

# Chapter 1

## Introduction

1.1 This is the first report on annual reports for 2018 of the Senate Environment and Communications Legislation Committee (the committee). It provides an overview of selected annual reports of agencies within the allocated portfolios tabled in the Senate between 1 May 2017 and 31 October 2017.

1.2 Annual reports inform the Parliament, stakeholders and other interested parties of the operations and performance of public sector departments, agencies and companies. They are a primary accountability mechanism. Additionally, annual reports are important reference documents and form part of the historical record of the Commonwealth.

### Terms of reference

1.3 Under Standing Order 25(20), the annual reports of certain departments and agencies are referred to the committee for examination and assessment. The committee is required to:

- (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 report 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 the attention of the Senate to 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

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

- Environment and Energy; and
- Communications and the Arts.<sup>1</sup>

## Reports examined

1.5 This report examines the following reports, tabled in the Senate or presented out of session to the President of the Senate and referred to the committee between 1 May 2017 and 31 October 2017:

### *Non-corporate Commonwealth entities*

- Department of Communications and the Arts—Annual Report for 2016–17;
- Department of the Environment and Energy—Annual Report for 2016–17;
- Australian Communications and Media Authority and the Office of the eSafety Commissioner—Annual Report for 2016–17;
- Bureau of Meteorology—Annual Report for 2016–17;
- Clean Energy Regulator—Annual Report for 2016–17;
- Climate Change Authority—Annual Report for 2016–17; and
- Great Barrier Reef Marine Park Authority—Annual Report for 2016–17.

### *Corporate Commonwealth entities*

- Australia Council for the Arts—Annual Report for 2016–17;
- Australian Broadcasting Corporation—Annual Report for 2016–17;
- Australian Film, Television and Radio School—Annual Report for 2016–17;
- Australian National Maritime Museum—Annual Report for 2016–17;
- Australian Postal Corporation—Annual Report for 2016–17;
- Australian Renewable Energy Agency—Annual Report for 2016–17;
- Clean Energy Finance Corporation—Annual Report for 2016–17;
- National Film and Sound Archive—Annual Report for 2016–17;
- National Gallery of Australia—Annual Report for 2016–17;
- National Library of Australia—Annual Report for 2016–17;
- National Museum of Australia—Annual Report for 2016–17;
- National Portrait Gallery of Australia—Annual Report for 2016–17;

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1 *Journals of the Senate*, No. 2, 31 August 2016, pp. 75–76.

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- Old Parliament House (Museum of Australian Democracy)—Annual Report for 2016–17;
  - Screen Australia—Annual Report for 2016–17;
  - Special Broadcasting Service Corporation—Annual Report for 2016–17; and
  - Sydney Harbour Federation Trust—Annual Report for 2016–17.

#### *Commonwealth companies*

- Australia Business Arts Foundation Limited (Creative Partnerships Australia)—Annual Report for 2016–17;
- Bundanon Trust—Annual Report for 2016–17; and
- NBN Co Limited—Annual Report for 2016–17.

### **Reports not examined**

1.6 The committee is not obliged to report on Acts, statements of corporate intent, surveys, policy papers, budget documents, corporate plans or errata. The following documents were referred to the committee between 1 May 2017 and 31 October 2017 but are not examined in this report:

- Australian Communications and Media Authority—Review of the captioning obligations in the *Broadcasting Services Act 1992*—Report, dated April 2017;
- Australian Energy Market Commission (AEMC) and Climate Change Authority—Towards the next generation: delivering affordable, secure and lower emissions power—Report, dated June 2017;
- Australian National Maritime Museum—Corporate Plan 2017–21;
- Australian Postal Corporation (Australia Post)—Diversity and inclusion—Report for 2016–17;
- Clean Energy Regulator—Renewable Energy Target—Tracking Towards 2020: Encouraging renewable energy in Australia—2016;
- Climate Change Authority's special review: emissions reduction targets, emissions trading and post-Paris action—Australian Government Response, dated May 2017;
- *Environment Protection and Biodiversity Conservation Amendment Act 2013*—Independent Review of the Water Trigger Legislation—Report by Mr Stephen Hunter, dated April 2017;
- Final budget outcome 2016–17—Report by the Treasurer (Mr Morrison) and the Minister for Finance (Senator Cormann), dated September 2017;
- Independent Scientific Committee on Wind Turbines—Report for 2016; and
- Snowy Hydro Limited—Financial report for the period 3 July 2016 to 1 July 2017.

## Annual reporting requirements

1.7 The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) established a performance reporting framework for all Commonwealth entities and companies. The performance framework is based on section 38 of the PGPA Act which requires all Commonwealth entities to measure and assess their performance.

1.8 The performance framework established under the PGPA Act includes the requirement for Commonwealth entities to prepare a corporate plan and annual performance statements. The Public Governance, Performance and Accountability Rule 2014 (PGPA Rule 2014) contain the minimum requirements to be included.

1.9 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 corporate plans and Portfolio Budget Statements.

1.10 Below is a summary of the legislative authority and requirements for the different types of bodies under which annual reports are prepared:

- Non-corporate Commonwealth entities: PGPA Act, section 46 and the PGPA Rule 2014, Division 3A(A); for portfolio departments and executive agencies, 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, Part 3-3; and for statutory bodies, relevant enabling legislation.
- Non-statutory bodies: the annual reporting requirements are contained in the government response to the Senate Standing Committee on Finance and Public Administration's Report on Non-Statutory bodies.<sup>2</sup>

### *Disclosure of executive remuneration*

1.11 In its previous reports on annual reports, the committee commented on the decrease in the level of information provided in relation to senior executive remuneration in the annual reports of entities that fall within the committee's portfolio areas.<sup>3</sup> The committee notes that the Government has progressed the reinstatement of the previous practice of requiring all Commonwealth entities to disclose senior executive remuneration. First, the Minister for Finance wrote to the Chairs of Government Business Enterprises (GBEs) and the Future Fund Management Agency

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2 *Senate Hansard*, 8 December 1987, pp. 2632–45.

3 See Senate Environment and Communications Legislation Committee, *Annual reports (No. 1 of 2016)*, pp. 6–7; and *Annual reports (No. 1 of 2017)*, pp. 3–4.

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in February 2017 requesting that senior executive remuneration be disclosed in a manner consistent with listed companies.<sup>4</sup> The committee notes that Australia Post now includes a comprehensive remuneration statement in its annual report.

1.12 Secondly, entities have been requested, through Secretary correspondence and guidance, to reinstate the previous practice and to publish remuneration information on entities' websites.<sup>5</sup>

1.13 The Joint Committee of Public Accounts and Audit (JCPAA), in its report on Commonwealth financial statements, commented on the publication of senior executive remuneration information by entities. The JCPAA stated that publication is only optional by request rather than a formal requirement, which had been the previous practice. In addition, this information is not required to be included in annual reports.<sup>6</sup>

1.14 In relation to the committee's portfolio areas, entities have published remuneration reports on their websites. However, the committee found it difficult to locate some remuneration statements. For example, the senior executive remuneration report for the Department of Communications and the Arts requires the use of the search function to find the relevant document. In addition, over time, websites are modified and documents archived so it may not be possible to review changes to senior executive remuneration over the longer term or to make comparisons between agencies. The committee therefore considers that reporting on senior executive remuneration on an entity's website is insufficient to ensure transparency and accountability, and that this information should once again be included in annual reports.

1.15 The committee notes that the JCPAA recommended further changes to the disclosure of senior executive remuneration in its report on Commonwealth financial statements in order to improve financial reporting and disclosure. The JCPAA recommended that the Department of Finance, consistent with previous practice:

- re-establish a formal requirement for disclosure of senior executive remuneration by Commonwealth entities (including, without limitation, Government Business Enterprises), with this requirement to be duly reflected in the relevant legislation and guidance

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4 Senator the Hon Mathias Cormann, Minister for Finance, *Media Release*, 'Transparency and accountability in executive remuneration for government businesses', 18 February 2017. <https://www.financeminister.gov.au/media-release/2017/02/18/transparency-and-accountability-executive-remuneration-government>

5 Joint Committee of Public Accounts and Audit, *Report 463: Commonwealth Financial Statements*, August 2017, p. 10.

6 Joint Committee of Public Accounts and Audit, *Report 463: Commonwealth Financial Statements*, August 2017, p. 10.

- ensure that the relevant disclosure is published in entity annual reports.<sup>7</sup>

1.16 The committee fully supports the JCPAA's recommendation and awaits the response from the Department of Finance to the JCPAA on this matter.

### **Timeliness**

1.17 As part of its review of annual reports, the committee is required to investigate and report on any lateness in the presentation of annual reports.<sup>8</sup> In assessing the timeliness of the presentation of annual reports, the committee assesses the presentation against the requirements of different categories of bodies, the PGPA Rule 2014 and other legislative requirements.

#### ***Commonwealth entities***

1.18 Section 46 of the PGPA Act requires the provision of an annual report of a Commonwealth entity to the responsible minister by the 15th day of the fourth month after the end of the reporting period for the entity. This section of the Act does not, however, provide for a timeframe for the minister to present the report to the Parliament.

#### ***Commonwealth companies***

1.19 Section 97 of the PGPA Act sets out the requirements for the provision of annual reports of Commonwealth companies to the responsible minister. Under subsection 97(2) of the PGPA Act a company is to provide a report:

- (a) if the company is required by the *Corporations Act 2001* to hold an annual general meeting—the earlier of the following:
  - (i) 21 days before the next annual general meeting after the end of the reporting period for the company;
  - (ii) 4 months after the end of the reporting period for the company;and
- (b) in any other case—4 months after the end of the reporting period for the company; or the end of such further period granted under subsection 34C(5) of the *Acts Interpretation Act 1901*.

1.20 Subsection 97(5) of the PGPA Act states that:

- (5) If the Commonwealth company is a wholly-owned Commonwealth company, or is not required to hold an annual general meeting, the responsible Minister must table the documents in each House of the Parliament as soon as practicable after receiving them. In all other cases, the responsible Minister must table the documents in each House of the

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7 Joint Committee of Public Accounts and Audit, *Report 463: Commonwealth Financial Statements*, August 2017, p.11.

8 Standing Order 25(20)(c).

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Parliament as soon as practicable after the annual general meeting of the company.

### ***PGPA Rule 2014***

1.21 The PGPA Rule 2014 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>9</sup>

1.22 The guidelines advise that for all 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>10</sup>

1.23 Entities reporting in accordance with their own legislation are often required to prepare for the relevant minister their annual report 'as soon as is practicable' after the end of the particular period to which the report relates. The committee draws attention to subsections 34C(2) and 34C(3) of the *Acts Interpretation Act 1901*, which stipulate that where no date for providing a report to a minister is specified, the report should be presented no more than six months after the reporting period, and the minister must provide the report to the Parliament within 15 days after the minister receives it.

### ***Timeliness of reports examined***

1.24 The committee notes that the 2015–16 annual reports of the Copyright Agency Limited within the Communications and the Arts portfolio, and the National Environment Protection Council (NEPC) within the Environment and Energy portfolio, were presented to the responsible ministers on 22 March 2017 and 28 July 2017 respectively. While both annual reports were tabled in accordance with their respective legislative requirements, they were provided to the responsible ministers more than six months after the reporting period covered. The committee reminds agencies to provide their annual reports to the responsible minister within a reasonable timeframe.

1.25 Appendix 1 lists the annual reports tabled (or presented) in the Senate and the House of Representatives between 1 May 2017 and 31 October 2017 and referred to the committee, with relevant tabling dates.

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9 See PGPA Rule 2014, sections 17AB, 17BC and 28C.

10 Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Documents to the Parliament (including Government Documents, Government Responses to Committee Reports, Ministerial Statements, Annual Reports and other Instruments)*, August 2016, pp. 4–5.

1.26 Appendix 2 lists the reports relating to the operation of acts and programs tabled (or presented) in the Senate and House of Representatives between 1 May 2017 and 31 October 2017 and referred to the committee, with relevant tabling dates.

#### *Reports received after 31 October 2017*

1.27 Where a deadline for presenting an annual report cannot be met, a Commonwealth entity or company can seek an extension of time to report under the provisions of subsections 34C(4)–(7) of the *Acts Interpretation Act 1901*, by advising the responsible minister of the reasons why the entity cannot comply with the deadline. The responsible minister is required to table this application and a statement specifying the extension granted and the reasons for the extension in both houses of the Parliament.<sup>11</sup>

1.28 The committee notes the tabling, on 19 October 2017, of an extension application dated 12 October 2017, and approval from the Minister for the Environment and Energy, the Hon. Josh Frydenberg MP, for the late tabling of the Director of National Parks Annual Report 2016–17.<sup>12</sup> The Director of National Parks annual report was subsequently presented to the President of the Senate on 20 December 2017 and tabled in the Senate on 5 February 2018.

1.29 Those annual reports received after the 31 October deadline will be examined and considered in the committee's *Annual reports (No. 2 of 2018)*.

#### **Senate debate**

1.30 In accordance with Standing Order 25(20)(d), the committee is required to take into account any relevant remarks about annual reports made in debate in the Senate. The committee notes that on 13 November 2017, Senator Andrew Bartlett and Senator Janet Rice commented on the annual report of the Great Barrier Reef Marine Park Authority. Senator Andrew Bartlett also provided comments on the annual report of the Australian Renewable Energy Agency.<sup>13</sup>

#### **Non-reporting bodies**

1.31 Standing Order 25(20)(h) requires that the committee inquire into and report on any bodies which do not present annual reports to the Senate but should present such reports. The committee makes no recommendations for any bodies not presenting an annual report to do so.

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11 *Acts Interpretation Act 1901*, ss. 34C(6).

12 *Journals of the Senate*, No. 67, 19 October 2017, p. 2135.

13 Senator Andrew Bartlett, *Senate Hansard*, 13 November 2017, pp. 8217–8220; Senator Janet Rice, *Senate Hansard*, 13 November 2017, pp. 8218–8219.



**Apparently satisfactory**

1.32 Standing Order 25(20)(a) requires that the committee report to the Senate on whether the annual reports of departments and agencies in its portfolios are 'apparently satisfactory'. In making this assessment, the committee considers such aspects as timeliness of presentation and compliance with relevant reporting requirements.

1.33 The committee has examined all annual reports referred during the reporting period and considers that they are 'apparently satisfactory'.

