

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**  
**BUDGET ESTIMATES 2017**

**Federal Court of Australia**

**Question No. BE17-217**

**Senator Macdonald asked the following question on 18 August 2017:**

CHAIR: Thanks very much for your annual report. It's one of the jobs of this committee to read and oversight the annual reports of all agencies. It's been brought to my attention that the Public Governance, Performance and Accountability Rule lists some mandatory things that must go into the report. Perhaps on notice I could indicate to you that there seem to be several of these mandatory things that are not mentioned in your report. Can anyone comment on that? Are you aware of the Public Governance, Performance and Accountability Rule?

Mr Soden: Absolutely. I'm surprised to hear that, I must say. Our report has been subject to scrutiny on many occasions over many years. We're actually quite proud of it in terms of its look and feel, what it says and what it says about our report. I'd be a bit disappointed if there were some criteria of a specific kind under the PGPA Act that we've missed. That would only be an inadvertent omission.

CHAIR: I'm sure of that.

Senator Brandis: It also has a very attractive cover—

CHAIR: Yes, it is—

Senator Brandis: not that aesthetic considerations are part of the PGPA guidelines.

Mr Soden: That cover is intended to reflect the digital operations of the court, if I may say so.

Senator Brandis: Is that right?

Mr Soden: Yes.

CHAIR: I understand that the rules changed relatively recently—I think probably between the time of the last report and this report.

Mr Soden: That may well be the case, Senator. I'm not personally aware of those rule changes. We will certainly take that on notice and have a look.

Senator Brandis: Senator Macdonald, you've obviously looked at this. Could you identify what failures to comply with those guidelines have been identified? I'm sure Mr Soden will be very alert to ensure that any omission is corrected.

CHAIR: I'm sure of that. The committee was going to comment upon it in its report on the annual reports, but, before doing that, I thought it only appropriate to draw it to your attention. We may be wrong, and I always acknowledge that. I can quickly run through them: 17AD(a), 17AE(1)(b), 17AF(1)(b)—

Senator Brandis: Can you slow down, please?

CHAIR: We've scribbled it on this page. I'll get the secretariat to make that available to you.

Senator Brandis: Thank you.

CHAIR: It may well be inadvertent or it may be the changing rules, but they are said to be mandatory.

Senator Brandis: We will take on notice the question of whether there has been any deficiency of compliance in respect of the guidelines that will be identified to Mr Soden, and, if so, why.

CHAIR: It's something we are required, as a committee, to report on, which is why, before

mentioning it in our report, I thought I might give you the opportunity. As I say, we may well be wrong, but if you could just have a look at that for us. With that, we thank the courts for being with us today and assisting us with our inquiries.

**The response to the honourable Senator's question is as follows:**

Question: On notice, could I indicate to you that there seem to be several of the mandatory things for Annual Reports mentioned in the Public Governance, Performance and Accountability Rule which are not mentioned in the Federal Court's Annual Report. Can anyone comment on that?

On 18 August 2017, the Secretary of the Senate Standing Committees on Legal and Constitutional Affairs sent to the Chief Executive Officer and Principal Registrar of the Federal Court the attached email setting out details of the Committees' concerns regarding the Federal Court's Annual Report and compliance with the Public Governance, Performance and Accountability Rule 2014 and the Department of Finance's guidelines for annual reports.

Question: I can quickly run through them: 17AD(a), 17AE(1)(b), 17AF(1)(b) – the Committee has scribbled it on this page. I'll get the secretariat to make that available to you. If you could have a look at that for us?

On 21 August 2017, the Chief Executive Officer and Principal Registrar of the Court sent to the Secretary of the Senate Standing Committees on Legal and Constitutional Affairs the attached letter responding to each of the issues raised in the Secretary's email of 18 August 2017.

**From:** McGarry, Kathleen (SEN) <Kathleen.McGarry@aph.gov.au> on behalf of Legal and Constitutional, Committee (SEN) <LegCon.Sen@aph.gov.au>  
**Sent:** Friday, 18 August 2017 1:26 PM  
**To:** Warwick Soden  
**Cc:** Watling, Timothy (SEN); McGarry, Kathleen (SEN); Legal and Constitutional, Committee (SEN)  
**Subject:** Legal and Constitutional Affairs Committee: Annual Report

Dear Mr Soden,

Thank you for taking the time to speak with us after your appearance at the estimates hearing this morning.

As we discussed, the main concern with the annual report was that the List of Requirements at Appendix 11 did not match the prescribed list in the PGPA Rule 2014, required under paragraph 17AJ(d). The issue here is that the Rule requires that the (correct, applicable) list of requirements appear in the Report.

However, because the list at Appendix 11 did not match the required list under the Rule, and because the list acts as an index, we were also unable to assess whether the following two items were applicable to the Court, and if they were, whether they were met:


- Information on any capability reviews on the entity that were released during the period, under subsection 17AG(3)(c) of the PGPA Rule; and
- An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities, under section 17AG(5) of the PGPA Rule, as the indexed page referring to 'assets management' included only financial statements.

Further, we identified a small number of items that, although included in the list of requirements, appear not to have met the strict requirements of the PGPA Rule or the recommendations in the Department of Finance's guidelines for annual reports. As we discussed, it may be the case for a number of these that discrepancies between the Federal Court of Australia Act and the PGPA Act/PGPA Rule provide the explanation:

- The letter of transmittal, under section 17AI of the PGPA Rule, is required to:
  - be signed by the accountable authority under the PGPA Act, who in this instance is the Registrar of the Federal Court; and
  - state that the report was prepared under section 46 of the PGPA Act.
- The review of the Federal Court's work included in Part 2 of the annual report, while comprehensive and apparently satisfactory, was not signed by the accountable authority (i.e. the Registrar), as required by subsection 17AD(a) of the PGPA Rule, and the page indexed as such contained only the annual performance statement.
- The annual performance statement appendix, while strictly meeting the requirements of the PGPA Rule and PGPA Act, did not meet the Department of Finance recommendations for the presentation of annual performance statements, which set out a structure and the type of details to be included in the discussion of non-financial results (*Resource Management Guide No. 131: Developing good performance information*).
- Subparagraph 17AE(1)(a)(iv) of the PGPA rule requires a 'description of the purposes of the entity as included in corporate plan'. While this item was included in the list of requirements, the committee was unable to identify a description from or any reference to the corporate plan in the annual report.

I have spoken to the Chair about this correspondence, and he agrees that the committee would be pleased to receive from the Federal Court a response to these issues at the earliest opportunity. This will inform the committee's commentary in its forthcoming Report on Annual Reports, in the hope that any issues raised will not appear to have been left unresolved. To that end, noting the tabling date for the ROAR is approaching, I would be grateful to receive your response no later than 28 August.

Please contact me should you have any questions.



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21 August 2017

Mr Tim Watling  
Secretary  
Senate Standing Committees on Legal and Constitutional Affairs

By Email: [Timothy.Watling@aph.gov.au](mailto:Timothy.Watling@aph.gov.au)

**Legal and Constitutional Affairs Committee: Annual Report**

Dear Mr Watling

Thank you for your email dated 18 August 2017 regarding compliance of the Federal Court of Australia's 2015–16 Annual Report.

As I said at the Senate Committee hearing on 18 August, 2017, we take our Annual Report very seriously, as an important accountability mechanism of the Court as an institution to Parliament and, we always seek to match the requirements of the Court to report under the *Federal Court Act* and our PGPA requirements.

I regret that we have not precisely met the PGPA requirements when also focussing on our statutory obligations to provide a comprehensive report of the operations of the Court to Parliament. A good example of this, mentioned below, is the transmission letter being from the Chief Justice of the Court pursuant to the *Federal Court Act*. I think the way in which we would appropriately meet dual requirements is, as proposed below, to prepare a transmission letter for both the Chief Justice and myself to sign.

I am most appreciative of your taking the opportunity to provide me with the details of your questions and providing me with the opportunity to respond.

A response to each of your questions is detailed below and please do not hesitate to contact me if you would like further information.

**List of Requirements at Appendix 11 did not match the prescribed list in the PGPA Rule 2014, required under paragraph 17AJ(d).**

The compliance index used in the 2015–16 Annual Report was a condensed version of the required list. The Court will rectify this in its 2016–17 report by using the correct index as outlined in Resource Management Guide No. 135: annual reports for non-corporate commonwealth entities.

**Information on any capability reviews on the entity that were released during the period, under subsection 17AG(3)(c) of the PGPA Rule.**

Information on external scrutiny can be found on page 53.

**An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities, under section 17AG(5) of the PGPA Rule, as the indexed page referring to 'assets management' included only financial statements.**

The assessment of the effectiveness of asset management is on page 55 under 'property management'. The Court will title this information 'asset management' in future reports to enable clearer reading and cross referencing.

**The letter of transmittal, under section 17AI of the PGPA Rule, is required to:**

- (i) be signed by the accountable authority under the PGPA Act, who in this instance is the Registrar of the Federal Court; and
- (ii) state that the report was prepared under section 46 of the PGPA Act.

Historically the Court has always had the Chief Justice sign the letter of transmittal. To ensure complete compliance going forward, the letter of transmittal will be signed by the Chief Justice (as per 18S of the *Federal Court of Australia Act 1976*) and the Chief Executive Officer and Principal Registrar (as per section 17AI Public Governance, Performance and Accountability Rule 2014).

**The review of the Federal Court's work included in Part 2 of the annual report, while comprehensive and apparently satisfactory, was not signed by the accountable authority (i.e. the Registrar), as required by subsection 17AD(a) of the PGPA Rule, and the page indexed as such contained only the annual performance statement.**

The compliance index should have referred to page 11 not page 195. The year in review does not have a signature as it is a general report on the work of the Court over the financial year. The annual performance statement will be correctly presented and signed in the 2016–17 report.

**The annual performance statement appendix, while strictly meeting the requirements of the PGPA Rule and PGPA Act, did not meet the Department of Finance recommendations for the presentation of annual performance statements, which set out a structure and the type of details to be included in the discussion of non-financial results (Resource Management Guide No. 131: Developing good performance information).**

The annual performance statement is not presented correctly. This will be rectified in the 2016–17 report.

**Subparagraph 17AE(1)(a)(iv) of the PGPA rule requires a 'description of the purposes of the entity as included in corporate plan'. While this item was included in the list of requirements, the committee was unable to identify a description from or any reference to the corporate plan in the annual report.**

An outline of the objectives, functions and powers of the Court can be found on page 3. The Court will ensure that there is a clearer link between the Court's purpose and its corporate plan in its 2016–17 Annual Report.

Yours sincerely



Warwick Soden  
Chief Executive Officer and Principal Registrar