



The Parliament of the Commonwealth of Australia

**SENATE LEGAL AND CONSTITUTIONAL
LEGISLATION COMMITTEE**

**REPORT ON THE EXAMINATION OF ANNUAL
REPORTS**

No. 2 of 2000

September 2000



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PREFACE

Terms of reference

On 1 May 1996 a resolution of the Senate allocated the following portfolios to the Legal and Constitutional Legislation Committee:

- Attorney-General's Department; and
- Department of Immigration and Multicultural Affairs.

This report was prepared pursuant to Standing Order 25(21) relating to the consideration of annual reports by legislation committees. The Standing Order states:

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 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; and
- (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.

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 continues to be an important element of accountability to Parliament, as the information provided in annual reports assists in the effective examination of the performance of departments and agencies and the administration of government programs.

Timing of presentation of reports on annual reports

Standing order 25(21)(f) requires that legislation committees report on annual reports tabled by 30 April each year by the tenth sitting day after 30 June of that year. The Legislation Committee was required to table this report on or before 5 September 2000.

Annual Reports referred to the Committee

This report includes those reports referred to the Committee between 1 November 1999 and 30 April 2000. During this period eighteen annual reports were referred to the Committee. This includes a Corrigenda from the Attorney-General's Department, fifteen reports (including one Erratum) from statutory authorities and two reports from non-statutory bodies. These reports are listed at Appendix 1. Other reports received, on which the Committee is not required to report, are also listed at Appendix 1.

“Apparently satisfactory”

Under the terms of standing order 25(21)(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.¹

Timeliness

Under standing order 25(21)(c) the Committee must also report to the Senate on any lateness in the presentation of annual reports.

Conclusion

This examination of annual reports has shown that the reports referred to the Committee continue to be of a high standard in both format and content. The Committee has found that the annual reports examined in this report are apparently satisfactory. Comments on particular reports are set out in the following chapters.

Senator Marise Payne

Chair

¹ *Requirements for Departmental Annual Reports*, March 1994 (for departments/agencies whose heads have powers of a secretary under the *Public Service Act 1922*); Guidelines for Annual Reports by Statutory Authorities are contained in the Commonwealth Authorities and Companies Orders 1998; and Reporting Requirements for the Annual Reports of Non-Statutory Bodies, are from the government response to the report on non-statutory bodies of the Senate Standing Committee on Finance and Government Operations, *Senate Hansard*, Vol. S.124, 8 December 1987, pp.2643-5.

CHAPTER 1

ANNUAL REPORTS OF GOVERNMENT DEPARTMENTS

Reports referred to the Committee for examination and report

1.1 In the relevant period, only two pages containing corrigenda to tables in the annual report of the Attorney-General's Department (dealt with in Report No 1 of 2000) were referred to the Committee for examination and report. The date on which the corrigenda were tabled is set out at Appendix 1.

1.2 The corrigenda do not substantially alter the situation on which the Committee has reported.

CHAPTER 2

ANNUAL REPORTS OF STATUTORY AUTHORITIES

2.1 The following annual reports of statutory authorities for the financial year 1998-99 were referred to the Committee for examination and report:

- Administrative Appeals Tribunal
- Administrative Review Council
- Family Court of Australia
- Family Court of Australia Erratum
- Family Law Council
- Federal Court of Australia
- Federal Police Disciplinary Tribunal
- High Court of Australia
- Human Rights and Equal Opportunity Commission
- Industrial Relations Court of Australia
- Migration Agents Registration Authority
- National Native Title Tribunal
- National Crime Authority
- Office of Parliamentary Counsel
- Refugee Review Tribunal.

2.2 The dates on which these reports were tabled in the Senate are set out at Appendix 1.

Reporting Guidelines

2.3 Annual reports prepared by statutory authorities are examined by reference to the Guidelines for the Content, Preparation and Presentation of Annual Reports by Statutory Authorities, tabled in the Senate on 11 November 1982. These are reproduced in Appendix 2.

2.4 The Committee notes that the reporting requirements for statutory authorities are guidelines only and therefore differing approaches to, and formats for, reporting may be adopted. However, statutory authorities whose operations are similar to those of government departments must consult the revised requirements for departmental annual reports, issued in May 1999, and comply with them as far as it is considered appropriate to do so.

2.5 Regardless of the guidelines or requirements that statutory authorities use, the Committee considers that accountability to Parliament should be the central objective of the annual reports of statutory authorities.

2.6 The Committee has elected to comment specifically on the annual reports and performance of some statutory authorities. These comments constitute the remainder of this chapter.

Administrative Appeals Tribunal

2.7 The Committee welcomes the return of Justice Deirdre O'Connor as President of the Tribunal after five years with the Australian Industrial Relations Commission.

2.8 The Committee notes with approval the efforts made by the Tribunal for the awareness raising and training of members and staff to improve service delivery to people with intellectual disabilities. That program is to be complemented by one related to psychiatric disability awareness.

Administrative Review Council

2.9 The Committee extends its appreciation to the President, Professor Marcia Neave AO, whose three year appointment ended on 3 February 1999. She was replaced (after the reporting period) by Mrs Bettie McNee. Justice Deirdre O'Connor, President of the Administrative Appeals Tribunal, and Professor David Weisbrot, President of the Australian Law Reform Commission, replaced Justice Jane Mathews and Mr Alan Rose AO respectively as ex officio members.

2.10 The Committee completed two project reports: one on the contracting out of government services and the other on the administrative review of patents decisions. It commenced three new projects: the first on the preparation of statements of reasons, the second on the internal review of agency decisions and the third on the professional standards of tribunal members.

Family Court of Australia

2.11 A significant event for the Family Court (and also for the Federal Court and the High Court) was the opening of the Melbourne Commonwealth Law Courts Building on 26 March 1999. All three courts are housed there.

2.12 An event of some concern was the judgment of the High Court in *Re Wakim; Ex parte McNally* in 1999, in which it was decided that cross vesting legislation was unconstitutional insofar as it purports to confer State jurisdiction on Federal courts. However, it appears that, overall, only a very small proportion of the Family Court's workload will be affected by the demise of cross-vesting.

2.13 The erratum complemented the Annual Report by indicating the actual expenditure (as opposed to the budgeted expenditure) on consultancy contracts.

Family Law Council

2.14 The terms of appointment of 7 members, including the Chairperson, expired on 30 June 1998. These members were replaced on 18 August 1999.

Federal Police Disciplinary Tribunal

2.15 During the reporting period, the term of office of the President, Justice Michael Foster, expired (26 November 1998) and a new President, Justice Anthony Whitlam, was appointed (17 March 1999).

Human Rights and Equal Opportunity Commission

2.16 As indicated in Report No 2 of 1999, Ms Moira Scollay ceased as Privacy Commissioner (in January 1999). Mr Malcolm Crompton replaced her (in April 1999).

Industrial Relations Court of Australia

2.17 On 25 May 1997, the jurisdiction of the Industrial Relations Court of Australia (except in relation to part-heard cases) was transferred to the Federal Court of Australia. As at 1 July 1998, there were 97 cases pending in the Court but at 30 June 1999, the number had been reduced to 23.

Migration Agents Registration Authority

2.18 The situation in this case is quite unusual, in so far as a private sector organisation, the Migration Institute of Australia, has been appointed by the Minister as the Migration Agents Registration Authority to administer the relevant provisions of the Migration Act. Legislation provided for a period of statutory self-regulation pending further review of industry regulation in March 2000.

National Native Title Tribunal

2.19 The term of Justice Robert French concluded on 31 December 1998. He was replaced by Mr Graeme Neate (on 1 March 1999).

Office of Parliamentary Counsel

2.20 Major drafting tasks for the Office during the year were several large packages of Bills to implement 'A New Tax System', Bills to establish Australia as a republic, a Bill providing for the grant of temporary safe haven visas in response to the Kosovar refugees crisis, and the Federal Magistrates Bill.

Refugee Review Tribunal

2.21 The term of Dr Peter Nygh's appointment as Acting Principal Member of the Tribunal expired on 31 May 1999 and Mr John Godfrey was appointed for 6 months from 1 June 1999.

Conclusion

2.22 The Committee considers that the annual reports of statutory authorities examined in this report are apparently satisfactory.

CHAPTER 3

ANNUAL REPORTS OF NON-STATUTORY BODIES

Reports referred to the Committee

3.1 The annual reports for 1998-99 of the following non-statutory bodies were referred to the Committee for examination and report:

- Copyright Agency Limited
- Screenrights (The Audio-Visual Copyright Society).

3.2 The tabling dates for the reports are recorded in Appendix 1.

3.3 The Copyright Agency Limited and the Audio-Visual Copyright Society are declared by the Attorney-General as collecting societies for copyright owners under the Copyright Act. The latter is declared as the single collecting society under section 135R in respect of the copying of television programs by educational institutions or institutions assisting intellectually handicapped persons. The former is declared as a collecting society under section 135ZZB in respect of the copying of other items and works by such institutions.

Reports on the operation of non-statutory bodies

3.4 Pursuant to the reporting Requirements for the Annual Reports of Non-Statutory Bodies, the Committee finds the 1998-99 Annual Reports of the Copyright Agency Limited and Screenrights (the Audio Visual Copyright Society) apparently satisfactory.

CHAPTER 4

ANNUAL REPORTS ON THE OPERATION OF ACTS AND PROGRAMS

4.1 The following reports on the operation of Acts and programs for the period 1998-99 were referred to the Committee:

- Australian Citizenship Statistics
- Bankruptcy Act 1966
- Crimes Act 1914 Part 1B (Controlled Operations)
- DIMA - Access and Equity Annual Report on Progress in implementing the Charter of Public Service in a Culturally Diverse Society
- Freedom of Information Act 1982
- HREOC Native Title Report
- HREOC Social Justice Report
- Privacy Act 1988
- Telecommunications (Interception) Act
- Witness Protection Act 1994

Reports on the Operation of Acts and Programs

4.2 Standing Order 25(21) does not provide for consideration of annual reports on the implementation or operation of Acts or programs. The Committee is not therefore required to include them in its Report on the Examination of Annual Reports. The Committee has chosen to list them only.

APPENDIX 1

LIST OF ANNUAL REPORTS FOR 1998-99 REFERRED TO THE COMMITTEE DURING THE PERIOD 1 NOVEMBER 1999 – 30 APRIL 2000 AND DATE OF TABLING IN SENATE

Tabled:

Department of State:

Attorney-General's Department Annual Report Corrigenda 9/12/99

Statutory Authorities:

Administrative Appeals Tribunal 23/11/99

Administrative Review Council 9/12/99

Family Court of Australia 23/11/99

Family Court of Australia Erratum 9/12/99

Family Law Council 24/11/99

Federal Court of Australia 9/12/99

Federal Police Disciplinary Tribunal 23/11/99

High Court of Australia 30/11/99

Human Rights and Equal Opportunity Commission 7/12/99

Industrial Relations Court of Australia 15/02/00

Migration Agents Registration Authority 9/12/99

National Crime Authority 9/12/99

National Native Title Tribunal 23/11/99

Office of Parliamentary Counsel 23/11/99

Refugee Review Tribunal 30/11/99

▪ Non-statutory Bodies

Copyright Agency Limited	9/12/99
Screenrights (The Audio-Visual Copyright Society)	9/12/99
▪ Other Reports	
Australian Citizenship Statistics	30/11/99
Bankruptcy Act 1966	24/11/99
DIMA Access and Equity	9/12/99
Freedom of Information Act 1982	9/12/99
Privacy Act 1988	23/11/99
HREOC Native Title	11/04/00
HREOC Social Justice	11/04/00
Telecommunications (Interception) Act 1979	11/04/00
Witness Protection Act 1994	15/02/00

APPENDIX 2

GUIDELINES FOR THE CONTENT, PREPARATION AND PRESENTATION OF ANNUAL REPORTS BY STATUTORY AUTHORITIES

11 November 1982

Introduction

These guidelines are intended to cover generally the annual reporting requirements for statutory authorities (incorporated or unincorporated authorities established by or pursuant to a law of the Commonwealth or of the ACT) and are subject to refinement in the light of experience.

Reports of small unincorporated authorities and office holders within the public account may continue to be included in the related departmental reports where it is practical to do so.

The guidelines do not, of course, override statutory requirements imposed by the legislation on individual authorities, but to the extent that they require a higher standard than does the legislation, they should be followed by all such authorities.

All authorities are to provide annual reports as soon as possible after the end of their financial year, if possible in time for the estimates debate in the Budget Sitings. At the very latest reports should be submitted within six months (unless a shorter period is provided in the legislation of an individual authority). An explanation will be submitted to Parliament if the deadline has to be extended in exceptional cases (the new deadline is to be mentioned in the explanation). Ministers will ensure that reports are tabled within fifteen sitting days of receipt.

Where there is a requirement for a form of financial statements to be approved by the Minister for Finance, authorities should commence negotiations with the Department of Finance early enough to allow issues to be resolved without delaying the annual report. Authorities also need to bear in mind the need for reasonable time to be allowed for completion of auditing of the financial statement within the six month deadline.

Report contents

Reports should be the means of providing a wide dissemination of information on authorities, with special attention being given to making available material that might not otherwise be made public as a matter of course.

The following information is to be provided in future annual reports:

- (i) Enabling Legislation: A clear statement of the legislation (if any) under which the organisation operates.
- (ii) Responsible Minister: To be shown. A description of any statutory powers of direction which the Minister has over the authority and details of the exercise of any such powers, subject to the need to protect confidential information, to be included.

- (iii) Powers, Functions and Objects: To be detailed.
- (iv) Membership and Staff: A list of the members of the body and their terms of appointment, together with listing of senior executive staff and a statement of the total number of staff employed by the organisation. In addition, the basis for staffing the organisations should be identified. The address and phone number of the information officer should also be included.
- (v) Financial Statements: All Government bodies should provide statements which adequately disclose financial aspects of their activities. For example, where the form of a body's financial statements is approved by the Minister for Finance, the approval form must, of course, be followed; where an unincorporated body has no specific financial responsibilities and no financial reporting requirement exists, it might be appropriate to disclose departmental receipts and expenditures relevant to its operations, while avoiding unnecessary duplication of the information contained in the annual Financial Statements prepared by the Minister for Finance. The requirement for adequate disclosure will extend to bodies incorporated under companies legislation if the Commonwealth is sole owner or shareholder; this will not affect the need to satisfy the reporting requirements under company law. The Department of Finance and the Auditor-General's Office are preparing guidelines which will assist Commonwealth undertakings in preparing financial statements; an exposure draft entitled 'Proposed Guidelines for the Form and Standard of Financial Statements of Commonwealth Undertakings' was issued in August 1980. The Exposure Draft has been considered by the relevant Parliamentary Committees.
- (vi) Activities and Reports: A description of the principal programs and activities of the body noting objectives and reviewing achievements. Information on interaction with other authorities, departments and State and international bodies should be provided as should a list of publications during the reporting period.
- (vii) Operational Problems: A description of the major problems which have arisen in the body's activities, including details of requisite Government action to overcome such problems, e.g. the amendment of the enabling Act.
- (viii) Subsidiaries: Details of subsidiary companies formed, or interest acquired in existing companies, are to be provided. It is a desirable practice to include the annual report of such subsidiaries as are controlled by the parent authority with the report of that authority, where this is feasible.

(Senate, *Hansard*, Vol. S.96, 11 November 1982, pp. 2261-2)

APPENDIX 3

REPORTING REQUIREMENTS FOR THE ANNUAL REPORTS OF NON-STATUTORY BODIES

8 December 1987

1. The date of establishment of each new non-statutory body (NSB) and, in relation to an existing NSB, information regarding the date of its establishment in as much detail as is available.
2. A statement of each NSB's objectives and functions.
3. An account of each NSB's significant activities during the year.
4. An indication that the creation or continued existence of each NSB, its functions and its organisation have received Ministerial approval.
5. The date on which each NSB will cease to exist or before which it will be reviewed (whichever is the earlier).
6. In the case of any NSB whose continued existence, functions and organisation have been reviewed and whose continued existence has been approved by the Minister, a summary of the outcome of the review.
7. A list of any positions provided for ex-officio government members on each NSB and of any positions provided for representatives nominated by particular non-government organisations.
8. The maximum term of appointment to each other position on an NSB.
9. Except in cases where there may be little or no continuity of membership from one meeting to the next, the names of individual members of each NSB, and their terms of appointment.
10. The manner in which the level of remuneration (if any) paid to members of each NSB is determined.
11. The manner in which each NSB is funded.
12. A summary of any other financial arrangements such as the kinds of expenditure that can be made from the funds provided, and the nature of secretariat services provided and the way in which these are funded.
13. An indication, in respect of each NSB, as to whether one of its functions is to distribute funds to other organisations or individuals.
14. In the case of each NSB with its own accounting system, an audited financial statement.
15. In the case of each NSB that operates through its parent body's accounts, an account of receipts and expenditures, to be provided on a program basis

- with the NSB's work reflected in the parent body's published program structure
- and with performance related to objectives and measured in terms of stated criteria, in accordance with standard program budgeting techniques; and
- the amounts of any grants made by each NSB.

([After] Senate, *Hansard*, Vol. S.124, 8 December 1987, pp. 2643-5)

