

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 (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 28 June 2012. Amendments to the latest issue of the *Requirements for Annual Reports* are:

- Consultancy reporting – recognising the functionality provided by the AusTender database, the requirement to provide details of consultancy contracts let in the reporting year has been omitted.
- Carer recognition – a new requirement has been added for public service care agencies to report on compliance with the *Carer Recognition Act 2010*.
- Freedom of Information – simplification of reporting following accommodation of major reforms to freedom of information reporting in the 2010-11 Requirements.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.

1 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies (Requirements for Annual Reports)*, 28 June 2012, Part 1, subsection 3(1).

2 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 28 June 2012, p. i.

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 1987.³

'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. However, the committee notes some reports could be improved with a closer adherence to the *Requirements for the Annual Reports*.⁴ 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*, 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.⁵

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

4 For example, the committee is disappointed to note that the Australian Human Rights Commission's annual report lacked a list of requirements, including a mandatory compliance index and a 'clear read' between the PBS and the report, despite concerns expressed by the committee in its *Annual Reports (No. 2 of 2012)* report, tabled on 12 September 2012: see pp 3-5.

5 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 28 June 2012, Part 1, section 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.⁶

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 6 months after the end of the period reported upon (subsection 34C(2)), and ministers must table reports within 15 sitting days after receipt.

6 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)*, Canberra, 28 June 2012, p. 5. Provisions for seeking an extension to the reporting period can be found in subsections 34C(4) to (7) of the *Acts Interpretation Act 1901*.

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 May 2012 and 31 October 2012, and which have been referred to the committee for examination, can be found at Appendix 1.⁷ Also included in this table, is the date each report was tabled in the House of Representatives.

The annual reports of bodies examined in this report met the reporting deadline of 31 October 2012. The committee commends the Department of Immigration and Citizenship, the Australian Federal Police, the Australian Law Reform Commission, the Australian Security Intelligence Organisation, the Australian Transaction Reports and Analysis Centre, the CrimTrac Agency, the Office of the Australian Information Commissioner, the Migration Agents Registration Authority, and the Migration Review Tribunal and the Refugee Review Tribunal for making their annual reports available for examination prior to the supplementary estimates hearings on 15 and 16 October 2012.

A number of agencies just missed the deadline in the Senate, tabling their reports in the Senate in November 2012. Accordingly, the reports of the following agencies will be examined in the committee's second report for 2013:

- Administrative Review Council;
- High Court of Australia; and
- National Native Title Tribunal.

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 The committee is disappointed to note there were fewer annual reports available prior to the committee's supplementary budget estimates hearings on 15 and 16 October 2012 compared to those previously examined. The committee commends the Australian Security Intelligence Organisation for making its annual report accessible for examination prior to the Supplementary Estimates hearings on 16 October 2012.⁹

Requirement for non-reporting bodies to report

In accordance with Standing Order 25(20)(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.

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

8 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 28 June 2012, Part 1, section 4.

9 See Appendix 1 for those bodies which tabled or presented their reports prior to 15 and 16 October 2012.

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