

Chapter 2

Annual reports from the Attorney-General's Portfolio

2.1 The annual reports of the following agencies within the Attorney-General's Portfolio for the financial year 2018-19 were referred to the committee for examination and report:

- the Independent National Security Legislation Monitor (the INSLM); and
- the High Court of Australia.

2.2 Neither body is subject to the reporting obligations under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), but both have mandatory reporting obligations arising out of their enabling legislation.

Independent National Security Legislation Monitor

2.3 The INSLM's annual report was tabled in the Senate on 26 February 2020, having been tabled in the House of Representatives on 5 February 2020.

2.4 This was the final annual report of the third INSLM, Dr James Renwick CSC, SC, whose term ended on 30 June 2020.

Reporting obligations

2.5 The INSLM is a Statutory Office Holder established under the *Independent National Security Legislation Monitor 2010* (the INSLM Act).

2.6 The INSLM's annual reporting obligations are set out in section 29 of the INSLM Act as follows:

- (a) The Independent National Security Legislation Monitor must prepare and give to the Attorney-General a report (an annual report)
 - (a) relating to the performance of the Monitor's functions as set out in paragraphs 6(1)(a) and (b); and
 - (b) containing such details relating to the performance of the Monitor's function as set out in paragraph 6(1)(c) as the Monitor considers appropriate.

2.7 Section 6 of the INSLM Act outlines the functions of the INSLM as follows:

- (a) The Independent National Security Legislation Monitor has the following functions:
 - (a) to review, on his or her own initiative, the operation, effectiveness and implications of:

- (i) Australia's counter-terrorism and national security legislation; and
 - (ii) without limiting subparagraph (i), Division 105A of the Criminal Code and any other provision of that Code as far as it relates to that Division; and
 - (iii) any other law of the Commonwealth to the extent that it relates to Australia's counter-terrorism and national security legislation;
- (b) to consider, on his or her own initiative, whether any legislation mentioned in paragraph (a):
- (i) contains appropriate safeguards for protecting the rights of individuals; and
 - (ii) remains proportionate to any threat of terrorism or threat to national security, or both; and
 - (iii) remains necessary;
- (c) if a matter relating to counter-terrorism or national security is referred to the Monitor by a Minister under section 7—to report on the reference.

2.8 The annual report recorded that during the financial year, the INSLM completed both an annual report and a further report concerning the prosecution and sentencing of children for Commonwealth terrorism offences.¹ The recommendations from that inquiry are outlined in the annual report.² The INSLM stated that this review raised related issues which he considered concurrently under the his 'own motion' powers.³

Conclusion

2.15 The committee considers this annual report to meet the reporting obligations under section 29 of the INSLM Act, and therefore finds it to be 'apparently satisfactory'.

1 *Independent National Security Legislation Monitor Annual Report 2018-19*, p. 11.

2 *Independent National Security Legislation Monitor Annual Report 2018-19*, p. 14.

3 *Independent National Security Legislation Monitor Annual Report 2018-19*, p. 11.

High Court of Australia

2.9 The annual report of the High Court of Australia (the High Court) was tabled in the Senate on 10 February 2020, having been tabled in the House of Representatives on 6 February 2020.

Reporting obligations

2.10 The High Court is an 'agency' under the Attorney-General's portfolio but it is not a Commonwealth entity under the PGPA Act due to its status under its enabling legislation.⁴

2.11 The High Court's annual reporting obligations are set out in section 47 of the *High Court of Australia Act 1979* (the High Court Act) as follows:

- (1) The High Court shall, as soon as practicable after 30 June in each year, prepare and submit to the Minister a report relating to the administration of the affairs of the Court under section 17 during the year that ended on that 30 June, together with financial statements in respect of that year in such form as the Finance Minister approves.

2.12 Section 17 of the High Court Act empowers the High Court to 'administer its own affairs subject to, and in accordance with, [the] Act'.⁵ It states:

- (1) The Court has power for the purposes of the Court to do all things that are necessary or convenient to be done for or in connection with the administration of its affairs and, without limiting the generality of the foregoing, has power:
 - (a) to enter into contracts;
 - (b) to acquire, hold and dispose of real and personal property;
 - (c) to take on hire, to exchange, and to accept on deposit or loan, library material, and also furnishings, equipment and goods needed for the purposes of the Court;
 - (d) to control and manage any land or building occupied by the Court and any adjacent land or building that is declared by Proclamation to be part of the precincts of the Court;

4 Department of Finance, *Flipchart of PGPA Act Commonwealth entities and companies (187)*, 1 July 2020 <https://www.finance.gov.au/sites/default/files/2020-09/Flipchart%20July%202020%20-%20Update%201%20July%202020.pdf> (accessed 28 September 2020). See also, section 10(2) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) which expressly identifies the High Court as not falling within the definition of a 'Commonwealth entity'.

5 *High Court of Australia Act 1979* (High Court Act), s. 17(1).

- (e) to accept gifts, devises and bequests made to the Court upon trust and act as trustee of moneys or other property vested in the Court upon trust; and
- (f) to do such other things as it is authorized by this Act to do.

Administration of the affairs of the Court

2.13 The annual report states that the High Court entered into 35 consultancy contracts worth a total of \$491,276.⁶ It also identifies a number of other projects undertaken during the period relating to asset and information management, including:

- the development of a new public entrance on level 2, including security screening point;⁷ and
- the deployment of enterprise-grade WiFi into the High Court's four main sites, for critical areas.⁸

Financial statements and inspection by the Auditor-General

2.14 In accordance with subsection 47(1) of the High Court Act, the financial statements for the relevant reporting period are incorporated at Part 5 of the annual report.⁹

2.15 In 2018-19, the High Court recorded a deficit of \$6.616 million, with an income (including revenue from appropriations) of \$19.065 million and operating expenses amounting to \$25.681 million.¹⁰ The annual report records that the Court's underlying operational result (excluding unfunded depreciation) was a surplus of \$0.199 million. The annual report further notes that the Court received an equity injection of \$6.143 million including departmental capital budget.¹¹

2.16 Subsection 47(2) of the High Court Act requires the Auditor-General to inspect the High Court's financial statements and provide a report to the minister on whether, in his or her opinion, the statements are based on proper accounts and records;

- (a) whether the statements are in agreement with the accounts and records;

6 *High Court of Australia Annual Report 2018-19*, p. 29.

7 *High Court of Australia Annual Report 2018-19*, p. 30.

8 *High Court of Australia Annual Report 2018-19*, p. 31.

9 *High Court of Australia Annual Report 2018-19*, p. 37.

10 *High Court of Australia Annual Report 2018-19*, p. 28.

11 *High Court of Australia Annual Report 2018-19*, p. 28.

- (b) whether, in his or her opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Court during the year have been in accordance with this Act; and
 - (c) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.
- (2) The Minister shall cause a copy of the report and financial statements of the Court together with a copy of the report of the Auditor-General to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

2.17 The Auditor-General's report was submitted to the minister on 3 September 2019, and is available at Part 5 of the annual report. It makes no findings of non-compliance with either reporting or expenditure obligations under the High Court Act.¹²

Conclusion

2.18 The committee considers the annual report to meet the reporting obligations under section 47 of the High Court Act, and therefore finds it to be 'apparently satisfactory'.

Senator Amanda Stoker

Chair

12 *High Court of Australia Annual Report 2018-19*, p. 35.