

Chapter 1

Introduction

1.1 This is the Senate Education and Employment Legislation Committee's (the committee) second 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, as amended on 12 February 2018, 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).

1 *Journals of the Senate*, No. 2, 31 August 2016, p. 76, and No. 84, 12 February 2018, pp. 2668–2669. 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. Until recently this department fell under the Jobs and Innovation portfolio. A subsequent amendment to the Administrative Arrangements Orders on 28 August 2018 removed the Department of Jobs and Small Business from the Jobs and Innovation Portfolio. These changes do 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).

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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.

Annual reporting requirements

1.10 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 November 2017 and 30 April 2018. The committee examined the following reports:

Non-corporate entities:

- Workplace Gender Equality Agency.

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:

- Australian Building and Construction Commission—Performance of the functions and the exercise of powers of the Australian Building and Construction Commissioner—Annual report—Operation from 2 December 2016 to 30 June 2017;
- Australian Building and Construction Commission—Performance of the functions and the exercise of powers of the Australian Building and Construction Commissioner—Quarterly report—Fourth quarter of 2016-17—Operations from 1 April to 30 June inclusive;
- Department of Finance—Consolidated Financial Statements for the year ended 30 June 2017;
- Department of the Treasury—2017 Tax Expenditures Statement;
- Australian Building and Construction Commission—Performance of the functions and the exercise of powers of the Australian Building and Construction Commissioner—Quarterly report—First quarter of the 2017-18 Financial Year—Operations from 1 July to 30 September inclusive;
- Department of Jobs and Small Business—*Fair Work Act 2009*—Greenfields Agreements Review;
- Education and Care Services Ombudsman—National Education and Care Services Freedom of Information and National Education and Care Services Privacy Commissioner—Report for 2016-17;
- Building and Construction Industry (Improving Productivity)—Report by the Commonwealth Ombudsman for the period 1 July 2016 to 31 March 2017;
- Building and Construction Industry (Improving Productivity)—Report by the Commonwealth Ombudsman for the period 1 April 2017 to 30 June 2017.

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 given to the

relevant Minister by the last day of the fifth month after the end of the period. This translates as 31 October.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 manner with the exception of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). This was noted in the committee's first Report on Annual Report of 2018.⁴

Tabling in Parliament

1.18 In regards to annual report examined in this report, the committee notes that the WGEA submitted its annual report to the Minister before 31 October as stipulated in its enabling legislation. The Minister also tabled a copy of the annual report in each House of Parliament within 15 sitting days of receiving the report. This was also in accordance with the enabling legislation.⁵

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

1.20 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.

1.21 Appendix 1 lists the annual reports which were presented to Parliament between 1 November 2017 and 30 April 2018 and referred to the committee, with relevant tabling dates.

Senate debate

1.22 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 the annual report examined in this report has not been the subject of comments or debates in the Senate.

Bodies not presenting annual reports to the Senate

1.23 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.

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

4 Education and Employment Legislation Committee, *Annual Reports (No. 1 of 2018)*, p. 5.

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

General comments on reports

1.24 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.⁶

6 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.