

Preface

Terms of reference

On 12 November 2013, 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 Border Protection 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.

This report examines annual reports tabled in the Senate or presented to the President between 1 May and 31 October 2016.

Role of annual reports

As annual reports place a great deal of information about government departments and agencies on the public record, the tabling of annual reports is an important element of accountability to Parliament. 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

Departments and agencies report under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which commenced on 1 July 2014. The PGPA Act establishes a performance reporting framework for all Commonwealth entities and companies. 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. The *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) supports the PGPA Act. The 2015–16 reporting period marks the first time that all Commonwealth entities are reporting under the prescriptions of this Rule.

Annual reports for the 2015–16 reporting period were prepared under the following requirements:

- for non-corporate Commonwealth entities (departments, executive agencies and statutory agencies): the PGPA Act, section 46, and the PGPA Rule, Division 3A(A); the *Public Service Act 1999*, sections 63(2) and 70(2); and other relevant enabling legislation for statutory bodies;
- for corporate Commonwealth entities: the PGPA Act, section 46, and the PGPA Rule, Division 3A(AB); and other relevant enabling legislation for statutory bodies;
- for Commonwealth companies: PGPA Act, section 97, which also refers to requirements under the *Corporations Act 2001* and the PGPA Rule, Part 3-3; and other relevant enabling legislation for statutory bodies; and
- for non-statutory bodies: the guidelines for are contained in the government response to the Senate Standing Committee on Finance and Public Administration Report on Non-Statutory bodies.¹

Reporting guidelines

The Department of Finance has produced three Resource Management Guides (RMGs) which set out the obligations for entities under the Act and provide guidance on fulfilling the mandatory requirements for the contents of annual reports prescribed by the PGPA Rule:

- *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.*

In addition to the RMGs listed above, the Department of Finance has produced a guide intended to improve the quality of non-financial performance information in

1 *Senate Hansard*, 8 December 1987, pp. 2632–45.

annual reports, *Resource Management Guide No. 131: Developing good performance information*. This guide sets out best practice for developing and reporting on performance measures, including key performance indicators and deliverables. The committee recommends that agencies use this RMG when preparing their reports.

Reports examined

This report examines the following annual reports; tabled in the Senate or presented out of session to the President of the Senate and referred to the committee between 1 May 2016 and 31 October 2016:

Departments of state

- Department of Immigration and Border Protection—report for 2015–16; and
- Attorney-General's Department—report for 2015–16.

Statutory agencies/authorities

Attorney-General's portfolio

- Administrative Appeals Tribunal—report for 2015–16, including report of the Immigration Assessment Authority;
- Australian Law Reform Commission—report for 2015–16;
- Family Court of Australia—report for 2015–16, including financial statements for the Federal Circuit Court of Australia;
- Australian Federal Police—report for 2015–16, including reports on assumed identities and the National Witness Protection Program;²
- Commonwealth Director of Public Prosecutions—report for 2015–16;³
- Australian Financial Security Authority—report for 2015–16, including reports on the operation of the *Bankruptcy Act 1966* and *Personal Property Securities Act 2009*;⁴
- Australian Information Commissioner—report for 2015–16;⁵ and
- Office of Parliamentary Counsel—report for 2015–16.⁶

2 Also stands referred to the Joint Committee on Law Enforcement.

3 Presented out of session on 21 October 2016 and subsequently not available for the Supplementary Budget Estimates hearings on 17 and 18 October.

4 Presented out of session on 28 October 2016 and subsequently not available for the Supplementary Budget Estimates hearings on 17 and 18 October.

5 Presented out of session on 31 October 2016 and subsequently not available for the Supplementary Budget Estimates hearings on 17 and 18 October.

6 Presented out of session on 31 October 2016 and subsequently not available for the Supplementary Budget Estimates hearings on 17 and 18 October.

'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 committee found all of the reports submitted to be 'apparently satisfactory', describing the functions, activities, performance and financial positions of the departments and agencies.

Debate in the Senate

Under the terms of Standing Order 25(20)(d), the committee is required to take into account any relevant remarks made about an a report in debate in the Senate.

The annual report of the Attorney-General's Department was presented to the Senate on 11 October 2016. Senator Nick McKim moved that the Senate take note of the document, speaking on the increased legal services expenditure of the department in the 2015–16 period, the role of the Solicitor-General, and legal services provided by the Australian Government Solicitor within the department.⁷

The committee did not identify any relevant remarks made in debate in the Senate about any other annual reports.

Timeliness

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

Section 46 of the PGPA Act sets out the requirements for the presentation of annual report for Commonwealth entities to the responsible minister by the 15th day of the fourth month after the end of the reporting period for the entity. For entities reporting on a financial-year basis, this requires reports to be provided to the minister by 15 October of that year. RMG No. 135, which relates to departments, executive agencies and other non-corporate Commonwealth entities, states that:

It has been practice for the responsible Minister to present the report to each house of the Parliament on or before 31 October. If Senate Supplementary Budget Estimates hearings are scheduled to occur before 31 October, Ministers have sought to table annual reports prior to these hearings.⁸

Where a body is unable to meet this deadline, an extension of time to report can be sought under the provisions of subsections 34C(4)–(7) of the *Acts Interpretation Act 1901*.⁹

Section 97 of the PGPA Act sets out the requirements for the provision of annual reports of Commonwealth companies to the responsible minister.

7 *Senate Hansard*, 11 October 2016, pp. 1506-7.

8 Department of Finance, *Resource Management Guide No. 135: Annual reports for non-corporate Commonwealth entities*, p. 8.

9 *Acts Interpretation Act 1901*, s. 34.

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 2016 and 31 October 2016, and which have been referred to the committee for examination, can be found at Appendix 1.¹⁰ Also included in this table is the date each report was tabled in the House of Representatives.

The annual reports included and examined in this report met the reporting deadline of 31 October 2016.

The annual reports of the following agencies were not tabled in the Senate, nor referred to the committee, by the 31 October deadline.¹¹ These reports will be examined by the committee in its next *Report on Annual Reports (No. 2 of 2017)*:

- Australian Commission for Law Enforcement Integrity;
- Australian Crime Commission;
- Australian Human Rights Commission;
- Australian Institute of Criminology;
- Australian Security Intelligence Organisation;
- CrimTrac Agency;
- Federal Circuit Court of Australia;
- Federal Court of Australia;
- High Court of Australia; and
- National Archives of Australia.

The committee continues to encourage bodies to table annual reports before the Supplementary Budget Estimates hearings in October each year, in accordance with best practice, as outlined in RMG No. 135.¹²

Requirement for non-reporting bodies to report

In accordance with Standing Order 25(20)(h), the committee is required to report on bodies that do not present an annual report to the Senate and which should present such a report. On this occasion, the committee has not identified any bodies that have not provided their annual reports to the Senate.

10 The table also includes reports on the operation of acts or programs that have been referred to the committee.

11 See Appendix 1.

12 Department of Finance, *Resource Management Guide No. 135: Annual reports for non-corporate Commonwealth entities*, p. 8.

