

# Chapter 1

## Introduction

### Introduction

1.1 This is the Senate Foreign Affairs, Defence and Trade Legislation Committee's first report on annual reports for 2017. Annual reports inform the Parliament, stakeholders and other interested parties of the operations and performance of public sector departments, agencies and companies. They are a primary accountability mechanism. Additionally, annual reports are important reference documents and form part of the historical record.<sup>1</sup>

### Terms of reference

1.2 Under Standing Order 25(20), the annual reports of certain departments and agencies are referred to the committee for examination and assessment. The committee is required to:

- (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 report 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 the attention of the Senate to any significant matters relating to the operations and performance of the bodies furnishing the annual reports.
- (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.

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1 Department of Finance, *Resource Management Guide No. 135: Annual report for non-corporate Commonwealth entities*, July 2016, p. 4.

## Allocated portfolios

1.3 In accordance with the resolution of the Senate on 31 August 2016, the committee has oversight of the following portfolios:

- Defence, including Veterans' Affairs; and
- Foreign Affairs and Trade.<sup>2</sup>

## Annual reporting requirements

1.4 The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) is the cornerstone of the Commonwealth Resource Management Framework which governs how the Commonwealth public sector uses and manages public resources. The PGPA Act received Royal Assent on 29 June 2013 and commenced on 1 July 2014.

1.5 The PGPA Act consolidates the governance, performance and accountability requirements previously contained in the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997*. Under the PGPA Act, a range of bodies are required to provide annual reports which are referred to committees for examination.

1.6 The PGPA Act categorises bodies as a Commonwealth entity (either a corporate Commonwealth entity or non-corporate Commonwealth entity), or a Commonwealth company:

- Non-corporate Commonwealth entity—an entity that is legally and financially part of the Commonwealth, and includes departments of state, parliamentary departments, statutory authorities, and listed entities (a body, person, group of persons or organisation that is prescribed by rules made under the PGPA Act);
- Corporate Commonwealth entity—a body corporate, that is, it has a separate legal personality from the Commonwealth, and includes statutory authorities. It can act in its own right exercising certain legal rights such as entering into contracts and owning property;
- Commonwealth company—a company established by the Commonwealth under the *Corporations Act 2001* that is controlled by the Commonwealth.

1.7 Section 46 of the PGPA Act sets out the annual reporting requirements in relation to Commonwealth entities, including that annual reports must comply with any requirements prescribed by rules. Section 97 sets out the annual reporting requirements for Commonwealth companies.

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2 *Journals of the Senate*, No. 1, 31 August 2016, p. 6.

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### ***Public Governance, Performance and Accountability Rule 2014***

1.8 The Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) supports the operation of the PGPA Act by establishing accountability and control mechanisms to support the transactions of the Commonwealth and Commonwealth entities.<sup>3</sup>

1.9 The performance framework established under the PGPA Act includes the requirement for Commonwealth entities and companies to prepare a corporate plan and annual performance statements. The PGPA Rule addresses the minimum requirements to be included (sections 16E, 16F and 27A).

1.10 Requirements for content to be included in entities' annual reports were approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit on 2 May 2016. Amendments to the PGPA Rule came into force on 7 May 2016 and apply in relation to any reporting period that begins on or after 1 July 2015.

1.11 Subdivisions A and B of Division 3A of the PGPA Rule prescribe the mandatory requirements for the content of annual reports for non-corporate Commonwealth entities and corporate Commonwealth entities, sections 28A to 28F in Part 3-3 prescribe requirements for Commonwealth companies.<sup>4</sup> For example, reports are required to use clear design, provide information on management and accountability, and include reviews, overviews, and reports on performance.

1.12 Section 46 of the PGPA Act requires accountable authorities to prepare and present annual reports for their entity to the responsible minister by the 15th day of the fourth month after the end of the reporting period. For entities that report on a financial year basis, this requires the annual report to be prepared and provided to the responsible minister by 15 October for each reporting period.

1.13 The PGPA Act does not provide a timeframe for the minister to present the report to the Parliament; however the PGPA Rule states that annual reports for Commonwealth companies and entities must comply with the *Guidelines for the Presentation of Documents to the Parliament*. The guidelines advise that it remains government policy for all companies and entities to table their annual reports by 31 October each year and if Senate Supplementary Budget Estimates hearings are

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3 Department of Finance, *Overview of the PGPA Rule 2014*, <https://www.finance.gov.au/resource-management/pgpa-legislation/pgpa-rule/>, (accessed 29 November 2016).

4 Department of Finance, *Resource Management Guide No. 137: Annual reports for non-corporate Commonwealth companies*, July 2016, p. 2.

scheduled to occur prior to 31 October, it is best practice for annual reports to be tabled prior to those hearings.<sup>5</sup>

1.14 Subsection 34C(7) of the *Acts Interpretation Act 1901* applies where there has been a failure to table a report required by statute. The agency is required to furnish an explanation to the minister within 14 days of the specified reporting date and the minister is to table the explanation within three sitting days.

1.15 Below is a summary of the legislative authority and requirements under which annual reports are prepared for different types of bodies:

***Non-corporate Commonwealth entities***

- PGPA Act, section 46 and the PGPA Rule 2014, Division 3A(A);
- for portfolio departments and executive agencies, the *Public Service Act 1999*, sections 63(2) and 70(2);
- for parliamentary departments, the *Parliamentary Service Act 1999*, section 65; and
- for statutory bodies, relevant enabling legislation.

***Corporate Commonwealth entities***

- PGPA Act, section 46 and the PGPA Rule 2014, Division 3A(B); and
- for statutory bodies, relevant enabling legislation.

***Commonwealth companies***

- PGPA Act, section 97, which also refers to requirements under the *Corporations Act 2001* and the PGPA Rule 2014, Part 3-3; and
- for statutory bodies, relevant enabling legislation.

***Non-statutory bodies***

- annual reporting requirements are contained in the government response to the Senate Standing Committee on Finance and Public Administration Report on Non-Statutory bodies, *Senate Hansard*, 8 December 1987, pp 2632–45.

***Statutory office holders***

- any requirements in the enabling legislation.

***Reports on the operation of Acts***

- any requirements under the relevant legislation.

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5 Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Documents to the Parliament (including Government Documents, Government Responses to Committee Reports, Ministerial Statements, Annual Reports and other Instruments)*, February 2016, pp 4-5.

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- the Government Response to the Legal and Constitutional Affairs Report on Annual Reports, May 1990, provides guidelines for the annual reports of the operation of Acts.

### **Assessment of annual reports**

1.16 Senate Standing Order 25(20) requires that the committee examine reports referred to it to determine whether they are timely and 'apparently satisfactory'. The committee must consider whether the reports comply with the relevant legislation and guidelines for the preparation of annual reports in forming its assessment.

1.17 The enabling legislation of some agencies may require that agency to report on matters other than those included in the guidelines, or impose different reporting requirements. The committee's view is that such agencies, while bound by their enabling legislation, should also comply with the PGPA Rule, to the extent that the requirements do not conflict.

### ***Timeliness***

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

1.19 The committee notes that 13 annual reports were tabled after 31 October 2016. All of these reports fall within the Defence portfolio and were submitted to the minister by the 15 October deadline, however no reports were tabled by 31 October.

1.20 By comparison, all annual reports within the Foreign Affairs and Trade portfolio and the Veterans' Affairs portfolio were tabled or presented out of sitting by 31 October.

1.21 The following annual reports were tabled after 31 October 2016:

- AAF Company;
- Army and Air Force Canteen Service;
- ASC Pty ltd;
- Australian Strategic Policy Institute;
- Department of Defence;
- Defence Housing Australia;
- Director of Military Prosecutions;
- Inspector-General of the Australian Defence Force;
- Judge Advocate General;
- Navy Canteens;
- Royal Australian Air Force Veterans' Residences Trust Fund;
- Royal Australian Air Force Welfare Recreational Company; and

- Services Trust Funds.

1.22 As required by the *Acts Interpretation Act 1901*, the Secretary of the Department of Defence provided a statement to the Minister for Defence to explain that the Defence annual report had not been presented as required due to the Secretary's required attendance at a number of international commitments leading up to 15 October.<sup>6</sup>

1.23 The committee also notes that the Inspector-General of the Australian Defence Force's annual report for the calendar year 2014–2015 was presented to the minister in December 2015; however it was not tabled until November 2016.

1.24 Furthermore, although required to be 'presented as soon as practicable' after 31 December, the annual reports of the Judge Advocate General and the Director of Military Prosecutions for the calendar year 2014–2015 were not presented to the Minister for Defence until September 2016 and October 2016. The reports were subsequently tabled in November 2016.

1.25 A table detailing the dates relating to the timeliness of presentation is at Appendix 1.

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

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

1.26 In accordance with Standing Order 25, the committee is to note any significant matters relating to the operations and performance of the bodies presenting their annual reports.

1.27 The committee notes that from 1 July 2015 the Defence Science and Technology Organisation has been renamed as the Defence Science and Technology Group. Also from 1 July 2015, the former Defence Materiel Organisation was delisted and its functions merged with the Department of Defence. The changes give effect to the 'One Defence' business model recommended by the First Principles Review.

1.28 On 1 May 2016, the *Australian Trade and Investment Commission Act 1985* was amended to change the agency's name to the 'Australian Trade and Investment Commission' to reflect the increased emphasis on attracting and facilitating foreign direct investment into Australia.<sup>7</sup>

1.29 The *Defence Legislation Amendment (Military Justice Enhancement—Inspector General ADF) Act 2015* commenced on 17 June 2015 and added a number

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6 Department of Defence, *Statement relating to the delay in presentation of a periodic report*, (tabled 8 November 2016).

7 Australian Trade and Investment Commission, *Annual Report 2016–17*, p. 142.

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of additional functions to the role of the Inspector-General of the Australian Defence Force.<sup>8</sup>

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

1.30 The committee is obliged, under 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***

1.31 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 is satisfied that there are no bodies within these portfolios that do not meet their reporting requirements to the Senate.

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

1.32 Under the terms of Standing Order 25(20)(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.

1.33 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 organisations. The committee therefore found all of the annual reports to be 'apparently satisfactory'.

### **Annual reports referred to the committee**

1.34 The following annual reports were referred to the committee for consideration:

#### ***Departments of State***

- Department of Defence (a non-corporate Commonwealth entity)
- Department of Foreign Affairs and Trade (a non-corporate Commonwealth entity)
- Department of Veterans' Affairs (a non-corporate Commonwealth entity incorporating the reports of Repatriation Commission and Military Rehabilitation and Compensation Commission)

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8 Inspector-General of the Australian Defence Force, *Report for the period 1 January 2014 to 30 June 2015*, p. 1.

*Corporate Commonwealth entities under the PGPA Act*

- Army and Air Force Canteen Service
- Australian War Memorial (statutory agency)
- Defence Housing Australia (statutory agency)
- Export Finance and Insurance Corporation
- Royal Australian Air Force Veterans' Residences Trust Fund
- Navy Canteens
- Services Trust Funds
- Tourism Australia

*Non-corporate Commonwealth entities under the PGPA Act*

- Australian Centre for International Agricultural Research (statutory agency)<sup>9</sup>
- Australian Trade and Investment Commission (statutory agency)
- Australian Safeguards and Non-Proliferation Office (statutory agency)<sup>10</sup>

*Statutory bodies not under the PGPA Act*

- Director of Military Prosecutions
- Judge Advocate General
- Inspector-General of the Australian Defence Force

*Commonwealth companies limited by guarantee under the Corporations Act 2001*

- AAF Company
- Australian Strategic Policy Institute
- Repatriation Medical Authority
- Royal Australian Air Force Welfare Recreational Company

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9 A statutory agency means the agency is identified in its enabling legislation as a statutory agency for the purposes of the *Public Service Act 1999*, whereby the legislation provides for the agency head to employ APS employees for that agency.

10 The Australian Safeguards and Non-Proliferation Office is a division within the Department of Foreign Affairs and Trade, however, the Director-General is a statutory officer who reports directly to the Minister for Foreign Affairs.



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- Veterans' Review Board (statutory agency)

*Commonwealth companies limited by shares under the Corporations Act 2001*

- ASC Pty Ltd<sup>11</sup>

*Others*

- Defence Abuse Response Taskforce—Final Report
- Schedule of Special Purpose Flights

### **Structure of report**

1.35 Chapter 1 contains comments on the annual reports of each Department of State. Chapter 2 considers annual reports of selected Commonwealth entities. Reports are listed in alphabetical order by portfolio.

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11 The ASC Pty Ltd sits within the Finance portfolio and is examined by the Finance and Public Administration Legislation Committee.

