

# Chapter 1

## Introduction

1.1 This is the Senate Education and Employment Legislation Committee's (the committee) second report on annual reports for 2016. It provides an overview of the committee's examination of annual reports for the 2014–15 financial year.

### Terms of Reference

1.2 This report was prepared pursuant to Standing Order 25(20) relating to the consideration of annual reports by committees, which states:

Annual reports of departments and agencies shall stand referred to the legislation committees in accordance with an allocation of departments and agencies in a resolution of the Senate. Each committee shall:

- (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.
- (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.<sup>1</sup>

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1 Amended 24 August 1994, 13 February 1997, 11 November 1998, 3 December 1998, 13 February 2002, 19 November 2002, 14 August 2006: with effect from 11 September 2006, 13 May 2009: with effect on 14 May 2009, 29 September 2010, 8 February 2012, 13 November 2013 and 15 July 2014.

## Allocated Portfolios

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

- Education and Training; and
- Employment.<sup>2</sup>

## Role of annual reports

1.4 Annual reports place information about government departments and agencies on the public record in relation to the performance, activities, management and financial position of the reporting body. They are a primary accountability mechanism and assist the Parliament in the effective examination of the performance of departments and agencies, and the administration of government programs.

## Annual reporting requirements

1.5 The annual reporting requirements of departments and agencies have a legislative framework. In addition, the annual reports of the non-corporate Commonwealth entities are prepared in accordance with the Requirements for Annual Reports, which are reviewed annually by the Department of the Prime Minister and Cabinet (PM&C) and approved by the Joint Committee of Public Accounts and Audit (JCPAA).

1.6 On 1 July 2014, the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) replaced the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act). The PGPA Act consolidated the governance, performance and accountability requirements contained in the FMA Act and the CAC Act. It also established a performance reporting framework for all Commonwealth entities and companies.

1.7 Annual reporting requirements for non-corporate and corporate Commonwealth entities are set out in section 46 of the PGPA Act, including that annual reports must comply with any requirements prescribed by the rules. Section 97 prescribes the annual reporting requirements for Commonwealth companies.

1.8 Major changes to the Requirements for Annual Reports were anticipated for the 2014-15 annual reports following the commencement of the PGPA Act. However, these revisions are now anticipated to come into effect in 2015-16.<sup>3</sup> Notwithstanding this delay, changes were made to the updated Requirements for Annual Reports in the interim to reflect the passage of the PGPA Act, including the amendment of references to the CAC Act and FMA Act.

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2 *Journals of the Senate*, No. 2, 31 August 2016, p. 76.

3 See Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, 29 May 2014, p. i; and Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and Other Non-Corporate Commonwealth Entities*, 25 June 2015, p. 1.

1.9 The current Requirements for Annual Reports note that sections 7AB and 7AC of the Public Governance Performance and Accountability (Consequential and Transitional Provisions) Rule 2015 continue the application of the Commonwealth Authorities (Annual Reporting) Orders 2011 and the Commonwealth Companies (Annual Reporting) Orders 2011 to annual reports for those entities and therefore will apply for the 2014-15 reporting period.<sup>4</sup>

1.10 Noting the above changes and transitional arrangements, below is a summary of the instruments under which the 2014-15 annual reports were prepared:

- for non-corporate Commonwealth entities: the PGPA Act, section 46; for departments and executive agencies, the *Public Service Act 1999*, subsections 63(2) and 70(2), and the *Parliamentary Service Act 1999*, section 65; relevant enabling legislation for statutory bodies; and the Requirements for Annual Reports;
- for corporate Commonwealth entities: the Commonwealth Authorities (Annual Reporting) Orders 2011; the PGPA Act, section 46; for statutory bodies, relevant enabling legislation;
- for Commonwealth companies: the PGPA Act, section 97, which also refers to requirements under the Commonwealth Companies (Annual Reporting) Orders 2011 and the *Corporations Act 2001*; and
- for non-statutory bodies: the guidelines are contained in the government response to the Senate Standing Committee on Finance and Public Administration Report on Non-Statutory bodies.<sup>5</sup>

### ***Requirements for annual reports for 2014-15***

1.11 Significant amendments to the most recent Requirements for Annual Reports relate to:

- Small Business Procurement—three requirements have been added to reflect the Government's commitment to improve small business access to Commonwealth contracts; and
- Indigenous Employment—reporting on 'Indigenous Employment' has been added to the existing requirement to report on the Management of Human Resources.<sup>6</sup>

### ***Future changes to the Requirements for Annual Reports***

1.12 As noted in the Requirements for Annual Reports issued on 25 June 2015:

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4 See Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, 29 May 2014, p. 1.

5 *Senate Hansard*, 8 December 1987, p. 2632–2645.

6 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies, and other Non-Corporate Commonwealth Entities*, 25 June 2015, p. i.

Significant revisions to the Requirements are anticipated for the 2015–16 financial year with the commencement of the performance reporting model under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).<sup>7</sup>

### **Annual reports referred**

1.13 In accordance with Senate Standing Order 25(20)(f) this report examines those annual reports tabled between 1 November 2015 and 30 April 2016. The committee examined the following reports:

#### ***Corporate entities under the PGPA Act:***

- Australian Curriculum, Assessment and Reporting Authority; and
- Coal Mining Industry (Long Service Leave Funding) Corporation

#### ***Non- corporate entity under the PGPA Act:***

- Asbestos Safety and Eradication Agency; and
- Workplace Gender Equality Agency

#### ***Commonwealth company under the PGPA Act***

- Australian Institute for Teaching and School Leadership Limited.

### **Reports not examined**

1.14 The committee is not obliged to report on Acts, statements of corporate intent, surveys, policy papers, budget documents, corporate plans or errata. Accordingly, the following documents were referred to the committee but are not examined in this report:

- Report of Inquiry into Complaints about the Honourable Vice President Michael Lawler of the Fair Work Commission and Related Matters;
- Royal Commission into Trade Union Governance and Corruption—Final Report; and
- Consolidated financial statements for the year ended 30 June 2015.

### **Method of assessment**

1.15 Senate Standing Order 25(20) requires the committee to examine the annual reports referred to it to determine whether they are timely and 'apparently satisfactory'. In making this assessment, the committee considers whether the reports comply with the relevant legislation and requirements for the preparation of annual reports.

### **Timeliness**

1.16 Section 46 of the PGPA Act requires Commonwealth entities to prepare an annual report and provide it to the responsible Minister by the 15<sup>th</sup> day of the fourth

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7 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies, and other Non-Corporate Commonwealth Entities*, 25 June 2015, p. i.

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month after the end of the reporting period, which translates as 15 October. However, some agencies have a specific date stipulated in their enabling legislation. For example, the Workplace Gender Equality Agency's (WGEA) legislation stipulates 30 October as its deadline.<sup>8</sup> All but one annual report of the corporate and non-corporate entities examined in this report were presented to the responsible Minister in accordance with their legislated deadlines.

1.17 The Asbestos Safety and Eradication Agency (ASEA) appears to be non-compliant with section 46 of the PGPA Act. As a non-corporate entity, the agency should have submitted its report by 15 October 2015. This is also in line with the Requirements for Annual Reports, which are referred to in subsection 70(2) of the Public Service Act:

[t]he report must be prepared in accordance with guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.

1.18 The letter of transmittal does mention section 46, and also section 70 of the *Public Service Act 1999*. However, the wording "as soon as practicable" is taken from subsection 34C(2) of the *Acts Interpretation Act 1901*. This was correct under section 45 of ASEA's enabling legislation, however that provision has been removed with the introduction of the PGPA Act. The agency is reminded to table reports by 15 October in future.

1.19 For Commonwealth companies, the deadline is stipulated under section 97 of the PGPA Act. The committee is satisfied that the Australian Institute for Teaching and School Leadership complied with this deadline.

1.20 In most cases, annual reports of non-corporate entities must be presented by the responsible Minister to each House of Parliament on or before 31 October each year.<sup>9</sup> In the case of the reports examined here, the WGEA submitted by its deadline, but the report was not tabled until 11 November 2015. As discussed above, ASEA submitted its annual report too late for the Minister's deadline, and it was tabled out of session one month after it was received.

1.21 There is a lack of clarity surrounding the timeframe for the presentation to the Parliament of corporate entities. It would appear that Section 34C of the *Acts Interpretation Act 1901* would apply to Commonwealth entities, as it did for Commonwealth authorities under the former CAC Act. Subsection 34C(3) of the *Acts Interpretation Act 1901* states:

Where an Act requires a person to furnish a periodic report to a Minister for presentation to the Parliament but does not specify a period within which the report is to be so presented, that Minister shall cause a copy of the periodic

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8 See the *Workplace Gender Equality Act 2012*, s. 12(1).

9 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies, and other Non-Corporate Commonwealth Entities*, 25 June 2015, p. 2.

report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which he or she receives the report.

1.22 The report of the Australian Curriculum, Assessment and Reporting Authority (ACARA) was tabled in accordance with this provision. There appears to be a considerable delay, however, between the Minister's receipt of the Coal Mining (Long Service Leave Funding) Corporation's report and when it was tabled in Parliament. While there is a lack of clarity around this deadline, the Minister is reminded that the requirement to table within 15 sitting days is best practice.

1.23 For Commonwealth companies, the Minister must table the documents as soon as practicable after receiving them.<sup>10</sup> The committee considers that the report for the Australian Institute for Teaching and School Leadership was tabled within a reasonable timeframe.

1.24 Appendix 1 lists the annual reports which were presented to Parliament between 1 November 2015 and 30 April 2016 and referred to the committee, with relevant tabling dates.

### **Senate debate**

1.25 Senate Standing Order 25(20) requires the committee to take into account any relevant remarks about the reports made in debate in the Senate. The committee notes that none of the annual reports examined in this report have been the subject of comments or debate in the Senate.

### **Bodies not presenting annual reports to the Senate**

1.26 The committee is required to report to the Senate each year 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 at this time.

### **General comments on reports**

1.27 The committee has found, under the terms of Standing Order 25(20), that all the reports listed above are satisfactory in terms of content. As discussed above, some reports were not transmitted to the Minister nor presented to the Parliament in a timely way, and the committee reminds ASEA and the responsible Minister to observe the correct deadlines.

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10 *Public Governance, Performance and Accountability Act 2013*, ss. 97(5).