

Background to scrutiny of the ATO

- 2.1 This Chapter provides an overview of the ATO's external scrutiny, as well as some perspective through international comparisons. After describing the function and background of each scrutiny body, a comparison of their recent scrutiny of the ATO is undertaken. The topics considered are:
- the scrutineers
 - frequency and coverage of external scrutineer reports
 - international comparison
 - recent reviews of the ATO.

The scrutineers

- 2.2 The list of ATO scrutineers for the purposes of this inquiry include:
- the Australian National Audit Office (ANAO)
 - the Inspector-General of Taxation
 - the Commonwealth Ombudsman
 - joint and House committees
 - Senate Committees
 - courts and the Administrative Appeals Tribunal
- 2.3 The role and operations of each of these scrutineers is outlined below.

Australian National Audit Office

- 2.4 The ANAO undertakes performance audits and financial statement audits of Commonwealth public sector bodies. This is a core function, and was established by the fourth Act to be passed by the Commonwealth Parliament in 1901. The ANAO provides independent reports and advice for the Parliament, the Australian Government and the community. Its

overall aim is to improve Commonwealth public sector administration and accountability.¹

- 2.5 The Auditor-General is an independent officer of the Parliament. Section 8 of *The Auditor-General Act 1997* states that this officer has ‘complete discretion in the performance or exercise of his or her functions or powers’ and ‘is not subject to direction from anyone’ as to audit selection, the conduct of audits, and priorities.
- 2.6 The ANAO can set its own work program, but it outlines a consultative, risk based approach on its website:
- The ANAO adopts a consultative approach to its forward audit program, which takes account of the priorities of the Parliament, as advised by the Joint Committee of Public Accounts and Audit, the views of entities and other stakeholders. The program aims to provide a broad coverage of areas of public administration and is underpinned by a risk-based methodology.²
- 2.7 The ANAO has extensive powers. For example, it can compel the provision of information and can gain access to classified government information.
- 2.8 The ANAO’s audits of the ATO’s financial statements are similar to those for other agencies. These are not considered in this inquiry because they have been specifically excluded in the inquiry’s terms of reference.
- 2.9 The ANAO’s performance audits look into the non-financial performance of government entities and programs. They assess whether administration has been carried out economically, efficiently, effectively, and in accordance with any requirements.³
- 2.10 Recently, the ANAO has begun inviting public submissions to some inquiries. For example, it has invited public contributions to its current review of myGov.
- 2.11 Staff of the ANAO come from varied backgrounds. Many have experience in program or financial management in the Australian Public Service. Those who audit financial statements tend to be qualified auditors.⁴
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1 Australian National Audit Office (ANAO), ‘About us’, <<https://www.anao.gov.au/about/auditor-general-and-office#about-office>> viewed 7 April 2016.

2 ANAO, ‘Auditor-General and the Office’, <<https://www.anao.gov.au/about/auditor-general-and-office>> viewed 7 April 2016.

3 ANAO, ‘A reflection of how far performance auditing has come from its roots in the 1970s to where we are today and where we are heading’ <<https://www.anao.gov.au/work/speech/reflection-how-far-performance-auditing-has-come-its-roots-1970s-where-we-are-today-and>> viewed 12 April 2016.

4 ANAO, ‘Careers’, <<https://www.anao.gov.au/careers>> viewed 9 April 2016.

The Inspector-General of Taxation

- 2.12 The Inspector-General of Taxation was established in 2003 to review, and make recommendations to government on, systems established by the ATO to administer the tax laws, including systems for communicating with the public or with particular people or organisations.⁵ Its original purpose was 'to strengthen the advice the government received about tax administration and process ... with a focus on improving the operation of the tax administration system'.⁶
- 2.13 Establishment of the Inspector-General followed complaints about the ATO's administration of mass marketed investments schemes and the business activity statement, which was part of the New Tax System.⁷
- 2.14 There was a consultation process managed by the Board of Taxation, and widespread support from tax practitioner groups, before the legislation was introduced. The Board's report recommended that the Inspector-General should represent the perspective of taxpayers.⁸
- 2.15 From 1 May 2015, the investigative powers of the Commonwealth Ombudsman in relation to individual tax matters were transferred to the Inspector-General. The rationale was:
- Issues surrounding taxation laws can be complex and specialised. This complexity is compounded as the administration of the taxation laws is scrutinised by both the Inspector-General and the Ombudsman. By concentrating expertise about taxation administration issues, taxpayers are provided with a dedicated body to investigate and handle complaints about all taxation matters.⁹
- 2.16 In deciding on its work program, the Inspector-General has a great deal of independence. He can be directed to conduct a review by the Minister (that is, the Treasurer or Assistant Treasurer), but although he may be requested to conduct a review by the Parliament, the Tax Practitioners

5 Inspector-General of Taxation (IGT), 'History', <<http://igt.gov.au/about-us/history/>> viewed 7 April 2016.

6 Board of Taxation, *Consultations on Inspector-General of Taxation*, media release, 29 May 2002, <<http://taxboard.gov.au/publications-and-media/media-release/consultations-on-inspector-general-of-taxation/>> viewed 7 April 2002.

7 CPA Australia, *Submission 10*, p. 2; Inspector-General of Taxation, *Submission 23*, p. 21.

8 S Dudley, *Inspector-General of Taxation Bill 2002*, Bills Digest No. 53 2002–03, Parliamentary Library, p. 1; Board of Taxation, *Inspector-General of Taxation: A Report to the Minister for Revenue and Assistant Treasurer*, July 2002, p. vi.

9 *Explanatory Memorandum*, Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014, p. 32, available at <<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr5389%22>> viewed 7 April 2016.

Board or the Commissioner of Taxation he does not have to comply with that request. An earlier requirement to consult with the ANAO and the Ombudsman has recently been removed.¹⁰

- 2.17 In practice, to determine which reviews will best reflect community concern and generate the greatest improvements to tax administration, he continues to confer with the ANAO and also confers with tax practitioners through their industry associations; this Committee; the government; the Treasury and the ATO.¹¹
- 2.18 The Inspector-General has considerable powers in requesting information, including the power to require tax officials to give evidence under oath or affirmation. There are criminal penalties including imprisonment for tax officials who do not provide documents he requests.¹²
- 2.19 The staff of the Inspector-General are tax specialists with qualifications in law and/or accounting, often with experience in tax administration or tax practice.

The Commonwealth Ombudsman

- 2.20 While the Ombudsman's role in handling complaints about tax administration has been transferred to the Inspector-General, the Ombudsman still has a role in examining complaints about the ATO in relation to public interest disclosure and freedom of information. The Office can also examine complaints about the Inspector-General.
- 2.21 The Ombudsman has wide ranging coercive powers. He or she can, for example, obtain a file or policy documents from an agency or interview an individual under oath. He or she can override secrecy provisions in other legislation, the privilege against self-incrimination and official use of legal professional privilege.¹³

10 *Inspector-General of Taxation Act 2003*, <<https://www.legislation.gov.au/Details/C2015C00236>> paragraph 8, viewed 9 April 2016.

11 IGT, 'Our Work Program', <<http://igt.gov.au/our-reviews/our-work-program/>> viewed 8 April 2016.

12 *Inspector-General of Taxation Act 2003*, <<https://www.legislation.gov.au/Details/C2015C00236>> paragraph 15, viewed 9 April 2016; for an explanation, see K Swoboda and L Nielson, *Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014*, Bills Digest No. 75, 2014–15, Parliamentary Library, 2015, pp. 13–14.

13 Commonwealth Ombudsman, 'Work Practices Manual – June 2014', <<http://www.ombudsman.gov.au/publications/ombudsman-policies>> viewed 9 April 2016.

Joint and House committees

- 2.22 The Joint Committee of Public Accounts and Audit (JCPAA) played an important role in tax administration. Its precursor, the Joint Committee of Public Accounts (JCPA), conducted the first major review of the self-assessment system in 1993 with its report *An Assessment of Tax*, which had 148 recommendations. The JCPAA conducted another extensive review in 2008, during which it commenced biannual hearings with the ATO.¹⁴
- 2.23 The JCPAA continued the hearings into tax administration, on an annual or biannual basis, until 2013. This role has been taken over by the House Standing Committee on Tax and Revenue, this Committee. Its pattern has been to hold biannual hearings into the ATO's annual report, and to conduct inquiries referred to it by the Treasurer.
- 2.24 Parliamentary committees comprise government and non-government members. They have the power to require people to appear before them and to produce documents. They investigate, among other things, questions of government administration and service delivery. The JCPAA can self-refer inquiries, but House of Representatives standing committees can only examine policy issues by referral from the House or a Minister. House committees can inquire into the annual reports of agencies and ANAO reports into agencies which have been referred to them by the Speaker.¹⁵
- 2.25 Staff of parliamentary committees tend to be policy generalists. Committee reports are usually not technical, but are often informed by the views of experts.
- 2.26 The JCPAA consists of Members and Senators and is established by the *Public Accounts and Audit Committee Act 1951*. The purpose of the JCPAA is essentially to hold Commonwealth agencies to account for the lawfulness, efficiency and effectiveness with which they use public monies.¹⁶ The JCPAA regularly examines ANAO reports and holds agencies to account for implementing ANAO recommendations. House committees occasionally do this too.

14 JCPA, *Report 326: An Assessment of Tax*, November 1993; JCPAA, *Report 410: Tax Administration*, June 2008.

15 House of Representatives, *Standing Orders*, <http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/House_of_Representatives_Standing_Orders> p. 85, viewed 9 April 2016.

16 JCPAA, 'Role of the Committee', <http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Accounts_and_Audit/Role_of_the_Committee> viewed 9 April 2016.

Senate Committees

2.27 According to the Senate website:¹⁷

The role of committees is to investigate and to draw attention to what they find. They throw 'light in dark corners' and give advice. ... The Senate may refer a particular matter to a committee because the matter warrants detailed examination, because the Senate wants information to be collected, or because it wants to hear views on the matter. These tasks are more easily undertaken by a small group of senators rather than by the Senate as a whole.

2.28 There are paired legislation and references committees for each of eight subject areas. In particular, the Senate Economics Committee has general oversight of Treasury and tax matters. The Senate has also created select committees to review tax issues. The Select Committee on a New Tax System reported in 1999 and the Select Committee on Scrutiny of New Taxes issued its reports in 2011. Both of these committees focussed on tax policy, rather than administration.

2.29 An important duty of the legislation committees is the scrutiny of proposed government expenditure in Estimates hearings:

Public hearings are held at which the relevant Senate ministers, together with senior officials from the organisations whose estimates are being examined, appear before the committees to explain expenditure proposals and to answer questions concerning the effectiveness and efficiency of various programs. An observer from the Department of Finance and Deregulation also attends each committee hearing.

2.30 Legislation committees also inquire into any bills referred to them, and into the annual reports of agencies for which they are responsible. These inquiries often include submissions from the public and public hearings

2.31 Senate references committees inquire into various matters referred to them by the Senate. The scope of inquiries and their terms of reference may range from the very broad and comprehensive to the specific. Examination can require evaluation of policy areas and assessment of implementation within and across allocated portfolios.

17 The material in this section is taken from Senate Brief No. 4, 'Senate Committees', <<http://www.aph.gov.au/Home/About%20Parliament/Senate/Powers%20practice%20n%20procedures/Senate%20Briefs/Brief04>> viewed 9 April 2016.

Courts and the Administrative Appeals Tribunal

2.32 Although they are not a focus of the inquiry, taxpayers can hold the ATO to account by appealing a decision of the ATO to the courts or the Tribunal (AAT). In the first instance, the ATO is scrutinised in the sense of whether it wins or loses a case. Scrutiny can be extended if the court comments on the ATO's conduct. The Institute of Public Affairs provided the Committee with examples of where the judiciary has adversely commented on how the ATO has managed litigation:

Governance at the ATO is so poor that it felt quite unconstrained by the courts. In the case, *Commissioner of Taxation v Indooroopilly Children Services (Qld) Pty Ltd*, at least two Federal judges were highly critical of the ATO's conduct ...

As Justice Richard Edmonds has subsequently noted, '... a proposition such that the Commissioner [of Taxation] does not have to obey the law as declared by the courts until he gets a decision that he likes was astonishing ...'¹⁸

2.33 The Committee has previously noted positive judicial comments about the ATO in its inquiry into tax disputes.¹⁹

2.34 The ATO can also use the courts to hold taxpayers to account through enforcement action such as garnishee orders, departure prohibition orders, and company wind-ups.

2.35 Greenwoods noted that the courts and AAT provide a specialised form of scrutiny. Although not commonly used, it can set important precedents for how the ATO operates:

Of course, these bodies are not the means for comprehensive or systematic oversight of the ATO but they do constrain its activities both in the (few) matters which are litigated but more importantly in the way that precedent sets standards for the ATO's future behaviour and administrative actions.²⁰

2.36 An obvious barrier to taxpayers being able to approach the courts or AAT is cost. Ernst & Young advised that taxpayers can self-represent at the AAT. Ernst & Young also noted that it is difficult to prove maladministration in court.²¹

18 Institute of Public Affairs, *Submission 11*, p. 4.

19 House of Representatives Standing Committee on Tax and Revenue, *Tax Disputes*, March 2015, p. 46.

20 Greenwoods & Herbert Smith Freehills, *Submission 8*, p. 3.

21 Ernst & Young, *Submission 7*, p. 9.

- 2.37 An advantage of the courts and the AAT is that they are independent of the government of the day and the parties in a dispute.

Summary

- 2.38 A profile of ATO scrutineers is summarised in Table 2.1.
- 2.39 What is apparent from the table is how different the external scrutineers are. These include:
- some make policy recommendations, while others do not
 - the statutory scrutineers operate within the ATO, with access to detailed data, while parliamentary committees work at a distance and rely more on public submissions and witness testimony
 - different interests are represented, including the Parliament, taxpayers, the House and the Senate
 - expertise varies across audit, tax, mediation, and general public policy and administration.
- 2.40 Perhaps the best utilisation of this expertise is when the scrutineers cooperate. This occurs when parliamentary committees follow-up scrutineer reports, such as the JCPAA's work with ANAO reports. This was further covered in the Review of Australia's Future Tax System (AFTS), discussed below.

Frequency and coverage of external scrutineer reports

- 2.41 Appendix D includes a list of external scrutineer reports from 2010 to 2015, and also shows current or completed inquiries in 2016.
- 2.42 The heaviest volume of scrutiny comes from the ANAO and the Inspector-General of Taxation, who average approximately five and four reports a year respectively. The ANAO has the widest range of topics of the scrutineers. Its reports are not limited to tax administration but also cover the ATO's corporate operations and issues that do not directly affect taxpayers. Examples are the 2011 report on ATO shopfronts, the 2013 report on the ATO's property portfolio, and the current audit on meeting revenue targets in budget measures. The Inspector-General's reports focus on interactions between taxpayers and the ATO.

Table 2.1 Profile of ATO scrutineers

Scrutineer	Role	Analysis method	Inquiry origins	Information sources	Policy recs
ANAO	Performance audit, which relates to an agency's operations generally.	Audit standards set by Auditor-General. Staff may be auditors or program managers	Self refers. Seeks comment from Parliamentary committees on a work program. Considers Parliament's audit priorities set by JCPAA.	Access to agency premises. Recently, has invited private submissions.	No
Inspector-General (IGT)	Tax administration, including systemic issues. Has handled tax complaints from 1 May 2015.	None specified. Staff have tax expertise.	Self-refers. In practice, uses industry consultations. Before 1 May 2015, required to consult with the Auditor-General and Ombudsman annually.	Powers as per the Ombudsman. Publishes discussion papers to prompt submissions.	Sometimes
Ombudsman (for tax admin matters, now IGT)	Handled tax administration complaints up to 30 April 2015. Still handles other complaints re the ATO.	None specified. Staff have complaints expertise and often use mediation.	Investigations can be complaints-based or on the Ombudsman's own motion	Power to request information and the provision of documents.	No
T&R, JCPAA and other House C'ees	Flexible. Often defined in inquiry terms of reference.	None specified. Parliamentarians set direction. Staff are policy generalists.	JCPAA has a general self-referral power. House committees can self-refer inquiries into annual reports and audit reports. Ministers or the House can refer policy inquiries.	Public submissions and hearings.	Often
Senate C'ees	Flexible. Often defined in inquiry terms of reference.	None specified. Parliamentarians set direction. Staff are policy generalists.	Senate	Public submissions and hearings.	Often
Courts and the AAT	Adjudicate disputes between taxpayers and the ATO	Make findings of facts. Interpret the law.	Passive. Cases brought by the parties.	Passive. Information brought by the parties.	No

Source Auditor-General Act 1997; Inspector-General of Taxation Act 2003; Ombudsman Act 1976; Public Accounts and Audit Committee Act 1951; House of Representatives, Standing Orders as at 26 March 2015; Senate, Standing Orders as at August 2015.

- 2.43 The volume of Ombudsman's reports is much lower. The Ombudsman issued two reports specifically in relation to the ATO in 2010 and then covered the ATO in the general report on complaints management across government in 2014. From 2014, the Ombudsman also published a short document summarising tax complaints, but this could not be considered detailed scrutiny in the same sense as the 2010 reports.
- 2.44 The JCPAA and the House Tax Committee have conducted annual or biannual hearings with the ATO, along with occasional inquiries into specific matters. These specific inquiries have become more frequent with the creation of this Committee in 2013. The Senate Economics Committee has also scrutinised the ATO.

International comparisons

- 2.45 In its submission, the Law Council of Australia provided a comparative analysis of the oversight arrangements of revenue agencies in Australia, the United Kingdom, Canada and New Zealand. The Committee has supplemented the Law Council's information with information on the United States, and some material on public accounts committees. The material is presented in Table 2.2.
- 2.46 The five countries have broadly similar scrutiny arrangements, but with notable differences. The US Treasury Inspector General of Tax Administration has a similar oversight role to the Australian Inspector-General. However, he issued 92 audit reports in the year to September 2015, a much higher number than his Australian counterpart. The US office differs from the Australian one in that it also investigates tax crime and oversees the administration of the Internal Revenue Service (IRS) in some detail. On the other hand, it does not investigate individual complaints.
- 2.47 All countries have an Auditor-General (in the US, the Government Accountability Office). The Canadian Auditor-General publishes approximately 15 performance audits annually, compared with 50 for the ANAO, so the proportion of reports about the tax agencies in the two jurisdictions are similar. The US Government Accountability Office put out 17 reports specifically about the Internal Revenue Service (as well as a few reports about broader administrative matters that involved the IRS) in the year to September 2015. This was a much smaller proportion of its whole report tally than for Australia and Canada. The UK National Audit Office also has to cover issues that the States and Territories would cover in Australia, so it is less directly comparable.

Table 2.2 Comparative analysis of oversight of the revenue agencies in Australia, the United Kingdom, Canada, New Zealand and the United States

	Australia	United Kingdom	Canada	New Zealand	United States
Revenue agency	Australian Taxation Office	HM Revenue and Customs	Canada Revenue Agency	Inland Revenue Department	Internal Revenue Service
External performance reviews	ANAO (2 in 2015, 6 in 2014, 5 in 2013) Inspector-General of Taxation (4 in 2015, 8 in 2014, 1 in 2013)	National Audit Office (2 in 2015, 3 in 2014, 4 in 2013) Also does general annual reviews.	Office of the Auditor-General of Canada (2 in 2015, 1 in 2014, 3 in 2013)	Controller and Auditor-General (1 in 2015, 1 in 2014, 0 in 2013)	Government Accountability Office (17 reports in year to Sept 2015) Treasury Inspector General for Tax Administration (92 reports year to Sept 2015)
Service complaints by taxpayers	Inspector-General	The Adjudicator's Office Parliamentary & Health Service Ombudsman (requires MP referral)	Taxpayer's Ombudsman Privacy Commissioner	Ombudsman	Taxpayer Advocate Service within IRS; separate annual report to Congress about systemic IRS issues
Parliamentary inquiries into agency's annual report	Biannual hearings of the House Tax Committee Senate Estimates	Commons, Treasury Select Committee	No	Finance and Expenditure Committee (brief inquiry in 2014)	Annual Senate Finance Committee hearings on the budget request for the IRS
Parliamentary inquiries into tax administration	Senate Standing Committee on Economics (2 in 2016) House Tax Committee (1 in 2016, 2 in 2015) JCPAA (1 in 2015)	Lords Select Committee on Economic Affairs (1 in 2012) Commons, Treasury Select Committee (1 in 2016, 1 in 2012) Public Accounts Committee (4 in 2015, 3 in 2014, 7 in 2013)	None recently (last one in 2006) Public Accounts Committee (0 in 2015, 1 in 2014, 3 in 2013)	None recently	Senate Finance Committee (2 in 2015, 1 current) Joint Committee on Taxation: reviews sample of returns each year House Committee on Ways and Means: continuing oversight; annual review of performance at tax time
Miscellaneous inquiries	No	No	A 2013 inquiry by the Privacy Commissioner	No	No
Research on tax and fiscal policy	Parliamentary Budget Officer	Office for Budget Responsibility Office for Tax Simplification	Parliamentary Budget Officer	A two-year Taxpayers Simplification Panel established	Congressional Budget Office
Management board	No	Yes	Yes	No, but some internal boards	Yes

Source Adapted from Law Council of Australia, Submission 9, Appendix 1 and websites of public accounts committees. The Canadian Public Accounts Committee holds hearings and publishes agency action plans in relation to Auditor-General reports, but does not issue reports for its own inquiries.

- 2.48 All of the countries have a complaints agency for taxpayers. The US Taxpayer Advocate Service is an independent body located within the IRS; it also reports separately to the House oversight and Government Reform Committee, largely about systemic issues in the IRS.
- 2.49 Parliamentary scrutiny is strongest in the UK, where the Public Accounts Committee is active; and in the US, where there are very active Senate and House Committees: a Senate Finance Committee inquiry into the IRS's processing of applications for tax-exempt status by 'political advocacy' organisations took two years and produced a report in four volumes, totalling approximately 5000 pages, in August 2015; and the House Committee on Ways and Means has published six statements critical of the IRS so far this year. Annual report inquiries mainly occur in Australia, the UK and the US.
- 2.50 All countries have a public agency or process to conduct research on tax/fiscal policy. Finally, the revenue agencies in the US, UK and Canada have a management board. This is not external scrutiny in the sense of an independent statutory agency, but does form part of the accountability framework. The IRS Oversight Board in the US currently does not have a quorum.
- 2.51 In summary, the oversight of the ATO seems similar to that of comparable jurisdictions.

Recent reviews of the ATO

The AFTS Review

- 2.52 The Review into Australia's Future Tax System (AFTS) focussed on tax policy, rather than administration. However, it did make some comment relevant to this inquiry.
- 2.53 In relation to the general performance of the ATO, the Review noted ATO data that 86 per cent of individuals and 90 per cent of businesses considered that the ATO was doing a good job. The Review also noted the 2008 report of the JCPAA on tax administration, which commented that the ATO was regarded internationally as a leading tax authority.²²
- 2.54 On tax administration, the Review concentrated on the role and accountability of the ATO. The Review found that, over time, the ATO has become larger, better resourced, and taken on more functions. However,

22 AFTS, *Report to the Treasurer, Part Two, Detailed Analysis, volume 2 of 2*, December 2009, p. 650.

the statutory independence of the Commissioner had meant that the ATO was subject to less oversight by a minister and, therefore, less parliamentary scrutiny.²³

- 2.55 A number of accountability institutions had been built up to address this problem. These included the ANAO, the Ombudsman, the Inspector-General of Taxation, Senate committees and the JCPAA. The Review came to the conclusion that the complexity of the tax system made it difficult for parliamentarians to oversee the ATO. Of note for this inquiry was the Review's concern about possible overlap between the Ombudsman and Inspector-General. This was because both officials interacted with taxpayers and responded to taxpayer concerns, although in different ways.
- 2.56 The review made four recommendations to improve the accountability mechanisms of the ATO:
- an advisory board be established for the ATO
 - the role of the Inspector-General should be clarified so that it focusses on tax administration issues for business
 - the government should ensure that the external scrutineers are properly resourced, ie the ANAO, the Ombudsman and the Inspector-General
 - the JCPAA should follow-up implementation of the reports of the Ombudsman and the Inspector-General.

The Capability Review

- 2.57 In 2010, the Department of Prime Minister and Cabinet released *Ahead of the Game: Blueprint for the Reform of Australian Government Administration*. It recommended that the Australian Public Service Commission (APSC) assess the capability in key agencies. The aim was to raise the capability of key agencies, as well as the public service overall.²⁴ The agencies scheduled for review were all the departments of state, as well as three others: the ATO, the Australian Bureau of Statistics, and the Australian Customs and Border Protection Service.
- 2.58 The leaders for each review comprised three people with extensive public and private sector experience; two were external to the public service and one a serving high-level SES officer seconded from another agency.

23 The remainder of this discussion is from AFTS, *Report to the Treasurer, Part Two, Detailed Analysis, volume 2 of 2*, December 2009, pp. 660-64.

24 APSC, *Capability Review: Australian Taxation Office*, May 2013, p. v.

2.59 Fieldwork for the ATO's review was conducted between January and May 2013. The Commission finalised the report in May 2013 and the Government released it in December 2013.

2.60 The ATO's capability review found that the agency had a strong track record in implementing new tax law and managing the tax and superannuation systems. It also found that the ATO had historically been a world leader in tax administration with many innovations. However, its pace of innovation had started to slow and tax administrations in other countries were overtaking it, especially in electronic services.²⁵

2.61 The ATO was in need of transformational change.²⁶ The review summarised its culture as follows:

The prevailing culture in the ATO is one of collaboration, professionalism, technical accuracy and integrity of process. When taken to the extreme, this culture results in what review participants almost universally described as risk aversion. A cultural predisposition to avoid rather than appropriately manage risk manifests as:

- elevation of decision making
- protracted processes of internal consultation and debate that delay outcomes
- a feeling of disempowerment at all levels
- perceived lack of support for staff if a mistake is made.²⁷

2.62 The APSC identified five key priority areas for the ATO to address:

- developing a forward-looking, enterprise-wide strategy
- developing better IT efficiency and agility and doing more discretionary work that could support innovations to simplify the system for taxpayers
- implementing cultural change to ensure that staff at the front line understood the mission and purpose of the organisation and reducing the emphasis on technical capability in favour of softer skills
- simplifying internal governance, ensuring that guidance is practical and that internal committees have authority to make decisions
- improving external relations.²⁸

25 APSC, *Capability Review: Australian Taxation Office*, May 2013, pp. 5-6.

26 APSC, *Capability Review: Australian Taxation Office*, May 2013, p. 5.

27 APSC, *Capability Review: Australian Taxation Office*, May 2013, pp. 6-7.

28 APSC, *Capability Review: Australian Taxation Office*, May 2013, pp. 8-14.

- 2.63 In relation to the ATO's internal governance, the Commission stated that the ATO was 'in the fortunate position of receiving extensive external scrutiny'.²⁹
- 2.64 Following the reviews, agencies developed and implemented action plans and the Commission announced its intention to conduct a smaller follow-up review (a health check) to identify what improvements had occurred. The ATO informed the Committee of its progress in addressing the priority areas at the biannual hearings and published a series of implementation updates, with the final update in April 2015. The ATO stated that it 'had made considerable progress against each of those [five priority] areas'³⁰ However, there is no publicly available information in relation to its health check.

29 APSC, *Capability Review: Australian Taxation Office*, May 2013, p. 13.

30 ATO, *ATO capability action plan: Final Report – April 2015*, April 2015, p. 5.

