The Senate

Legal and Constitutional Affairs Legislation Committee

Annual reports (No. 2 of 2010)

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PREFACE

Terms of reference

On 29 September 2010, a resolution of the Senate allocated the following portfolios to the Senate Standing Committee on Legal and Constitutional Affairs:

- Attorney-General's portfolio; and
- Immigration and Citizenship portfolio.

This report was prepared pursuant to Standing Order 25(20) relating to the consideration of annual reports by committees. The Standing Order states:

> Annual reports of departments and agencies shall stand referred to the committees in accordance with an allocation of departments and agencies in a resolution of the Senate. Each committee shall:
>
> (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.

Role of annual reports

Annual reports place a great deal of information about government departments and agencies on the public record. Accordingly, the tabling of annual reports is an important element of accountability to Parliament, as the information provided in annual reports assists in the effective examination of the performance of departments and agencies, and the administration of government programs.

Annual reporting requirements

Standing Order 25(20)(f) requires that committees 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.

Under the guidelines issued by the Department of Prime Minister and Cabinet and approved by the Joint Committee of Public Accounts and Audit, the *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, (the Requirements for Annual Reports) the annual reports of departments, and executive and prescribed agencies, must be tabled in each House of Parliament by 31 October.[1] If a department is unable to meet this deadline, the secretary of that department is to advise the responsible Minister of the reasons for the delay and the expected tabling date. The responsible Minister is to table this explanation in the Parliament on the next available sitting day.[2]

Orders made by the Minister under section 48 of the *Commonwealth Authorities and Companies Act 1997* (CAC Act) set out guidelines for the annual reports of Commonwealth authorities. The content of annual reports of Commonwealth companies is based on the reporting requirements under the *Corporations Act 2001*, in accordance with section 36 of the CAC Act.

Guidelines for the annual reports of non-statutory bodies are set out in the Government Response to recommendations of the then Senate Standing Committee on Finance and Government Operations, in its report entitled *Reporting Requirements for the Annual Reports of Non-Statutory Bodies*. The Government Response was incorporated into the Senate Hansard of 8 December 1987.[3]

'Apparently satisfactory'

Under the terms of Standing Order 25(20)(a), the committee is required to report to the Senate whether reports are 'apparently satisfactory'. In making this assessment, the committee considers such aspects as compliance with relevant reporting guidelines.

The reports examined by the committee in this report were found to be of a satisfactory standard, adequately describing the functions, activities and financial

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1 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 23 June 2010, Part 1, Section 4.

2 Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Government Documents to the Parliament*, Canberra, July 2008, p. 5.

3 *Official Senate Hansard*, 8 December 1987, pp 2643-2645.

positions of the departments and agencies. The committee finds all submitted annual reports to be 'apparently satisfactory'.

Timeliness

Under Standing Order 25(20)(c), the committee must also report to the Senate on any lateness in the presentation of annual reports.

The *Requirements for Annual Reports* published in 2009 state that:

> A copy of the annual report is to be presented to each House of the Parliament on or before 31 October in the year in which the report is given.[4]
>
> …
>
> Where an agency's own legislation provides a timeframe for its annual report, for example "within six months" or "as soon as practicable after 30 June in each year", that timeframe applies.[5]

The committee is pleased to note that the most recent guidelines (issued June 2010) have been amended to include the following advice in addition to that set out above:

> If Senate Estimates is scheduled to occur prior to 31 October, it is best practice for annual reports to be tabled prior to those hearings.[6]

The amendment reflects the fact that supplementary budget estimates hearings are now generally held in late October rather than November as was previously the case.

Some Senators experienced frustration at the hearings for the supplementary budget estimates round on 19 and 20 October 2009 in relation to the lack of availability of departmental and agency annual reports:

> **Senator BARNETT**—Mr Wilkins, we have heard from a range of agencies this morning regarding annual reports that were forwarded to the department as long ago as early September, in one instance. It is now 19 October and here we are at estimates without any annual reports from Attorney-General's or its agencies. In our annual committee report on the annual reports we strongly encouraged agencies of the department to table annual reports before Senate estimates. No doubt you have read that annual report of the legal and constitutional affairs committee. Is there a particular reason why these reports have not been tabled and made available to our committee prior to these estimates?
>
> **Mr Wilkins**—There is no reason of that sort. I take my obligation to be to comply with the law, and the law says it needs to be in by the 31st, as I understand, and that is what we are working towards.[7]

---

4 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 17 June 2009, Part 1, Section 4.

5 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 17 June 2009, Part 1, Section 4.

6 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 23 June 2010, Part 1, Section 4.

7 *Committee Hansard*, 19 October 2009, p. 103.

…

Mr Wilkins—…I take my portfolio responsibilities seriously. The key issue for us is making sure that they are tabled within the statutory time, and you will probably find that is a general view of secretaries. As I said to you, if you have a report that says something different, maybe it is a good idea to actually flag that in the law.

…

Senator BARNETT—…Together with other committee members, I take my position on the committee seriously, and that is why in our annual report on annual reports we strongly encourage them to be tabled as soon as possible so that we can consider them before estimates. Please bear in mind the views of our committee.

Mr Wilkins—I have taken that on board.

Senator BARNETT—Thank you.[8]

The revised *Requirements for Annual Reports* issued on 23 June 2010 will apply to annual reports for the financial year ending on 30 June 2010. The committee encourages departments and agencies to prepare, and ministers to table, annual reports as soon as possible so that they can be considered during the committee's examination of supplementary budget estimates.

Subsection 9(1) of the CAC Act requires the director of a Commonwealth authority to:

> (a) prepare an annual report in accordance with Schedule 1 for each financial year; and
> (b) give it to the responsible Minister by the deadline for the financial year for presentation to the Parliament.
>
> …
>
> (2) The deadline is:
> (a) the 15th day of the 4th month after the end of the financial year; or
> (b) the end of such further period granted under subsection 34C(5) of the *Acts Interpretation Act 1901*.

Under section 36 of the CAC Act:

> (1) A Commonwealth company must give the responsible Minister:
> (a) a copy of the company's financial report, directors' report and auditor's report that the company is required by the *Corporations Act 2001* to have for the financial year (or would be required by that Act to have if the company were a public company); and
> (b) any additional report under subsection (2); and
> (c) in the case of a wholly-owned Commonwealth company— any additional information or report required by the Finance Minister's Orders.
>
> (1A) The Commonwealth company must give the reports and information by:

8 *Committee Hansard*, 19 October 2009, p. 104.

(a) if the company is required by the *Corporations Act 2001* to hold an annual general meeting—the earlier of the following:

(i) 21 days before the next annual general meeting after the end of the financial year;
(ii) 4 months after the end of the financial year; and
(b) in any other case—4 months after the end of the financial year; or the end of such further period granted under subsection 34C(5) of the *Acts Interpretation Act 1901*.

A table listing the annual reports of departments and agencies tabled in the Senate (or presented out of session to the President of the Senate) between 1 November 2009 and 30 April 2010, and which have been referred to the committee for examination, can be found at Appendix 1.[9]

A number of annual reports for 2008-09 referred to the committee were tabled in the Senate after 31 October 2009. The committee notes that, among these reports, the following prescribed agencies under the *Financial Management and Accountability Act 1997* (FMA Act) tabled their reports in the Senate after 31 October 2009:

- Australian Commission for Law Enforcement Integrity;
- Australian Crime Commission;
- Australian Customs and Border Protection Service;
- Australian Human Rights Commission; and
- Commonwealth Director of Public Prosecutions.

However, the committee also acknowledges that the annual reports of all of the agencies above, except for the Australian Crime Commission, were tabled in the House of Representatives on 29 October 2009.

9 This table also includes the reports on the operation of acts or programs.

CHAPTER 1

ANNUAL REPORTS OF STATUTORY AUTHORITIES

1.1 The reports of the following statutory authorities for the financial year 2008-09 were referred to the committee for examination and report:

Attorney-General's Portfolio

- Aboriginal and Torres Strait Islander Social Justice Commissioner—Native title report for 2009
- Aboriginal and Torres Strait Islander Social Justice Commissioner—Social justice report for 2009
- Audio-Visual Copyright Society Limited (Screenrights)
- Australian Commission for Law Enforcement Integrity
- Australian Crime Commission
- Australian Customs and Border Protection Service
- Australian Human Rights Commission
- Copyright Agency Limited
- Office of the Director of Public Prosecutions
- Family Law Council
- High Court of Australia

1.2 As in previous reports of the committee, it has decided to select a small number of annual reports for closer examination. On this occasion, the reports of the following agencies will be examined:

- Australian Customs and Border Protection Service
- Australian Human Rights Commission
- Family Law Council
- High Court of Australia
- Office of the Director of Public Prosecutions

1.3 The committee has determined to consider, but not to report on, the annual reports of the Australian Crime Commission and Australian Commission for Law Enforcement Integrity, as other parliamentary committees (the Parliamentary Joint Committee on the Australian Crime Commission and the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity respectively) have specific responsibility for overseeing these agencies.

Australian Customs and Border Protection Service

1.4 The report of the Australian Customs and Border Protection Service was tabled in the Senate on 17 November 2009 and in the House of Representatives on 29 October 2009.

1.5 The committee was impressed with the report's detailed description of performance and activities for 2008-09. Results were presented against targets for key performance indicators were listed in the Portfolio Budget Statements (PBS). This section also presented trend information for a range of activities undertaken by the agency.

1.6 The committee was pleased to see the inclusion of 'improvement priorities for 2009-10' for each output group and will monitor progress on these in future annual reports presented by Customs.

1.7 The Chief Executive Officer (CEO) outlined performance highlights for the year under review. Among the range of items listed were impressive results in regard to the processing of 24.33 million international air and sea passengers with 97.4 per cent of incoming air passengers processed within 30 minutes of joining the inwards queue. This was only slightly lower than last year's result but exceeded the target of 95 per cent.[1] The agency achieved a traveller satisfaction rating of 98 per cent which was slightly higher than last year's result of 97 per cent.[2]

1.8 The CEO also highlighted the refinement of strategies to improve performance, citing the example of the development of the refined cargo intervention strategy which was introduced on 1 July 2009 and takes a risk-based approach.[3] The committee examined the development of this strategy during hearings on the budget estimates 2009-10[4] and will look to next year's report for an assessment of its implementation.

1.9 In the agency's overview of financial performance for 2008-09, it reported an operating deficit of $11.8 million for the 2008-09 financial year. In his review, the CEO advised that the ongoing financial sustainability of the agency was strong and that the deficit was:

> ...principally the result of adjustments flowing from a number of major reviews conducted during the year of our balance sheet position. The adjustments were non-cash based and largely one-off in nature.[5]

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1 *Australian Customs and Border Protection Service Annual Report 2008-09*, p. 18.

2 *Australian Customs and Border Protection Service Annual Report 2008-09*, p. 4.

3 *Australian Customs and Border Protection Service Annual Report 2008-09*, p. 5.

4 *Committee Hansard*, 26 May 2009, pp 80-83.

5 *Australian Customs and Border Protection Service Annual Report 2008-09*, p. 6.

1.10 The report is well presented and closely follows the Requirements for Annual Reports. Accordingly, the committee considers it to be 'apparently satisfactory'.

Australian Human Rights Commission

1.11 The Commission's annual report was tabled in the Senate on 17 November 2009 and in the House of Representatives on 29 October 2009.

1.12 The Commission has again produced an informative report with a high standard of presentation. The agency has five key performance indicators (KPI) for Output 1 listed in the PBS and appears to have exceeded four targets for 2008-09. Three of these KPI relate to the Complaint Handling Section and results were presented against the set targets.[6]

1.13 Another KPI related to the extent of contact the Commission has with government, community and industry groups. The 2008-09 target was to ensure that more than 70,000 publications are distributed to these groups Australia-wide per annum and to aim for more than 4 million pages view (35 million website hits).[7]

1.14 The report noted that:

> In 2008-09, a total of 75,021 publications were sent out to 4868 requests. This is an increase in the number of publications distributed in 2007-08.[8]
>
> …
>
> During 2008-09, the site received approximately 18,460, 234 page views on the server. This equates to approximately 93,769,855 hits on the site in total and 3,300,132 unique visits.[9]

1.15 Unfortunately, these impressive results appear not to be linked back to the 2008-09 performance targets as set out in the Portfolio Budget Statements; however, the Committee notes that the Commission appears to have significantly exceeded the set targets.

1.16 While pleased with the report's overall adherence to the Requirements for Annual Reports, the committee would have preferred to see the inclusion of a discussion of the Commission's financial performance for the year. Given the agency's tight budgetary situation,[10] a discussion which addresses any significant changes in financial results from the previous year or from the budgeted financial statements would be a useful inclusion. The committee notes that the Commission's income

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6 *Australian Human Rights Commission Annual Report 2008-09*, p. 44.

7 *Portfolio Budget Statements 2008-09, Attorney-General's Portfolio*, Human Rights and Equal Opportunity Commission, p. 292.

8 *Australian Human Rights Commission Annual Report 2008-09*, p. 18.

9 *Australian Human Rights Commission Annual Report 2008-09*, p. 22.

10 *Australian Human Rights Commission Annual Report 2008-09*, p. xi.

statement for the period ended 30 June 2009 indicates a deficit result for the last two financial years.[11]

1.17 The committee considers the Commission's report to be 'apparently satisfactory'.

Family Law Council

1.18 The Council is a statutory authority established under section 115 of the *Family Law Act 1975* which commenced operation in November 1976. The Council advises and makes recommendations to the Attorney-General in relation to :

- the operation of the Family Law Act and in relation to other family law legislation;
- legal aid as it applies to family law; and
- any other matters relating to family law.

1.19 The Council may provide advice and recommendations either of its own motion or at the request of the Attorney-General.[12]

1.20 The Council is resourced by the Attorney-General's Department, with a secretariat based in the Family Law Branch, and its expenditure forming part of the Department's financial statement.

1.21 The annual report of the Family Law Council was tabled in the Senate on 2 February 2010, having been presented to the President out of session on 18 December 2009. The report was also tabled in the House of Representatives on 2 February 2010. The report is prepared in accordance with subsection 115(9) of the Family Law Act which requires the Council to:

> As soon as practicable after 30 June in each year, prepare and furnish to the Attorney-General a report of the operations of the Council during the year that ended on that 30 June.
>
> The Attorney-General shall cause a copy of a report furnished under subsection (9) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.

1.22 The committee notes that, while the Council appears to have met its tabling requirements, this year's report was tabled considerably later than other recent reports of the Council.[13]

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11 *Australian Human Rights Commission Annual Report 2008-09*, p. 201.

12 Section 3, *Family Law Act 1975*.

13 See for example Senate tabling dates for annual reports for the following years: 2006-07, tabled 7 November 2006; 2007-08, presented 31 October 2008.

1.23 The report provides a good account of the activities of the Council during the year. Appendix C of the report provides some information required under the Requirements for Annual Reports.

1.24 In line with its statutory functions under subsection 115(3) of the Family Law Act, the Council provided four letters of advice to the Attorney-General on matters relating to family law. Areas of advice for 2008-09 included arbitration, kinship carers for indigenous children, binding financial agreements, and mental health in the family law system.[14]

1.25 As well as a description of activities for the year under review, the Council's annual report also forms an ongoing account of the work of the Council. The report includes statistics of the implementation of Council recommendations and a list of all reports and papers published by the Council since 1976. While the committee would not encourage agencies to include excessive historical detail in their annual reports, it considers this inclusion appropriate in the Council's case given the modest size of the report.

1.26 The Council (three non-judicial members) also provided a submission in response to the consultation paper *Improving Access to Justice: A better Framework for the Family Courts* (the Semple Report).[15]

1.27 The Committee considers the annual report of the Family Law Council to be 'apparently satisfactory'.

High Court of Australia

1.28 The High Court of Australia's annual report for 2008-09 is submitted in accordance with section 47 of the *High Court of Australia Act 1979*. The Court is not a prescribed agency under the *Financial Management and Accountability Act 1997*, due to its status under its enabling legislation.[16] Therefore, the Requirements for Annual Reports do not apply to the annual report of the Court. However, subsection 3(3) of the Requirements for Annual Reports provides:

> In the case of an agency (including an executive agency established under section 65 of the Public Service Act 1999) that is neither prescribed under the FMA Act nor comes within the CAC Act, these Requirements may be used to the extent that they are consistent with any reporting requirements contained in the agency's own legislation (if any).[17]

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14 *Family Law Council Annual Report 2008-09*, pp 11-12.

15 *Family Law Council Annual Report 2008-09*, p. 12.

16 See *Chart of 104 Agencies under the Financial Management and Accountability Act 1997*, Department of Finance and Deregulation, 27 July 2010.

17 *Requirements for annual reports for departments, executive agencies and FMA Act bodies*, June 2009.

1.29 The Court's report provides a clear and concise account of the year in review, including detailed statistics for judicial workload.

1.30 Statistics relating to the judicial business of the Court during the year under review were provided. It was noted that during this period the Court delivered judgements in 60 appeals and in five other matters, and decided 569 Special Leave Applications. It was further noted that 95 per cent of the applications for leave or special leave to appeal and 92 per cent of the appeals decided during this period were completed within nine months of filing. This compared favourably with the figures of 86 per cent and 80 per cent respectively for the previous year.[18] While the inclusion of statistics on timeliness is useful, the committee considers that an assessment against target timeframes would enhance the report.

1.31 The report was tabled in both the Senate and the House of Representatives on 2 February 2010 and was received by the President of the Senate out of session on 11 December 2009. Despite being tabled well after 31 October 2009, the Court has satisfied its reporting requirements in accordance with its enabling legislation. Nevertheless, the committee encourages agencies not subject to the Requirements for Annual Reports to table their reports as close as possible to the 31 October timeframe, in accordance with Government policy. The committee further notes, however, that the tabling time of this year's report is an improvement on the Court's tabling of annual reports in recent years.[19] The committee considers that timeliness in annual reporting is an important element of accountability.

1.32 The report notes the changes to the composition of the Court during 2008-09: the appointment of Chief Justice Robert French and Justice Virginia Bell, and the retirement of Chief Justice Murray Gleeson and Justice Michael Kirby.[20]

1.33 The Court's budget and resourcing levels have been the subject of some attention in recent years and have been raised at estimates hearings of this committee.[21] The committee notes that the court continued to operate at a deficit and reported an operating loss of $1,493,850 in 2008-09.[22] The annual report also indicates that the Court had obtained approval for a further operating loss in 2009-10 and that increasing operating losses were likely in the future.[23] The Chief Justice advised in his overview that the Court had '[a]pproached the Government during the

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18 *High Court of Australia Annual Report 2008-09*, p. 40.

19 The Court's annual report has been tabled on the following dates: 05/06, tabled 6/2/2007; 06/07, tabled 11/3/2008; 07/08, presented 16/12/2008 and tabled 3/2/2009.

20 *High Court of Australia Annual Report 2008-09*, pp 18-20.

21 See, for example, *Committee Hansard*, 27 May 2009, pp 17-18.

22 *High Court of Australia Annual Report 2008-09*, p. 20.

23 *High Court of Australia Annual Report 2008-09*, p. 20.

year with a view to seeking rebasing of its funding and a separate Appropriation Act'.[24]

1.34 The Chief Justice provided an update on the maintenance and repair work to the High Court building and surrounds which was undertaken during 2008-09. This included repair of leaks within the building and the restarting of the fountain. He further noted, however, that the fountain and parts of the forecourt still require remediation work.[25] The committee has examined this matter in some detail at recent estimates hearings[26] and will continue to monitor the Court's progress in completing this work.

1.35 The committee considers the report of the High Court to be 'apparently satisfactory'.

Office of the Commonwealth Director of Public Prosecutions

1.36 The annual report of the Office of the Commonwealth Director of Public Prosecutions was tabled in the Senate on 17 November 2009 and in the House of Representatives on 29 October 2009.

1.37 The report noted the Office's 25th anniversary which was celebrated in March 2009.

1.38 The Director highlighted the release in March 2009 of the revised Prosecution Policy of the Commonwealth during the year. The policy:

> …provides guidelines for the making of decisions regarding the prosecution process and serves two main purposes, namely to promote consistency in decision making, and to inform the public of the principles upon which the CDPP performs its statutory functions. [27]

1.39 The Director also explained that the revised prosecution policy is a refinement of the previous policy, with the introduction of new sections on victims and prosecution disclosure. However, the fundamental principles underlying the prosecution policy, including the test for commencement of prosecution, have not changed.[28]

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24 *High Court of Australia Annual Report 2008-09*, p. 12.

25 *High Court of Australia Annual Report 2008-09*, p. 12.

26 See *Committee Hansard 23 February 2009*, pp 190-195; 27 May 2009, pp 16-27; 8 February 2010 pp 40-44; and 24 May 2010, p. 71.

27 *Commonwealth Director of Public Prosecutions Annual Report 2008-09*, p. ix.

28 *Commonwealth Director of Public Prosecutions Annual Report 2008-09*, p. 5.

1.40 The Director noted in his Overview the release of the Victims of Crime Policy which has been developed in response to the changing nature of the Office's legal practice and the increasing number of offences involving individual victims.[29]

1.41 Both of these policies are included as appendices to the report.

1.42 Performance information was clearly presented against key performance indicators as listed in the Portfolio Budget Statements. The inclusion of results for the previous financial year provides a useful reference. The Office exceeded all performance targets for 2008-09.[30]

1.43 The committee congratulates the Office on presenting a report that is informative, attractively presented and which closely adheres to the Requirements for Annual Reports. The committee considers the annual report to be 'apparently satisfactory'.

29 *Commonwealth Director of Public Prosecutions Annual Report 2008-09*, p. x.

30 *Commonwealth Director of Public Prosecutions Annual Report 2008-09*, p. 104.

CHAPTER 2

REPORTS ON THE OPERATION OF ACTS AND PROGRAMS

2.1 Standing Order 25(20) does not provide for consideration of reports on the implementation or operation of acts or programs. The committee is not therefore required to include them in its report on the examination of annual reports. However, the committee chose to examine the following reports which are submitted in accordance with the *Migration Act 1958* (Migration Act):

- Report pursuant to Section 91Y of the Migration Act on Protection Visa Processing Taking More Than 90 days for the period 1 July to 31 October 2009 (published by the Department of Immigration and Citizenship (DIAC));
- Report Pursuant to Section 440A of the Migration Act on the conduct of Refugee Review Tribunal reviews not completed within 90 days for the period 1 July to 31 October 2009 (published by the Refugee Review Tribunal (RRT)).

Protection visa processing taking more than 90 days and refugee reviews taking more than 90 days

2.2 Section 65A of the Migration Act imposes a requirement for the Minister to make a decision on a protection visa application within 90 days of the lodgement of the application. If this target is exceeded, the Secretary of DIAC is required, under section 91Y of the Migration Act, to report on protection visa applications for which decision making has taken over 90 days. Similarly, section 440A requires the RRT to report on reviews not completed within 90 days.

2.3 DIAC and the RRT are required to report every four months, with the latest reports reviewed by the committee covering the period 1 July 2009 to 31 October 2009.

2.4 The committee monitors these periodic reports to the Minister, which are tabled in the Parliament, and considers the timeliness of both decisions on protection visa applications and RRT reviews as, not only beneficial to the applicant, but also a demonstration of the agencies' commitment to improving efficiency. These reports ensure that the processes within the department and tribunal are open and accountable.

Protection visa processing taking more than 90 days

2.5 The table below compares protection visa processing by DIAC taking more than 90 days for the three previous reporting periods:

	1 November 2008 to 28 February 2009	**1 March 2009 to 30 June 2009**	**1 July 2009 to 31 October 2009**
Total number *undecided* outside of 90 day period	324	480	524
Total number *decided* outside of 90 day period	409	488	582
Total number processed outside of 90 day period	**733**	**968**	**1106**
Percentage of total applications processed outside of 90 day period	21%	25%	25%

2.6 The committee was pleased to note that the number of delays attributable to departmental processing delays has fallen since the previous report. The current report identified 308 delays in this category compared to 342 in the previous report.[1]

2.7 The report advised that most of the applications not decided within 90 days due to factors within DIAC's control had sound reasons for deferral. For example, they included:

> …applications requiring DIAC exploration of complex character issues which might warrant visa refusal, and application where it is prudent to await the outcome of serious criminal charges.[2]

1 *Protection Visa Processing Taking More Than 90 Days for the report period 1 July 2009 to 31 October 2009*, Letter of transmittal, p. 2.

2 *Protection Visa Processing Taking More Than 90 Days for the report period 1 July 2009 to 31 October 2009*, Letter of transmittal, p. 2.

2.8 The committee will continue to monitor these reports and hopes to see a decrease in delays and a larger percentage of applications processed within the 90 day processing timeframe.

Refugee Review Tribunal reviews not completed within 90 days

2.9 This table outlines the number of RRT reviews not completed within 90 days for the previous three reporting periods:

	1 November 2008 – 28 February 2009	1 March 2009 to 30 June 2009	1 July 2009 to 31 October 2009
Reviews completed *outside* of 90 days	197 (25%)	287 (31%)	247 (36%)
Reviews completed *within* 90 days	601 (75%)	634 (69%)	448 (64%)
Total	**798**	**921**	**695**

2.10 The committee notes the increasing percentage of reviews being completed outside of 90 days. The committee further notes that the reasons for reviews not being completed within the 90-day timeframe can include factors outside the RRT's control (such as matters relating to the applicant or the legal adviser or matters which relate to third parties).[3]

Senator Trish Crossin
Committee Chair

3 *Report Pursuant to Section 440A of the Migration Act on the Conduct of Refugee Review Tribunal Reviews Not Completed Within 90 Days for the Period 1 July 2009 to 31 October 2009*, Letter of Transmittal.

APPENDIX 1

ANNUAL REPORTS REFERRED

Annual reports referred by the Senate to the committee during the period 1 November 2009 and 30 April 2010

Department/authority	Date submitted to Minister (if known)	Date received by Minister (if known)	Date tabled in Senate (Received in Senate out of session)
Attorney-General's Portfolio			
Aboriginal and Torres Strait Islander Social Justice Commissioner—Native title report for 2009			2/2/2010 (20/1/2010)
Aboriginal and Torres Strait Islander Social Justice Commissioner—Social justice report for 2009			2/2/2010 (20/1/2010)
Audio-Visual Copyright Society Limited (Screenrights) – Report for 2008-09	2/12/2009	6/1/2010	3/2/2010
Australian Commission for Law Enforcement Integrity – Report for 2008-09[1]	16/10/2009	21/10/2009	17/11/2009
Australian Crime Commission – Report for 2008-09[2]	17/11/2009	17/11/2009	25/11/2009
Australian Customs and Border Protection Service – Report for 2008-09	7/10/2009	19/10/2009	17/11/2009
Australian Human Rights Commission – Report for 2008-09	21/10/2009	26/10/2009	17/11/2009

1 Also stands referred to the Joint Committee on the Australian Commission for Law Enforcement Integrity, under the *Law Enforcement Integrity Commissioner Act 2006.*

2 Also stands referred to the Joint Committee on the Australian Crime Commission, under the *Australian Crime Commission Act 2002.*

Copyright Agency Limited – Report for 2008-09	6/1/2010	6/1/2010	3/2/2010
Office of the Director of Public Prosecutions – Report for 2008-09	19/10/2009	20/10/2009	17/11/2009
Family Law Council – Report for 2008-09			2/2/2010 (18/12/2009)
High Court of Australia – Report for 2008-09			2/2/2010 (11/12/2009)

List of reports on the operation of acts

Act	**Date submitted to Minister (if known)**	**Date received by Minister (if known)**	**Date tabled in Senate (Received in Senate out of session)**
Attorney-General's Portfolio			
Australian Federal Police Act 1979— Report for 2008-09 on the Ombudsman's activities under Part V of the Act			2/2/2010 (18/12/2009)
Crimes Act 1914—Ombudsman's report for 2008-09 on controlled operations [Monitoring controlled operations by Australian Crime Commission, Australian Federal Police and Australian Commission for Law Enforcement Integrity]			18/11/2009
Crimes Act 1914—Authorisations for the acquisition and use of assumed identities [Australian Commission for Law Enforcement Integrity] – Report for 2008-09	2/11/2009	2/11/2009	2/2/2010
Criminal Code Act 1995—Preventative detention and control orders [Australian Federal Police] – Reports for 2008-09	27/10/2009	27/10/2009	24/11/2009
National Security Information (Criminal and Civil Proceedings) Act 2004—Non-disclosure and witness exclusion certificates – Report for 2008-09	27/10/2009	27/10/2009	24/11/2009

Surveillance Devices Act 2004 – Report for 2008-09 on the operation of the Act	10/12/2009	10/12/2009	23/2/2010
Telecommunications (Interception) Act 1979—Report for 2008-09 under Division 2 of Part IX – on the operation of the Act	10/12/2009	10/12/2009	23/2/2010
Immigration and Citizenship Portfolio – Migration Act 1958			
Section 91Y – Department of Immigration and Citizenship—Protection visa processing taking more than 90 days – Report for the period 1 July to 31 October 2009	15/12/2009	15/12/2009	16/3/2010
Section 440A – Department of Immigration and Citizenship—Refugee Review Tribunal reviews not completed within 90 days – Report for the period 1 July to 31 October 2009	15/12/2009	15/12/2009	16/3/2010
Section 486O—Ombudsman's report on appropriateness of detention arrangements Personal identifier: 574/09 to 580/10	24/2/2010	24/2/2010	10/3/2010
Section 486O—Government response to Ombudsman's report on appropriateness of detention arrangements Personal identifier: 574/09 to 580/10	24/2/2010	24/2/2010	10/3/2010
Section 486O—Ombudsman's report on appropriateness of detention arrangements Personal identifier: 568/09 to 573/09	12/11/2009	12/11/2009	18/11/2009
Section 486O—Government response to Ombudsman's report on appropriateness of detention arrangements Personal identifier: 568/09 to 573/09	12/11/2009	12/11/2009	18/11/2009