

The Senate

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Foreign Affairs, Defence and Trade  
Legislation Committee

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Annual reports (No. 2 of 2016)

October 2016

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# Membership of the Committee

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Senator Scott Ludlam, AG, WA  
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# Report

## Introduction

1.1 This is the Senate Foreign Affairs, Defence and Trade Legislation Committee's second and final report on annual reports for 2016. 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.<sup>1</sup>

## Terms of reference

1.2 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.

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1 Department of Finance, *Resource Management Guide No. 135: Annual report for non-corporate Commonwealth entities*, July 2016, p. 4.

## **Allocated portfolios**

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

- Defence, including Veterans' Affairs; and
- Foreign Affairs and Trade.<sup>2</sup>

## **Annual reporting requirements**

1.4 This is the second time departments and agencies are reporting under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which commenced on 1 July 2014. The PGPA Act consolidates the governance, performance and accountability requirements contained in the *Financial Management and Accountability Act 1997* (FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (CAC Act). It also establishes a performance reporting framework for all Commonwealth entities and companies.

1.5 Section 46 of the PGPA Act sets out the annual reporting requirements in relation to Commonwealth entities, including that annual reports must comply with any requirements prescribed by rules. Section 97 sets out the annual reporting requirements for Commonwealth companies.

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

### ***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*, sections 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.

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2 *Journals of the Senate*, No. 1, 31 August 2016, p. 6.

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### *Non-statutory bodies*

- Annual reporting requirements are contained in the government response to the Senate Standing Committee on Finance and Public Administration Report on Non-Statutory bodies, *Senate Hansard*, 8 December 1987, pp 2632–45.

### *Statutory office holders*

- Any requirements in the enabling legislation.

### *Reports on the operation of Acts*

- Any requirements under the relevant legislation.
- The Government Response to the Legal and Constitutional Affairs Report on Annual Reports, May 1990, provides guidelines for the annual reports of the operation of Acts.

## **Public Governance, Performance and Accountability Rule 2014**

1.7 While the *Requirements for Annual Reports for Departments, Executive Agencies and Other Non-corporate Commonwealth Entities* issued by the Department of Prime Minister and Cabinet on 25 June 2015 applied to annual reports for 2014–15, it was noted that:

Significant revisions to the Requirements are anticipated for the 2015–16 financial year with the commencement of the performance reporting model under the Public Governance, Performance and Accountability Act 2013 (PGPA Act).

1.8 In its report on the development of the Commonwealth performance framework, the Joint Committee of Public Accounts and Audit (JCPAA) foreshadowed that in future years the annual report requirements 'will be replaced through the consolidation of all mandatory requirements into a rule made for the purposes of section 46 of the PGPA Act'.<sup>3</sup>

1.9 The former *Requirements for Annual Reports for Departments, Executive Agencies and Other Non-corporate Commonwealth Entities* have been replaced by the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule).

1.10 The former requirements included a timetable for the responsible minister to table annual reports before 31 October in the year it was given, and as best practice, before the Senate Supplementary Budget Estimates hearings if they are held before this date.<sup>4</sup>

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3 Joint Committee of Public Accounts and Audit, *Report 452 Development of the Commonwealth Performance Framework*, December 2015, p. 12.

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.

1.11 Section 46 of the PGPA Act requires Commonwealth entities (corporate and non-corporate) to prepare an annual report and provide it 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. This section of the Act does not, however, provide for a timeframe for the minister to present the report to the Parliament.

1.12 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*. The guidelines advise that it remains government policy for all entities to table their annual reports by 31 October each year.<sup>5</sup>

### **Assessment of annual reports**

1.13 Senate Standing Order 25(20) requires that the committee examine reports referred to it to determine whether they are timely and 'apparently satisfactory'. The committee must consider whether the reports comply with the relevant legislation and guidelines for the preparation of annual reports in forming its assessment.

1.14 The enabling legislation of some agencies may require that agency to report on matters other than those included in the guidelines, or impose different reporting requirements. The committee's view is that such agencies, while bound by their enabling legislation, should also comply with the PGPA Rule, to the extent that the requirements do not conflict.

### ***Timeliness***

1.15 Under Standing Order 25(20)(c), the committee must report to the Senate any lateness in the presentation of annual reports.

1.16 The committee notes that four annual reports were tabled late in November 2015; however, these reports were included in the committee's last Report on Annual Reports tabled in March 2016. A table detailing the dates relating to the timeliness of presentation is at Appendix 1.

1.17 The committee notes that the Director of Military Prosecutions and the Judge Advocate General did not present reports for the period 1 January to 31 December 2015 by the time this report was finalised to be tabled on 12 October 2016.

1.18 Under Section 196A and 196B of the Defence Force Discipline Act 1982, the Judge Advocate General and the Director of Military Prosecutions are required to present a report as soon as practicable after 31 December to the Minister.

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5 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)*, February 2016, pp 4-5.

1.19 In the absence of specific provisions, the Acts Interpretation Act 1901 requires bodies to present annual reports to ministers within six months after the end of the period reported upon (subsection 34C(2)), and ministers to table reports within 15 sitting days of receipt (subsection 34C(3)).

1.20 The committee sought an explanation for the delay from both Statutory Office Holders. On 30 September 2016, the committee received correspondence from the Minister for Defence stating that the Director of Military Prosecutions had provided an annual report to the Minister on 6 September 2016, and the report was expected to be presented to Parliament during the remaining 2016 sittings.

1.21 On 11 October 2016, the committee received further correspondence from the Minister for Defence stating that the Judge Advocate General had provided an annual report to the Minister on 15 September 2016, and the report was expected to be presented to Parliament during the remaining 2016 sittings.

**Senator Chris Back**  
**Chair**

# Appendix 1

## Compliance table of annual reports tabled during the period 1 November 2015 to 30 April 2016

Scrutiny of reports tabled by 30 April 2016				
Department/ agency	Enabling legislation and timeliness	Date on letter of transmittal	@ Date report submitted to minister (if known)  % Date report received by minister (if known)	* Date report presented to President  # Date tabled in the Senate  ^ Date tabled in H/Reps
<b>Defence portfolio</b>				
ASC Pty Ltd	Commonwealth company, limited by shares, registered under the <i>Corporations Act 2001</i> , subject to the <i>PGPA Act</i>  To be tabled by 31 October  *Forwarded to the Finance and Public Administration Legislation Committee	16 Oct 15		*2 Nov 15  #9 Nov 15  ^9 Nov 15
Defence Housing Australia	Corporate Commonwealth entity, established under the <i>Defence Housing Authority Act 1987</i> , s4, subject	7 Oct 15		*2 Nov 15  #9 Nov 15  ^9 Nov 15

	to the <i>PGPA Act</i> To be tabled by 31 October			
Director of Military Prosecutions	Statutory body established under the <i>Defence Force Discipline Act 1982 (DFDA)</i>  Section 196B of the DFDA requires the DMP to be tabled as soon as practicable after 31 Dec each year			Not presented
Judge Advocate General	Statutory body established under the <i>Defence Force Discipline Act 1982 (DFDA)</i>  Section 196B of the DFDA requires the DMP to be tabled as soon as practicable after 31 Dec each year			Not presented
<b>Foreign Affairs and Trade portfolio</b>				
Australian Safeguards and Non- Proliferation Office	Established under the <i>Nuclear Non- Proliferation (Safeguards) Act 1987, s51;</i> <i>Chemical Weapons (Prohibition) Act 1994, s96;</i> <i>Comprehensive Nuclear-Test- Ban Treaty Act 1998, s71.</i>	20 Oct 15		*2 Nov 15 #9 Nov 15 ^9 Nov 15

	<p>Minister to table within 15 sitting days of receiving report, subject to the <i>PGPA Act</i></p> <p>To be tabled by 31 October</p>			
<b>Veterans' Affairs portfolio</b>				
Australian War Memorial	<p>Corporate Commonwealth entity, established under the <i>Australian War Memorial Act 1980, s4</i>, subject to the <i>PGPA Act</i></p> <p>To be tabled by 31 October</p>	21 Sep 15		<p>*2 Nov 15</p> <p>#9 Nov 15</p> <p>^9 Nov 15</p>

