

The Senate

Legal and Constitutional
Legislation Committee

Annual reports (No. 2 of 2003)

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ABBREVIATIONS

| | |
|-------|---|
| ABCI | Australian Bureau of Criminal Intelligence |
| ACC | Australian Crime Commission |
| AIPM | Australian Institute of Police Management |
| AFP | Australian Federal Police |
| ALRM | Aboriginal Land Rights Movement |
| APS | Australian Protective Service |
| ATSIC | Aboriginal and Torres Strait Islander Commission |
| CAL | Copyright Agency Limited |
| CLC | Central Land Council |
| IFRRO | International Federation of Reproduction Rights Organisations |
| ILUA | Indigenous Land Use Agreement |
| KLC | Kimberley Land Council (Aboriginal Corporation) |
| NCA | National Crime Authority |
| OFLC | Office of Film and Literature Classification |
| RMIT | Royal Melbourne Institute of Technology |

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 9 September 2003.

“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 satisfactory standard, adequately 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 STATUTORY AUTHORITIES

Reports referred to the Committee

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

- Aboriginal Legal Rights Movement
- Administrative Review Council
- Australian Federal Police
- Cape York Land Council
- Central Land Council
- Central Queensland Land Council Aboriginal Corporation
- Federal Magistrates Service
- Goldfields Land and Sea Council
- Gurang Land Council
- High Court of Australia
- Kimberley Land Council
- Office of Film and Literature Classification
- Migration Agents Registration Authority
- Mirimbiak Nations Aboriginal Corporation
- National Common Police Service
- National Crime Authority
- Ngaanyatjarra Council (Aboriginal Corporation)
- North Queensland Land Council Aboriginal Corporation
- Queensland South Representative Body Aboriginal Corporation

- South West Aboriginal Land and Sea Council
- Tiwi Land Council
- Yamatji Barna Baba Maaja Aboriginal Corporation

1.2 The Committee has elected to comment on the annual reports and performance of a number of the statutory authorities. These comments constitute the remainder of the chapter.

Aboriginal Legal Rights Movement (ALRM)

1.3 The Chairperson's Report raises concerns over the decrease in the level of funding received by ALRM from the Aboriginal and Torres Strait Islander Commission (ATSIC) over the reporting period.

As Chairperson I am particularly concerned that ALRM did not meet some of the objectives of our 3-Year Strategic Plan in this reporting period due to the level of funding received from ATSIC.¹

1.4 The Chairperson's Report also states that ALRM is able to provide only limited litigation assistance services to the majority of native title claimants within South Australia. At the time of reporting there were 31 active claims before the Federal Court of Australia, with at least six claims being discussed.

1.5 Major issues and developments over the reporting period include;

- the finalizing of litigation in the *Peter De Rose & Others v State of South Australia & Others* – Federal Court SG6001/96;
- the development of strong working relationships with various State Government agencies and the South Australian Farmers Federation to establish a “Statewide Agreement Negotiations Framework” as an effective alternative to litigation;
- the introduction of pilot Indigenous Land Use Agreements (ILUA's) in areas such as pastoralism, mineral exploration, fishing and sea rights and Aboriginal Heritage; and
- active native title education in schools and universities to present an Aboriginal perspective of native title.

1.6 The Committee considers the Aboriginal Legal Rights Movement Annual Report to be a well documented account of ALRM's activities and finds the report to be apparently satisfactory.

1 ALRM Native Title Unit Annual Report 2001-2002 p. 1.

Administrative Review Council

1.7 The Committee notes the passing, on 11 March 2002, of Council President, Bettie McNee and extends its condolences to her family and colleagues.

1.8 The report advises of the commencement of two significant projects over the reporting period: the launch of the Council publication, *A Guide to Standards of Conduct for Tribunal Members*; and the establishment of the Council of Australasian Tribunals.

1.9 The Council report refers to a large number of letters of advice to a variety of government agencies concerning specific aspects of the administrative law system and public administration.

To the end of June 2002, the Council had produced approximately 250 letters of advice and submissions to Ministers, parliamentary committees and government agencies.²

1.10 The Committee also notes the Council's active participation at a number of conferences and seminars throughout the country relating to administrative decision making and the review process.

1.11 The Committee finds the Annual Report of the Administrative Review Council to be apparently satisfactory.

Australian Federal Police

1.12 The impact of the attacks on the United States on 11 September 2001 had a significant effect on the operation of the AFP. These attacks created the need for the AFP to

...engage in additional protection activities, investigations in support of US authorities as well as intelligence gathering...³

1.13 As a result of the requirement of the AFP to upgrade its protective security services and counter-terrorism capabilities, the Government provided a further \$9.271 million for these and related purposes in the Additional Estimates 2001-2002.

1.14 In response to this additional funding the AFP:

- established operational teams in AFP head office and in all business units to efficiently coordinate and use resources;

2 Administrative Review Council twenty-sixth Annual Report 2001-2002 p. 8.

3 Australian Federal Police Annual Report 2001-2002, p. 2.

- conducted proactive investigations into possible terrorist links in Australia;
- investigated suspect hoax mail offences; and
- deployed 60 additional members for close personal protection duties.

1.15 Other significant events for the AFP over the reporting period include:

- security arrangements for the Commonwealth Heads of Government Meeting in Coolumb, Queensland, in March 2002;
- large seizures of illicit drugs over the reporting period, particularly heroin;
- the arrest or deportation of significant figures in people-smuggling syndicates; and
- beginning work on a new Certified Agreement for the coming three years.

1.16 The report also advises of a change in Administrative Arrangements for the AFP and the Australian Protective Service (APS). As from 1 July 2002 the AFP assumed responsibility for the management of the APS.

1.17 The Committee finds the Annual Report of the AFP to be apparently satisfactory.

Central Land Council

1.18 Mr David Ross, Director of the Central Land Council (CLC) welcomed the commencement of an audit by the Australian National Audit Office into CLC operations and procedures. Mr Ross expressed his confidence that the audit would be:

...an opportunity for the Council to demonstrate that we carry out our responsibilities effectively and efficiently. We can also examine any improvements recommended by the office when their final report is presented in the next financial year.⁴

1.19 The reporting period saw the Minister, the Hon Philip Ruddock MP, approve an agreement for Newmont's Groundrush mine, the eighth new mine on Aboriginal land in the Central Land Council area. All mines were discovered through the use of exploration agreements negotiated under the Land Rights Act.

1.20 The Rural Enterprise Unit was involved in assisting a number of Aboriginal land owners develop and operate enterprises which can provide economic, cultural and social benefits to Aboriginal communities. These included assisting:

...Aboriginal landowners on Haasts Bluff Aboriginal Land Trust, west of Alice Springs, to establish a commercial camel harvesting project. This project is now in the stage of field implementation and aims to have around 200 paddocked camels available to supply local and export markets.⁵

And also assisting:

...Aboriginal landowners of the Atnetyne Aboriginal Land Trust, east of Alice Springs, to establish a joint venture cultural tourism enterprise on Aboriginal land. The project involves an indigenous family and an Alice Springs based four wheel drive tour operator.⁶

1.21 The Committee considers the Annual Report of the Central Land Council to be apparently satisfactory.

Federal Magistrates Service

1.22 The Chief Federal Magistrate advises in his review that despite the appointment of a further three Federal Magistrates during the reporting period,

...the growth of the court's workload has outstripped the additional capacity provided.⁷

1.23 The report states that the court has had several expansions of its jurisdiction. The court is now able to review visa related decisions made under the *Migration Act 1958*. This has resulted in a significant amount of the Federal Court's migration workload transferring to the Federal Magistrates Service. From 1 January 2002 the court has shared jurisdiction over family law matters in which the value of property in dispute is less than \$700,000. This is a significant increase over the previous \$200,000 limit.

1.24 The 2001-2002 reporting period saw the introduction of a new case management system, Casetrack.

Casetrack will be an important tool for developing the capacity of the court to monitor its workload, to identify opportunities to simplify procedures and for making court services more accessible.⁸

1.25 As a new court, the Federal Magistrates Court has had the opportunity to create new rules of operation. One significant rule adopted by the court is the "Two Day Rule." This rule is designed to ensure court control over its family law workload.

5 Central Land Council Annual Report 2001-2002 p. 69.

6 *ibid.* p. 69.

7 Federal Magistrates Service Annual Report 2001-2002 p. 9.

8 *ibid.* p. 12.

It has been determined that an objective criterion of two days hearing time will ensure that the court is hearing the range of matters that was intended by Parliament, including relatively simple contested residence and property proceedings.⁹

1.26 The Committee finds the Federal Magistrates Service annual report 2001-2002 to be apparently satisfactory.

The High Court of Australia

1.27 The High Court reported increases in workloads in a number of areas. An increase of 34% was noted in the number of matters filed in the 2001-2002 year over the preceding year and, the number of constitutional writs increased from 81 in 2000-2001 to 300 in 2001-2002. Of these 300 applications, 287 (or 96%) involved immigration matters.

1.28 Self-represented litigants also presented particular difficulties for the Court. The Court estimates that Registry staff devote more than 50% of their time to issues relating to self-represented litigants. The Court was considering the introduction of a revised set of procedures to deal with special leave applications:

...the overwhelming majority of their applications for special leave have no demonstrated factual or legal merit and do not qualify for a grant of special leave by the High Court. No other comparable final court of appeal is obliged to devote so much time of its members to so many proceedings with such small prospects of success.¹⁰

1.29 The Committee notes the retirement, on 10 February 2003 of Justice Gaudron after 16 years on the bench.

1.30 2003 sees the centenary of the first members of the High Court taking up their offices in Melbourne on 6 October 1903. The report advises that there will be a ceremonial sitting of the Court to be held in Melbourne, on Monday 6 October 2003 to mark the occasion.

1.31 The Committee considers the Annual Report of the High Court of Australia to be apparently satisfactory.

Kimberley Land Council Aboriginal Corporation

1.32 Over the reporting period, the Kimberley Land Council (KLC) undertook a review of the organisation's systems, work processes and priorities. The aims of the review were:

9 *ibid* p. 29.

10 High Court of Australia Annual Report 2001-2002 p. 7.

...to increase the capacity and efficiency of the organisation; better support staff through improved systems, process, work practices and workload management; and to provide a better service to our members – the Traditional Owners of the Kimberley.¹¹

1.33 The review found that the development and implementation of joint partnerships with business and industry should be made a priority. The KLC sees these partnerships as a means to improve the skills and capacities of the Kimberley Traditional Owners and also as a way to improve their social and economic conditions.

1.34 At the time of reporting, the KLC was providing facilitation and assistance to 26 of 32 native title applications in the Kimberley. Five of those applications were in Federal Court litigation process during the year. Fifty seven agreements were either finalised or being negotiated during the year, with the KLC responding to 222 future act notices.

1.35 The Committee finds the Annual Report of the Kimberley Land Council Aboriginal Corporation to be apparently satisfactory and provides a well laid out account of the Council's operations and objectives.

Office of Film and Literature Classification

1.36 In August 2001 the Office of Film and Literature Classification (OFLC) released a discussion paper concerning the Review of the Classification Guidelines for Film and Computer Games for public consultation. The review has encouraged Australians to put forward their views on how violence, sex, drug use and coarse language should be classified. In response, the OFLC received more than 370 written submissions. The review is expected to be completed during the next reporting period.

1.37 The OFLC also advertised for a number of new Board members during the reporting period as the terms of office of some members expired in October 2002.

1.38 The reporting period saw the OFLC increase its international liaison with classification bodies from a number of countries including New Zealand, Singapore, Norway, South Africa, the United Kingdom and the United States. The OFLC sees these relationships as being important in assisting its understanding of international classification issues, upcoming trends and in developing future planning direction.¹²

1.39 During the reporting period, the OFLC focused on raising community awareness and understanding of classification. Consumer research commissioned by

11 Kimberley Land Council Aboriginal Corporation Annual Report 2002 p. 6.

12 Office of Film and Literature Classification Annual Report 2001-2002 p. 5.

the OFLC in February 2002 ‘indicated that the profile of the OFLC and the national classification scheme is more visible than ever before to Australians.’¹³

1.40 The Committee finds the Annual Report of the OFLC to be apparently satisfactory. It is a well set out document giving the reader a good understanding of the role, functions and activities of the office.

National Common Police Services

1.41 The National Common Police Services consists of the following agencies:

- Australasian Centre for Policing Research;
- Australasian Bureau of Criminal Intelligence;
- Australian Institute of Police Management;
- National Crime Statistics Unit; and
- National Institute of Forensic Science.

1.42 The Australian Centre for Policing Research reported progress in a number of research areas. These included such areas as:

- early childhood crime prevention: implications for policing;
- women in senior police management;
- contemporary issues facing women in policing;
- managing the risk of psychological harm for operational police;
- understanding turnover in the police force, and
- workplace bullying.

1.43 Staff of the Australian Bureau of Criminal Intelligence (ABCI) gave significant support with regard to the formation of the Australian Crime Commission (ACC). The ACC was formed as a result of the merger of ABCI, the National Crime Authority and the Office of Strategic Crime Assessments.

The size of the ABCI coupled with the need to ensure the Bureau was adequately represented at all levels of the transition process, meant that on occasions 25% of ABCI staff were involved in the various working parties

13 *ibid* p. 5.

and groups facilitating the delivery of a range of functions and activities to the ACC.¹⁴

1.44 The ABCI also conducted several Strategic Intelligence Courses in conjunction with the National Crime Authority, Charles Sturt University, the Australian Federal Police and the Office of Strategic Crime Assessments. Students attended from a variety of countries including Sri Lanka, Panama, Malaysia, Vietnam, Taipei and Lebanon.

1.45 The 2001-2002 reporting period was a period of significant reform for the Australian Institute of Police Management (AIPM).

A new executive team was appointed, and the entire professional development staff of the Institute was replaced. There were also major changes to the staff in Corporate Services.¹⁵

1.46 The AIPM's two core programs, the Police Management Development Program and the Police Executive Leadership Program were revised with greater emphasis being placed on applied policing and a refined participant assessment process.

1.47 The Committee considers the Annual Report of the National Common Policing Services to be a well structured and informative account of the services' activities and operations and that the report is apparently satisfactory.

National Crime Authority

1.48 The Committee notes that this is the final annual report to be produced by the National Crime Authority. As from 1 January 2003 the National Crime Authority has been replaced by a new statutory body, the Australian Crime Commission.

1.49 Authority Chairman Mr Gary Crooke QC reports that following the events of September 11 2001 the Prime Minister flagged during the election campaign the Government's intention if re-elected, to consider the 'abolition, re-positioning or replacement of the NCA.'¹⁶

1.50 Mr Crooke criticised what he considered to be a lack of public consultation and the possible loss of independence of the new body.

1.51 In response to those comments, the Minister for Justice and Customs (Senator the Hon Chris Ellison) issued a formal reply stating that consultations had occurred over a 12 month period and the decision was made to establish the ACC.

14 National Common Police Services Annual Report 2002-2002 p. 67.

15 National Common Police Services Annual Report 2002-2002 p. 111.

16 National Crime Authority Annual Report 2001-2002 p. 10.

1.52 The Committee notes the cash reserves of the NCA were \$480,180 at 30 June 2002 with current liabilities exceeding that amount by \$3.4 million. This is explained as being the result of the NCA co-relocating (with the AFP) to premises in Melbourne which incurred capital costs of \$3.6 million.

1.53 *The National Crime Authority Amendment Act 2001*(Cwlth) came into effect in October 2001. The Act contained some important provisions including the appointment of the Commonwealth Ombudsman to oversee complaints made against the NCA and the removal of the privilege against self-incrimination at coercive NCA hearings. The report stated that the removal of the privilege:

has enabled the power to be used much more strategically and effectively in a manner akin to Royal Commissions – and with comparable results.¹⁷

1.54 The NCA recorded some significant drug seizures including 150 kg of ecstasy in tablet form with a street value in excess of \$30 million and 120 kg of cocaine which had been left for collection in a container on the sea bed.

1.55 The National Crime Authority Annual Report is a well set out, and informative account of the structure and operations of the Authority. The Committee considers the report to be apparently satisfactory.

CHAPTER 2

ANNUAL REPORTS OF NON-STATUTORY BODIES

Reports referred to the Committee

2.1 The following reports of non-statutory authorities for the financial year 2001-2002 were referred to the Committee for examination and report:

- Audio-Visual Copyright Society Limited (Screenrights)
- Copyright Agency Limited

The Audio-Visual Copyright Society Limited (Screenrights)

2.2 The Committee notes that total collections for Screenrights over the reporting period increased significantly over the previous year. Total collections of some \$16.94 million (including interest) represent an increase of 19.5% on the previous year.

2.3 Screenrights cites this increase as being due to greater income from licensed institutions, increased revenue from other licensing services and improvements in monitoring use. These improvements have provided Screenrights with a more accurate picture of the way in which radio and television are being used by both teachers and academics.

2.4 Screenrights launched the website www.enhancetv.com.au in March 2002 with the goal of providing a link between film industry members and the Australian education sector.

The site lets teachers and academics know about upcoming broadcasts relevant to their learning area, and provides them with access to a host of teaching resources. It also provides filmmakers with a dynamic-and free-means of accessing the education sector.¹

2.5 The Committee notes that Screenrights has been active internationally through the building of agreements with a number of sister societies. At the time of reporting, Screenrights had agreements with 12 other similar bodies from around the world including those in the US, Canada, Europe and New Zealand.

2.6 The Committee finds that Screenrights has produced a well presented and informative Annual Report which is apparently satisfactory.

1 Screenrights Annual Report 2001-2002 p. 4.

Copyright Agency Limited

2.7 The Committee notes the Copyright Agency Limited's (CAL) development of partnerships with such organisations as the National Library of Australia, Royal Melbourne Institute of Technology (RMIT) publishing, the Attorney-General's Department and the Australian Council for Educational Research for the delivery of online journal articles. The CEO's report advises that as a result:

Users can search and download material that they need either through their library's subscription or on a pay-per-view basis, libraries can provide better resources for their clients, and copyright owners who choose to participate, receive a payment for the new use of their works.²

2.8 During the 2001 calendar year, CAL declared \$26.4 million for distribution to its members compared to the previous years \$22 million. This represents an increase in distributions of 20% on the 2000 calendar year. The number of distribution recipients in 2001 increased by 39% to 11,033.

2.9 The Committee notes the election of Mr Michael Fraser to the position of Vice-President of the International Federation of Reproduction Rights Organisations (IFRRO) in 2001 while continuing to chair IFRRO's Asia-Pacific Development Committee. CAL sees many benefits in its association with IFRRO.

The cooperation and cross-licensing of rights among IFRRO collecting societies is essential for international rights management, and for CAL to be able to offer its voluntary licence schemes within Australia.³

2.10 In response to comment from members and government, this reporting period has seen CAL provide 'more analysis about the sources of our revenue, our expenditure, and our financial performance generally...' As a result, CAL has over the past year focused on improving the transparency of its operations. CAL has also adopted a new Corporate Governance Statement which sets out the roles and responsibilities of the Board and management.

2.11 The Committee finds the Annual Report of the Copyright Agency Limited to be apparently satisfactory.

2 Copyright Agency Limited Annual Report p. 4.

3 *ibid* p. 25.

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.

3.2

- Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2002*
- *Freedom of Information Act 1982*
- *Telecommunications (Interception) Act 1979*

Senator Marise Payne

Chair

