

CHAPTER 3

REPORTS ON THE OPERATION OF ACTS AND PROGRAMS

3.1 Standing Order 25(20) does not require that consideration of reports include 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. However, as on previous occasions, the committee has chosen to examine the following reports:

- Report to the Attorney-General on the results of inspections of records under section 55 of the *Surveillance Devices Act 2004* (inspections finalised between 1 July – 31 December 2012); and
- Report pursuant to section 440A of the Migration Act on the conduct of Refugee Review Tribunal reviews not completed within 90 days for the period 1 November 2012 to 28 February 2013 (published by the Refugee Review Tribunal).

Report to the Attorney-General on the results of inspections of records under section 55 of the *Surveillance Devices Act 2004*

3.2 Subsection 55(1) of the *Surveillance Devices Act 2004* (SD Act) requires the Commonwealth Ombudsman (Ombudsman) to inspect the records of each law enforcement agency to determine the extent of their compliance with the SD Act. Under subsection 6(1) of the SD Act, 'law enforcement agency' is defined as including the Australian Crime Commission (ACC), the Australian Federal Police (AFP), the Australian Commission for Law Enforcement Integrity (ACLEI), state and territory police forces, and other specified state and territory law enforcement agencies.¹ Section 61 of the SD Act requires the Ombudsman to report to the relevant minister (the Commonwealth Attorney-General) at six-monthly intervals on the results of each inspection. Each report covers inspections that are finalised within the reporting period and inspection results are considered finalised once the Ombudsman's internal report to the agency is completed and the agency has been provided the opportunity to comment on findings.²

3.3 The report reviewed by the committee covers the inspections finalised between 1 July and 31 December 2012, and examines the ACC, the AFP and the Victoria Police. The report is informative and well-presented. It includes the objective and scope of the inspections³ in addition to detailed inspection results outlining the

1 *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2013, p. 1.

2 *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2013, p. 1.

3 *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2013, p. 2.

progress made since the previous report and the issues that arose from the inspection, for each law enforcement agency examined during the reporting period.

3.4 The objective of the inspection is to determine the extent of compliance with the Act by agencies and their law enforcement officers, using the following criteria to assess compliance:

1. Were applications for warrants and authorisations properly made?
2. Were warrants and authorisations properly issued?
3. Where surveillance devices used lawfully?
4. Were revocations or warrants properly made?
5. Were records properly kept and used by the agency?
6. Were reports properly made by the agency?⁴

3.5 Based on the criteria provided, the inspection found the ACC to be compliant with the SD Act. However, four instances of non-compliance were identified. These instances concerned occasions where a requirement to specify the nature of the authorisation sought in relation to verbal applications for tracking device authorisations was not met during the inspection, and the agency did not meet the destruction requirements under subsection 46(1)(b).⁵

3.6 The Ombudsman's report to the ACC suggested that measures be taken to ensure sufficient information is recorded when making verbal applications for tracking device authorisations to meet the requirements of the SD Act. The ACC subsequently advised that it has updated its templates to include a prompt for applicants to detail the nature of the authorisation sought.⁶ The ACC self-disclosed that protected information obtained under 15 warrants was retained longer than the authorised timeframe without the chief officer's certification and as a result the ACC did not meet the requirements under section 46(1)(b)(ii) of the SD Act in these instances.⁷

3.7 The AFP was assessed as compliant with the SD Act. There were two exceptions: where the AFP did not notify the Attorney-General of extraterritorial surveillance activities, and the AFP did not meet the destruction requirements under subsection 46(1)(b).⁸

4 *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2013, p. 2.

5 *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2013, p. 4.

6 *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2013, p. 5.

7 *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2013, p. 6.

8 *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2013, p. 3.

3.8 The AFP has advised that it will update existing procedures to address the issues resulting in non-compliance to ensure that in future, the Attorney-General is notified of extraterritorial surveillance in a timely manner under section 42(6) of the SD Act.⁹ Additionally, the Ombudsman identified 32 instances of retaining protected information longer than the authorised timeframe without the required certification from the Commissioner of the AFP.¹⁰ Further to this, on the 27 June 2012 the AFP advised that the protected information pertaining to the 32 records had been destroyed or retained with the Commissioner's certification and that retention and destruction procedures have been updated to ensure they meet the requirements under the SD Act.¹¹

3.9 No recommendations were made to the law enforcement agencies examined in the report as a result of the inspections carried out by the Ombudsman.

Report pursuant to Section 440A of the Migration Act on the conduct of Refugee Review Tribunal reviews not completed within 90 days

3.10 Section 440A of the *Migration Act 1958* (Migration Act) requires the Refugee Review Tribunal (RRT) to report on the conduct of reviews not completed within 90 days. The RRT is required to report every four months. The report reviewed by the committee covers the period 1 November 2012 to 28 February 2013.

3.11 The table below sets out the number of RRT reviews completed within various timeframes (for example, within or outside of the reporting period, and if within the reporting period, within or outside of the 90 day decision-making period), as well as the corresponding statistics that were recorded for the previous two reporting periods.¹²

3.12 The average processing time for reviews completed during the reporting period (either within or outside the 90 day decision period) was 155 days for the

9 *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2013, p. 8.

10 *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2013, p. 8.

11 *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2013, p. 8.

12 *Report pursuant to section 440A of the Migration Act on the conduct of Refugee Review Tribunal reviews not completed within 90 days for the period 1 November 2012 to 28 February 2013*, p. 1; *Report pursuant to section 440A of the Migration Act on the conduct of Refugee Review Tribunal reviews not completed within 90 days for the period 1 July 2012 to 31 October 2012*, p. 1; *Report pursuant to section 440A of the Migration Act on the conduct of Refugee Review Tribunal reviews not completed within 90 days for the period 1 March 2012 to 30 June 2012*, p. 1.

period 1 November 2012 to 28 February 2013 compared to a similar result of 148 days for the previous reporting period of 1 July 2012 to 31 October 2012.¹³

	1 March 2012 to 30 June 2012	1 July 2012 to 31 October 2012	1 November 2012 to 28 February 2013
Number of RRT reviews decided <i>outside</i> of the 90 day decision-making period	847 (or 74% of 1,147 reviews)	720 (or 66% of 1,083 reviews)	838 (or 66% of 1,265 reviews)
Number of RRT reviews decided <i>within</i> the 90 day decision-making period (or RRT had no jurisdiction)	300 (or 26% of 1,147 reviews)	363 (or 34% of 1,083 reviews)	427 (or 34% of 1,265 reviews)
Total number of RRT reviews completed during the reporting period	1,147	1,083	1,265
Total number of RRT reviews incomplete after the 90 day decision-making period and at the end of the reporting period	642 (or 43% of 1,501 active reviews on hand at 30.06.12)	816 (or 36% of 2,279 active reviews on hand at 21.10.12)	1,416 (or 53% of 2,664 active reviews on hand at 28.02.13)
Total number of RRT reviews on hand at the end of the reporting period.	1,501	2,279	2,664

3.13 The Migration Review Tribunal (MRT) and Refugee Review Tribunal (RRT) has maintained a KPI target of 70 per cent of RRT cases decided within 90 calendar days during the last three reporting periods.¹⁴

13 Report pursuant to section 440A of the Migration Act on the conduct of Refugee Review Tribunal reviews not completed within 90 days for the period 1 November 2012 to 28 February 2013, p. 1; Report pursuant to section 440A of the Migration Act on the conduct of Refugee Review Tribunal reviews not completed within 90 days for the period 1 July 2012 to 31 October 2012, p. 1.

14 Migration Review Tribunal - Refugee Review Tribunal Annual Report 2012–13, p. 15.

3.14 The committee notes that the percentage of RRT reviews completed within the decision period of 90 days has increased to 34 per cent for the two most recent reporting periods, compared to 26 per cent for the period 1 March to 30 June 2012, yet remains below the MRT-RRT's KPI target of 70 per cent.

3.15 Common reasons attributed to reviews completed within the reporting period but not within the 90 day decision-making period for the report covering 1 November 2012 to 28 February 2013 were: applicant/adviser related; compliance with statutory procedural requirements; third party responsibility; and tribunal responsibility.¹⁵

3.16 The committee notes that the total number of RRT reviews that remain on hand at the end of the reporting period has significantly increased over the course of time from the period 1 March 2012 to 28 February 2013. Comparatively, the percentage of RRT reviews not completed at the end of the reporting period has fluctuated, and in the most recent report, comprised 53 per cent of the active reviews on hand at 28 February 2013. Reasons attributed to the delays were similar to those provided earlier, for reviews completed within the reporting period but not within the 90 day decision-making period.

3.17 RRT reviews involving applicants in detention and irregular maritime arrivals (IMAs) are given highest priority. Approximately 69 per cent of reviews of applicants in detention and 59 per cent of IMA reviews were decided within 90 days during the reporting period 1 November 2012 to 28 February 2013.¹⁶

3.18 The report identified the challenge for the tribunals in balancing priorities across the RRT and MRT caseloads, both of which have grown significantly from previous years.¹⁷

**Senator the Hon Ian Macdonald
Chair**

15 *Report pursuant to section 440A of the Migration Act on the conduct of Refugee Review Tribunal reviews not completed within 90 days for the period 1 November 2012 to 28 February 2013.*

16 *Report pursuant to section 440A of the Migration Act on the conduct of Refugee Review Tribunal reviews not completed within 90 days for the period 1 November 2012 to 28 February 2013.* p. 1.

17 *Report pursuant to section 440A of the Migration Act on the conduct of Refugee Review Tribunal reviews not completed within 90 days for the period 1 November 2012 to 28 February 2013.* p. 1.

