

# Chapter 1

## Overview

### Introduction

1.1 The Senate Finance and Public Administration Legislation Committee (the committee) is responsible for examining the annual reports of the parliamentary departments,<sup>1</sup> and the departments and agencies of the Prime Minister and Cabinet Portfolio and the Finance Portfolio.

1.2 This report on annual reports (No. 2 of 2020) provides an overview of the committee's examination of annual reports presented to the Parliament between 1 November 2019 and 30 April 2020.<sup>2</sup>

### Terms of reference

1.3 Under Senate Standing Order 25(20), the annual reports of certain departments and agencies stand referred to committees for examination and assessment. Each 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 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;

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1 As a matter of comity between the Houses of Parliament, neither House enquires into the operations of the other House. For this reason, neither the annual report of, or the proposed expenditure for, the Department of the House of Representatives is referred to a Senate committee for review.

2 Standing Order 25(20)(f) requires the committee to report on annual reports tabled between 1 May and 31 October by the tenth sitting day of the following year, and report on annual reports tabled between 1 November and 30 April 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; and
- (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.<sup>3</sup>

### **Allocated portfolios**

1.4 The Senate allocated departments and agencies to committees on 12 February 2020.<sup>4</sup> In accordance with that resolution, the committee has responsibility for the oversight of the following:

- Parliament;
- Prime Minister and Cabinet Portfolio; and
- Finance Portfolio.

### **Performance reporting framework**

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

1.6 Section 39 of the PGPA Act requires all Commonwealth entities to prepare an annual performance statement to be included in their annual report. Entities use annual performance statements to report on the results achieved against the targets, goals and measures established at the beginning of a reporting year in the relevant corporate plan and Portfolio Budget Statements (PBS).

1.7 These documents are an essential part of the accountability system that provides the Minister, the Parliament and the public with detailed information about the financial and non-financial performance of entities through the cycle of reporting periods, and facilitate the examination of how the use of public resources achieve the intended results for a Commonwealth body.<sup>5</sup>

1.8 The Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) supports the implementation of the PGPA Act and outlines the requirements of annual reports for Commonwealth entities.

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3 The Senate, *Standing Orders and other orders of the Senate*, January 2020, SO 25(20).

4 *Journals of the Senate*, No. 41, 12 February 2020, p. 1239.

5 Department of Finance, Resource Management Guide No. 135, *Annual Report for Non-Corporate Commonwealth Entities*, May 2019, p. 7, [https://www.finance.gov.au/sites/default/files/2019-12/RMG%20135\\_Annual\\_reports\\_for\\_non-corporates.pdf](https://www.finance.gov.au/sites/default/files/2019-12/RMG%20135_Annual_reports_for_non-corporates.pdf) (accessed 24 June 2020).

### ***Requirements for annual reports***

1.9 Annual reports place a great deal of information about government departments and agencies on the public record. Accordingly, the tabling of annual reports is an important element of accountability to the Parliament, as the information provided in annual reports assists in the effective examination of the performance of departments and agencies and the administration of government programs.

1.10 Different types of Commonwealth bodies have separate provisions for annual reporting which affect content and preparation requirements. Legislative provisions for Commonwealth bodies include:

- non-corporate Commonwealth entity<sup>6</sup>—section 46 of the PGPA Act and Subdivision A of Division 3A of Part 2–3 of the PGPA Rule;
- corporate Commonwealth entity<sup>7</sup>—section 46 of the PGPA Act and Subdivision B of Division 3A of Part 2–3 of the PGPA Rule;
- Commonwealth company<sup>8</sup>—section 97 of the PGPA Act, which refers to additional requirements under the *Corporations Act 2001* and Part 3–3 of the PGPA Rule;
- statutory office holders and statutory bodies—statutory office holders are engaged or employed under an Act, which may prescribe annual reporting requirements pursuant to the office. It should be noted that there may be reporting requirements in the enabling legislation for statutory bodies (which may also be a Commonwealth entity);<sup>9</sup> and
- non-statutory bodies (NSBs)—NSBs are established by a Minister and not pursuant to a statute. Guidelines for the preparation of annual reports for NSBs are contained in the government response to the Senate Standing Committee on Finance and Public Administration report on non-statutory bodies.<sup>10</sup>

1.11 In addition to legislative requirements, the Department of Finance (Finance) provides guidance material for Commonwealth entities and companies which sets out

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6 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 *Public Governance, Performance and Accountability Act 2013*).

7 A body corporate that has a separate legal personality from the Commonwealth, and includes statutory authorities. It can act in its own right exercising certain legal rights such as entering into contracts and owning property.

8 A company established by the Commonwealth under the *Corporations Act 2001* that is wholly controlled by the Commonwealth.

9 For example, some Acts that establish statutory bodies have separate reporting requirements under those Acts. For example, section 17 of the *Commonwealth Electoral Act 1918* prescribes specific reporting requirements for the Australian Electoral Commission.

10 *Senate Hansard*, 8 December 1987, pp. 2632–2645.

further detail on the content requirements for annual reports under the Commonwealth performance framework in accordance with the PGPA Act and PGPA Rule.<sup>11</sup> The material available from this website includes the following guides which apply to the reports being examined:

- *Resource Management Guide No. 135—Annual reports for non-corporate Commonwealth entities;*
- *Resource Management Guide No. 136—Annual reports for corporate Commonwealth entities; and*
- *Resource Management Guide No. 137—Annual reports for Commonwealth companies.*

1.12 The committee notes that Finance published updated versions of these guidance documents in May 2019 intended for 2018–19 annual reports, which include implementation steps resulting from the *Independent Review into the PGPA Act* (the Review).<sup>12</sup>

1.13 Following the Review, two amendments to the PGPA Rule were registered on 4 April 2019. These amendments—the Public Governance, Performance and Accountability Amendment (Annual Reporting) Rules 2019 and the Public Governance, Performance and Accountability Amendment (Reporting Executive Remuneration) Rules 2019—affect reporting obligations for entities' and Commonwealth companies' annual reports from the 2018–19 period.

1.14 The amendments expand the annual reporting requirements for Commonwealth entities and companies in the following ways:

*Public Governance, Performance and Accountability Amendment (Annual Reporting) Rules 2019*

- providing for annual reports to be published using Finance's digital reporting tool as soon as practicable after presentation to the Parliament;
- creating a requirement to report on statistics of all employees of an entity or company (in addition to statistics on Australian Public Service employees of the entity or company); and
- inclusion of compliance index templates for corporate Commonwealth entities and companies, in a structure similar to the existing compliance index for non-corporate Commonwealth entities.<sup>13</sup>

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11 Department of Finance, *List of Resource Management Guides*, <https://www.finance.gov.au/publications/resource-management-guides> (accessed 9 July 2020).

12 The report for this Review, the *Independent Review into the Operation of the Public Governance, Performance and Accountability Act 2013 and Rule* was tabled in both Houses of Parliament on 19 September 2018.

13 Public Governance, Performance and Accountability Amendment (Annual Reporting) Rules 2019, Explanatory Memorandum, pp. 1–4.

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*Public Governance, Performance and Accountability Amendment (Reporting Executive Remuneration) Rules 2019*

- providing for further requirements for Commonwealth entities and companies to report on the details of the remuneration of key management personnel and other senior executives in their annual report;
- establishing further requirements for Commonwealth entities and companies to report on their policies and practices for the remuneration of key management personnel; and
- requiring Commonwealth entities and companies to publish their annual reports on their website as soon as practicable after tabling in either House of Parliament, if required to do so.<sup>14</sup>

1.15 The committee assessed Commonwealth entities' and companies' annual reports for compliance with these new requirements. The committee's assessment is set out in this report.

### **Reports examined**

1.16 In accordance with Standing Order 25(20)(f), this report examines annual reports tabled in the period 1 November 2019 to 30 April 2020. In this period, nine annual reports of Commonwealth entities, companies and statutory office holders were tabled in the Senate and referred to the committee. The annual reports examined in this report are categorised as follows:

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

- Workplace Gender Equality Agency—Report for 2018–19

#### ***Corporate Commonwealth Entities***

- Anindilyakwa Land Council—Report for 2018–19
- Australian Institute of Aboriginal and Torres Strait Islander Studies—Report for 2018–19
- Central Land Council—Report for 2018–19
- Tiwi Land Council—Report for 2018–19
- Torres Strait Regional Authority—Report for 2018–19
- Wreck Bay Aboriginal Community Council—Report for 2018–19

#### ***Commonwealth Companies***

- Outback Stores Pty Ltd—Report for 2018–19

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14 Public Governance, Performance and Accountability Amendment (Reporting Executive Remuneration) Rules 2019, Explanatory Memorandum, pp. 1–11.

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### ***Statutory Office Holders***<sup>15</sup>

- Aboriginal Land Commissioner—Report for 2018–19

### **Reports not examined**

1.17 The committee is not obliged to examine reports on the operation of Acts, policy papers, budget documents or corporate plans. Where a report is referred to two standing committees, the committee has deferred examination of those reports to the committee which has primary oversight of the portfolio where the agency sits. Accordingly, the following documents were also referred to the committee but not examined for the purposes of this report:

#### ***Reports referred in the period 1 November 2019 and 30 April 2020***

- Australian Public Service Commission—State of the Service Report 2018–19
- Australian Public Service Commissioner—Report for 2018–19, including the report of the Merit Protection Commissioner—Correction
- Department of Finance—Campaign Advertising by Australian Government Departments and Agencies—Report for 2018–19
- Department of Finance—Consolidated financial statements for the year ended 30 June 2019—December 2019
- Department of Finance—Report on Advances Provided under the Annual Appropriations Acts for the year ended 30 June 2019
- Indigenous Australians—Closing the Gap—Ministerial statement by the Prime Minister (Mr Morrison), dated 12 February 2020
- Indigenous Australians—Closing the Gap—Prime Minister's Report—Closing the Gap 2020
- Parliamentary Budget Office—2019–20 Mid-Year Economic and Fiscal Outlook Snapshot
- Parliamentary Budget Office—National Fiscal Outlook: As at 2019–20 Budgets

### **Timeliness**

1.18 Section 46 of the PGPA Act requires annual reports to be provided to the responsible Minister by the 15<sup>th</sup> day of the fourth month after the end of the reporting period for the entity. The PGPA Act does not provide a timeframe for presentation to the Parliament; however the Minister is obliged to present it within 15 sitting days upon receiving the report.<sup>16</sup>

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15 While statutory office holders are not required to prepare annual reports for presentation to Parliament under the *Public Governance, Performance and Accountability Act 2013* and *Public Governance, Performance and Accountability Rule 2014*, such reports that have been tabled and referred to the committee have been examined for the purposes of this report.

16 *Acts Interpretation Act 1901*, subsection 34C(3).

1.19 Under section 97(2) of the PGPA Act, Commonwealth companies are required to prepare an annual report and provide it to the responsible Minister:

(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 In relation to the tabling of an annual report in the Parliament, 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 Parliament as soon as practicable after the annual general meeting of the company.

1.21 The PGPA Rule states that annual reports for corporate Commonwealth entities, non-corporate Commonwealth entities and Commonwealth companies must comply with the guidelines for presenting documents to the Parliament.<sup>17</sup> The Department of the Prime Minister and Cabinet published new *Guidelines for the Presentation of Documents to the Parliament* (Tabling Guidelines) in June 2019.

1.22 The Tabling Guidelines direct Commonwealth entities and companies to consult the Finance Resource Management Guides (RMG) for information about the preparation, content and reporting timeframes for annual reports.<sup>18</sup>

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

1.23 Standing Order 25(20)(c) requires the committee to report to the Senate on the late presentation of annual reports. The committee considers the timely presentation of annual reports to be an important element in accountability to the Parliament and reiterates its preference of having annual reports available to the Parliament before Supplementary Budget Estimates hearings.<sup>19</sup>

1.24 Appendix 1 lists the reports referred to the committee over the reporting period (1 November 2019 to 30 April 2020). The table lists the date each report was:

- submitted to its responsible Minister;

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17 See Public Governance, Performance and Accountability Rule 2014, sections 17AB, 17BC and 28C.

18 Department of the Prime Minister and Cabinet, *Tabling Guidelines*, June 2019, p. 4.

19 As the 2020–21 budget

- first sighted by the responsible Minister; and
- tabled (or presented) in both Houses of Parliament.

1.25 The committee thanks the Commonwealth entities that submitted their annual reports to the responsible Minister by the prescribed date of 15 October 2019 or by the date set by the entity's relevant enabling legislation. Three reports did not meet the deadline:

- Anindilyakwa Land Council—Report for 2018–19;
- Australian Institute of Aboriginal and Torres Strait Islander Studies—Report for 2018–19; and
- Wreck Bay Aboriginal Community Council—Report for 2018–19.

1.26 The committee again encourages Commonwealth entities and companies to prepare annual reports in accordance with the timeframe outlined by the PGPA Rule, the Tabling Guidelines and the RMG.

### **Bodies which have not presented annual reports to the Parliament**

1.27 Standing Order 25(20)(h) requires the committee to report to the Senate on whether there were any bodies that were required but failed to present an annual report to the Senate. Two entities did not present an annual report by the period covered by this report on annual reports:

- Northern Land Council—Report for 2018–19; and
- Executive Director of Township Leasing—Report for 2018–19.

1.28 The Northern Land Council's annual report for 2018–19 was presented to the Senate out of session on 2 July 2020. The annual report was due to be submitted to the Minister by 15 October 2019. Pursuant to the *Acts Interpretation Act 1901*, the Northern Land Council wrote to the Minister for Indigenous Affairs on 11 October 2019 to request an extension to present its annual report to the Parliament by 4 November 2019. Correspondence received by the Minister on 29 October 2019 indicated that the Northern Land Council intended to table its annual report during the November 2019 sittings.<sup>20</sup>

1.29 The Executive Director of Township Leasing's annual report for 2018–19 was presented to the Senate out of session on 6 August 2020. The annual report was due to be submitted to the Minister by 15 October 2019.

1.30 These annual reports will be considered by the committee in its report on annual reports (No. 1 of 2021), which will examine reports tabled between 1 May 2020 to 31 October 2020.

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20 The correspondence was tabled in the Senate on 11 November 2019. See *Journals of the Senate*, No. 24, 11 November 2019, p. 732; *House of Representatives Votes and Proceedings*, No. 28, 25 November 2019, p. 420.

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## **Annual reports referred to in the Senate**

1.31 Under Standing Order 25(20)(d), the committee is required to take into consideration any remarks made in the Senate about each annual report. The committee notes that one annual report was considered in the Senate for the period covered in this report.

1.32 During the Consideration of Documents in the Senate on 13 February 2020, Senator Malarndirri McCarthy, Deputy Opposition Whip in the Senate rose to speak on the Outback Stores Pty Ltd—Report for 2018–19.<sup>21</sup> In her statement, Senator McCarthy outlined the company's achievements during the 2018–19 reporting period and efforts to improve the health and economy of Indigenous communities.

## **Assessment of reports**

1.33 Standing Order 25(20)(a) requires that the committee to report to the Senate on whether the annual reports referred to it in the relevant period were 'apparently satisfactory'. In assessing these reports, the committee has taken into consideration the role and purpose of annual reports within the Commonwealth performance framework, the legislative requirements for the reports, and guidance for best practice in the Tabling Guidelines and the RMG.

1.34 The committee considers all reports examined to be 'apparently satisfactory', however, as noted above, continues to encourage Commonwealth bodies to aim for standards of best practice in preparing annual reports.

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21 *Senate Hansard*, 13 February 2020, pp. 1045–1046.

