

Chapter 1

Annual reports of statutory agencies

1.1 The annual reports of the following statutory agencies in the Attorney-General's portfolio were referred to the committee for examination and report during the period 1 November 2016 to 30 April 2017:

- Australian Human Rights Commission;
- Australian Commission for Law Enforcement Integrity;
- Australian Crime Commission;¹
- Australian Institute of Criminology;
- Australian Security Intelligence Organisation;
- Australian Transaction Reports and Analysis Centre;
- CrimTrac Agency;
- Federal Circuit Court of Australia;
- Federal Court of Australia;
- National Archives of Australia; and
- Office of the Commonwealth Ombudsman.²

1.2 No annual report was referred to the committee over this time period from the Immigration and Border Protection portfolio. As of 1 July 2015, there are no statutory agencies in that portfolio.

Consideration of annual reports

1.3 The committee considered, but has not reported on, the annual reports of the Australian Commission for Law Enforcement Integrity and the Australian Crime Commission. The Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity and the Parliamentary Joint Committee on Law Enforcement have specific responsibility for overseeing these agencies.

1.4 Similarly, the committee has considered, but not reported on, the annual report of the Office of the Commonwealth Ombudsman, as the Senate Finance and Public Administration Legislation Committee has responsibility for overseeing this agency.

1.5 While the committee has considered all reports presented during this period, on this occasion it has decided to examine issues of compliance with mandatory reporting requirements in the reports of the Federal Court of Australia and the Australian Institute of Criminology, for the reasons set out in the preface of this

1 Also stands referred to the Joint Committee on Law Enforcement.

2 Also forwarded to the Finance and Public Administration Legislation Committee.

report, and the Australian Security Intelligence Organisation, in relation to its performance statements.

Federal Court of Australia

1.6 The Federal Court of Australia (Federal Court, the court) tabled its annual report for 2015–16 in the Senate on 7 November 2016. This report also included the annual report of the National Native Title Tribunal, which the committee found to be satisfactory.

1.7 The report is in most respects a comprehensive representation of the court's activities, although the committee did identify a number of matters about which it sought further information.

1.8 The committee has assessed the Federal Court's report for 2015–16 against the requirements for non-corporate commonwealth entities as set out in the preface of this report, specifically using the mandatory list of requirements provided in Schedule 2 of the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) as a main reference point, as this is the method by which all other annual reports for the portfolio were assessed.

1.9 The Federal Court appears to not have followed a number of requirements for 2015–16 in the preparation of the annual report, and does not appear to have used the list of requirements prescribed by the PGPA Rule.

1.10 The committee raised its concerns about the report during the Budget Estimates 2017–18 hearing on 18 August 2017³ and in a subsequent letter to the Federal Court's Chief Executive Officer and Principal Registrar, Mr Warwick Soden. The court's response has been considered in the committee's analysis below.

List of requirements

1.11 The list of requirements, included in Appendix 11 of the report,⁴ does not closely match any version provided by either the Department of Prime Minister and Cabinet in previous years or the Department of Finance for 2015–16. As the list does not include any references to the PGPA Rule or other guidelines, the committee was unable to identify its source. The list of requirements is defined as an 'aid to access' in the PGPA Rule, and consistency in format across all departments and agencies is essential for analysis and comparison of performance information.⁵

1.12 In his response to the committee's inquiry, the Registrar, Mr Soden, stated that the court had used a 'condensed version of the required list' and that this error would be rectified in the 2016–17 report by using the correct index in accordance with the Department of Finance Resource Management Guide (RMG) No. 135: *Annual reports*

3 *Proof Committee Hansard*, 18 August 2017, p. 34.

4 *Federal Court of Australia Annual Report 2015–2016*, p. 197.

5 Department of Finance, *RMG No. 135: Annual reports for non-corporate Commonwealth entities*, pp. 34 and 35.

for non-corporate Commonwealth entities.⁶ The committee thanks Mr Soden for his explanation and undertaking, which the committee considers to be an acceptable outcome.

Did not meet specific requirements

1.13 The letter of transmittal to the Attorney-General, signed by the Hon James Allsop, Chief Justice, stated that the report had been prepared in accordance with section 18S of the *Federal Court of Australia Act 1976*. The committee noted that this letter did not meet two criteria under section 17AI of the PGPA Rule, requiring that it be signed by the accountable authority under the PGPA Act, who in this instance is the Registrar of the Federal Court⁷ and that it state that the report was prepared under section 46 of the PGPA Act.⁸

1.14 However, the committee notes that the letter of transmittal met all requirements under the *Federal Court of Australia Act 1976* which, in contrast to the PGPA Rule, requires the signature of the Chief Justice. The Federal Court has proposed that future letters of transmittal will include signatures of both the Chief Justice and the Registrar to ensure 'complete compliance' with both Acts.⁹ The committee is pleased with this approach.

1.15 While a comprehensive review of the Federal Court's work was included in Part 2 of the annual report, this was not a review by the accountable authority (i.e. the Registrar), as required by subsection 17AD(a) of the PGPA Rule. The Federal Court explained in its response to the committee that the 'year in review' section did not have a signature as it was a general report on the work of the court over the financial year.¹⁰ The committee encourages the Federal Court to include a review from the Registrar in future reports.

1.16 The annual performance statement, which is required under paragraph 17AD(c)(i) and section 16F of the PGPA Rule, and paragraph 39(1)(b) of the PGPA Act, was presented in an unusual manner: as a two-page appendix at the end of the report, referring to multiple sections of narrative within the body of the report for further detail.¹¹ While it is the committee's view that this performance statement strictly meets the requirements of the PGPA Rule and PGPA Act, it does not meet the

6 Mr Warwick Soden, Chief Executive Officer and Principal Registrar, Federal Court of Australia, correspondence received 21 August 2017, p. 1.

7 Department of Finance, *Resource Management Guide (RMG) No. 135: Annual reports for non-corporate Commonwealth entities*, pp. 33–35; *Federal Court of Australia Annual Report 2015–2016*, p. 8.

8 Department of Finance, *RMG No. 135: Annual reports for non-corporate Commonwealth entities*, pp. 33–35.

9 Mr Warwick Soden, Chief Executive Officer and Principal Registrar, Federal Court of Australia, correspondence received 21 August 2017, p. 2.

10 Mr Warwick Soden, Chief Executive Officer and Principal Registrar, Federal Court of Australia, correspondence received 21 August 2017, p. 2.

11 *Federal Court of Australia Annual Report 2015–2016*, p. 195.

Department of Finance recommendations for the presentation of annual performance statements, which set out a structure and the type of details to be included in the discussion of results.¹² The Federal Court acknowledged in their response to the committee that the annual performance statement was not presented correctly and that this would be rectified in the 2016–17 annual report.¹³

1.17 Subparagraph 17AE(1)(a)(iv) of the PGPA rule requires a 'description of the purposes of the entity as included in corporate plan'. While this item was included in the list of requirements, the committee was unable to identify either this description or any reference to the corporate plan in the annual report, and notes that the indexed page included only brief outlines of the Federal Court's objectives, establishment, and functions and powers on a title page.¹⁴ The Federal Court responded to the committee's concerns, stating that it would 'ensure that there is a clearer link between the court's purpose and its corporate plan in its 2016–17 report'.¹⁵

Conclusion

1.18 While the committee identified a number of shortcomings with the Federal Court's report, on balance it considers the report to be apparently satisfactory. The committee's subsequent inquiries to the court were met with a commitment to rectify the content and presentation of reports going forward, which the committee considers to be a positive outcome.

Australian Institute of Criminology

1.19 The Australian Institute of Criminology (AIC) tabled its annual report for 2015–16 in the Senate on 7 November 2016.

1.20 The report was prepared in accordance with section 46 of the PGPA Act and section 49 of the *Criminology Research Act 1971*.

1.21 The annual report of the AIC largely met the requirements of the PGPA Act and PGPA Rule in reporting the functions, activities, performance and financial position of the agency for the 2015–16 period.

1.22 While it is not its usual practice to examine the annual reports of a single agency in consecutive years, the committee is concerned about a repeated omission in staffing statistics and a significant inaccuracy in the presentation of the list of requirements in AIC's report for 2015–16.

12 Department of Finance, *RMG No. 135: Annual reports for non-corporate Commonwealth entities*, pp. 13 and 14.

13 Mr Warwick Soden, Chief Executive Officer and Principal Registrar, Federal Court of Australia, correspondence received 21 August 2017, p. 2.

14 *Federal Court of Australia Annual Report 2015–2016*, p. 3.

15 Mr Warwick Soden, Chief Executive Officer and Principal Registrar, Federal Court of Australia, correspondence received 21 August 2017, p. 2.

Omissions in staffing statistics

1.23 This is the second consecutive year that AIC have failed to include statistics on employees who identify as Indigenous. Statistics on staff location were also not included in the annual report.

1.24 While the committee acknowledges that its advice to remedy the error from the 2014–15 AIC annual report was published in the *Report on Annual Reports (No. 2 of 2016)*¹⁶ and would not have been available to AIC for the preparation of its 2015–16 report, this requirement is clearly stated in the PGPA Rule and Department of Finance guidelines.

1.25 Statistics on employees who identify as Indigenous and on staff location, both required under paragraph 17AG(4)(b) of the PGPA Rule, were indexed in AIC's list of requirements¹⁷ but no information in relation to those statistics was provided on the indexed pages¹⁸ or elsewhere in the 2015–16 report.

1.26 The committee notes that other staffing statistics provided under paragraph 17AG(4)(b) of the PGPA Rule, including statistics on staff classification, status and gender, were otherwise acceptable.

1.27 The committee requests that future reports of the AIC include all required staffing statistics, or statements explaining why certain statistics have been omitted. For example, the committee considers that it would be appropriate for an agency with all members of staff based in Canberra to make a simple statement to that effect.

List of requirements incomplete

1.28 The mandatory list of requirements is included in the AIC annual report for 2015–16 as *Appendix 4: Compliance index*.¹⁹

1.29 The first section of this index was produced with a high degree of fidelity to Schedule 2 of the PGPA Rule. However, all items from 'Assets management' onwards have been excluded from the list entirely. The committee notes that the omitted section of the list exactly matches pages four and five of the five-page Schedule 2, and questions whether this was an inadvertent error in the typesetting of the annual report.

1.30 Despite this apparent error, the committee notes that mandatory requirements which were omitted from the list have, in most cases, been included in the annual report in accordance with the PGPA Rule and the Department of Finance guidelines.

1.31 However, the committee identified two mandatory requirements, both from the omitted section of the list, which it believes were not included in this annual report:

16 Legal and Constitutional Affairs Legislation Committee, *Report on Annual Reports (No. 2 of 2016)*, p. ix.

17 *Australian Institute of Criminology Annual Report 2015–16*, p. 131.

18 *Australian Institute of Criminology Annual Report 2015–16*, pp. 79–83.

19 *Australian Institute of Criminology Annual Report 2015–16*, pp. 128–131.

- a statement that 'Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website', under paragraph 17AG(7)(d) of the PGPA Rule, although all other requirements for consultants reporting were met; and
- a website reference to where the entity's Information Publication Scheme statement pursuant to Part II of FOI Act can be found, under paragraph 17AH(1)(d) of the PGPA Rule.

Some requirements may not be applicable

1.32 It was unclear if a number of mandatory requirements were applicable to AIC due to their omission from the list. These included:

- an assessment of effectiveness of assets management where asset management is a significant part of the entity's activities, under subsection 17AG(5) of the PGPA Rule;
- if an entity entered into a contract with a value of more than \$100 000 (inclusive of GST) and the contract did not provide the Auditor-General with access to the contractor's premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract, under subsection 17AG(8) of the PGPA Rule, which may have been broadly covered in a section on access clauses;²⁰
- either if the entity conducted advertising campaigns, a statement to that effect in prescribed wording, or if the entity did not conduct advertising campaigns, a statement to that effect, under subparagraphs 17AH(1)(a)(i) and (ii) of the PGPA Rule;
- a statement about information on grants awarded, under paragraph 17AH(1)(b) of the PGPA Rule; and
- any correction of material from previous annual reports, under paragraph 17AH(1)(d) of the PGPA Rule.

Conclusion

1.33 Despite the incomplete nature of the mandatory list of requirements, the committee finds the annual report of AIC to be 'apparently satisfactory'.

Australian Security Intelligence Organisation

1.34 The Australian Security Intelligence Organisation (ASIO) tabled its annual report for 2015–16 in the Senate on 7 November 2016. A classified version of the annual report was also made available to the Attorney-General, the Minister for

Finance, other national security ministers, senior officials, the Inspector-General of Intelligence and Security, and is accessible to the Australian National Audit Office.²¹

1.35 The report was prepared in accordance with the requirements of section 46 of the PGPA Act and section 94 of the *Australian Security Intelligence Organisation Act 1979*.

1.36 In accordance with determinations made by the Attorney-General and the Minister for Finance under the PGPA Act, the version of the annual report tabled in parliament does not include classified material. The tabled report differs from the classified report in the following ways:

- Some detail has not been included in the annual performance statements at Part 3;²²
- Part 6, which 'contains classified information about performance and corporate management'²³, has been excluded; and
- Two appendices have been excluded:
 - Reporting on special intelligence operations (Appendix G); and
 - Reporting on authorisations for telecommunications data (Appendix H).²⁴

1.37 The committee wishes to acknowledge the work of ASIO in producing a report for parliament which not only provides unclassified summaries of annual performance information in Part 3, but also includes comprehensive narrative discussions of performance measures and demonstrative case-studies in Part 4.

Accountability and performance statements

1.38 The committee commends ASIO for providing a great level of detail in its unclassified report which, along with the Portfolio Budget Statements (PBS) and corporate plan, forms a critical part of the formal accountability mechanism between the agency and the Parliament.²⁵ In previous Reports on Annual Reports, this committee has emphasised the importance of a 'clear read' between performance information in annual reports and the relevant PBS.²⁶

1.39 However, the committee was unable to identify any reference to the key performance indicators set out in the PBS for 2015–16²⁷ in this annual report. It was

21 *Australian Security Intelligence Organisation Annual Report 2015–16*, p. 26.

22 *Australian Security Intelligence Organisation Annual Report 2015–16*, p. 29.

23 *Australian Security Intelligence Organisation Annual Report 2015–16*, p. v.

24 *Australian Security Intelligence Organisation Annual Report 2015–16*, p. 142.

25 Department of Finance, *RMG No. 135: Annual reports for non-corporate Commonwealth entities*, pp. 4 and 5.

26 Legal and Constitutional Affairs Legislation Committee, *Report on Annual Reports (No. 2 of 2016)*, p. 8.

27 *Portfolio Budget Statements 2015–16, Attorney-General's Portfolio*, pp. 255–6.

unclear whether this performance information may have been included in Part 6 of the classified report.

1.40 Furthermore, two performance measures listed in Part 3 were taken from the 2016–17 corporate plan, which was not yet published or in effect during the reporting period.²⁸ In each instance, the measure was described as 'an evolution' from a deliverable set out in the PBS for 2015–16, but did not match the PBS and could not be considered a 'clear read'.

1.41 The committee notes that ASIO's corporate plan and PBS were 'refined and aligned in 2016–17 to ensure clarity across these strategic documents'²⁹ and therefore anticipates that future annual reports from ASIO will benefit from the clearer performance targets set in the PBS for 2016–17³⁰ and 2017–18.³¹

Conclusion

1.42 The committee wishes to thank ASIO for the vital role it continues to play in protecting the national security of Australia and for its comprehensive unclassified reporting of the agency's work.

1.43 The committee considers the annual report of ASIO to be 'apparently satisfactory'.

**Senator the Hon. Ian Macdonald
Chair**

28 *Australian Security Intelligence Organisation Annual Report 2015–16*, pp. 40 and 42.

29 *Australian Security Intelligence Organisation Annual Report 2015–16*, p. 32.

30 *Portfolio Budget Statements 2016–17, Attorney-General's Portfolio*, p. 170.

31 *Portfolio Budget Statements 2017–18, Attorney-General's Portfolio*, pp. 177–8.