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Performance Audit

Visa Management: Working Holiday Makers

Department of Immigration and Multicultural Affairs

Australian National Audit Office

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Canberra ACT
17 October 2006

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the Department of Immigration and Multicultural Affairs in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit and the accompanying brochure to the Parliament. The report is titled *Visa Management: Working Holiday Makers*.

Following its tabling in Parliament, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee'.

Ian McPhee
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Glossary and Abbreviations

ACC	Australian Crime Commission
AFP	Australian Federal Police
AGIMO	Australian Government Information Management Office (formerly NOIE).
ANAO	Australian National Audit Office
APS	Australian Public Service
ARC	Administrative Review Council
CAAT	Computer-aided auditing tool. The ANAO used CAAT software in the course of this audit.
CPI	Consumer Price Index
DFAT	Department of Foreign Affairs and Trade
DIMA	Department of Immigration and Multicultural Affairs
ETA	Electronic Travel Authority
ETAS	Electronic Travel Authority System
eVisa	DIMA's electronic visa system
eWHM	Electronic Working Holiday Maker visa
Finance	Department of Finance and Administration
Global Working	A DIMA policy of performing its work (such as visa application processing) at locations which give better efficiencies, greater integrity and better client service, rather than where the client is located geographically.
GFS system	Government Finance Statistics system. The International Monetary Fund's specialised macroeconomic statistical system, designed to support fiscal analysis.
OPC	Onshore Processing Centre for offshore visa applications. In this report, usually the Hobart Global Processing Centre, which processes the offshore eWHM applications that are not autogranated.
ICSE	Integrated Client Services Environment. A DIMA mainframe-based computer system used for processing visa applications onshore including eVisas lodged by offshore applicants.

IMIA	Immigration, Multicultural and Indigenous Affairs (former portfolio)
IP	Intellectual property
IT	Information technology
JCPAA	Joint Committee of Public Accounts and Audit
LEGEND	DIMA's on-line library of legislative and business rules (see para. 3.27 et seq.)
MAL	Movement Alert List (see para. 4.44 et seq.).
MSIs	DIMA's Migration Series Instructions (see para. 3.23)
NOIE	National Office for the Information Economy, from April 2004, known as 'AGIMO'.
PAES	Portfolio Additional Estimates Statement
PAM3	DIMA's Policy Advice Manual, PAM3 being the current version (see para. 3.23)
PBS	Portfolio Budget Statement
PIC	Public Interest Criterion
PMO	Principal Migration Officer (at a DIMA overseas post)
Safeguards	DIMA's system for identifying visa applications that require more in-depth integrity checking. It does this by automatic checking of visa application details against specified profiles (see para. 4.44 et seq.).
TRIM	DIMA's internal departmental records system
TRIPS	DIMA computer system (see footnote 103).
VAC	Visa Application Charge. A charge that must be paid to the Commonwealth by those who apply for a visa (see Chapter 7).
WHM	Working Holiday Maker
<i>Note:</i>	<i>All references in this report to an Act or sections of an Act are references to the Migration Act 1958, unless the context shows otherwise.</i>

Summary and Recommendations

Summary

Background

1. Over recent years, the number of temporary entrants to Australia on Working Holiday Maker (WHM) visas has grown. These are young people without dependants, seeking a holiday of up to a year in Australia during which they supplement their funds by temporary periods of work in a variety of industries. They are also allowed to study or train for up to four months while in Australia.
2. The Department of Immigration and Multicultural Affairs (DIMA), which is responsible for managing the entry of people to Australia, now grants over 100 000 WHM visas each year to young people from the 19 countries and regions with which Australia has a reciprocal arrangement that allows young Australians similar opportunities.
3. On 1 July 2002, DIMA implemented a system for people to lodge WHM visa applications electronically over the Internet. This was expected to relieve pressure on DIMA's overseas posts and enable the department to cope with the increasing WHM application workload. Around 98 per cent of WHM visa applications are now lodged this way (referred to as 'eWHM'), reducing the posts' workload. In most cases, DIMA's computer systems assess the applications and grant the visa within minutes.

Audit objective and scope

4. The objective of the audit was to assess whether the WHM programme is administered effectively and in accordance with relevant laws and policies. In particular, the ANAO focused on four key areas:
 - the implementation of eWHM visa;
 - authority for the WHM programme;
 - decision-making for WHM visas; and
 - programme performance information.
5. A feature of the audit was the computer-aided scrutiny of over 300 000 visa application records to test DIMA's decision-making processes.

Key Findings

Implementation of eVisa

6. The eVisa system is an essential element of the delivery of the Working Holiday Maker (WHM) visa programme. The ANAO considered whether DIMA's implementation of eVisa to deliver WHM visas (eWHM) was consistent with sound practice for Internet delivery.

7. With the exception of its limited financial information in relation to the project, the ANAO considered that DIMA had carried out the implementation of the eWHM project largely in accordance with sound practice for Internet delivery. It conducted a rigorous design process, taking account of privacy, copyright and other administrative law relating to electronic transactions. DIMA has evaluated and reviewed aspects of eWHM regularly and has enhanced its accessibility and useability.

8. DIMA did not analyse the financial costs and benefits of the eWHM project, nor did it keep records of the costs of development. While acknowledging that it did not follow a formal procedure to analyse financial costs and benefits, DIMA has noted that it considered these issues and the likely efficiencies to be gained were a significant consideration in the decision to proceed with the eWHM. DIMA is also currently developing cost benefit analysis procedures to incorporate into all new projects and initiatives.

Authority for the Working Holiday Maker visa programme

9. The ANAO considers that DIMA has established an appropriate framework for the administration of the WHM visa programme. Authority exists for the WHM programme in migration law. The Migration Act allows the minister to grant visas and relevant powers have been delegated to DIMA officers.

10. DIMA has a comprehensive set of rules in place for WHM visas and it keeps these rules accessible and up-to-date. These business rules and procedural guidelines help to ensure that there is a basis for correct, consistent and equitable decision-making that accords with the law and policy.

11. In 2001, legislation was enacted to allow the minister to make an arrangement to authorise computer-based decision-making. When the audit began no specific arrangement had been made to provide this authority. This introduced a risk that the robustness of computer-based decisions to grant visas was open to doubt.

12. Independent legal advice obtained by the ANAO confirms that DIMA is now taking appropriate action to implement the necessary procedures to comply with the legislation. When this is complete, satisfactory arrangements should be in place authorising computer-based decision-making under the Migration Act. That advice also confirms that the lack of such an arrangement does not invalidate the granting of visas made through the autogrant facility of eWHM since July 2002.

Decision-making for Working Holiday Maker visas

Sound decision-making

13. DIMA's decision-making for WHM visas involves deciding whether an applicant meets legislative criteria for the grant of a visa. Therefore, the processes and structures that support it need to be lawful, accurate, transparent and of high integrity.

14. Around 98 per cent of WHM visa applications are lodged over the Internet. Most of DIMA's decision-making in granting WHM visas is undertaken automatically by its computer system or by processing centre staff utilising this system. In testing the soundness of DIMA's decision-making the ANAO extracted 304 052 eWHM applications. ANAO analysis involved testing records for accuracy, completeness and reliability against migration legislation and business rules.

15. DIMA's decision-making for eWHM visa applications is robust. Systematic analysis of computer records using auditing software shows a very high level of adherence to both legal and administrative requirements.

16. The primary data collected from visa applications and additional information compiled by DIMA through its own processing provides a potentially rich source of information. The ANAO considers that DIMA could benefit from the use of analytical tools to examine visa records and related data to monitor its client population and identify developing trends. This, in turn, would assist in visa management and provide a basis for policy advice.

Processing WHM visa applications at overseas posts

17. In 2003, DIMA staff at two major overseas posts, London and Berlin, without any approval from national office, decided not to process paper WHM visa applications but to return them and ask applicants to re-apply over the Internet. These decisions were unlawful. These two posts are responsible for

DIMA affairs over most of Europe, including several principal source countries for WHMs. They took this decision to overcome processing backlogs, to reduce workload pressures and deal more effectively with other priority caseloads. A third post, Seoul, also in a country which is a major source of WHMs, ceased accepting paper WHM applications in 2004. DIMA advised that this only occurred after agreement was reached with agents who represented the majority of applicants from South Korea.

18. These posts are now accepting paper applications. During the audit, DIMA also amended the posts' websites to make it clear that paper applications are acceptable. DIMA has also undertaken to provide further guidelines to overseas posts in relation to this matter.

19. On a related matter, DIMA Internal Audit found another major post, Tokyo, began offering 'instant' WHM visas to those who applied on paper applications, acting in contradiction to the DIMA eWHM objective of reducing manual processing. This practice ceased shortly after it was discovered.

20. The department advised that these issues illustrate the complexity of managing operations in a highly decentralised environment. Nevertheless, to ensure common service levels on a global basis, it would be beneficial for the department to reinforce periodically to its overseas posts the importance of equitable access to visa application processes.

WHMs working in the Australian sex industry

21. Evidence has been given to Parliament that Australia is a destination country for trafficking in women for the purpose of slavery and sexual servitude. Concern over sex workers in Australia on WHM visas has arisen within DIMA repeatedly over recent years. However, a person can enter Australia on a WHM visa and work in the legal sex industry with no breach of their visa conditions. Concern arises if there is evidence of sexual slavery or people trafficking. DIMA compliance officers have come across instances where they concluded that trafficking was occurring.

22. DIMA has agreed a protocol with the Australian Federal Police for referral of people trafficking information. DIMA provided evidence that it makes such referrals.

23. DIMA reported issues relating to people-trafficking in its 2004–05 Annual Report and has advised that it will provide similar information in its 2005–06 Annual Report.

Programme management and performance

24. DIMA's WHM visa programme is part of its Outcome 1, which is 'Contributing to Australia's society and its economic advancement through the lawful and orderly stay of people'. The ANAO sought to identify how the WHM visa programme contributes to this outcome.

25. The ANAO considers that DIMA could obtain a better strategic fit among outcomes, outputs and the specific objectives of DIMA's individual programmes by seeking agreement to revise its outcomes and outputs structure. To accord with government guidelines, DIMA could consider including in its PBS, statements as to its expected level of performance in terms of its Outcome 1 performance indicators and report against all objectives of the WHM programme, including the numbers of young Australians who take up reciprocal opportunities. DIMA is reviewing the disclosure of performance information as part of developing its 2005–06 Annual Report.

Visa Application Charge

26. Under the Migration Regulations applicants for a WHM visa are required to pay a Visa Application Charge (VAC). The charge is currently \$185. ANAO testing showed that DIMA is collecting this charge effectively.

27. However, the nature of VAC requires clarification. DIMA regards VAC as a tax. The ANAO has obtained a legal opinion that VAC is a tax. The Department of Finance and Administration has advised that, for financial reporting purposes, however, VAC is regarded as a regulatory fee (that is, a fee for service) and not a tax. More generally, the Australian Bureau of Statistics (ABS) has advised that it is planning to develop a guidance note to clarify interpretation of Government Finance Statistics (GFS) as it relates to taxes and fees for service. The ANAO considers that, following its current review of cost recovery, DIMA should obtain clarification of the accounting classification of VAC.

Audit conclusion

28. Overall, the ANAO considers DIMA has developed a sound framework for the effective administration of the WHM visa programme in accordance with relevant laws and policies. The eWHM mechanism implemented by DIMA provides a robust, effective mechanism for handling WHM visas in an environment where the number of applications continues to rise. The

implementation of the eWHM project has been largely in accordance with sound administrative practice for Internet delivery.

29. Using computer-aided auditing techniques, the ANAO found that DIMA's eWHM visa decision-making processes generally to be accurate, reliable and in accordance with the rules set out in law and policy. DIMA's eWHM has enabled it to maintain timely decision-making while generally improving processing efficiency. Audit analysis also highlighted several areas where programme administration needed to be improved, including the processing of paper applications at some overseas posts and the authorisation of computer-based decision-making. DIMA has taken action to address these issues. The ANAO also considered there are opportunities for DIMA to improve its programme performance information.

Recommendations

30. The ANAO made four recommendations. Two are aimed at improving the management of visa application processing within DIMA. A third recommendation is focused on complementing action commenced by DIMA during the audit to improve its performance information and the fourth is focused on clarifying the accounting classification of Visa Application Charge.

DIMA response

31. The department welcomes the report of the ANAO. This is the first performance audit of an "eVisa", which is a facility developed by DIMA that allows a client to apply for their visa over the Internet. The facility involves the client entering information into an on-line form. This data is then captured into DIMA's visa processing systems, which allows a number of processes to be automated, resulting in faster and more reliable processing. Australia is so far the only country to have developed this facility.

32. The eVisa for Working Holiday Maker applicants was one of the first to be introduced and has been particularly well-received by the target client group, who are young, mobile and generally IT-literate. The department is pleased that the ANAO's report has provided constructive findings in relation to the concept and operation of the eVisa. The department notes and accepts the ANAO's suggestions for improving some aspects of our planning and implementation processes, and enhancing our performance reporting in the future.

Recommendations

Set out below are the ANAO's recommendations. Report paragraphs references and abbreviated responses from DIMA are included. More detailed responses from DIMA are shown in the body of the report immediately after each recommendation.

Recommendation No.1

Para. 4.61

The ANAO recommends that DIMA improve its programme management capability through use of analytical tools to examine visa records and related data to monitor its client population and identify developing trends.

DIMA response: Agreed

Recommendation No.2

Para. 5.44

The ANAO recommends that DIMA reinforce periodically to its overseas posts the importance of equitable access to visa application processes.

DIMA response: Agreed

Recommendation No.3

As part of its proposed review of performance information, the ANAO considers that DIMA should:

Para. 6.69

- (a) seek agreement to a revision of its outcomes and outputs structure to get a better strategic fit among outcomes, outputs and the specific objectives of DIMA's individual programmes;
- (b) include, in its PBS, targets against stated performance indicators for its Outcome 1; and
- (c) report against all objectives of the WHM programme, including the numbers of young Australians who take up reciprocal WHM opportunities.

DIMA response: Agreed

Recommendation No.4

The ANAO recommends that, following its review of cost recovery, DIMA obtain clarification of the accounting classification of the Visa Application Charge.

Para. 7.33

DIMA response: Agreed

Audit Findings and Conclusions

1. Introduction

This chapter outlines the Working Holiday Maker visa programme, the audit objective and scope, and the purpose of the audit.

Background

1.1 The Department of Immigration and Multicultural Affairs (DIMA) is responsible for managing the permanent and temporary entry of people to Australia. This includes enforcing immigration law, settling migrants and refugees, and promoting the benefits of citizenship and cultural diversity.

1.2 DIMA manages entry and stay in Australia for non-citizens under the *Migration Act 1958*. The Working Holiday Maker (WHM) visa programme contributes to DIMA's Outcome 1: *contributing to Australia's society and its economic advancement through the lawful and orderly entry and stay of people*. This encompasses Australia's annual migration (non-humanitarian) and humanitarian programmes, temporary entry, litigation, detention and the prevention of unlawful entry.

1.3 Temporary entry and stay has three broad categories—visitors, overseas students and temporary residents. WHMs are visitors. The WHM visa programme allows young people from certain overseas countries/regions—those with which Australia has reciprocal arrangements—to enter and stay in Australia for an extended holiday and to do incidental work to supplement funds. The Government sees the programme as having social and economic benefits, and promoting international understanding by helping young people experience Australian culture.¹ It also aims to support the economy by providing supplementary labour for industries wanting short-term casual workers, such as the tourist and harvest industries.

1.4 Australia's WHM visa programme began in 1975, when the universal visa system was introduced. WHM visas were available for Australians to enter the UK so a similar, reciprocal arrangement was set up and extended to

¹ Minister for Immigration and Multicultural and Indigenous Affairs, 'Working Holiday' and 'Work and Holiday' visas, Budget 2003 Fact Sheet, 13 May. See <http://www.minister.immi.gov.au/media_releases/ruddock_media03/fs_work_hol.pdf>, last viewed 7 August 2006.

Irish and Canadian citizens. Over the past 30 years, the number of arrangements Australia has entered into has increased to 19.²

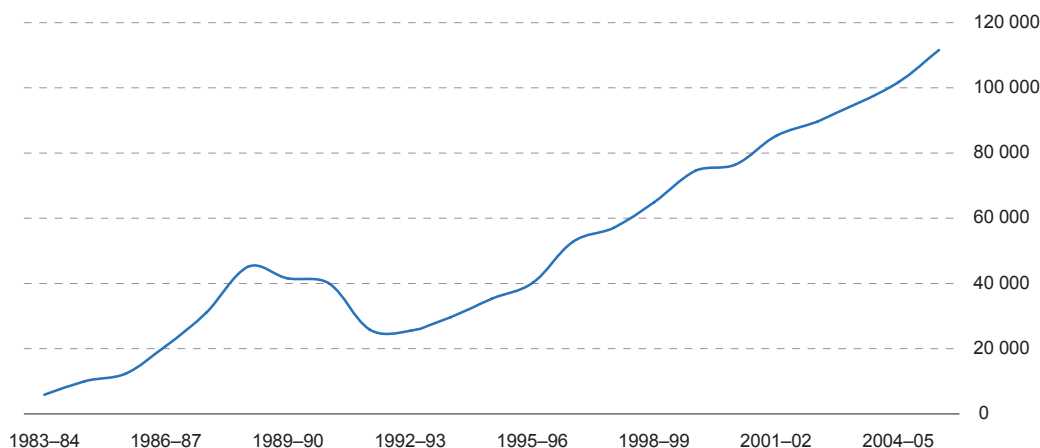
What is a visa?

A visa is permission to travel to, enter and remain in Australia. It is *not* a physical object such as a stamp on a passport, a form or other document. The fact that a person has been granted a visa is recorded on DIMA's computer databases. Such information can be accessed by those with a need to know about the person's status, for example, airline check-in staff. Evidence of a visa may be represented by a small paper form placed inside the person's passport. This is a 'visa label'. The presence of a visa label may provide physical evidence that the passport-holder has permission to enter Australia; however, its loss or destruction does not terminate the visa (permission). Further, absence of a visa label does not mean the person does not have a visa. Increasingly, a visa label is unnecessary for Australian visas.

1.5 In recent years, the number of temporary entrants to Australia on WHM visas has grown. These are young people without dependants, seeking a holiday of up to a year in Australia during which they supplement their funds by temporary periods of work in a variety of industries.³ The number of WHM visas granted has grown from fewer than 20 000 in the early 1980s. DIMA now grants over 100 000 WHM visas each year to young people from the countries and regions with which Australia has a reciprocal arrangement that allows young Australians similar opportunities (see Figure 1.1).

² Current reciprocal arrangement countries/regions are: Belgium, Canada, Denmark, Estonia, Finland, France, Germany, Hong Kong, Ireland, Italy, Japan, Malta, Norway, Republic of Cyprus, Republic of Korea, Sweden, Taiwan, the Netherlands, and the United Kingdom.

³ WHMs include many people commonly referred to as 'backpackers'.

Figure 1.1**Numbers of WHM visa grants, 1983–84 to 2004–05**

Source: DIMA

1.6 A WHM visa is a permit to stay in Australia for 12 months, and work, but for no more than a limited period, with any one employer unless the holder has DIMA's written permission.⁴ The *Migration Regulations 1994* (Schedule 2, Subclass 417) set out the criteria the applicant must satisfy to get a WHM visa, which can be granted only if he or she:

- has no dependent children;
- has turned 18 but not 31;
- holds a valid passport from an agreement foreign country or region;⁵
- seeks to enter or remain in Australia as a genuine visitor whose principal purpose is to spend a holiday in Australia;
- has sufficient money for departure air fare and personal support;
- has a reasonable prospect of getting employment in Australia; and

⁴ This period was formerly three months but, on 3 May 2006, the responsible minister announced a change to extend the period to six months. The change came into effect on 1 July 2006. See: <http://www.minister.immi.gov.au/media_releases/media06/v06054.htm>, last viewed 5 May 2006.

⁵ Previously, WHM visas could be granted to non-agreement nationals, if 'advantage to Australia' was determined by the decision maker. In September 1999, the then responsible minister agreed to change the Migration Regulations so that only arrangement country/region nationals were eligible to apply.

- has not entered previously entered Australia as a WHM visa holder.⁶

The introduction of eVisa

1.7 Until 2002, WHM visa applicants could apply only in writing at DIMA's overseas posts, where staff would process the applications and grant (or refuse) visas. Growth in demand for this and other visa types caused resource pressure at the posts, especially London and Berlin. In July 2002, to manage growth in the WHM programme, DIMA introduced an electronic visa ('eVisa') for WHM visas.

1.8 DIMA's development of electronic systems for visa application began in the 1990s. In December 1997, the Prime Minister announced the Government's policy *Investing for Growth*, including a plan to establish the Commonwealth as a leading user of technology. This included making all appropriate services Internet-deliverable by 2001. In April 2000, the Government released *Government Online: The Commonwealth Government's Strategy* to provide the strategic framework to assist agencies in meeting key online commitments, in particular, to:

- deliver all appropriate services via the Internet by December 2001, complementing existing written, telephone, fax and counter services;
- ensure core minimum standards in important areas such as privacy, security and accessibility were met; and
- encourage government business operations to go online.

1.9 DIMA now has a range of systems that support this strategy. The Electronic Travel Authority (ETA), introduced in 1996, enables short stay holiday and business visitors to apply to enter Australia over the Internet or through travel agencies or airlines.⁷ The eVisa system, introduced in 2001, is a separate, more recent and more sophisticated facility.

1.10 In essence, the eVisa system collects data from applicants who apply over the Internet to enter or remain in Australia. DIMA tested the feasibility of visa applications being lodged via the Internet, and then, as part of its online strategy, began the eVisa programme in December 2000.⁸ The primary

⁶ From 1 November 2005 a second WHM visa is available to applicants if they have worked for at least three months seasonal harvest work on their first WHM visa visit. This is a change in policy to assist seasonal harvest labour in regional areas.

⁷ Around 2.9 million ETA applications were lodged in 2005–06.

⁸ The proof-of-concept for electronic visa lodgement began in 1999 with DIMA's Student Internet Project, which enabled Australian universities to lodge student-permission-to-work applications via the Internet.

objectives of eVisa are to improve integrity, client service and programme outcomes. Applicants for a range of visa categories can apply over the Internet. The eVisa system has become a cornerstone for delivering the WHM visa programme.

Global working

1.11 In recent years, DIMA has pursued a range of strategies to improve the design and delivery of visas.⁹ These include relocating visa processing to centres in Australia that specialise in designated visa categories and Internet-based lodgement and processing of visas.¹⁰ DIMA intends to expand its range of electronic visa services through its major new computer project, *Systems for People*, which was recently announced by the responsible minister.¹¹

1.12 DIMA established centralised processing of WHM visas in Hobart in 2002–03.¹² With eVisa for WHM (known as ‘eWHM’), a young person wishing to come to Australia (or their agent) can apply to DIMA over the Internet. Around 98 per cent of WHM visa applications are now lodged this way. In most cases, DIMA’s computer system grants the visa within minutes. If the computer system cannot grant a visa, it refers the application for manual processing and decision by a departmental officer in Hobart.

1.13 Paper applications are submitted and processed at overseas posts in countries/regions with whom the WHM arrangements specify that only paper applications may be lodged, or where the applicant is unwilling or unable to lodge over the Internet.

Previous audit and evaluation

1.14 On 1 September 1997, the Joint Standing Committee on Migration tabled its report *Working Holiday Makers: More Than Tourists*.¹³ It concluded that the WHM visa programme was of considerable value to Australia and should

⁹ Rizvi, A. 2004, ‘Designing and Delivering Visas’, *People and Place*, vol. 12, no. 2, p. 45. One of the specific objectives of Global Working is to ‘Repatriate jobs to Australia’. See DIMAnet (DIMA Intranet), ‘Objectives of Global Working’.

¹⁰ DIMA, 2005–06 Internal Audit Program, p. 15.

¹¹ Minister for Immigration and Multicultural Affairs 2006, media release, ‘Vanstone announces Palmer progress’, 1 March, <http://www.minister.immi.gov.au/media_releases/media06/v06022.htm>, last viewed 23 June 2006.

¹² The Hobart ‘Onshore Processing Centre’ was the name given to the centre in 2002–03. It is now part of the larger Hobart Global Processing Branch (HGPB) which undertakes other global working initiatives, including processing Internet-lodged visa applications for Visitor visas.

¹³ See <<http://www.aph.gov.au/house/committee/mig/reports.htm>>, last viewed 30 April 2006.

continue to be supported. The Government tabled its response to the report on 2 September 1999, in which it accepted the majority of the Committee's recommendations.¹⁴

1.15 A number of earlier ANAO reports are relevant but none has examined either WHM visas or the eVisa system.¹⁵ The audit team drew on a range of other publications, papers and reports relevant to the audit, including DIMA internal audit reports. Most relevant is DIMA's eWHM evaluation, completed during the audit.¹⁶

1.16 DIMA proposes to commission further research into the programme that will look at the current outcomes and benefits of the programme.¹⁷ That proposal is in preparation for its 2006–07 research programme.¹⁸

Management context

1.17 The audit was conducted during a period when the activities of DIMA had been the subject of a range of reform proposals aimed at making DIMA:

- a more open and accountable organisation;
- ensuring fair and reasonable dealings with clients; and
- providing the organisation with well trained and supported staff.

1.18 During this period the department adopted its new strategic value statement: *'People: our business'*.¹⁹

Audit objective and scope

1.19 The audit objective was to assess whether the WHM visa is managed effectively and in accordance with the law and policy. The audit criteria were:

- (1) Does DIMA employ sound management arrangements and a comprehensive set of business rules to administer the WHM visa?

¹⁴ See <<http://www.aph.gov.au/hansard/senate/dailys/ds020999.pdf>>, p. 8266, last viewed 30 April 2006.

¹⁵ Auditor-General 1999, *Electronic Travel Authority*, (Audit Report No. 3, 1999–2000); Auditor-General 2001, *Internet Delivery Decisions—A Government Program Manager's Guide* (Better Practice Guide); Auditor-General 2003, *Management of Selected Aspects of the Family Migration Program*, (Audit Report No. 62, 2002–2003).

¹⁶ DIMA, Evaluation of Electronic Working Holiday Maker Visa (subclass 417), MTE Division, November 2005.

¹⁷ *ibid.*, p. 3.

¹⁸ DIMA, advice to the ANAO, 23 June 2006.

¹⁹ Immigration and Multicultural Affairs Portfolio, PAES 2005–06, pp. 3–6.

- (2) Are decisions to grant, reject and cancel visas accurate, consistent and in line with relevant laws, regulations and policies?
- (3) Does DIMA manage and monitor the WHM visa to ensure visas are delivered in a timely and cost-effective manner?
- (4) Is DIMA's adoption of the eVisa system to deliver WHM visas consistent with sound administrative practice for Internet delivery?

Audit method

1.20 The audit began in September 2005. The audit team conducted field-work until January 2006 at DIMA's national office in Canberra. It visited DIMA's regional office in Hobart, the location of the WHM OPC, which manually processes WHM visa applications. The team observed DIMA officers processing applications and interviewed management and staff about the programme's operation. DIMA officers from its national office provided oral briefings to the audit team and written responses to specific questions.

1.21 The audit team examined, in particular:

- DIMA national office files on the development of the WHM visa and records in its computer-based records management systems; and
- a large extract of visa data from DIMA's computer systems covering 304 052 eWHM applications, comprising all records from 1 July 2002 to 14 January 2006.

1.22 The ANAO obtained legal advice on DIMA's arrangements for computer-based decision-making and Visa Application Charge (VAC). It also obtained advice on VAC from the departments of the Treasury and Finance and Administration.

1.23 During the course of the audit, DIMA began action to address some of the issues raised. This is noted at relevant points in the report.

This report

1.24 This chapter provides an introduction to the WHM programme and the audit. The remaining six chapters relate to the following matters:

- Chapter 2 examines how well the eVisa system, which supports the WHM programme, was implemented;
- Chapter 3 examines the legal authority for the WHM programme, including authority for computer-based decision-making. It then

examines the framework of legislation, business rules and management arrangements within DIMA for the WHM visa programme, how this is maintained and made accessible;

- Chapter 4 is a core chapter. It examines DIMA's decision-making using computer-based auditing techniques to analyse WHM records between 1 July 2002 and 14 January 2006;
- Chapter 5 considers a range of matters that have arisen in processing WHM visa applications which have presented challenges to the integrity of the programme, and DIMA's response to each;
- Chapter 6 examines the objectives of the WHM programme and how it fits into DIMA's outcomes and outputs structure. It goes on to examine WHM programme performance information using both DIMA information and data the ANAO has derived; and
- finally, Chapter 7 examines whether DIMA collects the visa application charge (VAC) effectively for WHM visas and how the rates of VAC are varied. It also considers the nature of VAC. These considerations apply across all visas.

2. Implementation of eVisa

The eVisa system is essential to the delivery of the Working Holiday Maker (WHM) visa programme. This chapter considers whether DIMA's implementation of eVisa to deliver WHM visas (eWHM) was consistent with better practice for Internet delivery decisions.

Introduction

2.1 DIMA's eVisa system is essential to the WHM programme. Since the department first implemented eVisa for WHM ('eWHM') in July 2002 the proportion of visa applications lodged through it has risen to around 98 per cent.

2.2 The ANAO examined whether the implementation of eWHM was consistent with sound practice for Internet delivery,²⁰ including whether DIMA:

- (1) prepared a business case to support the proposal, showing the benefits, costs and risks, and to provide a basis for management decision-making;
- (2) carried out a rigorous design to establish the functionality and technical feasibility of the project;
- (3) took account of administrative law and intellectual property rights;
- (4) ensures the system is accessible and useable; and
- (5) monitors and evaluates Internet service delivery to allow it to modify and improve the system in the light of experience.²¹

Business case

2.3 A sound business case is an important first step in considering delivery options for any service, as it underpins the decision. It can also be the focus for later evaluations and audits. Once the service is implemented, the business case can be revisited to consider whether it performed as intended, whether it did so efficiently and effectively and what lessons have been learned.²²

²⁰ ANAO 2001, *Internet Delivery Decisions: A Government Program Manager's Guide*. See: <<http://www.anao.gov.au/WebSite.nsf/Publications>>, (last viewed 18 July 2006).

²¹ Careful consideration of security is another important aspect of good practice in Internet service delivery. This audit does not assess eVisa security management. DIMA's IT security management was recently assessed in Auditor-General, Audit Report No.23 2005–06, *IT Security Management*.

²² Auditor-General, Audit Report No. 26 2004–05, *Measuring the Efficiency and Effectiveness of E-Government*, p. 47 paragraph 3.8.

2.4 The business case considers the programme's suitability for online delivery and defines its objectives. The analysis can be expected to cover the programme aims and objectives, a cost-benefit analysis, the timeline for delivery and a risk analysis.

Review of project documentation

2.5 DIMA prepared no specific document to present a business case for eVisa 3, the release of eVisa that supports eWHM. The ANAO examined the project documentation to see whether it had, nevertheless, developed the elements of a business case as a basis for decision.

2.6 The first important document DIMA produced for the project set out the business requirements.²³ These were expressed primarily as an expanding WHM programme placing pressure on overseas posts, especially London and Berlin. This document acknowledged that ministerial approval would be needed before the envisaged changes could be implemented.

2.7 Later, DIMA prepared the *eBusiness Systems Development Section Project Charter* for eVisa 3 (1 October 2001) to establish a basis for the project, and to set out the broad scope and the timeframe. The initial work under this charter was to 'provide sufficient information to allow a fully informed decision to proceed', which it envisaged would be apparent from the then proposed 'Business Discovery' and 'Technical Discovery' statements and project plan.

2.8 The project charter set out nine related objectives, including 'Provide for Working Holiday visa applications for all levels of health risk through the Internet' and 'Automatically grant the Working Holiday visa where possible'. It also identified the roles of those participating in the project and provided a timetable with clear deadlines.

2.9 The subsequent Business Discovery statement (12 October 2001) articulated the project objectives more succinctly as comprising the two quoted above plus 'Minimise client contact with DIMA overseas posts'. DIMA prepared a Technical Discovery statement (13 December 2001) and the Project Plan (14 March 2002) envisaged in the Project Charter. The latter contained a risk analysis and mitigation strategy.

2.10 By the time the project plan was produced, however, DIMA had already sought ministerial approval. It did so in February 2002, before com-

²³ DIMA, *Electronic Working Holiday (Subclass 417) visa—Stage 5 Business Requirements* (4 September 2001)

pleting the work envisaged in the project charter, promising 'substantial efficiencies which would enable us to direct more resources to integrity checking and better client service in higher risk caseloads'. However, no specific figures were quoted and there was no evidence of a financial analysis of the project or in the documents mentioned above. The minister approved the project on 21 February 2002.

2.11 DIMA made a summary assessment of the resource implications of the project in a table it included in a later document, the 'Implementation Strategy' (17 May 2002). This shows estimated savings of around \$2.5 million a year by 2005–06. It does not explain the basis of the calculation nor discuss the sensitivity of the result to variables such as the numbers of applicants, take-up rate for on-line application, and autogrant rate.

2.12 The ANAO concludes that DIMA proceeded with eVisa 3 without having a completed business case for the project. This means that it is difficult later to assess whether it has realised the expected benefits. DIMA advised that key objectives for the project have been met, with estimated savings of more than \$3 million in 2005–06.

Actual costs

2.13 In June 2005, DIMA estimated the actual project costs at \$300 000.²⁴ Later, in its evaluation of eWHM (November 2005), DIMA estimated the cost of the eWHM visa processing system to be \$750 000.²⁵ DIMA subsequently advised that the figure of \$300 000 is an estimate of the eBusiness development component of the \$750 000 and that the latter figure is the total of costs for the eBusiness group, its ICSE (mainframe systems) group and subsequent testing groups of development, implementation and testing of the eWHM system.

2.14 DIMA did not record the actual costs of the development of the eVisa3 project, nor track this against original estimates.²⁶ The ANAO concludes that DIMA insufficiently considered the costs of developing the eVisa3 system before starting. It could also have benefited from recording actual costs to inform any proposals for further developments. DIMA has advised that it is 'currently developing Cost Benefit Analysis procedures to incorporate into all

²⁴ DIMA internal correspondence, 20 June 2005.

²⁵ DIMA, Evaluation of Electronic Working Holiday Maker Visa (subclass 417), MTE Division, November 2005, p. 35. This figure is said to be 'amortised over 5 years, plus maintenance costs @ 10% p.a.'

²⁶ DIMA internal correspondence, 16 June 2005.

new projects and initiatives. Once in place there is an expectation that benefit realisation will be an integral part of all post implementation reviews'.²⁷

Design

2.15 The design stage defines the required functionality and organises it into components for prototyping and development. Under DIMA's systems development methodology, the solution design is completed and prototyped to demonstrate its business and technological feasibility.²⁸

2.16 A consideration at the design stage was whether DIMA should deploy two on-line visa systems: eVisa and the Electronic Travel Authority System (ETAS, see box, below).²⁹

ETAS versus eVisa—why DIMA has two on-line visa platforms

In 1996, DIMA arranged for the Electronic Travel Authority System (ETAS) to be developed externally by a contractor. It enables travel agents worldwide to apply for visitor visas on behalf of their clients in low risk countries through the travel industry communications network. ETAS provides a facility to check the visa status of all passengers travelling to Australia at airline check-in. A facility for individual clients to apply for an ETA over the Internet began in May 2001. ETAS operates from a Sydney-based computer centre.

DIMA developed its eVisa Internet application lodgement system in 2001. It is more sophisticated, collects more data from applicants and allows easier and real-time integration with other DIMA systems (such as ICSE and TRIPS). ETAS functions could be incorporated within eVisa but ETAS could not efficiently perform eVisa functions without substantial additional costs. ETAS's strengths lie in its use of older communications technologies within the travel industry.

2.17 DIMA's e-Commerce Steering Committee decided that where business requirements showed an advantage in using ETAS a financial analysis would be used to help choose between them, otherwise it would not use ETAS for further applications.

²⁷ DIMA, advice to the ANAO, 5 July 2006.

²⁸ DIMA, *CSC Catalyst Overview Version 1.0*, 2000 (Note: CSC is DIMA's outsourced IT supplier).

²⁹ DIMA, E-Business Steering Committee, 5 December 2001.

2.18 DIMA provided documents detailing the design stage of eWHM.³⁰ The ANAO concluded from its review that the design process was rigorous, establishing the required functionality and technical feasibility of the project.

Administrative law and system ownership

2.19 The ANAO sought to access DIMA's consideration of administrative law implications of eWHM, in particular, the *Privacy Act 1988*; copyright; legal risk mitigation with disclaimers; the *Electronic Transactions Act 1999*; and intellectual property.

2.20 To comply with the Privacy Act DIMA's website must include privacy statements setting out their policy and practice on the online handling of personal information.³¹ It is prudent for the eVisa website to include a copyright notice.³² To mitigate risk and limit liability that can arise in the online environment, a disclaimer statement should also be used.³³

2.21 DIMA's policy in relation to the online handling of personal information is set out on a separate webpage, 'Terms and Conditions Acceptance'.³⁴ It displays the copyright symbol on a separate webpage, titled *Copyright and Disclaimer*,³⁵ which can be accessed by a link which appears at the bottom of every eVisa page. This page also includes a disclaimer statement, setting out the conditions of use.

2.22 The *Electronic Transactions Act 1999* (the ET Act) allows persons using electronic communications to satisfy obligations under Commonwealth law. The ANAO assessed whether DIMA considered the ET Act requirements.³⁶

³⁰ *eVisa3 Conceptual Design* (22 March 2002); *Working Holiday Visa Online Functional Design* (11 April 2002); *Working Holiday Visa Online Functional Design* (11 April 2002); *ICSE Functional Specifications for WHMs* (28 March 2002).

³¹ ANAO, *Internet Delivery Decisions: A Government Program Manager's Guide*, 2001, book 7.

³² In Australia, copyright protection is automatic and no registration is required. It is not necessary to include the copyright symbol '©' on material to be protected by copyright. However, by its nature, the DIMA website material will be accessed and viewed overseas. In some countries, to qualify for copyright protection works must bear the copyright symbol prominently.

³³ ANAO, *Internet Delivery Decisions: A Government Program Manager's Guide*, 2001, book 7.

³⁴ This webpage can be accessed by a link titled *View Terms and Conditions regarding this application* on the online application proceed page. Clients are not able to start their online application until they check the box 'I have read and agree to the terms and conditions'. DIMA advise that the workflow for this change is slightly different for other eVisa products and took effect on 1 July 2006.

³⁵ <<http://www.immi.gov.au/functional/copyright.htm>>, last accessed 1 May 2006.

³⁶ ANAO, *Internet Delivery Decisions: A Government Program Manager's Guide*, 2001, book 7.

2.23 DIMA sought legal advice from the Office of General Counsel (OGC) in May 2000, which concluded that the ET Act would permit applications, lodged after 1 July 2001, to be lodged electronically and would apply to requirements for signing documents.³⁷ However, OGC considered that s. 11 of the ET Act, the electronic communication of documents, would not apply to most visa transactions. This is because DIMA can require original documents—a result of evidence of high levels of fraud in migration documentation. As a result, a clause³⁸ was inserted in the ET Act that certain documents are exempt.³⁹

2.24 OGC also gave an opinion that the ET Act would allow an application form submitted on the Internet, which is subsequently computer processed, to be considered a valid application, provided visa application charge is paid and the other requirements of the *Migration Act 1958* are complied with.

2.25 Intellectual property (IP) rights are granted by law to protect the outcomes of economic investment made by an individual or organisation in pursuing intellectual activity.⁴⁰ The *Financial Management and Accountability Act 1997* requires the efficient, effective and ethical management and control of public assets, both tangible and intangible assets. As a result DIMA is required to manage its IP in an accountable manner.⁴¹

2.26 A DIMA internal audit of IP of April 2005 shows that, for DIMA's internally generated IP, such as the eVisa system, ownership automatically resides with the Commonwealth.

2.27 The ANAO concluded that DIMA had properly considered the Privacy Act, the ET Act, disclaimers and copyright in its implementation of eWHM. DIMA had also recognised the Commonwealth's ownership of eVisa.

Accessibility and useability

2.28 For government programmes, 'accessibility' means 'available to clients in formats which are easily available, easy to use and appropriately targeted'.

2.29 DIMA had twice arranged for external consultants to assess eVisa. The first report identified areas for improvement to the eVisa application. It

³⁷ Office of General Counsel, 20 May 2000.

³⁸ Clause 1 of Schedule 1 of the *Electronic Transactions Act 1999*.

³⁹ DIMA, advice to the ANAO, 21 February 2006.

⁴⁰ Auditor-General, Audit Report No. 25 2003–04, *Intellectual property policies and practices in Commonwealth agencies*.

⁴¹ DIMA, Review of Intellectual Property, April 2005.

suggested changes to improve useability which have largely been addressed in subsequent implementations.⁴²

2.30 The second report assessed the site, particularly from the perspective of the target audience. DIMA advised that the redevelopment of its website, would address the recommendations related to clarity and accessibility in this report. DIMA expected that its new website structure would improve workflow for on-line applicants, including WHMs.⁴³

2.31 DIMA considers its eWHM target audience to be technology-literate and to have little difficulty accessing the system to apply. It acknowledges a need to simplify language on the website. Its Client Service Division is considering a 'plain English' project for all website information when resources become available.

2.32 Many WHM applicants are in countries where English is not the first language. The National Office for the Information Economy (NOIE) *e-Government Benefits Study—Agency Case Studies* found, with regard to eVisa: 'The barriers to realising planned benefits of eVisa were ... language and communication barriers because the Internet site is only available in English.'⁴⁴ The ANAO found that some applicants not fluent in English have difficulties using eWHM effectively.⁴⁵ DIMA's Client Services Division is to review the cost effectiveness of measures for providing better services for people whose first language is not English.

2.33 Other countries often provide Internet information for potential WHM applicants in a range of languages.⁴⁶ DIMA provides not only an English language version of its ETA website but also a Japanese one.⁴⁷ There are opportunities to enhance customer service, improve communication and

⁴² DIMA, email advice to the ANAO, 20 June 2006. The reports were: *DIMA Electronic Visa Application Expert Evaluation* (June 2001), and *Useability Evaluation of Settlement & Visitor-Student e-visa Content* (May 2005).

⁴³ DIMA, email advice to the ANAO, 20 June 2006. The new website design was implemented on 1 July 2006.

⁴⁴ NOIE has been replaced by the Australian Government Information Management Office (AGIMO). The NOIE study referred to here is dated May 2003.

⁴⁵ The ANAO's review of ICSE records showed instances of applicants failing to understand. Inherently, it is difficult to test lack of applicant comprehension without questioning the client. However, it was apparent from responses that the applicant had misunderstood. For example, there were multiple instances where a question about 'mobility and care' drew a response that suggested that the applicant had interpreted 'care' as 'car'. It is not possible to estimate the frequency of misunderstanding.

⁴⁶ Other countries do not have on-line application. However, application forms for the German and Danish WHM visa can be downloaded from the Internet in English (and French for the latter).

⁴⁷ See <<http://www.eta.immi.gov.au/ETAAus0Jp.html>>, last viewed 4 May 2006.

improve Australia's competitive position by providing eWHM information and on-line application in selected languages other than English. However, translating and maintaining currency of forms even in a limited range of languages may be costly.⁴⁸ Therefore, DIMA has stated that its strategy is to 'engage with travel and education agents who can assist applicants in making applications'. This also has the advantage of shifting costs from the taxpayer to the individual non English-speaking applicant who wishes to visit Australia. Agents also frequently provide additional services to WHM applicants, such as booking travel, guidance on accommodation and employment opportunities.

2.34 The ANAO concluded that DIMA has taken appropriate steps to make its eVisa system accessible and useable. More can be done: for example, there may be opportunities to provide, in eWHM, for languages of a small number of major WHM source countries.

Monitoring and evaluation of eVisa

Monitoring

2.35 Monitoring Internet services involves the systematic collection and analysis of a range of information to track performance, so that improvements can be made as part of their continuing operation.⁴⁹ To monitor the Internet service for eWHM visas, DIMA could reasonably be expected to:

- keep a record of the web statistics;
- monitor the Internet chat rooms used by backpackers to exchange travel information for evidence of weaknesses in the programme;
- collect and act on client feedback; and
- record performance measures for the number of system down times.

2.36 DIMA provided statistics as evidence that it monitors the number of hits each web page receives. For each eVisa page, these include the number of visits, the number of views, average time viewed and average time-to-serve.

2.37 An internal audit of the eVisa 3 implementation recommended that DIMA consider regular monitoring of various Internet forums (chat rooms) to

⁴⁸ DIMA advises that it had given some thought to translation of application forms, including undertaking some indicative costing a few years ago. At that time, costs were in the order of some \$600 000 per form to develop, test and implement (DIMA, advice to the ANAO, 4 July 2006).

⁴⁹ Auditor-General, Audit Report No. 30 2003–04, *Quality Internet services for government clients – monitoring and evaluation by government agencies*, p. 45.

identify areas where eVisa weakness may be discussed.⁵⁰ Examples of this type of activity had been detected as part of the internal audit.

2.38 DIMA has monitored Internet forums though it does not have a programme to do it regularly.^{51,52} However, DIMA advised that, if resources permit, it may develop a strategy to help policy and operational areas review internet forums from time to time.⁵³

2.39 It is sound practice to collect client feedback because it can be used to detect and address problems. DIMA monitors client feedback through its eWHM email helpdesk in the Hobart OPC. It monitors complaints, for example, on system outages and performance, and passes these to the business area to analyse and rectify.

2.40 By adopting eWHM, DIMA has created a substantial dependency on the robustness and resilience of its IT systems. When WHM visa application depended on overseas posts dealing with paper applications the processing was effectively buffered from small delays and had low mutual dependence among processing centres. Now, with most applications processed on-line, any interruption to that system can suspend a major part of WHM processing.

2.41 DIMA advised that it has employed a number of strategies to mitigate failure of any of the parts to the eVisa application and that any outages can be fixed quickly.⁵⁴ However, it has limited current capacity to report on systems downtime or provide statistics on this.⁵⁵ DIMA does notify agents of scheduled outages and unscheduled ones as soon as it is practicable.⁵⁶

Evaluation

2.42 Systematic evaluation assesses how effectively online delivery matches client service with programme objectives.⁵⁷ The ANAO concluded from a

⁵⁰ DIMA 2003, *Audit of eVisa 3 Implementation—IT and Business Process Review*, December.

⁵¹ DIMA, WHM comments from clients in chat rooms.doc.

⁵² DIMA 2006, *Follow-up Review: eVisa and Related eBusiness Initiatives*, February.

⁵³ DIMA, advice to the ANAO, 19 April 2006.

⁵⁴ DIMA, advice to the ANAO, 10 March 2006 and August 2006.

⁵⁵ DIMA advises (7 August 2006) that it has plans to improve monitoring under its *Systems for People* IT initiatives.

⁵⁶ <www.immi.gov.au/e_visa/outage.htm>, identified in the Migration Agents Newsletter No. 4, 2005.

⁵⁷ ANAO, *Internet Delivery Decisions: A Government Program Manager's Guide*, 2001, book 5.

range of relevant reviews that eWHM and related DIMA systems and activities have been regularly evaluated.⁵⁸

2.43 An important paper among these is one prepared for DIMA's Management Board, *Security and Integrity of Electronic Visa Processes* (August 2005). This showed that the department had reviewed and satisfied itself with particular reference to the relative risks of eVisa as compared with manual processing. In summary, the paper concluded that the electronic processes were more secure than paper-based ones both for DIMA and for applicants.

2.44 The ANAO concluded that DIMA had some mechanisms in place to monitor eWHM though there remain opportunities to take this further in some areas. For example, DIMA has evaluated and reviewed aspects of eWHM regularly. DIMA has advised that it is establishing Performance Management Boards which will report to a Performance Management Committee on a regular basis. The Boards will monitor performance of the service network and eWHM will be included in these arrangements.⁵⁹

⁵⁸ These reviews included: Evaluation of Electronic Working Holiday Maker Visa (Subclass 417), (November 2005); Review of Web Security, 2004–05; Review of Intellectual Property, 2004–05; Audit of Client Service, 2004–05; Audit of eVisa3 Implementation—IT and Business Process Review, 2003–04 (and a follow-up review, 2005–06); Review of Business Impact of Internet Solutions, 2003–04; Audit of eVisa Forms, 2002–03; Business Risk Assessment of ICSE Strategic Direction and Sustainability, 2002–03; Review of the Internet Electronic Travel Authority Interface, 2002–03; Review of Project Management Methodology in DIMA—with an IT component 2002–03; Review of the Internet Control Environment for e-Business in DIMA, 2002–03; and Post-Implementation Audit of the Student Internet Project.

⁵⁹ DIMA, advice to the ANAO, 7 August 2006.

3. Authority for the Working Holiday Maker Visa Programme

This chapter considers the authority for the Working Holiday Maker visa programme and whether it is managed within a sound administrative framework of legislation and business rules.

Introduction

3.1 For proper operation, a programme such as the Working Holiday Maker (WHM) visa programme requires authority. Authority is also needed for the imposition and collection of Visa Application Charge (VAC), which must be paid by those who apply for a visa. This chapter considers the authority for the programme.

3.2 Authority for the programme, in turn, provides a basis for a set of business rules and procedural guidelines within which the programme operates. This helps to ensure that there is a basis for correct, consistent and equitable decision-making that accords with the law and, under the law, policy adopted by ministers. This chapter also examines that framework. The next chapter examines DIMA's actual decision-making.

Legislative authority

3.3 The *Migration Act 1958* provides authority for the WHM visa programme. The Act, which is administered by the Minister for Immigration and Multicultural Affairs, sets out the legal framework for how non-citizens can come to Australia.⁶⁰ The Migration Act provides how those who wish to apply for visas must do so. It is supported by the Migration Regulations, which set out, among other things, the criteria for the grant of those visas.

3.4 VAC is imposed under a separate Act, the *Migration (Visa Application) Charge Act 1997*, administered by the same minister.⁶¹

3.5 The Migration Act gives the minister power to grant or refuse a non-citizen permission to travel to and enter and remain in Australia (s. 29). The minister can delegate those powers with a written instrument (s. 496).

⁶⁰ Administrative Arrangements Order, 16 December 2004, as amended 21 July 2005 and 27 January 2006. See <<http://www.pmc.gov.au/parliamentary/docs/aa0.pdf>>.

⁶¹ Administration of VAC is examined separately in Chapter 7.

Delegation

3.6 DIMA provided evidence that appropriate delegation had been provided to its officers in its Hobart OPC, who process just under 40 per cent of WHM visa applications. The delegation is made to positions (as compared with named individuals). Where a person acts in another's position and this is recorded in DIMA's staff management computer system, the relevant delegations are automatically available to the person who is acting.⁶²

3.7 The minister's powers to grant visas have also been delegated to other DIMA officers, including those at overseas posts.⁶³

Basis for computer-based decision-making

3.8 Most WHM visas (about 60 per cent) are 'autograned'. This means that the decision to grant a visa is made, in practice, by DIMA's computer systems without direct involvement of the minister or any delegated DIMA officer.^{64,65}

3.9 Since mid-2001, the Act has allowed the minister to arrange for the use of computer programs under the minister's control to make decisions and exercise other ministerial powers under the Act or regulations (s. 495A).⁶⁶ This is the provision that allows the minister to authorise the autogrant of visas. Where the minister makes such an arrangement and a computer program makes a decision, that decision is taken to be a decision of the minister.⁶⁷

⁶² Lists of delegations are generally accessible within DIMA from its Intranet.

⁶³ DIMA advice to the ANAO, 6 February 2006. This is set out in DIMA, Instrument M11, which lists powers delegated, by section of the Act, and identifies, by position number, Department of Foreign Affairs and Trade (DFAT) staff (Australia-based officers overseas), including ambassadors, high commissioners and other staff and, by title and post, Austrade staff (also Australia-based officers overseas).

⁶⁴ The ANAO's analysis of data extracted from DIMA's ICSE database for the period 1 July 2002 to 14 January 2006 shows that about 187 000 grants in a total of about 296 000 were autogrants.

⁶⁵ For a recent review of computer use in administrative decision-making see Administrative Review Council 2004, *Automated Assistance in Administrative Decision Making: Report to the Attorney-General* (Report No. 46), November.

⁶⁶ The responsible minister stated in the second reading speech for the Bill introducing the changes that included these provisions (the Migration Legislation Amendment (Electronic Transactions and Methods of Notification) Bill 2001) that the approach taken was similar to that under the Social Security (Administration) Act 1999 (Hansard, House of Representatives, 5 April 2001, p. 26 528). Other similar provisions exist in several other Commonwealth Acts, including the *Australian Citizenship Act 1948*, administered by DIMA, (see s. 36A), and other acts administered by other portfolios. The amendments to the Migration Act gained assent on 28 June 2001.

⁶⁷ Note that the minister does not *delegate* powers to the computer system in a way similar to that provided under s. 496 to give officers powers to make decisions. Rather, under s. 495A, the minister is, in effect, making use of a computer system under the minister's control to exercise decision-making power.

3.10 The government’s intention was to enable DIMA to use computers to grant certain visas where the criteria for grant are ‘simple and objective’.⁶⁸ It did not intend that computers refuse to grant a visa or make complex decisions requiring any assessment of discretionary criteria. The minister’s delegates would continue to make those decisions that were refusals or otherwise required an evaluative or ‘subjective’ element.

3.11 DIMA’s computer programs have made the majority of decisions to grant WHM visas over the last several years—several hundred thousand. DIMA’s computer programs also grant visas of other types.

Authority for decisions by computer program

3.12 The ANAO sought to establish what arrangements the minister had made under s. 495A for decision-making—particularly, the grant of visas—under the Act by computer programs under the minister’s control.^{69,70}

3.13 DIMA confirmed that the addition to the Act in 2001 of ss. 495A and B was to ensure the lawfulness of computer based decision making.⁷¹ It showed that it had ministerial agreement to a range of proposals introducing and expanding electronic lodgement of visa applications. In 2001, the minister was advised that computer-based granting of visas was taking place.⁷² However, the ANAO found that no specific arrangement of the kind contemplated by s. 495A had been put in place.

3.14 DIMA subsequently sought legal advice and was told ‘where there is a computer program designed to make decisions of the kind mentioned in the section, it ought to be possible to point to an arrangement made by the Minister for the operation of that program’.⁷³

3.15 In April 2006, DIMA advised the responsible minister of the need to make arrangements to ensure the robustness of computer-based visa decision-

⁶⁸ See the Explanatory Memorandum to the Migration Legislation Amendment (Electronic Transactions and Methods of Notification) Bill 2001. This amending legislation introduced similar provisions into the *Australian Citizenship Act 1948*. DIMA had intended to use computer-based decision-making for its Electronic Travel Authority (ETA) applications and sought legal advice from the AGS to this end in 1999.

⁶⁹ Section 496 of the Migration Act allows the minister to delegate her power under s. 495A.

⁷⁰ The ANAO first raised this with DIMA in September 2005.

⁷¹ DIMA, advice to the ANAO, 9 February 2006.

⁷² DIMA, ministerial submission, 13 February 2002. Note that lodgement of WHM visa applications is handled by the eVisa ‘front-end’ computer system. This is a distinct and separate system from the ICSE computer system, which performs autogrant and is the main system for retention of WHM records.

⁷³ DIMA, advice of senior counsel, AGS, 14 March 2006.

making. The minister then opted to delegate her powers under s. 495A(1) to the Secretary and a deputy secretary of DIMA (the latter is also the department's Chief Information Officer (CIO)).⁷⁴

3.16 Subsequently, DIMA began action to:

- describe the computer systems and programs currently used in making autogrant decisions (covering all autogrant processes including ETA);
- seek the CIO's certification that all systems that impact on autogrants are working as intended and in accordance with law; and
- establish a mechanism for all systems changes that may impact on autogrants to be certified by the CIO, for each systems release.⁷⁵

3.17 By their nature, these certifications will take place just before each relevant systems release. DIMA advised that work was proceeding 'to ensure system testing covers aspects relating to autogrant so the Minister's delegate could sign off after the July [2006] release'.⁷⁶

Consequences

3.18 DIMA also sought legal advice on the consequences of the lack of a specific arrangement under s. 495A for visa decisions already made by its computers under the minister's control. The advice was that, even if s. 495A had not been strictly complied with, it probably did not have any implications for the validity of visas granted electronically under the eVisa system, because:

there is clearly no legislative purpose evident in the Migration Act to invalidate the grant of a visa by operation of a computer program that is not supported by an 'arrangement' made under s 495A (1). On the contrary, I think it is clear from the terms of the Act that once a visa is granted it is effective unless and until it ceases to be in effect in accordance with s 82, including where it is cancelled ... Given the consequences for the visa holders concerned, it is inconceivable that a court would rule that every auto grant made since the enactment of s 495A was invalid merely because the Minister had not formally 'arranged' for the use of the relevant computer program (or programs) in the decision making process.

⁷⁴ This decision is dated 26 April 2006. The ANAO obtained independent legal advice (23 June 2006) that the AGS advice given to DIMA provides a satisfactory basis for concluding that the minister is entitled to delegate her powers under the relevant section and that the delegation appeared to be validly made.

⁷⁵ DIMA, minute from Assistant Secretary, Delivery Innovation Branch, to various others within DIMA.

⁷⁶ DIMA, advice to the ANAO, 25 June 2006.

3.19 Independent legal advice confirms that the advice given to DIMA provides a satisfactory basis for concluding that (i) DIMA has not to-date complied with the strict requirements of s. 495A(1); and (ii) this would not invalidate the granting of WHM visas under that section.⁷⁷

The law, business rules and procedural guidelines

3.20 The ANAO examined whether DIMA has a comprehensive set of rules in place for WHM visas and whether DIMA makes those rules accessible and up-to-date. It also considered an apparently anomalous public interest criterion that currently applies to decision-making on WHM visas.

3.21 The current legislative regime dates from extensive changes brought in 1989 following the report of the Fitzgerald inquiry into Australia's immigration policies.⁷⁸ The major deficiency in the Migration Act, the inquiry found, was the wide discretionary power it contained, which 'created a great deal of uncertainty'. Amending legislation then introduced legally binding statutory rules for visa categories, set out in the Act and accompanying regulations. In effect, those changes substantially 'codified' decision-making on visas.⁷⁹

3.22 The Migration Act and Regulations now set out a highly structured statutory framework for assessing who should, and who should not, be granted a visa to travel to, enter and remain in Australia.⁸⁰ The printed edition of the Act comprises two volumes and Regulations are set out in nine volumes.⁸¹

3.23 In addition, DIMA has developed detailed policies to help decision-makers, to interpret and apply the law. These are set out in DIMA's Policy Advice Manual (PAM3). DIMA provides this primarily as a companion to the Regulations, to be read with the legislation, to provide policy and procedural

⁷⁷ Legal advice obtained by the ANAO, 23 June 2006.

⁷⁸ Fitzgerald, S. (chair) 1988, *Immigration: A Commitment to Australia, Report of the Committee to Advise on Australia's Immigration Policies*, Australian Government Publishing Service, Canberra. See, particularly, p.112.

⁷⁹ Ibid. p. 122. The Act was amended by Migration Legislation Amendment Bill (No. 2) 1989. In Parliamentary discussion the salient issue in these changes was the degree of ministerial discretion to be retained in the amended Migration Act. An account is set out in Carrington, K. 2003, 'Ministerial Discretion in Migration Matters' (Brief prepared for Senate Select Committee on Ministerial Discretion in Migration Matters), Department of Parliamentary Library, September <<http://www.aph.gov.au/library/pubs/CIB/2003-04/04cib03.htm>> and Senate Select Committee on Ministerial Discretion in Migration Matters 2004, *Inquiry into Ministerial Discretion in Migration Matters*, Commonwealth of Australia, March <http://www.aph.gov.au/Senate/committee/minmig_cte/index.htm>.

⁸⁰ Additional sources of rules are Ministerial Directions made under s. 499 of the Act.

⁸¹ See <<http://www.comlaw.gov.au/>>.

instruction relevant particularly to the Regulations.⁸² It also issues Migration Series Instructions (MSIs) from time to time. These additional guides to decision-makers are intended to be incorporated in PAM3 over time.

3.24 DIMA has also produced a guide *Good Decision Making: Training for DIMA Decision Makers* which provides guidance on the structure of the migration legislation and how to make a proper decision under the law.⁸³

Changes to the rules

3.25 Immigration law changes, as do policies and procedures for visas. Generally, the policies and procedures that apply to a visa applicant and their application are those in effect when they apply. Thus, to examine visa decision-making it is important to find precisely the legislation for a particular date.

3.26 The ANAO sought to identify sources of information on the law, policies and procedures and how the rules applicable at a particular time can be identified. In particular, it sought to determine how DIMA decision-makers could and do get this information.

DIMA's library of rules: Legend

3.27 DIMA maintains an on-line library of migration and citizenship legislation business rules and policy guidelines, called 'LEGEND'.⁸⁴

3.28 The entire suite of rules current at any given time, available in LEGEND, is referred to as a 'stack'. When any rule is changed DIMA incorporates the change in a new stack comprising the entire suite of rules: those unchanged and those that are new or modified. The replaced stack remains in LEGEND, labelled to show the date range for which it was applicable. Thus, the rules which applied at a particular date can easily be identified and accessed in the relevant LEGEND stack.

3.29 A gauge of the rate of rule change across the entire suite is that there have been, on average, about 13 new stacks each year for the last six years.⁸⁵

⁸² The PAM3 guidelines are departmental policy and as such are required to be considered and given due weight by delegates in deciding visa applications.

⁸³ DIMA provided the ANAO with a copy of version 1.06, dated October 2005.

⁸⁴ Generally, in respect of migration, LEGEND comprises the Migration Act, Migration Regulations, PAM3; MSIs and forms. Some MSIs are classified and, therefore, are not available on LEGEND. An example is MSI 367. This provides detailed advice on the Movement Alert List (MAL).

⁸⁵ A simple count of the number of stacks shows the following: 13 stacks for 2005; 7 stacks for 2004; 19 stacks for 2003; 12 stacks for 2002; 16 stacks for 2001; and 9 stacks for 2000.

3.30 LEGEND is available from each DIMA officer's desktop workstation. This means that, provided the system is working correctly, all decision-makers can access the rules in LEGEND. The department also gives access to LEGEND to external parties by subscription.⁸⁶ DIMA advises new users of its principal mainframe computer systems that they 'need to be able to competently interact with LEGEND to ensure they are up-to-date with the latest legislative changes'.⁸⁷

3.31 DIMA's website states that LEGEND updates are 'made on an ongoing basis so that changes to legislation and other material are generally available on the day they come into effect'. This offers up to date information.

3.32 The ANAO examined the changes to legislation affecting WHM visas since 1 July 2002 and found that those changes are reflected properly in the LEGEND stacks. The ANAO concluded that LEGEND is an important and valuable resource to support DIMA decision-making and which is up-to-date and comprehensive.

Internet and non-Internet visa applications

3.33 When eWHM was implemented in July 2002, separate sets of criteria applied to Internet and non-Internet applications. In mid-2005, however, a single, common set of criteria for both ways of applying replaced the two different sets. ANAO sought to establish why DIMA had changed its approach to structuring the regulations and the associated risks.

3.34 DIMA sought legal advice in 1999 on how it could arrange for automated decision-making under the Act. Its advisors said that wholly-automated decision-making could be adopted where the decision does not depend on subjective criteria. That is, where the criteria to be met are, by their nature, clear-cut, then automated decision-making could be done. In contrast, a decision involving discretion or judgement needs a human decision-maker.⁸⁸

3.35 This is consistent with the view taken by the Administrative Review Council (ARC) in its report to the Attorney-General, *Automated Assistance in*

⁸⁶ The product is known 'LEGENDcom' and was launched 1 July 2004. LEGENDcom contains current and historical versions of: the Migration Act and associated Migration Regulations (since 1 September 1994); the *Citizenship Act 1948* and associated Citizenship Regulations (since 10 April 1997); other Migration and Citizenship related legislation; PAM3; MSIs; Australian Citizenship Instructions; Legislative Instruments (including Section 499 Directions and Gazette Notices) and fillable forms.

⁸⁷ DIMA, ICSE New Starter Learner's Pack.

⁸⁸ DIMA, advice from the AGS, 4 March 1999.

Administrative Decision Making. The ARC has formulated a range of best-practice principles for automated assistance in administrative decision making. Relevantly, the first two of these are:

Principle 1: Expert systems that make a decision—as opposed to helping a decision maker make a decision—would generally be suitable only for decisions involving non-discretionary elements.

Principle 2: Expert systems should not automate the exercise of discretion.⁸⁹

3.36 Two sets of primary criteria were introduced into the Migration Regulations from 1 July 2002. DIMA devised the first set to cater for Internet applications. These were cast so as to take the ‘objective’ form that would enable the ICSE computer system to autogrant a visa provided the applicant gave appropriate responses. The second set catered for those who applied in the traditional way, using a paper form, and those who originally had applied on the Internet but who did not satisfy the first, ‘objective,’ set.

3.37 Under these regulations, where an applicant applied using the Internet and satisfied the objective criteria then, provided no other internal computer checks prevented it, DIMA’s ICSE mainframe computer system would autogrant the WHM visa. Although ICSE can grant a visa, in no circumstances should it refuse to grant a visa: if it cannot grant it it refers the case to a delegate for decision.⁹⁰ If an Internet application did not satisfy the objective criteria then the application would be referred to a delegate at the Hobart OPC for decision. Then the second set of criteria would apply—those intended for paper applications.

3.38 Certain criteria—requiring that the minister be satisfied the applicant is a genuine visitor and requiring the applicant to have a reasonable prospect of getting employment in Australia—applied only to those who do not use the Internet. In the latter case, the PAM3 advice to the decision-maker is:

Policy intends that, in assessing whether the applicant satisfies this criterion, officers should balance the applicant’s skills, work experience and professional

⁸⁹ Administrative Review Council 2004, *Automated Assistance in Administrative Decision Making: Report to the Attorney-General* (Report No. 46), November, p. 16. Note that the ARC report uses the term ‘expert systems’ to refer to the full range of automated assistance in administrative decision-making, including the most straightforward computer-based decision-making. In some contexts the term ‘expert system’ refers to a more sophisticated computing system which, when provided with basic information and a general set of rules for reasoning and drawing conclusions, can mimic the thought processes of a human expert. See, for example, Auditor-General, Audit Report No.40 2004–05, *The Edge Project*.

⁹⁰ The ANAO found no evidence of ICSE automatically rejecting an application; that is, all refusals among the records checked were made by manual decision. See Chapter 5.

and/or trade qualifications (if any) with personal qualities such as self-reliance and resourcefulness.

If the opportunity is available, applicants with professional or trade qualifications should be advised of any qualifications recognition and/or registration or licensing requirements that apply in Australia to that occupation—see, for example, the ASCO Dictionary.⁹¹

3.39 However, those who applied (successfully) on the Internet over this three-year period did not face this test. The PAM3 manual explains:

Subjective standard criteria, eg the criterion requiring the applicant to have a reasonable prospect of obtaining employment in Australia, are not included because systems-based application processing does not allow for subjective assessments.⁹²

3.40 This introduces a risk of inequity in decision-making as between those who apply for a WHM visa by different means. The PAM3 explanation indicates that, for the period during which these separate sets of rules applied, DIMA had given priority to its capacity to perform system-based assessments over the application of consistent policy rules to all applicants. DIMA advises:

Although this criterion existed for paper applications, in reality little checking was done because of the low risk nature of the caseload and the lack of resources due to high workload pressures.⁹³

3.41 DIMA further advised that its rationale for this approach was two-fold: (i) a risk based approach, given that decision makers undertook limited investigation of these criteria when assessing paper applications; and (ii) limited technical capacity to undertake further assessment in the electronic environment (capacity has since been enhanced with the introduction of the Safeguards system).

Reversion to a single set of rules

3.42 In July 2005, after three years of operation, the Migration Regulations applying to WHM visas were amended so all applications would be assessed against the same set of criteria regardless of the sort of application lodged.⁹⁴

⁹¹ DIMA, PAM3, Item 13.1 of the then current edition.

⁹² *ibid.*, item 18.2.

⁹³ DIMA, advice to the ANAO, 5 July 2006.

⁹⁴ See <http://www.immi.gov.au/legislation/amendments/lc01072005_14.htm>, last viewed 29 June 2006.

3.43 The primary technical challenge to DIMA in reverting to a single set of criteria was that posed by the criterion relating to the minister's satisfaction of the bona fides of the applicant. DIMA's wish to continue to enable computer autogrant required 'objective' criteria.

3.44 When the then minister had first agreed to DIMA's direction on its on-line initiatives he had commented that 'bona fides will still be an overriding issue in using this technology'.⁹⁵ However, DIMA explained that, when it first introduced eVisa services (originally for 'low immigration risk' circumstances), it relied on the applicant's assertions that they satisfied the visa criteria. A manual assessment would be no more likely to detect a false statement as decision-makers adopted a 'similar risk management approach'—that is, they would also tend to accept the applicant's assertions.

3.45 The criteria applicable to Internet applications required that an applicant must 'state' certain information to be granted a visa by the computer. The declaration itself was sufficient for the applicant to satisfy the relevant criteria. That did not contemplate the situation where an applicant states acceptable answers but, due to the perceived high risk nature of the applicant and their country of origin circumstances, DIMA suspected that they may not be a genuine visitor. In these situations, the then-applicable regulations did not allow a case officer to make further bona fides assessments of an applicant, and there was a risk the applicant would be auto-granted.

3.46 To allow cases thought to need bona fides checking to be referred to Hobart for decision, DIMA required a method of identifying those cases and had to amalgamate the rules so that the bona fides regulation applied to both Internet and non-Internet applications. The method of identifying cases needing manual consideration is the Safeguards profile alert system, implemented in 2004 (see paragraph 4.54 et seq.). DIMA advised that the WHM regulations were amalgamated at the same time a similar change was being implemented for another eVisa type, on 1 July 2005.

3.47 The ANAO concluded that, when DIMA set up the separate set of 'objective' criteria it devised for Internet applications, it assumed it would not need to assess WHM visa applications for bona fides as the applications were considered to be low risk. It has now been mitigated by the re-amalgamation of the criteria for Internet and non-Internet applications and use of the Safeguards profile alert system.

⁹⁵ DIMA, email from Chief Information Officer to various division heads, October 2000.

Public Interest Criteria

3.48 Applicants for a WHM visa must satisfy a range of criteria at the time of the decision to grant them such a visa. Regulation 417.22 of the Migration Regulations sets out these criteria.⁹⁶ They include a list of criteria called, in the regulations, ‘public interest criteria’.⁹⁷ For example, among the public interest criteria that an applicant for a WHM visa must meet are Public Interest Criterion 4001 (‘PIC 4001’), which requires them to satisfy the character test, and PIC 4002, which requires them not to have been assessed as a risk to Australian national security.

3.49 Another public interest criterion applicable to WHM visas is PIC 4010:

If the applicant seeks to remain in Australia permanently, or temporarily for longer than 12 months, the applicant is likely to become established in Australia without undue personal difficulty and without imposing undue difficulties or costs on the Australian community.

3.50 It is not clear that this criterion could be brought into consideration:

- First, a WHM visa is permission to stay for up to a year. However, PIC 4010 relates to staying longer. That would require the person to apply for, and be granted, a further visa, which would be a separate decision.
- Second, it is inappropriate for the decision-maker to consider a ‘benefit’ that the applicant is not seeking or refuse permission sought on the grounds that they might also later seek some other permission.⁹⁸

3.51 DIMA advises that PIC 4010 is not actually used for WHM visas. It now has a project to rationalise visa regulations and will be looking at whether PIC 4010 should remain for temporary visas that do not involve sponsorship.⁹⁹

3.52 PIC 4010 cannot properly be brought to bear upon WHM visa applications. Removal of such unnecessary provisions—when such work can be given priority—would serve the interests of public administration.

⁹⁶ Migration Regulations 1994. See <<http://www.comlaw.gov.au/>>.

⁹⁷ Regulation 417.221(2b) lists those criteria required to be satisfied at the time of decision for a WHM visa.

⁹⁸ If the decision-maker had reason to suppose that the applicant did not intend to comply with a condition subject to which the visa was granted they could refuse the visa under r. 417.221(4).

⁹⁹ DIMA, advice to the ANAO, 5 April 2006.

4. Decision-Making for Working Holiday Maker Visas

This chapter considers whether DIMA's decision-making for the Working Holiday Maker programme is sound.

Introduction

4.1 DIMA's central task in its Working Holiday Maker programme is to decide to whom among visa applicants it will grant a visa. That is, it decides whether an applicant will be given permission to enter and stay temporarily in Australia for a working holiday. Therefore, DIMA's decision-making—deciding whether an applicant meets legislative criteria for the grant of a visa—and the processes and structures that support it need to be lawful, accurate, transparent and of high integrity.

4.2 The ANAO examined, first, DIMA's approach to decision-making to establish what, in terms of the Migration Act, regulations and related law and policy, constitutes a sound decision-making process. Using the results of this analysis, the ANAO then reviewed the department's records of its actual decision-making, to test its soundness. This involved computer-aided scrutiny of over 300 000 WHM visa application records and related data. The purpose of the analysis was to test the robustness of the process and not to revisit individual visa decisions.

Requirements for sound decision-making

4.3 In general, good decision-making in government accords with principles of administrative law. In deciding visa applications the record of assessment should show that the merits of the application were identified, that all relevant matters were considered, that the decision was based on the facts, and that the critical elements of the decision were identified for the consideration of the decision-maker, who was authorised to make that decision.

4.4 When granting visas, as with other powers created by legislation, officers cannot rely upon executive power to make decisions. Decision-makers must either be the person empowered under the legislation (in this case, the minister) or officers who have been delegated the authority. The authority to grant a visa is a delegation under s. 496 of the Migration Act.

4.5 The prerequisite for any decision to grant (or refuse to grant) a visa is the receipt of a valid application. When it receives a valid visa application, DIMA must, by law, make a decision about that application. Similarly, where a visa application is not valid, it must not be processed and no visa can be granted. The application is not valid unless the prescribed VAC has been paid.

4.6 DIMA's decision to grant or refuse to grant a WHM visa depends on its assessment of all the facts of the application and its judgement as to whether the applicant complies with the statutory criteria. Matters of fact include whether the applicant has a valid passport from an arrangement country/region, whether they have no dependent children and are aged over 18 and under 31 at the time of application. Matters for judgement include DIMA's assessment of the bona fides of the applicant and whether the applicant is likely to comply with the visa conditions.

4.7 DIMA's assessment for each item may be examined if, for instance, an applicant seeks review of a decision to refuse or cancel a visa (though the circumstances for review are restricted).

4.8 When DIMA makes a decision to grant a visa, the decision-maker makes that decision under s. 65. As a matter of good administrative practice (rather than by specific legislative provision), the decision-maker makes a record of that decision (whether on the computer system or in writing). If that decision is to grant a visa, the effect of s. 67 is that the recording of the visa grant decision is the point at which the visa is granted.¹⁰⁰

4.9 Section 67 does not apply to a decision to refuse to grant a visa. If the decision is to refuse to grant a visa, that decision record will form the basis of the notification to the client of the decision (under s. 66). If the client has review rights of the decision, the decision record is highly likely to be considered as evidence by the body reviewing the decision (whether a Tribunal or a Court) of the decision-maker's decision.¹⁰¹

Keeping records of decisions

4.10 Maintaining documentation of each visa decision is important for operational and legal reasons, and is generally good practice. Each of DIMA's records of its assessment of a visa application should show that its decision

¹⁰⁰ DIMA advises that this provision is necessary as there are a number of other provisions that turn on when a visa is granted.

¹⁰¹ DIMA, advice to the ANAO, 4 July 2006.

was lawful and based on the facts, including any inquiries it made. That means it should set out the reasons for the decision, along with the material facts and any relevant evidence. The material facts include, for instance, records of DIMA's testing of an applicant's claims against relevant criteria of migration law, and its final decision based on the results of testing the applicant's claims.

4.11 For these reasons, an adequate record of a visa application assessment includes, at a minimum, the following eight items:

- (1) evidence that DIMA always considers valid—and only valid—applications (s. 47). This requires it to identify, first, those applications that are valid (s. 46). An application cannot be valid unless VAC has been paid (s. 46(1)(ba) and r. 2.07(1)(b));
- (2) a record of all information in the application, including whether all documents necessary to evidence claims had been provided and whether all declarations and certifications had been sighted (s. 54);
- (3) clear and conclusive evidence to reasonably satisfy each relevant legal criterion. This includes the health and character of the applicant (s. 65);
- (4) a record of the main steps taken in deciding to grant or reject a visa;
- (5) a transparent log of any correspondence with the applicant, their agent, or an offshore DIMA post, especially where additional information was sought (s. 55 and s. 56);
- (6) a record of DIMA's final decision (where a grant is made, s. 67), recording any enquiries the decision-maker had made;
- (7) a record of the decision-maker's name and position number, including the legal delegation that authorises them (s. 496); and
- (8) a notifying advice (letter/email) of the grant, advising the applicant the conditions of entry and stay, or a notifying letter of refusal, advising the applicant of which criteria were not satisfied and why, and how to appeal the decision if the application carries a review right (s. 66).¹⁰²

Whether DIMA makes sound decisions

4.12 To examine the soundness of DIMA's decision-making in granting WHM visas, the ANAO examined DIMA's records, most of which are kept on its ICSE computer system.

¹⁰² Section 66 and regulation 2.16 provide that visa holders must be told about the decision to grant them a visa. Any further information (such as visa conditions) should be provided to clients as part of good practice. Section 66 specifies what a client whose visa application has been refused must be told.

4.13 Each of the items identified in the paragraph 4.11 was examined in turn. In doing so the ANAO did not seek to review specific decisions by DIMA about individual cases. That is, it has not purported to undertake a merits-based review of DIMA visa decisions. Rather, it examined the decision-making process as revealed by the evidence in DIMA's computer systems.

Analysis of eWHM information

The ANAO took a data extract of 304 052 eWHM applications since 1 July 2002. The audit team used this data to perform tests to determine, for example, whether DIMA followed a sound decision-making process, and whether the electronic records were accurate, complete and reliable.

DIMA provided the ANAO with an extract of all valid eWHM visa applications records lodged between 1 July 2002 and 14 January 2006 and residing on the ICSE mainframe. DIMA also provided the ANAO with records in the Visa database and Movement database on the department's TRIPS database¹⁰³ for these WHM applicants.

The ANAO used a computer-aided auditing tool (CAAT) to analyse the data. A substantial part of the ANAO's analysis involved testing the records against migration legislation criteria and business rules. For instance, the ANAO tested whether DIMA records showed that those granted a WHM visa were aged between 18 and 30 at the time of application. The ANAO also used this software to calculate general and complex performance information, such as processing times and numbers of applications by country over time. Over the extract period, the ANAO took account of changes to WHM legislation, business rules and the information collected by DIMA. The ICSE records include the details the client submitted in the visa application as well as a record of steps taken by DIMA to decide each visa's outcome.

(1) Whether DIMA considers all and only valid applications

Whether DIMA identifies valid visa applications

4.14 Before processing a visa application DIMA must decide whether the application is valid. An application that is not valid cannot lawfully be processed and a visa cannot lawfully be granted.

4.15 DIMA's policy advice manual requires decision-makers to note several general features a valid application must have, three of which apply to WHM: a valid application must (i) be on an approved form, (ii) VAC must have been paid, and (iii) the applicant's residential address must be on the form.

¹⁰³ TRIPS is a broad collection of mainframe computer systems designed to facilitate the processing of passengers moving through immigration clearance at Australia's border by verifying the identity of passengers on arrival, checking their authority to enter, flagging persons of interest and recording the actual arrival or departure.

4.16 In testing the 304 052 cases in its data extract, the ANAO found:

- (1) All eWHM applications must have been made on the Internet form to have been accepted by the DIMA system. A paper version of the Internet form had been duly approved.
- (2) Applicants had paid the required VAC for all applications accepted for processing in ICSE.
- (3) Testing for the presence of a valid residential address is complex, and is discussed below.

4.17 It is difficult to test by inspection whether an applicant has provided a valid residential address. No comprehensive list exists of valid residential addresses for WHM arrangement countries against which to test. Thus, short of writing to the address or a physical inspection of premises the only option is to examine the general format of the address to judge whether it seems plausible. It is more difficult to test this by automated means. However, it is possible to test for the presence of implausible or self-evidently wrong residential addresses (such as post office box numbers).

4.18 The ANAO's analysis found the following among WHM visa applications accepted for processing in ICSE:

- 1513 client addresses contained a single letter in address lines 1 and 2. These were primarily cases from Scandinavian countries;¹⁰⁴
- 397 records with a post office box for the client's address;¹⁰⁵
- 163 agents' addresses used as a residential address; and
- at least 79 implausible addresses containing an apparent data entry error ('drop-down box' or 'pick-box' error).¹⁰⁶

4.19 It is not possible for DIMA to work out what proportion this represents of all incorrect WHM residential addresses on ICSE.

¹⁰⁴ This practice may be associated with particular migration agents.

¹⁰⁵ Regulation 2.07(4) requires that the applicant's residential address must be provided for the application to be valid. The agent's PO box can also be provided but cannot substitute for the applicant's residential address. The ANAO found many more post office box addresses for migration agents acting on behalf of WHM applicants.

¹⁰⁶ For example, Irish applicants sometimes mistakenly select Iraq instead of Ireland and Japanese applicants select Jamaica instead of Japan. There is no apparent test for instances of this problem other than individual inspection.

Significance of these errors

4.20 DIMA collects the applicant's residential address primarily in case compliance action is needed and the address is required under regulation.¹⁰⁷ For practical purposes, incorrect residential addresses may not pose a substantial risk. However, under r. 2.07(4), an application without a residential address is not valid. Under section 47(3) of the Migration Act, the minister is not to consider an application that is not valid.

4.21 This means that DIMA has erred in several ways in these cases. First, the cases should not have been considered as the applications were invalid. Second, VAC should not have been collected.¹⁰⁸

4.22 It may remain possible to cancel such cases (if they remain current) on the grounds that the applicant had supplied incorrect information or because the decision was not in accordance with migration law. However, DIMA would not routinely do so, unless the provision of incorrect information was material to the decision.

Reasons for these errors and potential solutions

4.23 The single letter addresses may be lazy data entry by migration agents who have learned that a single letter will suffice to allow the application to progress. DIMA has advised that it is currently considering options to address this issue.

4.24 The drop-down box error apparently occurs because the locality field is free-text, while the country is chosen from a drop-down box that appears in alphabetical order. Careless selection results in a choice adjacent to that intended. This may be a common problem across all eVisa types, which might make it more substantial and worth further investigation by the department.

4.25 A DIMA internal audit in 2003 identified that one application containing nonsensical data had been autograned. In this instance, the first and last name field for the applicant was entered as 'none'.¹⁰⁹ The audit recommended improvements to the eVisa system to reduce the likelihood that an applicant enters wrong data. It pointed out, however, that other border control mechanisms, such as a passport check, would result in the applicant with an implausible name in their application not being able to enter Australia. DIMA decided

¹⁰⁷ DIMA, advice to the ANAO, 4 July 2006.

¹⁰⁸ In all cases, VAC had been paid. VAC must be paid for an application to be valid but is only payable for a visa application that would otherwise be, in any case, valid.

¹⁰⁹ DIMA 2003, *Audit of eVisa3 Implementation – IT and Business Process Review*.

that requiring an applicant to re-enter details as a measure to improve data integrity would reduce the incentives for clients to use the eVisa service by increasing the time and effort involved.¹¹⁰

4.26 The ANAO advised DIMA of some options for reducing the incidence of incorrect addresses in WHM applications. They include placing all the arrangement countries/regions at the head of the drop-down list so that the wrong country is less likely to be selected inadvertently.

Whether DIMA considers valid visa applications

4.27 Under s. 47 of the Migration Act, the minister must consider a valid application for a visa. This requirement continues until the minister grants or refuses the visa, the application is withdrawn or further consideration is prevented by other requirements of the Act. The department's internal guide to good decision-making is unequivocal: 'You must process a valid visa application'. It explains that it is unlawful to 'deliberately sit on a valid visa application with the intention of never processing it'.¹¹¹

4.28 Section 47 does not distinguish between electronic and paper visa applications. Thus, the imperative to process a valid application remains, regardless of whether the application has been lodged on paper or the Internet.

4.29 The ANAO examined DIMA records to see if there was evidence of valid WHM visa applications not being considered in accordance with s. 47.

Whether DIMA considers electronic visa applications

4.30 The ANAO sought to establish whether DIMA always considers valid applications lodged electronically. Only when an application has been transmitted from the eVisa system (the 'front-end' computer program) to ICSE does DIMA consider that it has received a valid application. The ANAO examined WHM records derived from ICSE to see if it could identify records of WHM visa applications that had been lodged but had not progressed and, if so, why.

4.31 DIMA data revealed 2445 cases, all of which had commenced before 31 October 2005 and which were unfinalised at the date of the ANAO's data extract. This means that all these cases had been on hand for at least 10 weeks, well beyond DIMA's timeliness standard.

4.32 In a substantial proportion of cases the last recorded action ('event') within the relevant records was a request from DIMA to the applicant for

¹¹⁰ DIMA 2006, *Follow up Review: eVisa and Related Business Initiatives*.

¹¹¹ DIMA 2005, *Good Decision Making: Training for DIMA Decision Makers*, p. 32.

further information to help assess the visa application.¹¹² This means that the delay was most probably due to the applicant's failure to respond to DIMA's correspondence and not to DIMA's failure to process valid applications. In only 26 cases was the next action apparently with the department. When the ANAO drew these to DIMA's attention, 18 were promptly resolved and action was continuing on the remaining eight.¹¹³

4.33 In February 2006 DIMA set up a small taskforce in its ACT Regional Office to reduce the backlog of unfinalised cases. They had reduced it to about 200 cases which were being referred to Hobart for finalisation.¹¹⁴

Whether DIMA considers paper visa applications

4.34 Paper WHM visa applications are received and processed at DIMA's overseas posts. It was impractical for the audit team to verify that all paper visa applications received by the department at its various overseas posts are considered and processed. However, the ANAO did find evidence that, on several occasions, DIMA staff at major overseas posts decided not to process WHM visa applications made on paper forms. These decisions were associated with the implementation of Internet lodgement (eWHM).

4.35 Because they could have involved action inconsistent with s. 47 of the Act, and which was therefore, *prima facie*, unlawful, these decisions warrant careful examination. This is discussed in Chapter 5.

(2) Whether DIMA records all WHM visa application information

4.36 The ANAO checked whether DIMA records all WHM visa application information. It is reasonable to expect that all information collected by the eVisa facility is transferred to ICSE to help the decision maker decide the outcome of the case.

4.37 DIMA provided the ANAO with a process map that describes all the information collected in the application by the eVisa facility, and how it is transferred through to the ICSE mainframe. The Hobart OPC then showed the ANAO how it could, through ICSE, print a 'pseudo' completed application form with all a particular client's application information. This shows that

¹¹² The largest categories of last recorded events were 'Email sent' (554 cases, or 23 per cent) and 'Information requested—supplementary declaration' (482 cases, or 20 per cent).

¹¹³ DIMA, advice to the ANAO, 21 June 2006. In some of these cases further evidence was found that showed that the open action was with the client.

¹¹⁴ DIMA, email to the ANAO, 21 June 2006.

DIMA seeks to record all WHM visa application information that applicants supply.

4.38 Key information used by decision-makers to assess claims against criteria is recorded as 'declaration events'. Declaration events, which are mandatory, are an applicant's statements relevant to whether he or she satisfies the relevant criteria. For the events to be recorded, applicants are required to give a 'yes' or 'no' response. The ANAO found that, in almost all cases, DIMA kept a complete record of all declaration events.¹¹⁵ The ANAO also tested information contained in the applicants name fields. The result showed that in all but two cases, DIMA kept a full record of the applicant's name.¹¹⁶

(3) Whether evidence exists to reasonably satisfy criteria

4.39 The ANAO considered (i) the criteria that must be satisfied at the time of application (r. 417.21) and (ii) the criteria to be satisfied at the time of decision (r. 417.22). The analysis took account of the fact that the regulations changed during the period under analysis.

4.40 DIMA's assessment of whether applicants meet the criteria depends on the information the applicant sets out in the application form, together with other checking done against its databases.¹¹⁷ Where the applicant's information satisfies the relevant criterion, DIMA describes that as an 'appropriate declaration'. Where it does not satisfy the criterion it is an inappropriate declaration. For example, if the applicant for a WHM visa states that they have dependent children then this is an inappropriate declaration as it indicates a failure to satisfy the criterion set out in r. 417.211(2) (a).

4.41 An inappropriate declaration is not immediately fatal to an eWHM application. It does, however, prohibit an autogrant. That is, the application must be referred for manual processing.

4.42 The ANAO checked the 304 052 visa applications in its data extract to test adherence to these rules. The testing found virtually no autogrant having taken place where an inappropriate declaration had been recorded.¹¹⁸

¹¹⁵ Two applications, both submitted on 24 December 2002, did not key general declaration events such as 'sufficient funds' or 'genuine visitor'.

¹¹⁶ One record contained the name 'none'. The other record did not contain a name.

¹¹⁷ These databases include MAL, Safeguards, TRIPS and Movements.

¹¹⁸ One case was autogranting a visa when the applicant had stated their age as 31 years and ten days at the time of application.

4.43 Detailed results of further ANAO testing are in Appendix 2. That testing showed that DIMA’s decision-making processes against the criteria to be satisfied at the time of application and the time of decision are robust.

What does the ANAO testing mean?

The ANAO tested DIMA’s response to the declarations made on-line by eWHM visa applicants. The testing considered each of the relevant criteria set out in the regulations. To illustrate the meaning of the testing, an example is the first criterion, which requires that the applicant have no dependent children if they are to be granted a WHM visa.

The ANAO looked at the responses given by the 304 052 applicants whose data it extracted. It found only 286 applicants (0.09 per cent) who had declared in their application that they had dependent children. Prima facie, this precludes these applicants from getting a WHM visa. Testing showed that, correctly, none had been autograned a visa by ICSE, nor had any been refused by the computer. Every such case had been referred, correctly, to Hobart OPC for manual consideration and decision by a delegate. Further testing then showed that, after a delegate had followed up the applicants’ responses (by email) most (250 cases) were able to satisfy the criterion. Testing did not examine the specific correspondence in each case. However, it was clear from the records that applicants had often misinterpreted the question.

Further testing then showed that, where and only where the delegate was satisfied that the criterion—and all other criteria—were, in fact met, the visa was granted. The remaining few cases were withdrawn, refused or still under consideration when the data was extracted.

(4) Whether DIMA keeps a record of decision-making steps

4.44 The ANAO sought to identify whether DIMA keeps a record of decision-making steps. DIMA records decision-making steps in ICSE as ‘events’. The ANAO’s testing sought to determine whether common important steps were undertaken to reach a decision, by checking if every eWHM case contained the following events: a commencement; a VAC payment; a health declaration; a general declaration; a character declaration; a MAL check; and a Safeguards check.¹¹⁹

4.45 The testing revealed that, of the 304 052 applications, 304 040 cases (99.996 per cent) showed that DIMA recorded the key steps to reach a decision. One case did not show a general declaration, character declaration or MAL

¹¹⁹ Only applications lodged from 1 July 2004 onwards require a Safeguards check.

check; four cases did not show a MAL or Safeguards check; two cases did not show a Safeguards check; and five cases did not show a MAL check. The ANAO referred these cases to DIMA for analysis.¹²⁰

What are MAL and Safeguards?

MAL

The Movement Alert List (MAL) is DIMA's principal electronic alert system and an integral part of the national security and border control strategy. The purpose of MAL is to alert DIMA decision-makers, and other border security organisations, to adverse information that may be relevant to processing of visa and citizenship applications and to border clearances.

MAL consists of the Person Alert List (PAL) and the Document Alert List (DAL). PAL details people of concern to Australia for reasons including national security, character and health. DAL details information about lost, stolen, cancelled and bogus foreign travel documents.

Safeguards

Safeguards is an electronic system designed to support DIMA decision-makers in the global working environment. Safeguards has been implemented progressively since 1 July 2004.

Increasingly, visa applications are processed in offices, like Hobart, that are far removed from the applicant's place of residence. This is particularly the case in eVisas. These developments highlighted the need for information about local issues and trends to be shared so they are available to any officer processing cases from an overseas country or region.

Safeguards is intended to reduce reliance on manual systems and human memory in identifying visa applicants who may meet profiles of concern. Safeguards provides alerts about visa applications that present security or integrity concerns, through automatic checking of application details against profiles in the system that comprise a combination of characteristics of concern. Where there is a match between the characteristics of concern and the visa application, decision-makers receive an alert message, which gives them processing advice.

Safeguards complements MAL. It identifies visa applications that match against risk profiles rather than individuals. Safeguards profiles are not limited to visa applicants—they can also include any association of persons or organisations with visa applicants. A positive MAL or Safeguards match does not mean the application will not be granted. Accordingly, a positive match will never be a reason for refusal.

¹²⁰ This analysis shows a very small minority of cases which did not have the expected record of key steps. The ANAO referred those cases to DIMA not out of any substantial concern about the integrity of this aspect of processing but to allow DIMA to analyse the records to identify how these extremely infrequent anomalies occur.

4.46 MAL is DIMA's principal electronic alert system and an integral part of the national security and border control strategy. Safeguards is a newer computer-based system that alerts decision-makers to applicants who match a profile of concern. The ANAO therefore specifically examined DIMA's records to assess the level of MAL and Safeguards activity in processing visa applications. Details of the analysis are set out in Appendix 3. This analysis shows that just over 15 per cent of cases yielded a 'possible MAL match' and less than one per cent a MAL match. Less than one per cent attracted a Safeguards match. The entire caseload resulted in less than 1000 refusals, only 26 of which were after a MAL match and three after a Safeguards match.

4.47 The ANAO concludes that the overwhelming majority of cases include a record of the common important steps to decide the outcome of an application.

(5) Whether DIMA keeps a transparent communication log

4.48 The ANAO sought to identify whether DIMA kept a transparent log of communication with WHM applicants.

4.49 DIMA records communication with the client as various types of 'events' on ICSE. These events identify that communication has taken place, but not the log of communication with the client. The Hobart OPC demonstrated to the audit team that it had historically kept a systematic hard-copy file of its correspondence with applicants.

4.50 The ANAO noted that, more recently, the Hobart OPC has been storing its logs of communication with the client, by month of communication, in the DIMA electronic records system TRIM.

4.51 The ANAO concludes DIMA keeps a transparent log of communication with WHM clients.

(6) Whether DIMA keeps a record of its final decision

4.52 The ANAO sought to identify whether DIMA retained a record of its final decision in each case.

4.53 In finalised cases, DIMA adequately records the final decision of each case as either granted, refused or withdrawn. The ANAO could easily identify, in DIMA data, whether a visa was granted, withdrawn or refused, for each application. Cases which are not in one of these categories are unfinalised and among those discussed earlier (see para. 4.31).

(7) Whether WHM visa decisions are properly authorised

4.54 A lawful decision to grant, refuse to grant or cancel a WHM visa must be made either by the minister or by an authorised delegate. DIMA's guide to decision making states that, to establish that the decision-maker was a delegate at the time of decision, they must record their name, position number on the day of decision, signature and date.¹²¹ The ANAO sought to determine, from the records on ICSE, that a decision-maker can be identified for every decision to grant, refuse or cancel a visa.

4.55 The ANAO found that the Legislation section maintains records of delegations and, in its testing, found that every decision to grant, refuse or cancel a visa was accompanied by a record of an identifiable decision-maker.

4.56 The ANAO concluded that a decision-maker could be identified for every decision to grant, refuse or cancel of WHM visa, and that DIMA retains records to show that each decision had been made either by the minister or a properly delegated officer.

(8) Whether DIMA notifies applicants of its decisions

4.57 The ANAO sought to find whether DIMA retained a record of its notification to applicants of its decision on their visa application.

4.58 For visa grants, DIMA records its notification to the applicant in the ICSE record at either one of two steps in the process: (i) as an 'auto-notification event' (267 300 cases) or (ii) in an additional text field of the 'grant event' (27 849). Given that the records analysed by the ANAO encompassed 295 602 grants, this accounts for all but 453. Further testing found that, in some of these cases, there were records in various other categories of records, including 'email sent events', which incorporated an indication that a grant notification had been provided to the applicant.

4.59 For every refusal in the records examined, the ANAO found evidence that the department had sent notification to the applicant.

4.60 Cancellations are recorded in a similar way to grant records. ANAO found that applicants were appropriately notified.

¹²¹ If the decision is recorded directly on a computer system (such as ICSE) then electronic means of identifying the decision-maker is available.

Recommendation No.1

4.61 The ANAO recommends that DIMA improve its programme management capability through use of analytical tools to examine visa records and related data to monitor its client population and identify developing trends.

Agency response

4.62 We agree with this recommendation. The department is looking into the purchase of such a tool which will help to improve our programme management capability through research and analysis of performance in relation to all visa categories.

5. Processing Integrity

This chapter considers five matters that arose during the ANAO's analysis of DIMA's processing of WHM visa applications and which could present challenges to the integrity of the programme.

Introduction

5.1 Four issues affecting the integrity of WHM visa processing came to the attention of the audit team during its analysis of DIMA records. These were:

- (1) processing of paper WHM visa applications at overseas posts;
- (2) DIMA's handling of multiple applications from the same person;
- (3) the possible substitution of eWHM visas for other visa types; and
- (4) the department's concerns about the incidence of WHMs working in the sex industry in Australia with a potential for illegal activity such as sexual slavery or trafficking.

Each of these is examined below.

Processing Working Holiday Maker visa applications at overseas posts

5.2 Under s. 47 of the Migration Act, the minister must consider a valid application for a visa. This requirement continues until the minister grants or refuses the visa, the application is withdrawn or further consideration is prevented by other requirements of the Act.

5.3 In 2003, DIMA staff at two major overseas posts, London and Berlin, without any approval from national office, decided not to process paper WHM visa applications but to return them and ask applicants to re-apply over the Internet. These decisions were unlawful. The Seoul post ceased processing paper applications from July 2004.¹²² DIMA advised that this only occurred after agreement was reached with agents who represented the majority of applicants from South Korea.

¹²² DIMA, minutes of eVisa Working Group, 5 November 2003; minutes of an undated meeting of this group estimated to have taken place in August 2003; DIMA, internal email from the First Secretary (Immigration) and Principal Migration Officer, London, 23 September 2003, to DIMA's national office; DIMA, 'Working Holiday Makers (WHM)—Republic of Korea' (Korea brief for [former Deputy Secretary])

5.4 Before the electronic lodgement of WHM visa applications, the workload generated by the WHM applications in London was recognised in the eWHM implementation strategy as a challenge.¹²³ DIMA identified this, together with the continuing rise in WHM application numbers, in its statement of business requirements to expand eVisa to incorporate WHM. As the manager of the Hobart OPC stated later: ‘the main point of eVisa services is to take pressure off the posts’.^{124, 125} DIMA advises that posts at this time were in danger of becoming dysfunctional due to increasing and overwhelming volumes of work. The posts’ strategy would enable them to deal with backlogs and lengthening processing times in all caseloads.¹²⁶

Whether DIMA was aware that posts’ actions were unlawful

5.5 DIMA was aware that it could not enforce electronic lodgement without a change in the law. To make it compulsory would be inconsistent with the spirit of the *Electronic Transactions Act 1999*.¹²⁷ DIMA was conscious that the whole-of-government policy context was for agencies to ‘deliver all appropriate Commonwealth services on the Internet, complementing—not replacing—existing written, telephone, fax and counter services’.¹²⁸ The posts were also aware that their post’s actions were not supported by the law.¹²⁹

5.6 DIMA’s national office was aware of the London and Berlin posts’ refusal to accept ‘over the counter WHM applications’ and the issue was considered at several meetings of a working group in Canberra.¹³⁰

5.7 From the file evidence, the ANAO concludes that the London and Berlin posts knew their actions had no legal authority. During the audit, DIMA confirmed there was no authority for the posts’ actions and undertook to

¹²³ These pressures on London, in particular, and the benefits to that post of WHM applicants using Internet-based services were emphasised in the eWHM implementation strategy (DIMA, Implementation Strategy (Electronic Working Holiday (Subclass 417) Visa), 15 May 2002.)

¹²⁴ DIMA, *Electronic Working Holiday (Subclass 417) visa—Stage 5 Business Requirements*, 4 September 2001.

¹²⁵ DIMA, email from Manager, OPC, Hobart, to the First Secretary (Immigration), London, 15 August 2003.

¹²⁶ DIMA, advice to the ANAO, 7 July 2006. DIMA also advises that posts also needed to redirect resources to other caseloads of greater complexity, such as partners.

¹²⁷ DIMA, minute from Legal Opinions Section, ‘Electronic Transactions Act 1999 and Student-Visa Initiatives’, 24 August 2001.

¹²⁸ DIMA, E-Business Steering Committee, 21 December 2000, agenda item 4, ‘DIMA’s E-commerce Principles’. See also: <http://www.agimo.gov.au/government/benefits_study>.

¹²⁹ DIMA, email from the Principal Migration Officer, London, to national office, 5 August 2003.

¹³⁰ DIMA, minutes of eVisa Working Group meetings of August and 5 November 2003.

develop, in the near future, 'some further guidelines ... to provide greater assistance to DIMA officers in this area'.¹³¹

5.8 DIMA further advised:

In preparing new guidelines, DIMA will be particularly mindful of the need to provide good client service whilst at the same time avoiding unnecessary costs which could impact adversely on the Australian community.¹³²

5.9 DIMA also advised in September 2006 that in subsequently reviewing this issue both London and Berlin did accept some paper applications.

5.10 Failure to address unlawful actions (even where those actions are taken with good intentions) can only diminish regard for the provisions of the Migration Act and the regulations. The *Australian Public Service (APS) Code of Conduct*, set out in s.13 of the *Public Service Act 1999*, requires that APS employees comply with all applicable Australian laws. It is essential that DIMA officers be instructed that adherence to Australian migration law is expected of them at all times, in all locations. The department proposes to issue further guidelines and provide training to address this matter.

Whether there is a continuing issue

5.11 During the audit, the departmental secretary reaffirmed a commitment to 'fair and reasonable dealings with clients', stating that:

DIMA has a diverse client base. It is therefore important that we listen to our clients and provide them with a range of choices to contact us. Some people like face-to-face contact, others prefer telephone or email. Visa applicants can apply in paper and, in a number of visa categories, over the Internet.¹³³

5.12 This re-emphasises a commitment to serve clients in the way they prefer to do business. This approach is reflected in DIMA's specific advice that:

DIMA continues to provide a paper application option for all eVisa products, as part of best practice client service (ie. there is no 'wrong door' by which to approach us) and in recognition that there will be situations where applicants will not be able to access internet lodgement (eg. no PC at home and no internet café available within reasonable proximity).¹³⁴

¹³¹ DIMA, advice to the ANAO, 23 February 2006.

¹³² DIMA, advice to the ANAO, 7 July 2006.

¹³³ Secretary, DIMA, Implications of the Palmer Report, paper presented to a seminar, 25 November 2005.

¹³⁴ DIMA, advice to the ANAO, 24 March 2006.

5.13 Subsequently, DIMA reviewed and modified its Berlin and London web sites (June 2006) to reflect the policy set out above.^{135,136} The department also provided evidence that these posts were now accepting paper WHM applications.¹³⁷

5.14 A related issue that arose during the audit is evidence of a very different strategy being adopted by some overseas posts in response to the implementation of eVisa. A DIMA internal audit report found that:

local post procedures appear to contradict the Department's direction towards encouraging the use of eVisa initiatives. ... At least one overseas post (Tokyo) is offering 'instant' visas for Working Holiday Makers. This again has potential to work against an eVisa objective aimed at reducing manual processing. We have been advised that this practice has now ceased.¹³⁸

5.15 In other words, the Tokyo post set up an arrangement that competed with the department's eVisa strategy. Taken together with the actions by London and Berlin, this presents a view that posts assume a greater degree of discretion in conducting their operations than is consistent with effective implementation of department-wide strategic initiatives.

5.16 In response to this point, DIMA has stated:

This illustrates the complexity and difficulty of managing operations in a highly decentralised environment. Posts do have the responsibility for managing day-to-day operations but it should be within an agreed framework. This is being addressed by Client Services Division.¹³⁹

5.17 The ANAO considers that, in the interests of obtaining full effectiveness from initiatives such as eWHM, DIMA should ensure that its entire organisation, including all overseas posts, takes a consistent approach to implementation.

Multiple applications from the same person

5.18 The ANAO's testing of DIMA's adherence to eWHM 'business rules' drew attention to potential anomalies when a person submits multiple visa

¹³⁵ See <<http://www.australian-embassy.de/visa/visas/holiday/417.html>> (last viewed 22 June 2006).

¹³⁶ See <http://www.australia.org.uk/vti/FORMS/0034_WHM.pdf> (last viewed 11 July 2006).

¹³⁷ DIMA, advice from the London post, 6 July 2006. The advice asserts that some 262 paper applications had been lodged between 1 January and 30 June 2006.

¹³⁸ DIMA, Audit of eVisa3 Implementation—IT and Business Process Review, December 2003.

¹³⁹ DIMA, advice to the ANAO, 7 July 2006.

applications, for example, multiple payments of Visa Application Charge (VAC) where an applicant has successfully lodged several applications.

5.19 One of DIMA's original eWHM business rules prohibits an applicant from lodging another application of the same type for seven days.¹⁴⁰ However, the rule was removed in July 2005.¹⁴¹ Testing showed 248 instances where an applicant successfully lodged a second eWHM application within seven days of their first, most often on the same day, with 214 granted.¹⁴² These have occurred from mid-2002 but with increasing frequency from June 2005. There were 75 instances of subsequent requests for a refund of VAC and 84 instances where refund was approved.¹⁴³ This suggests that the business rule was not originally implemented effectively. DIMA advised that the business rule that prevented a second application being lodged within 7 days of the first one was removed in July 2005 and replaced by another business rule that prevents people who have an unfinalised application in the system from lodging a second one of the same type.

5.20 ANAO testing showed that four applicants had applied four times and one, five times. In four of these cases the records show that the applicant submitted all their applications within 24 hours, paying VAC on each occasion.¹⁴⁴ In two of these cases the records show that the applicant later asked for a refund and DIMA paid it. In the other cases, there is no record of either a refund request or DIMA making a refund. This suggests that DIMA does not become aware when multiple applications and VAC payments are made and that it may have collected excess VAC in some cases.¹⁴⁵

5.21 Any deficiency in the eVisa system that allows inappropriate collection of multiple VAC payments could affect visa types other than the WHM visa. The ANAO suggests that DIMA reviews its records of payment of VAC

¹⁴⁰ This is business rule BR0213, identified in DIMA, *Working Holiday Maker (subclass 417) Online Functional Design*, p. 29. This seems to have been a practical approach to inhibiting attempted abuse of the system, for example, by those who might seek to submit applications repeatedly simply to test which changes to data submitted yield a 'successful' result.

¹⁴¹ DIMA, advice to the ANAO, 4 July 2006.

¹⁴² One hundred and seventy-one were autograned. In only one case was the initial application refused but the subsequent one granted.

¹⁴³ These cases were identified by their having a common ID in the DIMA system, showing that DIMA could have identified them easily.

¹⁴⁴ Two of these applicants lodged their applications on the same date. This may indicate that both were affected by a temporary system problem. The remaining applicant submitted his or her applications at irregular intervals over an 18 month period.

¹⁴⁵ The ANAO has provided data on all instances of multiple application and multiple VAC payment to DIMA for analysis and appropriate action. DIMA has advised that all refunds have now been made.

through its eVisa system and arranges, where practicable and appropriate, to repay any excess payments collected. DIMA has advised that in future, excess payments may be addressed through ‘the new portal in *Systems for People*’.¹⁴⁶

Substitution of Working Holiday Maker for student visas

5.22 Just before the start of eVisa for WHM in July 2002, DIMA’s Seoul post expressed concerns about the bona fides of the caseload and the potential for abuse of the WHM visa by applicants from South Korea.¹⁴⁷ The post formed a view that ‘many of these “new” applicants are unable to satisfy the evidentiary requirements for the student visas and/or the bona fides and so have been applying for WHM visas instead’. DIMA national office responded that it would be a while before they had any ‘hard data’ to evaluate potential abuse.¹⁴⁸ WHMs are allowed to study or train for up to a limit of four months and, provided this is adhered to, there is no basis for concern about a breach of visa conditions.

5.23 Nearly three years later, in January 2005, the Seoul post again cautioned that ‘the word out in the agent industry here is that Uni students are choosing to apply for WHM online instead of sc570 [English language intensive course for overseas students visa]’.¹⁴⁹

5.24 DIMA’s eWHM evaluation report (November 2005) found that ‘There is also evidence that South Korean applicants may be using the eWHM visa as a faster and easier alternative to applying for a student visa’.

¹⁴⁶ DIMA, advice to the ANAO, 4 July 2006.

¹⁴⁷ DIMA, email from Seoul post to DIMA national office, 25 June 2002.

¹⁴⁸ DIMA, email from the policy section to Seoul post, 3 July 2002.

¹⁴⁹ DIMA, email from Principal Migration Officer, Seoul to Hobart OPC, 24 January 2005.

5.25 DIMA advised the ANAO that:

Neither Tourism Delivery Support Section nor Student Policy Section have evidence to suggest that the WHM visa is being used systematically by South Koreans to undertake more than the permitted period of study on that visa and recent trends in the Student visa caseload for South Koreans do not support the earlier concerns that South Koreans may be substituting the WHM visa for a Student visa.¹⁵⁰

5.26 The ANAO examined data for the period 1 July 2002 to 14 January 2006 to identify trends in the numbers and proportions of WHM visa applicants who declared they would be in a classroom during their stay in Australia. A high proportion could show that a primary intention was to learn English, a common objective among applicants from non English-speaking countries.

5.27 However, the ANAO's analysis found that the number of WHM applicants declaring an intention to be in a classroom has risen substantially since July 2005, mainly due to South Korean WHMs. WHM applicants from each other country/ region showed no change in behaviour—no substantial increase or decrease in the proportion making this statement.¹⁵¹ The proportion of South Koreans among those who declare an intention to be in a classroom while in Australia has increased to the point where they comprise the majority of all WHMs making such a statement.¹⁵²

5.28 DIMA's records show the percentage of all South Korean WHM applicants that declare a classroom situation likely was low until mid-2005. It then rose to over 50 per cent. In contrast, the proportion of all WHMs who declare this intention, over time (but leaving aside the South Korean WHMs) has been tending to decrease over time and is about 2 per cent a month. No other source country has applicants who showed a similar change in behaviour to that among South Korean WHMs, including the other major East Asian source country, Japan.

5.29 DIMA has subsequently advised that before July 2005 the system was not providing applicants with the forms they needed to complete in order to

¹⁵⁰ DIMA, advice to the ANAO, 8 June 2006.

¹⁵¹ The proportion of Japanese WHM visa applicants expecting to be in a classroom situation is highest overall to date at about 25 per cent. However, this has not varied over time.

¹⁵² Before June 2004 the proportion of South Koreans among those intending to be in a classroom varies but, month by month, is usually under 10 per cent of the total of all WHMs stating such an intention in their application. There is a leap to 32 per cent by June 2005. Then, from July 2005, there is a dramatic increase to nearly 76 per cent of the group. This applies for a few months and from November 2005 it is yet higher at over 90 per cent.

undertake a full medical if they intended to study in Australia – the system would only provide an X-ray form. This had not been a problem for clients even when they had indicated an intention to study as they could still manually complete the form required to undertake the full medical, and the results were then entered into ICSE via the Internet, by officers at the post. This made it appear there was a very low proportion of South Korean WHMs intending to study in Australia. The issue was only discovered when eHealth 2 was rolled out in April 2005 because, unless the student/agent indicated on the on-line form that they intended to be in a classroom situation, the eHealth 2 system did not refer them to the panel doctor for a medical – only for an Xray, and it is not possible to manually complete further medicals in the eHealth 2 system.

5.30 For the July release, DIMA advised the eVisa system was fixed and, provided the applicant/agent indicated they were to be in a classroom situation, the system delivered the correct forms through eHealth 2. Applicants/agents were informed of the importance of indicating their intention to study. Given the shorter processing times made possible by eHealth 2, migration agents complied and the information was captured. This made it appear that there had been a sudden increase in the proportion of those intending to undertake study.

WHMs working in the Australian sex industry

5.31 Following field compliance work in mid-2003 and the cancellation of a WHM visa held by a Korean sex worker in an Australian brothel, certain DIMA officers suspected that this may have been organised behaviour, extending ‘rather widely’ and formed a view that there is an ‘increasing propensity to use the visa sub class 417 [WHM] to bring sex workers into Australia’.¹⁵³

5.32 It is important to note that a person can enter Australia on a WHM visa and work in the legal sex industry with no breach of their visa conditions.¹⁵⁴ Concern arises if there is evidence of sexual slavery or people trafficking. Further, indications of organisation of sex workers may not be a concern unless there were also signs of coercion or trafficking.

¹⁵³ DIMA, various internal emails, 15 August 2003.

¹⁵⁴ For example, working longer than three months with the one employer would be a breach. (From 1 July 2006 this period is extended to six months for WHM visas granted on and after that date and those still current but granted before that date. See <http://www.immi.gov.au/allforms/visiting_whm_detail.htm> (last viewed 20 June 2006).)

5.33 Evidence has been given to Parliament that Australia is a destination country for trafficking in women for the purpose of slavery and sexual servitude.¹⁵⁵ For example, DIMA provided evidence in 2005 that it had made 159 people-trafficking referrals since 1999.¹⁵⁶ The Parliamentary Joint Committee on the Australian Crime Commission (ACC) noted in August 2005 that ACC data showed that there appeared to have been a fall in the number of Thai sex workers and an increase in the number of South Korean sex workers.¹⁵⁷

5.34 DIMA has stated its responsibilities in these circumstances as follows:

DIMIA has responsibility for the enforcement of matters contained in the Migration Act, including the detection and detention of unlawful non-citizens as well as people smuggling and migration fraud-related offences. Matters involving trafficking may come to the attention of DIMIA staff in the course of the enforcement of migration law such as during the service of search warrants on brothels or private residences. Any matters involving indications of trafficking coming to the attention of DIMIA staff are referred to the AFP [Australian Federal Police] for investigation.¹⁵⁸

5.35 The ANAO found that concern over sex workers had arisen repeatedly over recent years within DIMA in relation to WHMs. DIMA has been monitoring the matter:

- In 2003, Hobart OPC began a statistical analysis of South Korean applicants to identify any trends.¹⁵⁹ A national office data integrity taskforce then also began investigating the matter.¹⁶⁰

¹⁵⁵ Parliamentary Joint Committee on the Australian Crime Commission, Inquiry into trafficking in women for sexual servitude, Update on Sexual Trafficking of Women for Sexual Servitude <http://www.apf.gov.au/Senate/committee/acc_ctte/completed_inquiries/2002-04/sexual_servitude/round_table/update.htm>, last viewed 20 June 2006, Submission No. 37, Australian Federal Police, 30 October 2003, section 1.1.

¹⁵⁶ See Parliamentary Joint Committee on the Australian Crime Commission, *ibid.*, Statistics on people trafficking referrals (tabled by DIMA).

¹⁵⁷ Parliamentary Joint Committee on the Australian Crime Commission Inquiry into trafficking in women for sexual servitude 2005, Supplementary report to the Inquiry into the trafficking of women for sexual servitude, August, p. 3.

¹⁵⁸ Parliamentary Joint Committee on the Australian Crime Commission Inquiry into trafficking in women for sexual servitude, Submission No. 38, Department of Immigration and Multicultural and Indigenous Affairs, 30 October 2003; see <http://www.apf.gov.au/Senate/committee/acc_ctte/completed_inquiries/2002-04/sexual_servitude/submissions/sub38.pdf>, last viewed 20 June 2006.

¹⁵⁹ DIMA, email from the manager, Hobart OPC to others within DIMA, including Compliance Operations, Melbourne, 15 August 2003. She also raised the possibility of key agents being involved in sexual servitude.

¹⁶⁰ DIMA, email from the Hobart OPC to national office, 19 May 2004.

- In December 2003, after a joint compliance operation with police and other agencies, an internal report to the then Secretary identified the WHM visa as the ‘latest visa of choice for Korean nationals working in the sex and “entertainment” industry’.¹⁶¹ The operation revealed that ‘a significant number of sex workers [had] entered Australia on subclass 417 Working Holiday Maker (WHM) visas’.¹⁶²
- In May 2004, DIMA compliance officers reported four incidents in Melbourne ‘which support a conclusion that South Korean WHM ‘women identified recently in the sex industry were trafficked to Australia for the purpose of being sex workers’.¹⁶³
- In June 2004, DIMA established a new project on Korean WHM visa abuse, to be undertaken by Intelligence Analysis Section.¹⁶⁴

5.36 In 2004, DIMA began exploring options to prevent temporary residents from working in the sex industry.¹⁶⁵ This was not proceeded with because it is legal to work in the sex industry.¹⁶⁶

5.37 In March 2005, a DIMA report on non-citizens found working in the sex industry over the previous twelve months noted that the ‘top’ nationality in this category was South Korea (244 cases with 208 holding WHM visas).¹⁶⁷

5.38 Further evidence came to light in April 2005, when two South Korean WHM visa applicants were found to have provided substituted X-rays after their original X-rays revealed tuberculosis. This led the Principal Migration Officer (Compliance) in Seoul to suspect a link to the ‘organised facilitation of Korean sex workers to Australia under the e-Working Holiday maker program’.¹⁶⁸

¹⁶¹ DIMA, internal email, 15 December 2003.

¹⁶² DIMA, file record of ‘Operation Viking’, 15 December 2003. The report indicated that 41 WHM visa holders had been found at seven locations where sexual services were provided. Seven visas were cancelled but the cancellations were later overturned at review because the WHM visa holders had not breached any conditions of their visa.

¹⁶³ DIMA, minute of 19 May 2004, to A/g Director CM&TE, Manager, Hobart OPC and PMO Seoul from Team Leader, Compliance, Sex Industry and Construction, Melbourne.

¹⁶⁴ DIMA, internal email from Director, Intelligence Analysis Section, to various others, 18 June 2004.

¹⁶⁵ DIMA, ministerial brief, 7 July 2004. The matter was still being explored in December 2004. See DIMA, ‘Visitor Visa Program—Input for brief for Secretary’s meeting with Korean Ambassador—15 December 2004.’

¹⁶⁶ DIMA, advice to the ANAO, 4 July 2006.

¹⁶⁷ WHM visas were also the top visa class for this activity, providing 215 out of the 638 cases identified. See: DIMA, ‘Non-Australian Citizens working in the sex industry—March 2005 update.’

¹⁶⁸ DIMA, Overseas Compliance Officer Information Report SHA2005-008, Shanghai, 4 April 2005.

5.39 DIMA has advised the ANAO:

In the financial year 2004–05, 222 South Korean WHMs were encountered working lawfully in the sex industry, with 160 found working in NSW. In 2003–04, 63 South Korean WHMs were found working lawfully in the sex industry, with 52 found working in NSW. Over the previous two financial years there is evidence of a growing trend to use the WHM visa for Koreans working in the sex industry. If there is no evidence of non-compliance, fraud, or criminal activity such as trafficking then there is no action taken.¹⁶⁹

5.40 Later, DIMA added that ‘In the period March 2004 – February 2006, 38 South Korean WHMs have been located working in the sex industry unlawfully, that is, in breach of visa conditions’.¹⁷⁰

5.41 DIMA advised:

Where any indicators of trafficking are identified a referral is made to the Australian Federal Police who are the primary investigatory agency for people trafficking matters. DIMA continues to look at profiling methods to reduce the incidence of visa fraud and criminality, including sex trafficking. Where such profiles can be developed, they are included on the Safeguards system, which alerts those processing visas to higher risk visa applications.¹⁷¹

5.42 DIMA provided the ANAO with a copy of a protocol agreed between the department and the AFP for referral of people trafficking information. This confirms that DIMA responsibilities are to refer all indicators of people trafficking to the AFP within one hour when they arise. DIMA also provided evidence that it makes such referrals.

5.43 DIMA reported issues relating to people-trafficking in its 2004–05 Annual Report and has advised that it will provide similar information in its 2005–06 Annual Report.

Recommendation No.2

5.44 The ANAO recommends that DIMA reinforce periodically to its overseas posts the importance of equitable access to visa application processes.

Agency response

5.45 We agree with this recommendation. The department is reinforcing the need for all DIMA staff to comply with existing legal provisions for lodgement

¹⁶⁹ DIMA, advice to the ANAO, 19 April 2006.

¹⁷⁰ DIMA, advice to the ANAO, 8 June 2006.

¹⁷¹ DIMA, advice to the ANAO, 19 April 2006.

of visa applications, especially overseas, through new guidelines which will be highlighted at our training courses for officers selected for overseas service. The observance of the guidelines will be monitored by the department's regional directors overseas.

6. Programme Performance Information

This chapter considers the objectives of the Working Holiday Maker visa programme and how it fits in DIMA's outcomes and outputs structure. It then examines the available programme performance information.

Introduction

6.1 DIMA's activities, like those of all other Australian government agencies, are structured in a framework of outcomes and outputs. This is intended to help departments to manage and report on their obligations.

6.2 Arranging activities in an outcomes and outputs structure should also help agencies acquit their responsibilities to ministers, the Parliament and, ultimately, the public.¹⁷² For example, it provides a basis for the development and use of indicators of effectiveness and efficiency.

6.3 This chapter examines how the WHM programme fits into the relevant DIMA outcome, how its objectives align with those of the outputs and outcome, and the available programme performance information.

Working Holiday Makers and DIMA's Outcome 1

6.4 Under the outcomes and outputs framework, each outcome is defined by an outcome statement that sets out the impacts government expects from the work of the agency—its outputs in support of that outcome.

6.5 The ANAO sought to identify how the WHM programme contributes to the realisation of DIMA's Outcome 1, which is 'Contributing to Australia's society and its economic advancement through the lawful and orderly entry and stay of people'.

6.6 The first object of the Migration Act is: 'to regulate, in the national interest, the coming into, and presence in, Australia of non-citizens' (s. 4(1)). Self-evidently, the outcome statement relates strongly to this object.

6.7 The WHM programme is part of DIMA's Output Group 1.1, *Non-humanitarian entry and stay*. The DIMA 2004–05 Annual Report (October 2005, p. 52) states the objective of Output 1.1.4, *Visitors and Working Holiday Makers*:

¹⁷² See Finance: <http://www.finance.gov.au/budgetgroup/Commonwealth_Budget_-_Overview/structuring_outcomes___outputs.html>, last viewed 29 June 2006.

The delivery of visa processes and strategies that support the growth of the tourism industry and enhance border integrity by:

- assisting the lawful entry of genuine tourists, business and family visitors by continually improving grant rates, client services and processing times
- minimising the potential for non-genuine visitors to remain in Australia or to contravene visa conditions.

6.8 On the assumptions that a growing tourism industry is likely to support economic advancement and that enhanced border integrity is consistent with lawful and orderly entry and stay, this clearly identifies the contribution of the output to the outcome. It also identifies a key tension for DIMA: that of balancing access and restriction, between maximising the number of visitors so as to support tourism growth while prohibiting the entry of undesirable non-citizens.

WHMs and reciprocity

6.9 One prominent aspect of the WHM programme does not seem to 'contribute to Australia's society and its economic advancement through the lawful and orderly entry and stay of people'. That is the requirement that the programme work only through reciprocal arrangements with other countries. The rationale is that it ensures that young Australians get similar opportunities to enjoy working holidays overseas.¹⁷³

6.10 When, in August 1997, the Joint Standing Committee on Migration, in its inquiry into the WHM programme, proposed that Australia's WHM arrangements be extended to non-agreement countries, the government did not accept the recommendation, expressing an explicit policy preference to maintain reciprocity.¹⁷⁴ Reciprocity remains 'key to the negotiation of WHM arrangements' and DIMA has continued to observe this policy.¹⁷⁵

6.11 While the ANAO appreciates that outcome statements cannot neatly capture all the detail of the programmes that contribute to their achievement, reciprocity is unequivocally a part of policy. However, it is not readily apparent within Outcome 1. 'Lawful and orderly entry and stay' clearly means 'entry and stay in Australia'.

¹⁷³ DIMA, *Fact Sheet 49—Working Holiday Maker Program*. See <<http://www.immi.gov.au/facts/49whm.htm>>, (viewed 29 June 2006).

¹⁷⁴ See <<http://www.aph.gov.au/house/committee/mig/report/holiday.pdf>>, (last viewed 29 June 2006). The Government response is in the Senate Hansard, 2 September 1999, pp. 8266–74.

¹⁷⁵ DIMA, advice to the ANAO, 28 March 2006.

6.12 DIMA has reaffirmed that reciprocity remains ‘key to the negotiation of WHM arrangements’ but subsequently described it as a ‘by-product benefit which contributes to a whole-of-government outcome’:

the broad policy statements set out in the Outcome and Output structure, by their nature, will not capture the detail of all programs. *DIMA has a number of programs that do not explicitly fit within the outcome and output structure, eg. DIMA’s engagement with the international community in assisting refugees and people of concern to resettle in a third country.*

While the reciprocal element to the WHM program is not explicitly reflected in Outcome 1, Australia’s society and economy derive significant benefit from the experiences young Australians gain through reciprocal WHM arrangements, particularly their appreciation for, and understanding of the value of, cultural diversity [Emphases added].¹⁷⁶

6.13 The outcomes–outputs structure is intended to cater for the many objectives that most agencies must deliver. It is intended to allow agencies ‘to manage and report on their complex obligations within a relatively straight-forward framework that is structured yet flexible’.¹⁷⁷ DIMA has a number of programmes that do not readily fit its outcomes–outputs structure.

6.14 The ANAO considers that DIMA should consider whether it can revise its outcomes and outputs to get a better strategic fit among outcomes, outputs and the specific objectives of DIMA’s individual programmes. This is important because appropriations are made by outcome and the outcome statement is an expression of the purpose of the relevant appropriation.

Objectives of the WHM programme

6.15 The current statement of the objective of the output encompassing the WHM programme (para. 6.7 above) is about supporting tourism and the emphasis in related material is on young people having a holiday in Australia.

6.16 Recent changes to Working Holiday visa rules show that WHMs are seen increasingly as a source of labour for seasonal industries in Australia, such as harvesting crops. In October 2005, the responsible minister announced a change to allow, for the first time, WHMs to gain a second WHM visa, stating that ‘the WHM programme has been expanded to help growers get the sea-

¹⁷⁶ DIMA, advice to the ANAO, 28 March 2006.

¹⁷⁷ See <http://www.finance.gov.au/budgetgroup/Commonwealth_Budget_-_Overview/structuring_outcomes___outputs.html> (last viewed, 29 June 2006).

sonal harvest labour they need'.¹⁷⁸ The change is centrally directed at the provision of WHMs as temporary workers.¹⁷⁹ In July 2006, another new measure extended the range of industries where a WHM could work and thereby secure a second WHM visa.¹⁸⁰

6.17 DIMA has advised that despite these changes WHM arrangements remain primarily focused on holiday makers who work on an incidental basis in employment which is casual or largely unskilled. Nevertheless, the ANAO considers it is important that DIMA continues to monitor progress to reflect any changing priorities ministers have identified

Performance information

6.18 Performance information forms an essential part of the Australian government's outcomes and outputs management framework for the activities of all government agencies. The Australian Government has promulgated a set of performance management principles to identify the main features of good practice in performance reporting and management. The ANAO has published guides to *Performance Information in Portfolio Budget Statements* (May 2002) and *Better Practice in Annual Performance Reporting* (April 2004).¹⁸¹

Performance measurement and reporting

6.19 Sound performance information helps to make agencies accountable. Portfolio Budget Statements (PBSs) set out performance measures and statements of expected performance by the agency and its programmes; the results of that performance are reported later in annual reports.

6.20 Having performance information is not an end in itself—it needs to be analysed so that information is used not only to monitor progress but also to manage the agency. Therefore, performance information used for external

¹⁷⁸ See <http://www.minister.immi.gov.au/media_releases/media05/v05133.htm>, (last viewed 23 March 2006). In addition, on 17 May 2005, the then Minister for Agriculture, Fisheries and Forestry stated: 'The Australian Government will introduce a new Working Holiday Maker Programme in November to help alleviate shortages in the number of seasonal workers in rural areas' [emphasis added], (see <<http://www.maff.gov.au/releases/05/05134wt.html>>, last viewed 3 April 2006).

¹⁷⁹ It is important to understand that this change affects the primary WHM visa, rather than the second one. Additional rural labour is expected to result primarily through WHMs ensuring that they work in seasonal harvest work during their *initial* stay so as to secure their opportunity to stay longer.

¹⁸⁰ Minister for Immigration and Multicultural Affairs 2006, Rural and Regional Industries to Benefit from Visa Extension. media release, 3 May. See <http://www.minister.immi.gov.au/media_releases/media06/v06051.htm>, (last viewed 18 July 2006).

¹⁸¹ See: <<http://www.anao.gov.au/WebSite.nsf/Publications/>>.

reporting, such as an annual report, should be consistent with and linked to information collected and used for internal monitoring and reporting.

6.21 Against this background, and to assess whether DIMA's arrangements for performance information on its WHM programme are robust, the ANAO examined the performance framework set out in the PBS—prospective information—and that in DIMA's annual reports—the retrospective account.

Outcome performance information

Prospective performance information

6.22 Outcome performance is about how effective government activities and payments are in making a desired change to the outside world. Under the government's guidelines on performance reporting agencies must have effectiveness indicators which identify the contribution of outputs and administered items to the stated outcome.

6.23 Recent Immigration and Multicultural and Indigenous Affairs Portfolio Budget Statements set out a table of outcome performance information.¹⁸² The tables comprise measures such as 'The extent to which Australia is economically, socially and culturally enriched by migration and temporary entry'. This, in turn, comprises ten subsidiary measures. These generally take the form 'the extent to which [a particular expectation is realised]'. Use of the term 'extent' implies that that each measure can be achieved to a greater or lesser degree and that the department has some way of measuring or assessing it.

6.24 None of these measures includes a statement of the level of performance DIMA expects to achieve. This means that when Parliament considers the Budget, the PBS gives it no information as to how effectively the department and its programmes are expected to perform in delivering its Outcome 1.

6.25 DIMA disagrees, stating that:

estimating what next year's performance may be is unlikely to be accurate as there are many environmental variables which are not within DIMA's control including global and domestic financial, health and security factors.

The Portfolio Budget Statements already include statements of performance measures for the WHM programme in regard to finalisations, estimated costs

¹⁸² Immigration and Multicultural and Indigenous Affairs, 'Performance information for Outcome 1', PBS 2004–05, pp. 94–5; PBS 2005–06, pp. 58–60; PBS 2006–07, pp 57–59.

and service standards. To provide expectations on a range of other possible measures may be unnecessary and could risk confusing the reader.¹⁸³

6.26 The ANAO recognises that the performance of every government programme is subject to some external influences beyond the control of the responsible agency. Unforeseen matters affecting performance should be explained in annual reports and can then be taken into account in reviewing performance. What is desirable is a statement as to the agency's own reasonable expectations on what it will achieve with the funds appropriated. The Department of Finance and Administration's (Finance's) guidelines simply require agencies to be explicit in their reporting to Parliament as to their plans and what they believe to be an appropriate performance.¹⁸⁴

Performance reporting

6.27 The Joint Committee of Public Accounts and Audit (JCPAA) has approved a set of annual reporting requirements for departments. One of these requires annual reports to include 'reporting of actual results against the specific standards for the outcomes and outputs set out in the PBS/PAES'.¹⁸⁵

6.28 Recent DIMA annual reports each provide a table of results for a range of effectiveness measures.¹⁸⁶ To satisfy the JCPAA's expectations, where performance information has changed during the year, details of both the former and the new information must be provided, with reasons for the change, so as to fully inform the reader.¹⁸⁷ For 2004–05, DIMA revised three of the Outcome 1 measures in the PBS during the year and noted this in the Portfolio Additional Estimates Statement (PAES).¹⁸⁸ However, neither the PAES nor the subsequent annual report provides reasons for the change.¹⁸⁹

¹⁸³ DIMA, advice to the ANAO, September 2006.

¹⁸⁴ See: <http://www.finance.gov.au/budgetgroup/Commonwealth_Budget_-_Overview/structuring_outcomes__outputs.html>.

¹⁸⁵ Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies* (Approved by the JCPAA under subsections 63(2) and 70(2) of the *Public Service Act 1999*), June 2005, p. 6; see <http://www.pmc.gov.au/guidelines/docs/annual_report_requirements.pdf>, (last viewed 10 April 2006).

¹⁸⁶ DIMIA, Annual Reports (2002–03, pp. 19–21; 2003–04, pp. 23–6; 2004–05, pp. 27–32).

¹⁸⁷ Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*.

¹⁸⁸ Immigration and Multicultural Affairs PAES 2004–05, p. 48, see: <<http://www.immi.gov.au/budget/budget04paes.htm>>.

¹⁸⁹ The change is footnoted 'Change to performance indicator text' in the PAES (*ibid.*, p. 48).

6.29 In response to the above and other issues raised by the ANAO on its outcome performance information, DIMA has advised that it has ‘engaged a consultant to review the Department’s Key Performance Indicators’. The review:

is aimed at enhancing the quality, usefulness, and timely reporting of the department’s performance information. It is anticipated that this review will be completed by the end of 2006–07. Any changes to the department’s performance information will be disclosed and explained according to government reporting requirements.¹⁹⁰

Output performance information

6.30 To review output performance information, the ANAO examined first the PBS 2004–05 and the corresponding DIMIA 2004–05 Annual Report, which give prospective and retrospective accounts for the same year. To supplement this, the ANAO also looked to other sources of performance information internal to DIMA and the audit team’s own analyses of the department’s data.¹⁹¹

6.31 Finance requires agencies to publish performance information in key documents such as PBSs and annual reports. For outputs, Finance’s guidelines require efficiency indicators—price, quantity and quality of the final output.¹⁹² In this case, the PBS (pp. 100–1) states measures of output performance for Output 1.1.4 (which includes WHM visas) in terms of price, quantity, quality and timeliness. Timeliness is a further useful category of performance information. The ANAO examined WHM output performance by considering each of these in turn.

Price

6.32 In 2003–04, DIMA participated in a review of its business processes led by Finance.¹⁹³ Finance subsequently agreed to a funding model to derive DIMA

¹⁹⁰ DIMA, advice to the ANAO, 5 July 2006.

¹⁹¹ A further source of DIMA data made public by the department is its set of statistical publications. See <<http://www.immi.gov.au/statistics/publications/>>, last viewed 6 May 2006. For example, DIMA, *Population Flows: Immigration Aspects 2004-05 Edition* contains two pages of information on the WHM programme (see: <http://www.immi.gov.au/statistics/publications/popflows2004_5/index.htm>, last viewed 8 May 2006).

¹⁹² See http://www.finance.gov.au/budgetgroup/Commonwealth_Budget_-_Overview/performance_reporting.html, last viewed 8 May 2006.

¹⁹³ The steering committee for the review also included the Treasury and the Department of the Prime Minister and Cabinet.

output costs and, moreover, the new arrangements were approved by government in the 2004–05 Budget process.¹⁹⁴

6.33 The PBS gives expected output prices, down to individual output level. In 2004–05 DIMA expected its Output 1.1.4 to cost \$75.7 million (p. 100). The PAES subsequently raises this slightly.¹⁹⁵ However, at the end of that year, DIMA provides information on the actual cost of the output group in its detailed financial statements (\$99.356 million) but does not explain the variance in its discussion of performance, which would increase transparency and accountability.¹⁹⁶ DIMA has advised that ‘the manner of disclosure of performance information will be reviewed as part of development of the 2005–06 annual report’.¹⁹⁷

Quantity

6.34 The PBS (p. 100) gives the number of WHM applications finalised as a quantity performance measure and sets the expected level as 101 850. The PAES (p. 49) revises this to 103 180 and the annual report (p. 51) records a result of 105 824 applications finalised for the year, and compares that with the PAES figure. Separately, the annual report (p. 60) notes that DIMA granted 104 353 WHM visas in 2004–05.¹⁹⁸

6.35 Although the number of visas applications finalised is a measure of processing performance, programme performance flows from the numbers of visas actually used and the length of time that the WHMs stay in Australia, neither of which are measured or reported by DIMA. The ANAO analysed its data extract to measure these.

¹⁹⁴ PBS 2005–06, p. 47. The ANAO has taken the references to ‘output costs’ in the PBS as equivalent to ‘output prices’. In the Outcomes and outputs framework, the term ‘output price’ was deliberately selected by Finance to reflect the point of balance between the cost of production, the price of alternatives, the quality and quantity to be produced of the chosen output, and the amount the government is willing to pay (ibid, item 4.3). However, government approval of the new arrangements for funding DIMA’s departmental expenses has been taken, for practical purposes, to indicate its willingness to pay.

¹⁹⁵ The PAES shows the adjustments to output price estimates separately for the funds sourced from departmental appropriations (p. 45; increases estimate by \$837 000) and revenue from other sources (p. 46; decreases estimate by \$119 000). The net effect is to increase the estimate for Output 1.1.4 by \$718 000, from \$75.699 million to \$76.417 million. The PAES does not show the net estimate, which the reader can derive only by referring to figures set out in five separate pages across the two documents.

¹⁹⁶ DIMA, 2004–05 Annual Report, Financial statements, p. 466; Outcome 1 performance, pp. 33–142.

¹⁹⁷ DIMA, advice to the ANAO, 5 July 2006.

¹⁹⁸ The number of applications finalised includes some refusals and some withdrawn by the applicant. The number of WHM visitors in the year is a separate matter. After a WHM visa has been granted, the WHM can commence their stay up to twelve months after the date of grant. Thus, for example, the WHMs in Australia during 2004–05 will have included many who were granted earlier.

6.36 The ANAO's analysis of DIMA data shows that about 95 per cent of WHM visas are actually used.¹⁹⁹ There are differences in propensity to use a WHM visa among applicants by country of origin. Among those most likely not to use their WHM visa are South Korean applicants (10 per cent); Scandinavians are most likely to use theirs (only 2 per cent do not).²⁰⁰ Monitoring this lack of use could help DIMA to understand WHM applicant behaviour.

6.37 Although the visa is for twelve months, many WHMs leave a lot earlier. The mean completed stay is just over seven months. A steady stream of WHMs complete their visit from relatively early in the twelve months, with a substantial proportion leaving after three to five months (Figure 6.1).²⁰¹

6.38 The ANAO appreciates the limitations of various measures, but suggests combining these two measures—visas actually used and actual lengths of stay—could provide a better quantitative measure of programme performance. This could be measured in person-months of WHM stay in Australia.

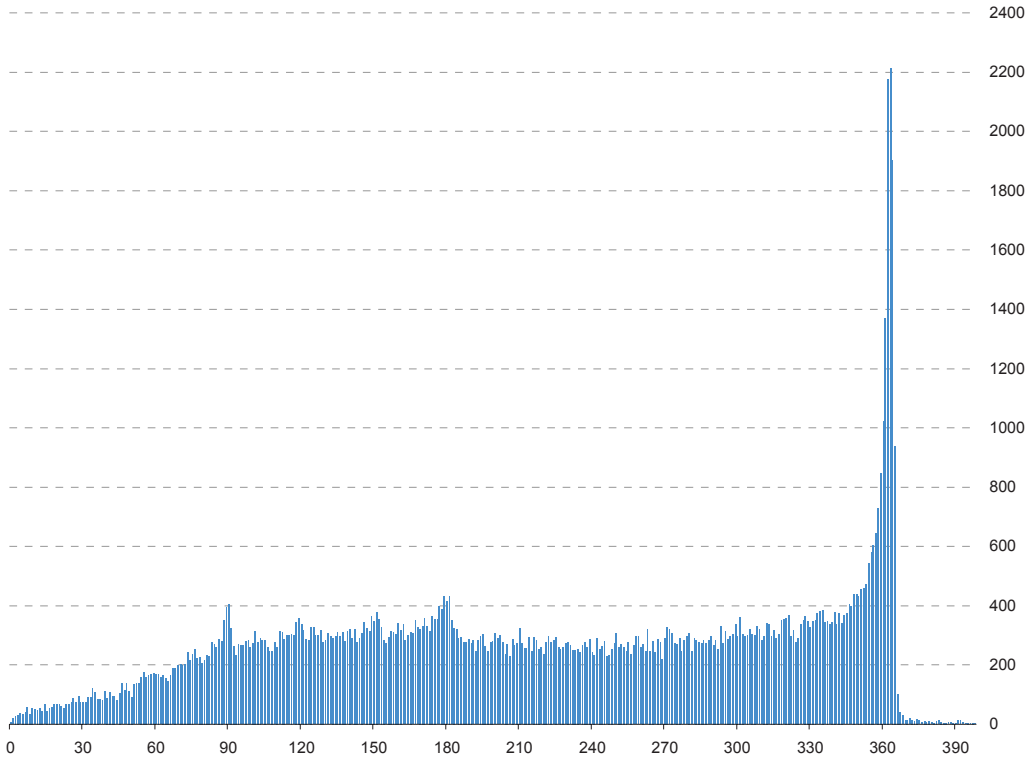
¹⁹⁹ Because WHMs have twelve months after grant to make use of their visa this data can only be calculated reliably for those visas granted more than a year ago.

²⁰⁰ There is no data that might indicate why those who did not use their WHM visa failed to do so.

²⁰¹ Closer analysis of the data shows other interesting micro-features, such as a small peak exodus at about 90 days and another at about 180 days. This might be influenced by the structure of airline fares.

Figure 6.1

WHM length of stay: Numbers of WHMs leaving Australia, by number of days after original entry



Source: ANAO analysis of data supplied by DIMA. Includes only cases where the person has only ever been granted one visa and the visa is no longer in effect; excludes cancellations. Analysis draws on WHM's last departure date to allow for WHM visa being multiple entry. That is, while in Australia on a WHM visa, the holder may visit other places outside Australia (such as New Zealand or Fiji) and return before the expiry of the twelve month period.

Quality

6.39 The PBS (p. 100) gives a range of quality indicators, some of which are specific to visa types within Output 1.1.4 other than WHM visa. However, the list includes some quality indicators that are obviously relevant to WHM visas.

The non-return rate

6.40 First is 'the non-return rate of visitors relative to the refusal rate continues to decline or remain low in historical terms'. This reference to the *refusal rate* is an unexpected formulation given that 'non-return rate for visitors

relative to the *approval rate* for visitor applications' is an indicator at the outcome level.²⁰² (The refusal rate is approximately the complement of the approval rate.)²⁰³

6.41 DIMA explained:

the two measures need to be considered together to be meaningful. The non-return rate could be lowered by increasing the refusal rate to a high level but that impacts on the benefits of the program; approval rates could be increased to 100% but that would result in an increase in the non-return rate. It is managing to decrease refusals and at the same time keep the non-return rate low that is the goal.

Take-up of eWHM

6.42 A second quality indicator in the PBS (p. 100) is 'overall take up rate of eWHM applications greater than 85 per cent', later amended (PAES, p. 49) to 90 per cent.

6.43 Successive annual reports have provided the results which, for 2004–05, had reached 98.01 per cent (p. 51). The eWHM evaluation report also states eWHM take-up by country of citizenship from 2002–03 to 2002–05.²⁰⁴

6.44 As noted in Chapter 5, two major DIMA overseas posts, the primary recipients of paper-based WHM visa applications, resolved from mid-2003 forward to cease accepting most paper based applications. They returned them to be lodged electronically. This was done with a view to the on-line facility becoming the only mode of application.²⁰⁵ None of these documents (PBS, PAES and annual report) mentions this.

6.45 The reader might incorrectly infer that take-up performance in these posts related wholly to voluntary action by applicants (and agents) attracted to this mode of service delivery.

Timeliness

6.46 In the PBS (see Table 6.1, below), DIMA proposes to measure timeliness of processing by two service standards: a median processing time (how long it

²⁰² This formulation for the indicators at outcome and output level remains in place in the PBS for 2005–06. The 2003–04 Annual Report (pp. 24 and 43) shows that it was the same for that year.

²⁰³ A further small proportion comprises withdrawals.

²⁰⁴ DIMA, Evaluation of Electronic Working Holiday Maker Visa (subclass 417), MTE Division, November 2005, Attachment B.

²⁰⁵ This matter is examined in detail in Chapter 6.

takes to finalise half of the applications) and a 75th percentile processing time (how long it takes to finalise three-quarters of them). The median target processing time declines markedly to only a day at the time of start of eWHM in 2002 and has remained at that level. An increase in the 75th percentile processing time for 2005–06 and 2006–07 is attributed to an ‘Increase in proportion of Working Holiday Makers requiring health clearances’.²⁰⁶

Table 6.1

Targets for timeliness of processing WHM visas, 2001–02 to 2005–06

Processing time	2001–02	2002–03	2003–04	2004–05	2005–06	2006–07
Median	5 weeks	1 day	1 day	1 day	1 day	1 day
75th percentile	–	1 day	1 day	1 day	6 days	6 days

Sources: 2001–02, PBS, p. 122; 2002–03, PBS, p. 97; 2003–04, PBS, p. 91; 2004–05, PBS, p. 101; 2005–06, PBS, p. 65; 2006–07 PBS, p. 64.

6.47 DIMA reports timeliness of processing in its November 2005 evaluation report and recent annual reports as set out in Table 6.2.

Table 6.2

Reported timeliness of processing WHM visas, 2001–02 to 2004–05

Processing time	2001–02	2002–03	2003–04	2004–05
Median	Same day	Same day	0 day	Same day
75th percentile	8 days	1 day	3 days	11 days

Sources: 2001–02, DIMA, *Evaluation of Electronic Working Holiday Maker Visa (subclass 417), November 2005*, p. 14; 2002–03 to 2004–05, DIMIA/DIMA, Annual Reports.

Note: For 2003–04 the 75th percentile result is footnoted: ‘Increase in proportion of WHMs requiring health clearance’ (p. 63). For 2004–05 it is footnoted: ‘Application surge from nationals who are required to undergo health checking and for some who are required to provide evidence of funds due to downturn in local economies’ (p. 81).

6.48 Timeliness for the year that immediately precedes eWHM, 2001–02, is not markedly different from that achieved since. However, the median time has been maintained while the number of applications has increased.

6.49 DIMA confirmed that it calculates timeliness of processing using the date of finalisation of an application.²⁰⁷ That is, it takes the cases *finalised* in a given period and works out how long each took.²⁰⁸ Measuring timeliness with

²⁰⁶ Immigration and Multicultural Affairs PBS 2005–06, Table 3.2, footnote 6; p. 65.

²⁰⁷ DIMA, advice to the ANAO, 7 March 2006.

²⁰⁸ An alternative is to measure the time taken to finalise all applications *received* in a period. This presents the difficulty that some may not be finalised when a report on processing timeliness is required.

this figure alone presents an incomplete picture if it is not accompanied by a measure of the cases on-hand. This is because, although the cases actually completed may meet the target, there may be others which are not progressing.

6.50 The structure of performance reporting needs to take account of the incentives it creates. The desire to maintain timeliness standards may provide a short-run incentive for processing officers to finalise 'easy' cases and allow 'difficult' unfinalised cases to accumulate. As such cases age, any attempt to clear them could result in an apparent deterioration in processing time. This can be addressed by including in service standards a target measure of numbers of unfinalised cases alongside standards for timeliness.

6.51 This concern has arisen for the unfinalised WHM application processing backlog in Hobart (referred to earlier—see para. 4.31): 'These are being finalised but their completion will skew the overall processing times and refusal rates over the coming months and for the current programme year.'²⁰⁹

6.52 DIMA could supplement its timeliness targets with one for on-hand cases, expressed, for example, as the number of cases on-hand outside service standards.

ANAO analysis of timeliness of processing

6.53 As part of its analysis of DIMA data, the ANAO examined the timeliness of processing of electronically-lodged WHM visa applications since the commencement of eVisa, July 2002, to mid-January 2006. Specifically, the ANAO analysed the timeliness of processing leading to grants for electronically-lodged applications for each financial year.

6.54 The profile of processing time (Figure 6.2) slowed in the first two years after 2002–03 but remained generally consistent from 2004–05 to 2005–06. DIMA attributes this to an increase in applicants requiring health checking. Another change has affected the processing profiles for the two subsequent years, specifically, a 'flat-spot' at the start of processing, with few finalisations in the first five days. DIMA attributes this to the need for further follow-up which usually requires sending an email to the client or to the post and seeking a response.²¹⁰ However, it may also reduce the chance of DIMA achieving its

²⁰⁹ DIMA, Evaluation of Electronic Working Holiday Maker Visa (subclass 417), MTE Division, November 2005, p. 3.

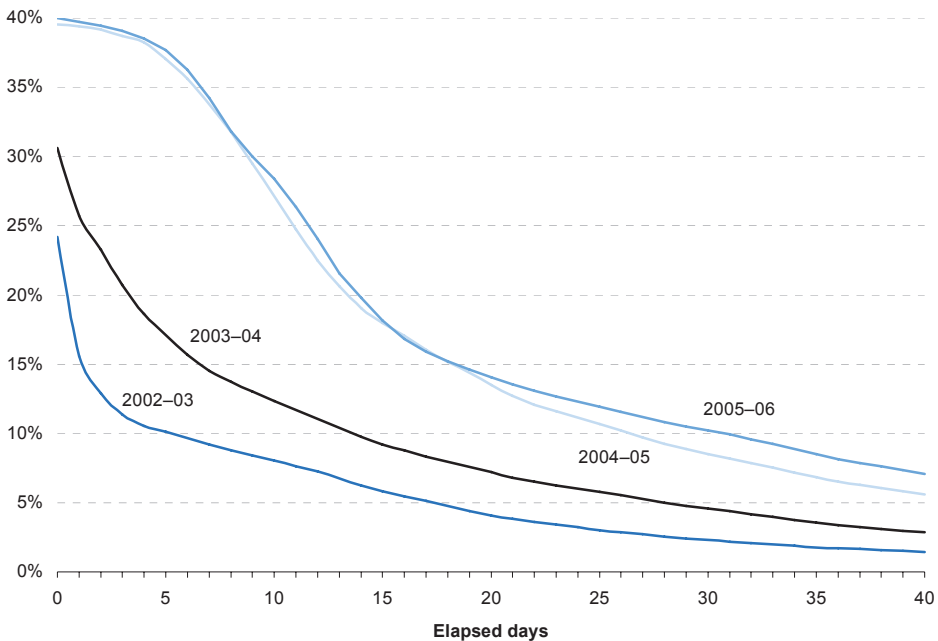
²¹⁰ DIMA, advice to the ANAO, 5 July 2006.

current 75th percentile processing target of six days. DIMA has advised that this issue is now being addressed as part of its current systems redevelopment.

Figure 6.2

Timeliness of eWHM visa grants, by financial year of grant

For all electronic applications resulting in grants, proportion of applications remaining to be finalised at a given number of days after receipt of the application



Note on reading this graph: Consider the curve for 2002-03. This shows that after the elapse of five days from application receipt, only 10 per cent of those applications which would lead to grants remained 'on hand' to be processed; after 17 days, only five per cent remained, and so on.

Source: ANAO analysis of DIMA data. Data for 2005-06 includes only 1 July 2005-14 January 2006.

Importance of autogrants to rapid processing

6.55 This analysis also shows that, each year, DIMA finalised most WHM applications almost immediately. At worst, only 40 per cent of applications are left on day one. Already processed are autogranting WHM visas, which are granted very promptly, taking a mean processing time of under seven

seconds.²¹¹ Thus, a major influence on the timeliness of processing is the proportion of applications that can be autogrant.

6.56 Initially, DIMA had expected that only 10 per cent of cases would be referred to the Hobart OPC.²¹² Later, in its evaluation report, DIMA stated that the original autogrant target was 70 per cent. Even so, this had allowed it to set the target at one day.²¹³ Therefore, it is important for management of WHM visa processing for DIMA to observe any changes in this proportion.

6.57 The ANAO found that data on the proportion of WHM autogrants is reported to DIMA management in regular reports from the Hobart OPC and that the reports provide reasons for changes in this proportion. For example, the report for December 2005 showed that autogrant rate had declined to 58 per cent. The report attributes this to the 'continued increase in South Korean applications'. These all require health checking and are referred to the Hobart OPC for manual processing.

6.58 About two-thirds of all WHM visa grants have been autogrant since the commencement of eWHM. However, the proportion has declined from around 70 per cent in the first two years to around 60 per cent (Figure 6.3). This means an increasing proportion of cases is generating work for Hobart OPC.

6.59 For DIMA to manage WHM processing and balance resources to meet its timeliness objectives, management needs to be aware of the autogrant rate and trends in that rate. The ANAO found that the Hobart OPC is monitoring and reporting this rate in its monthly reports. DIMA has noted that the Systems for People project is examining how the system can be improved to increase the autogrant rate without prejudicing integrity.

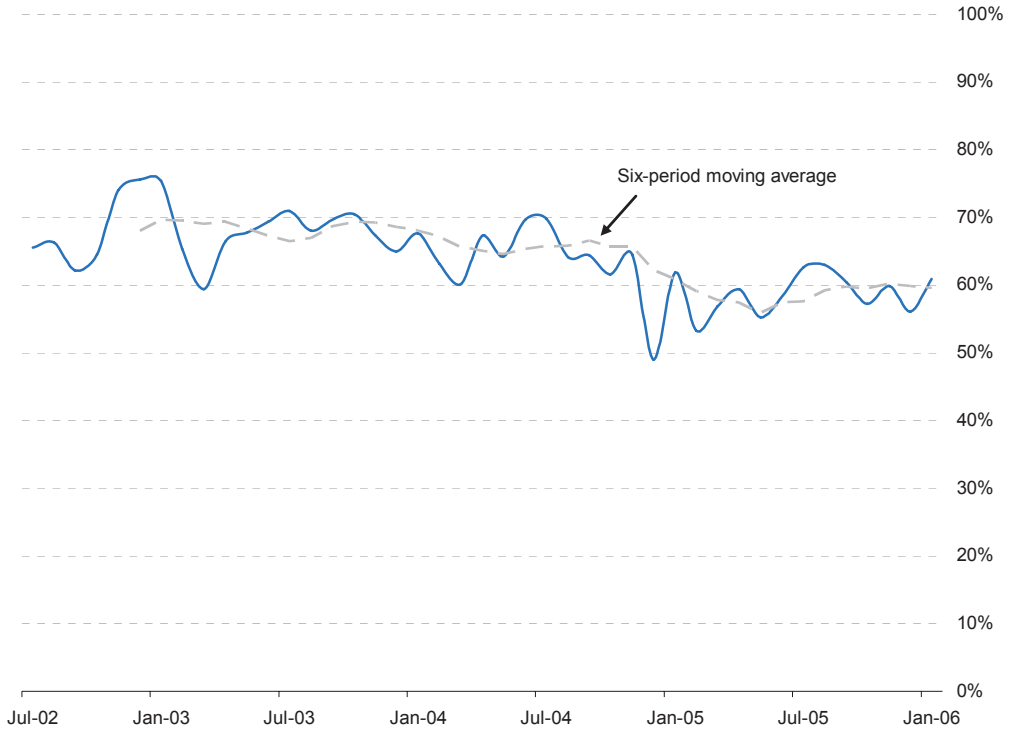
²¹¹ ANAO analysis of DIMA data. For the purposes of this calculation the ANAO has adopted DIMA's definition of 'autogrant' as including all decisions made by computer in less than 100 seconds.

²¹² DIMA, minute to the Assistant Secretary, Temporary Entry Branch, 'Progress Report—DIMIA Tasmania Onshore Processing Centre for Electronic Working Holiday Visa Applications', December 2002.

²¹³ DIMA, *Evaluation of Electronic Working Holiday Maker Visa (subclass 417)*, November 2005, p. 18.

Figure 6.3

Proportion of WHM visa grants that are autogrananted, July 2002 – December 2005



Note: Calculated by date of grant

Source: ANAO analysis of data supplied by DIMA

Performance against other objectives

6.60 As discussed earlier, the WHM programme has several objectives not currently reflected in the programme outcome and outputs material.

Work in rural industries

6.61 Given the increasing importance the government has attached to WHMs providing a large pool of seasonal workers, especially in rural industries, DIMA could explore the opportunities to improve information on the number and proportion that do so.

6.62 DIMA has said that it would need to consider the resource implications of such reporting and the possible imposition of a burden on business in collecting such data.²¹⁴

Reciprocity

6.63 DIMA stated that:

DIMA, through Tourism Delivery Support Section, monitors the performance of WHM programs of other countries, particularly the access of Australians to those programs, through ongoing contact with relevant Embassies and High Commissions in Australia.

Australia's own overseas missions also report on performance of programs in-country. They engage in ongoing dialogue with relevant host governments to ensure the program continues to benefit young Australians and to address any issues that may arise from time to time.²¹⁵

6.64 DIMA has sought to collect this data from foreign embassies in Australia.²¹⁶ However, no performance information is provided publicly.

6.65 The following table, covering 2001–02 and 2002–03, is among DIMA's records. This shows that the great majority (95 per cent) of Australian WHMs go to Britain, Canada, Ireland or Japan.

²¹⁴ DIMA, advice to the ANAO, 5 July 2006.

²¹⁵ DIMA, advice to the ANAO, 28 March 2006.

²¹⁶ For example, DIMA, fax to the Embassy of the Republic of Korea, 24 July 2003.

Table 6.3**Reciprocity: WHM visas granted 2001–02 and 2002–03**

Country	2001–02		2002–03	
	<i>Visas granted to Australians</i>	<i>Visas granted by Australia</i>	<i>Visas granted to Australians</i>	<i>Visas granted by Australia</i>
UK	19 945	40 946	18 717	39 690
Canada	6004	5729	5500	6230
The Netherlands	379	4656	327	3714
Japan	1154	9752	1136	9711
Ireland	2140	10 799	2906	11 128
Korea	14	3364	7	5858
Malta	14	77	17	66
Germany	303	5869	326	7558
Denmark	64	1091	78	1015
Sweden	88	2412	142	2568
Norway	69	428	137	678
Hong Kong	58	49	113	130
Finland	4	13	21	380
Cyprus	–	–	13	11
Other	–	84		21
Total	30 236	85 269	29 440	88 758

Source: DIMA file record.

6.66 The DIMIA 2001–02 Annual Report (p. 49) stated that ‘over 30 000 working holiday visas were granted to young Australians by reciprocal arrangement countries during [2001–02]’. The eWHM Evaluation Report (p. 11) also reports a similar result, this time for 2003–04.²¹⁷ However, there is no indication of whether this performance is more or less than intended.

6.67 DIMA has said:

it may also serve to heighten such concerns if the numbers continue to be in Australia’s favour. It would seem there is little that DIMA could or should do to address this. The opportunity is available, beyond that, it is up to individuals to make their choices, and up to arrangement countries to find ways to attract WHMs to their country/region.

²¹⁷ DIMA has advised that the figures were obtained from relevant embassies and high commissions (5 July 2006).

6.68 However, representatives in Australia of the governments of WHM visa arrangement countries have raised, from time to time, their perception of an imbalance.²¹⁸ That is, many more young people from the overseas country are coming to Australia than there are young Australians travelling in the other direction. To address this issue DIMA proposes to write to travel agents and tertiary education providers to advise them of the opportunities available for young Australians under the scheme and to seek their assistance in devising suitable advertising that will reach potential travellers. In this way the opportunity for young Australians to travel can be publicised by those who have the business interest and who are best placed to reach their target audience.

Recommendation No.3

6.69 As part of its proposed review of performance information, the ANAO considers that DIMA should:

- (a) seek agreement to a revision of its outcomes and outputs structure to get a better strategic fit among outcomes, outputs and the specific objectives of DIMA's individual programmes;
- (b) include, in its PBS, targets against stated performance indicators for its Outcome 1; and
- (c) report against all objectives of the WHM programme, including the numbers of young Australians who take up reciprocal WHM opportunities.

Agency response

6.70 We agree with this recommendation. We will review the current framework and indicators against which performance can be measured. We note the ANAO's concern that although a key element of the Working Holiday Maker arrangements with other countries is providing reciprocal arrangements for young Australians, relatively few avail themselves of the opportunity to holiday and work in these countries. We will take steps to publicise this opportunity more widely so that the benefits of the programme can be more widely experienced.

²¹⁸ For example, the South Korean embassy drew attention to the large numbers of young Koreans coming to Australia and the relatively few Australians going to South Korea in mid-1999 (DIMA, file note, 11 June 1999) and in early 2001 (letter from the Embassy of the Republic of Korea, 19 March 2001). Various documents on DIMA's file record indicate that: (i) for the year 2000, 1205 South Koreans WHMs were granted visas but only 11 Australian WHMs obtained visas for South Korea; (ii) for 2001–02, 14 Australian WHMs were granted visas for South Korea; (iii) for 2002–03, 5858 South Korean WHMs were granted visas but only seven Australian WHMs obtained visas for South Korea.

7. Visa Application Charge

This chapter considers whether DIMA has collected Visa Application Charge (VAC) effectively for WHM visas; how the rates of VAC are varied; and the nature of VAC.

Introduction

7.1 Visa Application Charge (VAC) is imposed by the *Migration (Visa Application) Charge Act 1997* (the VAC Act). Under s. 45A of the Migration Act, a non-citizen who makes a valid application for a visa is liable to pay VAC.²¹⁹ The amounts payable (which vary among visa types) are specified in the Migration Regulations, authorised by s. 45C of the Migration Act. VAC raises most of the revenue DIMA collects, an estimated \$498.9 million in 2005–06.²²⁰

7.2 Under the Migration Regulations an applicant for a WHM visa currently pays a VAC of \$185.²²¹ At the current volume of WHM visa applications (around 100 000 a year) about \$19 million revenue can be expected to be raised by this visa sub-class in a full year.

7.3 The ANAO examined whether DIMA collects VAC for WHM visas effectively, the mechanism for adjusting the rate of VAC and the nature of VAC.

Collection of VAC

7.4 Under s. 46 of the Migration Act, for a visa application to be valid, VAC must be paid. The Migration Regulations (Schedule 1, r. 1225(2)) prescribe that VAC is payable when the application is lodged. DIMA's Policy Advice Manual (PAM3) states that 'persons lodging over the Internet must pay by credit card'.

7.5 As noted earlier, the ANAO's systematic analysis of DIMA eWHM records found that a VAC payment had been recorded for each of the 304 052 valid eWHM visa applications DIMA received in the period 1 July 2002 to 14 January 2006.

7.6 A visa application is invalid if VAC has not been paid. However, if the application would otherwise be invalid, VAC is not liable to be paid (s. 45A).

²¹⁹ If an application made using the Internet fails validation checks no payment is requested.

²²⁰ DIMA, advice to the ANAO, *Background on Visa Application Charges (VACs)*, 16 January 2006.

²²¹ See item 1225 of Part 2 to Schedule 1 of the Migration Regulations 1994 (Statutory Rules 1994 No. 268 as amended). The rate of \$185 applies from 1 July 2006.

In its scrutiny of DIMA's eWHM records the ANAO identified a small proportion of cases (less than one per cent) where applications had been taken as valid but which did not satisfy the legislative requirements for valid applications. These include cases where, for example, the applicant had not supplied a valid residential address. In these cases, collection of VAC is unlawful.²²²

7.7 In the ANAO's opinion, the best way to avoid the collection of VAC in such cases is to control the lodgement of invalid applications with a view to having the applicants supply the information that would make them valid. DIMA has agreed and stated that enhancements will be considered in context of the new WHM portal being developed under *Systems for People*.²²³

7.8 ANAO testing of DIMA data showed there have been instances where DIMA has allowed an applicant to apply on multiple occasions, paying VAC each time, even where the applicant has apparently applied multiple times on the one day. There are very few of these—less than one in every thousand cases. DIMA advised that the future occurrence of collecting excess payments may be addressed through the new portal in systems for people.

Credit card payments

7.9 Payment by credit card is efficient. DIMA's eWHM evaluation report (p. 10) points out: 'eWHM has reduced manual handling and receipting of revenue which in turn has resulted in reduced risk of fraud and lower resource costs at posts, including reduced need for accommodation'. However, it introduces additional risk as the payee does not provide a signature which, in any dispute, credit card companies regard as proof of the transaction's validity.

7.10 DIMA developed concerns in 2000 that it had an increasing number of ETA visitor visa applicants disputing their credit card payment. As DIMA does not have the applicants' signatures, the banking system will automatically reverse the payment, the result being the visa is granted, but the Commonwealth loses the revenue.²²⁴ In 2001, the same problem occurred for eVisa

7.11 DIMA advised that it had developed an approach to chargeback requests. It contacts the client to tell them what the payment was for and their

²²² The presence of invalid addresses is considered in Chapter 4. See para. 4.17 et seq.

²²³ DIMA, advice to the ANAO, 5 July 2006.

²²⁴ DIMA, email to CIO relating to the business of the e-commerce steering committee, October 2000 (ADF2000/5968)

obligation to pay VAC for a visa application to be valid.²²⁵ Usually, the person accepts the payment was legitimate and does not pursue their claim.

7.12 DIMA stated that the most frequent reasons for refund requests include a failure to identify what it was for; a duplicate payment; or the card being used by someone else to make the payment. This may be, for eWHM, a young person using a parent's card.

7.13 On the basis of the numbers of actual chargebacks reported by DIMA as a proportion of the number of VAC transactions (comprising one in every 8000 cases) the ANAO concludes that the risk to revenue is very small.

7.14 The ANAO made its own calculation as to the magnitude of refunds by estimating gross revenue payable for VAC for eWHM visas over the period 1 July 2002 to 14 January 2006 (the period for which it extracted data from ICSE) and the refunds payable in the same period. This shows that refunds (whether for chargebacks or for other reasons, such as to correct duplicate payments) are very low, generally amounting to about 0.1 per cent of the gross revenue each year.

How the rate of VAC is authorised and changed

7.15 The Migration Regulations are amended from time to time and it is through this mechanism that rates of VAC are changed annually. No annual indexation of VAC is required by law or regulation. DIMA advised that, in practice, there is a discretionary process of VAC increase.

7.16 The VAC Act provides for the indexation of a parameter known as the 'visa application charge limit', a ceiling on the amount of charge that may lawfully be prescribed in the regulations.²²⁶ This limit, originally set at \$12 500, and now \$15 585, is very much greater than most VAC rates.²²⁷

²²⁵ DIMA advised that the issue was managed by its Corporate Treasury Section.

²²⁶ The second reading speech states: 'This bill imposes a single visa application charge and establishes a ceiling of \$12 500 for the maximum amount of charge that may be prescribed in the regulations. The ceiling is subject to an indexation formula based on annual movements in the consumer price index. The ceiling has been designed to cover the most expensive visa applications, but the great majority of applicants will pay a much lower amount that will be broadly comparable to the current fees and charges plus some increases to recover costs which are not currently recovered.'

'The amount of charge that is paid by a visa applicant will be prescribed in the Migration Regulations which comprehensively govern the processing of visa applications' (Hansard, House of Representatives, 16 October 1996, p. 5594).

²²⁷ DIMA, advice to the ANAO, 5 July 2006.

7.17 In effect, changes in the rates of VAC are decided from time to time by government policy (often by following the Consumer Price Index (CPI) related indexation process prescribed in law for the VAC limit) and given effect by changes to the Migration Regulations, authorised by s. 45C of the Migration Act. The government of the day therefore has the discretion to set VAC for any type of visa at any level it chooses, provided that level remains below the VAC limit.

7.18 DIMA advises that current levels have been determined by ‘a number of factors beyond those of just projected financial returns’. Other important considerations include:

policy intent, reciprocity of fee levels between similar visa classes and domestic political factors. Existing VAC levels are regularly compared to the levels being charged by other migration taking nations.²²⁸

The nature of VAC

7.19 Before the VAC Act, DIMA regarded visa application fees as a fee-for-service.²²⁹ However, Australian courts had taken the view that, where a law authorises the charging of a fee for services, the fee cannot generally be fixed at a level which would recoup more than the cost of the relevant services. There must be some discernible relationship between the quantum of the fee for service and the actual cost of providing the services to the persons required to pay. If it were at a level exceeding cost recovery, it may be found to be a tax.²³⁰

7.20 Some charges for migration services before 1996 may have exceeded the cost of providing them.²³¹ DIMA was concerned that, if the matter were challenged in a court, there was a risk that fees could be found to be a tax and, as a consequence, the whole of the remainder of the legislation—the Migration Act—could be declared invalid under s. 55 of the Constitution.

7.21 Thus separate legislation to impose VAC was required, and the VAC Act was introduced.²³² The government’s intention was cost recovery—to

²²⁸ DIMA, advice to the ANAO, *Background on Visa Application Charges (VACs)*, 16 January 2006.

²²⁹ DIMA, evidence of Deputy Secretary, 18 November 1996; Hansard, L&C pp. 4–6.

²³⁰ This was settled by the High Court in *Air Caledonie International v the Commonwealth* (1988) 165 CLR 462.

²³¹ DIMA, Submission to the Productivity Commission’s Cost Recovery Inquiry, Nov. 2000, Appendix B.

²³² DIMA, evidence provided by senior departmental officers to the Productivity Commission Inquiry into Cost Recovery, Transcript of Proceedings, 5 December 2000, p. 570, at: <http://www.pc.gov.au/inquiry/costrecovery/trans/canberra001205.pdf>.

‘permit recovery of the indirect costs associated with processing visa applications and the provision of post-arrival services to permanent visa holders’.²³³

7.22 In December 2000, the government adopted a formal cost recovery policy to improve the consistency, transparency and accountability of Commonwealth cost recovery and promote the efficient allocation of resources.²³⁴ However, cost recovery under the new policy has assumed the narrow definition (that is, equivalent to fees-for-service) which DIMA had sought to go beyond in its rationale of recovering costs, and which was given effect by the introduction of the VAC Act in 1997.

7.23 DIMA has advised that ‘VACs are not collected on a cost recovery basis by the Commonwealth. VACs are collected under the broader principle of user pays utilising the taxation powers of the Commonwealth’.²³⁵

7.24 For several years after the VAC Act came into effect, DIMA publications and the budget papers classified VAC under ‘Other Taxes, Fees, and Fines’.²³⁶ However, from late 1999 forward, both report the amounts of revenue raised by VAC as ‘Non-taxation Revenue’.²³⁷ Non-taxation revenue is a category of receipts which consists of ‘revenue from the direct provision of goods and services by the Australian Government general government sector’.²³⁸

7.25 DIMA advised that the non-taxation revenue classification was ‘required by the Finance Minister’s Orders, which include immigration fees under non-taxation revenue/goods and services’. This change was effected by Estimates Memorandum 1999/29, which moves ‘Immigration fees’ from ‘Other taxes ...’ to ‘Sales of Goods and Services’.²³⁹

7.26 The Department of Finance and Administration (Finance) advised the ANAO that regulatory fees of all agencies were reclassified from other taxes to

²³³ Hansard, House of Representatives, 16 October 1996, p. 5593.

²³⁴ Finance 2005, *Australian Government Cost Recovery Guidelines* (Financial Management Guidance No. 4), July, p. 2.

²³⁵ Email from DIMA to ANAO, *Background on Visa Application Charges (VACs)*, 16 January 2006. The ANAO has found no public statement (such as in DIMA annual reports) providing any update to the statement made in the 1996–97 edition, explaining DIMA’s change from a pursuit of cost recovery (broadly defined) to ‘user pays’.

²³⁶ Treasury, Budget Paper No. 1, 1997–98, 13 May 1997; Budget Paper No. 1 1998–99, 12 May 1998; DIMA, Annual Report 1997–98, 20 October 1998.

²³⁷ DIMIA, 2004–05 Annual Report, p. 451.

²³⁸ Treasury, *Budget Strategy and Outlook 2005–06* (Budget Paper No. 1), p. 5.26.

²³⁹ Finance, Estimates Memorandum 1999/29, Attachment A (Summary of Changes Made to Chart of Accounts—August 1999)

non-tax revenue from 1999–2000 to align with the International Monetary Fund’s Government Finance Statistics (GFS) standard.²⁴⁰ Finance’s view is that VAC is a regulatory fee (fee for service) and not a tax for financial reporting purposes.²⁴¹

7.27 Treasury noted that the primary budget financial statements are prepared according to the GFS:

This framework provides specific guidance for determining the classification of revenue between taxation and non-taxation, particularly the classification of government fees that fulfil a proper regulatory function as a non-tax revenue. Further, the GFS framework considers the economic substance of a transaction rather than the legal form.²⁴²

7.28 The Australian Bureau of Statistics (ABS) notes that:

the GFS and the National Accounts focus on the economic substance of a particular transaction or economic event. While the statistical treatment may be guided by any legal, administrative or constitutional considerations, the final analysis is based on the economic substance of the transaction or event in question. The ABS considers that as the VAC is a fee which relates to the assessment of visa applications by the Government, it meets the statistical criterion for treatment as a fee for service.

7.29 In contrast, the structure of the legislation supports the view that VAC is a tax.²⁴³ DIMA confirmed to the ANAO that VAC is a tax and a part of general taxation.²⁴⁴ General taxation is a ‘compulsory exaction of money by a public authority for public purposes, enforceable by law, and which is not a payment for services rendered’.²⁴⁵ The ANAO has a legal opinion that, from a constitutional perspective, VAC is a tax.

7.30 In this light, the classification of VAC as non-tax revenue is not without doubt and it would be appropriate for it to be subject to further review.

²⁴⁰ Finance, advice to the ANAO, 8 February 2006.

²⁴¹ Finance, advice to the Auditor-General, 28 June 2006.

²⁴² Treasury, advice to the ANAO, 26 June 2006.

²⁴³ This is because it is consistent with the general form of Australian taxation legislation, where, under s. 55 of the Australian Constitution, a law imposing a tax can have no other effective provisions. For the text of the Australian Constitution, see: <<http://www.comlaw.gov.au/>>.

²⁴⁴ DIMA, email advice to the ANAO, 16 January 2006.

²⁴⁵ Finance 2005, *Australian Government Cost Recovery Guidelines* (Financial Management Guidance No. 4), July, p. 10.

7.31 DIMA is currently conducting a cost recovery review. Finance together with Treasury and the ABS will consider the results of the review. This and a revision currently under way by the International Monetary Fund of its System of National Accounts should clarify the delineation between tax and non-tax revenue.²⁴⁶

7.32 More generally, the ABS has advised that it is planning to develop a guidance note to clarify interpretation of GFS as it relates to taxes and fees for service.

Recommendation No.4

7.33 The ANAO recommends that, following its review of cost recovery, DIMA obtain clarification of the accounting classification of the Visa Application Charge.

Agency response

7.34 We agree with this recommendation. The accounting classification of the Visa Application Charge is an issue which affects most visa categories and will require close consultation with the Departments of the Treasury and Finance and Administration.



Ian McPhee
Auditor-General

Canberra ACT
17 October 2006

²⁴⁶ Finance, advice to the Auditor-General, 28 June 2006; DIMA, advice to the ANAO, 5 July 2006.

Appendices

Appendix 1: Agency Response

DIMA's COMMENTS ON THE ANAO REPORT OF PERFORMANCE AUDIT OF THE WORKING HOLIDAY MAKER eVISA

General comments:

The department welcomes the report of the ANAO. This is the first performance audit of an “eVisa”, which is a facility developed by DIMA that allows a client to apply for their visa over the Internet. The facility involves the client entering information into an on-line form. This data is then captured into DIMA's visa processing systems, which allows a number of processes to be automated, resulting in faster and more reliable processing. Australia is so far the only country to have developed this facility.

The eVisa for Working Holiday Maker applicants was one of the first to be introduced and has been particularly well-received by the target client group, who are young, mobile and generally IT-literate. The department is pleased that the ANAO's report has provided constructive findings in relation to the concept and operation of the eVisa. The department notes and accepts the ANAO's suggestions for improving some aspects of our planning and implementation processes, and enhancing our performance reporting in the future.

Comments on Recommendations:

Recommendation 1:

We agree with this recommendation. The department is looking into the purchase of such a tool which will help to improve our programme management capability through research and analysis of performance in relation to all visa categories.

Recommendation 2:

We agree with this recommendation. The department is reinforcing the need for all DIMA staff to comply with existing legal provisions for lodgement of visa applications, especially overseas, through new guidelines which will be highlighted at our training courses for officers selected for overseas service. The observance of the guidelines will be monitored by the department's regional directors overseas.

Recommendation 3:

We agree with this recommendation. We will review the current framework and indicators against which performance can be measured. We note the ANAO's concern that although a key element of the Working Holiday Maker arrangements with other countries is providing reciprocal arrangements for young Australians, relatively few avail themselves of the opportunity to holiday and work in these countries. We will take steps to publicise this opportunity more widely so that the benefits of the programme can be more widely experienced.

Recommendation 4:

We agree with this recommendation. The accounting classification of the Visa Application Charge is an issue which affects most visa categories and will require close consultation with the Departments of the Treasury and Finance and Administration.

Appendix 2: Results of ANAO testing of DIMA WHM decision-making against legislative criteria

The tables show the results of ANAO testing of DIMA WHM records against the criteria set out in the Migration Regulations.

Table A.1

Criteria to be satisfied at the time of application

Schedule 2, Migration Regulations	Results
417.211 (2a) The applicant has no dependent children.	Testing showed 286 applicants had stated that they had dependent children. ICSE referred these cases to the Hobart OPC for manual follow up. Subsequently, the OPC was able to obtain further information in most cases to satisfy this criterion. DIMA manually granted 250 WHM visas to these applicants. It is clear from the computer record that, in many of these cases, the applicant had been confused by the wording of the relevant questions. ²⁴⁷
417.211 (2b) The applicant has turned 18 but not turned 31.	According to DIMA's records, three applicants were not aged between 18 and 31 at the time of application. Two were born in 1996 and 1960, making them 7 and 44 at application. The application of the former has not been finalised. The latter was autograned. The last of the three was 31 and 10 days old at the time of application, which was autograned.
417.211 (2c) The applicant holds a valid passport of a kind specified in a Gazette Notice.	All applicants stated that they held a passport of a WHM eligible country.
417.211 (3b) The application is made in the foreign country specified in the Notice for that kind of passport. (Replaced from 1 November 2005 by r. 1225(3)(b)(ii) of Schedule 1 to the Regulations.)	<p>This regulation permitted passport holders from Germany, Hong Kong, Japan, Malta and South Korea to apply only from their country of passport.²⁴⁸ This regulation was in effect from 1 July 2002 but was not implemented satisfactorily for most of these countries (and not at all for Germany) until February 2005. DIMA attributes this delay to 'resource constraints and systems priorities'.²⁴⁹</p> <p>Some 433 applicants from these countries stated that they were not in their country-of-passport. All these cases were referred to the Hobart OPC for manual follow up. Subsequently, the Hobart OPC was able to obtain further information in most cases to satisfy or fail this criterion. DIMA manually granted 256 and refused 70 WHM visas to</p>

²⁴⁷ DIMA advised the ANAO that a change in November 2005 to the way in which the answer to the declaration about dependants is handled in ICSE has caused confusion. DIMA expects to have corrected this in its July 2006 release.

²⁴⁸ This regulation applied also to applications from Cyprus; however, eWHM is not available in these cases.

²⁴⁹ DIMA, advice to the ANAO, 16 June 2006.

Schedule 2, Migration Regulations	Results
	<p>these applicants. Thirty-eight applications were withdrawn.</p> <p>ANAO testing revealed that, when the regulation ceased to apply to German applicants in late 2005, DIMA gave effect to that change on the day of the systems release (29 October 2005) instead of the legal date of effect (1 November 2005)²⁵⁰ thereby failing to test against this rule some 50 German applicants who applied between those times.</p> <p>Further ANAO testing showed that, of the German applicants DIMA did not test for place of application between 1 July 2002 and 18 February 2005, some 1133 gave a 'point of contact' address outside Germany (most often London or Auckland). However, this is not a certain indicator that the application was not made from within Germany.</p>
<p>417.211 (4a) The applicant seeks to enter or remain in Australia as a genuine visitor whose principal purpose is to spend a holiday in Australia.</p>	<p>Testing showed 1074 applicants had stated that employment was not incidental to their holiday. ICSE sent all of these cases to the Hobart OPC for manual follow up. It obtained further information in most cases to either satisfy or fail this criterion. DIMA manually granted 913 and refused 22 WHM visas to these applicants. A further 27 applications were withdrawn.</p>
<p>417.211 (4b) The applicant has sufficient money for the fare to the applicant's destination on leaving Australia, and personal support for the purposes of the working holiday.</p>	<p>Testing showed 983 applicants had stated that they did not have sufficient funds for the purposes of the working holiday. ICSE referred all of these cases to the Hobart OPC for manual follow up. Subsequently, the Hobart OPC obtained further information in most cases to either satisfy or fail this criterion. DIMA manually granted 837 and refused 23 WHM visas to these applicants; twenty-two applications were withdrawn.</p>
<p>417.211 (4c) The applicant has a reasonable prospect of obtaining employment in Australia. <i>This applies to Internet applications only where they were lodged after 1 July 2005.</i></p>	<p>Testing showed that 1581 applications were lodged after 1 July 2005 where the applicant said they were unemployed. However, ICSE processing has autograned 910 of these and referred the remainder for manual decision only where another item in the application required such a referral.</p>
<p>417.211 (5) The applicant had not previously entered Australia as the holder of a WHM visa.</p>	<p>Forty-five applicants stated that they had previously entered Australia as the holder of a WHM visa. ICSE sent all of these cases to the Hobart OPC for manual follow up. Hobart OPC obtained further information in most cases to either satisfy or fail this criterion. DIMA subsequently manually granted 38 WHM visas to these applicants.</p>

²⁵⁰ This was confirmed later by DIMA; email to the ANAO, 16 June 2006.

Table A.2

Criteria to be satisfied at the time of decision

Schedule 2, Migration Regulations	Results
<p>417.222 (2b) The applicant satisfies public interest criteria 4001. The applicant satisfies the Minister that the applicant passes the character test. The applicant does not pass the character test if the applicant imposes a threat or danger to the Australian community or has a substantial criminal record. An applicant has a substantial criminal record if they have been sentenced to death, life imprisonment, or a collective term of imprisonment of 12 months or more.</p>	<p>Testing showed that 26 594 applicants had failed to meet the character test. ICSE sent all of these cases to the Hobart OPC for manual follow up. Subsequently, the Hobart OPC obtained information in most cases to either satisfy or fail this criterion. DIMA manually granted 24 869 and refused 222 WHM visas to these applicants. A further 134 applications were withdrawn.</p> <p><i>Note: To help assess satisfaction of this criterion, among DIMA's questions to applicants is one about any past military history. In 22 575 of these cases the applicant had declared a past military history.</i></p> <p><i>DIMA has recently modified the relevant question as it was eliciting a positive response from a high proportion of applicants from countries with compulsory military service.</i></p>
<p>417.222 (2b) The applicant satisfies public interest criteria 4002. The applicant is not assessed by the competent Australian authorities to be directly or indirectly a risk to Australian national security.</p>	<p>Twenty applicants were assessed by the competent Australian authorities. Twelve of these were granted visas. None has been refused.</p>
<p>417.222 (2b) The applicant satisfies public interest criteria 4003. The applicant is not determined by the Foreign Minister, or a person authorised by the Foreign Minister, to be a person whose presence in Australia: is, or would be, prejudicial to relations between Australia and a foreign country; or may be directly or indirectly associated with the proliferation of weapons of mass destruction.</p>	<p>Two hundred and twenty-two applicants were assessed by the Foreign Minister. Of these, 207 were granted visas, three were refused and one application was withdrawn.</p>
<p>417.222 (2b) The applicant satisfies public interest criteria 4004. The applicant does not have outstanding debts to the Commonwealth unless the Minister is satisfied that appropriate arrangements have been made for payment.</p>	<p>Twenty-four applicants stated that they had an outstanding debt to the Commonwealth. ICSE referred all of them to the Hobart OPC for manual follow up. Subsequently, the Hobart OPC obtained further information in most cases to either satisfy or fail this criterion. DIMA manually granted 21 WHM visas and refused one to these applicants.</p> <p>It is clear that, in many of these cases, the applicant did not understand the question.</p>
<p>417.222 (2b) The applicant satisfies public interest criteria 4005.</p>	<p>Testing showed 34 149 applicants failed to meet the health test. ICSE sent all of these cases to the Hobart OPC for</p>

Schedule 2, Migration Regulations	Results
<p>The applicant passes the health test. That is, the applicant is free from tuberculosis; The applicant is free from a disease or condition that may result in the applicant being a threat to public health in Australia, a danger to the Australian community or would require health care or community service.</p>	<p>manual follow up or the applicant was required to undertake a medical assessment. Subsequently, the Hobart OPC obtained further information that allowed them to grant 30 874 visas. A further 304 were refused and 298 were withdrawn.</p> <p>Testing showed 43 996 applicants applied as holders of passports from very high health risk countries/regions (Estonia, Hong Kong, South Korea and Taiwan). A health test for these applicants is mandatory. All these cases were identified for a health assessment to satisfy this criterion. Subsequently, in most cases, the results of the health assessments provided DIMA with information to either satisfy or fail this criterion. DIMA granted 39 920 and refused visas to 300 of these applicants. A further 179 were withdrawn.</p>
<p><i>For applications lodged after 1 July 2005:</i> The applicant satisfies public interest criteria 4010. If the applicant seeks to remain in Australia permanently, or temporarily for longer than 12 months, the applicant is likely to become established in Australia without undue personal difficulty and without imposing undue difficulties or costs on the Australian community.</p>	<p>The ANAO could find no evidence in its ICSE data extract that DIMA assessed this criterion for any eWHM applicant. DIMA advised 'We are not aware of any instances where [these provisions] have been used in relation to applicants for Working Holiday Maker visas'²⁵¹ (see the discussion at para. 3.48 et seq.).</p>
<p>417.222 (2b) The applicant satisfies public interest criteria 4013. A person is affected by a risk factor if a visa previously held by the applicant was cancelled.</p>	<p><i>Not separately tested. The question on the eWHM form designed to test the 'character' criterion also elicits the information required for this criterion.</i></p>
<p>417.222 (2b) The applicant satisfies public interest criteria 4014. A person is affected by a risk factor if the person left Australia as an unlawful non-citizen or the holder of a Bridging C, D or E visa.</p>	<p><i>Not separately tested. The question on the eWHM form designed to test the 'character' criterion also elicits the information required for this criterion.</i></p>

²⁵¹ DIMA, advice to the ANAO, 5 April 2006.

Schedule 2, Migration Regulations	Results
417.222 (3) If the applicant has previously been in Australia, the applicant satisfies public interest criteria 5001. The applicant is not a person who left Australia while the subject of a deportation order under section 200 of the Act and the applicant was not a person whose visa had been cancelled under section 501 of the Act, wholly or partly because the Minister, having regard to the person's past criminal conduct, was satisfied that the person was not of a good character.	Forty-seven applicants stated that they had previously been removed or deported from some country, including Australia. ICSE sent all of these cases to the Hobart OPC for manual follow up. Subsequently, the Hobart OPC obtained further information in most cases to satisfy this criterion. DIMA manually granted 43 WHM visas to these applicants. None was refused. One application was withdrawn.
417.222 (3) If the applicant has previously been in Australia, the applicant satisfies public interest criteria 5002. If the applicant is a person who had been previously removed from Australia, the application was made more than 12 months after the removal or the Minister was satisfied compelling circumstances that affect the interests of Australia justify the granting of the visa within 12 months after the removal.	<i>Not separately tested. The question on the eWHM form designed to test the public interest criterion 5001 elicits the information required for this criterion.</i>
If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa. (For applications lodged after 1 July 2005.)	No WHM visa applicant was an AusAID student or AusAID recipient.
The applicant is not an AusAID student or an AusAID recipient.	<i>As above</i>
417.222 (6) The applicant states in the application that the applicant intends to comply with the conditions subject to which the visa was granted.	Five hundred and sixty-four applicants stated that they did not read and understand the visa conditions they were required to abide by. ICSE sent all of these cases to the Hobart OPC for manual follow up. Subsequently, the Hobart OPC obtained further information in most cases to either satisfy or fail this criterion. DIMA manually granted 472 and refused eight WHM visas to these applicants. Fourteen applications were withdrawn.

Source: ANAO analysis of data supplied by DIMA, using auditing software.

Appendix 3: MAL and Safeguards

Table A.3

DIMA's use of MAL and Safeguards in eWHM visa decision-making

Item (MAL: 1 July 2002 –14 Jan. 2006; Safeguards:1 July 2004 – 14 Jan. 2006 only)	No.	... as a proportion of visa applications
No. of visa applications	304 052	100%
Instances of 'No MAL match' (NB: Can be checked several times during DIMA processing)	642 655	211.36%
Possible MAL matches	46 154	15.18%
MAL matches	2 929	0.96%
No. of visa applications	170 874	100%
Instances of 'No Safeguards match'	337 997	197.80%
Safeguards matches	1 649	0.97%
Safeguards offline	2 929	1.71%
No. of visa refusals (entire period)	958	0.32%
Refusals after possible MAL match	211	0.069%
Refusals after a MAL match	26	0.0086%
Refusals with no MAL match	721	0.24%
Refusals after a Safeguards match	3	0.0017%
Refusals with no Safeguards match	955	0.56%

Source: ANAO analysis of DIMA data.

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