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Legal and Constitutional
Legislation Committee

Annual reports (No. 1 of 2003)

May 2003

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ABBREVIATIONS

ACS	Australian Customs Service
ANAO	Australian National Audit Office
ASIO	Australian Security Intelligence Organisation
ATSIC	Aboriginal and Torres Strait Islander Commission
AUSTRAC	Australian Transaction Reports and Analysis Centre
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
HREOC	Human Rights and Equal Opportunity Commission
ILC	Indigenous Land Corporation
MRT	Migration Review Tribunal
OATSIA	Office of Aboriginal and Torres Strait Islander Affairs
RRT	Refugee Review Tribunal

PREFACE

Terms of reference

On 1 May 1996 a resolution of the Senate allocated the following portfolios to the Legal and Constitutional Legislation Committee:

- Attorney-General's portfolio; and
- Immigration and Multicultural and Indigenous Affairs portfolio.

This report was prepared pursuant to Standing Order 25(21) relating to the consideration of annual reports by legislation committees. The Standing Order states:

Annual reports of departments and agencies shall stand referred to the legislation 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; and
- (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.

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 continues to be an important element of accountability to Parliament, as the information provided in annual reports assists in the effective examination of the performance of departments and agencies and the administration of government programs.

Timing of presentation of reports on annual reports

Standing order 25(21)(f) requires that legislation committees 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. The Legislation Committee was required to table this report on or before 20 March 2003. On 19 March 2003 the Senate agreed to extend the time for reporting to 15 May 2003.

Annual reports referred to the Committee

This report includes reports referred to the Committee between 1 May 2002 and 31 October 2002. The report includes several annual reports that were received by the President out of session prior to 31 October 2002, and were not tabled until the earliest opportunity of 11 November 2002.

“Apparently satisfactory”

Under the terms of standing order 25(21)(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 guidelines.¹

Timeliness

Under standing order 25 (21)(c) the Committee must also report to the Senate on any lateness in the presentation of annual reports.

Conclusion

The Committee examined all of the Annual Reports submitted and found them to be of a high standard, satisfactorily describing the functions and activities and financial positions of the various departments and agencies. The Committee therefore finds all of the Annual Reports submitted to be apparently satisfactory.

1 *Requirements for Departmental Annual Reports*, June 2001 (for departments/agencies whose heads have powers of a secretary under the *Public Service Act 1999*); Guidelines for Annual Reports by Statutory Authorities are contained in the Commonwealth Authorities and Companies Orders 1998; and Reporting Requirements for the Annual Reports of Non-Statutory Bodies, are from the government response to the report on non-statutory bodies of the Senate Standing Committee on Finance and Government Operations, Senate *Hansard*, Vol. S.124, 8 December 1987, pp.2643-2645

CHAPTER 1

ANNUAL REPORTS OF GOVERNMENT DEPARTMENTS

1.1 The following annual reports of government departments for the financial year 2001-2002 were referred to the Committee for examination and report:

- the Attorney-General's Department; and
- the Department of Immigration and Multicultural and Indigenous Affairs.

Attorney-General's Department

1.2 As stated by Mr Robert Cornell in the Secretary's Review,

The terrorist attack in the United States on 11 September 2001 had an immediate and continuing impact on the Attorney-General's Department, as national security is one of the Department's responsibilities. Its repercussions dominated the Department's work in 2001-02.¹

1.3 As a result the Department implemented a number of initiatives designed to reduce the vulnerability of Australia, its citizens, assets and infrastructure to terrorist actions.

1.4 Among these initiatives were: a review of Australia's counter-terrorism arrangements; development of a package of counter-terrorism legislation (six Acts being passed by the Parliament by the end of the reporting period); and the implementation of improvements to critical infrastructure protection measures. In addition, the use of Air Security Officers for further protection on domestic airline flights commenced on 31 December 2001.

1.5 The Committee notes that there have also been a number of changes to the Department's administrative arrangements. These include the transfer to the Department of responsibility for Emergency Management Australia from the Department of Defence, and the transfer from the Department of Finance and Administration of administrative responsibility for two Royal Commissions.

1.6 The Committee considers that the Attorney-General's Department has produced a well written, clear and concise account of the Department's activities and that the report meets all the requirements for a Departmental Annual Report.

1 Attorney-General's Department Annual Report 2001-02, p.3

Department of Immigration and Multicultural and Indigenous Affairs

1.7 The composition of the Immigration and Multicultural and Indigenous Affairs portfolio also changed significantly during the 2001-2002 financial year. A change in administrative arrangement orders in November 2001 saw the Department of Reconciliation and Aboriginal and Torres Strait Islander Affairs amalgamate with the Department of Immigration and Multicultural Affairs. The new Department of Immigration and Multicultural and Indigenous Affairs now includes the Office of Aboriginal and Torres Strait Islander Affairs (OATSIA).

1.8 The Annual Report notes that the Department has pursued an ‘active program of international engagement’ designed to reduce the flow of unauthorized arrivals to Australia’s shores, for example, through co-chairing with Indonesia the Regional Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime in February 2002.²

1.9 With regard to detention matters the Committee notes the Department has acted to implement a number of the recommendations of both the Flood Inquiry and the Ombudsman’s ‘own motion’ inquiries into detention issues. This has resulted in a major review of Immigration Detention Standards.

1.10 The Committee also notes the large increase in the number of ministerial representations in 2001-02 (7,003 compared with 2,635 the previous year). The number of Human Rights and Equal Opportunity Commission (HREOC) and Ombudsman inquiries also increased by 35 per cent over the same time period. The Department cites growing public interest in detention services and facilities as the primary reason for these increases.

1.11 The Committee found the “Discussion/Analysis of Financial Performance” and the “Resource Summary Tables” on pages 16 and 17 of the report to be particularly helpful in giving an overview of Departmental expenditure.

1.12 The Committee finds that the Department of Immigration and Multicultural and Indigenous Affairs has produced an annual report that complies with the reporting requirements of a Commonwealth Department.

2 Department of Immigration and Multicultural and Indigenous Affairs, Annual Report 2001-02, p 4

CHAPTER 2

ANNUAL REPORTS OF STATUTORY AUTHORITIES

2.1 The following annual reports of statutory authorities were referred to the Committee:

Aboriginal and Torres Strait Islander Commission

Aboriginal Hostels Limited

Aboriginal Land Commissioner

Aboriginals Benefit Account

Administrative Appeals Tribunal

Anindilyakwa Land Council

Australasian Common Police Minister's Council – National Common Police Services

Australian Customs Service

Australian Government Solicitor

Australian Institute of Aboriginal and Torres Strait Islander Studies

Australian Institute of Criminology and Criminology Research Council

Australian Law Reform Commission

Australian Security and Intelligence Organisation

Australian Transaction Reports and Analysis Centre

Carpentaria Land Council Aboriginal Corporation

Commonwealth Ombudsman

Defence Force Ombudsman

Director of Public Prosecutions

Family Court of Australia

Family Law Council

Federal Police Disciplinary Tribunal

Human Rights and Equal Opportunity Commission

Indigenous Business Australia

Indigenous Land Corporation

Industrial Relations Court of Australia

Insolvency and Trustee Services Australia

Migration Review Tribunal

National Native Title Tribunal

Northern Land Council

Office of Parliamentary Counsel

Refugee Review Tribunal

Torres Strait Islander Authority

2.2 The impact of the increased threat of terrorism on law enforcement agencies' operations was a key theme that emerged during the Committee's review of the annual reports. The Committee also highlights matters relating to indigenous affairs policy and immigration issues in a selection of reports discussed below.

Australian Security Intelligence Organisation (ASIO)

2.3 The terrorist attacks in the United States on 11 September 2001 had a significant impact on ASIO's activities. As the Director General, Mr Dennis Richardson stated:

Following the attacks ASIO commenced round-the-clock operations, which continued for some months. The majority of ASIO's investigative and analytical resources were directed to counter-terrorist investigations. Our work had to be reprioritised, and this will have long-term implications.¹

2.4 Whilst ASIO noted that Australia does not face the same level of threat as some other countries, it nevertheless upgraded Australia's threat spectrum from the previous very low/low operating level to the low/medium operating level. ASIO stated that the events of 11 September will be the primary driver of its workload over the next three to five years.

2.5 The Committee notes that funding for National Information Infrastructure Protection was approved to the sum of \$1.352m per annum from 2002-2003, allowing ASIO to increase its ability to provide security intelligence assessments and protective

1 Australian Security Intelligence Organisation Report to Parliament 2001-2002, p.3

security advice. ASIO completed 23 threat assessments in this area in 2001-2002, compared to 14 in 2000-2001.

2.6 The report notes significantly improved performance in personnel security assessments, with ASIO 'close to achieving all benchmarks in 2001-02' after falling 'well short' the previous financial year.²

2.7 The report also advises of some significant developments in accountability for ASIO. The *Intelligence Services Act* 2001 established a new Parliamentary Joint Committee on ASIO, ASIS and DSD, replacing the former Joint Committee on ASIO.³

2.8 The Committee considers that the ASIO Report to Parliament 2001-2002 has met all the reporting requirements for a statutory body.

Australian Transaction Reports And Analysis Centre (AUSTRAC)

2.9 AUSTRAC reported that the events of 11 September 2001 caused a re-focus of structure and a review of systems for identifying the financing of terrorism, stating:

The focus on terrorist financing has caused a significant change to our priorities and highlighted the need for more sophisticated technology and more highly developed analytical skills.⁴

2.10 At the 10th Egmont Group of Financial Intelligence Units held from 4-7 June 2002, Australia was elected to the position of Head of the Oceania Region and was also elected as Co-vice Chair of the Egmont Committee. The Annual Report noted that:

As a consequence, Australia will have a major input into the development of the fast growing number of financial intelligence units around the world and their work.⁵

2.11 AUSTRAC's automated monitoring system was responsible for identifying a number of suspect banking transactions. In one instance the transaction reports showed that over \$1m was transferred overseas in a single three month period. The transactions appeared to be conducted in such a way as to avoid legislative reporting requirements. The primary offenders were subsequently convicted, the overseas-based

2 *ibid*, p. 5

3 *ibid*, p. 48. The new Committee has expanded oversight functions and may review aspects of ASIO's activities referred to it by the Minister or Parliament, as well as scrutinising ASIO's administration and expenditure.

4 Australian Transaction Reports and Analysis Centre Annual Report 2001-2002, p vi

5 *ibid*, p viii

principal receiving more than 15 years imprisonment and the local principal receiving 10 years imprisonment.⁶

2.12 Access to AUSTRAC intelligence assisted a number of law enforcement agencies (partner agencies) in securing convictions for a range of offences including drug trafficking and money laundering. The report highlighted the significant increase in workload in all areas, ranging from a 13 per cent increase in the number of partner agencies AUSTRAC supported by supplying information and intelligence, to a 165 per cent increase in the number of investigations by partner agencies using AUSTRAC's data.

2.13 The Committee is pleased to note that AUSTRAC was awarded a special commendation from the Institute of Public Administration Australia for its Annual Report of 2000-01. The judges stated:

AUSTRAC presented a report that was readable, lively and informative. It is commended for its transparency and clarity in explaining its role, functions and management systems.⁷

2.14 The Committee congratulates AUSTRAC on the award and finds the 2001-2002 annual report to be of a comparably high standard. It is an informative and clearly laid out account of AUSTRAC's operations and functions. The Committee finds that the report conforms to all of the reporting requirements.

Australian Customs Service (ACS)

2.15 The report notes that ACS has worked since 11 September 2001 with the World Customs Organisation to develop an action plan for the improvement of security and to combat terrorism. A counter-terrorism plan for the protection of its assets and for the management of any incident affecting business continuity or the safety of ACS staff was developed, and a counter-terrorism awareness package was delivered to all operational staff.⁸

2.16 The ACS report highlighted a number of major illicit drug seizures, including the seizure of 378kg of heroin in Brisbane in March 2002; and almost three tonnes of cannabis resin from shipping containers from the Middle East in Melbourne. In conjunction with the AFP, the ACS was also responsible for the largest seizure of cocaine in Australia to date (938kg at Dulverton Bay, Western Australia).

2.17 The detection and interception of illegal fishing vessels is another major area of operation for the ACS, with Coastwatch coordinating the interception of 162

6 *ibid*, p 35

7 *ibid*, p xii

8 Australian Customs Service Annual Report 2001-02, p 13

foreign fishing vessels in 2001-02, and the apprehension of 94 vessels and 595 crewmembers.⁹

2.18 Within the Great Barrier Reef Marine Park, the ACS detected 59 long line fishing vessels operating illegally over the reporting period. This is a considerable increase in detections compared to the previous two years (17 in 1999-2000 and 14 in 2000-2001). Evidence from these detections is being used to support 93 charges against vessel operators and masters of motherships. During the reporting period ACS also entered into a three month trial of the use of satellite technology for surveillance purposes in Australia's maritime zones.¹⁰

2.19 The Committee finds the ACS report to be well set out and to give an informative overview of the role and activities of Customs. The Committee considers that the report has met all reporting requirements.

Aboriginal and Torres Strait Islander Commission (ATSIC)

2.20 A significant issue in ATSIC's Annual Report was grant administration. Amendments to the *Aboriginal and Torres Strait Islander Commission Act 1989* passed in 2002 were designed to improve financial management and assist internal review processes.

2.21 During 2001-02 ATSIC provided 3,198 individual grants to more than 1,000 separate organisations, to a total of over \$860m. The report states that incremental changes to grant management procedures resulted in Regional Managers being able to access a greater range of options for managing grants, with a focus on proactive risk management. A Quality Assurance Network was developed, which has been used to 'clarify and, where possible, simplify grant procedures'.¹¹

2.22 The Committee notes that the Australian National Audit Office (ANAO) carried out a major audit of ATSIC's grant management processes during 2001-02. The annual report states that ANAO found that ATSIC had improved its management of grant funding and that its financial management of grants was sound.¹² However, the ANAO commented that some processes needed to be improved, advising that documentation should be clearer and the required number of field visits to monitor grants must be undertaken. The report states that the ANAO audit also showed that:

ATSIC's role as a supplementary funder is undermined by historically-based grant funding that locks Regional Councils into a cyclical funding

9 ibid, p 105

10 ibid, p 106

11 Aboriginal and Torres Strait Islander Commission Annual Report 2001-02, p 13

12 ibid, p. 13

pattern and that an inadequate information base means ATSIC is unable to highlight where gaps in funding exist.¹³

2.23 The annual report also noted that there was an increasing awareness of governance issues in 2001-02, culminating in an Indigenous Governance Conference on 3-5 April 2002 co-sponsored by ATSIC, Reconciliation Australia and the National Institute for Governance.¹⁴

2.24 The Committee finds the ATSIC Annual Report to be a very comprehensive guide to the activities and outputs of the agency. The Committee considers that the report fulfills all the necessary reporting requirements for a statutory body.

Indigenous Land Corporation (ILC)

2.25 As stated in the report's introduction, the ILC is an independent statutory authority:

... established to provide economic, environmental, social and cultural benefits for Aboriginal persons and Torres Strait Islanders by assisting in the acquisition and management of an Indigenous land base.¹⁵

2.26 The report notes that over the last three years there has been a broadening of ILC emphasis to include long-term sustainable land use planning whilst land acquisition functions continue. This change was due in part to the ILC recognising:

...that Indigenous people, once they become land owners, must also be able to sustain activities on the land for themselves and future generations.¹⁶

2.27 The Committee notes that the ILC is moving towards a series of interagency partnerships with a range of Commonwealth and State training and educational bodies. The report states that it is expected that these partnerships will benefit ILC clients by enhancing their capacity to adequately manage their land.

2.28 The Committee also notes that in response to an internal audit of ILC properties carried out during the year, the ILC has begun work on a strategy to improve the physical and social infrastructure on a number of properties, and sees this as a significant task in the next financial year.

2.29 The Committee finds that the Annual Report of the Indigenous Land Corporation meets the required reporting standards.

13 *ibid*, p 13

14 *ibid*, p 14

15 Indigenous Land Corporation Annual Report 2001-2002, p 10

16 *ibid*, p 22

Migration Review Tribunal (MRT)

2.30 The MRT reports a number of steps taken in 2001-02 to increase efficiency. Gains were made from the two portfolio tribunals (the MRT & the Refugee Review Tribunal (RRT)) working more closely together: the appointment of a single person to act as Principal Member of both MRT & RRT; the appointment of a single Registrar to both tribunals; and the transfer of such functions as human resources, finance information technology to the RRT Principal Registry.

2.31 The MRT reports that there was an 18 per cent increase in its caseload during the year to 8,531 cases, increasing from 7,211 the previous year. As a result significant pressure was placed on Tribunal operations and resources. The Committee notes that 14 new members were appointed in October 2001, bringing the total number of members to 52 (the Principal Member, four senior members, eight full-time members and 39 part-time members).¹⁷

2.32 The report states that staffing increases and some significant productivity increases resulted in a 30 per cent increase in the number of cases finalised over the year. The Committee notes that for the first time since the Tribunal's establishment in June 1999, it has finalised more cases than it has received. Despite these gains, the reduction of waiting times remains a priority for the MRT. The report notes that processing times have increased, due at least in part, to an unexpected increase in lodgements over consecutive years and a change in allocation priorities early in 2001.

2.33 In last year's report, the Committee commented that the MRT had not provided a breakdown of staff by gender for each classification level and suggested that it do so, if only by aggregate groups to protect individual privacy because of small staff numbers.¹⁸ The Committee is pleased to note that the MRT has provided a breakdown in this report.¹⁹

2.34 The Annual Report for 2001-2002 gives a clear picture of the nature and functions of the Tribunal. The Committee considers that the report meets all the reporting requirements of a statutory body.

17 Migration Review Tribunal Annual Report 2001-2002, pp. 2-3

18 Senate Legal and Constitutional Legislation Committee *Report on the examination of annual reports*, No. 1 of 2002, March 2002, p. 12.

19 Migration Review Tribunal Annual Report 2001-2002, p. 42

CHAPTER 3

ANNUAL REPORTS ON THE OPERATION OF ACTS AND PROGRAMS

3.1 Standing Order 25(21) does not provide for consideration of annual reports on the implementation or operation of Acts or programs. The Committee is not therefore required to include them in its Report on the Examination of Annual Reports. The Committee has chosen, at this stage, only to list them.

Australian Citizenship Act 1948

Bankruptcy Act 1966

Complaints (Australian Federal Police) Act 1981

Crimes Act 1914

Immigration (Education) Act 1971

War Crimes Act 1945

Witness Protection Act 1994

