

Chapter 1

Introduction

1.1 This is the Senate Education and Employment Legislation Committee's (the committee) first report on annual reports for 2019. It provides an overview of the committee's examination of annual reports for the 2017-18 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

- Jobs and Small Business.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), 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 was renamed the Department of Jobs and Small Business. Under the reshuffle 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. On 13 September 2018 a further amendment passed the Senate relating to the allocation of departments and agencies to legislative and general purpose standing committees. Under this amendment the portfolio was renamed Jobs and Small Business.

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

- 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 PGPA Rule. Section 97 prescribes the annual reporting requirements for Commonwealth companies.

1.11 Below is a summary of the instruments under which the 2017-18 annual reports were prepared:

Non-corporate Commonwealth entities:

- PGPA Act, section 46 and the PGPA Rule, 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, 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, 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 and 31 October 2018. 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 Jobs and Small Business;
- Fair Work Commission;
- The Fair Work Ombudsman and Registered Organisations Commission Entity;³
- 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 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:

- International Labour Organisation—Submission reports on ILO instruments—Employment and Decent Work for Peace and Resilience Recommendation, 2017 (no. 205);
- Australian Building and Construction Commission—Performance of the functions and the exercise of powers of the Australian Building and Construction Commissioner—Quarterly report for the period 1 January to 31 March 2018;
- Australian Building and Construction Commission—Performance of the function and the exercise of powers for the Australian Building and Construction Commissioner—Quarterly report for the period 1 April to 30 June 2018;
- National School Resourcing Board—Review of socio-economic status of score methodology—Final report, dated June 2018;

3 Please note, the Fair Work Ombudsman and the Registered Organisations Commission will be examined separately in chapter 2 of this report.

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- *Building and Construction Industry (Improving Productivity) Act 2016*—Report by the Commonwealth Ombudsman for the period 1 July to 30 September 2017; and
 - Final budget outcome 2017-18—Report by the Treasurer (Mr Frydenberg) and the Minister for Finance (Senator Cormann), dated September 2018.

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, may have a specific date stipulated by their enabling legislation.

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 all non-corporate and corporate Commonwealth entities, and Commonwealth companies, were presented to the relevant ministers in a timely manner.

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 as the PGPA Rule 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

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).

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 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 In December 2017, the committee wrote to all departments and agencies under the Jobs and Small Business and Education and Training portfolios reminding 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 encouraged them to do so in the future. With a few understandable exceptions, all agencies responded positively, noting that they will take all necessary steps to table future annual reports before the commencement of Supplementary Budget Estimates.

1.24 The committee notes that all bodies have met the recommended timeframe for tabling annual reports in Parliament prior to the commencement of the 2018-19 Supplementary Budget Estimates. The committee welcomes this improved timeliness in tabling annual reports and thanks both departments and all associated agencies. The

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).

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.

committee further encourages departments and agencies to continue this best practice in the future.

1.25 The following bodies tabled annual reports in the Senate prior to the commencement of Supplementary Budget Estimates:

- Australian Institute for Teaching and School Leadership;
- Australian Skills Quality Authority;
- Australian National University;
- Tertiary Education Quality and Standards Agency;
- Australian Building and Construction Commission;
- Comcare and Safety, Rehabilitation and Compensation Commission;
- Department of Jobs and Small Business;
- Fair Work Commission;
- Fair Work Ombudsman and Registered Organisations Commission Entity; and
- Seafarers Safety, Rehabilitation and Compensation Authority (Seacare).

1.26 The following bodies tabled annual reports in the House of Representatives prior to the commencement of the Supplementary Budget Estimates hearings for the Jobs and Small Business and Education and Training portfolios but did not table in the Senate until 12 November:

- Australian Curriculum, Assessment and Reporting;
- Australian Research Council;
- Department of Education and Training;
- Asbestos Safety and Eradication Agency; and
- Safe Work Australia.¹⁰

1.27 The Coal Mining Industry (Long Service Leave Funding) Corporation tabled its annual report in the House of Representatives on 24 October 2018. This was the day of the Supplementary Budget Estimates hearing for the Jobs and Small Business portfolio. The committee, however, acknowledges that the corporation was not requested to appear at the Supplementary Budget Estimates hearings.

1.28 The committee reminds all entities and companies that it is best practice for annual reports to be tabled prior to Supplementary Budget Estimates, which this year is due to commence on 21 October 2019. The committee further notes that it is possible for agencies 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.

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

1.29 Appendix 1 lists the annual reports which were presented to Parliament between 1 May 2018 and 31 October 2018 and referred to the committee, with relevant tabling dates.

Senate debate

1.30 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 reports examined in this report have not been the subject of comments or debates in the Senate.

Bodies not presenting annual reports to the Senate

1.31 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

1.32 The reports presented by most agencies met all requirements under the PGPA Rule relating to the inclusion of a letter of transmittal, independent auditor's report, appropriate style and formatting, and assessment of performance against targets.¹¹

1.33 The committee 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.

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