

The Senate

Environment and Communications
Legislation Committee

Annual reports (No. 2 of 2020)

October 2020

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Chapter 1

Introduction

1.1 This is the second report on annual reports for 2020 of the Senate Environment and Communications Legislation Committee (the committee). It provides an overview of selected annual reports of agencies within the allocated portfolios tabled in the Senate between 1 November 2019 and 30 April 2020.

1.2 Annual reports inform the Parliament, stakeholders and other interested parties of the operations and performance of public sector departments, agencies and companies. They are a primary accountability mechanism. Additionally, annual reports are important reference documents and form part of the historical record of the Commonwealth.

Terms of reference

1.3 Under Standing Order 25(20), the annual reports of certain departments and agencies are referred to the committee for examination and assessment. 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 4 July 2019 resolution of the Senate, the committee had oversight of the following portfolios during the reporting period:

- Communications and the Arts; and
- Environment and Energy.¹

Reports examined

1.5 This report examines the following reports, tabled in the Senate or presented out-of-session to the President of the Senate and referred to the committee between 1 November 2019 and 30 April 2020:

- Audio-Visual Copyright Society Limited—Report for 2018-19; and
- Copyright Agency Limited—Report for 2018-19.

Reports not examined

1.6 The committee is not obliged to report on Acts, statements of corporate intent, surveys, policy papers, budget documents, corporate plans or errata. The following documents were referred to the committee between 1 November 2019 and 30 April 2020 but are not examined in this report:

- Advance to the Finance Minister—Report on advances provided under the annual Appropriation Acts for 2018-19;
- Australian Broadcasting Corporation—Diversity and inclusion—Report for 2018-19;
- Australian Competition and Consumer Commission—Telstra's structural separation undertaking—Report for 2018-19;
- Department of Finance—Consolidated financial statements for the year ended 30 June 2019;
- Mid-year economic and fiscal outlook 2019-20—Statement by the Treasurer (Mr Frydenberg) and the Minister for Finance (Senator Cormann);
- *Telecommunications Act 1997*—Funding of telecommunications consumer representation grants—Report for 2018-19;
- Wet Tropics Management Authority—Report for 2018-19; and
- Wet Tropics Management Authority—State of the Wet Tropics—Report for 2018-19.

1 *Journals of the Senate*, No. 3, 4 July 2019, pp. 83–84. See also, *Journals of the Senate*, No. 42, 13 February 2020, pp. 1368–1369 for the allocation of agencies following the Administrative Arrangements Order made on 5 December 2019, with took effect from 1 February 2020.

Annual reporting requirements

1.7 A performance reporting framework is established for all Commonwealth entities and companies by the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). The performance framework is based on section 38 of the PGPA Act which requires all Commonwealth entities to measure and assess their performance according to the requirements prescribed by the rules.

1.8 The performance framework includes the requirement for Commonwealth entities to prepare a corporate plan and annual performance statements. The Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) contains the minimum requirements that must be included.

1.9 Section 39 of the PGPA Act requires all Commonwealth entities to prepare an annual performance statement and include those statements in their annual reports. Entities use the annual performance statements to report on the results achieved against the targets, goals and measures established at the beginning of a reporting year in corporate plans and in any Portfolio Budget Statement, Portfolio Additional Estimates Statement or other portfolio estimates statement, that were prepared for the reporting period.

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

- Non-corporate Commonwealth entities: PGPA Act, section 46, and the PGPA Rule, Division 3A(A); for portfolio departments and executive agencies, and for statutory bodies, relevant enabling legislation.
- Corporate Commonwealth entities: PGPA Act, section 46, and the PGPA Rule, 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, Part 3-3; and for statutory bodies, relevant enabling legislation.
- Non-statutory bodies: the annual reporting requirements are contained in the government response to the Senate Standing Committee on Finance and Public Administration's Report on Non-Statutory bodies.²

Timeliness

1.11 As part of its review of annual reports, the committee is required to investigate and report on any lateness in the presentation of annual reports.³ In assessing the timeliness of the presentation of annual reports, the committee

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

3 Standing Order 25(20)(c).

assesses the presentation against the requirements of the PGPA Act, the PGPA Rule and other legislative requirements.

Presentation to ministers

1.12 Section 46 of the PGPA Act requires the provision of an annual report of a Commonwealth entity, including corporate and non-corporate entities, to the responsible minister by the 15th day of the fourth month after the end of the reporting period for the entity. For most agencies this translates to 15 October each year. This part of the PGPA Act does not, however, provide a timeframe for the minister to present the report to the Parliament.

1.13 The arrangements for Commonwealth companies differ to some degree. Section 97 of the PGPA Act sets out the requirements for the provision of annual reports of Commonwealth companies to the responsible minister. In general, this amounts to four months after the end of the reporting period for each company.⁴

Tabling in Parliament

1.14 The PGPA Rule states that annual reports for corporate Commonwealth entities, non-corporate Commonwealth entities and Commonwealth companies must comply with the guidelines for presenting documents to the Parliament.⁵ In addition, the Department of Finance's Resource Management Guides for corporate and non-corporate Commonwealth entities advise:

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.⁶

1.15 Entities reporting in accordance with their own legislation are often required to prepare for the relevant minister their annual report 'as soon as is practicable' after the end of the particular period to which the report relates. The committee draws attention to subsections 34C(2) and 34C(3) of the *Acts Interpretation Act 1901*, which stipulate that where no date for providing a report to a minister is specified, the report should be presented no more than six months after the reporting period, and the

4 *Public Governance, Performance and Accountability Act 2013*, ss. 97(2).

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

6 Department of Finance, *Resource Management Guide No. 135 – Annual report for non-corporate Commonwealth entities*, May 2019, p. 11; *Resource Management Guide No. 136 – Annual report for corporate Commonwealth entities*, p. 9. In the case of a wholly-owned Commonwealth company, or a Commonwealth company that is not required to hold an annual general meeting, the PGPA Act states that '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' (*Public Governance, Performance and Accountability Act 2013*, ss. 97(5)).

minister must provide the report to the Parliament within 15 days after the minister receives it.

1.16 Where a deadline for presenting an annual report cannot be met, a Commonwealth entity or company can seek an extension of time to report under the *Acts Interpretation Act 1901*, by advising the responsible minister of the reasons why the entity cannot comply with the deadline. The responsible minister is required to table this application and a statement specifying whether the extension was granted and the reasons for the extension in both houses of the Parliament.⁷

Timeliness of reports examined.

1.17 Appendix 1 lists the reports and documents tabled (or presented) in the Senate and the House of Representatives between 1 November 2019 and 30 April 2020 and referred to the committee, with relevant tabling dates.

Senate debate

1.18 In accordance with Standing Order 25(20)(d), the committee is required to take into account any relevant remarks about annual reports made in debate in the Senate. None of the annual reports examined in this report were the subject of Senate debate.

Non-reporting bodies

1.19 Standing Order 25(20)(h) requires that the committee report on any bodies which do not present annual reports to the Senate but should present such reports. The committee notes that there are no relevant bodies which are required to present an annual report to the Senate which have not done so.

Apparently satisfactory

1.20 Standing Order 25(20)(a) requires that the committee report to the Senate on whether the annual reports of departments and agencies in its portfolios are 'apparently satisfactory'. In making this assessment, the committee considers such aspects as timeliness of presentation and compliance with relevant reporting requirements.

1.21 The committee has examined all annual reports referred during the reporting period and considers that they are 'apparently satisfactory'.

⁷ *Acts Interpretation Act 1901*, ss. 34C(6).

Chapter 2

Review of selected reports

2.1 The committee provides the following comments on the annual reports of the Audio-Visual Copyright Society Limited (Screenrights) and the Copyright Agency Limited (Copyright Agency).

Audio-Visual Copyright Society Limited

2.2 Screenrights has prepared and tabled its annual report in accordance with the *Copyright Act 1968* (Copyright Act).⁸ The annual report for 2018-19 was tabled in the House of Representatives on 28 November 2019 and subsequently in the Senate on 2 December 2019.

2.3 Screenrights is an Australian-domiciled company and not-for-profit entity. Its principal activities include exercising its rights as a collecting society under the Copyright Act, including the distribution of royalties collected from educational institutions, government departments and agencies and retransmitters for distribution to relevant copyright owners.⁹

Performance reporting

2.4 The annual report provided a satisfactory overview of Screenrights' key revenue and expenditure figures for the 2018-19 financial year. This included relevant extracts from its Corporate Governance Statement.¹⁰ The committee notes that Screenrights made available \$43.5 million for distribution to its members during the reporting period and increased its membership by five per cent to 4,438.¹¹ In addition, Screenrights distributed \$325,000 from its recently established Cultural Fund to seven projects in Australia and New Zealand.

2.5 Screenrights has included further relevant information on its website; including trend data for some categories, such as total distributions by licences for the last three reporting periods and a breakdown of expenditure for 2018-19. This data was useful for comparative purposes and is presented in a variety of formats including charts and diagrams and included a breakdown of total distributable amounts paid to members, as well as allocations between Australian and overseas rights holders.¹²

8 *Copyright Act 1968*, s. 135ZZV and 183D.

9 *Copyright Act 1968*, Parts IVA, VC and s. 183.

10 Screenrights, *Annual Report 2018-19*, p. 1.

11 Screenrights, *Annual Report 2018-19*, p. 4.

12 Screenrights, 'Year in Review 2018-2019', www.screenrights.org/about-us/corporate-governance/ (accessed 10 September 2020).

2.6 The annual report noted that in November 2018, Screenrights reached a settlement agreement with the Australian Writers' Guild and the Australian Writers' Guild Authorship Collecting Society.¹³ The committee notes that the terms of the settlement deed are confidential and all parties have declined to provide any further public comment on the matter.¹⁴

2.7 The committee also notes that this was the final annual report presented by Ms Jill Bryant, former Chair of the Screenrights Board, who stepped down from the role in November 2019 after 13 years. The committee thanks Ms Bryant for her service to the board.

Financial reporting

2.8 As noted above, Screenrights reported a total of \$43.5 million available for distribution to its members in 2018-19. This represented a three per cent increase on the \$42.1 million available for distribution in the previous financial year.¹⁵

2.9 The committee considers that Screenrights has met its reporting obligations and that its annual report is 'apparently satisfactory'.

Copyright Agency Limited

2.10 In accordance with its obligations under the Copyright Act and the *Resale Royalty Right for Visual Artists Act 2009*, the Copyright Agency submitted its annual report to the Minister on 30 October 2019. The annual report was subsequently tabled in the House of Representatives and the Senate on 4 December 2019.

2.11 The Copyright Agency is a not-for-profit rights management organisation or 'declared collecting society' and operates as a public company limited by guarantee. The agency is appointed by the Australian Government to manage statutory licences in the Copyright Act as well as the artists' resale royalty scheme. The licences regulate the use of text, images and print music, by educational institutions and people with disabilities, and for reproduction by Commonwealth, state and territory governments.

2.12 The Copyright Agency assists in reproducing, storing and sharing copyright material whilst delivering fair compensation to the rights owners of content and

13 On 3 March 2016, the Australian Writers' Guild and the Australian Writers' Guild Authorship Collecting Society filed proceedings against Screenrights in the Federal Court of Australia alleging amongst other things that Screenrights had failed to pay scriptwriters their royalty entitlements.

14 Australian Writers' Guild Authorship Collecting Society, Australian Writers' Guild and Screenrights, 'AWGACS, AWG and Screenrights agree settlement of dispute', *Media Release*, 6 November 2018, www.screenrights.org/awgacs-awg-screenrights-settle-dispute/ (accessed 10 September 2020).

15 Screenrights, *Annual Report 2018-19*, p. 10.

managing the resale royalty schemes of artists. The Copyright Tribunal has the power to determine licencing and distribution arrangements, including how usage is monitored, where this cannot be resolved by agreement.¹⁶

Performance reporting

2.13 The Copyright Agency's annual report provided an overview of its principal activities and performance for the reporting period. This included the operation of the statutory licence schemes in the education and government sectors, as well as the commercial and other non-statutory licences offered by the agency. The annual report also provided a detailed breakdown of payments to content creators by sector, content type and by state and territory.¹⁷

2.14 In 2018-19, the Copyright Agency recorded revenues of \$150.8 million, and, after the deduction of operating costs, allocated \$127.7 million for distribution to rights holders.¹⁸ Of this pool of funds, approximately \$116.4 million was distributed to content creators during the reporting period. This compared to \$123.9 million that was distributed in the previous reporting period.¹⁹ The Copyright Agency also approved \$1.5 million for projects and applicants under its Cultural Fund, IGNITE Fund and CREATE Fund, as well as five Copyright Agency Fellowships.²⁰

2.15 In addition, the Copyright Agency paid a total of \$690,000 to 351 artists under the artists' resale royalty scheme. Of the artists receiving royalties, 64 per cent were Aboriginal and Torres Strait Islander artists.²¹ The annual report noted that, as of 30 June 2019, over \$7 million in royalties had been generated for 1,821 artists under the scheme since its commencement.²²

2.16 As foreshadowed in its 2017-18 annual report, the Copyright Agency was not able to reach agreement with Universities Australia on a new agreement on the remuneration payable by the universities sector for the copying and communication of copyright material and the appropriate method of sampling to monitor this use. As a

16 *Copyright Act 1968*, Part VI.

17 Copyright Agency Limited, *Annual Report 2018-19*, pp. 27–34.

18 Copyright Agency Limited, *Annual Report 2018-19*, p. 59.

19 Copyright Agency Limited, *Annual Report 2018-19*, p. 59.

20 Copyright Agency Limited, *Annual Report 2018-19*, pp. 35–41. The Cultural Fund is the philanthropic arm of the Copyright Agency. Members commit 1.5 per cent of revenue annually towards grants to enhance the profile of Australian writers and visual artists and to support the dynamic writing, publishing and visual arts sectors. The IGNITE grants provide financial support to authors and visual artists in recognition of their creative endeavours that enrich and promote Australia's literary and arts communities. The CREATE funding provides authors and artists with a living allowance that enables them critical time and space to create.

21 Copyright Agency Limited, *Annual Report 2018-19*, p. 25.

22 Copyright Agency Limited, *Annual Report 2018-19*, p. 25.

result, the Copyright Agency was required to initiate proceedings in the Copyright Tribunal and the matter has been set down for hearing in September 2020.²³

Financial reporting

2.17 The committee notes that the Copyright Agency recorded a deficit for the year of \$741,877 compared to a surplus of \$113,023 recorded for 2017-18.²⁴ The report noted that the deficit 'represents monies disbursed by the Company for certain non-operating expenses sourced from the Future Fund and Indemnity Fund for that purpose'.²⁵

2.18 The committee considers that the Copyright Agency has met its reporting obligations and that its annual report is 'apparently satisfactory'.

**Senator the Hon David Fawcett
Chair**

23 Copyright Agency Limited, *Annual Report 2018-19*, p. 61.

24 Copyright Agency Limited, *Annual Report 2018-19*, p. 68.

25 Copyright Agency Limited, *Annual Report 2018-19*, p. 59.

Appendix 1

Dates relating to the presentation of annual reports between 1 November 2019 and 30 April 2020

Report	Submitted to Minister	Received by Minister	Tabled in the House of Representatives	Tabled in the Senate
Advance to the Finance Minister—Report on advances provided under the annual Appropriation Acts for 2018-19	N/A	N/A	11/02/2020	11/02/2020
Audio-Visual Copyright Society Limited—Report for 2018-19	30/10/2019	30/10/2019	28/11/2019	2/12/2019
Australian Broadcasting Corporation—Diversity and inclusion—Report for 2018-19	5/12/2019	5/12/2019	5/02/2020	4/02/2020 (23/01/2020)*
Australian Competition and Consumer Commission—Telstra's structural separation undertaking—Report for 2018-19	21/02/2020	21/02/2020	12/05/2020	23/03/2020 (5/03/2020)*
Copyright Agency Limited—Report for 2018-19	30/10/2019	30/10/2019	4/12/2019	4/12/2019
Department of Finance—Consolidated financial statements for the year ended 30 June 2019	12/11/2019	12/11/2019	5/02/2020	4/02/2020 (11/12/2019)*

Mid-year economic and fiscal outlook 2019-20—Statement by the Treasurer and the Minister for Finance	13/12/2019	13/12/2019	6/02/2020	10/02/2020
<i>Telecommunications Act 1997</i> —Funding of telecommunications consumer representation grants—Report for 2018-19	3/12/2019	3/12/2019	11/02/2020	11/02/2020
Wet Tropics Management Authority—Report for 2018-19	6/11/2019	6/11/2019	3/12/2019	3/12/2019
Wet Tropics Management Authority—State of the Wet Tropics—Report for 2018-19	6/11/2019	6/11/2019	3/12/2019	3/12/2019

* Denotes the date the document was presented in the Senate out-of-session.