

The Senate

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Legal and Constitutional Affairs  
Legislation Committee

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Annual reports (No. 2 of 2014)

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### **44th Parliament**

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Senator Linda Reynolds (LP, WA)

Senator Penny Wright (AG, SA)

#### **Secretariat**

Ms Sophie Dunstone	Committee Secretary
Mr Tim Hillman	Research Officer
Ms Jo-Anne Holmes	Administrative Officer

Suite S1.61	Telephone: (02) 6277 3560
Parliament House	Fax: (02) 6277 5794
CANBERRA ACT 2600	Email: <a href="mailto:legcon.sen@aph.gov.au">legcon.sen@aph.gov.au</a>



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# PREFACE

## Terms of reference

On 29 September 2010, a resolution of the Senate allocated the following portfolios to the Senate Legal and Constitutional Affairs Legislation Committee (the committee):

- Attorney-General's portfolio; and
- Immigration and Citizenship portfolio.<sup>1</sup>

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.

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<sup>1</sup> Following a resolution of the Senate on 13 November 2013, the Immigration and Citizenship portfolio was renamed the Immigration and Border Protection portfolio.

## 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* (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).<sup>2</sup>

The 2012-13 annual reports are prepared in accordance with the Requirements for Annual Reports issued on 29 May 2014. Amendments to the latest issue of the Requirements for Annual Reports are:

- Consultancy reporting – recognising the functionality provided by the AusTender database, the requirement to provide details of consultancy contracts let in the reporting year...has been omitted.
- Carer recognition – a new requirement has been added for public service care agencies to report on compliance with the *Carer Recognition Act 2010*
- ...
- Freedom of information – simplification of reporting following accommodation of major reforms to freedom of information reporting in the 2010–11 Requirements.<sup>3</sup>

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.

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2 Department of the Prime Minister and Cabinet (DPMC), *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies* (Requirements for Annual Reports) 28 June 2012, Part 1, subsection 3(1).

3 DPMC, *Requirements for Annual Reports*, 29 May 2014, p. i.



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.<sup>4</sup>

### **'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.

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, 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 Supplementary Budget Estimates hearings are 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.<sup>5</sup>

If a department or agency is unable to meet this deadline, the secretary or agency head 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.<sup>6</sup>

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

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

5 DPMC, *Requirements for Annual Reports*, 29 May 2014, Part 1, section 4.

6 DPMC, *Guidelines for the Presentation of Documents to the Parliament (including government documents, government responses to committee reports, ministerial statements, annual reports and other instruments)*, October 2013, p. 5.

(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:

(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 six 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 2013 and 30 April 2014, and which have been referred to the committee for examination, can be found at Appendix 1.<sup>7</sup> Also included in this table is the date each report was tabled in the House of Representatives.

The annual reports of FMA Act bodies examined in this report missed the 31 October 2013 tabling deadline for the Senate.

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

Although the report of the High Court of Australia was tabled after 31 October 2013, the High Court of Australia (which is a body not bound by the FMA Act), presented its annual report in accordance with its respective legislative provisions.<sup>8</sup>

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.<sup>9</sup>

### **Requirement to report agencies for non-reporting**

In accordance with Standing Order 25(20)(h), the committee must report bodies which are required to present an annual report to the Senate but which have failed to do so.

On this occasion, the committee is unaware of any body required to table an annual report which has failed to do so.

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8 Subsections 47(1) of the *High Court Act 1979* and 34C(2) of the *Acts Interpretation Act 1901* gives the High Court a period of six months after the end of the reporting period to submit to the minister an annual report.

9 DPMC, *Requirements for Annual Reports*, 29 May 2014, Part 1, section 4.



# CHAPTER 1

## ANNUAL REPORTS OF STATUTORY AUTHORITIES

1.1 The annual reports for the financial year 2012-13 of the following statutory authorities in the Attorney-General's portfolio were referred to the committee for examination and report:

- Audio-Visual Copyright Society Limited (Screenrights); and
- High Court of Australia.

1.2 The following report from a statutory authority in the Immigration portfolio was also referred to the committee for examination and report:

- Migration Review Tribunal and Refugee Review Tribunal.

1.3 The committee has decided to closely examine all three of these annual reports.

### **Audio-Visual Copyright Society Limited**

1.4 The Audio-Visual Copyright Society Limited, which trades as Screenrights, is an Australian domiciled company. The company is a non-profit entity and its principal activities include: exercising its right as a collecting society under Part VA, Part VC and Part VB (in relation to audio-visual items) of the *Copyright Act 1968* (Copyright Act); and collecting money from educational institutions for distribution to relevant copyright owners.<sup>1</sup> Screenrights' annual report was tabled in the House of Representatives on 21 November 2013 and in the Senate on 3 December 2013.

1.5 The company is limited by guarantee and, pursuant to section 34(2) of the *Commonwealth Authorities and Companies Act 1997* (CAC Act), is a wholly-owned Commonwealth company. The guarantee 'in the event of the winding up of the company is \$10 for each member'.<sup>2</sup> As at 30 June 2012, the company's total liability was \$35 600 from 3560 full members.<sup>3</sup> This is an increase compared with its liability of \$34 640 from 3464 members in 2012-13.<sup>4</sup>

1.6 The annual report of Screenrights needs to comply with ministerial orders made under section 48 of the CAC Act, which are set out in the *Commonwealth Companies (Annual Reporting) Orders 2011*. 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. The reporting

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1 *Screenrights Annual Report 2012-13*, p. 30.

2 *Screenrights Annual Report 2012-13*, p. 21.

3 *Screenrights Annual Report 2012-13*, p. 21.

4 *Screenrights Annual Report 2012-13*, p. 21.

provisions for Screenrights are contained in sections 135R, 135ZZD, 135ZZV and 183D of the Copyright Act.<sup>5</sup>

1.7 Certain issues identified by this committee in previous reports<sup>6</sup> persist in the Screenrights Annual Report 2012-13. These include the need for a letter of transmittal, a contents page, a compliance index and a glossary index. The inclusion of such information would increase the accessibility of information, as well as assist the committee in its examination of the report. Similarly overlooked in previous annual reports is the reporting requirements with which the annual report complies. The inclusion of accompanying headings relating to information presented in colourful graphs would also enhance the readability of the annual report. Nonetheless, the committee is pleased to see that the report contains information on the organisational structure of Screenrights, as well as information on the enabling legislation under which Screenrights operates.<sup>7</sup>

1.8 The above issues notwithstanding, the report contains useful background information about the role and functions of Screenrights, its objectives, board members and company membership. The layout and format of its financial statements and 'Notes to the Consolidated Financial Statements' continue to be clearly set out and easy to follow.<sup>8</sup>

1.9 During 2012-13, Screenrights reported a record \$46.5 million in license revenue and other income for the film and television industries.<sup>9</sup> In its last annual report Screenrights stated that it intended to keep expenditure in relation to total collections below 16 per cent.<sup>10</sup> This was achieved in 2012-13 with expenses at 14.8 per cent of collections.<sup>11</sup> The company distributed more than \$34.9 million to rights holders in film and television.<sup>12</sup>

1.10 Highlights for Screenrights during 2012-13 included the launch of the EnhanceTV Direct streaming service for educators, a partnership with RMIT to introduce Enhance TV to universities, and a contribution to the Australian Law Reform Commission Review into the Copyright Act.<sup>13</sup> The EnhanceTV Direct streaming service provides access to a wide range of content for both educators and

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5 *Copyright Act 1968*, ss. 135(R); 135(ZZD); 135(ZZV) and 183(D).

6 Senate Legal and Constitutional Affairs Legislation Committee, *Annual reports (No. 2 of 2012)*, September 2012, p. 2; Senate Legal and Constitutional Affairs Legislation Committee, *Annual reports (No. 2 of 2013)*, December 2013, p. 2.

7 *Screenrights Annual Report 2012-13*, p. 17; p. 30.

8 *Screenrights Annual Report 2012-13*, pp 30–51.

9 *Screenrights Annual Report 2012-13*, pp 1; 8; 9; and 12.

10 *Screenrights Annual Report 2011-12*, pp 1, 10 and 21.

11 *Screenrights Annual Report 2012-13*, p. 1.

12 *Screenrights Annual Report 2012-13*, p. 1.

13 *Screenrights Annual Report 2012-13*, p. 1.

students and benefits members by increasing the longevity of their content and the returns for them.<sup>14</sup>

1.11 The financial information presented in the annual report relates to Screenrights and not the consolidated entity that includes the wholly-owned subsidiary EnhanceTV Direct Pty Ltd.<sup>15</sup> The consolidated entity reported a net operating loss after income tax of \$927 712, an increase from \$360 632 in the preceding year.<sup>16</sup> During the 2012-13 period, the directors reported no significant changes in the state of affairs of the company or consolidated entity.<sup>17</sup>

1.12 The committee considers the annual report of Screenrights to be 'apparently satisfactory', but again expresses some concern about the accessibility of certain information and the omission of some required information.

### **High Court of Australia**

1.13 The High Court of Australia's (the High Court) annual report for 2012-13 is presented in accordance with section 47 of the *High Court of Australia Act 1979*. The High Court is not a prescribed agency under the *Financial Management and Accountability Act 1997*, due to its status under its enabling legislation.<sup>18</sup> Therefore, the Requirements for Annual Reports do not apply to the High Court's annual report.

1.14 Nonetheless, section 3(4) of the Requirements for Annual Reports provides:

In the case of an agency (including an executive agency established under section 65 of the *Public Service Act 1999*) that is neither prescribed under the FMA Act nor comes within the CAC Act, these Requirements may be used to the extent that they are consistent with any reporting requirements contained in the agency's own legislation (if any).<sup>19</sup>

1.15 The annual report of the High Court of Australia was tabled in both the House of Representatives and the Senate on 13 November 2013, and complies with the High Court's own reporting requirements.

1.16 For the reporting period 2012-13, the High Court reported a smaller deficit of \$4.378 million than the previous financial year's deficit of \$7.099 million.<sup>20</sup> In 2012-13, the court received \$16.451 million in income, including revenue from appropriations. The High Court reported \$20.829 million in operating expenses and an

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14 *Screenrights Annual Report 2012-13*, p. 4.

15 *Screenrights Annual Report 2012-13*, p. 7.

16 *Screenrights Annual Report 2012-13*, p. 21.

17 *Screenrights Annual Report 2012-13*, p. 21.

18 Department of Finance and Deregulation, Chart of 108 Agencies under the *Financial Management and Accountability Act 1997* (FMA Act), 1 November 2013.

19 Department of Prime Minister and Cabinet (DPMC), *Requirements for Annual Reports*, 29 May 2014, Part 1, subsection 3(4)

20 *High Court of Australia Annual Report 2012-13*, p. 11.

equity injection of \$3.870 million.<sup>21</sup> A major reason for the deficit can be attributed to the inclusion in the court's operating expenses of depreciation of non-financial assets (to the value of \$4.486 million), for which the court does not receive appropriation funding.<sup>22</sup> The High Court's annual appropriation was also reduced due to changes in the management and funding of Commonwealth Law Courts buildings from 1 July 2012.<sup>23</sup> However, the court reported an underlying surplus of \$0.108 million following exclusions of non-cash and unfunded items, and the above depreciation and revaluation figures.<sup>24</sup>

1.17 During 2012-13, 35 000 people visited the High Court and the court hosted guided tours for and gave presentations to 35 000 students.<sup>25</sup> The High Court's website serves as the primary source of public information related to the core business of the High Court including its history, structure and administration.<sup>26</sup> The website also provides access to legal documents, transcripts and speeches.<sup>27</sup>

1.18 The court reported a slight decrease in the number of cases filed for the 2012-13 reporting period with 618 cases filed compared to 728 cases in 2011-12.<sup>28</sup> Inversely, the proportion of special leave applications filed by self-represented litigants increased to 44 per cent in 2012-13 from 41 per cent in 2011-12.<sup>29</sup> The majority of cases were filed in the Sydney registry office with 50 per cent of cases filed, followed by the offices in Melbourne consisting of 26 per cent of cases and Canberra comprising 24 per cent. The Melbourne and Canberra offices processed cases filed in other interstate cities as well as those filed in these respective cities.<sup>30</sup>

1.19 The committee again notes that an issue commented on previously<sup>31</sup> has resurfaced in the High Court's 2012-13 report. In the court's last annual report, the committee made the observation that the court's outcome—to interpret and uphold the Australian Constitution and perform the functions of the ultimate appellate court in Australia—was not actually made clear from the outset but was identified near the end

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21 *High Court of Australia Annual Report 2012-13*, p. 40.

22 *High Court of Australia Annual Report 2012-13*, p. 17.

23 *High Court of Australia Annual Report 2012-13*, p. 40.

24 *High Court of Australia Annual Report 2012-13*, p. 17.

25 *High Court of Australia Annual Report 2012-13*, p. 46.

26 *High Court of Australia Annual Report 2012-13*, p. 97.

27 *High Court of Australia Annual Report 2012-13*, pp 97–98.

28 *High Court of Australia Annual Report 2012-13*, p. 30.

29 *High Court of Australia Annual Report 2012-13*, p. 17.

30 *High Court of Australia Annual Report 2012-13*, p. 30.

31 Legal and Constitutional Affairs Legislation Committee, *Report on Annual Reports No. 2 2013*, December 2013, p. 4.



of the report in the 'Notes to and forming part of the Financial Statements'.<sup>32</sup> This was also the case in the 2010-11 annual report.

1.20 As mentioned in the committee's last report, although the Requirements for Annual Reports do not apply to the High Court, the committee wishes to emphasise the importance of performance reporting in annual reports. This provides the relevant agency with an accountability framework as well as a monitoring mechanism of activities and practices. As stated in the Requirements for Annual Reports:

The "clear read" between PB Statements and annual reports is an essential part of the accountability system that compares budgeted targets and figures to those actually achieved, and places a strong emphasis on compatibility between the two documents regarding budget and performance information.<sup>33</sup>

1.21 Aside from the concern raised above, the court's annual report provides a clear and concise overview of the court's activities over the reporting period. The layout, in terms of the annual report's headings, chapters, statistical information relating to the court's workload, funding arrangements, visitor programs and building maintenance, are clearly set out and easy to follow. Statistical information in the annual report is also presented in both graphical and tabulated formats where appropriate to enhance the accessibility of the information.

1.22 The committee considers the annual report of the High Court to be 'apparently satisfactory'.

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

1.23 The report of the MRT-RRT was tabled in the Senate on 12 November 2013 and in the House of Representatives on 13 November 2013. The committee notes the late presentation of the report but also remarks that the report was provided in time for supplementary estimates.

1.24 The MRT-RRT is a statutory authority that reports under the *Financial Management and Accountability Act 1997* and provides independent merits review of visa related decisions made by the minister or by public officers acting as delegates of the minister as set out in the *Migration Act 1958*.<sup>34</sup>

1.25 There was an increase in lodgements and in the number of cases decided by the combined tribunals in 2012-13. Case decisions increased from 10 815 in 2011-12 to 19 347 in 2012-13. An additional four per cent of cases lodged were decided by the tribunals in 2012-13 than in 2011-12.<sup>35</sup> The committee was pleased to note that the

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32 *High Court of Australia Annual Report 2012-13*, p. 61.

33 DPMC, *Requirements for Annual Reports*, 28 June 2013, p. 3.

34 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2012-13*, p. 6.

35 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2012-13*, p. vii.

total percentage of tribunal decisions taken to judicial review equalled seven per cent.<sup>36</sup>

1.26 The principal member's report on the tribunals' operations for 2012-13 provides a useful overview of a demanding year. In addition to the increase in usual workload, it was also reported that there was a significant rise in workload due to changes made to processing arrangements for unauthorised maritime arrivals. In March 2012, the minister permitted unauthorised maritime arrivals to apply for protection visas, providing the applicants the right to tribunal review if a delegate of the minister consequently refused to grant a protection visa. During the reporting period, 1 518 applications for review were received from unauthorised maritime arrivals.<sup>37</sup>

1.27 In order to manage the increased workload while also maintaining the quality of the reviews, the tribunals created specialist teams and reorganised staff structure, committing senior members to specific caseloads to ensure that specific strategies were developed for particular caseloads.<sup>38</sup>

1.28 The performance section is clearly laid out with results presented against targets set for key performance indicators and deliverables.<sup>39</sup> The report states that the tribunals did not meet the target of publishing 40 per cent of decisions, however it also highlights that there was an increase in published decisions from 4 546 in 2011-12 to 4 783 in 2012-13.<sup>40</sup>

1.29 The tribunals' financial performance for 2012-13 is also discussed in this section of the report. A net surplus of \$24.53 million was recorded for the financial year.<sup>41</sup>

1.30 The report also includes a detailed breakdown of caseload statistics which provides useful background.<sup>42</sup>

1.31 The report is well presented and easy to navigate with an effective design. It follows the Requirements for Annual Reports and depicts a fair account of the reporting period. The committee considers the report to be 'apparently satisfactory'.

1.32 The committee congratulates the Refugee Review Tribunal for its twentieth year of operation.

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36 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2012-13*, p. vii.

37 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2012-13*, p. 3.

38 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2012-13*, p. 3.

39 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2012-13*, p. 15.

40 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2012-13*, p. 15.

41 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2012-13*, pp 15–16.

42 *Migration Review Tribunal and Refugee Review Tribunal Annual Report 2012-13*, pp 108–114.

## 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 such reports, specifically the:

- *Surveillance Devices Act 2004* report for the year ending 30 June 2012; and
- *Telecommunications (Interception and Access) Act 1979*.

#### **Report on the operation of the *Surveillance Devices Act 2004***

2.2 The report on the operation of the *Surveillance Devices Act 2004* (SD Act) was tabled in the House of Representatives on 12 December 2013 and in the Senate on 11 February 2014. The report was presented to the minister on 22 October 2013, outside the SD Act's legislative provisions. Under section 50(3) of the SD Act:

The report must be submitted to the Minister as soon as practicable after the end of each financial year, and in any event within 3 months after the end of the financial year.<sup>1</sup>

2.3 The report relates to the period from 1 July 2012 to 30 June 2013. During this reporting period, an important legislative development took place in relation to the SD Act. Following reforms to the *Law Enforcement Integrity Act 2012*, integrity tests were introduced for staff members of the Australian Federal Police (AFP), Australian Crime Commission (ACC) and the Australian Customs and Border Protection Service (ACBPS) suspected of corrupt conduct. The tests are intended to test whether an official will respond to a simulated event in a manner that is illegal or would breach an agency's standard of integrity.<sup>2</sup> This amendment was originally recommended by the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity.<sup>3</sup>

2.4 There were no significant judicial decisions under the SD Act during the reporting period.<sup>4</sup>

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1 *Surveillance Devices Act 2004*, ss. 50(3).

2 Attorney-General's Department (AGD), *Surveillance Devices Act 2004 Report for the year ending 30 June 2013*, p. 11.

3 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Inquiry into Integrity Testing*, November 2011, p.19.

4 AGD, *Surveillance Devices Act 2004 Report for the year ending 30 June 2013*, p. 11.

### ***Applications for surveillance device warrants***

2.5 Information in relation to the number of warrants obtained at the state and territory level was not available as state and territory law enforcement agencies generally rely on their own legislative regimes for the use of surveillance devices, although they are able to make use of the SD Act when dealing with a Commonwealth matter or during a joint operation.<sup>5</sup>

2.6 Pursuant to paragraph 50(1)(a) of the SD Act, the annual report must provide information on the number of applications for warrants made and the number of warrants issued for the reporting period. Under subsection 50(2), the SD Act also requires the report to provide a breakdown of these numbers in respect of each different kind of surveillance device.<sup>6</sup>

2.7 For 2012-13 there was an approximate increase in the number of warrants issued with 737 warrants issued compared to the preceding period with 642 warrants issued.<sup>7</sup>

2.8 Section 15 of the SD Act provides for remote application for a warrant. A remote warrant could be made by telephone, fax, email or other means of communication if it is impracticable for the law enforcement agency to apply in person. There were no remote applications during the reporting period.<sup>8</sup>

2.9 Section 50 requires the inclusion of information which is, for the committee's purpose, indicative of the SD Act's effective use, such as: the number of arrests; prosecutions and convictions; as well as 'the number of locations and safe recoveries of children', based on information obtained using surveillance devices.<sup>9</sup>

2.10 The following table shows the number of arrests, prosecutions and convictions for 2012-13. The figures in brackets refer to the preceding reporting period 2011-12. During the reporting period there was a decrease in arrests and prosecutions, however, there was an increase in convictions.<sup>10</sup>

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5 AGD, *Surveillance Devices Act 2004 Report for the year ending 30 June 2013*, p. 11.

6 AGD, *Surveillance Devices Act 2004 Report for the year ending 30 June 2013*, p. 12.

7 AGD, *Surveillance Devices Act 2004 Report for the year ending 30 June 2013*, p. 14.

8 AGD, *Surveillance Devices Act 2004 Report for the year ending 30 June 2013*, p. 16.

9 AGD, *Surveillance Devices Act 2004 Report for the year ending 30 June 2013*, p. 18.

10 Adapted from: AGD, *Surveillance Devices Act 2004 Report for the year ending 30 June 2013*, p. 22.

**Table 2.1**

<b>AGENCY</b>	<b>Arrests</b>	<b>Safe Recovery</b>	<b>Prosecutions</b>	<b>Convictions</b>
<b>ACC</b>	(25) 27	-	(0) 5	(0) 1
<b>AFP</b>	(112) 102	-	(125) 121	(25) 50
<b>Victoria Police</b>	(2) 2	-	-	-
<b>Total</b>	(139 <sup>11</sup> ) 131	-	(125) 126	(25) 51

2.11 The report notes that information regarding arrests, prosecutions (inclusive of committal proceedings) and convictions should be interpreted with caution, especially in presuming a relationship between them. An arrest in one reporting period might not lead to a prosecution in a later reporting period, likewise a conviction in one reporting period could be recorded in another period. Further, there is no correlation between the number of charges and arrests as an arrest could lead to conviction for multiple offences. Also, in situations where the weight of evidence obtained from surveillance devices is sufficient for defendants to enter guilty pleas, it may not be necessary for surveillance information to be introduced as evidence.<sup>12</sup>

### ***Telecommunications (Interception and Access) Act 1979***

2.12 The *Annual report on the Telecommunications (Interception and Access) Act 1979 2012-13* was tabled in the House of Representatives on 12 December 2013 and in the Senate on the 11 February 2014.

2.13 The *Telecommunications (Interception and Access) Act 1979* (TIA Act) has the primary goal of protecting the privacy of individuals who use the Australian telecommunications network. Communications cannot be intercepted unless authorised by specific circumstances set out in the TIA Act. Law enforcement agencies have the option to access several separate warrants to intercept a communication. These include warrants for real-time content and for stored communications.<sup>13</sup>

2.14 Section 104 of the TIA Act sets out the provisions for annual reports, specifically:

The Minister shall cause a copy of a report under section 93 or Division 2 to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report, or the report is prepared, as the case may be.<sup>14</sup>

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11 AGD, *Surveillance Devices Act 2004 Report for the year ending 30 June 2012*, p. 15.

12 AGD, *Surveillance Devices Act 2004 Report for the year ending 30 June 2013*, p. 22.

13 AGD, *Telecommunications (Interception and Access) Act annual report 2012-13*, p. 5.

14 *Telecommunication (Interception and Access) Act*, s. 104(1).

2.15 The committee notes that the report was tabled before the required date in both Houses of Parliament.

2.16 In 2012-13 interception warrants were only available to 17 Commonwealth and state and territory agencies including ACC, ACLEI, AFP, state and territory police and state anti-corruption agencies.<sup>15</sup> In order to use an interception warrant an authority must be satisfied that the agency is investigating a serious offence, that the gravity of the offence warrants the intrusion and that the interception is likely to support the investigation.<sup>16</sup>

2.17 The report notes that an interception warrant may only be issued by an eligible judge or a nominated Administrative Appeals Tribunal member. Eligible judges in 2012-13 included members of the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court. Judges have to formally consent in writing and be declared eligible by the Attorney-General to be an eligible judge.<sup>17</sup>

2.18 With the introduction of the *Cybercrime Legislation Amendment Act 2012* law enforcement agencies became able to work with cybercrime investigators globally. The Act also amended the *Criminal Code Act 1995* (Cth) to enable the ability for agencies to access and share computer offence information with regards to international investigations.<sup>18</sup>

2.19 During the reporting period, the Parliamentary Joint Committee on Intelligence and Security (PJCIS) made recommendations regarding the TIA Act after tabling its report for the *Inquiry into Potential Reforms of National Security Legislation* on 24 June 2013. The committee assessed possible reforms to the interception system to ensure it is up to date with rapid changes in the telecommunications environment.<sup>19</sup>

2.20 After accepting that emerging and upcoming technologies can impact on the ability of law enforcement agencies to intercept communications, gather intelligence and arrest and prosecute offenders, the committee made several recommendations in its report, which included:

- a comprehensive rewrite of the TIA Act to provide clear direction on the protections and powers available under the legislations;
- the introduction of a security framework for the telecommunications sector through amendments to the Telecommunications Act; and
- support for the majority of the proposed measures to modernise and improve laws relating to Australian intelligence agencies.<sup>20</sup>

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15 AGD, *Telecommunications (Interception and Access) Act annual report 2012-13*, p. 5.

16 AGD, *Telecommunications (Interception and Access) Act annual report 2012-13*, p. 5.

17 AGD, *Telecommunications (Interception and Access) Act annual report 2012-13*, p. 5.

18 AGD, *Telecommunications (Interception and Access) Act annual report 2012-13*, p. 8.

19 AGD, *Telecommunications (Interception and Access) Act annual report 2012-13*, p. 9.

20 AGD, *Telecommunications (Interception and Access) Act annual report 2012-13*, p. 9.

2.21 The integrity testing introduced by the *Law Enforcement Integrity Legislation Amendment Act 2012* mentioned earlier in this chapter also applied to the TIA Act.<sup>21</sup>

### ***Telecommunications interception warrants***

2.22 During the reporting period a total of 4226 telecommunications interceptions warrants were issued by Judges and nominated AAT members.<sup>22</sup>

**Table 2.2**

<b>Issuing Authority</b>	<b>Family Court Judges</b>	<b>Federal Court Judges</b>	<b>Federal Circuit Court Judges</b>	<b>Nominated AAT members</b>	<b>Total</b>
Number of warrants issued	175	124	597	3 330	4 226

2.23 The table below shows the number of applications for warrants, telephone applications for warrants and renewal applications that were made, withdrawn and issued. The figures in brackets refer to the preceding reporting period 2011-12.<sup>23</sup>

**Table 2.3**

	<b>Applications for warrants</b>	<b>Telephone Applications for Warrants</b>	<b>Renewal applications</b>
Made	(3 764) 4 247	(111) 90	(513) 607
Refused/withdrawn	(9) 15	(0) 1	(0) 0
Issued	(3 755) 4 232	(111) 89	(513) 607

2.24 The committee notes that there appears to be a discrepancy between the total number of telecommunications warrants issued in *Table 2.2* (4 226) compared to the total number issued in *Table 2.3* (4 232). The committee is aware that this may not necessarily be an error but rather a difference that needs further clarification.

2.25 During the reporting period there was an instance in which a telecommunications interception was undertaken without a warrant. The TIA Act

21 AGD, *Telecommunications (Interception and Access) Act annual report 2012-13*, p. 9.

22 Adapted from: AGD, *Telecommunications (Interception and Access) Act annual report 2012-13*, p. 11.

23 Adapted from: AGD, *Telecommunications (Interception and Access) Act annual report 2012-13*, p. 12.

allows agencies to undertake an interception without a warrant only in very specific circumstances, including if there is a serious threat to life or the possibility of serious injury. The AFP carried out an interception without a warrant on the grounds that the person had threatened to kill or seriously injure another.<sup>24</sup>

### ***Stored Communications***

2.26 The TIA Act enables law enforcement agencies to apply for stored communications warrants to assist investigations. These warrants may apply to email, SMS or voice message communications. In 2012-13 agencies that applied for stored communication warrants included the Australian Competition and Consumer Commission (ACCC), the Australian Securities and Investments Commission (ASIC) and the Australian Customs and Border Protection Service.<sup>25</sup>

2.27 The table below shows the number of applications for warrants, telephone applications for warrants and renewal applications that were made, withdrawn and issued. The figures in brackets refer to the preceding reporting period 2011-12.<sup>26</sup>

***Table 3.4***

	<b>Applications for stored communications warrants</b>	<b>Telephone Applications for stored communication warrants</b>
Made	(485) 562	(0) 0
Refused/withdrawn	(2) 1	(0) 0
Issued	(483) 561	(0) 0

2.28 During the reporting period, law enforcement agencies made 132 arrests, 152 prosecutions and 65 convictions based on evidence obtained under stored communications warrants.<sup>27</sup> In total, information obtained under the interception and stored communications warrants were used in 3 083 arrests, 6 898 prosecutions and 2 765 convictions.<sup>28</sup>

### **Senator the Hon Ian Macdonald Chair**

24 *Telecommunications (Interception and Access) Act annual report 2012-13*, p. 29.

25 *Telecommunications (Interception and Access) Act annual report 2012-13*, p. 37.

26 Adapted from: AGD, *Telecommunications (Interception and Access) Act annual report 2012-13*, p. 38.

27 *Telecommunications (Interception and Access) Act annual report 2012-13*, p. 39.

28 *Telecommunications (Interception and Access) Act annual report 2012-13*, p. 4.



## APPENDIX 1

### Reports tabled during the period 1 November 2013 and 30 April 2014 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 (or received in Senate out of session)	Date tabled in the House of Reps
<i>Attorney-General's portfolio</i>			
<i>Department/authority – Report for 2012-13</i>			
Australian Crime Commission Assumed Identities – Annual report 2012-13	31.10.13/ 31.10.13	3.12.13	13.11.13
Australian Human Rights Commission – Aboriginal and Torres Strait Islander Social Justice Commissioner – Social Justice and Native Title – Report 2013	29.11.13/ 29.11.13	11.12.13	11.12.13
Australian Human Rights Commission – National Children’s Commissioner – Children’s Rights Report 2013	29.11.13/ 29.11.13	11.12.13	11.12.13
Australian Human Rights Commission – Report 58 – BB v Commonwealth of Australia (Department of Immigration and Citizenship)	19.6.13/ 19.6.13	13.11.13	27.6.13
Australian Human Rights Commission – Report 60 – inquiry into the complaint: Behme v Commonwealth of Australia	25.9.13/ 25.9.13	12.11.13	13.11.13
Australian Human Rights Commission – Report 62 – inquiry into the complaint: Ince v Commonwealth of Australia (Department of Immigration and Citizenship)	25.9.13/ 25.9.13	12.11.13	13.11.13
Australian Human Rights Commission – Report 63 – inquiry into the complaint: Paul family v Commonwealth of Australia (Department of Immigration and Citizenship)	25.9.13/ 25.9.13	12.11.13	13.11.13

Australian Human Rights Commission – Report 64 – inquiry into the complaint: Immigration detainees with adverse security assessments v Commonwealth	29.11.13/ 29.11.13	11.12.13	11.12.13
Australian Human Right Commission – Review into the Treatment of Women in the Australian Defence Force - Audit Report 2014	3.3.2014/ 3.3.2014	26.3.14	26.3.14
Australian Law Reform Commission – Report 122 - Copyright and the Digital Economy – Final Report and the Summary Report – November 2013	2.12.13/ 2.12.13	13.2.14	24.2.14
Australian Transaction Reports and Analysis Centre (AUSTRAC) – supervisory levy review report – The independent review 2013	20.12.13/ 20.12.13	18.3.14	18.3.14
Board of the Australian Crime Commission – Chair Annual Report 2012-13	3.12.13/ 3.12.13	11.2.14 (17.12.13)	11.2.14
Commonwealth Ombudsman – Report on the Commonwealth Ombudsman’s activities in monitoring controlled operations – Australian Crime Commission and Australian Federal Police – Annual report 2012-13	12.11.13/ 12.11.13	11.2.14	12.12.13
Control Orders and Preventative Detention Orders – Annual report 2012-13	26.9.13/ 26.9.13	3.12.13	14.11.13
Copyright Agency – Annual Report 2012-13	17.2.14/ 17.2.14	18.3.14	18.3.14
Defence Abuse Response Taskforce – Fourth Interim Report to the Attorney-General and Minister for Defence – <i>no legislative requirement to table the report</i>	10.12.13/ 10.12.13	11.2.14	11.12.13
High Court of Australia – Annual report 2012-13	29.10.13/ 29.10.13	13.11.13	13.11.13
Office of the Information Commissioner Annual report of the Information Commissioner’s activities in relation to eHealth – Annual report 2012-13	24.9.13/ 8.10.13	3.12.13	2.12.13

Old Parliament House – Annual report 2012-13	17.10.13/ 17.10.13	12.11.13 (6.11.13)	13.11.14
Royal Commission into Institutional Responses to Child Sexual Abuse – Report of Case Study No.1 – The response of institutions to the conduct of Steven Larkins – <i>no legislative requirement to table the report.</i>	23.4.14/ 24.4.14	13.05.14 (24.4.14)	13.5.14
Screenrights – Annual report 2012-13	23.10.13/ 23.10.14	3.12.13	21.11.13
<i>Operation of an act or program</i>			
Commonwealth Ombudsman – Report to the Attorney-General on the results of inspections of records under s.55 of <i>the Surveillance Devices Act 2004</i> – Inspections finalised between 1 January - 30 June 2013 – Australian Commission for Law Enforcement Integrity 1 January to 30 June 2012; Australian Crime Commission 1 January to 30 June 2012; Australian Federal Police 1 January to 30 June 2012; New South Wales Police Force 1 July 2011 to 31 August 2012	22.11.13/ 22.11.13	11.2.14	12.12.13
<i>National Security Information (Criminal and Civil Proceedings) Act 2004</i> – Annual report 2012-13	26.9.13/ 26.9.13	3.12.13	14.11.13
Report on the Operation of the <i>War Crimes Act 1945</i> to 30 June 2013 – Annual report 2012-13	22.1.14/ 22.1.14	13.5.14	27.3.14
Review of the operation of Subdivision A of Division 6 of Part VIIC of the <i>Crimes Act 1914</i> – Final Report October 2013	30.10.13/ 30.10.13	3.12.13	2.12.13
<i>Surveillance Devices Act 2004</i> – Annual Report 2012-13	22.10.13/ 22.10.13	11.2.14	12.12.13
<i>Telecommunications (Interception and Access) Act 1979</i> – Annual Report 2012-13	22.10.13/ 22.10.13	11.2.14	12.12.13
<b><i>Immigration and Border Protection portfolio</i></b>			

<i>Department/authority – Report for 2012-13</i>			
Australian Customs and Border Protection Service – Assumed Identities Authorisations and Use – Annual Report 2012-13	28.11.13/ 12.12.13	4.3.14	25.3.13
Australian Customs and Border Protection Service – Report by the Minister – Conduct of Customs Officers under subsection 233BABA of the <i>Customs Act 1901</i>	4.11.13/ 4.11.13	12.11.13 (11.11.13)	13.11.13
Migration Review Tribunal and Refugee Review Tribunal – Annual report 2012-13	3.10.13/ 10.10.13	12.11.13 (11.11.13)	13.11.13
<i>Operation of an act or program</i>			
<i>Migration Act 1958</i>			
Protection Visa Processing Taking More than 90 Days for the Reporting Period – 1 March 2013 to 30 June 2013	21.11.13/ 22.11.13	11.12.13	11.12.13
Protection Visa Processing Taking More than 90 Days for the Reporting Period – 1 July 2013 to 31 October 2013	13.12.13/ 14.12.13	19.3.14	19.3.14
Refugee Review Tribunal – 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 2013 to 30 June 2013	21.11.13/ 22.11.13	11.12.13	11.12.13
Refugee Review Tribunal – 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 2013 to 31 October 2013	2.12.13/ 2.12.13	19.3.14	19.3.14

<p>Section 486O of the <i>Migration Act 1958</i> –  [Personal identifier: 1000597, 1000605, 1001241, 1000987, 1000939, 1001187, 1000718, 1000938, 1000963, 1000980, 1001131, 1001277, 1000905, 1000924, 1000923, 1000825, 1000834, 1000858, 1001170, 1000899, 1000900, 1000862, 1000861, 1000904, 1000299, 1001228, 1001070, 1001069, 1001136, 1001105, 1001003, 1000271, 1000773, 1000744, 1000415, 1000798, 1000269, 1000769, 1000897, 1001062, 1000898, 1000896, 1000989, 1001113, 1001050, 1000959, 1000857.]</p> <p>– Commonwealth Ombudsman's reports</p> <p>– Government response to Ombudsman's reports, dated 27 February 2014</p>	<p>17.2.14/ 17.2.14</p>	<p>5.3.14</p>	<p>5.3.14</p>
<p>Section 486O of the <i>Migration Act 1958</i>  [Personal identifier: 1001135, 1000971, 1000960, 1001121, 1000979, 1000981, 1000972, 1001150, 1001178, 1001171, 1000571, 1000766, 1000644, 1000677, 1000656, 1000768, 1000873, 1000792, 1000821, 1000793, 1000835, 1000823, 1000724, 1000723, 1000535, 1000678, 1000794, 1000712, 1000783, 1000664, 1000826, 1000680, 1000770, 1000675, 1000784, 1000772, 1000990, 1001145, 1001146, 1001139, 1000746, 1001138, 1001123, 1001153, 1001156, 1001046, 1001196, 1001206, 1001143, 1001140.]</p> <p>– Commonwealth Ombudsman's reports</p> <p>– Government response to Ombudsman's reports, dated 3 February 2014</p>	<p>24.1.14/ 24.1.14</p>	<p>12.2.14</p>	<p>12.2.14</p>

<p>Section 486O of the <i>Migration Act 1958</i>  [Personal identifier: 1001020, 1001072, 1001012, 1000233, 1001057, 1000248, 1001128, 1000065, 1000684, 1001100, 1001007, 1000489, 1001008, 1000982, 1000977, 1000983, 1001040, 1001006, 1000254, 1001077, 1000696, 1001090, 1001087, 1000974, 1000976, 1000274, 1000916, 1000920, 1000921, 1000919, 1000225, 1000918, 1000258, 1001111, 1001043, 1001035, 1001038, 1001039, 1001028, 1001098, 1001041, 1001029, 1001030, 1001031, 1000967, 1001047, 1001053, 1000996, 1001137, 1000984, 1000978, 1001112, 1001133, 1000997, 1000993, 1001058, 1001096, 1000842, 1000995, 1001019, 1000955, 1000662, 1001099, 1000994, 1001013, 1001103, 1198/13, 1399/13.]</p> <p>– Commonwealth Ombudsman's reports</p> <p>– Government response to Ombudsman's reports, dated 4 December 2013</p>	<p>25.11.13/ 25.11.13</p>	<p>11.12.13</p>	<p>11.12.13</p>
<p>Section 486O of the <i>Migration Act 1958</i> –  [Personal identifier: 1001157, 1001076, 1001086, 1001048, 1001294, 1001233, 1001295, 1001147, 1001106, 1001107, 1001067, 1001083, 1001132, 1000881, 1000853, 1001191, 1001017, 1001092, 1001115, 1000909, 1001054, 1001373, 1001129, 1000926, 1001186, 1000988, 1000986, 1001064, 1001033, 1001005, 1000800, 1001015, 1001094, 1001034, 1000854, 1001210, 1000192, 1001063, 1000852, 1000902, 1000908, 1001097, 1001331, 1001279, 1001110, 1001108, 1001339, 1000880, 1001227, 1001336.]</p> <p>– Commonwealth Ombudsman's reports</p> <p>– Government response to Ombudsman's reports, dated 10 March 2014</p>	<p>4.3.14/ 4.3.14</p>	<p>19.3.2014</p>	<p>19.3.2014</p>

<p>Section 486O of the <i>Migration Act 1958</i>  [Personal identifier: 1378/13, 1489/13, 1491/13, 1502/13, 1506/13, 1513/13, 1516/13, 1518/13, 1539/13, 1563/13, 1564/13, 1568/13, 1578-82/13, 1584-5/13, 1587/13, 1589-92/13, 1601/13, 1618/13, 1624/13, 1626-8/13, 1630-1/13, 1638/13, 1640-1/13, 1646-7/13, 1649/13, 1659/13, 1670/13.]</p> <p>– Commonwealth Ombudsman's reports</p> <p>– Government response to Ombudsman's reports, dated 3 December 2013</p>	<p>12.11.13/ 12.11.13</p>	<p>4.12.13</p>	<p>4.12.13</p>
<p>Section 486O of the <i>Migration Act 1958</i>  [Personal identifier: 851/12, 1054/12, 1113/12, 1142-3/13, 1145/13, 1147/13, 1158/13, 1200/13, 1221/13, 1263/13, 1368/13, 1380/13, 1393/13, 1397/13, 1400-1/13, 1405/13, 1424/13, 1427/13, 1438-41/13, 1443/13, 1452/13, 1454-5/13, 1483-4/13, 1488/13, 1493-4/13, 1496-7/13, 1501/13, 1512/13, 1514-5/13, 1517/13, 1521-38/13, 1541-48/13, 1550-53/13, 1557-9/13, 1561/13, 1565-6/13, 1569-77/13, 1586/13, 1593-1600/13, 1602-5/13, 1608-12/13, 1614-17/13, 1623/13, 1644/13, 1650-3/13, 1660/13.]</p> <p>– Commonwealth Ombudsman's reports</p> <p>– Government response to Ombudsman's reports, dated 3 December 13</p>	<p>19.11.13/ 19.11.13</p>	<p>4.12.13</p>	<p>4.12.13</p>

<p>Section 486O of the <i>Migration Act 1958</i>  [Personal identifier: 795/12, 860/12, 874/12, 964/12, 1026/12, 1104/12, 1108/12, 1111/12, 1115-6/12, 1120/12, 1127/12, 1129-31/13, 1133-4/13, 1137-8/13, 1150-1/13, 1167/13, 1198-9/13, 1214/13, 1358/13, 1367/13, 1371/13, 1373/13, 1376/13, 1382-3/13, 1396/13, 1398-9/13, 1402-3/13, 1406/13, 1422/13, 1444-51/13, 1453/13, 1456-7/13, 1468/13, 1477/13, 1485-7/13, 1490/13, 1492/13, 1498-500/13, 1503-5/13, 1507-8/13, 1509-11/13, 1519/13, 1540/13, 1560/13, 1567/13.]</p> <p>– Commonwealth Ombudsman's reports</p> <p>– Government response to Ombudsman's reports, dated 5 October 2013</p>	<p>25.9.13/ 26.9.13</p>	<p>13.11.13</p>	<p>13.11.13</p>
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