

The Senate

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Legal and Constitutional Affairs  
Legislation Committee

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Annual reports (No. 2 of 2019)

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### 46th Parliament

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Senator Anthony Chisholm (ALP, QLD)

#### Secretariat

Ms Sophie Dunstone	Committee Secretary
Ms Ophelia Tynan	Research Officer
Mr Michael Fisher	Acting Research Officer
Ms Brooke Gay	Administration 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 31 August 2016, a resolution of the Senate allocated the following portfolios to the Senate Legal and Constitutional Affairs Legislation Committee (the committee):

- Attorney-General's portfolio; and
- Home Affairs portfolio.<sup>1</sup>

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.
- (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.

This report examines annual reports tabled between 1 November 2018 and 30 April 2019.

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<sup>1</sup> *Journals of the Senate*, No. 2, 31 August 2016, pp.75–76; The Immigration and Border Protection portfolio was replaced by the Home Affairs portfolio as of 12 February 2018, see: *Journals of the Senate*, No. 84, 12 February 2018, pp. 2668–2669.

## **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. 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**

Departments and agencies report under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which commenced on 1 July 2014. The PGPA Act establishes a performance reporting framework for all Commonwealth entities and companies. Section 46 of the PGPA Act sets out the annual reporting requirements in relation to Commonwealth entities, including that annual reports must comply with any requirements prescribed by rules. Section 97 sets out the annual reporting requirements for Commonwealth companies. The *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) supports the PGPA Act.

Annual reports for the 2017–18 reporting period were prepared under the following requirements:

- for non-corporate Commonwealth entities (departments, executive agencies and statutory agencies): section 46 of the PGPA Act, and Division 3A(A) of the PGPA Rule; sections 63(2) and 70(2) of the *Public Service Act 1999*; and other relevant enabling legislation for statutory bodies;
- for corporate Commonwealth entities: section 46 of the PGPA Act; Division 3A(AB) of the PGPA Rule; and other relevant enabling legislation for statutory bodies;
- for Commonwealth companies: section 97 of the PGPA Act, which also refers to requirements under the *Corporations Act 2001* and Part 3-3 of the PGPA Rule; and other relevant enabling legislation for statutory bodies; and
- for non-statutory bodies: the guidelines are contained in the government response to the Senate Standing Committee on Finance and Public Administration Report on Non-Statutory bodies.<sup>2</sup>

## **Reporting guidelines**

The Department of Finance has produced three Resource Management Guides (RMGs) which set out the obligations for entities under the Act and provide guidance on fulfilling the mandatory requirements for the contents of annual reports prescribed by the PGPA Rule:

- Resource Management Guide No. 135: *Annual reports for non-corporate Commonwealth entities*;
- Resource Management Guide No. 136: *Annual reports for corporate Commonwealth entities*; and

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2 *Senate Hansard*, 8 December 1987, pp. 2632–2645.

- Resource Management Guide No. 137: *Annual reports for Commonwealth companies*.

In addition to the RMGs listed above, the Department of Finance has produced a guide intended to improve the quality of non-financial performance information in annual reports, Resource Management Guide No. 131: *Developing good performance information*. This guide sets out best practice for developing and reporting on performance measures, including key performance indicators and deliverables. The committee recommends that agencies use this RMG when preparing their reports.

## **Reports examined**

This report examines the following annual reports, tabled in the Senate or presented out of session to the President of the Senate and referred to the committee between 1 November 2018 and 30 April 2019:

### ***Attorney-General's portfolio***

- Australian Financial Security Authority—report for 2017–18;
- High Court of Australia—report for 2017–18; and
- Independent National Security Legislation Monitor—report for 2017–18.

### ***Home Affairs portfolio***

- Australian Criminal Intelligence Commission—report for 2017–18;<sup>3</sup>
- Australian Institute of Criminology—report for 2017–18;
- Australian Security Intelligence Organisation (ASIO)—report for 2017–18; and
- Australian Transaction Reports and Analysis Centre—report for 2017–18.

## **'Apparently satisfactory'**

Under 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 requirements, such as those in the PGPA Act.

The committee has found that most reports referred in this period are 'apparently satisfactory' in reporting the annual performance of the relevant agency. The reports of these agencies are considered in detail at chapter 1.

The ASIO annual report for 2017–18 was identified as not being satisfactory because it fails to comply with a small number of the PGPA Act mandatory requirements, including:

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

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

ASIO's annual report also provides incomplete or unclear information in relation to the following PGPA Act mandatory requirements:

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

In addition to the PGPA Act, ASIO is subject to the reporting requirements under section 94 of the *Australian Security Intelligence Organisation Act 1979*.

While certain aspects of ASIO's activities are classified and consequently must be withheld from publication, the committee suggests that information in response to the requirements listed above should be provided to the fullest extent that does not disclose classified information, noting that classification is sometimes necessary for information that to an outsider may seem apparently benign.

The committee encourages all agencies to comply with the requirements of the PGPA Act and any other legislation requiring reporting on public administration matters.

### **Timeliness**

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

Under section 46 of the PGPA Act, Commonwealth entities must present their annual report to the responsible minister by the 15th day of the fourth month after the end of the reporting period for the entity. For entities reporting on a financial year basis, this requires reports to be provided to the minister by 15 October of that year. RMG No. 135, which relates to departments, executive agencies and other non-corporate Commonwealth entities, and RMG 136, which relates to corporate Commonwealth entities, state that:

It has been practice for the responsible Minister to present the report to each house of the Parliament on or before 31 October. If Senate Supplementary Budget Estimates hearings are scheduled to occur before 31 October, Ministers have sought to table annual reports prior to these hearings.<sup>4</sup>

Where a body is unable to meet this deadline, an extension of time to report can be sought under the provisions of subsections 34C(4)–(7) of the *Acts Interpretation Act 1901*.<sup>5</sup>

Section 97 of the PGPA Act sets out the requirements for the provision of annual reports of Commonwealth companies to the responsible minister.

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4 Department of Finance, *Resource Management Guide No. 135: Annual reports for non-corporate Commonwealth entities*, p. 8; Department of Finance, *Resource Management Guide No. 136: Annual reports for corporate Commonwealth entities*, p. 7.

5 *Acts Interpretation Act 1901*, s. 34.

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 2018 and 31 October 2018, and which have been referred to the committee for examination, is at Appendix 1.<sup>6</sup> Also included is the date each report was tabled in the House of Representatives.

The High Court of Australia (High Court) is exempted from the PGPA Act's requirements, as it is not a Commonwealth entity due to its status under enabling legislation. The High Court is instead required to table an annual report in both Houses of Parliament within 15 sitting days after receipt by the minister, as per section 47(3) of the *High Court of Australia Act 1979*. In this case, the High Court fulfilled its obligations in relation to its annual report for 2017–18.

A number of annual reports included and examined in this report were not tabled in the Senate and referred to the committee by 31 October 2018. These included the:

- Australian Criminal Intelligence Commission—report for 2017–18;
- Australian Institute of Criminology—report for 2017–18;
- Australian Financial Security Authority—report for 2017–18;
- Australian Security Intelligence Organisation (ASIO)—report for 2017–18; and
- Australian Transaction Reports and Analysis Centre—report for 2017–18.

In accordance with best practice, as outlined in RMGs No. 135 and No. 136, the committee encourages reporting bodies to table annual reports before the Supplementary Budget Estimates hearings in October each year.<sup>7</sup>

The committee will monitor the future tabling dates of annual reports to ensure that reports of portfolio departments and agencies are provided in a timely fashion.

### **Comments made in the Senate**

Under the terms of Standing Order 25(20)(d), the committee is required to take into account any relevant remarks made about an annual report in debate in the Senate. The committee did not identify any relevant remarks made about the annual reports referred during this reporting period.

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

In accordance with Standing Order 25(20)(h), the committee is required to report on bodies that do not present an annual report to the Senate and which should present such a report. On this occasion, the committee is unaware of any body required to table an annual report for 2017–18 which has failed to do so.

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6 The table also includes reports on the operation of acts or programs, reports tabled in accordance with agencies' legislative requirements, and reports on the work of Royal Commissions, which have been referred to the committee.

7 Department of Finance, *Resource Management Guide No. 135: Annual reports for non-corporate Commonwealth entities*, p. 8; Department of Finance, *Resource Management Guide No. 136: Annual reports for corporate Commonwealth entities*, p. 7.



# 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 Legal and Constitutional Affairs Legislation Committee (the committee) for examination and report between 1 November 2018 and 30 April 2019:

- Australian Criminal Intelligence Commission—report for 2017–18;<sup>1</sup>
- Australian Financial Security Authority—report for 2017–18;
- Australian Institute of Criminology—report for 2017–18;
- Australian Security Intelligence Organisation (ASIO)—report for 2017–18;
- Australian Transaction Reports and Analysis Centre—report for 2017–18;
- High Court of Australia—report for 2017–18; and
- Independent National Security Legislation Monitor—report for 2017–18.

### Consideration of annual reports

1.2 In the following sections, the committee examines in closer detail the annual reports of the Australian Criminal Intelligence Commission (ACIC) and the Australian Transaction Reporting and Analysis Centre (AUSTRAC).

1.3 The ACIC's annual report has been chosen for detailed examination due to three recent developments. Firstly, the ACIC has been the subject of an audit by the Australian National Audit Office (ANAO) in relation to project management. Secondly, the ACIC now comprises what was once the Australian Crime Commission (ACC) and the Australian Institute of Criminology (AIC), the latter of which now operates within the ACIC. Finally, the ACIC has been moved from the Attorney-General's portfolio into the Home Affairs portfolio as a result of machinery of government changes.

1.4 The AUSTRAC report is also considered in greater detail in this report due to its recent incorporation into the Home Affairs portfolio.

### Australian Criminal Intelligence Commission

1.5 The 2017–18 annual report of the ACIC was provided to the Minister for Home Affairs on 28 September 2018 and was subsequently tabled in the Senate on 12 November 2018.

1.6 The ACIC is established by section 7 of the *Australian Crime Commission Act 2002* (ACC Act).<sup>2</sup> The ACIC's stated purpose is to:

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

2 Section 7(1A) of the *Australian Crime Commission Act 2002* allows the agency to be known by one or more names. As a result, the change of the agency's name did not affect its empowering legislation.

[M]ake Australia safer through improved national ability to discover, understand and respond to current and emerging crime threats and criminal justice issues, including the ability to connect police and law enforcement to essential criminal intelligence, policing knowledge and information through collaborative national information systems and services.<sup>3</sup>

1.7 The ACIC has one outcome and one program based on the *Strategic Plan 2016–21* (strategic plan), *Corporate Plan 2017–18 to 2020–21* (corporate plan) and the *Portfolio Budget Statement 2017–18* (PBS).<sup>4</sup>

1.8 The Chief Executive Officer (CEO) is the accountable authority of the ACIC.<sup>5</sup>

#### ***Chief Executive Officer's review***

1.9 The annual review of the ACIC was provided by Mr Michael Phelan APM, CEO of the ACIC.<sup>6</sup>

1.10 In his review, the CEO noted that the 2017–18 financial year was marked by the agency's move into the Home Affairs portfolio in December 2017. Mr Phelan stated that this move 'recognised the strategic importance of integrated, joint agency activity to ensure a safer and more secure Australia'.<sup>7</sup> The agency's placement within the Home Affairs portfolio was said to offer a trusted source of criminal intelligence, national policing information and systems for law enforcement.<sup>8</sup>

1.11 The review reflects on a number of ACIC projects that had progressed or been completed during the reporting period, including:

- maintaining 16 information and intelligence systems used by more than 70,000 police and non-police users daily;<sup>9</sup>
- establishing the first iteration of the National Criminal Intelligence System (NCIS), designed to support frontline personnel and provide secure access to a national view of criminal intelligence and information;<sup>10</sup>
- supporting the continued rollout of Joint Cyber Security Centres in multiple cities and permanently deployed cybercrime analysts to the Australian Cyber Security Centre;<sup>11</sup>

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3 *Australian Criminal Intelligence Commission Annual Report 2017–18*, p. 14 ('*ACIC Annual Report 2017–18*').

4 *ACIC Annual Report 2017–18*, p. 14.

5 *Australian Crime Commission Act 2002*, section 7(3)(b).

6 *ACIC Annual Report 2017–18*, p. 9.

7 *ACIC Annual Report 2017–18*, p. 9.

8 *ACIC Annual Report 2017–18*, p. 9.

9 *ACIC Annual Report 2017–18*, p. 9.

10 *ACIC Annual Report 2017–18*, p. 10.

11 *ACIC Annual Report 2017–18*, p. 10.

- conducting 212 coercive examinations to discover new information about crime relating to ACIC's special operations and special investigations;<sup>12</sup>
- delivering 2,162 intelligence products, including a range of unclassified reports;<sup>13</sup> and
- working with partner agencies to seize illicit drugs valued at over \$3.5 billion, dismantle an international criminal enterprise operating encrypted communications, and prosecute a global money launderer and drug trafficker in the United States.<sup>14</sup>

### ***Performance reporting***

1.12 According to the corporate plan, the ACIC's function is to assist, alongside Commonwealth and state and territory agencies, in making Australia safer and reducing the impact of crime. However, the nature of the agency's role within this framework results in the ACIC being unable to control outcomes or determine to what extent its performance has contributed to other agencies' outcomes.<sup>15</sup> The corporate plan states:

Our information and intelligence systems and services provide value to our stakeholders by enhancing their ability to undertake their role in keeping Australia safe. We cannot apportion specific aspects of their performance to our contribution, but we can measure the quality, volume of data provided and reliability of these systems. We also seek to measure the efficiency and effectiveness benefits our partners gained through new and enhanced systems.<sup>16</sup>

1.13 The ACIC's performance reporting scheme is broadly structured into four categories as derived from the corporate plan and the PBS. The categories are: Discover, Understand, Respond and Connect, which are reproduced in the annual report.<sup>17</sup> Each category has between one and four subcategories which contain performance measures to be met. The PBS provides a broad performance criteria statement, which does not set any specific key performance indicator (KPI) targets.

1.14 When read alongside the PBS, the annual report appears to provide a relatively 'clear read' in relation to its performance criteria.

1.15 The annual report explains that the ACIC used a mix of qualitative and quantitative measures to examine its achievements against its performance criteria, in addition to utilising a stakeholder satisfaction survey to assess performance against

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12 *ACIC Annual Report 2017–18*, p. 11.

13 *ACIC Annual Report 2017–18*, p. 12.

14 *ACIC Annual Report 2017–18*, pp. 12–13.

15 *Australian Criminal Intelligence Commission Corporate Plan 2017-18 to 2020-21*, p. 18 ('Corporate Plan').

16 Corporate Plan, p. 18.

17 *ACIC Annual Report 2017–18*, p. 21.

each criterion.<sup>18</sup> Each performance criterion is accompanied with an explanation of the methodology used to measure performance, including why other methodologies were not used if applicable.

1.16 As stated above, the ACIC does not appear to have specific KPI targets. Instead, its performance is assessed according to broad goals. The PBS provided a statement in relation to the planned measurement of the ACIC's performance:

The ACIC collects qualitative and quantitative performance data. The ACIC monitors and analyses trends in quantitative data against relevant performance criteria, where appropriate, which includes:

- comparative statistics on information and intelligence systems and services availability, usage and support levels
- demonstrated delivery and implementation of planned systems and services that satisfy stakeholders and users
- comparative statistics on volume and breadth of intelligence shared
- the level and types of our activities to discover and understand crime impacting Australia
- the level, types and results of our responses to disrupting serious and organised crime
- annual stakeholder survey results that form an overall assessment against the performance criteria.<sup>19</sup>

1.17 For example, the category titled Connect 1 states that the performance criterion is: 'Existing ACIC systems and services are accessible, used and reliable'.<sup>20</sup> While the corporate plan and PBS suggest methods in which the ACIC may seek to identify results related to that goal, such as surveys or comparative multi-year statistics, it does not identify what the specific targets are for the ACIC.<sup>21</sup> Further, the information provided in the performance statement do not make clear which statistics are to be used for assessing performance, as opposed to information provided as additional explanation or evidence. The approach applied to Connect 1 is reproduced across most performance criteria set for the ACIC.

1.18 Out of ten performance criteria, three were reported to be 'partially met'.<sup>22</sup> These criteria included:

- Connect 1: Existing ACIC systems and services are accessible, used and reliable;<sup>23</sup>

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18 *ACIC Annual Report 2017–18*, p. 22.

19 *Portfolio Budget Statement 2017-18*, p. 82.

20 *ACIC Annual Report 2017–18*, p. 42.

21 Corporate Plan, p. 20; *Portfolio Budget Statement 2017-18*, p. 82.

22 *ACIC Annual Report 2017–18*, pp. 20–56.

23 *ACIC Annual Report 2017–18*, pp. 42–47.

- Connect 2: The delivery and implementation of new and enhanced ACIC systems and satisfies the needs of stakeholders and users;<sup>24</sup> and
- Connect 4: The ACIC builds, coordinates and maintains strong and collaborative relationships with domestic and international partners.<sup>25</sup>

1.19 Discussion of each of the relevant criterion is accompanied by supporting data and statistics, detailing information such as relevant projects or products delivered, strategic and operational insights provided to partner agencies, reports completed and usage of ACIC-owned systems. As noted above, it is unclear whether this information is presented as evidence demonstrating that the performance criterion was met or for another purpose.

1.20 As a result of the lack of clarity regarding the specific methods used to measure performance, it is difficult to ascertain whether the ACIC has met its performance criteria or to what extent it has not met the criteria. This is demonstrated in the three 'partially met' performance criteria, where it is uncertain to what extent the ACIC failed to meet the criteria.

1.21 The committee is thus unable to make a clear assessment of whether the ACIC has met or has not met its performance criteria based on the information provided in the report. As previously noted by the committee, the importance of clear performance reporting in annual reports is necessary to 'provide sufficient information and analysis for the Parliament to make a fully informed judgement on department performance.'<sup>26</sup>

1.22 This view has been supported by the ANAO, which stated in a 2013 report on performance measurement and reporting in Australian government agencies:

Performance reporting is most effective in informing the government, the Parliament, and the public when based on clearly expressed outcome statements, program objectives, deliverables and KPIs...[There is a] need for focused and clear outcome statements and well defined program objectives as important in allowing the development of appropriate KPIs. Entities' periodic review of both outcomes and objectives, together with adherence to Finance guidance, will contribute to meeting the need for focus, clarity and well defined outcome statements and program objectives.<sup>27</sup>

1.23 The committee encourages all portfolio agencies to clearly state whether a performance criteria is met or not, and clearly present supporting evidence.

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24 *ACIC Annual Report 2017–18*, pp. 48–50.

25 *ACIC Annual Report 2017–18*, pp. 54–56.

26 Department of Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies, and other Non-Corporate Commonwealth Entities*, 25 June 2015, p. 4.

27 Australian National Audit Office, *The Australian Government Performance Measurement and Reporting Framework – Pilot Project to Audit Key Performance Indicators*, Report No. 28 2012–13, 23 April 2013, p. 20.

### ***Biometric Identification Services project***

1.24 The Biometric Identification Services (BIS) project was a platform designed to replace the National Automated Fingerprint Identification System and intended to enable a national facial recognition platform for law enforcement agencies across the Commonwealth, states and territories. A discussion of the background to the project can be found in the Parliamentary Joint Committee on Law Enforcement (PJCLE) report *Examination of the Australian Criminal Intelligence Commission Annual Report 2016-17*.<sup>28</sup>

1.25 Eighteen months after the BIS project development contract was awarded to NEC Australia, it was reported in January 2018 that the project was significantly delayed and experiencing budgetary problems. The ACIC subsequently announced the discontinuance of the BIS project due to the delays, and cancelled the contract with NEC by mutual agreement in June 2018.<sup>29</sup>

1.26 At the request of the ACIC, the ANAO conducted an audit and published a report on the ACIC's handling of the BIS project on 21 January 2019, considering issues such as the procurement process and management of the project.<sup>30</sup> The ANAO found that, while the BIS procurement process was compliant with the Commonwealth Procurement Rules and ICT Investment Approval requirements, the administration of the project thereafter was 'deficient in almost every respect' which contributed to the project continuously missing deadlines.<sup>31</sup> It found that the financial management of the BIS project was poor, and raised concerns about the ACIC being unable to definitively state how much had been spent in total on the project, in addition to a one-off 'goodwill' payment to NEC totalling \$2.9 million that was not linked to any contractual milestone.<sup>32</sup> The ANAO reported that total expenditure on the discontinued project amounted to \$34 million, having achieved none of the project deliverables or milestones.<sup>33</sup>

1.27 The PJCLE expressed concern in its report regarding the management and cancellation of the BIS project. It noted that there was a significant cost to the Commonwealth, including approximately \$26 million which would not be recouped and the resulting renegotiation of contracts for other related projects.<sup>34</sup> That committee acknowledged, however, that the ACIC appeared willing to learn from the

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28 Parliamentary Joint Committee on Law Enforcement, *Examination of the Australian Criminal Intelligence Commission Annual Report 2016-17*, April 2019, pp. 33–39 ('PJCLE report').

29 PJCLE report, p. 34.

30 See: Australian National Audit Office, *The Australian Criminal Intelligence Commission's Administration of the Biometric Identification Services Project*, Audit-General Report No. 24 2018–19, 21 January 2019 ('ANAO report').

31 ANAO report, p. 8.

32 ANAO report, p. 9.

33 ANAO report, p. 8.

34 PJCLE report, p. 39.

experience, as evidenced by the self-initiated request to the ANAO for an audit, and stated that it would monitor the agency's response to the audit report.<sup>35</sup>

1.28 In the 2017–18 ACIC annual report, very little mention is made of the BIS project or how it was funded. The BIS project fell under performance criterion 'Connect 2: The delivery and implementation of new and enhanced ACIC systems and services satisfied the needs of stakeholders and users', which was reported to be 'partially met'.<sup>36</sup> The report stated:

Following consultation with law enforcement partners, we determined the benefits of continuing the project no longer outweighed the costs and risks for our agency and partner agencies, and that the current National Automated Fingerprint Identification System (NAFIS) remains fit for purpose.<sup>37</sup>

1.29 In its discussion of its performance, the ACIC recognised the impact of the discontinuance of the BIS project on its stakeholder survey, which is a measure of performance for the criterion. The ACIC stated that it had learned a number of critical lessons from the experience and identified issues such as:

- the need to improve communication with stakeholders and manage engagement at the portfolio/agency level rather than on a project level, which had prompted the establishment of a dedicated Technology Collaboration and Coordination Unit to build and develop stakeholder relationships effectively;
- building capacity to more effectively deliver project, program and portfolio outcomes through the Enterprise Program Management Office, which would also respond to findings of reviews and audits and implement refined practices and processes accordingly;
- managing projects more effectively and developing a user-centric approach which would adopt processes that meet the Digital Service Standard; and
- strengthening governance of all projects by including stakeholders in planning and governance at all levels during project management.<sup>38</sup>

1.30 The ACIC annual report provided information about the ANAO audit in its statement on reports on its operation by the Auditor-General, a Parliamentary Committee or the Commonwealth Ombudsman, as required by section 17AG(3)(b) of the PGPA Act. However, the statement does not provide context or reasons for the audit.<sup>39</sup>

1.31 Very little information is provided in the annual report regarding the financial performance of the contract. The financial statements provide limited insight into

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35 PJCLE report, p. 39.

36 *ACIC Annual Report 2017–18*, p. 48.

37 *ACIC Annual Report 2017–18*, p. 49.

38 *ACIC Annual Report 2017–18*, p. 50.

39 *ACIC Annual Report 2017–18*, p. 169.

where and how appropriations were made on the BIS project. Further, the financial statements provide no explanation regarding the impact of the project's closure on the ACIC's other programs and overall budget.

### ***Financial performance***

1.32 The ACIC reported an operating deficit of \$16.325 million for the 2017–18 financial year.<sup>40</sup> The agency received \$88.46 million in operating appropriations, \$2.64 million in departmental capital budget expenses, and \$0.580 million for an equity injection.<sup>41</sup>

1.33 The annual report also provides a breakdown of the operating appropriation, noting that \$79.607 million was provided in base funding with the remainder being tied to specific projects. Tied funding projects included: funding for the Australian Gangs Intelligence Coordination Centre; enhancing security at all office sites and personnel security capabilities; developing and enhancing cybercrime intelligence and analysis capability; development of the National Order Reference System; supporting the Australian Cyber Security Centre; and establishing a national database of rejected applications for Working with Children Checks.<sup>42</sup>

1.34 In relation to the ACIC's own source income, it collected \$124.265 million. This included \$97.737 million as a result of the provision of National Policing Information Services, \$10.379 million received from the Proceeds of Crime Trust Account, \$1.385 million in resources received free-of-charge, and \$14.764 million relating to the provision of services.<sup>43</sup> Services provided included biometric systems for the recognition of fingerprints and DNA, identification systems for missing persons and disaster victims, protection services to assist with managing child offenders, and the national police history checking service.<sup>44</sup>

### ***Conclusion***

1.35 As discussed earlier, the committee encourages the ACIC to clearly state whether a performance criteria has been met or not, and clearly present supporting evidence. This would assist the committee to reach a fully informed judgement about the ACIC's performance over each financial year. The committee reiterates the ANAO's advice stating that clear tools to measure agency performance are crucial in enabling effective oversight of the functions of government.

1.36 The committee also observes that the annual report contains limited information regarding the cessation of the BIS project. Given the significant expenditure on the project and its failure to meet any deliverables or milestones,

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40 *ACIC Annual Report 2017–18*, p. 189.

41 *ACIC Annual Report 2017–18*, p. 190.

42 *ACIC Annual Report 2017–18*, p. 190.

43 *ACIC Annual Report 2017–18*, p. 191.

44 *ACIC Annual Report 2017–18*, p. 40.

further information about the project, its management, costs and the reasons for its discontinuance would be beneficial in avoiding similar problems in the future.

1.37 Noting the comments made by the PJCLE on the BIS project, this committee will continue to monitor future project management by the ACIC and the performance reporting of such projects in annual reports.

1.38 Notwithstanding these issues, the committee finds the report to be 'apparently satisfactory'.

### **Australian Transaction Reports and Analysis Centre**

1.39 AUSTRAC provided its 2017–18 report to the minister on 26 September 2018, which was subsequently tabled in the House of Representatives and the Senate on 12 November 2018.

1.40 AUSTRAC was established under the *Financial Transaction Reports Act 1988*, and continues in existence under section 209 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). AUSTRAC's stated purpose is to:

[P]rotect Australia from financial crime and terrorism financing, and contribute to the growth and resilience of Australia's economy, by discovering, understanding and disrupting criminal activity, through our intelligence and regulatory programs.<sup>45</sup>

1.41 Prior to December 2017, AUSTRAC was an agency in the Attorney-General's portfolio. As a result of machinery-of-government changes, AUSTRAC was moved into the Home Affairs portfolio, under the Minister for Home Affairs and the Minister for Law Enforcement and Cyber Security.<sup>46</sup>

1.42 AUSTRAC has one outcome and one program based on the *Corporate Plan 2017–21* (Corporate Plan) and the *Portfolio Budget Statement 2017–18* (PBS).<sup>47</sup>

1.43 The Chief Executive Officer (CEO) is the accountable authority of AUSTRAC.<sup>48</sup>

#### ***Chief Executive Officer's review***

1.44 Ms Nicole Rose PSM, CEO, provided the annual review for the 2017–18 reporting period. Ms Rose commenced her role as AUSTRAC's CEO on 13 November 2017.<sup>49</sup>

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45 *Australian Transaction and Reporting Analysis Centre Annual Report 2017–18*, p. 14 ('AUSTRAC Annual Report 2017–18') p. 15.

46 *AUSTRAC Annual Report 2017–18*, p. 15.

47 *Australian Transaction and Reporting Analysis Centre Corporate Plan 2017–21* ('AUSTRAC Corporate Plan'), pp. 16–20; *Portfolio Budget Statement 2017–18*, pp. 149–151.

48 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, section 209(4)(b).

49 *AUSTRAC Annual Report 2017–18*, p. 8.

1.45 Ms Rose opened the annual review by stating that AUSTRAC has continued its position as Australia's financial intelligence unit and anti-money laundering and counter-terrorism financing (AML/CTF) regulator to pursue its vision of 'a financial system free from criminal abuse'.<sup>50</sup>

1.46 The CEO stated that the establishment of the Home Affairs portfolio had resulted in increased opportunities for AUSTRAC to engage with the public and private sectors. Increased challenges in combating financial crime, including the rise of cryptocurrencies, enabled AUSTRAC to collaborate with these partners via projects such as the Fintel Alliance, the world-first partnership to combat AML/CTF, and the multi-agency Serious Financial Crime Taskforce (SFCT) which identifies and addresses serious and complex financial crimes.<sup>51</sup> AUSTRAC also contributed to the work of other Commonwealth and state/territory agencies, including the federal Department of Human Services and the Western Australian Joint Organised Crime Taskforce.<sup>52</sup>

1.47 Other achievements during the reporting period noted by the CEO included:

- instituting landmark civil penalty proceedings in the Federal Court of Australia against the Commonwealth Bank of Australia (CBA) for multiple contraventions of the AML/CTF Act, which resulted in the court ordering the CBA to pay a \$700 million penalty, the largest civil penalty in Australian corporate history;<sup>53</sup>
- publishing and disseminating three risk assessments to assist in educating the financial sector's understanding of AML/CTF capabilities and addressing vulnerabilities within the industry and its products;<sup>54</sup>
- collaborating with regulated entities to establish a 'Community of Practice' and redesign the annual AML/CTF compliance reports;<sup>55</sup>
- alongside the Attorney-General's Department and the Department of Home Affairs, contributing to legislative reform to the AML/CTF Act, addressing issues such as the regulation of digital currency, enhancing information-sharing capabilities between related bodies corporate, and expanding the range of regulatory offences;<sup>56</sup> and
- engagement with international partners, including hosting a number of conferences and visits from overseas counterparts.<sup>57</sup>

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50 *AUSTRAC Annual Report 2017–18*, p. 9.

51 *AUSTRAC Annual Report 2017–18*, p. 9.

52 *AUSTRAC Annual Report 2017–18*, pp. 9–10.

53 *AUSTRAC Annual Report 2017–18*, p. 10.

54 *AUSTRAC Annual Report 2017–18*, p. 10.

55 *AUSTRAC Annual Report 2017–18*, p. 10.

56 *AUSTRAC Annual Report 2017–18*, p. 11.

57 *AUSTRAC Annual Report 2017–18*, pp. 11–12.

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### ***Performance reporting***

1.48 AUSTRAC's performance reporting scheme comprises six performance criteria. These six performance criteria are measured using a number of different methods, which are outlined in the annual report.<sup>58</sup> AUSTRAC does not appear to use specific KPI targets. Instead, the PBS indicates that AUSTRAC measures performance by using a 'range of case studies and quantitative and qualitative reporting'.<sup>59</sup>

1.49 When read alongside the PBS, the annual report appears to provide a 'clear read' in relation to its performance criteria.

1.50 AUSTRAC reported that all performance criteria had been fully achieved for the reporting period. The annual report also noted that all performance criteria established by the PBS were achieved as well.

1.51 Each performance criterion is accompanied with supporting material demonstrating how it was met. For example, the performance criterion titled Corporate Plan Performance Criterion 1.1: Our public and private sector partners readily access intelligence that is of value, included evidence to support this finding:<sup>60</sup>

- AUSTRAC's continued work on the Fintel Alliance, a public-private partnership established in March 2017 to develop shared intelligence and deliver innovative solutions to protect the Australian economy from criminal abuse, with additional information on related Fintel Alliance projects such as the online money mules project and the child sexual exploitation project;<sup>61</sup>
- 136,225,100 reports from industry over the reporting period, representing a 21.6 per cent increase on the previous reporting period;<sup>62</sup>
- contributing to a number of multi-agency task forces, including the SFCT;<sup>63</sup>
- case studies of AUSTRAC's information being used to inform public partners, including Operation Astatine, which focussed on a NSW-based criminal syndicate involved in drug trafficking and tobacco smuggling;<sup>64</sup> and
- the production of risk assessments that identify and evaluate the money laundering or terrorism financing risks posed by financial sectors and products, including advice released by the Minister for Justice in July 2017

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58 *AUSTRAC Annual Report 2017–18*, pp. 30–31.

59 *Portfolio Budget Statement 2017-18*, p. 151.

60 *AUSTRAC Annual Report 2017–18*, p. 33.

61 *AUSTRAC Annual Report 2017–18*, pp. 33–34.

62 *AUSTRAC Annual Report 2017–18*, p. 34.

63 *AUSTRAC Annual Report 2017–18*, pp. 34–35.

64 *AUSTRAC Annual Report 2017–18*, pp. 34–36.

regarding risks in the securities and derivatives sector, which were reported to have been responded to meaningfully by the industry.<sup>65</sup>

1.52 As noted above, AUSTRAC does not have specific KPI targets for assessing performance. It is therefore reliant on using a wider range of achievements to assess the performance of the agency. As observed in the discussion regarding the ACIC, this can be challenging for the Senate in determining whether agencies have met their performance criteria. Specific KPI targets may assist in promoting a fulsome understanding of AUSTRAC's performance.

1.53 The performance reporting in the annual report is otherwise highly detailed and provides illustrative examples of how AUSTRAC has sought to achieve its performance criteria, even where specific KPIs are not present. The examples demonstrate a clear link with the relevant performance criterion, and are presented clearly and concisely.

### ***Financial performance***

1.54 AUSTRAC reported a net operating surplus of \$2.2 million for the 2017–18 financial year. This was compared with the 2016–17 reporting period which resulted in a net operating deficit of \$8.7 million.<sup>66</sup> The net operating surplus includes \$4.9 million of unfunded depreciation and amortisation expenses. Total revenue for the reporting period was \$70 million, representing a \$7.9 million increase over the previous year's results.<sup>67</sup>

1.55 Expenses for AUSTRAC were reported to amount to a total of \$67.763 million, which includes employee benefits, supplier costs, and write-down and impairment of intangible assets.<sup>68</sup> In relation to employee benefits, the annual report explains that there was a variance in the budgeted cost compared to the actual expenditure. This was due to two factors: firstly, in 2017, AUSTRAC engaged in a program in which contractors were converted to APS staff, which resulted in a higher cost for employee benefits than originally budgeted. Secondly, due to new funding measures announced in the Mid-Year Economic and Fiscal Outlook (MYEFO) 2017–18, additional resourcing was engaged to meet demand.<sup>69</sup>

1.56 AUSTRAC also reported a total expenditure on legal services for the 2017–18 financial year as \$3,459,004 (exclusive of GST), which includes the cost of providing internal and external legal services.<sup>70</sup>

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65 *AUSTRAC Annual Report 2017–18*, pp. 36–37.

66 *AUSTRAC Annual Report 2017–18*, p. 57.

67 *AUSTRAC Annual Report 2017–18*, p. 57.

68 *AUSTRAC Annual Report 2017–18*, p. 75.

69 *AUSTRAC Annual Report 2017–18*, p. 75.

70 *AUSTRAC Annual Report 2017–18*, p. 57.

**Conclusion**

1.57 The committee commends AUSTRAC on its informative and clearly expressed annual report. While it notes that the lack of specific KPIs can make it difficult for agencies to measure performance, AUSTRAC has provided explanations of its activities in meeting performance criteria, and demonstrated how it has met these criteria with illustrative and clearly related examples of its work. AUSTRAC's reporting is an excellent example to all agencies without specific KPIs of how effective performance reporting can be achieved in circumstances where performance criteria do not have specific targets or refer to broad outcomes.

1.58 The committee finds the annual report to be 'apparently satisfactory'.



## Chapter 2

### Reports on the operation of acts and programs

2.1 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 required to include them in its report on the examination of annual reports; however, as on previous occasions, the committee has chosen to examine such reports. The committee has examined the annual report of the Australian Information Commissioner's activities in relation to digital health for 2017–18.

#### Digital health

2.2 Subsection 106(1) of the *My Health Records Act 2012* (My Health Records Act) requires that the commissioner prepare a report on the commissioner's activities during the financial year relating to the My Health Record system. Subsection 106(2) of the My Health Records Act states that the report must include the following information:

- (a) statistics of the following:
  - (i) complaints received by the Commissioner in relation to the My Health Record system;
  - (ii) investigations made by the Commissioner in relation to My Health Records or the My Health Record system;
  - (iii) enforceable undertakings accepted by the Commissioner under this Act;
  - (iv) proceedings taken by the Commissioner in relation to civil penalty provisions, enforceable undertakings or injunctions; and;
- (b) any other matter prescribed by the regulations.

2.3 Section 30 of the *Healthcare Identifiers Act 2010* (Healthcare Identifiers Act) also states that the commissioner must prepare a report on its compliance and enforcement activities under the Healthcare Identifiers Act during the relevant financial year.

2.4 The commissioner must provide a copy of the reports to the minister and the ministerial council by no later than 30 September at the end of the relevant financial year. The minister is then required to table a copy in each House of Parliament within 15 sitting days after the commissioner provides the report to the minister.<sup>1</sup>

2.5 The report combines the requirements from both the My Health Records Act and the Healthcare Identifiers Act into one report. The report was submitted to the minister on 28 September 2018 and received by the minister on 17 October 2018. The report was then tabled by the minister in both the House of Representatives and the

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1 *My Health Records Act 2012* (My Health Records Act), subsections 106(3) and (4); *Healthcare Identifiers Act 2010* (Healthcare Identifiers Act), subsections 30(2) and (3).

Senate on 5 December 2018 in accordance with the requirements of both of the relevant Acts.<sup>2</sup>

2.6 The report sets out the commissioner's digital health compliance and enforcement activity during 2017–18. The report states that during the reporting period the Office of the Australian Information Commissioner (OAIC) received 28 mandatory data breach notifications, which recorded 42 separate breaches affecting a total of 65 healthcare recipients, 47 of whom had a My Health Record at the time of the breaches. Four of the notifications remained open at the end of the reporting period.

2.7 The OAIC received eight complaints regarding the My Health Record system, and no complaints about the Healthcare Identifiers Service (HI Service).<sup>3</sup>

2.8 Section 40(2) of the *Privacy Act 1988* states that the commissioner has the discretion to investigate an act or practice that may be an interference with privacy, on the commissioner's own initiative. No investigations were initiated or conducted during the reporting period.<sup>4</sup>

2.9 The OAIC conducted one assessment relating to the My Health Record system during 2017–18, and continues to progress one assessment that began in the previous reporting period.<sup>5</sup>

2.10 The commissioner also reported that the OAIC had carried out a program of digital health-related work, including:

- a briefing by the Australian Digital Health Agency and the Department of Health in relation to the process for the national rollout of optional opt-out of the My Health Record planned for 2018;
- providing a submission to HealthConsult regarding the development of the *Framework to guide the secondary use of My Health Record system data*;
- the provision of advice to stakeholders in relation to privacy-related matters regarding the My Health Record system;
- the development, revision and update of guidance materials for a broad range of audiences in relation to the My Health Record system and the upcoming commencement of the opt-out period, including multimedia and new 'frequently asked questions'; and
- participating in the Privacy and Security Advisory Committee.<sup>6</sup>

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2 See *Appendix 1*.

3 *Annual Report of the Australian Information Commissioner's Activities in relation to Digital Health 2017–18*, p. 3.

4 *Annual Report of the Australian Information Commissioner's Activities in relation to Digital Health 2017–18*, p. 8.

5 *Annual Report of the Australian Information Commissioner's Activities in relation to Digital Health 2017–18*, pp. 8–9.

2.11 No enforceable undertakings accepted by the commissioner were reported for the reporting period. Additionally, the annual report does not report any proceedings taken by the commissioner in relation to civil penalty proceedings, enforceable undertakings or injunctions.

**Table 1: Summary of activities undertaken by OAIC in 2017–18 in relation to My Health Record and HI Service<sup>7</sup>**

<i>Activity</i>	<i>My Health Record</i>	<i>HI Service</i>
Telephone enquiries	9	1
Written enquiries	8	1
Complaints finalised	5	0
Policy advices (incl. submissions)	13	0
Assessments completed or in progress	2	1
Mandatory data breach notifications received	28	N/A
Media enquiries	1	0

2.12 The committee is satisfied that the annual report has met the requirements of both the My Records Act and the Healthcare Identifiers Act.

**Senator Amanda Stoker**  
**Chair**

6 *Annual Report of the Australian Information Commissioner's Activities in relation to Digital Health 2017–18*, p. 3.

7 Source: *Annual Report of the Australian Information Commissioner's Activities in relation to Digital Health 2017–18*, p. 6.



## Appendix 1

### Reports tabled during the period 1 November 2018 and 31 April 2019 and referred to the committee

Department/authority/ operation of an act or program	Date submitted to minister/date received by minister	Date tabled in Senate (received in Senate out of session)	Date tabled in the House of Reps
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#### *Attorney-General's Portfolio*

<i>Department/authority – Report</i>			
Australian Financial Security Authority— Report for 2017-2018, including reports on the operation of the <i>Bankruptcy Act 1966</i> and <i>Personal Property Securities Act 2009</i> .	4.10.2018/ 15.10.2018	12.11.2018	22.10.2018
High Court of Australia—Report for 2017-18.	28.11.2018/ 7.12.2018	(12.12.2018) 12.2.2019	12.2.2019
Independent National Security Legislation Monitor—  - Report for 2017-18.  - Report to the Prime Minister: the prosecution and sentencing of children for terrorism.	<i>n/a</i>	2.4.2019	2.4.2019
<i>Operation of an act/program</i>			
Australian Human Rights Commission— Reports—  - No. 123—AG v Commonwealth (Department of Foreign Affairs and Trade) and Finite Group APAC Pty Ltd.  - No. 124—AM v Commonwealth of Australia (Department of Home Affairs).  - No. 125—Ms Jessica Smith v Redflex Traffic Systems Pty Ltd.  - No. 126—CW v Commonwealth of Australia (Department of Home Affairs).	15.11.2018/ 15.11.2018	28.11.2018	28.11.2018

<i>Healthcare Identifiers Act 2010 and My Health Records Act 2012—Australian Information Commissioner—Activities in relation to digital health—Report for 2017-18.</i>	28.9.2018/ 17.10.2018	5.12.2018	5.12.2018
Australian Law Reform Commission—Report no. 134—Integrity, fairness and efficiency: an inquiry into class action proceedings and third-party litigation funders—Final report, dated December 2018.	22.1.2019/ 22.1.2019	(24.1.2019) 12.2.2019	12.2.2019
Australian Law Reform Commission—Report no. 135—Family law for the future: An inquiry into the family law system— - Final report, dated March 2019. - Summary report, dated March 2019.	31.3.2019/ 3.4.2019	(10.4.2019) 2.7.2019	4.7.2019
<i>Royal Commission – Report</i> <i>Note: There is no legislative requirement to table these reports</i>			
Institutional Response to Child Sexual Abuse—Royal Commission—Implementation of recommendations from the final report—Annual progress report.	11.12.2018/ 12.12.2018	(14.12.2018) 12.2.2019	12.2.2019
Misconduct in the banking, superannuation and financial services industry—Royal Commission—Final report— - Volume 1 - Volume 2: Case studies - Volume 3: Appendices	<i>n/a</i>	(4.2.2019) 12.2.2019	12.2.2019

Department/authority/ operation of an act or program	Date submitted to minister/date received by minister	Date tabled in Senate (received in Senate out of session)	Date tabled in the House of Reps
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*Home Affairs portfolio*

<i>Department/authority – Report</i>			
Australian Transaction Reports and Analysis Centre (AUSTRAC)—Report for 2017-18.	26.09.2018/ 26.09.2018	12.11.2018	12.11.2018
Department of Home Affairs—Report for 2017-18.	28.09.2018/ 28.09.2018	12.11.2018	18.10.2018
Australian Institute of Criminology—Report for 2017-18.	28.09.2018/ 28.09.2018	12.11.2018	18.10.2018
Australian Criminal Intelligence Commission—Report for 2017-18.	28.09.2018/ 28.09.2018	12.11.2018	18.10.2018
Australian Security Intelligence Organisation (ASIO)—Report for 2017-18.	26.09.2018/ 26.09.2018	12.11.2018	18.10.2018
<i>Australian Crime Commission Act 2002</i> —Board of the Australian Criminal Intelligence Commission—Report for 2016-17.	21.1.2019/ 21.1.2019	2.4.2019	20.2.2019
<i>Operation of an act/program</i>			
<i>Migration Act 1958</i>			
<i>Migration Act 1958</i> —Section 486O—Assessment of detention arrangements— - Commonwealth Ombudsman’s reports—Report 21 of 2018. - Government response to Commonwealth Ombudsman’s report, dated 20 November 2018.	6.11.2018/ 12.11.2018	26.11.2018	26.11.2018
<i>Migration Act 1958</i> —Section 486O—Assessment of detention arrangements— - Commonwealth Ombudsman’s reports—Report 1 of 2019. - Government response to Commonwealth Ombudsman’s report, dated 11 February 2019.	21.1.2019/ 8.2.2019	13.2.2019	13.2.2019

<p><i>Migration Act 1958</i>—Section 486O—Assessment of detention arrangements—</p> <ul style="list-style-type: none"> <li>- Commonwealth Ombudsman's reports—Report no. 2 of 2019.</li> <li>- Government response to Ombudsman's reports, dated 11 February 2019</li> </ul>	4.2.2019/ 8.2.2019	2.4.2019	21.2.2019
<i>Other acts/programs</i>			
<p><i>Criminal Code Act 1995</i>—Control orders, preventative detention orders, and continuing detention orders—Report for 2017-18.</p>	3.12.2018/ 3.12.2018	(20.12.2018) 12.2.2019	12.2.2019
<p><i>Telecommunications (Interception and Access) Act 1979</i>—Commonwealth Ombudsman's inspection of the Australian Federal Police—Compliance with journalist information warrant provisions, dated January 2019.</p>	15.11.2018/ 15.11.2018	(21.2.2019) 2.4.2019	21.2.2019
<p><i>Crimes Act 1914</i>—Reports for 2017-18—</p> <ul style="list-style-type: none"> <li>- Authorisations for the acquisition and use of assumed identities—Australian Criminal Intelligence Commission.</li> <li>- Authorities for assumed identities—Department of Home Affairs.</li> <li>- Witness identity protection certificates—Department of Home Affairs</li> </ul>	21.1.2019/ 21.1.2019	2.4.2019	20.2.2019