

## Chapter 2

### Annual reports of agencies

2.1 The annual reports of the following agencies in the Attorney-General's portfolio were referred to the committee for examination and report during the period 1 May to 31 October 2016:

- Administrative Appeals Tribunal;
- Australian Law Reform Commission;
- Family Court of Australia;
- Australian Federal Police;<sup>1</sup>
- Commonwealth Director of Public Prosecutions;
- Australian Financial Security Authority; and
- Australian Information Commissioner.

2.2 As of 1 July 2015, there are no statutory agencies under the Immigration and Border Protection Portfolio.

#### Consideration of annual reports

2.3 The list of agencies that did not table their annual reports in the Senate during the period 1 May to 31 October 2016 is provided in the preface of this report. The committee will consider those annual reports in the *Report on Annual Reports (No. 2 of 2017)*.<sup>2</sup>

2.4 On this occasion, the committee has examined in more detail the reports of the Administrative Appeals Tribunal, due to significant changes in the agency during the reporting period, and the Office of the Australian Information Commissioner, which it has not examined before.

#### Administrative Appeals Tribunal

2.5 The Administrative Appeals Tribunal (AAT) is a statutory agency, established by the *Administrative Appeals Tribunal Act 1975*. The 2015–16 reporting period marked 40 years of operation for the AAT.

2.6 On 1 July 2015, in accordance with the *Tribunals Amalgamation Act 2015*, the Migration Review Tribunal (MRT), Refugee Review Tribunal (RRT) and Social Security Appeals Tribunal (SSAT) were amalgamated with the AAT.<sup>3</sup>

2.7 The AAT provides independent review of administrative decisions made by Australian Government ministers, departments and agencies, and, in limited

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1 Also stands referred to the Joint Committee on Law Enforcement.

2 See Preface, p. xi.

3 *Administrative Appeal Tribunal Annual Report 2015–16*, p. 10.

circumstances, by state and territory governments and non-government bodies. The AAT also reviews decisions made under Norfolk Island laws.<sup>4</sup>

2.8 The AAT annual report for 2015–16 was prepared in accordance with section 24R of the *Administrative Appeals Tribunal Act 1975* and section 46 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).<sup>5</sup> It was tabled in the Senate on 12 October 2016 and was therefore available for the Supplementary Budget Estimates hearings on 17 and 18 October 2016.<sup>6</sup>

### ***President's and Registrar's overviews***

2.9 The President's overview discussed the significant governance changes to the AAT in 2015–16, following the integration of the MRT, RRT and SSAT, including: an increase in staff numbers; a new senior management team and governance structure; and a new strategic plan for 2015–20.<sup>7</sup> The overview also summarised the AAT's membership and performance for the reporting period, and key developments in national and international engagement with like organisations.<sup>8</sup> The President finished his remarks with an outlook for 2016–17, including the implementation of a new protocol for member appointments and harmonising procedures for the amalgamated AAT.<sup>9</sup>

2.10 The Registrar's overview covered the operations of the AAT following amalgamation, including: staff consultation processes; consolidation of office locations; integration of IT networks and online service delivery; stakeholder engagement; and human resources, training and staffing costs. The Registrar's outlook for 2016–17 focused on a 'more integrated registry service' and a digital services strategy for the AAT.<sup>10</sup>

### ***Performance reporting***

2.11 Annual performance information for the AAT was well-presented and provided a 'clear read' when cross-checked with the Portfolio Budget Statement (PBS) and Corporate Plan. The presentation of performance criteria results closely matched the format recommended by the Department of Finance in *Resource Management Guide No. 135*,<sup>11</sup> listing each criterion with its source, and providing detailed discussion of how it was or was not achieved.<sup>12</sup>

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4 *Administrative Appeal Tribunal Annual Report 2015–16*, p. 10.

5 *Administrative Appeal Tribunal Annual Report 2015–16*, p. iii.

6 See Appendix 1.

7 *Administrative Appeal Tribunal Annual Report 2015–16*, pp. 2-3.

8 *Administrative Appeal Tribunal Annual Report 2015–16*, pp. 3-4.

9 *Administrative Appeal Tribunal Annual Report 2015–16*, pp. 4-5.

10 *Administrative Appeal Tribunal Annual Report 2015–16*, pp. 6-7.

11 Department of Finance, *Resource Management Guide No. 135: Annual reports for non-corporate Commonwealth entities*, Appendix A, pp. 37-8.

12 *Administrative Appeal Tribunal Annual Report 2015–16*, pp. 20-2.

2.12 Of the four performance criteria set for 2015–16, the AAT only failed to achieve Performance Criterion 1: Number of applications finalised. The following table sets out a comparison between the PBS deliverables for 2015–16 and the result for the period:

**Table 2.1—Performance Criterion 1**

<b>Deliverable</b>	<b>2015–16 Target<sup>13</sup></b>	<b>2015–16 Actual<sup>14</sup></b>
Number of applications finalised without a hearing	6,535	14,003
Number of applications finalised with a hearing	34,134	24,143
Total number of applications finalised	40,669	38,146

2.13 Variation between targets and actual results was related to the significant changes within the AAT following amalgamation.<sup>15</sup> The tribunal attributed the six per cent discrepancy in total number of applications finalised to reduced member appointments in the Migration and Refugee Division, and a lower-than-expected number of applications received relating to the National Disability Insurance Scheme. Furthermore, the variation between estimates in the two target categories (with a hearing/without a hearing) was attributed to the tribunal's anticipation that all finalisations in the Migration and Refugee Division and the Social Services and Child Support division would require a hearing.<sup>16</sup>

2.14 The committee commends the AAT for exceeding its targets regarding timeliness (Criterion 2) and judicial review (Criterion 2),<sup>17</sup> and for providing detailed information on the user feedback survey used to assess customer satisfaction (Criterion 4).<sup>18</sup>

### ***Financial performance***

2.15 The AAT reported total expenditure of \$133.9 million in 2015–16, with total revenue (including appropriations) of \$125.8 million. Excluding depreciation of \$7.4 million, the AAT reported a net deficit of \$0.7 million for the reporting period.<sup>19</sup>

13 *Portfolio Budget Statements 2015–16, Attorney-General's Portfolio*, p. 66.

14 *Administrative Appeal Tribunal Annual Report 2015–16*, p. 20.

15 *Administrative Appeal Tribunal Annual Report 2015–16*, p. 22.

16 *Administrative Appeal Tribunal Annual Report 2015–16*, pp. 20-1.

17 *Administrative Appeal Tribunal Annual Report 2015–16*, p. 21.

18 *Administrative Appeal Tribunal Annual Report 2015–16*, pp. 22, 39.

19 *Administrative Appeal Tribunal Annual Report 2015–16*, p. 23.

2.16 Funding for the AAT in 2015–16 was based on the existing funding models for the separate tribunals before amalgamation, including a 'demand-driven' funding model for MRT and RRT where funding was based on the number of actual reviews finalised: appropriations set in the PBS and Portfolio Additional Estimates Statements were based on finalising 18,000 decisions in the Migration and Refugee Division, while the actual result for the division was 16,111 in 2015–16.<sup>20</sup> This reduced caseload therefore resulted in reduced funding for the AAT.

### ***Conclusion***

2.17 The committee congratulates the AAT for clear reporting of the transitional period following the amalgamation with the MRT, RRT and SSAT.

2.18 The committee finds the annual report of the AAT to be 'apparently satisfactory'.

### **Office of the Australian Information Commissioner**

2.19 The Office of the Australian Information Commissioner (OAIC) is a statutory agency established under the *Australian Information Commissioner Act 2010*. The OAIC performs functions relating to privacy, freedom of information and information policy around government information.

2.20 The OAIC annual report for 2015–16 was prepared under sections 30, 31 and 32 of the *Australian Information Commissioner Act 2010*, and section 46 of the PGPA Act, and includes reporting under the *Freedom of Information Act 1982*. The report was tabled out of session on 31 October 2016 and was therefore not available for Supplementary Budget Estimates on 17 and 18 October 2016.<sup>21</sup>

### ***Commissioner's review***

2.21 The Australian Privacy Commissioner and Acting Australian Information Commissioner, Mr Timothy Pilgrim PSM, provided an overview of the work of the OAIC in the 2015–16 period,<sup>22</sup> following the reversal of a 2014–15 Budget measure to cease operation of the agency.<sup>23</sup> Themes included: the scope and diversity of personal information use in products and services; innovation in the social and economic potential of data; the Open Government Partnership; the implementation of efficiencies in freedom of information (FOI) administration; and the necessity of 'strategically-transparent' approaches to information management in businesses and agencies.<sup>24</sup>

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20 *Administrative Appeal Tribunal Annual Report 2015–16*, pp. 22-3, 64.

21 See Appendix 1.

22 *Office of the Australian Information Commissioner Annual Report 2015–16*, pp. 11-13.

23 *Portfolio Budget Statements 2015–16, Attorney-General's Portfolio*, p. 455.

24 *Office of the Australian Information Commissioner Annual Report 2015–16*, pp. 11-13.

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### ***Performance reporting***

2.22 In the overview of the annual report, infographics provided a visual representation of key results and statistics in the areas of FOI and privacy. The numbers of enquiries, complaints and notifications were compared with results from the previous two reporting periods, demonstrating a significant increase in all measures in 2015–16.<sup>25</sup>

2.23 In the performance statement of the annual report, KPIs were presented clearly and in accordance with the PGPA Rule guidelines. Each of the ten performance criteria groups was supported with reference to the PBS and Corporate Plan 2015–16, and a brief explanation was provided for how each target was met or unmet for the period.<sup>26</sup>

2.24 Three performance targets were not met in the reporting period: 80% of data breach notifications handled or escalated to Commissioner initiated investigations within 60 days (actual result 54.5%); 100% of privacy enquires finalised within 10 days (actual result 70% of written enquiries finalised within 10 days, 100% of phone enquiries finalised on day of call); and 100% of FOI enquiries finalised within 10 days (actual result 85% of written enquiries finalised within 10 days, 100% of phone enquiries finalised on day of call). These failures were explained by an increase in breach notifications and privacy and FOI enquiries, including a 34% increase in written enquiries. The OAIC explained that methods for managing these increases in future years were being evaluated.<sup>27</sup>

2.25 The performance criterion around staff survey results was not assessed in the annual report as data was not yet available.<sup>28</sup>

### ***Financial reporting***

2.26 The OAIC annual report did not include any in-text discussion of financial performance but did provide comprehensive explanatory notes in the annual financial statements.<sup>29</sup>

2.27 The total departmental expenses for the OAIC in 2015–16 were \$11.4 million, a decrease from \$13.4 million in 2014–15. The OAIC achieved a surplus of \$0.3 million in the reporting period.<sup>30</sup>

2.28 The change in depreciation and amortisation expenses from \$0.9 million in 2014–15 to \$0.5 million in 2015–16 was attributed to the closure of the Canberra

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25 *Office of the Australian Information Commissioner Annual Report 2015–16*, pp. 14-17.

26 *Office of the Australian Information Commissioner Annual Report 2015–16*, Table 1, pp. 31-5.

27 *Office of the Australian Information Commissioner Annual Report 2015–16*, pp. 32-5.

28 *Office of the Australian Information Commissioner Annual Report 2015–16*, p. 35.

29 *Office of the Australian Information Commissioner Annual Report 2015–16*, pp. 90-121.

30 *Office of the Australian Information Commissioner Annual Report 2015–16*, p. 95.

office and significant write-down of assets at 30 June 2015 in preparation for the closure of the OAIC that did not occur.<sup>31</sup>

### ***PGPA Rule mandatory requirements***

2.29 Section 17AG(4)(a) of the PGPA Rule requires an assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives. The Rule states that 'the content of the assessment is at the discretion of the accountable authority' but suggests that this may include workforce planning, staff retention, enterprise bargaining, training and development, work health and safety, and productivity gains.<sup>32</sup>

2.30 This item, although identified as mandatory, was marked as 'not applicable' in the OAIC's list of requirements,<sup>33</sup> which the committee believes is incorrect.

2.31 However, the committee is satisfied that the information provided in the human resources section of the annual report<sup>34</sup> broadly meets the requirements of Section 17AG(4)(a) and recommends that the list of requirements references similar content as such in future reports.

### ***Conclusion***

2.32 The committee congratulates the OAIC on a well-presented, visually-appealing and easy-to-read annual report and on its strong performance in the reporting period. However, it wishes to remind the OAIC of the need to fulfil and reference all mandatory requirements of the PGPA Rule when preparing annual reports.

2.33 The committee considers the annual report of the OAIC to be 'apparently satisfactory'.

## **Senator the Hon Ian Macdonald Chair**

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31 *Office of the Australian Information Commissioner Annual Report 2015–16*, pp. 95-6.

32 PGPA Rule, pp. 20-1.

33 *Office of the Australian Information Commissioner Annual Report 2015–16*, p. 174.

34 *Office of the Australian Information Commissioner Annual Report 2015–16*, pp. 79-83.