Chapter 1

Overview

Introduction

1.1 Annual reports of departments and agencies are referred to Senate legislation committees under Senate Standing Order 25(20). The Economics Legislation Committee is responsible for the scrutiny of departments and agencies in the following portfolios:

- Innovation, Industry, Science and Research;
- Resources, Energy and Tourism; and
- Treasury.[1]

1.2 The structures and outcomes for each of these portfolios for 2009–10 are summarised in Appendices 2, 3 and 4, respectively.

1.3 Standing Order 25(20) requires the committee to:

- examine each annual report referred to it and report to the Senate whether the report is apparently satisfactory;
- 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;
- investigate and report to the Senate on any lateness in the presentation of annual reports;
- in considering an annual report, take into account any relevant remarks about the report made in debate in the Senate;
- if the committee so determines, consider annual reports of departments and budget-related agencies in conjunction with examination of estimates;
- 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;
- draw to the attention of the Senate any significant matters relating to the operations and performance of the bodies furnishing the annual reports; and
- 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.[2]

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1 *Journals of the Senate*, No. 2, 29 September 2010, pp 88–89.

Purpose and requirements of annual reports

1.4 Annual reports provide information on the success (or otherwise) of agencies in meeting targets outlined in budget statements, their primary function being to assist in ensuring the public accountability of government agencies. The tabling of annual reports in the Parliament, and scrutiny by Senate committees, allows Parliament to make informed judgments on the executive's performance in administering government programmes.

1.5 Departments of State and Executive Agencies present their annual reports pursuant to subsections 63(2) and 70(2) of the *Public Service Act 1999*. These entities, as well as prescribed agencies under section 5 of the *Financial Management and Accountability Act 1997* (FMA Act), are required to comply with the Department of the Prime Minister and Cabinet's *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, approved by the Joint Committee of Public Accounts and Audit.[3]

1.6 Commonwealth authorities and companies present their annual reports pursuant to their own enabling legislation and/or sections 9 and 36 of the *Commonwealth Authorities and Companies Act 1997* (CAC Act).[4]

1.7 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 requirements imposed under the government's policy, to the extent that the requirements do not conflict.

1.8 The legislation governing the annual reports of agencies considered in this report is shown in Appendices 4, 5 and 6.

Reports referred to the committee

1.9 Under Standing Order 25(20)(f), the committee is required to report on the annual reports of departments and agencies tabled in the Senate between 1 November

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2 Standing Order 25(20), *Standing Orders and other orders of the Senate*, June 2009, p. 28.

3 See http://www.dpmc.gov.au/guidelines/docs/annual_report_requirements.pdf. The financial statements for these entities must be produced in accordance with the *Financial Management and Accountability Orders (Financial Statements for reporting periods ending on or after 1 July 2008)*.

4 Reports of Commonwealth authorities subject to the CAC Act must be produced in accordance with the *Commonwealth Authorities and Companies (Report of Operations) Orders 2008* and the *Commonwealth Authorities and Companies Orders (Financial Statements for reporting periods ending on or after 1 July 2008)*. Annual reports of Commonwealth companies are required to be based on the reporting requirements under the *Corporations Act 2001*.

and 30 April of the following year by the tenth sitting day after 30 June of that year. This year that date is 24 August 2011.[5]

1.10 This report therefore examines the 2009–10 annual reports of the following agencies (which were tabled in the Senate or presented to the President between 1 November 2010 and 30 April 2011):

- Anglo-Australian Observatory (AAO);
- Auditing and Assurance Standards Board (AUASB);
- Australian Accounting Standards Board (AASB);
- Australian Centre for Renewable Energy Board (ACRE);
- Australian Competition and Consumer Commission (ACCC);
- Australian Nuclear Science and Technology Organisation (ANSTO);
- Australian Research Council (ARC);
- Australian Securities and Investments Commission (ASIC);
- Department of Resources, Energy and Tourism (DRET);
- Financial Reporting Council (FRC);
- Innovation Australia;
- Innovation Investment Fund (IIF) Companies;
- National Competition Council (NCC);
- National Offshore Petroleum Safety Authority (NOPSA);
- Productivity Commission (PC);
- Reserve Bank of Australia (RBA);
- Royal Australian Mint (RAM);
- Snowy Hydro Limited; and
- Takeovers Panel (TP).

1.11 In addition to the 2009–10 annual reports of agencies, this report also examines the 2008–09 report on Australia and the International Financial Institutions, which was tabled in the parliament by the Treasurer on 9 February 2011.[6]

1.12 Comments on all of the above reports are contained in Chapter 2.

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5 The committee is also required to report on annual reports tabled in the Senate between 1 May and 31 October each year by the tenth sitting day of the following year.

6 Whilst this is a report presented to the parliament by the Minister, and not an annual report of a department or agency, it is still within the power of the committee to consider it as a report of interest under the committee's area of oversight.

Timeliness

1.13 Standing Order 25(20)(c) requires the committee to report to the Senate on the late presentation of annual reports.

Departments and FMA Act entities

1.14 Section 4 of the *Requirements for Annual Reports* states that annual reports of departments and agencies under the FMA Act framework are to be presented to each House of Parliament on or before 31 October in the year the report is given.

CAC Act entities

1.15 Section 9 of the CAC Act stipulates that the deadline for furnishing the minister with the annual reports of Commonwealth authorities is the 15th day of the 4th month after the end of the financial year; that is, 15 October.

1.16 Section 36 of the CAC Act stipulates that Commonwealth companies must give their annual reports to the responsible minister by the earlier of the following:

- four months after the end of the financial year, or
- 21 days before the next annual general meeting of the company after the end of the financial year.

Other entities

1.17 Entities reporting in accordance with their own legislation are often required to prepare for the relevant minister their annual report 'as soon as is practicable' after a particular date. The committee draws attention to subsections 34C(2) and 34C(3) of the *Acts Interpretation Act 1901*, which stipulate that where no date for providing a report to a minister is specified, the report should be presented no more than six months after the reporting period, and the minister must provide the report to the Parliament within 15 sitting days after he or she receives it.

Government policy for all annual reports

1.18 While the legislative requirements for the tabling of annual reports vary between different types of agencies, the government's policy is 'that all annual reports should be tabled by 31 October'.[7]

1.19 The committee notes that none of the annual reports considered in this report were tabled in the Senate by 31 October 2010. All bar three of the reports considered

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7 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, June 2009, p. 2; and Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Government Documents to the Parliament (Including Government Responses to Committee Reports, Ministerial Statements, Annual Reports and Other Instruments)*, June 2009, paragraph 4.10.

in this report were, however, tabled in the House of Representatives before 31 October, and hence have technically met the requirement set down by the government's policy.

1.20 The two reports which were not tabled in either House of Parliament by 31 October and hence failed to meet this policy are the 2009–10 annual reports of the Anglo-Australian Observatory and Innovation Investment Fund (IIF) companies. The annual report of the ACRE Board was also late; however, the committee recognises that the Board only had its first formal meeting on 21 June 2010 and therefore had limited operational capacity to complete its report on time.

1.21 The committee suggests that all annual reports should be tabled by 31 October in the Senate, regardless of their tabling date in the House of Representatives.

1.22 Additionally, while it is government policy that all annual reports should be tabled by 31 October, dates for the tabling of annual reports set in legislation vary between agencies and as such, will be considered in the specific comments on annual reports below where necessary.

Remarks made in the Senate

1.23 Senate Standing Order 25(20)(d) directs the committee to take into account remarks made in the Senate when considering annual reports.

1.24 None of the annual reports considered in this report have been the subject of debate in the Senate.

Bodies not presenting annual reports to the Senate

1.25 The committee is required to report to the Senate each year under Standing Order 25(20)(h) on whether there are any bodies not presenting annual reports to the Senate which should. The committee is satisfied that there are no such bodies within the Innovation, Industry, Science and Research; Resources, Energy and Tourism; or Treasury portfolios.

Other comments on reports

1.26 The *Requirements for Annual Reports* outlines the government's view of the purpose of annual reports:

> The primary purpose of annual reports of departments is accountability, in particular to the Parliament.
>
> 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.[8]

1.27 In accordance with Standing Order 25(20)(a) the committee is required to examine reports and inform the Senate as to whether they are 'apparently satisfactory'. In doing so the committee considers compliance with the reporting guidelines specified by the legislation under which departments and agencies present their annual reports.

1.28 The committee considers that the reports it has examined are 'apparently satisfactory'.

1.29 Despite this, the committee believes that some aspects of agency annual reports can be improved. In this report, the committee has focussed on examining whether or not agency annual reports contain discussion of external scrutiny and parliamentary accountability.

External scrutiny and parliamentary accountability

1.30 The *Requirements for Annual Reports* states that annual reports:

> … must provide information on the most significant developments in external scrutiny of the department and the department's response, including particulars of:
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> (a) judicial decisions and decisions of administrative tribunals that have had, or may have, a significant impact on the operations of the department; and
>
> (b) reports on the operations of the department by the Auditor-General (other than the report on financial statements), a Parliamentary committee or the Commonwealth Ombudsman.[9]

1.31 Clause 11 of Schedule 1 of the *Commonwealth Authorities and Companies (Report of Operations) Orders 2008* states that the same requirements apply to Commonwealth authorities that present their annual reports in accordance with the provisions of section 9 of the CAC Act.

1.32 As noted above, the primary purpose of annual reports is accountability to the Parliament—it is therefore important that details about external scrutiny are included in a clear manner in annual reports. It is particularly important that details about parliamentary scrutiny are included in annual reports, including appearances at Senate estimates hearings (which are the subject of bi-annual reports to the Senate).

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8 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 23 June 2010, p. 3.

9 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 23 June 2009, p. 9.

1.33 With this in mind, the committee believes that future annual reports could be improved by more systematic reporting in relation to parliamentary committee inquiries and reports, and reports of the Auditor-General and Ombudsman, as recommended in its previous report *Annual reports (No. 2 of 2010)*.[10]

Compliance of agencies with Senate Orders

1.34 Periodically, the Rule of Law Institute of Australia (RoLIA) publishes a survey reviewing the performance of Australia's economic regulatory agencies at Senate Estimates, including an evaluation of data relating to the timeliness of agencies' provision of responses to questions taken on notice at estimates hearings.

1.35 Its third report of this kind, published in January 2011, notes that many agencies struggle to comply with Senate Orders relating to timeliness, and contains a recommendation "that the Senate require agencies and departments to maintain a register of compliance with Senate Orders, including compliance with Orders relating to Estimates questions taken on notice, and that the register be published in each Annual Report."[11]

1.36 The committee considers that a register of compliance with Senate Orders would be a useful addition to agencies' annual reports, and would enhance the accountability of government entities to the Parliament.

Recommendation 1

1.37 The committee recommends that the government, in consultation with the Joint Committee of Public Accounts and Audit, amend the annual reporting requirements for government entities to include for the provision of a register of compliance with Senate Orders in each annual report.

Structure of report

1.38 This report consists of two chapters. The second chapter analyses the annual reports of the agencies listed in paragraph 1.10 above.

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10 Senate Economics Legislation Committee, *Annual Reports (No. 2 of 2010)*, November 2010, p. 6.

11 Rule of Law Institute of Australia, *RoLIA Senate Estimates Survey No. 3*, p. 25.