CHAPTER 3

REPORTS ON THE OPERATION OF ACTS AND PROGRAMS

3.1 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 section 55 of the *Surveillance Devices Act 2004* (inspections finalised between 1 July – 31 December 2011);
- 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 2011 to 29 February 2012 (published by the Refugee Review Tribunal); 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 March 2012 to 30 June 2012 (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' covers the Australian Crime Commission (ACC), the Australian Federal Police (AFP), the Australian Commission for Law Enforcement Integrity (ACLEI), state and territory police forces, as well as other specified state and territory law enforcement agencies.[1] The report reviewed by the committee covers the period between 1 July to 31 December 2011, and examines the ACC, the AFP and the Victoria Police Special Projects Unit.

3.3 The Ombudsman's inspections found these agencies complied with the SD Act and had a strong compliance culture, with a high standard of record keeping. The AFP and the ACC were found to have significantly improved their standard of record-keeping to demonstrate compliance with warrants; this compared well to the Ombudsman's previous report to the Attorney-General.[2]

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

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

3.4 In relation to inspection of the ACC, conducted from 31 January to 2 February 2011, the Ombudsman's assessment of a 45 per cent sample (25 warrants and authorisations) were assessed to have complied with the SD Act. In contrast to the Ombudsman's previous inspection, the ACC was able to provide sufficient information to show compliance with subparagraph18(2)(c)(i)[3] for 100 per cent of the 'person warrants' under inspection. This is a significant improvement from the ACC's 26 per cent of 'person warrants' that did not comply with the SD Act in the previous reporting period.[4]

3.5 Similarly, there were improvements found in the inspection results of the AFP, conducted from 4 to 8 April 2011. Compared to the previous report, whereby the Ombudsman could not provide compliance assessment against subparagraph 18(2)(c)(i) for 44 per cent of the AFP's 'person warrants' due to insufficient record-keeping, for this reporting period, 95 per cent of the 'person warrants' were found to be in compliance. Further, the AFP advised that, since inspection, it has revised its guidelines to provide staff with clear guidance on the use and retrieval of surveillance devices and the SD Act's reporting requirements. [5]

3.6 The inspection of the Victoria Police Special Projects Unit's surveillance device records took place on 9 August 2011, with the examination of one surveillance device warrant (and associated records) that expired during the period 1 July 2010 to 30 June 2011. The Ombudsman's inspection assessed the Victoria Police Special Project Unit as compliant with the SD Act and commended its positive attitude to compliance.[6]

Refugee Review Tribunal reviews not completed within 90 days

3.7 Section 440A of the *Migration Act 1958* (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 cover the period 1 July 2011 to 30 June 2012.

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3 *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, p. 3. Subparagraph 18(2)(c)(i) of the SD Act provides that a 'person warrant' authorises the installation, use and maintenance of devices on premises where the person is reasonably believed to be or likely to be. Where surveillance devices have been installed on premises under a 'person warrant', there is an expectation that there would be information relating to the use of these devices linking the premises to the person named in the warrant.

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

5 *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, p. 5. The inspection examined surveillance device warrants and authorisations (and associated records) that expired during the period 1 July to 31 December 2010.

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

3.8 The table below sets out the number of RRT reviews not completed within 90 days compared to those that were completed for the previous three reporting periods; and the RRT number for cases outside of 90 days not decided at the end of the reporting period.[7]

	1 July 2011 to 31 October 2011	**1 November 2011 to 29 February 2012**	**1 March 2012 to 30 June 2012**
Reviews completed *outside* of 90 days	386 (47% of 816)	619 (74% of 840)	847 (74% of 1,147)
Reviews completed *within* 90 days (or Tribunal had no jurisdiction)	430 (53% of 816)	221 (26% of 840)	300 (26% of 1,147)
Total	**816**	**840**	**1,147**
Cases outside 90 days and *not decided* at end of reporting period	509 (38% of 1,328 of active cases as at 31.10.11)	752 (50% of 1,499 of active cases as at 29.02.12)	642 (43% of 1,501 of active cases as at 30.06.12)

3.9 The MRT-RRT has a KPI target of 70% of RRT cases decided within 90 calendar days.[8]

3.10 The committee notes the percentage of reviews completed within 90 days remained the same at 26 per cent for the most recent period, and is down from 53 per cent for July to October 2011.

3.11 Reasons attributed to reviews taking longer than 90 days were: tribunal responsibility; compliance with statutory procedural requirements; applicant or adviser related; and third party responsibility.

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7 *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; *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 2011 to 29 February 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 July 2011 to 31 October 2011*, p. 1.

8 *Migration Review Tribunal - Refugee Review Tribunal Annual Report 2011-12*, p. 17.

3.12 The results for the number of RRT cases outside 90 days, and which have not been decided at the end of the reporting period, fell from 50 per cent for the previous period to 43 per cent for the most recent period, but were an improvement from 38 per cent for July to October 2011.

3.13 Reasons attributed to the delays included: an increase in RRT lodgements; and reduced availability of members who had been working for the Independent Protection Assessment Office.[9]

Senator Trish Crossin
Chair

9 *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; *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 2011 to 29 February 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 July 2011 to 31 October 2011*, p. 1.