

Chapter 2

Annual reports of agencies

2.1 The annual reports of the following agencies in the Attorney-General's portfolio were referred to the committee for examination and report during the period 1 May 2018 to 31 October 2018:

- Administrative Appeals Tribunal;
- Australian Commission for Law Enforcement Integrity;
- 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.

2.2 One annual report from an agency in the Home Affairs Portfolio was received during the reporting period. This report was the annual report of the Australian Federal Police, including reports on assumed identities, the National Witness Protection Program and unexplained wealth investigations and proceedings.

2.3 The list of agencies that did not table their annual reports in the Senate during the period 1 May 2018 to 31 October 2018 is provided in the preface of this report. The committee will consider those annual reports in the *Report on Annual Reports (No. 2 of 2019)*.¹

2.4 On this occasion, the committee has examined in more detail the reports of the Inspector-General of Intelligence and Security, as it has not been examined by the committee since its incorporation into the Legal and Constitutional Affairs portfolio, and the Australian Law Reform Commission, which the committee last examined in *Report on Annual Reports (No. 2 of 2016)*.

1 See Preface, pp. ix–xi.

Inspector-General of Intelligence and Security

2.5 The Inspector-General of Intelligence and Security (the Inspector-General) is a statutory office holder appointed by the Governor-General under the *Inspector-General of Security and Intelligence Act 1986* (IGIS Act).²

2.6 The role of the Inspector-General is to 'assist Ministers in overseeing and reviewing the activities of the Australian intelligence agencies for legality and propriety and for consistency with human rights'.³ The Inspector-General is also required to assist the Australian Government in providing advice to Parliament and the public, and demonstrating that intelligence and security matters regarding Commonwealth agencies are open to scrutiny.⁴

2.7 The Office of the Inspector-General of Intelligence and Security (IGIS) is an agency that resided within the Attorney-General's portfolio prior to its shift to the Home Affairs portfolio as a result of machinery-of-government changes in 2018.

2.8 The IGIS is responsible for: monitoring and conducting regular inspections of the operations of Australian security and intelligence agencies; conducting inquiries, either self-initiated or at the request of the Australian Government; investigating complaints made about agencies; and making recommendations to the Australian Government.⁵

2.9 The IGIS annual report for 2017–18 was prepared in accordance with section 35 of the IGIS Act and section 46 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).⁶ It was tabled out of session in the Senate on 19 October 2018.⁷

Inspector-General's review

2.10 The Inspector-General, the Hon Margaret Stone, opened her review of the 2017–18 period with a recognition of the importance of a strong accountability entity to maintain oversight over Australia's security and intelligence agencies which hold 'significant human and technical capabilities and some extraordinary legal powers and immunities'.⁸

2.11 Key elements of the IGIS's core work discussed by the Inspector-General included: two inquiries commenced during the previous reporting period which were finalised, in addition to two more initiated during 2017–18; development of an inspection program to target high risk areas with a focus on in-depth investigations;

2 *Inspector-General of Intelligence and Security Annual Report 2017-18 (IGIS Annual Report 2017-18)*, p. 3.

3 *IGIS Annual Report 2017-18*, p. 4.

4 *IGIS Annual Report 2017-18*, p. 4.

5 *IGIS Annual Report 2017-18*, p. 4.

6 *IGIS Annual Report 2017-18*, p. i.

7 See Appendix 1.

8 *IGIS Annual Report 2017-18*, p. 2.

inspections of ASIO's activities; oversight of agencies governed by the *Intelligence Services Act 2001*; responding to complaints from the public or from members of the intelligence agencies; developing links with international counterparts, including those within the Five-Eyes community; and additional oversight responsibilities of four agencies within the Home Affairs Portfolio as a result of the *2017 Independent Intelligence Review*.⁹

2.12 The Inspector-General also made note of the support IGIS received from all agencies, which were reported to have engaged with the agency regularly on matters such as briefing requests, self-reporting compliance breaches, and prospectively briefing IGIS regarding proposed operations.¹⁰

Performance reporting

2.13 Annual performance information for the IGIS was generally well-presented and provided a 'clear read' when cross-checked with the Portfolio Budget Statement (PBS) and Corporate Plan. The presentation of performance criteria results closely matched the format recommended by the Department of Finance in *Resource Management Guide No. 135*,¹¹ clearly listing each criterion with its source, and providing detailed discussion of how it was or was not achieved.

2.14 The IGIS achieved most of its performance criteria set for 2017–18. It worked to the performance criteria of both the PBS and Corporate Plan, reporting on these performance criteria in the annual report.

2.15 The IGIS provides an exemplary model of performance reporting, providing a high level of detail under each Activity and performance indicator. It details the investigations and inspections conducted by IGIS and the outcomes of the work conducted. It also details information about responses to public interest disclosures, advice provided to parliamentary committees and others, and engagement with intelligence agencies and the public.

2.16 Of the performance criteria set for 2017–18 in the PBS and Corporate Plan, the IGIS failed to achieve two targets:

- For the performance criteria *range of inspection work undertaken* in Activity 2: Inspections, the relevant KPI is: inspection of at least 75 per cent of each agency's activity categories. The categories are determined by the Inspector-General and are based on the underlying functions of the agency laid down in the relevant legislation. While the IGIS successfully inspected five agencies to the required standard, its examination of the Office of National Assessments (ONA) did not meet the required target.¹² The annual report explains that the target was missed due to staffing constraints, also

9 *IGIS Annual Report 2017-18*, pp. 2–3.

10 *IGIS Annual Report 2017-18*, p. 2.

11 Department of Finance, *Resource Management Guide No. 135: Annual reports for non-corporate Commonwealth entities*, Appendix A, pp. 37–38.

12 *IGIS Annual Report 2017-18*, p. 16.

noting that the IGIS considers ONA's activities as an assessment agency are less likely to intrude upon the personal affairs of Australians than those of the other intelligence agencies which were thus given priority.¹³

- For the performance criteria *timeliness of complaint resolution* in Activity 3: Responding to Complaints, the relevant KPI is: 90 per cent of complaints acknowledged within five business days and 85 per cent of visa-related complaints resolved within two weeks. The IGIS did not meet its KPIs in relation to visa-related complaints, resolving 82 per cent of complaints within two weeks.¹⁴ The IGIS notes that the number of visa-related complaints has more than doubled since the 2015–16 reporting period.¹⁵ It further reported that it received an increased number of complaints in relation to citizenship applications, rising from five per cent of all visa-related complaints in 2016–17 to 37 per cent in 2017–18. The IGIS stated that it would investigate the reason behind the sharp increase in complaints in the 2018–19 reporting period.¹⁶

2.17 The committee notes that the results for a number of the performance indicators set for the IGIS are indicative of factors external of the agency's control. For example, the IGIS's KPI in relation to timeliness of complaint resolution in reference to visa-related complaints was impacted by the high number of complaints received by the IGIS, which had risen significantly in the previous three years. The committee also notes with approval, the IGIS's commitment to identifying the reason for the increase in complaints during the 2018–19 reporting period.

2.18 Notwithstanding the missed KPIs identified, the committee commends the IGIS for its excellent reporting and its otherwise strong results.

Financial performance

2.19 The IGIS operated within its available resources in 2017–18, and reported a surplus of \$3.664 million.¹⁷ Funds in the reporting period were increased significantly as a result of additional departmental funding provided in the Portfolio Additional Estimates Statements (PAES). This extra funding totalled \$3.662 million, provided in order to implement the recommendations of the *2017 Independent Intelligence Review* which included an expansion of the office and a change in the IGIS's jurisdiction.¹⁸

13 *IGIS Annual Report 2017-18*, p. 40.

14 *IGIS Annual Report 2017-18*, p. 45.

15 *IGIS Annual Report 2017-18*, p. 45.

16 *IGIS Annual Report 2017-18*, p. 46.

17 *IGIS Annual Report 2017-18*, p. 72.

18 *IGIS Annual Report 2017-18*, p. 72.

2.20 Expenses for the IGIS were higher than expected as a result of increasing staffing levels associated with the additional funding.¹⁹ Net equity increased significantly from \$3.161 million in 2016–17 to \$18.406 million in 2017–18.²⁰

Human resources

2.21 The IGIS reported that as at 30 June 2018 it had 23 ongoing Australian Public Service (APS) employees, five of which worked part-time. The report stated that no employees identified as indigenous. The IGIS provided details regarding its gender balance, which showed that the agency was predominantly staffed by female employees at the OIGIS Broadband 2 (APS4–6) and OIGIS Broadband 3 (EL1) levels, but that men and women were equally represented at the OIGIS Broadband 4 level and positions at higher levels than that were held by men.²¹

Conclusion

2.22 The committee acknowledges the IGIS's efforts in providing a well-presented and accessible report. In particular, the IGIS's provision of highly detailed information in relation to its operations was exemplary among other agencies' annual reports, and set a high standard for others to follow.

2.23 The committee finds the annual report of the IGIS to be 'apparently satisfactory'.

Australian Law Reform Commission

2.24 The Australian Law Reform Commission (the ALRC) is an independent statutory agency established under the *Australian Law Reform Commission Act 1996* (ALRC Act). Its role, in accordance with the ALRC Act and the terms of reference provided by the Attorney-General for each inquiry, is to review Commonwealth laws and make recommendations for reform.²²

2.25 The ALRC annual report for 2017–18 was prepared under Division 6, section 46 of the PGPA Act, and includes reporting under the *Freedom of Information Act 1982*. The report was tabled out of session in the Senate on 19 October 2018.²³

President's review

2.26 The President of the ALRC, Justice Sarah Derrington, began the review by acknowledging her predecessor Emeritus Professor Rosalind Croucher AM and the work of the ALRC's other Commissioners.²⁴

19 *IGIS Annual Report 2017-18*, p. 72.

20 *IGIS Annual Report 2017-18*, p. 72.

21 *IGIS Annual Report 2017-18*, p. 67.

22 *Australian Law Reform Commission Annual Report 2017–18 (ALRC Annual Report 2017–18)*, p. 4.

23 See Appendix 1.

24 *ALRC Annual Report 2017–18*, p. 2.

2.27 Justice Derrington also noted that the reporting year had brought significant change to the ALRC as a result of its move to a shared services model under which some of the ALRC's corporate and financial management will be provided by the Attorney-General's Department (AGD). Justice Derrington stated that while a number of these functions would be provided by the AGD, 'the leadership of the Commission by a statutorily appointed President and Commissioners will ensure the independence, rigour and integrity of the ALRC's reports is maintained and strengthened'.²⁵

2.28 Justice Derrington provided an overview of the work planned for the year ahead, including completing the ALRC's review into class actions and third-party litigation funders and also its review of the family law system.²⁶

Performance reporting

2.29 Annual performance information for the ALRC provided a 'clear read' in the overview section when cross-checked with the PBS and Corporate Plan. The presentation of performance criteria results closely matched the format recommended by the Department of Finance in *Resource Management Guide No. 135*.²⁷

2.30 The ALRC's annual performance statement also provided an overview of how it measures its performance, including: implementation rates of its recommendations; the number of citations of ALRC reports; visitor numbers to the website; the number of submissions provided to the ALRC's inquiries; presentations and speaking engagements; and media mentions.²⁸ These Performance Criteria are sourced from the Corporate Plan and the PBS.²⁹

2.31 During the reporting period, the ALRC achieved the following major outcomes: three inquiries conducted; 216 stakeholder consultations held; 611 submissions received; one Final Report, one Issues Paper and two Discussion Papers produced; and presentations given at 28 conferences and seminars.³⁰

2.32 The ALRC met each of its performance criteria targets during the 2017–18 period.³¹ The performance statement provided a detailed explanation for how each performance criteria was met for the period.³² The ALRC performed exceptionally well in the following KPIs:

- Citations or references: of a target of 50 citations or references, the ALRC achieved 138 citations or references to its reports, including at least

25 *ALRC Annual Report 2017–18*, p. 2.

26 *ALRC Annual Report 2017–18*, p. 2.

27 Department of Finance, *Resource Management Guide No. 135: Annual reports for non-corporate Commonwealth entities*, Appendix A, pp. 37–38.

28 *ALRC Annual Report 2017–18*, pp. 15–16.

29 *ALRC Annual Report 2017–18*, p. 16.

30 *ALRC Annual Report 2017–18*, p. 15.

31 *ALRC Annual Report 2017–18*, p. 16.

32 *ALRC Annual Report 2017–18*, pp. 15–21.

39 mentions of ALRC reports in the judgments of Australian courts and tribunals (including one citation in the High Court of Australia and 11 citations by the Federal Court of Australia) and 26 references to ALRC reports and recommendations during Parliamentary proceedings.³³

- Visitors to the ALRC website: of a target of in excess of 250,000 visits, the ALRC achieved a total of 1,184,073 visits to the ALRC website during the reporting period.³⁴ In comparison to the 2016–17 reporting period, these results represented a three per cent increase in visits to the website, a four per cent increase in page views, and a two per cent increase in the number of unique visitors accessing the website. The ALRC also provided information in relation to the top five reports accessed by PDF downloads, including: *Recognition of Aboriginal Customary Laws* (ALRC Report 31), published on 12 June 1986; *Essentially Yours: The Protection of Human Genetic Information in Australia* (ALRC Report 96), published on 30 May 2003; and *Grey Areas – Age Barriers to Work in Commonwealth Laws* (DP 78), published on 2 October 2012.³⁵
- Submissions received: of a target of 150 submissions received to inquiries, the ALRC received a total of 611 submissions to its inquiries.³⁶ In its performance review, the ALRC explained that while this measure is used to indicate the level of public engagement with the agency's work and the extent to which the consultation papers have stimulated debate, the number of submissions received to an inquiry is highly dependent on the nature and topic of the inquiry.³⁷ The ALRC noted that the Review of the Family Law System had generated particular interest, receiving nearly 500 formal submissions in addition to over 900 contributions to the ALRC's confidential 'Tell us your story' portal.³⁸

2.33 The committee commends the ALRC on meeting all its targets.

Financial reporting

2.34 The ALRC reported an operating deficit of \$0.722 million for the reporting period.³⁹ The agency's operating revenue was reported as \$2.740 million, comprising of revenue from government (\$2.701 million), revenue from sales of goods such as publications (\$0.004 million) and other revenue such as audit remuneration (\$0.0035 million). Total operating expenses were reported as \$3.511 million, which was \$0.760 million more than the previous reporting period in 2016–17. This was

33 *ALRC Annual Report 2017–18*, pp. 16–18.

34 *ALRC Annual Report 2017–18*, p. 16.

35 *ALRC Annual Report 2017–18*, pp. 18–19.

36 *ALRC Annual Report 2017–18*, p. 16.

37 *ALRC Annual Report 2017–18*, p. 20.

38 *ALRC Annual Report 2017–18*, p. 20.

39 *ALRC Annual Report 2017–18*, p. 21.

determined to be as a result of the ALRC working on three major inquiries, as opposed to two in the previous reporting period.⁴⁰

2.35 The ALRC's depreciation and amortisation expense decreased by \$0.023 million. In addition, the ALRC's total assets increased by \$0.103 million, and total liabilities also increased by \$0.859 million.⁴¹

Conclusion

2.36 The committee considers the annual report of the ALRC to be 'apparently satisfactory'.

**Senator the Hon Ian Macdonald
Chair**

40 *ALRC Annual Report 2017–18*, p. 21.

41 *ALRC Annual Report 2017–18*, p. 21.