7.1 Law enforcement agencies

There are a number of law enforcement agencies that have an important role in upholding statutes at state and federal levels, as well as some of the legal restrictions placed on these agencies.

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The police

State and territory police

Under Australia’s constitution, state governments hold responsibility to provide police services. Each state and territory police service has responsibilities involving upholding the law, preventing and investigating crime, and providing community protection. In addition, police services manage emergency incidents, enforce road and traffic rules, and deal with missing persons reports.

The police have rules that they must obey when they perform these duties. To ensure that evidence is collected correctly and thus is able to be used by the prosecution in a court case, the police are covered by a code of practice. The Foreword to the code outlines what it covers:

- police powers to stop, search and detain people
- police powers to enter and search premises, and seize property
- police powers to arrest, detain and question suspects
- the way in which suspects and others are to be treated by police.

Each state and territory in Australia has its own police force. The New South Wales Police Force is primarily concerned with enforcing criminal law, particularly those offences contained in the Crimes Act 1900 (NSW). Some of the most serious crimes are clearly those against the person such as homicide, manslaughter and sexual assault. More recently, new laws have been passed to combat organised gangs and terrorist activities.

Other aspects of state policing include assisting with mediation in family and neighbourhood disputes, particularly those involving domestic violence. The application and enforcement of apprehended violence orders (AVOs) restricting the movements of some individuals in relation to others is another part of the job of the state police.

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Figure 7.1 Police powers to stop, search and detain people are defined in the code of practice.

apprehended violence order (AVO)

court order to protect a person who fears violence or harassment from a particular person. In NSW, ‘apprehended personal violence orders’ prohibit violence between members of the public; ‘apprehended domestic violence orders’ prohibit violence in the context of a family.

state police

law enforcement agencies with statewide jurisdiction

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A current issue for state policing is the use of taser or stun guns, also called Controlled Electronic Devices (CEDs), to subdue, apprehend and disable suspects. These weapons deliver a strong shock that disrupts the central nervous system. In 1995, a mentally unstable man Roni Levi threatened a number of people on Bondi beach with a knife. Police shot him dead after he ignored repeated warnings to drop his weapon. Advocates of CEDs argue that Mr Levi might still be alive today if police carried CEDs rather than firearms.

There was a renewed call for CEDs to be carried by police in December 2008. This followed an incident in which Tyler Cassidy, a 15-year-old Victorian youth, was shot dead after brandishing a knife and making threats towards police. However, while healthy adults are unlikely to suffer lasting damage from a CED,
abnormal heartbeat may be brought on in persons with existing heart disease or other risk factors such as mental illness, drug use, alcohol use or high stress. A 2008 Amnesty International report, ‘Less than Lethal?’, documented the deaths of 334 people in the United States after CEDs were used on them. In more than 40 of the cases, coroners found that the shocks had led to or contributed to the death.

Another problem with CEDs is that they are open to abuse by police officers and there appear to be few guidelines or restrictions on their use, leaving suspects at the mercy of some overzealous officers. Amnesty International’s study found that 90 per cent of those who died after having a CED used on them were unarmed and did not pose a threat to the public.

In March 2012, a Brazilian student Roberto Laudisio Curti was tasered by police for allegedly stealing biscuits from a convenience store in Sydney. Mr Curti had taken the drug LSD at some stage during the night and was showing signs of extreme paranoid and agitated behaviour. After being asked by police to stop and talk to them on several occasions, Mr Curti was chased by six police officers, who used capsicum spray before using a CED to apprehend Mr Curti. He died as a result.

**Federal police**

The **Australian Federal Police (AFP)** is responsible for enforcing federal law and criminal law where crimes cross state boundaries. A key role is the prevention and detection of crimes within Australia against Commonwealth law. In certain circumstances, police may also deal with Australians overseas. Crime legislation enforced by the AFP includes the **Crimes Act 1914** (Cth) and the **Criminal Code 1995** (Cth). Offences include drug importation and distribution, and crimes relating to Commonwealth entities (e.g. bribery of Commonwealth public officials). The powers of the AFP are set out in the **Australian Federal Police Act 1979** (Cth).

**Australian Federal Police (AFP)**

the federal police agency of the Commonwealth of Australia, set up to enforce the federal laws and to protect the interests of Australia both domestically and internationally

Significantly, the nature of the AFP and what is required of it have changed since 11 September 2001. The AFP has reacted to a rapidly changing environment, particularly in relation to terrorism and terrorist organisations. There is now a greater focus on international operations.

The new challenges the AFP faces include terrorism, cybercrime, human trafficking and sexual slavery. The AFP may also be involved in the family law process if the Family Court makes specific orders requiring the involvement of the AFP; for example, if the Court believes that a child may be taken from Australia. Under sections 66Y and 66Z of the **Family Law Act 1975** (Cth), children involved in family law proceedings must not be removed from Australia. There is a penalty of up to three years’ imprisonment for anyone who attempts to do this.

Chapter 19 details the AFP’s investigations into Mohamed Haneef’s alleged role in a terrorist attack in Glasgow, Scotland. It is not the most glowing of reports as the AFP spent $8 million investigating Dr Haneef, only for him to be found to have been wrongfully arrested. Similarly, Chapter 14 considers the controversy around their cooperation with the Indonesian National Police regarding the arrest and prosecution of the Bali Nine.

**Additional law enforcement agencies in Australia**

**Australian Border Force**

The Australian Customs Service was renamed in 2015 to the Australian Border Force (ABF). It was originally known as the Department of Trade and Customs and was the first government department established...
in 1901. Approximately 20 million passengers each year move through air and seaports. ABF works closely with the AFP, as well as with the Australian Quarantine and Inspection Service, the Department of Immigration and Citizenship and the Department of Defence, to detect and discourage unlawful movement of goods and people across the border.

The ABF website describes its functions as:

- facilitating the lawful passage of people and goods,
- investigations, compliance and enforcement in relation to illicit goods and immigration malpractice; and
- onshore detention, removals and support to regional processing arrangements.

The ABF employs more than 5500 people in Australia and overseas, has a fleet of sea patrol vessels, and uses two aerial surveillance planes for surveillance of borders. The key areas of concern for the ABF are:

- immigration – ensuring that passengers are moving legally across borders
- quarantine – monitoring and confiscating goods harmful to animal and human life
- family law – enforcing court orders and preventing parents from illegally removing their children from Australia
- law enforcement.

A high priority is the protection of the Australian community by intercepting illegal drugs and firearms. The ABF uses sophisticated techniques to identify suspicious aircraft, vessels, cargo, postal items and travellers. The techniques include intelligence analysis as well as the use of detector dogs and computer technology.

In November 2014, Australia’s Federal Police made one of the largest drug seizures in the country’s history. Approximately 2.5 tonnes of illicit drugs were seized in Sydney with an estimated street value of $1.5 billion. Six men were charged with drug importation with the federal police commenting that many more were involved at the point of shipment, probably in Germany with links through Asia.

The drugs would have been distributed around the country if they had not been seized. Australian Crime Commission chief executive Chris Dawson said the recent ice epidemic was not limited to major cities, but had spread to rural areas as well.

Over the last few years in Australia, the drug commonly known as ‘ice’ has seemingly become the drug most widely used by people, with horrific consequences for users and their families.

A joint statement was made by the serving Prime Minister Tony Abbott, the serving Immigration and Border Protection Minister Scott Morrison and Justice Minister Michael Keenan in which they praised the teamwork provided by law enforcement agencies. They said that this was a ‘landmark day’ in the battle against organised crime and drugs.

**Australian Crime Commission**

The Australian Crime Commission (ACC) was established under the *Australian Crime Commission Act 2002* (Cth). It works at a national level with other federal, state and territory agencies to combat serious and organised crime. In New South Wales, the *Australian Crime Commission (New South Wales) Act 2003* (NSW) was passed to enable the full operation of the ACC in NSW. Similar legislation was passed in the other states and territories, effectively bringing the *Australian Crime Commission Act 2002* (Cth) into state or territory law. All arms of intelligence gathering and law enforcement were thereby brought together to unify the fight against serious, organised criminal activity.

The ACC has a number of important functions, involving both intelligence and investigative roles:

- collecting and analysing criminal intelligence data
• giving advice about National Criminal Intelligence Priorities (NCIPs) to the ACC Board
• managing criminal intelligence systems such as the Australian Criminal Intelligence Database
• investigating federally relevant criminal activity and forming task forces; for example, Strike Force Tuno II, a homicide squad established to investigate a string of possibly related murders, attempted murders and suspected murders over a 15-year period. Many other task forces are established as the need arises to tackle serious issues of organised crime, terror and drug importation.

**Australian High Tech Crime Centre**
The Australian High Tech Crime Centre (AHTCC) is hosted by the AFP and attempts to provide a national approach to technology crime. Its role is to address serious and complex crimes involving computer technology such as online fraud, mule recruitment, and offensive and prohibited internet content. ‘Technology-enabled crime’ includes crimes committed directly against computers and computer systems, and also traditional crimes committed with the use of technology. The first category, detailed in Part 10.7 of the *Criminal Code* (Cth), includes:
• computer intrusions (gaining unauthorised access to data in a computer or computer system)
• unauthorised modification or destruction of data
• denial-of-service attacks (deliberate removal of service)
• creation and distribution of malicious software such as viruses, worms or trojans.

**mule recruitment**
the attempt to procure a person (the ‘mule’) to receive and deliver illegal funds to criminals abroad or at home without the knowledge of the ‘mule’; this is usually done through a fake company and may involve getting an unsuspecting employee to sign a contract and transfer funds on behalf of organised criminals

Each state and territory in Australia has its own legislation, similar to the Commonwealth legislation, covering computer-related offences.

Another task of the AHTCC is to police and remove inappropriate and illegal internet content such as child pornography and racially based ‘hate’ sites. Identity fraud is also a growing criminal activity, especially with the increasing use of social networking sites such as Instagram, Snapchat and Facebook. Identities are usually stolen through ‘phishing’, whereby email is used to lure unsuspecting computer users to a fake website where they provide their bank account details.

**Australian Security Intelligence Organisation**
The Australian Security Intelligence Organisation (ASIO) is Australia’s national security service, established under the *Australian Security Intelligence Organisation Act 1979* (Cth). It was initially established in 1949 as Australia’s security service, to guard against activities such as espionage (spying), sabotage, politically motivated violence and attacks on our nation’s defence systems. ASIO’s main role is to gather information that will help the federal government and other law enforcement agencies, such as the AFP, to prevent and thwart attacks on Australia. ASIO’s role is expanding; it employs approximately 1500 people. ASIO’s information is used by 75 government departments, police and senior decision-makers.

Chapter 19 outlines the role of ASIO in the arrest and detention of terror suspect Mohamed Haneef, in which ASIO correctly advised the AFP that Dr Haneef was not a suspect in the 2007 Glasgow Airport bombing and that there was virtually no evidence linking Dr Haneef to this terrorist attack.
**Government departments**

Some Commonwealth and state government departments have the authority to enforce specific laws. The Australian Tax Office (ATO) has the power to enforce certain laws for the protection and benefit of society. For example, under the *Income Tax Assessment Act 1936* (Cth), the ATO can investigate and prosecute individuals or companies in relation to tax offences.

The main issues relating to income tax involve either the avoidance of tax or the underpayment of tax. During 2012, the ATO reported a range of prosecutions and subsequent custodial sentences for tax fraud and evasion. Robert Agius was sentenced to nine years’ jail for tax evasion schemes through his company PTK Vanuatu. Mr Agius was found guilty of conspiring to defraud the Commonwealth and conspiracy to dishonestly cause a loss. These convictions demonstrate the serious nature of tax offences and the power of the ATO. Mr Agius was one of nine people given custodial sentences for tax fraud or tax evasion crimes.

Other laws administered by the ATO include those governing fringe benefits tax (FBT), the Goods and Services Tax (GST) and superannuation.

**Alternative dispute resolution (ADR)** uses a variety of methods to resolve disputes between parties without involving court processes. ADR allows the participants not only to save time and money, but also to have more control over proceedings.

**Negotiation**

**Negotiation** means discussion between two or more parties with the aim of reaching a mutually beneficial outcome. It involves consideration of the other party’s views, and often some degree of compromise. Many parents teach their children negotiating skills and you would probably be surprised at how often you negotiate with friends, teachers and parents. In a legal sense, negotiation is frequently the first stage of resolving a dispute between parties. Negotiation only involves the parties involved and therefore is usually low in cost.

**Mediation and conciliation**

**Mediation** and **conciliation** are similar procedures and are usually confidential. Both processes involve a neutral and independent third party who helps the parties to negotiate their disagreement and to come to a decision that they both find acceptable.

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**Review 7.1**

1. What is a law enforcement agency? Give an example of a government body that has enforcement powers and briefly summarise its specific aims.
2. Explain the role of the police in the legal system. Comment on the importance of jurisdiction in law enforcement.

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**7.2 Disputes between individuals**

Disputes between individuals are highly variable in terms of their nature, complexity and seriousness. One of the more common types of disputes between individuals is that of ‘neighbourhood’ disputes.

**Alternative dispute resolution**

Going to court can be expensive in terms of both money and time. There has been pressure to provide alternatives to court processes for solving legal disputes. It has been estimated that the average civil case costs $30,000–$40,000, which puts many average wage earners in a precarious position should they lose. Logically, any claim against another party for less than this amount would seem useless, yet the financial cost of loss or damage below this amount may still be significant to the person who suffers it.

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