

Chapter 1

Overview

Introduction

1.1 This is the Senate Economics Legislation Committee's (the committee) second and final report on annual reports in 2014. It provides an overview of the committee's examination of annual reports for the 2012–13 financial year tabled after 31 October 2013 and after the publication of the committee's first report on annual reports in 2014.

Terms of reference

1.2 Annual reports of departments and agencies are referred to Senate committees under Senate Standing Order 25(20). During the reporting period, the Senate Economics Legislation Committee was responsible for the scrutiny of departments and agencies in the following portfolios:

- Industry; and
- Treasury.¹

1.3 The structures and outcomes for each of these portfolios are summarised in Appendices 3, 4, 5 and 6 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;
- (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

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.

- (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 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 Together with Portfolio Budget Statements (PBS) and the Estimates process, annual reports are the principal mechanisms for scrutiny of the operations of government. Indeed, as highlighted in the *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies (Requirements for Annual Reports)* released by the Department of the Prime Minister and Cabinet (PM&C), and approved by the Joint Committee of Public Accounts and Audit (JCPAA):

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.³

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Annual reports and PB Statements are the principal formal accountability mechanisms between government and departments and from departments through (or on behalf of) government to the Parliament.⁴

Assessment of annual reports

1.7 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.

1.8 The requirements are set out as follows:

- Departments of State and Executive Agencies present their annual reports pursuant to subsections 63(2) and 70(2) of *Public Service Act 1999*, and the *Requirements for Annual Reports*. As a matter of policy, the *Requirements for*

3 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies (Requirements for Annual Reports)*, 24 June 2013, paragraph 5(2).

4 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 24 June 2013, paragraph 6(1).

Annual Reports also apply to prescribed agencies under section 5 of the *Financial Management and Accountability Act 1997* (FMA Act).⁵

- 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). Those commonwealth authorities and companies reporting under the CAC Act are required to comply with the *Commonwealth Companies (Annual Reporting) Orders 2011* and the *Commonwealth Companies (Annual Reporting) Orders 2011*, respectively.
- Guidelines for the annual reports of non-statutory bodies are set out in the Government Response to recommendations of the then Senate Standing Committee on Finance and Public Administration on Non-statutory bodies, *Senate Hansard*, 8 December 1987, pp 2643–45.

1.9 The legislation governing the annual reports of various agencies and the tabling information is shown in Appendices 1, 2 and 3.

1.10 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 PM&C guidelines, to the extent that the requirements do not conflict.

Changes to reporting requirements

1.11 The 2012–13 annual reports are prepared in accordance with the *Requirements for Annual Reports*. These requirements are reviewed annually and the latest version was issued on 24 June 2013.

1.12 Significant amendments to the most recent *Requirements for Annual Reports* 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*.⁶ This framework was established to improve reporting of regional expenditure.

Organisational and operational changes

1.13 Following the Machinery of Government changes arising from the Administrative Arrangements Orders (AAO) dated 18 September 2013, 3 October 2013 and 12 December 2013, the Department of Industry has simplified its outcomes and programmes structure. The current Report on Annual Reports (No. 2 of 2014), however, is based on the machinery of government changes of March 2013 and

5 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 24 June 2013, paragraph 3(1).

6 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 24 June 2013, p. i.

its accompanying AAO amendments. The Report on Annual Report (No. 1 of 2015), subsequent to this current report, will be based on the more updated AAO amendments.

Annual reports referred to the committee

1.14 The committee reported on annual reports that had been tabled in the Senate by 31 October 2013 in its report *Annual reports (No. 1 of 2014)* tabled on 19 March 2014.

1.15 Under Standing Order 25(20)(f), the committee is required to report on the annual reports of departments and agencies tabled in the Senate by 30 April each year by the tenth sitting day after 30 June of that year. This year that date is 27 August 2014. This Report on Annual Report also examines annual reports that were tabled after 30 April 2014 but before this report's tabling.

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

Statutory bodies/authorities not under the FMA Act

- Innovation Australia (independent statutory body)

Non-statutory bodies

- Foreign Investment Review Board

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

Additional reports referred to the committee

1.18 In addition to the aforementioned reports, the following reports were also referred to the committee in the reporting period. The committee notes that these reports are referred for information only, and the committee is not required to report on them under the terms of the Standing Order:

- Australia and the International Financial Institutions 2012–13, tabled 13 May 2014 (presented out of session on 23 April 2014);
- Australian Competition and Consumer Commission—Telstra's Structural Separation Undertaking Annual Compliance Report 2012–13—Report to the Minister for Communication, tabled 17 June 2014;
- Australian Competition and Consumer Commission—Report Telecommunications 2012–13: Report 1: Telecommunications competitive safeguards; Report 2: Changes in the prices paid for telecommunications services in Australia, tabled 25 March 2014;
- Australian National Audit Office:
 - Report No. 35 of 2013–14—Performance audit, Managing Compliance of High Wealth Individuals: Australian Taxation Office, tabled 16 June 2014;
 - Report No. 38 of 2013–14—Performance audit, Establishment and administration of the National Offshore Petroleum Safety and

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- Environmental Management Authority: National Offshore Petroleum Safety and Environmental Management Authority, tabled 16 June 2014 (presented out of session 12 June 2014);
- Report No. 39 of 2013–14—Performance audit, Compliance Effectiveness Methodology: Australian Taxation Office, tabled 16 June 2014 (presented out of session 12 June 2014);
 - Report No. 41 of 2013–14—Performance audit, Commercialisation Australia Program, Department of Industry, tabled on 19 June 2014;
 - Report No. 44 of 2013–14—Performance audit, Financial statement audit—Interim phase of the audits of the financial statements of major general government sector agencies for the year ending 30 June 2014: Across agencies, tabled 19 June 2014;
 - Report No. 47 of 2013–14—Performance audit, Managing conflicts of interest in FMA agencies: Across agencies, tabled 23 June 2014;
 - Report No. 48 of 2013–14—Performance audit, Administration of the Australian Business Register: Australian Taxation Office; Australian Securities and Investments Commission; Department of Industry, tabled 23 June 2014;
 - Report No. 49 of 2013–14—Performance audit, The management of physical security: Australian Crime Commission; Geoscience Australia; Royal Australian Mint, tabled 24 June 2014;
 - Report No. 50 of 2013–14—Performance audit, Cyber attacks: Securing agencies' ICT systems: Across agencies, tabled 24 June 2014;
 - Report No. 54 of 2013–14—Performance audit, Establishment and use of multi-use lists: Across agencies, tabled 26 June 2014;
- Clean Energy Finance Corporation (CEFC)—Report to Responsible Ministers under the *Employment Opportunity (Commonwealth Authorities) Act 1987*, Section 9 of the *Equal Employment Opportunity (Commonwealth Authorities) Act 1987*;
 - Productivity Commission—
 - Report No. 69—Tasmanian shipping and freight, dated 7 March 2014, tabled 24 June 2014;
 - Report No. 70—Australia's Automotive Manufacturing Industry, Section 12 of the *Productivity Commission Act 1998*, tabled 26 August 2014; and
 - Report No. 71—Public Infrastructure, Volumes 1 & 2, Section 12 of the *Productivity Commission Act 1998*, tabled 15 July 2014.

Timeliness

1.19 Standing Order 25(20)(c) requires the committee to report to the Senate on the late presentation of annual reports. The annual reports considered in this report were tabled after 31 October 2013.

Departments and FMA Act entities

1.20 Subsection 4(1) of Part 1 of the *PM&C 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 Supplementary Estimates hearings are scheduled to occur prior to 31 October, it is best practice for annual reports to be tabled prior to those hearings.

CAC Act entities

1.21 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.

1.22 According to section 36(1) of the CAC Act a Commonwealth company must give the responsible Minister:

- (a) a copy of the company's financial report, directors' report and auditor's report that the company is required by the *Corporations Act 2001* to have for the financial year (or would be required by that Act to have if the company were a public company); and
- (b) any additional report under subsection (2); and
- (c) in the case of a wholly-owned Commonwealth company—any additional information or report required by the Finance Minister's Orders.

1.23 Section 36(1A) of the CAC Act stipulates that a Commonwealth company must give the report to the responsible Minister by:

- (a) if the company is required by the *Corporations Act 2001* to hold an annual general meeting—the earlier of the following:
 - (i) 21 days before the next annual general meeting after the end of the financial year;
 - (ii) 4 months after the end of the financial year; and
- (b) in any other case—4 months after the end of the financial year; or the end of such further period granted under subsection 34C(5) of the *Acts Interpretation Act 1901*.

1.24 It should be noted that 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

1.25 The committee notes that although the 2012–13 annual report for Innovation Australia was tabled after 31 October 2013, section 46(1) of the *Industry Research and Development Act 1986* allows:

7 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 24 June 2013, p. 2; and *Guidelines for the Presentation of Government Documents to the Parliament (Including Government Documents, Government Responses to Committee Reports, Ministerial Statements, Annual Reports and Other Instruments)*, October 2013, paragraph 4.10.

...the Board...[to], as soon as practicable after 30 June in each year...prepare and give to the Minister a report on the operations of the Board during the financial year that ended on that 30 June.

1.26 Likewise, the annual reporting requirements 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, pp. 2643–45 is not clear on the tabling date for non-statutory bodies such as the Foreign Investment Review Board (FIRB). Nonetheless, the committee encourages all bodies required to table annual reports to make them available to prior to the October supplementary estimates to allow senators sufficient time for examination.

Other entities

1.27 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 the Minister receives it.

Other comments on reports

1.28 Under Standing Order 25(20)(a), the committee is required to examine the annual reports of departments and agencies and report to the Senate on whether they are 'apparently satisfactory'. 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'.

1.29 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

1.30 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:

(a) judicial decisions, decisions of administrative tribunals, and decisions by the Australian Information Commissioner, that have had, or may have, a significant impact on the operations of the department; and

(b) reports on the operations of the department, including by the Auditor-General (other than the report on financial statements), a

Parliamentary committee, the Commonwealth Ombudsman, or agency capability reviews (once released).⁸

1.31 Annual reports should be a primary reference document for parliamentarians and others looking for information about external scrutiny of government agencies. As noted, 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. Details on parliamentary scrutiny should be included in annual reports, including appearances at Senate estimates hearings (which are the subject of biannual reports to the Senate) and any evidence or submissions made to parliamentary inquiries. The reports should also note that they are subject to scrutiny by this and any other committee.

1.32 One of the key requirements for an annual report is that it should 'be written in plain English and provide sufficient information and analysis for the Parliament to make a fully informed judgement on departmental performance'.⁹

Compliance indices or lists of requirements

1.33 The inclusion of a compliance index or a list of requirements in annual reports is mandatory for all departments and agencies under the FMA Act and CAC Act. 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 notes that only one annual report examined in this report included a compliance index. The committee wishes to draw to the attention of portfolio departments and agencies that the inclusion of the reporting requirements, particularly the mandatory elements contained in the *Requirements for Annual Reports*, is an essential part of the reporting and accountability mechanism.

8 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 23 June 2013, p. 10. Clause 17 of the *Commonwealth Authorities (Annual Reporting) Orders 2011* 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. Likewise, Clause 15 of the *Commonwealth Companies (Annual Reporting) Orders 2011* requires a similar duty to include details of external scrutiny and reviews.

9 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 23 June 2013, paragraph 4.