

The Senate

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Foreign Affairs, Defence and Trade  
Legislation Committee

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# Membership of the Committee

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# Preface

## Terms of reference

1. The committee is responsible for examining annual reports of departments and agencies within two portfolios: Defence (including the Department of Veterans' Affairs), and Foreign Affairs and Trade.

2. Under Standing Order 25(20), the committee is required to report on annual reports tabled by 31 October each year by the tenth sitting day of the following year, and on reports tabled by 30 April each year by the tenth sitting day after 30 June of that year. This report also examines annual reports that were tabled after 30 April 2015.

3. 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; 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

4. 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 and more broadly to the Australian people. The information provided in annual reports assists Parliament in the effective examination of the performance of departments and agencies and the administration of government programs. Indeed, as noted in the *Requirements for annual reports*:

Annual reports serve to inform the Parliament (through the responsible Minister), other stakeholders, educational and research institutions, the media and the general public about the performance of departments in relation to services provided. Annual reports are a key reference document and a document for internal management. They form part of the historical record.

...

Annual reports and Portfolio Budget Statements (PB Statements) are the principal formal accountability mechanisms between government and departments and from departments through (or on behalf of) government to the Parliament.<sup>1</sup>

## Assessment of annual reports

5. The committee examines annual reports to determine whether they are timely and 'apparently satisfactory' and whether they comply with the relevant requirements for the preparation of annual reports of departments and authorities.<sup>2</sup> To this end, the committee stresses that its current report focuses on departmental and agency compliance with the process of preparing and tabling annual reports rather than the administration and performance of specific programs.

The requirements are set down in the following instruments:

- for portfolio departments and bodies prescribed under the FMA Act: *Public Service Act 1999*, subsections 63(2) and 70(2), and the *Requirements for annual reports for departments, executive agencies and FMA Act bodies*, Department of Prime Minister and Cabinet, 29 May 2014;
- for Commonwealth authorities and companies: the *Commonwealth Authorities and Companies Act 1997* (CAC Act); Commonwealth authorities and companies reporting under the CAC Act are required to comply with the *Commonwealth*

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<sup>1</sup> *Requirements for annual reports for departments, executive agencies and FMA Act bodies*, Department of the Prime Minister and Cabinet, 29 May 2014, p. 3.

<sup>2</sup> Refer to Appendix 1 for a table of the reports referred to the committee for scrutiny.



*Authorities (Annual Reporting) Orders 2011* and the *Commonwealth Companies (Annual Reporting) Orders 2011*, respectively;

- and for non-statutory bodies: the guidelines are contained in the government response to the report of the Senate Standing Committee on Finance and Government Operations on Non-statutory Bodies, *Senate Hansard*, 8 December 1987, vol s 124, pp. 2643–45 (requirements were modified in 1987).

6. For FMA Act bodies, significant amendments in the Requirements for Annual Reports for the 2013–14 period relate to:

- **Spatial reporting**—a new requirement has been added for selected portfolio agencies to report on expenditure in relation to the Spatial Reporting Framework.<sup>3</sup>

7. For Commonwealth authorities and companies, the annual reports for the 2011–12 financial year were the first annual reports to be prepared under the new orders with the exception of clauses dealing with related entity transactions, which apply to annual reports for each financial year ending on or after 30 June 2013.

### **Annual reports considered**

8. The annual reports of the following organisations have been examined by the committee:

*Defence portfolio*

Judge Advocate General

### **General comments on the annual reports**

#### ***Timeliness in tabling reports***

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

10. In accordance with the *Requirements for Annual Reports* published in May 2014, agencies are required to present:

A copy of the annual report...to each House of Parliament on or before 31 October in the year in which the report is given. If Senate Supplementary Budget Estimates hearings are scheduled to occur prior to 31 October, it is best practice for annual reports to be tabled prior to those hearings.<sup>4</sup>

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3 The committee notes that this requirement was not applicable to any of the FMA Act bodies under its portfolio coverage.

4 *Requirements for annual reports for departments, executive agencies and FMA Act bodies*, Department of Prime Minister and Cabinet, 29 May 2014, p. 3.

11. With the exception of the Director of Military Prosecutions report, the committee found that reports were presented within a reasonable timeframe. A table detailing the dates relating to the timeliness of presentation is at Appendix 1.

### ***Matters of significance***

12. In accordance with Senate Standing Order 25, the committee is to note any significant matters relating to the operations and performance of the bodies presenting their annual reports. The committee found no matters of significance relating to the operations and performance of the bodies presenting their reports.

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

13. The committee is obliged, under Senate Standing Order 25(20)(d), to consider any remarks made about these reports in the Senate. There were no comments in the Senate on any of these reports.

### ***Bodies not presenting annual reports to the Senate***

14. The committee is required to report to the Senate each year on whether there are any bodies that do not present annual reports to the Senate and which should present such reports. The committee notes that the Director of Military Prosecutions did not table a report as required by Section 196B of the *Defence Force Discipline Act 1982 (Cth)*, as soon as practicable after 31 December 2014. Noting this exception, the committee is satisfied that there are no other bodies within these portfolios that did not meet their reporting requirements to the Senate.

### ***Standard of reports***

15. The committee found all reports to be generally of a high standard. They effectively described the function, activities and financial positions of the various departments and agencies. The committee therefore found all of the annual reports to be 'apparently satisfactory'.

### **Conclusion**

16. The committee found that the report submitted by the Judge Advocate General was of a high standard. The following chapter provides a brief overview of some of the matters that arose during the reporting period between 1 January 2014 and 31 December 2014.

# Chapter 1

## Annual reports

### Judge Advocate General

1.1 The Judge Advocate General's (JAG) annual report for the period 1 January 2014 to 31 December 2014 was tabled in the House of Representatives on 25 June 2015 and in the Senate on 10 August 2015. Section 196B of the *Defence Force Discipline Act 1982* (DFDA) requires the JAG, as soon as practicable after 31 December each year, to provide the Minister with a report relating to the operation of the DFDA.<sup>1</sup>

1.2 The office of the Judge Advocate General of the ADF was created by s 179 of the DFDA. The current JAG, Rear Admiral the Hon Justice M J Slattery RANR, was first appointed on 14 May 2015, having acted in the position since 30 July 2014. His current appointment is until 29 July 2017.<sup>2</sup>

1.3 The functions of the JAG are prescribed by the DFDA. The JAG is responsible for the following functions:

- (a) reporting annually to Parliament on the operation of the DFDA, the Regulations, the Rules of Procedure, and the operation of any other law of the Commonwealth or the ACT insofar as that law relates to the discipline of the Defence Force;
- (b) making Procedural Rules for Service tribunals, being Court Martial and Defence Force Magistrate Rules, and Summary Authority Rules;
- (c) nominating the judge advocate for a court martial and Defence Force magistrates;
- (d) nominating to a Service Chief officers to be members of the judge advocate's panel;
- (e) appointing Defence Force magistrates from officers appointed as members of the judge advocate panel;
- (f) nominating to a Service Chief legal officers for the purposes of DFDA s 154(1)(a); and
- (g) if requested, providing a final and binding legal report in connection with the internal review of proceedings before Service tribunals.<sup>3</sup>

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1 Judge Advocate General Annual Report, 2014, p. 1.

2 Judge Advocate General Annual Report, 2014, p. 2.

3 Judge Advocate General Annual Report, 2014, pp. 2–3.

### ***Operation of the Superior Military Tribunals***

1.4 The JAG noted that during the reporting period, trials by court martial and DFM continued in accordance with the *Military Justice (Interim Measures) Act (No 1) 2009*, as amended by the *Military Justice (Interim Measures) Amendment Act 2011* and the *Military Justice (Interim Measures) Amendment Act 2013*.<sup>4</sup>

### ***Appeals to the Defence Force Discipline Appeal Tribunal***

1.5 During the reporting period, there were no appeals determined by the Defence Force Discipline Appeal Tribunal.<sup>5</sup>

### ***Legislation***

1.6 The JAG observed that the *Military Justice (Interim Measures) Act (No 1) 2009* as amended continues the appointment of the former Chief Military Judge and military judges as Chief Judge Advocate and full time judge advocates respectively. The legislation remains in force only until 21 September 2015 unless further amended.

1.7 In the previous annual report, the then JAG recommended that while the interim measures are working satisfactorily, a final decision should be taken as to whether the interim measures will continue indefinitely, or whether a Chapter III court is to be created.<sup>6</sup>

1.8 The current JAG agreed that, 'there is no more important a decision for maintaining ADF members' confidence in the ADF's military justice system than for Parliament now to express in legislation its own confidence in a permanent system.'<sup>7</sup>

1.9 The JAG also discussed two matters of law reform. First, that the maximum available fines for non-defence members under the DFDA should be revised. Currently, the only punishments available are imprisonment or a fine not exceeding \$500, which was inserted in the legislation when it was enacted in 1982. This fine has not kept pace with inflation and should be adjusted automatically.<sup>8</sup>

1.10 Secondly, that the same reviewing authority which reviews twice whether punishments are excessive is undesirable. The legislation does not preclude a reviewing authority considering a petition lodged after that same authority had already conducted a review. The JAG recommended the legislation be amended to preclude the reviewing authority from reviewing a severity of punishment twice.<sup>9</sup>

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4 Judge Advocate General Annual Report, 2014, p. 5.

5 Judge Advocate General Annual Report, 2014, p. 6.

6 Judge Advocate General Annual Report, 2013, pp. 7–8.

7 Judge Advocate General Annual Report, 2014, pp 6–7.

8 Judge Advocate General Annual Report, 2014, p. 7.

9 Judge Advocate General Annual Report, 2014, p. 10.

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## **Conclusion**

1.11 In conclusion, the JAG stated that:

...I reemphasize Major General Tracey's conclusion to his 2013 report and add: it is now highly desirable in that a final decision be taken as to whether the interim measures are to be made permanent or whether for instance, a Chapter III military court is to be created. While the measures in place remain 'interim' it is difficult to address the much-needed reforms that this and previous JAG report have suggested for improving the operation of the military justice system.<sup>10</sup>

## **Other reports**

1.12 Other portfolio authorities, agencies and/or companies which had their annual reports examined by the committee, but were not otherwise commented upon in this report, include:

- AAF Company—report tabled in the Senate on 1 December 2014.
- Royal Australian Air Force (RAAF) Welfare Recreational Company—report tabled in the Senate on 1 December 2014.
- Royal Australian Navy Central Canteens Board (RANCCB)—report tabled in the Senate on 26 November 2014.

1.13 The committee considers that the annual reports of the above-mentioned organisations adequately met their respective reporting requirements.

**Senator Chris Back**  
**Chair**



## Appendix 1

### Compliance table for the annual reports tabled during the period 1 November 2014 to 30 April 2015 and referred to the committee

Department/agency	Enabling legislation and timeliness	Date on letter of transmittal	@ Date report submitted to minister (if known)  % Date report received by minister (if known)	* Date report presented to President  # Date tabled in the Senate  ^ Date tabled in H/Representatives
AAF Company	Commonwealth company, limited by guarantee <i>Commonwealth Authorities and Companies Act 1997 (CAC Act)</i> To be tabled by 31 October.	23 Oct 2014	%29 Oct 2014	#1 Dec 2014  ^1 Dec 2014
Judge Advocate General	<i>Defence Force Discipline Act 1982</i> , section 196A(1). As soon as practicable after 31 December each year. JAG reports for the period 1 January to 31 December each year.	27 May 2015	@9 June 2015  %9 June 2015	#10 August 2015  ^25 June 2015
Royal Australian Air Force (RAAF) Welfare Recreational Company	Commonwealth company, limited by guarantee CAC Act To be tabled by 31 October.	27 Oct 2014	%31 Oct 2014	#1 Dec 2014  ^1 Dec 2014

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Royal Australian Navy Central Canteens Board (RANCCB)	Established by regulations under the Defence Act 1910.  Commonwealth authority CAC Act To be tabled by 31 October.	23 Oct 2014	%10 Oct 2014	#26 Nov 2014 ^26 Nov 2014
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