

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

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.

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 <i>undecided</i> outside of 90 day period	789	1147	1561
Total number <i>decided</i> 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%
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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 <i>outside</i> of 90 days	219 (32%)	201 (26%)	190 (23%)
Reviews completed <i>within</i> 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.*