

The Senate

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Education and Employment  
Legislation Committee

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Annual reports (No. 2 of 2017)

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# Chapter 1

## Introduction

1.1 This is the Senate Education and Employment Legislation Committee's (the committee) second report on annual reports for 2017. It provides an overview of the committee's examination of annual reports for the 2015-16 financial year.

### Terms of Reference

1.2 This report was prepared pursuant to Senate 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.

### 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>1</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 defined legislative framework.

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 previously contained in the FMA Act and the CAC Act.

1.7 The PGPA Act establishes a performance reporting framework for all Commonwealth entities and companies. 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 the annual performance statements to report on the results achieved against the targets, goals and measures established at the beginning of a reporting year in its corporate plan.

1.8 The Public Governance, Performance and Accountability Rule 2014 (PGPA Rule 2014), established under the PGPA Act, details the requirements for the corporate plan, annual performance statements as well as the guidelines for annual reports.<sup>2</sup>

1.9 A range of PGPA Act bodies provide annual reports which are referred to committees for examination.

### ***PGPA Act bodies***

1.10 The PGPA Act categorises bodies as a Commonwealth entity (either a non-corporate Commonwealth entity or a corporate Commonwealth entity), or a Commonwealth company, as detailed below:

- Non-corporate Commonwealth entity—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 PGPA Act).

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

2 See *Public Governance, Performance and Accountability Rule 2014* (Sections 16E, 16F and 27A).

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- Corporate Commonwealth entity—a body corporate that has a separate legal personality from the Commonwealth, and includes certain statutory authorities. It can act in its own right exercising certain legal rights such as entering into contracts and owning property.
  - Commonwealth company—a company established by the Commonwealth under the *Corporations Act 2001* that is controlled by the Commonwealth.

### ***Changes to reporting requirements***

1.11 Prior to the passage of the PGPA Act, annual reporting requirements of the various bodies were governed by the FMA Act and the CAC Act. In addition, the annual reports of non-corporate Commonwealth entities were prepared in accordance with the *Requirements for Annual Reports*, which were 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).

1.12 Major changes to the *Requirements for Annual Reports* were anticipated for the 2014-15 annual reports following the commencement of the PGPA Act, but this was delayed until 2015-16.<sup>3</sup> However, transitional requirements came into effect for the 2014-15 period to reflect the passage of the PGPA Act. Sections 7AB and 7AC of the Public Governance Performance and Accountability (Consequential and Transitional Provisions) Rule 2014 continued the application of the Commonwealth Authorities (Annual Reporting) Orders 2011 and the Commonwealth Companies (Annual Reporting) Orders 2011 to annual reports for relevant entities for the 2014-15 reporting period.<sup>4</sup>

1.13 Commencing in the 2015-16 period, 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. The document *Requirements for Annual Reports* has been replaced by the PGPA Rule 2014.

1.14 Below is a summary of the instruments under which the 2015-16 annual reports were prepared:

#### *Non-corporate Commonwealth entities:*

- PGPA Act, section 46 and the PGPA Rule 2014, Division 3A(A);
- for portfolio departments and executive agencies, the *Public Service Act 1999*, subsections 63(2) and 70(2); for parliamentary departments, the *Parliamentary Service Act 1999*, section 65; and

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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.

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.



- for statutory bodies, relevant enabling legislation.

*Corporate Commonwealth entities:*

- PGPA Act, section 46 and the PGPA Rule 2014, Division 3A(B); and
- for statutory bodies, relevant enabling legislation.

*Commonwealth companies:*

- PGPA Act, section 97, which also refers to requirements under the *Corporations Act 2001* and the PGPA Rule 2014, Part 3-3; and
- for statutory bodies, relevant enabling legislation.

### **Annual reports referred**

1.15 In accordance with Senate Standing Order 25(20)(f) this report examines those annual reports tabled between 1 November 2016 and 30 April 2017. The committee examined the following report:

*Non-corporate entities:*

- Workplace Gender Equality Agency.

1.16 During the aforementioned period, the committee received two quarterly reports from the Australian Building and Construction Commission (ABCC). The ABCC commenced operations on 2 December 2016. As this was after the conclusion of the reporting period, the ABCC was not required to produce an annual report for 2015-16. The committee has therefore decided to analyse the ABCC quarterly reports in lieu of an annual report.

### **Reports not examined**

1.17 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:

- *Safe Work Australia Act 2008*—Review of Safe Work Australia's role and functions;
- *Workplace Gender Equality Act 2012*—Workplace Gender Equality Agency—Progress report for the period 2014 to 2016;
- Australian Small Business and Family Enterprise Ombudsman—Inquiry into the effect of the Road Safety Remuneration Tribunal's Payments Order on Australian small businesses—Australian Government response—Report;
- Education and Care Service Ombudsman, National Education and Care Services FOI & Privacy Commissioners—Annual Report 2013-14;
- Education and Care Service Ombudsman, National Education and Care Services FOI & Privacy Commissioners—Annual Report 2014-15;
- Education and Care Service Ombudsman, National Education and Care Services FOI & Privacy Commissioners—Annual Report 2015-16.

## Method of assessment

1.18 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

### *Presentation to ministers*

1.19 Section 46 of the PGPA Act requires Commonwealth entities, both corporate and non-corporate, to prepare an annual report and provide it to the responsible Minister by the 15<sup>th</sup> day of the fourth month after the end of the reporting period, which translates as 15 October. Certain agencies, however, have a specific date stipulated in their enabling legislation. For example, the Workplace Gender Equality Agency's (WGEA) legislation stipulates that an annual report must be prepared by the last day of the fifth month after the end of the period, which translates as 31 October.<sup>5</sup>

1.20 For Commonwealth companies, the deadline for providing the report to the responsible minister is stipulated under section 97 of the PGPA Act, namely, four months after the end of the company's reporting period.

1.21 The annual reports of corporate and non-corporate entities were presented to relevant ministers in a timely manner except for the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). This was noted in the committee's first Report on Annual Reports of 2017.<sup>6</sup>

1.22 As stated previously, the ABCC commenced operations on 2 December 2016. As this was after the 2015-16 reporting period, the ABCC did not present the Employment Minister with an annual report covering this reporting period.

### *Tabling in Parliament*

1.23 Formerly, annual reports of non-corporate entities are to be presented by the responsible Minister to each House of Parliament on or before 31 October each year.<sup>7</sup> The PGPA Rule 2014, however, is silent on this matter and as a consequence there is no longer an explicit stipulation for this to occur. Instead, it is now recommended that such reports be tabled before Supplementary Budget Estimates.<sup>8</sup>

1.24 While the transitional provisions were in effect for the 2014-15 reporting period, there was a lack of clarity surrounding the timeframe for the presentation to

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

6 Education and Employment Legislation Committee, *Annual Reports (No. 1 of 2017)*, p. 5.

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. 2.

8 See 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.

the Parliament of the annual reports of corporate entities.<sup>9</sup> As explained below, it is now clearer under the operation of the PGPA Rule 2014.

1.25 The PGPA Rule states that annual reports for corporate Commonwealth entities, non-corporate Commonwealth entities and Commonwealth companies must comply with the *Guidelines for the Presentation of Documents to the Parliament* which is prepared by the Department of the Prime Minister and Cabinet.<sup>10</sup>

1.26 The guidelines advise that for all Commonwealth entities:

As per past practice, it is expected that the responsible Minister will present the report to each House of Parliament on or before 31 October. If Senate Supplementary Budget Estimates hearings are scheduled to occur prior to 31 October, it is best practice for annual reports to be tabled prior to those hearings. This ensures that annual reports are available for scrutiny by the relevant Senate standing committee.<sup>11</sup>

1.27 The committee notes that the next Supplementary Budget Estimates hearings commence on 23 October 2017 and expects that all relevant annual reports be tabled prior to this date.

1.28 For Commonwealth companies, subsection 97(5) of the PGPA Act states that the Minister must table the reports as soon as practicable after receiving them.<sup>12</sup> This provision is clarified in the *Guidelines for the Presentation of Documents to the Parliament* which sets out the expectation that reports will be tabled on or before 31 October or sooner if Senate Supplementary Budget Estimates hearings are scheduled prior to 31 October.<sup>13</sup>

1.29 In this regard the committee notes that the Joint Committee on Public Accounts and Audit (JCPAA) has considered formally bringing the tabling date forward:

...the [JCPAA] Committee believes that bringing forward both of these dates [presentation to ministers and tabling in Parliament], and formalising the required tabling date in legislation, is both viable and valuable. If achieved, it will provide some certainty to Senate Estimates Committees in

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9 Senate Education and Employment Legislation Committee, *Annual reports (No. 2, 2016)*, October 2016, p.5.

10 Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Documents to the Parliament*, February 2017, [www.dPMC.gov.au/sites/default/files/publications/pmc-tabling-guidelines.pdf](http://www.dPMC.gov.au/sites/default/files/publications/pmc-tabling-guidelines.pdf).

11 Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Documents to the Parliament*, February 2017, p. 4.

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

13 Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Documents to the Parliament*, February 2017, paragraph 4.10, p. 4.

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particular that the important performance information in annual reports will be made available in a timely manner to assist scrutiny.<sup>14</sup>

1.30 As was noted in the first Report on Annual Reports of 2017 many bodies did not meet the recommended timeframe for tabling annual reports in Parliament prior to the 2016 Supplementary Budget Estimates.<sup>15</sup> Despite the clear guidance contained within the *Guidelines for the Presentation of Documents to the Parliament* the only bodies that tabled reports in both Houses before this period were the Australian National University and the Department of Employment.

1.31 In the case of reports examined here, the WGEA submitted by its deadline, but the report was not tabled until 30 November 2016, more than one month after the Supplementary hearing.

1.32 The committee reminds all entities and companies that it is best practice for annual reports to be tabled prior to Supplementary Budget Estimates. As stated earlier for the 2016-17 reporting period, this commences on 23 October 2017.

1.33 Appendix 1 lists the annual reports which were presented to Parliament between 1 November 2016 and 30 April 2017 and referred to the committee, with relevant tabling dates.

### **Senate debate**

1.34 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**

1.35 The committee is required to report to the Senate on whether there are any bodies which should have presented an annual report to the Senate but did not. The committee is satisfied that there are no such bodies at this time.

### **General comments on reports**

1.36 The reports presented met all the requirements under the PGPA Rule 2014 relating to the letter of transmittal, inclusion of audit reports, style and formatting, and assessment of performance against targets.<sup>16</sup>

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14 Joint Committee of Public Accounts and Audit, *Report 457: Development of the Commonwealth Performance Framework Second Report*, May 2016, p. 11.

15 Education and Employment Legislation Committee, *Annual Reports (No. 1 of 2017)*, p. 7.

16 For non-corporate Commonwealth entities see PGPA Rule 2014, Subdivision 3A(A); for corporate Commonwealth entities see Subdivision 3A(B); for Commonwealth companies see PGPA Rule 2014 Part 3-3.

## Chapter 2

### Review of annual reports

2.1 This chapter examines selected annual reports in greater detail, and provides the Senate with information that may be of particular interest.

2.2 The following annual report under the Employment portfolio is discussed in this chapter:

- Workplace Gender Equality Agency.

2.3 In addition, two quarterly reports under the Employment portfolio, both from the Australian Building and Construction Commission are discussed.

2.4 No reports from bodies under the Education and Training portfolio were received during this recording period.

#### **Workplace Gender Equality Agency**

2.5 The Workplace Gender Equality Agency (WGEA) is a statutory agency established under the *Workplace Gender Equality Act 2012*.<sup>1</sup>

2.6 The WGEA is charged with promoting and improving gender equality in Australian workplaces, including through the provision of advice and assistance to employers and the assessment and measurement of workplace data.<sup>2</sup>

2.7 In 2015-16, the agency focused on expanding its reach to a national audience. A series of public speaking engagements were undertaken, including six pay equity roundtables which brought together business leaders to discuss barriers to pay equity and possible actions to remedy this issue. Fourteen Australia-wide webinars and live walkthroughs of the WGEA reporting process involved 1,524 participants.<sup>3</sup>

2.8 As of 19 September 2016, 4,707 reports had been assessed by the WGEA as compliant for the 2015-16 reporting period. These employers represented over 4 million employees, which accounts for approximately 40 per cent of employees in Australia.<sup>4</sup>

2.9 All of WGEA's performance criteria were either met or exceeded. These were:

- Percentage of women in leadership roles: Greater than 24.5 per cent of governing board members, 26.5 per cent of key management personnel (KMP) and 38 per cent of other managers;
- More than 25 per cent of relevant employers have conducted gender remuneration gap analyses;

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1 Workplace Gender Equality Agency, *Annual Report 15-16*, p. 12.

2 Workplace Gender Equality Agency, *Annual Report 15-16*, p. 16.

3 Workplace Gender Equality Agency, *Annual Report 15-16*, p. 8.

4 Workplace Gender Equality Agency, *Annual Report 15-16*, p. 10.

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- 56 per cent of relevant employers have a strategy or policy to support employees with family or caring responsibilities;
  - 210,000 visits to the agency website.<sup>5</sup>

2.10 The WGEA has expanded its education outreach during the reporting period. A suite of educational resources and fact sheets were produced to support employers and promote public understanding. Increased knowledge of the WGEA was exemplified by the 276,928 unique website visits and 516 media mentions during the reporting period.<sup>6</sup>

2.11 The committee commends the WGEA for its work during this reporting period and its continued role in enhancing awareness and promoting gender equality in Australia.

### **Australian Building and Construction Commission**

2.12 The Australian Building and Construction Commission (ABCC) began operations on 2 December 2016 after the commencement of the *Building and Construction Industry (Improving Productivity) Act 2016* (BCIIP Act) and the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016*.<sup>7</sup>

2.13 Under the BCIIP Act the ABCC is required to produce an annual report as soon as practicable after the end of each financial year.<sup>8</sup> As noted elsewhere in this report, the ABCC was established after the conclusion of the 2015-16 reporting period and as a result its first annual report will be for 2016-17.

2.14 The ABCC is additionally required to prepare quarterly reports for the 3 month periods beginning 1 July, 1 October, 1 January and 1 April.<sup>9</sup> Section 20 of the BCIIP Act requires the Australian Building and Construction Commissioner to prepare a report each quarter on the performance of the Commissioner's functions and the exercise of the Australian Building and Construction Commissioner's powers during that quarter.<sup>10</sup>

2.15 This review of annual reports covers two quarterly reports, the *Australian Building and Construction Quarterly Report, Second Quarter of 2016-17*, which covers the 16 business days between 2 December and 31 December 2016, and the

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5 Workplace Gender Equality Agency, *Annual Report 15-16*, p. 18.

6 Workplace Gender Equality Agency, *Annual Report 15-16*, p. 21.

7 Australian Building and Construction Commission, *Quarterly Report (Third quarter of 2016-17)*, p. 3.

8 See the *Building and Construction Industry (Improving Productivity) Act 2016* (BCIIP Act), s. 32K.

9 See the *Building and Construction Industry (Improving Productivity) Act 2016* (BCIIP Act), ss. 20(1).

10 Australian Building and Construction Commission, *Quarterly Report (Third quarter of 2016-17)*, p. 1.

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*Australian Building and Construction Quarterly Report, Third Quarter of 2016-17*, which covers the period between 1 January and 31 March 2017.

2.16 During the reporting period the ABCC was in the process of developing a case management system, due for release in July 2017. The ABCC's existing case management system (AIMS) was carried over from Fair Work Building and Construction and does not have the capability to allocate and track agency costs against individual matters.<sup>11</sup>

2.17 For the transition from AIMS, the ABCC has added a basic time recording capability to the AIMS system that allows for approximate reporting of internal costs against investigations. The nominal internal cost data is based on this interim solution and provides an approximation of internal time costings.

2.18 During the second quarter of 2016-17, the ABCC had 49 open investigations. Of these, 20 investigated coercion, 17 right of entry, six unlawful industrial action, five freedom of association and one misrepresentation of workplace rights.<sup>12</sup> For the third quarter of 2016-17, the ABCC had 81 open investigations. Of these, 27 investigated coercion, 17 unlawful industrial action, 15 right of entry and 10 wages and entitlements disputes. Freedom of association, misclassification/sham contracting and misrepresentation of workplace rights accounted for seven, four and one investigations respectively.<sup>13</sup>

2.19 During the second quarter of 2016-17 the ABCC provided assistance and advice by responding to 337 enquiries. Sixty-two per cent of responses regarded inquiries into the Building Code, including general Code information, Code assessment and notices of Code breach.<sup>14</sup> For the third quarter of 2016-17, the ABCC responded to 1,658 enquiries of which 65 per cent were related to the Building Code and a further 16 per cent to workplace laws such as wages and entitlements, right of entry and unlawful industrial action.<sup>15</sup>

2.20 During the second and third quarters of 2016-17 the ABCC finalised eight Building Code audits and 47 Building Code inspections. Of these, six audits identified

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11 Australian Building and Construction Commission, *Quarterly Report (Second quarter of 2016-17)*, p. 7.

12 Australian Building and Construction Commission, *Quarterly Report (Second quarter of 2016-17)*, p. 8.

13 Australian Building and Construction Commission, *Quarterly Report (Third quarter of 2016-17)*, p. 7.

14 Australian Building and Construction Commission, *Quarterly Report (Second quarter of 2016-17)*, p. 9.

15 Australian Building and Construction Commission, *Quarterly Report (Third quarter of 2016-17)*, p. 9.

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potential issues which have since been addressed and 10 inspections identified potential issues.<sup>16</sup>

2.21 The ABCC finalised 11 proceedings during the two recording periods, of which two are subject to appeal.

2.22 During the second quarter of 2016-17 the agency incurred approximately \$490,000 in external legal expenses as a result of enforcement action undertaken in 41 matters.<sup>17</sup> During the third quarter, the ABCC incurred approximately \$1.2 million in external legal expenses through enforcement action in 60 matters.<sup>18</sup>

2.23 The agency received 77 complaints during the recording period, comprising 15 in the second quarter<sup>19</sup> and 62 in the third quarter.<sup>20</sup>

2.24 The committee notes this information regarding the performance of the Commission's functions and the use of its powers and expects to examine the Commission's first full annual report during the 2016-17 reporting period.

**Senator Linda Reynolds CSC  
Chair**

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16 Australian Building and Construction Commission, *Quarterly Report (Second quarter of 2016-17)*, p. 9; Australian Building and Construction Commission, *Quarterly Report (Third quarter of 2016-17)*, p. 10.

17 Australian Building and Construction Commission, *Quarterly Report (Second quarter of 2016-17)*, p. 11.

18 Australian Building and Construction Commission, *Quarterly Report (Third quarter of 2016-17)*, p. 10.

19 Australian Building and Construction Commission, *Quarterly Report (Second quarter of 2016-17)*, p. 11.

20 Australian Building and Construction Commission, *Quarterly Report (Third quarter of 2016-17)*, p. 14.





# Appendix 1

## Dates relating to the presentation of annual reports between 1 November 2016 and 30 April 2017

Reporting Body	Type of body	Submitted to Minister	Received by Minister	Tabled in the Senate or presented out of sitting (*)	Tabled in the House of Representatives
<b>EMPLOYMENT PORTFOLIO</b>					
Workplace Gender Equality Agency	Non-corporate entity	31/10/16	31/10/16	30/11/16	30/11/16

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