

# CHAPTER 1

## ANNUAL REPORTS OF STATUTORY AUTHORITIES

1.1 The following reports of statutory authorities for the financial year 2007-08 were referred to the committee for examination and report:

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

- Administrative Appeals Tribunal
- Administrative Review Council
- Audio-Visual Copyright Society Limited (Screenrights)
- Australian Crime Commission<sup>1</sup>
- Australian Government Solicitor
- Australian Institute of Criminology and Criminology Research Council
- Australian Law Reform Commission
- Australian Security Intelligence Organisation
- Commonwealth Ombudsman<sup>2</sup> [Prime Minister and Cabinet portfolio]
- Copyright Agency Limited
- Family Court of Australia
- Federal Court of Australia
- Federal Magistrates Court
- High Court of Australia
- Human Rights and Equal Opportunity Commission (now Australian Human Rights Commission)
- Insolvency and Trustee Service Australia
- National Capital Authority
- National Native Title Tribunal
- Classification Board and Classification Review Board
- Office of Parliamentary Counsel

### **Immigration and Citizenship Portfolio**

- Migration Agents Registration Authority

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<sup>1</sup> Also stands referred to the Joint Committee on the Australian Crime Commission, under the *Australian Crime Commission Act 2002*.

<sup>2</sup> Forwarded to the Finance and Public Administration Committee also.

- Migration Review Tribunal
- Refugee Review Tribunal

1.2 In each of these reports, the committee's custom has been to select a small number of reports for closer examination. On this occasion, the committee decided to select the annual reports of the following agencies:

- Australian Security Intelligence Organisation
- Human Rights and Equal Opportunity Commission
- Migration Agents Registration Authority
- National Native Title Tribunal

### **Australian Security Intelligence Organisation**

1.3 The annual report of the Australian Security Intelligence Organisation (ASIO) was tabled in the Senate on 11 November 2008. As indicated in the letter of transmittal, this report is provided to the Attorney-General in an unclassified form for tabling, while a classified annual report is also provided to the Attorney-General in accordance with section 94 of the *Australian Security Intelligence Organisation Act 1979*.

1.4 ASIO's role as Australia's security service limits the information which is included in the unclassified annual report. Subsection 94(4) of the Act allows the Minister to make deletions from the classified report 'in order to avoid prejudice to security, the defence of the Commonwealth, the conduct of the Commonwealth's international affairs or the privacy of individuals.'

1.5 The level of scrutiny available with regard to ASIO's operations was the subject of questioning during the recent budget estimates 2009-10 hearings. The Director-General of Security described the role of the unclassified report within the broader accountability regime for the organisation.

**Senator LUDLAM**—How do the Australian public know if they are getting value for money? What are your distinct outputs? How are we measuring the success of the agency, particularly benchmarked against big increases in funding?

**Mr Irvine**—I frankly think that is a difficult question to answer to the full satisfaction of the Australian public in the sense that, necessarily, ASIO's activities and its successes cannot be made public. So what the system has in place is, first of all, a form of reporting which is public. The annual report of ASIO is put forward in an unclassified form for the public. That necessarily tends to speak in generalities. For the government itself, there is a much more complete report of a highly classified nature. The second area of oversight, if you like, is through the Joint Parliamentary Committee on Intelligence and Security, which looks into the management and administration of ASIO. There are other measures of oversight that ensure or add substance to the notion of assurance to the Australian public that ASIO is indeed working effectively and with appropriate levels of probity.

**Senator LUDLAM**—I am a little more familiar with the role of the joint parliamentary committee, but can you describe for us in broad terms the classified reporting obligations that you have, presumably to the Attorney-General? What sort of form do they take?

**Mr Irvine**—In essence it takes the form of a typical Public Service annual report but sometimes it goes into quite considerable detail about cases and statistics that perhaps cannot be made public and so on.<sup>3</sup>

1.6 It was noted in the annual report that ASIO is the only agency within the Australian intelligence community that produces a publicly available annual report.<sup>4</sup>

1.7 The committee found the report for 2007-08 adhered to the reporting requirements under section 94 of the ASIO Act<sup>5</sup> and followed the requirements for annual reporting. Taking into account the limitations placed on the agency with regards to public reporting, the annual report provided a good account of activities, initiatives and financial position for the year under review.

1.8 The one-page summary of key statistics for 2007-08 in the introductory section of the report was a useful inclusion. It provided quick access to key items of continuing interest, including staffing numbers and budget, and a snapshot of the ASIO's work throughout the year in review, often with a comparative figure for the previous year.<sup>6</sup>

1.9 The report stated that terrorism continues to pose a significant security threat to Australia and counter-terrorism continues to be a major priority for the organisation. "Terrorism.....currently commands the majority of ASIO's operational attention and resources."<sup>7</sup> However, ASIO is also building capability to meet the growing demands in the areas of countering espionage and foreign intelligence.<sup>8</sup> It was reported that ASIO has boosted the level of resources devoted to counter-espionage work and plans to build further capability through to 2010-11.<sup>9</sup>

1.10 ASIO reported on the progress of the Next Generation Border Security (NGBS) initiative. ASIO has worked with the Department of Immigration and Citizenship on this initiative which is aimed at improving service delivery related to border security through better identification and prevention of entry to Australia of

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3 *Committee Hansard*, 26 May 2009, p.138.

4 *Australian Security Intelligence Organisation Report to Parliament 2007-08*, p. 61.

5 *Australian Security Intelligence Organisation Report to Parliament 2007-08*, p. 122.

6 *Australian Security Intelligence Organisation Report to Parliament 2007-08*, p. viii

7 *Australian Security Intelligence Organisation Report to Parliament 2007-08*, p. 3.

8 *Australian Security Intelligence Organisation Report to Parliament 2007-08*, p. vii.

9 *Australian Security Intelligence Organisation Report to Parliament 2007-08*, p. 7.

people of security concern.<sup>10</sup> The report advised that the implementation of the NGBS is well advanced and the committee looks forward to further updates.

1.11 The report notes an increase in ASIO's involvement in criminal and legal litigation during 2007-08. This includes the provision of information to support terrorism prosecutions, civil litigation and review of administrative decisions.<sup>11</sup> In response to this growing trend, a Legal Division was created in July 2007.<sup>12</sup>

1.12 Staffing numbers have continued to increase during the reporting period. The ASIO workforce grew from 1356 to 1492 during 2007-08 but was still below the target growth figure of 170 for the year. However, ASIO reported that the organisation was still confident of achieving its target of 1860 by 2010-11.<sup>13</sup>

1.13 The growth in staffing has put pressure on ASIO's office accommodation and a new central office building was approved in the 2007-08 Federal Budget. The new building is scheduled for completion by 2012.<sup>14</sup>

1.14 The total price of ASIO's outputs increased by \$69.345m in 2007-08. It was reported that the agency received a significant equity injection of \$159m during the year which allowed ASIO to continue its major capital investment activities.<sup>15</sup>

1.15 The committee noted that the report referred to several recent reviews and inquiries that ASIO cooperated with during 2007-08. These included the Homeland and Border Security Review (the Smith Review) and the Clarke inquiry into the handling by Australian agencies of investigations following attempted bombings in the United Kingdom in June 2007. The report also provided a summary of the recommendations which related directly to ASIO which came out of the review of interoperability between the Australian Federal Police (AFP) and its national security partners conducted by the Honourable Sir Laurence Street AC KCMG QC. It noted that implementation of these recommendations, working with the AFP and the Commonwealth Director of Public Prosecutions, was well advanced.<sup>16</sup>

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

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10 *Australian Security Intelligence Organisation Report to Parliament 2007-08*, p. 20.

11 *Australian Security Intelligence Organisation Report to Parliament 2007-08*, p. 23.

12 *Australian Security Intelligence Organisation Report to Parliament 2007-08*, p. 24.

13 *Australian Security Intelligence Organisation Report to Parliament 2007-08*, p. 45.

14 *Australian Security Intelligence Organisation Report to Parliament 2007-08*, p. 55.

15 *Australian Security Intelligence Organisation Report to Parliament 2007-08*, p. xiv.

16 *Australian Security Intelligence Organisation Report to Parliament 2007-08*, p. 64.

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## **Australian Human Rights Commission (formerly the Human Rights and Equal Opportunity Commission)**

1.17 The committee commends the Australian Human Rights Commission (AHRC) on a report that is well presented and which provides a good account of the commission's performance and activities for the year in review. The report also clearly articulates the Commission's role and objectives. It includes a review of the 'HREOC21' summit, a planning exercise 'to initiate a AHRC-wide strategic planning process by creating a refreshed vision for AHRC's future and a concrete plan of action that would make the vision happen'.<sup>17</sup> The outcomes from the summit included a new vision and mission, a new strategic plan and a full-time position to implement these.<sup>18</sup>

1.18 The committee notes that a compliance index was not included in the report. While the inclusion of a compliance index is not mandatory, the committee recommends agencies include one as a useful cross reference to the annual reporting requirements.

1.19 The report began with a summary of milestones for the year under review.<sup>19</sup> Amongst the range of items highlighted was the appointment of Ms Elizabeth Broderick as Sex Discrimination Commissioner and Commissioner responsible for Age Discrimination; the reaccreditation of three national Indigenous Legal Advocacy courses of which AHRC is the copyright holder; and the implementation of the Community Partnerships for Human Rights Program, a set of initiatives to assist the achievement of social inclusion for Australia's Muslim communities and to help decrease marginalisation and discrimination on the basis of race or religion.<sup>20</sup>

1.20 Complaints handling forms a significant part of the work of AHRC. The Commission has responsibility for the investigation and conciliation of complaints lodged under federal anti-discrimination and human rights law, and provides information to the public about the law and the complaint process.<sup>21</sup> The annual report provided a detailed account of the Commission's performance in this area and included extensive use of tables and graphs. Additionally, the committee found the use of case studies to illuminate the work of the Complaints Handling Section a useful inclusion in this chapter.

1.21 During 2007-08 the volume of both inquiries and complaints increased. Inquiries increased by 13 per cent from the previous year and 32 per cent in comparison to the average number of enquiries received over the previous four years. The number of complaints for the period increased by 17 per cent from the previous

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17 *Human Rights and Equal Opportunity Commission Annual Report 2007-2008*, p. 1.

18 *Human Rights and Equal Opportunity Commission Annual Report 2007-2008*, p. 2.

19 *Human Rights and Equal Opportunity Commission Annual Report 2007-2008*, pp v-vii.

20 *Human Rights and Equal Opportunity Commission Annual Report 2007-2008*, pp v-vi.

21 *Human Rights and Equal Opportunity Commission Annual Report 2007-2008*, p. 43.

reporting year and 28 per cent in comparison with the average number of complaints over the past four years.<sup>22</sup> Despite these increases, the Commission reported that it had exceeded its targets for the performance standards for timeliness, the conciliation rate and customer satisfaction.<sup>23</sup>

1.22 The report made references to budget pressures impacting on the organisation. The committee notes that the outgoing President, the Honourable John von Doussa QC, expressed concern that budget restraints were 'seriously limiting research and policy initiatives that could otherwise be undertaken to enhance the understanding and enjoyment of human rights in Australia and our near Pacific neighbours.'<sup>24</sup> Similarly, the Race Discrimination Commissioner stated that:

It is with continuing disappointment I note ... that HREOC must continue its works in an environment of ever-diminishing financial resources and staff reductions at the very time that modest budget supplementation could offer such significant benefits to the entire nation.<sup>25</sup>

1.23 The committee considers the annual report of AHRC to be 'apparently satisfactory'.

### **Migration Agents Registration Authority**

1.24 The Migration Agents Registration Authority (MARA) was established to ensure relevant provisions of the *Migration Act 1958* are administered and to regulate the migration advice profession.<sup>26</sup> From 1 July 2009 MARA has been attached to the Department of Immigration and Citizenship as a discrete office.

1.25 As stated in the letter of transmittal, MARA prepares its annual report in accordance with Guidelines for the Presentation of Government Documents to the Parliament and to the extent that it is relevant to its operation, it also complies with the Requirement for Annual Reports for Departments, Executive Agencies and FMA Act Bodies 2008.

1.26 MARA's annual report sets out a clear account of organisational performance for the year under review. Appendix Four presents the performance targets for MARA as provided for in the Deed of Agreement entered into between the Commonwealth and the Migration Institute of Australia (MIA). These targets are referenced to relevant sections in the report.<sup>27</sup>

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22 *Human Rights and Equal Opportunity Commission Annual Report 2007-2008*, p. 43.

23 *Human Rights and Equal Opportunity Commission Annual Report 2007-2008*, pp 44-45.

24 *Human Rights and Equal Opportunity Commission Annual Report 2007-2008*, p. xiii.

25 *Human Rights and Equal Opportunity Commission Annual Report 2007-2008*, p. 131.

26 *Migration Agents Registration Authority 2007-2008 Annual Report*, p. 6.

27 *Migration Agents Registration Authority 2007-2008 Annual Report*, p. 35.

1.27 The committee notes that MARA generally performed well against performance targets. The section of the report dealing with performance in relation to complaints provided detailed data on various aspects of the complaint handling processes, including volume, finalising times, sources and issues. MARA met or exceeded performance targets in the area of complaint finishing times.<sup>28</sup> It was noted in the Executive Officer's report that the complaint handling processes have become more streamlined and flexible, the complaint backlog had been eradicated and processing times are at a record low.<sup>29</sup>

1.28 The report included a summary of progress on the implementation of recommendations of the Commonwealth Ombudsman's report on MARA's complaint handling process which was released in June 2007.<sup>30</sup> MARA accepted all of the Ombudsman's recommendations and reported good progress on their implementation, but acknowledged that further improvements are required.<sup>31</sup>

1.29 Appendix Nine of the report contained a special purpose financial report on MARA for the period 1 July 2003 to 30 June 2008 which received a qualified independent audit report. The qualification related to a carried forward surplus of \$771 240 that had been identified by MIA to be surplus funds from the performance of the statutory functions of MARA that existed at 30 June 2003. The auditor advised that this balance was not audited and did not have an opinion on the accuracy or otherwise of this amount.<sup>32</sup>

1.30 The committee considers the annual report of MARA to be 'apparently satisfactory'.

### **National Native Title Tribunal**

1.31 The annual report of the National Native Title Tribunal outlines the Tribunal's activities during the year, detailing changes in legislation and external factors affecting the Tribunal and forecasts within the native title system, particularly the resolution of native title applications.

1.32 The Tribunal lists its key results, which include an operating surplus of \$2.95 million<sup>33</sup> for 2007-08 and an increase of \$3.08 million in net equity due to

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28 *Migration Agents Registration Authority 2007-2008 Annual Report*, p. 15.

29 *Migration Agents Registration Authority 2007-2008 Annual Report*, p. 5.

30 *Migration Agents Registration Authority 2007-2008 Annual Report*, pp 36-39.

31 *Migration Agents Registration Authority 2007-2008 Annual Report*, p. 36.

32 *Migration Agents Registration Authority 2007-2008 Annual Report*, p. 58.

<sup>33</sup> *National Native Title Tribunal Annual Report 2007-2008*, p. 105.

accumulated surplus<sup>34</sup>. The Tribunal attributes its operating surplus as being largely due to reductions in suppliers' expenditure and depreciation.<sup>35</sup>

1.33 Staffing numbers at 30 June 2008 show no change from the previous reporting period, however that level was not sustained throughout that period as 75 employees left the Tribunal, resulting in a 30 per cent turnover, an 8 per cent increase in staff turnover from the last reporting period.<sup>36</sup> The Tribunal did not give a reason for the increase in turnover however the committee notes the Tribunal has continued its employee survey to assess staff satisfaction and determine people-management priorities<sup>37</sup>.

1.34 The Tribunal achieved an overall client satisfaction rate of 94 per cent, which equates to an average of 7.15 out of a maximum of 10. The target client satisfaction rate is 80 per cent. The committee notes the client satisfaction rate has risen steadily since 2003<sup>38</sup> and attributes commissioned research into the satisfaction of its clients and stakeholders as the basis of the improved ratings.

1.35 The Tribunal provided a useful summary of significant decisions of the Full Court of the Federal Court that were handed down. These decisions are noted as significant because they illustrate interpretation and application of the principles laid down by the High Court.

1.36 The report provides comprehensive performance information, including presentation of performance indicators and useful maps of Indigenous land use agreements. The inclusion of trend data over several years is a practical and helpful comparison of performance indicators and results.

1.37 The Tribunal noted that the number of Indigenous Land Use Agreements was 57, far exceeding the predicted total figure of 45, with the most significant activity occurring in Queensland.

1.38 The committee considers the annual report of the Tribunal to be 'apparently satisfactory'.

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<sup>34</sup> *National Native Title Tribunal Annual Report 2007-2008, p. 105.*

<sup>35</sup> *National Native Title Tribunal Annual Report 2007-2008, p. 105.*

<sup>36</sup> *National Native Title Tribunal Annual Report 2007-2008, p. 90-91.*

<sup>37</sup> *National Native Title Tribunal Annual Report 2007-2008, p. 89.*

<sup>38</sup> *National Native Title Tribunal Annual Report 2007-2008, p. 99.*