

Chapter 1

Introduction

1.1 The Senate Legal and Constitutional Affairs Legislation Committee (the committee) is responsible for examining the annual reports of the departments and agencies of the Attorney-General's Portfolio and the Home Affairs Portfolio.

1.2 This report on annual reports (No. 1 of 2020) provides an overview of the committee's examination of annual reports presented to the Parliament between 1 May 2019 and 31 October 2019.¹ Copies of this and other committee reports can be obtained from the Senate Table Office, the committee secretariat, or [online](#) at the committee's web page.

Terms of reference

1.3 Under Senate Standing Order 25(20), the annual reports of certain departments and agencies stand referred to committees for examination and assessment. Each 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 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 Standing Order 25(20)(f) requires the committee to report on annual reports tabled between 1 May and 31 October by the tenth sitting day of the following year, and report on annual reports tabled between 1 November and 3 April by the tenth sitting day after 30 June of that year.

- (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.²

Allocated portfolios

1.4 The Senate allocated departments and agencies to committees on 4 July 2019.³ In accordance with that resolution, the committee has responsibility for the oversight of the following:

- Attorney-General's Portfolio;⁴ and
- Home Affairs Portfolio.

Performance Reporting Framework

1.5 The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) established a performance reporting framework for all Commonwealth entities and companies. Section 38 of the PGPA Act requires all Commonwealth entities to measure and assess their performance.

1.6 Section 39 of the PGPA Act requires all Commonwealth entities to prepare an annual performance statement and include those statements in their annual reports. Entities use annual performance statements to report on the results achieved against the targets, goals and measures established at the beginning of a reporting year in the relevant corporate plan and Portfolio Budget Statements (PBS).

1.7 These documents are an essential part of the accountability system that provides the minister, the Parliament and the public with detailed information about the actual financial and non-financial performance of entities through the cycle of reporting periods, and facilitate the examination of how the use of public resources achieve the intended results for a Commonwealth body.⁵

2 The Senate, *Standing Orders and other orders of the Senate*, August 2018, SO 25(20).

3 *Journals of the Senate*, No. 3, 4 July 2019, pp. 83–84.

4 By operation of the Administrative Arrangements Order dated 29 May 2019, responsibility for workplace relations, including work health and safety, rehabilitation and compensation functions was moved from the former Department of Jobs and Small Business to the Attorney-General's Department. The Department of Finance issued an instrument on 21 June 2019 which assigned responsibility for the preparation of the 2018-19 annual report and annual performance statements for those functions to the Department of Employment, Skills, Small and Family Business. Further, by virtue of a motion of the Senate dated 4 July 2019, the responsibility for industrial relations was allocated to the Senate Standing Committee on Education and Employment. As such, matters relating to those functions, including reporting on annual reports, are considered by that committee.

5 Department of Finance, Resource Management Guide No. 135, *Annual Report for Non-Corporate Commonwealth Entities*, May 2019, p. 7, https://www.finance.gov.au/sites/default/files/2019-12/RMG%20135_Annual_reports_for_non-corporates.pdf (accessed 21 January 2020).

1.8 The Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) supports the implementation of the PGPA Act and outlines the requirements of annual reports for Commonwealth entities.

Requirements for Annual Reports

1.9 Annual reports place a great deal of information about government departments and agencies on the public record. Accordingly, the tabling of annual reports is an important element of accountability to the Parliament, as the information provided in annual reports assists in the effective examination of the performance of departments and agencies, and the administration of government programs.

1.10 Different types of Commonwealth bodies have separate provisions for annual reporting which affect content and preparation requirements. Legislative provisions for Commonwealth bodies include:

- Non-corporate Commonwealth entity⁶—section 46 of the PGPA Act and Subdivision A of Division 3A of Part 2–3 of the PGPA Rule;
- Corporate Commonwealth entity⁷—section 46 of the PGPA Act and Subdivision B of Division 3A of Part 2–3 of the PGPA Rule;
- Commonwealth company⁸—section 97 of the PGPA Act, which refers to additional requirements under the *Corporations Act 2001* and Part 3–3 of the PGPA Rule;
- Statutory office holders and statutory bodies—statutory office holders are engaged or employed under an Act, which may prescribe annual reporting requirements pursuant to the office. It should be noted that there may be reporting requirements in the enabling legislation for statutory bodies (which may also be a Commonwealth entity);⁹ and
- Non-statutory bodies (NSBs)—NSBs are established by a minister and are not pursuant to a statute. Guidelines for the preparation of annual reports for NSBs are contained in the government response to the Senate Standing

6 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 *Public Governance, Performance and Accountability Act 2013* (PGPA Act)).

7 A body corporate that 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.

8 A company established by the Commonwealth under the *Corporations Act 2001* that is wholly controlled by the Commonwealth.

9 For example, some Acts that establish statutory bodies have separate reporting requirements under those Acts. For example, section 17 of the *Commonwealth Electoral Act 1918* prescribes specific reporting requirements for the Australian Electoral Commission.

Committee on Finance and Public Administration report on non-statutory bodies.¹⁰

1.11 In addition to legislative requirements, the Department of Finance (Finance) provides guidance material for Commonwealth entities and companies which sets out further detail on the content requirements for annual reports under the Commonwealth performance framework in accordance with the PGPA Act and PGPA Rule.¹¹ The material available from this website includes the following guides which apply to the reports being examined:

- *Resource Management Guide No. 135—Annual reports for non-corporate Commonwealth entities;*
- *Resource Management Guide No. 136—Annual reports for corporate Commonwealth entities; and*
- *Resource Management Guide No. 137—Annual reports for Commonwealth companies.*

1.12 The committee notes that Finance published updated versions of these guidance documents in May 2019 intended for 2018–19 annual reports, which include implementation steps resulting from the *Independent review into the PGPA Act* (the review).¹²

1.13 Following the review, two amendments to the PGPA Rule were registered on 4 April 2019. These amendments—the Public Governance, Performance and Accountability Amendment (Annual Reporting) Rules 2019 and the Public Governance, Performance and Accountability Amendment (Reporting Executive Remuneration) Rules 2019—affect reporting obligations for entities' and Commonwealth companies' annual reports from the 2018–19 period.

1.14 The amendments expand the Commonwealth entity and company annual reporting requirements in the following ways:

Public Governance, Performance and Accountability Amendment (Annual Reporting) Rules 2019

- providing for annual reports to be published using Finance's digital reporting tool as soon as practicable after presentation to the Parliament;

10 *Senate Hansard*, 8 December 1987, pp. 2643-45.

11 Department of Finance, *List of Resource Management Guides*, <https://www.finance.gov.au/publications/resource-management-guides> (accessed 17 January 2020).

12 The report of this review, the *Independent review into the operation of the Public Governance, Performance and Accountability Act 2013 and Rule* was tabled in both Houses of Parliament on 19 September 2018.

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- creating a requirement to report on statistics of all employees of an entity or company (in addition to statistics on Australian Public Service (APS) employees of the entity or company); and
 - inclusion of compliance index templates for corporate Commonwealth entities and companies, in a structure similar to the existing compliance index for non-corporate commonwealth entities.¹³

Public Governance, Performance and Accountability Amendment (Reporting Executive Remuneration) Rules 2019

- providing for further requirements for Commonwealth entities and companies to report on the details of the remuneration of key management personnel and other senior executives in their annual report;
- establishing further requirements for Commonwealth entities and companies to report on their policies and practices for the remuneration of key management personnel; and
- requiring Commonwealth entities and companies to publish their annual reports on their website as soon as practicable after tabling in either House of Parliament, if required to do so.¹⁴

1.15 The committee assessed Commonwealth entities' and companies' annual reports for compliance with these new requirements. The committee's assessment is set out in this report.

Reports examined

1.16 In accordance with Standing Order 25(20)(f), this report examines annual reports tabled in the period 1 May 2019 to 31 October 2019. In this period, 25 annual reports of Commonwealth entities, companies and statutory office holders were tabled and referred to the committee. The annual reports examined in this report are categorised as follows:

Attorney-General's Portfolio

- Administrative Appeals Tribunal—report for 2018–19;
- Attorney-General's Department—report for 2018–19;
- Australian Commission for Law Enforcement Integrity—report for 2018–19;
- Australian Financial Security Authority—report for 2018–19;
- Australian Human Rights Commission—report for 2018–19;

13 Public Governance, Performance and Accountability Amendment (Annual Reporting) Rules 2019, Explanatory Memorandum, pp. 1–4.

14 Public Governance, Performance and Accountability Amendment (Reporting Executive Remuneration) Rules 2019, Explanatory Memorandum, pp. 1–11.

- Australian Law Reform Commission—report for 2018–19;
- Commonwealth Director of Public Prosecutions—report for 2018–19;
- Commonwealth Ombudsman—report for 2018–19;
- Family Court of Australia—report for 2018–19;
- Federal Circuit Court of Australia—report for 2018–19;
- Federal Court of Australia—report for 2018–19, including the report of the National Native Title Tribunal;
- Inspector-General of Intelligence and Security—report for 2018–19;
- National Archives of Australia and National Archives of Australia Advisory Council—report for 2018–19;
- Office of the Australian Information Commissioner—report for 2018–19; and
- Office of Parliamentary Counsel—report for 2018–19.

Home Affairs portfolio

- Australian Transaction Reports and Analysis Centre—report for 2018–19;
- Australian Criminal Intelligence Commission—report for 2018–19;
- Australian Institute of Criminology—report for 2018–19;
- Australian Security Intelligence Organisation (ASIO)—report for 2018–19;
- Department of Home Affairs—report for 2018–19; and
- Australian Federal Police (AFP)—report for 2018–19, including reports on delayed notification search warrants, the National Witness Protection Program and unexplained wealth investigations and proceedings.

1.17 The committee is not obliged to examine reports on the operation of Acts, policy papers, budget documents or corporate plans. A list of all reports referred to the committee, including those not examined in this report can be found at Appendix 1.

Timeliness

1.18 Section 46 of the PGPA Act requires Commonwealth entities (corporate and non-corporate) to prepare annual reports and for such reports to be provided to the responsible minister by the 15th day of the fourth month after the end of the reporting period for the entity. The PGPA Act does not provide a timeframe for presentation to the Parliament; however the minister is obliged to present it within 15 sitting days upon receiving the report.¹⁵

1.19 The PGPA Rule 2014 states that annual reports for corporate Commonwealth entities, non-corporate Commonwealth entities and Commonwealth companies must

15 *Acts Interpretation Act 1901*, subsection 34C(3).

comply with the guidelines for presenting documents to the Parliament.¹⁶ The *Guidelines for the Presentation of Documents to the Parliament (including Government Documents, Government Responses to Committee Reports and Other Instruments)*, prepared by the Department of the Prime Minister and Cabinet (PM&C), were superseded by new *Tabling Guidelines* (the guidelines), which were published in June 2019.

1.20 The revised PM&C guidelines direct Commonwealth entities and companies to consult the Finance resource management guides for information about the preparation, content and reporting timeframes for annual reports.¹⁷

Timeliness of reports examined

1.21 Standing Order 25(20)(c) requires the committee to report to the Senate on the late presentation of annual reports. The committee considers the timely presentation of annual reports to be an important element in accountability to the Parliament and reiterates its preference of having annual reports available to the Parliament before Supplementary Budget Estimates hearings.

1.22 Appendix 1 lists the annual reports tabled between 1 May 2019 and 31 October 2019 and referred to the committee for examination. This table includes the dates the reports were tabled in the Senate (or received by the President out of session) and the House of Representatives. For the purposes of the committee's examination of timeliness, the earlier date is taken as the presentation date to the Parliament. The table also includes the dates the reports were submitted to, and received by, the minister, if available.

1.23 The committee notes that all Commonwealth entities submitted their annual reports to the responsible minister by the prescribed date of 15 October 2019. However, a number of reports were tabled on the date immediately preceding Supplementary Budget Estimates hearings on 21 and 22 October 2019. The committee reminds entities of best practice advice articulated within the PM&C guidelines, which states that reports should be tabled before the commencement of Supplementary Estimates hearings.

1.24 The committee encourages Commonwealth entities and companies to prepare annual reports in accordance with the timeframe outlined by the PGPA Rule, the PM&C guidelines and the Finance resource management guides.

Bodies which have not presented annual reports to the Parliament

1.25 Standing order 25(20)(h) requires the committee to report to the Senate on whether there were any bodies that were required but failed to present an annual report

16 See Public Governance, Performance and Accountability Rule 2014, sections 17AB, 17BC and 28C.

17 Department of the Prime Minister and Cabinet, *Tabling Guidelines*, June 2019, p. 4.

to the Senate. The committee notes that all relevant bodies in the portfolios over which the committee has oversight presented annual reports to the Senate.

Annual reports referred to in the Senate

1.26 Under Standing Order 25(20)(d), the committee is required to take into consideration any remarks made in the Senate about each annual report. The committee notes that there were no relevant remarks about tabled annual reports in the Senate for the periods covered in this report.

'Apparently satisfactory'

1.27 Standing Order 25(20)(a) requires the committee to report to the Senate on whether the annual reports referred to it in the relevant period were 'apparently satisfactory'.¹⁸ In assessing these reports, the committee has taken into consideration the position of the annual reports within the Commonwealth performance framework, the legislative requirements for the reports, and guidance for best practice issued by the PM&C guidelines and the Finance resource management guides. The committee considers all reports examined to be 'apparently satisfactory', however, as noted above, it continues to encourage Commonwealth bodies to aim for standards of best practice in preparing annual reports.

18 The Senate, *Standing Orders and other orders of the Senate*, August 2018, SO 25(20)(a).