

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
- Immigration and Border Protection 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 May 2017 and 31 October 2017. As discussed later, the report also includes the annual report for the Department of

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

Immigration and Border Protection, which has been included in the committee's examination despite not being tabled in the Senate until after 31 October 2017.

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 2016–17 reporting period were prepared under the following requirements:

- for non-corporate Commonwealth entities (departments, executive agencies and statutory agencies): the PGPA Act, section 46, and the PGPA Rule, Division 3A(A); the *Public Service Act 1999*, sections 63(2) and 70(2); and other relevant enabling legislation for statutory bodies;
- for corporate Commonwealth entities: the PGPA Act, section 46, and the PGPA Rule, Division 3A(AB); and other relevant enabling legislation for statutory bodies;
- for Commonwealth companies: PGPA Act, section 97, which also refers to requirements under the *Corporations Act 2001* and the PGPA Rule, Part 3-3; 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*;

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

- Resource Management Guide No. 136: *Annual reports for corporate Commonwealth entities*; and
- 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 May 2017 and 31 October 2017:

Attorney-General's portfolio

- Administrative Appeals Tribunal—report for 2016–17;
- Attorney-General's Department—report for 2016–17;
- Australian Commission for Law Enforcement Integrity—report for 2016–17;
- Australian Financial Security Authority—report for 2016–17;
- Australian Information Commissioner—report for 2016–17;
- Australian Law Reform Commission—report for 2016–17
- Australian Security Intelligence Organisation—report for 2016–17;
- Australian Transaction Reports and Analysis Centre—report for 2016–17;
- Board of the Australian Crime Commission—report for 2015–16;
- Federal Court of Australia—report for 2016–17, including the report of the National Native Title Tribunal;
- National Archives of Australia and National Archives of Australia Advisory Council—report for 2016–17; and
- Office of Parliamentary Counsel—report for 2016–17.

Immigration and border protection portfolio

- Department of Immigration and Border Protection—report for 2016–17.

'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 guidelines.

The committee has found all reports referred in this period to be 'apparently satisfactory' in reporting the annual performance of the relevant agency.

The reports of these departments and agencies are considered in detail at chapters 1 and 2.

Timeliness

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

Section 46 of the PGPA Act sets out the requirements for the presentation of annual reports for Commonwealth entities 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, states 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.³

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*.⁴

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

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 2017 and 31 October 2017, and which have been referred to the committee for examination, can be found at Appendix 1.⁵ Also included in this table is the date each report was tabled in the House of Representatives.

Subject to the exception described below, the annual reports included and examined in this report were tabled in the Senate and referred to the committee by 31 October 2017.⁶ This date for reporting applied to all reports examined.

The annual reports of a number of agencies were provided to the Minister by the prescribed date of 15 October and subsequently tabled in the House of Representatives before, or at the time of, the Supplementary Budget Estimates hearings (23 and 24

3 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.

4 *Acts Interpretation Act 1901*, s. 34.

5 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.

6 See Appendix 1.

October 2017). However, the reports were not received by the Senate or referred to the committee until 13 November 2017.⁷ These reports included:

- Australian Crime Intelligence Commission;
- Australian Federal Police;
- Australian Human Rights Commission;
- Australian Institute of Criminology;
- Commonwealth Director of Public Prosecutions;
- Family Court of Australia; and
- Federal Circuit Court of Australia.

The committee notes that these agencies' annual reports were tabled in the House of Representatives by the correct date, but were delayed in their tabling in the Senate and subsequent referral to the committee. The committee thus accepts the reports as being on time, but will consider these agencies' annual reports in *Report on Annual Reports (No. 2 of 2018)*.

The report for the Department of Immigration and Border Protection was tabled in the House of Representatives on 19 October 2017 but was not tabled in the Senate or referred to the committee until 13 November 2017. Although the deadline for the report's provision to the committee within the appointed time was missed, the committee accepts that tabling and referral of the report in the Senate was unintentionally delayed. The committee has therefore decided to include the report in its consideration of annual reports in this *Report on Annual Reports* (see Chapter 1).

The committee continues to encourage bodies to table annual reports before the Supplementary Budget Estimates hearings in October each year, in accordance with best practice, as outlined in RMG No. 135 and RMG No. 136.⁸

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 identified one occasion on which an annual report was remarked upon during debate in the Senate during the period between 1 May and 31 October 2017.

The report for the Administrative Appeals Tribunal (AAT) was remarked upon during debate in the Senate on 18 October 2017. Senator Nick McKim remarked on the AAT's role in the rule of law in Australia, and the importance of it being an independent decision-making body.⁹

The committee notes the remarks made by Senator McKim.

7 See Appendix 1.

8 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.

9 *Senate Hansard*, 18 November 2017, p. 7938.

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.

The committee identified that the Family Law Council, a statutory committee in the Attorney-General's portfolio, failed to table an annual report for 2016–17 in accordance with subsection 115(9) of the *Family Law Act 1975*. The committee observed in *Report on Annual Reports (No. 1 of 2017)* that the Family Law Council also failed to table an annual report for 2015–16.

On this occasion, the committee is unaware of any other body required to table an annual report for 2016–17 which has failed to do so.