

PREFACE

Terms of reference

On 29 September 2010, a resolution of the Senate allocated the following portfolios to the Senate Standing Committee on Legal and Constitutional Affairs:

- Attorney-General's portfolio; and
- Immigration and Citizenship portfolio.

This report was prepared pursuant to Standing Order 25(20) relating to the consideration of annual reports by committees. The Standing Order states:

Annual reports of departments and agencies shall stand referred to the 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; 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.

Role of annual reports

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 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.

Annual reporting requirements

Standing Order 25(20)(f) requires that committees 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.

Pursuant to subsections 63(2) and 70(2) of the *Public Service Act 1999*, departments of state and executive agencies must prepare annual reports in accordance with the *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, (the *Requirements for Annual Reports*). As a matter of policy, the *Requirements for Annual Reports* also apply to prescribed agencies under section 5 of the *Financial Management and Accountability Act 1997* (FMA Act).¹

Orders made by the Minister under section 48 of the *Commonwealth Authorities and Companies Act 1997* (CAC Act) set out guidelines for the annual reports of Commonwealth authorities. The content of annual reports of Commonwealth companies is based on the reporting requirements under the *Corporations Act 2001*, in accordance with section 36 of the CAC Act.

Statutory authorities must also report in accordance with their establishing legislation.

Guidelines for the annual reports of non-statutory bodies are set out in the Government Response to recommendations of the then Senate Standing Committee on Finance and Government Operations, in its report entitled *Reporting Requirements for the Annual Reports of Non-Statutory Bodies*. The Government Response was incorporated into the Senate Hansard of 8 December 1987.²

'Apparently satisfactory'

Under the terms of Standing Order 25(20)(a), the committee is required to report to the Senate whether reports are 'apparently satisfactory'. In making this assessment, the committee considers such aspects as compliance with relevant reporting guidelines.

1 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 23 June 2010, Part 1, subsection 3(1).

2 *Official Senate Hansard*, 8 December 1987, pp 2643-2645.

The reports examined by the committee in this report were found to be of a satisfactory standard, adequately describing the functions, activities, performance and financial positions of the departments and agencies. The committee finds all submitted annual reports to be 'apparently satisfactory'.

Timeliness

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

In accordance with the *Requirements for Annual Reports* published in June 2010, agencies are required to present:

A copy of the annual report...to each House of the Parliament on or before 31 October in the year in which the report is given. If Senate Estimates is scheduled to occur prior to 31 October, it is best practice for annual reports to be tabled prior to those hearings.

...

Where an agency's own legislation provides a timeframe for its annual report, for example "within six months" or "as soon as practicable after 30 June in each year", that timeframe applies.³

If a department is unable to meet this deadline, the secretary of that department is to advise the responsible Minister of the reasons for the delay and the expected tabling date. The responsible Minister is to table this explanation in the Parliament on the next available sitting day.⁴

Subsection 9(1) of the CAC Act requires the director of a Commonwealth authority to:

- (a) prepare an annual report in accordance with Schedule 1 for each financial year; and
- (b) give it to the responsible Minister by the deadline for the financial year for presentation to the Parliament.

...

(2) The deadline is:

- (a) the 15th day of the 4th month after the end of the financial year; or
- (b) the end of such further period granted under subsection 34C(5) of the *Acts Interpretation Act 1901*.

Under section 36 of the CAC Act:

3 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 23 June 2010, Part 1, section 4.

4 Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Government Documents to the Parliament*, Canberra, July 2008, p. 5.

- (1) A Commonwealth company must give the responsible Minister:
 - (a) a copy of the company's financial report, directors' report and auditor's report that the company is required by the *Corporations Act 2001* to have for the financial year (or would be required by that Act to have if the company were a public company); and
 - (b) any additional report under subsection (2); and
 - (c) in the case of a wholly-owned Commonwealth company— any additional information or report required by the Finance Minister's Orders.

(1A) The Commonwealth company must give the reports and information by:

- (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 financial year;
 - (ii) 4 months after the end of the financial year; and
- (b) in any other case—4 months after the end of the financial year; or the end of such further period granted under subsection 34C(5) of the *Acts Interpretation Act 1901*.

In the absence of any specific provision, the *Acts Interpretation Act 1901* requires bodies to present annual reports to ministers within 6 months after the end of the period reported upon (subsection 34C(2)), and ministers must table reports within 15 sitting days after receipt.

A table listing the annual reports of departments and agencies tabled in the Senate (or presented out of session to the President of the Senate) between 1 November 2010 and 30 April 2011, and which have been referred to the committee for examination, can be found at Appendix 1.⁵ Also included in this table, is the date each report was tabled in the House of Representatives.

Although the annual reports of FMA Act bodies examined in this report missed the 31 October 2010 tabling deadline for the Senate, the committee notes that a number of reports were tabled in the House of Representatives before that date. The committee further notes that the annual reports of the Australian Crime Commission and the Migration Review Tribunal and Refugee Review Tribunal were tabled in both Houses of Parliament on 24 November 2010 and 16 November 2010, respectively, and hopes to see more timely tabling of future reports.

In accordance with best practice, as outlined in the Requirements for Annual Reports, the committee encourages bodies to table annual reports before the supplementary budget estimates hearings in October each year.⁶

5 This table also includes the reports on the operation of acts or programs which have been referred to the committee.

6 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 23 June 2010, Part 1, Section 4.

Requirement for non-reporting bodies to report

In accordance with Standing Order 25(21)(h), the committee is required to report on bodies which do not present an annual report to the Senate and which should present such a report.

On this occasion, the committee makes no recommendation for any organisation not presenting an annual report to do so.

