

The Senate

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Legal and Constitutional Affairs  
Legislation Committee

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## MEMBERS OF THE COMMITTEE

### Members

Senator Patricia Crossin, **Chair**, ALP, NT

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Senator Mark Furner, ALP, QLD

Senator Scott Ludlam, AG, WA

Senator Stephen Parry, LP, VIC

Senator Louise Pratt, ALP, WA

### Secretariat

Ms Julie Dennett	Committee Secretary
Ms Margaret Cahill	Research Officer
Ms Kate Middleton	Administrative Officer

Suite S1.61	Telephone: (02) 6277 3560
Parliament House	Fax: (02) 6277 5794
CANBERRA ACT 2600	Email: <a href="mailto:legcon.sen@aph.gov.au">legcon.sen@aph.gov.au</a>



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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.

Pursuant to subsections 63(2) and 70(2) of the *Public Service Act 1999*, departments of state and executives agencies must prepare annual reports in accordance with the *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, (the Requirements for Annual Reports). As a matter of policy, the Requirements for Annual Reports also apply to prescribed agencies under section 5 of the *Financial Management and Accountability Act 1997*.<sup>1</sup>

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.

Statutory authorities must also report in accordance with their establishing legislation.

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.<sup>2</sup>

## '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.

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1 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 23 June 2010, Part 1, subsection 3(1).

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



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

In accordance with the *Requirements for Annual Reports* published in June 2010, agencies are required to present:

A copy of the annual report...to each House of the Parliament on or before 31 October in the year in which the report is given. 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.

...

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.<sup>3</sup>

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.<sup>4</sup>

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:

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

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

- (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:

- (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*.

In the absence of any specific provision, the *Acts Interpretation Act 1901* requires bodies to present annual reports to ministers within 6 months after the end of the period reported upon (subsection 34C(2)), and ministers must table reports within 15 sitting days after receipt.

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 May 2010 and 31 October 2010, and which have been referred to the committee for examination, can be found at Appendix 1.<sup>5</sup> All annual reports examined in this report were tabled in a timely manner.

The committee was pleased to note that a number of agencies tabled or presented their annual reports prior to the supplementary budget estimates hearings on 18 and 19 October 2010. Sixteen agencies tabled (or presented) their 2009-10 annual reports in the Senate prior to the hearings, compared to only two agencies presenting their 2008-09 annual reports prior to the hearings in the previous year.

The committee had previously expressed its frustration at the lack of annual reports available for examination at the supplementary budget estimates hearings, and welcomed the amendment to the June 2010 Requirements for Annual Reports which included guidance that it is 'best practice' for annual reports to be tabled prior to these

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5 This table also includes the reports on the operation of acts or programs which have been referred to the committee.

hearings.<sup>6</sup> The committee commends those agencies which were able to meet this timeframe.

### **Requirement for non-reporting bodies to report**

In accordance with Standing Order 25(21)(h) the committee is required to report on bodies which do not present an annual report to the Senate and which should present such a report.

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

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6 Senate Legal and Constitutional Affairs Committee, Annual reports (No. 2 of 2010), November 2010, pp ix-x.



# CHAPTER 1

## ANNUAL REPORTS OF DEPARTMENTS

1.1 The annual reports for the financial year 2009-10 of the following departments were referred to the committee for examination and report:

- Department of Immigration and Citizenship
- Attorney-General's Department

### Department of Immigration and Citizenship

1.2 The Department of Immigration and Citizenship has again presented a report that provides a good account of its activities and performance for the year under review. Performance information is clearly presented along with a range of statistics covering broad timeframes to provide trend information. The committee welcomes the inclusion of a number of items in the report which are suggested but not mandatory under the annual reporting guidelines, for example, the overview of the department's performance and financial results<sup>1</sup> and the outlook for 2010-11<sup>2</sup>.

1.3 The report outlined reforms in a range of policy areas implemented by the department in 2009-10. These included a number of reforms to the Migration Program.

1.4 A significant undertaking was reform of the Skilled Migration Program to make it more responsive to the needs of the Australian economy and to meet relevant labour market requirements. Changes included:

- revoking the Migration Occupations Demand List;
- development of a new Skilled Occupation List; and
- a review of the points test to ensure it focuses on applicants with high-value skills that will meet Australia's medium-to-long-term economic needs.<sup>3</sup>

1.5 The committee noted that the department reported an operating surplus of \$5.5 million for 2009-10, which compares with a \$47.6 million operating loss in the previous financial year.<sup>4</sup> In the discussion and analysis of financial performance for 2009-10, the report noted that the surplus was achieved in a challenging operating environment where the main contributing factors included:

- the department's strong focus on financial management and performance;

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1 *Department of Immigration and Citizenship Annual Report 2009-10*, pp 34-39.

2 *Department of Immigration and Citizenship Annual Report 2009-10*, pp 13-14.

3 *Department of Immigration and Citizenship Annual Report 2009-10*, p. 5.

4 *Department of Immigration and Citizenship Annual Report 2009-10*, p. 34.

- efficiencies achieved throughout the financial year, including a reduction in overhead expenditure; and
- improved business planning and budget reporting activities.<sup>5</sup>

1.6 In his review, the Secretary discussed the significant increase in the number of asylum seekers arriving by boat in Australia during 2009-10. The impact on programs of the department and management of resources in response to this challenge has been a focus of Senators during recent estimates hearings of this committee.

1.7 The Secretary outlined how the department was responding in managing the rise in the number of arrivals and people in immigration detention, advising that:

To support the department's response to the increasing number of boat arrivals, there have been significant efforts in recruitment and training of staff to provide enhanced case management and detention review, as well as enhancements to decision-making on asylum claims, independent merits review and the department's capacity to remove those who have no lawful basis to remain in Australia. There were also strong efforts to ensure that the department maintained, and improved upon, client service in our other areas of operations.

Despite the scale of the challenges we are facing, the department and our service providers have shown a strong commitment to the government's detention values and continue to work very hard to provide fair and reasonable service to people required by law to be in immigration detention.<sup>6</sup>

1.8 In regard to the impact on the department's Humanitarian Program, it was reported that the challenges were met through careful management of resources to achieve 39 per cent more protection visa decisions and 2,697 more Refugee Status Assessments compared to the previous financial year.<sup>7</sup> It was explained that:

The combined impact of irregular maritime arrivals on the overall available places in the Humanitarian Program and responding to their needs to be reunited with their families, presented a challenge to the program.<sup>8</sup>

1.9 From 1 July 2009, the Office of the Migration Agents Registration Authority (MARA) commenced operations as a discrete office attached to the department. The Secretary of the department reported that the Office has achieved a seamless transition.<sup>9</sup> The committee was advised at the supplementary budget estimates hearings in October 2010 that, as a result of the new arrangements, the Office will

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5 *Department of Immigration and Citizenship Annual Report 2009-10*, p. 34.

6 *Department of Immigration and Citizenship Annual Report 2009-10*, p. 7.

7 *Department of Immigration and Citizenship Annual Report 2009-10*, p. 99.

8 *Department of Immigration and Citizenship Annual Report 2009-10*, p. 99.

9 *Department of Immigration and Citizenship Annual Report 2009-10*, p. 6.

provide annual report information in both the department's annual report and in a separate report of the Office:

What we are doing this year is we are providing the annual report information that is required under the act through the department's own report. We have also decided to produce a separate report for the Office of the MARA under our own regulations and that will provide more operation detail.<sup>10</sup>

1.10 The department presented the Office of the MARA's results against deliverables and key performance indicators. The committee notes that the Office failed to meet the target of 50% for the key performance indicator (KPI) concerning the percentage of relevant recommendations appropriately implemented from the 2007-08 Review of Statutory Self-regulation of the Migration Advice Profession. The report noted, however, that there had been action on all recommendations and they were at various stages of implementation.<sup>11</sup>

1.11 The online version of the annual report was readily located on the website and provided both HTML and PDF versions. As in recent years, this year's online report included an introductory video message from the Secretary which highlighted the major challenges and achievements during 2009-10. It also included short videos for a number of the 12 case studies presented in this year's report. A helpful online search facility for the annual report was also available.

1.12 The report provided an overview of the new budgetary reporting framework which is based on outcomes and programs from 2009-10, and included a useful transition table for the new framework at Appendix 7.<sup>12</sup>

1.13 A focus of the 2009-10 annual report was the celebration of the department's 65<sup>th</sup> anniversary. The report features articles on Australian immigration history over the past 65 years, accompanied by a range of photographs. While the Secretary highlighted the many achievements and contributions the department has made to the nation, the committee appreciates his candour in also acknowledging the mistakes that have occurred over the years and a commitment to continually improve services in the future.<sup>13</sup>

1.14 The committee considers the annual report of the Department of Immigration and Citizenship to be 'apparently satisfactory'.

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10 *Committee Hansard*, 19 October 2010, p. 17-18.

11 *Department of Immigration and Citizenship Annual Report 2009-10*, p. 92.

12 *Department of Immigration and Citizenship Annual Report 2009-10*, p. 435

13 *Department of Immigration and Citizenship Annual Report 2009-10*, p. 14.

## Attorney-General's Department

1.15 The annual report of the Attorney-General's Department was presented out of session in the Senate on 13 October 2010. The committee commends the department for presenting its report in a timely manner, which made it available to Senators prior to the supplementary budget estimates hearings on 18 and 19 October 2010.

1.16 The report provides a good account of the activities that have contributed to the achievement of the departmental outcomes. It also provides a good review of how the department has performed during the year in relation to its KPIs. Performance information is presented in table format and is clear and accessible. The committee notes that the KPIs were mostly achieved or partially/substantially achieved for 2009-10.

1.17 In the summary of financial management, the department reported an operating deficit of \$0.244 million for 2009-10, which was less than 1 per cent of total revenues. This compares to a deficit of \$1.749 million for 2008-09.<sup>14</sup>

1.18 Among the range of activities and initiatives undertaken by the department during the year and highlighted in the report, the committee notes some major achievements. The department implemented and promoted the strategic framework for access to justice, which was a central recommendation of the September 2009 report of the Access to Justice Taskforce and adopted by the government. The annual report explained that:

The framework emphasises providing better and more accessible sources of information and assistance at an earlier stage to meet legal needs, better use of non-legal gateways and increased coordination.<sup>15</sup>

1.19 The department advised that it will use the framework to guide decisions and develop initiatives to improve access to justice for all Australians in the future.<sup>16</sup>

1.20 The committee also noted with interest the development of the *Disability (Access to Premises – Buildings) Standards 2010*. According to the annual report, the Premises Standards:

...are part of a wider scheme, led by the Australian Government, to provide improved, updated and, for the first time, nationally uniform rules for appropriate and dignified access to public buildings and offices for people with disability.

...

The Premises Standards impose obligations on building certifiers, developers and managers to ensure compliance with those matters in the

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14 *Attorney-General's Department Annual Report 2009-10*, p. 185.

15 *Attorney-General's Department Annual Report 2009-10*, p. 43.

16 *Attorney-General's Department Annual Report 2009-10*, p. 43-44.



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Premises Standards for which they are responsible or will have control over.<sup>17</sup>

1.21 The report outlined the department's role in the development of these standards: namely, providing advice to the Attorney-General on their preparation, and involvement in the government's response to the House of Representatives Standing Committee on Legal and Constitutional Affairs Committee's report, *Access All Areas*. The department also worked with a number of relevant stakeholders.<sup>18</sup>

1.22 During the year under review, the department was also involved in the development and implementation of Australia's Human Rights Framework. The Attorney-General released this policy in April 2010 in response to the report of the National Human Rights Consultation Committee. The framework outlines a range of key measures to further protect and promote human rights in Australia.<sup>19</sup>

1.23 The department has begun implementing a number of measures under this policy initiative, including preparation and presentation of bills to establish a parliamentary joint committee on human rights and to require that statements of compatibility with human rights accompany new legislation and legislative instruments.<sup>20</sup> The committee will continue to monitor with interest a number of key projects the department will progress under this policy in the coming year which are outlined in the report, including the consolidation of Commonwealth Anti-Discrimination Laws and the development of the Human Rights National Action Plan.<sup>21</sup>

1.24 The report provided detail on the most significant developments in external scrutiny from the Australian National Audit Office, the courts, parliamentary committees, the Office of the Privacy Commissioner, the Australian Human Rights Commission, Royal Commissions and the Coordinator General for Remote Indigenous Services. However, the committee notes that two reports of the House of Representatives Standing Committee on Legal and Constitutional Affairs were incorrectly attributed to the Senate Legal and Constitutional Affairs Committee.<sup>22</sup>

1.25 The online version of the report is easily accessible on the department's website and is available in PDF and HTML formats.

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17 *Attorney-General's Department Annual Report 2009-10*, p. 48.

18 *Attorney-General's Department Annual Report 2009-10*, p. 48.

19 *Attorney-General's Department Annual Report 2009-10*, p. 47.

20 *Attorney-General's Department Annual Report 2009-10*, pp 47-48.

21 *Attorney-General's Department Annual Report 2009-10*, p. 60.

22 The reports on *Older People and the Law* and *Access All Areas* were listed under the Senate Legal and Constitutional Affairs Committee: see *Attorney-General's Department Annual Report 2009-10*, pp 177-178.

1.26 The report closely adheres to the annual reports requirements and includes suggested as well as mandatory information, including a compliance index. The committee considers the report of the Attorney-General's Department to be 'apparently satisfactory'.

# **CHAPTER 2**

## **ANNUAL REPORTS OF STATUTORY BODIES**

2.1 The following reports of statutory bodies for the financial year 2009-10 were referred to the committee for examination and report:

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

- Administrative Appeals Tribunal
- Administrative Review Council
- Australian Commission for Law Enforcement Integrity<sup>1</sup>
- Australian Federal Police<sup>2</sup>
- Australian Government Solicitor
- Australian Institute of Criminology and Criminology Research Council
- Australian Law Reform Commission
- Australian Security Intelligence Organisation
- Australian Transaction Reports and Analysis Centre (AUSTRAC)
- Classification Board and Classification Review Board
- CrimTrac Agency
- Family Court of Australia
- Family Law Council
- Federal Court of Australia
- Federal Magistrates Court of Australia
- High Court of Australia
- National Native Title Tribunal
- Office of Parliamentary Counsel

### **Immigration and Citizenship Portfolio**

- Office of Migration Agents Registration Authority

2.2 On this occasion, the committee has decided to examine in more detail the reports of AUSTRAC, the High Court of Australia and the Office of the Migration Agents Registration Authority.

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1 Also referred to the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity.

2 Also referred to the Parliamentary Joint Committee on Law Enforcement.

## **Australian Transaction Reports and Analysis Centre (AUSTRAC)**

2.3 The committee commends AUSTRAC on the timely presentation of the annual report on 14 October 2010, which made it available to Senators prior to the supplementary budget estimates hearings on 18 and 19 October 2010.

2.4 The report was the subject of detailed questioning during examination of AUSTRAC's estimates on 18 October 2010. Questioning focussed on:

- the budget and expenditure for the development of the organisation's intelligence systems;
- clarification of figures presented in the annual report of applications for relief from the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;
- dissemination of suspect transaction and suspicious matter reports;
- the Criminal Intelligence Fusion Centre within the Australian Crime Commission; and
- submission of declaration of financial interests and personal circumstances for senior executive service level staff.<sup>3</sup>

2.5 The Chief Executive Officer noted an increase in transaction reporting to AUSTRAC during the year. AUSTRAC received more than 21 million reports from industry, which represented a nine per cent increase from the previous year and was attributed to a rise in reports of international funds transfer instructions.<sup>4</sup>

2.6 The report features nine case studies which draw on real-life cases in which partner agencies have used AUSTRAC information to assist in their investigations into money laundering and other serious crimes. The case studies were taken from the *AUSTRAC typologies and case studies report 2010*.<sup>5</sup> The committee welcomes the prudent use of case studies in annual reports to illuminate the work of an agency. In this case, their inclusion is a very useful feature (without being overly lengthy and taking up an excessive amount of space). During the supplementary estimates hearings, Senator Parry complimented AUSTRAC on the use of case studies throughout the report.<sup>6</sup>

2.7 AUSTRAC reported an operating result of \$0.7 million surplus, compared to a deficit of \$2.4 million for the previous year. The surplus has contributed to an increase in total equity to \$11.8 million for 2009-10.<sup>7</sup>

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3 *Committee Hansard*, 18 October 2010, pp 72-76.

4 *AUSTRAC Annual Report 2009-10*, p. 7.

5 *AUSTRAC Annual Report 2009-10*, p. 10.

6 *Committee Hansard*, 18 October 2010, p. 73.

7 *AUSTRAC Annual Report 2009-10*, p. 83.

2.8 The committee congratulates AUSTRAC on preparing a report of high standard which features a clear and concise style and an attractive design. The report is informative and adheres to the Requirements for Annual Reports, and the inclusion of a compliance index assisted the committee in its examination of the report.<sup>8</sup> Under the agency overview, the outcome-program structure is clearly articulated and includes a description of the transition to the new reporting structure for the 2009-10 reporting year.<sup>9</sup> The committee is impressed with the clear presentation of performance information in a table format which included results against program deliverables and key performance indicators.

2.9 The committee considers AUSTRAC's annual report to be 'apparently satisfactory'.

## High Court of Australia

2.10 The committee notes the prompt tabling of this year's annual report of the High Court of Australia, which was presented on 14 October 2010. In the committee's previous report on annual reports it had commented on the court's delayed tabling times in recent years, and the presentation of this year's report marks a significant improvement.<sup>10</sup>

2.11 The committee takes a keen interest in the operations of the court and notes that the funding of the court and the maintenance of the building and surrounds continue to be ongoing issues. The report indicates that the court has commissioned the preparation of a management plan covering these issues.<sup>11</sup>

2.12 The court again reported an operating loss. The operating loss for the 2009-10 financial year was \$0.574 million, compared to \$1,493,850 for the previous year. The Chief Justice noted in his overview:

The Court has informed the Attorney-General that marginal operating losses are likely to continue in future years. Much of this was related to increased building repairs and maintenance costs.<sup>12</sup>

2.13 The report further advised that the court has again sought approval of the Attorney-General for a further operating loss in 2010-11 and that:

Action to ensure the adequacy of the Court's future funding continued during 2009-10, with the involvement of the Attorney-General's and Finance and Deregulation portfolios.<sup>13</sup>

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8 *AUSTRAC Annual Report 2009-10*, pp 148-149.

9 *AUSTRAC Annual Report 2009-10*, pp 12-13.

10 Senate Legal and Constitutional Affairs Legislation Committee, *Annual reports (No. 2 of 2010)*, November 2010, p. 6.

11 *High Court of Australia Annual Report 2009-2010*, p. 10.

12 *High Court of Australia Annual Report 2009-2010*, p. 10.

2.14 The committee will continue to monitor this issue closely.

2.15 The annual report also notes that repair and maintenance work on elements of the court's roof and windows continued throughout 2009-10 and will continue into the next year. Similarly, the rectification of the forecourt and cascade waterfall defects is also scheduled to be completed in 2010-11.<sup>14</sup>

2.16 The Portfolio Budget Statement 2009-10 (PBS) for the court outlines the transition to the new program reporting framework, that is, from outcomes and outputs to outcomes and programs.<sup>15</sup> However, the annual report still includes a reference to the court's 'outputs and outcomes' for 2009-10.<sup>16</sup>

2.17 In that context, the committee notes that the court's outcome is not actually identified in the report until the section entitled 'Notes to and forming part of the Financial Statements for the High Court of Australia' at page 55.

2.18 The PBS for the court includes a program deliverable for Program 1.1 – The High Court decides cases arising in its original and appellate jurisdictions.<sup>17</sup> While the annual report does include details of activity of the court during the year, including judicial workload, it does not appear to explicitly report against the 'program deliverable' as listed in the PBS.

2.19 The PBS for the court does not include key performance indicators to be reported against in its annual report. The committee notes that the other courts within the Attorney-General's Portfolio do provide key performance indicators in their PBS which are reported on in their annual reports.<sup>18</sup>

2.20 The committee considers performance reporting in annual reports to be a crucial element of the accountability framework and closely monitors agencies' approaches in their annual reports. Although the Requirements for Annual Reports do not apply to the High Court, the committee notes that:

The 'clear read' between PB Statements and annual reports is an essential part of the accountability system that compares budgeted targets and figures to those actually achieved, and places a strong emphasis on compatibility

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13 *High Court of Australia Annual Report 2009-2010*, p. 14.

14 *High Court of Australia Annual Report 2009-2010*, p. 15.

15 *Budget Portfolio Budget Statements 2009-10, Attorney-General's Portfolio*, p. 367.

16 *High Court of Australia Annual Report 2009-2010*, p. 37.

17 *Budget Portfolio Budget Statements 2009-10, Attorney-General's Portfolio*, p. 369.

18 See, for example, *Budget Portfolio Budget Statements 2009-10, Attorney-General's Portfolio*, Family Court of Australia p. 325; Federal Court of Australia p. 341; Federal Magistrates Court of Australia p. 355

between the two documents regarding budget and performance information.<sup>19</sup>

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

### **Office of the Migration Agents Registration Authority (MARA)**

2.22 The 2009-10 annual report of the Office of the MARA was presented on 29 October 2010.

2.23 This is the first report of the Office since it was incorporated into the Department of Immigration and Citizenship on 1 July 2009 as a discrete office. As noted earlier in this report, the Office of the MARA now presents annual reporting information in two places, as part of the DIAC annual report and as a discrete report of the Office.

2.24 This report is prepared in accordance with section 322 of the *Migration Act 1958*. The Office states in its letter of transmittal that this report provides additional information to that contained in the DIAC Annual Report 2009-10 (which was examined earlier in the committee's report).

2.25 In accordance with the recommendations of the *2007-08 Review of Statutory Self-Regulation of the Migration Advice Profession* (the review), an advisory board was established during the reporting period. The board replaces the regulatory system previously administered by the Migration Institute of Australia.<sup>20</sup> The Chairman of the Office of the MARA, Mr Robert Cornall AO, explained that:

The diverse skills and experience of advisory board members provide the CEO with the opportunity to test and evaluate policy ideas and options in a way that cannot be achieved solely with the Office of the MARA staff.<sup>21</sup>

2.26 The Chief Executive Officer, Ms Christine Sykes, reported a smooth transition to an independent office attached to the DIAC, and a successful first year of operation.<sup>22</sup>

2.27 The report provided good coverage of the status of the implementation of 57 recommendations for reform that came out of the review. It was reported that 21 recommendations were finalised or substantially completed, 20 were in progress and

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19 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 23 June 2010, p. 3.

20 *Office of the Migration Agents Registration Authority Annual Report 2009-10*, p. 2.

21 *Office of the Migration Agents Registration Authority Annual Report 2009-10*, p. 2.

22 *Office of the Migration Agents Registration Authority Annual Report 2009-10*, p. 3 and pp 15-19.

16 were unable to be progressed as they depended on legislative change or needed further research.<sup>23</sup>

2.28 One reform that has been implemented was the raising of English language standards for the migration agents profession from an International English Language Testing System (IELTS) score of six to seven. This higher standard of English proficiency was introduced for initial registration applicants on 1 January 2010. It was reported that this new requirement has been introduced 'fairly and flexibly', but that the Office is aware that there is concern from some sectors in the profession about the recommendation to extend the higher English language standards to existing registered agents. The report further noted that an impact study will be undertaken to assist with transition arrangements.<sup>24</sup>

2.29 The operational reports in the annual report contain useful details on activities of the Office, including results against performance standards. The annual report also presented results against performance targets for registration processing, managing complaints, and professional development.

2.30 The committee notes that some of the Office's performance targets for time periods for the processing of applications for completion of initial and repeat registrations were not consistently met during the reporting period. The Office indicated that this was 'due to a number of factors including an increased number of applications received, staff turnover and resolution of old cases.'<sup>25</sup> It was further noted that the Office has introduced processes to manage the registration applications of agents both efficiently and with integrity.<sup>26</sup>

2.31 Results of performance relating to time periods for the completion of complaint processes were also not met. It was advised that this was the result of the Office focussing on finalising older and more complex complaints in 2009-10.<sup>27</sup> The committee will continue to monitor the Office's performance standards for complaints processing in future reports.

2.32 The committee is of the view that the annual report of the Office of the MARA is of a high standard and, accordingly, considers it to be 'apparently satisfactory'.

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23 *Office of the Migration Agents Registration Authority Annual Report 2009-10*, p. 10.

24 *Office of the Migration Agents Registration Authority Annual Report 2009-10*, p. 15.

25 *Office of the Migration Agents Registration Authority Annual Report 2009-10*, p. 21.

26 *Office of the Migration Agents Registration Authority Annual Report 2009-10*, p. 27.

27 *Office of the Migration Agents Registration Authority Annual Report 2009-10*, p. 29.



## **CHAPTER 3**

### **REPORTS ON THE OPERATION OF ACTS AND PROGRAMS**

3.1 Standing Order 25(20) does not provide for the 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, as on previous occasions, the committee has chosen to examine the following reports:

- Report to the Attorney-General on the results of inspection of surveillance device records for 2008 under section 55 of the *Surveillance Devices Act 2004*, March 2010 (published by the Commonwealth Ombudsman);
- Report pursuant to section 91Y of the Migration Act on Protection visa processing taking more than 90 days for the period 1 November 2009 to 28 February 2010 (published by the Department of Immigration and Citizenship); and
- 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 November 2009 to 28 February 2010 (published by the Refugee Review Tribunal).

#### **Report under the *Surveillance Devices Act 2004***

3.2 The *Surveillance Devices Act 2004* (the Act) regulates the use of surveillance devices by law enforcement agencies.<sup>1</sup> Subsection 55(1) of the Act requires the Commonwealth Ombudsman to inspect the records of each law enforcement agency to determine the extent of compliance with the Act by the agency and its law enforcement officers. Under section 61 of the Act, the Ombudsman is required to report to the Minister at six-monthly intervals on the results of each inspection.<sup>2</sup>

3.3 The inspections conducted by the Ombudsman were limited to those warrants and authorisations that had expired or been revoked during the inspection periods.<sup>3</sup>

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1 Under subsection 6(1), the term 'law enforcement agency' includes the Australian Crime Commission, the Australian Federal Police, the Australian Commission for Law Enforcement Integrity, and specified state and territory law enforcement agencies. If any of these agencies utilise the provisions of the Act, the Ombudsman is required to inspect records relating to that use. See further Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2010, p. 1.

2 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2010, p. 1.

3 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2010, p. 2.

3.4 This report relates to inspections of records for the following agencies for the time period indicated:

- Australian Crime Commission (ACC) (1 January 2008 to 31 December 2008);
- Australian Federal Police (AFP) (1 January 2008 to 31 December 2008); and
- New South Wales (NSW) Police (1 July 2007 to 31 December 2007).

3.5 The committee is pleased to note that the Ombudsman reported 'continued improvement in agency compliance with requirements of the Act'.<sup>4</sup> The ACC and the NSW Police were assessed as compliant with the Act, and the AFP was considered to be generally compliant with the requirements of the Act.<sup>5</sup>

3.6 The Ombudsman summarised the inspections as follows:

The majority of issues were relatively minor and generally able to be remedied through training and better recordkeeping practices. The agencies have willingly accepted our recommendations and have continued to improve administration of their surveillance device regimes.<sup>6</sup>

3.7 The committee has previously noted the ACC's training initiatives to improve compliance with the Act<sup>7</sup> and is pleased to see that, on this occasion, the Ombudsman reported significant improvements as a result of the ACC's *Excellence in Compliance Strategy*. The two areas of note were the increase in compliance by the agency in relation to the content, accuracy and timeliness of the section 49 report to the Minister; and a more proactive approach to revocation of warrants under sections 20 and 21 of the Act.<sup>8</sup>

3.8 The committee notes that concerns in relation to privacy issues and the application of paragraph 16(2)(c) of the Act continued to be issues for both the ACC and the NSW Police Service. Paragraph 16(2)(c) of the Act states that an issuing officer (an eligible judge or the Administrative Appeals Tribunal member) must have regard to 'the extent to which the privacy of any person is likely to be affected' in determining whether to issue a surveillance device warrant.

3.9 The committee notes that the report indicated that the ACC has adopted strategies to address the privacy concerns raised by the Ombudsman which included

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4 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2010, p. 2.

5 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2010, see pp 3, 8 and 14.

6 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2010, see p. 3.

7 Senate Legal and Constitutional Affairs Committee, *Annual reports (No. 1 of 2009)*, March 2009, p. 12.

8 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2010, see p. 3.

'reviewing internal guidelines, emphasising particular issues raised in training sessions and focusing on privacy requirements during internal audits'.<sup>9</sup>

3.10 The committee is pleased to note that the Ombudsman remarked on the considerable improvement that the AFP has made in the area of privacy since the last inspections and therefore made no recommendation on this occasion.

3.11 The committee notes that the report was easily located on the Commonwealth Ombudsman's website, along with other 'inspection reports'.

### **Protection visa processing taking more than 90 days**

3.12 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, under section 91Y of the Act, the Secretary of the Department of Immigration and Citizenship is required to report on protection visa applications for which decision making has taken over 90 days. The department is required to report every four months.

3.13 The report reviewed by the committee covers the period 1 November 2009 to 28 February 2010.

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

	<b>1 March 2009 to 30 June 2009</b>	<b>1 July 2009 to 31 October 2009</b>	<b>1 November 2009 to 28 February 2010</b>
Total number <i>undecided</i> outside of 90 day period	480	524	789
Total number <i>decided</i> outside of 90 day period	488	582	623
<b>Total number processed outside of 90 day period</b>	<b>968</b>	<b>1106</b>	<b>1412</b>
Percentage of total applications processed outside of 90 day period	25%	25%	24%

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9 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2010, see p. 5.

3.15 While the percentage of total applications processed outside the 90-day period remains steady, the committee notes that the number of delays in processing attributable to the department has risen significantly since the last report. There were 400 visa applications in this category, compared to 308 in the previous report. The Secretary of the department indicated in the report that:

Most of these are applications where sound reasons exist for decision deferral, such as applications requiring DIAC exploration of complex character issues which might warrant visa refusal, and applications where it is prudent to await the outcome of serious criminal charges.<sup>10</sup>

3.16 The committee was unable to locate this report on the department's website and would encourage the department to publish these reports on-line, enabling them to be widely accessed and enhancing the openness and accountability of departmental processes.

### **Refugee Review Tribunal reviews not completed within 90 days**

3.17 Section 440A of the Migration Act requires the Refugee Review Tribunal (RRT) to report on reviews not completed within 90 days.

3.18 The RRT is required to report every four months. The report reviewed by the committee covers the period 1 November 2009 to 28 February 2010.

3.19 The table below outlines the number of RRT reviews not completed within 90 days for the previous three reporting periods:

	<b>1 March 2009 to 30 June 2009</b>	<b>1 July 2009 to 31 October 2009</b>	<b>1 November 2009 to 28 February 2010</b>
Reviews completed <i>outside</i> of 90 days	287 (31%)	247 (36%)	219 (32%)
Reviews completed <i>within</i> 90 days	634 (69%)	448 (64%)	468 (68%)
<b>Total</b>	<b>921</b>	<b>695</b>	<b>687</b>

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<sup>10</sup> *Protection visa processing taking more than 90 days for the reporting period 1 November 2009 to 28 February 2010*, Letter of transmittal, p. 2.

3.20 The following reasons for reviews taking longer than 90 days were provided:

- compliance with statutory procedural requirements;
- applicant or adviser related;
- tribunal responsibility; and
- third party responsibility.<sup>11</sup>

3.21 The section 440 report was readily located on the Migration Review Tribunal-Refugee Review Tribunal website.

**Senator Trish Crossin**  
**Chair**

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11 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 November 2009 to 28 February 2010, Letter of transmittal.



# APPENDIX 1

## Reports tabled during the period 1 May 2010 to 31 October 2010 and referred to the committee

### Annual reports of departments and statutory bodies

Department/authority	Date submitted to Minister (if known)	Date received by Minister (if known)	Date tabled in Senate (Received out of session)
<i>Attorney-General's Portfolio</i>			
Administrative Appeals Tribunal – Report for 2009-10			25/10/2010 (13/10/2010)
Administrative Review Council – Report for 2009-10			25/10/2010 (6/10/2010)
Attorney-General's Department – Report for 2009-10			25/10/2010 (13/10/2010)
Australian Commission for Law Enforcement Integrity – Report for 2009-10 <sup>1</sup>	18/10/2010	18/10/2010	27/10/2010
Australian Federal Police – Report for 2009-10 <sup>2</sup>			25/10/2010 (15/10/2010)
Australian Government Solicitor – Report for 2009-10			25/10/2010 (15/10/2010)
Australian Institute of Criminology and Criminology Research Council – Reports 2009-10			15/11/2010 (29/10/2010)
Australian Law Reform Commission – Report for 2009-10			25/10/2010 (14/10/2010)
Australian Security Intelligence Organisation – Report for 2009-10	24/9/2010	24/9/2010	26/10/2010

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- 1 Also referred to the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity.
  - 2 Also referred to the Parliamentary Joint Committee on Law Enforcement.

Australian Transaction Reports and Analysis Centre (AUSTRAC) – Report for 2009-10			25/10/2010 (14/10/2010)
Classification Board and Classification Review Board – Reports for 2009-10			25/10/2010 (6/10/2010)
CrimTrac Agency – Report for 2009-10			25/10/2010 (13/10/2010)
Family Court of Australia – Report for 2009-10			25/10/2010 (14/10/2020)
Family Law Council – Report for 2009-10			25/10/2010 (6/10/2010)
Federal Court of Australia – Report for 2009-10			25/10/2010 (14/10/2010)
Federal Magistrates Court of Australia – Report for 2009-10			25/10/2010 (14/10/2010)
High Court of Australia – Report for 2009-10			25/10/2010 (14/10/2010)
National Native Title Tribunal – Report for 2009-10			25/10/2010 (13/10/2010)
Office of Parliamentary Counsel – Report for 2009-10			25/10/2010 (12/10/2010)
<b><i>Immigration and Citizenship Portfolio</i></b>			
Department of Immigration and Citizenship – Report for 2009-10			15/11/2010 (29/10/2010)
Office of Migration Agents Registration Authority – Report for 2009-10			15/11/2010 (29/10/2010)



## Reports on the operation of an act or program

Act	Date submitted to Minister (if known)	Date received by Minister (if known)	Date tabled in Senate (Received out of session)
<i>Attorney-General's Portfolio</i>			
<i>Crimes Act 1914</i> – Authorisation for the acquisition and use of assumed identities – Australian Federal Police – Report for 2009-10			28/09/2010 (13/09/2010)
<i>Crimes Act 1914</i> – Authorisations for the acquisitions and use of assumed identities – Australian Commission for Law Enforcement Integrity – Report for 2009-10			25/10/2010 (13/10/2010)
<i>Crimes Act 1914</i> – Witness identity protection certificates – Australian Commission for Law Enforcement Integrity – Report for 2009-10			25/10/2010 (13/10/2010)
<i>Crimes Act 1914</i> – Controlled operations – Australian Federal Police – Report for 2009-10	5/10/2010	5/10/2010	26/10/2010
<i>Customs Act 1901</i> – Conduct of Customs officers [Managed deliveries] – Report by Minister for Home Affairs for 2009-10			25/10/2010 (14/10/2010)
<i>Surveillance Devices Act 2004</i> – Commonwealth Ombudsman's report on inspection of surveillance device records for 2008	16/6/2010	16/6/2010	22/06/2010
<i>Witness Protection Act 1994</i> – Report for 2009-10 on the operation of the National Witness Protection Program			28/09/2010 (23/09/2010)

<i>Immigration and Citizenship Portfolio – Migration Act 1958</i>			
Section 91Y – Protection visa processing taking more than 90 days – Report for the period 1 November 2009 to 28 February 2010	14/4/2010	14/4/2010	16/06/2010
Section 440A – Refugee Review Tribunal reviews not completed within 90 days – Report for the period 1 November 2009 to 28 February 2010	14/4/2010	14/4/2010	16/06/2010
Section 486O – Ombudsman's report on appropriateness of detention arrangements – Personal identifier: 590/10 to 594/10	10/6/2010	10/6/2010	16/06/2010
Section 486O – Government response to Ombudsman's report on appropriateness of detention arrangements – Personal identifier: 590/10 to 594/10	10/6/2010	10/6/2010	16/06/2010
Section 486O – Ombudsman's report on appropriateness of detention arrangements – Personal identifier: 581/10 to 589/10	6/5/2010	7/5/2010	12/05/2010
Section 486O – Government response to Ombudsman's report on appropriateness of detention arrangements – Personal identifier: 581/10 to 589/10	6/5/2010	7/5/2010	12/05/2010
Section 486O – Ombudsman's report on the assessment of detention arrangements – Personal identifiers 595/10 to 599/10	1/10/2010	5/10/2010	26/10/2010
Section 486O – Government response to Ombudsman's report on assessment of detention arrangements – Personal identifiers 595/10 to 599/10	1/10/2010	5/10/2010	26/10/2010