

External Scrutiny

Achieving a Just & Secure Society

As part of the overall accountability framework, the Department's activities are subject to external scrutiny from a variety of sources. These might include judicial decisions and decisions of administrative tribunals as well as reports of parliamentary committees, the Auditor-General and the Commonwealth Ombudsman. During the reporting period the Ombudsman raised no substantive issues.

Reports of parliamentary committee inquiries can address a range of matters including legislation proposals, legal and policy work, broad community-interest issues of both direct and indirect relevance to the Department, and aspects of operational infrastructure i.e. the support systems, processes and procedures which enable the Department to perform its functions efficiently and effectively. During 2000–01 there were no reports by parliamentary committees directly related to the operations of the Department. Further information on parliamentary committee consideration of other types of matters impacting on the Department appears in the 'Report on Performance', against relevant departmental outputs.

Details of judicial decisions having significant impact on the Department, as well as of Auditor-General reports on the operations of the Department, follow.

Judicial decisions in 2000–01 having significant impact on the operations of the Department

Proceeds of crime

On 30 July 1999, his Honour Mr Justice Mandie of the Supreme Court of Victoria dismissed an application by the Commonwealth Director of Public Prosecutions for the registration of a 'seizure order' issued in Mexico for the purpose of preserving suspected proceeds of crime located in Australia. Mandie J determined that an order for the 'seizure' of property held by an alleged offender in Australia did not constitute a 'foreign restraining order' for the purposes of the *Mutual Assistance in Criminal Matters Act 1987*. An appeal against the decision of Mandie J was dismissed by the Victorian Court of Appeal on 22 March 2000.

The seizure order issued in Mexico was in a similar form to the form of orders issued in other civil law jurisdictions for the purpose of preserving property believed to constitute the proceeds of crime. If the Australian authorities were not in a position to enforce such foreign orders, we would not be in a position to meet our obligations at international law in respect of the provision of assistance in criminal matters.

In response to this decision, an amendment to the Mutual Assistance in Criminal Matters Act came into force on 6 April 2001 (Schedule 2 to the *Crimes Amendment (Forensic*

Procedures) Act 2001) which makes it clear that orders having the intended purpose of preserving suspected proceeds of crime, whether in the form of seizure orders, orders that property not be disposed of or otherwise dealt with by any person, or orders that property be taken into official custody and/or control, are orders that fall within the description of 'foreign restraining order' for the purposes of the Mutual Assistance in Criminal Matters Act.

Reports on the operations of the Department by the Auditor-General in 2000–01

Australian National Audit Office (ANAO) Report Administration of Consular Services Audit Report No.31, tabled 29 March 2001.

Recommendation 5 – The Committee recommends that the Department of Foreign Affairs and Trade examine options to enable locally engaged staff in Australian posts overseas to undertake notarial acts.

Government Response: Accepted. Amendments to the *Consular Fees Act 1955* have been made, and in consultation with State and Territory governments, we will examine options to enable suitably qualified locally engaged staff to perform notarial acts under relevant State and Territory legislation.

Summary of action advised by agency: The Department advised that Commonwealth and States/Territories Attorneys-General agreed in April 1999 that Commonwealth, State and Territory legislation be amended to enable locally-engaged staff at overseas posts to carry out notarial acts. Progress by jurisdictions in amending their legislation is dependent on parliamentary timetables. To date only Queensland and South Australia have enacted the necessary legislation. Other jurisdictions have yet to implement the agreement. Amendments to relevant Commonwealth legislation are scheduled for introduction in 2001. To date the Secretary of the Department of Foreign Affairs and Trade has authorised a total of 154 locally-engaged staff at overseas posts to perform notarial acts under Commonwealth legislation.

Recommendation 17 – The Committee recommends that in the case of the victims of crimes special consideration should be given to ensure that they have access to adequate legal representation, if required, in a foreign jurisdiction, that travelling and in country expenses be provided if these are not met by the foreign government and that funding for these services be provided under the Special Circumstances (Overseas) Scheme.

Government Response: Further consideration necessary. The recommendation requires additional funding and will be considered in the context of the budget of the Attorney-General's Department.

Summary of action advised by agency: The Department advised that assistance of the type recommended can be provided under the Special Circumstances (Overseas) Scheme, subject to the applicant satisfying the usual conditions for assistance under that scheme. The scheme is administered by the Legal Assistance Branch of the Family Law and Legal Assistance Division, and application forms and copies of the guidelines that relate to the scheme are available on request. The Department has not pursued additional funding for

assistance for victims of crime overseas, as only a very small number of applications have been received. Since 1997 there have been two applications relating to victims of crime overseas. Funding was provided in one case.

Recommendation 18 – The Committee recommends that the Attorney-General seek the cooperation of the States and Territories to implement the arrangements necessary for the introduction of the international prisoner transfer scheme.

Government Response: Agreed. Commonwealth legislation providing arrangements for international prisoner transfer has already been enacted. The States and Territories (except Western Australia and the Northern Territory) have agreed in principle to enact complementary legislation and are preparing to do so.

Summary of action advised by agency: The Department advised that all States and Territories have now passed complementary legislation. The Commonwealth has been consulting with all States and Territories on draft Administrative Arrangements which will be necessary for the implementation of the legislation. The Commonwealth is also preparing draft regulations under the Commonwealth legislation and associated materials in relation to the scheme. Australia will then enter into appropriate international transfer arrangements.

The Department advised that the key international priorities are to conclude a bilateral agreement with Thailand and to accede to the Council of Europe Convention on the Transfer of Sentenced Persons. Negotiations on a draft agreement with Thailand are nearing completion. Australia's accession to the Council of Europe Convention would enable Australia to enter into prisoner transfer arrangements with approximately 50 countries, including several with large numbers of Australian prisoners, such as the United Kingdom, Greece and the United States of America. The Government has initiated processes for Australia's accession to the Convention. The Government also proposes to arrange for Australia's participation in the Commonwealth Scheme for the Transfer of Convicted Offenders, and will examine possible bilateral arrangements with other countries as appropriate. All proposed international arrangements will be subject to parliamentary scrutiny, including review by the Joint Standing Committee on Treaties.

Recommendation 19 – The Committee recommends that the Attorney-General's Department ensure that appropriate consular officers are advised when an Australian national is to be extradited to a foreign jurisdiction and that the person being extradited be informed of the assistance that may be provided by Australian consular officials to persons in gaol overseas.

Government Response: Agreed. The Attorney-General's Department will advise the Consular Branch of the Department of Foreign Affairs and Trade when Australians are to be extradited to foreign jurisdictions

Summary of action advised by agency: The Department advised that arrangements to inform the Consular Branch of all relevant extradition cases were not introduced until February 2000. The Department of Foreign Affairs and Trade (DFAT) commented that, in practice, it has learnt very quickly of such cases in recent years, and posts have extended the same consular service to extradited Australian citizens as to any other prisoners abroad. In many cases, the use of the diplomatic communications system provides automatic access to information concerning extraditions.

The ANAO found that, in practice, posts had not always been notified in advance of extradition cases. To address this, the Attorney-General's Department and DFAT have now agreed and implemented arrangements whereby the Department advises DFAT of the impending extradition of Australian citizens as soon as their date of surrender is finalised (usually about a week before surrender occurs) so that DFAT can notify the relevant post in time for it to take appropriate consular measures upon the arrival of the extraditee. The ANAO also found that the second part of the recommendation—that persons being extradited abroad be informed of consular assistance available to persons in gaol overseas—had not been implemented, as the Attorney-General's Department's understanding had been that the extraditee would be informed of consular assistance on arrival in the overseas country. The Attorney-General's Department and DFAT have now agreed and implemented arrangements to address this. The Attorney-General's Department provides advice on consular services to Australian citizens facing extradition at the same time as they are advised that the Minister has signed a warrant for their surrender. The Department considers that this arrangement ensures that the person has ample time to consider this information before surrender occurs.