The Senate

Legal and Constitutional Affairs Legislation Committee

Annual reports (No. 2 of 2011)

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PREFACE

Terms of reference

On 29 September 2010, a resolution of the Senate allocated the following portfolios to the Senate Standing Committee on Legal and Constitutional Affairs:

- Attorney-General's portfolio; and
- Immigration and Citizenship portfolio.

This report was prepared pursuant to Standing Order 25(20) relating to the consideration of annual reports by committees. The Standing Order states:

> Annual reports of departments and agencies shall stand referred to the 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 is 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.

Annual reporting requirements

Standing Order 25(20)(f) requires that committees 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.

Pursuant to subsections 63(2) and 70(2) of the *Public Service Act 1999*, departments of state and executive agencies must prepare annual reports in accordance with the *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, (the Requirements for Annual Reports). As a matter of policy, the Requirements for Annual Reports also apply to prescribed agencies under section 5 of the *Financial Management and Accountability Act 1997* (FMA Act).[1]

Orders made by the Minister under section 48 of the *Commonwealth Authorities and Companies Act 1997* (CAC Act) set out guidelines for the annual reports of Commonwealth authorities. The content of annual reports of Commonwealth companies is based on the reporting requirements under the *Corporations Act 2001*, in accordance with section 36 of the CAC Act.

Statutory authorities must also report in accordance with their establishing legislation.

Guidelines for the annual reports of non-statutory bodies are set out in the Government Response to recommendations of the then Senate Standing Committee on Finance and Government Operations, in its report entitled *Reporting Requirements for the Annual Reports of Non-Statutory Bodies*. The Government Response was incorporated into the Senate Hansard of 8 December 1987.[2]

'Apparently satisfactory'

Under the terms of Standing Order 25(20)(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.

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1 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 23 June 2010, Part 1, subsection 3(1).

2 *Official Senate Hansard*, 8 December 1987, pp 2643-2645.

The reports examined by the committee in this report were found to be of a satisfactory standard, adequately describing the functions, activities, performance and financial positions of the departments and agencies. The committee finds all submitted annual reports to be 'apparently satisfactory'.

Timeliness

Under Standing Order 25(20)(c), the committee must also report to the Senate on any lateness in the presentation of annual reports.

In accordance with the *Requirements for Annual Reports* published in June 2010, agencies are required to present:

> A copy of the annual report...to each House of the Parliament on or before 31 October in the year in which the report is given. If Senate Estimates is scheduled to occur prior to 31 October, it is best practice for annual reports to be tabled prior to those hearings.
>
> …
>
> Where an agency's own legislation provides a timeframe for its annual report, for example "within six months" or "as soon as practicable after 30 June in each year", that timeframe applies.[3]

If a department is unable to meet this deadline, the secretary of that department is to advise the responsible Minister of the reasons for the delay and the expected tabling date. The responsible Minister is to table this explanation in the Parliament on the next available sitting day.[4]

Subsection 9(1) of the CAC Act requires the director of a Commonwealth authority to:

> (a) prepare an annual report in accordance with Schedule 1 for each financial year; and
> (b) give it to the responsible Minister by the deadline for the financial year for presentation to the Parliament.
>
> …
>
> (2) The deadline is:
> (a) the 15th day of the 4th month after the end of the financial year; or
> (b) the end of such further period granted under subsection 34C(5) of the *Acts Interpretation Act 1901*.

Under section 36 of the CAC Act:

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3 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports,* 23 June 2010, Part 1, section 4.

4 Department of the Prime Minister and Cabinet, *Guidelines for the Presentation of Government Documents to the Parliament,* Canberra, July 2008, p. 5.

> (1) A Commonwealth company must give the responsible Minister:
> (a) a copy of the company's financial report, directors' report and auditor's report that the company is required by the *Corporations Act 2001* to have for the financial year (or would be required by that Act to have if the company were a public company); and
> (b) any additional report under subsection (2); and
> (c) in the case of a wholly-owned Commonwealth company— any additional information or report required by the Finance Minister's Orders.
>
> (1A) The Commonwealth company must give the reports and information by:
> (a) if the company is required by the *Corporations Act 2001* to hold an annual general meeting—the earlier of the following:
>
> (i) 21 days before the next annual general meeting after the end of the financial year;
> (ii) 4 months after the end of the financial year; and
> (b) in any other case—4 months after the end of the financial year; or the end of such further period granted under subsection 34C(5) of the *Acts Interpretation Act 1901*.

In the absence of any specific provision, the *Acts Interpretation Act 1901* requires bodies to present annual reports to ministers within 6 months after the end of the period reported upon (subsection 34C(2)), and ministers must table reports within 15 sitting days after receipt.

A table listing the annual reports of departments and agencies tabled in the Senate (or presented out of session to the President of the Senate) between 1 November 2010 and 30 April 2011, and which have been referred to the committee for examination, can be found at Appendix 1.[5] Also included in this table, is the date each report was tabled in the House of Representatives.

Although the annual reports of FMA Act bodies examined in this report missed the 31 October 2010 tabling deadline for the Senate, the committee notes that a number of reports were tabled in the House of Representatives before that date. The committee further notes that the annual reports of the Australian Crime Commission and the Migration Review Tribunal and Refugee Review Tribunal were tabled in both Houses of Parliament on 24 November 2010 and 16 November 2010, respectively, and hopes to see more timely tabling of future reports.

In accordance with best practice, as outlined in the Requirements for Annual Reports, the committee encourages bodies to table annual reports before the supplementary budget estimates hearings in October each year.[6]

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5 This table also includes the reports on the operation of acts or programs which have been referred to the committee.

6 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 23 June 2010, Part 1, Section 4.

Requirement for non-reporting bodies to report

In accordance with Standing Order 25(21)(h), the committee is required to report on bodies which do not present an annual report to the Senate and which should present such a report.

On this occasion, the committee makes no recommendation for any organisation not presenting an annual report to do so.

CHAPTER 1

ANNUAL REPORTS OF STATUTORY AUTHORITIES

1.1 The reports of the following statutory authorities for the financial year 2009-10 were referred to the committee for examination and report.

Attorney-General's Portfolio

- Audio-Visual Copyright Society Limited (Screenrights)
- Australian Crime Commission
- Australian Customs and Border Protection Service
- Australian Human Rights Commission
- Commonwealth Director of Public Prosecutions
- Commonwealth Ombudsman
- Copyright Agency Limited
- Insolvency and Trustee Service Australia

Immigration and Citizenship Portfolio

- Migration Review Tribunal and Refugee Review Tribunal

1.2 As in previous reports of the committee, it has decided to select a small number of annual reports for closer examination. On this occasion, the reports of the following agencies will be examined:

- Australian Customs and Border Protection Service;
- Australian Human Rights Commission;
- Insolvency and Trustee Service Australia; and
- Migration Review Tribunal and Refugee Review Tribunal.

1.3 The committee has determined to consider, but not report on, the annual report of the Australian Crime Commission, as the Parliamentary Joint Committee on Law Enforcement has specific responsibility for overseeing this agency.

1.4 The annual report of the Commonwealth Ombudsman also stands referred to the Senate Finance and Public Administration Legislation Committee and, as this body sits within the Prime Minister and Cabinet Portfolio, the committee has also determined to consider, but not to report on, this annual report.

Australian Customs and Border Protection Service (Customs)

1.5 The annual report of Customs was tabled in the Senate on 16 November 2010 and in the House of Representatives on 28 October 2010. The Minister received the report on 7 October 2010 and satisfied the legislative requirement of presenting the report in each House of Parliament within 15 sitting days of receipt.

1.6 The report includes a list of requirements,[1] now mandatory under the Requirements for Annual Reports, which assisted the committee in its examination of the report. The report closely adheres to the Requirements.

1.7 Customs has again presented an impressive report which provides the Parliament with a useful and detailed description of performance and achievements for the year under review. Performance information was presented for the five programs which contribute to the agency outcome, and also against each of the six border risks which the agency manages: terrorism; irregular movement of people; biosecurity; prohibited, restricted or regulated goods; unlawful activity in Australia's maritime zone; and revenue.

1.8 In his review, the Chief Executive Officer highlighted a number of achievements for 2009-10, including the delivery of an effective maritime security program that successfully deterred illegal foreign fishing in Australia's northern waters and maintained an effective on-water interception response to maritime people smuggling. Other achievements included the prevention of an extensive range of prohibited, restricted or regulated goods entering Australia; the facilitation of travel by processing of over 26 million international passengers with an average of 97.9% of inwards passengers processed within 30 minutes of joining the queue; and the facilitation of trade by processing air and sea cargo in internationally competitive release times.[2]

1.9 Following the examination of last year's annual report, which highlighted the development of the risk-based approach to cargo intervention, the committee was interested in the results of its implementation.[3] This year's report outlined the implementation of the Cargo Intervention Strategy which resulted in a move from mass screening to an intelligence-led, risk-based approach to intervention. It was explained that under the refined system all air and sea cargo will continue to be risk-assessed electronically. Cargo identified as high-risk will be subject to physical examination.[4]

1.10 The report noted:

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1 *Australian Customs and Border Protection Service Annual Report 2009-10*, pp 230-233.

2 *Australian Customs and Border Protection Service Annual Report 2009-10*, pp xi-xii.

3 *Legal and Constitutional Affairs Legislation Committee, Annual Reports (No. 2 of 2010)*, p. 2.

4 *Australian Customs and Border Protection Service Annual Report 2009-10*, p. 25.

> Despite considerably reduced intervention across all streams, we maintained a comparable detection rate against 2008-09 detections, although there was a decline in the overall weight of drugs detected in sea cargo during 2009-10.[5]

1.11 The committee notes the financial performance of Customs this year included an operating surplus of $4.5 million. This compares to an operating deficit of $11.8 million for 2008-09.[6]

1.12 The committee commends Customs for the high standard of design and presentation of this year's report. Particular features which the committee notes, include clear layout and overall design, and the use of tables and graphs to assist in presenting information. The committee considers the annual report of Customs for 2009-10 to be 'apparently satisfactory'.

Australian Human Rights Commission (AHRC)

1.13 The annual report of the AHRC for 2009-10 was tabled in the House of Representatives on 28 October 2010 and in the Senate on 16 November 2010. The report was tabled promptly after receipt by the Minister on 26 October 2010.

1.14 Early in the report, ten key achievements for the year are listed and summarised. These include the launch of the *2009 Social Justice Report*, the Human rights consultation and framework, assisting in the creation of the National Congress of Australia's First Peoples, and the launch of the *Gender Equality Blueprint 2010*.[7]

1.15 The committee was once again disappointed to note that, although performance information was provided, it was not always evaluated against key performance indicators as presented in the Portfolio Budget Statements (PBS) 2009-10 for the agency. For example, performance information in relation to website usage and distribution of publications indicated that targets were exceeded in both areas. However, the report does not note the results as compared to the targets.[8] The report incorrectly refers the reader to Appendix 1 for further information. The correct appendix is Appendix 2, and provides a breakdown of the website usage, but no reference to performance targets.[9]

1.16 Another key performance indicator in the PBS for 2009-10 relates to the customer/stakeholder survey to rate the effectiveness of major educational and promotional activity, with an 80% target rate as effective. The results of this survey could not be located in the report.

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5 *Australian Customs and Border Protection Service Annual Report 2009-10*, p. 22.

6 *Australian Customs and Border Protection Service Annual Report 2009-10*, p. 126.

7 *Australian Human Rights Commission Annual Report 2009-10*, pp 8-9.

8 *Australian Human Rights Commission Annual Report 2009-10*, p. 22.

9 *Australian Human Rights Commission Annual Report 2009-10*, p. 143.

1.17 Conversely, performance information in relation to complaints handling was well set out, with results presented against performance standards. The report notes that assisting in the resolution of complaints about discrimination and breaches of human rights is a core function of the agency. All performance targets in relation to complaints handling were exceeded for 2009-10.[10] The report also includes detailed breakdown of statistics on the different categories of complaints received, which provides useful background.[11]

1.18 The Commission's financial statements indicated that the agency again ran at an operating deficit of $614,000.[12] The committee could not locate any discussion on financial performance for the year under review within the body of the report.

1.19 The report generally follows the Requirements for Annual Reports. However, the committee was disappointed to note again this year that a list of requirements with an index of page references was not included. The committee has suggested previously, when it was not a mandatory item, the inclusion of a compliance index as an accountability device and to assist in examination of the report. It is now a mandatory item under the Requirements for Annual Reports issued in June 2010, which were applicable to this annual report of the AHRC. The Requirements state:

> The List of Requirements must be included as an appendix to the annual report. If an item specified in the checklist is not applicable to an agency, it should be reported as not applicable rather than omitted from the list. Agencies should include a column indicating the location of the information in the annual report.[13]

1.20 The committee considers the AHRC annual report 2009-10 to be 'apparently satisfactory', but does express concern about its overall quality and accuracy. The committee hopes to see relevant omissions corrected in the AHRC's next annual report.

Insolvency and Trustee Service Australia (ITSA)

1.21 While the annual report of ITSA for 2009-10 was not tabled in the Senate until 16 November 2010, the committee notes that it was tabled in the House of Representatives on 28 October 2010. The report was submitted to, and received by, the Minister on 12 October 2010.

1.22 The committee was pleased to note that, in examining the annual report against the list of requirements under the Requirements for Annual Reports, all mandatory items were included in the report and a number of suggested items were

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10 *Australian Human Rights Commission Annual Report 2009-10*, p. 99.

11 *Australian Human Rights Commission Annual Report 2009-10*, pp 74-90.

12 *Australian Human Rights Commission Annual Report 2009-10*, p. 107.

13 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports*, 23 June 2010, p. 33.

also included.[14] The report includes an index to the 'list of requirements'[15] which referenced page numbers in the report. However, the index contains incorrect page number references for nearly all the items listed and appears to be a copy of the index from last year's annual report. The committee considers this to be an unfortunate error, in addition to some other minor editing oversights,[16] which detract from the overall quality of the report.

1.23 The Chief Executive's review outlines areas of change and renewal within the agency during the year under review, as well as the provision of key statistics. Some areas of note include the smooth implementation of a new business structure on 1 July 2009, and the publication of a vision statement embodying the core values and aspirations of the organisation.[17]

1.24 Also noted in the Chief Executive's review was ITSA's close working relationship with the Attorney-General's Department to progress the implementation of the new Personal Properties Securities regime, where ITSA will assume operational responsibility for the Personal Properties Securities Register and the associated Contact Centre to be established in Adelaide.[18]

1.25 The Chief Executive reported an overall marginal increase of 0.07% in total activity under the *Bankruptcy Act 1966* for 2009-10 from the previous year. These responsibilities comprise bankruptcies, debt agreements and personal insolvency agreements. It was further noted that this is the fourth consecutive year of growth.[19]

1.26 Performance information is thorough and well presented. In some instances, data from the previous year (or years) is included to provide trend information. The discussion of the performance results is informative and concise, without focussing excessively on the detail of activities performed in achieving results.[20]

1.27 For some programs, the performance discussion includes a brief case study or case studies. The committee found these useful to illuminate some of the processes in which the agency is involved.

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14 See, for example, sections on suggested items: names of senior executives and their responsibilities, pp 13-14; the social justice and equity impact p. 56; policy and practices on the establishment and maintenance of appropriate ethical standards p. 63.

15 *Insolvency and Trustee Service Australia Annual Report 2009-10*, pp 157-158.

16 See, for example, incorrect page number references, *Insolvency and Trustee Service Australia Annual Report 2009-10*, pp 63 and 135.

17 *Insolvency and Trustee Service Australia Annual Report 2009-10*, p. 10.

18 *Insolvency and Trustee Service Australia Annual Report 2009-10*, p. 10.

19 *Insolvency and Trustee Service Australia Annual Report 2009-10*, p. 10.

20 *Insolvency and Trustee Service Australia Annual Report 2009-10*, pp 17-47.

1.28 In the section on Client Service, the committee notes that general complaints have increased from 409 in 2008-09 to 456 in 2009-10. It was further noted that, of these, 338 were considered either justified or partially justified. The report explains that 'general complaints' concerned service delivery standards, as distinct from complaints about the way in which debtors became bankrupt, which is outside ITSA's control.[21] While the committee acknowledges that the large increase in recent years is attributed to a new complaints and compliments management system which was rolled out during 2007-08,[22] it nonetheless notes the continued rise in general complaints during the most recent financial year.[23]

1.29 Last year's annual report identified the time taken to deal with complaints as an area for improvement in 2009-10. In that report, it was noted that 55% of complaints were resolved in 14 days and over 18% of complaints took in excess of 150 days to finalise.[24] It was disappointing that the 2009-10 report did not appear to follow up on this particular issue. The committee will continue to monitor this issue in future reports.

1.30 On a more positive note, the committee notes that compliments about the quality of service provided by ITSA employees increased slightly to 228 in 2009-10, from 215 for the previous year.[25]

1.31 The committee considers the annual report of ITSA to be 'apparently satisfactory'.

Migration Review Tribunal (MRT) and Refugee Review Tribunal (RRT)

1.32 The report of the MRT-RRT was tabled in both the Senate and the House of Representatives on 16 November 2010. The Principal Member was questioned on this matter by the committee during the supplementary budget estimates 2010-11 hearings on 19 October 2010:

> **Senator BARNETT**—Firstly, based on your statement here, your annual report is to be lodged next month. What is the reason for the delay?
>
> **Mr O'Brien**—As you know, Senator, last year we managed to table our report before the hearing of this committee. The process associated with the election was the main delay factor in getting our financial statements approved by the minister and so forth. That was the main contributor.

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21 *Insolvency and Trustee Service Australia Annual Report 2009-10*, p. 53.

22 *Insolvency and Trustee Service Australia Annual Report 2008-09*,

23 54 in 2005-06; 23 in 2006-07; 62 in 2007-08.

24 *Insolvency and Trustee Service Australia Annual Report 2008-09*, p.

25 *Insolvency and Trustee Service Australia Annual Report 2009-10*, p. 54. The committee notes that the figure for the total number of compliments received in 2008-09, referred to in the current report as '58', is incorrect and the correct figure as listed in the 2008-09 annual report is 215.

> **Senator BARNETT**—We try and have these reports in advance of estimates so that we can then talk and ask questions about the reports. That is our objective; you are aware of that?
>
> **Mr O'Brien**—Yes, I understand that.[26]

1.33 As noted in the Preface to this report, the committee hopes to see a more timely tabling of the annual report in the future.

1.34 There was an increase in lodgements and in the number of cases decided by the combined tribunals in 2009-10. Case decisions increased from 8,229 in 2008-09 to 9,737 in 2009-10 (the largest number of cases since 2005-06[27]). Eighteen per cent more cases were decided by the tribunals in comparison to the previous year.[28]

1.35 The committee was pleased to note that the percentage of tribunal decisions taken to judicial review declined in 2009-10. The report notes that judicial review applications were lodged in relation to 7.7 per cent of tribunal decisions in 2009-10, compared to 13.2 per cent of decision made in 2008-09.[29]

1.36 The Principal Member's report on the tribunals' operations for 2009-10 provides a good account of what is described as a 'challenging year'. In addition to the increase in overall workload, it was also reported that there were significant changes to the composition of the MRT lodgements and the representation of source countries for the RRT caseload. The Principal Member addressed these challenges:

> To respond to the increasing volume and shifting composition of the tribunals' caseload we have developed strategies, underpinned by extensive analysis of the caseload, to allocate cases to members in a way that makes the most efficient and effective use of member resources. In 2009–10 the target was to allocate 10,000 cases for the year and, in the end, 9,428 cases were allocated to members. This result was affected by the need to reallocate cases from 21 members who were not reappointed for a further term.[30]

1.37 The performance section is clearly laid out with results presented against targets set for key performance indicators and deliverables.[31] This section of the report articulates the strategies which have been implemented in response to the growth in the MRT caseload, which includes:

> [I]mproved case management training for members; increasing the opportunities for members to specialise, recognising that appropriate

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26 *Committee Hansard*, 19 October 2010, p. 10.

27 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2009-10*, p. 10.

28 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2009-10*, p. 10.

29 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2009-10*, p. 11.

30 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2009-10*, p. 11.

31 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2009-10*, p. 25.

> specialisation can improve the timeliness, quality and consistency of decision-making; increased use of batching cases with like issues to enhance efficiency; and more regular feedback on performance for members, including closer monitoring of and reporting on older cases.[32]

1.38 The tribunals' financial performance for 2009-10 is also discussed in this section of the report. A net loss of $4.6 million was recorded for the financial year.[33]

1.39 The report also includes a detailed breakdown of caseload statistics which provides useful background.[34]

1.40 The report is attractively presented with good design and a clear and concise style. It closely follows the Requirements for Annual Reports and presents a good account of the year under review. The committee considers the report to be 'apparently satisfactory'.

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32 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2009-10*, p. 25.

33 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2009-10*, p. 26.

34 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2009-10*, pp 23-33.

CHAPTER 2

REPORTS ON THE OPERATION OF ACTS AND PROGRAMS

2.1 Standing Order 25(20) does not provide for the consideration of 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. 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 s55 of the *Surveillance Devices Act 2004*, November 2010 (published by the Commonwealth Ombudsman);
- Protection Visa Processing taking more than 90 days for the reporting period 1 March to 30 June 2010 (published by the Department of Immigration and Citizenship);
- Protection Visa Processing taking more than 90 days for the reporting period 1 July to 31 October 2010 (published by the Department of Immigration and Citizenship);
- Report Pursuant to Section 440A of the Migration Act on the conduct of Refugee Review Tribunal review not completed within 90 days for the period 1 March to 30 June 2010 (published by the Department of Immigration and Citizenship); and
- Report Pursuant to Section 440A of the Migration Act on the conduct of Refugee Review Tribunal review not completed within 90 days for the period 1 July to 31 October 2010 (published by the Department of Immigration and Citizenship).

Report under the *Surveillance Devices Act 2004*

2.2 The *Surveillance Devices Act 2004* (the Act) regulates the use of surveillance devices by law enforcement agencies.[1] Subsection 55(1) of the Act requires the Commonwealth Ombudsman to inspect the records of each law enforcement agency to determine the extent of compliance with the Act by the agency and its law

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1 Under subsection 6(1), the term 'law enforcement agency' includes the Australian Crime Commission, the Australian Federal Police, the Australian Commission for Law Enforcement Integrity, and specified state and territory law enforcement agencies. If any of these agencies utilise the provisions of the Act, the Ombudsman is required to inspect records relating to that use. See further Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, November 2010, p. 1.

enforcement officers. Under section 61 of the Act, the Ombudsman is required to report to the Minister at six-monthly intervals on the results of each inspection.[2]

2.3 The inspections conducted by the Ombudsman were limited to those warrants and authorisations that had expired or been revoked during the inspection periods.[3]

2.4 This report relates to inspections of records for the following agencies for the time period indicated:

- Australian Crime Commission (ACC) (1 January 2009 to 30 June 2009);
- Australian Federal Police (AFP) (1 January 2009 to 30 June 2009); and
- Corruption and Crime Commission (WA) (1 July 2008 to 30 June 2009).

2.5 The Ombudsman advised of a number of non-compliance issues which were detected during the inspections and resulted in one recommendation being made with regard to each of the agencies. The Ombudsman also recognised the importance the agencies place on compliance with the Act and their efforts to implement the recommendations made through this process.[4]

2.6 The inspection of records for the ACC found that requirements under the Act had not been satisfied in relation to dual applications (the practice of combining applications for surveillance devices and the use of telecommunication intercepts under the Act and the *Telecommunication (Interceptions and Access) Act 1979*). The ACC accepted the Ombudsman's findings and is addressing this issue.[5]

2.7 The Ombudsman also raised concerns about the ACC's practice of obtaining new surveillance device warrants to retrieve devices which could have been retrieved under the authority of the original surveillance device warrant or under a retrieval warrant. The ACC did not accept the Ombudsman's position on this issue.[6]

2.8 The committee is pleased to note that the Ombudsman noted a high level of compliance with the Act for the AFP. However, concerns were raised with regard to the issue of applications for extensions or variations of a warrant, and the requirement that this can only be done by the original applicant or someone acting on their behalf.

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2 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, November 2010, p. 1.

3 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, November 2010, p. 2.

4 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, November 2010, p. 2.

5 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, November 2010, p. 2.

6 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, November 2010, p. 2.

In a number of instances, the AFP was found to be non-compliant with this requirement, and is addressing this issue.[7]

2.9 The Ombudsman noted that this was the first inspection of records for the WA Corruption and Crime Commission. This inspection involved examination of records relating to one warrant and it was found that 'procedures were well documented and record keeping was of a high standard.'[8] The only issue raised concerned the requirement to report the details of the extension of warrants to the Minister, which did not occur with regard to the warrant. The ACC accepted the Ombudsman's recommendation that future Ministerial reports contain information relating to the extension and variations of a device warrant or authorisation.[9]

Protection visa processing taking more than 90 days

2.10 Section 65A of the Migration Act imposes a requirement for the Minister to make a decision on a protection visa application within 90 days of the lodgement of the application. If this target is exceeded, under section 91Y of the Act, the Secretary of the Department of Immigration and Citizenship is required to report on protection visa applications for which decision making has taken over 90 days. The department is required to report every four months. The reports reviewed by the committee cover the period 1 March to 31 October 2010.

2.11 The table below compares protection visa processing by the department taking more than 90 days for the three previous reporting periods:

	1 November 2009 to 28 February 2010	**1 March 2010 to 30 June 2010**	**1 July 2010 to 31 October 2010**
Total number *undecided* outside of 90 day period	789	1147	1561
Total number *decided* outside of 90 day period	623	926	1091
Total number processed outside of 90 day period	**1412**	**2073**	**2652**

7 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, November 2010, p. 3.

8 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, November 2010, p. 3.

9 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, November 2010, p. 3.

Percentage of total applications processed outside of 90 day period	24%	35%	43%

2.12 The committee notes a significant increase in both the total number, and percentage, of protection visa applications processed outside of the 90 day period over the last two reporting periods. The committee also notes that, according to the report, the number of delays attributable to the department has also risen for the last two reporting periods.[10]

Refugee Review Tribunal reviews not completed within 90 days

2.13 Section 440A of the Migration Act requires the Refugee Review Tribunal (RRT) to report on reviews not completed within 90 days. The RRT is required to report every four months. The reports reviewed by the committee covers the period 1 March to 31 October 2010.

2.14 The table below outlines the number of RRT reviews not completed within 90 days for the previous three reporting periods:

	1 November 2009 to 28 February 2010	**1 March 2010 to 30 June 2010**	**1 July 2010 to 31 October 2010**
Reviews completed *outside* of 90 days	219 (32%)	201 (26%)	190 (23%)
Reviews completed *within* 90 days	468 (68%)	574 (74%)	636 (77%)
Total	**687**	**775**	**826**

Senator Trish Crossin
Chair

10 *Protection visa processing taking more than 90 days for the reporting period 1 March 2010 to 30 June 2010*, page 2 of the letter of transmittal; *Protection visa processing taking more than 90 days for the reporting period 1 July 2010 to 31 October 2010*, page 2 of the letter of transmittal.

APPENDIX 1

Reports tabled during the period 1 November 2010 and 30 April 2011 and referred to the committee

Department/authority/ Operation of an act or program	Date submitted to Minister/Date received by Minister	Date tabled in Senate (received in Senate out of session)	Date tabled in the House of Reps
Attorney-General's Portfolio			
Department/authority			
Aboriginal and Torres Strait Islander Social Justice Commissioner – Native Title Report for 2010	No legislative requirement to table	1.3.11	10.2.11
Aboriginal and Torres Strait Islander Social Justice Commissioner – Social Justice Report for 2010	21.1.11/21.1.11	1.3.11	10.2.11
Audio-Visual Copyright Society Limited (Screenrights) – Report for 2009-10	19.1.11/19.1.11	9.2.11	9.2.11
Australian Crime Commission – Report for 2009-10	19.11.10/19.11.10	24.11.10	24.11.10
Australian Customs and Border Protection Service – Report for 2009-10	7.10.10/7.10.10	16.11.10	28.10.10
Australian Human Rights Commission – Report for 2009-10	26.10.10/26.10.10	16.11.10	28.10.10
Commonwealth Director of Public Prosecutions – Report for 2009-10	14.10.10/14.10.10	16.11.10	28.10.10
Commonwealth Ombudsman – Report for 2009-10	26.10.10/26.10.10	15.11.10 (1.11.10)	15.11.10
Copyright Agency Limited – Report for 2009-10	16.12.10/16.12.10	9.2.11	9.2.11
Insolvency and Trustee Service Australia – Report for 2009-10	12.10.10/12.10.10	16.11.10	28.10.10

Operation of an act or program			
Australian Federal Police Act 1979 – Report for 2009-10 on the Ombudsman's activities under Part V of the Act	No ministerial approval required to table	9.2.11	9.2.11
Bankruptcy Act 1966 – Report for 2009-10 on the operation of the Act	12.10.10/12.10.10	16.11.10	28.10.10
Crimes Act 1914 – Authorisations for the acquisition and use of assumed identifies – Australian Customs and Border Protection Service – Report for 2009-10	3.2.11/4.2.11	1.3.11	24.2.11
Crimes Act 1914 – Report for 2009-10 on Ombudsman's activities in monitoring controlled operations conducted by Australian Crime Commission and Australian Federal Police	30.11.10/7.3.11	23.3.11	23.3.11
Criminal Code Act 1995 – Control orders and preventative detention orders – Reports for 2009-10	8.10.10/8.10.10	9.2.11	25.11.10
National Security Information (Criminal and Civil Proceedings) Act 2004 – Non-disclosure and witness exclusion certificates – Report for 2009-10	8.10.10/8.10.10	9.2.11	25.11.10
Surveillance Devices Act 2004 – Commonwealth Ombudsman's report on inspections of surveillance device records for the period 1 January to 30 June 2009 – Australian Crime Commission and Australian Federal Police; and Corruption and Crime Commission (WA) for 2008-09	1.12.10/1.12.10	2.3.11	2.3.11
Surveillance Devices Act 2004 – Report for 2009-10 on the operation of the Act	22.12.10/22.12.10	23.3.11	23.3.11
Telecommunications (Interception and Access) Act 1979 – Report for 2009-10 on the operation of the Act	21.12.10/21.12.10	23.3.11	23.3.11
War Crimes Act 1945 – Report for 2009-10 on the operation of the Act	11.10.10/11.10.10	15.11.10 (4.11.10)	15.11.10

Immigration and Citizenship Portfolio			
Department/authority			
Migration Review Tribunal and Refugee Review Tribunal – Report for 2009-10	22.10.10/9.11.10	16.11.10	16.11.10
Migration Act 1958			
Section 486O – Assessment of detention arrangements – Personal identifiers 600.10 to 610.10 -Commonwealth Ombudsman's reports -Government response to Ombudsman's reports	8.11.10/9.11.10	17.11.10	17.11.10
Section 486O – Assessment of detention arrangements – Personal identifiers 611.10 to 619.10 -Commonwealth Ombudsman's reports -Government response to Ombudsman's reports	3.2.11/3.2.11	9.2.11	9.2.11
Section 91Y – Protection visa processing taking more than 90 days – Report for the period 1 March to 30 June 2010	13.8.10/13.8.10	16.11.10	16.11.10
Section 440A – Conduct of the Refugee Review Tribunal reviews not completed within 90 days – Report for 1 March to 30 June 2010	13.8.10/13.8.10	16.11.10	16.11.10
Section 91Y – Protection visa processing taking more than 90 days – Report for the period 1 July to 31 October 2010	4.3.11/7.3.11	22.3.11	22.3.11
Section 440A – Conduct of the Refugee Review Tribunal reviews not completed within 90 days – Report for the period 1 July to 31 October 2010	4.3.11/7.3.11	22.3.11	22.3.11