



Program 3 — Community Affairs

Program Objective

To enhance and promote the rights of individuals and their reasonable access to justice.



3.4 Legal Aid and Family Services

SUB-PROGRAM OBJECTIVES

Access to assistance for the prevention and resolution of disputes through a range of mechanisms.

Access to justice through legal aid schemes and increased awareness of legal rights and responsibilities.

Access to a range of high-quality family relationship services.

ROLE

The sub-program is administered by Legal Aid and Family Services (LAFS), which is located in the Department's Central Office.

While LAFS administers some funding directly, most of the funds appropriated are allocated to various community-based service providers and Legal Aid Commissions (LACs) throughout Australia in all States and Territories.

Legal Aid

The Legal Aid Program aims to provide reasonable access to legal assistance, particularly for those who have needs arising under Commonwealth law. This goal is pursued in cooperation with the States and Territories.

Commonwealth funding was provided for legal aid through:

- LACs in all States and Territories in accordance with Commonwealth-State agreements for provision of legal assistance throughout Australia;
- community legal centres in all States and Territories for provision of community-based legal assistance throughout Australia;
- direct grants of financial assistance in matters arising under a number of Commonwealth schemes, including matters under the *Native Title Act 1993*, the Workplace Relations Act, the Racial Discrimination Act, the Sex Discrimination Act, the Commonwealth Public Interest and Test Cases Scheme and the Overseas Custody (Child Removal) Scheme.

Family Relationships Services

The Family Relationships Services Program contributes to the development of an Australia in which children, young people and adults are able to develop and sustain safe, supportive and nurturing family relationships, and the emotional, social and economic costs associated with disruption to family relationships are minimised. The program includes:

- family, child and relationship counselling services to help couples and family members establish and maintain appropriate relationships;
- marriage and relationship education for pre-marriage and at significant points in the life of families and relationships;
- family and child mediation to assist separating couples reach agreement on matters including parenting and care, finances and property;
- adolescent mediation and family therapy which aims to prevent youth homelessness by addressing serious conflict between adolescents and their families;
- contact services which facilitate safe contact arrangements for children whose parents are in high conflict over the contact;
- family skills training which provides vulnerable families with skills in positive parenting and non-violent problem-solving.

LAFS also administers the appointment under the Marriage Act of civil and religious marriage celebrants (other than nominees of major recognised denominations).

The Family Services Council, established in December 1994, is an advisory council to the Attorney-General. It provides advice on the development of policy directions, priorities and principles in family services, including quality assurance and a research and evaluation agenda. The council consists of 10 people, including a departmental representative, service provider representatives and experts in social and family policy.

In March 1997 the Department contracted Community Link Australia to develop a quality strategy and a national information system for the Family Relationships Services Program. This project (known as FAMQIS) involved significant policy work in 1997-98 and was conducted in close consultation with family relationships services providers. The project provides a framework for greatly improved performance information on the program and is planned for full implementation during 1998-99.

Resources Summary — Sub-program 3.4 Legal Aid & Family Services

| FINANCIAL | 1996-97 <i>Actual</i> \$('000) | 1997-98 <i>Estimate</i> \$('000) | 1997-98 <i>Actual</i> \$('000) |
|--|--------------------------------------|--|--------------------------------------|
| Appropriation Bill No. 1 | | | |
| Running Costs | | | |
| • Salaries (120-1) (p) | 4,258 | 4,101 | 4,057 |
| • Other (120-1) (p) | 4,122 | 3,186 | 3,037 |
| RUNNING COSTS APPROPRIATIONS | 8,380 | 7,288 | 7,094 |
| Other Program Costs | | | |
| • Grants to Australian Organisations (120-2-01) (p) | 1,125 | 1,051 | 1,051 |
| • Financial Assistance (120-2-03) | 4,851 | 5,309 | 5,309 |
| • Grants to Family Relationship Support Organisations (120-2-09) | 30,804 | 35,202 | 32,953 |
| Appropriation Bill No. 2 | | | |
| • Provision of Legal Aid (806-02) | 128,303 | 91,736 | 91,678 |
| • Legal Aid Grants (806-03) | 15,116 | 16,170 | 14,904 |
| • Commonwealth Legal Aid Program (807-03) | - | 52,819 | 18,000 |
| TOTAL APPROPRIATIONS | 188,580 | 209,575 | 170,989 |
| Adjustments affecting Outlays | | | |
| • Revenue | | | |
| – Miscellaneous | 49 | 342 | 342 |
| • Section 35 (Audit Act) Receipts | 3 | 4 | 4 |
| TOTAL OUTLAYS | 188,527 | 209,228 | 170,642 |
| STAFFING | | | |
| Staff Years | 66.0 | 69.0 | 68.6 |

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

Strategy

Develop and implement coherent, innovative and achievable policy initiatives in conjunction with relevant stakeholders.

PERFORMANCE MEASURE

Endorsement of policy advice by the Minister.

PERFORMANCE OUTCOME

New legal aid agreements were introduced and commenced progressively from 1 July 1997. Under these agreements responsibility for legal aid funding is delineated in accordance with responsibility for the laws passed by the respective governments. The Attorney-General endorsed revised priorities and guidelines for the program following a review of the new arrangements after six months in operation.

Consultation commenced on revised program guidelines for the Commonwealth Community Legal Services Program, the Child Support Scheme Legal Services Program and the Commonwealth Community Environmental Legal Program. These guidelines reflect a purchaser/provider framework for program management, emphasising efficiency in service delivery and providing a sound basis for the implementation of government policies and priorities.

New guidelines for the provision of assistance in native title matters were introduced.

The Family Relationships Services Program was expanded to achieve more effective outcomes for men and their families seeking assistance with managing relationships.

An initiative to involve community-based organisations in helping prevent and resolve disputes over contact orders was announced in May 1998. This was in response to the interim report of the Family Law Council on the enforcement of Family Court orders and penalties for non-compliance. This pilot is to be implemented by December 1998.

PERFORMANCE MEASURE

Effectiveness of research and development initiatives

PERFORMANCE OUTCOME

A comprehensive needs-based model for equitable distribution of legal aid funds to States and Territories was developed. Stage I of the model was released in November 1997 and stage II commenced in March 1998.

Reviews of community legal services were conducted in South Australia and Victoria during 1997-98.

Research into child-inclusive practice in counselling and mediation was completed and the report was finalised at the end of June 1998. Findings indicated that there were significant benefits for children and their parents in the use of child-inclusive practice in both counselling and mediation. The Department will be looking at ways to enable service providers to develop their practice in this area.

An evaluation of the effectiveness of the children's contact services and their impact on children commenced in 1997-98, and is scheduled for completion by December 1998.

An evaluation of marriage and relationship education was completed for the Department by Keys Young in December 1997. The recommendations included improving integration of marriage and relationship education programs with other relationship and family support services and activities, and defining the outcomes to be achieved by these activities. Other recommendations related to the need to review guidelines and funding processes to provide clear guidance and incentives to service providers to improve and maintain quality service; the need for service providers to develop effective marketing and promotion strategies; and several recommendations related to domestic violence prevention. Many of the consultants' recommendations

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will be addressed through the FAMQIS project during 1998–99. Other recommendations will be progressed through the implementation of pilot projects, best practice initiatives and other projects, such as national conferences for marriage and relationship educators and celebrants.

Research and development work for a community awareness strategy for marriage and relationship education was undertaken, with implementation anticipated towards the end of 1998.

PERFORMANCE MEASURE

Effectiveness of consultation measures

PERFORMANCE OUTCOME

Open and effective consultation remained a key priority for LAFS, and 1997–98 saw extensive consultation on the implementation of a number of key measures. In the Legal Aid Branch, the Commonwealth guidelines for legal aid were revised through a wide-ranging consultative process involving LACs, community legal centres and the Family Court. Similarly, the revision of the guidelines for the provision of assistance in native title matters involved consultation with pastoral bodies, mining interests, seafood industry representatives, the Native Title Tribunal and ATSIC.

Attendance at regular meetings of National Legal Aid was an important opportunity in 1997–98 for consultation with all directors of LACs on a range of issues of legal aid policy. In addition, the Legal Aid Branch maintained regular contact with the National Association of Community Legal Centres on a number of issues, including the review of service level agreements and the program guidelines. The establishment of a new consultative body to identify legal aid issues in native title was also approved in 1997–98.

A consultative group was also formed to support the development by the Legal Aid Branch of a needs-based model for legal aid funding. The group comprises representatives from LACs, community legal centres, ATSIC and the Department of Finance and Administration.

In conjunction with the Civil Justice Branch, responses to the Department's discussion paper on primary dispute resolution were considered. The Family Services Council was asked by the Attorney-General to convene a joint meeting with the Family Law Council in May 1998 to provide further advice to the Attorney, in particular how to promote the use of primary dispute resolution in the community and how to establish a stronger partnership between the current providers of these services.

Around 800 responses were received to the discussion paper on the civil marriage celebrants' program published in November 1997. These were analysed and preliminary findings presented at a national conference for civil marriage celebrants in Melbourne in July 1998. Outcomes of a survey of marrying couples conducted in February 1998 were also presented.

The FAMQIS project is a valuable example of the consultative process in action. Consultation on the three elements of the project — program development, quality strategy and a national information system — was conducted in three stages. In the first stage, widespread consultations were held to access the views and expertise of as many participants in the Family Relationships Services Program as possible through a detailed resource document and response paper, as well as through a series of meetings and telephone link-ups. This was followed by deliberative consultations involving people selected on the basis of their specialised expertise and experience. These people were drawn together in a national forum to workshop detailed proposals. In the final stage, confirmation, a final check was made with the Project Management Committee, consisting of representatives of peak bodies and the Family Services Branch.

PERFORMANCE MEASURE

Success in implementation of policy initiatives

PERFORMANCE OUTCOME

The Legal Aid Branch implemented new legal aid agreements in all States and Territories. The Commonwealth was successful in encouraging LACs to purchase a computer software package (LA Office) developed specifically for use in LACs. As a result all LACs will use a consistent software package.

New service agreements for the provision of community legal services were successfully implemented in 1997-98. These agreements require service providers to submit strategic plans to ensure that they provide well-targeted and appropriate legal services to the disadvantaged in the community.

Several new policy measures were implemented as part of the Prime Minister's Partnerships Against Domestic Violence initiative. These included initiatives within existing program funds targeted at indigenous families and young women, and new funds for improving access to services by men.

Strategy

Fund provider organisations to deliver effective services to meet Commonwealth policy priorities, under contract or in accordance with agreements.

PERFORMANCE MEASURE

Whether services are provided to the community cost-effectively and in line with government priorities

PERFORMANCE OUTCOME

A key priority for LAFS in 1997-98 was cost-effective service provision for the community. This was pursued in the Legal Aid Branch through the restructuring of arrangements for legal aid service delivery resulting in a more cost-effective approach. In the community legal services sector, service providers were required to submit strategic plans as part of their service agreement, outlining what legal services will be provided and how performance will be measured. Some mandatory quantitative performance indicators were developed at the program level.

Contracts with a number of family mediation organisations were extended to pilot a mediation service for clients of the Child Support Agency. The pilot began in February 1998. The early take-up rate was low, but Child Support Agency staff were developing increased awareness of mediation and its effectiveness in this area, with possible longer-term benefits.

PERFORMANCE MEASURE

Quality services accessible to targeted groups or regions

PERFORMANCE OUTCOME

During 1997-98 there were a number of initiatives to ensure that services were better targeted. The new legal aid agreements were designed to ensure that those looking to the Commonwealth for assistance will be able to do so in the knowledge that the priorities for expenditure are clear. In addition, the Commonwealth participated in reviews of community legal services in South Australia and Victoria. These reviews sought to ensure that resources were distributed equitably and services appropriately targeted.

Since January 1996, six community development officers have been funded within family relationships organisations to address the needs of clients from diverse linguistic and cultural backgrounds. Tenders were called in April 1998 for an evaluation of the projects to be conducted during 1998-99. During 1997-98 a

separate consultancy to manage organisational change was undertaken to deliver diversity strategy workshops for all contracted organisations to ensure they had an integral strategic approach to diversity. These workshops were completed and strategies subsequently developed by the majority of participating organisations.

A LAFS website linked to the departmental homepage was developed to provide increased access to information for clients of family relationships services and the celebrants' program. Early feedback suggested that this had made program information, such as the application package for the new men's funding round, and the large number of papers presented at the National Forum on Men and Family Relationships, more accessible to the public. The departmental homepage contains information on the provision of legal aid by LACs and community legal centres, together with details of the various Commonwealth financial assistance schemes.

Strategy

Promote good management practice and greater accountability in service provision.

PERFORMANCE MEASURE

Effective contractual and monitoring arrangements in place.

PERFORMANCE OUTCOME

In 1997-98 a number of measures were implemented to improve monitoring of legal aid agreements. A flag was implemented on the database for the collection of legal aid information to signify whether a matter is a Commonwealth or State responsibility. This enabled the ready identification of matters for which the Commonwealth is responsible.

In addition, 1997-98 saw the adoption of a purchaser/provider relationship with some LACs enabling the Commonwealth to contract directly with the legal aid service provider. Quarterly management information discussions meant better targeting of high-quality services.

The Legal Aid Branch commenced a review of its performance information requirements for LACs in the context of the new funding arrangements and the Commonwealth's move to accrual budgeting in 1999-2000.

The National Information System, a data collection tool for work undertaken by community legal organisations, was reviewed during 1997-98. A further release was approved to improve the system pending the implementation of a new data collection system in 2000.

Planning began for recontracting all family services organisations by the end of 1998-99. The new contracts will move the focus from inputs to outputs and outcomes for clients.

The pilot of the FAMnet data collection system commenced in 10 sites around Australia in June 1998. If successful, the system will be rolled out to all Family Relationships Services Program organisations over a period of six months. The agreed quality strategy will be implemented in 1998-99.

Steps to enhance existing data management and analysis practices within the program resulted in the development of OASYS, a database providing initial performance information on program organisations from existing data in the lead-up to the introduction of FAMnet.

PERFORMANCE MEASURE

Progress towards implementation of quality programs.

PERFORMANCE OUTCOME

A service standards and performance indicators project was designed to identify core functions common to community legal services, and to develop appropriate service standards and performance indicators which can usefully be applied to them. Trials will be held in a number of organisations before the service standards and performance indicators are implemented nationally.

The FAMQIS project addressed a range of issues to improve the management and accountability of the Family Relationships Services Program. The project comprised:

- a program development process involving intensive consultation with service providers;
- the development of a two-tiered quality strategy for family relationships services;
- a performance assessment framework;
- a sophisticated policy framework;
- the FAMnet Internet-based data collection system for the use of the Department and family relationships services. The system provides an online client information system for service providers and the Family Relationships Services Program overall; a grants administration support system with contracting information, funding applications, financial returns and other material online; and a program management tool enabling funded organisations and the Department to develop and insert program targets and obtain reports against expected performance.

Strategy

Ensure staff have relevant skills and knowledge.

PERFORMANCE MEASURE

Extent to which processes reviewed improve efficiencies

PERFORMANCE OUTCOME

The Family Services Branch moved to a team-based structure in April 1998 to reflect a more integrated program approach, provide better service to the Minister and to contracted organisations, and to provide more opportunities for development of staff. A process to improve planning and project management skills within the branch commenced in 1997-98.

LAFS established two teams to examine improvements in work practices for the whole Division. One team examined records management, including recording and locating incoming correspondence and filing practices. This team developed a correspondence register which was piloted with a view to implementation in 1998-99. The second team worked on streamlining workflow. Two processes — the handling of speeches and possible parliamentary questions — were addressed and will be incorporated into a procedures manual for all action officers.

PERFORMANCE MEASURE

Training opportunities provided in identified areas

PERFORMANCE OUTCOME

Staff development continued to be a priority for LAFS, and implementation of this goal was seen through the attendance by a number of staff at conferences and training programs. The identification of staff development needs and appropriate training programs to meet those needs are being pursued through the divisional planning process.

3.5 Insolvency and Trustee Service, Australia

SUB-PROGRAM OBJECTIVE

A personal insolvency system which balances the need for rehabilitating insolvent debtors with maximising returns to creditors, producing public confidence in the system, through:

- relevant and up-to-date personal insolvency laws;
- accessible information on bankruptcy and its alternatives;
- maintaining the public bankruptcy register;
- the exercise of statutory powers, and the investigation of possible offences under bankruptcy legislation;
- administration of estates where a private sector bankruptcy trustee has not been appointed;
- regulation of the activities of the Official Trustee and private sector bankruptcy trustees.

Contribute to the enforcement of proceeds-of-crime remedies in cooperation with other agencies.

Functions

The principal functions of ITSA are:

- Administration of the personal insolvency system:
 - to provide information on bankruptcy and its alternatives to debtors in financial difficulty contemplating bankruptcy, and to the community;
 - to receive debtors' petitions, issue bankruptcy notices, accept debt agreements for processing and maintain and make available data on bankrupts and other debtors;
 - to exercise statutory powers regarding information-gathering, property realisation and the assessment of income contributions by bankruptcy trustees;
 - to consider applications by bankruptcy trustees for an indemnity for their costs in legal proceedings.
- Bankruptcy estate administration:
 - to administer those bankrupt estates in which a registered trustee is not appointed.
- Policy and legislation reform:
 - to provide policy advice to the Government on the Bankruptcy Act and regulations;
- Bankruptcy regulation:
 - to regulate personal insolvency administration by all trustees.
- Proceeds of crime:
 - to control and realise property under the provisions of the Customs Act and the Proceeds of Crime Act.
- To provide other trustee services to government agencies.

Overview

Highlights for ITSA in 1997–98 included:

- an independent client survey conducted in November-December 1997 provided the basis for the development of the Client Service Charter, in consultation with staff and a wide range of clients;
- a high level of consultation with ITSA staff enabled the successful certification on 30 June 1998 of the ITSA Certified Agreement 1998–2000.

This focus on client service and a consultative working environment placed ITSA in a good position to achieve its objectives in times of growing workload. The numbers of new bankruptcies received by ITSA in 1997–98, 23 287, was 13 per cent above the 1996–97 figure of 20 597.

Resources Summary — Sub-program 3.5 Insolvency & Trustee Service, Australia

| FINANCIAL | <i>1996-97</i> | <i>1997-98</i> | <i>1997-98</i> |
|---|----------------|-----------------|----------------|
| | <i>Actual</i> | <i>Estimate</i> | <i>Actual</i> |
| | <i>\$(000)</i> | <i>\$(000)</i> | <i>\$(000)</i> |
| Appropriation Bill No. 1 | | | |
| Running Costs | | | |
| • Salaries (120-1) (p) | 13,983 | 14,931 | 14,082 |
| • Other (120-1) (p) | 10,422 | 10,167 | 9,431 |
| RUNNING COSTS APPROPRIATIONS | 24,405 | 25,097 | 23,513 |
| Other Program Costs | | | |
| • Compensation & Legal Expenses (120-2-04) (p) | 1,929 | 1,775 | 1,775 |
| Appropriation Bill No. 2 | | | |
| • Departmental Plant & Equipment (805-1-01) (p) | 413 | 104 | 99 |
| TOTAL APPROPRIATIONS | 26,747 | 26,977 | 25,387 |
| Adjustments affecting Outlays | | | |
| • Revenue | | | |
| – Miscellaneous | 11,238 | 8,495 | 8,495 |
| • Section 35 (Audit Act) Receipts | 138 | 174 | 174 |
| TOTAL OUTLAYS | 15,372 | 18,308 | 16,718 |
| STAFFING | | | |
| Staff Years | 283.5 | 270.0 | 271.0 |
| REVENUE AND/OR ITEMS NOT AFFECTING OUTLAYS | | | |
| Miscellaneous Receipts | 1,600 | 8,847 | 8,847 |

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

Effective Administration of the Personal Insolvency System**Strategy**

Give the community access to information about the personal insolvency system, particularly alternatives to bankruptcy.

PERFORMANCE MEASURE

Increasing acceptance of debt agreements and other alternatives to bankruptcy through better-informed decisions by persons in financial difficulty, creditors and others.

PERFORMANCE OUTCOME

In 1997-98 ITSA gave information to 51 611 people enquiring about bankruptcy and its alternatives, a 34 per cent increase over 1996-97. ITSA publishes a wide range of information pamphlets about bankruptcy and gives information sessions to creditors, particularly finance providers. Major presentations were given on 70 occasions in 1997-98, compared with 182 in 1996-97. This reduction reflected the absence of amendments to bankruptcy law during the year.

During 1997-98 349 debt agreements were made with creditors, compared with 48 for the six month period of 1996-97 in which they were operational. Debt agreements are a new, formal alternative to bankruptcy, intended for those with low income and few assets who are able to offer something to their creditors. The take-up has not been strong, although the trend suggested an increasing number of debt agreements were being made each quarter since the March 1997 quarter, the first period of operation of the new debt agreement scheme. This reflected a growing awareness of the benefits of debt agreements among creditors and

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people in financial difficulty able to avoid bankruptcy. The number of Part X agreements, another alternative to bankruptcy, remained steady at 507 matters in both 1996-97 and 1997-98.

Strategy

Maintain the National Personal Insolvency Index bankruptcy register.

PERFORMANCE MEASURE

The National Personal Insolvency Index (NPII) is accurate and up-to-date; complaints about data accuracy or usefulness number fewer than 0.1 per cent of searches conducted.

PERFORMANCE OUTCOME

The NPII is maintained by ITSA and is the public record of matters under the Bankruptcy Act, such as creditors' petitions, bankruptcies, debt agreements and Part X arrangements. The NPII had its first full year of operation in 1997-98. Two information brokers provide the bulk of searches through online connection services to the NPII. During 1997-98 ITSA improved the operation of the NPII in terms of data accuracy and clarity.

The number of recorded complaints about NPII data accuracy and usefulness in 1997-98, 2687, was 1.6 per cent of all searches conducted (162 281). This was not unexpected, given that this was the first full year of operation of the NPII. There were fewer complaints as the year progressed, and a client survey in November 1997 indicated that the NPII 'is now performing much better.'

Strategy

Exercise statutory powers to enable trustees to obtain information, require attendance to give evidence, gain access to premises, recover and charge property and collect income contribution liabilities.

PERFORMANCE MEASURE

Official Receiver notices issued within five days of receipt of relevant supporting material.

PERFORMANCE OUTCOME

On behalf of all bankruptcy trustees, Official Receivers exercise information-gathering powers and issue notices requiring the recipient to yield up property forming part of the bankrupt's estate to the trustee. In the case of people holding money for, or owing money to, any bankrupt who has been assessed by the trustee as liable to pay an income contribution, Official Receivers issue notices requiring the payment of an amount on account of the income contribution assessed.

In 1997-98 540 notices in total were issued by Official Receivers to assist trustees to administer bankruptcies. The comparable figure for 1996-97 was 743. Ordinarily the performance standard of issuing notices within five days of receipt of relevant supporting material was achieved.

Strategy

Provide funding under s. 305 of the Bankruptcy Act to trustees in cases where creditor funding is not available and public confidence in the system is at stake.

PERFORMANCE MEASURE

Intended benefit achieved in 75 per cent of cases where s. 305 funding is approved.

PERFORMANCE OUTCOME

Bankruptcy trustees can apply for funding under s. 305 of the Bankruptcy Act regarding proposed outlays in the proper administration of a bankrupt estate, where there are insufficient funds in that estate. Typical actions for which trustees seek funding are the locating of a bankrupt for the purpose of obtaining a statement of affairs, public examination of a bankrupt before a court and legal proceedings to recover assets transferred by the bankrupt to another person at the expense of the creditors.

In 1997–98 56 applications for s. 305 funding were processed, including three which were on hand at 30 June 1997. Of those 47 were approved and nine rejected. In 1996–97 31 of 49 applications were approved. The funding indemnity ceiling for s. 305 applications approved in 1997–98 was \$1 516 000, up from \$286 000 the previous year. Several involved commitments of more than \$20 000. The operational standard of submitting a recommendation to the delegate within five working days (10 days in complex matters) of receipt of all relevant supporting material was met in all of the 47 approved cases.

In 1997–98, for the first time, records were kept of the extent to which assistance to trustees resulted in the achievement of the benefit identified when s. 305 funding was sought and approved. Of 42 matters completed in 1997–98, the identified benefit was achieved in 38 cases, or 90 per cent. On four occasions legal proceedings by a trustee to recover assets for the benefit of the creditors of the bankruptcy were unsuccessful. The benefits most often achieved were locating the bankrupt and obtaining a statement of affairs, conducting a public examination of the bankrupt and defending legal proceedings where there were no funds in the estate or the creditors had insufficient financial resources to fund the trustee or to indemnify the trustee against an award of costs.

Strategy

Identify and investigate cases of material offences under the Bankruptcy Act.

PERFORMANCE MEASURE

References to the Director of Public Prosecutions (DPP) accepted for prosecution, or other successful outcomes achieved, in 80 per cent of cases.

PERFORMANCE OUTCOME

In accordance with the objective of producing public confidence in the personal insolvency system, ITSA gives more prominence to the investigation of offences under the Bankruptcy Act where the facts suggest that a material offence has been committed.

During 1997–98 officers in State branches received training from the Australian Federal Police in offence investigation practices and the taking of evidence. It was anticipated that the impact of the higher priority given to this activity would take some time to produce outcomes able to be measured, not only by the number of references to the DPP accepted for prosecution but also by other successful outcomes.

In 1997–98 35 matters, or 80 per cent of cases investigated, were either referred to the DPP or another successful outcome was achieved.

Strategy

Set performance standards and measure outputs.

PERFORMANCE MEASURE

Achievement of performance standards.

PERFORMANCE OUTCOME

ITSA's system administration services include the giving of information to people making inquiries about bankruptcy and its alternatives, the examination of debt agreement proposals, the issuing of bankruptcy

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notices, the acceptance of debtors' petitions and the handling of those bankruptcies in which no assets were identified or in which investigations were required. Apart from the handling of asset-less bankruptcies, most of those services were transferred to ITSA from the Federal Court in December 1996.

The standards for the achievement of those services were generally achieved in 1997–98. The activity level and the number of outputs produced were significant: 7265 bankruptcy notices were issued, 22 243 debtor's petitions were accepted, 349 debt agreements were made with creditors and 19 296 asset-less bankruptcies were handled.

The following table shows the amount of revenue received from system administration services during 1997–98, with 1996–97 figures for comparison.

| | 1996–97* | 1997–98 |
|--------------------|-------------|-------------|
| NPII Searches | \$788 787 | \$1 947 380 |
| Realisation Charge | \$2 970 445 | \$5 175 588 |
| Bankruptcy Notices | \$1 137 612 | \$2 213 471 |
| Other Revenue | \$424 329 | \$932 631 |

* ITSA began delivering relevant services in December 1996, and relevant revenue amendments to bankruptcy laws took effect in November and December 1996.

Relevant and up-to-date personal insolvency laws

Strategies

- Evaluate legislative amendments within a reasonable time of their commencement;
- be informed about developments in bankruptcy practice;
- collect data about the circumstances in which bankruptcies occur.

PERFORMANCE MEASURE

Evaluation of December 1996 amendments completed by October 1999.

PERFORMANCE OUTCOME

Significant changes were made to bankruptcy law and procedures by the *Bankruptcy Legislation Amendment Act 1996* which came into effect on 16 December 1996. An initial evaluation of two key features of the Act was carried out, based on statistics collected by ITSA and findings from the 1997 client survey. Those features were the one-stop service, including the responsibilities transferred from the Federal Court to ITSA, and debt agreements.

The evaluation found that the transfer of responsibilities from the Federal Court to ITSA, and the one-stop service provided by ITSA since the transfer, were an overall success and that some initial difficulties had largely been overcome. It also found that, after a slow start, debt agreements gained greater acceptance. However, the debt agreement option had little overall impact on the number of bankruptcies.

ITSA planned to evaluate the two other key features of the amendments — the overhaul of those provisions which allow bankruptcy trustees to set aside certain pre-bankruptcy transactions, and the updated trustee registration provisions — in 1999.

ITSA monitors reported case law and participates in insolvency conferences and seminars. ITSA is also a member of the International Association of Insolvency Regulators, which enables insolvency developments overseas to be monitored.

During 1997–98 available data from people in financial difficulty, who either went bankrupt or made debt agreements with their creditors, was analysed. The results of these debtor profiles will be used to assist in policy development and to help the finance industry better understand the circumstances in which people go bankrupt.

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Strategy

Consult personal insolvency system stakeholders about personal insolvency laws.

PERFORMANCE MEASURE

Consultation about bankruptcy law acknowledged by stakeholders as effective and constructive.

PERFORMANCE OUTCOME

A client survey in 1997 found that, in the area of policy development, ITSA was perceived by stakeholders to have improved its openness and willingness to consult in the last few years. Meetings of the Bankruptcy Reform Consultative Forum, comprising representatives from key ITSA stakeholders, occurred in August 1997 and March 1998. At those meetings, stakeholders discussed the operation of the Bankruptcy Act and identified areas of the law requiring improvement and simplification. An examination of these contributions commenced.

Strategy

By 2000, introduce legislation to simplify personal insolvency laws.

PERFORMANCE MEASURE

Legislation, recognised by key stakeholders as simplifying the law, introduced by 2000.

PERFORMANCE OUTCOME

Opportunities for simplifying the Bankruptcy Act and keeping it up-to-date were under consideration.

Effective regulation of the bankruptcy system

Strategy

In relation to the Official Trustee and private sector bankruptcy trustees:

- conduct a targeted program of inspection of trustee systems and practices;
- handle complaints within set timeframes;
- liaise regularly with trustees.

PERFORMANCE MEASURE

Program of targeted inspections achieved.

PERFORMANCE OUTCOME

ITSA's bankruptcy regulation role is conducted by staff working direct to the Inspector-General in Bankruptcy. The 1997-98 year was one of transition from the regular inspection of a set percentage of trustee administrations to a proactive approach of conducting risk assessments of the systems and processes of all trustees. This approach enabled areas identified as having the greater risk and impact on high-quality standards of administration to be targeted for investigation.

In the intervening period, in order to be satisfied that no material errors remained undetected, the bankruptcy regulation unit conducted sufficient inspections and investigations to identify problems and key cases which needed to be tested in the courts. Overall inspections of 120 administrations of registered trustees and 365 administrations of the Official Trustee were completed. In three per cent of the total number of cases inspected, problems were identified within 12 months of them occurring and, once identified, in 81 per cent of cases remedial action was taken within 60 days. Circulars addressing some of the common problems were sent to trustees alerting them to the issues involved.

Attorney-General's Department

Documents filed by trustees, particularly in relation to Part X matters, continued to be monitored and 97 meetings of creditors were attended to ensure parties were properly informed and there was a high standard of meeting practice. As a result remedial action was taken in relation to 21 Part X matters.

A total of 109 Inspector-General reviews of trustee decisions in relation to income contribution assessments, applications for early discharge and objections to discharge were carried out. All except one review were completed within the required 60-day period, including 57 reviews of registered trustee decisions and 52 of Official Trustee decisions. Overall 24 per cent of trustee decisions were overturned on review. Many of these were in relation to income contributions where new assessments were issued.

PERFORMANCE MEASURE

Complaints handled within set timeframes

PERFORMANCE OUTCOME

The bankruptcy regulation unit investigated 152 complaints in relation to the administrations under the control of registered trustees and 31 complaints concerning the administrations of the Official Trustee. Of these the substantive issues involved were found to be justified in 16 per cent of cases. In a further six per cent of cases the complaints were found to be justified and to involve breaches of the law. Follow-up action included the counselling of the trustees concerned and necessary corrective measures.

PERFORMANCE MEASURE

Over time, fewer justified complaints about trustees

PERFORMANCE OUTCOME

In 1997-98 measurement began of the reduction in complaints in recurring problem areas, such as poor communication between the trustee and others, and in regard to meeting procedures. Complaints were found to result from poor communication in 55 per cent of cases involving registered trustee administrations and 23 per cent involving Official Trustee administrations. It was decided to address this problem as part of a remedial training program for trustees.

In regard to complaints concerning meeting procedures, 10 per cent were found to be justified. The smaller percentage involved would indicate that the strategy of monitoring new administrations and attending creditors' meetings where necessary had a positive effect.

Strategy

Administer a registration scheme in relation to private sector bankruptcy trustees.

PERFORMANCE MEASURE

Effective administration of trustee registration scheme.

PERFORMANCE OUTCOME

The Inspector-General administers the Bankruptcy Trustee Registration Scheme, which involves committees interviewing applicants for registration as a bankruptcy trustee. The committees comprise three members: the Inspector-General or his delegate, a representative from the Insolvency Practitioners Association of Australia and, usually, a senior officer from the Bankruptcy Regulation Section in the State concerned. In 1997-98, 11 of a total of 15 applications for registration were approved. Four were not approved because applicants did not demonstrate the depth of knowledge and experience needed to practise as a bankruptcy trustee.

Effective administration of bankrupt estates

Strategies

- Set performance standards and measure outputs;
- act as trustee of last resort where a private sector trustee has not been appointed;
- categorise estates to maintain consistency and make cost-effective use of resources.

PERFORMANCE MEASURE

Achievement of performance standards

PERFORMANCE OUTCOME

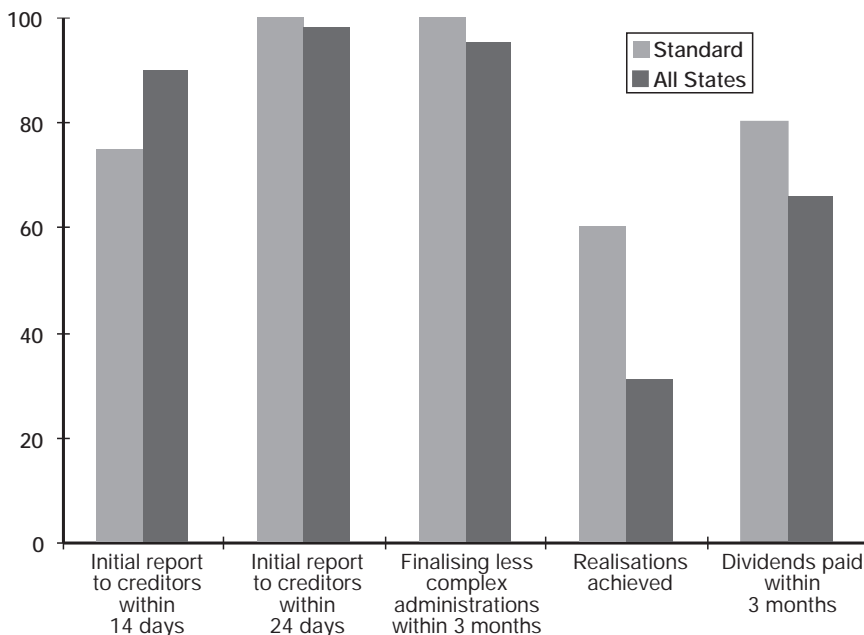
During 1997–98 ITSA revised some performance indicators to measure the effectiveness of its estate administration function better. Further refinements were planned.

Broadly, the significant indicators measure how quickly initial reports to creditors are sent out after the bankruptcy occurs; whether realisations are being achieved in those estates on which significant administrative resources are being spent (as distinct from those where the bankruptcy is recorded and creditors are notified but no other work is warranted, or where preliminary inquiries reveal that no more work is warranted); and whether, when dividends are paid to creditors, they are paid promptly after realisations are made. The aim is to encourage staff to focus resources and effort on those estates where assets can be realised cost-effectively.

Bankrupts or creditors can appoint a private trustee to administer the bankruptcy. Otherwise, ITSA administers them. In 1997–98 ITSA received 23 287 new bankruptcies, which was 95 per cent of the total.

Upon preliminary analysis, those new bankruptcies which appear not to contain realisable assets or income contribution potential are notified to creditors. If no further information is received which warrants investigation, the matters receive little further attention unless contact is made by the bankrupt, such as an application for early discharge. All other new bankruptcies are fully investigated.

Performance Against Standards



Performance in 1997–98 against the revised standards showed, as depicted in the chart on the previous page:

- the standards for sending initial reports to creditors (75 per cent within 14 days of receipt of a statement of affairs, and 100 per cent within 28 days) were exceeded or substantially achieved at 90 per cent and 98 per cent respectively;
- the standard of finalising 100 per cent of less complex estates within three months of receipt of a statement of affairs was substantially achieved at 95 per cent;
- the standard of achieving realisations in 60 per cent of estates open for more than three months was not achieved, with the outcome for 1997–98 year being 31 per cent;
- the standard of paying 80 per cent of dividends within three months of the receipt of realisations was not achieved, but performance improved marginally from 62 per cent to 66 per cent during 1997–98.

Most of the performance information is based on performance in finalised estates. Many bankruptcies involving complex affairs take from 18 to 36 months to administer. Inevitably, therefore, there will be a significant time lag before the discipline of meeting the new standards flows through to outcomes in estates under administration. It is expected that performance against realisations and dividend indicators will improve as the development of standards progresses and estates older than 36 months are finalised.

The following table shows the amount of dividends paid by ITSA to creditors, the Official Trustee's (ITSA) fees taken and the interest on the Common Investment Fund (CIF) paid to the Consolidated Revenue Fund during 1997–98, with 1996–97 figures for comparison.

| | 1996–97 | 1997–98 |
|------------------------------------|--------------|---------------|
| Dividends Paid to creditors | \$10 700 073 | \$15 177 524* |
| Official Trustee Fees | \$5 469 131 | \$6 216 427* |
| Interest on Common Investment Fund | \$1 500 000 | \$725 000 |

* The Goldberg estate yielded dividends to creditors of \$3.9 million and fee revenue of \$1.1 million.

PERFORMANCE MEASURE

Justifiable complaints re Official Trustee estates are less than one per cent of substantive estates on hand.

PERFORMANCE OUTCOME

At 30 June 1998 ITSA had 4456 substantive estates on hand. Of 48 complaints received, five were justified. Reasons for justification of the complaints included failure to advise the bankrupt of a secured creditor's right to deal with property; the level of fees proposed to be taken in the transfer of property to the non-bankrupt spouse; the selling of property not vested in the trustee; failure to provide appropriate interview facilities in a public area of the office; and failure to administer an estate in a commercially sound way. Remedial action included counselling of relevant staff and improvement of the wording of relevant ITSA guidelines.

PERFORMANCE MEASURE

Client groups satisfied, as measured by periodic client surveys.

PERFORMANCE OUTCOME

Findings from the 1997 client survey showed that ITSA staff are well-regarded for their honesty, courtesy, fairness, professionalism and responsiveness, and for providing a value-for-money service.

Contribute to the enforcement of proceeds of crime remedies

On behalf of the Official Trustee, ITSA implements orders relating to the control of property under the Proceeds of Crime and Customs Acts. When ordered by the court, ITSA takes control of property pending the making of pecuniary penalty orders, forfeiture orders or other orders. ITSA works with other law enforcement agencies, including the Australian Federal Police and the DPP, in this law enforcement initiative.

The property and assets realised under pecuniary penalty orders and forfeiture orders is paid into the Confiscated Assets Trust Fund, which ITSA manages. In 1997-98 payments to the fund totalled \$4.51 million, compared with \$3.5 million in 1996-97, and \$4.8 million was paid to the Consolidated Revenue Fund. Funds totalling \$1.23 million remained available for distribution at 30 June 1998.

Strategy

Using ITSA's trustee expertise, locate, control and, if necessary, sell property under proceeds of crime legislation.

PERFORMANCE MEASURE

Within one week, achieve control of property specified in the control order or otherwise identified.

PERFORMANCE OUTCOME

All property was brought under control within the operational standard time of one week of the order being received, unless the property was overseas.

PERFORMANCE MEASURE

All property the subject of court orders realised within six months of final orders.

PERFORMANCE OUTCOME

The standard for realising property which is the subject of relevant court orders was achieved within six months of final orders.