

2003

THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

# **Annual Reports (Government Agencies) Bill 2003**

## **Explanatory Statement**

Circulated by authority of  
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Chief Minister

## Overview

This Bill repeals and replaces the *Annual Reports (Government Agencies) Act 1995* with a redrafted Act that implements a Government commitment to amend provisions relating to the presentation and tabling of annual reports of ACT Government agencies.

In its response to Auditor-General Report No.1 of 2003:Effectiveness of Annual Reporting, the Government agreed to amend the Act to provide a single requirement to table reports in the Legislative Assembly within 3 months of the end of the reporting period.

This provides a date by which reports are to be made available, replacing the formulation in the 1995 Act based on a requirement to present reports to Ministers within 10 weeks of the end of the reporting period and tabling of reports within 6 sitting days of presentation to Ministers.

The revised approach in the Bill requires reports to be made available by the end of September each year but, in removing the earlier presentation date, provides some additional time for agencies to finalise reports.

The very tight timetable flowing from the 10 week presentation date in the 1995 Act meant some flexibility was required to manage the completion of end of year financial and performance audits required under the *Financial Management Act 1996*. These issues can now be resolved in the Annual Report Directions (which are directions made by the Chief Minister to set the form and content of reports) that will be revised when the Bill is passed.

The 1995 Act was structured around the Ministerial presentation requirement. As the proposed changes remove this element, the opportunity has been taken to redraft the Act so it is consistent with current drafting conventions.

Other than the changes to tabling requirements, and inclusion of arrangements for providing reports to Assembly Members when the Assembly is not sitting, the impact of the 1995 Act has been retained, albeit in a redrafted form. For example, the 1995 Act provides for various directions setting the form and content of annual reports. These have been called annual report directions. The Bill uses this term directly.

A number of consequential changes will be made in a further Bill. These will replace references in other laws to the 1995 Act with the proposed 2004 Act.

One consequential change of more substance is included as a Schedule to this Bill. This resolves an ambiguity about whether Auditor-General annual reports are covered by annual reporting legislation.

## Financial Implications

Nil.

## **Part 1 Preliminary**

### **Clause 1 Name of Act**

This is a formal provision that provides the name of the Act.

### **Clause 2 Commencement**

This is a formal provision specifying that the Act commences operation on a day fixed by the Minister.

### **Clause 3 Dictionary**

This clause provides that the dictionary set out at the end of the Act is part of the Act.

### **Clause 4 Notes**

This clause confirms that notes included in the Act are explanatory and not part of the Act. This is the approach taken in section 127 of the *Legislation Act 2001*, which confirms that notes are not part of an Act.

## **Part 2 Annual reports**

### **Clause 5 Annual report of chief executive**

Clause 5 provides that administrative unit chief executives must prepare reports each financial year on the operations of administrative units for each reporting period. The reports must comply with any annual report directions issued by the Minister under clause 8.

Sub-clause 5(3) provides for circumstances where an administrative unit begins operation during the financial year. The reporting period covers the period of the administrative unit's operation during that year.

### **Clause 6 Annual report of public authority**

This clause provides that public authorities must prepare reports on their operations for the financial year and comply with any applicable annual report direction issued by the Minister under clause 8.

Clause 6(3) cross-references the capacity to make an annual report direction that requires a public authority to report for a period other than a financial year. (A small number of agencies report on a calendar year basis – for example the Canberra Institute of Technology.)

Under clause 6(3) references to financial year include a reporting period set under an annual report direction or, if a public authority operates for part of a year, the reporting period is that part of the year.

### **Clause 7 Annual report of commissioner for public administration**

This clause requires the Commissioner for Public Administration to provide an annual report (called the public administration annual report) on a financial year basis about the operation of the public service. This report must include an account of the management of the service as a whole.

### **Clause 8 Annual report direction**

Annual report directions, issued by the Minister with portfolio responsibility for the Act, will set the form and content of annual reports.

Annual report directions may require:

- reports to be in a particular form or include stated information;
- inclusion of public authority reports, as an attachment or otherwise, in chief executive annual reports and, to complement this requirement, that public authorities must provide reports as an attachment or otherwise to chief executives;
- public authorities to report on an other than financial year basis;
- annual reports of a stated person or public authority to be provided to responsible ministers by a stated day. This means these authorities could be directed to provide reports to Ministers in advance of the tabling dates. This might be useful in managing completion of reports;
- chief executives to include stated matters if a public authority fails to comply with directions to provide information under clause 6. An example of this would be a direction that chief executive reports identify where a public authority fails to provide a report or information for inclusion in the chief executive's report and the reasons for that failure. This is the requirement under section 9 of the 1995 Act.

Clauses 8(3) and (4) make an annual report direction a notifiable instrument under the *Legislation Act 2001* and require that directions are presented to the Legislative Assembly within 6 sitting days after notification.

## **Part 3 Responsible Ministers**

### **Clause 9 Responsible Minister for chief executive annual report**

The responsible Minister for a chief executive's annual report is the Minister who has been allocated responsibility for the administrative unit under administrative arrangements made under section 14(1)(a) of the *Public Sector Management Act 1994*.

### **Clause 10 Responsible Minister for public authority annual report**

The responsible Minister for a public authority's annual report is the Minister who has portfolio responsibility for legislation, or the part of legislation, that creates the public authority.

Public authorities not established or appointed by legislation will report to the Minister declared under proposed section 11 to be the responsible Minister.

These provisions do not apply to the Auditor-General. This reflects the fact that the Auditor-General reports direct to the Legislative Assembly, rather than to the Assembly through a Minister.

### **Clause 11 Declaration of responsible Minister for public authority**

Under this clause, the Chief Minister may declare in writing that a Minister is the responsible Minister for a public authority. This means the public authority

provides its annual report to that Minister, who is in turn responsible for presenting that report to the Legislative Assembly under clause 12.

The declaration made under this clause is a notifiable instrument.

The report of the Auditor-General is not covered by these arrangements as that report is provided direct to the Speaker under clause 13.

## **Part 4 Presentation of annual reports**

### **Clause 12 Responsible Minister to present annual report**

Under this clause, responsible Ministers must present annual reports to the Legislative Assembly within 3 months of the end of the financial year. The Chief Minister may direct that reports are to be presented on a stated day within that 3 month period. These directions are notifiable instruments.

Clause 12(4) provides for the presentation of annual reports when the Legislative Assembly is not sitting.

If there are no Legislative Assembly sitting days in the last 7 days of the 3 month period in which to provide reports, responsible Ministers must provide the Speaker with sufficient copies of annual reports for each Member of the Legislative Assembly. The Speaker must arrange for these copies to be provided to Members immediately. The proposed clause means the Speaker must arrange to provide reports to Members on the same day they are received from responsible Ministers.

Responsible Ministers must present reports to the Legislative Assembly on the next sitting day or, in election years, the second sitting day immediately after the general election subject to applications for extension of time to present reports under clause 13.

Clause 12 (6) permits the Deputy Speaker to receive and circulate reports in the absence of the Speaker, or the Clerk in the absence of both the Speaker and the Deputy Speaker.

These arrangements mean that reports can continue to be tabled in the Legislative Assembly during the late September sitting week. In years when there is no sitting week at this time (such as election years) reports must be provided to Members before the end of September. The practice is that once reports are presented to the Assembly, or provided to Members, they are also made available to the public.

### **Clause 13 Extension of time for presenting annual reports**

This clause provides for extensions for presenting annual reports to the Legislative Assembly. It reflects similar arrangements in section 12 of the 1995 Act but takes into account removal of the 10 week Ministerial presentation date.

The clause permits responsible Ministers to apply to the Chief Minister for extensions of time in which to present reports to the Legislative Assembly. Applications must be made in advance of the due date for reports and provide a statement of reasons for the failure to meet the reporting deadline. This statement must be presented to the Legislative Assembly before the original reporting deadline.

As a result of an application for extension, the Chief Minister may set a period in which the report is to be provided, or fix a date for presentation of the report to the Assembly. The responsible Minister must then comply with this requirement. If the Assembly is not sitting during this period, the out of session arrangements provided in clause 12 apply.

#### **Clause 14 Presentation of annual report of auditor-general**

This clause deals with the presentation of the Auditor-General's annual report to the Legislative Assembly within 3 months of the end of the financial year. The same arrangements for presentation of other annual reports in clause 12 apply except that the Auditor-General report is provided direct to the Speaker. This reflects the independent role of the Auditor-General and the direct reporting relationship to the Assembly.

The clause also permits the Auditor-General to request a later presentation time.

### **Part 5 Miscellaneous**

#### **Clause 15 Declaration of public authority**

Under this clause, the Minister declares entities to be public authorities for the dictionary included in the Act. Statutory office holders or an authority, tribunal, commission, council, board, institute, committee, organisation or other entity established under an Act may be declared to be public authorities and therefore subject to the reporting requirements in clause 6 and the annual report directions made under clause 8.

The declaration is a notifiable instrument.

#### **Clause 16 Combined reports**

Combined reports may be made where a person is required to provide more than one report for the same period under the Act. A combined report in these circumstances is taken to meet the requirements of the Act.

#### **Clause 17 Relationship to other laws**

This clause means that the Act, once it commences, applies in addition to requirements under other laws. Therefore, public authorities with reporting requirements under this Act and another law may prepare reports that comply with both laws. One law should not be taken to exclude the operation of the other.

### **Clause 18 Application of Act**

This clause sets out that the Act applies in relation to a financial year that ends after the commencement of the proposed section. As a result, if the substantive provisions of the Act commence before 30 June 2004, the Act will apply to reports due for the financial year ending 30 June 2004. This will permit annual report directions for the 2003-04 reporting year to reflect the new presentation arrangements.

As this requirement is needed only for the first year of operation, the proposed section expires on 1 July 2005.

## **Part 6 Amendments of sections 5 and 8 – human rights**

### **Clause 19 Application of pt 6**

This clause means that Part 6 has effect on commencement of the Human Rights Act 2004 so that human rights reporting obligations are not operative until the Human Rights Act commences.

### **Clause 20 Act, section 5(2)**

This clause provides a substitute section to operate once the Human Rights Act commences. The new section will include in proposed section 5 the additional requirement that chief executive annual reports include a statement describing the measures taken during the financial year to respect, protect and promote human rights.

### **Clause 21 Act, section 8(2)(da) and note**

This clause provides an additional paragraph in proposed section 8, which deals with annual report directions. The paragraph permits the making of an annual report direction to require that annual reports of public authorities include a statement describing the measures taken during the financial year to respect, protect and promote human rights.

### **Clause 22 Act, section 8(2)**

This clause provides for renumbering of paragraphs of proposed section 8 when the Act is republished.

### **Clause 23 Expiry of pt 6**

As part 6 provides transitional provisions to align operation of the Annual Reports (Government Agencies) Act with the Human Rights Act it will expire either the day after part 6 has effect or on 1 January 2005.

## **Part 7 Repeals and consequential amendments**

### **Clause 24 Act repealed**

This clause repeals the *Annual Reports (Government Agencies) Act 1995*. The new Act entirely replaces the 1995 Act.

### **Clause 25 Instruments repealed**

This clause repeals a number of instruments made under the 1995 Act. New instruments will be made under the new Act.

### **Clause 26 Auditor General Act 1996, new section 9A**

The Auditor-General is a reporting entity under the new Act as a result of inclusion in the dictionary definition of public authority. This resolves a possible ambiguity around the annual reporting requirements for the Auditor-General.

Clause 21 inserts a new section 9A in the *Auditor-General Act 1996*. This provides that the Auditor-General does not need to comply with the Annual Reports (Government Agencies) Act where he or she considers compliance would prejudice the independence of the office of Auditor-General. This limitation is relevant to the application of annual report directions to be made under proposed section 8.

### **Dictionary**

A number of terms used in the Act are defined in the dictionary.

Annual report is defined to mean the annual report of a chief executive; a public authority; or the public administration report (i.e. the report of the Commissioner for Public Administration).

Annual report direction is the direction made under proposed section 8.

Chief Executive annual reports are those reports made under proposed section 5.

Financial year in relation to chief executive annual reports is dealt with in section 5(3) and in relation to public authority reports in section 6(3).

The public administration report is the report of the Commissioner for Public Administration made under proposed section 7.

Public authority means a Territory instrumentality; a statutory office holder declared by the Minister under proposed section 15(1); an authority, tribunal, commission, council, board, institute, committee, organisation or other statutory body declared by the minister under proposed section 15(2); or the Auditor-General.

Public authority annual report refers to those reports made by public authorities under proposed section 6.

Responsible Ministers for the various reporting entities are identified by reference to proposed section 9 for chief executives and to proposed section 10 for public authorities. The responsible Minister for the Commissioner for Public Administration is the Chief Minister.

A reference to the Speaker relates to provisions in proposed section 12 relating to presentation of annual reports. Proposed section 12(6) states that references to the Speaker include the Deputy Speaker where the Speaker is



unavailable, or the clerk of the Legislative Assembly where both the Speaker and Deputy Speaker are unavailable.

Territory instrumentality is cross-referenced to the dictionary in the Legislation Act or means a Territory owned corporation.