Chapter 1

Overview

Introduction

1.1 This is the Senate Economics Legislation Committee's (the committee) second and final report on annual reports in 2012. It provides an overview of the committee's examination of annual reports for the 2010–11 financial year, and which were tabled after 31 October 2011.

Terms of reference

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

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

1.3 The structures and outcomes for each of these portfolios are summarised in Appendices 5, 6 and 7, respectively.

1.4 Standing order 25(20)[2] requires the committee 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 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;

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1 *Journals of the Senate*, No. 74, 8 February 2012, pp 2043–2044.

2 *Standing Orders and other orders of the Senate*, June 2009, p. 28.

(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.

Purpose and requirements of annual reports

1.5 Annual reports provide information on the success (or otherwise) of departments and agencies in meeting their targets and therefore assist in ensuring the public accountability of government departments and agencies. Their tabling in the Parliament, and scrutiny by Senate committees, allows Parliament to make informed judgments on the executive's performance in administering government programs.

1.6 The requirements are set down in the following instruments:[3]

- Departments of State and Executive Agencies present their annual reports pursuant to sections 63(2) and 70(2) of the *Public Service Act 1999*,[4] and the Department of the Prime Minister and Cabinet's *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, revised 8 July 2011.
- Commonwealth authorities and companies present their annual reports pursuant to their own enabling legislation and/or sections 9, 36 and 48 of the *Commonwealth Authorities and Companies Act 1997* (CAC Act).[5]
- For non-statutory bodies, the requirements are contained in the Government response to the report of the Senate Standing Committee on Finance and Public Administration on Non-statutory bodies, Senate *Hansard*, 8 December 1987, pp 2643–45.

1.7 The legislation governing the annual reports of various agencies is shown in Appendices 2, 3 and 4.

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3 The Department of Finance and Deregulation publishes charts on their website that show which agencies are subject to various acts: http://www.finance.gov.au/financial-framework/fma-legislation/fma-agencies.html; and http://www.finance.gov.au/financial-framework/cac-legislation/cac-bodies.html.

4 See www.dpmc.gov.au/guidelines/index.cfm. Section 3(1) of Part 1 of the Requirements states that they also 'apply to prescribed agencies under section 5 of the *Financial Management and Accountability Act 1997*'. The financial statements must be produced in accordance with the amended *Financial Management and Accountability Orders (Financial Statements for reporting periods ending on or after 1 July 2008)*.

5 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*.

1.8 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.

Changes to reporting requirements

1.9 This report also examines the recent requirements approved by the Joint Committee of Public Accounts and Audit which include an analysis of Key Performance Indicators (KPIs) and statistics relating to occupational health and safety issues;[6] freedom of information requests (up to 30 April 2011);[7] ecologically sustainable development and environmental performance reporting;[8] and advertising and market research.[9]

1.10 As part of the recent major reforms to Freedom of Information legislation, the Information Publication Scheme (IPS) was established. It commenced on 1 May 2011, replacing the former annual report publication requirements in section 8 of the FOI Act. For the 2010–11 financial year, the reports should include both a section 8 statement covering the period from 1 July 2010 to 30 April 2011 inclusive, as well as a statement referring to the IPS.[10]

1.11 *Requirements for Annual Reports* for 2010–11 include significant amendments relating to the Commonwealth Disability Strategy. The specific requirement for disability reporting in individual annual reports has been discontinued. To preserve the level of parliamentary scrutiny of disability issues, each report must now include an explicit and transparent reference to other disability reporting mechanisms, noting where agency level information can be found. A suggested form of words to satisfy the requirement is set out in the PM&C *Requirements for Annual Reports* released on July 2011, p. 29.

Reports referred to the committee

1.12 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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6 Section 74 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

7 Section 8 of the *Freedom of Information Act 1982*.

8 Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999*.

9 *Requirements for Annual Reports*, published by the Department of Prime Minister and Cabinet and approved by the Joint Parliamentary Committee on Public Accounts and Audit in July 2011.

10 PM&C *Requirements for Annual Reports*, p. 21; and *Freedom of Information Act 1982*, Part II.

and 30 April each year by the tenth sitting day after 30 June of that year. This year that date is 12 September 2012.[11]

1.13 This report examines the annual and financial reports 2010–11 of the following departments and agencies, which were tabled in the Senate within the aforementioned timeframe and later:

Government departments

- Department of the Treasury;

Prescribed agencies under the FMA Act

- Australian Competition and Consumer Commission [includes the Australian Energy Regulator] (independent statutory authority);
- Australian Office of Financial Management (non-statutory agency);
- Australian Prudential Regulation Authority;
- Commissioner of Taxation (ATO) [includes the Development Allowance Authority] (statutory agency);
- Corporations and Markets Advisory Committee (statutory agency);
- Royal Australian Mint (non-statutory agency);

Statutory bodies/authorities not under the FMA Act

- Australian Centre for Renewable Energy (ACRE) Board (independent statutory advisory board);
- Australian Statistics Advisory Council;
- Innovation Australia (independent statutory body);
- Tax Practitioners Board (independent statutory authority);

Non-statutory bodies

- Foreign Investment Review Board;

Commonwealth authorities (under the CAC Act)

- Australian National University (statutory authority);
- Tourism Australia (statutory authority);

Commonwealth companies (under the CAC Act)

- IIF Investments Pty Ltd; and

11 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.

Other companies, limited by shares

- Snowy Hydro Limited (statutory corporation).

1.14 Comments on these individual reports are contained in Chapter 2, where reports are listed in alphabetical order under each portfolio.

Organisational changes

1.15 Due to changes in the machinery of government in December 2011, this report also contains analysis of one annual report tabled under the Tertiary Education and Skills portfolio, now the third outcome for the Department of Industry, Innovation, Science, Research and Tertiary Education (formerly the Department of Industry, Innovation, Science and Research). This is the Australian National University's *Annual Report 2011*, tabled on 20 June 2012. Annual reports tabled by 31 October 2011 under the Tertiary Education and Skills portfolio were considered in the Education, Employment and Workplace Relations Committee's report on *Annual reports (No. 1 of 2012)*.[12]

1.16 The committee notes that the Tertiary Education Quality and Standards Agency (TEQSA), a prescribed agency under the FMA Act, commenced operation on 31 July 2011. At the time of its establishment the agency was operating under the Education, Employment and Workplace Relations portfolio, but has since been transferred to the Industry, Innovation, Science, Research and Tertiary Education portfolio.

1.17 By the same principle, there is another prescribed agency and statutory authority formerly within the Education, Employment and Workplace Relations portfolio which will for the first time be required to report for the financial year 2011–12 under the Industry, Innovation, Science, Research and Tertiary Education portfolio. It is the Australian Skills Quality Authority (ASQA), established on 24 March 2011.

1.18 With the Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Bill 2011, there was a transfer of responsibility for existing renewable energy technology projects from RET (including those projects under the oversight of the ACRE Board) to ARENA, a new agency under the Resources, Energy and Tourism portfolio established as an independent statutory authority under the *Australian Renewable Energy Agency Act 2011*. ARENA commenced operation on 1 July 2012.

1.19 On 23 August 2012, the Corporations Legislation Amendment (Financial Reporting Panel) Bill 2012 was passed in the Senate. The legislation disbanded the Financial Reporting Panel by repealing its functions and powers. The Panel's annual

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12 See: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=eet_ctte/annual/2012/report1/index.htm

report for 2010–11 was considered in the committee's report on *Annual reports (No. 1 of 2012)* under the Treasury portfolio.

Timeliness

1.20 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

1.21 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. Furthermore, if Senate Estimates is scheduled to occur prior to 31 October, it is best practice for annual reports to be tabled prior to those hearings, as noted in the PM&C *Requirements for Annual Reports*.

CAC Act entities

1.22 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.

1.23 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

1.24 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

1.25 While the legislative requirements for the tabling of annual reports vary between different types of agencies,[13] the Government's policy is 'that all annual reports should be tabled by 31 October'.[14]

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13 The various requirements are set out in the Committee's report *Annual reports (No. 1 of 2009)*, March 2009, p. 4.

1.26 The committee notes that none of the annual reports considered in this report were tabled in the Senate by 31 October 2011. However, 7 out of the 16 reports considered were tabled in the House of Representatives by 31 October, and hence have technically met the requirement set down by the government's policy.

Remarks made in the Senate

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

1.28 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

1.29 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 Industry, Innovation, Science, Research and Tertiary Education; Resources, Energy and Tourism; or Treasury portfolios at this time.

Other comments on reports

1.30 Taking into account the reporting guidelines specified by the legislation under which departments and agencies present their annual reports, the committee considers that the reports it has examined are generally 'apparently satisfactory'.

1.31 Despite this, the committee considers that some aspects of agency annual reports could be improved. One of the things that the committee examines is whether annual reports contain discussion of external scrutiny and parliamentary accountability.

External scrutiny and accountability

1.32 It is required 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

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14 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, 8 July 2011, p. 2; 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 2010, paragraph 4.10.

(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.[15]

Compliance indices or lists of requirements

1.33 The inclusion of a list of requirements in annual reports is mandatory for all departments and agencies under the FMA Act. For CAC Act and other agencies, the committee recommends the inclusion of a compliance index. The index preferably should include a nil return entry where the agency has nothing to report under an item. A compliance index is a useful feature of reports and considerably assists the committee's task of assessing reports. It also assists agencies by clearly showing that their compliance obligations have been met. It can be particularly useful for agencies with reporting requirements under various Acts.

1.34 The committee commends the majority of agencies for their inclusion of compliance indices in their 2010–11 annual reports.

1.35 Annual reports should be a primary reference document for parliamentarians and others looking for information about external scrutiny of government agencies. 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).

15 *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*. 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.