Decisions

The Native Title Division contributed to the developing law of native title through the management of the Commonwealth's involvement in native title litigation. In

particular, High Court decisions this year in the *Miriuwung Gajerrong* and *Yorta Yorta* cases, to which the Commonwealth was a party, confirmed the underlying principles upon which the *Native Title Act 1993* (NTA), and the Government's 1998 amendments, were based.

Resolving native title by agreement

To facilitate the Commonwealth's involvement in negotiating consent determinations of native title, NTD advised the Attorney-General on the outcomes of the key High Court decisions in *Miriuwung Gajerrong* and *Yorta Yorta*. These decisions influenced the further development of the Commonwealth's principles applied in negotiations for consent determinations, namely, certainty for all parties, consistency with the common law, compliance with the provisions of the NTA and transparency of process. In 2002–03, the Commonwealth actively participated in a number of consent determination negotiations, including the *Miriuwung Gajerrong* applications remitted from the High Court to the Federal Court and the *Wik* and *Wotjobaluk* applications.

Native title policy

In March 2003, the Prime Minister approved a policy on native title determination applications that reflects its commitment to the principles described above and will direct much of the Division's future native title litigation and negotiation work. Further policy development this year included consideration of issues relating to off-shore native title matters. These issues arose out the High Court's 2001 decision in *Yarmirr* [2001]208 CLR 1, in which the Court found that native title is capable of existing in the territorial sea, from the low water mark seaward to 12 nautical miles. NTD provided advice to the Government on an appropriate Commonwealth response that was consistent with the High Court's ruling.

COMMENTS AGAINST PERFORMANCE MEASURES

PERFORMANCE MEASURE

Timely and sound assistance to the Attorney-General (and the Government):

- *in the development of policies that maintain, develop and deliver efficient and effective justice in relation to native title for all Australians by providing solutions that:*
 - *achieve an appropriate balance of competing interests*
 - *recognise the needs, rights and responsibilities of individuals and groups (including families), and legitimate business and other economic interests*
 - *facilitate equitable resolution of native title issues*

Recognition of native title

NTD advised the Attorney-General on the communication of Commonwealth native title policies through the process of native

title determination applications. By participating in the determination process, the Commonwealth is able to assist in the achievement of an equitable resolution of native title issues. For example, in 2002–03, the Commonwealth actively participated in a number of Federal Court hearings including *Wellesley* (December 2002), *Daniel v State of Western Australia (Ngarluma)* [2003] FCA 666, and *Rubibi* (May–June 2003).

Native title determination applications are in most cases mediated. If mediation is successful, a consent determination of native title can be made. Some, such as matters listed above, are litigated before the Federal Court. In either case, the process involves the applicant group and a variety of respondents (including the relevant State/Territory government and other interest holders in the area, often represented by relevant peak bodies). The Commonwealth generally becomes a party in relation to specific property or policy interests. In consent determination negotiations, the Commonwealth seeks to promote determinations which are certain, transparent, and comply with the common law and the requirements of the NTA. This approach helps to promote fair, effective and enduring outcomes for the native title system and for all Australians.

Native title system coordination and consultation

In the development of policies that maintain, develop and deliver efficient and effective justice in relation to native title to all Australians, NTD has facilitated and participated in a range of bilateral and informal consultations. Also, NTD chaired and provided secretariat support to the Consultative Forum.

The Consultative Forum is a multi-lateral and informal body and membership includes representatives from the Australian Government, all State and Territory Governments, the Federal Court, the National Native Title Tribunal, the Aboriginal and Torres Strait Islander Commission, Native Title Representative Bodies, the National Farmer's



Baobab Tree. Photo: M. Brouwer and the Australian Heritage Commission Collection.

Federation, the fishing industry, mining industry, petroleum industry and local government. It provides an opportunity for stakeholders in the native title system to discuss and exchange views on recent developments in the native title system. The Consultative Forum also assists stakeholders to recognise the need for balance in the native title system and to appreciate the needs and responsibilities of other parties. Participation in this process is part of the Government's commitment to maintaining a well functioning system.

The Minerals Exploration Action Agenda

In an effort to identify priority issues and possible solutions to a decline in the level of minerals exploration expenditure in Australia, the Government has established the Minerals Exploration Action Agenda. The Agenda is led by a Strategic Leaders'

Group and is considering a range of issues facing the industry, including native title. The minerals exploration industry has a particular interest in native title matters as its members must often address native title in the course of applying for an exploration tenement.

NTD's contribution to the Strategic Leaders' Group assisted in striking a balance between the interest of miners in progressing development activity and the interests of native title holders. Work will continue in this area through participation in an inter-departmental committee that will provide advice to the Government regarding the recommendations of the Strategic Leaders' Group.

Future acts

The amended NTA ensures that native title holders can have a seat at the table in future developments on native title land. In particular, the Government's Indigenous Land Use Agreement (ILUA) provisions allow for mutually beneficial arrangements to be developed outside the adversarial system. Resolving native title issues through agreement rather than through litigation or arbitration encourages involved parties to recognise the needs, rights and responsibilities of other stakeholders and their legitimate business and other economic interests, and to themselves generate effective outcomes.

This year, the NTD provided assistance to various Commonwealth agencies in the development and negotiation of individual ILUAs. Of particular note is the work that was conducted in relation to the negotiation of an ILUA for the development and use of Bradshaw station in the Northern Territory as a defence field training area. NTD was an active member of the inter-departmental negotiating team set up to assist the Department of Defence in their negotiations with the traditional owners of the area to reach an agreement that provides benefits to all parties. (The ILUA was subsequently signed by all parties in mid July 2003.)

PERFORMANCE MEASURE

Timely and sound assistance to the Attorney-General (and the Government):

- *in the development and maintenance of legislative frameworks (Commonwealth laws and State/Territory laws with which they interact) that are appropriate for that purpose*

Native title determination applications

The Commonwealth is participating in approximately 190 native title determination applications which potentially affect the Commonwealth's interests. These applications are advancing either by way of mediation or litigation. The Commonwealth's position in mediation and litigation is consistent with the provisions of the NTA. This involvement is one method by which the Commonwealth conveys its native title policy and seeks to maintain a system consistent with the legislative framework.

In light of the developing nature of native title law, NTD played a significant role in the ongoing analysis of native title decisions and ensured that Commonwealth policies were revised and updated to reflect changes in the law. NTD undertook substantial work in this regard following the handing down of the High Court's decisions in *Miriuwung Gajerrong* and *Yorta Yorta*. NTD also ensured that mediation and litigation to which it is a party proceeded in accordance with developing legal precedents.

State and Territory native title laws

States and Territories are able to develop their own native title regimes that apply instead of the 'right to negotiate' arrangements under the NTA. These alternative regimes are important because they provide flexibility for native title issues to be addressed as part of the land management systems of the States

and Territories, complementing local legislation. The Attorney-General must determine that an alternative State regime meets criteria specified in the NTA before it comes into effect.

NTD managed the Attorney-General's involvement in the successful appeal to the Full Court of the Federal Court in *State of Queensland v Central Queensland Land Council Aboriginal Corporation* [2002] 195 ALR 106. The appeal was against a decision at first instance that four determinations approving alternative state regimes in Queensland under section 43 of the NTA were invalid.

The Queensland Government announced in late 2002 that Queensland would revert to the 'right to negotiate' under the NTA from 1 July 2003. NTD advised the Attorney-General on the impact that this change would have on Determinations made by the Attorney-General in relation to Queensland legislation under sections 26A and 43 of the NTA. The Queensland Government has subsequently announced that exploration permits granted in Queensland from 1 July 2003 would be subject to native title protection conditions designed to protect and safeguard the cultural heritage of land subject to native title.

PERFORMANCE MEASURE

Timely and sound assistance to the Attorney-General (and the Government):

- *to ensure that those policies are adequately explained, implemented and applied.*

Native Title in the public arena

NTD assisted the Attorney-General to promote Australia's native title system and contributed to briefings for the Commonwealth Law Ministers' Conference, the UN Commission on Human Rights 59th session, and the Australia-Vietnam Dialogue on International Organisations and Legal Issues.

To ensure policies were adequately explained, implemented and applied, NTD actively assisted in the presentation of the Government's native title policies and legislation to Parliamentary Committees and the public. For example, NTD contributed to the House of Representatives Standing Committee on Industry and Resources inquiry into any impediments to increasing investment in mineral and petroleum exploration in Australia. In addition, a senior staff member from NTD delivered a paper at the annual Native Title Representative Bodies conference in Alice Springs in June 2003 outlining the Commonwealth's approach to ILUA and consent determination negotiations.

Together with the Office of Aboriginal and Torres Strait Islander Affairs and the National Native Title Tribunal, the Division assisted in the development of indicators relating to land that will be used by the Council of Australian Governments to measure the impact of services directed at overcoming Indigenous disadvantage.

Implementation, education and application of native title policies across Government agencies

NTD played an important role in supporting other Commonwealth agencies by providing policy advice on native title matters and advice on agreement making in the native title context. In addition to policy advice, NTD conducted seminars to promote the implementation and application of Commonwealth native title policies. The seminars were designed to provide agencies with adequate information about native title to ensure compliance with the NTA and to raise awareness of the relevance of native title to work being undertaken by various agencies. To date seminars have been provided to:

- Agriculture, Fisheries and Forestry – Australia
- Australian Fisheries Management Authority
- Department of Employment and Workplace Relations
- Department of Industry, Tourism and Resources
- Environment Australia, and
- National Oceans Office.

OUTLOOK FOR 2003–04

NTD will continue to promote a sustainable native title system that operates efficiently and effectively for all Australians with an interest in native title. Although there have been major High Court decisions in 2002–03 providing some clarification as to the legal nature and significance of native title rights and interests under the NTA, some issues remain to be clarified. NTD intends to strategically identify and engage in matters to assist in the establishment of instructive legal precedents.

A particular focus will be the development of Commonwealth policy on compensation and the impacts of future acts by Commonwealth agencies. This policy advice will provide direction for the native title work of both the Department and the related activities of other Commonwealth agencies.

NTD will continue to monitor the resourcing of the native title system. That monitoring will examine workloads in the system, the level of resources needed to deal with those workloads, and the distribution of resources between the various agencies in the system.

OUTCOME 2

COORDINATED FEDERAL CRIMINAL JUSTICE, SECURITY AND EMERGENCY MANAGEMENT ACTIVITY, FOR A SAFER AUSTRALIA

OVERVIEW

The Attorney-General's Department contributes to the achievement of Outcome 2 by providing policy advice and services in the areas of criminal justice, crime prevention, security law, and protective security, as well as through its coordination activities. These activities are most prominent in the emergency management and protective security fields. The Department also undertakes a range of activities to meet obligations and responsibilities in international as well as domestic circumstances.

The Department works in consultation and cooperation with many other organisations to achieve Outcome 2. These organisations include government agencies (at Commonwealth and State/Territory levels) as well as non-government and foreign institutions, and include advisory bodies, law enforcement agencies, emergency services and commercial businesses. As well as the inter-relationships with other organisations, the Department operates in an environment where international as well as domestic events or trends can play a significant role.

During 2002–03, the Department made significant and substantial progress toward achieving Outcome 2, with many successes drawing positive comments from stakeholders, including the Attorney-General and the Minister for Justice and Customs. These aspects are discussed more fully in the reports for each output contributing to Outcome 2, which appear later in this section.

HIGHLIGHTS FOR 2002–03

- At the Leaders' Summit on Terrorism and Multi-jurisdictional Crime on 5 April 2002, all Australian governments agreed to establish a new national framework to focus on international crime and terrorism. Much of the new framework was put in place during the reporting period and substantial progress was made on the remaining actions. National counter-terrorism arrangements and legislation were enhanced, and the Australian Crime Commission replaced the National Crime Authority. A range of legal and administrative reforms designed to minimise the impact of jurisdictional boundaries on the effective conduct of criminal investigations in Australia began to move into place. The Attorney-General's Department played a central role in bringing about these results.
- In the aftermath of the 11 September 2001 terrorist attacks, the Department assisted the Government in developing reforms in the area of counter-terrorism

and national security. Four of the five pieces of legislation in a comprehensive legislative package to combat terrorism came into force in July 2002:

- *Security Legislation Amendment (Terrorism) Act 2002*
 - *Suppression of the Financing of Terrorism Act 2002*
 - *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002*, and
 - *Telecommunications Interception Legislation Amendment Act 2002*.
- The protection of Australia's critical infrastructure was advanced by the creation of the Trusted Information Sharing Network (TISN) and the Critical Infrastructure Protection (CIP) Branch within the Department. CIP Branch will provide a single point for coordinating national CIP strategic policy. The TISN was formally launched in April 2003 by the Attorney-General. Establishing individual sector assurance advisory groups will continue into 2003–04. The CIP Branch has been active in the Asia–Pacific Region building Computer Emergency Response Team (CERT) capability through AusAID and Australian Public Service Commission initiatives.
 - Emergency Management Australia (EMA) responded immediately to the terrorist bombings in Bali on 12 October 2002 to facilitate the movement of 66 critically injured Australians. Patients were initially triaged at the Royal Darwin Hospital, then transferred to hospitals in other States. EMA liaised closely with State and Territory emergency management organisations, other Commonwealth agencies and the private sector to ensure the repatriation of the remains of 78 of the 88 Australian fatalities from Bali. EMA has since conducted a series of operational debriefs to identify successful aspects of the response, and where there was scope for improvement. These findings will enhance operational planning for future mass casualty events involving Australians overseas, including terrorism.
 - 2002–03 was a challenging and diverse year for the Protective Security Coordination Centre (PSCC), with Australia being confronted with a direct terrorist attack on its community through the Bali bombing on 12 October 2002. This followed the multiple terrorist attacks on the United States on 11 September 2001—defining events for PSCC. These events and their continuing aftermath fully tested PSCC's ability to meet Outcome 2, and resulted in a new business direction and a significant enhancement of its longstanding security coordination mechanisms.
 - The Department managed security and guarding services to meet diplomatic, consular and other Commonwealth responsibilities. The function was effectively managed by PSCC in circumstances of high demand and scarce resources. The residual effects of the terrorist attacks on the US, the Bali bombing and the Iraq War created a heightened threat environment with unprecedented demand for guarding services throughout Australia.

RESOURCE SUMMARY

OUTCOME 2 – COORDINATED FEDERAL CRIMINAL JUSTICE, SECURITY, CRIME AND EMERGENCY MANAGEMENT ACTIVITY, FOR SAFER AUSTRALIA

	(1) BUDGET ¹ 2002–03 \$'000	(2) ACTUAL ² EXPENSES 2002–03 \$'000	VARIATION (COLUMN 2 MINUS COLUMN 1)	BUDGET ³ 2003–04 \$'000
Administered Expenses (including third party outputs)	11 644	15 364	3 720	26 154
Special Appropriations	300	245	(55)	55 860
Total Administered Expenses	11 944	15 609	3 665	82 014
PRICE OF DEPARTMENTAL OUTPUTS				
OUTPUT 2.1: Policy advice on, and program administration and regulatory activities associated with, the Commonwealth's domestic and international responsibilities for criminal justice and crime prevention, and meeting Australia's obligations in relation to extradition and mutual assistance	29 899	33 206	3 307	18 750
OUTPUT 2.2: Legal services and policy advice on security law	2 493	1 918	(575)	2 646
OUTPUT 2.3: Provide national leadership in the development of emergency management measures to reduce risk to communities and manage the consequences of disasters	25 196	28 801	3 605	27 283
OUTPUT 2.4: Development and promotion of protective security policy, advice and common standards and practices, and the coordination of protective security services, including counter-terrorism and dignitary protection	25 425	24 921	(504)	26 818
OUTPUT 2.5: Management and coordination of the delivery of security and guarding services to meet diplomatic, consular and other Commonwealth responsibilities	22 022	25 462	3 440	31 158
TOTAL PRICE OF OUTPUTS	105 035	114 308	9 273	106 655
Revenue from Government (Appropriation) for Departmental Outputs	92 943	92 943	-	103 404
Revenue from other Sources	3 345	4 950	1 605	3 251
Total Departmental Revenue	96 288	97 893	1 605	106 655
TOTAL FOR OUTCOME 2 (Total Price of Outputs and Administered Expenses)	116 979	129 917	12 938	188 669

	2002–03	2003–04
Average Staffing Level	389.4	387.5

- 1 Full-year budget, including additional estimates and decisions of Government in the 2003–04 Budget impacting on 2002–03
- 2 Actual expenses include the capital use charge
- 3 Budget prior to additional estimates
- 4 The variation is primarily due to adjustments made to non-financial assets during the financial year

PERFORMANCE REPORT – ADMINISTERED ITEMS FOR OUTCOME 2

DIVERSIONARY PROGRAMS FOR JUVENILES IN THE NORTHERN TERRITORY

PERFORMANCE MEASURE

Expenditure in accordance with Government decision and agreed arrangements

Under the Government's Agreement with the Northern Territory Government, the Commonwealth provides \$5 million per year for four years for a pre-court diversionary program for juvenile offenders and a jointly funded Aboriginal Interpreter Service (AIS) to improve access to the justice system for Indigenous people. 2002–03 was the third year of the Agreement. The AIS assists to alleviate the language barriers faced by Aboriginal people. The AIS advised that from April 2000 to May 2003 it trained nearly 160 Aboriginal interpreters, as well as 294 clients in effective use of interpreters.

As part of the Agreement, the Commonwealth and Northern Territory Governments undertook a review from February to April 2002. A report of the review was published in January 2003. Its findings indicate that the Agreement is showing early signs of success. During the reporting period there was a 31 per cent decrease in court appearances by juveniles for property offences and a 51 per cent reduction in convictions overall. There was also a 40 per cent decrease in detention/imprisonment orders for juveniles for property offences.

The review identified the training of interpreters as a priority and recommended that a planned, comprehensive training program be established. In February 2003 the AIS employed a training coordinator to provide strategic advice on training and accreditation of interpreters. The AIS has employed trainers to provide mentoring support for interpreters at Royal Darwin Hospital and the Darwin Magistrates Court. Similar services are planned for

Alice Springs. The AIS has developed a training program that will be implemented between July and December 2003.

The Agreement requires that a final evaluation be undertaken six months before it expires on 31 August 2004. The Department expects to have the evaluation completed by the end of 2003.

ESTABLISHMENT OF A NATIONAL COORDINATION/FUNDRAISING POINT FOR CRIME STOPPERS

PERFORMANCE MEASURE

Expenditure in accordance with Government decision and agreed arrangements

Crime Stoppers comprises seven separate programs (ACT and NSW are combined). Funding a national coordination and fundraising point supports the expansion of this highly successful network. As the central coordination point, the national Crime Stoppers Corporation can now set strategic direction and provide networking, information exchange on best practise and fundraising activities at the national level. The aim is for the coordination and fundraising point to be largely self-funding at the completion of the four-year funding agreement.

Crime Stoppers has been remarkably successful in Australia. Between November 1987 and December 2002, information given to Crime Stoppers across Australia resulted in 22 931 arrests, 87 781 charges being laid, the recovery of more than \$37 million worth of property and the seizure of more than \$694 million worth of drugs.

INTERNATIONAL BODIES – MEMBERSHIP CONTRIBUTIONS

PERFORMANCE MEASURE

Grants made in accordance with Government decisions and agreed rates of contribution

This expenditure covers Australia's annual contribution (\$45 152 for 2003) for the Secretariat of the Financial Action Task Force (FATF) on Money Laundering.

The FATF is an inter-governmental body whose purpose is the development and promotion of international policies to combat money laundering. Australia was a founding member.

NATIONAL FIREARMS PROGRAM IMPLEMENTATION ACT 1996 – ADMINISTRATION

PERFORMANCE MEASURE

Expenditure in accordance with the objectives of the Program

Since the program began in 1996, the Commonwealth has provided \$398 million to the States and Territories for compensation for the purchase of prohibited semi-automatic firearms and \$63 million for costs of administering the Program (including \$56.6 million to the States and Territories for this purpose).

At 30 June 2003 \$388 million provided for compensation and \$62 million for administration had been acquitted.

During the year jurisdictions returned \$321 966.71 in unspent funds. Some jurisdictions retain funds to meet outstanding claims.

AUSTRALIA'S CONTRIBUTION TO THE INTERNATIONAL CRIMINAL COURT

PERFORMANCE MEASURE

Grants made in accordance with Government decisions and agreed rates of contribution

The Australian Government provided \$1 894 922 toward the operation of the International Criminal Court (ICC) in 2002–03. This covered Australia's contribution to the ICC budget for 2002 (\$461 504), 2003 (\$1 323 447) and a contribution to the ICC Working Capital Fund (\$109 971), that will be used for the 'start-up' costs of the Court.

The ICC is an important development in ensuring that those who commit the most serious international crimes are brought to justice. The ICC has jurisdiction to prosecute the perpetrators of genocide, crimes against humanity and war crimes committed after 1 July 2002. Australia ratified the Statute on 1 July 2002.

The budget of the ICC is set by the Assembly of State Parties to the Rome Statute of the ICC. The contribution of each State Party is determined by the United Nations Scale of Assessment. The Scale of Assessment is calculated by reference to each member state's share of aggregated world gross national product, with small adjustments made for political reasons. Australia's share of the total of the required contributions is currently 3.37088 per cent. Australia is the ninth largest contributor to the ICC. As more states become parties to the ICC Statute, Australia's share of these costs will fall.

HANDGUN BUYBACK PROGRAM

PERFORMANCE MEASURE

Expenditure in accordance with the legislation

The *National Handgun Buyback Act 2003* received Royal Assent on 30 June 2003. No payments were made under the Act during the 2002–03 financial year.

NATIONAL COUNTER-TERRORISM COMMITTEE (PREVIOUSLY SAC-PAV) – OPERATING EXPENSES

PERFORMANCE MEASURE

Expenditure in accordance with Government decision and as approved by the Committee

A Commonwealth administered appropriation provided funding to the National Counter-Terrorism Committee (NCTC) program to develop and maintain a nation-wide counter-terrorism capability. The program includes the development of national plans; Commonwealth–State policy and operational seminars, forums and

workshops; a training and exercise program; the purchase of specialist equipment for police and other operational agencies; and the servicing of a national network of agencies. The 2002–03 NCTC budget was \$5.03 million which included \$1.15 million from 2001–02 for the carry over of contracted supplies. The NCTC program objectives for 2002–03 were met.

PERFORMANCE REPORT – DEPARTMENTAL OUTPUTS FOR OUTCOME 2

OUTPUT 2.1

POLICY ADVICE ON, AND PROGRAM ADMINISTRATION AND REGULATORY ACTIVITIES ASSOCIATED WITH, THE COMMONWEALTH'S DOMESTIC AND INTERNATIONAL RESPONSIBILITIES FOR CRIMINAL JUSTICE AND CRIME PREVENTION, AND MEETING AUSTRALIA'S OBLIGATIONS IN RELATION TO EXTRADITION AND MUTUAL ASSISTANCE

OVERVIEW

Output 2.1 is the particular responsibility of Criminal Justice Division (CrJD). By providing policy advice, crime prevention strategies, management of research programs and processing of casework, CrJD made a central contribution to ensuring coordinated federal criminal justice, security and emergency management activity, for a safer Australia. CrJD provides support to the Attorney-General, the Minister for Justice and Customs and the portfolio law enforcement agencies in furthering Commonwealth and national law enforcement interests.

HIGHLIGHTS FOR 2002–03

Firearms and weapons

In December 2002 the Council of Australian Governments (COAG) agreed to restrict the availability and use of handguns and endorsed 28 other firearms reform measures developed by the Australasian Police Ministers' Council (APMC). CrJD is responsible for advancing these reforms, and through the year:

- developed and managed passage of the *National Handgun Buyback Act 2003*, which appropriated monies to fund two-thirds of the cost of compensation paid for the surrender of handguns prohibited under the COAG agreement
- arranged immediate amendment of the *Customs (Prohibited Imports) Regulations 1956* to prohibit the importation, possession and use of certain handguns by sporting shooters, and

- supported the Minister in consultations with the Sporting Shooters' Advisory Council to achieve consensus on key issues and practical implementation of the reforms.

A key challenge for the CrJD will be to continue to improve its own technical knowledge base and maintain the productive relationships it has developed with other agencies on which it needs to draw for technical advice.

Australian Crime Commission

At the Leaders' Summit on 5 April 2002 all Australian governments agreed to replace the National Crime Authority (NCA) with an Australian Crime Commission (ACC) by the end of 2002. The ACC will focus on criminal intelligence and will give a greater role to the States and Territories than the NCA. Final details of the arrangements were settled by the APMC on 9 August 2002.

CrJD and the ACC Project Implementation Team played a key role in meeting the Leaders' Summit deadline. The ACC commenced operations on 1 January 2003. The major challenge in this project was the need to take account of the views of a large number of Commonwealth and State agencies, and of the Parliamentary Joint Committee on the NCA, while operating within a very tight time frame. CrJD effectively addressed this challenge by maintaining an active and cooperative approach throughout the process.

Credit and debit card skimming

In late 2002 card skimming fraud emerged as an issue of national concern. CrJD played a lead role in supporting the Minister, and coordinating with other agencies, in a range of initiatives to address financial fraud including credit and debit card skimming:

- In December 2002 the Minister sought the support and input of other APMC members for a national response to the problem of card skimming. The APMC adopted this proposal shortly after the end of the reporting period.
- In May 2003, at the request of the Department, the Board of the ACC authorised an ACC intelligence operation on card skimming.
- At the Attorney-General's request the Standing Committee of Attorneys-General (SCAG) authorised the development of model skimming offences.
- The Minister instituted biannual ministerial meetings with peak bodies from the financial sector, and law enforcement agencies enhanced their working arrangements with the private sector for exchange of information and intelligence on financial crime.

- In March 2003 the Commonwealth and New South Wales governments established a joint task force, chaired by the Australian Federal Police (AFP), to follow up intelligence received from the ACC Identity Fraud Register.
- The Australian Hi-Tech Crime Centre is developing national referral arrangements for identity fraud, including information and intelligence sharing.

Bali process

The Bali process was initiated by the Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime held in Bali in February 2002. Australia and Indonesia co-chair the Bali process. It is a cornerstone of the Government's approach to combating transnational organised crime in the Asia-Pacific region and provides an important forum for regional countries to learn to work together in this area. A Second Ministerial Conference was held in April 2003. CrJD played a key role in two major achievements in the Bali process during 2002–03:

- It proposed, planned and facilitated a workshop in Malaysia aimed at developing relevant legislation. The workshop identified key elements for effective prosecution of crimes relating to people smuggling and people trafficking and strategies for strengthening national legislation.
- CrJD drafted model laws criminalising people smuggling and people trafficking, which the second Bali Ministerial Conference adopted. These model laws have attracted the interest of countries within and beyond the Asia-Pacific region. At 30 June 2003, Cambodia was implementing the model people smuggling law.

COMMENTS AGAINST PERFORMANCE MEASURES

PERFORMANCE MEASURE

Policy advice

- *sound policy advice provided to meet the Government and Minister's timetable*
- *effective coordination and representation of Commonwealth interests in international and domestic policy development forums*
- *Government's legislation requirements met*

CrJD provided policy advice to portfolio Ministers on a wide range of issues. Feedback from Ministers' offices indicated they were generally well satisfied with the quality and timeliness of this advice.

CrJD participated, or supported participation by Ministers, in a range of international and domestic forums including the Second Bali Ministerial Meeting, the continuing negotiations for a United Nations Convention against

Corruption, the Financial Action Task Force and various Commonwealth-State/Territory meetings within the scope of the Ministerial Council for the Administration of Justice (MCAJ). The Commonwealth achieved significant results in a number of these forums.

CrJD managed a substantial body of legislation. Some of it was very urgent and unexpected. Despite the additional requirements, CrJD completed the whole program in accordance with the Government's legislation requirements.

Responding to international crises

Bali bombings

CrJD played a significant role in the Government's response to the Bali bombings of 12 October 2002. The Division provided extensive legal policy advice on cooperation with Indonesian authorities. It also managed the preparation and passage of two urgent new items of legislation in response to the bombings:

- The *Crimes Amendment Act 2002*, passed in October 2003, relaxed the normal restrictions on obtaining, analysing and disseminating DNA



Photo: Geoff Comfort Photography.

samples to allow samples from the crime scene in Bali to be used to identify people killed in the bombing. The legislation also authorised the Minister to apply these special provisions to any other incident overseas involving the deaths of Australians.

- The *Criminal Code Amendment (Offences against Australians) Act 2002*, passed in November 2002, made it an offence to murder, commit manslaughter or intentionally or recklessly cause serious harm to Australians outside Australia. The legislation applies to acts done on or after 1 October 2002. The Act will make it easier for Australia to prosecute people who commit terrorist acts against Australians overseas and, where necessary, to obtain their extradition to Australia.

Iraq

CrJD contributed greatly to the Department's advice on criminal justice issues relating to the war in Iraq. The Department played an integral role in ensuring that Australia's participation in operations in Iraq was consistent with international and domestic law.

Leaders' Summit on Terrorism and Multi-jurisdictional Crime

The Department made substantial progress in implementing the Leaders' Summit initiatives during the reporting period. Actions agreed at the Summit comprise three groups:

- actions 1–6: a new national counter-terrorist framework
- actions 7–13: establishment of the ACC, and
- actions 14–20: minimisation of jurisdictional barriers to effective law enforcement.

Establishing the Australian Crime Commission

This was a large and complex task which had to be completed within a very tight timeframe. The ACC replaced three pre-existing bodies; the NCA, the Australian

Bureau of Criminal Intelligence and the Department's Office of Strategic Crime Assessments. The ACC's structure and functions are significantly different from those of the NCA. It has a supervising Board comprising the heads of the main agencies with law enforcement responsibilities at Commonwealth and State/Territory level, its special investigative powers are exercised by examiners independent of the Commission's management structure and it has a wide-ranging national criminal intelligence role.

CrJD was central in settling detailed policy issues in consultation with relevant State and Commonwealth agencies and managing the drafting and passage of the *Australian Crime Commission Establishment Act 2002*. An ACC Project Implementation Team, comprising officers from the Department, the NCA and the AFP was established within the Department following the Leaders' Summit to develop administrative arrangements for the transition to the ACC. These parallel processes were completed effectively within the timeframe set by the Leaders' Summit.

CrJD has a continuing policy role in relation to the ACC. It advises the Secretary of the Department in his role as a member of the ACC Board and assists the portfolio ministers in the administration of the ACC's governing legislation. It helped the Board to develop and introduce best practice corporate governance procedures and an effective authorisation process for intelligence and investigative operations.

Minimising jurisdictional barriers to effective law enforcement

CrJD has contributed significantly to progress toward most actions in this group:

- *Actions 14, 15 and 16 (effective money laundering offences, cross-border investigation powers and AFP powers to investigate State offences incidental to multi-jurisdictional crime):* The SCAG-APMC Joint Working Group on National

Investigation Powers (with CrJD participation) completed reports on money laundering offences and AFP powers to investigate State offences, and at 30 June 2003 was on track to complete a report on cross-border investigation powers, for consideration at the August 2003 SCAG meeting. Its work during 2002–03 included publication of a discussion paper on national investigation powers, covering controlled operations, assumed identities, electronic surveillance devices and witness anonymity.

- *Action 17 (enact model laws of forensic procedures, computer offences and serious drug offences):* CrJD worked toward enactment of Commonwealth serious drug offences. Commonwealth legislation on forensic procedures and computer crime already complied with the model legislation. Other jurisdictions made steady progress and all except the Northern Territory have implemented the model forensic procedures legislation. NSW, Victoria and the ACT have implemented the model computer offences. Victoria and Tasmania have implemented the model serious drug offences.
- *Action 18 (radio-communications equipment inter-operability and adequate access to spectrum):* An inter-agency working group prepared a report on radio-communications compatibility between police and other law enforcement agencies for consideration by APMC at its July 2003 meeting. The Communications Legislation Amendment Bill (No 1) 2002, introduced in June 2002, included an amendment to the *Radio-communications Act 1992* to clarify that national security and law enforcement concerns must be taken into account in radio spectrum decisions. For reasons unrelated to this amendment, the Bill had not been enacted by 30 June 2003.

- *Action 19 (enhance the capacity of jurisdictions to contribute DNA profiles to the national DNA database):* The Commonwealth entered ministerial and administrative arrangements with the ACT under the new forensic procedures legislation. Victoria, Western Australia and Tasmania were at an advanced stage. Jurisdictions were well advanced with technical aspects of the system.
- *Action 20 (elimination of administrative and legal barriers in specified areas of law enforcement to pursuit of criminals operating in more than one jurisdiction):* The Police Commissioners' Policy Advisory Group identified required actions. The Joint Working Group and the Model Criminal Code Officers' Committee (both including CrJD representatives) will develop model legislation in 2003–04.

Firearms and weapons

CrJD's firearms and weapons control responsibilities increased substantially during the year and it responded quickly to new Government initiatives on firearms. It worked cooperatively and productively with other Commonwealth, State and Territory agencies.

In July 2002, the Commonwealth agreed with States and Territories to strengthen measures against the trade in illegal firearms. CrJD managed development and passage of legislation inserting two cross-border firearms trafficking offences into the Commonwealth Criminal Code (*Crimes Legislation Amendment (People Smuggling, Firearms Trafficking And Other Measures) Act 2002*). These provisions carry a heavier penalty than existing State/Territory legislation.

CrJD provided advice to the Minister on the development of national handgun reforms that were endorsed by COAG in December 2002. The first phase of these reforms was implemented quickly.

CrJD also contributed to Australia's reports on its activities in support of international firearms agreements, commented on draft model weapons control legislation

being developed for South Pacific Forum countries and to the development of uniform firearms legislation in the South Pacific region, and provided policy advice to the Minister on proposals to restrict access to crossbows, particularly pistol crossbows and the possible development of national crossbow trafficking legislation.

Transnational organised crime

People smuggling

CrJD played a major role in the Government's initiatives to address the problem of people smuggling. The Division's work was focused on international cooperation, particularly in the South East Asian region.

In addition to the firearms provisions already mentioned, the *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002* made it an offence under Australian law to smuggle people from Australia to another country or for an Australian to smuggle people between two foreign countries. The Act also made it an offence to make, provide or possess false travel or identity documents intended to help a person enter a foreign country unlawfully. These measures complement existing laws against smuggling people into Australia, enabling Australia to prosecute those involved in smuggling people into foreign countries. They should help Australia to obtain reciprocal assistance from other countries.

CrJD made a significant contribution to Australia's role as co-chair of the Bali process. It conducted a workshop in Malaysia and subsequently drafted model legislation on people smuggling and people trafficking.

People trafficking

CrJD coordinated intensified efforts to combat people trafficking. On 11 December 2002 Australia signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, a protocol to the United Nations Convention against Transnational Organized Crime. The Protocol will complement Australia's strong domestic laws by strengthening

international rules against people trafficking and promoting cooperation between States to combat this crime.

Corruption

CrJD participated in the continuing negotiations for the draft United Nations Convention against Corruption. It coordinated State, Territory, business and non-government organisation (NGO) consultations to ensure adequate representation of stakeholder interests in the Convention.

CrJD representatives attended the Global Forum III, an anti-corruption conference held in Seoul, South Korea, in May 2003. CrJD was actively involved with the OECD Working Group on Bribery, which monitors compliance with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Illicit drugs

In partnership with portfolio agencies, CrJD helped develop new measures under the National Illicit Drug Strategy (NIDS).

CrJD is helping develop strategies to address the diversion of precursor chemicals. These include a National Strategy on the Diversion of Precursor Chemicals and the operation of the National Precursor Working Group, established in September 2002. It brings together representatives of law enforcement and health agencies from a range of jurisdictions, and the pharmaceutical and chemicals industry. It actively promotes the development of new initiatives to deal with precursor chemicals, including the establishment of a clandestine laboratory database, strategic intelligence, research and evaluation, and awareness raising activities as part of the National Strategy.

CrJD supported the Minister's participation at the 46th meeting of the United Nations Commission on Narcotic Drugs (CND46) in April 2003, at which 18 resolutions were agreed, including six co-sponsored by Australia. The meeting encouraged and assisted countries to work toward achieving the

ten-year goals set by the United Nations General Assembly Special Session on Drugs in 1998. International law enforcement cooperation was a major theme of CND46. Australia showcased its achievements in this field and its presentations were well received.

Fraud

CrJD played a key role in addressing Commonwealth and national issues relating to fraud. The main issues during the reporting period were credit and debit card fraud and associated financial fraud, control of fraud against the Commonwealth, and identity fraud.

Fraud control

In May 2002, the Minister issued the *Commonwealth Fraud Control Guidelines 2002*. The Guidelines incorporate the latest developments in corporate governance, modern business practices and fraud control initiatives. During the reporting period, CrJD assisted agencies to put into place appropriate arrangements to implement the Guidelines. The main new requirements of the Guidelines and the outcomes achieved against those requirements are:

- Chief Executive Officers must now certify in their agencies' annual report that they have complied with all requirements of the Guidelines. Compliance has improved markedly, with many more agencies implementing the requisite procedures and practices.
- Agencies must collect information on fraud and provide it to the Department by 30 September each year. Many agencies have improved their reporting and information management systems to collect fraud related information. This process has provided a greater level of information on fraud against the Commonwealth than previously available.
- Employees and service providers who are primarily engaged in preventing, detecting, or investigating fraud were required to meet new improved fraud

control competencies by 30 June 2003. Those with coordinating and investigative roles must meet additional competencies by 30 June 2004. Compliance will be assessed in the coming year.

- Investigations must comply with the *Commonwealth Fraud Investigation Standards*. After a review of the Standards by an inter-departmental committee including the Department, the Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA) approved a revised *Commonwealth Investigations Standards Package* in April 2003. Compliance with the Package will become a requirement of the Guidelines early in 2003–04. Compliance with the current Standards will be assessed early in 2003–04.

CrJD also participated in the following fraud control activities:

- It maintained a fraud email box for input and queries by Commonwealth and other relevant agencies. Allegations received are referred to the relevant Commonwealth agency for action. The most serious case to date is expected to result in a successful prosecution for a \$2 million fraud.
- The biannual Fraud Liaison Forum for Commonwealth agencies provided an opportunity to exchange fraud control information, including information on fraud trends, training and investigations issues.

Identity fraud

CrJD took a lead role in coordinating and giving stronger impetus and strategic direction to work to address identity fraud in Commonwealth agencies.

In June 2003, the Government authorised the Department to coordinate development of a whole-of-government strategy to enhance identification and verification processes in Commonwealth agencies. In the next reporting period CrJD will undertake comprehensive feasibility studies for:

- a common set of identifying documents of higher integrity for use by Commonwealth agencies to identify clients
- an on-line identity verification service for primary identification documents, and
- more well-defined, cross-agency data matching to detect fictitious identities and cleanse identity registers.

Criminal and terrorist assets

The *Proceeds of Crime Act 2002 and Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002* came into effect on 1 January 2003. This is the most significant innovation since enactment of the original *Proceeds of Crime Act 1987*. This major legislative package was the culmination of several years work by CrJD and other agencies. It introduced a new civil forfeiture regime for the proceeds of crime. Proceeds can now be recovered in situations where it is clear that they derive from criminal activity but there is not enough evidence to secure a conviction.

In June 2003, the Financial Action Taskforce on Money Laundering, the international body which sets global anti-money laundering standards, adopted a revised version of its core document, the Forty Recommendations. CrJD, together with Treasury, participated in the extensive international consultation process by which the recommendations were reviewed in preparation for this decision. At 30 June 2003, CrJD was developing legislative proposals to implement the enhanced requirements of the Forty Recommendations.

CrJD had significant input into the preparation by the Department of Foreign Affairs and Trade of the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002*. These regulations establish procedures to follow prior to restraining assets suspected to be terrorist related.

International Criminal Court

Australia ratified the Rome Statute of the International Criminal Court on 1 July

2002. In 2002–03 members of CrJD participated in negotiations of procedures for the election of the Court's judges and the prosecutor, and in the first elections held under these procedures. This was the conclusion of many years of work by CrJD to help establish a permanent independent court before which people accused of the most serious crimes under international law may be tried. CrJD managed development and enactment of the *International Criminal Court Act 2002* during the previous reporting period. The Act commenced on 26 September 2002. It will enable Australia to comply with its obligations under the Rome Statute to assist the Court. CrJD will continue to play a key role in Australia's liaison with the organs of the Court.

Strategic crime assessments

The Office of Strategic Crime Assessments (OSCA) transferred from the Department into the newly established ACC on 1 January 2003. This report covers OSCA's activities between July and December 2002. During this transitional period OSCA managed the combined pressure of a recruitment freeze and the requirement to participate extensively in working groups established to help design structures and processes for the new ACC. Its resources were applied to maintaining assessment outputs at the expense of its intelligence coordination function.

Policy advice

During the period to December 2002, OSCA produced five strategic assessments and new types of product, including several strategic alerts and 'over the horizon' assessments. Topics included:

- anticipated developments in firearms trafficking
- instability, crime and corruption in Australia's region
- future directions in illegal immigration
- civil-criminal crossover in the 'dark grey economy'
- emerging risks to the National Information Infrastructure

- anticipated changes in Australia's illicit heroin market
- drugs trafficking mechanisms, and
- credit card skimming.

Through its formal and informal product comment system OSCA received positive feedback on the quality and nature of its product from a wide range of customers including State, Commonwealth and international law enforcement agencies.

Other outputs from the strategic assessment program included continued advice on departmental interests in improving the safety of superannuation, a major assessment of the Commonwealth law enforcement strategic context, and a number of briefs to agencies on the strategic setting to 2007.

OSCA launched a strategic Indications and Warning (I&W) program to provide clients with warning intelligence of emerging strategic law enforcement trends. The I&W system will cover problem areas relating to drug trafficking, transnational organised crime, money laundering, illegal immigration, fraud, identity fraud, new technology, criminal contagion from regional instability, privacy, environmental crime, domestic corruption warning, and firearms trafficking. The full introduction of this system was delayed by low staffing levels in 2002. By December 2002, five problem areas were established at a working level. Several strategic alerts were published on aspects of those areas.

Coordination of Commonwealth intelligence assessment activities

OSCA managed the Commonwealth Law Enforcement Intelligence Consultative Committee (CLEICC) and the Open Source Information Special Interest Group (OSI-SIG), and represented the law enforcement community on a number of national intelligence committees. From July to December 2002, CLEICC and OSI-SIG did not meet and OSCA played only a limited role in national intelligence committees. The intelligence assessment coordination function will be revived within the ACC.

Other activities

Strategic Plan for Commonwealth Law Enforcement

CrJD commenced development of this plan in consultation with Commonwealth agencies with law enforcement responsibilities within the Attorney-General's portfolio. The plan provides a broad framework to coordinate strategic planning of these agencies, and a setting for the planning of Commonwealth agencies outside the portfolio that have law enforcement functions. The plan will be finalised by November 2003.

Model Criminal Code

CrJD participated in the SCAG Model Criminal Code Officers Committee and managed drafting and enactment of the Commonwealth *Criminal Code*. In 2002–03 the Commonwealth enacted aspects of Model Code's fatal and non-fatal offences. SCAG referred two new issues to the Committee: double jeopardy law reform and model credit and debit card skimming offences.

Procedural reforms

CrJD managed development and passage of two bills that make minor amendments to ensure the smooth operation of the Commonwealth criminal justice process. The *Crimes Legislation Enhancement Act 2003* made amendments that, among other things, significantly expanded the scope for less serious Commonwealth offences to be dealt with by magistrates. The *Acts Interpretation Amendment (Court Procedures) Act 2003* confirms that a reference in Commonwealth legislation to any particular form of initiating proceedings includes all relevant methods of initiating proceedings. This will ensure that changes to State/Territory procedures will not impede prosecution of Commonwealth offences.

Royal Commissions

CrJD worked with the Office of Legal Services Coordination to deal with criminal justice issues arising from the Royal Commissions into the building and construction industry (RCBCI) and the

collapse of the HIH Insurance Group. The Division contributed to the Government's submission to the RCBCI, and advised the Attorney-General and coordinated with other departments to deal with matters arising from the recommendations of the two Royal Commissions, including those for new legislation.

Parliamentary inquiries

CrJD gave evidence on the Department's technical and policy assistance activities in the South Pacific to the Senate Standing Committee on Foreign Affairs, Defence and Trade's inquiry into Australia's relationship with Papua New Guinea and Pacific Island nations.

It also coordinated the Department's submission to the inquiry into cybercrime by the Parliamentary Joint Committee on the Australian Crime Commission, and provided input to the Government's response to the Parliamentary Joint Committee on the NCA inquiry into the law enforcement implications of new technology.

Registration of child sex offenders

The Division participated in an inter-jurisdictional working party to develop a nationally consistent approach to the registration of child sex offenders. The working party completed a report for the July 2003 APMC meeting.

Air security officers

The Government announced that it will place air security officers (ASOs) on selected international flights. CrJD commenced discussions with the United States and Singapore on the deployment of ASOs on Australian flights to those countries.

Ongoing functions

Inter-governmental and inter-agency consultative mechanisms

The Division provided policy advice to the Minister and secretariat services for 10 meetings of the MCAJ. These included the Inter-Governmental Committee on the ACC, the APMC, the Corrective Services Ministers' Conference and their associated

Senior Officers' Groups. CrJD facilitated meetings of the National Common Police Services Boards of Control. It also provided policy advice and support to the Secretary of the Department as Chair of the meeting of Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA) and as a member of the Board of the ACC.

Scrutiny of proposed legislation

CrJD assisted the Minister to ensure that criminal law provisions in draft Commonwealth legislation are soundly and effectively framed and that they comply with policy. In 2002–03, the Department advised the Minister on 62 Bills (47 in 2001–02).

The Legislation Handbook requires Commonwealth agencies to consult with the Department on criminal law aspects of legislative proposals. In 2002–03 CrJD provided advice on more than 170 proposals (149 in 2001–02).

International assistance

The Division provided technical and policy assistance to South Pacific jurisdictions to develop new anti-terrorism laws.

Defence visiting forces

CrJD provided advice to the Department of Defence on three draft defence cooperation agreements with foreign states.

PERFORMANCE MEASURE

Development of appropriate strategies for violence and crime prevention

CrJD made a significant contribution to the development and implementation of violence and crime prevention strategies through the work of its Crime Prevention Branch and, in relation to drugs, the National Law Enforcement Policy Branch. This work is not restricted to crimes under Commonwealth laws but deals with a wide variety of criminal conduct.

National Crime Prevention program

The National Crime Prevention (NCP) program is administered by CrJD's Crime Prevention Branch.

Reports and other publications

The program finalised a number of important research and demonstration projects. It released several reports and others are in the final stages of production. Two popular resources, *Crime Prevention for Seniors* and the *Burglary Prevention Kit*, were reprinted. The *Crime Prevention for Seniors* booklet has been translated into 10 community languages. The program continues to manage several major projects and to develop crime prevention policy.

Crime Prevention Conference

The NCP and the Australian Institute of Criminology (AIC) jointly hosted a national Crime Prevention Conference in September 2002. The emphasis was on inter-agency approaches to crime prevention, and included measures to reduce opportunities for crime, as well as preventing 'criminality'.

Other achievements

Other key achievements include:

- Secretariat support was provided to the National Aboriginal Justice Advisory Committee (NAJAC), which is planning a summit on Indigenous justice in late 2003.
- The Protocols and Practices for Night Patrols capacity building project in the Northern Territory was completed. The project produced nationally accredited training and competency standards for Night Patrol workers.
- *A Meta-Evaluation of Methods and Approaches to Reduce Bullying in Pre and Early Primary Schools* was reprinted. The second phase of the bullying project will develop a booklet for parents or carers and teachers that is expected to be released in late 2003.
- Australia joined the International Centre for the Prevention of Crime (ICPC), an international non-governmental organisation affiliated with the United Nations. The ICPC provides a central location for the international identification and distribution of effective crime prevention strategies. As the conduit between the ICPC and the States and Territories, the Crime Prevention Branch disseminated information and created international links to Australian expertise in research and best practice in this area.
- An information resource on identity fraud aimed at the general public as potential victims of identity theft, was developed and is to be published in late 2003.

Northern Territory Agreement

The Crime Prevention Branch managed the Northern Territory Agreement on behalf of the Commonwealth. The Agreement provides for a review, after 12 months, of progress in achieving the purpose of the pre-court juvenile diversion programs and interpreter services, and a final evaluation six months before it expires on 31 August 2004. The progress review was completed during 2002–03. It found signs of early success.

Drink spiking

CrJD is facilitating a national project on drink spiking. The project will research the extent of drink spiking and undertake a preventative campaign to improve the capacity of stakeholders to respond. The Ministerial Council on Drug Strategy identified this as a priority area and the Commonwealth and States and Territories will fund the project under a cost-shared arrangement.

PERFORMANCE MEASURE

Management of programs

- *agreements/contracts negotiated which reflect the Commonwealth's requirements*
- *performance of contractual and agreement obligations monitored, reported and evaluated*
- *successful implementation of new or enhanced programs/projects within available budget*

CrJD adhered to Commonwealth guidelines in monitoring current and new agreements and contracts under the NCP program.

The Crime Prevention Branch identified a need for better information systems to facilitate project and financial management. The Branch, in consultation with the Information and Knowledge Services Group, developed an IT solution. The package, which records financial expenditure and project timelines, has been in use since early 2003.

Indigenous justice programs

National Indigenous Justice Strategy

The National Indigenous Justice Strategy is part of the Government's commitment to work with State and Territory governments to reduce the rate of Indigenous representation in courts and in custody. The Crime Prevention Branch has reviewed current programs and materials on Indigenous justice issues.

National Aboriginal Justice Advisory Committee (NAJAC)

At the request of the APMC, NAJAC developed references for national measures to advance reconciliation. In October 2002, NAJAC members met with relevant Commonwealth ministers, the Opposition spokesman on Indigenous issues and Senator Aden Ridgeway.

The Chair of NAJAC addressed the April 2003 meeting of SCAG on current issues relating to Indigenous justice.

An Overview of Night Patrol Services in Australia

In November 2002, the Department and the Aboriginal and Torres Strait Islander Commission published this report profiling night patrols and similar services around Australia.

Convicted persons programs

Prisoners and their Families

The Branch continued to expand this program. It signed contracts for two correctional centres in New South Wales. To ensure the validity and quality of the evaluation of the program, the Branch extended, until July 2004, prison programs at sites due to finish before the completion of the evaluation.

General community programs

The Crime Impact and Response Process project in Kalgoorlie

The aim of this project was to build a clear picture of the impact of crime at the local level, identify risk and protective factors, and to secure the active involvement of the community in 'grass roots' crime and violence prevention strategies. The project was completed in January 2003.

A Guide to Personal and Financial Safety for Older Australians

This booklet aims to provide crime prevention information to older Australians, in a positive manner that will not create fear among its readers. Since it was launched in October 2001, a further 140 000 copies have been printed. The booklet has been translated into 10 community languages.

Childhood/youth programs

Early Intervention in Crime Prevention demonstration projects, Redfern, New South Wales

The Commonwealth collaborated with the New South Wales Government to explore more effective mechanisms for service provision to children and their families in Redfern/Waterloo. Phase one of the project consisted of an audit/analysis of services currently being

provided for children aged 0–14 years and their families in the area. This phase was completed in October 2002. Phase two commenced in April 2003 and will implement the interventions identified through the first phase of the project.

Investing in Our Youth project—Bunbury, Western Australia

This two year project was completed in June 2003. Under the umbrella of *Communities that Care*, the project is an inter-agency approach to early intervention in troubled and at-risk families. It aims to reduce youth alienation and crime at the local level through the promotion of community self-reliance and offers the opportunity to explore effective early intervention strategies in a regional location.

National Agenda for Early Childhood

As a member of the task force on Early Childhood Development, Health and Wellbeing, the Crime Prevention Branch contributed to the ongoing development of a National Agenda for Early Childhood.

Young Motor Vehicle Theft Prevention pilot project

The Commonwealth is undertaking this project in conjunction with the National Motor Vehicle Theft Reduction Council (NMVTRC), State governments and local industry bodies. The project will trial the good practice model developed by the NMVTRC to combat motor vehicle theft by young people. During 2002–03 service providers were engaged in Tasmania, Western Australia and New South Wales. A consultant was also engaged to undertake the meta-evaluation of the young people and motor vehicle theft prevention program.

Research on drugs and crime

Under NIDS, the Department received funding to research drug-crime links. CrJD continued to provide support to the AIC to manage a major research project on the relationship between illicit drugs and crime. The project involves surveying prisoners about their drug use and offending careers. CrJD contracted a consultant to undertake an overview

on drugs and crime, assess the utility of current data sets and monitoring systems, and identify priorities for future research and data collection in Australia on the link between drugs and crime.

CrJD is represented on the National Drug Law Enforcement Research Fund Board. It contributed to the development and management of research projects on law enforcement drug policies and strategies.

PERFORMANCE MEASURE

Casework

- *applications for assistance or decisions under domestic and international arrangements for mutual assistance, extradition, federal prisoners, firearms importation and criminal laws, proactively managed and properly determined*

CrJD has a central role in administering several Commonwealth responsibilities in the broad area of criminal justice. It makes, or advises Ministers on making, decisions on matters relating to international law enforcement cooperation, Federal prisoners and the import and export of firearms. In 2002–03 CrJD began dealing with requests for international transfer of prisoners and export of human embryos.

Federal prisoners

CrJD provided advice on the administration of federal offenders' sentences. Decisions were made on 216 individual matters during 2002–03, including parole, release on licence, interstate transfer, overseas travel, and remissions. At 30 June 2003 there were approximately 716 federal offenders in prison in Australia—644 males and 72 females. There were also 12 federal offenders serving periodic detention orders and another eight on home detention.

A decision not to release a federal prisoner on parole was the subject of an application for a review under the *Administrative Decisions (Judicial Review) Act 1977*. This was the first such

challenge since the enactment in 1990 of the Commonwealth sentencing provisions in Part IB the *Crimes Act 1914*. The application was dismissed by the Federal Court in December 2002.

International transfer of prisoners arrangements

The Government secured a longstanding policy objective with the commencement of the International Transfer of Prisoners Scheme in September 2002. This was the culmination of several years work by CrJD involving passage of the legislation, negotiation of domestic arrangements and conclusion of international agreements.

Australia ratified a transfer of prisoners treaty with Thailand, acceded to the Council of Europe Convention on the Transfer of Sentenced Persons and finalised relevant administrative arrangements with Western Australia, New South Wales, Queensland, Victoria, Tasmania, the Northern Territory and the Australian Capital Territory. These arrangements enable the voluntary transfer of prisoners between Australia and 52 other countries.

Australians returned under these arrangements will remain in prison to serve out their sentences but will do so in circumstances that reduce the hardship caused to their families and significantly enhance their prospects of rehabilitation.

The first transfer of an Australian under the Scheme was completed in March 2003 when a prisoner was transferred from a Thai prison to a facility in Western Australia.

At 30 June 2003, the Department was processing 63 requests for transfer, including formal applications and informal expressions of interest. Forty-eight requests were for transfer from Australia to a range of other countries—Austria, Canada, France, Israel, the Netherlands, Romania, Serbia and Montenegro, Spain, Switzerland, Thailand, Turkey, the United Kingdom and the United States of America. There were 15 requests for transfer to Australia from prisoners held in other countries—

Hungary, Ireland, Spain, Thailand, the United Kingdom and the United States of America.

Import and export approvals—firearms

The *Customs (Prohibited Imports) Regulations 1956* restrict importation of certain categories of firearms, their parts and accessories. Importation must comply with one of the tests specified in Schedule 6 to the Regulations. The Minister for Justice and Customs must provide written permission for importation in all cases except firearms that fall within the police authorisation test.

In 2002–03 the Minister granted 124 import approvals for firearms, ammunition and related parts and accessories: 84 under the official purposes test, 18 under the dealer test and 22 under the specified purposes test. The Minister also granted 11 sports shooters certificates.

Embryo exports

CrJD was given responsibility for processing applications seeking the Minister's approval for the export of human embryos under the *Customs (Prohibited Exports) Regulations 1958*. The Minister approved one application to export during 2002–03.

Extradition

The Division continued to administer Australia's extradition laws, and its existing network of international extradition relationships.

The number of incoming and outgoing extradition requests rose in 2002–03. Key offences included fraud, drug offences and people smuggling. Statistical information on extradition casework is in Appendix 11.1. CrJD had some significant successes, in particular:

- Al Jenabi—extradited from Thailand in February 2003 to face people smuggling charges in Australia
- Daoed—arrested in Sweden in May 2003, pending extradition to Australia on people smuggling charges

- Pinner—extradited to the US in May 2003 to face charges of aggravated battery, and
- Oates—extradited from Poland in June 2003 to face corporate fraud charges in Australia.

Mutual assistance

Detailed statistics on mutual assistance casework are at Appendix 11.2.

In 2002–03, Australia made 135 new requests for assistance to 71 different countries. This is a significant increase (over 50 per cent) over 2001–02.

Together with 77 requests carried forward from last year, 84 Australian requests were executed or otherwise completed. This is an increase of over 35 per cent from 2001–02. Most requests involved fraud, large scale drug trafficking or people smuggling offences. Requests to restrain or forfeit the proceeds of crime also continued to increase. Some requests in investigations into drug trafficking required urgent consideration because, for example, law enforcement authorities were conducting controlled deliveries or had received information that an import was imminent. In November and December 2002, CrJD made five requests for assistance over a very short time frame, as part of an Australian Federal Police (AFP) investigation that resulted in what was then Australia's largest seizure of ecstasy tablets.

Requests for assistance made to Australia increased slightly. The number of requests executed or otherwise completed for foreign countries increased by nearly 80 per cent compared with 2001–02. Most requests involved fraud, drug trafficking and money laundering, but requests to restrain and recover the proceeds of crime were also a feature.

Australia assisted the International War Crimes Tribunal for the former Yugoslavia in seven matters. This is less than in 2001–02, as the Tribunal is focusing its resources on completing its most high profile investigations by the end of 2004.

A database was developed to track and actively manage mutual assistance case work.

Extradition and mutual assistance relationships

The Government established new extradition relationships with Jordan and Cambodia. It also extended extradition relationships to all parties to the International Convention for the Suppression of Terrorist Bombings for offences covered by that Convention. The Government finalised a treaty with Greece on mutual assistance in criminal matters during the year.

Criminal Justice Certificates

Part II of the *Migration Act 1958* establishes the Criminal Justice Certificate scheme. The scheme ensures that a non-citizen whose presence in Australia is required for the purposes of criminal justice can enter or remain in Australia temporarily although the person's presence is not otherwise lawful. The person may not be removed or deported but may be held in immigration detention. The Attorney-General issues the Certificate for Commonwealth matters and may endorse a Certificate issued by a State officer for a State matter.

Statistics for 2002–03 are at Appendix 11.3. During the year the Attorney-General issued several criminal justice stay certificates for victims whose presence is required to assist the AFP with ongoing investigations into sexual slavery offences. This has led to Australia's first slavery charges being laid.

EVALUATIONS

Review of Crimes Act 1914

The *Crimes Amendment (Forensic Procedures) Act 2001* (Act No. 22/2001) provides for a deferral of the review under Part 1D of the *Crimes Act 1914* which was due in June 2002. The review is to cover the operation of Part 1D and its effectiveness, and the operation of comparable State and Territory legislation in jurisdictions that are participating in national DNA matching.

An independent review of the forensic procedures provisions of Part 1D of the *Crimes Act 1914* was conducted by

Mr Tom Sherman AO, former Australian Government Solicitor and Chair of the National Crime Authority. The review committee also included the Federal Privacy Commissioner and representatives of the AFP, Commonwealth Ombudsman and Commonwealth Director of Public Prosecutions. The review's final report was tabled in both Houses of Parliament on 14 May 2003.

The review's report contains 24 recommendations for action by the Commonwealth, other participating jurisdictions, and agencies within those jurisdictions. A number of the recommendations consider measures to improve complaint handling, reporting and auditing of the national DNA database system. The report also makes recommendations about the complexity of information required under Part 1D and the sharing, access and destruction of DNA samples and profiles.

OUTLOOK FOR 2003–04

CrJD conducted a stakeholder survey covering the 12 months to March 2003. Responses indicated a substantial level of satisfaction with the expertise and responsiveness of CrJD staff over all. Most respondents felt the quality of service had improved over the survey period. Areas for further improvement were identified—a number of responses suggested the Division could focus more actively on broad policy issues rather than technical detail and interact more openly and flexibly with other stakeholders in the policy formulation process. Strategies to address these issues will be developed and implemented during the coming year.

CrJD is currently undertaking consultations to discuss key issues and identify priorities on the National Indigenous Justice Strategy, and will present a discussion paper at the NAJAC summit in late 2003. By the end of 2003 the Crime Prevention Branch will report to the Government on the revision of the Strategy. The revision may lead to increased programs and services in priority areas based on bilateral agreements and joint funding arrangements.

The Crime Prevention Branch and the Australian Institute of Criminology are undertaking a project that will provide an up-to-date knowledge base of post-release interventions both in Australia and overseas. It will also document the characteristics of adult prisoners re-entering the community. The first phase of this project will comprise the literature review and the characterisation of the returning offender population. The second phase will involve the compilation and broad review of the inventory of Australian post-release services. The project will be completed by October 2003.

The goals for CrJD in the coming year include:

- implementing outstanding actions from the 2002 Leaders' Summit on Terrorism and Multi-jurisdictional Crime, in particular the cross-border investigation powers regime
- consolidating significant Leaders' Summit initiatives already implemented, such as the Australian Crime Commission
- finalising a Strategic Plan for Commonwealth Law Enforcement
- implementing new initiatives under NIDS to:
 - maintain the Drug Use Monitoring in Australia program
 - boost financial intelligence related to illicit drug trafficking, and
 - prevent the diversion of precursor chemicals used in illicit drug manufacture
- under the NCP program's Building Safer Communities measure:
 - consolidating current policies and projects to prevent and reduce crime and the fear of crime, and
 - reviewing the direction of Commonwealth participation in crime prevention, and
- developing a coordinated government response to identity fraud issues.

OVERVIEW

Output 2.2 is the particular responsibility of Information and Security Law Division (ISLD). By providing coordination and policy advice the Division made a significant contribution to ensuring coordinated federal criminal justice, security and emergency management activity, for a safer Australia.

HIGHLIGHTS FOR 2002–03

The *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003*, was passed by Parliament on 26 June 2003 after extensive parliamentary scrutiny. This Act empowers ASIO to obtain a warrant to detain and question a person who may have information important to the gathering of intelligence in relation to terrorist activity.

In addition, the *Criminal Code Amendment (Espionage and Related Matters) Act 2002*, which was introduced shortly after the 11 September terrorist attacks, was passed by Parliament on 16 October 2002 and commenced shortly thereafter. The Act strengthens Australia's espionage laws by increasing the maximum penalty for espionage and supports the process of bringing cases of espionage to trial.

Following the Bali bombings on 12 October 2002, the Department assisted the Government with further legislation to strengthen our counter-terrorism capabilities.

The *Criminal Code Amendment (Offences Against Australians) Act 2002* introduced new provisions making it an offence to murder, commit manslaughter or intentionally or recklessly cause serious harm to an Australian outside Australia.

The *Criminal Code Amendment (Anti-Hoax and Other Measures) Act 2002* introduced new offences for the use of postal and other services to perpetrate hoaxes, make threats and send dangerous articles.

The *Criminal Code Amendment (Terrorism) Act 2003* was enacted after the States and Territories referred to the Commonwealth the power to legislate on certain matters concerning terrorism. The Act, which removes any uncertainty about the constitutional status of the new counter-terrorism offences, gives effect to a decision made by the Prime Minister and State and Territory leaders on 5 April 2002 to put in place a national framework to meet the new challenges of combating terrorism. The *Criminal Code Amendment (Hizballah) Act 2003* became law on 24 June 2003. The Act allows the Attorney-General to list the terrorist wing of Hizballah as a terrorist organisation. Regulations listing the Hizballah External Security Organisation as a terrorist organisation became effective from 5 June 2003.

The *Australian Protective Service Amendment Bill 2003* was developed by the Criminal Law Branch of Criminal Justice Division, in cooperation with the Security Law Branch of ISLD. The Bill was

introduced into Parliament on 26 June 2003. The purpose of the Bill is to ensure that the Australian Protective Service has adequate powers to support its role at the front line of our changing security environment.

The Department assisted the Government to develop national security and counter-terrorism policy by continuing to assist the National Security Committee of Cabinet. The Security Law Branch also provided advice to a range of clients on other national security and counter-terrorism related legislation administered by the Attorney-General's portfolio.

The Security Law and Criminal Law Branches provided policy advice on security related matters including specific cases such as the detention of Australian citizens by the United States military at Guantanamo Bay in Cuba and the deployment of Air Security Officers.

The Trusted Information Sharing Network (TISN) was launched by the Attorney-General at the Critical Infrastructure Summit in April 2003. The *OECD Guidelines for the Security of Information Systems and Networks* of August 2002, which were developed by a committee chaired by a staff member of the Department, will be implemented within this framework.

Training to build the capability of Computer Emergency Response Teams (CERTs) in Indonesia, Papua New Guinea, The Philippines, Thailand and Vietnam is being undertaken by the Department using AusAID funding. The Critical Infrastructure Protection Branch of ISLD is also leading a project using APEC funding to the value of approximately \$150 000 to provide in-country CERT training to the Russian Federation, Mexico, Chile and Peru.

COMMENTS AGAINST PERFORMANCE MEASURES

PERFORMANCE MEASURE

Policies recognise rights and responsibilities of stakeholders

The Department responded swiftly and effectively to the heightened terrorism threat by introducing a comprehensive legislative regime to combat terrorism and strengthen Australia's national security:

- *Criminal Code Amendment (Anti-Hoax and Other Measures) Act 2002*
- *Criminal Code Amendment (Espionage and Related Matters) Act 2002*
- *Security Legislation Amendment (Terrorism) Act 2002*
- *Suppression of the Financing of Terrorism Act 2002*
- *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002*
- *Telecommunications Interception Legislation Amendment Act 2002*
- *Criminal Code Amendment (Offences Against Australians) Act 2002*
- *Criminal Code Amendment (Hizballah) Act 2003*
- *Criminal Code Amendment (Terrorism) Act 2003*, and
- *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003*.

Each piece of legislation was subject to extensive parliamentary scrutiny, offering stakeholders the opportunity to make public submissions.

The Department engaged Mr Tom Sherman in April 2003 to conduct a review of certain provisions of the *Telecommunications (Interception) Act 1979* (the Act). The review focused on the effectiveness of, continuing need for and safeguards applying to the named person warrant regime, which was introduced in 2 000 to allow intercepting agencies to obtain a warrant for the interception of any telecommunications service used or likely to be used by a named individual.

Mr Sherman consulted with key stakeholders including intercepting agencies, the Commonwealth Ombudsman and his State counterparts, warrant grantors,

telecommunications carriers, the Federal Privacy Commissioner, civil liberties organisations, staff of the Department and the Attorney-General. Mr Sherman reported to the Attorney-General on 23 June 2003. The Department anticipates that the report will be tabled in Parliament during the Spring 2003 sittings and that it will consult further with stakeholders before implementing Mr Sherman's recommendations.

The Critical Infrastructure Protection Branch, along with several police jurisdictions, contributed financially to AusCERT's 2003 Computer Crime and Security Survey.

PERFORMANCE MEASURE

Policies provide solutions for, and recognise an appropriate balance of, competing interests

In its work on Australia's counter-terrorism legislative framework, the Department was conscious of the need to protect the community from the threat of terrorism without unnecessarily encroaching on the rights and liberties of individual Australians.

Security Law Branch, in consultation with Criminal Law Branch, provided legal input into the formulation of appropriate secrecy provisions in new legislation. It ensured that such provisions were necessary and applicable to identifiable persons and information, and, that secrecy provisions were consistent with policy requirements in relation to burden of proof, penalties and access to information through court proceedings.

The function of the Agency Coordinator, a statutory office established under the *Telecommunications Act 1997*, is undertaken by the head of the Information and Security Law Division. The Agency Coordinator acts as a point of contact for telecommunications carriers and carriage service providers, and law enforcement agencies.

The Agency Coordinator ensured that law enforcement agencies were able to have their telecommunications interception warrants executed by telecommunication companies in a timely and effective manner and to otherwise discharge their obligations under the *Telecommunications (Interception) Act 1979*. Staff of the Division also protected the rights of Australians by ensuring in policy



Photo: Geoff Comfort Photography.

development that only the investigation of serious crime justifies intrusion into the privacy of an individual's communications.

PERFORMANCE MEASURE

Government policies are effectively explained, implemented and applied

Since the *Security Legislation Amendment (Terrorism) Act 2002* entered into force, 14 groups have been listed as terrorist organisations under the *Criminal Code Regulations 2002*. When an organisation is listed, it becomes an offence to join that organisation or to receive from, or provide to, that organisation training, funds and other resources. In June 2003, the *Criminal Code Amendment (Hizballah) Act 2003* amended the definition of terrorist organisation in the Criminal Code Act to include the Hizballah External Security Organisation.

The Department assisted the Senate Legal and Constitutional Legislation Committee and Scrutiny of Bills Committee in their consideration of the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003*.

A large volume of correspondence from members of the public seeking further information about the status and operation of the counter-terrorism and security legislation, was received and answered.

The Department provided essential legal input on the operation of the 'call out' powers in Part IIIAAA of the *Defence Act 1903* for national security exercises conducted under the National Counter-Terrorism Committee framework (formerly the Standing Advisory Committee on Commonwealth-State Cooperation for Protection Against Violence). These exercises are coordinated by the Department's Protective Security Coordination Centre.

The public is kept informed about the work undertaken by the Department on national security and counter-terrorism matters through the Attorney-General's Department website. Members of the public can access an extensive

amount of information in relation to the Government's security legislation and policy package as well as other security initiatives.

Staff of the Division provided training to Special Projects Registrars and Investigators of the AFP as well as to State Police officers, on the legal requirements for the preparation of telecommunications interception warrants. The presentations provided an opportunity to discuss the legal and associated policy issues arising from the commencement of the *Telecommunications Interception Legislation Amendment Act 2002*.

OUTLOOK FOR 2003-04

There is significant momentum building within Commonwealth, State and Territory governments and private owners and operators of the critical infrastructure, to establish a coordinated national approach to its protection. The Department will continue to provide leadership, nationally and internationally, to the implementation of the *OECD Guidelines for the Security of Information Systems and Networks* of August 2002. The coming year will see the establishment of the remaining sectoral advisory groups, the establishment of the Critical Infrastructure Advisory Council, strategic planning throughout the Trusted Information Sharing Network and advances in the coordination of national research priorities directed to critical infrastructure protection. The Department will continue to provide leadership in the development and coordination of strategic policy on critical infrastructure protection in close cooperation with State and Territory governments and the private sector for the protection of the nation's critical infrastructure from an 'all-hazards' perspective. The building of CERT capability throughout the APEC region will continue in 2003-04.

The changed security environment and the high priority accorded by the Government to national security and counter-terrorism issues will ensure the demand on all areas of ISLD's Security Law Branch remains high.



OUTPUT 2.3

PROVIDE NATIONAL LEADERSHIP IN THE DEVELOPMENT OF EMERGENCY MANAGEMENT MEASURES TO REDUCE RISK TO COMMUNITIES AND MANAGE THE CONSEQUENCES OF DISASTERS

OVERVIEW

Output 2.3 is the particular responsibility of Emergency Management Australia (EMA). By providing dedication and expertise to the emergency management aspects of community safety, EMA made an essential contribution to ensuring coordinated federal criminal justice, security and emergency management activity, for a safer Australia.

HIGHLIGHTS FOR 2002–03

'Lessons Learnt' workshops

EMA initiated a series of Senior Executive Briefings and Workshops in March 2003 to focus on "lessons learnt" by United States emergency management experts involved in the recovery process following the terrorist attacks on the World Trade Centre in New York and the Pentagon in Washington on 11 September 2001. More than 2000 representatives from the emergency management sector, volunteer organisations, and private enterprise attended presentations in Sydney, Melbourne, Canberra, Brisbane and Perth. In addition to gaining an appreciation of the events, including the massive response and recovery coordination, participants also considered Australia's current emergency management arrangements. A final report with recommendations to enhance Australia's capabilities is being prepared for the Attorney-General.

Bushfire assistance

EMA coordinated 19 requests for Commonwealth assistance from New South Wales, the Australian Capital Territory and Victoria during the 2002–03 bushfire season. With approval from

the Attorney-General, EMA's National Emergency Management Coordination Centre (NEMCC) in Canberra handled requests for helicopters, large earthmoving plant, accommodation, power generators, personnel, and planning and logistics capabilities. EMA Liaison Officers were also deployed to respective operations centres to facilitate the timely sharing of information. EMA briefed the ACT Government Review of the Bushfires conducted by former Commonwealth Ombudsman, Mr Ron McLeod AM, and provided a submission to and appeared before the House of Representatives Select Committee on the Recent Australian Bushfires.

Chemical, Biological and Radiological Enhancement Program

EMA managed the Chemical, Biological and Radiological Enhancement Program (CBREP) to acquire specialist chemical, biological and radiological (CBR) equipment identified by a National CBR Working Group. Funding of \$17.8 million over four years was announced in the 2002–03 Federal Budget. The aim of CBREP is to enhance

the capability of State and Territory emergency management organisations that are responsible for the first response in emergency situations. During 2002–03, \$8.4 million was expended on equipment for personal protection, detection, chemical and radiological decontamination, and biological analysis.

Registered Training Organisation accreditation

Six months of intense preparation by EMA staff achieved on-going registration of the education and training facility as a nationally Registered Training Organisation. EMA continues to focus on records management and procedures to maintain compliance with the Australian Quality Training Framework standards, and to meet any future audit or assessment requirements.

Emergency volunteers

EMA continued to play a leading role in support of initiatives identified by emergency management representatives at the National Summit for Volunteers in Canberra in 2001. Significant issues included the formation of the Australian Emergency Management Volunteer Forum (AEMVF), representations in relation to the Workplace Relations Act (Protection for Emergency Management Volunteers) Bill, advice to the Australian Emergency Management Committee (AEMC) on emergency volunteer issues, and the coordination of the *Emergency Management Volunteers in Action* photographic competition in August 2002.

COMMENTS AGAINST PERFORMANCE MEASURES

PERFORMANCE MEASURE

Develop a strategic emergency management framework agenda

EMA successfully developed a strategic emergency management framework. This was achieved by initiating and chairing forums, investing in innovative thinking, and identifying strategies to address current and future risk.



Canberra bushfires, 18 January 2003. Photo: Simon Toohey.

EMA took the lead role in the creation of an Emergency Management Critical Infrastructure Protection Working Group. This provided State, Territory and other Commonwealth agencies with the opportunity to develop a strategy to provide recognition of consequence management in the critical infrastructure protection environment. With the strategy finalised and State and Territory endorsement sought, EMA's objectives were fully achieved.

In July 2002, EMA developed a strategy to manage the implementation of the outcomes from the Council of Australian Governments (COAG) review of the *Natural Disasters in Australia – Reforming Mitigation, Relief and Recovery Arrangements* report. It is anticipated that the outcomes (subject to COAG endorsement) from this review will place an increasing demand on EMA's resources in implementing the proposed recommendations.

PERFORMANCE MEASURE

Build more effective relationships between emergency management and other sector stakeholders

EMA recognises the importance of building effective relationships in the emergency management sector covering State and Territory emergency management organisations, volunteers, private enterprise, the media and the Australian public. EMA brought together expertise and experience, helped build knowledge networks, and provided opportunities to market emergency management concepts.

EMA built and promoted effective relationships with industry such as the Planning Institute of Australia's *Planning for Bushfire Prevention National Speaking Tour*, and the Institution of Engineers' *Engineering a Safer Australia* report. In addition, EMA published the quarterly *Australian Journal of Emergency Management* and led an Australia-wide speaking tour that focused on "lessons learnt" during the recovery process after the 11 September 2001 terrorist attacks in the United States. EMA initiated a joint venture with Australian Insurance Group to exchange information relating to risk and communities. Similar relationships with other organisations in the private sector will provide EMA with broader opportunities to work with communities to reduce risk and increase community awareness in emergency management aspects of climate change, cyclones and other natural hazards, and the *Expect the Unexpected* program.

Through the further development of the Australian Disaster Information Network (AusDIN) portal, EMA ensured that access to information on emergencies and disasters is available to the Australian public. AusDIN covers causes, warnings of potential dangers, information on current and past events, and what should be done before and during an event. EMA proposed to AEMC that an AusDIN Steering Committee be established, under the auspices of AEMC, to ensure

information and knowledge sharing occurs throughout the emergency management sector. This initiative was ratified in December 2002.

PERFORMANCE MEASURE

Enhance emergency management capability

EMA enhanced the capability of the emergency management sector by developing expertise and capacity, coordinating Commonwealth disaster assistance, managing and resourcing research and projects, and identifying and planning for current risks. EMA made a significant contribution to building emergency management capability through the provision of disaster assistance to States and Territories, management of the CBREP, and achieving national Registered Training Organisation status.

EMA's NEMCC in Canberra coordinated Australian Government disaster assistance to the States and Territories during 2002–03. Client satisfaction surveys conducted after each incident confirmed that NEMCC achieved its objective of providing timely and relevant Australian Government assistance. Resources to assist with bushfire fighting were provided following requests from the ACT, NSW and Victoria. The Australian Government Overseas Disaster Assistance Plan (AUSASSISTPLAN) was activated after cyclones impacted on Fiji and Solomon Islands. EMA assisted in coordinating the provision of relief medical supplies to the Middle East Area of Operations in Operation Baghdad Assist. Following the Bali bombings, EMA assisted coordinating the distribution of critically injured to Australian hospitals and assisted with the repatriation of the remains of those killed.

With \$17.8 million announced in the 2002–03 Federal Budget for CBREP over four years, EMA managed the procurement of specialised chemical, biological and radiological (CBR) equipment identified by a National CBR Working Group. During 2002–03,

\$8.4 million was expended to acquire equipment for personal protection, detection, chemical and radiological decontamination, and biological analysis.

EMA achieved on-going registration of its education and training facility as a nationally Registered Training Organisation. To meet both the expectation of clients within the emergency management sector, and to ensure full compliance with the Australian Quality Training Framework standards, EMA continued to focus on its records management and procedures program.

PERFORMANCE MEASURE

Facilitate the process of developing resilient and safer sustainable communities

EMA facilitated the creation of resilient and sustainable communities through community centred emergency management, raising community understanding and awareness, and integrating emergency management consideration into other policy arenas.

EMA completed stage one of the National Community Awareness Strategy which aims to promote community safety, including the acceptance of the risk component of emergency management at a community level. In March 2003, stakeholders attended a workshop at EMA Mount Macedon to focus on issues relating to community safety activities in the emergency management sector.

EMA received 67 entries for the 2002 Australian Safer Communities Awards that were judged at the State and Territory level in July 2002. The regional winners were subsequently assessed at the national level with the successful entrants receiving their Awards from the Attorney-General at Parliament House in Canberra in October 2002. EMA also provided four of the national winners with additional financial support to value add to their projects. The objective to increase entries by 10 per cent in 2002, and to encourage more ownership of the Awards at the State and Territory level for the 2003 Awards was achieved.

OUTLOOK FOR 2003-04

In conjunction with the States and Territories EMA will work on the development of the Government's counter-terrorism agenda, particularly in relation to urban search and rescue (USAR), communications, national capability in mass casualty handling, use of spatial data, CBR training, and developing further planning for response to mass casualty events involving Australians overseas. Work will also continue on established consequence management programs.

EMA will focus on improved coordination, communication and cohesiveness in the area of disaster mitigation and prevention arrangements. This will include improvements in mitigating the effects of all disasters, whether they are as a result of natural, technological or human causes, including acts of terrorism.



OUTPUT 2.4

DEVELOPMENT AND PROMOTION OF PROTECTIVE SECURITY POLICY, ADVICE AND COMMON STANDARDS AND PRACTICES, AND THE COORDINATION OF PROTECTIVE SECURITY SERVICES, INCLUDING COUNTER-TERRORISM AND DIGNITARY PROTECTION

OVERVIEW

Output 2.4 is the particular responsibility of the Protective Security Coordination Centre (PSCC). By providing advice and the effective coordination of the efforts of other organisations, PSCC made a significant contribution to ensuring coordinated federal criminal justice, security and emergency management activity, for a safer Australia.

HIGHLIGHTS FOR 2002–03

The critical challenge in managing PSCC in 2002–03 was to continue carrying out its core business functions at a high standard, while also successfully responding to unpredictable and volatile external challenges.

Since the attacks on the United States on 11 September 2001 and the Bali bombing on 12 October 2002, the concept of terrorism has become more complex and broader in scope. In response to the increased threat level to Australia's security, PSCC, with input from across the Department, was able to efficiently establish its information and incident response facility, the Watch Office, as a permanent facility, operating 24 hours a day, seven days a week.

PSCC was also responsible for setting up the National Security Hotline in December 2002 at the Prime Minister's request. It was created as a facility designed to give reassurance to the community and to receive information on possible terrorist activity. In cooperation with the Department of the Prime Minister and Cabinet (PM&C), Telstra, Centrelink and the Department's Information and Knowledge Services Group, PSCC established the Hotline in

a very short period of time. These efforts were recognised in a letter from the Prime Minister acknowledging the work undertaken and offering congratulations on a job well done.

The Hotline represents another critical role in PSCC's coordination function by providing law enforcement agencies with timely and relevant information. The Hotline also operates 24 hours a day, seven days a week.

COMMENTS AGAINST PERFORMANCE MEASURES

PERFORMANCE MEASURE

Effective coordination of security issues through cooperative relationships between governments and law enforcement and justice agencies within and outside of Australia

The current security environment and the work program of the National Counter-Terrorism Committee (NCTC) have ensured that PSCC's interaction and relationships with governments, law enforcement and justice agencies have greatly increased and strengthened.

During the reporting period, the lead role for counter-terrorism policy was transferred to PM&C. PSCC continued to support PM&C by providing secretariat support to the NCTC, its Executive Committee, and the Commonwealth Counter-Terrorism Policy Committee (CCTPC), and with the provision of senior level executive advice and representation to these bodies.

PSCC provided executive and secretariat support to the Commonwealth Counter-Terrorism Committee (CCTC), the NCTC's Capability Sub-Committee and Australian Secure Network (ASNET) Policy Project Group. The NCTC established a number of project groups to progress various issues on their behalf. The groups comprised representatives from Commonwealth, State and Territory governments and law enforcement agencies.

PSCC continued to have responsibility for operational coordination of counter-terrorism issues. PSCC chaired the Critical Infrastructure Protection, NCT Handbook and Legislation Work Groups, which have worked cooperatively to further strengthen Australia's national counter-terrorism arrangements. PSCC managed the development of the NCT Handbook, which supports the National Counter-Terrorism Plan. The Handbook is expected to be approved and released in September 2003.

A national counter-terrorism exercise was conducted in Western Australia in March 2003. It was designed to validate Australia's preparedness to prevent, respond, investigate and recover from a national terrorist situation. Lessons learnt from the exercise will be incorporated into the NCTP Handbook and considered by the NCTC in the context of continually refining national counter-terrorism arrangements.

The COAG meeting on 6 December 2002 agreed to an NCTC proposal for the acquisition of a range of chemical, biological and radiological (CBR) equipment for use by police counter-terrorism first responders. PSCC undertook, on behalf of the NCTC, the

coordination of the central acquisition program for the States and Territories.

The events of September 11 and the Bali bombing highlighted the need for a dedicated Watch Office to undertake day-to-day security coordination and response management.

Additional funding in the 2002-03 Budget enabled PSCC to recruit, train and establish a professional core of staff to operate the Watch Office 16 hours a day, 7 days a week. Following the security alert in Australia on 19 November 2002, the Watch Office moved to ongoing 24-hour operation.

The Watch Office has enhanced national security coordination and counter-terrorism capabilities. Numerous security agencies, particularly the State and Territory police services, share information with and utilise the coordination services of the Watch Office.

Following the Bali bombing, the Government decided to implement a campaign to inform Australians of the counter-terrorism arrangements that had been put in place and to encourage them to report any suspicious activity. The National Security Hotline, comprising a 1800 toll-free number and email address, was established to answer enquiries from the public about national counter-terrorism arrangements and other national security issues of concern, and to receive information from the public.

The Hotline's role is to provide a single point of contact for national security information and provide the community with an opportunity to make a contribution towards making Australia a safer place. It commenced operation on 27 December 2002 and, at 30 June 2003, had logged 19 747 calls, letters and emails.

Contact with the Hotline has broadly fallen into three main categories: comments and questions on the campaign itself; calls seeking information and assurance about national security arrangements; and calls providing information in relation to suspicious activity.



Photo: *The Canberra Times*.

The Watch Office works closely with the National Security Hotline to ensure that time critical information reported by the public is promptly disseminated to relevant agencies for immediate assessment and appropriate action. Information received by the Hotline is forwarded to the Australian Federal Police (AFP), the relevant State or Territory police service, and, where appropriate, ASIO and/or the Department of Transport and Regional Services.

PERFORMANCE MEASURE

Security education and awareness meets clients needs and reflects standards as set out in the Protective Security Manual

Increasing the level of security awareness and education in Commonwealth agencies is the responsibility of the PSCC Training Centre, which exists to disseminate the Government's protective security policy and procedures as defined in the *Commonwealth Protective Security Manual 2000*.

Demand for these services has expanded markedly as a result of the international security climate and the reputation for the quality of the product the Training Centre

provides. In 2002–03 the Training Centre conducted 54 courses for 729 participants and 24 seminars for about 2 000 participants. These participants came from some 90 organisations.

Courses run by the PSCC Training Centre cover all aspects of protective security including personnel vetting, physical security, information security, IT security, administrative investigations, security management, risk management and general security awareness.

The Training Centre conducted continuous evaluation of its training programs. Formal responses by participants were overwhelmingly favourable in relation to course aims, quality of instruction and relevance of course content, with over 90 per cent of evaluations rating the training as above average or excellent. Informal feedback from agency protective security staff and increased participation rates indicated substantial and continuing support for the current program.

A new initiative to provide all agencies with timely and flexible access to security awareness training via the Internet was developed and implemented during this year. Although it is still in its infancy, the training has already attracted considerable interest from some 50 agencies with over 3 000 participants registered.

PERFORMANCE MEASURE

Security clearance investigations conducted in accordance with standards specified in the Protective Security Manual in line with Memoranda of Understanding with client agencies

The Australian Security Vetting Service (ASVS) exists to provide high-quality personnel security vetting services to Government agencies and private sector contractors engaged on work for the Commonwealth.

In 2002–03, ASVS completed 2896 clearances on behalf of some 60 agencies.

ASVS uses trained contractors to undertake security vetting. The Service will expand its panel of contractors during 2003–04 in order to respond to demand for more and quicker vetting from clients. ASVS continued to decrease the average processing time to 47 days for all clearances, down from 60 days in 2001–02.

The Service is developing an improved information management system in response to the increased volume of clearances and client requests for more detailed reporting of cases. This system will be in operation in early 2003–04.

PERFORMANCE MEASURE

Effective management and coordination of security arrangements for Australian office holders, visiting dignitaries and diplomatic and consular personnel and premises

Visiting foreign dignitaries

PSCC continued to coordinate with other Commonwealth, State and Territory agencies, security arrangements for foreign dignitaries visiting Australia. Security for all visits was managed effectively and there were no security incidents that adversely impacted on a

visit. The heightened levels of terrorist alert internationally resulted in an increased demand for protection for overseas dignitaries visiting Australia. A number of major visits were also cancelled or postponed at late notice due to the impact of international events such as the war in Iraq and the SARS epidemic.

Major official visits for which security was effectively coordinated included the President of Greece, the Chairman of the National People's Congress of China, the Crown Prince and Princess of Japan, the Crown Prince of Brunei and the Crown Prince of Belgium.

PSCC also coordinated security for a number of high profile private visitors including former Israeli Prime Minister Ehud Barak, the President of Ireland Mrs Mary McAleese, former UK Prime Minister John Major, HRH Prince Edward, Mrs Cherie Blair, wife of the UK Prime Minister, and former US Vice President Al Gore.

Australian office holders and diplomatic security

An unprecedented level of security was coordinated by PSCC during 2002–03. The demand for security was largely driven by external events, including the Bali bombing and the war in Iraq. These events created the need for security for greater numbers of Australian holders of high office and members of the diplomatic and consular communities as well as higher levels of protection. In particular, the number of foreign missions requiring protection reached an unprecedented level. Protective security measures ranging from static guarding through to close personal protection were provided by both State and Commonwealth agencies.

While there were a large number of sometimes volatile protests directed against Australian office holders and foreign diplomatic and consular missions, effective security measures prevented any injuries to protected persons or significant damage to property.

In close cooperation with the AFP, the Prime Minister's Office and the Department of the Prime Minister and Cabinet, PSCC effectively conducted security advances for all overseas visits undertaken by the Prime Minister. Planning and coordination of security arrangements was also required for official travel by Ministers to an increasing number of countries where the threat of terrorism is high.

PSCC also ensured that effective physical security was provided at the official residences of the Governor-General and Prime Minister and the Commonwealth Parliament Offices.

Security for major events

In 2002–03 there was no security incident that adversely impacted any major event.

PSCC assisted the Department of Foreign Affairs and Trade (DFAT) and the NSW Police Service in providing effective security arrangements for the World Trade Organisation Trade Ministerial Meeting in Sydney on 14–15 November 2002. PSCC also worked closely with other Commonwealth agencies and the State and Territory police services in planning security arrangements for the Rugby World Cup to be held in October–November 2003, and the Commonwealth Games 2006.

Staff of PSCC participated in an inter-agency team that travelled to Turkey to coordinate with the Turkish Government appropriate security arrangements to protect Australians attending the ANZAC Day ceremonies at Gallipoli.

PERFORMANCE MEASURE

Effective protective security practices, procedures and standards for Commonwealth departments and agencies

PSCC maintained its contribution to effective protective security practices, procedures and standards in the Commonwealth. This was achieved through the provision of specific advice

on current policy and practices to agencies, the conduct of information sessions and conferences, the dissemination of policy standards through the work of the PSCC Training Centre, the issue of Protective Security Bulletins and the promotion of the *Commonwealth Protective Security Manual 2000* (the Manual) within Government. Work on revising parts of the Manual is proceeding.

PSCC provided research and secretariat support to the Protective Security Policy Committee (PSPC). PSPC aims to promote and coordinate the development of policy standards for sound protective security management within Commonwealth agencies. On behalf of the Committee, PSCC conducted the annual Commonwealth Protective Security Survey. This multi-question survey collects data for analysis to measure the extent of Government agency compliance with the Manual's standards and to provide a snap-shot of the state of protective security within the Government. The survey was disseminated to 190 Commonwealth agencies. It found that the status of protective security across all Commonwealth agencies appears inconsistent. Comparison between the 2001 and 2002 survey results shows some areas of protective security have improved, others remain unchanged, and some have declined.

The Security in Government Conference is the premier event in the Commonwealth's protective security calendar, and its reputation and popularity continued to grow. Its purpose is to promote protective security policies and protective security education and awareness that reflect the standards set out in the Manual. The 2003 Conference attracted a record 520 delegates to hear 32 speakers share their knowledge and experience on protective security issues and the emerging security environment. The Conference placed increased emphasis on information systems security by devoting a whole day to this important topic. Interest from

prospective delegates and exhibitors exceeded capacity. The Trade Exhibition, run in conjunction with the Conference, attracted over 1000 visitors to the 72 trade exhibition booths.

EVALUATIONS

National counter-terrorism exercise

PSCC managed, coordinated and participated in the NCTC-sponsored national counter-terrorism exercise, Raw Horizon, conducted jointly by the Commonwealth and Western Australian governments in March 2003. The exercise focused on crisis and consequence management issues, and the subsequent investigation of an incident, and tested the national crisis management arrangements. The exercise was designed to validate Australia's preparedness to prevent, respond, investigate and recover from a national terrorist situation. The exercise highlighted a number of issues relating to the declaration of a national terrorist situation that were resolved in the development of the NCT Handbook. During 2002–03, the NCTC also considered and accepted the recommendation of the report of the evaluation of the National Anti-Terrorist Exercise, New Dawn, conducted in June 2002.

SAC-PAV review

The key recommendations of the *Review of the Standing Advisory Committee on Commonwealth–State Cooperation on Protection Against Violence*, endorsed in May 2002, were implemented during 2002–03 by the Committee and its various subordinate groups.

National counter-terrorism capability analysis

In July 2002, the NCTC commissioned Deloitte Consulting to conduct an analysis of the national counter-terrorism arrangements to identify any gaps in Australia's capability. The report identified a number of key issues that required further development and was

considered by the NCTC at its November 2002 meeting. The NCTC noted that the issues identified were consistent with many recommendations from previous reviews and significant progress had already been made to address weaknesses in the counter-terrorism framework. The NCTC intends to conduct a further independent review in 2003–04 to assess the progress against the issues identified as requiring further development.

Codarra report

ASNET provides secure email communications between Commonwealth, State and Territory bodies.

In March 2003, Codarra Advanced Systems Pty Ltd was engaged to review the proposal to upgrade ASNET as agreed by COAG in December 2002, and provide recommendations for implementation of the upgrade. The review also took account of the findings of an earlier review of ASNET completed in June 2002. The outcomes of the report were considered by the NCTC's ASNET Policy Project Group in April 2003 and endorsed by the NCTC at its May 2003 meeting. The upgrade will proceed during 2003–04.

Air Security Officer and Counter-Terrorist First Response review

The Air Security Officer (ASO) function is carried out by the Australian Protective Service within the AFP. In reaching agreement with the aviation industry to commence the program from 31 December 2001, it was agreed that a review would be conducted by the end of 2002.

The review, conducted by Signet International Pty Ltd, found the ASO program is well conceived and administered. Work is underway to extend the program to international operations.

The review also considered the Counter-Terrorist First Response (CTFR) function, also performed by the Australian

Protective Service, and recommended fundamental changes. CTFR involves providing an initial operational response to a serious security incident and containing it until the responsible police service arrives. In response to the shortcomings of the CTFR program, it was recommended that the program be reshaped to become preventive, proactive and intelligence focused rather than essentially reactive. The recommendations formed part of a broader submission considered by Government in March 2003.

OUTLOOK FOR 2003–04

In 2003–04 PSCC will face the challenge of maintaining appropriate levels of security for many persons, premises and events as well as assisting other organisations with their efforts to respond to the evolving security environment, in areas including security vetting and training.

The heightened global security environment since September 2001, the Bali bombing in October 2002 and the priority the Government has placed on national security, ensure the demand on PSCC will remain high.

Australia's international effort to play a lead role in countering terrorism is likely to see an increased demand for support for counter-terrorism training and cooperation in the South-East Asian and Pacific regions. PSCC is working with relevant departments and agencies to identify the training needs of countries in the region and to ensure, in collaboration with the newly appointed Ambassador for Counter-Terrorism, that a consistent approach is taken.

PSCC will continue to assist agencies and industry to understand their role in the protection of critical infrastructure, and support the role and functions of the Department's newly established Critical Infrastructure Protection Branch. PSCC will work with stakeholders to identify critical infrastructure facilities and provide information and advice on the counter-

terrorism security measures appropriate at each national counter-terrorism level of alert.

PSCC's contribution to the preparation of Commonwealth security arrangements for the Melbourne 2006 Commonwealth Games Task Force will continue during 2003–04. PSCC is working to ensure that the Commonwealth's security arrangements for the Games are based on an integrated whole-of-Government approach, as was the case with the Sydney 2000 Olympic Games and the Commonwealth Heads of Government Meeting (CHOGM) 2002. PSCC will continue to work closely with other agencies for preparations for, and play an active role in, the security arrangements for the Rugby World Cup to be held in October–November 2003.

OUTPUT 2.5

MANAGEMENT AND COORDINATION OF THE DELIVERY OF SECURITY AND GUARDING SERVICES TO MEET DIPLOMATIC, CONSULAR AND OTHER COMMONWEALTH RESPONSIBILITIES



OVERVIEW

Output 2.5 is the particular responsibility of the Protective Security Coordination Centre (PSCC). By providing management and coordination of security and guarding services to meet diplomatic, consular and other Commonwealth responsibilities, PSCC made a crucial contribution to ensuring coordinated federal criminal justice, security and emergency management activity, for a safer Australia.

HIGHLIGHTS FOR 2002–03

Guarding provides a visible deterrent and an early response to any incident that may arise. It can range from static posts to perimeter patrols of premises by foot or vehicle.

Due largely to external events, including the Bali bombing and the war in Iraq, an unprecedented level of security was coordinated by PSCC during 2002–03. These events created the need for security for greater numbers of Australian holders of high office and members of the diplomatic and consular communities as well as higher levels of protection. In particular, the number of foreign missions requiring protection reached an unprecedented level.

While there were many incidents involving the security of Australian office holders and foreign diplomatic and consular missions, effective security measures prevented any injuries to protected persons or significant damage to property.

COMMENTS AGAINST PERFORMANCE MEASURES

PERFORMANCE MEASURE

No security failure attributed to the Protective Security Coordination Centre

PSCC ensured that security and guarding services have been provided in accordance with the assessed level of threat and risk. This ensured that Australia met its obligation under the Vienna Convention on the protection of diplomatic and consular missions as well as providing protection for Australian office holders.

Despite the increased demand for guarding and the heightened level of alert existing over the year, there were no security failures attributable to PSCC.

PERFORMANCE MEASURE

Level of guarding is commensurate with the level of threat and risk

Decisions on the level of guarding are made through a consultative process managed by PSCC and involving Commonwealth agencies with security responsibilities including the AFP, the Australian Protective Service, ASIO, DFAT and the Department of the Prime Minister and Cabinet. These decisions are made in accordance with the assessed level of threat and risk management principles.

The collective approach to the assessment of risk has ensured the effective application of scarce resources and minimised the application of unwarranted security. The level of guarding is regularly monitored in consultation with other relevant agencies and adjustments made when warranted.

The Australian Protective Service was employed to provide the Commonwealth with the majority of static and mobile guarding on a fee for service basis.

Where the Service was unable to meet guarding requirements, PSCC arranged for guarding to be provided by State or Territory police on a cost recovery basis. Private security guards have also been employed at less sensitive locations.

OUTLOOK FOR 2003–04

The continuing challenge is to ensure that an appropriate level of security is provided to Australian office holders and diplomatic and consular staff and premises in a rapidly evolving security environment and with limited resources.

An audit of the performance of the Australian Protective Service against performance indicators in the APS/PSCC Memorandum of Understanding as it relates to diplomatic and consular security will be conducted in the first half of 2003–04.



Parliament House, Canberra.

Photo: Geoff Comfort Photography.
