

Chapter 1

Introduction

1.1 The Senate Education and Employment Legislation Committee's (the committee) report on annual reports provides an overview of the committee's examination of annual reports referred to it for the 2018–19 financial year, tabled between 1 May and 31 October 2019.

1.2 This is the first of two reports on annual reports that the committee is required to produce in 2020.

Terms of reference

1.3 Under Senate Standing Order 25(2), annual reports of departments and agencies shall stand referred to the legislation committees in accordance with an allocation of departments and agencies in a resolution of the Senate. Each 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 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.

Purpose of annual reports

1.4 The tabling and scrutiny of annual reports by Senate committees under Standing Order 25(20) is an important element in the process of government accountability to the Parliament. The information provided in annual reports is placed

on the public record and assists the Parliament in its examination of the performance of departments and agencies and the administration of government programs.

Allocated portfolios

1.5 In accordance with a resolution of the Senate on 4 July 2019, the committee has oversight of the following portfolios:

- Education; and
- Employment, Skills, Small and Family Business, including Industrial Relations.¹

Machinery of government changes

1.6 The Administrative Arrangements Order of 29 May 2019 (May 2019 AAO) replaced the former order of 4 April 2019. The changes under the May 2019 AAO relevant to the portfolio responsibilities of the committee include the following:

- transfer of responsibilities for vocational education and training, and apprenticeships from the Education portfolio to the Employment portfolio. In accordance with these changes, the Australian Skills Quality Authority (ASQA) moved from the Education portfolio to the Employment portfolio;
- transfer of responsibilities for migrant adult education from the Education portfolio to the Home Affairs portfolio; and
- transfer of responsibility for industrial relations from the Employment portfolio to the Attorney-General's portfolio.²

1.7 The Administrative Arrangements Order of 8 August 2019 made additional changes. Under the new arrangements, policy regulation and programs related to vocational education and training in schools were transferred from the Department of Education portfolio to the Department of Employment, Skills, Small and Family Business (DESSFB) portfolio.³

1.8 Further changes were made on 5 December 2019 in accordance with a new Administrative Arrangements Order, with the changes to come into effect from 1 February 2020. The changes under the 5 December AAO included:

- transfer of employment and skills functions from the Department of Education to the renamed Department of Education, Skills and Employment (DESE); and

1 *Journals of the Senate*, No. 3, 4 July 2019, pp. 83–84. The Administrative Arrangements Order of 29 May 2019 replaced the 4 April 2019 order. In accordance with the 29 May order, the Department of Jobs and Small Business changed its name to the Department of Employment, Skills, Small and Family Business, and the Department of Education and Training changed its name to the Department of Education, <https://www.pmc.gov.au/sites/default/files/publications/aao-20190529.pdf> (accessed 30 January 2020).

2 Administrative Arrangements Order of 29 May 2019, <https://www.pmc.gov.au/sites/default/files/publications/aao-20190529.pdf> (accessed 30 January 2020).

3 Administrative Arrangements Order of 8 August 2019, https://www.pmc.gov.au/sites/default/files/publications/aao-20190808-amendments_0.pdf (accessed 4 February 2020).

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- transfer of small business policy and programmes to the renamed Department of Industry, Science, Energy and Resources.⁴

1.9 As this report covers the 2018–19 reporting period, it will refer to the departments by the names they held at the time.

Industrial relations matters

1.10 As part of the changes made under the May 2019 AAO, industrial relations matters were transferred from the Employment portfolio to the Attorney-General's portfolio.⁵ As part of a departmental restructure to accommodate the changes, the Attorney-General's Department (AGD) established an Industrial Relations Group.

1.11 Despite the reallocation of portfolio responsibilities, on 21 June 2019 the Department of Finance issued an instrument under subsection 17A(4) of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) to the effect that departments would retain responsibility for preparing the 2018–19 annual performance statements and annual report for functions which had been transferred under the May 2019 AAO.⁶

1.12 DESFFB was thus nominated responsibility for reporting on workplace relations (including work health and safety, rehabilitation and compensation) functions.

1.13 On 4 July 2019, the Senate resolved that industrial relations matters should remain within the portfolio responsibility of the committee.⁷

Annual reporting requirements

1.14 The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) establishes a performance reporting framework for all Commonwealth entities and companies. The performance framework is based on section 38 of the PGPA Act, which requires all Commonwealth entities to measure and assess their performance.

1.15 The performance framework established under the PGPA Act includes the requirement for Commonwealth entities to prepare a corporate plan and annual performance statements. The PGPA Rule contains the minimum requirements to be included.

1.16 Section 39 of the PGPA Act requires all Commonwealth entities to prepare an annual performance statement and include those statements in their annual reports.

4 Administrative Arrangements Order of 5 December 2019, <https://www.pmc.gov.au/resource-centre/government/aao-made-5-december-2019-effect-1-february-2020> (accessed 30 January 2020).

5 Administrative Arrangements Order of 29 May 2019, Summary of Changes, <https://www.pmc.gov.au/sites/default/files/publications/aao-summary-changes-20190529.pdf> (accessed 30 January 2020).

6 Attorney-General's Department, *Annual Report 2018–19*, p. 12.

7 *Journals of the Senate*, No. 3, 4 July 2019, p. 84.

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 its corporate plans and Portfolio Budget Statements.

1.17 The PGPA Rule, established under the PGPA Act, details the requirements for the corporate plan, annual performance statements as well as the guidelines for annual reports.⁸

PGPA Act bodies

1.18 The PGPA Act categorises bodies as a Commonwealth entity (either a non-corporate Commonwealth entity or a corporate Commonwealth entity), or a Commonwealth company, as detailed below:

- Non-corporate Commonwealth entity—an entity that is legally and financially part of the Commonwealth, and includes departments of state, parliamentary departments, statutory authorities, and listed entities (a body, person, group of persons or organisation that is prescribed by rules made under the PGPA Act).⁹
- Corporate Commonwealth entity—a body corporate that has a separate legal personality from the Commonwealth, and includes certain statutory authorities. It can act in its own right exercising certain legal rights such as entering into contracts and owning property.¹⁰
- Commonwealth company—a company established by the Commonwealth under the *Corporations Act 2001* that is controlled by the Commonwealth.¹¹

Annual reporting requirements

1.19 Annual reporting requirements for non-corporate and corporate Commonwealth entities are set out in section 46 of the PGPA Act, including that annual reports must comply with any requirements prescribed by the PGPA Rule. Section 97 prescribes the annual reporting requirements for Commonwealth companies.

1.20 Below is a summary of the instruments under which the 2018–19 annual reports were prepared:

Non-corporate Commonwealth entities:

- PGPA Act, section 46 and the PGPA Rule, Division 3A(A);
- for portfolio departments and executive agencies, the *Public Service Act 1999*, subsections 63(2) and 70(2);

8 See Public Governance, Performance and Accountability Rule 2014, s. 16E, s. 16F and s. 27A.

9 *Public Governance, Performance and Accountability Act 2013*, ss. 11(b).

10 *Public Governance, Performance and Accountability Act 2013*, ss. 11(a).

11 *Public Governance, Performance and Accountability Act 2013*, ss. 89(1).

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- 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, 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.

Reports examined

1.21 In accordance with Standing Order 25(20)(f), this report examines those annual reports tabled between 1 May and 31 October 2019. The reports examined in this report are categorised as follows:

Non-corporate entities:

- Asbestos Safety and Eradication Agency (ASEA);
- Australian Building and Construction Commission (ABCC);
- Australian Research Council (ARC);
- Australian Skills Quality Authority (ASQA);
- Department of Education;
- Department of Employment, Skills, Small and Family Business;
- Fair Work Commission (FWC);
- The Fair Work Ombudsman and Registered Organisations Commission Entity;
- Safe Work Australia;
- Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority); and
- Tertiary Education Quality and Standards Authority (TEQSA).

Corporate entities:

- Australian Curriculum Assessment and Reporting Authority (ACARA);
- Australian National University (ANU);
- Coal Mining Industry (Long Service Leave Funding) Corporation; and
- Comcare and Safety, Rehabilitation and Compensation Commission.

Commonwealth companies:

- Australian Institute for Teaching and School Leadership (AITSL).

Reports not examined

1.22 The committee is not obliged to report on Acts, statements of corporate intent, surveys, policy papers, budget documents, corporate plans or errata. Accordingly, the following documents were referred to the committee but not examined for the purposes of this report:

- Australian Building and Construction Commission—Performance of the functions and the exercise of powers of the Australian Building and Construction Commissioner—Quarterly report for the period 1 January to 31 March 2019;
- Australian Building and Construction Commission—Performance of the function and the exercise of powers for the Australian Building and Construction Commissioner—Quarterly report—Third quarter of 2018–19—Operations from 1 January to 31 March inclusive – Section 20(5) of the *Building and Construction Industry (Improving Productivity) Act 2016*;
- Australian Building and Construction Commission—Performance of the function and the exercise of powers for the Australian Building and Construction Commissioner—Quarterly report—Fourth quarter of 2018–19—Operations from 1 April to 30 June inclusive – Section 20(5) of the *Building and Construction Industry (Improving Productivity) Act 2016*;
- *Social Security (Administration) Act 1999*—Review of the operation of Youth Jobs PaTH—Final Report, dated October 2019;
- *Building and Construction Industry (Improving Productivity) Act 2016*—Reports by the Commonwealth Ombudsman for the following periods: 1 January to 31 March 2018; 1 April to 31 June 2018; 1 July to 30 September 2018; 1 October to 31 December 2018; and
- Final budget outcome 2018–19—Report by the Treasurer (The Hon Josh Frydenberg MP) and the Minister for Finance (Senator the Hon Mathias Cormann), dated September 2019.

Timeliness

Presentation to ministers

1.23 Section 46 of the PGPA Act requires Commonwealth entities, both corporate and non-corporate, to prepare annual reports and for such reports to be provided to the responsible Minister by the 15th day of the fourth month after the end of the reporting period for the entity. Certain agencies, however, may have a specific date stipulated by their enabling legislation.

1.24 For Commonwealth companies, the deadline for providing the report to the responsible minister is stipulated under section 97 of the PGPA Act, namely four months after the end of the company's reporting period.

1.25 For this reporting period, the annual reports of all non-corporate and corporate Commonwealth entities, and Commonwealth companies, were presented to the relevant ministers in a timely manner.

Tabling in Parliament

1.26 Formerly, annual reports of non-corporate entities had to be presented by the responsible Minister to each House of Parliament on or before 31 October each year.¹² There is no longer an explicit stipulation for this to occur as the PGPA Rule is silent on this matter. However, as explained below, the PGPA Rule does recommend that such reports be tabled before Supplementary Budget Estimates.

1.27 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* which is prepared by the Department of the Prime Minister and Cabinet.¹³

1.28 The guidelines advise that for all Commonwealth 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.¹⁴

1.29 For Commonwealth companies, subsection 97(5) of the PGPA Act states that the Minister must table the reports as soon as practicable after receiving them.¹⁵ This provision is clarified in the *Guidelines for the Presentation of Documents to the Parliament* which sets out the expectation that reports will be tabled on or before 31 October, or sooner if Senate Supplementary Budget Estimates hearings are scheduled prior to 31 October.¹⁶

1.30 In this regard the committee notes that the Joint Committee on Public Accounts and Audit (JCPAA) has considered formally bringing the tabling date forward:

...the [JCPAA] Committee believes that bringing forward both of these dates [presentation to ministers and tabling in Parliament], and formalising the required tabling date in legislation, is both viable and valuable. If achieved, it will provide some certainty to Senate Estimates Committees in

12 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies, and other Non-Corporate Commonwealth Entities*, 25 June 2015, p. 2.

13 Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Documents to the Parliament*, February 2017, www.dpmmc.gov.au/sites/default/files/publications/pmc-tabling-guidelines.pdf (accessed 28 January 2020).

14 Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Documents to the Parliament*, February 2017, p. 4.

15 *Public Governance, Performance and Accountability Act 2013*, ss. 97(5).

16 Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Documents to the Parliament*, February 2017, paragraph 4.10, p. 4. Department of Finance, *RMG-135: Annual reports for non-corporate Commonwealth entities*, May 2019, p. 11.

particular that the important performance information in annual reports will be made available in a timely manner to assist scrutiny.¹⁷

1.31 The committee notes that all bodies have met the recommended timeframe for tabling annual reports in Parliament prior to the commencement of the 2018–19 Supplementary Budget Estimates. The committee welcomes this improved timeliness in tabling annual reports and thanks the departments and associated agencies. The committee further encourages departments and agencies to continue this practice in the future.

1.32 The following bodies tabled annual reports in the Senate prior to the commencement of Supplementary Budget Estimates:

- ACARA;
- ARC;
- ASQA;
- ANU;
- Department of Education (incorporating reports of the Tuition Protection Service, Student Identifiers Registrar and the Trade Support Loan Program); and
- DESSFB.

1.33 AITSL tabled its report in the House of Representatives prior to the commencement of the Supplementary Budget Estimates hearings.

1.34 The following bodies tabled annual reports in the House of Representatives on commencement of Supplementary Budget Estimates hearings and in the Senate on 11 November 2019:

- TEQSA;
- ASEA;
- ABCC;
- Coal Mining Industry (Long Service Leave Funding) Corporation;
- Comcare and Safety, Rehabilitation and Compensation Commission;
- FWC;
- Fair Work Ombudsman and Registered Organisations Commission Entity;
- Safe Work Australia; and
- Seacare Authority.¹⁸

17 Joint Committee of Public Accounts and Audit, *Report 457: Development of the Commonwealth Performance Framework Second Report*, May 2016, p. 11.

18 The committee acknowledges that because each report had been tabled in the House of Representatives they were available publicly prior to Supplementary Budget Estimates.

1.35 The committee reminds all entities and companies that it is best practice for annual reports to be tabled prior to Supplementary Budget Estimates.

1.36 Appendix 1 lists the annual reports which were presented to Parliament between 1 May and 31 October 2019 and referred to the committee, with relevant tabling dates.

Senate debate

1.37 Senate Standing Order 25(20)(d) requires the committee to take into account any relevant remarks about the reports made in debate in the Senate. The committee notes that the annual reports examined in this report have not been the subject of comments or debates in the Senate.

Bodies not presenting annual reports to the Senate

1.38 The committee is required to report to the Senate on whether there are any bodies which should have presented an annual report to the Senate but did not. The committee is satisfied that there are no such bodies at this time.

Method of assessment and general comments on reports

1.39 Senate Standing Order 25(20)(a) requires the committee to examine the annual reports referred to it to determine whether they are timely and 'apparently satisfactory'. In making this assessment, the committee considers whether the reports comply with the relevant legislation and requirements for the preparation of annual reports.

1.40 The reports presented by most agencies met all requirements under the PGPA Rule relating to the inclusion of a letter of transmittal, independent auditor's report, appropriate style and formatting, and assessment of performance against targets.¹⁹

1.41 The committee notes that while the majority of annual reports were compliant with their reporting requirements, page numbers in compliance indices were missing in some reports. The committee reminds agencies that this information should be included in all future annual reports.²⁰

1.42 The following chapter examines selected annual reports in further detail.

19 For non-corporate Commonwealth entities see PGPA Rule, subdivision 3A(A); for corporate Commonwealth entities see Subdivision 3A(B); for Commonwealth companies see PGPA Rule Part 3-3.

20 See the annual reports of: Fair Work Ombudsman and Registered Organisations Commission (PGPA Rule s. 17A(1)(aa)(i), s. 17A(1)(aa)(ii), s. 17A(1)(aa)(iii)); Asbestos Safety and Eradication Agency (PGPA Rule s. 17AF(1)(b)); Coal Mining Industry (Long Service Leave Funding) Corporation and Australian National University (PGPA Rule s. 17BF: items missing and should be included with 'NA' if applicable for consistency); Tertiary Education Quality and Standards Agency.

