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Reporting basis and approach

Performance reporting in this annual report is based on the outcomes and outputs structure and performance information set out in the 2004–05 Portfolio Budget Statements (PBS) and the 2004–05 Portfolio Additional Estimates Statements (PAES).

A department's annual report has a dual role: it is both a key document that is part of the Department's accountability to Parliament as well as an informative record of the Department's activities during the year. We therefore try to achieve a balance between presenting assessments of progress towards the Department's outcomes and describing the diverse activities of the Department. Our reports on performance this year attempt to take into account feedback on previous annual reports.

While the Department is the primary driver of its two outcomes, it does not work in isolation in realising its achievements. The performance reports in this chapter refer to the extensive cooperative and consultative networks between the Department and other organisations, along with external factors that can have an impact on the Department, including significant domestic and international events or trends.

Performance report structure

At outcome level, each performance report contains:

- an overview of activities that contributed to that outcome, and a broad assessment of progress towards it
- a resource summary table
- a report on administered items, and
- separate reports on each of the departmental outputs contributing to the relevant outcome.

At output level, each performance report contains:

- a performance overview including highlights of how the Department fulfilled the output (and so contributed to achieving the related outcome in 2004–05)
- reports against the performance measures associated with the output
- results of evaluations or reviews
- purchaser–provider arrangements, where relevant
- a challenges statement identifying contextual challenges or problems affecting progress, and
- an outlook statement highlighting activities or goals for the next financial year.

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 in order 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, Indigenous justice and native title. The Department also provides specialised support for the Attorney-General as First Law Officer, 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 include government agencies (Commonwealth, State and Territory) as well as non-government. They include advisory bodies, task forces, professional associations and community interest groups. In addition to maintaining these interrelationships with other organisations, the Department must maintain the flexibility to adapt its operations to the impacts of domestic and international events or trends.

During 2004–05, the Department made substantial contributions to various government initiatives, drawing positive comments from stakeholders, including the Attorney-General. The reports on performance for each output contributing to Outcome 1, presented further on in this part, expand on these aspects.

Resource summary

Outcome I – An equitable and accessible system of federal civil justice

	(1) Budget* 2004-05 \$'000	(2) Actual expenses 2004-05 \$'000	Variation (column 2 minus column 1)
Administered Expenses (including third party outputs)	292,214	633,633	341,419
Special Appropriations	40,627	52,772	12,145
Total Administered Expenses	332,841	686,405	353,564
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	12,513	8,083	(4,430)
Output 1.2 Support for the Attorney-General as First Law Officer, advice on constitutional policy, and promotion of Australian legal services internationally	4,316	3,436	(880)
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	15,542	14,264	(1,278)
Output 1.4 Legal services and policy advice on international law	5,065	3,977	(1,088)
Output 1.5 Drafting of legislative and other instruments, publication of legislative materials and provision of related legal services	7,786	8,906	1,120
Output 1.6 Legal services and policy advice on information law	7,037	5,006	(2,031)
Output 1.7 Legal services and policy advice on native title	5,900	5,188	(712)
Output 1.8 Legal services and policy advice on Indigenous law and justice issues, and the administration of government Indigenous law and justice programs	6,189	8,634	2,445
Total price of Outputs	64,348	57,494	(6,854)
Revenue from Government (Appropriation) for Departmental Outputs	62,127	56,571	(5,556)
Revenue from other Sources	1,945	3,435	1,490
Total Departmental Revenue	64,072	60,006	(4,066)
Total for Outcome I (Total Price of Outputs and Administered Expenses)	397,189	743,899	346,710
		2004-05	2005-06
Average Staffing Level		392.8	478.4

* Full-year budget, including additional estimates.

Note: A restructure occurred during 2004-05 which means that output information between 2004-05 and 2005-06 is not directly comparable.

Outcome 1 – An equitable and accessible system of federal civil justice

	Budget** 2005-06 \$'000	
Administered Expenses (including third party outputs)	344,601	
Special Appropriations	40,627	
Total Administered Expenses	385,228	
Price of Departmental Outputs		
Output 1.1 Legal services and policy advice on family law, federal courts and tribunals, civil procedure, alternative dispute resolution, administrative law and administration of related government programs	20,004	
Output 1.2 Support for the Attorney-General as First Law Officer, advice on constitutional policy, and promotion of Australian legal services internationally	4,057	
Output 1.3 Legal services and policy advice on information law and human rights	7,585	
Output 1.4 Legal services and policy advice on international law	5,178	
Output 1.5 Drafting of legislative and other instruments, maintenance of the Federal Register of Legislative Instruments (FRLI), publication of legislative materials and provision of related legal services	9,077	
Output 1.6 Legal services and policy advice on native title	6,572	
Output 1.7 Legal services and policy advice on Indigenous law and justice and legal assistance, and the administration of related government programs	16,114	
Total price of Outputs	68,587	
Revenue from Government (Appropriation) for Departmental Outputs	66,164	
Revenue from other Sources	2,423	
Total Departmental Revenue	68,587	
Total for Outcome 1 (Total Price of Outputs and Administered Expenses)	453,815	
	2004-05	2005-06
Average Staffing Level	392.8	478.4

** Budget prior to additional estimates. A restructure occurred during 2004-05 which means that output information between the years is not directly comparable.

Administered items for Outcome I

Payments for the provision of legal aid

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

Funding was provided to legal aid commissions in the Australian Capital Territory, the Northern Territory, South Australia, Tasmania and Western Australia for the provision of legal services for Commonwealth law matters during 2004–05. This funding was paid in accordance with agreements between the Commonwealth and the States and Territories and included new funding allocated in the 2004–05 Budget.

Commonwealth legal aid program

Funds provided in accordance with formal agreements between the Commonwealth and relevant State and Territory Legal Aid Commissions

Funding was provided to legal aid commissions in New South Wales, Victoria and Queensland for the provision of legal aid services for Commonwealth law matters during 2004–05. This funding was paid in accordance with agreements between the Attorney-General's Department and legal aid commissions and included new funding allocated in the 2004–05 Budget.

Payments for the provision of legal aid to Indigenous Australians

Funds provided in accordance with legislation and any relevant agreement or arrangement

The Australian Government's Legal Aid for Indigenous people (LEGA) program

provides funding for organisations to deliver legal aid services to Indigenous Australians. Services were delivered from a network of 24 service providers throughout all States and Territories.

Payments for the provision of law and justice advocacy services for Indigenous Australians

Funds provided in accordance with legislation and any relevant agreement or arrangement

The Law and Justice Advocacy program (LJAD) provides funding for a range of activities that promote improved law and justice outcomes for Indigenous Australians. Funding was allocated in accordance with LJAD's program guidelines to activities including Aboriginal Justice Advisory Committees, test cases (which will be part of the Legal Aid for Indigenous people program in the future), Deaths in Custody Monitoring Units and research.

Payments for the provision of prevention, diversion and rehabilitation services for Indigenous Australians

Funds provided in accordance with legislation and any relevant agreement or arrangement

The Prevention, Diversion and Rehabilitation program (PDRE) provided grant funding in accordance with its program guidelines to 137 activities across Australia that aim to reduce Indigenous peoples' adverse contact with the justice system. The funding was distributed between community night patrol services, youth initiatives and prisoner support services.

Payments for the provision of family violence prevention legal services for Indigenous Australians

Funds provided in accordance with legislation and any relevant agreement or arrangement

The Family Violence Prevention Legal Services program (FVPLS) allocated funding in accordance with its program guidelines. The bulk of program funding was spent on the existing network of 13 FVPLS units, which provide legal and support services to Indigenous adults and children who are victims of family violence, or immediately at risk of such violence. Funding was also allocated for start-up costs for 13 new FVPLS units established under a 2004-05 Budget measure.

Financial assistance towards legal costs and related expenses

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

The Department administers a range of schemes for legal assistance. These include statutory schemes under the *Native Title Act 1993*, the *Federal Proceedings (Costs) Act 1981*, the *Human Rights and Equal Opportunity Act 1986* and the *Judiciary Act 1903* and non-statutory schemes such as the Overseas Custody (Child Removal) Scheme, Special Circumstances (Overseas) Scheme and the Commonwealth Public Interest and Test Cases Scheme.

The largest expenditure from appropriation funding for financial assistance schemes is for administration of the statutory scheme under s 183 of the *Native Title Act 1993*. The guidelines in accordance with which assistance is provided under that scheme take account of the unique nature of native title matters, which potentially affect a large number of respondents with diverse interests. As at 30 June 2005, there were 1,265 current

grants of financial assistance under the native title financial assistance schemes.

In August 2004, the Department deployed the Data and Workflow Grants System (DAWGS), which was anticipated in the 2003-04 annual report. DAWGS has greatly improved efficiency in processing grants and tracking and reporting on grants.

Community legal services

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

In 2004-05, 127 community legal centres (CLCs) were funded under the Commonwealth Community Legal Services program to provide assistance on legal and related matters to people on low incomes and those with special needs. CLCs are a key component of Australia's legal aid system and provide a distinctive form of service that complements services provided by the legal aid commissions and the private legal professions.

CLCs are required to provide a range of data to the Department so that it can monitor, manage and account for output delivery and the achievement of the program's objectives.

Family Relationships Services Program

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

The Family Relationships Services Program is jointly funded by the Attorney-General's Department and the Department of Family and Community Services (FaCS). Funding from our appropriation assists separating families to reduce conflict, focus on the needs of their children and resolve disputes outside the courts where possible. FaCS administers the program on our behalf under a Business Partnership Agreement.

In 2004–05, the services funded under this program received a 30 per cent increase to help them meet increased costs. This was announced by the Prime Minister in July 2004 as part of the Government's proposed reforms to the family law system arising from the *Every picture tells a story* report. The increase in core funding provides the program with a sound base upon which new and expanded services can be established as part of the Government's reforms (see page 57). Services will also be assisted by a move from annual to three-year funding agreements from 1 July 2005.

Family Court of Western Australia—operating expenses

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

Under an agreement with the Government of Western Australia, the Commonwealth contributes towards the operating expenses of the Family Court of Western Australia, ensuring access for all Australians to the civil justice system with regard to family law matters. In 2004–05, the Commonwealth provided a total of \$11,785,000, including an additional payment to accommodate rental increases.

Reimbursements or payments on account of reimbursement made for services under the *Family Law Act 1975* and the *Child Support Scheme* legislation

Funds provided in accordance with Commonwealth–State agreements

In accordance with individual agreements with the States, the Commonwealth provides funds for the provision of services under the *Family Law Act 1975* and federal child support legislation. The funding contributes towards achieving an accessible system of federal civil justice for federal family law and child support matters.

Publication of Acts and Statutory Rules

Expenditure in accordance with the Legislative Printing Program

The administered program deals with the printing and publishing of Commonwealth legislation in hard copy form, including numbered Acts and Statutory Rules, reprints of Acts and Statutory Rules, bound volumes of Acts and Statutory Rules, and tables and indexes. The program contributes to an equitable and accessible system of federal civil justice by making legislation available to the Australian community after it is enacted or made.

The high-volume output of printed material prepared in 2004–05 included 132 numbered Acts, 248 numbered Statutory Rules, 151 numbered Select Legislative Instruments (from 1 January 2005), 18 titles of reprinted Acts and Statutory Rules (7,060 pages), six bound volumes of Acts 2004 (6,693 pages), six volumes of Statutory Rules 2004 (7,020 pages) and associated tables (980 pages). In 2004–05, \$1.64 million was allocated to the program.

The Department has been updating the printing schedule of annual volumes of Acts and Statutory Rules and this project is now complete. With the implementation of the *Legislative Instruments Act 2003*, the authoritative versions of the instruments now appear electronically on the Federal Register of Legislative Instruments (FRLI). A series of Select Legislative Instruments, has replaced the Statutory Rules series. This will be published in pamphlet form, but not in annual volumes. Acts will continue to be published both in pamphlet form and in annual volumes.

The number of printed reprints is expected to continue to decline. In recent years, the demand for hard copy volumes and reprints has tended to decline with the increasing use of electronic compilations of Commonwealth legislation. The electronic compilations of

Acts and Legislative Instruments are available free through the ComLaw–FRLI web site <<http://www.comlaw.gov.au>> and updated much more frequently than is possible with paper reprints.

Financial assistance to States and Territories under Part 9 of the Native Title Act 1993

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 Australian Government 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, as no financial assistance agreements have been signed, no payments have been made.

Compensation payments made under Part 2 of the Native Title Act 1993

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 of the Australian Government 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 been made.

International bodies—membership contributions

Grants made in accordance with agreed rates of contribution

The **International Institute for the Unification of Private Law (UNIDROIT)** is an independent intergovernmental organisation based in Rome. Its purpose is to study needs and methods for modernising,

harmonising and coordinating private law—and, in particular, commercial law—between countries and groups of countries.

UNIDROIT is financed by annual contributions from member countries, fixed by the General Assembly, as well as a basic annual contribution from the Italian Government. In 2004–05, Australia's membership contribution was \$69,238. 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.

Mr Ian Govey, Deputy Secretary, is an elected member of the Governing Council of the Institute, and attended the annual meeting in April 2005. UNIDROIT's current projects include the development of an instrument governing transactions in securities held with intermediaries on transnational and connected capital markets, and work associated with the implementation of the Cape Town Convention on International Interests in Mobile Equipment, and the development and implementation of protocols dealing with aircraft, railway and space equipment.

Through its publication *Uniform Law Review/Revue de droit uniforme*, UNIDROIT disseminates information concerning the unification of private law, and promotes instruments prepared under its auspices. It also has a program of legal cooperation for developing countries and countries in economic transition.

Australia's contribution to the **World Intellectual Property Organization** in respect of Australia's membership of the Berne Union for the protection of the rights of authors in their literary and artistic works was \$208,160. The Berne Union comprises member countries of the Berne Convention on copyright—the foundation of and most important treaty on international copyright

standards. These standards are reflected extensively in the *Copyright Act 1968*.

The work of the **Hague Conference on Private International Law** contributes to the unification of key areas of private international law. In particular, the Conference's work enhances efficient and effective international cooperation in areas of concern to Australia, including action to assist parents in the recovery of children abducted and taken overseas.

In 2004–05, Australia's membership contribution was \$161,594. We also made, on behalf of the Australian Government, a voluntary contribution of \$35,000 to assist the Conference to promote and support, among countries in the Asia–Pacific region, effective implementation of a number of conventions to which Australia is a party, including a number of conventions relating to the protection of children.

Australian organisations—grants

Grants made in accordance with agreed funding arrangements

Grants were made to 10 organisations to assist with projects or activities related to the pursuit of an equitable and accessible system of federal civil justice.

We continue to fund the **National Judicial College of Australia (NJCA)**. Our contribution towards the operating costs of the NJCA for 2004–05 was \$505,652, of which \$225,652 was calculated according to a formula agreed by the Standing Committee of Attorneys-General and \$40,000 was an additional contribution. New South Wales, Tasmania, South Australia, the Northern Territory and the Australian Capital Territory also contributed funding.

The NJCA provides a variety of courses of relevance to judges and magistrates in all States and Territories. During 2004–05, the NJCA organised courses on professional issues such as judgment writing as well as social and ethical issues such as disability

awareness, diversity and cultural awareness. The NJCA also organised orientation courses for new judicial officers and training programs in which experienced and new judicial officers get together to share ideas and experiences.

In addition to annual grants, we provide funding for specific projects. In 2004–05, we granted \$240,000 for the College to establish and operate a national sentencing database—which will provide data on sentences for Commonwealth offences in a form that is readily accessible by judicial officers—and to establish an electronic library service.

The **Australian Institute of Judicial Administration (AIJA)** promotes an equitable and accessible system of federal civil justice by conducting professional skills courses, conferences and seminars on court administration and judicial systems for persons involved in the administration of the justice system, including judicial officers, court administrators and the legal profession. The AIJA receives funding from all Australian jurisdictions through the Standing Committee of Attorneys-General. The Government's contribution to the AIJA in 2004–05 was \$206,911.

The Australian branch of the **International Social Service** received an \$80,000 grant to establish a central contact and referral point for persons requiring counselling as a result of international child abduction, to conduct specialised training for existing counselling services and raise community awareness of international child abduction issues.

We made a grant of \$150,000 to assist the **Australian Red Cross (ARC)** in providing educational programs and training activities on the principles of international humanitarian law. The ARC's activities assist the Australian Government to fulfil its obligations under a number of international treaties to raise awareness and understanding of international humanitarian law.

A grant of \$49,000 was provided to the **Australian Federation of Disability Organisations**. The grant facilitated involvement of the disability sector in the ongoing development of the Disability Standards for Access to Premises including through attendance at the meetings of the Building Access Policy Committee.

A grant of \$30,000 was provided to the **Australian Legal Information Institute (AustLII)** to assist in the development of the Commonwealth Legal Information Institute (CommonLII).

AustLII is an educational institution administered within the University of Technology Sydney. AustLII is leading the CommonLII initiative, which aims to provide one central Internet location from which it is possible to search—for free—core legal information from all Commonwealth countries.

The expected outputs of the CommonLII initiative are:

- provision of a common technical platform through which all Commonwealth countries can cooperatively provide access to their laws
- improvement of research capacity within each country and its level of expertise concerning the common law and law of other Commonwealth countries
- development of a genuinely international common law
- support for the rule of law throughout the Commonwealth, by making each country's legal system more transparent
- support of international trade and investment through more transparent legal systems, and
- assistance for developing countries in the Commonwealth to create national sustainable free access to law.

A grant of \$25,000 was provided to the **Australian Association of Women Judges (AAWJ)** to assist with the upcoming

International Association of Women Judges (IAWJ) biennial conference. This is the first time that the conference has been held in our region. The theme for the conference is 'An Independent Judiciary', with a particular emphasis on gender and cultural issues.

We also made two grants to the **Law Council of Australia**. The first grant (\$25,000) assisted the Organising Committee of LAWASIA down under 2005 host a series of legal conferences held at the Gold Coast from 20 to 24 March 2005. The purpose of the second grant (\$4,000) was to support a survey, under the auspices of the International Legal Services Advisory Council, to quantify the size of the export and import market of legal services in Australia.

A grant of \$4,000 was provided to the **Asian Law Centre** to assist it in promoting the teaching and awareness of Asian law in Australia and of Australian law in Asia. The objective of the Centre is to encourage greater understanding and knowledge of laws and legal systems in our region.

A grant of \$10,000 was provided to the **National Committee for Human Rights Education** to help with the implementation of the Committee's 'Citizen of Humanity' project. The project encourages students to take time to reflect on human rights and their importance in our community.

Law Courts Limited—contributions to operating and capital expenses and costs of the joint Law Library

Payments made in accordance with Commonwealth–NSW funding agreement and the refurbishment program

Law Courts Limited is a jointly owned Australian Government and New South Wales State Government corporation established to manage the joint Australian and NSW State Law Courts building in Sydney.

The company has a Board of six members: three Australian Government directors, who are appointed by the Attorney-General, and three State directors, who are appointed by the NSW Attorney General.

Both the Australian Government and the NSW State Government contribute to the operating expenses of the Law Courts building. Contributions are made on the basis of 47.5 per cent by the Australian Government and 52.5 per cent by the NSW State Government, calculated on the allocation of space occupied by each jurisdiction.

Additional Australian Government funding of \$96.7 million has been approved for the refurbishment of the building, of which \$2.4 million was allocated for expenditure in 2004–05. The refurbishment process is funded over a five-year period and is scheduled to be completed in 2009. Funding in 2004–05 was provided for the master planning and design process and to allow some early works in respect of the base building services to commence.

All payments made in 2004–05 were made in accordance with the agreement between the Commonwealth Government and the NSW State Government.

Judges' Pensions Act 1968

Payments made in accordance with entitlements and agreed arrangements

The *Judges' Pensions Act 1968* 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 the Department processes payments under the Judges Pensions Scheme. The scheme is non-contributory.

All payments have been made in accordance with advice provided, entitlements and agreed arrangements.

Remuneration and Allowances Act 1990—Justices of the High Court

Payments made in accordance with entitlements and agreed arrangements

The Department administers remuneration and allowances of Justices of the High Court. Determinations on remuneration- and allowance-related matters are issued by the Remuneration Tribunal.

All payments have been made in accordance with advice provided, entitlements and agreed arrangements.

Output 1.1—Legal services and policy advice on courts and tribunals, alternative dispute resolution, administrative law, human rights, evidence and procedure

Performance overview

Output 1.1 is the responsibility of the Civil Justice Division and the Information Law and Human Rights Division. This follows a reorganisation of a number of departmental functions during 2004–05.

Under this Output we are committed to

- ensuring that the federal civil justice system is as effective and efficient as possible and that aspects of civil procedure do not place unnecessary burdens on individuals and businesses requiring assistance from federal courts or tribunals to resolve their disputes, and
- providing the Attorney-General and the Government with advice and support in relation to domestic human rights and anti-discrimination matters, and the implementation of international human rights obligations.

During the year, the Civil Justice Division and the Information Law and Human Rights Division have assisted the Attorney-General and the Government to develop and implement a number of important legislative reforms and policies, including:

- reforms to the operation of the Administrative Appeals Tribunal
- review of Commonwealth legislation to resolve inconsistencies with the *Legislative Instruments Act 2003* to enable commencement of the Act on 1 January 2005

- referring the operation of the *Evidence Act 1995* to the Australian Law Reform Commission (ALRC) for inquiry and report
- negotiating the Hague Convention on Choice of Court Agreements
- preparation of a discussion paper by the Trans-Tasman Working Group on Court Proceedings and Regulatory Enforcement
- introduction of the Migration Litigation Reform Bill
- rewriting the Federal Court Regulations
- improving the security in Commonwealth Law Court buildings
- providing secretariat services to the Administrative Review Council and the National Alternative Dispute Resolution Council
- providing funding to the National Judicial College of Australia
- release of Australia's National Framework for Human Rights—National Action Plan
- introduction and passage by the House of Representatives of the Sex Discrimination Amendment (Teaching Profession) Bill 2004
- tabling in Parliament of the Disability Standards for Education, and passage of the *Disability Discrimination (Education Standards) Act 2005*, which supports the Standards, and
- participating in Australia's delegation to the United Nations Committee on the Elimination of Racial Discrimination in March 2005.

Performance measures

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

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

Migration litigation reform

The Migration Litigation Reform Bill 2005 was introduced in the House of Representatives in the Autumn 2005 sittings, was passed by the House in the Winter 2005 sittings and is scheduled for debate in the Senate in the Spring Sittings. The Bill will improve the handling of the significant migration litigation workload in the federal courts. The major reforms in the Bill will:

- direct migration matters to the Federal Magistrates Court
- reform court processes to reduce delays, and
- introduce measures to deter unmeritorious migration cases that waste scarce judicial resources.

Eight additional Federal Magistrates were appointed in 2005 to handle new migration cases and deal with the backlog of migration matters in the Federal Magistrates Court.

Resourcing courts and tribunals

Some significant court appointments were made. These are discussed in the Highlights chapter (see page 10).

In the 2005–06 Budget announced in May 2005, \$4.5 million was provided to the Federal Court over four years to enable the Australian Competition Tribunal to carry out its proposed new functions in the areas of merger authorisations, merger clearances, and collective bargaining for small businesses. The funding provides for support staff for the Tribunal and for a replacement Federal Court judge following Justice Goldberg's appointment as full-time Tribunal President.

Security in Commonwealth Law Court buildings

Funding of \$9.9 million over four years was provided in the 2005–06 Budget to install and operate airport-style weapons-screening equipment in Commonwealth Law Court buildings around Australia and on court circuits.

Significant changes to the jurisdiction of courts

A Bill has been developed for introduction in the Spring 2005 sittings of Parliament to amend the *Family Law Act 1975* and other legislation to expand the jurisdiction of Perth family law magistrates (formerly the Perth Court of Petty Sessions) to match the jurisdiction of the Federal Magistrates Court in family law and child support matters. The Bill has been developed in consultation with the Family Court of Western Australia.

An exposure draft Bill to amend the *Australian Securities and Investments Commission Act 2001* and the *Corporations Act 2001* to confer jurisdiction on the Federal Magistrates Court in corporate insolvency matters was released for public comment in December 2004.

Administrative Appeals Tribunal reforms

The *Administrative Appeals Tribunal Amendment Act 2005* commenced on 16 May 2005. These reforms provide the Tribunal with greater flexibility, enabling it to continue to improve its services to its clients. The key areas of reform are to:

- provide the President of the AAT with greater flexibility in managing caseload
- enable the use of a wider range of alternative dispute resolution techniques
- require parties using alternative dispute resolution to act in good faith, and
- provide that decision makers have a legislative duty to assist the Tribunal, and provide it with all documents objectively relevant to the case, not just those they subjectively consider relevant.

Arrangements between Australia and New Zealand

A Working Group of Australian and New Zealand officials has developed proposals to improve efficiency and effectiveness of court proceedings and regulatory enforcement, including enhanced cooperation in the areas of:

- the service of process
- the taking of evidence, and
- the recognition of judgments in civil and regulatory matters.

The Working Group held its second meeting in Wellington, New Zealand in November 2004.

Timely and sound assistance to the Attorney 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

Legislative Instruments Act

The *Legislative Instruments Act 2003* (LIA), the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* and the *Legislative Instruments Regulations 2004* all began operation on 1 January 2005.

The LIA establishes the Federal Register of Legislative Instruments comprising an easy-to-find database of legislative instruments, explanatory statements and compilations. Legislative instruments made on or after 1 January 2005 must be registered or they will not be enforceable. Legislative instruments made before 1 January 2005 must also be registered in accordance with the Act's backcapture program, which ends on 31 December 2007; if not they are treated as having been repealed. Further details on the Federal Register of Legislative

Instruments are in the performance report for Output 1.5 in this chapter (see page 71).

The LIA also provides for a regime for parliamentary scrutiny of legislative instruments and for a regime of sunseting of instruments. Work continued in 2005 on regulations to support the LIA and to include further exemptions.

The Acts Interpretation Amendment (Legislative Instruments) Bill 2005 was introduced into the Senate in June 2005. It inserts a definition of legislative instrument to prevent the need to define the term 'legislative instrument' every time it is used in legislation and makes a number of consequential amendments to the *Acts Interpretation Act 1901*.

Statute Law Revision Bill

The Statute Law Revision Bill was passed by the Parliament on 23 June 2005. It delivers efficient and effective justice by amending a number of Acts to:

- correct minor technical or drafting errors and misdescribed amendments
- remove references to organisations that no longer exist, and
- update references to organisations that have been succeeded by other organisations.

Federal Court Regulations

The *Federal Court of Australia Regulations 2004* commenced on 1 November 2004. They represent a comprehensive rewrite of the previous *Federal Court of Australia Regulations 1978*. The new Regulations are simpler and easier for the Court to administer and for Court users to understand, placing less pressure on the Court's resources. The amendments include abolition of some fees, adjustment of fee amounts, fee exemptions, deferral, prepayment and refund of some fees, as well as clarifying the scope of a number of provisions and updating the language.

CASE STUDY

Committed to the elimination of racial discrimination

44

CASE STUDY

Human rights is one of the Department's key responsibilities, particularly in ensuring that domestic laws meet Australia's international obligations.

...departmental officers involved in the Australian delegation spoke of their sense of privilege and the tremendous professional experience they had gained in speaking on behalf of their country...

An important part of these obligations is Australia's regular appearance before committees of the United Nations to report on our progress on a range of human rights issues.

In March 2005, Australia appeared before the United Nations Committee on the Elimination of the Racial Discrimination. The Attorney-General's Department was represented in the Australian delegation because of its central role in implementing the Convention on the Elimination of Racial Discrimination.

The hearing provides an opportunity for non-government organisations and human rights institutions to brief committee members on the progress of individual countries. Committee members then have the opportunity to raise issues of concern and interest. Delegations are given the chance to respond by providing more information, correcting misunderstandings and noting disagreement on some points.

At the March 2005 hearing, the Committee asked the Australian delegation a range of questions about Indigenous rights, the Native Title Act, discrimination against Arab and Muslim Australians, human rights education, counter-terrorism laws, multiculturalism, and immigration policies.

While not all issues were agreed, the Committee noted the comprehensive way the delegation responded to questioning during the hearing. The Committee also made recommendations about Australia's implementation of the Convention, which the Australian Government is considering on their merits.

On a personal note, departmental officers involved in the Australian delegation spoke of their sense of privilege and the tremendous professional experience they had gained in speaking on behalf of their country in a United Nations forum.

The National Alternative Dispute Resolution Advisory Council

During 2004-05, the Attorney-General appointed five new Council members, and re-appointed five members, of the National Alternative Dispute Resolution Advisory Council. The Council provides independent expert advice to the Attorney-General on alternative dispute resolution issues. A departmental officer is a member of the Council.

The Council publishes its own annual report. More information is available at <www.nadrac.gov.au>.

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

- explain, implement and apply the Government's policies

Review of the Evidence Act

In July 2004, the Attorney-General referred the operation of the *Evidence Act 1995* to the Australian Law Reform Commission (ALRC) for inquiry and report. The ALRC released an issues paper in December 2004 and is due to release a discussion paper in July 2005 in conjunction with the New South Wales Law Reform Commission and the Victorian Law Reform Commission. The ALRC has consulted extensively throughout the community, working towards greater harmonisation of the evidence laws within Australia. The final report is due to be delivered to the Attorney-General by 5 December 2005 and will be publicly available after its tabling in federal Parliament. A departmental officer is a member of the Advisory Committee of the ALRC for this inquiry.

The Proposed Hague Convention on Choice of Court Agreements

Our delegation to the Diplomatic Conference of the Hague Conference on Private International Law in June 2005 participated actively in final negotiations on the text of a Convention on Choice of

Court Agreements. The Convention has the potential to benefit Australian businesses by:

- increasing certainty about enforcement of Australian judgments overseas and vice versa, and
- reducing the cost and inconvenience of duplicated legal proceedings in different jurisdictions.

Human Rights and Equal Opportunity Commission

The Human Rights and Equal Opportunity Commission promotes human rights within the community, provides advice to the Government on policy and legislative development, assists in the conciliation of complaints under federal anti-discrimination laws, and may inquire into and report on Commonwealth acts or practices that are alleged to infringe human rights.

A Bill to restructure and refocus the Commission—the Australian Human Rights Commission Legislation Bill 2003—lapsed on the proroguing of Parliament in August 2004. The Government remains committed to pursuing legislative reform of the structure of the Commission to enhance the Commission's ability to respond to current and emerging human rights issues and give greater priority to human rights education. We continue to provide assistance to the Attorney-General and the Government to meet these objectives.

Aboriginal and Torres Strait Islander Social Justice Commissioner

Mr Tom Calma was appointed as Aboriginal and Torres Strait Islander Social Justice Commissioner with effect from 12 July 2004.

Appearance before the UN Committee on the Elimination of Racial Discrimination

The UN Committee on the Elimination of Racial Discrimination asked Australia's delegation a range of questions concerning Indigenous rights, the Native Title Act, the Human Rights and Equal Opportunity

Commission, discrimination against Arab and Muslim Australians, Australia's legal and constitutional system, human rights education, the *Racial Discrimination Act 1975*, counter-terrorism laws, and multiculturalism and immigration policies. Following Australia's appearance the Chair of the Committee congratulated Australia for the serious and comprehensive manner in which it had responded to the Committee's questions. The Committee has published its conclusions, which include positive findings as well as noting areas of concern.

Sex Discrimination Amendment (Teaching Profession) Bill 2004

The Bill was passed by the House of Representatives on 12 May 2005. The purpose of the Bill is to facilitate measures to address the problem of imbalance in the number of male and female schoolteachers, and the effect of that imbalance on the education of male school students in particular.

Government's response to Productivity Commission's review of the *Disability Discrimination Act 1992*

In 2003, the Productivity Commission reviewed the operation of the *Disability Discrimination Act 1992* (DDA) under the Competition Principles Agreement. The report concluded that the DDA has been reasonably effective in addressing disability discrimination and, with appropriate amendments, would provide net benefits into the future.

In developing the Government's response to the report, which was tabled out of session on 27 January 2005, we consulted a range of agencies, in particular the Human Rights and Equal Opportunity Commission (HREOC). The Government's response accepts, either in full, in part or in principle, 26 of the 32 recommendations. The response balances the needs and rights of people with disability with the interests of industry and service providers.

Draft convention on the rights of people with disabilities

Together with the Department of Family and Community Services, we coordinated Australia's participation in work in the United Nations to develop a draft convention on the rights of people with disabilities. We have been represented on each of the official delegations to sessions during the reporting year of the UN Ad Hoc Committee that was set up to consider the convention. A member of the disability sector and a representative of HREOC were also included in the official Australian delegation.

Negotiations on the draft text developed at the third session continued this year at the fourth and fifth sessions, which were held 23 August – 3 September 2004 and 24 January – 4 February 2005. Consistent with Australia's law and policy, Australia supports text that would ensure that people with disabilities can effectively access and exercise the rights that they have under existing human rights treaties.

Disability Standards for Education

The Attorney-General formulated the Disability Standards for Education and then tabled the Standards in both Houses of Parliament on 17 March 2005. The Standards were to come into effect 15 sitting days after their tabling, provided no notice of motion to amend was made.

The Disability Standards for Education specify how education and training are to be made more accessible to students and prospective students with disabilities, without imposing unjustifiable burdens on education providers. They describe the obligations of education providers in relation to students with disabilities, and provide guidance on how to meet those obligations.

The *Disability Discrimination (Education Standards) Act 2005*, which supports the Standards, received Royal Assent in March 2005.

CASE STUDY

Protecting the rights of people with disabilities

One of our most significant undertakings as an agency in an international context in 2004–05 has been the leading role we have played in the development of a new UN convention to protect the rights and dignity of people with disabilities.

Australia put forward a number of valuable proposals for consideration...

The convention is intended to set out how people with disabilities can access the same fundamental human rights that others might take for granted. Often, people with disabilities do not have the same access as others to work, education and leisure opportunities. They also need respect for their privacy, as well as the ability to have a home and family life, and to be able to participate in public life.

The convention is unique because, for the first time, non-government organisations (NGOs) have been invited to participate in their own right in negotiations and they have been able to make formal interventions where they see fit. Australian NGOs have taken an active role.

This Department's Human Rights Branch has coordinated the work of numerous Australian Government agencies in the project by consulting with stakeholders, coordinating and preparing briefings, and preparing delegations.

Representatives from Australia's Human Rights and Equal Opportunity Commission and the disability sector have been included in the official Australian delegations to the UN negotiations. All this work has resulted in Australia putting forward a number of valuable proposals for consideration.

An equally important part of the project has been ensuring that people with disability in Australia have the opportunity to contribute to the development of the convention. To ensure this happened, we provided a grant to People With Disability Australia Inc to enable it to canvas the disability sector and report to government.

The United Nations is due to release a new consolidated text of the proposed international convention on the rights of people with disabilities in October 2005. The Department will engage in further extensive consultation before attending the continuing negotiations in New York.

Disability Standards for Access to Premises

We are represented on the Australian Building Codes Board's Building Access Policy Committee (BAPC), which has been working to develop amendments to the Building Code of Australia so that it can form the basis of a Disability Standard for Access to Premises. The BAPC held its 38th, and final, meeting in April 2005 and provided recommendations to the Board. The Board has in turn made recommendations to Government, which were under consideration at the end of the reporting period.

We provide funding to facilitate the involvement of the disability sector in the development of disability standards made under the DDA. We have provided grants to the Australian Federation of Disability Organisations (AFDO) to ensure the participation of disability sector representatives on BAPC in 2004–05.

Non-Government Organisation Forum on Domestic Human Rights

The 13th Attorney-General's Non-Government Organisation (NGO) Forum on Domestic Human Rights was held on 17 June 2005. The Forum is an important

part of the human rights policy consultation process for the Government. The Forum provides a regular opportunity for the Attorney-General's Department and NGOs to exchange information and discuss issues concerning human rights. The Forum was attended by representatives of approximately 30 NGOs. Forum discussions covered a range of issues and government initiatives that reflect the diversity of human rights interests within Australia.

International visits

During the year, departmental representatives met with delegations from Norway and the United Arab Emirates. The visitors had in each case requested the meetings to learn from Australia's experience in developing and administering the DDA and disability standards made under the Act.

Departmental representatives participated in the eighth and ninth rounds of Australia's Human Rights Dialogue with China. Australia raised a range of human rights issues at these dialogues, including civil and political rights, China's legal system, women's and children's rights, rights of HIV/AIDS sufferers, ethnic minorities including in Tibet and Xinjiang, religious freedom and the treatment of groups such as Falun Gong, as well as individual cases of concern.

Departmental representatives also took part in the second Joint Meeting of the Australia–Indonesia Working Group on Legal Cooperation held in Canberra on 17 March 2005.

Australia's National Framework for Human Rights—National Action Plan

On 23 December 2004, the Australian Government published and launched a new framework for the protection of human rights in Australia. This document is the first substantial revision of Australia's National Action Plan on Human Rights since 1994.

The new framework outlines the Government's priorities for enhancing the



Attorney-General, The Hon Philip Ruddock MP, addressing the 13th Non-Government Organisation Forum on Domestic Human Rights 17 June 2005

enjoyment of human rights in Australia. The document also describes the comprehensive human rights protections that are already in place in Australia.

The framework's focus on human rights priority areas is designed to ensure a coordinated approach to human rights across government departments, as well as being of long-term use to non-government organisations and the wider community.

The Government has identified the following areas as its focus for human rights:

- promoting a strong, free democracy
- human rights education and awareness
- addressing disadvantage and assisting independence
- supporting the family, and
- promoting human rights internationally.

During the reporting year, we provided funding of \$10,000 to the National Committee for Human Rights Education to support implementation of its 'Citizen of Humanity' project. Further details are in the Administered items section of this chapter (see page 39).

Challenges

The Civil Justice Division will continue to identify, and advise the Government on effective options to address, a wide range of challenges affecting the federal civil justice system.

Identifying and responding to barriers to the effective resolution of disputes is an important challenge. An example is the Migration Litigation Reform Bill 2005, which was introduced in March 2005. The Bill, together with additional resources provided to the Federal Magistrates Court in the 2004–05 Budget, is designed to make the handling of migration litigation more efficient.

The increasingly international focus of business transactions also places greater

importance on international judicial assistance. Consultations on the proposals of the Trans-Tasman Working Group on Court Proceedings and Regulatory Enforcement will assist us to advise the Government on improvements in this area.

The challenge in developing disability discrimination law and policy—in particular, various standards under the Disability Discrimination Act—is to strike the right balance between ensuring people with disabilities are able to participate fully in community life and imposing unjustifiable costs on suppliers and providers of goods and services.

Achieving the twin goals of security and justice in today's heightened security environment presents another challenge. Our ongoing task in relation to the development of national counter-terrorism legislation is to provide advice to assist the Government to develop laws and policies to protect human security, consistent with Australia's human rights obligations, to ensure that Australia can continue to reap the benefits of our traditions of tolerance, respect and multiculturalism.

Outlook

The Migration Litigation Reform Bill 2005 will be considered by the Senate in the Spring 2005 sittings.

The Trans-Tasman Working Group on Court Proceedings and Regulatory Enforcement prepared a discussion paper, to enable its release later in 2005, that:

- highlights a number of problems arising in civil court proceedings that have a trans-Tasman element and in the enforcement of regulatory regimes between Australia and New Zealand, and
- discusses and seeks views on the options for addressing those problems and indicates preferred solutions.

On Human Rights Day 2004 the United Nations General Assembly proclaimed the World Programme for Human Rights Education. The draft Plan of Action for the First Phase (2005–07) of the World Programme focuses on the primary and secondary school systems. We will assist the Attorney-General and the Government with the implementation of the draft Plan of Action.

We will continue to work closely with interested parties, including the disability sector, HREOC and the Department of Industry, Tourism and Resources to finalise Standards that will lead to accessible buildings without placing undue burdens on those who build them.

A major priority will be working towards implementing the Government response to the Productivity Commission's review of

the Disability Discrimination Act. This will clarify and improve the operation of the Act. Implementing the Government response will require legislative amendment, the development of Guidelines by HREOC and other actions.

Subsection 39(2) of the *Age Discrimination Act 2004* ensures that anything done in direct compliance with a Commonwealth Act or Regulation is not unlawful discrimination on the ground of a person's age. The exemption will expire on 23 June 2006. Laws and programs covered by exemptions other than section 39(2) will not be affected. Any new exemptions would require legislative change. The Human Rights Branch has commenced a process to identify any relevant laws and programs currently subject to the exemption.

Output 1.2—Support for the Attorney-General as First Law Officer, advice on constitutional policy, and promotion of Australian legal services internationally

Performance overview

Output 1.2 is the responsibility of the Legal Services and Native Title Division. The Office of Legal Services Coordination (OLSC) and the Constitutional Policy Unit form part of the Division.

During the year, we continued to assist the Attorney-General and coordinate with external stakeholders, helping to ensure an equitable and accessible system of federal justice.

- To help agencies comply with the Legal Service Directions and handle legal service issues, we introduced a discussion group for agencies on legal services and continued to disseminate better practice through our web site and by email.
- We continued to pursue national approaches to key law and justice issues through the Standing Committee of Attorneys-General.
- In conjunction with the Office of Film and Literature Classification and the States and Territories, we assisted in developing common classification types and new classification markings, and advanced projects to enhance public confidence in the National Classification Scheme.
- Working with the Insolvency Trustee Service Australia and the Family Law Branch, we developed legislation to clarify the relationship between bankruptcy law and family law.
- We continued to provide assistance on constitutional litigation and policy.

- We took the lead in developing a memorandum of understanding (MOU) to facilitate State and Territory implementation of the Model Legal Profession Bill.
- Through our involvement in the International Legal Services Advisory Council, we promoted legal cooperation and the more transparent regulation of cross-border legal services.

Performance measures

Advancement of a national legal profession

We took the lead in developing an MOU governing the implementation, operation and maintenance of model laws for the national legal profession. This was directed to ensuring an effective and transparent commitment to implementation of the national model laws. The Attorneys-General of the Commonwealth and each State and Territory signed the MOU in July 2004.

There has been good progress on implementation, with most States and Territories expected to legislate in the coming months.

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

We assist the Attorney-General to administer the Legal Services Directions issued under the *Judiciary Act 1903*. The Directions provide a framework for the delivery of legal

services to the Australian Government and its agencies. During the year, we investigated 30 possible breaches of the Directions.

Table 1: Investigation of breaches of the Legal Services Directions

	2003–04	2004–05
Established breaches	8	16
Examined and found not to involve breaches	3	5
Still under investigation at year end	5	9
Total	16	30

The substantiated breaches related to performance of tied legal work without approval, and the engagement of counsel above the threshold rates without approval.

During the year, we also considered 82 individual applications for approval of counsel fees as required under the Directions.

Table 2: Counsel fee applications

	2003–04	2004–05
Approval of ongoing rates above threshold	43	30
Approval on 'one off basis' of rates above threshold	15	28
Not approved	21	19
Approval of payment of a retainer	–	1
Application withdrawn	–	1
Pending applications at year end	–	3
Total	79	82

As a result of a general review of counsel fees, we approved ongoing rates at levels above the relevant thresholds for 115 counsel in addition to the 82 individual applications.

We continued to process claims by Ministers for legal assistance under the *Parliamentary Entitlements Regulations 1997*. There were four applications for assistance in 2004–05. The Attorney-General was the decision maker under the Regulations in relation to

two applications and he sought approval from the Prime Minister for the provision of assistance in relation to the other two.

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

We have continued to work with the International Legal Services Advisory Council (ILSAC) and other stakeholders. This includes work on market access barriers and regulation, legal cooperation, legal education and training, and international commercial dispute resolution. Some of our more significant achievements this year included:

- legal services advice in respect of free trade agreements (FTAs), including the Singapore–Australia FTA and the Australia–United States FTA
- involvement in scoping studies for possible FTAs with China and Malaysia, and negotiations for a proposed FTA with the United Arab Emirates
- jointly chairing and hosting the second meeting of the Australia–Indonesia Ministerial Forum (AIMF) Working Group on Legal Cooperation (see case study page 53)
- chairing the Friends of Legal Services Group on liberalising trade in legal services in the World Trade Organization Council on Services, Geneva culminating in a Joint Statement on Legal Services of February 2005
- progressive implementation of two part-funded AusAID projects, one involving an Internet legal database and the other a legislative drafting project for Indonesia, and
- development and launch of an international commercial dispute resolution web site, <www.icdr.gov.au>.

In addition, we provided secretariat support for ILSAC, which held two full meetings and a meeting of each of its four committees.

CASE STUDY

Australia–Indonesia Working Group on Legal Cooperation

On 17 March 2005, officials from Australia and Indonesia gathered in Canberra for the second meeting of the Australia–Indonesia Working Group on Legal Cooperation. The meeting was held under the auspices of the Australia–Indonesia Ministerial Forum, which met the following day, as well as a broad-ranging memorandum of understanding signed by both countries in 2000. These structures reflect the growing relationship in law and legal services between Australia and Indonesia.

The Working Group facilitates discussion about the range of legal cooperation activities between the two countries; assists with future work by officials in their particular areas of responsibility; and plans future legal cooperation activities. These activities have been carried out since the first meeting in 2002.

The meeting discussed existing and proposed cooperation in areas including counter-terrorism and international criminal law; trade, commercial and bankruptcy law; legislative drafting, law reform and publication of legal material. There were also updates on key domestic developments in each country and the opportunities they provide for future cooperation, including in human rights, intellectual property and Australia's aid arrangements.

The Working Group meeting provided a welcome opportunity for officers of the Department and the Indonesian Ministry of Law and Human Rights to examine our legal cooperation relationships and build professional relationships. Staff from the Treasury, AusAID and IP Australia also participated in the Working Group.

The Working Group will meet again in Jakarta in 2007.



Mr Karl Alderson (left), Assistant Secretary, Office of Legal Services Coordination, Attorney-General's Department with Mr Mangasi Sihombing, Director-General of Information, Public Diplomacy and International Treaties, Department of Foreign Affairs, Indonesia at the Australia–Indonesia Working Group on Legal Cooperation meeting, Canberra, 17 March 2005.

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

We coordinate the Australian Government's participation in the Standing Committee of Attorneys-General (SCAG) and support the Attorney-General and Minister for Justice and Customs at the meetings.

There were three meetings of SCAG in 2004–05, during which the Australian Government continued to pursue its objectives for appropriate consistent and uniform legislation. Among SCAG's major accomplishments were:

- signing an MOU governing the implementation, operation and maintenance of model laws for the national legal profession
- establishing a working party to develop proposals for reform of personal property securities law across Australia, and
- agreeing to develop protocols to ensure that, in the event of a disaster involving Australian citizens, investigative and coronial agencies respond in a well-organised and coordinated way.

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

We provide assistance and advice on constitutional policy development, litigation and public law issues of federal significance. This includes advice on the Attorney-General's intervention in constitutional litigation and on questions of constitutional amendment.

Constitutional litigation has covered a range of High Court cases, including *Forge v ASIC & Commonwealth*, regarding the appointment of acting judges to State courts and transitional provisions of the *Corporations Act 2001*; *Dalton v New South*

Wales Crime Commission, regarding the validity of the *Service and Execution of Process Act 1992*; and *A v Boulton*, regarding the compulsory examination powers of the Australian Crime Commission.

We continued our involvement in the Government's consideration of harmonising federal and international legal arrangements, including developing a proposal for a national defamation law. We have also provided technical advice in relation to the Inquiry into the Centenary House Lease <<http://www.ag.gov.au/agd/www/centenaryhome.nsf/>>.

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

Our joint responsibility for classification policy with the Office of Film and Literature Classification (OFLC) has seen progress on significant classification reforms. During 2004–05, we assisted in implementing the new classification categories and introduced common classification types for films and computer games.

We have also taken a leading role in improving public confidence in the classification system through:

- advice on amendments to the Classification Code and Guidelines to make it explicit that material that would offend the International Labour Organization on Child Employment (ILO 182) is refused classification
- close cooperation with the Department of Communications, Information Technology and the Arts, and the Australian Broadcasting Authority (now the Australian Communications Management Authority), and

- assisting the Government to make appointments to the Classification Board and Classification Review Board that ensure those boards continue to be broadly representative of the Australian community.

We have assisted in a number of significant reviews and reforms during the year, including:

- the Community Assessment Panels for 2004, that investigated the extent to which classification decisions are in accordance with community standards
- reviews of OFLC fees and determined markings, and
- a review of the Operation of the Combined Guidelines for the Classification of Films and Computer Games.

In consultation with 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

The *Bankruptcy and Family Law Legislation Amendment Act 2005* passed in March 2005 addresses longstanding problems concerning the interaction between bankruptcy and family law. We worked with the Family Law Branch and the Insolvency and Trustee Service Australia (ITSA) to achieve the passage of this important legislation.

In February 2005, ITSA released a discussion paper to develop proposals to strengthen anti-avoidance provisions in the *Bankruptcy Act 1966*. We worked with ITSA on the formulation of this paper, and participated in consultations. Work is continuing on proposals emerging from the consultation process.

Evaluations

Auditor-General's Report No. 52 *Legal Services Arrangements in the Australian Public Service*

In June 2005, the Australian National Audit Office (ANAO) released its report into Australian Government legal services arrangements. The report's focus was on the purchasing of legal services, and the ANAO made several recommendations to enhance the benefits that the Government has derived from individual agencies' being responsible for determining their own legal service needs.

The report also considered the effectiveness of OLSC in administering the Legal Services Directions and assisting agencies with their legal services purchasing. The recommendations directed toward OLSC build on initiatives already established by us to improve agencies' awareness of the Directions and to provide forums for agencies to exchange information about best-practice legal services purchasing. The Department supports those recommendations and is continuing its work in this area.

Challenges

One of the key challenges we faced during the year was our engagement in FTA negotiations as part of our ongoing promotion of Australian legal services internationally.

We also worked with OFLC and ITSA on some large-scale classification and bankruptcy policy projects, including a series of reviews and changes to the classification system. Our challenge is to continue to provide the Attorney-General and government with high-quality policy advice on these projects in an efficient and effective manner.

We also maintained our ongoing work to finalise a review of the Legal Service Directions, as well as working with the ANAO in its development of a report into legal services arrangements. Emerging from these are a series of new priorities for OLSC, including:

- consideration of wide-reaching education campaigns to promote awareness of the Legal Service Directions, paying particular attention to educating smaller agencies
- assisting the ANAO in developing best-practice guidelines for recording and reporting legal services expenditure, and
- considering further enhancing our outreach initiatives to stakeholders.

Outlook

Among other key initiatives over the next reporting period, we will:

- work on further outreach initiatives for the Legal Services Directions
- build our legal cooperation and promotion of Australian legal services internationally and continue to be actively involved in bilateral free trade negotiations for legal services and negotiations in the World Trade Organization
- work with ITSA on a review to determine whether debt agreements are meeting the original policy objective of providing a cost-effective alternative to bankruptcy
- continue assistance with constitutional litigation, policy and public law issues
- promote the harmonisation of laws by working with the States and Territories through SCAG, in particular by securing the enactment of the national legal profession model provisions and by facilitating a working group charged with developing a national system for the regulation of personal property securities
- establish new arrangements for selecting legal services for our Department, and
- conduct a review of the fee waiver principles for classification fees under the National Classification Scheme, in consultation with OFLC and relevant stakeholders.

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

Performance overview

Output 1.3 is the responsibility of the Civil Justice Division and the Indigenous Justice and Legal Assistance Division. This follows a reorganisation of a number of departmental functions during 2004–05.

Family law

In family law, the Department's major achievement in 2004–05 has been assisting the Government to develop its response to *Every picture tells a story*, the House of Representatives Committee on Family and Community Affairs' report on its inquiry into child custody arrangements in the event of family separation. This involved working closely with the Department of Family and Community Services (FaCS) and the Department of the Prime Minister and Cabinet to ensure a cross-portfolio approach to the Committee's recommendations.

In responding to the report, the Government announced a package of new and expanded services, at a cost of \$397 million over four years, to help prevent separation and, where parents do separate, help them reduce conflict and reach agreement on parenting arrangements in a non-adversarial way. Central to the response is the establishment of a new network of Family Relationship Centres that will help families reach agreement outside the courts, where possible, and assist families to access a range of other services. The Government's response also contains the most significant changes to the *Family Law Act 1975* in 30 years, major

changes to the way courts handle parenting issues and a new combined registry for the Family Court and the Federal Magistrates Court.

On 23 June 2005, the Government tabled its formal response to the report and released an exposure draft of the legislative changes: the Family Law Amendment (Shared Parental Responsibility) Bill 2005. It immediately referred the Bill to the House of Representatives Standing Committee on Legal and Constitutional Affairs to allow for consultation upon the draft Bill. Among other things, the Bill will introduce a new presumption of joint parental responsibility to promote parents consulting together on important parenting decisions such as where a child goes to school or major health issues. It will make the primary factors when deciding the best interests of the child the right of children to know their parents and be protected from harm.

The Bill also will require parents to attend dispute resolution before taking a parenting matter to court (with exceptions, including situations of child abuse and violence). It will improve enforcement of parenting orders through the ability to impose cost orders, bonds, 'make up' time and compensation.

The *Bankruptcy and Family Law Legislation Amendment Act 2005* (BFLAA) received Royal Assent on 18 March 2005. This Act amends the *Family Law Act 1975* and the *Bankruptcy Act 1966* to address problems relating to the interaction of bankruptcy

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Family law reform— investing in the future

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This Department's Family Pathways Branch is working with the Department of Family and Community Services to bring about major changes to family law and family relationships services. In the 2005–06 Budget, \$397.2 million over four years has been provided to assist families before, during and after separation.

.....
Family relationship centres—a front door into the family law system.
.....

This package is the biggest-ever investment in the family law system. Changes to the legislation will promote the importance of children having a meaningful relationship with both their parents after separation.

The Attorney-General's Department is working to establish a network of 65 family relationship centres, which form the centrepiece of the package. The centres will be established across Australia over the next three years through an open competitive selection process. The centres will be a front door into the family law system. They will have a role in building strong, healthy relationships by helping couples with pre-marriage education and relationship skills.

The centres will be a point of referral and information for families seeking help (whether or not they are separated) and will assist separated parents to reach agreement on parenting arrangements. Where parenting arrangements break down or court orders are breached, the centres will be a first port of call to help parents resolve disputes and establish arrangements that work for them and more importantly their children.

A new national telephone advice line and web site will also support the new system. More details and updates on the establishment of the centres can be found at <www.familylaw.gov.au>.

law and family law, and implements key recommendations of the 2002 Report of the Joint Taskforce on the Use of Bankruptcy and Family Law Schemes to Avoid Payment of Tax (the Joint Taskforce).

Other improvements to the *Family Law Act 1975* were enacted by the *Family Law Amendment Act 2005*, which received Royal Assent on 6 July 2005. This Act includes amendments that supplement reforms in the BFLAA in response to the Joint Taskforce recommendations. The Act incorporates recommendations of the Senate Legal and Constitutional Legislation Committee and submissions received from stakeholders.

Applications were approved for scheme-specific factors and methods for valuing superannuation interests for the purpose of the 2002 family law reforms permitting splitting and flagging of superannuation interests on marriage breakdown.

The operation of Part VIIIB of the *Family Law Act 1975*, enabling superannuation to be split in property settlement proceedings between parties to a marriage on marriage breakdown or divorce, was extended by the *Family Law Amendment (Annuities) Act 2004* to superannuation-like annuity products. Those amendments, and supporting adjustments to the provisions of the *Family Law (Superannuation) Regulations 2001*, commenced on 15 June 2005.

The *Marriage Amendment Act 2004* was passed by Parliament and came into force on 16 August 2004. The Act amends the *Marriage Act 1961* by inserting a formal definition of marriage as 'the union of a man and a woman to the exclusion of all others voluntarily entered into for life'. The amendments also make clear that the definition of marriage applies to the recognition in Australia of foreign marriages.

In June 2005, the *Marriage Regulations 1963* were amended to provide for the introduction of a new Form 15 marriage certificate. This is the certificate given to marrying couples.

The changes have been made to ensure that the certificates are more secure against fraud or misuse and are readily traceable. The certificates, which marriage celebrants will be required to give to all marrying couples from 1 September 2005, will contain security features, including individual serial numbers. The certificate will provide couples with much more reliable evidence of change of name and marital status.

Reforms to the Marriage Celebrants Program contained in the *Marriage Amendment Act 2002* that came into effect on 1 September 2003 have entered their second year of implementation. During a transitional period of five years, a cap has been imposed on the number of marriage celebrants able to be registered each year. The cap is 10 per cent of the total number of Commonwealth-registered marriage celebrants calculated on an annual basis in defined geographic regions. Between 1 July 2004 and 30 June 2005, the Department received 1,538 applications for registration as a marriage celebrant. The very large number of applications for registration has necessitated the establishment of waiting lists for appointment in all regions.

Legal aid

Major achievements for 2004-05:

- *Legal aid agreements were signed for the provision of legal aid for Commonwealth law matters in all States and Territories.* Following intensive negotiations, State and Territory governments and legal aid commissions signed new agreements in March and April 2005. These replace the previous agreements and are due to expire on 31 December 2008. The signing of the agreements allowed additional funding of \$12 million per annum, provided in the 2004-05 Budget, to flow to legal aid commissions to enhance services.
- *Revised Commonwealth legal aid priorities and guidelines were implemented.* The new agreements implement revised

priorities and guidelines and provide a framework for improved financial management and accountability.

- *Development commenced on a new reporting system, Legal Aid Reporting Initiative (LARI).*

To underpin the financial management and accountability framework, the Department commenced work on developing a new data collection and reporting system to replace the Legal Aid System for Statistical Information and Exchange (LASSIE). The new system will provide functionality for both statistical and financial reporting, enabling the Department to manage impending changes in the management systems used by legal aid commissions.

Performance measures

Timely and sound assistance to the Attorney 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**

Family law

Marriage Celebrants Program

The implementation of the reforms to the Marriage Celebrants Program has involved ongoing discussions with marriage celebrants and other interested parties. The new system balances the needs of marriage celebrants registered under the previous system with appropriate development and accountability of marriage celebrancy as a whole.

Family Law Amendment Act 2005

The *Family Law Amendment Act 2005* included amendments to the family law provisions for child maintenance, allowing for recovery of child maintenance in circumstances where a person was found not to be liable to support a child on the basis that paternity testing showed they were not a parent of the child. The Department

assisted the Attorney-General to respond appropriately to balance competing public interests in the passage of these provisions. The Department also advised the Government on amendment of the Bill to respond to public and legal professional views on family court costs issues.

Bankruptcy and Family Law Legislation Amendment Act 2005

In advising the Attorney-General on progressing the passage of this Act in 2005, we took into account a range of opinions expressed by stakeholders on the harmonisation of bankruptcy law and family law. The new legislative regime allows for recognition of competing interests of creditors, bankrupts, the bankruptcy trustee and former spouses in proceedings where these areas of law interact.

International family law

Adoption

As part of its responsibility as the Commonwealth Central Authority—and in accordance with the Commonwealth–State Agreement for the Implementation of the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption—the Department cooperates with the States and Territories to facilitate the operation of existing arrangements, and development of new arrangements, with countries that are party to the 1993 Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption.

The Department, in cooperation with the States and Territories, also monitors Australia's bilateral adoption programs with China, Ethiopia, Fiji, Hong Kong, Korea and Taiwan, which are not party to the Convention.

In 2005, the Department made a submission to and appeared before the Standing Committee on Family and Human Services, which is undertaking an Inquiry into Adoption of Children from Overseas.

Abduction

The Department is the Commonwealth Central Authority for the 1980 Hague Convention on the Civil Aspects of International Child Abduction. In cooperation with State Central Authorities, it provides assistance to applicants to secure the prompt return of children wrongfully removed to, or retained in, any country party to the Convention.

At the end of the reporting year, agreement had been reached with the Lebanese government on the final text of an agreement that aims to promote cooperation between Australia and Lebanon in cases involving the protection of the welfare of children. This agreement is based on the Bilateral Agreement regarding Cooperation on Protecting the Welfare of Children between Australia and Egypt (which came into effect on 1 February 2002).

Child protection

The Department is the Commonwealth Central Authority for and oversees the implementation of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children. Each State and Territory will also implement the Convention through model legislation relating to child protection matters.

The Convention provides simple solutions to jurisdictional problems arising when parents and children travel from one country to another. It also facilitates the mutual recognition and enforcement of parental responsibility orders and child protection orders made under the Convention.

Overseas maintenance

The Department works closely with the Child Support Agency to ensure child support liabilities and proceedings pursuant to the *Family Law Act 1975* are pursued effectively and in a timely fashion.

The Department continues to liaise with the working group of the Hague Conference on Private International Law, which is drafting a new comprehensive Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance. The new treaty will develop a modern system of judicial and administrative cooperation between contracting states for the international recovery of child support.

Legal aid

Advice provided to the Attorney-General, the Prime Minister, Treasurer and Minister for Finance and Administration facilitated the signing of new legal aid agreements with the States and Territories that provide for individuals and families to access legal aid services for Commonwealth law matters.

Advice provided to the Attorney-General facilitated the establishment of the new duty lawyer service to assist people representing themselves before the Family and Federal Magistrates courts and the Family Court of Western Australia.

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

Family law

By commissioning the development of guidelines, training and research, we continued to promote best practice in services assisting separating families. Projects completed in 2004-05 include:

- a training package for group work facilitators in the Contact Orders Program (a program that helps separated families in high conflict)

- training for service providers in entering information about their services on Australian Law Online
- research on the training needs of workers in children's contact services, and
- research into the expectations and experiences of people using children's contact services.

Legal aid

Provisions in the new legal aid agreements set out the legal assistance services to be provided in relation to Commonwealth law matters. The new agreements also enhance transparency and strengthen financial management and control of Commonwealth funds.

New reporting requirements have been included in the new legal aid agreements. These requirements, together with the development of the new legal aid reporting system, will facilitate monitoring of legal aid commission performance under the agreements.

The new duty lawyer service to assist people to represent themselves in family law matters was successfully implemented.

The fees paid to private solicitors providing legal aid services for family and veterans' law matters have been brought up to a minimum of \$120 per hour (GST exclusive) in all jurisdictions except Tasmania. The fee increase in that State is being phased in.

The cost limits on family law matters have been increased to \$12,000 for party professional costs and \$18,000 for child representative costs.

Community Legal Services Program

The data collection and reporting system used by community legal centres (CLCs) was upgraded during 2004–05. The enhanced system provides for the improved collection and monitoring of performance information submitted by CLCs in accordance with their service agreements.

A review of CLCs in New South Wales was commenced in August 2004. This is the last of a series of joint Commonwealth–State reviews, which provide both governments with a sound basis for future decision-making under the program. The final report is being drafted.

Administration of programs

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

Family law

As indicated above, consultation with stakeholders enabled us to provide sound advice to the Government on its proposed reforms to the family law system. With the help of FaCS, we held face-to-face meetings around the country, in capital cities and some regional areas, with over 300 organisations, service providers and interest groups. We also held teleconferences with rural service providers and received over 400 written submissions. Following the Government's announcement of its package of reforms in May 2005, we held scenario workshops with a range of service providers and relevant agencies to assist us to identify the day-to-day operational issues associated with Family Relationship Centres. We are continuing to consult with these and other stakeholders as we implement specific aspects of the reform package.

We liaised regularly with stakeholders in the family law system—in particular, community-based service providers. We also consulted with professional bodies such as the Law Council of Australia, including its Family Law Section, legal aid commissions, CLCs, and relevant government agencies such as the Insolvency Trustee Service Australia, on a range of issues.

Reforms to the *Family Law Act 1975* were undertaken with extensive consultation with representatives of community organisations providing services to separating couples, the Family Court, the Federal Magistrates Court, representatives of the legal profession, legal aid commissions and some CLCs.

We also consulted government and non-government agencies in the family law system through participation in the Separation Support Network, which has representatives of key organisations working towards a more coordinated family law system. The Department also participated in a joint working group to examine ways of better coordinating the Commonwealth's family law system with State and Territory child protection systems.

Significant consultation also took place with the Child Support Agency and FaCS on development of reforms related to family law and child support.

Marriage celebrants program

As part of the process for introducing the new couples marriage certificate, consultation took place with stakeholders in marriage celebrancy. Celebrant associations were surveyed on issues including paper type and printability of the new certificates. Celebrant associations, Registries of Births, Deaths and Marriages, and Nominating Authorities for Recognised Denominations were consulted on record keeping associated with the new certificates.

International family law

The Department participated in two intercountry adoption conferences with the State and Territory central authorities for intercountry adoption. The first conference was held in Canberra in November 2004, and the second in Hobart in April 2005.

The Department responded to queries from the public and members of the legal profession on international family law

matters, including parental abduction, adoption and child maintenance. The Department also maintains the publicly available International Child Abduction: Official Australian web site, which includes information on the Convention, related legislation and how to make an application under the Convention. The web site address is <www.ag.gov.au/childabduction>.

Legal aid

The Department manages the Commonwealth Criminal Law—Expensive Cases Fund, which has been established to assist legal aid commissions to cater for high, one-off costs associated with providing assistance for a particular criminal law matter.

Financial assistance

The Department administers a range of schemes for legal assistance. These include statutory schemes under the *Native Title Act 1993*, the *Federal Proceedings (Costs) Act 1981*, the *Human Rights and Equal Opportunity Act 1986* and the *Judiciary Act 1903* and non-statutory schemes such as the Overseas Custody (Child Removal) Scheme, Special Circumstances (Overseas) Scheme and the Commonwealth Public Interest and Test Cases Scheme.

The largest expenditure from the appropriation for the schemes of financial assistance is for administration of the statutory scheme under section 183 of the *Native Title Act 1993*. The guidelines in accordance with which assistance is provided under that scheme take account of the unique nature of native title matters, which potentially affect a large number of respondents with diverse interests. As at 30 June 2005, there were 1,265 current grants of financial assistance under the native title financial assistance schemes.

Consultation/liason with stakeholders

- maintenance of effective partnerships and consultative arrangements with stakeholders

Family law

In assisting the Government to develop its response to *Every picture tells a story*, we undertook wide-ranging public consultations on proposed changes to the family law system. These consultations enabled us to provide advice to the Government that took into account the diverse views in the community about the proposed reforms.

Legal aid

Staff of the Department met with National Legal Aid and individual legal aid commissions during 2004–05 to discuss key issues with the legal aid program.

Community Legal Services Program

The Community Legal Services Program is managed as a partnership between the Australian and State governments in those jurisdictions where there is a State Community Legal Centre funding program. The Department funds State legal aid commissions (or, in South Australia, the State Attorney-General's Department) to employ state program managers to manage the program in each State on behalf of the Commonwealth. The state program managers also undertake program management functions on behalf of the State. This arrangement provides funded organisations with a single reporting framework for combined Commonwealth and State monies.

The Department regularly consults with community legal centres through State program managers and through the sector's industry representative group, the National Association of Community Legal Centres.

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 been wrongfully removed.

The Department has secured maintenance payments for children whose maintenance is not covered by the *Child Support (Assessment) Act 1989* where one of the parents lives overseas.

The Department has also facilitated the registration of custody orders from reciprocating jurisdictions.

Evaluations

Review of Australia's bilateral adoption programs

A review of Australia's bilateral adoption programs with China, Ethiopia, Fiji, Hong Kong, Korea and Taiwan was completed by an interdepartmental committee of Commonwealth and State Central Authorities.

The review examined the programs in respect of their current practice and their conformity with the standards and principles set out in the 1993 Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption. The committee recommended that the programs be continued, as each of those programs meets Hague Convention standards. At the Community Services Ministers' Advisory

Council's meeting on 7 October 2004 State and Territory members endorsed these programs. They also agreed to a robust and independent review of these arrangements in 2009 by the Australian Central Authorities. However, since that time, the Ethiopian program has been subject to further scrutiny and it has been decided that, pending the outcome of the review, it should be examined further.

Review of the Community Legal Service Funding Program—New South Wales (continuing)

A review of New South Wales community legal centres commenced in August 2004. The review committee, comprising Australian Government and New South Wales government officials as well as representatives from the New South Wales community legal services sector, New South Wales Council of Social Services and the Law Society of New South Wales, called for public submissions in October 2004. The committee has since conducted a series of consultations with service providers, including specialist centres, rural and regional community legal centres and other relevant stakeholders. The final report is in the process of being drafted.

Evaluation of the legal aid aspects of the Magellan project

In June 2005, the Attorney-General decided to extend the waiver of the fee cap in the Legal Aid Guidelines for Magellan cases until 30 September 2006. Magellan is a Family Court of Australia program that fast tracks and more intensively case manages cases in which serious allegations of child abuse are made.

Consideration by the Attorney-General of any further extension of the waiver will be informed by an evaluation of the Magellan project, including the legal aid elements of the project.

Purchaser–provider arrangements

Legal aid

Funding for the provision of legal aid services and the Commonwealth legal aid program was distributed to legal aid commissions under new legal aid agreements. The initiatives described under the 2004–05 Budget measure 'Commonwealth legal aid—equitable access' have been implemented.

Challenges

Family law

The Government's response to the *Every picture tells a story* report represents the most significant changes to the family law system since 1975. There will be major challenges to ensure that all of the new and expanded services and legislative reforms are progressed in an effective and timely manner. However, the major challenge will be encouraging cultural change and helping the community understand the Government's objectives.

To meet these challenges, we are working closely with FaCS and the Department of Human Services to ensure a cross-government approach to these challenges. We will also be advising the Government on what needs to be done to communicate the reforms to the wider community.

Legal aid

Funds were provided in the 2004–05 Budget to improve the Department's capacity to manage its financial and accountability requirements. This included funds to enable the Commonwealth to enhance reporting capabilities and to improve and automate business processes. As part of these initiatives, the Department has commenced development of a new data collection and reporting system, the Legal Aid Reporting Initiative (LARI), to replace the current Legal Aid Statistical System for Information Exchange (LASSIE). The Department anticipates that LARI will be fully implemented during 2005–06.

Outlook

Family law

Implementation of the significant reforms flowing from the Government's response to the *Every picture tells a story* report will be our major focus next year—and indeed the following three years. We will assist the Government with the Family Law Amendment (Shared Parental Responsibility) Bill 2005, including advising on feedback received during the exposure process and Parliamentary Committee consideration. We will work closely with FaCS, the courts and other relevant agencies. In 2005–06, a primary focus will be developing the new network of Family Relationship Centres and selecting organisations to manage them so that 15 centres can commence operation in

mid-2006. In addition, the legislative reforms that are required to pick up the references of power from some States to allow de facto couples to resolve their disputes concerning property matters in courts exercising jurisdiction under the *Family Law Act 1975* will be a major priority. Ongoing work on administering the Marriage Celebrants Program and the case work associated with our responsibilities in International Family Law will continue to be significant priorities.

Legal aid

The legal aid program will be working closely with legal aid commissions, through National Legal Aid, to consider issues affecting access to legal aid.

Output 1.4—Legal services and policy advice on international law

Performance overview

Output 1.4 is the responsibility of the Office of International Law. Through the Office, the Department provided legal services and advice on international law that contributed to the welfare, and promoted the interests, of the Australian community directly and through the implementation of international law in Australian domestic law.

Advice we provide contributes not only to achieving the outcomes for the Department, but also to outputs and outcomes of other departments. We provide legal advice on the broad spectrum of international law. We represent Australia in the negotiation of a wide range of treaties and other legal instruments, and provide advice on the domestic implementation of treaties.

- Together with the Department of Foreign Affairs and Trade (DFAT) and Geoscience Australia, we prepared a submission under the United Nations Convention on the Law of the Sea, claiming an extended continental shelf for Australia.
- Together with DFAT, we successfully negotiated a maritime boundary agreement with New Zealand.
- Together with DFAT and other agencies, we have been negotiating maritime arrangements with East Timor.
- We prepared Australia's report on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- We contributed to the successful outcome of the World Trade Organization (WTO) dispute brought by Australia and other countries against the European Communities, concerning subsidies for sugar exports.

Performance measures

Relevant, sound and timely legal advice on international law issues

We provided detailed advice on the law of the sea in developing a major submission, with DFAT and Geoscience Australia, in support of Australia's assertion of an extended continental shelf for Australia. Under the UN Convention on the Law of the Sea, Australia is entitled to areas of continental shelf beyond 200 nautical miles of Australia that are within limits defined in the Convention. The completed submission set out in detail Australia's extended continental shelf in 10 distinct areas off the Australian mainland and outlying areas, covering over three million square kilometres.

We provided advice on the law of the sea, which assisted the Government in the development of a plan for offshore and maritime security.

We provided advice on a wide range of fisheries issues, assisting the Government to defend Australia's interests in its marine resources.

We continued to provide advice in the implementation of the Proliferation Security Initiative (PSI), a multi-nation activity aimed at preventing the development and transfer of weapons of mass destruction. We chaired the legal experts group of the PSI meeting in Sydney in December 2004, focusing on the international law relating to air interdictions.

We provided advice to other agencies on a variety of legislation and policy initiatives, to help them ensure consistency with international law. Particular areas of advice included law of the sea, law of armed conflict, human rights law, security issues, and environmental law.

CASE STUDY

Extended continental shelf limits

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CASE STUDY

Australia is nearing the end of a process to confirm its jurisdiction over large areas of seabed that are over 200 nautical miles from Australia. There are ten such regions of continental shelf linked to the Australian landmass, with a total area of 3,372,000 square kilometres. Australia has both resource and environmental jurisdiction over the seabed of this vast area.

Under the Law of the Sea Convention, Australia was required to submit these areas to the UN Commission on the Limits of the Continental Shelf. Australia's submission documentation, weighing some 700 kilograms, was lodged with the United Nations in November 2004. It was the subject of a presentation to the full Commission in April 2005 by a delegation led by the Attorney-General's Department and the Department of Foreign Affairs and Trade, together with representatives from Geoscience Australia and the Department of Environment and Heritage.

The lodgment and presentation of Australia's submission was the culmination of over ten years of work. This involved ship surveys, collation and interpretation of the data collected, technical and legal interpretation, diplomatic representations to other countries with an interest in Australia's submission and drafting and finalising the submission.

A Subcommission, chaired by Mr Harald Brekke from Norway, was formed in April to consider the detail of Australia's submission. The Australian delegation met with the Subcommission on a number of occasions in April 2005 and has since answered a range of questions and requests for further information. Further meetings with the Commission will take place over the next year. The Subcommission will make recommendations to the full Commission, after which the Commission will make its final recommendations.

The development and presentation of Australia's submission is an excellent example of a multidisciplinary cooperative effort by a number of departments and portfolios, that will bring great benefit to Australia.

The Australian submission covers an area of continental shelf linked to the Australian landmass totalling 3,372,000 square kilometres.

The Department cleared National Interest Analyses prepared for all treaties that the Government proposes to ratify. It appeared regularly before the Joint Standing Committee on Treaties to advise on international law issues. The outcome of this activity is proper analysis for the Parliament and the public on international obligations that Australia proposes to undertake.

Ministers and other clients have expressed high levels of satisfaction with the quality, relevance and timeliness of advice provided.

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

We provided legal and policy advice on a wide range of matters considered at the UN Commission on Human Rights (CHR). This helped to ensure consistency of the Australian position at CHR with relevant policy on domestic and international law matters.

We contributed to the development of policy on proposed major reforms to the United Nations, to be considered at a Summit of World Leaders in September 2005.

We held a conference on international trade law in September. Participants from government, academia and the private sector discussed policy and legal developments in trade law. The participants commented favourably on the organisation and content of the conference.

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

We contributed, as part of a team headed by DFAT, in dispute settlement proceedings before the WTO.

In a case brought by Australia, together with Brazil and Thailand, involving a challenge to the European Communities' regime for sugar

export subsidies, the WTO Appellate Body decided in favour of the Australian position. The outcome of the case will be of significant benefit to the Australian sugar industry, in creating a more competitive world market for sugar.

In addition, Australia and the United States brought proceedings in relation to European Communities' legislation for the protection of geographical indications for foodstuffs and agricultural products. The WTO Panel found aspects of this legislation inconsistent with the European Communities' WTO obligations. The case is of significance for Australian farmers and food producers.

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

We have been negotiating, or helping other portfolios to negotiate, treaties and other international agreements in many areas. These include:

- a maritime boundary agreement with New Zealand and the implementation of the agreement by proclamations under the *Seas and Submerged Lands Act 1973*
- negotiations with East Timor towards maritime arrangements in the Timor Sea
- a fisheries management convention for the Southern Indian Ocean
- negotiations, in the UN Commission on International Trade Law, of an instrument on carriage of goods by sea
- negotiation of amendments to International Maritime Organisation conventions on the safety and security of ships and offshore installations
- a liability annex to the Antarctic Treaty, and
- regional and bilateral aviation safety agreements.

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

We responded to a number of communications to the UN human rights treaty bodies. The Australian responses were thorough and well argued.

We prepared Australia's report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was lodged with the United Nations on 7 April 2005.

We commenced drafting of Australia's report under the International Covenant on Civil and Political Rights. This included drafting an expanded core document, to be used as the core of reporting under all the human rights treaties, setting out information about Australia's legal, social and political frameworks. This contributes to greater efficiency and effectiveness in the system for monitoring compliance with human rights obligations.

Challenges

International law issues arise across the range of policy responsibilities of the Government. Officers dealing with these issues need to be able to grasp quickly the policy settings, including in novel factual contexts. Staff selection and development focuses on skills such as strategic and analytical thinking, the exercise of sound judgment, and the development of productive relationships with client departments and other agencies. Attention is also paid to knowledge management within the Office to ensure that there is ready access to precedents and other important sources of knowledge about recurring or related issues.

Outlook

We will continue to provide legal advice across a wide variety of areas of government activity.

High-priority projects will be:

- the negotiation of several free trade agreements
- the development of legal frameworks to support the further implementation of offshore and maritime security measures, and
- Australia's appearance in September 2005 before the United Nations Committee on the Rights of the Child.

Output 1.5—Drafting of legislative and other instruments, publication of legislative materials and provision of related legal services

Performance overview

Output 1.5 is the responsibility of the Office of Legislative Drafting and Publishing.

Through the Office, the Department provides a high-quality legislative drafting service for Commonwealth legislative and non-legislative instruments. Drafting is in plain English to make the legislation easy to understand and consistent in style.

The Department publishes up-to-date Commonwealth legislation on the ComLaw and SCALEplus web sites, and manages the registration of legislative instruments and compilations of legislative instruments on the new Federal Register of Legislative Instruments (which is also published on ComLaw). It arranges commercial printing and publishing of Commonwealth legislative materials at reasonable cost to the public, and produces and distributes the Government Notices series of the *Commonwealth of Australia Gazette*.

These activities make a significant contribution to ensuring an equitable and accessible system of federal civil justice.

Major achievements for 2004-05:

- The *Legislative Instruments Act 2003*, which commenced on 1 January 2005, introduced a modern regime for managing Commonwealth legislative instruments. It established the Federal Register of Legislative Instruments, which provides the public with quick and easy access to legislative instruments and related material through the Internet. All Commonwealth rule-making agencies are required to lodge

new legislative instruments for registration as soon as practicable after making, and to register ('back-capture') all existing instruments by the end of 2007.

The Department conducted an education program for Commonwealth agencies to prepare them for the new legislative instruments regime. It also developed a new IT system to manage the lodgment and registration of the large number of legislative instruments requiring registration, and created a new web site, ComLaw, which provides access to the Register as well as to Acts and other legislative material in a single integrated system. ComLaw is progressively replacing SCALEplus. These activities have required significant internal coordination and liaison with Australian Government agencies and other stakeholders.

- A large number of instruments were drafted. They included Regulations relating to aviation and maritime transport security, choice of superannuation, corporations law and financial sector reform, petroleum industry reform and migration. Other instruments included the Classification (Films and Computer Games) Determination, setting a new regime of classification markings.
- We continued to participate in drafting legislation for Pacific island nations (Tuvalu, Kiribati and Papua New Guinea) dealing with money laundering, proceeds of crime and mutual assistance in criminal matters, as well as on model provisions dealing with terrorist financing and transnational organised crime for

the Pacific Island Forum states. The Department also drafted legislation for Cambodia to enable it to comply with the various UN conventions relating to terrorism.

- A new tender was issued for the printing, distribution and sale of all Commonwealth Acts and Select Legislative Instruments. The contract was signed in December 2004.

Performance measures

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

Demand for the Department's drafting and advising services remained high in 2004–05 (see Table 3). The Department's traditional and non-billable work includes drafting most instruments in the former Statutory Rules series and the new Select Legislative Instruments series, which started on 1 January 2005. The trend since 1988–89 of an average 10 per cent increase in the total number of pages drafted continues.

The drafting workload included an increasing number of instruments for the Attorney-General's portfolio. They included approvals of alternative methods for valuing

superannuation interests for the purpose of the Family Law superannuation legislation, and non-legislative instruments, including appointments, delegations, authorisations and agreements.

Other agencies for which large volumes of instruments were drafted included IP Australia, the Civil Aviation Safety Authority, the Department of Agriculture, Fisheries and Forestry, the Family Court of Australia, 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 formed an important area of the Department's drafting work during the year, including several sets of Regulations implementing parts of the aviation and maritime security packages. The Department continued its involvement in preparing legislation for Pacific island nations dealing with proceeds of crime, mutual assistance in criminal matters, money laundering and implementation of enhanced cooperation arrangements with Australia.

Table 3: Demand for drafting and advising services, 2003–04 and 2004–05

	2003–04	2004–05	Percentage increase/decrease
Total draft instruments	763	677	– 11%
Billable draft instruments	238	191	– 20%
<i>(Billable draft instruments as percentage of total draft instruments)</i>	31%	28%	– 3%
Total billable revenue for drafting services	\$518,062	\$728,438	+ 41%
Statutory Rules and Select Legislative Instruments drafted	401	354	– 12%
Total number of pages of Statutory Rules and Select Legislative Instruments drafted	4,406	5,067	+ 15%

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

The Department regularly receives positive comments from clients about the quality of its legislative drafting services. Letters of commendation were received, in particular from the departments of Transport and Regional Services, Health and Ageing, and Family and Community Services. The Governor-General also asked on at least two occasions that the officials responsible for preparing a large and complex instrument be informed of his appreciation of their work.

Of the 354 Statutory Rules made during 2004-05, two were disallowed by the Senate. None of these instruments contravened the scrutiny principles of the Senate Standing Committee on Regulations and Ordinances. The Committee raised drafting-related concerns about two instruments, both of which had been drafted in accordance with the instructing agency's requirements.

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

The Department prepares electronic compilations of all Acts, Regulations and a small number of other instruments. In 2004-05, more than 43,000 amending items were incorporated (an increase of 116 per cent over 2003-04), and the Department continued to meet its performance and publishing standards. The Department usually has amendments incorporated and loaded to SCALEplus or ComLaw within one to two days of receipt of the electronic copy, depending on the volume of legislation received.

Arrangements for legislative instruments changed on 1 January 2005 with the implementation of the Federal Register of Legislative Instruments. Under the *Legislative Instruments Act 2003*, compilations of legislative instruments are required to be registered as soon as practicable after commencement of an amending instrument. Generally, it is the responsibility of Commonwealth agencies to lodge compilations of legislative instruments for registration. The Attorney-General's Department prepares and registers compilations of Regulations as amended.

Eighteen reprinted Acts, Statutory Rules and instruments were made available in response to public demand. This returns to the trend of recent years (excluding last year), in which electronic publication has generally been replacing hard copy.

The Department complies with the tabling requirements set down in the Legislative Instruments Act and generally delivers Registered legislative instruments to the respective tabling offices within one to two working days after Registration.

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

During 2004-05, the Department made available more than 1,800 items of new and compiled Commonwealth legislation on SCALEplus and responded to numerous enquiries from the public seeking information about legislation. We are still recording over one million 'hits' each month on SCALEplus.

Our objectives are to load new numbered Acts to ComLaw within one business day of receipt, and compilations within three business days. These targets are generally met or bettered.

The new ComLaw site is also recording an increasing number of hits and visitor sessions. A large and increasing volume of email is received on the ComLaw feedback link, with many users expressing gratitude for the assistance provided by the Department and useful feedback on the new site.

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

The Legislative Instruments Database (LID)—the precursor to the Federal Register of Legislative Instruments (FRLI)—was closed to new data on 1 January 2005 and replaced by ComLaw–FRLI. Legislative instruments then in force were transferred from LID to the FRLI on ComLaw in late December 2004. Since 1 January 2005, Register staff have assessed and registered 1,382 new instruments and 1,187 existing instruments. All new instruments have been registered in time for them to be enforceable. All instruments are published on ComLaw–FRLI within two hours of registration.

Challenges

Some important challenges for the Office include improvements and enhancements to the new ComLaw web site (including FRLI) and managing the back-capture of existing legislative instruments, some of which are due to be lodged for registration on the FRLI by 31 December 2005.

Outlook

The Department will continue to bed down the new ComLaw system, monitor public feedback on the site, and make further improvements and enhancements to assist users of legislation. Another important goal will be the successful back-capture of those existing legislative instruments due to be lodged for registration on the FRLI by 31 December 2005.

Output 1.6—Legal services and policy advice on information law

Performance overview

Output 1.6 is the responsibility of the Information Law and Human Rights Division. Through the Division, the Department provided timely and sound assistance to the Attorney-General and the Government on privacy and freedom of information law, copyright law and related issues.

Copyright

The entry into force of the Australia–United States Free Trade Agreement (AUSFTA) on 1 January 2005 was made possible by the successful conclusion to intensive deliberations and discussions involving officers of our Department, and the rapid preparation of copyright legislation that was enacted very shortly before that date. The second half of the year saw the initiation and, in some cases the completion, of major reviews in the areas of unauthorised accessing of pay television broadcasts, broadcasting royalties for sound recordings and possible new exceptions to copyright.

Extensive and complex legislative amendments to the *Copyright Act 1968* developed by the Department to implement the copyright obligations of the AUSFTA were passed by the Parliament and came into effect on 1 January 2005. Related amendments to the *Copyright Regulations 1969* were also made and commenced on that date.

We undertook a review of law and policy regarding unauthorised access to and use of pay television broadcasts, which included the release of a discussion paper in May 2005. On 30 June 2005, the Attorney-General announced that the Government would introduce amendments to criminalise various unauthorised activities, including dishonestly accessing pay television broadcasts.

Work continued on the review of the reforms made by the *Copyright Amendment (Digital Agenda) Act 2000*, which updated the *Copyright Act 1968* to take account of technological developments such as the Internet and Pay TV. This took place in conjunction with other related projects—in particular, the examination of fair use, fair dealing and other copyright exceptions.

The Copyright Amendment (Film Directors' Rights) Bill, introduced into Parliament in March 2005, will confer a limited share of the copyright in films on their directors. This has symbolic as well as economic significance in recognising the contribution of directors to their films.

The Department assumed responsibility for the Commonwealth Copyright Administration (CCA) on 1 March 2005 from the Department of Communications, Information Technology and the Arts (DCITA). The CCA is responsible for the management of copyright in published text-based materials on behalf of Commonwealth agencies. During the year, the CCA responded to more than 1,700 requests. Of those, over 600 were in the period after the transfer to the Department.

The final report of the Copyright Law Review Committee into Crown ownership of copyright material was released in April 2005. The Department provided secretariat support for the Committee. The Head of the Copyright Law Branch was a member of the Committee. The Committee recommended that government should, as far as possible, be on the same footing as other parties, and that there should be the widest possible access to government-owned materials. The Government is considering the recommendations of the report.

Privacy

In August 2004, the Attorney-General asked the Privacy Commissioner to review the private sector privacy provisions of the *Privacy Act 1988*. The Department was a member of the review Steering Committee established by the Privacy Commissioner and also participated in focus groups organised by the Privacy Commissioner. The Privacy Commissioner's Report—*Getting in on the Act: The review of the private sector provisions of the Privacy Act 1988*—was presented to the Attorney-General in March 2005.

We played a leading role in an initiative in Asia–Pacific Economic Cooperation (APEC) to develop a common approach to privacy in the region. APEC is an appropriate forum to achieve this goal, as it covers a range of economic, cultural and legal systems. After two years' work by the APEC Electronic Commerce Steering Group, APEC Ministers agreed on the APEC Privacy Framework in November 2004 at their meeting in Santiago, Chile. The APEC framework consists of nine privacy principles, supported by a preamble and scope statement, and a section that provides guidance on domestic implementation. Australia continues to play a leading role in ongoing work to develop the international implementation section of the framework.

Australia continues to engage with the European Commission to progress an adequacy rating for the Privacy Act and in relation to proposals to access passenger name record data from airlines entering Australia. While these matters have not advanced as quickly as anticipated, the outlook for achieving an adequacy rating remains positive.

The Department continued its involvement in the Standing Committee of Attorneys-General (SCAG) Working Party on Unauthorised Photos on the Internet and continued to chair the joint SCAG–Ministerial Council on Consumer Affairs

Working Party on Residential Tenancy Databases.

The Government announced the appointment of three new members of the Privacy Advisory Committee in February 2005, including Ms Joan Sheedy, Assistant Secretary, Information Law Branch. The Committee is a statutory body that advises the Privacy Commissioner on matters relevant to her functions.

We participated on an interdepartmental committee established by the Department of Foreign Affairs and Trade to develop the Australian position on the draft Universal Declaration on Bioethics and Human Rights.

Freedom of Information

To promote greater consistency in decisions under the *Freedom of Information Act 1982* (the FOI Act), the Department has commenced an update of the guidelines, known as the FOI Memoranda, to guide FOI decision makers. It is proposed to write each memorandum by subject matter, in plain, non-technical English incorporating developments in FOI policy and law since the memoranda were first published. The memoranda will be progressively rewritten and published on the Department's web site.

Performance measures

Policies recognise rights and responsibilities of stakeholders

Copyright

We engaged with copyright stakeholders on a range of matters and in various ways throughout the year.

Following the passage of the *US Free Trade Agreement Implementation Act 2004* in August 2004, we received submissions and met with many stakeholders on aspects of that legislation. As a result of those consultations, minor and clarifying amendments were included in the Copyright

CASE STUDY

The APEC Privacy Principles

Australia has been closely involved in conceiving and developing the APEC Privacy Principles.

In February 2003, officers of this Department initiated discussions leading to the establishment of the APEC Privacy Sub-Group. The Sub-Group was established to develop an APEC Privacy Framework, including implementation mechanisms. The first chair of the Sub-Group was Mr Peter Ford, a first assistant secretary of this Department until his retirement in 2004.

Australia was concerned that the European Union (EU) approach to privacy protection was too restrictive and wanted to work towards an international standard of greater utility. APEC was considered to be an appropriate forum in which to take forward this issue as its membership covered a diverse range of economic, cultural and legal systems.

In developing Privacy Principles, the Sub-Group took as its starting point the OECD Privacy Protection Guidelines, developed in 1980. The OECD Guidelines reflected an international consensus and articulated privacy principles of general application. These Guidelines had earlier served as the basis for Australia's *Privacy Act 1988*.

Although the OECD Guidelines continued to be held in high regard, they could not be adopted as the principal international privacy standard without modification. This was because of the differences between the relatively homogenous OECD environments and the diverse APEC environments, and factors that were not present 20 years

ago such as the Internet and other communications technologies.

In participating in the Sub-Group, Australia has worked to assist all parties to reach agreement. After extensive negotiation the resulting APEC Privacy Principles were endorsed by APEC Ministers at their November 2004 meeting in Santiago, Chile. Ministers recognised that the Principles would make a significant contribution to APEC's efforts to increase cross-border trade and growth in e-commerce in the Asia Pacific region.

Australia initiated the Sub-Group because it was concerned that the European Union (EU) approach to privacy protection was too restrictive.

The APEC Privacy Framework promotes a consistent approach to information privacy protection across APEC member economies while avoiding the creation of unnecessary barriers to information flows. While the framework applies to both the government and private sectors, it is primarily intended to guide business.

The Sub-Group continues to work on the international implementation of the APEC Privacy Principles with the aim of developing a regional approach to privacy that will support global business models. This will be an important element in ensuring the success of the Privacy Principles. Australia continues to participate actively in this work.

CASE STUDY

Australia–United States FTA

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CASE STUDY

On Saturday, 16 October 2004, the Department of Foreign Affairs and Trade (DFAT) contacted the Copyright Law Branch with an urgent request for assistance.

The proposed 1 January 2005 start date for the historic Australia–United States Free Trade Agreement (AUSFTA) was fast approaching.

Legislation implementing the AUSFTA had already been passed by the Australian Parliament, but the United States Government and domestic copyright stakeholders considered that further changes to Australian law were necessary.

The stakes were high—the Australian Government had made it clear that the

AUSFTA would result in significant benefits to the Australian economy and had committed itself to ensuring the AUSFTA commenced on 1 January 2005.

Within three days of DFAT’s request, Principal Legal Officer Gabrielle Mackey was on her way to Washington, unsure of how long she would be away. Her role was to provide expert briefing on the outstanding copyright issues to the Australian Embassy officials meeting with the US Trade Representative.

The meetings were fruitful and 10 days later Ms Mackey was back in Canberra working with the rest of the small team preparing, clearing and steering through Parliament the necessary legislative amendments.

It was a huge collaborative effort. The team, including administrative staff, worked late at night and on weekends to meet the deadline. They were closely supported by other areas of the Department including the Office of International Law and the Office of Legislative Drafting.

In addition, the team provided regular briefings to the Australian Embassy in Washington, the Department of the Prime Minister and Cabinet, and the Department of Communications, Information Technology and the Arts.

By the end of November, legislation had been prepared and introduced into Parliament. It passed both chambers, without amendment, within three weeks. Complementary regulations were gazetted soon after, ensuring that the AUSFTA came into effect as scheduled on 1 January 2005.



Australia–US Free Trade Agreement Copyright Obligations Team: (left to right) Robert Cornall, Gabrielle Mackey, Fiona Phillips, Kirsti Haipola, Barton Hoyle, Mark Jennings and Sam Ahlin. Absent: Geoff McDonald, Claire Parkhill and Chris Creswell.

The team received an award for professionalism and dedication to achieving the Government’s high priority of implementing the Australia–US Free Trade Agreement.

Legislation Amendment Bill 2004. Passage of that Bill in December 2004 implemented copyright obligations under the AUSFTA.

On 20 May 2005, the Department convened a Copyright Law Consultative Forum in Sydney. Representatives from over 30 key copyright stakeholder groups attended. At the forum, the Attorney-General outlined the Government's copyright reform agenda, and participants outlined key copyright priorities from their perspectives. The forum provided valuable ideas for future effective consultative mechanisms.

The Copyright Amendment (Film Directors' Rights) Bill was introduced to recognise directors as major stakeholders in films directed by them.

Our discussion paper, released in February 2005 to review the statutory cap on the royalties payable for broadcasting sound recordings, gave stakeholders the opportunity to make their views known.

The Attorney-General announced a review of whether a 'fair use' exception or other new exceptions to copyright should be enacted. We invited stakeholders to make submissions in response to our issues paper of 5 May 2005.

As part of the review of law and policy affecting pay television broadcasts, we released a discussion paper and invited stakeholders to make submissions on whether or not various unauthorised activities concerning subscription broadcasts ought to be criminalised. We took all submissions into consideration in the finalisation of the policy review.

As part of its inquiry into Crown copyright, the Copyright Law Review Committee prepared a discussion paper for a forum in Sydney on 27 July 2004 with key stakeholders. Following the forum, the Committee held further consultations in Perth and Melbourne with State governments and other stakeholders.

Privacy

To ensure that the private sector provisions of the *Privacy Act 1988* continued to achieve the Government's aim of a flexible and 'light-touch' privacy framework for the private sector, the Attorney-General asked the Privacy Commissioner to review these provisions. The Privacy Commissioner engaged in extensive public consultations in the course of conducting the review, including public forums in all States and Territories.

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

Copyright

The Government defined the scope of the copyright being conferred on film directors in the Copyright Amendment (Film Directors' Rights) Bill to ensure an equitable balance of their interests and those of film producers, as the existing copyright holders in most films.

The initiation of the review of whether there should be a fair use exception or other new exceptions to copyright shows the Government's willingness to consider proposals to balance reasonable access to copyright for users against protection of copyright.

A significant aspect of the amendments implementing Australia's copyright obligations under the AUSFTA was a cooperative voluntary scheme involving copyright owners and carriage service providers responsible for online systems and networks used to distribute copyright material. The amendments ensured that there were safeguards to minimise abuse of the scheme through the procedures prescribed in relation to the conditions of the scheme.

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

Copyright

Our web site includes a short guide to copyright that provides an easily understood overview of Australian copyright law. The guide is also available in hard copy at no charge to members of the public who contact the Department.

The web site of the Copyright Law Review Committee was regularly updated with information on progress on the Crown copyright inquiry. The final report of the Committee was released in April 2005 and made available on our web site. Copies of the final report were also made available in hard copy.

We produced an electronic newsletter (*e-News on copyright*) regularly during the year. We also contributed regular items to the *Australian Intellectual Property Journal*. These publications provide progress reports on copyright policy and legislative projects. The publications also give plain-English explanations of amendments to the Copyright Act.

Members of our Department regularly spoke at seminars and functions on copyright law.

Freedom of Information

Our Department maintains a Freedom of Information (FOI) web site that contains a range of useful FOI information for agencies and the community at <www.ag.gov.au/foi>.

Challenges

We will prepare a government response to the Senate Legal and Constitutional References Committee report *The real Big Brother: Inquiry into the Privacy Act 1988*. We will also prepare a response to the Privacy Commissioner's report *Getting in on the Act: The review of the private sector provisions of the Privacy Act 1988*.

We will be seeking to achieve outcomes for the implementation stages of the APEC privacy principles.

We will have privacy policy input into the development of identity security and counter-terrorism measures.

We will be seeking to achieve an adequacy rating pursuant to the relevant EU privacy Directive for both the *Privacy Act 1988* and the PNR (passenger name record) data held by Australian Customs.

Outlook

Amendments will be introduced to make it a criminal offence to dishonestly access a subscription broadcast without payment of the subscription fee for the service accessed.

The 'fair use' review will be completed.

The Government's review of the copyright Digital Agenda reforms will be completed.

Legislation to recognise Indigenous Communal Moral Rights will be progressed.

We will be working with other agencies, including IP Australia and DCITA, to develop a whole-of-government approach to the management of intellectual property. The objective is to develop a framework that will encourage and improve good practice in the use and management of IP by government agencies. The work will incorporate a review of the *Commonwealth IT IP guidelines*.

We will complete steps to accede to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty.

We will progress the implementation of the remaining AUSFTA obligations regarding technological protection measures.

We will work with other agencies, including the Department of Foreign Affairs and Trade and IP Australia, in negotiating the intellectual property aspects of free trade agreements with China, Malaysia, the Association of Southeast Asian Nations—New Zealand and the United Arab Emirates.

We will work to finalise the reports of the SCAG Working Party on Unauthorised Photos on the Internet and the joint SCAG–Ministerial Council on Consumer Affairs Working Party on Residential Tenancy Databases.

We will continue with the project of progressively updating the guidelines on the operation of the FOI Act.

We will be developing policy to enable Australian Government agencies to properly and lawfully exchange personal information in the event of a disaster or emergency.

We will continue to have discussions with officers from the Department of Employment and Workplace Relations about the need for further measures to enhance privacy protection of employee records and the options for implementation.

We will continue to provide advice to the Department of Health and Ageing and the Health Insurance Commission on a range of privacy and identity fraud issues raised by electronic health initiatives.

We will continue to contribute to the development of the Government's identity security initiatives and the Human Services portfolio smart cards investigations by providing advice on the law and on implementation strategies that enhance privacy protections.

Output 1.7—Legal services and policy advice on native title

Performance overview

Output 1.7 is the particular responsibility of Legal Services and Native Title Division. By providing legal and policy advice to the Attorney-General, and Government, we contributed to ensuring an equitable and accessible system of federal civil justice.

As part of the 2005–06 Budget, the Australian Government committed an additional \$72.9 million over four years to the native title system. This amount will be directed to:

- the Federal Court
- the National Native Title Tribunal
- the Office of Indigenous Policy Coordination (OIPC) in the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), and
- the Attorney-General's Department.

The funding will be reviewed in 2008. The additional funding is in response to the review of the native title system by the Native Title Coordination Committee, which was completed in 2004. The Committee is made up of members from the Federal Court, National Native Title Tribunal, OIPC, the Department of the Prime Minister and Cabinet (PM&C), the Department of Finance and Administration (Finance) and the Attorney-General's Department. We chair and provide secretariat support to the Committee and will continue to do so.

The funding will support continued improvement to the operation of the native title system in meeting the Government's objectives of:

- continuing to pursue practical native title solutions
- promoting faster and fairer resolution of native title issues, including the promotion of agreement making

- working cooperatively with the States and Territories, and
- continuing to adequately resource the native title system.

We continued to manage the Australian Government's involvement in the resolution of significant native title claims. The Australian Government became a party to consent determinations recognising native title in *Karajarri B* and *Wik B*. We also reached agreement on the protection of Australian Government interests in the settlement of a number of claims to which the Australian Government was not formally a party, including the *Ngaanyatjarra Lands* claim and a series of claims over islands in the Torres Strait. These settlements underlined the Government's preference to resolve native title claims through negotiation, where possible, rather than through costly and time-consuming litigation.

We have developed and implemented a number of proposals to refine the Government's involvement in native title claims. This reflects the maturity of the native title system, with considerable established case law, as well as the Government's objectives for native title.

We are playing an active role in the whole-of-government effort to increase economic opportunities for Indigenous Australians through home ownership and business creation. We are working closely with other Australian Government departments and agencies to support the work of the Secretaries' Group on Indigenous Affairs.

Performance measures

Timely and sound assistance to the Attorney (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

Native title determination applications

We help the Attorney-General and the Government to communicate and implement native title policies through the Government's participation in the native title application process. This assists in promoting the equitable and efficient resolution of native title claims.

Most native title determination applications are mediated before the National Native Title Tribunal. If mediation is successful, a consent determination of native title may result. The Government seeks to resolve matters through mediation, where possible. In its consent determination negotiations, the Government seeks to secure determinations that are certain, transparent, consistent with the common law and in compliance with the requirements of the *Native Title Act 1993*. This approach helps promote fair, effective and enduring outcomes for the native title system and for all Australians.

During the year, the Government became a party to three formal consent determinations recognising native title in *Karajarri B* and *Wik B*. We worked towards satisfactory resolution of the *Wotjobaluk* claim through negotiations with the claimants, the Victorian Government and other parties. Mediation commenced in the Torres Strait

native title sea claim, the claim area of which extends over about 44,000 square kilometres of sea and borders Australia's maritime boundary with Papua New Guinea.

Where agreement cannot be reached on all issues, the application is litigated before the Federal Court. In 2004–05, we participated in a number of hearings, including in *Blue Mud Bay No 2*, *Rubibi No 1* and *Yulara*. Judgment was delivered on 2 May 2005 in *Ngarluma Yindjibarndi*, which is now the subject of an appeal by the claimant to the Full Federal Court. Reasons for decision were handed down in the *Bardi and Jawi* claim and in *Blue Mud Bay No 2*. We anticipate that determinations formally recognising the existence of native title will be made in these matters during the coming year.

A consent determination was made, in resolution of most of the *Ngaanyatjarra Lands* native title application, recognising native title over nearly 188,000 square kilometres of the Central Desert in Western Australia. This is the largest determination of native title yet made in Australia. The Australian Government was able to protect its interest in the Giles Meteorological Station by negotiation with parties without needing to become a party to the application.

The Federal Court made a series of consent determinations relating to native title rights over seven islands in the Torres Strait. Our participation through negotiation with parties ensured the Australian Government's property interests and treaty obligations were appropriately reflected in the determinations, although the Government was not a party to the claims.

Yulara is the first native title compensation claim to be litigated in the Federal Court, and concerns an application lodged by the Yankunytjatjara people of the Western Desert over Yulara Township, near Uluru. The proceedings focused on whether the claim group holds any compensable native title rights over the claim area. We expect a

decision on this aspect of the claim in the coming year.

Native title system coordination and consultation

We participate in a range of forums to discuss native title issues. These include meetings of the Native Title Coordination Committee and the Native Title Consultative Forum. We chair the Forum and provide secretariat support for the meetings. The Forum comprises representatives of the Federal Court, OIPC, the National Native Title Tribunal, the Attorney-General's Department, State and Territory governments, Native Title Representative Bodies, the Human Rights and Equal Opportunity Commission, the Australian Local Government Association, and representatives from pastoral, fishing, mining and petroleum industries.

The Forum uses the extensive experience of its members to inform its discussions on significant issues that have an impact on the effectiveness of the native title system. From an Australian Government perspective, the forum enables a broad range of views to be considered in policy formulation.

Timely and sound assistance to the Attorney (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 Australian Government is participating in approximately 170 native title determination applications that are proceeding through mediation or litigation. The Government's position in such cases is consistent with the provisions of the *Native Title Act 1993*. This involvement is one method by which the Government seeks to maintain a system consistent with the

legislative framework. We ensured that the native title mediation and litigation to which the Government is a party proceeded in accordance with developing legal precedents.

Commonwealth legislation

We continue to work on the development of proposals for possible Regulations under the *Native Title Act 1993* to govern the holding of monies on trust under particular provisions of that Act. We received a significant number of responses from various stakeholders to the discussion paper circulated in March 2004, and are preparing proposals for Government consideration.

During the reporting year, we were involved in consultations with agencies on other legislative proposals relating to native title. We provided advice to the Registrar of Aboriginal Corporations on the Corporations (Aboriginal and Torres Strait Islander) Bill 2005, which includes special provisions for registered native title bodies corporate. The Bill was introduced into the Australian Parliament on 23 June 2005. We have also liaised with OIPC on possible amendments to the *Native Title (Prescribed Bodies Corporate) Regulations 1999*.

Timely and sound assistance to the Attorney (and the Government) to ensure that those policies are adequately explained, implemented and applied

Education about native title policies

We support Australian Government departments and agencies by providing information and training on native title matters and agreement making. Following the release of the *Guide to native title* in 2003–04, we conducted a series of training seminars for Australian Government officers whose work involves dealing with native title. Agency-specific seminars were provided to agencies including the Department of Defence, the Department of Agriculture, Fisheries and Forestry, Finance and PM&C.

CASE STUDY

Realising potential in native title by working with stakeholders

In outlining the Australian Government's approach to native title in June 2004, the Attorney-General observed that the responsibility for making progress on native title was not and could not be a matter for government alone. He stated that the great potential of native title would only be realised if we worked together.

The need to work effectively with stakeholders has been an increasingly significant aspect of the work of all officers within the Native Title Unit over the past year. This has included the initiation of high-level bilateral discussions with officials from State and Territory governments, industry representatives and Native Title Representative Bodies (NTRBs) on measures to enhance cooperation within the system.

The key focus of multilateral cooperation is through the Native Title Consultative Forum (NTCF), which seeks to draw together stakeholders from all jurisdictions to exchange views on key issues in native title.

Meetings of the NTCF in 2004–05 have highlighted cooperative themes in the resolution of native title issues, including agreement-making and practical measures to secure outcomes for Indigenous communities. Representatives from NTRBs, government and industry have delivered presentations, with a focus on their experience of agreement-making in the native title context. Feedback from these meetings has been positive.

Given the breadth and complexity of the native title system, preparations for and participation in NTCF meetings require contributions from all staff in the Native Title Unit, as well as assistance from officers in the Indigenous Justice and Legal Assistance Division. This work also entails considerable logistical demands, including assistance to participants to ensure that all views may be presented and considered.



The Systems Coordination Team responsible for coordinating meetings of the Native Title Consultative Forum. From left, Tara Inverarity, Liz Brayshaw, Kristy Katavic and Kathryn Honczar.

We also provide advice to Australian Government departments and agencies to assist them to address their native title obligations. This involves participation in project teams, interdepartmental committees and other forums. For example, we participated in negotiating teams for Indigenous Land Use Agreements and interdepartmental committees on issues such as the protection of endangered marine mammals. Our involvement in these activities ensures the consistent application of native title policies across government agencies and adherence to the Australian Government's obligations under the *Native Title Act 1993*.

Participation in international forums

At the international level, we participated in preparations for Australia's appearance before the United Nations Committee on the Elimination of Racial Discrimination in March 2005. The Committee's deliberations included consideration of aspects of Australia's native title system. The Committee requested further information on particular issues relating to native title, to be provided by March 2006.

Consultation and liaison with other bodies

In June 2004, the Council of Australian Governments (COAG) agreed to commit to cooperation between jurisdictions on native title. We have been actively expanding our dialogue with other jurisdictions on native title matters to assist in the more effective and efficient operation of the native title system, and provide opportunities for jurisdictions to learn from each other. One aspect of this was a series of meetings with officials from the Western Australian Office of Native Title that took place in April and May 2005, to deepen mutual understanding of the issues and challenges facing the respective jurisdictions. We also engaged in bilateral discussions with a

range of other stakeholders, such as Native Title Representative Bodies, industry representatives, the Federal Court and the National Native Title Tribunal.

Representatives from the Native Title Unit participated in several forums, which provided opportunities to discuss current issues in native title with representatives from a broad range of stakeholders (see Table 4).

Table 4: Forums for discussing native title issues

Forum	Date
State and Territory Native Title Officer's conference	September 2004
Queensland Native Title Consultative Committee meetings	September 2004 and May 2004
Federal Court Native Title Workshop	April 2005
AgForce Queensland Workshop	April 2005
Native Title Representative Bodies CEO Forum	April 2005
National Native Title Conference, organised by the Australian Institute of Aboriginal and Torres Strait Islanders	June 2005
AGD NGO Human Rights Forum	June 2005

Evaluations

2004 Review of the native title system

The Native Title Coordination Committee (membership noted previously in the Performance overview) undertook and completed a review of funding of the native title system in 2004. The review assessed the impact of additional funding provided over the last four years for use by Australian Government agencies with roles in the administration of the native title system. The review also considered the future funding needs of the native title system. The Committee engaged an

independent consultant to provide financial advice but retained overall responsibility for undertaking the review. In response to the review, the Australian Government committed in this year's Budget an additional \$72.9 million over four years to the native title system. The funding will be directed to the Federal Court of Australia, the National Native Title Tribunal, OIPC and the Attorney-General's Department. The additional funding will contribute to building an efficient and effective native title system.

Challenges

Although the resolution of native title applications has improved in recent years, processes remain slow, and participants within the system should be encouraged to work together in efficiently securing effective and lasting outcomes. We will continue to engage with the States and Territories, and other parties to native title claims, to develop practical options that may assist in this endeavour. This is likely to include increased emphasis on native title-related outcomes in negotiations aimed at resolving those applications that have little prospect of gaining formal recognition of native title, and the promotion of realistic approaches to the resolution of native title applications.

In his speech at the National Reconciliation Planning Workshop in May 2005, the Prime Minister firmly placed Indigenous land and economic development on the national agenda. The Attorney-General and the Minister for Immigration and Multicultural and Indigenous Affairs have been asked to provide advice on making the existing arrangements deliver better housing and economic opportunities for Indigenous Australians. We are continuing to examine this issue and, in consultation with other agencies, investigating ways to promote opportunities for economic development and to maximise the economic benefits for Indigenous communities.

Outlook

We will continue to:

- work with other Australian Government departments and agencies to identify ways to facilitate economic development and increased utilisation of land by Indigenous Australians
- provide advice and guidance to Australian Government departments and agencies regarding their compliance with the *Native Title Act 1993*
- ensure the Government's participation in native title determination applications is effectively targeted and contributes to the achievement of outcomes by agreement, where possible, and
- work with parties and institutions in the native title system to improve the efficiency and effectiveness of the system.

As part of the Native Title Coordination Committee, we will continue to monitor the performance of Australian Government agencies within the native title system and the additional resources that have been provided by the Australian Government to continue to improve the operation of the system. We will also work with the other members of the Native Title Coordination Committee to implement the recommendations of the 2004 review of the native title system.

Output 1.8—Legal services and policy advice on Indigenous law and justice issues, and the administration of government Indigenous law and justice programs

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PERFORMANCE REPORTS: OUTPUT 1.8

Performance overview

Output 1.8 is the responsibility of the newly created Indigenous Law and Justice Branch. With the introduction of the new arrangements for the administration of Indigenous affairs on 1 July 2004, the Indigenous law and justice programs formerly administered by the Aboriginal and Torres Strait Islander Services were transferred to the Department.

Indigenous Coordination Centre (ICC) staff visiting Canberra.

Back: David Pollack (Melbourne); middle (left to right): Duncan Cross (Sydney), Mark Champion (Perth), Tanya Jackson (Bourke), Pauline Hill (Canberra), Dan Ticehurst (Wagga Wagga), Carl Lincoln (Perth), Ashok Kumar (Brisbane); front (left to right): Liz Dashwood (Alice Springs), Paul Williams (Adelaide), Lyn Bajic (Adelaide), Hyacinth Adie (Perth), Stacey Lange (Assistant Director—Canberra), John Boersig (Assistant Secretary—Canberra), Rebecca Hall (Assistant Director—Canberra), Pam Townsend (Tamworth)

The Indigenous Law and Justice Branch is responsible for the delivery of programs that benefit Indigenous Australians, and for policy advice on Indigenous law and justice issues. Legal Aid for Indigenous people (LEGA) supports the provision of culturally sensitive legal aid services to Indigenous people via grants and contracts. Family Violence Prevention Legal Services (FVPLS) provide specialist services to assist Indigenous adults and children who are victims of family violence, or who are at immediate risk of such violence. Law and Justice Advocacy (LJAD) supports the advancement of the legal rights of Indigenous Australians by funding groups to pursue advocacy, research and community-level education. Prevention, Diversion and Rehabilitation (PDRE) provides funding to a range of community-level projects that are intended to help reduce Indigenous people's adverse contact with the justice system.

These programs are delivered with the assistance of departmental officers in the national network of Indigenous Coordination Centres (ICCs), who work closely with service providers and Indigenous communities.

In 2004–05, funding was provided under LEGA to an existing network of 24 service providers, ensuring a seamless transition for providers and clients. Program staff also began implementing the Government's new approach to the provision of legal aid services to Indigenous Australians, which is based



on an open tendering process. Requests for tender were released and the successful tenderers in Victoria, Western Australia and Queensland announced. In all three States, existing Aboriginal and Torres Strait Islander Legal Services were awarded tenders.

A network of FVPLS units assists 500 to 700 Indigenous Australians annually. At the beginning of 2004-05, the program funded 13 units, located in high-need remote and rural areas. The Government committed funding to expand the program by 13 additional units. The locations and providers for all of the additional units have been announced and all should be fully operational early in the 2005-06 financial year.

Departmental staff conducted a series of on-site visits, and, in partnership with the Australian Indigenous Leadership Centre and the National Network of Indigenous Women's Legal Services, provided Certificate IV training to 22 Indigenous FVPLS unit staff.

Departmental staff worked with other responsible departments and agencies to ensure a coordinated approach to policy development and service delivery for Indigenous Australians. In particular, the Department is working with the Office of Indigenous Policy Coordination in the Department of Immigration and Multicultural and Indigenous Affairs on the negotiation of a number of Shared Responsibility Agreements (SRAs) addressing community needs. The Department is providing funding towards a number of SRAs across the country, supporting community-level initiatives such as night patrols and diversionary programs for at-risk youth.

As at 8 June 2005, there were 23 departmental staff based in 16 ICCs around the country.

Performance measures

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

- the needs, rights and responsibilities of Indigenous Australians
- the potential of whole-of-government approaches to delivering outcomes

The Australian Government's Indigenous programs are now administered by mainstream agencies under a whole-of-government approach whereby all government policies and funds must be coordinated and used efficiently and strategically in cooperation with local communities. The Department advised the Government on, and assisted it to implement, two priority projects over 2004-05 that seek to directly contribute to a more equitable and accessible federal justice system for Indigenous Australians.

Expansion of the Family Violence Prevention Legal Services program

An Australian Government Budget initiative in 2004-05 allocated \$22.7 million over four years to fund the expansion of the number of the highly successful FVPLS units. Over the past year, the Department managed the process of adding 13 new locations and providers (see Table 5). The sites were recommended following an independent assessment conducted by the Crime Research Centre at the University of Western Australia, combined with stakeholder feedback. The assessment was based on factors that included rates of family violence, identification of existing national infrastructure, and the particular requirement to provide services to rural and remote areas of Australia.

FVPLS units deliver legal assistance, case work and court support to victims of family violence. They also provide other support services such as referrals, crisis counselling

and community education. The units consist of a solicitor and two to three other staff, including a sexual assault worker.

All new service providers received set-up funds before the end of the financial year and are now in their early stages of operation. Further details are in the Administered items section of this chapter (see page 35).

Table 5: New Family Violence Prevention Legal Services service providers, February–May 2005

Date (number of service providers)	Region/locality
25 February 2005 (7)	Bourke/Brewarrina Rockhampton Kununurra, Halls Creek, Kalumburu, Wyndham and Oombulgarri Dubbo Local Government Area/ Binaal Billa region Mildura Local Government Area/ Wentworth Melville Island, Bathurst Island and Nhulunbuy Carnarvon, Meekatharra, Mount Magnet, Cue, Wiluna and Burringurrah
2 May 2005 (4)	Port Hedland Local Government Area Ceduna Local Government Area North Queensland ATSIC region Palm Island, Hughenden, Richmond and Charters Towers
20 May 2005 (1)	Cunnamulla, Quilpie, Charleville, Goondiwindi, Murgon and Cherbourg (<i>Service provider: Roma Town Council (Working against Abuse Service)</i>)
21 June 2005 (1)	Anangu Pitjantjatjara Lands region (<i>Service provider: Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council (Aboriginal Corporation)</i>)

Tendering for legal aid services

The Department oversaw the introduction of the tendering process for legal aid services for Indigenous Australians, while ensuring the continued funding of current providers.

New policy directions for legal aid services introduce clearly defined service standards, eligibility requirements and, to ensure services are provided to those most in need, means testing. Further, the development and application of a new funding model based on relative needs will result in a more equitable national distribution of Indigenous legal aid funding.

Management of programs

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

In December 2004, the Attorney-General agreed to new policy guidelines for each of the four programs administered by the Indigenous Law and Justice Branch.

New providers of legal aid services

The aim of the tendering process for legal aid services is to ensure that Indigenous Australians have access to high-quality, professional and culturally sensitive legal services, while also ensuring value for money. The process has already been completed in three States and the successful tenderers to date are:

- Victoria: the Victorian Aboriginal Legal Service Cooperative Limited
- Western Australia: the Aboriginal Legal Service of Western Australia Inc, and
- Queensland:
 - Northern Zone: the Aboriginal and Torres Strait Islander Community Legal Services (Townsville and Surrounding Districts) Ltd, and
 - Queensland Southern Zone: the Aboriginal and Torres Strait Islander Corporation (QEA) for Legal Services.

CASE STUDY

Indigenous legal aid—

the Victorian experience

In July 2004, the Government announced new arrangements to provide culturally appropriate access to legal aid for Indigenous people, including a commitment to a competitive tendering process.

A Request for Tender (RFT) for the provision of legal aid services to Indigenous Australians in Victoria was released in November 2004.

The evaluation report concluded that the Victorian Aboriginal Legal Service Co-operative Ltd (VALS) met the evaluation criteria to a very high standard. . .

The Department organised a well-attended information session, which was monitored by the legal process adviser. The Department also engaged an independent consultant to conduct a tender assistance workshop and provide generic information on government tendering processes. This was in recognition that Indigenous organisations may have had limited experience in government contracting.

A Tender Evaluation Team was formed with staff from the Indigenous Law and Justice Branch and the Legal Assistance Branch in the Department. Members of the Legal Aid Section provided administrative support.

The tender evaluation then proceeded in accordance with an approved tender evaluation plan cleared by the legal process adviser. The first two phases covered receipt and registration of the tenders, and assessment of tender conformance with the requirements of the RFT and with the mandatory criteria. The third phase was a technical worth assessment against the selection criteria and an assessment of risk, with a final comparative evaluation of tenders.

The Victorian Aboriginal Legal Service Co-operative Ltd (VALS) was selected as the preferred tenderer. The evaluation report concluded that VALS met the evaluation criteria to a very high standard. The responses across all criteria were highly convincing and credible, and showed a comprehensive understanding of the requirements of the criteria and a demonstrated capacity to provide the services required under the RFT. The risk rating was low and it was assessed as providing best value for money.

Requests for tender covering New South Wales and Tasmania will be released early in 2006.

All four successful tenderers are Indigenous organisations, demonstrating that such organisations can compete successfully in an open tender environment. The new providers are engaged under three-year contracts, commencing on 1 July 2005.

Capacity building and accountability in FVPLS

The Department organised a national workshop for all FVPLS unit staff in Darwin in November 2004, as well as five induction workshops for new service providers in Alice Springs, Cairns, Carnarvon, Ceduna and Sydney. Departmental staff conducted eight on-site visits to units and auspice bodies in Alice Springs, Cairns, Carnarvon, Ceduna, Darwin, Geraldton, Katherine and Kempsey. An internal review of the FVPLS operational framework was also finalised, and a policy and procedures manual developed for implementation in 2005–06.

A partnership agreement was concluded with the Australian Indigenous Leadership Centre, which saw Certificate IV training in governance and management provided to 22 Indigenous FVPLS unit staff, with

support from the National Network of Indigenous Women's Legal Services.

Administration of programs

- applications for assistance, or payments made, under programs, assessed in accordance with agreed policy documents, guidelines or operational frameworks

Through the Indigenous Legal Aid program, \$45 million¹ was allocated to a network of 24 service providers operating from 96 sites across Australia. These providers represented over 70,000 clients on more than 137,000 cases and duty matters. Of total clients, 23 per cent were female and 48 per cent were 24 years of age or under.

Under the Prevention, Diversion and Rehabilitation program, funding was provided to 46 night patrol services, 75 youth initiative services, and 16 prisoner support services across Australia, including through SRAs.

Through the Law and Justice Advocacy program, over \$2.6 million² was provided to organisations for a variety of activities

Indigenous Law and Justice Branch staff, Canberra, January 2005



1 Funding was initially appropriated to the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). \$20.0m was expended by DIMIA prior to s 32 (of the *Financial Management Accountability Act 1997*) transfer of functions to the Attorney-General's Department in October 2004.

2 Funding was initially appropriated to the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). \$0.9m was expended by DIMIA prior to s 32 (of the *Financial Management Accountability Act 1997*) transfer of functions to the Attorney-General's Department in October 2004.

that advance and protect the legal rights of Indigenous Australians, including Aboriginal Justice Advisory Committees, Deaths in Custody Monitoring Units, and research, law reform and community legal education groups.

Consultation and liaison with stakeholders

- maintenance of effective partnerships and consultative arrangements with stakeholders

As part of the process of selecting sites for new FVPLS, feedback was sought in September 2004 from over 250 stakeholders, including current units, Aboriginal and Torres Strait Islander Legal Services, Aboriginal Medical Services, and State and Territory Attorneys-General. The Department maintains regular contact with the Department of Family and Community Services in relation to two non-legal family violence programs that were transferred to that department under the new arrangements: the Family Violence Partnership program and the Family Violence Regional Activities program.

The introduction of the tendering process for legal aid services was followed by an information day in each of the tendered States. In addition, the Department held assistance workshops for Indigenous organisations. These events were well attended by existing service providers, and helped to foster positive relationships.

Through its staff in the ICCs, the Department continues to work to maintain and develop connections with Indigenous communities, organisations and individuals.

Challenges

The new arrangements for administering Indigenous affairs raise issues about the management and use of property purchased using grants from the Aboriginal and Torres Strait Islander Commission and its predecessors. With respect to the Indigenous

Legal Aid program, cooperation with the Office of Indigenous Policy Coordination (OIPC) and stakeholders has ensured the identification of these assets and their continued application towards the provision of legal aid services to Indigenous Australians.

Communication of information about the new arrangements to Indigenous communities and individuals has been highlighted by some key stakeholders (for example, the National Indigenous Council and the Aboriginal and Torres Strait Islander Social Justice Commissioner) as requiring urgent attention. The Department has been addressing this in cooperation with OIPC.

The Department is also working with OIPC in supporting the negotiation of SRAs with Indigenous communities, addressing a range of community needs. However, there is greater scope for SRAs to be employed more widely—particularly through the activities funded under the Prevention, Diversion and Rehabilitation program, for example. The Department will be focusing on this in 2005–06.

Outlook

The introduction of the new tendering process for the provision of legal aid services will continue in 2005–06, with requests for tender for South Australia and the Northern Territory to be released on 2 August 2005 and for contracts to commence on 1 February 2006. Requests for tender for New South Wales and Tasmania will be released on 28 January 2006, with contracts to commence on 1 July 2006. The new service providers in Queensland, Victoria and Western Australia commenced operations on 1 July 2005.

The Department will be working with the new FVPLS units to ensure they are all fully operational early in the 2005–06 financial year.

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 operational coordination and services in the areas of national security (including counter-terrorism and security law), emergency management, criminal justice, crime prevention, critical infrastructure protection and protective security. 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 or Territory levels) as well as non-government and foreign institutions. They include advisory bodies, law enforcement agencies, emergency services and commercial businesses. In addition to maintaining these interrelationships with other organisations, the Department operates in an environment where international as well as domestic events or trends can play a significant role.

During 2004–05, 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 chapter.

Resource summary

Outcome 2—Coordinated federal criminal justice, security and emergency management activity, for a safer Australia

	(1) Budget* 2004-05 \$'000	(2) Actual expenses 2004-05 \$'000	Variation (column 2 minus column 1)
Administered Expenses (including third party outputs)	32,714	28,748	(3,966)
Special Appropriations	12,086	8,389	(3,697)
Total Administered Expenses	44,800	37,137	(7,663)
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	40,719	34,579	(6,140)
Output 2.2 Legal services and policy advice on security law and critical infrastructure protection	10,775	8,640	(2,135)
Output 2.3 Provide national leadership in the development of emergency management measures to reduce risk to communities and manage the consequences of disasters	25,485	23,258	(2,227)
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	34,009	35,743	1,734
Output 2.5 Management and coordination of the delivery of security and guarding services to meet diplomatic, consular and other Commonwealth responsibilities	26,334	23,457	(2,877)
Total price of outputs	137,322	125,677	(11,645)
Revenue from Government (Appropriation) for Departmental Outputs	113,324	118,880	5,556
Revenue from other Sources	3,357	9,894	6,537
Total Departmental Revenue	116,681	128,774	12,093
Total for outcome 2 (Total Price of Outputs and Administered Expenses)	182,122	162,814	(19,308)
		2004-05	2005-06
Average Staffing Level		489.2	512.7

* Full-year budget, including additional estimates.

Note: A restructure occurred during 2004-05 which means that output information between 2004-05 and 2005-06 is not directly comparable.

Outcome 2—Coordinated federal criminal justice, security and emergency management activity, for a safer Australia

	Budget** 2005–06 \$'000	
Administered Expenses (including third party outputs)	57,721	
Special Appropriations	–	
Total Administered Expenses	57,721	
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	29,072	
Output 2.2 National leadership and coordination of legal and policy advice on national security and counter-terrorism laws and critical infrastructure protection	15,866	
Output 2.3 Provide national leadership in the development of emergency management measures to reduce risk to communities and manage the consequences of disasters	27,669	
Output 2.4 Development and promotion of protective security policy advice and common standards and practices; the coordination of protective security services, including counter-terrorism and dignitary protection; the provision of security for special events; the development of counter-terrorism and capabilities; and the coordination of national security crises and information through the Watch Office and National Security Hotline	46,714	
Total price of outputs	119,321	
Revenue from Government (Appropriation) for Departmental Outputs	115,909	
Revenue from other Sources	3,412	
Total Departmental Revenue	119,321	
Total for outcome 2 (Total Price of Outputs and Administered Expenses)	177,042	
	2004–05	2005–06
Average Staffing Level	489.2	512.7

** Budget prior to additional estimates. A restructure occurred during 2004–05 which means that output information between the years is not directly comparable.

Administered items for Outcome 2

National Counter-Terrorism Committee—operating expenses

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

An Australian Government administered appropriation, the National Counter-Terrorism Committee (NCTC) Special Fund provides funding to the NCTC program to develop and maintain a nationwide counter-terrorism capability through the provision of a basic viable capability in each State and Territory commensurate with the general level of threat to Australia. The Protective Security Coordination Centre's Counter-Terrorism Branch manages this fund.

The NCTC Special Fund enables the preparedness, development and management of activities for the nationwide counter-terrorism capabilities to be conducted.

It provides for:

- meetings of the NCTC, its subcommittees and working groups
- national policy and operational seminars, forums and workshops
- the development of documentation to support the NCTC and the nationwide counter-terrorism capability
- a training, development and exercise program
- an Australian Secure Network (ASNET), which facilitates the transmission of information between approved Australian Government and State and Territory government departments and agencies involved in counter-terrorism, and
- the purchase of specialist equipment for State and Territory police.

The 2004-05 NCTC budget was \$16.089 million, which included the appropriated budget of \$11.755 million, an additional \$3.661 million transferred from the 2003-04 Budget and a further \$673,000 allocated under the Australian Government's enhanced exercise program arising from the 2004 election commitment. An amount of \$1.4 million will be sought for transfer to 2005-06 to facilitate activities associated with the national multijurisdictional counter-terrorism exercise Mercury 05, continue work on ASNET and fulfil orders carried over due to delays in supply.

Diversionsary programs for juveniles in the Northern Territory

Expenditure in accordance with Government decision and agreed arrangements

Northern Territory Agreement and Extension Agreement

During the period 1 September 2000 to 30 June 2005, the Australian Government committed a total of \$23.9 million for both the jointly funded Aboriginal Interpreter Service (AIS) and the Juvenile Diversion Scheme.

Between September 2000 and June 2005, the Australian Government contributed some \$5 million as the Commonwealth's share of establishment and operational costs of the AIS. This figure includes unmatched funding provided for interpreter training and funding for all four Aboriginal and Torres Strait Islander Legal Services for the purchase of interpreter services.

The AIS is based in Darwin and Alice Springs and provides interpreting in 104 Aboriginal languages. There are 192 active interpreters, of whom 103 are accredited to paraprofessional level. Almost all of these interpreters are Indigenous people. Since its establishment in April 2000 through to June 2005, the AIS has

completed 9,978 jobs. Each job may involve more than one interpretation. During the 2004 calendar year, approximately 50 per cent of interpretation requests came from the legal sector and approximately 40 per cent from the health sector.

The independent evaluation of the Northern Territory Agreement, commissioned by the Australian Government and conducted by Urbis JHD in 2003–04, found that the AIS has had a significant impact in enhancing access to services and promoting the wellbeing of Aboriginal people in the Northern Territory. The AIS has developed interpreter training and accreditation, reviewed employment conditions for interpreters and conducted community awareness projects in the health and legal fields to promote greater understanding of the interpreter's role. In June 2005, the AIS conducted the first Indigenous Interpreters Conference in Australia, which was attended by some 60 Indigenous interpreters.

The Australian Government has allocated an additional \$1,079,000 in 2005–06 to continue the joint funding of the AIS to 30 June 2006.

Juvenile Diversion Scheme (JDS)

Under the Northern Territory Agreement and its extension, the Australian Government provided some \$18 million for the personnel, operational and community program costs of the JDS.

Data provided by the Northern Territory Police indicate that the Juvenile Diversion Scheme (JDS) has had a positive impact:

- For the period 28 August 2000 to 31 January 2005:
 - fifty-four per cent of all juveniles apprehended were offered diversion (3,384 out of 6,252 apprehensions)
 - forty-eight per cent of Indigenous juveniles apprehended were offered diversion (1,963 out of 4,047 Indigenous apprehensions), and
- sixty-four per cent of non-Indigenous juveniles apprehended were offered diversion (1,421 out of 2,205 non-Indigenous apprehensions).
- Ninety per cent of referrals to formal programs (training, substance abuse, counselling, community, adventure) were satisfactorily completed.
- Community Youth Development Units (CYDUs) offering numerous registered diversion programs are operating in the following locations: the Tiwi Islands, Galiwinku, Thamarrurr Wadee, Julalikari Tennant Creek, Groote Eylandt, Luritja Region–Papunya/Ikuntji and Walungurra, Gove Region, Yuendumu, Nyangatjatjara, Borroloola, and Mutitjulu.
- Training and support for CYDU workers are provided by the Bachelor Institute of Indigenous Tertiary Education.
- Over 300 agencies, organisations, service providers and community councils have been consulted on community program development, and more than 1,000 community members have been briefed on the scheme.

The Extension Agreement stipulated that the Northern Territory Government would examine options for the continued operation of the Juvenile Diversion Scheme once Australian Government funding ceased on 30 June 2005. The NT Government is developing a model to enhance the diversionary work established by the JDS by establishing an integrated youth program focused on diversion and case management interventions for young people at risk in the NT. Under the Youth Justice Bill, an upgraded version of the existing diversion scheme is to be transferred from the Police Administration Act to the proposed Youth Justice Act. New proposed provisions include a presumption in favour of diversion and the capacity for a Youth Justice Court to refer

a juvenile back to the Police Diversion Unit to be reassessed for diversion.

The Australian Government has allocated \$770,000 for expenditure on the remote area CYDUs in 2005-06.

National Community Crime Prevention Programme (NCCPP)

Expenditure in accordance with the objectives of the program

The Australian Government has committed \$58 million over four years from 2004-05 to the National Community Crime Prevention Programme (NCCPP), which features a national community grants program and another program specifically for the Western Sydney region.

Both provide funding for grass-roots projects designed to enhance community safety and crime prevention by preventing or reducing crime and antisocial behaviour, improving community safety and security, and reducing the fear of crime.

The Australian Government believes that people who live and work in a community are in the best position to recognise local problems and find locally relevant solutions. The NCCPP is designed to provide the additional resources often needed by community groups to develop their own projects and find their own ways of getting people to work together for the common goal of promoting community safety.

The grants provide practical and flexible support for local projects and enable community groups to trial new crime prevention approaches to:

- promote the development of broad, community-based partnerships focused on dealing with local crime prevention issues
- increase public awareness of and support for crime prevention at the local level, and
- increase the capacity of diverse communities to deal with crime and victimisation.

The program was launched by the Prime Minister on 7 May 2004 and provides funding under three streams:

- Community Partnerships Stream: grants of up to \$500,000
- Indigenous Community Safety Stream: grants of up to \$150,000, and
- Community Safety Stream: grants of up to \$150,000.

Grant funding is non-recurrent and is available for projects of up to three years' duration.

The first round of grants was advertised on 23 May 2004; 186 applications, seeking funding of over \$40 million, were received by the closing date of 30 June. The Prime Minister and the Minister for Justice and Customs announced the first grant recipients on 29 and 30 July, with further announcements being made in September. Thirty-four grants were awarded in the first round, amounting to some \$5.099 million across the three funding streams.

The second round of grants was advertised on 13 November 2004; 468 applications, seeking funding totalling \$94 million, were received by the closing date of 7 February 2005. Forty-five grants were awarded across the three streams, amounting to \$8.459 million.

The first round of Western Sydney grants was advertised in February 2005. The assessment process included a community based advisory panel, charged with making recommendations to the Minister. The outcome was eight grants totalling \$1.7 million publicly announced by the Prime Minister in August 2005.

National funding for Crime Stoppers

Expenditure in accordance with the objectives of the program

In Australia, Crime Stoppers is a highly successful network of eight separate programs. In 1998, Crime Stoppers Australia Limited was established by the State and Territory programs to provide national and international representation, and a national information service.

Crime Stoppers Australia Ltd sets strategic directions and provides networking, information exchange on best practice and fundraising activities at the national level. The reports of the eight members of the corporation point to the diversity of their operations and are indicative of different but current priorities. The Australian Government is providing \$1 million over four years (2003–06) to support the work of the organisation. Between November 1987 and December 2003, information given to Crime Stoppers across Australia resulted in 26,730 arrests, 99,935 charges laid, the recovery of more than \$51 million worth of property and the seizure of more than \$711 million worth of drugs.

National Firearms Program Implementation Act 1996—Administration

Expenditure in accordance with the objectives of the Program

The program involved making payments to States and Territories for compensation for the purchase of newly prohibited semi-automatic firearms surrendered under the program and administration costs associated with running the program. During the course of the program, the Australian Government has provided:

- \$398 million to the States and Territories for compensation for the surrender of semi-automatic firearms, and

- \$63 million for administering the program (including \$56.6 million to the States and Territories for this purpose).

At 30 June 2005, \$388 million provided to States and Territories for compensation and \$62 million for administration had been acquitted. Some jurisdictions retain unspent funds to meet outstanding claims.

Handgun buyback program

Expenditure in accordance with the legislation

The National Handgun Buyback Program involved reimbursing States and Territories for compensation paid for newly prohibited handguns and handguns parts surrendered under the program and administrative costs associated with running the program. The program was conducted in all jurisdictions between 1 July 2003 and 30 June 2004.

At 30 June 2005, jurisdictions had paid \$95,475,875 in compensation for 69,236 handguns and associated parts surrendered under the program.

In accordance with the Intergovernmental Agreement concerning the accountability and administrative procedures for the program (the IGA), the Australian Government has provided \$70,148,650 in reimbursement to jurisdictions for eligible handguns and parts surrendered under the program.

Under the terms of the IGA, States and Territories were advanced a portion of \$15 million for administrative costs on a per capita basis. This advance will be adjusted once all surrendered items have been processed and all administrative costs have been accounted for.

Australia's contribution to the International Criminal Court

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

The Australian Government provided \$3,726,530 towards the operation of the International Criminal Court (ICC) in 2004-05.

The budget of the ICC is set by the ICC Assembly of State Parties to the Rome Statute of the ICC. The contribution of each State Party is determined with reference to 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.

Australia's share of the total of the required contributions is currently 3.29 per cent.

International bodies—membership contributions

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

In 2005, Australia contributed \$48,448 to the budget of the secretariat of the Financial Action Task Force on Money Laundering (FATF). The FATF is an intergovernmental body that develops and promotes international policies to combat money laundering and terrorist financing. Australia was a founding member. The Department's contribution to the secretariat meets Australia's annual commitment to supporting the work of the FATF.

Operation Tsunami Assist

Expenditure in accordance with Government decision and agreed arrangements

Emergency Management Australia's (EMA) response to the 26 December 2004 Indian Ocean tsunami was the largest in the organisation's history since Cyclone Tracy in December 1974.

Operation Tsunami Assist was a significant activity for EMA in testing its planning, coordination and capacity on behalf of the Australian Government for the immediate deployment of critical medical and public health teams into an offshore environment.

It was also the first occasion States and Territories have been requested to assist in a whole-of-government international emergency response of this scale.

Over a six-week period staff coordinated the deployment of personnel and logistics support, repatriation, debrief and hand-back to the respective States and Territories of nine medical, public health and engineering teams comprising 130 specialist personnel to disaster-affected regions in Indonesia, Thailand, Sri Lanka and the Maldives.

Emergency Management Australia made reimbursements totalling \$2.816 million to States and Territories primarily for the provision of medical and related logistic support services during the response.

CASE STUDY

Operation Tsunami Assist

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CASE STUDY

The December 2004 Boxing Day tsunami was yet another in a long line of recent tragic events, which we will remember for many years to come.

Emergency Management Australia (EMA) was one of many Australian Government agencies that sprang into action to play a significant role in Australia's immediate response to the disaster.

Operation Tsunami Assist required the coordination and immediate deployment of critical medical and public health teams offshore. And it was the first time Australia's States and Territories had been called in to assist in a whole-of-government response, the biggest in EMA's history since Cyclone Tracy in December 1974.

The operation was launched following the establishment of an Australian Government Interdepartmental Emergency Task Force (IDETF), chaired jointly by the Department

of the Prime Minister and Cabinet and the Department of Foreign Affairs and Trade. The IDETF also comprised the Attorney-General's Department (represented by EMA), the Department of Health and Ageing, the Department of Immigration and Multicultural and Indigenous Affairs, and the Department of Defence.

The task force's role was to consider the scope of the emergency, requests for assistance and how the requests would be managed.

EMA took responsibility for coordinating the repatriation of Australians killed in the tsunami and recalled 36 officers from annual leave over a six-week period. EMA staff were given the task of coordinating the deployment of nine medical, public health and engineering teams to disaster-affected areas in Indonesia, Thailand, Sri Lanka and the Maldives.

The Department also took responsibility for 130 skilled Australian personnel who were sent to assist with personal and logistic support and repatriation.

With the assistance of the Australian Defence Force, EMA coordinated the airlift to Indonesia of temporary shelter, collapsible water bottles, water purification tablets and body bags from its disaster stores in Sydney.

Throughout the operation, EMA sourced much-needed supplies in order to maintain support for all the teams working in disaster areas.

The operation clearly demonstrated the ability of all levels of government in Australia to pull together and coordinate an appropriate response.



Staff from Emergency Management Australia at work in the National Emergency Management Coordination Centre in Canberra.

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

Performance overview

Output 2.1 is the responsibility of the Criminal Justice Division. Through the Division, the Department provided policy advice and program management, making a direct contribution to progressing the Government's objectives for a coordinated federal criminal justice system, an integrated national law enforcement system and effective international legal cooperation.

Criminal Justice Division has delivered on all of its priority activities for the year and has received positive feedback from the Attorney-General and the Minister for Justice and Customs.

The Division's contribution has been substantial, both in delivering significant outcomes and in responding to daily briefing requirements. We are regarded as highly responsive to the needs of the Government and are seen as a valuable participant in a range of intergovernmental and industry forums.

Relationships with stakeholders have been reinforced, and enhanced, through development of the Law and Legislation Amendment (Serious Drug Offences and other Measures) Bill 2005 and our engagement with States and Territories on drugs, firearms, law enforcement and crime prevention matters.

The Division's close liaison with portfolio bodies—including the Australian Federal Police (AFP), Director of Public Prosecutions, Australian Customs Service, the Australian Crime Commission and CrimTrac—has encouraged a team-based approach to portfolio issues.

Strong working relationships have also been maintained with other departments and agencies—particularly the departments of Health and Ageing, Human Services, Immigration and Multicultural and Indigenous Affairs, Treasury, Foreign Affairs and Trade, and the Office of the Privacy Commissioner, AusAID and the Commonwealth Ombudsman—through management of several whole-of-government outputs.

Under Output 2.1, the following achievements are worthy of note:

- implementation of the new National Community Crime Prevention Programme and delivery of two rounds of grants, totalling \$13.5 million in 78 grants to local government and community organisations
- successful management of on-site evaluations of Australia's implementation of provisions aimed at preventing money laundering and bribery of foreign officials
- completion of six major pieces of new and amending legislation

- management of the law and justice (non-policing) component of the Papua New Guinea Enhanced Cooperation Program (ECP)
- steering the National Working Group on the Diversion of Precursor Chemicals to a unanimous recommendation to reschedule combination pseudoephedrine-based products, and
- leading Australia's participation in the *Eleventh United Nations Congress on Crime Prevention and Criminal Justice*, hosted by the Government of Thailand, in Bangkok, from 18 to 25 April 2005.

Performance measures

Government's legislation requirements met

The following legislation was completed during the reporting period:

- *Anti-terrorism Act (No. 2) 2004*, which added a new offence to the Criminal Code of associating with a terrorist organisation
- *Anti-terrorism Act (No. 3) 2004*, amending a number of Acts, including the forensic procedures provisions in the *Crimes Act 1914* that deal with certain incidents
- *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004*, to add new offences dealing with interference with and misuse of the telecommunications system, including offences dealing with the possession and supply of child pornography material through the Internet
- *Criminal Code Amendment (Trafficking in Persons) Act 2005*, to add offences that criminalise comprehensively trafficking in persons
- *Criminal Code Amendment (Suicide Related Material Offences) Act 2005*, to prevent the use of the Internet to counsel or incite a person to commit suicide or to promote a particular method of suicide, and
- Law and Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005, introduced into Parliament on 26 May 2005.

The Division also examined all Bills that contained offence provisions, civil penalties or enforcement powers to ensure that the legislation complied with Commonwealth criminal law policy or that any departure from policy was appropriate.

Policy advice

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

The Division continued to provide timely policy advice on an extensive range of topics. There continues to be a strong international aspect to the work of the Division. Key activities included:

- conclusion of a broad-ranging industry consultation process to inform the development of advice to government on the domestic implementation of the Financial Action Task Force on Money Laundering (FATF) recommendations for the prevention of money laundering
- development of a whole-of-government approach to identity security. In April 2005, the Government announced the development of a national strategy on identity security to combat the fraudulent use of stolen and assumed identities. The 2005–06 Budget allocated funding of \$5.9 million over two years to undertake key project work in support of the strategy
- presentation of the United Nations Convention against Corruption to the Joint Standing Committee on Treaties for approval following extensive whole-of-government analysis of the implications for Australia in ratifying the Convention

- negotiation of bilateral treaties relating to extradition, mutual assistance and the international transfer of prisoners
- as part of the Australian National Action Plan to Combat Trafficking in Persons—development of a National Policing Strategy to Combat Trafficking in Women for Sexual Servitude under the leadership of the AFP, and endorsement of the strategy by the Australasian Police Ministers' Council (APMC)
- development of a legislative framework to implement the Government's commitment to establish a federal law enforcement anti-corruption body. The establishing legislation is expected to be introduced in the 2005 Spring session of Parliament
- provision of support for the development of national approaches within the National Working Group on the Prevention of the Diversion of Precursor Chemicals. The Working Group brings together 42 members representing Australian government and State/Territory government agencies in the areas of health, law enforcement and forensics; the pharmaceutical and industrial chemicals industries; and the pharmacy sector
- management of the recruitment and deployment of eight non-policing personnel to Papua New Guinea under the Law and Justice component of the ECP
- management of the whole-of-government approach to on-site evaluations of Australia's implementation of both the FATF standards to prevent money laundering and the Organisation for Economic Co-operation and Development (OECD) Foreign Bribery Convention, and
- commencement of the National Community Crime Prevention Grants Programme (NCCPP) on 1 July 2004. The program will provide \$58 million over four years from 2004-05. Further details are in the Administered items section of this chapter (see page 99) and at <www.crimeprevention.gov.au>.

Development of appropriate strategies for violence and crime prevention

Crime prevention strategies are being developed through:

- the NCCPP
- the greater western Sydney component of the NCCPP
- progressing a response to the House of Representatives Standing Committee on Legal and Constitutional Affairs 'Crime in the community: victims, offenders and fear of crime' report, and
- other topic-related initiatives, including CrimeStoppers funding, UTurn programs, Farm Crime publications, Trafficking in Persons communication strategy.

One of the key sources of priority setting for these actions is the Australian and New Zealand Crime Prevention Forum, which reports to Ministers through the APMC.

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

The Division has facilitated national strategic approaches to its work through the effective management of a number of programs, including:

- conduct of a scoping study on the proposed establishment of a National Firearms Management System. In accordance with a decision of the APMC, the scoping study is being managed by a project team chaired by the Australian Government and the State Government of Victoria, and

- development and implementation of national responses under the National Strategy to Prevent the Diversion of Precursor Chemicals into Illicit Drug Manufacture and the National Illicit Drug Strategy. Work has required extensive engagement with law enforcement, forensic, industry and community stakeholders.

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

Federal prisoner administration, including international transfer of prisoners, continued to be undertaken in accordance with the statutory requirements.

Firearms import permits and embryo export permits continued to be issued in accordance with the relevant legislation, with 137 and 12 permits being issued respectively.

Extradition, mutual assistance, and international transfer of prisoner cases included several high-profile cases that required significant resource diversion both to manage the cases and to provide ministerial and media briefing.

Detailed statistics on extradition and mutual assistance casework, and criminal justice certificates, are at Appendix 10.

Evaluations

Part 1D Crimes Act, Forensic Procedures Review to be conducted in 2004–05

This review was planned for 2004–05 but, due to competing priorities, it was not conducted in the reporting period. It is now planned for 2005–06.

Challenges

The growth in high-profile international prisoner transfer, extradition and mutual assistance cases has demonstrated that operational casework can be highly resource-intensive. These demands are expected to continue to increase. Several high-profile matters—including mutual assistance requests on behalf of the Australian Securities and Investments Commission, and in the Schapelle Corby trial—have impacted upon resource capacity and progress of casework.

Managing two on-site evaluations of Australia's anti-money laundering and foreign bribery measures has required resourcing and extensive whole-of-government coordination. The reports of both evaluations will be presented at meetings of the FATF and the OECD Foreign Bribery Convention Working Group in Paris in October. The outcomes of both evaluations could generate additional work in the next reporting period.

The Division has a very active, self-nominated Working Smarter Team, which has made great progress in identifying ways to change our work practices to improve our efficiency and make better use of resources. Their work has been well received in the Division and is already producing benefits. The efforts of the Team and the Division to make more efficient use of resources will continue.

The Division will be faced with two new major tasks in 2005–06 that will have to be completed within existing resources. The first is the review of criminal penalties announced by the Government prior to the last election. This work needs to commence early in 2005–06 and will require the diversion of resources from existing tasks. The second will be the legislatively mandated reviews of the *Proceeds of Crime Act 2002*, the *Australian Crime Commission Act 2002* and Part 1D of the Crimes Act.

CASE STUDY

International transfer of prisoners

Australia struck a landmark agreement with Thailand in September 2002 to enable the transfer of prisoners between the two countries.

The agreement with Thailand was Australia's first bilateral treaty, allowing prisoners to return to their home country to serve out the remainder of their prison sentence.

The treaty signalled the start of the International Transfer of Prisoners scheme in Australia.

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The agreement with Thailand was Australia's first bilateral treaty allowing prisoners to return to their home country to serve out the remainder of their prison sentence.
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One of the foundations of the treaty is that it allows Australians imprisoned in Thailand and Thai nationals imprisoned in Australia to apply to serve out their sentence in their home country without the language and cultural barriers that may reduce their rehabilitation prospects. The arrangements also reduce the impact on family members of those imprisoned overseas.

Since the signing of the agreement with Thailand, three Australians have been allowed to return here to serve out their sentences. Transfers between Australia and Thailand are not automatic and require the informed consent of the sentencing country, the receiving country and the prisoner to the terms of the transfer.

Since 2002, the Australian Government has made arrangements for the scheme to extend to 56 other countries through the Council of Europe's Convention on the Transfer of Sentenced Persons.

Transferred prisoners can generally expect to serve out the same sentence they received in the sentencing country.

A number of conditions also have to be met before transfer. These include that the offender is a national of the receiving country, that no other legal proceedings are pending, and that the prisoner has served the minimum period of imprisonment stipulated by the transferring country's law.

Prisoners are transferred subject to agreed conditions of sentence enforcement including the period of imprisonment before they will be considered eligible for parole. Significantly, transfer allows prison authorities to assess a prisoner's rehabilitation prior to returning to the community.

Outlook

It will be essential to make progress over the next year on implementing the Financial Intelligence Support Team which will assist Pacific Island countries with developing effective anti-money laundering and counter-financing of terrorism systems.

We are also responsible for managing an expedited program of bilateral treaty negotiations in extradition, mutual assistance and international transfer of prisoners. Significant progress will need to be made during 2005–06.

Subject to government decisions on the next steps, further work will be required on proposals for domestic implementation of the FATF international standards to counter money laundering and the financing of terrorism.

In the next 12 to 18 months, work on the national identity security strategy will focus on a number of key areas, including: proof of identity; security features on proof-of-identity documents; document verification; improving the accuracy of information on government databases; and authentication of individuals accessing services.

Legislative and administrative activities will need to continue for the establishment of the Australian Commission for Law Enforcement Integrity.

The Australian Law Reform Commission (ALRC) is expected to present its report on the operation of Part 1B of the Crimes Act early in 2006. Part 1B governs the administration and management of federal offenders. Preparations of advice to government on the ALRC report will be a priority towards the end of 2005–06.

Another goal is managing the development of business cases for a National Firearms Management System and a National Clandestine Laboratory Database.

Output 2.2—Legal services and policy advice on security law and critical infrastructure protection

Performance overview

Output 2.2 is the particular responsibility of the Security and Critical Infrastructure Division. The Division provides legal and policy advice on a broad range of security and critical infrastructure issues. A key element to the effectiveness of this work is the close liaison engaged in with other areas of the Australian Government, as well as other governments within and outside Australia.

The work on security law issues brought to fruition a number of the Government's key objectives. This included further refinements to the suite of counter-terrorism laws, legislation providing for the protection of classified information used in court proceedings and the listing/relisting of organisations as 'terrorist organisations' for the purposes of the Criminal Code. Our input is often sought on issues that extend beyond legislation directly administered by the Division. We are a participant in many working groups that have as their aim the improvement of security. At the national level we lead the debate on counter-terrorism legal issues.

Our work on critical infrastructure protection (CIP) produced a number of significant achievements. Australia's critical infrastructure has been identified and categorised. The Australian Security Intelligence Organisation (ASIO) is producing comprehensive assessments of the threat of terrorism. Infrastructure owners are being engaged in a comprehensive two-way dialogue to assist them in making informed decisions about managing risk, and in having

access to the broadest possible range of mitigation options.

Legislative initiatives

We assisted the Government with a range of legislation in the national security, counter-terrorism and telecommunications interception areas.

Regulations listing or re-listing 17 organisations as terrorist organisations were made under the *Criminal Code Act 1995* between 1 September 2004 and 11 April 2005, bringing the total number of organisations to 18.

- We worked with the Criminal Law Branch on the *Anti-terrorism Act (No.2) 2004* and the *Anti-terrorism Act (No. 3) 2004*. The No 2 Act provides for an offence for association with a terrorist organisation and the capacity to transfer prisoners for national security reasons. The No 3 Act strengthens the powers available to security agencies and police in relation to a foreign travel document. It also amends the forensic procedure provisions in the *Crimes Act 1914* to facilitate effective disaster victim identification within Australia.
- The *Australian Security Intelligence Organisation Amendment Act 2004* expands and clarifies ASIO's ability to furnish security assessments to support the national licensing regime for regulating ammonium nitrate.
- The *Surveillance Devices Act 2004* consolidates, updates and modernises the surveillance device powers of the Commonwealth. The Act aids law enforcement by allowing a wider range of

devices to be used and making warrants available for a wider range of offences. It also enables senior law enforcement officers to authorise the use of surveillance devices in emergency circumstances. The Act is modelled on provisions developed under the auspices of the Leaders' Summit on Terrorism and Multijurisdictional Crime, which was chaired by the Prime Minister on 5 April 2002. Similar State and Territory provisions have been, and are in the process of being, developed so that there is national consistency on this issue.

- The *National Security Information (Criminal Proceedings) Act 2004* seeks to protect information that, if disclosed during criminal proceedings, is likely to prejudice national security. The Act applies to any criminal proceeding in any court exercising federal jurisdiction for Commonwealth offences. The Regulations to this Act specify how and where information that requires protection under the Act must be accessed, prepared and otherwise handled.
- The *National Security Information Legislation Amendment Act 2005* extends the protections for security-sensitive information under the *National Security Information (Criminal Proceedings) Act 2004* to include certain civil court proceedings.
- The *Telecommunications (Interception) Amendment (Stored Communications) Act 2004* amended the *Telecommunications (Interception) Act 1979* to provide an interim solution to dealing with the interception of stored communications by providing an exception—which will sunset on 14 December 2005—from the prohibition against interception for such communications.
- To inform government about what measures, if any, should replace the provisions, Mr A S Blunn AO was appointed as an independent consultant to conduct a Review of the Regulation of Access to Communications. The outcome of the review will be reported in the 2005–06 annual report.
- The *Crimes Legislation Amendment (Telecommunications Interception and Other Measures) Act 2005* amended the *Criminal Code Act 1995* so that the defence that is available to certain telecommunication offences in the Criminal Code is accessible by all agencies that may lawfully engage in conduct in contravention of those offences, and makes a number of amendments to the *Telecommunications (Interception) Act 1979* to improve the efficiency and effectiveness of that Act.
- We worked with Criminal Law Branch to prepare the *Crimes Amendment Act 2005*, which amends the *Crimes Act 1914* to enable Commonwealth agencies to obtain evidence of identity from the States and Territories in accordance with the legislation in those States and Territories.

Non-legislative measures

- During the year we began providing assistance to the Government of the Kingdom of Cambodia in developing comprehensive counter-terrorism legislation to implement all the United Nations conventions and protocols and Security Council resolutions relating to terrorism. This is the forerunner to a program of counter-terrorism-related legislative assistance to countries in the South-East Asian region. This program will operate for four years.
- We 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. Officers also attended military commission proceedings at Guantanamo Bay as observers and organised the return of a citizen to Australia after his release from detention.

- We assisted the Government to develop national security and counter-terrorism policy by continuing to support the Attorney-General in his role as a member of the National Security Committee of Cabinet. The Security Law Branch also provided advice to a range of clients on the operation and interpretation of other legislation related to national security and counter-terrorism.

Critical infrastructure protection

Through ASIO and the States and Territories, critical assets and key sectors have been identified and problem areas analysed, resulting in ASIO producing a range of asset-specific and sector threat assessments. We have facilitated briefings for the owners of infrastructure, conducted jointly by relevant Australian Government and State/Territory government agencies. These briefings will assist owners and operators with their security, risk management and business continuity planning. The National Counter-Terrorism Committee (NCTC) endorsed new *National guidelines on protecting critical infrastructure from terrorism*. These have been distributed to the approximately 1,800 owners of critical infrastructure identified by the NCTC. Industry interest and support for CIP initiatives has been good.

There are now nine operational Infrastructure Assurance Advisory Groups within the Trusted Information Sharing Network for critical infrastructure protection (TISN) covering the diverse range of Australia's critical infrastructure, with the addition of two new groups—Icons and Public Gatherings, and Transport—during the year.

As much of the TISN approaches the end of its second year of operation, groups are being encouraged to review their progress, effectiveness and structure to ensure that they are able to remain effective and have the capacity to handle an increasing level of activity.

In our coordinating role, we work through and with a number of other Australian Government departments to manage the TISN. All participating Australian Government agencies are actively implementing their CIP commitments. Agencies are also beginning to utilise the TISN for broader consultative purposes. This not only provides government with useful consultation but also reinforces the benefits of participation by industry.

The secure TISN web site was launched by the Attorney-General on 13 April 2005. The web site is designed to facilitate communication at the in-confidence level between TISN members. Within the web site, each group also has its own compartment where discussions can be restricted to members of that group.

Closer alignment of CIP activities between the NCTC and the TISN is producing benefits for both government and the infrastructure owners. Activities are better coordinated, and are seen to be by the business sector.

In addition to the TISN, CIP Branch also supports the Business–Government Advisory Group on National Security to ensure that chief executive officers are not only aware of the security and risk context in which their businesses are operating but also have a direct line of advice and communication to the highest levels of government.

Two new major CIP projects were commenced this year:

- When fully operational, the CIP Modelling and Analysis (CIPMA) program will assist decision makers by developing a capability to model, simulate and analyse the primary dependencies and interdependencies between national critical infrastructures and the flow-on consequences of a failure in a particular sector. Priority sectors are communications, banking and finance, and energy. A strong foundation has been

laid including the review of comparative overseas capabilities, the compilation of a detailed implementation plan, the establishment of a CIPMA Development Team—which includes Geoscience Australia and the Commonwealth Scientific and Industrial Research Organisation (CSIRO)—and the gathering of user requirements.

- The Computer Network Vulnerability Assessment (CNVA) program aims to better protect Australia's critical infrastructure by assisting the owners and operators of critical infrastructure to identify major vulnerabilities within computer systems networks, and test resistance to exploitation. Under the program, owners and operators of critical infrastructure can apply to us for funding of up to 50 per cent of the total cost of undertaking assessments of their networks. The lessons learnt from these projects will provide a body of knowledge of computer network vulnerabilities and interdependencies that can be shared among TISN members. The program was launched by the Attorney-General in November 2004. Since the launch, two application rounds were conducted and several projects have been approved for funding.

Early in 2005 we created a new team to focus on serious incidents affecting Australia's national information infrastructure, GovCERT.au. Its major functions are to:

- prepare and test strategies for dealing with a major incident
- develop and/or coordinate government policy for computer emergency response teams (CERTs)
- act as a point of contact and coordination within the Australian Government for foreign governments on CERT-related issues, and
- manage the relationship between the Australian Government and AusCERT (located in the University of Queensland),

which provides computer incident prevention, response and mitigation strategies for members, a national alerting service and an incident reporting scheme.

Performance measures

Policies recognise rights and responsibilities of stakeholders

In our work on critical infrastructure protection, we engage business in a genuine partnership, which aims to allow business to manage the risks posed to its enterprises and assets. Companies have a responsibility to protect their employees and customers, as well as work in the interest of shareholders. Through the TISN and the Business–Government Advisory Group on National Security, we assist business to meet these obligations by providing information on threats and vulnerabilities, and helping to remove impediments.

We continued to respond swiftly and effectively to the security environment by expanding and enhancing the comprehensive legislative regime to combat terrorism and strengthen Australia's national security. Each piece of legislation was subject to extensive parliamentary scrutiny, offering stakeholders the opportunity to make public submissions.

Where appropriate, the legislation was developed in close consultation with relevant stakeholders. For example, the *Crimes Legislation Amendment (Telecommunications Interception and Other Measures) Act 2005* was developed in response to practical issues identified by the National Emergency Communications Working Group and the Australian Communications Authority, as well as members of the Interception Consultative Committee.

In addition, in response to a request from the Tasmanian Police Force, that police force was declared to be an intercepting agency for the purposes of the *Telecommunications (Interception) Act 1979*.

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

Our work with business on critical infrastructure protection addresses all potential hazards. Whilst our main interest is in ensuring that critical infrastructure is adequately protected from terrorism, the 'all-hazards' approach recognises that business has to consider a wide range of risks. In this case, there is a positive spin-off for all concerned as mechanisms such as the TISN help protect Australian business from criminal activity as well as natural and man-made disasters.

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

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

In the telecommunications interception area, we continued to provide policy advice to government consistent with maintaining the balance between providing effective tools to law enforcement and security agencies and protecting the privacy of users of the Australian telecommunications system.

The function of the Agency Co-ordinator, a statutory office established under the *Telecommunications Act 1997*, is undertaken by the head of SCID. The Agency Co-ordinator acts as a point of contact between telecommunications service providers and law enforcement agencies on interception and related issues. The Agency Co-ordinator continued to perform this

statutory role in relation to the consideration of Interception Capability Plans, applications for exemptions from interception capability requirements and applications for carrier licences. The Agency Co-ordinator has also taken an active role in educating members of the telecommunications industry on interception matters.

Government policies are effectively explained, implemented and applied

The TISN is used to ensure that industry is fully consulted on policy development in critical infrastructure protection. We also use the TISN web site, the secure site and the CIP newsletter to communicate to stakeholders. In addition, we accept a large number of invitations to speak to professional bodies and at conferences to help communicate our messages for business. The Australian Local Government Association has joined the Critical Infrastructure Advisory Council in recognition of the important role local government is playing in the security of communities.

One further group has been listed as a terrorist organisation under the *Criminal Code Regulations 2002*, with 17 organisations re-listed, bringing the number of listed terrorist organisations to 18. 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.

We assisted various parliamentary committees, particularly the Senate Legal and Constitutional Legislation Committee, in its consideration of several Bills, including the National Security Information Legislation Amendment Bill 2005. The Department also assisted the Parliamentary Joint Committee on ASIO, the Australian Secret Intelligence Service (ASIS) and the Defence Signals Directorate (DSD) in its consideration of the listing of the al-Zarqawi network as a terrorist organisation and the re-listing of 16 other organisations.

The Parliamentary Joint Committee on ASIO, ASIS and DSD is currently reviewing the operation, effectiveness and implications of ASIO's terrorism-related questioning and detention powers in Division 3 of Part III of the ASIO Act. We have provided written submissions to, and appeared before, the Committee and will continue to assist the Committee with its review. The Committee is required to report by 22 January 2006.

We answered a large volume of correspondence from members of the public asking about the status and operation of the counter-terrorism and security legislation as well as the status of Australians detained by the United States military at Guantanamo Bay, Cuba.

We 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. These exercises are coordinated by the Protective Security Coordination Centre.

We continued to provide advice and training on the application of telecommunications interception legislation to law enforcement, security agencies and the telecommunications industry. We also provide advice and training on surveillance device matters.

The Department chairs the Legal Issues Working Group on Counter-Terrorism established by Ministers at the Bali Regional Ministerial Meeting on Counter-Terrorism in February 2004. The Group has focused on the implementation of the United Nations instruments relating to terrorism and ways of enhancing legal cooperation in the region.

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 web site. 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.

Effective leadership, coordination and representation of Commonwealth interests in international and domestic forums

We continued to provide strong leadership on critical infrastructure protection issues, both domestically and overseas. Mechanisms such as the National Committee for Critical Infrastructure Protection (NCCIP) have been put in place to ensure greater coordination with the States and Territories. We have been very active in the international efforts to deal with new security challenges in information and communication technology through such forums as the APEC Telecommunications Working Group and regular bilateral meetings with the Government of the United States.

Challenges

ASIO is preparing a range of sectoral threat assessments (TAs) for critical infrastructure, and we are committed to facilitating industry briefings for them as they are published. The number and scale of industry briefings required over the next year to service these TAs is larger than anything previously undertaken, and we will be working closely with other Australian Government departments to assist them to take a lead role with their sectors of industry.

We have built the TISN, which now comprises 13 separate groups, and the coming year will be used to ensure that these groups strengthen their networking functions, with the identification of interdependencies and other matters of mutual concern.

The challenges of emerging communications technologies will be addressed in the context of interception capabilities and the application of the *Telecommunications (Interception) Act 1979*.

Outlook

In CIP, the coming year will see a large number of industry briefings on the terrorist threat being offered to business as ASIO threat assessments are published. The CIP Modelling and Analysis program will reach a stage of being able to demonstrate a new capability, for both government and business, to simulate the effect of major shocks on some of our key infrastructure. This will be delivered through a strong partnership with Geoscience Australia and the CSIRO. Collaboration with the US Department of Homeland Security will be ongoing.

Building on the creation of an Icons and Public Gatherings group within the TISN, we will be working with the NCTC to develop and distribute guidance for the owners of places of mass gathering, similar to the mechanisms that we have put in place for critical infrastructure. These places by their nature allow the general public easy access and, as a consequence, their security requirements are likely to be quite different from those of most critical infrastructure.

The 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 SCID's Security Law Branch remains high. In particular, the Department will be proactive in monitoring and reviewing existing legislation in light of the prevailing and potential future security environment, and will develop and implement appropriate enhancements and legislative amendments. The Department will also expand its counter-terrorism legislative assistance activities in the South-East Asian region.

The Blunn Review on the Regulation of Access to Communications will be provided to the Attorney-General in the next reporting period. In the coming year, the Security Law Branch will assist the government in developing a response to the review's recommendations.

Output 2.3—Provide national leadership in the development of emergency management measures to reduce risk to communities and manage the consequences of disasters

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PERFORMANCE REPORTS: OUTPUT 2.3

Performance overview

Output 2.3 is the responsibility of Emergency Management Australia (EMA). Through EMA, the Department focuses on the emergency management activity for a safer Australia.

EMA's response to the 26 December 2004 Indian Ocean tsunami was the largest since the response to Cyclone Tracy in 1974. Operation Tsunami Assist was a critical operation in civil rapid deployment; more information is on page 101.

The Augmented Australasian Police Ministers' Council (A/APMC)—established in response to the Council of Australian Governments (COAG) Review of Natural Disaster Relief and Mitigation in Australia—met for the first time on 4 March 2005. The Council progressed a wide range of issues including national capability arrangements. These included mitigation, bushfire awareness, community capacity/readiness, the relationship between emergency management and national security, and the Indian Ocean tsunami. Outcomes related, in particular, to the implementation of two COAG reports—*Natural disasters in Australia* and the *National inquiry into bushfire mitigation and management*. As the Australian Government agency responsible for emergency management EMA participates in the activities of these committees and provides the Secretariat for both committees.

In support of emergency management volunteers, we conducted the Value Your Volunteers: Emergency Management Volunteers Summit 2005 in Canberra in April 2005. The main goal of the summit was to develop a stronger volunteer sector and greater community awareness of volunteers.

As part of the Australian delegation to the United Nations World Conference on Disaster Reduction (WCDR) in Kobe in January 2005, we facilitated a key session on the important issue of recognising the unique needs of the Small Island Developing States in the WCDR outcomes—The Hyogo Framework for Action 2005–2015. Also, we contributed to major consideration of future Tsunami warning systems.

Performance measures

Develop a strategic emergency management framework agenda

We have continued to develop a national strategic emergency management policy framework. This was achieved by initiating and chairing forums on specific emergency management issues, investing in innovation, and identifying strategies addressing current and future risk. We have received substantial support to achieve this objective through reports from COAG and federal parliamentary committees.

We continued to manage high-level emergency management arrangements. As a member of the National Counter-Terrorism Committee (NCTC), we continue to progress the work of the Committee through the NCTC Forward Work Program, and have done considerable work in the development of national urban search and rescue (USAR) capability.

Build more effective relationships between emergency management and other sector stakeholders

We have continued to build effective relationships in the emergency management sector with State and Territory emergency management organisations, volunteers, private enterprise, the media, and the Australian public. For example, EMA publishes a quarterly journal—the *Australian Journal of Emergency Management* (AJEM)—with the participation of sector partners. Three special themed issues were published during 2004–05 on recovery, counter-terrorism and agricultural emergencies.

Partnerships with education and industry relevant to emergency management added value to the outcomes of our education and training programs. Working through RMIT University, Swinburne University of Technology and Charles Sturt University, we have provided opportunities for graduates from the emergency management sector to move through the Graduate Certificate and the Advanced Diploma, to the Bachelor, Graduate Diploma and Masters programs in areas of business administration, health science and emergency management.

There is a strong relationship with emergency management stakeholders via the AEMC. In addition to its formal twice-yearly meetings, the AEMC is convened regularly via teleconference and whenever an incident warrants stakeholder input—for example, via daily teleconferences for the first ten days of the tsunami disaster.

Enhance emergency management capability

In early June 2005, COAG endorsed the National Response Plan for Mass Casualty Incidents involving Australians Overseas (OSMASSCASPLAN), which was developed by EMA in close partnership with agencies from all jurisdictions. The plan details the agreed roles and responsibilities of Australian Government agencies and the linkages into State- and Territory-managed provision of health care in an offshore incident.

EMA's 2004–05 Research and Innovation Program supported key initiatives for emergency management relating to: mass casualty simulation to assess, train and develop emergency management systems to cope with mass casualty events; emergency risk management assurance to ensure that the effort devoted to emergency risk management is supported through governance arrangements for extreme risks; and 'emergeo-train', which simulates real-time emergency management events in an exercise environment.

EMA developed a Senior Executive Program to address the critical leadership and decision-making skills required in times of uncertainty that have both political and



EMA staff, Mt Macedon, Victoria 2005

social consequences. The first program for senior emergency management agency executives was conducted in May 2005.

Facilitate the process of developing resilient and safer sustainable communities

EMA reviewed community awareness products in response to stakeholder feedback, and distributed revised material through established State and Territory networks, including commercial agencies that promote hazard awareness through school curricula. EMA's school education web site allows teachers access to emergency management curricula and information, including comprehensive details on the Indian Ocean tsunami.

Our profile as a leader in emergency management continues to be recognised by invitations to speak at national and international emergency management and security forums. This has helped to establish formal and informal links with international organisations in the emergency and consequence management sector.

A new program, Emergency Management for Local Government, was developed and evaluated, and received national accreditation from the Victorian Qualifications Authority. This program develops knowledge and skills in applying emergency management strategies at the local level, contributing to more resilient and safer communities. We have also developed the first nationally accredited training for Business Continuity Management; this course is designed to enable organisations to prepare for and recover from disaster and will be delivered by us in 2005–06.

Challenges

The year 2005–06 will continue to bring many new challenges to EMA in meeting our objective of developing safer, sustainable communities.

We are progressing priorities relating to national security and emergency management—namely, mass casualty transport capability and national urban search and rescue capacity.

The Augmented Australasian Police Ministers' Council (A/APMC) has requested the Remote Indigenous Communities Advisory Committee (RICAC)—of which EMA is a member—to develop a national strategy addressing emergency management in remote Indigenous communities. Work will continue throughout the year on this initiative with high-profile involvement.

EMA will continue to participate in the development of the Australian tsunami early warning system. Our work focuses on the development of community awareness, community preparedness, establishment of a warning system, development and delivery of education and training for emergency managers and augmentation of communications equipment in the National Emergency Management Coordination Centre.

EMA will coordinate a report on lessons learnt from Australia's response to the 26 December 2004 Indian Ocean tsunami.

In conjunction with AusAID, we will be involved in the Australian–Indonesian Task Force (AITF) to enhance Indonesian emergency management capabilities. AITF will be working directly with BAKORNAS, our counterpart agency in Indonesia.

We expect significant work to flow to EMA from the COAG bushfire inquiry outcome. Increased emphasis on improving community awareness of bushfire hazards has highlighted the need for a national approach to bushfire awareness.

Outlook

Emergency management arrangements and programs require priority consideration and understanding as a means to ensure confidence in the sustainability of the Australian community, including plans for healthy and safe mass gatherings.

EMA's 'all hazards' approach to emergency management, strongly supported by State and Territory jurisdictions, must consider risk and resilience measures for all communities.

Our capacity to call on all State and Territory jurisdictions in times of disasters to rapidly coordinate and deploy essential assets within Australia and offshore will continue to be tested with constant re-evaluation and assessment in a 'lessons learnt' context.

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

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PERFORMANCE REPORTS: OUTPUT 2.4

Performance overview

Output 2.4 is the responsibility of the Protective Security Coordination Centre (PSCC).

- The PSCC is the pre-eminent whole-of-government coordination centre for incidents relating to protective security or terrorism. The effectiveness and primacy of this coordination role—facilitated primarily by the PSCC Watch Office—was successfully demonstrated during the various ‘white powder’ incidents throughout June 2005.
- On behalf of the National Counter-Terrorism Committee (NCTC), we made a major contribution to nation-wide counter-terrorism capability enhancement through the conduct of six major counter-terrorism exercises throughout the country and planning for exercise Mercury 05 to be held in October 2005.
- Further counter-terrorism measures coordinated by the PSCC include the revision of the *National Counter-Terrorism Handbook* and work on the current revision of the *National Counter-Terrorism Plan*, as well as the purchase of significant police counter-terrorism specialist equipment, including replacement bomb robots.
- The PSCC successfully provided security coordination for the Australian Government and State/Territory government agencies in support of some 136 visits to Australia by foreign dignitaries that included heads of state, heads of government, royalty, Ministers and other officials. We also continued to work collaboratively with other countries for the protection of the Prime Minister and other dignitaries for their travel overseas.
- We also worked closely with Australian Government and other partner agencies on security arrangements for the 90th Anzac Day services at Gallipoli, which were attended by a number of Australian dignitaries, including the Prime Minister. The services at Lone Pine presented a unique security challenge, and they proceeded without any serious security incidents.
- During 2004–05, the National Security Hotline received 16,163 calls, letters and emails, compared with 13,731 in 2003–04. Some of the information provided has been of significant value to the police and intelligence agencies.

CASE STUDY

Anzac Day 2005—90th anniversary of the landings at Gallipoli

Around 15,000 people gathered at Gallipoli in Turkey last April to commemorate the Allied landings 90 years ago. Many of these were Australians and New Zealanders.

The annual Anzac Day ceremonies in Gallipoli are significant in today's security environment because they occur on the same day, at the same time, every year. They are also the largest regular gathering of Australians in a foreign country. Australian security preparations for the events in Gallipoli require intensive planning, advance trips to Turkey and participation on the ground in the week leading up to 25 April.

Australian security preparations for Anzac Day in Gallipoli require intensive planning.

For the past three years the Protective Security Coordination Centre (PSCC) in the Attorney-General's Department has provided protective security advice to the Australian Government agencies that arrange the ceremonies.

The Turkish Government has the primary responsibility for security at the event. The PSCC, through the Department of Foreign Affairs and Trade, engages with the Turkish authorities to discuss our concerns and wishes for the event.

In 2005, the ceremonies went smoothly as the Turkish Government and local people continued their tradition of offering understanding and generosity to those who travelled to Gallipoli.

The Jandarma (Turkish Military) had around 800 troops on the Peninsula in the lead-up to the ceremonies and for some days afterwards. These troops undertook security screening of the people who arrived to participate in the Anzac ceremonies, including checking vehicles, people and bags.

From a security viewpoint, it was a positive experience and will be used by the PSCC to plan for Anzac Day in 2006 and beyond.

- We continued collaborative security planning and preparations with other Australian Government agencies, the Victorian Government and the Melbourne 2006 Commonwealth Games Corporation in readiness for the Commonwealth Games in March 2006. We also initiated security planning with the departments of Treasury and Foreign Affairs and Trade for international ministerial-level meetings to be held in Australia during 2006.
- In 2004–05, the PSCC established the APEC 2007 Security Branch to coordinate security arrangements for Australia's hosting of Asia–Pacific Economic Cooperation (APEC) in 2007. To ensure that security is fully integrated into all other aspects of planning, the Branch is co-located with the APEC 2007 Taskforce in the Department of the Prime Minister and Cabinet (PM&C), and has commenced planning in partnership with a range of Australian Government, State and Territory agencies.
- In April 2005, the PSCC's Training Centre achieved status as a Registered Training Organisation under the Australian Quality Training Framework (AQTF).
- The annual Security in Government Conference was held in May 2005, with the theme 'Working Together for Australia's Security'. In excess of 500 delegates from business, government and the security industry came together to discuss protective security policies and to experience the latest in security technologies. The accompanying Trade Exhibition attracted exhibitors who filled 110 booths. The conference continues to provide a valuable forum for the discussion of security issues that affect all Australians.

Performance measures

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

PSCC manages the Australian Government's protective security responsibilities and performs a coordination role in marshalling resources in preventing, or responding to, threats to our national security. It maintains close working relationships with all Australian Government departments and agencies, Federal, State and Territory police services, Premiers' and Chief Ministers' Departments and security agencies to accomplish these functions. Establishing and maintaining these relationships is the cornerstone of PSCC's operations.

PSCC Watch Office

The Department operates two round-the-clock centres: the Watch Office and the National Security Hotline. They are co-located and work together closely.

The Watch Office is a dedicated security facility that provides a whole-of-government coordination point for national security issues including those related to terrorism and politically motivated violence. Using well-established protocols, information received from a wide range of sources, is consolidated and disseminated to all



Queen's Baton Relay launch 10 February 2005, Melbourne. Left to right: Diana Ferry AGD PSCC—M2006 Taskforce, Sue Evans DCITA—M2006 Taskforce, Bronwyn Arneson DCITA—M2006 Taskforce. Photo by Geoff Comfort Photography.

CASE STUDY

White powder in the post— coordinating the response

In June 2005, an embassy in Canberra received mail containing an unknown white powder. This was of immediate concern in case the powder was a harmful biological agent such as anthrax. Even if the powder was innocuous, the sending of white powder in the mail demonstrated a clear intention to cause fear and disrupt the recipient's organisation.

Staff in the Watch Office were already working with around 20 separate agencies...

In this case, a call from the embassy to the Australian Federal Police (AFP) triggered a well-practised response. One of the first tasks was to notify the Watch Office, which is responsible for disseminating information to all relevant agencies and ensuring there is a coordinated, whole-of-government response. The Watch Office is part of the Protective Security Coordination Centre (PSCC), a Division of this Department.

AFP officers quickly arrived at the embassy, where they were able to contain the scene and begin providing information to the Watch Office. Staff in the Watch Office were already working with around 20 separate

agencies from both the Australian and ACT governments, making sure the right people received the right information at the right time. This included preparing situation reports and disseminating them at two hourly intervals.

Officers from the Department's Public Affairs Unit relocated to the Watch Office so that consistent and accurate information could be provided to the media. Staff in the PSCC's Security Programs Branch also ensured that other embassies and parliamentary offices were alerted to the incident and were using procedures for safe mail handling.

Once the substance was analysed and declared non-hazardous, the situation started to wind down. However, there were a number of 'copy-cat' incidents in the following days targeting parliamentary and government offices, as well as other embassies in Canberra. The response to each of these was as comprehensive and resource-intensive as the first.

relevant Australian Government and State and Territory agencies, including all police services.

In accordance with the National Counter-Terrorism Plan, the Watch Office also plays a key role in support of the Special Incident Task Force (SITF), which may be subsumed by the National Crisis Committee when it is activated, by providing timely and accurate information to high-level decision makers, as well as general organisational support.

National Security Hotline

The National Security Hotline provides a single point of contact for members of the public to receive advice and reassurance regarding national security issues, and to report any suspicious activity that may be related to national security. A new phase of the national security public information campaign was launched in September 2004 to remind the public that even small pieces of information can help protect Australia from terrorism.

Although calls to the Hotline tend to increase in response to media focus on a particular national or international security issue, there was a steady flow of calls from the public throughout the year (see Figure 3). Calls, letters and emails to the Hotline are classified into four categories: those providing information; those commenting on the national security information

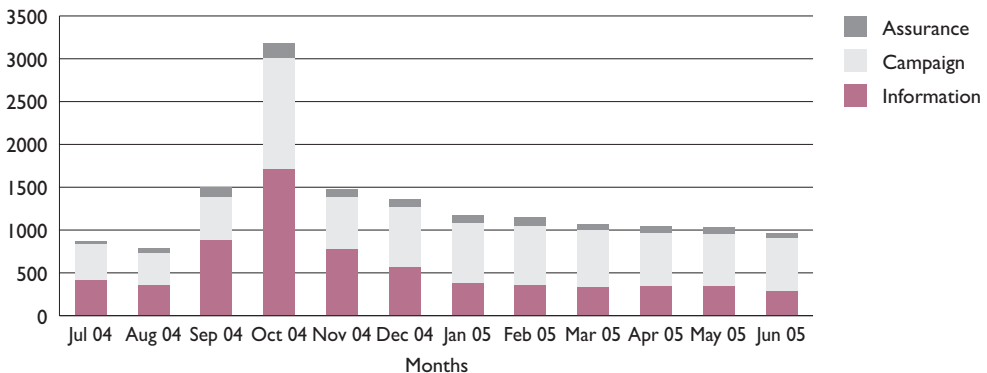
campaign; those seeking assurance; and a very small number of emergency calls (one in 2004-05), which are referred immediately to 000.

The information provided by the public is passed on to the Australian Federal Police (AFP), the Australian Security and Intelligence Organisation (ASIO) and relevant State and Territory police. In 2003-04, ASIO reported that, of 13,381 calls referred by the Hotline, 2,602 were investigated. For the same period, 19,735 Hotline reports were referred to the AFP, with 538 followed up for investigation. These figures illustrate clearly the value of the information provided by the public to our national security.

Dignitary protection

The PSCC coordinates the Australian Government's dignitary protection arrangements for Australian holders of high office, foreign diplomats and visiting dignitaries. In close cooperation with the AFP, the Prime Minister's Office and PM&C, we successfully coordinated arrangements with foreign security services for visits overseas by the Prime Minister. The Prime Minister conducted eight overseas trips, visiting 13 countries. The Department supported these visits by carrying out 11 advance security surveys.

Figure 3: National Security Hotline calls July 2004 to June 2005





Australian Government

HELP PROTECT AUSTRALIA FROM TERRORISM



Every piece of
information helps

If you see anything suspicious call the
24-hour National Security Hotline

1800 123 400

NATIONAL SECURITY HOTLINE

www.nationalsecurity.gov.au

Special event security

The role of PSCC in special event security coordination is to act as a conduit to other organisations and thereby provide practical solutions to event organisers, cognisant of security needs from an Australian Government perspective.

The division is currently engaged in preparing security arrangements for Australia's hosting of APEC in 2007 and the 18th Commonwealth Games to be held in Melbourne on 15–26 March 2006. These activities involve a significant degree of coordination and collaboration, bringing together all Australian Government as well as State and Territory government agencies with relevant security organisations and international stakeholders.

Counter-terrorism

Planning for Mercury 05—the second multijurisdictional counter-terrorism exercise, to be held in October 2005—commenced in July 2004 and is well advanced. The exercise is designed to practise national counter-terrorism arrangements in support of the Melbourne 2006 Commonwealth Games. Large-scale field exercises will be conducted in a number of States. Mercury 05 will test strategic-level decision making within and between all participating governments, including at ministerial level.

The PSCC also provides counter-terrorism operational coordination support to the NCTC. The functions include administering the NCTC Special Fund; coordinating the NCTC training, exercise, development and equipment procurement programs; and providing executive and secretariat support to a number of NCTC subcommittees and working groups. (Further details on the NCTC Special Fund are in the Administered items section of this chapter, see page 97.) In addition, the *National Counter-Terrorism Handbook* was reviewed and updated in late 2004 and distributed in early 2005. The

Department is currently in the process of updating the *National Counter-Terrorism Plan*, on behalf of the NCTC, to bring it into line with the revised handbook. The updating of the plan is expected to be finalised by late 2005.

The PSCC continues to provide executive and secretariat support to the Australian Government Counter-Terrorism Committee (AGCTC), which meets monthly to review and advise government on the national level of alert. The AGCTC also shares protective security information with relevant Australian Government departments and agencies.

The PSCC also provides chairing and secretariat support to the National Spatial Information for National Security (NSINS) Working Group. This group brings together representatives from a wide range of organisations across the nation in recognition of the emerging importance of geospatial information in relation to counter-terrorism, emergency management and critical infrastructure protection.

During the reporting period, the Department, on behalf of the NCTC, completed the upgrade of the Australian Secure Network (ASNET), which provides a secure communications link within and between relevant Australian Government, State and Territory government, security, law enforcement and intelligence agencies.

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

The Protective Security Coordination Centre's Training Centre continues to provide security education and awareness to Australian Government and State and Territory government agencies on a cost-recovery basis.

In April 2005, the Training Centre achieved status as a Registered Training Organisation under the Australian Quality

Training Framework (AQTF), enabling it to issue qualifications under the Australian Qualifications Framework (AQF) to participants who successfully demonstrate Recognised Prior Learning and competence relevant to the courses within the Centre's scope of registration.

The Training Centre's training courses are mapped to the nationally recognised Government Security Management competencies contained in the Public Sector Training Package 04. Course curriculum has recently been updated to reflect minimum standards set out in the revised and updated *Protective Security Manual* (PSM) 2005, to be released later this year.

We provided appropriate security awareness to Australian Government and State/Territory government agencies in direct support of preparations and planning for visiting foreign dignitaries. We also provided this security awareness to relevant agencies in support of significant events held in Australia or overseas.

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) provides high-quality personnel security vetting services to Australian Government agencies and private sector contractors working for government. In 2004-05, the ASVS completed 3,240 clearances on behalf of 93 agencies.

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

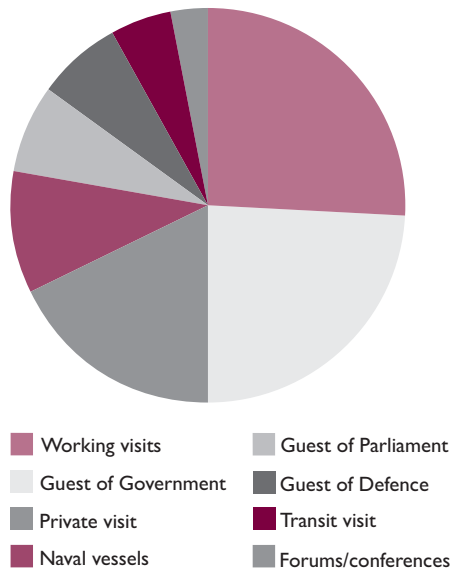
We successfully managed and coordinated security for a range of visits to Australia by working closely with Australian Government and State and Territory government police

agencies and security services of the visiting nations. Major visits included those by HRH the Prince of Wales; the wife of the UK Prime Minister; Israeli President Moshe Katsav; and HE General Pervez Musharraf, President of Pakistan. All visits were completed successfully.

The overall number of visits by foreign dignitaries to Australia in 2004-05 was 136 (see Figure 4). The changed security environment presented new challenges. Expectations of foreign security services have increased. This has resulted in a general expectation of more security for a wider range of dignitaries, including senior officials and an increase in the number of foreign security officers travelling with dignitaries.

A new armoured VIP limousine was available in the last quarter for the protected carriage of important persons assessed at-risk. The limousines provide a high standard of protection and finish commensurate with the needs of senior Australian and international dignitaries.

Figure 4: Significant visits for 2004-05



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

The Australian Government's *Protective Security Manual* (PSM) is issued by the Attorney-General's Department. It is the principal means for disseminating Australian Government protective security policies, principles, standards and procedures to be followed by all Australian Government agencies for the protection of official resources.

After extensive consultation with other agencies, including key agencies through the Protective Security Policy Committee (PSPC), the PSM has undergone a comprehensive review and redrafting. The revised PSM provides minimum common standards in protective security for all Australian Government agencies and contractors and their employees performing services for and on behalf of the Australian Government. These minimum standards ensure that there is a consistent approach to protective security within and between agencies.

A further initiative introduced by the Department has been The National Visits Media Card system. This requires checking of identity and bona fides for media representatives involved in the visit of dignitaries to Australia. This has improved overall protective security arrangements and has contributed to a higher level of confidence in the legitimacy of media representatives covering visits.

Evaluations

Implementation of strategies arising from the Sadleir Review of protective security arrangements for Australian holders of high office and diplomatic and consular missions commenced during the year. These strategies lay the foundations for the efficient and effective management of protective security into the future. They are based on risk

assessment, technology, physical barriers and mobile patrols to counter the risk of the most likely forms of terrorist attacks. The focus this year was on implementing technology strategies to provide the basis for future enhancements to guarding and a range of physical security measures. This was a priority for the Department in 2004-05, with significant progress made in collaboration with the Australian Federal Police.

The National Counter-Terrorism Committee commissioned an evaluation of progress against the key findings from the national counter-terrorism capability analysis conducted by Deloitte Consulting in 2002. The Department, through the Protective Security Coordination Centre, managed the review.

The review report was considered by the NCTC at its May 2005 meeting. The meeting noted the progress already being made in relation to the majority of the review's recommendations. The Department is working with the NCTC to develop a strategy for taking the recommendations forward.

The Australian National Audit Office (ANAO) completed a performance audit into Australia's National Counter-Terrorism Coordination Arrangements: Evaluations and the Links to Continuous Improvement. The audit's focus is on the roles of the National Security Division of PM&C and the PSCC. The ANAO expects that the final report will be tabled in late 2005.

Challenges

A significant challenge both nationally and internationally is to enhance our working relationships concerning protective security and dignitary protection with the wide variety of agencies involved, and with their often differing requirements. We intend to continue our extensive consultative

arrangements, enhance agreed procedures and develop new protocols where needed.

A major challenge for the future will be the conduct of the national multijurisdictional counter-terrorism exercise Mercury 05 in October 2005 and its subsequent evaluation in the lead-up to the Melbourne 2006 Commonwealth Games.

Outlook

In addition to continuing to provide high-level security coordination for high office holders and diplomatic missions, and security planning and coordination in support of major events to be held both in Australia and overseas, we anticipate that 2005-06 will bring a particular focus on the following:

- continued implementation of strategies arising from the review of protective security arrangements for Australian high office holders and diplomatic and consular missions
- continued security planning and coordination in support of the Melbourne 2006 Commonwealth Games
- completion of delivery of the armoured VIP limousines to required standards, setting of requirements for the next generation of protected vehicles, and initiation of procurement action for delivery of the next fleet
- in partnership with a range of Commonwealth, State and Territory security agencies, detailed security planning for the wide range of high-profile APEC 2007 meetings to be hosted throughout Australia commencing in January 2007, and
- training and exercises in all jurisdictions under the National Counter-Terrorism Committee program to prepare for the APEC meetings in 2007.

Output 2.5—Management and coordination of the delivery of security and guarding services to meet diplomatic, consular and other Commonwealth responsibilities

130

PERFORMANCE REPORTS: OUTPUT 2.5

Performance overview

Output 2.5 is the responsibility of the Protective Security Coordination Centre. Through the Centre, the Department manages and coordinates security and guarding to meet diplomatic, consular and other Commonwealth responsibilities.

Guarding provides a visible deterrent, an ability to detect intruders and a timely response to any security incident that may arise at protected premises. Depending on circumstances guarding can take the form of static posts, perimeter patrols of premises by foot or vehicle and general patrolling of a designated area.

The attack on the Australian Embassy in Jakarta, along with the continuing general heightened world security environment, has meant that relatively high levels of protective security have continued to be managed and coordinated by the Department during 2004–05. Security was provided to a number of Australian office holders and members of the diplomatic and consular community Australia-wide.

The ongoing nature of terrorist attacks has meant that the level of demand for protective security is now at a consistently high level.

The changed security environment presents new challenges in providing security for visits by foreign dignitaries to Australia. In particular, expectations of foreign security services—which often interpreted the security environment differently from

Australian agencies—have increased. There is a general expectation of more security for a wider range of dignitaries, including senior officials, and an increase in the number of foreign security officers travelling with dignitaries.

Performance measures

No security failure attributed to the Protective Security Coordination Centre

There were no significant security incidents in 2004–05 that resulted in injuries to protected persons or significant damage to property.

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

The PSCC works collaboratively with other Australian Government agencies with security responsibilities. This includes the Australian Federal Police (AFP), the Australian Security and Intelligence Organisation (ASIO), the Department of Foreign Affairs and Trade (DFAT) and the Department of the Prime Minister and Cabinet (PM&C). The PSCC also works closely with State authorities regarding the provision of security measures.

The provision of protective security services, including guarding, is based on the assessed level of risk. This collaborative risk management approach ensured the effective use of finite resources and reduced the application of excessive security measures. The level of guarding for protected

premises and persons during 2004-05 was consistently monitored and adjusted when warranted.

The AFP Protective Service (AFPPS) was employed to provide the bulk of guarding services, with State or Territory police providing guarding services where the AFPPS was unable to meet requirements. Private sector guards were employed at less sensitive locations.

The Department provided a level of protective security and guarding services commensurate with the assessed level of risk. This ensured that Australia met its obligations under the Vienna Convention for the protection of diplomatic and consular missions as well as providing protection for Australian office holders.

Challenges

As the world security environment continues to respond to the threat of terrorism, managing diplomatic, consular and other Commonwealth security in Australia is a constantly evolving challenge.

Outlook

From 1 July 2005 the management of the funding arrangement for this output was transferred to the AFP. Responsibility for determination of guarding requirements and provision of some of the alternatives to static guarding (ie, close-circuit television barriers, etc) remains with the PSCC to coordinate a whole-of-government approach.