

Chapter 1

Introduction

1.1 This is the Senate Education and Employment Legislation Committee's (the committee) first report on annual reports for 2018. It provides an overview of the committee's examination of annual reports for the 2016-17 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.

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.¹

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 The *Public Governance, Performance and Accountability Act 2013* (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.

1.7 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.²

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

PGPA Act bodies

1.9 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).
- Corporate Commonwealth entity—a body corporate that has a separate legal personality from the Commonwealth, and includes certain statutory

1 *Journals of the Senate*, No. 2, 31 August 2016, p. 76. Note that under the Australian Government Cabinet reshuffle on 18 December 2017 the Department of Employment has been renamed the Department of Jobs and Small Business. The new department falls under the Jobs and Innovation portfolio. This change does not influence the committee's assessment for the 2016-17 annual reports but will likely impact the 2017-18 reports that are examined.

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

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.

Annual reporting requirements

1.10 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.

1.11 Below is a summary of the instruments under which the 2016-17 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
- 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

1.12 In accordance with Senate Standing Order 25(20)(f) this report examines those annual reports tabled between 1 May 2017 and 31 October 2017. The committee examined the following reports:

Non-corporate entities:

- Asbestos Safety and Eradication Agency (ASEA);
- Australian Building and Construction Commission (ABCC);
- Australian Research Council (ARC);
- Australian Skills Quality Authority (ASQA);
- Department of Education and Training;
- Department of Employment;
- Fair Work Commission;

- The Fair Work Ombudsman and Registered Organisations Commission Entity;
- Safe Work Australia;
- Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority); and
- Tertiary Education Quality and Standards Authority (TEQSA).

Corporate entities:

- Australian Curriculum Assessment and Reporting Authority (ACARA);
- Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS);
- Australian National University (ANU);
- Coal Mining Industry (Long Service Leave Funding) Corporation; and
- Comcare and Safety, Rehabilitation and Compensation Commission.

Commonwealth companies:

- Australian Institute for Teaching and School Leadership (AITSL).

Reports not examined

1.13 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:

- Final Budget Outcome 2016-17.

Method of assessment

1.14 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

1.15 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 15th 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 within

6 months, after each 31 May, and submitted to the Minister. This translates as 30 November.³

1.16 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.

1.17 For this reporting period the annual reports of non-corporate and corporate Commonwealth entities, and Commonwealth companies were presented to the relevant ministers in a timely way with the exception of AIATSIS, which was presented to the Minister for Education on 16 October 2017.

Tabling in Parliament

1.18 Formerly, annual reports of non-corporate entities had to be presented by the responsible Minister to each House of Parliament on or before 31 October each year.⁴ There is no longer an explicit stipulation for this to occur because the PGPA Rule 2014 is silent on this matter. However, as explained below, the PGPA Rule does recommend that such reports be tabled before Supplementary Budget Estimates.

1.19 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.⁵

1.20 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.⁶

1.21 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.⁷ 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

3 See the *Workplace Gender Equality Act 2012*, ss. 12(1).

4 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.

5 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 (accessed 7 February 2018).

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

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

31 October, or sooner if Senate Supplementary Budget Estimates hearings are scheduled prior to 31 October.⁸

1.22 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 particular that the important performance information in annual reports will be made available in a timely manner to assist scrutiny.⁹

1.23 Despite the clear guidance contained in the *Guidelines for the Presentation of Documents to the Parliament*, many bodies did not meet the recommended timeframe for tabling annual reports in Parliament prior to Supplementary Budget Estimates. In 2017, Supplementary Budget Estimates for the Employment and Education and Training portfolios took place on 25 and 26 October. The following bodies tabled reports in both Houses before this period:

- Australian National University (tabled on 14 June);¹⁰
- Comcare and Safety, Rehabilitation and Compensation Commission (tabled on 23 October);
- Department of Employment (tabled on 18 October); and
- Seacare Authority (tabled on 23 October).

1.24 The following bodies tabled annual reports in the House of Representatives prior to the commencement of the Supplementary Budget Estimates hearings for the Employment and Education and Training portfolios but did not table in the Senate until 13 November:

- Asbestos Safety and Eradication Agency;
- Australian Building and Construction Commission;
- Coal Mining Industry (Long Service Leave Funding) Corporation;
- Fair Work Commission; and
- Fair Work Ombudsman and Registered Organisations Commission Entity.¹¹

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

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

10 The tabling date specified is the date by which the report was tabled in both houses.

11 The committee acknowledges that because the report had been tabled in the House of Representatives it was available publicly prior to Supplementary Budget Estimates.

1.25 The Department of Education and Training tabled its annual report in the House of Representatives on 25 October. This was not before the Supplementary Budget Estimates for the Employment and Education and Training portfolios commenced. However, it was before the department appeared on 26 October.

1.26 At the hearing Senator the Hon Jacinta Collins acknowledged that the Department of Education and Training had met their statutory obligations. However, the Senator also questioned why the annual report was not published in a more timely manner.¹² Senator Collins also drew attention to her comments on the Department of Education and Training's lateness in tabling reports during the 2016 Supplementary Estimates round.¹³

1.27 The following agencies did not table in either the House of Representatives or the Senate before the Supplementary Estimates round:

- Australian Curriculum Assessment and Reporting Authority (tabled on 4 December);
- Australian Institute for Teaching and School Leadership (tabled on 4 December);
- Australian Institute of Aboriginal and Torres Strait Islander Studies (tabled on 4 December);
- Australian Research Council (tabled on 4 December);
- Australian Skills Quality Authority (tabled on 4 December);
- Safe Work Australia (tabled on 4 December); and
- Tertiary Education Quality and Standards Authority (tabled on 4 December).¹⁴

1.28 The committee expresses concern that numerous agencies failed to table their annual reports before the commencement of Supplementary Budget Estimates, in accordance with the best practice guidance.

1.29 The committee reminds agencies that it is possible to table their annual reports out-of-sitting to ensure that they meet their statutory obligations and to ensure that reports are available before Supplementary Budget Estimates.

1.30 The committee, in particular, commends Comcare and the Safety, Rehabilitation and Compensation Commission and Seacare for tabling their annual reports in the Senate out-of-sitting to ensure that the committee had access to them before the commencement of Supplementary Budget Estimates.

1.31 In December 2017, the committee wrote to all departments and agencies under the Education and Training portfolio and the Employment portfolio reminding

12 *Committee Hansard*, 26 October 2017, p. 55.

13 *Committee Hansard*, 20 October 2016, p. 6.

14 These agencies did however present their reports to the Senate out of sitting between 25 and 28 October, prior to the formal deadline of 31 October 2017.

them that it is best practice to ensure that annual reports are tabled prior to Supplementary Budget Estimates. The correspondence also noted that several agencies had not met these guidelines and that the committee encourages them to do so in the future.

1.32 The committee notes that with a few understandable exceptions, all agencies responded positively to this letter stating they will take all necessary steps or make best endeavours to table future annual reports before the commencement of Supplementary Budget Estimates. These responses are welcome and the committee will monitor the situation closely.

1.33 The committee reminds all entities and companies that it is best practice for annual reports to be tabled prior to Supplementary Budget Estimates, which commences on 22 October 2018.

1.34 Appendix 1 lists the annual reports which were presented to Parliament between 1 May 2017 and 31 October 2017 and referred to the committee, with relevant tabling dates.

Senate debate

1.35 Senate Standing Order 25(20) requires the committee to take into account any relevant remarks about the reports made in debate in the Senate.

Bodies not presenting annual reports to the Senate

1.36 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

1.37 The reports presented by most agencies met all 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.¹⁵

1.38 The committee reminds AIATSIS to include a letter of transmittal in future annual reports in accordance with clause 17AI of the PGPA Rule 2014.

1.39 The committee also reminds ACARA, AITSL and the Coal Mining Industry (Long Service Leave Funding) Corporation to include an alphabetical index of the contents of the report in all future annual reports in accordance with clause 17AJ of the PGPA Rule 2014.

15 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.