# Chapter 1

## Report on annual reports

### Introduction

1.1 This is the Senate Finance and Public Administration Legislation Committee's (the committee) second report on annual reports for 2012. It provides an overview of the committee's examination of annual reports for the 2010–11 financial year presented to the Parliament between 1 November 2011 and 30 April 2012. Copies of this and other committee reports can be obtained from the Senate Table Office, the committee secretariat or online at: www.aph.gov.au/senate_fpa.

### Terms of reference

1.2 Under Senate Standing Order 25(20) the annual reports of certain departments and agencies stand referred to committees for examination and assessment. Each committee is required to:

(a) examine each annual report referred to it and report to the Senate whether the report is apparently satisfactory;

(b) consider in more detail, and report to the Senate on each annual report which is not apparently satisfactory, and on the other annual reports which it selects for more detailed consideration;

(c) investigate and report to the Senate on any lateness in the presentation of annual reports;

(d) in considering an annual report take into account any relevant remarks about the report made in debate in the Senate;

(e) if the committee so determines, consider annual reports of departments and budget-related agencies in conjunction with examination of estimates;

(f) report on annual reports tabled by 31 October each year by the tenth sitting day of the following year, and on annual reports tabled by 30 April each year by the tenth sitting day after 30 June of that year;

(g) draw to the attention of the Senate any significant matters relating to the operations and performance of the bodies furnishing the annual reports; and

(h) report to the Senate each year whether there are any bodies which do not present annual reports to the Senate and which should present such reports.

## Allocated portfolios

1.3 The Senate allocated departments and agencies to committees on 8 February 2012. In accordance with that resolution, the committee has responsibility for the oversight of the following:

- Parliament;
- Prime Minister and Cabinet portfolio; and
- Finance and Deregulation portfolio.

1.4 There are no changes to the departments and agencies within the committee's allocated portfolios since the committee's last report on annual reports tabled on 15 March 2012.

## Method of assessment

1.5 Annual reports provide one of the key mechanisms, together with the Estimates process, for scrutiny of the operations of Government. As stated in the *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies* 'the primary purpose of annual reports of departments is accountability, in particular to the parliament'.

1.6 Senate Standing Order 25(20) requires that the committee examine reports referred to it to determine whether they are timely and 'apparently satisfactory'. The committee must consider whether the reports comply with the relevant legislation and guidelines for the preparation of annual reports in forming its assessment. The principal legislation which applies to departments, statutory agencies and authorities, and Commonwealth companies are:

- *Public Service Act 1999*;
- *Parliamentary Service Act 1999*;
- *Financial Management and Accountability Act 1997* (FMA Act); and
- *Commonwealth Authorities and Companies Act 1997* (CAC Act).

1.7 Statutory authorities also report under their respective enabling legislation.

1.8 The committee also assesses whether reports comply with the *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies* (the PM&C Requirements), issued by the Department of the Prime Minister and Cabinet with the approval of the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*. This is the authoritative source outlining the requirements for preparing and presenting annual reports for bodies prescribed under the FMA Act. The latest version of the PM&C Requirements was issued on 28 June 2012 and will apply to annual reports for the financial year 2011–12.

1.9 Commonwealth authorities and companies reporting under the CAC Act are required to comply with the *Commonwealth Authorities (Annual Reporting) Orders 2011* and the *Commonwealth Companies (Annual Reporting) Orders 2011*, respectively. These Orders set out the requirements for the preparation of annual reports and replaced the *Commonwealth Authorities and Companies (Report of Operations) Orders 2008*. The new orders apply to annual reports relating to the financial year ending on or after 30 June 2012, with the exception to clauses dealing with related entity transactions, which will apply to annual reports for each financial year ending on or after 30 June 2013.

1.10 The explanatory statement accompanying the new orders relating to Commonwealth authorities, states that the new orders are more user-friendly and 'broaden the scope of information to be reported in the Annual Report of Operations to better reflect public sector standards of accountability and transparency.'[1]

1.11 The new orders relating to annual reporting of Commonwealth companies are modelled on the equivalent orders applying the Commonwealth authorities and are the first reporting orders to be issued for wholly-owned Commonwealth companies. Wholly-owned Commonwealth companies will be required to report on specific matters in their annual reports, in addition to what is already required by the *Corporations Act 2001*.[2]

1.12 The Finance Minister has a role in the oversight of Commonwealth authorities that are also classified as a government business enterprise (GBE) as set out in the CAC Act. The annual reports of GBEs must provide an assessment of the entity's financial condition, dividends and community service obligations over the financial year.

1.13 The committee determines whether the report of an agency satisfactorily meets reporting requirements by assessing it against the PM&C Requirements, in particular, the checklist at Attachment F in the requirements; its respective enabling legislation; and where necessary, the *Corporations Act 2001*.

## Reports examined

1.14 During the period of 1 November 2011 to 30 April 2012, 11 annual reports were tabled in the Senate or presented 'out of session' to the President of the Senate,[3] and referred to the committee for examination. The reports are categorised as follows:

1 Explanatory Statement, *Commonwealth Authorities (Annual Reporting) Orders 2011*, p. 1.

2 Explanatory Statement, *Commonwealth Companies (Annual Reporting) Orders 2011*, p. 1.

3 Excluding reports tabled by 31 October 2011 in the House of Representatives which were examined in the committee's Report 1 of 2012.

***Statutory agencies/authorities***

- Commonwealth Ombudsman – Report for 2010–11 – pursuant to subsection 19(4) of the *Ombudsman Act 1976*; and
- Independent National Security Legislation Monitor – Report for the period 21 April 2011 to 30 June 2011.

## Reports not examined

1.15 The committee is not obliged to report on Acts, statements of corporate intent, surveys, corporate plans or errata. The following documents were referred to the committee but not examined in this report:

- Australian Public Service Commission—State of the Service Report 2010–11;
- Australian Electoral Commission—Election 2010—Funding and disclosure report;
- Department of Finance and Deregulation—Certificate of compliance – Report for 2010–11;
- Department of Finance and Deregulation—Consolidated financial statements for the year ended 30 June 2011;
- Department of Finance and Deregulation—Issues from the advances under the annual Appropriation Acts – Report for 2010–11;
- Department of Finance and Deregulation—Campaign advertising by Australian government departments and agencies – Report for the Period 1 July to 31 December 2011;
- *Members of Parliament (Staff) Act 1984*—Report for 2010–11;
- Mid-year economic and fiscal outlook – 2011–12—Statement by the Treasurer and the Minister for Finance and Deregulation; and
- *Commonwealth Electoral Act 1918*—2011 Redistribution into electoral divisions – South Australia – Report.

## Reports held over

1.16 The following reports were tabled in the Senate after 30 April 2012 and will therefore be considered in the committee's next report on annual reports, due to be presented to the Senate in early 2013:

- Medibank Private—Statement of corporate intent 2011–2014; and
- Australian River Co. Limited—Report for the period 1 December 2010 to 30 November 2011.

## Non-reporting bodies

1.17 Standing Order 25(20)(h) requires that the committee inquire into, and report on, any bodies which do not present annual reports to the Senate but should present such reports.

1.18 On this occasion, the committee makes no recommendation for any organisations not presenting an annual report to do so.

## Timeliness

1.19 All annual reports are required to be tabled in Parliament by 31 October each year unless another date is specified in an agency's legislation, charter and/or terms of reference. The PM&C Requirements state that 'it remains the Government's policy that all annual reports should be tabled by 31 October'. The committee considers timeliness in annual reporting an important element in accountability and continues to encourage FMA Act bodies to follow this policy.

1.20 The annual report of the Commonwealth Ombudsman was submitted to and received by the Minister on 23 December 2011, and tabled in the Senate on 7 February 2012. Section 19 of the *Ombudsman Act 1976* requires the Ombudsman to:

> …as soon as practicable, and in any event within 6 months, after each 30 June submit to the Minister, for presentation to the parliament, a report of the operation of the Ombudsman during the year that ended on that 30 June.[4]
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> …
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> Where the Ombudsman submits a report to the Minister under subsection (1) or (2), the Minister shall cause the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.[5]

1.21 Although the agency met its legislative requirement for the tabling of its annual report, the committee would encourage the Ombudsman to observe the timeframe for the tabling of annual reports as specified in the PM&C Requirements and applicable to FMA Act bodies, that is, by 31 October, and as best practice, prior to the Senate supplementary budget estimates hearings.[6] The committee acknowledges that the office underwent a period of transition in October 2011 with the appointment of Ms Alison Larkins as the Acting Commonwealth Ombudsman. It is further noted that Ms Larkins' letter of transmittal states her preference for the report to be presented out of session before Parliament met in February 2012.[7]

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4 *Ombudsman Act 1976*, subsection 19(1).

5 *Ombudsman Act 1976*, subsection 19(4).

6 *Department of the Prime Minister and Cabinet, Requirements for Annual Reports*, p. 2.

7 *Commonwealth Ombudsman Annual Report 2010–11*, p. iii.

1.22 The first report of the Independent National Security Legislation Monitor (INSLM) was tabled in the Senate on 20 March 2012, in accordance with legislative requirements. The timing of the tabling of this report is discussed further in the section dealing with this report.

1.23 Appendix 1 lists the annual reports tabled (or presented) in the Senate between 1 November 2011 and 30 April 2012[8] and referred to the committee with relevant tabling dates.

## Senate debate

1.24 Few annual reports are debated in the Senate, but many remain on the Senate Notice Paper for future consideration. There are several reports on the Notice Paper, however the committee is not aware of any Senate debates relating to the reports examined.

## Selected agencies and reports

1.25 The committee examined the *Commonwealth Ombudsman Annual Report 2010–11* and the first report of the newly established Independent National Security Legislation Monitor for the period 21 April to 30 June 2011.

### *Office of the Commonwealth Ombudsman*

1.26 The Acting Ombudsman, Ms Alison Larkins, advised in the foreword to the report that there was a four per cent increase in approaches and complaints[9] to the office from the previous year. Of the 38,919 approaches and complaints made about government agencies, 51 per cent were considered to be complaints within the office's jurisdiction.[10] It was further noted in the report that across the whole office, complaints and approaches received have increased by 16.8 per cent over the last five years.[11]

1.27 The report noted a high level of responsiveness by relevant agencies to the recommendations in the 13 formal reports published by the office throughout the year, which examined systemic administrative problems across government agencies. It was reported that 90 per cent of recommendations were accepted by agencies in full, and a further nine per cent in part.[12]

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8 Excluding reports tabled in the House of Representatives by 31 October 2011.

9 The report explained that approaches are any contact with the office; while complaints are approaches that are within the office's jurisdiction. See *Commonwealth Ombudsman Annual Report 2010–11* p. 2.

10 *Commonwealth Ombudsman Annual Report 2010–11*, p. viii.

11 *Commonwealth Ombudsman Annual Report 2010–11*, p. 2.

12 *Commonwealth Ombudsman Annual Report 2010–11*, p. viii.

1.28 The report highlighted some of the results from two surveys conducted during 2010–11 which sought to identify public awareness and government agency satisfaction. The survey of Australian and ACT Government agencies revealed 81 per cent of participants rating their satisfaction with the office as 7 out of 10 or better. It was further reported that participants expressed largely positive attitudes towards the Ombudsman in terms of independence, trustworthiness, accountability, impartiality and impact on improving government relations.[13]

1.29 The public awareness survey revealed that 66 per cent of participants were aware of the Ombudsman. While the report noted that this result was consistent with previous surveys, the committee would hope to see this figure increase in future and will monitor with interest, the strategies implemented to better target the provision of information about the services provided by the Ombudsman. The survey also identified a number of sections of the Australian community which are less likely to be aware of the office, including young people, women, and people from culturally and linguistically diverse backgrounds.[14]

1.30 Among the range of specialist roles performed by the Ombudsman, one area of particular interest to the committee was the increase in the number of the approaches and complaints to the Immigration Ombudsman over recent years. It was reported that there was a 34 per cent increase in 2010–11 from the previous year in approaches and complaints and that this figure has been increasing for most years since 2004–05.[15] The increase for 2010–11 was attributed to the increased number of irregular maritime arrivals (IMAs) who complained to the office, particularly as a result of the office's active visits program where more than 90 per cent of detention-related complaints were made.[16] It was acknowledged that the increase in the number of IMAs on Christmas Island and their placement in detentions centres in both remote and metropolitan locations has required the office to expand its inspection program and has presented new challenges in the provision of detentions reviews. It was noted that:

> Despite these challenges we continued our program of inspections of immigration detention facilities, own motion investigations into systemic issues, and ongoing engagement with the department through regular meetings, briefings and consultation on proposed initiatives. This preventive approach helped to reduce the volume of complaints received about systemic issues and enabled the department to quickly implement processes to address underlying problems.[17]

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13 *Commonwealth Ombudsman Annual Report 2010–11*, p. viii.

14 *Commonwealth Ombudsman Annual Report 2010–11*, pp viii and 7.

15 *Commonwealth Ombudsman Annual Report 2010–11*, pp 102–103.

16 *Commonwealth Ombudsman Annual Report 2010–11*, p. 102.

17 *Commonwealth Ombudsman Annual Report 2010–11*, p. 102.

1.31 The committee notes that the office gained the new specialist function of Overseas Student Ombudsman on 9 April 2011. This role requires the investigation of complaints from overseas students, about problems with private education and training in Australia. Up until 30 June 2011, the Overseas Student Ombudsman received 161 approaches and complaints about more than 50 education bodies. The office reported an initial positive response from bodies within the sector to the Ombudsman's recommendations arising from complaint investigations.[18]

1.32 The office reported an operating surplus of $0.226 million for the financial year 2010–11, which compares to a deficit of $1.120 million for the previous financial year. The surplus was attributed to a 7 per cent increase in revenue.[19] The agency received an unqualified auditor's report on its financial statements for 2010–11.[20]

1.33 The performance review chapter of the report is well presented, and addresses the key performance indicators and deliverables as listed in the Portfolio Budget Statement. This chapter provides an analysis of results against each of the agency's key objectives and the committee notes that most objectives were met. However, the office's performance relating to timeliness of investigating complaints was slightly down on the previous year in some aspects. For example, in 2010–11 the office finalised 75 per cent of all approaches and complaints within one month of receipt (down from 77 per cent in the previous year).[21] It was also noted that for the year under review, 20.5 per cent of investigated complaints were finalised in one month (down from 24 per cent) and 59.7 per cent were finalised in three months (down from almost 64 per cent).[22] It was explained in the report that the decrease in timeliness reflects the increased complaint numbers.[23]

1.34 The report closely adheres to the PM&C Requirements for Annual Reports and the committee considers it to be 'apparently satisfactory'.

### *Independent National Security Legislation Monitor*

1.35 This is the first annual report of the Independent National Security Legislation Monitor (INSLM) following the appointment of Mr Bret Walker SC to the office on 21 April 2011.

1.36 The report outlines the functions of the INSLM as:

> …the review of the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation (CT Laws) and other

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18 *Commonwealth Ombudsman Annual Report 2010–11*, pp 3 and 5.

19 *Commonwealth Ombudsman Annual Report 2010–11*, p. 40.

20 *Commonwealth Ombudsman Annual Report 2010–11*, pp 180–181.

21 *Commonwealth Ombudsman Annual Report 2010–11*, p. 26.

22 *Commonwealth Ombudsman Annual Report 2010–11*, p. 27.

23 *Commonwealth Ombudsman Annual Report 2010–11*, p. 28.

> related laws, and consideration whether those laws contain appropriate safeguards for protecting the rights of individuals, remain proportionate to any threat of terrorism or threat to national security or both, and remain necessary.[24]

1.37 The report is prepared pursuant to section 29 of the *Independent National Security Legislation Monitor Act 2010* (Cth), which requires the INSLM to prepare and provide to the Prime Minister an annual report as soon as practicable after 30 June in each financial year and in any event by the following 31 December. The Prime Minister must table the annual report within 15 sitting days after the day of receipt. On this occasion, the INSLM met the reporting requirement, with the report being provided to the Prime Minister on 16 December 2011 and tabled in the Senate on 20 March 2012.

1.38 This initial annual report draws on the work completed by the INSLM up to December 2011, rather than 30 June 2011, to allow adequate time for review and consideration of relevant matters.[25] In February 2012, prior to the tabling of the report, Mr Walker explained to the committee at the additional estimates 2011–12 hearings his decision on the timing of the tabling of the initial report:

> I chose to delay, I should say within the statutory period but towards the end of the statutory period, my first annual report so as to use it in the following way. I decided the area was one that required a deal of attention to comparative law, a deal of attention to commentary—academic and otherwise outside of government—but, of course, in particular understanding the functions, operations and priorities of the agencies in question. All of that meant that I had a deal of meeting to do, which I have done—not accomplished but started. I have a lot of reading to do, a lot of which I have done but I fear will never be accomplished because it is published I think more quickly than anyone can read it and, in particular, a deal of research into comparative law, practice and commentary.
>
> My first annual report therefore goes beyond reporting on my activities up to 30 June last and contains a preliminary survey of the whole area of all the statutes in question.[26]

1.39 The report provides background on the policy and principles which form the basis for the INSLM's scrutiny of counter-terrorism law. It also provides a summary of Australia's international obligations, particularly concerning counter-terrorism, international security and human rights, which the INSLM will focus on when assessing the counter-terrorism laws. The remaining chapters of the report cover the relevant provisions of counter-terrorism and national security legislation as defined in section 4 of the INSLM Act.

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24 *Independent National Security Legislation Monitor Annual Report 16 December 2011*, p. 1.

25 *Independent National Security Legislation Monitor Annual Report 16 December 2011*, p. 2.

26 Mr Bret Walker SC, *Committee Hansard*, 13 February 2012, p. F&PA 60.

1.40 Appendix 3 of the report contains a list of 63 questions/issues raised in the body of the report and which will be a priority for consideration by the INSLM in 2012.[27] Mr Walker elaborated on the focus of the forward work program at the additional estimates hearing:

> I have assembled questions which I believe arise on the face of the statutes and consideration of their operation and thought about their compliance with international law evoke. The work program for the next period—which formally ends on 30 June, but I can see tasks which will go beyond that—has been set pretty much by the set of questions I have raised for myself at the end of my first report.
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> They will focus, I can tell the committee, first of all and particularly on the only one of the extraordinary powers to have been used—namely, the ASIO questioning warrants—and the bracketing of powers that it is sensible to consider alongside them. There will also be questioning and detention warrants, which have never been issued; control orders, which, with two well-known exceptions, have not been used; and preventative detention orders, which have not been used. I intend that my inquiries commencing very soon with the relevant agencies will be focusing on those extraordinary powers first.[28]

1.41 Given the short time the INSLM has been operating, the committee was impressed by the comprehensive initial report presented and looks forward to receiving future reports of the INSLM.

**Senator Helen Polley**
**Chair**

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27 *Independent National Security Legislation Monitor Annual Report 16 December 2011*, pp 67–70.

28 Mr Bret Walker SC, *Committee Hansard*, 13 February 2012, p. F&PA 60.