

Chapter 1

Introduction

1.1 Under Senate Standing Order 25(20), the annual reports of departments and agencies under the committee's allocated portfolios stand referred to the Senate Foreign Affairs, Defence and Trade Legislation Committee for examination and report. In the year's first report, the committee is required to examine those annual reports presented to the Parliament between 1 May and 31 October each year. On this occasion, the committee has chosen to also examine the reports tabled after 31 October 2017 that were available at the time of preparing this report.

1.2 Copies of this and other committee reports can be obtained from the Senate Table Office or online at the committee's webpage.

Terms of reference

1.3 Under Standing Order 25(20) the committee is required to:

- (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 the attention of the Senate to 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.

Allocated portfolios

1.4 In accordance with the resolution of the Senate on 31 August 2016, the committee has oversight of the following portfolios:

- Defence, including Veterans' Affairs; and
- Foreign Affairs and Trade.¹

Role of annual report

1.5 Annual reports inform the Parliament, stakeholders and other interested parties of the operations and performance of public sector departments, agencies, companies and statutory office holders. Annual reports are a key publication under the Commonwealth performance framework and remain 'the primary document through which responsible Ministers report to the Parliament.'² Additionally, they are an important reference document and form a critical part of the historical record.³

Reports examined

1.6 During the period 1 May 2017 to 28 February 2018, 22 annual reports of bodies were presented to the Parliament and referred to the committee. Reports examined included those from the following categories of bodies under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), and those which are prepared by statutory offices or office holders:

Non-corporate Commonwealth entities

- Department of Defence – Report for 2016-17
- Department for Veterans' Affairs, incorporating the reports of the Repatriation Commission and the Military Rehabilitation and Compensation Commission – Reports for 2016-17
- Department of Foreign Affairs and Trade – Report for 2016-17
- Australian Centre for International Agricultural Research – Report for 2016-17

1 *Journals of the Senate*, No. 2, 31 August 2016, pp 75-76. This order was subsequently amended on 12 February 2018 and 15 February 2018; however, the amendments did not relate to these portfolios, see *Journals of the Senate*, No. 84, 12 February 2018, pp 2668-2669, and *Journals of the Senate* No. 87, 15 February 2018, p. 2740.

2 Department of Finance, *Resource Management Guide No. 130 – Overview of the enhanced Commonwealth performance framework*, July 2016, p. 7.

3 Department of Finance, *Resource Management Guide No. 135: Annual report for non-corporate Commonwealth entities*, May 2017, p. 4; *Resource Management Guide No. 136: Annual reports for corporate Commonwealth entities*, May 2017, p. 3; *Resource Management Guide No. 137: Annual reports for Commonwealth companies*, May 2017, p. 3.

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- Australian Trade and Investment Commission – Report for 2016-17

Corporate Commonwealth entities

- Australian War Memorial – Report for 2016-17
- Army and Air Force Canteen Service – Report for 2016-17
- Royal Australian Navy Relief Trust Fund, Australian Military Forces Relief Trust Fund and Royal Australian Air Force Welfare Trust Fund – Reports for 2016-17
- Royal Australian Air Force Veterans' Residences Trust – Report for 2016-17
- Royal Australian Navy Central Canteens Board (Navy Canteens) – Report for 2016-17
- Defence Housing Australia – Report for 2016-17
- Export Finance and Insurance Corporation – Report for 2016-17
- Tourism Australia – Report for 2016-17

Commonwealth companies

- Australian Strategic Policy Institute – Report for 2016-17
- Army Amenities Fund – AAF Company – Report for 2016-17

Statutory offices/office holders

- Judge Advocate General Report for the period 1 January to 31 December 2016
- Director of Military Prosecutions – Report 2016
- Inspector-General of the Australian Defence Force – Report for 2015-16
- Repatriation Medical Authority – Report for 2016-17 (*Also referred to the Senate Community Affairs Legislation Committee*)
- Veterans' Review Board – Report for 2016-17
- Inspector-General of the Australian Defence Force – Report for 2016-17
- Australian Safeguards and Non-proliferation Office – Report for 2016-17

Reports not examined

1.7 The committee is not obliged to examine reports on the operation of Acts, policy papers, budget documents or corporate plans. Where a report is referred to two standing committees, the committee has deferred examination of those reports to the

committee which has primary oversight of the portfolio where that agency sits. Accordingly, the following documents were also referred to the committee but not examined:

- Department of Defence – Special Purpose Flights – Schedule for the period 1 January to 30 June 2016
- Department of Defence – Special Purpose Flights – Election supplement – Schedule for the period 8 May to 3 July 2016
- Australian Naval Infrastructure Pty Ltd – Report for 2016-17 (*Also referred to the Senate Finance and Public Administration Legislation Committee*)
- ASC Pty Ltd – Report for 2016-17 (*Also referred to the Senate Finance and Public Administration Legislation Committee*)
- Department of Defence – Special Purpose Flights – Schedule for the period 1 July to 31 December 2016
- Foreign Policy White Paper 2017
- Final Budget Outcome 2016-17
- Department of Finance - Consolidated financial statements in respect of the year ended 30 June 2017
- Department of the Treasury – Tax Expenditures Statement – 2017
- Mid-year economic and fiscal outlook - 2017-18
- Department of Defence—Special purpose flights—Schedule for the period 1 January to 30 June 2017

Assessment of annual reports

1.8 Senate Standing Order 25(20) requires the committee to examine reports referred to it to determine whether they are timely and 'apparently satisfactory'. The committee must consider whether the reports comply with the relevant legislation or requirements for the preparation of annual reports in forming its assessment.

Annual reporting requirements

Public Governance, Performance and Accountability Act 2013

1.9 The PGPA Act is the legislative basis of the Commonwealth performance framework which governs how the Commonwealth public sector uses and manages public resources. It sets out the key requirements for governance, performance reporting and accountability required of Commonwealth entities and companies. A description of different governance structures of these bodies for the purposes of the PGPA Act is set out below:

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- Non-corporate Commonwealth entity – legally and financially part of the Commonwealth, including departments of state, parliamentary departments or listed entities (a body, person, group of persons or organisation that is prescribed by rules made under the PGPA Act).
 - Corporate Commonwealth entity – a body corporate, that is, a separate legal personality from the Commonwealth. It can act in its own right exercising certain legal rights such as entering into contracts and owning properties.
 - Commonwealth company – a company established by the Commonwealth under the *Corporations Act 2001* that is wholly controlled by the Commonwealth.⁴

Annual reports

1.10 Section 46 of the PGPA Act sets out the annual reporting requirements in relation to Commonwealth entities, which states that annual reports must comply with any requirements prescribed by rules. Section 97 sets out the annual reporting requirements for Commonwealth companies, including those of the *Corporations Act 2001* and any additional information or report prescribed by the rules.

Corporate plans and annual performance statements

1.11 The Commonwealth performance framework also includes the requirement for Commonwealth entities and companies to prepare and publish corporate plans each year, pursuant to sections 35 and 95 of the PGPA Act. Under section 39 of the PGPA Act, Commonwealth entities must prepare an annual performance statement and include this statement in the annual report. Entities use the annual performance statement to report on results achieved against the targets, goals and measures established at the beginning of a reporting year in its corporate plan, in addition to key performance indicators set out in portfolio budget/additional estimates statements.

1.12 It is noted that Commonwealth companies are not required to prepare annual performance statements. However, under section 27A of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule), companies are required to include in their annual report a report on the actual performance results achieved against the performance information published in their corporate plan.⁵

Public Governance, Performance and Accountability Rule 2014

1.13 The PGPA Rule sets out the detailed mandatory requirements for the preparation of corporate plans, annual performance statements and annual reports for Commonwealth entities and, where relevant, Commonwealth companies.

4 See <https://www.finance.gov.au/resource-management/governance/overview/> (accessed 12 October 2017).

5 Department of Finance, *Resource Management Guide No. 134 – Annual performance statements for entities*, July 2017, p. 7.

Statutory office holders and statutory bodies

1.14 Statutory office holders are engaged or employed under an Act which may prescribe annual reporting requirements pursuant to the office. It is also noted that there may be reporting requirements in the enabling legislation for statutory bodies (which may also be a Commonwealth entity).

Non-Statutory bodies

1.15 Non-statutory bodies (NSBs) are established by a Minister and are not pursuant to a statute. Annual reporting requirements for NSBs are contained in the government response to the Senate Standing Committee on Finance and Public Administration Report on Non-Statutory Bodies, dated 8 December 1987.⁶

Summary of annual reporting requirements

1.16 Below is a summary of the legislative authority and requirements under which annual reports are prepared for different types of bodies:

Non-corporate Commonwealth entities

- PGPA Act, section 46 and the PGPA Rule 2014, Division 3A(A);
- for parliamentary departments, the *Parliamentary Service Act 1999*, section 65; and
- for statutory bodies: relevant enabling legislation.

Corporate Commonwealth entities

- PGPA Act, section 46 and the PGPA Rule 2014, Division 3A(B); and
- for statutory bodies: relevant enabling legislation.

Commonwealth companies

- PGPA Act, section 97, which also refers to requirements under the *Corporations Act 2001* and the PGPA Rule 2014, Part 3-3; and
- for statutory bodies: relevant enabling legislation.

Non-statutory bodies

- annual reporting requirements are contained in the government response to the Senate Standing Committee on Finance and Public Administration Report on Non-Statutory bodies, *Senate Hansard*, 8 December 1987.⁷

6 Government response to the Senate Standing Committee on Finance and Public Administration Report on Non-Statutory bodies, *Senate Hansard*, 8 December 1987, pp. 2632–45.

7 Government response to the Senate Standing Committee on Finance and Public Administration Report on Non-Statutory bodies, *Senate Hansard*, 8 December 1987, pp. 2632–45.

Statutory offices or office holders

- any requirements in the enabling legislation.

Timeliness

1.17 Under Standing Order 25(20)(c), the committee must report to the Senate any lateness in the presentation of annual reports. The committee notes the different reporting timeframes for different categories of bodies.

Commonwealth entities

1.18 Section 46(2) of the PGPA Act requires the accountable authority for a Commonwealth entity to prepare an annual report and provide it to the responsible minister by the fifteenth day of the fourth month after the end of the reporting period for the entity. This section of the Act does not prescribe a timeframe for the Minister to present the report to the Parliament, neither does the PGPA Rule.

1.19 The PGPA Rule states that annual reports for corporate Commonwealth entities, non-corporate Commonwealth entities and Commonwealth companies must comply with the *Guidelines for the Presentation of Documents to the Parliament*⁸ which is prepared by Department of the Prime Minister and Cabinet (PM&C).

1.20 The guidelines advise that for all entities:

As per past practice, it is expected that the responsible Minister will present the report to each House of Parliament on or before 31 October. If Senate Supplementary Budget Estimates hearings are scheduled to occur prior to 31 October, it is best practice for annual reports to be tabled prior to those hearings. This ensures that annual reports are available for scrutiny by the relevant Senate standing committee.⁹

1.21 The guidelines also refer to the Department of Finance (Finance) website for guidance material detailing the minimum mandatory content requirements for Commonwealth entities' and companies' annual reports under the new Commonwealth performance framework and in accordance with the PGPA Act and PGPA Rule.¹⁰ The material available from this website includes the following:

- *Resource Management Guide No. 135 – Annual reports for non-corporate Commonwealth entities*; and

8 See PGPA Rule, sections 17BC, 17AB and 28C.

9 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)*, February 2017, pp 4-5.

10 See <https://www.finance.gov.au/resource-management/index/rmg/> (accessed 20 February 2018).

- *Resource Management Guide No. 136 – Annual reports for corporate Commonwealth entities.*

1.22 These resource management guides include advice in relation to the timetable for tabling annual reports. For non-corporate Commonwealth entities and corporate Commonwealth entities, the guides advise 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 those hearings.¹¹

Commonwealth companies

1.23 Under section 97(2) of the PGPA Act, Commonwealth companies are required to prepare an annual report and provide it to the responsible Minister:

(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 reporting period for the company;

(ii) 4 months after the end of the reporting period for the company; and

(b) in any other case—4 months after the end of the reporting period for the company; or the end of such further period granted under subsection 34C(5) of the *Acts Interpretation Act 1901*.

1.24 In relation to the tabling of the annual report in the Parliament, section 97(5) of the PGPA Act states that:

(5) If the Commonwealth company is a wholly-owned Commonwealth company, or is not required to hold an annual general meeting, the responsible Minister must table the documents in each House of the Parliament as soon as practicable after receiving them. In all other cases, the responsible Minister must table the documents in each House of the Parliament as soon as practicable after the annual general meeting of the company.

1.25 The advice contained in *Resource Management Guide No. 137 – Annual reports for Commonwealth companies*, in regard to the timeframe for the presentation of reports of Commonwealth companies, aligns with the requirements under section

11 Department of Finance, *Resource Management Guide No. 135 – Annual reports for non-corporate Commonwealth entities*, May 2017, p. 8; and *Resource Management Guide No. 136 – Annual reports for corporate Commonwealth entities*, May 2017, p. 7.

97(5) of the PGPA Act set out above.¹² However, as noted above, section 28C of the PGPA Rule requires reports of Commonwealth companies to comply with the PM&C *Guidelines for the Presentation of Documents to the Parliament*, which advise that '[a]s per past practice, it is expected that the responsible Minister will present the report to each House of Parliament on or before 31 October'. The committee notes the inconsistent advice on the presentation date for the presentation of annual reports of Commonwealth companies between the PGPA Act and PM&C guidance material.

Provisions of the Acts Interpretation Act 1901

1.26 In the absence of specific provisions, 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 to table reports within 15 sitting days of receipt (subsection 34C(3)).

Reporting timeframes for statutory offices/office holders in the Defence Portfolio

Judge Advocate General

1.27 Under section 196A(1) of the *Defence Force Discipline Act 1982* (DFD Act) the Judge Advocate General shall, as soon as practicable after each 31 December, prepare and furnish to the Minister a report relating to the operation of the Act, the regulations, the rules of procedure; and the operation of any other law of the Commonwealth or of the Australian Capital Territory in so far as it relates to the discipline of the Defence Force during the year ending on that 31 December.

1.28 Section 196A(2) of the DFD Act requires the Minister to present the report to each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Director of Military Prosecutions

1.29 Under Section 196B(1) of the DFD Act, the Director of Military Prosecutions must, as soon as practicable after each 31 December, prepare and give to the Minister, for presentation to the Parliament, a report relating to the operations of the Director of Military Prosecutions during the year ending on that 31 December.

1.30 The Act does not prescribe a timeframe for the Minister to present the report to the Parliament. It appears that section 34C(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act) would apply, therefore requiring the Minister to lay a copy of the report before each House of Parliament within 15 sitting days of receipt of that report.

12 Department of Finance, *Resource Management Guide No. 137 – Annual reports for Commonwealth companies*, May 2017, p. 5.

Inspector-General of the Australian Defence Force

1.31 Section 110R(1) of the *Defence Act 1903* (Defence Act) states that as soon as practicable after the end of each financial year, the Inspector-General of the Australian Defence Force (ADF) must prepare and give to the Minister, for presentation to the Parliament, a report on the operations of the Inspector-General during the financial year. This section also notes that reference should also be made to section 34C of the Acts Interpretation Act, which contains extra rules about periodic reports.

1.32 As the Defence Act does not provide for a timeline for the Minister to present the report to the Parliament, it appears that section 34C(3) of the Acts Interpretation Act would also apply in this case, therefore requiring the Minister to lay a copy of the report before each House of Parliament within 15 sitting days of receipt of that report.

Repatriation Medical Authority

1.33 The Repatriation Medical Authority is established under the *Veterans' Entitlement Act 1986* and there does not appear to be a statutory requirement to table an annual report under the Act but the Authority has done so since its inception.

Veterans' Review Board

1.34 Section 215(4) of the *Veterans' Entitlement Act 1986* states that the Principal Board Member shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report on the operations of the Board during the year that ended on that 30 June. Section 215(5) states that the Minister shall cause a copy of a report furnished to the Minister under subsection (4) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Australian Safeguards and Non-proliferation Office

1.35 Under section 51 of the *Nuclear Non-Proliferation (Safeguards) Act 1987*, section 96 of the *Chemical Weapons (Prohibition) Act 1994* and section 71 of the *Comprehensive Nuclear Test-Ban Treaty Act 1998*, the Director General of the Australian Safeguards and Non-Proliferation Office must, as soon as practicable after 30 June in each year, prepare a report of operations and furnish it to Minister. The above legislative sections require the Minister to cause a copy of the report to be laid before each House within 15 sitting days.

Timeliness of reports examined

1.36 Standing Order 25(20)(c) requires the committee to investigate and report to the Senate on any lateness in the presentation of annual reports. The committee considers the timely presentation of annual reports to the Parliament an important element of accountability.

1.37 Appendix 1 lists the annual reports tabled between 1 May 2017 and 28 February 2018 and referred to the committee for examination. This table includes the dates the reports were tabled in the Senate (or received by the President out of session) and the House of Representatives. For the purposes of the committee's examination of timeliness, the earlier date is taken as the presentation date to the Parliament. The table also includes the dates the reports were submitted to, and received by, the Minister, if available.

1.38 As noted above, there are two elements regarding the timeframe for the preparation and presentation of annual reports: the provision of the report to the Minister and the presentation of the report to the Parliament. Both of these elements were examined by the committee in investigating any lateness in presentation of the annual reports.

1.39 The committee notes that all reports in the Foreign Affairs and Trade Portfolio met both elements of the relevant reporting timeframes.

1.40 Within the Defence Portfolio, most reports met both elements of the respective reporting timeframes or were close to meeting them. The few exceptions are discussed below. While the report for Defence Housing Australia was provided to the Minister on 11 October 2017, it was presented to the Parliament late, on 17 November 2017.

1.41 The reports of two corporate Commonwealth entities, the Royal Australian Air Force Veterans' Residences Trust and the Royal Australian Navy Central Canteens Board (Navy Canteens), were provided to the Minister after the required date of 15 October, that is, on 17 and 25 October 2017 respectively. However, these reports were presented to the President of the Senate (out of sitting) in a timely manner, that is, by 31 October 2017.

1.42 The Army Amenities Fund (AAF Company), a Commonwealth company, only provided its report to the Minister on 12 December 2017 (and it was received by the Minister on 13 December 2017), which is after the time specified in section 97(2) of the PGPA Act. The report was subsequently presented to the President of the Senate out of sitting within a week of receipt, on 20 December 2017.

1.43 The reports of statutory office holders have the annual reporting requirements set out in their establishing legislation, as detailed above. These reports were generally prepared and presented to the Parliament in a timely manner. However, the committee notes that the report of the Inspector-General of the ADF for 2015-16 was provided to the Minister approximately nine months after the end of the financial year for which it reported on. While the relevant legislative basis for reporting requires the Inspector-General to provide the report to the Minister 'as soon as practicable' after the end of the financial year, the committee would hope to see more timely preparation of future reports. It notes that the 2016-17 report of the Inspector General of the ADF, which was also examined in this report, was provided to the Minister more promptly, that is, just over five months after the end of the financial year. It was pleasing to note that

both of these reports were subsequently presented in the Parliament within 15 sitting day of the Minister's receipt of the report. In the case of the 2015-16 report, although the tabling of the report in the House of Representatives exceeded 15 sitting days (it being 20 days); it was tabled in the Senate 11 days after receipt, and therefore available to Parliament and publicly available at that time.

1.44 The committee commends those bodies whose report for the 2016-17 financial year was presented to the Parliament and available to the committee before the Supplementary Budget Estimates 2017-18 hearings on 25 and 26 October 2017. These included the reports of the following bodies (date of presentation is in brackets):

- Australian War Memorial (17 October 2017);
- Australian Safeguards and Non-proliferation Office (18 October 2017);
- Department of Foreign Affairs and Trade (18 October 2017);
- Australian Centre for International Agricultural Research (20 October 2017); and
- Export Finance and Insurance Corporation (20 October 2017)

Reports on the Schedule of Special Purpose Flights

1.45 Although not reports on the operation of a body, the committee has chosen to comment on the lateness in presentation of the reports prepared by the Department of Defence on the *Schedule of Special Purpose Flights*. The committee notes that these reports were tabled after the required date set out in the *Guidelines for the Use of Special Purpose Aircraft*. The Guidelines state that:

Defence will be responsible to the Minister for Defence for compiling the Schedule of Special Purpose Flights for tabling in Parliament in June (for the six months ending the previous 31 December) and December (for the six months ending the previous 30 June) each year. This schedule will list all legs flown, passengers carried and hours and costings.¹³

Senate debate

1.46 In accordance with Standing Order 25(20)(d) the committee is required to take into account any relevant remarks about the reports made in debate in the Senate. The committee notes that none of the annual reports examined in this report have been the subject of comments or debate in the Senate at the time of preparing this report.

13 Paragraph 25, *Guidelines for the Use of Special Purpose Aircraft*, see https://maps.finance.gov.au/entitlements_handbooks/ministers-of-state/Guidelines_for_the_Use_of_Special_Purpose_Aircraft - (accessed 16 February 2018).

Non-reporting bodies

1.47 Standing Order 25(20)(h) requires that the committee inquire into, and report on, any bodies which do not present annual reports to the Senate but should present such reports. The committee makes no recommendation for any bodies not presenting an annual report to do so.

Assessment of reports

1.48 Under Standing Order 25(20)(a), the committee is required to examine the annual reports of departments and agencies and report to the Senate on whether they are 'apparently satisfactory'. In its examination of the annual reports referred, the committee found them to be of a satisfactory standard and largely adhere to relevant requirements. The committee considers the reports examined to be 'apparently satisfactory'.

