

Preface

Terms of reference

On 31 August 2016, a resolution of the Senate allocated the following portfolios to the Senate Legal and Constitutional Affairs Legislation Committee (the committee):

- Attorney-General's portfolio; and
- Home Affairs portfolio.¹

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.
- (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 between 1 November 2018 and 30 April 2019.

¹ *Journals of the Senate*, No. 2, 31 August 2016, pp.75–76; The Immigration and Border Protection portfolio was replaced by the Home Affairs portfolio as of 12 February 2018, see: *Journals of the Senate*, No. 84, 12 February 2018, pp. 2668–2669.

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. 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.

Annual reports for the 2017–18 reporting period were prepared under the following requirements:

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

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

2 *Senate Hansard*, 8 December 1987, pp. 2632–2645.

- 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 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 November 2018 and 30 April 2019:

Attorney-General's portfolio

- Australian Financial Security Authority—report for 2017–18;
- High Court of Australia—report for 2017–18; and
- Independent National Security Legislation Monitor—report for 2017–18.

Home Affairs portfolio

- Australian Criminal Intelligence Commission—report for 2017–18;³
- Australian Institute of Criminology—report for 2017–18;
- Australian Security Intelligence Organisation (ASIO)—report for 2017–18; and
- Australian Transaction Reports and Analysis Centre—report for 2017–18.

'Apparently satisfactory'

Under 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 requirements, such as those in the PGPA Act.

The committee has found that most reports referred in this period are 'apparently satisfactory' in reporting the annual performance of the relevant agency. The reports of these agencies are considered in detail at chapter 1.

The ASIO annual report for 2017–18 was identified as not being satisfactory because it fails to comply with a small number of the PGPA Act mandatory requirements, including:

- inclusion of a description of the purposes of the entity as included in the agency's corporate plan, as required under section 17AE(1)(a)(iv); and
- a description of non-salary benefits provided to employees, as required under section 17AG(4)(c)(iii).

3 Also referred to the Parliamentary Joint Committee on Law Enforcement.

ASIO's annual report also provides incomplete or unclear information in relation to the following PGPA Act mandatory requirements:

- annual performance statement in accordance with paragraph 39(1)(b) of the Act and section 16F of the Rule, as required under section 17AD(c)(i); and
- information on any enterprise agreements, individual flexibility arrangements, Australian workplaces agreements, common law contracts and determinations under subsection 24(1) of the *Public Service Act 1999*, as required by section 17AG(4)(c)(iii).

In addition to the PGPA Act, ASIO is subject to the reporting requirements under section 94 of the *Australian Security Intelligence Organisation Act 1979*.

While certain aspects of ASIO's activities are classified and consequently must be withheld from publication, the committee suggests that information in response to the requirements listed above should be provided to the fullest extent that does not disclose classified information, noting that classification is sometimes necessary for information that to an outsider may seem apparently benign.

The committee encourages all agencies to comply with the requirements of the PGPA Act and any other legislation requiring reporting on public administration matters.

Timeliness

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

Under section 46 of the PGPA Act, Commonwealth entities must present their annual report 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, and RMG 136, which relates to corporate Commonwealth entities, state 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.⁴

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*.⁵

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

4 Department of Finance, *Resource Management Guide No. 135: Annual reports for non-corporate Commonwealth entities*, p. 8; Department of Finance, *Resource Management Guide No. 136: Annual reports for corporate Commonwealth entities*, p. 7.

5 *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 2018 and 31 October 2018, and which have been referred to the committee for examination, is at Appendix 1.⁶ Also included is the date each report was tabled in the House of Representatives.

The High Court of Australia (High Court) is exempted from the PGPA Act's requirements, as it is not a Commonwealth entity due to its status under enabling legislation. The High Court is instead required to table an annual report in both Houses of Parliament within 15 sitting days after receipt by the minister, as per section 47(3) of the *High Court of Australia Act 1979*. In this case, the High Court fulfilled its obligations in relation to its annual report for 2017–18.

A number of annual reports included and examined in this report were not tabled in the Senate and referred to the committee by 31 October 2018. These included the:

- Australian Criminal Intelligence Commission—report for 2017–18;
- Australian Institute of Criminology—report for 2017–18;
- Australian Financial Security Authority—report for 2017–18;
- Australian Security Intelligence Organisation (ASIO)—report for 2017–18; and
- Australian Transaction Reports and Analysis Centre—report for 2017–18.

In accordance with best practice, as outlined in RMGs No. 135 and No. 136, the committee encourages reporting bodies to table annual reports before the Supplementary Budget Estimates hearings in October each year.⁷

The committee will monitor the future tabling dates of annual reports to ensure that reports of portfolio departments and agencies are provided in a timely fashion.

Comments made 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 annual report in debate in the Senate. The committee did not identify any relevant remarks made about the annual reports referred during this reporting period.

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 is unaware of any body required to table an annual report for 2017–18 which has failed to do so.

6 The table also includes reports on the operation of acts or programs, reports tabled in accordance with agencies' legislative requirements, and reports on the work of Royal Commissions, which have been referred to the committee.

7 Department of Finance, *Resource Management Guide No. 135: Annual reports for non-corporate Commonwealth entities*, p. 8; Department of Finance, *Resource Management Guide No. 136: Annual reports for corporate Commonwealth entities*, p. 7.

