



29 July 2005

Mr Owen Walsh
Committee Secretary
Senate Legal and Constitutional References Committee
Parliament House
CANBERRA ACT 2600

Dear Mr Walsh

Inquiry into the administration and operation of the *Migration Act 1958*

Thank you for your letter of 23 June in which you invited submissions to the Senate Legal and Constitutional References Committee's inquiry into the administration and operation of the *Migration Act 1958*.

In preparing this submission, the ANAO has noted the breadth of the Committee's terms of reference and the earlier work of the Committee, in particular the report 'A Sanctuary under review: An Examination of Australia's Refugee and Humanitarian Determination Process'. Accordingly, we have tailored the submission around four recently tabled performance audits that are related in part or full, to the Committee's terms of reference and which may be of assistance to the Inquiry. We note that the identified performance audits were not intended to answer specific questions of the type outlined in the terms of reference. However, my officers will be available to respond to any supplementary questions arising from the Inquiry.

Should you require further information, please contact Mr John Meert on 6203 7360 or Mr Steven Lack on 6203 7577.

Yours sincerely



Ian McPhee

Enc.

AUSTRALIAN NATIONAL AUDIT OFFICE

SUBMISSION

TO THE

**SENATE LEGAL AND CONSTITUTIONAL REFERENCES
COMMITTEE'S**

**INQUIRY INTO THE ADMINISTRATION AND OPERATION OF THE
MIGRATION ACT 1958**

Introduction

The Australian National Audit Office (ANAO) assists the Auditor-General to provide an independent view of the performance and financial management of public sector entities. The *Auditor-General Act 1997* sets out the Auditor-General's functions, mandate and powers.

The ANAO evaluates the economy, efficiency and effectiveness of the management of public sector entities and provides audit opinions on their financial statements.

ANAO Audit Coverage

The ANAO adopts an integrated approach to the planning of its financial and performance audit activities to achieve coverage of major risks in each agency and to make recommendations for improvement in administration. The ANAO has conducted and tabled 14 audits within DIMIA over the last nine years. Three further performance audits are currently in progress. A list of these audits is provided at Attachment A.

Current ANAO performance audit activity involves:

- Advance Passenger Processing;
- Management of the Tender Process for the Detention Services Contract; and
- The Migration Review Tribunal (MRT) and Refugee Review Tribunal (RRT).

As these audits are still in progress, the ANAO submission does not specifically address the material examined in these projects. Reports on these audits are expected to be tabled late in 2005, except the MRT and RRT report, which will be finalised early in 2006.

Future audit topics will be drawn from a list of potential audits maintained by the ANAO and updated as part of our annual planning process. For 2005-06¹ this list includes:

- Visa Management: A Series of Compliance Audits Against Visa Classifications;
- Management of DIMIA's Travel and Immigration Processing System (TRIPS);
- DIMIA's Introduction of Biometric Technologies; and
- The Movement Alert List.

The Committee Terms of Reference (TOR)

The ANAO audits listed at Appendix A were not intended to answer specific questions of the type outlined in the Committee TOR. As well, the time elapsed since completion of some of the audits, means that the context in which the data was gathered and analysed may have changed, and therefore where comparisons and/or parallels between the reports are contemplated, these should be undertaken with caution.

Subject to the foregoing, the ANAO has extracted from appropriate performance audits, specific sections and findings relevant to the Inquiry and in some cases, relevant to earlier work by the Committee. There have been four performance audits conducted within DIMIA that are related in part or full, to the Committee's TOR. These range from the program specific;

- No.62 2002-03, *Management of Selected Aspects of the Family Migration Program*; and
- No.56 2003-04, *Management of the Processing of Asylum Seekers*.

to specific activities or services embedded within programs, such as

- No.54 2003-04, *Management of the Detention Centre Contracts – Part A*; and
- No.1 2005-06, *Management of the Detention Centre Contracts – Part B*.

The audit summaries are provided at Attachment B.

¹ The full document is available at
<<http://www.anao.gov.au/WebSite.nsf/Publications/AAB6C0F9E7FF8231CA25703300818852>>

Committee Term of Reference (TOR) A – Visa Processing

The administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs, with particular reference to the process and assessment of visa applications, migration detention and the deportation of people from Australia.

Earlier Work by the Committee and the Work of the ANAO

In June 2000, the Legal and Constitutional References and Legislation Committee (the Committee) released its report 'A Sanctuary under review: An Examination of Australia's Refugee and Humanitarian Determination Process'. The Chair of the Committee at the time, wrote to the Auditor-General to bring to his attention two of the recommendations of the report:

- Recommendation 3.2 "The Committee recommends that an appropriate body such as the ANAO undertake an efficiency audit to determine if community-based protection visa applicants eligible for IAAAS² assistance, are not receiving it. The audit should assess if funds could be managed more efficiently to provide additional services."
- Recommendation 4.7 "The Committee recommends that the ANAO conduct an efficiency audit to determine if improved primary decision making will reduce program costs."

ANAO Performance Audit No.56 2003-04, Management of the Processing of Asylum Seekers

The ANAO carried out a performance audit of the management of the processing of Asylum Seekers, which was tabled in June 2004. The objective of the audit was to assess the extent to which Protection Visa (PV) applicants³ in Australia were processed in accordance with relevant laws and policies, and whether DIMIA employs appropriate mechanisms to ensure compliance with those laws and policies. This audit also examined the IAAAS system suggested by the Committee in its report 'A Sanctuary under review: An Examination of Australia's Refugee and Humanitarian Determination Process' (recommendation 3.2). However, it did not specifically examine the program costs (recommendation 4.7). The audit focused on whether:

- DIMIA's decision on PV applications were accurate, timely, consistent and in accordance with law and policy;
- DIMIA effectively managed its relationship with the Refugee Review Tribunal;

² Immigration Advice and Application Assistance Scheme was established in 1997 to provide application assistance to PV applicants who are in immigration detention and community applicants who are eligible for the service.

³ Protection Visa Applications is the formal process for those commonly thought of as seeking to engage Australia's obligations under the UNHCR convention for refugees – or Asylum Seekers.

- DIMIA monitored, reviewed, and assessed the risks to the decisions in the processing of onshore asylum seekers; and
- DIMIA consulted relevant stakeholders regarding the processing of asylum seekers.

The ANAO undertook compliance testing of a stratified random sample from the population of all PV applications finalised between 1 July 2002 and 30 June 2003. From 3077 cases finalised during his period, the ANAO sampled 209 completed PV cases. The sample of PV applications was not designed to provide statistically significant results and the data obtained could not be extrapolated to the population. However, the cases represented a cross section of PV applications and the findings were indicative of DIMIA's approach to PV decision-making at the time.

To enable the ANAO to undertake the compliance testing, a set of checklists was developed with assistance from DIMIA and was based on DIMIA's own quality assurance checklists. The ANAO sought to determine whether:

- key documentation necessary for making a decision was on file;
- decisions were timely;
- decisions were transparent; and
- decisions were made in accordance with legislation and guidelines.

Compliance Test	% of files that complied with criteria	ANAO comment
Application processed within performance target timeframes excluding where there were extenuating circumstances	77	The ANAO examined whether applications had been processed with DIMIA's performance target timeframes of 42 days for applicants in detention or 90 days for community applicants. The figure reported is for cases where there were no extenuating circumstances which prevented finalisation.
Record of decision on file	99	The ANAO examined whether the file contained a written record of the decision as per the requirements of s66(2)(c) of the Migration Act.
Key documents on file: Correct application form	100	The ANAO sought to determine if the key documentation necessary for making a decision was on file. The ANAO found that the overall standard of record keeping on the case files of protection visa applicants was high.
Key documents on file: Proof of identification	92	
Key documents on file: Health and character checks	98	
Reasons for the decision adequately documented	92	The ANAO examined whether the decision-maker had adequately documented the reasons for their decision including the use of information gained in the interview and through CISNET. ⁴
Source: Analysis of ANAO compliance testing results ⁵		

The ANAO noted DIMIA's decision to use higher level and more experienced officers to make decisions in processing PV applications. The audit found that overall the standard of record keeping on the case files of PV applicants was high. In particular, the decision-making process and the reasons for decisions made were adequately documented. However, the standard of decision records varied between processing offices. In cases where an abbreviated decision record⁶ was used, the ANAO was unable to determine the rationale behind the decision.

⁴ An electronic database to distribute relevant country information to decision makers.

⁵ ANAO Report No. 56, 2003-04, table 2.1.

⁶ A summary decision record prepared when the initial decision-maker had left the position before the decision was handed down.

The ANAO found that the results of the compliance testing related to the timeliness of the processing of applications were in line with the quality measures outlined in DIMIA's Portfolio Budget Statements. However, the ANAO found cases where applications took longer to process than the times set down in DIMIA's published performance indicators. Generally, these were cases where the external factors, including those beyond DIMIA's control, influenced the timeliness of processing. The ANAO made a recommendation aimed at enhancing monitoring of that part of its caseload to allow DIMIA to identify common causes of extended delays and to identify any actions DIMIA could initiate to improve timeliness.

DIMIA agreed to the ANAO's recommendation.

ANAO Performance Audit No.62 2002-03, Management of Selected Aspects of the Family Migration Program

The objective of this audit was to examine the effectiveness and efficiency of DIMIA's decision-making processes and the management of systems for delivering the parent and partner aspects of the family stream of the Migration Program. The audit addressed the following questions:

- Did DIMIA have the systems to facilitate decision-making, which was internally consistent?
- Did DIMIA have strategies in place to facilitate effective and prompt decision-making?
- How effectively did DIMIA manage relationships with other relevant agencies?

The ANAO tested a sample of 208 completed parent and partner visa cases. A stratified random sample was drawn from the population of parent and partner migration applications finalised between 1 July 2001 and 30 May 2002. In particular, the ANAO assessed whether decisions were well documented, whether errors had been made in elements of the decision-making process, and the impact of these errors on the overall transparency of decisions and the integrity of the program. The ANAO identified the following four groups of visa applications for examination: spouse visa applications processed in overseas posts ('Offshore spouse applications'); spouse visa applications processed in Australia ('Onshore spouse applications'); parent visa applications processed in overseas posts ('Offshore parent applications'); and parent visa applications processed in Australia ('Onshore parent applications').

Visa type	Processing location	Number of applications in stratum	Number of applications selected	Number of applications audited	% of selected applications not located within audit period
Spouse	Offshore	15421	66	47	29
	Onshore	4334	65	62	5
Parent	Offshore	4161	65	58	11
	Onshore	321	54	41	24
Total		24237	250	208	69
Source: ANAO analysis of DIMIA data ⁷					

After examining a sample of visa classes, the ANAO concluded that decision-making by DIMIA officials was generally sound, although there were elements of the department's administrative systems which required attention at the first opportunity, including:

- the lack of documentation which supported certain elements of the decision-making processes;
- the administrative systems for managing the queue and allocating visas in queue date order; and
- enhancing consistency between the department's existing offshore and onshore quality assurance processes.

At the time of the audit, health risk assessments for migrants and the roles and responsibilities for each of the stakeholder departments were poorly defined. In particular, DIMIA did not have reliable information on the number and type of health waivers that are granted to new migrants.⁸ The costing guidelines for health waivers at the time had not been agreed by relevant agencies. DIMIA, DoHA and FaCS were seeking to improve cooperation and information exchange. The ANAO recommended that this should be resolved as a matter of priority to protect the interests of the Commonwealth.

DIMIA, DoHA and FaCS agreed to the ANAO's recommendation.

⁷ ANAO Report No. 62, 2002-03, Appendix 1, table 1.

⁸ The health requirement specified in the Migration Regulations can be waived in some cases where compelling and compassionate circumstances exist, provided that there is no undue cost to the Australian community, or the waiver does not cause undue prejudice to the access to health care or community services of an Australian citizen or permanent resident.

Committee Terms of Reference A, C and D – Immigration Detention

A:

The administration and operation of the Migration Act 1958, its regulations and guidelines by the Minister for Immigration and Multicultural and Indigenous Affairs and the Department of Immigration and Multicultural and Indigenous Affairs, with particular reference to the process and assessment of visa applications, migration detention and the deportation of people from Australia.

C:

The adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention.

D:

The outsourcing of management and service provision at immigration detention centres.

ANAO Approach to the Terms of Reference dealing with Immigration Detention

The Terms of Reference canvass immigration detention in three broad areas:

- immigration detention in the context of the administration of the Migration Act (TOR A);
- the adequacy of healthcare and other services provided to people in immigration detention (TOR B); and
- the outsourcing of the management and service provision at the immigration detention centres (TOR C).

The ANAO audits of the Detention Centre Contracts were not established to address these criteria specifically. For this reason, our submission has been arranged according to the TOR while preserving as far as possible, the context in which the audits were conducted. The audits did not separately examine the outcomes of the detention program, nor the quality of the services provided. The audits examined DIMIA's management of the contractual arrangements for delivery of detention services and related performance measures.

The performance audit of the management of the detention centre contracts was conducted in two parts. The first part (ANAO Report No.54 2003–2004) focused on the detention agreements between DIMIA and Australasian Correctional Management (ACM). The second part of the audit (ANAO Report No.1 2005-2006) focused on DIMIA's management of its contract with Global Solutions Limited (GSL) and how any lessons learned from the previous arrangements had been incorporated into the new contract. The

second audit did not specifically examine the implementation of the recommendations from the first audit. However, the audit was conducted in the context of DIMIA's response to the first audit which was:

DIMIA is of the view that many of the identified areas of concern either have been or are being addressed in the management of the new detention centres contract. As this audit has been split into two stages, a complete picture of DIMIA's management of the contract will be clearer following the second audit report.

Service Delivery Obligations

The ANAO concluded in both reports that DIMIA has been unable to articulate its requirements clearly for the provision of detention services. DIMIA's management of the detention agreements with ACM suffered from a lack of clearly identified and articulated requirements. While the contract with GSL does not establish clear expectations for the level and quality of services to be delivered; mechanisms to protect the Commonwealth's interests are not always clear; and there is insufficient information about the quality of services being delivered.

Risk management

In the first audit, the ANAO found that DIMIA's management of the program, together with the delivery of services under the contract with ACM and the prioritisation of tasks, focused on risks that materialised, rather than systematic risk analysis, evaluation, treatment and monitoring. While DIMIA acted appropriately to deal with program and other risks as they occurred, the majority of risks were managed in response to an incident or event.

In its second audit, the ANAO focused its examination on operational risk management rather than the management of risk at the program level, as it had done previously. The absence of an overall risk assessment means that many of the provisions of the contract with GSL are not risk based and in some instances this results in Commonwealth exposure. In particular, areas of concern identified by the ANAO include; the insurance; indemnity and liability regime; the mechanisms to manage the engagement and performance of subcontractors; and overall performance monitoring. The ANAO also found that the completion of a risk assessment to inform DIMIA's contract management plan was not completed until November 2004. This assessment comprised a risk assessment of each of the Immigration Detention Standards (IDS), rather than a comprehensive risk identification process involving the consideration of whole-of-government risks and the relevant plans and strategies to treat them.

Subcontractors

DIMIA's contract with GSL allows for the use of subcontractors to deliver services at the centres. The ANAO found that the Contract does not provide a mechanism for review of the terms and conditions in the subcontracts to assess compliance. However, after obtaining agreement from GSL, DIMIA (through its legal advisors – AGS) was able to examine the content of the subcontracts. The AGS review found that the specific rights and obligations were substantially different in a number of areas; particularly the IDS and performance measures were not applied in the case of the subcontract for

psychological services. The ANAO identified considerable scope for DIMIA to improve its management of risks associated with the contractual arrangement with subcontractors.

Performance Measures

The IDS set out by DIMIA in the contract underpin the provision of detention services and the standard of care to be provided.⁹ Both ANAO reports highlighted deficiencies with the IDS, the related performance measures and contract monitoring conducted by the department. The first audit found that although DIMIA had identified shortcomings in the contract with ACM, it did not vary the contract to establish clear expectations of the services to be delivered, or refine the standards it used to monitor and report on ACM's performance. The first audit went on to conclude that these shortcomings adversely affected DIMIA's ability to: assess overall service delivery; determine the quality of services required and delivered in key areas; manage shared responsibilities; and establish priorities for improvement.

In relation to DIMIA current contract with GSL the ANAO found that there are a number of limitations with the IDS and related measures that would affect their usefulness in assessing contractor performance. The Contract lists 148 standards and 243 measures. Terms such as 'timely', 'appropriate', 'relevant', 'adequate', and 'as soon as possible' are used in the standards and/or measures and these are not defined to allow their assessment. The flexible and discretionary application of performance standards and measures means that these no longer effectively serve the purpose of standards – a pre-determined level of service delivery – and therefore do not provide DIMIA with assurance that a consistent level of services are being provided.

Contract Monitoring

At the time of audit fieldwork for both audits, DIMIA used an exceptions-based method of contract monitoring, focusing on the monitoring and reporting of incidents rather than ongoing quality of service delivery. In its first audit report the ANAO found that DIMIA had not fully implemented a range of strategies to collect and analyse information, nor were the strategies connected to an overall contract monitoring plan. The ANAO further concluded that the contractual requirements lack sufficient specificity to enable DIMIA to adequately monitor the quality of services provided.

The audit of DIMIA's management of its contract with GSL found that the contract monitoring and reporting arrangements that were in place at the time of the first audit continued to be used. DIMIA advised that it does not accept the non-delivery of any contracted service and that the department's monitoring strategy is based on its assumption that the expected standard of service is being provided at all times across all of the centres. The ANAO considers that continuing to focus contract monitoring on the reporting of incidents does not allow for a systematic approach to assessing the quality of performance and changes in the level of services delivered. The ANAO acknowledges the implementation of DIMIA's contract monitoring plan in

⁹ Detention Services Contract between the Department of Immigration and Multicultural and Indigenous Affairs and GSL Australia; Schedule 2, clause 1.6.

January 2005. However, the ANAO was unable to assess the effectiveness of this strategy during the course of the audit owing to its recent implementation.

Coordination arrangements with external agencies

The provision of detention services at the various centres across Australia establishes a complex legal and administrative framework for the delivery of detention services. As the single agency responsible for the administration of immigration detention, DIMIA is responsible for liaising and coordinating organisations or stakeholders with an interest in, or responsibility for, aspects of service delivery.

The ANAO found in both audits that DIMIA had not sufficiently articulated the roles and responsibilities of third parties in the delivery of detention services. The ANAO found in the first audit that although DIMIA had made progress towards introducing a comprehensive range of Memoranda of Understanding (MOU) with a range of external agencies, including State departments, the extent to which the MOU's had been finalised and implemented varied. In the second audit, the ANAO found that the MOU's negotiated between the Commonwealth and State and Territory government agencies are still in various states of development. Eighteen months after the Contract was signed, and seven years after detention services were initially outsourced, 11 out of the 21 agreements (listed in ANAO Report No. 54 2003-04) are not yet finalised.

ANAO Recommendations – Immigration Detention

Across both audit reports, the ANAO has made a total of 10 recommendations. The recommendations are reproduced in the audit summaries provided at Attachment B. The recommendations covered areas of contract administration including:

- risk management, including the allocation of risk through the contract;
- contract monitoring;
- performance information;
- financial management; and
- infrastructure management, including infrastructure standards and management plans.

DIMIA agreed with all ANAO recommendations. The ANAO has not examined, and therefore cannot comment on DIMIA's progress in implementing these recommendations.