

## Chapter 3

### Annual reports of agencies

3.1 The annual reports of the following agencies were referred to the committee for examination and report during the period 1 May 2019 to 31 October 2019:

#### *Attorney-General's Portfolio*

- Administrative Appeals Tribunal;
- Australian Commission for Law Enforcement Integrity;
- Australian Financial Security Authority;
- Australian Human Rights Commission;
- Australian Law Reform Commission;
- Commonwealth Director of Public Prosecutions;
- Commonwealth Ombudsman;
- Family Court of Australia;
- Federal Circuit Court of Australia;
- Federal Court of Australia, including the report of the National Native Title Tribunal;
- Inspector-General of Intelligence and Security;
- National Archives of Australia and National Archives of Australia Advisory Council;
- Office of Parliamentary Counsel; and
- Office of the Australian Information Commissioner.

#### *Home Affairs Portfolio*

- Australian Transaction Reports and Analysis Centre;
- Australian Criminal Intelligence Commission;
- Australian Institute of Criminology;
- Australian Security Intelligence Organisation; and
- Australian Federal Police.

3.2 On this occasion, the committee has examined in more detail the reports of the Australian Security Intelligence Organisation, which was last examined in *Report on Annual Reports (No. 2 of 2017)*, and the Commonwealth Ombudsman (the Ombudsman), which has not been examined by the committee since its incorporation into the Legal and Constitutional Affairs portfolio.

## Australian Security Intelligence Organisation

3.3 The Australian Security Intelligence Organisation (ASIO) tabled its report in the Senate and the House of Representatives on 16 October 2019. The report was available to senators for the Supplementary Budget Estimates 2018–19 hearing on 21 October 2019.

3.4 In its *Report on Annual Reports (No. 2 of 2019)*, the committee identified that the ASIO annual report for 2017-18 was not 'apparently satisfactory' because it failed to comply with the following PGPA Act mandatory requirements:

- inclusion of a description of the purposes of the entity as included in the agency's corporate plan, as required under section 17AE(1)(a)(iv); and
- a description of non-salary benefits provided to employees, as required under section 17AG(4)(c)(iii).

3.5 The committee further identified that the report provided incomplete or unclear information in relation to:

- the annual performance statement in accordance with paragraph 39(1)(b) of the Act and section 16F of the Rule, as required under section 17AD(c)(i); and
- information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under subsection 24(1) of the *Public Service Act 1999*, as required by section 17AG(4)(c)(iii).

3.6 It is in this context that the committee considers the 2018-19 annual report.

### *Director-General's review*

3.7 In the Director-General's review, Mr Duncan Lewis AO DSC CSC, remarked on the evolution of the organisation in its 70-year history. He noted the one constant over that period was ASIO's 'resolute focus on protecting Australia from those who wish us harm'.<sup>1</sup>

3.8 Mr Lewis highlighted the major contemporary threats, including an enduring threat of terrorism on Australian soil, and espionage and foreign interference, acts which, Mr Lewis stated, 'occur on a daily basis, [and] are of unprecedented scale and sophistication'.<sup>2</sup>

3.9 The Director-General pointed to measures ASIO had taken in the reporting period in order to meet increasingly complex challenges, including building on partnerships and seeking to harness new technological capabilities such as artificial

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1 *Australian Security Intelligence Organisation Annual Report 2017-18*, p. 3.

2 *Australian Security Intelligence Organisation Annual Report 2017-18*, p. 4.

intelligence and machine-learning.<sup>3</sup> A significant development was the commencement of the Enterprise Transformation Program to implement the recommendations from Mr David Thodey AO's 2017 report *A digital transformation of the Australian Security Intelligence Organisation*. Part of that program involves building partnerships with technology partners on the open market.<sup>4</sup>

### ***Performance reporting***

3.10 Mr Lewis, as Director-General, was the accountable authority for ASIO during the relevant period. ASIO is a non-corporate Commonwealth entity under the Home Affairs Portfolio. At the time that the Portfolio Budget Statements (PBS) for 2018-19 were drafted, ASIO fell under the Attorney-General's Portfolio. As such, ASIO's outcome appears in that portfolio's statements.

3.11 ASIO has one outcome:

Informed government decisions about the development, reform and harmonisation of Australian laws and related processes through research, analysis, reports and community consultation and education.<sup>5</sup>

3.12 One performance criterion<sup>6</sup> is applied to evaluate success against a number of targets grouped into four key activities:

- counter-terrorism;
- counter espionage, foreign interference and malicious insiders;
- countering serious threats to Australia's border integrity; and
- providing protective security advice to government and industry.<sup>7</sup>

These key activities and targets are reflected in the *Corporate Plan 2018-19*.<sup>8</sup> The targets outlined in the PBS are reflected as performance measures in the Corporate Plan. The performance statement contained in the annual report reflects a combination of the targets in the PBS and the performance measures set by the Corporate Plan.

3.13 The methodology used to develop the annual performance statement was analysis of internal performance reporting and the conduct of an independent survey

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3 *Australian Security Intelligence Organisation Annual Report 2017-18*, p. 5.

4 *Australian Security Intelligence Organisation Annual Report 2017-18*, p. 5.

5 *Portfolio Budget Statements 2018-19, Attorney-General's Portfolio*, p. 5.

6 Effective advice, reporting and services that assist the Australian Government and ASIO's partners to manage security risks and disrupt activities that threaten Australia's security. See *Portfolio Budget Statements 2018-19, Attorney-General's Portfolio*, p. 121; and *Australian Security Intelligence Organisation Annual Report 2017-18*, p. 32.

7 *Portfolio Budget Statements 2018-19, Attorney-General's Portfolio*, pp. 119-121.

8 *Australian Security Intelligence Organisation Corporate Plan 2018-19*, pp. 10-13.

of 74 stakeholders. Six of the eight performance objectives (or performance measures as referred to in the Corporate Plan) were met during the reporting period. Two performance objectives were 'partially met':

- Performance objective 2b: 'National security partners use our advice to disrupt and defend against harmful espionage, foreign interference, sabotage and malicious insiders'. The annual report states that the partial achievement was attributed largely to the fact that demand for advice is greater than ASIO's capacity to provide it.<sup>9</sup> ASIO has instigated a number of measures to overcome this challenge, but the annual report acknowledged that the significant growth in demand for advice will be a continuing challenge for the agency.<sup>10</sup>
- Performance objective 2c: 'We collect foreign intelligence in Australia that advances Australia's national security interests'. ASIO attributes this outcome to the ongoing high tempo of counter-terrorism and counter-espionage investigations, and the limitation of available resources to this objective. ASIO noted that while valuable intelligence was obtained through its operations, a number of operations requested by partners were unable to be progressed.<sup>11</sup>

3.14 The committee refers to its previous observation about a lack of clarity in ASIO's previous annual report, and congratulates ASIO for its work in improving clarity in its performance evaluation processes. The committee does note, however, that clarity could be further enhanced by the consistent use of language across the three key documents. In some instances, it appears that multiple labels are applied to the one concept.<sup>12</sup>

### ***Financial performance***

3.15 ASIO recorded a deficit of \$14.4 million (excluding depreciation) compared to a surplus of \$1 million in 2017-18.<sup>13</sup> The annual report attributed this loss to a mandatory accounting adjustment of \$8.3 million for employee and make-good provisions due to interest rate movement, and to necessary supplier costs, despite the

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9 *Australian Security Intelligence Organisation Annual Report 2018–19*, p. 45.

10 *Australian Security Intelligence Organisation Annual Report 2018–19*, p. 45.

11 *Australian Security Intelligence Organisation Annual Report 2018–19*, p. 47.

12 See, for example, 'Counter-terrorism' appears as a Target under the PBS (see p. 119), but also appears as a Key Activity in the annual report and the Corporate Plan (see p. 33). Further, performance measures in the Corporate Plan are referred to as performance objectives in the annual report.

13 *Australian Security Intelligence Organisation Annual Report 2018–19*, p. 61.

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implementation of measures to reduce expenditure.<sup>14</sup> ASIO noted that the appropriate government process was followed as a result of the outcome.<sup>15</sup>

### ***Management of human resources***

3.16 The annual report notes an increase in ongoing staff from 1,900 in 2017-18 to 1,961 in 2018-19, and a decrease in non-ongoing staff from 31 to 25 in the same periods.<sup>16</sup> Just over half of the new ongoing positions were filled by females.<sup>17</sup>

3.17 The committee notes its previous concerns regarding the lack of information on enterprise agreements and other workplace arrangements, as required by PGPA Rule 17AG(4)(c)(iii), in ASIO's previous annual report. The current annual report does not appear to provide this information. The list of requirements indicates that this provision was not applicable in this annual report.<sup>18</sup> It would assist the committee if some guidance was provided as to why this mandatory requirement was not applicable.

### ***Other matters***

3.18 In relation to its observations about the lack of a description of the agency's purpose, as required by PGPA Rule 17AE(1)(a)(iv), the committee congratulates ASIO on its efforts to remedy this concern by clearly outlining its purpose as per the *Corporate Plan 2018-19*.<sup>19</sup>

3.19 A list of requirements has been provided as required by PGPA Rule 17AJ(d), but the committee notes that ASIO has chosen to reference the relevant part (akin to a chapter) of the report, rather than pinpointing any reference with specificity. It would assist the committee if specific references were made within the report, rather than the more general approach listed in the annual report.

### ***Conclusion***

3.20 While the committee identified a number of shortcomings with ASIO's report, on balance it considers the report to be 'apparently satisfactory'. The committee commends ASIO for the improvements applied to its annual reporting processes thus far and encourages the agency to continue this trend.

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14 *Australian Security Intelligence Organisation Annual Report 2018–19*, p. 61.

15 *Australian Security Intelligence Organisation Annual Report 2018–19*, p. 61.

16 *Australian Security Intelligence Organisation Annual Report 2018–19*, p. 119.

17 *Australian Security Intelligence Organisation Annual Report 2018–19*, p. 119.

18 *Australian Security Intelligence Organisation Annual Report 2018–19*, p. 130.

19 See *Australian Security Intelligence Organisation Corporate Plan 2018–19*, p. 2; and *Australian Security Intelligence Organisation Annual Report 2018–19*, p. 11.

## **Commonwealth Ombudsman**

3.21 The Commonwealth Ombudsman tabled its report in the House of Representatives on 21 October 2019 and in the Senate on 11 November 2019. The report was available to senators for the Supplementary Budget Estimates 2018–19 hearing on 22 October 2019.

### ***Review by the Ombudsman***

3.22 In his review, the Commonwealth Ombudsman, Mr Michael Manthorpe PSM noted the continuing trend of high volume of incoming complaints, with a total of 37,388 received over the reporting period. In the Ombudsman's 40 plus year history, that number had only been exceeded once, in the preceding year, with a figure of 38,026.<sup>20</sup> Stakeholder groups which saw growth in the number of complaints over the year included parties interested in the National Disability Insurance Scheme, current and former students who had incurred debts under the VET FEE-HELP Scheme, and overseas students.<sup>21</sup> Mr Manthorpe noted that complaints about the Department of Human Services, while still representing the greatest number of complaints, fell during the reporting period. A similar trend was detected in respect of private health insurers and Australia Post.<sup>22</sup>

3.23 Mr Manthorpe flagged that in the 2019-20 reporting period, the Ombudsman would reform its examination of performance measures to evaluate its ability to build and maintain the confidence of the people who use it, the agencies overseen by it, and the Parliament.<sup>23</sup> The committee looks forward to examining this new approach in the course of its consideration of the 2019-20 annual report.

### ***Performance reporting***

3.24 The Commonwealth Ombudsman has one outcome:

Fair and accountable administrative action by Australian Government entities and prescribed private sector organisations, by investigating complaints, reviewing administrative action and statutory compliance inspects and reporting.<sup>24</sup>

3.25 The Ombudsman evaluates its performance by reference to 12 Key Performance Indicators (KPIs) under five objectives.<sup>25</sup> When read alongside the

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20 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 12.

21 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 12.

22 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 12.

23 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 14.

24 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 29.

25 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 12.

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*Corporate Plan 2018-19* and the PBS, the annual report appears to provide a 'clear read' in relation to its performance criteria.

3.26 The Ombudsman achieved eight out of 12 KPIs. The KPIs not achieved were as follows:

- KPI 6—Percentage of public law enforcement reports finalised within Office standards. The year end result produced an achievement rate of 50 per cent, compared to the 85 per cent target benchmark.<sup>26</sup> The annual report notes that three out of six public law enforcement reports were completed within the relevant time period. The Ombudsman attributed this result to resourcing issues carried over from the previous year, and stated that it did not anticipate recurrence.<sup>27</sup>
- KPI 8—Percentage of immigration detention State of the Network reports issued within three months of the reporting cycle. 50 per cent of these reports were issued within the prescribed time, compared to a KPI target of 90 per cent.<sup>28</sup> The annual report notes that two reports were issued within the reporting period. The first was issued after the three month deadline, while the second was issued within it.<sup>29</sup>
- KPI 9—Percentage of public users who completed the survey for [privatehealth.gov.au](http://privatehealth.gov.au) and provided a 'satisfied' or 'very satisfied' response regarding the quality of information provided by the website. The annual report noted a KPI result of 78 per cent, in comparison to the KPI target of 80 per cent.<sup>30</sup> The Ombudsman noted that it would continue to explore ways to improve the website user experience.<sup>31</sup>
- KPI 10—Percentage of industry complaints handled within Office service standards. 69 per cent of industry complaints were closed within the Office service standards, compared to a target of 85 per cent.<sup>32</sup>

3.27 The committee acknowledges the Ombudsman's efforts to meet all KPI targets in coming reporting periods. The committee will continue to take an interest in the Ombudsman's efforts to do so, particularly under the new evaluation program foreshadowed by Mr Manthorpe in his review.

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26 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 30.

27 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 37.

28 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 30.

29 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 39.

30 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 31.

31 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 40.

32 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 40.

***Financial performance***

3.28 The Ombudsman recorded an operating surplus of \$1.4 million, excluding depreciation, amortisation and write down of assets. This was an increase from the previous year's deficit of \$0.147 million.<sup>33</sup> Expenses increased by \$7 million to \$43 million to accommodate for travel, property, contractors and additional staffing costs associated with new functions.<sup>34</sup> Revenue also increased from \$23.7 million to \$39.1 million. This was largely in the form of additional funding for new and existing programs.<sup>35</sup>

***Conclusion***

3.29 The committee commends the Ombudsman for a clear and user-friendly annual report, and considers it to be 'apparently satisfactory'.

**Senator Amanda Stoker**

**Chair**

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33 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 46.

34 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 46.

35 *Annual Report for the Office of the Commonwealth Ombudsman 2018-19*, p. 46.