

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 (committee):

- 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 (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

The 2010-11 annual reports are prepared in accordance with the *Requirements for Annual Reports* issued on 8 July 2011. Amendments to the latest issue of the *Requirements for Annual Reports* are:

- Commonwealth Disability Strategy – the requirement to report on the implementation of the Commonwealth Disability Strategy in annual reports has been discontinued.
- Social inclusion reporting – accommodating social inclusion measurement and reporting strategies.
- Freedom of Information – accommodating recent major reforms to Freedom of Information legislation.²

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.

1 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 8 July 2011, Part 1, subsection 3(1).

2 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 8 July 2011, p. i.

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 1987.³

'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.

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 July 2011, 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.⁴

If a department or agency is unable to meet this deadline, the secretary or agency head 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.⁵

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

4 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 8 July 2011, Part 1, section 4.

5 Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Government Documents to the Parliament*, Canberra, June 2010, p. 5.

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:

- (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 six 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 2011 and 30 April 2012, and which have been referred to the committee for examination, can be

found at Appendix 1 to this report.⁶ 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 2011 tabling deadline for the Senate, a number of reports were tabled in the House of Representatives before that date.

The committee notes the annual report of the Australian Human Rights Commission was tabled in both Houses of Parliament on 1 November 2011, and hopes to see a more timely tabling of future reports.

In contrast, although the reports of the Commonwealth Ombudsman and the High Court of Australia were tabled after 31 October 2011, both the Commonwealth Ombudsman and the High Court of Australia (which is a body not bound by the FMA Act), presented their annual reports in accordance with their respective legislative provisions.⁷

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.⁸

Requirement for non-reporting bodies to report

In accordance with Standing Order 25(20)(h), the committee must report on bodies which are required to present an annual report to the Senate, but which have failed to do so.

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

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

7 Subsection 19(1) of the *Ombudsman Act 1976* allows the Commonwealth Ombudsman six months after 30 June to submit its annual report to the Minister for presentation to the Parliament. Subsections 47(1) of the *High Court Act 1979* and 34C(2) of the *Acts Interpretation Act 1901* gives the High Court a period of six months after the end of the reporting period to submit to the Minister an annual report.

8 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 8 July 2011, Part 1, Section 4.

