

# **Administration of the Adult Migrant English Program Contracts**

Department of Home Affairs

Linda Wyse and Associates

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ISSN 1036–7632 (Print)

ISSN 2203–0352 (Online)

ISBN 978-1-76033-931-9 (Print)

ISBN 978-1-76033-932-6 (Online)

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Canberra ACT  
13 June 2024

Dear President  
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Department of Home Affairs and Linda Wyse and Associates. The report is titled *Administration of the Adult Migrant English Program Contracts*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely



Rona Mellor PSM  
Acting Auditor-General

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

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# Contents

Summary and recommendations.....	7
Background .....	7
Conclusion .....	8
Supporting findings.....	9
Recommendations.....	12
Summary of entity response.....	14
Key messages from this audit for all Australian Government entities .....	15
<b>Audit findings.....</b>	<b>17</b>
1. Background .....	18
Introduction .....	18
Rationale for undertaking the audit .....	20
Audit approach .....	20
2. Contractual arrangements .....	22
Do service provider contracts clearly outline contracted deliverables? .....	22
Were variations to the contracts appropriate, including adequately demonstrating value for money? .....	24
Have contracted advisers on the program been appropriately engaged? .....	32
Have appropriate probity arrangements been effectively implemented? .....	35
Is an appropriate transition management plan in place? .....	36
3. Service provider contract management.....	40
Is contract information accurately recorded and stored by the department? .....	40
Are service delivery standards (or KPIs) for the service providers clearly stipulated, reported, and used to inform contract management?.....	42
Are invoices verified and payments made in accordance with AMEP contracts?.....	47
Does the department have appropriate complaint resolution processes? .....	49
4. Quality assurance services .....	52
Has the department appropriately exercised its contractual powers to manage the contracted quality assurance provider's performance? .....	52
Has service provider performance informed planned quality assurance work?.....	58
Has the quality assurance provider appropriately monitored service provider performance? .....	63
Has the AMEP service provider performance been improved through the work of the quality assurance provider?.....	77
Have payments to the quality assurance provider aligned with the contract and the services provided?.....	78
<b>Appendices .....</b>	<b>79</b>
Appendix 1      Entity responses .....	80
Appendix 2      Improvements observed by the ANAO .....	85
Appendix 3      Key program statistics.....	86
Appendix 4      Advisors contracted on the AMEP program (July 2017 to December 2023) .....	88
Appendix 5      Invoicing issues identified with general service providers .....	90
Appendix 6      Invoicing issues identified with quality assurance provider .....	97



# Audit snapshot

## Auditor-General Report No.37 2023–24

### *Administration of the Adult Migrant English Program Contracts*



#### Why did we do this audit?

- ▶ Contracts for the delivery and quality assurance of delivery of the Adult Migrant English Program (AMEP) are valued at over \$2 billion and will have been in place for 7 years and a half years before contracts are replaced.
- ▶ The ANAO has audited the management of AMEP contracts once previously (in 2001), with the audit report including six recommendations, all of which were agreed to.
- ▶ The ANAO audited the Department of Home Affairs, which has been responsible for AMEP since 2019 and the contracted quality assurance provider, Linda Wyse and Associates.



#### What did we find?

- ▶ The design and administration of the AMEP contracts has not been effective.
- ▶ Appropriate contractual arrangements are not in place with the 13 general service providers.
- ▶ The general service provider contracts have not been appropriately managed, including by the department amending the contracted performance framework such that only one of the four key performance indicators remains.
- ▶ Department of Home Affairs has significantly changed the nature of services provided by the contracted quality assurance provider substantially away from quality assurance over the work of the general service providers.



#### Key facts

- ▶ English tuition has been contracted for delivery by 13 providers, across 58 contract regions, including one distance learning provider.
- ▶ Quality assurance of tuition providers is contracted for delivery by one firm nationally.



#### What did we recommend?

- ▶ There were 10 audit recommendations.
- ▶ The department agreed to all recommendations. Linda Wyse and Associates also agreed with all recommendations.

\$287m

average contract value per year of the program.

183,653

active students in since 1 July 2017.

# Summary and recommendations

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## Background

1. Established in 1948, the Adult Migrant English Program (AMEP) provides free English tuition to eligible migrants and humanitarian entrants with no or low English levels.<sup>1</sup> The program supports an average of 53,000 participants annually. The design of the program recognises that learning English can help migrant settlement.
2. Contracted delivery of the Adult Migrant English Program (AMEP) has been in place for 25 years.<sup>2</sup> The current contracts commenced in 2017 and deliver English language lessons in over 300 locations and online, to clients in metropolitan, regional and remote locations in Australia. The 15 contracts<sup>3</sup> were initially valued at \$1.22 billion which had increased by 75 per cent) to more \$2.153 billion as at April 2024, representing an average annual contract value of \$287 million. There is also a contract for quality assurance, for which the reported value increased from \$6.15 million to \$22.52 million. The October 2022 Federal Budget included \$20 million to provide more flexible delivery options for the program and to increase case management support for students (to deliver on an election commitment).
3. All contracts were due to end on 30 June 2023. These contract arrangements were extended in December 2022, to 30 June 2024 (with work orders under the contracts not due to expire until 31 December 2024), after a government decision to delay implementation of a further new AMEP business model.<sup>4</sup> The request for tender for new AMEP contracts was to be issued in September 2023, and new arrangements to commence 1 January 2025. On 30 November 2023, the Minister for Immigration, Citizenship and Multicultural Affairs approved a further delay<sup>5</sup>, with no new release date advised. In February 2024 the department advised the ANAO that advice to the minister and a new policy proposal were in development and the release date of the request for tender is dependent on government agreement to a new model and implementation date.

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1 The *Immigration (Education) Act 1971* requires that eligible migrants be provided with tuition in an English course.

2 Prior to 1998, State Education Departments delivered most AMEP tuition using State Education Department facilities, in accordance with Commonwealth and State agreements, with funding provided by the Commonwealth.

3 The quality assurance provider is Linda Wyse & Associates (LWA). The thirteen general service providers are: AMES Australia (AMES); South Regional TAFE; Navitas English Pty Ltd (Navitas), STEPS Group Australia Limited (STEPS); TAFE Queensland (TAFE QLD); TAFE SA; South Metropolitan TAFE; South Metropolitan Youth Link (SMYL) Community Services; TASTAFE; North Metropolitan TAFE; Djerriwarrh Employment & Education, also trading as Learning for Employment (Lfe); Melbourne Polytechnic, Technical & Further Education (TAFE NSW).

4 Three different AMEP models have been implemented (to varying degrees) since the current contracts were executed in 2017. The model that was included in the 2016 request for tender incorporated changes to the previous (2011) model under earlier contracts. In April 2021 the AMEP enabling legislation was amended and a new AMEP model was partially implemented to: increase eligibility; and remove the restriction on the tuition hours allowed per participant. Other changes, including changes to the pricing arrangements, were intended to follow in subsequent years. In 2023 a further model was consulted on, and 'shadow contracting' implemented to trial the changes prior to the new request for tender being released. These proposed changes included: change of curriculum; update to the AMEPOnline portal; and changes to individual program guidance sessions.

5 The brief noted that 'implementation has already been delayed 18 months'.

## Rationale for undertaking the audit

4. Contracts for the delivery and quality assurance of delivery of AMEP are valued at over \$2 billion and will have been in place for at least seven and a half years by the time they are replaced. The ANAO has audited the management of AMEP contracts once previously (in 2001<sup>6</sup>), with the audit report including six recommendations, all of which were agreed to. Those recommendations related to improving program performance management and reporting; strategic management and coordination; management of financial risk; and monitoring of contractor performance.

5. The audit provides assurance to the Parliament that the department is appropriately administering the Adult Migrant English Program contracts.

## Audit objective and criteria

6. The objective of the audit was to assess whether the design and administration of AMEP is effective.

7. To form a conclusion against the objective, the following high-level criteria were applied:

- Are appropriate contractual arrangements in place?
- Are the service provider contracts appropriately managed?
- Are contracted quality assurance services being delivered to an appropriate standard?

8. In addition to auditing the management of contracts by the Department of Home Affairs, the audit used the follow the money power provided under paragraph 18B(1)(b) of the *Auditor-General Act 1997* to examine the performance of Linda Wyse and Associates (LWA), the quality assurance provider for the AMEP.

## Conclusion

9. The design and administration of the Adult Migrant English Program contracts has not been effective.

10. Appropriate contractual arrangements are not in place with the 13 general service providers. The contracts are continuing to operate past their stated completion date, despite there being no extension options in the contracts. While the contracts, and associated instructions, clearly outline the contracted deliverables:

- there have been significant variations made to each of the contracts, with insufficient documentation to evidence that each variation represented value for money to the Australian Government and the records of the variations are inadequate;
- there are deficiencies in the processes by which the department has engaged advisers and contracted the existing service providers to identify areas that could benefit from adaptation of new ideas and innovative service delivery to enhance client outcomes (referred to as innovative projects);

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6 Auditor-General Report No.40 2000–01, *Management of the Adult Migrant English Program Contracts*, ANAO, Canberra, 2021, available from <https://www.anao.gov.au/work/performance-audit/management-the-adult-migrant-english-program-contracts>.



- there is no probity plan for the management of the contracts, and inadequate departmental transition planning for the end of the contracts.

11. The general service provider contracts have not been appropriately managed. A comprehensive set of contracted performance indicators was in place when the contracts were first signed, but that framework has been amended over time such that it no longer addresses the educational outcomes being achieved by students, the accuracy of provider assessments of student educational outcomes or the timeliness of service provider provision of data to the department. The only indicator that has remained relates to the extent to which eligible students commence in the program. In addition:

- invoice verification processes have not been sufficiently robust; and
- the department has not implemented a previously agreed recommendation that it would use complaints data from providers to inform and improve service delivery for students.

12. In its administration of the contract with the firm engaged as quality assurance provider, the Department of Home Affairs (Home Affairs) has not obtained appropriate assurance over the work of the 13 contracted general service providers. Key factors that led to this result include:

- the contractual performance framework was diminished after the quality assurance provider was selected and the contract signed, and key performance indicators have not been met notwithstanding that the targeted quantity of work has been reduced over time by the department;
- the approach to planning quality assurance work is not risk based; and
- Home Affairs has significantly changed the nature of services provided away from quality assurance over the work of the general service providers. For 2023–24, the department decided that 15 per cent of the budget for the provider would be spent on quality assurance work, down from 78 per cent in the first year of the contract.

## Supporting findings

### Contractual arrangements

13. The service provider contracts, and associated Service Provider Instructions, clearly outlined the contracted deliverables. (See paragraphs 2.2 to 2.7)

14. Significant variations have been made to each of the contracts since they were signed such that the terms and conditions are now different in important respects from the procurement opportunity that was presented to the market. The department has not kept adequate records of the contract variations that have occurred. Home Affairs' records of decisions to vary the contracts do not adequately address value for money considerations and therefore do not demonstrate that each of the variations has been appropriate. (See paragraphs 2.8 to 2.30)

15. Contracted advisers have not been engaged through appropriate procurement processes. In addition to engaging advisers, the contracts with service providers were amended to enable the department to engage them to deliver 'innovative projects' that are additional to the services they were contracted to deliver at the conclusion of the 2017 procurement process. (See paragraphs 2.33 to 2.42)

16. There is no probity plan for the management of the AMEP contracts. As a result, there are no conflict of interest declaration and other probity risk management requirements in place for the AMEP contracts. (See paragraphs 2.47 to 2.49)

17. Appropriate transition management plans are not in place. The contracts were due to end on 30 June 2023 and did not include any extension options yet, due to delays with the procurement process to replace them, they are continuing to operate past the stated completion date. As of December 2023, the department had not finalised and approved a transition out plan for the existing contracts, notwithstanding that those contracts were originally due to expire in June 2023 (they are now due to expire on 30 June 2024, with work orders under the contracts due to expire on 31 December 2024). Further, the draft transition in plan is substantively incomplete, reflecting the uncertainty about the future contractual arrangements (the tender process for replacement contracts has been subject to delays). (See paragraphs 2.53 to 2.63)

### **Service provider contract management**

18. The introduction of an information technology system to support the department's oversight of contractor service delivery has not proceeded. The department's continued use of a system that was not replaced as planned has not provided a sound basis for monitoring service provider performance, or to support the payment of invoiced amounts. The failure to introduce the planned new system also required the department to make additional payments to the service providers to recognise the additional administrative burden placed on them, and has meant one of the four key performance indicators for the general service provider contracts has not been applied. (See paragraphs 3.2 to 3.9)

19. The contracts, when first signed, established a performance measurement and management framework for the general service providers, focused on four key performance indicators (KPIs). The request for tender that led to the contracts being signed had stated that the four KPIs represented 'a minimum performance standard that service providers will be expected to meet and it is an expectation of the department that service providers will strive to deliver above these standards'. The department has amended the framework over time such that the suite of four KPIs have not been used to inform contract management:

- none of the four KPIs were applied for the first 12 months of the contract term;
- the KPI relating to data timeliness has not been applied at all;
- the target addressing the KPI relating to the accuracy of service provider assessments of client learning outcomes was first reduced and was later paused in November 2021 for the remaining term of the contracts; and
- the English attainment progress KPI has been removed. (See paragraphs 3.10 to 3.20)

20. The invoices for general service providers have not been appropriately verified. Invoicing and payments to the 13 AMEP general service providers has not consistently adhered to the contracts with issues identified in a number of areas including the application of goods and services tax, fee indexation and backdating fee increases. (See paragraph 3.24 to 3.28)

21. The Department of Home Affairs does not have appropriate complaint resolution processes for the delivery of services under the Adult Migrant English Program, and has not

implemented an ANAO recommendation from a 2000–01 audit report<sup>7</sup> that it had agreed to. While the contractual framework includes appropriate arrangements to enable the department to monitor the number and nature of complaints being received by the 13 general service providers, the department has not effectively administered those arrangements. As a result, the department is unable to assure itself that service providers are meeting their obligations for the timely and effective handling of complaints, and the department does not analyse complaints data to identify opportunities to improve service delivery across the program. (See paragraph 3.29 to 3.34)

### Quality assurance services

22. The contracted performance management framework has not been appropriately implemented by Home Affairs. The KPI framework was changed after the completion of the procurement process to select the provider of quality assurance services, and does not reflect the full scope of services expected of the contractor. Further, notwithstanding that the department has reduced over time the amount of quality assurance reviews required to be undertaken<sup>8</sup>, in only two years has the provider reported undertaking the (reduced) number of client file verifications specified in the annual plan (a shortfall of 27 per cent in the first six years) and has only undertaken the (reduced) number of onsite quality assurance reviews in 2022–23 (a shortfall of 20 per cent in the first six years). (See paragraphs 4.2 to 4.10)

23. Performance of AMEP service providers has not been a direct input into the development of quality assurance work. The department has not consistently implemented a risk-based approach to quality assurance work. The department decided to cease using a risk-based approach in 2020–21 and a proportional approach, based on student populations, was instead implemented from 2021–22. (See paragraphs 4.15 to 4.27)

24. The budgeting for, and tasking of, the quality assurance provider, by Home Affairs, has significantly changed the nature of services provided under this contract. The contracted provider has identified that the changes have redirected services from the intended purpose of the quality assurance role. As a result of the department refocusing the work of the contracted quality assurance provider to the delivery of professional development and development of ‘program delivery documents’, the quality assurance activities planned and delivered have not appropriately monitored the performance of the contracted general service providers. (See paragraphs 4.31 to 4.68)

25. The contractual arrangements in place to not allow an evidence-based assessment of whether the work of the quality assurance provider has improved the performance of the general service providers. (See paragraphs 4.73 to 4.77)

26. The invoices for the AMEP quality assurance provider have not been appropriately verified or paid in accordance with the AMEP quality assurance contract. (See paragraphs 4.78 to 4.79)

<sup>7</sup> Auditor-General Report No. 40 2000–01 *Management of the Adult Migrant English Program Contracts*.

<sup>8</sup> The plan for 2022–23 was for 65 per cent fewer client file verifications than in the first year of the contract, and for 76 per cent fewer on site quality assurance reviews.

## Recommendations

### Recommendation no. 1 Paragraph 2.18

To meet its record keeping obligations and ensure appropriate performance management of contracts, the Department of Home Affairs develop a complete record of all contract variations, including those variations agreed through correspondence, together with a master version of the contracts that incorporates all variations.

**Department of Home Affairs response:** *Agreed.*

**Linda Wyse and Associates response:** *Agreed.*

### Recommendation no. 2 Paragraph 2.31

When considering potential contract variations for the Adult Migrant English Program, the Department of Home Affairs make a decision-making record that addresses whether the proposed changes represent value for money, including by reference to the value for money assessment that underpinned the procurement decision-making prior to the contract being awarded.

**Department of Home Affairs response:** *Agreed.*

**Linda Wyse and Associates response:** *Agreed.*

### Recommendation no. 3 Paragraph 2.43

The Department of Home Affairs introduce stronger governance arrangements over the process by which it engages service providers under the Adult Migrant English Program to identify areas that could benefit from adaptation of new ideas and innovative service delivery to enhance client outcomes including opportunities to offer these opportunities to open competition.

**Department of Home Affairs response:** *Agreed.*

**Linda Wyse and Associates response:** *Agreed*

### Recommendation no. 4 Paragraph 2.50

The Department of Home Affairs develop a probity plan to govern the management of contracts for the Adult Migrant English Program.

**Department of Home Affairs response:** *Agreed.*

**Linda Wyse and Associates response:** *Agreed.*

**Recommendation no. 5**  
**Paragraph 2.64**

The Department of Home Affairs improve its transition planning for the Adult Migrant English Program by:

- finalising the transition out plan for the current contracts and, for future contracts, preparing the transition out plan early in the new contract period; and
- aligning the development of the transition in plan for the replacement contracts with the preparation of the approach to market documentation.

**Department of Home Affairs response:** *Agreed.*

**Linda Wyse and Associates response:** *Agreed.*

**Recommendation no. 6**  
**Paragraph 3.21**

The Department of Home Affairs establish a comprehensive suite of performance indicators and targets in the service provider contracts for the Adult Migrant English Program, require that service providers report performance against the indicators and targets and take appropriate contract management action where performance is below requirements.

**Department of Home Affairs response:** *Agreed.*

**Linda Wyse and Associates response:** *Agreed.*

**Recommendation no. 7**  
**Paragraph 3.35**

The Department of Home Affairs analyse and review complaints data from the general service providers for the Adult Migrant English Program to inform and improve service delivery to students.

**Department of Home Affairs response:** *Agreed.*

**Linda Wyse and Associates response:** *Agreed.*

**Recommendation no. 8**  
**Paragraph 4.11**

The Department of Home Affairs strengthen the contractual performance management framework for the provision of quality assurance services for the Adult Migrant English Program.

**Department of Home Affairs response:** *Agreed.*

**Linda Wyse and Associates response:** *Agreed.*

**Recommendation no. 9**  
**Paragraph 4.28**

The Department of Home Affairs undertake a systematic, documented, evidence-based approach to determining and targeting quality assurance activities based on general service provider performance and other risk information known to the department.

**Department of Home Affairs response:** *Agreed.*

**Linda Wyse and Associates response:** *Agreed.*

**Recommendation no. 10** The Department of Home Affairs give greater emphasis to monitoring the quality of services being delivered to students by the contracted general service providers.

**Paragraph 4.69**

**Department of Home Affairs response:** *Agreed.*

**Linda Wyse and Associates response:** *Agreed.*

## Summary of entity response

27. The proposed audit report was provided to Home Affairs and Linda Wyse and Associates (LWA), the quality assurance provider for the AMEP. The letters of response are included in Appendix 1. Summary responses from Home Affairs and LWA are reproduced below.

### Department of Home Affairs

The department has agreed to the recommendations made by the ANAO. While acknowledging room for improvement, the Department does not consider the ANAO's findings, listed below, reflect and recognise the environment in which the AMEP Agreements were being delivered:

- The design and administration of the current Agreements have not been effective, and
- The appropriate contractual arrangements are not in place.<sup>a</sup>

The AMEP has successfully delivered English language tuition to eligible migrants and humanitarian entrants, including during a period of unprecedented disruption due to the impact of COVID-19.<sup>b</sup>

Since implementation of Administrative Orders, transferring the administration of the AMEP to the department in July 2019, the department has sought to strengthen processes, procedures and the technology that support the management of the Agreements.<sup>c</sup> Several recommendations made have previously been identified by the department as opportunities for improvement in the design of the future contract/s.<sup>d</sup> The procurement process for this future contract cycle has been delayed due to the change of Government and subsequent program setting reviews. Through the future contract/s, the department will implement an enhanced performance management framework, including key performance indicators supporting the strategic intent of the AMEP and effective performance management, and deliver a new IT system supporting the administration of the contract/s.

### *ANAO comments on Department of Home Affairs summary response*

28. ANAO comments regarding Home Affairs's summary responses are included below, with rejoinders to the letter of response included within Appendix 1.

- (a) An important consideration in the ANAO's conclusions that the design and administration of the contracts has not been effective relates to the Key Performance Indicators (KPIs) for service providers. Of the four KPIs identified included in the contracts that commenced in July 2017 to establish 'a minimum performance standard' that service providers were expected to meet, three are no longer in place, including the KPI relating to the desired program outcome of progressive English attainment by students (see paragraphs 3.11 to 3.20).

- (b) The impact of the COVID-19 pandemic on the program, and/or how the impact was addressed or not addressed by the department, is discussed throughout the audit report (paragraphs 1.4, 2.7, 2.26 and 2.27, 3.15, 4.25, 4.31, 4.36, 4.57, 4.60 to 4.68 and Table 3.1).
- (c) Administration of the AMEP contracts transferred into the Department of Home Affairs nearly five years ago, in July 2019. Relevant records and some key staff moved with the program to the Department of Home Affairs (see footnote 28). Consistent with the 'Collaborative Agreement' signed by the two departments in October 2019, changes made since 2019 by the Department of Employment and Workplace Relations to the parts of the head contracts that apply to both AMEP and SEE have occurred through engagement with, and input from, the Department of Home Affairs. Home Affairs agreed that the department responsible for the SEE program would be the lead agency, and that any variations to the general clauses in the contract must be agreed by both departments.
- (d) The ANAO notes the scope of its work has been on the current contracts and as such the findings relate to the administration of the current contracts. The ANAO has not audited the design of future contract/s, for which no request for tender has yet been issued.

### **Linda Wyse and Associates**

LWA welcomes the report and its recognition that the Adult Migrant English Program (AMEP) contract faced many challenges in its tenure. The disruption caused by COVID-19 cannot be underestimated; it was the impetus for the change in work carried out by LWA to support AMEP providers facing the challenges of moving from face-to-face classes to online delivery for a diverse cohort of clients, who personified the digital divide.

LWA agrees in full with the 10 recommendations given in the report, recognising the importance of assuring quality and ensuring documentation accurately captures quality assurance activities. We feel strongly that monitoring the quality of services being delivered to the student is an important duty of the quality assurance provider and welcome the ANAO recommendation to give more emphasis to this activity.

LWA is committed to working with the Department to implement the recommendations and is initiating steps, as noted against the relevant recommendation, to address the areas identified for improvement.

## **Key messages from this audit for all Australian Government entities**

29. Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### **Contract management**

- It is important that the most up-to-date version of the contract incorporating any variations and records of relevant decisions, including approvals and authorisations, is formally evidenced in writing and appropriately stored. This provides the basis for making payments and the ongoing management of the contract.
- Contract variations should be undertaken through the process set out in the contract. The reasons for any variation should be clearly documented. Variations should not be used to address poor performance or serious underlying problems. The effect on original timeframes, deliverables and value for money should be assessed to form a judgment whether any

proposed variations represent value for money having regard to the procurement process that resulted in the contract being entered into.

- Decisions to change, or remove, contracted key performance indicators should be carefully considered, including having regard to the value for money considerations from the procurement process that led to the contract(s) being signed. This also applies where there have been significant changes in the nature of the services being obtained under a contract from the procurement opportunity offered to the market. It is inconsistent with the principles espoused in the Commonwealth Procurement Rules for entities to approach the market seeking particular services for the entity to then substantively change, or add to, those services after the successful tenderer has been selected.
- Continuity in contract management staff, who are appropriately experienced and trained, along with clear lines of responsibility within an organisation, contributes to effective contract management.



## **Audit findings**

# 1. Background

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## Introduction

1.1 Established in 1948, the Adult Migrant English Program (AMEP) provides free English tuition to eligible migrants and humanitarian entrants with no or low English levels.<sup>9</sup> The program supports an average of 53,000 participants annually (see Appendix 3). The design of the program recognises that learning English can help migrant settlement.

1.2 Contracted delivery of the Adult Migrant English Program (AMEP) has been in place for 25 years.<sup>10</sup> The current contracts commenced in 2017 with AMEP providers contracted in each state and territory, delivering English language lessons in over 300 locations and online, to clients in metropolitan, regional and remote locations in Australia.<sup>11</sup> Data published on AusTender initially valued the 15 contracts<sup>12</sup> with 14 providers<sup>13</sup> at \$1.22 billion which had increased by 75 per cent to \$2.15 billion as at February 2024, representing an average annual contract value of \$287 million. There is also a contract for quality assurance, for which the reported value increased from \$6.15 million to \$22.52 million.

1.3 A 2019 Investing in Refugees Investing in Australia report<sup>14</sup> found that the program had unacceptably poor results due to too few participants (seven per cent) achieving functional levels of English at the conclusion of their course. The report also found a significant underutilisation of the program, with many participants not completing the hours they had available.

1.4 The COVID-19 pandemic impacted on the delivery of the AMEP by the general service providers, given that the contracts involved face-to-face tuition. The COVID-19 pandemic also impacted on the delivery of onsite assessments by the quality assurance provider.

1.5 In 2021, changes were made to the program. They allowed eligible migrants access to unlimited hours of lessons by removing the previous 510 hour limit; and increased alignment with the AMEP's partner program, Skills for Education and Employment (SEE) by increasing the standard

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9 The *Immigration (Education) Act 1971* requires that eligible migrants be provided with tuition in an English course.

10 Prior to 1998, State Education Departments delivered most AMEP tuition using State Education Department facilities, in accordance with Commonwealth and State agreements, with funding provided by the Commonwealth.

11 The request for tender identified 58 contract regions, plus distance learning. These regions aligned with the Australian Statistical Geography Standard (ASGS) Regions developed by the Australian Bureau of Statistics. At the conclusion of the procurement, 53 contract regions were awarded to the 13 service providers, the remaining regions to be serviced through distance learning.

12 AusTender reports two contracts with TAFENSW, however there is only one Deed of Standing Offer with TAFENSW, for which work orders for AMEP General Services and AMEP Distance Learning are issued under.

13 The quality assurance provider is Linda Wyse & Associates (LWA). The thirteen general service providers are: AMES Australia (AMES); South Regional TAFE; Navitas English Pty Ltd (Navitas), STEPS Group Australia Limited (STEPS); TAFE Queensland (TAFE QLD); TAFE SA; South Metropolitan TAFE; South Metropolitan Youth Link (SMYL) Community Services; TASTAFE; North Metropolitan TAFE; Djerriwarrh Employment & Education, also trading as Learning for Employment (Lfe); Melbourne Polytechnic, Technical & Further Education (TAFE NSW).

14 Australian Government, *Investing in Refugees, Investing in Australia: the findings of a review into Integration, Employment and Settlement Outcomes for Refugees and Humanitarian Entrants in Australia*, prepared by Peter Shergold, Kerrin Benson and Margaret Piper, 2019.

of eligibility and attainment from ‘functional’ to ‘vocational’ English.<sup>15</sup> The October 2022 Budget included \$20 million to provide more flexible delivery options for the program and to increase case management support for students (to deliver on an election commitment).

### **Administrative responsibility for the program**

1.6 Administration of the AMEP contracts transferred into the department from the Department of Education and Training through Machinery of Government changes in July 2019. The procurement process that resulted in the current AMEP contracts was conducted when the program was the responsibility of the then Department of Education and Training (the SEE program is now administered by the Department of Employment and Workplace Relations).

1.7 Changes made since 2019 by the Department of Employment and Workplace Relations to the head agreements that apply to both AMEP and SEE have occurred through engagement with, and input from, the Department of Home Affairs. This is consistent with a ‘Collaborative Agreement’ signed by the two departments in October 2019 under which Home Affairs agreed that the department responsible for the SEE program would be the lead agency. The Collaborative Agreement requires that any variations to the general clauses in the contracts must be agreed by both departments. The two departments have the ability to make variations to their respective schedules within the contracts, and are to inform each other as a matter of courtesy of any variations to their respective parts of the contracts.

### **Procurement process to replace the contracts**

1.8 All contracts were due to end on 30 June 2023, with the request for tender for new contracts to be released on 30 April 2022. The contracts were extended in December 2022 to 30 June 2024 (with work orders under the contracts not due to expire until 31 December 2024), after a government decision to delay implementation of a further new AMEP business model.<sup>16</sup> The request for tender for new AMEP contracts was to be issued by September 2023, and new arrangements to commence 1 January 2025. On 30 November 2023, the Minister for Immigration, Citizenship and Multicultural Affairs approved a further delay<sup>17</sup>, with no new release date advised. In February 2024, (22 months after the request for tender was to have been released) the department advised the ANAO that advice to the minister and a new policy proposal were in

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15 The AMEP program does not report on ‘graduations’ through attainment of ‘functional’ or ‘vocational’ English. Rather, the program applies an eligibility threshold and exit point centred around English competency level. Prior to April 2021, this threshold and exit point was ‘functional’ English, being such that prospective participants were not eligible for the program if their existing English competency was equal to, or greater than ‘functional’ English. Similarly, existing participants would be ‘exited’ from the program where they attained such English competency that they were no longer eligible for the program. This threshold and exit point was increased to ‘Vocational’ in April 2021 as part of the AMEP legislative reforms.

16 Three different AMEP models have been implemented (to varying degrees) since the current suite of contracts were executed in 2017. The model that was included in the 2016 request for tender incorporated changes to the previous (2011) model under earlier contracts. In April 2021 the AMEP enabling legislation was amended and a new AMEP model was partially implemented to: increase eligibility; and remove restriction on the tuition hours allowed per participant. Other changes, including changes to the pricing arrangements, were intended to follow in subsequent years. In 2023 a further model was consulted on, and ‘shadow contracting’ implemented to trial the changes prior to the new request for tender being released. These proposed changes included: change of curriculum; update to the AMEPOnline portal; and changes to individual program guidance sessions.

17 The brief noted that ‘implementation has already been delayed 18 months’.

development and the release date of the request for tender is dependent on government agreement to a new model and implementation date.

## Rationale for undertaking the audit

1.9 Contracts for the delivery and quality assurance of delivery of AMEP are valued at over \$2.15 billion and will have been in place for at least seven and a half years by the time they are replaced. The ANAO has audited the management of AMEP contracts once previously (in 2001<sup>18</sup>), with the audit report including six recommendations, all of which were agreed to. Those recommendations related to improving program performance management and reporting; strategic management and coordination; management of financial risk; and monitoring of contractor performance.

1.10 The audit provides assurance to the Parliament that the department is appropriately administering the Adult Migrant English Program contracts.

## Audit approach

### Audit objective, criteria and scope

1.11 The objective of the audit was to assess whether the design and administration of AMEP is effective.

1.12 To form a conclusion against the objective, the following high-level criteria were applied:

- Are appropriate contractual arrangements in place?
- Are the service provider contracts appropriately managed?
- Are contracted quality assurance services being delivered to an appropriate standard?

1.13 This audit examined the design and administration of the AMEP contracts entered into in 2017, including associated variations and work orders and preparation and transition planning for the program post-30 June 2024.

1.14 The ANAO did not audit the procurement processes for establishing the AMEP contracts.

1.15 In addition to auditing the management of contracts by the Department of Home Affairs, the audit used the follow the money power provided under paragraph 18B(1)(b) of the *Auditor-General Act 1997* (the Act) to examine the performance of Linda Wyse and Associates (LWA), the quality assurance provider for the AMEP.

### Audit methodology

1.16 The audit method included:

- examination of records;
- meetings with staff; and
- analysis of reports from information systems.

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18 Auditor-General Report No. 40 2000–01 *Management of the Adult Migrant English Program Contracts*.

1.17 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$583,000.

1.18 The team members for this audit were Hannah Conway, Tamara Duncan, Amita Robinson, Calli Stewart and Brian Boyd.

## 2. Contractual arrangements

### Areas examined

The ANAO examined whether appropriate contractual arrangements in place with the general service providers.

### Conclusion

Appropriate contractual arrangements are not in place with the 13 general service providers. The contracts are continuing to operate past their stated completion date, despite there being no extension options in the contracts. While the contracts, and associated instructions, clearly outline the contracted deliverables:

- there have been significant variations made to each of the contracts, with insufficient documentation to evidence that each variation represented value for money to the Australian Government and the records of the variations are inadequate;
- there are deficiencies in the processes by which the department has engaged advisers and contracted the existing service providers to identify areas that could benefit from adaptation of new ideas and innovative service delivery to enhance client outcomes (referred to as innovative projects); and
- there is no probity plan for the management of the contracts, and inadequate departmental transition planning for the end of the contracts.

### Areas for improvement

The ANAO made five recommendations aimed at improved records of contract variations, better addressing value for money when considering variations to contracts, improving the process by which funding is awarded for innovative projects, development of a probity plan for the program and improved transition planning by the department.

2.1 The adoption of appropriate contractual arrangements is an essential underpinning to achieving the outcomes envisaged through a procurement process. The Department of Finance's *Contract Management Guide* states that 'the aim of contract management is to ensure that all parties meet their obligations to deliver the objectives of the contract' such as 'ensuring the goods or services purchased are provided on time, to the agreed standard, at the agreed location and for the agreed price'.

### Do service provider contracts clearly outline contracted deliverables?

The service provider contracts, and associated Service Provider Instructions, clearly outlined the contracted deliverables.

2.2 The deeds of standings offers executed with each of the 13 general service providers includes a chapter outlining the specifics of the services; a chapter outlining the performance requirements and expectations; another chapter outlining the fees to be charged for each of the AMEP services; and a chapter specifying the contract regions (see footnote 11 and paragraph 3.13) the provider is to deliver the AMEP services.

2.3 The deeds of standing offers with each of the general service providers do not require the department to seek quotes from the providers before entering into a work order under the deed of

standing offer. Instead, the standing offers allows the Commonwealth to issue work orders on demand.<sup>19</sup> The deeds with each provider state that ‘The Contractor ... irrevocably offers to provide the Commonwealth with the Services as and when the Commonwealth requires those Services’ and that the Contractor agrees to provide the Services ‘for the Fees; within the Contract Regions; from the Sites; and on the conditions’ as set out in the deed.

2.4 The AMEP General Service Provider Instructions (SPIs) are intended ‘to support and clarify the delivery arrangements for the Adult Migrant English Program (AMEP) service providers’. The information in the SPIs usually go to the detail of operationalising the contract, such as providing details on how to enrol, how to use the IT system, what is to be included in reports, timeframes for enrolment and reports. The SPIs were in place from the start of contracts (1 July 2017) to 30 June 2022. Version 11 of the SPIs was released on 5 May 2023 (with an end date of 31 December 2024). As such no SPI was in place for 10 months.

2.5 No one document contains all the AMEP general service providers obligations. The SPIs note that they should be read in conjunction with ‘supplementary tier documents’, ‘your contract and any other relevant reference material issued by the department’. This lack of clarity in where the provider obligations may be recorded was partially addressed in the March 2021 update to the SPIs where the department specified that the SPIs provide ‘supplementary administrative advice and should be read in conjunction with your Deed of Agreement, Work Order, Administrative Advice and all other relevant advice and/or reference material issued by the Department from time to time.’ It is standard practice in the administration of the AMEP for the department to issue correspondence, Communiques and Administrative Advices via email to all providers, or upload to a shared secure site for providers to locate.<sup>20</sup>

2.6 The version control sections across the 11 versions of the SPIs (most recent update was made in May 2023) note that updates often incorporate changes made to the administration of the program through communication with providers (through Administrative Advices, Communiques and correspondence). Similarly, some variations executed to the deeds of standing offer are made to incorporate changes made to the General Service Provider Instructions.

2.7 The Department of Finance’s *Contract Management Guide*, notes in section 2.3, that some communications with suppliers ‘can result in a variation of the contract or a waiving of your entity’s rights under the contract’ and recommends that the entity keep ‘note of discussions or agreements and email these to the supplier to avoid uncertainty regarding the discussion, minimise the risk of

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19 The deeds of standing offers with AMEP providers notes that if the provider is ‘unable to deliver Services’ or ‘decided to close a Site without first obtaining the Commonwealth’s written agreement’ then the Commonwealth may ‘take action’ as if the provider defaults on the agreement, where the breach cannot be remedied the Commonwealth may terminate the agreement.

20 Initially this was a secure GovDex shared site, later replaced with a secure GovTeams shared site.

dispute and ensure you both have a record'. The department only commenced maintaining a register<sup>21</sup> of such communications in 2020.<sup>22</sup>

## Were variations to the contracts appropriate, including adequately demonstrating value for money?

Significant variations have been made to each of the contracts since they were signed such that the terms and conditions are now different in important respects from the procurement opportunity that was presented to the market. The department has not kept adequate records of the contract variations that have occurred. Department of Home Affairs' (Home Affairs) records of decisions to vary the contracts do not adequately address value for money considerations and therefore do not demonstrate that each of the variations has been appropriate.

2.8 The contracts resulted from a combined procurement process for the AMEP and Skills for Education and Employment Program (SEE) programs.<sup>23</sup> The contracts with the general service providers, as well as the contract with the quality assurance provider, include separate parts specific to each program, as well as parts that apply to both programs.

### Extent of variations

2.9 The Department of Finance's *Contract Management Guide* advises that:

- 'The variation process you should follow is usually in the contract' and that the administering department should 'document the variation in writing and ensure both parties sign as evidence of agreement to the change (usually through a Deed of Variation)'; and
- the administering department should have, for longer term or more complex contracts, a 'master version' of the contract that includes all variations in track changes.

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21 In March 2020 a 'COVID-19 — Service Provider Administrative Advice and Alerts Register' of communications with providers was introduced. The approach to maintaining this register evolved over time. In February 2021 communications were numbered and split into 'Administrative Advice' (matters that would be incorporated into the Service Provider Instructions or contracts later) and 'Communiques' (information of a more general nature). A year later, in January 2022, the team maintaining the register informed the rest of the AMEP team in writing about its existence and approach. In February 2023, a further year later, the process document formalising the approach for drafting, categorising, issuing and registering correspondence with providers was developed. Despite this formalisation, the most current version of the register is incomplete. It does not include a retrospective register of communication made prior to March 2020. The current register continues to include a list of 'Rogue Ones', communications issued in 2021, not categorised as either communiques or administrative advices.

22 The department first drafted its Administrative Advice and Communique process document in February 2023. The document included a template for administrative advices and required all Administrative Advices to be recorded in an 'Administrative Advices and Communiques Register'. This was noted as being developed in response to internal departmental inconsistencies, where it was recorded that there was a revised 'communication process with AMEP service providers to better align communications with the AMEP Head Agreement/contract and Service Provider Instructions (SPIs)' but that this had not been communicated 'within the branch' due to other workload pressures.

23 The quality assurance provider for AMEP is also the quality assurance provider for the SEE program. Of the 13 general service providers awarded a contract for AMEP, 12 were also awarded a contract for the SEE program. In April 2023, one of the AMEP and SEE providers ceased delivery of SEE services. As at January 2024, 11 of the 13 current AMEP general service providers, are also SEE general service providers.



2.10 The extent to which the contracts are varied can indicate that a contract does not provide an appropriate basis for the management and delivery of a program.

2.11 The first AMEP variation was approved in December 2017, less than six months into the contract term, with a total of seven variations (usually referred to as variation numbers two, three, five, nine, 10 and 11) made to clauses that impact on delivery of AMEP. In proceeding with the variation approved in December 2017, the department recorded in April 2018 that:

Since the commencement of the new AMEP contracts on 1 July 2017, the department and the service providers identified contractual inconsistencies, practical problems implementing the new business model and difficulties managing program with the administratively burdensome contingency IT system.

2.12 In addition to the variations specific to AMEP for all service providers, four service providers have had specific variations made to their contracts, as follows:

- in December 2018, a provider's contract was varied<sup>24</sup> to incorporate an additional contract region<sup>25</sup>;
- in June 2022, the contract for one provider (and three previous deeds of variation) was varied<sup>26</sup> to change the Australian Business Number to the correct number;
- in July 2023, the contract for one provider was varied to change the fees payable; and
- in December 2023, the contract for another provider was varied<sup>27</sup> to change the fees payable.

2.13 Each of the service provider contracts has also been affected by a variation to the general contract terms (that apply to both AMEP and SEE) and a variation to extend the duration of each contract. These variations were undertaken by the department that administers the SEE program.

2.14 The contract with the AMEP quality assurance provider has been similarly subject to numerous variations, with ten deeds of variations executed. Of note:

- Deed of Variation 2 from April 2018 could not be located in departmental records<sup>28</sup>;

24 The AMEP was administered at this time by the Department of Education, see paragraphs 1.6–1.7.

25 Six contract regions were not awarded to any provider as a result of the tender process. Clients in these contract regions were to access AMEP through the single distance learning provider. In December 2018, the Central Northern Territory contract region was added to the list of contract regions for a general service provider delivering in a neighbouring contract region. The Department of Education sought quotes from the previous provider for the region, who declined to quote, advising that delivery to Central Northern Territory was not viable without also being contracted to deliver to Darwin.

26 The variation was made by the lead agency for the contract, Department of Education, Skills and Employment, see paragraphs 1.6–1.7. In line with the Collaborative Agreement, variations made to general clauses are to be agreed by both departments administering AMEP and SEE.

27 The AMEP was administered at this time by the Department of Home Affairs, see paragraphs 1.6–1.7.

28 In 2022, Home Affairs confirmed with the Department of Education that Deed of Variation 2 was not used. This was reconfirmed and details clarified in June 2023 when variations to a work order were referred to in the list of variations to the contract. Administration of the AMEP contracts transferred into the Department of Home Affairs nearly five years ago, in July 2019, with relevant records and some key staff moving with the program. It would be expected, consistent with the 'records follow function' requirement of a Machinery of Government change, that if there were further records not transferred at the time, which the department required as part of its responsibilities for administering AMEP, then the department would seek, and continue to seek, those records.

- an ‘in principle agreement’ to vary fees was effected<sup>29</sup> via a letter of offer and acceptance, not through a deed of variation;
- two variations<sup>30</sup> are titled ‘Deed of Variation 6’, one being executed in February 2021 and another in December 2021 (Deed of Variation 7 was executed earlier in December 2021); and
- Deed of Variation 9 (which was actually the tenth variation) from July 2023<sup>31</sup> states it is only amending the SEE Part yet varies Part 1 of the whole agreement which impacts both programs.

2.15 Home Affairs has not maintained adequate records of variations to the contracts. For example, in December 2020 (Deed of Variation 4) all contracts for the general service providers were varied to adjust the fees for the providers. Prior to this variation, fees had been varied for four service providers through correspondence and so not reflected as variations in each contract’s variation schedule. These variations through correspondence are not recorded in a contract register, and there is no central repository of them. Some of the fee increases were agreed to through correspondence by the department because of the financial situation of the provider, without the department examining the implications in terms of the competitive procurement process that had concluded that the contractor offered the best value for money for particular contract regions. For example:

- a general service provider was party to two variations specific to its contract:
  - On 28 June 2019, the department agreed through correspondence to increase the fees for the provider effective from 1 January 2019, including backdating fees for a six-month period.<sup>32</sup> The reason the provider sought an increase was due to the implementation of a new enterprise agreement for its staff as of 1 May 2018. The department decided to increase the fee as the ‘change to the [enterprise agreement] was unforeseen, outside [the provider’s] contract and is real in terms of the impact on their organisation and their sub-contractors. The [enterprise agreement] was not in place at the time [the provider] tendered to deliver the AMEP and the SEE program.’
  - In December 2019, the same provider again requested a fee increase for financial years 2020–21 and 2021–22. The request was reiterated on 24 June 2020. The

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29 The AMEP was administered at this time by the Department of Education, see paragraphs 1.6 –1.7.

30 In line with the Collaborative Agreement, see paragraphs 1.6 –1.7, variations made to specific program (AMEP or SEE) clauses are to be led by the administering department, with the non-administering department advised of the changes. In this instance, both departments sought to vary the agreement, with the Department of Home Affairs making two variations that year. The numbering and timing of the variations with the non-administering department’s variation was not effectively communicated, such that two variations were referred to as the sixth variation.

31 The variation was made by the lead agency for the contract, see paragraphs 1.6 –1.7. In line with the Collaborative Agreement, variations made to general clauses are to be agreed by both departments administering AMEP and SEE.

32 At the time of the agreement through correspondence, AMEP was administered by the Department of Education, see paragraphs 1.6 –1.7. The Department of Home Affairs did not record this variation, through correspondence in the Department of Home Affairs’ Contract Management Tracking register. Home Affairs held records of the variation and agreement.

justification for the fee increase was the same as previously, ‘unanticipated costs’ related to staffing.<sup>33</sup>

- in December 2018 the department agreed through correspondence to increase the child care fee paid<sup>34</sup> to a different general service provider, and backdate payment of the child care administrative fee to 1 July 2018.<sup>35</sup> The provider had advised the department that its ‘new child care model, which commenced on 1 July 2017, was not working well and [the provider] could no longer support the losses associated with the program.’ The agreement through correspondence was to cease on 30 June 2020.<sup>36</sup> The Quarter 1 Invoice for the 2020–21 financial year for this provider continued the varied child care administration fee, despite the agreement ceasing, and applied the Australian Bureau of Statistics (ABS) Wage Price Index to the unit fee, increasing the fee for the 2020–21 financial year.<sup>37</sup> In December 2020, a deed of variation was executed<sup>38</sup> reestablishing the fee schedules for all providers.
- in July 2018, a different general service provider sought an increase to its fees for the 2018–19 financial year to ‘cover ongoing administration costs associated with the increase in AMEP expenses’. Some seven months later, in February 2019, the department agreed through correspondence to increase fees and for this to be backdated to 1 July 2018. This higher rate was to expire on 30 June 2020.<sup>39</sup> In 2019 the department recorded that this fee increase stemmed from ‘concerns about the financial viability of the small service provider delivering in regional and remote contract regions and the administrative burden of delivering the AMEP, which was not well quantified at the time of the tender’<sup>40</sup> For the

33 At the time of the agreement through correspondence, AMEP was administered by the Department of Home Affairs, see paragraphs 1.6–1.7. In June 2021 and July 2023 the provider again sought a fee increase, these were rejected through ‘letters’.

34 Child care is provided through the AMEP (included as a required service in the approach to market) by general service provider to support and encourage participation of carers of children under school age.

35 At the time of the agreement through correspondence, AMEP was administered by the Department of Education, see paragraphs 1.6–1.7. The Department of Home Affairs did not record this variation, through correspondence in the Department of Home Affairs’ Contract Management Tracking register, Home Affairs held records of the variation and agreement through correspondence.

36 In March 2024, the department advised the ANAO that ‘the “end date” is not the date the fee increase ends; it is the end date of the current work order’. The ANAO notes that the correspondence states ‘For clarity, the department’s offer to [provider] is: From 1 July 2018 to 30 June 2020, the fee set out in the table below will apply in place of those at row 7 of the [fee schedule] table a Clause 4.5, Part 2 of the Deed of Agreement [contract]’. The correspondence makes no reference to the Work Order, which refers to fees in the overarching contract.

37 At the time of the invoicing, AMEP was administered by the Department of Home Affairs, see paragraphs 1.6–1.7.

38 Consistent with the Collaborative Agreement, see paragraphs 1.6–1.7, variations made to specific program (AMEP or SEE) clauses are to be led by the administering department, with the non-administering department advised of the changes. This variation was made by Department of Home Affairs.

39 At the time of the agreement through correspondence, AMEP was administered by the Department of Education, see paragraphs 1.6–1.7. The Department of Home Affairs did not record this variation, through correspondence in the Department of Home Affairs’ Contract Management Tracking register. Home Affairs held records of the variation and agreement.

40 In 2017–18 the AMEP general service providers were asked to advise the department of a ‘supplementary program administration fee’ to ‘compensate for the additional administrative work due to the lack of new management information system’. A one-off lump sum fee was agreed with all providers, totalling \$4.7 million. A large provider requested the department to continue the payment into 2018–19, and this was agreed, and paid to all providers. As at February 2024, the department reported a total cost for ‘supplementary program administration fee’ to be \$10.29 million over four financial years.

2019–20 financial year, the fees agreed through correspondence were indexed, and increased by the ABS Wage Price Index of 2.3 per cent. Despite the agreed fees expiring on 30 June 2020, for the Quarter 1 invoices for the 2020–21 financial year, the department<sup>41</sup> continued to apply the fees agreed through correspondence with a further index applied. In December 2020, a deed of variation was executed<sup>42</sup> reestablishing the fee schedules for all providers, and incorporated this expired fee (index annually) in the varied fee schedule.

- In April 2018 the department agreed through correspondence to increase all fees<sup>43</sup> for another provider in one of its allocated contract regions, including backdating payments for the revised fees to July 2017, as student participation numbers were lower than the provider anticipated, threatening its ability to continue to deliver services. A further agreement was made for the 2018–19 financial year<sup>44</sup>, and again in June 2019 for the 2019–20 financial year.<sup>45</sup> There is no evidence of agreement for the 2020–21 financial year.<sup>46</sup> For the Quarter 1 invoice for the 2020–21 financial year, the department had continued to apply the child care administration fee and supplementary program administration fee as agreed in the correspondence (and indexed each year) despite the agreement for these fee increases expiring. In December 2020, a deed of variation was executed<sup>47</sup> reestablishing the fee schedules for all providers.

2.16 In February 2024 the department advised ANAO that it ‘does not agree’ that Home Affairs has not maintained adequate records, rather that ‘it maintains a record of the variation that is complete to the best of its knowledge’<sup>48</sup>, and that ‘the record may not encompass all variations,

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41 At the time of the invoicing, AMEP was administered by the Department of Home Affairs, see paragraphs 1.6–1.7.

42 Consistent with the Collaborative Agreement, see paragraphs 1.6–1.7, variations made to specific program (AMEP or SEE) clauses are to be led by the administering department, with the non-administering department advised of the changes. This variation was made by Department of Home Affairs.

43 At the time of the agreement through correspondence, AMEP was administered by the Department of Education, see paragraphs 1.6–1.7. The Department of Home Affairs did not record this variation, through correspondence in the Department of Home Affairs’ Contract Management Tracking register. Home Affairs held records of the variation and agreement.

44 At the time of the agreement through correspondence, AMEP was administered by the Department of Education, see paragraphs 1.6–1.7. The Department of Home Affairs did not record this variation, through correspondence in the Department of Home Affairs’ Contract Management Tracking register. Home Affairs held records of the variation and agreement.

45 At the time of the agreement through correspondence, AMEP was administered by the Department of Education, see paragraphs 1.6–1.7. The Department of Home Affairs did not record this variation, through correspondence in the Department of Home Affairs’ Contract Management Tracking register. Home Affairs held records of the variation and agreement.

46 Administration of AMEP was transferred to the Department of Home Affairs in July 2019, see paragraphs 1.6–1.7.

47 Consistent with the Collaborative Agreement, see paragraphs 1.6–1.7, variations made to specific program (AMEP or SEE) clauses are to be led by the administering department, with the non-administering department advised of the changes. This variation was made by Department of Home Affairs.

48 This is inconsistent with the department’s own experience, where in June 2023, when seeking legal review of potential fee variations to a provider’s contract, the department itself noted that ‘it appears that variations have occurred and have been formalised through exchange of letters, instead of formal DOV’s’ and that the department would ‘work through with AMEP Finance and Contract Managers to identify any other potential variations effected through this type of process, to ensure we have these on our DOV tracker, variations register and can source quickly.’ As at February 2024 these variations through correspondence are still not recorded in the department’s Contract Management Tracking register.

particularly those undertaken via correspondence, prior to Machinery of Government changes.’ ANAO notes that such limitations to the records means that they are not adequate.

2.17 The extent to which the contracts with the general service providers have been varied indicates that those contracts did not provide an appropriate basis for the management and delivery of the program.

### Recommendation no. 1

2.18 To meet its record keeping obligations and ensure appropriate performance management of contracts, the Department of Home Affairs develop a complete record of all contract variations, including those variations agreed through correspondence, together with a master version of the contracts that incorporates all variations.

**Department of Home Affairs response:** *Agreed.*

2.19 *The Department will continue to update the contract variation register and master contract to ensure all variations identified prior to machinery of government changes, effected by correspondence, have been recorded.*

**Linda Wyse and Associates response:** *Agreed.*

2.20 *LWA respects the need for contract record-keeping management and the need to ensure that contracted and performed activities align. LWA is committed to working closely with the Department to ensure the quality assurance contract is managed according to the Department of Finance’s Contract Management Guide.*

### Considering value for money

2.21 The Department of Finance’s *Contract Management Guide* advises that ‘an entity should not seek or allow a contract variation where it would amount to a significant change to the contract or significantly vary the scope of the contract’ if ‘other potential suppliers may have responded differently to an amended contract scope ... which may have produced a different value for money outcome’ or if it would ‘compromise the original procurement’s value for money assessment.’

2.22 Home Affairs’ records of each of the decisions to vary the contracts do not clearly record that value for money was considered and therefore do not demonstrate that each of the variations has been appropriate.

2.23 For example, the first variation to the general service provider contracts (see paragraph 2.10) added services additional to those included in the approach to the market that resulted in the contracts being signed. Specifically, as recorded by the department, the ‘original contract did not make provision for Innovative Projects’ with Home Affairs advising the ANAO in April 2024 that this was a ‘drafting oversight’ at the time the tender was conducted. The contracts were varied to include a provision allowing for the conduct of select tender procurement processes for the delivery of additional services (‘innovative projects’). As of February 2024, ANAO has identified 53 innovative projects in departmental records (see paragraphs 2.35 to 2.42, Figure 2.1 and paragraphs 4.65 to 4.67) for a total budgeted cost of \$5.94 million (excluding GST).

2.24 Other significant changes made in that variation related to:

- changes to the contracted key performance indicators (see paragraphs 3.11 to 3.19);
- changing the frequency of reporting from quarterly to six-monthly;
- allowing providers to seek exemptions from the department to engage teachers who do not meet the qualifications specified in the contract;
- changing the way child care travel payments were to be calculated and paid (to be formula based rather than based on records submitted by providers); and
- elevating from the General Service Provider Instructions to the contract provision for 'blended' classes (where providers with low student numbers may have students from both the pre-employment and social AMEP streams in the same class). This change was made on the advice of the department's legal team which noted that 'it is more appropriate to have the provider's obligations set out on the face of the Contract rather than in the SPIs [Service Provider Instructions]'.

2.25 The brief to the approval delegate within the department did not discuss value for money implications of each of these changes either individually or in totality.

2.26 Another example related to changes made in July 2020, to come into effect in April 2020 (three months before the approval) in response to changes to support virtual tuition modes where face-to-face tuition was not possible due to the COVID-19 pandemic and social distancing measures. The changes included:

- detailing new services (being two new modes of tuition);
- agreement to a 'One Off Transitional Cost';
- development and implementation of 'strategies to encourage adoption of Virtual Participation';
- development and implementation of 'a strategy that allows for AMEP clients to engage in a variety of ways most suitable to their circumstances'; and
- 'Surveying other means of participation with AMEP Clients to determine their existing IT capability'.

2.27 While the department's approval briefing for the changes discussed various 'issues', it did not explicitly address whether the changes (already in place for three months, see paragraph 1.4) represented value for money. The brief sought approval 'to minimise the risk of 2019–20 program expenditure' (see Appendix 5 paragraphs 10–12) being 'recorded against the 2020–21 budget' and:

A key consideration for desired outcomes is the Departmental budget for the AMEP. The budget model for the program is demand driven and normally increases and decreases according to the number of eligible visas granted. Under normal circumstances the reduction in arrivals from the closure of the Australian border on 15 March 2020 would have resulted in a proportional reduction in overall expenditure. However, the increased cost of delivery means that the reduced client inflow has been partially offset by the increased cost of delivery in the COVID-19 context.

2.28 The changes and associated fees were not incorporated into a deed of variation. Instead, the contract was varied to add a clause stating that Virtual Participation Fees 'shall be set out in the AMEP SPIs and any applicable Work Order'. A work order was issued, which included a fee table, with fees specific to alternative tuition modes (see Appendix 5 paragraphs 10–12). The

department's approach to including and varying fees and services was inconsistent with the contract and also meant that, in a further contradiction of the contract terms, subordinate documentation, being the General Service Provider Instructions and work orders, was given priority over the contract deed (see Appendix 5 paragraphs 10–12).

2.29 Value for money was also not adequately addressed by Home Affairs in its decision making for the fourth deed of variation. This variation had two key impacts on fees. Firstly, adjusting the fees of all providers to incorporate variations made through correspondence<sup>49</sup> (see paragraph 2.15), and secondly, the removal of the 'supplementary program administration fee' on 31 December 2020. This fee was agreed to be paid until a new information management system was introduced.<sup>50</sup> When the administration of the AMEP program was moved to Department of Home Affairs in 2019, no new information management system had been introduced. Between 1 July 2017 and 30 June 2021, providers were paid \$10.29 million in supplementary program administration fees. Neither the initial brief advising of the issue, nor the brief seeking execution of the deed of variation noted that all fees for all providers were also being varied to align with variations made through correspondence, and did not include a value for money assessment of the changes. Similarly, the department's approval of an April 2021 variation did not adequately address value for money considerations. The variation was necessary as a result of legislative amendments that:

- removed 'the 510 hour cap that currently limits free English tuition' for AMEP students;
- raised 'the AMEP eligibility threshold (and exit point from the program) from functional to vocational English; and
- removed 'the time limit for registering, commencing and completing AMEP tuition (for those already in Australia as at 1 October 2020).'

2.30 The department's variation approval briefing described these variations as 'administrative only with no anticipated financial implications for the current contracts'. Inconsistent with this statement, removing the time limit on participation in the program (when providers are paid on hours of tuition) and extending the eligibility threshold from functional to vocational English can reasonably be expected to have financial implications.

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49 In February 2024 the department advised the ANAO that the varied rates were 'flowed through to the next work order, when issued.' This approach is inconsistent with the clearly specified end date for the varied rates and the record of the decision did not include a value for money assessment of continuing the varied rates beyond the expiry period.

50 Machinery of Government changes in 2013 moved administration of the AMEP from the then Department of Immigration and Citizenship to the Department of Industry. In 2014, the program was moved to the Department of Education. Administration and ownership of the AMEP Reporting Management System (ARMS) remained with the Department of Immigration and Citizenship. In order to administer AMEP, the Department of Education developed a separate system, with no linkages to ARMS.

## Recommendation no. 2

2.31 When considering potential contract variations for the Adult Migrant English Program, the Department of Home Affairs make a decision-making record that addresses whether the proposed changes represent value for money, including by reference to the value for money assessment that underpinned the procurement decision-making prior to the contract being awarded.

**Department of Home Affairs response:** *Agreed.*

2.32 *The Department will improve decision making records for Adult Migrant English Program contract variations.*

**Linda Wyse and Associates response:** *Agreed.*

## Have contracted advisers on the program been appropriately engaged?

Contracted advisers have not been engaged through appropriate procurement processes. In addition to engaging advisers, the contracts with service providers were amended to enable the department to engage them to deliver 'innovative projects' that are additional to the services they were contracted to deliver at the conclusion of the 2017 procurement process.

2.33 The Department of Finance's *Contract Management Guide* notes that specialist advisers, such as procurement specialists, technical and operational specialists, and legal advisers, may be used to assist with contract management activities. The Department of Home Affairs' engagement of advisers to assist with AMEP is required to be consistent with the Commonwealth Procurement Rules, including employing procurement processes that encourage competition and demonstrate the achievement of value for money.

2.34 The CPRs also require that officials maintain appropriate records of the conduct of procurement processes. This includes records that outline the requirement for the procurement, the process that was followed, how value for money was considered and achieved and relevant decisions and the basis of those decisions. As outlined in Appendix 4, for the eight procurements examined by the ANAO:

- there was no competition for five procurements<sup>51</sup> (63 per cent) despite the CPRs stating that encouraging competition is a key element of the Australian Government's procurement framework, requiring non-discrimination and the use of competitive procurement processes; and
- value for money was not addressed in the record of the decision to spend public money for two procurements (25 per cent) despite the CPRs stating that achieving value for

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51 Competition is a key element of the Australian Government's procurement framework set out in the CPRs. While thresholds are set for the adoption of open competitive procurement practices (with specified exemptions), this does not mean that procurements valued below those thresholds should not involve competition. This reflects that, generally, the more competitive the procurement process, the better placed an entity is to demonstrate that it has achieved value for money (value for money being the core rule of the CPRs).



money is the ‘core rule’ of the CPRs (as it is critical to ensuring that public resources are used in the most efficient, effective, ethical and economic manner).

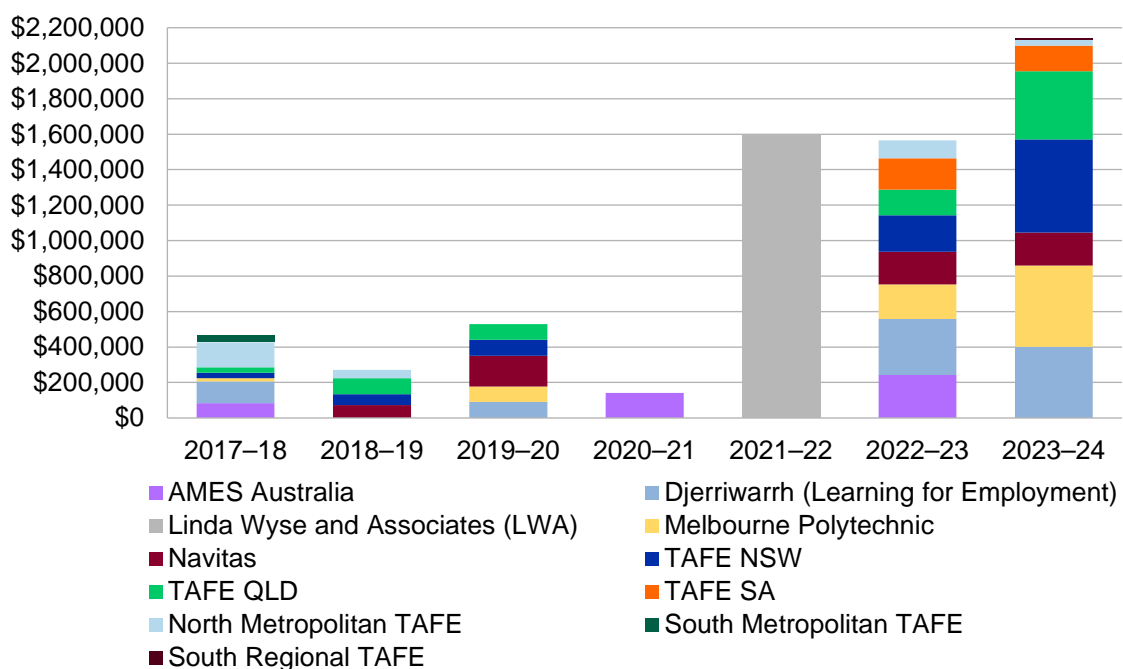
## Innovative projects

2.35 The AMEP General Service Provider Instructions include ‘innovative projects’, which are projects to encourage AMEP service providers to ‘look beyond how you currently deliver AMEP services and what you do well, and identify areas that could benefit from adaptation of new ideas and innovative service delivery to enhance client outcomes’. As discussed at paragraph 2.23, the resulting contracts required amendment after being executed to provide for them.

2.36 The amendment to the contracts to permit the contracting of innovative projects set out various matters the department would specify when inviting a service provider to submit a proposal for an innovative project. Those matters included the timeframe for submitting a proposal, the nature of the services required for the innovative project and the delivery timeframe. The contract does not require the department to inform the service provider of the criteria that will be applied in deciding whether to accept any proposal that is received.

2.37 The AMEP General Service Provider Instructions advised providers that the department ‘may conduct funding rounds at least once per financial year’ and projects may be initiated in two ways: open submission from the panel of AMEP providers; and requests for quotation on specific projects identified by the department. Work orders were issued to 10 of the 14 providers to undertake the 56 innovative projects identified by the ANAO from departmental records (see Figure 2.1), for a total budgeted cost of \$9.52 million (excluding GST). Innovative project rounds were open to all providers. Not all providers submitted proposals in all years.

**Figure 2.1: Distribution and value of innovative projects as at April 2024**



Note: Three projects from 2019-20 were varied to extend the life of the project into 2020-21. One further project is yet to be approved for the 2023-24 year, with costs not included in this figure.

Source: ANAO analysis of Home Affairs records.

2.38 Initially, a competitive approach was taken to awarding innovative projects funding, with all providers invited in April 2017 to submit proposals. Seven providers submitted ten proposals in the funding round, of which eight proposals (from seven providers) were successful.

2.39 The innovative projects guidelines released to the AMEP providers included a statement of requirements for the projects and ‘assessment criteria’ that amounted to minimum requirements for projects identified through competitive rounds. The guidelines did not include evaluation criteria for projects where the department asked one or more providers to quote. While initially intended that work orders would be executed with successful providers, once it became apparent to the department<sup>52</sup> that the contracts did not provide for this, the 2017–18 innovative projects were implemented through separate contracts with each of the successful AMEP providers.

2.40 Subsequently, between May and June 2018, the main contracts with the AMEP providers were varied to include innovative projects. All subsequent innovative projects have been effected through work orders under those contracts.

2.41 After the variations to contracts innovative projects were selected through the ‘request for quote’ process, with the department providing ‘themes’ and all AMEP providers given the opportunity to submit quotes for proposed projects. Not all providers responded to all requests, with an average of seven providers responding with an average of 12 proposals each year.<sup>53</sup>

2.42 The requests for quotes did not include evaluation criteria, or weightings against the statement of requirements. The requests for quotes did not include information on how the department would evaluate quotes against each other and assess value for money. An evaluation plan was established for the 2023–24 innovative project round, and records the assessment scores awarded to each proposal against five unweighted criteria and determined value for money rankings for projects based firstly on assessed score (highest to lowest total value), followed by assessed risk (lowest risk preferred) followed by value of project. This was also the first time conflict of interest declarations were made by the assessment team.

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52 The AMEP was administered at this time by the Department of Education, see paragraphs 1.6 –1.7.

53 It is not clear how the 2020–21 project was innovative given that one of the AMEP providers was already contracted to deliver this service (see Appendix 4, an online platform and e-learning content). Rather, the department’s approval to release the request for quote to AMEP providers notes the internal hurdles to commencing a separate procurement or developing a department solution, as such the department sought to ‘leverage on existing contracts and relationships with AMEP providers by utilising the AMEP Innovative project mechanism’. In February 2024, the department advised ANAO that the ‘platform was a new product based on new and innovative teaching resources and tools, in line with the definition of innovative as set out in the SPIs.’

### Recommendation no. 3

2.43 The Department of Home Affairs introduce stronger governance arrangements over the process by which it engages service providers under the Adult Migrant English Program to identify areas that could benefit from adaptation of new ideas and innovative service delivery to enhance client outcomes including opportunities to offer these opportunities to open competition.

**Department of Home Affairs response:** *Agreed.*

2.44 *The department has commenced implementing this recommendation, and notes the ANAO has recognised improvements made to the governance arrangements for Innovative Projects within the Report*

2.45 *With respect to the current Agreement, seeking proposals for Innovative Projects from existing providers is consistent with the intent of the panel approach, and the opportunity presented to the market in the establishment of the Panel. The department will consider opportunities to offer innovative projects to open competition, where practical.*

**Linda Wyse and Associates response:** *Agreed.*

2.46 *LWA acknowledges that extending these opportunities to open competition may further invigorate service delivery.*

### Have appropriate probity arrangements been effectively implemented?

There is no probity plan for the management of the AMEP contracts. As a result, there are no conflict of interest declaration and other probity risk management requirements in place for the AMEP contracts.

2.47 The Department of Finance's *Contract Management Guide* identifies that, in addition to an overarching contract management plan, entities should consider developing a probity plan that 'details the mechanisms for assuring probity within the management of the contract'. This guidance recognises that it is important that entity's address probity risks during the management of contracts, and not only during the procurement process that results in the contract. The Guide identifies ethical considerations that need to be kept in mind during the management of contracts, including in relation to conflicts of interest:

As a contract manager, you should ensure all individuals materially involved with the management of a contract make a conflict of interest declaration and update it on a regular basis, particularly for longer term contracts.

2.48 Probity considerations are not addressed in the department's contract management plan for AMEP, apart from identifying that advice on probity (and other) matters can be obtained from the department's Civil, Commercial and Employment Law Branch and that probity risks will need to be managed as part of the transition to replacement contracts. For example, there is no requirement for those individuals materially involved with the management of the contract to make, and keep updated, conflict of interest declarations. The department does not maintain a register of any conflicts of interests that have been identified, or how they have been managed. The

absence of a probity plan also means that, for example, there are not arrangements in place to address probity risks relating to:

- variations to the contracts, including where the variations mean the contract terms and conditions differ from the procurement opportunity that was presented to the market (see paragraphs 2.10, 2.24, 2.26, 2.29 to 2.30);
- ‘innovative projects’ (see paragraph 2.23);
- changes being made to the key performance indicators for the general service providers (see paragraphs 3.11 to 3.19); or
- the change in the nature of the services being requested from the contracted quality assurance provider<sup>54</sup> such that the focus of the work is no longer consistent with the approach to the market (see paragraph 2.14).

2.49 In May 2022, the department adopted a probity plan that applies to consultations with stakeholders for planned program reforms, and the procurement process for replacement AMEP contracts. This probity plan does not apply to the management of the AMEP contracts under which services have been provided since 1 July 2017.

#### Recommendation no. 4

2.50 The Department of Home Affairs develop a probity plan to govern the management of contracts for the Adult Migrant English Program.

**Department of Home Affairs response:** *Agreed.*

2.51 *The department will establish a Probity Plan for the management of the existing and future contracts for the Adult Migrant English Program.*

**Linda Wyse and Associates response:** *Agreed.*

2.52 *LWA appreciates the importance of probity and its impact on contract management. LWA Conflict of Interest Plans, updated annually and used to inform quality assurance activities, are available to ensure quality assurance activities adhere to the developed probity plan.*

#### Is an appropriate transition management plan in place?

Appropriate transition management plans are not in place. The contracts were due to end on 30 June 2023 and did not include any extension options yet, due to delays with the procurement process to replace them, they are continuing to operate past the stated completion date. As of December 2023, the department had not finalised and approved a transition out plan for the existing contracts, notwithstanding that those contracts were originally due to expire in June 2023 (they are now due to expire on 30 June 2024, with work orders under the contracts due to expire on 31 December 2024). Further, the draft transition in plan is substantively incomplete, reflecting the uncertainty about the future contractual arrangements (the tender process for replacement contracts has been subject to delays).

54 The department did not record whether it had considered potential new conflicts of interest arising from this change, despite the request for tender requiring quality assurance staff to have ‘at least three years full-time equivalent experience in teaching TESOL or Literacy programs at adult, secondary or pre-tertiary level’.

2.53 The transition from the prior contracts to the current AMEP general service provider contracts that commenced on 1 July 2017 was not well planned and executed. This was reflected in complaints from some general service providers and stakeholders. One provider made a request for compensation, and later sought (and was awarded) increases to its contracted fee, with the lack of student numbers cited as a key reason.

2.54 The contracts include a 'completion' date which according to the terms of the agreement is the date the agreement ends (unless terminated earlier). At the time the contracts were signed, this date was 30 June 2023.

2.55 Section 2.13 of the Department of Finance's *Contract Management Guide* state that departments can only extend a contract if three conditions are met: the contract has an unused option to extend the contract; it is value for money to extend the contract; and the contract has not yet expired. The AMEP contract does not have a clause providing an option to extend the contract for any addition or set period of time.

2.56 Notwithstanding this situation, in December 2022, all contracts were varied to adjust the 'completion' date from 30 June 2023 to 30 June 2024. Essentially, this extended the contract period for a year despite the contract not having an option to extend. In December 2022, the planned request for tender for new contracts was under design and development, and had not yet been opened to the market.

2.57 As part of the December 2022 variation, the clause specifying when a work order made under the contract would cease was also changed. Originally the clause stated that each work order would end on a date specified in the work order or on the contract's completion date. This was varied to state that the work order would 'end on the end date specified in the Work Order, unless terminated earlier' in accordance with the contract. This variation has the effect of allowing the work orders to continue on past the completion of the overarching contract.

2.58 On 30 November 2023, the Minister for Immigration, Citizenship and Multicultural Affairs approved a further delay<sup>55</sup> to the planned approach to market for new contract arrangements for the AMEP program. The department advised the minister that:

New AMEP Work Orders would need to be put in place to extend arrangements with the current providers a further nine to twelve months. Current AMEP Work Orders are in place to 31 December 2024. These Work Orders sit under an Agreement that is owned by the Department of Workplace Relations (DEWR) which expires 30 June 2024. While new Work Orders can be entered into beyond the Agreement expiry date, any Work Orders must be in place before the Agreement expires and no further variations can be made after that date.

2.59 The department further advised that minister that:

The Agreement does not have any extension options. Extension may be possible through a Deed of Variation (DoV), but this is complex as responsibility for the Agreement sits with DEWR who conducted the approach to market in 2016 and manage the panel, which includes both AMEP and Skills for Education and Employment providers. Any DoV to extend the Agreement date would require consultation with DEWR and it is not clear if DEWR would support this process as they will have no ongoing need for the Agreement beyond 30 June 2024. It may be possible to seek transfer

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<sup>55</sup> The brief noted that 'implementation has already been delayed 18 months'.

of the Agreement from DEWR to Home Affairs, but this would result in a large body of work for both departments and is therefore considered unlikely.

If the Agreement is not extended, it is possible to put Work Orders in place before the Agreement expires on 30 June 2024 which go beyond that date, as long as the need for services is justified. However, once the Agreement ceases, it is not possible to execute any new Work Orders. This will result in a loss of flexibility in managing the AMEP contracts, especially in undertaking any further Innovative Projects in relation to the Governments \$20 million commitment to improving flexible delivery options and increasing case management support to clients in the AMEP. The Department will be able to incorporate Innovative Projects into ms before the expiry of the Agreement, but would need to seek further advice on the extent to which this is possible after the Agreement ceases.

With any DoV or Work Order process, consultation and negotiation would be required with each service provider.

2.60 The minister noted the risks associated with his decision.

### **Transition plan for end of AMEP contract**

2.61 The contracts include 'Transition-Out' clauses, which outline the requirements of providers to support transition to new providers and new contract prior to the expiry of the 'Agreement Period'. The contract defines 'Agreement Period' as 'the period between the Commencement Date and the Completion Date' (which is now 30 June 2024, although, as set out in paragraphs 2.57–2.60, work orders under the contracts are due to expire on 31 December 2024).

2.62 In terms of the department's preparation for transitioning to new contracts, as at December 2023, Home Affairs:

- did not have a transition out plan prepared and approved. Drafting of a transition out plan commenced in April 2022, and the department decided in June 2022 to contract Callida at a cost of \$250,000 to 'create and implement a transition-out plan which will detail the processes and activities required to be carried out to ensure a seamless transition of supplier services prior to the expiry of existing AMEP agreements'.<sup>56</sup> The most recent version of this draft dated November 2023. The document is not complete, has not been considered by the department's Transition Working Group and has not been approved; and
- preparation of a transition in plan commenced in April 2023, and there have been no further draft versions prepared. Reflecting the significant uncertainty around the delayed procurement process to replace the AMEP contracts, the transition in plan is substantively incomplete. In February 2024, Home Affairs advised the ANAO that:

The department will continue to progress the development and approval of the Transition In Project Plan following finalisation of the new AMEP business model settings and contractual arrangements. As the Transition In Project Plan is a live document, it will continue to be regularly

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56 The decision to engage Callida was for the work to be completed by 30 June 2023, with two 12 month extension options. This was varied in June 2023 by exercising one of the options to extend the contract to 30 June 2024, and increase the contract value to \$300,000. In February 2024, Home Affairs advised the ANAO that: 'Due to the changing program circumstances and priorities, the contract with Callida has primarily been used to support costing the new AMEP business models, with minimal support requested and provided by Callida to date in relation to transition activities'.

reviewed and updated over the life of the project, including following approval of the detailed transition in plans submitted by the preferred tenderer/s.

2.63 In February 2024 the department advised the ANAO that it 'is considering options' to 'rectify any timeframe issues in relation to transition out clauses, to mitigate against any potential future risk where Work Orders may extend beyond the Completion Date.' Further extending the completion date of the contract past 30 June 2024 would be inconsistent with Section 2.13 of the Department of Finance's *Contract Management Guide* (see paragraph 2.55) which states that entities can only extend a contract if three conditions are met: the contract has an unused option to extend the contract; its value for money to extend the contract; and the contract has not yet expired. The AMEP contract does not have a clause providing an option to extend the contract for any additional or set period of time.

### Recommendation no. 5

2.64 The Department of Home Affairs improve its transition planning for the Adult Migrant English Program by:

- finalising the transition out plan for the current contracts and, for future contracts, preparing the transition out plan early in the new contract period; and
- aligning the development of the transition in plan for the replacement contracts with the preparation of the approach to market documentation.

**Department of Home Affairs response:** *Agreed.*

2.65 *The department will finalise the drafting and approval of its Transition Out Project Plan in accordance with the department's established Contract Management Framework.*

2.66 *The department will continue to align the further development of the Transition In Project Plan for the future contract/s with the preparation of the approach to market documentation.*

**Linda Wyse and Associates response:** *Agreed.*

### 3. Service provider contract management

#### Areas examined

The ANAO examined whether the Department of Home Affairs (Home Affairs) is appropriately managing the general service provider contracts.

#### Conclusion

The general service provider contracts have not been appropriately managed. A comprehensive set of contracted performance indicators was in place when the contracts were first signed, but that framework has been amended over time such that it no longer addresses the educational outcomes being achieved by students, the accuracy of provider assessments of student educational outcomes or the timeliness of service provider provision of data to the department. The only indicator that has remained relates to the extent to which eligible students commence in the program. In addition:

- invoice verification processes have not been sufficiently robust; and
- the department has not implemented a previously agreed recommendation that it would use complaints data from providers to inform and improve service delivery for students.

#### Areas for improvement

The ANAO made two recommendations aimed at improving the contracted framework for service provider performance and analysing complaints data from the general service providers so as to inform and improve service delivery to students.

3.1 The aim of contract management is to ensure that parties meet their obligations such that deliverables are provided to the required quantity and standard and within the specified timeframes such that value for money is achieved. The Department of Finance's *Contract Management Guide* states that it 'is important that contracts are managed consistently and actively throughout their life in accordance with their terms' as this 'will ensure that supplier performance is satisfactory, stakeholders are well informed, and all contract requirements are met thereby ensuring that the contract delivers the anticipated value for money.'

#### Is contract information accurately recorded and stored by the department?

The introduction of an information technology system to support the department's oversight of contractor service delivery has not proceeded. The department's continued use of system that was not replaced as planned has not provided a sound basis for monitoring service provider performance, or to support the payment of invoiced amounts. The failure to introduce the planned new system also required the department to make additional payments to the service providers to recognise the additional administrative burden placed on them, and has meant one of the four key performance indicators for the general service provider contracts has not been applied.

3.2 The Department of Finance's *Contract Management Guide* advises entities that keeping good records should be seen as an integral part of, rather than incidental to, contract management activities. Good recordkeeping also assists entities manage contracts to achieve their objectives by



providing a sound basis to inform contractor performance monitoring and assessment, including decisions about whether it is appropriate to make payments and, where performance is not to the required standard, the exercise of contractual remedies.

3.3 One of the four key performance indicators (KPIs) for the general services providers (see further at paragraphs 3.14 to 3.15) relates to whether data is recorded and reported in a form required by the Commonwealth within required timeframes. Data recording by service providers and reporting to the department was intended to take place through a new Information Technology system with this system to be used to determine client eligibility and entitlements, record participation and provide the basis for the making of contract payments.

3.4 An internal audit in 2018<sup>57</sup> identified that ‘Implementation of the replacement IT system was delayed from the original release date of 1 July 2017 which resulted in the business area using contingency spreadsheets to supplement the legacy system [referred to as the] AMEP Reporting Management System (ARMS)’. The internal audit noted that the ‘contingency system ... relies on multiple spreadsheets, increased manual data entry and back-end reporting.’

3.5 Delays with implementation of the new system resulted in increased program costs. For 2017–18, a ‘supplementary program administration Fee’ was paid to service providers to ‘compensate for the additional administrative work due to the lack of new management information system’, totalling \$4.7 million. One provider requested that the department<sup>58</sup> to continue the payment into 2018–19, and this was agreed, and paid to all providers. As at November 2020, the department<sup>59</sup> reported a total cost for ‘supplementary program administration fee’ to be \$10.29 million over four financial years. In addition to the payments to service providers, the department estimated that its cost to support the current system until a new system is implemented was \$1.1 million per annum.

3.6 Work on the development of a new system ceased in July 2019 when responsibility for the program moved to the Department of Home Affairs.

3.7 Non-delivery of the new system has impacted on the measurement of service provider performance. Specifically, the third (of four) key performance indicators (relating to data timeliness) under the contracts has not been reported against by service providers for any year (see Table 3.1 and paragraphs 3.18 to 3.19).

3.8 Non-delivery of the new system as planned has had other adverse effects on contract management:

- The 2018 internal audit noted that ‘provider error rates on upload have been very high, initially 49% in July 2017, and 30% in January 2018’ (see footnote 50). The internal audit report noted that errors dropped to ‘10% in February 2018 following targeted Provider communication.’ Data entered into the system by the AMEP providers was to be quality assured (on a sample basis) by the quality assurance provider. The required quality assurance activities over data entered into the system have declined over time, such that

57 The AMEP was administered at this time by the Department of Education, see paragraphs 1.6–1.7, and the internal audit was conducted by Department of Education of the department’s processes.

58 The AMEP was administered at this time by the Department of Education, see paragraphs 1.6–1.7.

59 The AMEP was administered at this time by the Department of Home Affairs, see paragraphs 1.6–1.7.

it is not possible to confirm that the data in the system is accurately recorded (see Table 3.1, paragraph 3.19, and paragraphs 4.31 to 4.64).

- The 2018 internal audit noted that ‘payments to providers are made based on information contained in both the spreadsheets and data entered’ into the information management system. As discussed in paragraph 3.28 and Appendix 5 paragraph 6–7, the department identified in December 2023 errors and concerns with regard to relying on the data for invoicing purposes.

3.9 As part of the Department of Home Affairs’ ongoing request for tender preparations a new information management system is, again, to be developed. This system was to align with the design of the new AMEP model to be implemented with the outcome of the new tender.

### **Are service delivery standards (or KPIs) for the service providers clearly stipulated, reported, and used to inform contract management?**

The contracts, when first signed, established a performance measurement and management framework for the general service providers, focused on four key performance indicators (KPIs). The request for tender that led to the contracts being signed had stated that the four KPIs represented ‘a minimum performance standard that service providers will be expected to meet and it is an expectation of the department that service providers will strive to deliver above these standards’. The department has amended the framework over time such that the suite of four KPIs have not been used to inform contract management:

- none of the four KPIs were applied for the first 12 months of the contract term;
- the KPI relating to data timeliness has not been applied at all;
- the target addressing the KPI relating to the accuracy of service provider assessments of client learning outcomes was first reduced and was later paused in November 2021 for the remaining term of the contracts; and
- the English attainment progress KPI has been removed.

3.10 Guidance to entities from the Department of Finance is that: good performance management is key to delivering value for money; performance standards for contractors should be specified in the contract; and performance management should take place throughout the life of the contract and be based on the performance framework included in the contract.<sup>60</sup>

### **The contracted performance management framework**

3.11 The request for tender conducted in 2016 set out the performance management framework for the general service providers, including the four KPIs that would be applied. The request for tender package stated that the four KPIs represented ‘a minimum performance standard that service providers will be expected to meet and it is an expectation of the department that service providers will strive to deliver above these standards’.

3.12 The contracts signed with the successful tenderers for the general service provider roles to commence on 1 July 2017 included the same KPIs set out in the request for tender. The contract terms were also consistent with the draft contract included in the request for tender, setting out

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60 Department of Finance, *Australian Government Contract Management Guide*, December 2020, pp. 29-33.

that non-performance against those KPIs provided the basis for the department to take management action including, where a KPI had not been met on two or more occasions, immediately terminating the agreement.

3.13 The design of the program, and the conduct of the procurement process, related to the delivery of services in 58 contract regions which make up the whole of Australia.<sup>61</sup> The request for tender stated that ‘the need for geographical borders such as contract regions is to ensure service delivery is spread equitably and that services are not clustered in highly populated areas.’ Notwithstanding this design feature of the program, the contracts did not require that the KPIs be met in each contract region (contracts with general service providers covered more than one contract region). For some years, the department obtained reporting of performance against the KPIs that identified performance in each contract region (without specifying how performance in each region was to be converted into overall contract performance), in others the service providers were only required to report their performance in aggregate across each contract region. This reduced the visibility of provider performance within the contract regions.

3.14 As originally signed, the contracts required the KPIs be met from the contract commencement date of 1 July 2017. In December 2017, it was decided to seek agreement from the general service providers to delay the commencement of the KPIs to 1 July 2018. The departmental approval of this proposed variation (which was effected through the second deed of variation), which the general service providers agreed to, did not document the merits of making this change. Over time the KPI framework, established in the contracts following the 2017 procurement process, have been varied, as set out in Table 3.1.

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61 These regions aligned with the Australian Statistical Geography Standard (ASGS) Regions developed by the Australian Bureau of Statistics.

**Table 3.1: General service provider contracted key performance indicators (KPIs)**

KPI	Measurement at time contracts signed	ANAO analysis
Participation: Number of clients who are assessed as eligible who commence in the program.	90% of eligible clients who complete a commencement process and commence AMEP learning activities.	Indicator has been changed in 2018 to add in threshold that 'commencement' occurs 'within six months of an initial assessment for in person, and six months of referral for distance learning'.
Attainment: Client benefits from AMEP learning activities as measured by Australian Core Skills Framework (ACSF) improvement.	80% of clients attain one ACSF indicator per 200 hours of tuition (applies to both the pre-employment stream and the social stream).	Initially this KPI was split into two, one specific to the achievement within the pre-employment stream (80% of students attaining two ACSF indicators per 200 hours) and social stream (80% of students attaining one ACSF indicators per 200 hours). In 2018, the KPIs were merged into one, and the threshold for attainment in pre-employment stream reduced to equal that of the social stream.  The requirement to undertake 200 hour ACSF progressive assessments (PAs) during COVID-19 was paused to allow service providers to focus on client engagement and retention. Following consultation with service providers, the department then decided to remove this KPI. There is no replacement KPI to address 'attainment'.
Data timeliness: Data is recorded and reported in a form required by the Commonwealth within the required timeframes.	95% of data is recorded and reported in a form required by the Commonwealth within the required timeframes.	The department's contract management plan states that 'KPI 3 was never used under this contract as it was reliant on a new system which was never developed'. There was no alternative KPI employed to address the timeliness of service provider provision of data to the department.
Accurate assessment: Client assessment is accurate in accordance with the ACSF.	95% of client assessment outcomes are accurate against the ACSF.	Target reduced to 80% in 2018.  In November 2021 the AMEP General Service Provider Instructions declared the KPI paused, and would not be reimplemented during the contract period.

Source: ANAO analysis of departmental records.

3.15 While the service provider contracts have been subject to significant variations (see paragraphs 2.22 to 2.30), the contracts have not been amended to replace the KPIs for attainment<sup>62</sup>,

62 In February 2024, the department advised the ANAO that: 'While there is no longer any formal KPI to measure attainment, there is now an alternate and improved arrangement to demonstrate client progression. The department paused KPI 2 (attainment) in the early stages of the COVID-19 Pandemic in 2020 in response to restrictions and to allow service providers to focus on client retention and engagement. During the KPI 2 pause, the department trialled the usage of Australian Vocational Education and Training Management Information Statistical Standard (AVETMISS) unit completion data. Data was mapped to the Australian Core Skills Framework (ACSF) to report on client outcomes and reduce assessment duplication. The trial was positively received by stakeholders as there had been significant administrative burden with 200 hour progressive ACSF assessments under KPI 2....The department is monitoring general service providers who fall below the benchmark. It has commenced sharing KPI2 data with service providers to support them to identify barriers affecting their performance'. Notwithstanding this, the contracts have not been varied to include a replacement KPI within the service provider contracts.

data timeliness or accurate assessment. As a result the performance measurement and management provisions of the general service provider contracts have been given relatively little importance in the department's administration of the contracts.

3.16 An evaluation of the AMEP business model<sup>63</sup>, commissioned in 2019, notes that 'the substantial public investment in the AMEP justifies a progress KPI that can be used to report program outcomes to the government and the public.' As outlined in Table 3.1, the attainment KPI was reduced and ultimately removed, with no contractual replacement made. Departmental data records 1900 students exiting the program since 1 July 2017 based on attaining sufficient English competency such that they have now become ineligible for the program. In April 2024, Home Affairs advised the ANAO that:

Prior to the implementation of the legislative reforms in April 2021, AMEP participants were entitled to up to 510 hours of tuition. AMEP participants were exited from the program when they reached a 510 hour limit or Functional English, and this limitation and context have been omitted. The legislative reforms removed the 510 hour cap on English language tuition; raised the AMEP eligibility threshold and exit point for the program from functional to vocational English; and removed time limits on enrolling, commencing and completing AMEP tuition, for those already in Australia on or before 1 October 2020. These changes have allowed more migrants to access English language tuition through the AMEP for longer and until they reach a higher level of proficiency. Learning a new language is complex and takes time, and the number of hours of tuition required by each individual varies based on many factors, including age, prior education and the linguistic distance of their first language from English. Research shows that 510 hours is insufficient to reach functional English for the vast majority of AMEP clients who enter the program with very low levels of English. For these people, around 2,000 hours may be required.

### *Quality requirements*

3.17 The contracts set out that meeting the KPIs is not the only performance requirement. Specifically, the contracts state that quality of services provided may also be considered in relation to: entry interviews conducted by the service provider; client individual pathway guides; tuition provided to clients; and progress of clients through the AMEP Learning. The provision of quality assurance provider services, which is relevant to this aspect of the department's management of the general service provider contracts, is examined in Chapter 4 of this audit report.

### **Service provider reporting against KPIs**

3.18 Reporting by service providers of their performance against the KPIs is required to be included in both a mid-year report (required by 31 March each year covering the six months to 31 December) and an annual report (required by 30 September each year covering the year to 30 June).

3.19 As set out in Table 3.1, the first KPI (relating to participants commencing in the program) is only one where there has been reporting to the department throughout the contract period by general service providers of their performance. For the three most recently completed years (2020–21, 2021–22 and 2022–23) service providers have only had one KPI to meet, and report against.

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63 Delivered by Social Compass, AusTender contract notice CN3563612, for \$500,000, see Appendix 4.

3.20 On those occasions between 2017–18 and 2022–23 where reporting by a general service provider was that they had not met a KPI, departmental records did not outline that department employed the contractual provisions enabling it to issue a notice requiring service improvement. In February 2024 the department advised that ANAO that ‘no notices requiring service improvement have been used under the contract.’

### **Recommendation no. 6**

3.21 The Department of Home Affairs establish a comprehensive suite of performance indicators and targets in the service provider contracts for the Adult Migrant English Program, require that service providers report performance against the indicators and targets and take appropriate contract management action where performance is below requirements.

**Department of Home Affairs response:** *Agreed.*

3.22 *The department has commenced implementing this recommendation through the development of a new Performance Management Framework for the future contract arrangements.*

**Linda Wyse and Associates response:** *Agreed.*

3.23 *LWA believes referring to a few of the recommendations in the AMEP Evaluation report, published by ACIL ALLEN Consulting in 2015, may be useful in addressing this recommendation:*

- *Recommendation 1: Clarify program objectives. With the introduction of increased eligibility and uncapped tuition hours, LWA finds the program may benefit from having program objectives reviewed and clarified.*
- *Recommendation 2: Measurement against objectives. LWA advocates for performance indicators which measure qualitative as well as quantitative outcomes.*
- *Recommendation 8: Client outcomes. LWA proposes the consideration of performance measures that incorporate client outcomes, which measure the extent to which client needs are being met.*

## Are invoices verified and payments made in accordance with AMEP contracts?

The invoices for general service providers have not been appropriately verified. Invoicing and payments to the 13 AMEP general service providers has not consistently adhered to the contracts with issues identified in a number of areas including the application of goods and services tax (GST), fee indexation and backdating fee increases.

3.24 Verification of invoices is important to ensure the proper use of commonwealth resources. The Department of Finance's *Contract Management Guide* states that departments should only make a payment when the service has been received and meets the required standards; the supplier is compliant with the contract; the invoice is accurate and correct according to the contract; and when all necessary authorisations and approvals have been obtained.

3.25 Although the contracts are constructed similarly, the department has implemented different invoicing processes for the AMEP general service providers compared to the AMEP quality assurance provider.

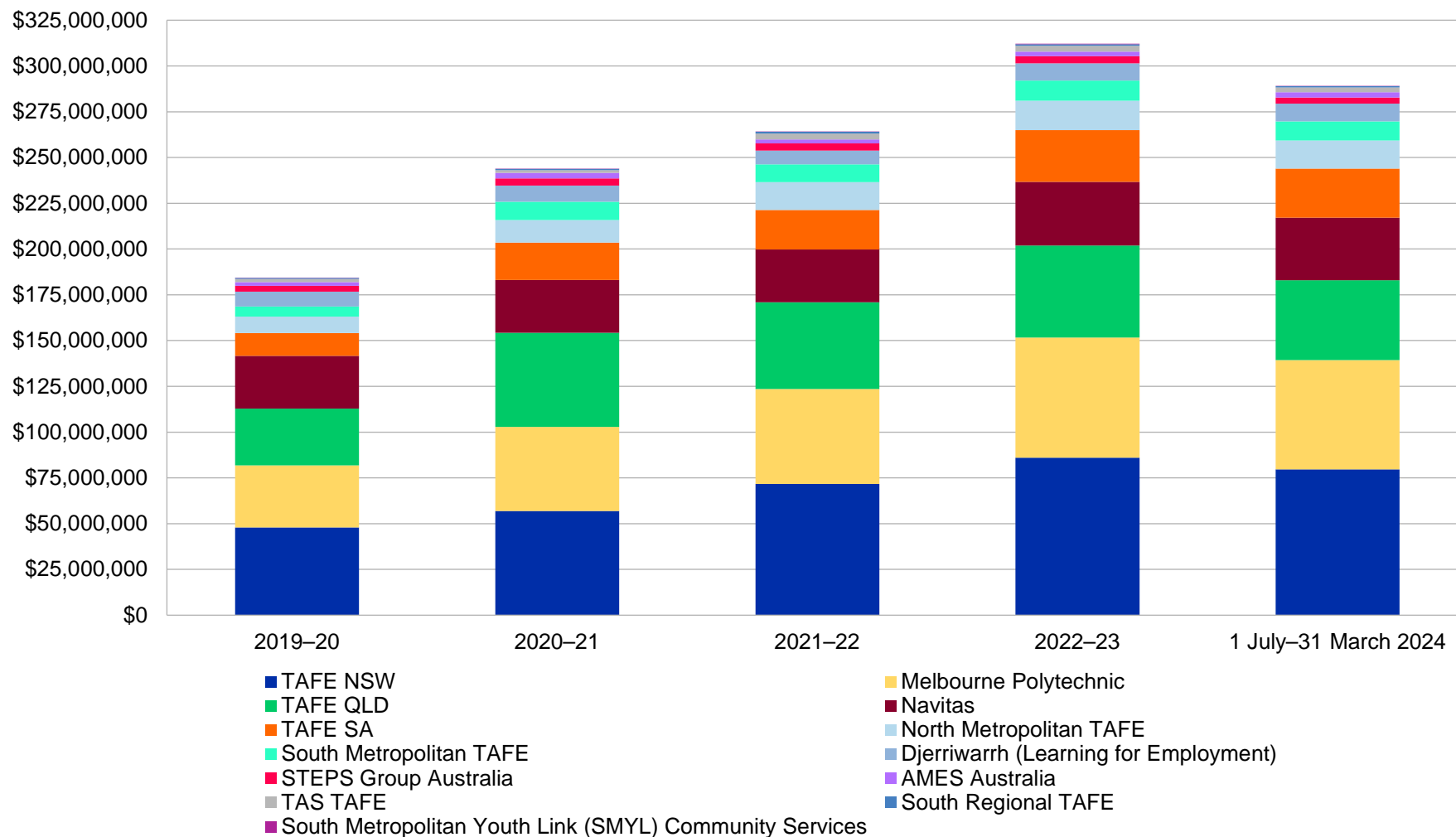
- Consistent with the contracts, the invoices for the AMEP general service providers are determined by the department. The department determines an estimate that it instructs providers to invoice for, and then makes a quarterly adjustment to the invoices based on data uploaded to Home Affairs systems by each AMEP general service provider.
- Rather than employing the approach set out in the contract, the invoices for the AMEP quality assurance provider are based on work completed in the prior period (usually a month) with no quarterly adjustments process (see paragraphs 4.78 to 4.79 and Appendix 6).

3.26 The approach to the market outlined the services the AMEP general service providers were to provide English language tuition and assessment (across two streams and sub-programs), child care and the Home Tutor Scheme (later renamed the Volunteer Tutor Scheme). In May 2018, variations were made to the AMEP general service provider contracts to allow the department to invite providers to submit proposals for 'Innovative Projects' to develop, test, evaluation and report on different approaches and techniques (see paragraphs 2.35 to 2.41).

3.27 Departmental records state that \$1.29 billion has been paid to AMEP general service providers since 1 July 2019 (see Figure 2.1). The distribution of this amount has been extensively driven by providers' invoiced provision of AMEP general services (namely, numbers of tuition hours and associated child card fees). Since 1 July 2019, \$8.09 million has been spent on 'innovative projects' and additional projects, of which \$5.87 million<sup>64</sup> was paid to the AMEP quality assurance provider. The remaining nearly \$2.22 million was shared between 9 of the 13 AMEP general service providers, with payments for projects ranging between \$23,255 to \$524,469 (see Figure 2.1).

64 Included in this range of payments for individual projects of over \$1.5million, for the hosting of 'AMEPOnline'. AMEPOnline was an online portal for access to teaching and student resources. This is a public facing portal of resources, whereas the AMEP Task Bank, later rebranded as the AMEP Hub is a restricted access portal of teaching and student resources and professional development resources. See Appendix 4.

**Figure 3.1: Payments made to AMEP general service providers since 1 July 2019**



Note: Data limitations as a result of machinery of government changes have prevented analysis from contract commencement (1 July 2017).

Source: ANAO analysis of Home Affairs records.



3.28 Invoicing and payments to the 13 AMEP general service providers has not consistently adhered to the contracts with issues identified by the ANAO in a number of areas, (see Appendix 5 for details) including:

- monthly instalments and quarterly adjustments;
- reliance on unverified data;
- payment for services outside of the contract;
- fee indexation;
- application of GST;
- backdating invoices to accommodate variations to fee; and
- use of fees outside of written agreement.

### Does the department have appropriate complaint resolution processes?

The Department of Home Affairs does not have appropriate complaint resolution processes for the delivery of services under the Adult Migrant English Program, and has not implemented an ANAO recommendation from a 2000–01 audit report that it had agreed to. While the contractual framework includes appropriate arrangements to enable the department to monitor the number and nature of complaints being received by the 13 general service providers, the department has not effectively administered those arrangements. As a result, the department is unable to assure itself that service providers are meeting their obligations for the timely and effective handling of complaints, and the department does not analyse complaints data to identify opportunities to improve service delivery across the program.

3.29 The Commonwealth Ombudsman's *Better Practice Complaint Handling Guide* states that good complaints handling will help agencies 'meet general principles of good administration, including fairness, transparency, accountability, accessibility and efficiency' and that the 'analysis of complaint data may identify opportunities for the improvement of administrative practices'.<sup>65</sup>

3.30 Auditor-General Report No. 40 2000–01 *Management of the Adult Migrant English Program Contracts*, which examined the management of earlier AMEP contracts:

- identified that the service provider contracts required providers to have a complaint handling procedure and to resolve client complaints;
- concluded that the department was not monitoring complaints to service providers including by not obtaining complaint data from the service providers which, in turn, was limiting assurance that issues impacting on contractors' performance are brought to the department's attention and that systemic issues are identified and taken into account in broader contract management;
- observed that the results from the department's Client Satisfaction Survey emphasised that the department needed to better manage the complaints handling mechanisms of providers; and

<sup>65</sup> Commonwealth Ombudsman, *Better Practice Complaints Handling Guide* [Internet], Ombudsman, February 2023, available from <https://www.ombudsman.gov.au/publications-resources-and-faqs> [accessed July 2023].

- recommended that the department collect, monitor and review provider complaints data to inform and improve service delivery. The department agreed to this recommendation.

3.31 The current AMEP service provider contracts include obligations on service providers to have in place mechanisms/processes for the timely and effective handling of complaints, and to make sure clients are aware of the existence of the complaints handling process. In addition, the contracts require that each provider maintain a register of complaints and provide this to the department upon request.

3.32 The Service Provider Instructions issued by the department under the contracts require the 13 general service providers to provide an annual report for each financial year that includes data on number and nature of client complaints received. In comparison to the number of clients, the number of complaints as reported by service providers was as follows in 2021–22:

- a total of 37 complaints were reported to Home Affairs by the general service providers in their AMEP annual reports, representing 1 complaint for every 1,514 enrolments in 2021–22 (or 0.07 per cent)<sup>66</sup>;
- 89 per cent of the complaints were reported by two of the providers with a further four providers reporting that they received a single complaint; and
- seven providers did not report having received any complaints in 2021–22. Of those seven providers, four have not reported receiving a single complaint in any of their annual reports.

3.33 Home Affairs has not:

- analysed the complaints data included in the annual reports from service providers, for example to compare complaints data between service providers;
- sought to satisfy itself:
  - about the completeness of the data being reported to it, such that in some years, providers did not complete the complaints section in the annual report template, with the department not taking steps to have this corrected; or
  - that the general service providers have appropriate complaints handling processes and systems in place; and
- exercised its contractual right to obtain complaints information from providers and so has not analysed client complaints in the manner it had agreed to in response to the earlier ANAO performance audit.

3.34 In April 2024, Home Affairs advised the ANAO that ‘Through the onsite QA process, the QA provider checks service providers’ complaints processes’. As discussed at paragraphs 4.31 to 4.68, the budgeting for, and tasking of, the quality assurance provider by Home Affairs has significantly changed the nature of services provided. In particular, as a result of the department refocusing the work of the contracted quality assurance provider to the delivery of professional development and development of ‘program delivery documents’, the quality assurance activities planned and delivered have not appropriately monitored the performance of the contracted general service

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<sup>66</sup> In its 2021–22 Annual Report, Home Affairs reported (at page 103) that there were more than 56,000 enrolments in 2021–22.

providers.<sup>67</sup> The ANAO has recommended that Home Affairs give greater emphasis to monitoring the quality of services being delivered to students by the contracted general service providers (see paragraph 4.69).

### Recommendation no. 7

3.35 The Department of Home Affairs analyse and review complaints data from the general service providers for the Adult Migrant English Program to inform and improve service delivery to students.

**Department of Home Affairs response:** *Agreed.*

3.36 *The department will put in place more measures to further monitor complaint information and use this analysis to inform and improve service delivery.*

**Linda Wyse and Associates response:** *Agreed.*

3.37 *LWA will explore with the Department the idea that this recommendation could fall under the current scope of the Quality Assurance provider. At present, the Quality Assurance provider assesses providers for a complaints resolution process; therefore, the Quality Assurance provider is well placed in their role to work with the Department to support the recommendation, ensuring complaint rectification and associated improvements are implemented.*

67 The first quality assurance annual plan Home Affairs approved was in July 2019 and this included reducing the number of onsite quality assurance reviews planned from 48 in 2018-19 to 14 in 2019-20 (a 71 per cent reduction).

## 4. Quality assurance services

### Areas examined

The ANAO examined whether the contracted quality assurance services are being delivered to an appropriate standard.

### Conclusion

In its administration of the contract with the firm engaged as quality assurance provider, the Department of Home Affairs (Home Affairs) has not obtained appropriate assurance over the work of the 13 contracted general service providers. Key factors that led to this result include:

- the contractual performance framework was diminished after the quality assurance provider was selected and the contract signed, and key performance indicators have not been met notwithstanding that the targeted quantity of work has been reduced over time by the department;
- the approach to planning quality assurance work is not risk based; and
- Home Affairs has significantly changed the nature of services provided away from quality assurance over the work of the general service providers. For 2023–24, the department decided that 15 per cent of the budget for the provider would be spent on quality assurance work, down from 78 per cent in the first year of the contract.

### Areas for improvement

The ANAO made three recommendations aimed at strengthening the performance management framework, adopting a risk-based approach to planning quality assurance work, and returning the contracted firm's focus to monitoring the quality of services being delivered to students by the contracted general service providers.

4.1 The 2016 approach to the market outlined the key role the quality assurance provider was to play in ensuring clients receive high quality English language training and assessment services under AMEP. The Department of Home Affairs' tasks Linda Wyse and Associates (LWA) for the provision of quality assurance services for AMEP.

### Has the department appropriately exercised its contractual powers to manage the contracted quality assurance provider's performance?

The contracted performance management framework has not been appropriately implemented by Home Affairs. The key performance indicator (KPI) framework was changed after the completion of the procurement process to select the provider of quality assurance services, and does not reflect the full scope of services expected of the contractor. Further, notwithstanding that the department has reduced over time the amount of quality assurance reviews required to be undertaken<sup>68</sup>, in only two years has the provider reported undertaking the (reduced) number of client file verifications specified in the annual plan (a shortfall of 27 per cent in the first six years) and has only undertaken the (reduced) number of onsite quality assurance reviews in 2022–23 (a shortfall of 20 per cent in the first six years).

<sup>68</sup> The plan for 2022–23 was for 65 per cent fewer client file verifications than in the first year of the contract, and for 76 per cent fewer on site quality assurance reviews.

4.2 Guidance to entities from the Department of Finance is that: good performance management is key to delivering value for money; performance standards for contractors should be specified in the contract; and performance management should take place throughout the life of the contract and be based on the performance framework included in the contract.<sup>69</sup>

### **Contracted performance management framework**

4.3 The performance framework for the AMEP quality assurance provider was set out in the request for tender for the procurement conducted via an approach to the market in 2017. The request for tender stated that the seven KPIs ‘represent the performance standard that the quality assurance providers will be expected to meet’ and that it ‘is an expectation of the department that the quality assurance providers will strive to deliver above these standards’. The request for tender further stated that ‘failure to meet KPIs may result in the Department applying sanctions as outlined in the [Quality Assurance Provider Instructions]’.

4.4 Consistent with the request for tender, the contract signed with the successful tenderer to commence on 1 July 2017 set out that non-performance against the specified KPIs provided the basis for the department to take management action including, where a KPI had not been met on two or more occasions, immediately terminating the agreement. The KPIs included in the contract are inconsistent from those included in the request for tender and presented to the market (see Table 4.1). Some changes were made in the contract when first signed, with the KPIs varied a further two times after contract execution.

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69 Department of Finance, *Australian Government Contract Management Guide*, December 2020, pp. 2933.

**Table 4.1: Key performance indicators — quality assurance provider**

Request for Tender					1/7/2017	16/2/2018	24/9/2018 to date
Verification coverage	The Contractor must achieve 100% of their allocated AMEP client file verifications.						
	The Contractor must complete one Onsite Quality Assurance Assessment per AMEP Service Provider, per Contract Region per financial year.		The Contractor must complete one Onsite Quality Assurance Assessment per AMEP Service Provider, per Contract Region per financial year, <b>or as specified in the Annual Plan.</b>				
	The Contractor must verify 100% of their allocated Work Experience Record Verifications.						
Assessment Task Bank	At a minimum 50 new Assessment Tasks created, verified and uploaded to the Assessment Task Bank each financial year.						
Quality service delivery	90% of all appeals show the same review result.	<b>100% of requests for appeals performed.</b>		The minimum performance standard — 90% of all appeals show the same review result.			
	–	100% of requests for Internal Moderations performed.		100% of requests for Internal Moderations performed; <b>at least 90% of all File Verifications Internally Moderated must show the same result.</b>			
	–		<b>90% of ratings in the evaluation forms completed by Professional Development Workshop participants are 'satisfactory overall' or better.</b>				
Timeliness	Results of onsite and offsite file verifications are provided to the Service Provider and the Department within 21 business days.	Results of Onsite <b>Quality Assurance Assessments</b> and <b>Quality Assurance Assessments</b> for Distance Learning are provided to the Service Provider and the Department within <b>15</b> business days.					
	All quarterly and annual reporting is completed and provided to the Department in accordance with the Contract.						

Note: **Bold text** highlights changes made to the key performance indicators.

Source: ANAO analysis of departmental records.

4.5 The first change to the KPIs made after contract signature occurred in February 2018 to include a KPI relevant to the new service requirement to deliver professional development workshops. No further variations have been made the key performance indicators despite the range of other variations made to the contract, including changes in the services to be provided. As a result, the performance measurement and management provisions of the quality assurance provider contract have been given little importance in the department's administration of the contract (as was also the case for the general service provider contracts, see paragraph 3.15).

Changes that have happened and have not been reflected in the contracted key performance measures include:

- descope of significant parts of the onsite quality assurance assessments in 2018–19 which were only placed back into the contract in 2021 (see paragraph 4.36);
- significantly decreasing the scale of client file verifications from over 3000 to a few hundred (see paragraphs 4.31 to 4.50);
- increasing focus and expenditure on ‘program delivery documents’ (see paragraphs 4.55 to 4.59);
- pausing of quality assurance services during the COVID-19 pandemic (see paragraphs 4.60 to 4.64); and
- inclusion of ‘innovative projects’ to the contract and increased focus and expenditure of these projects (see paragraphs 4.65 to 4.67).

### **Quality assurance provider reporting against KPIs**

4.6 The quality assurance provider is required to report its performance against the KPIs in a ‘quarterly report’ due within 15 business days of the end of each quarter. The quality assurance provider is also required to deliver an annual report (required by 30 September each year covering the year to 30 June) that includes information about the: ‘number of services delivered’; ‘effectiveness’ of the quality assurance activities delivered; the ‘appeals register’; and areas of ‘improvement’ to be made to the delivery of AMEP services.

4.7 The reporting by the quality assurance provider in its annual reports (see Table 4.2) identified that it has frequently not met the KPI relating to delivery of quality assurance activities. Performance has not met the KPI notwithstanding that the annual plans have consistently reduced the number of activities to be delivered. The provider reported that it has delivered the planned number of onsite quality assurance activities in only one year, 2022–23, and has only delivered all the planned file verifications in two years.<sup>70</sup> Overall, since 2017–18:

- file verifications have fallen short by 2,362 files (27 per cent) across the first six years; and
- onsite quality assurance reviews have fallen short by 30 (20 per cent).

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70 Paragraphs 4.60 to 4.64 discuss the impact of the COVID-19 pandemic on assurance activities.

**Table 4.2: Quality assurance activities planned and delivered against KPI 1 and 2**

KPI	2017–18		2018–19		2019–20		2020–21		2021–22		2022–23		Total	
	Delivered	Planned	Delivered	Planned	Delivered	Planned	Delivered	Planned	Delivered	Planned	Delivered	Planned	Delivered	Planned
File verifications	2330	3249	1490	1620	994	1412	100	996 <sup>b</sup>	763	762	812	812	6489	8851
	72%		92%		70%		10%		100%		100%		73%	
Onsite quality assurance reviews	48	59	45	48	7	14	0	0	5	14	14	14	119	149
	81%		94%		50%		–%		36%		100%		80%	
Work experience files	150	154 <sup>a</sup>	155	150	91	150	34	150 <sup>c</sup>	150	150	150	150	730	904
	97%		103%		61%		23%		100%		100%		81%	
50 Assessment Task Bank tasks uploaded	50	50	53	50	52	50	50	50	63	50	54	50	304	300
	100%		106%		104%		100%		126%		108%		101%	

Note a: The AMEP Quality Assurance Provider Instructions specify that a minimum of 150 work experience files be verified, despite 154 being included in the annual plan.

Note b: In September 2020, the department agreed that the planned client file verification allocation would be delivered in Quarter 3 and 4 of the financial year. By the end of Quarter 3 that year, in March 2021, the department issued advice to the AMEP general service providers that ‘approximately two client file per contract region’ would be assessed on the ‘new template’. This new approach shifted focus from verification to ‘a focus on compliance to Service Provider Instruction’. The annual plan with the quality assurance provider was not updated to reflect this, instead a ‘cost tracking sheet’ was updated. The quality assurance provider’s annual report noted 100 per cent achievement against a revised target of 100 client file verifications for the period.

Note c: The September annual plan did not include details on the number of work experience files to be verified. The Quality Assurance Provider Instructions still required 150 client files to be verified.

Source: ANAO analysis of department records.



4.8 On the occasions where reporting from the provider was that it had not met a KPI, departmental records did not record whether Home Affairs employed, or considered employing, the contractual provisions which would have started with issuing a notice requiring service improvement.<sup>71</sup>

4.9 In February 2024, the quality assurance provider advised ANAO that:

Decisions and actions, external to LWA, such as management of contract transition [*see paragraph 2.53, paragraph 4.5, paragraphs 4.31 to 4.50*], service provider site establishment/business levels, suspension of QA verification services and KPIs [*see paragraph 4.5 and paragraphs 4.60 to 4.64*] during COVID-19 and extension of exceptional circumstances [*see paragraphs 4.60 to 4.64 and Appendix 5's paragraph 6*], obstructed LWA from delivering files numbers according to the annual plan. It would not have been appropriate for DHA to issue notices requiring service improvement given the contexts cited above.

### Departmental administrative arrangements

4.10 The department reduced its ability to appropriately manage the contract with the quality assurance provider by:

- frequent changes in the contract manager, with extensive reliance on hand over notes rather than contract records;
- inconsistency in reporting lines for the provider, depending on the work being delivered. Innovative projects and some program delivery documents have been delivered to the AMEP policy team, some to the AMEP operations team, and others to the AMEP governance and assurance services team; and
- deviating its focus on the work produced by the provider from quality assurance activities to program delivery (consultancy) work, which is also at odds with the procurement opportunity that was presented to the market and the assessment of competing proposals for the quality assurance provider role. Performance measures have not adapted in line with this change in focus, undermining the value of the performance framework in the contract.

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71 In February 2024, Home Affairs advised the ANAO that it had issued two breaches to the quality assurance provider for 'breach of services agreement - unauthorised emails (sent in error) which constituted a breach of privacy and unauthorised disclosure.'

## Recommendation no. 8

4.11 The Department of Home Affairs strengthen the contractual performance management framework for the provision of quality assurance services for the Adult Migrant English Program.

**Department of Home Affairs response:** *Agreed.*

4.12 *The department will commence implementation of this recommendation through the 2024–25 Quality Assurance Annual Plan.*

4.13 *The department has developed a new Performance Management Framework for the future contract arrangements.*

**Linda Wyse and Associates response:** *Agreed.*

4.14 *LWA is prepared to deliver fully on all performance indicators, as demonstrated in Financial Year 2023, with the COVID-19 disruption concluded or otherwise manage.*

## Has service provider performance informed planned quality assurance work?

Performance of AMEP service providers has not been a direct input into the development of quality assurance work. The department has not consistently implemented a risk-based approach to quality assurance work. The department decided to cease using a risk-based approach in 2020–21 and a proportional approach, based on student populations, was instead implemented from 2021–22.

4.15 The Department of Finance's *Contract Management Guide* advises entities to ensure that contractual obligations are carried out, including meeting performance measures, as 'not addressing supplier underperformance when reported may establish new reduced performance levels within the contract'. The intent of quality assurance activity is to ensure services are being delivered to a standard that supports achievement of program outcomes.

4.16 The contract with the quality assurance provider determines what information and inputs the provider may use to develop its annual plan of quality assurance activities. The contract places and obligation on the department to 'notify the Contractor, by 1 June each year, the: (a) risk profiles of each AMEP Service Provider'<sup>72</sup>, the budget within which the quality assurance work is to be delivered; and the number of client file verifications (for each contract region) and onsite quality assurance activities to be delivered that year.

4.17 The contract requires the quality assurance provider to prepare and submit, by 15 June each year, the annual plan which sets out the proposed quality assurance activity taking into account the information provided by the department. Provider performance against key performance indicators, provider's annual reports, or briefs from the AMEP general service provider contract managers are not included in this range of information to be drawn on when developing the annual

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72 The contract required the AMEP general service providers to provide an 'Annual Report' to the department by 30 September each year. The Annual Report is required to set out the provider's progress against their annual plan and reconcile invoices for the preceding quarter.

plan. Instead, the department is to include this information to inform the department's determination of the general service provider risk profiles.

## Risk rating

4.18 All three versions of the Quality Assurance Provider Instructions, which form part of the contracting suite<sup>73</sup> with the quality assurance provider and the department, stated that:

The risk rating will be dependent on:

- length of time contracted in the program
- Service Provider performance against Key Performance Indicators (KPIs)<sup>74</sup> and other contractual obligations<sup>75</sup>
- governance arrangements within organisation
- strength of stakeholders relationships.

4.19 The contract and Quality Assurance Provider Instructions specify requirements for the quality assurance provider on how activities with providers must be conducted based on the department's risk profile for the provider. Provider's deemed 'high or very high risk' are to have quality assurance activities and client file verifications conducted 'onsite' using 'original documentation', while client file verifications may be conducted offsite for moderate or low risk providers. The contract defines 'high risk provider' as a provider that will 'have a higher percentage of AMEP Client files reviewed every year' and report to the department how the provider 'will improve its performance against the KPIs'. These elements of the contract were not varied by any of the nine deeds of variation executed during the life of the contract.

4.20 The department has not met its obligation to produce and provide risk ratings to the quality assurance provider each year. Where ratings have been provided, there are no records to support the allocation of the ratings, and no evidence that the department has considered the inputs as described in the Quality Assurance Provider Instructions (see paragraph 4.18). It is not evident that provider performance informed the allocation of risk ratings.

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73 The AMEP Quality Assurance Provider Instructions are referred to within the contract. The Quality Assurance Provider Instructions provide the processes and procedures to deliver the contracted services, with the contract requiring that the provider be compliant with the procedures outlined in the Quality Assurance Provider Instructions.

74 Using service provider performance against key performance indicators requires service provider performance to be reported on, assessed and considered. Service provider's self-report achievement against key performance indicators in both mid-year and annual reports (see paragraphs 3.16 to 3.18), and the indicator relating to participants commencing in the program is the only indicator that has been reported and monitored by the department throughout the whole contract period. For the three most recently completed years (2020-21, 2021-22 and 2022-23) service providers have only had one KPI to meet, and report against.

75 On those occasions between 2017-18 and 2022-23 where reporting by a general service provider was that they had not met a KPI, departmental records did not outline that department employed the contractual provisions enabling it to issue a notice requiring service improvement. Similarly, it is not clear that this informed or resulted in changes to planned quality assurance activities.

**Table 4.3: Risk category allocated to AMEP general service providers by the department**

	Shared on or before 1 June?	Very high	High	Medium	Low	Not provided
2017–18 <sup>a</sup>	No. 29 June 2017	2	3	1	7	1 <sup>e</sup>
2018–19 <sup>b</sup>	No. 12 June 2018	0	9	0	5	0
2019–20 <sup>c</sup>	Yes. 2 April 2019	0	0	3	11	0
2020–21	No. Not provided	n/a	n/a	n/a	n/a	All
2021–22 <sup>d</sup>	No. 14 July 2021	0	0	0	14	0
2022–23	No. 24 June 2022	0	0	0	14	0
2023–24	No. 13 June 2023	0	0	0	14	0

Note a: The risk ratings provided in 2017–18 were allocated against a mix of providers and contract regions. While this approach is consistent with the design of the program, where services are provided by a single provider in more than one contract region (each with their own inherent regional risks), and may be delivered by sub-contractors, such an approach is inconsistent with the contract, that states that risk profiles will be provided for each service provider (see paragraph 4.16).

Note b: In 2018–19 risk ratings were allocated to contract regions, 25 regions were assigned ‘high’, 6 were assigned ‘medium’ and 22 ‘low’ risk ratings. ANAO has aggregated these allocations to a provider level.

Note c: In 2019–20 risk ratings were allocated to contract regions, three were assigned ‘high’, 19 were assigned ‘medium’ and 30 were assigned ‘low’ risk ratings. A consultant was contracted to review the allocation of quality assurance activity, and developed a ‘proportional’ approach. This had the effect of applying a ‘low’ risk rating to providers where their KPI4 score was 75 per cent or greater; and ‘medium’ where their KPI4 score was 75 per cent or less. The results of this approach have been reflected in the table.

Note d: The risk assessment of ‘low’ for all providers is at odds with the status of the program in June 2021 when risk profiles were to be finalised. At the time general service providers were at varying stages of reopening to onsite teaching after the pandemic lockdowns. Onsite quality assurance assessments (where possible) would have been of increased value at this time.

Note e: This provider was the main provider of services in New South Wales and the largest provider of services for AMEP.

Source: ANAO analysis of departmental records.

4.21 The approach to determining the ‘risk rating’ for providers has varied across the life of the program. In the first two years, risk ratings were allocated at a contract region level, without evidence to support the ratings. By May 2019, the approach developed for the department by ORIMA Research under a contract was adjusted by the department to determine risk based on general service provider results for their KPI4 (see Table 3.1 and paragraph 3.19). Only two risk ratings were applied: ‘low’ a KPI result of 75 per cent or greater; or ‘medium’ a KPI score of 75 per cent or less. It is not clear how it was decided that only two categories (low and medium) of risk would be used<sup>76</sup>; or why 75 per cent was selected as the threshold, particularly when the KPI requirement was that 80 per cent of assessments be accurate.<sup>77</sup>

76 At the time the KPI4 score at a contract region level, was that 30 of the 53 contract regions (57 per cent) did not meet the KPI4 threshold of 80 per cent, and a further 7 regions did not have any students so had no KPI score.

77 The risk ‘profile’ provided to the quality assurance provider on 2 April 2019 was inconsistent with the new model for two providers, where based on KPI4 results one provider’s KPI 4 score was possibly 97.6 per cent, but was allocated a risk of ‘medium’, and the other provider was allocated a risk of ‘low’ despite an average KPI 4 score of 59.3 per cent.

4.22 The department does not have records explaining or approving:

- the changed approach;
- the rationale to reduce the number of risk categories from an original four down to two; or
- the application of 75 per cent threshold to the KPI assessment rather than the contracted 80 per cent.

4.23 The reduction of available risk ratings from four categories to two ('medium' and 'low') has an impact for the application of the contract requirements on how 'high or very high' rated providers are to be treated (see paragraph 4.19). The approach employed by the department did not provide an option for a provider to be assessed as 'high' or 'very high' risk. This truncation had the effect of reducing the work required of the quality assurance provider and the department in managing 'high or very high' risk providers.

4.24 Risk profiles were not provided or considered in quality assurance planning for the 2020–21 financial year. The department's records indicated that the team undertaking the planning for quality assurance were concerned that there was not a clear process that was 'documented, transparent and easily understood'.

4.25 The department's failure to have a clear, evidenced-based approach to considering and evaluating AMEP general service provider risks, to inform quality assurance activities, resulted in the development of a quality assurance plan for the 2020–21 year that was mostly focused on 'support' activities and less on ensuring quality was being delivered. Notwithstanding this was when it would reasonably be expected that risks were high for all service providers (having transitioned to virtual and mixed mode tuition), and addressing COVID-19 impacts on schedules. The department recorded that:

- 'under the Contract the Department is required to provide the [quality assurance provider] a budget to allow [the quality assurance provider] to plan the next financial year's delivery of Quality Assurance Support Services. Under normal circumstances [the quality assurance provider] provides an annual plan and costings to the Department for consideration and agreement and that annual plan then forms part of the agreement'. The department made no reference to its obligation to provide the quality assurance provider with risk profiles on which to target the quality assurance plan.
- 'due to the impacts of COVID 19 and the uncertainty surrounding the extent of that impact into the FY 2020/21' only a quarterly plan was initially agreed, reflecting 'what is possible to deliver in a COVID 19 environment'. Despite 'the impact COVID 19 has had on the ability to undertake' quality assurance activities the department committed '20.6% of the expected \$1.2 million' budget for the first quarter activities. Quality assurance activities included in the first quarter plan were:
  - zero client file verifications;
  - zero client initial assessment file verifications;
  - zero onsite quality assurance activities;
  - three online professional development workshops; and
  - ongoing costs of maintaining the Assessment Task Bank

- The rest of the activities were ‘program delivery’ activities.
- By only approving a quarterly plan the department was provided with ‘time to review the quality assurance needs of the AMEP and determine the direction for Quality Assurance Support Services for the remainder of FY2020/21’.
- ‘the Department can engage [the quality assurance provider] under the Agreement to deliver other related Quality Assurance Support Services. These items fall under ... the Program Delivery Documents Clause. AMEP Policy Section, together with AMEP Operations Section, will work with [the quality assurance provider] to define these services.’

4.26 The quarterly plan was approved on 3 July 2020, with the record of approval noting:

The above activities should be considered indicative and are subject to agreement between LWA and the Department about in [sic] Quarter 1:

- Supporting the design, implementation and quality assurance of an interim performance measurement system<sup>78</sup>;
- Consideration of the next stage of the AMEP English Language Proficiency Framework with Melbourne University and key collaborators [see Appendix 4];
- Moving QA away from assessment verification to a more holistic QA that covers: teaching programs, targeting for cohorts, flexibility in delivery, promotional materials, referral to [Distance Learning];
- Providing for the contracting by LWA of experts to assist with AMEP policy design and program operations.

4.27 Records from April 2021 demonstrate that the department was considering how to approach planning for quality assurance for the 2021–22 financial year, and returning some of the original quality assurance activities to the plan. Records outline that the department’s methodology for sampling was to determine risk ratings at a provider level ‘based on KPIs and performance outlined in the annual report’. Departmental records did not evidence that this work was completed, nor that the proposed approach considered that the four KPIs originally planned to be used had reduced to one measured KPI by this time, and that the one KPI remaining related to ‘commencement’ of students, not ‘quality’ of tuition or achievement of student progress (see paragraphs 3.14 to 3.19). The continued determination that all 13 providers were ‘low’ risk, evidenced that no revised approach was applied.

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78 The ‘Interim Performance Measurement system’ was agreed by the Assistant Secretary 6 weeks later, on 12 August. This interim system supported the decision by the department to remove the requirement that providers assess student progress after every 200 hours of tuition. Instead, the department would accept assessment completed in line with the curriculum (conducted at more meaningful times, quarterly or end of term) as evidence of student progression. The intent being to reduce the duplication of assessment requirements on students, with focus on teaching and retention. The Assistant Secretary approved the recommendation that the quality assurance provider manage the implementation of this change in approach. Such a role is not a Quality Assurance role, but a program delivery role. The quality assurance provider’s role previously was to review the assessments recorded and consider supporting evidence and consistency across the program.

## Recommendation no. 9

4.28 The Department of Home Affairs undertake a systematic, documented, evidence-based approach to determining and targeting quality assurance activities based on general service provider performance and other risk information known to the department.

**Department of Home Affairs response:** *Agreed.*

4.29 *The department will strengthen its use of service provider performance and risk evidence to inform quality assurance activities.*

**Linda Wyse and Associates response:** *Agreed.*

4.30 *LWA is formulating steps to use current quality assurance activities to assist the Department in establishing risk profiles for each general service provider, which will inform a risk-based approach to planning quality assurance work.*

## Has the quality assurance provider appropriately monitored service provider performance?

The budgeting for, and tasking of, the quality assurance provider, by Home Affairs, has significantly changed the nature of services provided under this contract. The contracted provider has identified that the changes have redirected services from the intended purpose of the quality assurance role. As a result of the department refocusing the work of the contracted quality assurance provider to the delivery of professional development and development of 'program delivery documents', the quality assurance activities planned and delivered have not appropriately monitored the performance of the contracted general service providers.

4.31 The request for tender described the AMEP quality assurance services sought as: 'verification services including client files, work experience placements and onsite QA assessments that include teacher qualifications and curriculum verifications and additional services the following QA services'. The request for tender noted that the focus of the planned quality assurance activities would be 'directed at establishing the accuracy of assessments used to claim' achievement against the curriculum and 'consistent application' of the curriculum by AMEP providers. The request for tender, and the Quality Assurance Provider Instructions included, provided details on the quality assurance required. As outlined in Table 4.4, the Quality Assurance Provider Instructions and contract executed on 10 April 2017 aligned with the request for tender. The Quality Assurance Provider Instructions were updated twice (these adjustments are highlighted in bold text in Table 4.4) during the course of the contract, with no adjustments made to accommodate changes in quality assurance services during and after the COVID-19 pandemic.

**Table 4.4: Quality assurance service scope as outlined in Provider Instructions**

	Request for Tender	18 January 2018–31 July 2018	1 August 2018 to date
Client file verifications	3,000 client files each financial year, across all contract regions (minimum of 150 for each state/territory, with the remainder distributed based on risk)		<b>Removed number of verifications and minimum requirement across state/territories</b>
	Accuracy and consistency of AMEP client assessments (including: initial assessment, progressive assessments, supporting material and alignment to curriculum indicators)		
	Accuracy and consistency of AMEP client attendance records including evidence of the Service Provider strategies to encourage retention		<b>Deleted</b>
	Accuracy and consistency of the AMEP Client's Individual Pathway Guidance specifically that it was developed in accordance with department guidance, updated every 200 hours following each progressive assessment		
	Accuracy and consistency of suitability AMEP Clients enrolment (offsite or onsite) is appropriate to the [student's Individual Pathway Guide]		
Work experience program (SLPET)	150 client files in the AMEP Sub-program ( <i>Settlement Language Pathways to Employment and Training</i> ) each financial year, across all contract regions		
	Suitability and appropriateness of AMEP work experience placements (offsite or onsite) alignment with departmental policy		
	Appropriateness of placement duties with learning outcomes		
	Appropriateness of placement with client's IPG goals		
	Appropriateness of place with client's English language proficiency		
	Alignment with Service Provider's SLPET annual plan		
Onsite quality assurance	One for each AMEP contract region at least once per year		
	Suitability of Service Provider delivery sites facilities (safe, clean and with appropriate facilities)		<b>Deleted</b>
	Verification of teacher qualifications		<b>Assessment</b> of teacher qualification
	Verification of curriculum and resources		<b>Assessment</b> of curriculum and resources
Distance Learning	Onsite quality assurance assessment of each distance learning provider as per other providers, excluding suitability of learning environments		

Note: **Bold text** highlights the changes made to the scope of the service.

This is not a complete list of contracted services, it is only services specific to the quality assurance function. Services not included are set out in paragraph 4.32.

Source: ANAO analysis of departmental records.

4.32 Other services included in the contract with the quality assurance provider that did not relate to quality assurance were:

- management and maintenance of the AMEP Assessment Task Bank (later AMEP Hub), including assessment task validation, hosting and promotion of a secure website and an additional website, for publicly available learning resources;



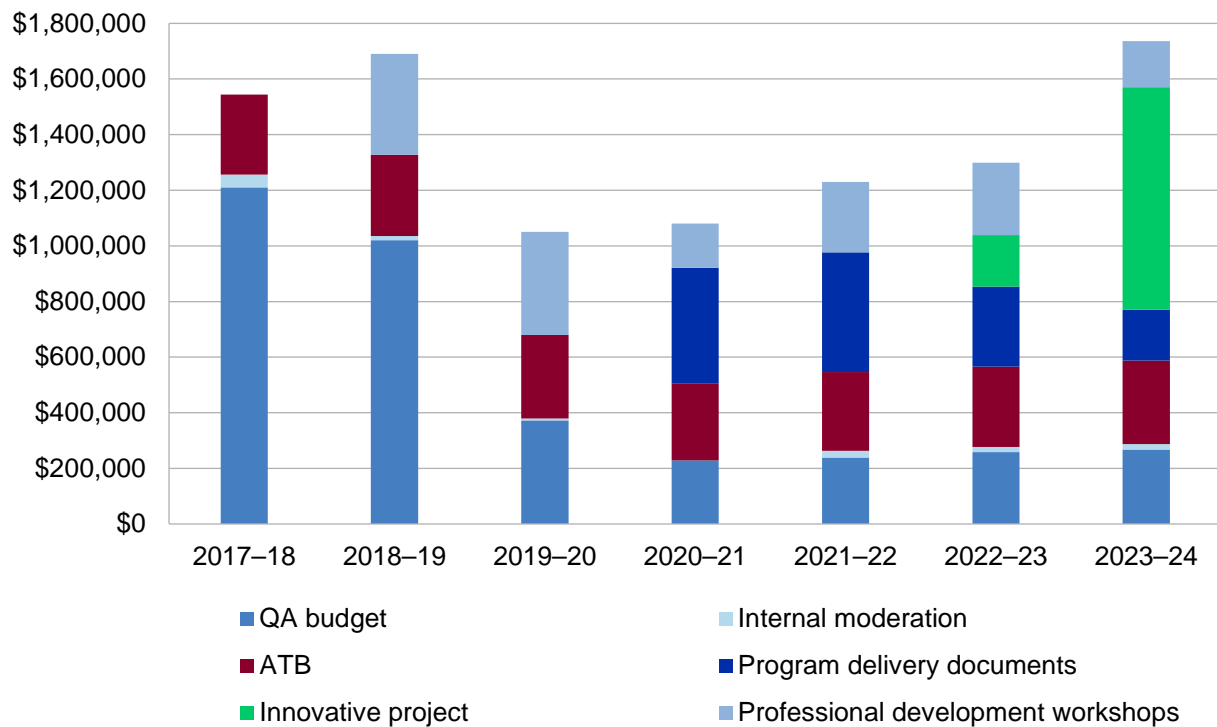
- preparing program delivery documents (described as ‘materials to support Service Providers in the delivery and administration of the program’ and that may include the development of ‘templates; instructions; coversheets; and guidance material’);
- delivery of professional development workshops (added in the January 2018 variation to the contract); and
- innovative projects (added in the December 2021 variation to the contract).

### **Allocation of funding budgeted for quality assurance work**

4.33 The focus of the request for tender for the quality assurance provider role, and the resulting contract, was the delivery of quality assurance services (verification services including client files, work experience placements and onsite quality assurance assessments that include teacher qualifications and curriculum verifications and additional services) and Assessment Task Bank (ATB) management to support the delivery of AMEP.

4.34 In 2017–18, the first year of the contract, funding for the quality assurance provider was consistent with this emphasis as 78 per cent of the budget was approved by the department for quality assurance services and 19 per cent for ATB management. Over time, the allocation of the budget for the quality assurance provider services has changed considerably such that it is no longer consistent with the approach to the market and the resulting contract. While ATB management has been approved for between 17 per cent and 29 per cent of the budget in each year, there has been a marked decline in the budget allocation for quality assurance services. This decline began in the second year (2018–19) of the contract, with the largest reduction occurring when the department approved the plan for the third year (2019–20) of the contract, and has continued such that, for 2023–24, only 15 per cent of the budget was approved for quality assurance services (see Figure 4.1). As a result, the emphasis in service delivery has changed from quality assurance work to other activities. Reflecting this situation, in February 2024, LWA advised the ANAO that ‘LWA’s quality assurance role has been hollowed out over the course of this contract and now LWA’s services do not verify program educational content’.

**Figure 4.1: Distribution of funding to quality assurance activities as set out in approved quality assurance annual plans**



Note: Innovative projects were only separately reported, and clearly traceable in the annual plans from 2022-23. Prior to that they were incorporated into program delivery document activities (see paragraph 4.58).

Source: ANAO analysis of departmental records.

### Quality assurance activities

4.35 The contract with the quality assurance provider requires the department to issue work orders outlining which contracted services are to be delivered. A total of six work orders have been issued.

4.36 The first work order commenced on 1 July 2017 for a period of three financial years, ceasing 30 June 2020. Separate work orders were issued for 2020-21, 2021-22, 2022-23 and 1 July 2023-31 December 2024. No variations to any work orders could be located to account for:

- the five variations during the same period;
- the addition of professional development workshops (see paragraphs 4.51 to 4.53);
- the changes made in September 2018 to the administration of the quality assurance function with administering department's state networks assuming elements of the

quality assurance scope of services<sup>79</sup> (and the subsequent reinstatement of the work in February 2021<sup>80</sup>);

- changes to program delivery document acquisition process (see paragraph 4.56);
- changes to requirements for the 2020–21 quality assurance planned activities<sup>81</sup> as a result of the COVID-19 pandemic (see paragraphs 4.60 to 4.64); or
- changes in April 2021 to the legislation that underpin AMEP service and service requirements; or
- inclusion of innovative projects into the contract (see paragraphs 4.58 to 4.61 and paragraphs 4.65 to 4.67).

4.37 Instead, changes to service requirements for each year were incorporated into the Annual Plans drafted between the department and the service provider.

4.38 Not all elements of the provider instructions regarding quality assurance services were met. The quality assurance provider reported against service delivery for quality assurance activities are part of its annual KPI reporting (see paragraphs 4.6 to 4.9). As outlined in paragraph 4.34 and illustrated in Figure 4.1, services delivered by the quality assurance provider have deviated from quality assurance activities, with the focus increasingly on program delivery documents and innovative projects.

### Volume of quality assurance activities

4.39 The number of client file verification activities (per contract region) and onsite quality assurance activities are to be advised by the department to the quality assurance provider by 1 June each year (see paragraph 4.16). Initially the number of each of these activities was incorporated into the Quality Assurance Provider Instructions (see Table 4.5).

4.40 The quality assurance provider is to allocate the number of client file verifications and onsite quality assurance activities based on provider risk (see paragraph 4.17) across an annualised plan, based on requirements in the contract and the Quality Assurance Provider Instructions. One key change was made to the requirements over time (see Table 4.5), specifically to remove the stated number of client file verifications to be completed.

79 In March 2018, the administration of AMEP was restructured, including decentralising compliance and quality assurance processed to the State Office network of the Department of Education (see paragraphs 1.6 –1.7). Aspects of the quality assurance contractor’s work deemed ‘generalist’ were reallocated to departmental staff. This included: verifying suitability of tuition venues and equipment; ensuring teaching facilities met the minimum Commonwealth safety standards; verifying client files were maintained to the standard required by the Commonwealth; and verifying accurate attendance records and strategies for student retention. The fees for the impacted activities were varied with the quality assurance contractor.

80 In February 2021 all work was reinstated and the fees for the associated services similarly reinstated.

81 A work order was issued in April 2020 to establish a basis for work to be delivered by the quality assurance provider during the COVID-19 pandemic. This was not a work order for quality assurance services, and was issued under clause 2.18 of the contract, for the ‘development of program delivery documents’, this is discussed at paragraphs 4.60 to 4.64).

**Table 4.5: Advised distribution of assurance activities**

Requirement	July 2017	January 2018 <sup>a</sup>	August 2018 <sup>b</sup>
Client file verification	3,000 client files must be verified each financial year, across all Contract Regions		Deleted
	Each state/territory will receive a minimum of <u>5%</u> of the total client file verifications ( <u>150</u> )		Deleted
	The remainder of client file verifications will be distributed nationally by the department based on risk		Verifications will be distributed nationally by the department based on risk
Onsite quality assurance activity	<u>One</u> visit to <u>each AMEP contract region</u> in your remit at least once per year	Each AMEP service provider <u>at each contract region</u> , at least once per financial year and as directed by the department in the Risk Profiles	
Work experience file verification	150 work experience placement records must be verified each financial year across all Contract Regions		
	The verifications must be distributed geographically to ensure that an appropriate range of SLPET work experience records at metropolitan and regional/rural AMEP sites are verified		

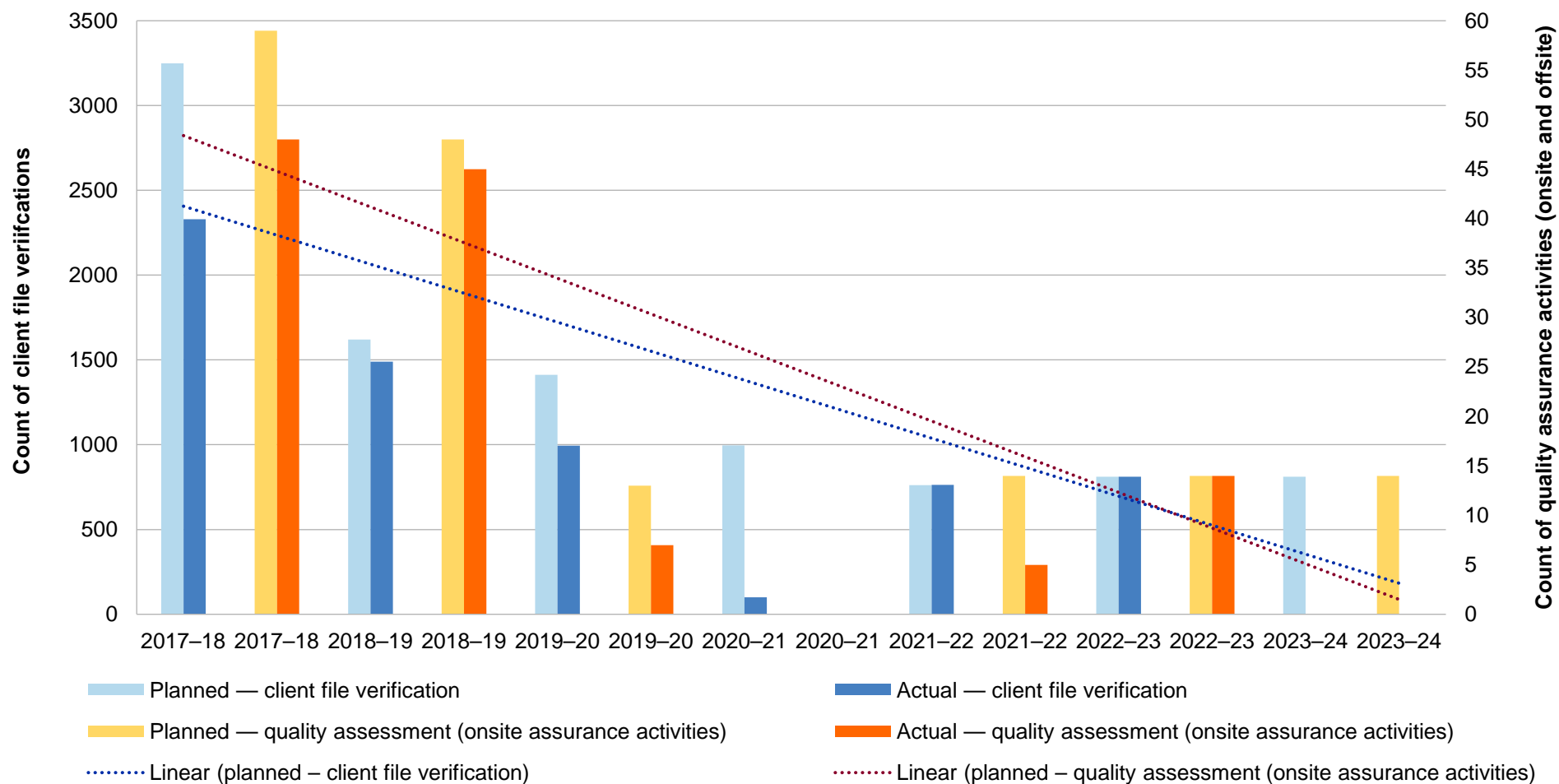
Note a: In response to queries from ANAO, LWA advised on 20 November 2023 that it was not aware of the January 2018 version of the Quality Assurance Provider Instructions. LWA advised that 'changes in the scope of the quality assurance services resulting from variations to contracts were incorporated into LWA's work via changes in project work, templates and processes and the issuance of annual plans.' ANAO notes that this approach by the department to administer the contract is inconsistent with the contract. Rather than a single source of truth, or a clear line of requirement, three versions of requirements exist, the contract requirements, the outdated Quality Assurance Provider Instructions, and the less than detailed work orders which refer back to the contract.

Note b: This version of the Quality Assurance Provider Instructions was redated in March 2020 following machinery of government changes which moved the AMEP to Department of Home Affairs. The only change made to the instructions was the rebranding of the document to carry the Home Affairs document header. No content was changed. The department confirmed to ANAO on 21 November 2023 that the quality assurance provider was not provided with a copy of the rebranded Instructions.

Source: Departmental records.

4.41 Consistent with the August 2018 change in Quality Assurance Provider Instructions, the number of client verifications to be completed was reduced from 2018–19 (see Figure 4.2). It was not evident from department records how the planned figures were arrived at for each year. Despite no changes being made in the contract or the Quality Assurance Provider Instructions on the number of onsite quality assurance activities (52 contract regions are serviced by general service providers, and 7 are serviced by the Distance Learning provider), the number of planned activities declined from 2018–19.

**Figure 4.2: Changes in planned and actual quality assurance activities**



Note: Data is not yet available for activities completed in 2023–24 as annual reporting from the quality assurance provider is due to be submitted on 30 September 2024.

Source: ANAO analysis of departmental records.

### *Allocation of quality assurance assessments*

4.42 Quality assurance assessment are activities undertaken to:

- assess the suitability of the learning environment (including that: sites are compliant with relevant state and territory safety standards; the facilities are safe, clean and well maintained; equipment, furniture and fittings are sufficient and fit for purpose; and the size and layout meet the learning needs of clients);
- verify teacher qualifications (including: that minimum Registered Training Organisation requirements are met, that AMEP additional requirements are met; and that teachers with appropriate qualifications are teaching appropriate AMEP streams);
- verify the curriculum and resources used for teaching (including: that the curriculum used aligns with the curriculum registered with the department; that the curriculum used is suitable to achieve client outcomes; that the educational resources are maintained and relevant to the curriculum and are in a good condition with sufficient supply and variety to suit the needs of client); and
- undertake client file verifications (for high-risk service providers).

4.43 The KPI in the contract stated that the provider ‘must complete one onsite assessment per service provider, per contract region per financial year, or as specified in the annual plan’ (see Table 4.1). As outlined in Figure 4.2, quality assurance assessments have not been planned or completed against all 53<sup>82</sup> services contract regions each year.

4.44 In response to ANAO questions about the inconsistency between the Quality Assurance Provider Instruction requirements and delivered activities, the department advised, in October 2023, that ‘the number is determined by the department’ and is based on one per ‘each AMEP provider’, noting that ‘where there are multiple sites in a contract region, [the quality assurance provider] ensures that different sites are visited each year’ and that ‘there is discussion with the provider to organise the site that is visited’. The ANAO further queried whether the approach to selecting sites for onsite assessment was ‘risk based’ or potentially ‘event based’ with the department advising that the quality assurance provider ‘is not informed by service providers of most of the factors you’ve noted (i.e. changes in [service provider] staff, changes in class room venues, complaints, ASQA concerns’ and that ‘selection of sites occurs following discussion with service providers, with sites selected on a rotating schedule’. This is not a risk based approach, nor does the coverage align with the Quality Assurance Provider Instructions approach of each contract region.

4.45 Annual plans have varied the figures over time to only complete one onsite quality assurance assessment per provider per financial year. This means that not all contract regions are planned to be examined. Such an approach relies on strong governance within the service providers to ensure that their internal processes enforce compliance with the AMEP contract requirements and does not consider regional impacts or subcontracting arrangements, without those governance

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82 The request for tender identified 58 contract regions, plus distance learning. On award of contracts, the 53 contract regions were awarded to the 13 service providers, the regions not awarded were to be serviced through distance learning.

arrangements being assessed as to whether they can be relied upon. This is particularly impactful where:

- the sole provider in the Australian Capital Territory, also provides services in Tasmania and New South Wales, so for the 2019–20, 2020–21 and 2023–24 years no onsite quality assurance activity was planned for the Australian Capital Territory, and no work was completed in 2019–20 and 2020–21;
- no onsite quality assurance activity was planned for the sole provider in the Northern Territory in either 2019–20 or 2020–21, and no work was completed in 2019–20, 2020–21 or 2021–22; and
- where one provider is contracted to deliver services for an entire state, such as in Queensland and South Australia, only one onsite quality assurance activity was planned for 2019–20, 2021–22, 2022–23 and 2023–24.

#### *Allocation of client file verification activities*

4.46 While the Quality Assurance Provider Instructions required activities to be ‘distributed nationally based on risk’, the quality assurance plans do not evidence that this occurred.

4.47 In 2017–18, for example, the one provider with no risk rating was allocated 450 client files for verification<sup>83</sup> whereas:

- the two providers with a ‘very high’ rating were allocated between 30 and 150 file verifications per contract region, the same number of files also allocated to the three providers with ‘high’ risk ratings; and
- one ‘low’ rated provider was allocated 17 files for verification whereas the other six ‘low’ risk providers were allocated between 125 and 150 client file verifications per contract region and the ‘low’ rated Distance Learning provider was allocated 325 file verifications.

4.48 Changes were made to the approach in each of the next three years. For example, in 2021–22, all providers were allocated low risk, with the only factor actually determining number of client file verifications was the student population size of each provider.

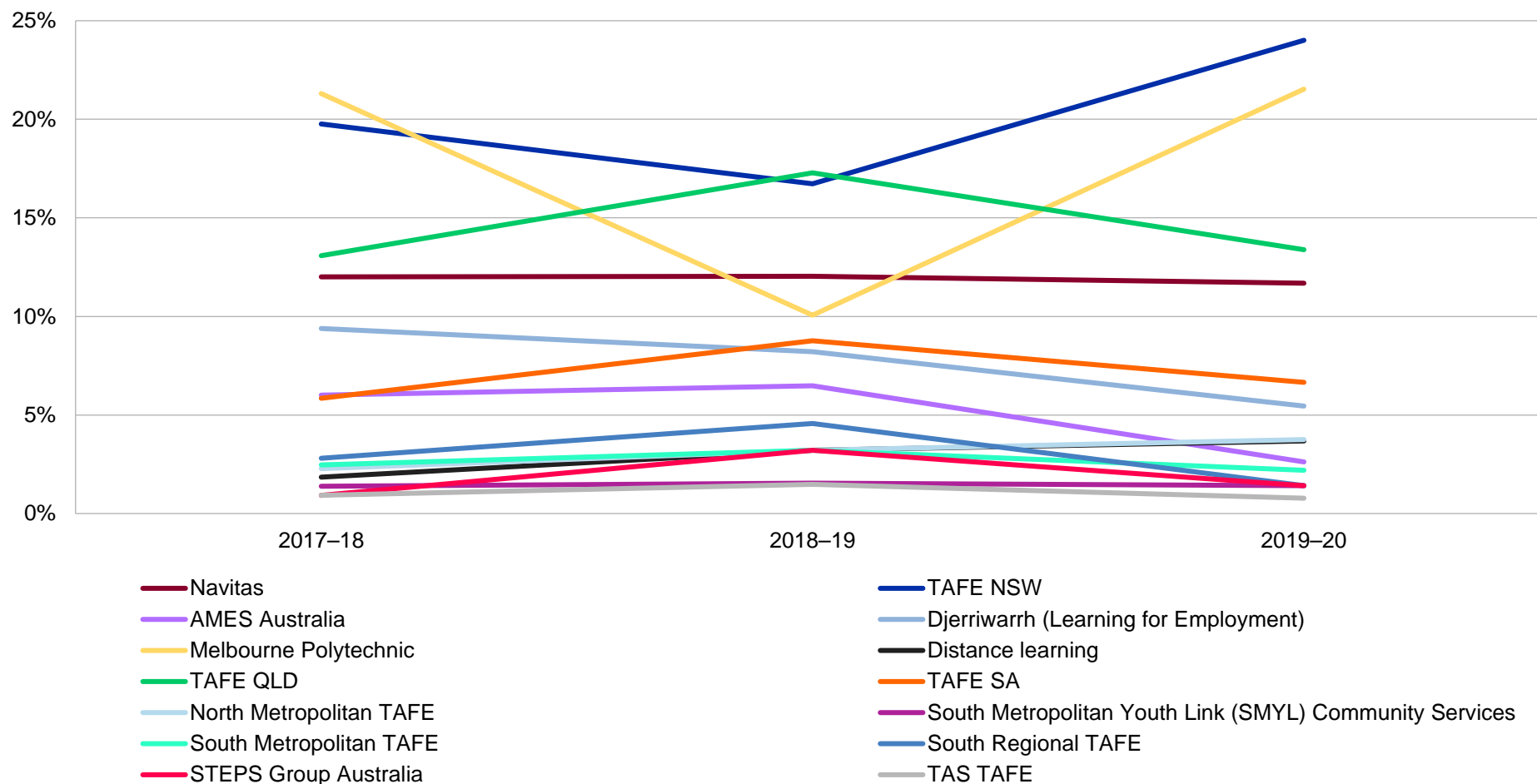
4.49 In 2022–23 and 2023–24, the allocation method from 2021–22 was reused.

4.50 The changes in approach to allocating client file verifications by the department has had little impact on the proportion of client files each provider was required to have verified by the quality assurance provider (see Figure 4.3). Other than for two providers, the allocations are largely consistent (as a portion of total file verifications) across the annual plans and, where there are changes, these are not informed by changes in assessed risk. Instead, the approach simply reduced the number of files verified from an original sample of 3249 files to 1412 files.

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83 This allocation was split in half, with 225 allocated to the provider’s distance learning client files, and 225 for its NSW client files.

**Figure 4.3: Changes to proportion of client file verification allocated to provider as a percentage of total client file verification sample size**



Note: Client file verification allocated to TAFE NSW have been split, to distinguish between those allocated to the provider in its general service provider capacity, and as the sole Distance Learning provider.

Source: ANAO analysis of departmental records.



## **Volume of professional development workshops**

4.51 Less than seven months after the quality assurance contract was executed it was varied to include a new service, the provision of ‘professional development workshops’ that had not been included in the request for tender. The topics were to be based on the quality assurance provider’s ‘experience of Quality Assurance Assessments and Client File Verifications’ taking into account the ‘developmental needs of the Personnel of the AMEP Providers delivering AMEP Services’.

4.52 The variation stated that the provider was to deliver these workshops ‘at its own cost’. Despite this, the same deed of variation also amended the fee schedule, and included a fee for holding profession development workshops in particular regions.

4.53 Eight months later (September 2018) a variation was made to the contract to include an additional location for professional development workshops to be held, for a fee, increasing the average cost of professional development workshops. None of the subsequent variations removed the clause that specified Professional Development Workshops were to be conducted at the quality assurance providers ‘own cost’. The Department of Home Affairs has paid the quality assurance provider for the Professional Development Workshops held in accordance with quality assurance Annual Plans provided by the quality assurance provider each year.

4.54 In 2017–18, six professional development workshops were held. This increased to 24 in 2018–19 and 2019–20 (representing 21 per cent and 35 per cent of the total budgets for those years). In 2020–21 annual plans of the quality assurance provider included 35 workshops (representing 15 per cent of the total quality assurance budget for the year) to be held online, despite having no online fee agreed within the contract, and no variation made to date to include a fee. Ultimately, 18 workshops were delivered. In 2021–22, 24 online workshops (representing 21 per cent of the total quality assurance budget for the year) were delivered online. The quality assurance provider’s annual plan for 2022–23 included holding 25 online workshops, representing 21 per cent of the total quality assurance budget for the year.

## **Volume of program delivery document activities**

4.55 In addition to the main service sought in the request for tender from a quality assurance provider, the request for tender and initial contract included the provision of ‘additional services’, including development and provision of ‘program delivery documents for use by AMEP service providers’ such as ‘templates, instructions, coversheets or guidance material’.

4.56 Initially the department was to determine ‘a need’ and provide a full scope and details of the required work to the provider. On 24 September 2020 the contract was varied so that the department would ‘consult with the Contractor to determine the full nature and specifics of the documents to be developed’ and if required three quotes for any specialist expert services would be sought.

4.57 A work order would be issued, under the contract, by the department with respect to any program delivery document projects agreed. The ANAO identified five such work orders<sup>84</sup>, with a total budgeted cost of \$332,192 (excluding GST):

- Work Order 2, commenced April 2018, to deliver an AMEP Curriculum and Teacher Assessor Qualification Guide;
- Work Order 3, commenced November 2018, to deliver a 'Streamlined CALD IA/PTA Kit' including trial and revision of the kit, and publication of report on kit use;
- Work Order 2, commenced December 2019 to map the 'AMEP Curricula to the Outcomes Framework – Stage 1' (see Appendix 4);
- Work Order 3, commenced February 2020, to continue the December 2019 work a deliver 'Outcomes Framework – Stage 2' (see Appendix 4); and
- Work Order 4, commenced April 2020, to 'support teachers in their transition to online/remote delivery' as a result of the COVID-19 pandemic. The quality assurance provider's existing quality assurance work was ceased, and work was redirected to:
  - revise the Assessor Guide previously created by the contractor for initial assessments and update to facilitate virtual/mixed mode delivery of the initial assessment by AMEP Providers;
  - deliver four training sessions to AMEP Providers about 'online/remote (booklet) delivery' and the delivery of the virtual/mixed mode initial assessment;
  - manage a 'Q&A chat forum ... to answer teacher queries and concerns';
  - introduce a 'suite of resources' to the AMEP website to support virtual participate/mix mode delivery of AMEP;
  - deliver a suite of professional development training to highlight best practise for virtual/mixed mode initial assessments and AMEP delivery;
  - provide a report to the department on the innovation of providers, success of transitioning and delivery of virtual/mixed mode service provision, challenges encountered and recommendations to inform future online delivery of the program.

4.58 The annual plan for quality assurance work included 'program delivery documents' and later 'projects'. As illustrated in Figure 4.1, the budget allocated to 'additional services', including program delivery documents, and later innovative projects (see paragraphs 4.65 to 4.67), increased over time.

4.59 The work completed through 'program delivery documents' does not support the quality assurance activities that monitor the performance of general service providers.

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84 Numbering of work orders was mostly sequential, and tied to a financial year, with the count reset each financial year, with some consideration given to ongoing work orders or those with extensions to end dates.

### *Impact of the COVID-19 pandemic on assurance activities*

4.60 In March 2020, the department advised the minister that ‘non-critical work’ was being ‘put on hold’ in response to the COVID-19 pandemic. The list of paused non-critical work did not include any quality assurance activities.<sup>85</sup>

4.61 The following month the minister was briefed on the department’s decision to ‘relax performance monitoring and compliance activities for the next quarter [... including the] suspension of file verifications (audits will not be scheduled for a later date) and onsite assessments for General and DL providers’. While the attachments to the brief informed the minister that the department had suspended application of general service provider key performance indicators two (attainment) and four (accuracy of assessment), no advice was provided regarding the decision to also suspend the quality assurance provider’s KPIs (see Table 4.1).

4.62 On 18 April 2020, the department decided to redirect planned quality assurance activities to instead support service providers ‘transition to Virtual Participation and Mixed Mode delivery of AMEP service’ for an additional cost of \$125,909. The work order issued for that changed work did not include quality assurance activities that monitored the performance of general service providers and was issued under contractual provisions relating to ‘program delivery documents’ (see paragraph 4.57, fifth bullet point).

4.63 Two months later, on 25 June 2020, the department held a workshop (led by the quality assurance provider) with AMEP service providers to ‘explore possible interim methods of measuring language progression in the AMEP’. Six weeks later (12 August 2020), the department decided that the quality assurance provider would:

- ‘manage the implementation of interim Progressive Assessments, including ... consultation with providers and the Department, to determine appropriate quality assurance verification activities, to be rolled out in Quarter two’;
- ‘work with providers to determine an appropriate verification process, once the implementation of the interim measures rolls out’; and
- return to the decision-maker in ‘Quarter 2 with a proposal for a more holistic QA that covers- teaching programs, targeting for cohorts, flexibility in delivery, promotional materials and referrals to DL (in consultation with [the quality assurance provider]’.

4.64 No variations were made to the contract with the quality assurance provider to accommodate these changes in service requirements.

### **Innovative projects**

4.65 On 2 December 2021 the quality assurance contract was varied to allow the department to ‘invite’ the quality assurance provider to submit a proposal for Innovative Projects, a term not defined in the contract. Innovative Projects are also not defined or expanded on in the Quality Assurance Provider Instructions which support and clarify the delivery arrangements for the contract. Innovative Projects are defined in the AMEP general service providers contractual arrangements (see paragraphs 2.35 to 2.41).

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85 The list included: planned request for tender for AMEP trials; AMEP English Language Proficiency Framework; review of the AMEP funding model; establishment of an AMEP Advisory Committee; Offshore English Language Support Program; and funding conversational English through a National Community Hubs program.

4.66 After variation, the contract with the quality assurance provider required the department to invite the provider to submit a proposal for an innovative project. If the department agreed to accept the proposal, the department is required to issue a work order. The ANAO identified one such work order, which was varied four times.

4.67 Issued four days after the variation to the quality assurance provider's contract, the work order was for the delivery of a 'online platform and e-learning content'. The total budget for the work order was \$1,598,763 (excluding GST), nearly four times the cost of all 'program delivery document' work planned to be completed that year (see Figure 4.1). The work was to be completed by 30 June 2022. By the end of the fourth variation, the budget for the Innovative Project was \$5,454,545 (excluding GST), and delivery of the project was varied by a year, to 30 June 2023. The revised budget was nearly four times greater than the original budgeted cost, and 8 times larger than the cost of all other 'program delivery document' work planned for 2021–22 and 2022–23 financial years (see Figure 4.1). The quality assurance provider advised ANAO in February 2024 that the change in cost was 'due to changes in project scope by the department.'

4.68 Further advice to the ANAO from the quality assurance provider in February 2024 was that:

LWA was hired for their expertise in the field and ability to verify educational outcomes of clients in the AMEP. We verified:

- Validity, appropriateness, and reliability of educational outcomes for the learner against their individual learning plan (accurate assessment KPI)
- Timeliness of educational outcome meeting program objectives (attainment KPI)

LWA would like to reapply our expertise to these objectives to ensure program tuition remains valid and appropriate for the AMEP cohort and timely and reliable within and across all providers.

Our current QA activities do identify issues for continuous improvement and reoccurring issues for timed rectification. However, we acknowledge that the current processes do not monitor the quality of services being delivered. Also, the percentage of files we currently verify does not reflect accurate provider risk ratings.

LWA would like to ensure the department retains Quality Assurance services which monitor the quality of services being delivered to students (qualitative KPI), and does not merely monitor quantitative KPIs, such a minimum of 90% of AMEP client exited by the service provider who have not completed a CSWE Certificate of the Pre-CSWE Course have achieved a Statement of Attainment (Service Provider KPI from 2011 AMEP contract).

## Recommendation no. 10

4.69 The Department of Home Affairs give greater emphasis to monitoring the quality of services being delivered to students by the contracted general service providers.

**Department of Home Affairs response:** *Agreed.*

4.70 *The department will refocus the work of the quality assurance provider through the 2024–25 Quality Assurance Annual Plan.*

4.71 *The department has developed a new Performance Management Framework for the future contract arrangements.*

**Linda Wyse and Associates response:** *Agreed.*

4.72 *LWA will explore, in negotiation with the Department, establishing and implementing processes which monitor the quality of services being delivered to students by the contracted general service providers. Processes will include the manner in which to act on issues identified in the QA process and proactively support providers with continuous improvement in delivery.*

## Has the AMEP service provider performance been improved through the work of the quality assurance provider?

The contractual arrangements in place do not allow an evidence-based assessment of whether the work of the quality assurance provider has improved the performance of the general service providers.

4.73 The Department of Finance's *Contract Management Guide* states that 'good performance management is key to delivering value for money', and that performance measurement should be based on the performance framework included in the contract. For the AMEP general service providers, this framework included key performance indicators and quality assurance activities. The *Contract Management Guide* advises that entities should ensure information used to assessment performance is 'accurate, fair and verifiable'.

4.74 As outlined in paragraphs 3.11 to 3.19, the performance of the general service providers has not been measured consistent with the contracts, and the four key performance indicators established have not been applied for the life of the contract. Only one measure of provider performance remains, and that is student commencements. This measure is not directly impacted by the quality assurance activities completed by the quality assurance provider. In these circumstances, there is insufficient evidence to analyse the performance of AMEP general service providers over the life of the contract.

4.75 The work of the quality assurance provider, as tasked by the department, has deviated from providing primarily quality assurance activities to the provision of professional development workshops, program delivery documents and an online platform for e-learning (see paragraphs 4.39 to 4.50). The volume and statistical significance of quality assurance activities reduced over time (see paragraphs 4.31 to 4.50) such that it cannot be relied upon to accurately and fairly represent performance. The effects of the 'additional services' on provider performance have not been measured by the department.

4.76 There is no performance indicator in the quality assurance provider's contract that addresses the extent to which the contractor's work has resulted in improvements to general service provider performance.

4.77 Surveys of AMEP students, seeking views on the performance and value of the program, have been conducted by the quality assurance provider since 2020. The benefit of these surveys is limited as:

- response rates have been between 15 and 20 per cent; and
- except for the survey conducted in May 2023, results were provided at a whole of program level, not provider level.<sup>86</sup>

### Have payments to the quality assurance provider aligned with the contract and the services provided?

The invoices for the AMEP quality assurance provider have not been appropriately verified or paid in accordance with the AMEP quality assurance contract.

4.78 Verification of invoices is important to ensure the proper use of Commonwealth resources. The Department of Finance's *Contract Management Guide* states that departments should only made a payment when the service has been received and meets the required standards; the supplier is compliant with the contract; the invoice is accurate and correct according to the contract; and when all necessary authorisations and approvals have been obtained.

4.79 Invoicing and payments to the quality assurance provider has not consistently adhered to the contract with issues identified in a number of areas, including: monthly instalments and quarterly adjustments; engagement for services outside of the contract; application of goods and services tax; and invoicing and payment anomalies (see Appendix 6 for details).



Rona Mellor PSM  
Acting Auditor-General

Canberra ACT  
13 June 2024

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86 Questions relevant to assessing provider performance were student satisfaction levels with: teacher preparations; interest level of lessons; relevant of learning materials; availability of flexible learning; class sizes; and quality of facilities.

# Appendices

## Appendix 1 Entity responses

### Department of Home Affairs response



Australian Government  
Department of Home Affairs

SECRETARY

EC24-002697

Ms Rona Mellor PSM  
A/g Auditor-General  
Australian National Audit Office  
GPO Box 707  
Canberra ACT 2601

Dear Ms Mellor

Thank you for the opportunity to provide feedback and comments on the Section 19 Report (the Report) on the Administration of the Adult Migrant English Program (AMEP) contracts that was provided to the Department of Home Affairs (the Department) on 14 March 2024.

The AMEP has been in place since 1948 and has supported access to free English language tuition for more than two million eligible migrants and humanitarian entrants, to help them successfully settle and participate in Australian society.

The Department acknowledges that there are opportunities for improvement in the management of the AMEP Agreements. The Department has agreed to the recommendations made by the ANAO and notes since implementation of Administrative Orders, which transferred the administration of the AMEP to the department in July 2019, the Department has sought to strengthen processes, procedures and the technology that support the management of the AMEP Agreements. The Department notes that several recommendations made by the ANAO have previously been identified by the Department as opportunities for improvement, and have been considered and incorporated into the design of the future AMEP contract/s.

While acknowledging room for improvement, the Department does not consider the ANAO's findings, listed below, reflect and recognise the environment in which the AMEP Agreements were being delivered:

- The design and administration of the current Agreements have not been effective, and
- The appropriate contractual arrangements are not in place<sup>4</sup>

These arrangements have supported eligible migrants and humanitarian entrants to improve their English language skills and settle into Australia throughout the contract cycle. The program's positive outcomes are demonstrated through client progression data, client survey results and longitudinal research findings<sup>5</sup>.

During this contract cycle, the COVID-19 pandemic redefined how we all lived and worked and was a period of unprecedented disruption, which required complex operational decisions to be made quickly. The extent and speed of change for delivery in response to COVID-19 impacted the Department, service providers, teachers and AMEP clients (many of whom had low literacy skills - both language and digital - with limited access to technology).<sup>6</sup> The socio-economic challenges faced by people in Australia with limited or no English language skills are well documented and the AMEP prioritised the ongoing engagement of AMEP clients during this period.

Despite the challenges of COVID-19, many positives were reported, such as increased innovative practices, knowledge sharing, delivery flexibility, and renewed investment in learning resources. The Department's use of the exceptional circumstance work orders<sup>7</sup> issued under the Agreement supported the ongoing delivery of a critical government program in a rapidly changing operating environment, as did the use of the Quality Assurance Agreement to support the sudden change in the modes of program delivery. The impact of the pandemic on the administration of the Agreements and their deliverables was significant and required a careful balance to meet broader government expectations.

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As indicated in the Report, in 2016 the then Department of Education and Training (DET) undertook a procurement, which established the Panel for the provision of services in: the AMEP, the Skills for Education and Employment (SEE) Program, Quality Assurance for AMEP, and Quality Assurance for SEE (the Panel). Following the establishment of the Panel, Administrative Orders due to Machinery of Government changes transferred responsibility of the AMEP to the Department of Home Affairs in July 2019. The Department notes that the Agreements, as transferred to the Department, had established operational reference points. Overarching responsibility for the Panel and the SEE Program was retained by the then Department of Employment, Skills, Small and Family Business (DESSFB), later the Department of Education, Skills and Employment (DESE), now the Department of Employment and Workplace Relations (DEWR).<sup>9</sup> The Report includes references to variation processes and actions led by DEWR as the lead agency for the Panel. The Department is not authorised to respond on behalf of DEWR and was unable to discuss these matters with DEWR, due to the operation of section 36 of the Auditor-General Act 1997. As such, the Department was in a position where it was not able to effectively provide information on processes in which it has had limited or no involvement.<sup>9</sup>

To support the conduct of the inquiry, the Department has provided access to certain legal advices and referred to legal advice in its responses to the audit. These advices and references to legal advice were provided to the ANAO following written confirmation, dated 14 February 2024, that the information was requested under section 33 of the Auditor-General Act 1997 and that the protections in section 30(2) of the Auditor-General Act 1997 apply to that information. The legal advices were provided for the purposes of the audit only and as agreed by the ANAO, legal professional privilege in those advices is not waived.<sup>9</sup>

The Department's summary response to the draft Report for inclusion in the final Report (**Attachment B**), as well as a response to the recommendations (**Attachment C**), is attached.

The Department values the role of the ANAO in supporting accountability and transparency in the public sector. Should your team wish to discuss any aspects of the Department's response, please contact Assistant Secretary Audit and Assurance, Alison Sommerville on 0478 401 706 or via [Alison.Sommerville@homeaffairs.gov.au](mailto:Alison.Sommerville@homeaffairs.gov.au). Please feel free, of course, to contact me directly if that would be helpful.

Yours sincerely



Stephanie Foster PSM

20 May 2024

### *ANAO comments on the Department of Home Affairs response*

- (a) An important consideration in the ANAO's conclusions that the design and administration of the contracts has not been effective relates to the Key Performance Indicators (KPIs) for service providers. Of the four KPIs identified included in the contracts that commenced in July 2017 to establish 'a minimum performance standard' that service providers were expected to meet, three are no longer in place, including the KPI relating to the desired program outcome of progressive English attainment by students (see paragraphs 3.11 to 3.20).
- (b) Four KPIs were identified in the request for tender conducted in 2016, and subsequently included in the contracts that commenced in July 2017 (see Table 3.1). As discussed at paragraph 3.11, the KPIs established 'a minimum performance standard' that service providers were expected to meet. The KPIs were also to form the basis for assessing provider performance individually and relative to other service providers, and form part of any consideration of contract extensions. Of the four planned and contracted KPIs, only one related to program outcomes, being progressive English attainment by students. As set out at paragraphs 3.11 to 3.20, there remains only one contractual KPI, further: none of the four KPIs were applied for the first 12 months of the contract term; one KPI (relating to data timeliness) has not been applied at all; the target addressing the KPI relating to the accuracy of service provider assessments of client learning outcomes was first reduced and was later paused in November 2021 for the remaining term of the contracts; and the English attainment progress KPI has been removed. The KPIs that have been removed include the one relating to progressive English attainment such that there is no longer a contractual framework under which the department is able to measure and manage provider performance relating to the extent to which clients benefit from AMEP learning activities. As set out in Appendix 3, Table A3.2, 1900 students were recorded as exited from the program as a result of no longer meeting the legislative eligibility threshold of functional or vocational English.
- (c) The impact of the COVID-19 pandemic on the program, and/or how the impact was addressed or not addressed by the department, is discussed throughout the audit report (paragraphs 1.4, 2.7, 2.26 and 2.27, 3.15, 4.25, 4.31, 4.36, 4.57, 4.60 to 4.68 and Table 3.1).
- (d) See report's discussion on exceptional circumstances work orders at paragraphs 4.60 to 4.64 and Appendix 5, paragraph 10.
- (e) Administration of the AMEP contracts transferred into the Department of Home Affairs nearly five years ago, in July 2019. Relevant records and some key staff moved with the program to the Department of Home Affairs. It would be expected that, if there were further records not transferred at that time which the Department of Home Affairs required as part of its responsibilities for administering AMEP then the Department of Home Affairs would have sought those records from the Department of Education and/or the Department of Employment and Workplace Relations prior to the conduct of ANAO audit work in the second half of 2023 and into 2024. Home Affairs obtaining any missing relevant records would have been consistent with the 'records follow function' requirement of a Machinery of Government change.

Changes made since 2019 by the Department of Employment and Workplace Relations to the parts of the head contracts that apply to both AMEP and SEE have occurred through

engagement with, and input from, the Department of Home Affairs. This is consistent with the 'Collaborative Agreement' signed by the two departments in October 2019 under which Home Affairs agreed that the department responsible for the SEE program would be the lead agency, and that any variations to the general clauses in the contract must be agreed by both departments.

(f) See footnote 28.

(g) Section 30 of the *Auditor-General Act 1997* provides that the information gathering powers of the Auditor-General are not limited by any rule of law relating to legal professional privilege (amongst other things). In short, this means that auditees cannot claim legal professional privilege to refuse access to information for audit purposes. In addition, subsection 30(2) provides protection to auditees to ensure that disclosure within the audit of otherwise privileged information does not waive that privilege for purposes outside the audit.

## Linda Wyse and Associates response

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Hawthorn East  
Victoria 3123  
Australia



Ms Rona Mellor PSM  
Acting Auditor General for Australia  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Rona,

Thank you for inviting LWA to respond to *The Administration of the Adult Migrant English Program Contracts* report.

LWA appreciates the audit's recognition that the Adult Migrant English Program (AMEP) contract faced many challenges in its tenure. The contract transition and its impact on student volumes, as well as the unprecedented challenge of COVID-19 and resulting interruption to AMEP face-to-face delivery, greatly impacted LWA's ability to maintain contractual KPIs, as outlined in Table 4.2 and acknowledged in Section 4.9 of the report.

The disruption caused by COVID-19 cannot be underestimated; it was the impetus for the change in work carried out by LWA. As part of the Department's response to COVID-19, which had made some of the contractual QA activities impossible to conduct, LWA was asked to undertake different QA activities. Fulfilling this request, LWA helped create an adapted program of QA work at very short notice, which supported the AMEP program to continue. These new QA activities bolstered AMEP providers facing the challenges of moving from face-to-face classes to online delivery with a cohort of culturally and linguistically diverse clients, who personified the digital divide.

LWA was proud to work closely with AMEP stakeholders in addressing the challenges of COVID-19. The QA Provider Instructions (PIs) call for LWA to establish effective working relationships with key stakeholders. We feel the manner in which we have delivered AMEP quality assurance activities, throughout the various challenges presented, has delivered effectively and efficiently on this requirement.

LWA acknowledges that the contract and QA PIs do not detail current quality assurance activities. LWA supports resuming contractual quality assurance activities and accepts in full the 10 recommendations in the report. We would like to see Recommendation 10, monitoring the quality of services being delivered to students, reinstated in quality assurance activities as this supports continuous improvement in delivery and strengthening the effectiveness and validity of the program.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mary Wallace', is positioned above the printed name.

Mary Wallace  
Director  
10 April 2024



## Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.

2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's corporate plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.

3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on any identified matters during the course of an audit. Remedial actions entities may take during the audit include:

- strengthening governance arrangements;
- introducing or revising policies, strategies, guidelines or administrative processes; and
- initiating reviews or investigations.

4. In this context, the below actions were observed by the ANAO, or advised to the ANAO by Home Affairs, during the course of the audit. It is not clear whether these actions and/or the timing of these actions were planned in response to proposed or actual audit activity. The ANAO has not sought to obtain assurance over the source of these actions or whether they have been appropriately implemented.

- Review of invoicing arrangements and validity of source data for quarterly adjustments (see Appendix 5, paragraphs 1-9).
- An improved process to monitor the quality assurance provider's progress against contractual KPI requirements (see paragraph 4.8).
- The department remedied a repeated error made as a result of document conversion issues, that created inconsistencies identified the ANAO between the AMEP legislation, the department's 'Eligibility Chart' as shared with AMEP providers in 2021 and 2023, and the table of visas within the information management system. The Chart was reissued during the audit, with the error remedied.
- Review of departmental communications between the program's policy team, assurance team and operations team to inform a more holistic view of the program (see paragraph 4.10).

## Appendix 3 Key program statistics

**Table A.1: Number of active students by state/territory**

Year	2017–18		2018–19		2019–20		2020–21		2021–22		2022–23		2023–February 2024	
	Active students	Students transferred during the year	Active students	Students transferred during the year	Active students	Students transferred during the year	Active students	Students transferred during the year	Active students	Students transferred during the year	Active students	Students transferred during the year	Active students	Students transferred during the year
ACT	911	31	886	49	785	40	721	28	1019	27	1125	31	854	15
NSW	18516	215	17973	399	16751	428	15277	370	17087	212	20125	273	15736	125
NT	332	3	370	15	354	5	444	11	457	9	412	16	279	3
QLD	6591	86	6851	122	6485	87	7106	108	9226	105	9409	143	7630	59
SA	3705	59	3674	71	3541	56	3411	53	4489	52	5247	130	4322	46
TAS	829	24	794	47	643	28	646	14	787	24	804	42	578	14
VIC	15638	170	16725	219	14991	179	13116	128	16059	164	19070	303	15538	135
WA	4223	67	3887	74	3671	64	3460	79	5373	52	5497	79	4405	34
Distance Learning	1408	277	1741	533	1656	560	1848	499	2249	401	2722	558	2295	339
<b>Total</b>	<b>52153</b>	<b>932</b>	<b>52901</b>	<b>1529</b>	<b>48877</b>	<b>1447</b>	<b>46029</b>	<b>1290</b>	<b>56746</b>	<b>1046</b>	<b>64411</b>	<b>1575</b>	<b>51637</b>	<b>770</b>
<b>Total unique students</b>	<b>51687</b>		<b>52134</b>		<b>48153</b>		<b>45384</b>		<b>56222</b>		<b>63621</b>		<b>51252</b>	

Note: Active students based on student attending at least one session (including initial assessment) in that financial year. Students may be active across more than one financial year.

Source: ANAO analysis of Home Affairs records.

**Table A.2: Number of students exiting AMEP as a result of attaining functional or vocational English**

Year	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23	2023–February 2024
Number of students exited	141	55	33	64	391	682	536
% of students exited from active students	0.27	0.11	0.07	0.14	0.70	1.07	1.04

Source: ANAO analysis of Home Affairs records.

**Table A.3: Number of students by visa type at date of registration for AMEP**

Visa type	2017–18	2018–19	2019–20	2020–21	2021–22	2022–23
Family	15,393 (58%)	13,529 (54%)	10,209 (53%)	12,034 (76%)	10,896 (46%)	11,652 (42%)
Humanitarian	7,420 (28%)	8,510 (34%)	9,212 (42%)	1,352 (8%)	7,261 (31%)	9,245 (33%)
Skilled/Other	3,799 (14%)	3,158 (13%)	2,314 (11%)	2,419 (15%)	5,423 (31%)	6,715 (24%)
<b>Total</b>	<b>26,612</b>	<b>25,197</b>	<b>21,735</b>	<b>15,805</b>	<b>23,580</b>	<b>27,612</b>

Source: ANAO reproduction of Home Affairs report.

## Appendix 4 Advisors contracted on the AMEP program (July 2017 to December 2023)

Advisor	Project	Extent of competition	Approved value	Value for money assessed by department?
AMES	Webhosting of AMEPOnline	No competition. Request for quote from panel from single provider.	\$32,718 <sup>a</sup>	Yes
LWA (subcontracting to University of Melbourne and Macquarie University)	Mapping of Outcomes / Assessment Framework to AMEP curricula	No competition.	Stage 1 — \$44,000 Stage 2 — \$95,750.98	No
Wuhan (Social Compass)	Evaluation of AMEP	Limited tender. Approached three indigenous suppliers. <sup>b</sup>	\$500,000	Yes
Life Course Centre and Telethon Kids Institute	Using integrated administrative [AMEP] data to improve educational equity over the life course	No competition. Request for quote issued verbally to single provider from a panel. <sup>c</sup>	2021 project — \$25,000 2022 project — \$92,000.	Yes
Ernst and Young (EY)	Research paper	Yes, three quotes sought from panel.	\$180,364.	Yes
LWA (subcontracting to Monash University)	Report on digital literacies in adult EAL learners.	No competition. <sup>d</sup>	\$398,338	No
Callida	AMEP Contract Transition <sup>e</sup>	No competition. Request for quote from panel from single provider.	\$250,000 <sup>f</sup>	Yes
Pragma Partners	Program Managers for AMEP reform.	Three quotes received from 6 providers on panel.	\$674,834 <sup>g</sup>	Yes

Note a: In November 2021 the value of this contract was increased by \$82,547 to \$115,265. The provider was re-engaged in 2022 to continue to host AMEPOnline, for \$6,569. Variations to this second engagement increased the value of this second engagement by \$13,137 to \$19,706.

Note b: While noted as a potential probity risk, the department's evaluation noted (positively) that one of the staff members at the preferred provider 'has previous experience as a university teacher and as an AMEP volunteer home tutor' but that none of the staff had 'formal education or teaching qualifications'. The evaluation report also noted that the preferred provider has 'benefitted from its previous work with the department on the multi-provider model — access to core documents and SPIs' indicating that it had information advantages over other potential providers.

Note c: Life Course Centres delivered three projects between 2019 and 2022. The first of the projects was agreed and entered into prior to Machinery of Government changes and the department does not hold records of the procurement approvals. The agreement for provision of the first project expired 'without the outcomes of the



AMEP project being fully realised'. A second and third project were agreed to by Home Affairs with the aim of 'realising the original intended outcomes of the AMEP project' and these two projects have been incorporated into the table.

- Note d: In response to questions from ANAO about the selection process for Monash University, the department cited email correspondence outlining an unsolicited proposal from the provider. In February 2024, the department advised the ANAO that 'of particular note' and 'the key reason for the selection of Monash University' was the experience of the 'lead researcher' who 'had also previously worked with a Victorian AMEP provider delivering AMEP in an online environment'. Alternative providers were not considered by the department, and there was no market scan documented. The approvals to proceed with the project did not: identify that the project stemmed from an unsolicited proposal; address the lack of competition in selecting the provider; identify or address the probity considerations that arose as a result of the provider's very recent AMEP work experience. As Monash University was engaged through LWA rather than directly by the department, the engagement of Monash University was not required to be reported on AusTender. In March 2024 the department advised the ANAO that not reporting the engagement on AusTender 'was not the intent' and the engagement had 'progressed on the understanding this work was within scope of the Program Delivery Document services under the [Quality Assurance] Agreement'. The department has noted that it 'will develop a Probity Plan for the management of Agreements to mitigate probity risks, including the potential conflict of interests as identified here', that 'there is scope to address VFM [value for money] more clearly' and the department 'will introduce stronger governance arrangements over the process by which it engaged service providers under the AMEP, under the existing panel.'
- Note e: Scope of work was to 'create and implement a transition-out plan which will detail the processes and activities' and to 'ensure a seamless transition of supplier services prior to the expiry of existing AMEP agreement'. In April 2024, Home Affairs advised the ANAO that: 'the scope of the department's contract with Callida is broader than assisting with transition planning, as has been highlighted in the Report. The scope of work also includes 'to support timely implementation of the...AMEP reform project and support work as required', which allowed the department to seek support from Callida in costing the new AMEP business model.'
- Note f: Variation was made to this contract increasing the value to \$300,000, see paragraph 2.62 and footnote 56. In April 2024, Home Affairs advised the ANAO that the variation and increase related to exercising an extension option.
- Note g: In October 2022 the value of this contract was increased by \$283,620 to \$958,454.54. In April 2024, Home Affairs advised the ANAO that the variation and increase related to exercising an extension option.

Source: ANAO analysis of Home Affairs records.

## Appendix 5      Invoicing issues identified with general service providers

### Monthly instalments and quarterly adjustments

1. The approach to market set out that invoicing and payment arrangements for the AMEP general service providers would require that invoicing and payments be made in monthly instalments, with quarterly adjustments. Consistent with the approach to the market, the contracts signed with the successful tenderers reflected the approach to market in that it provides for monthly instalment payments of fees based on an estimated fixed fee, with quarterly adjustments.
2. The estimated fixed fee used by the department to determine a quarter's first two monthly invoices is based on 'the previous year's expenditure divided by twelve months'. This is recorded in internal departmental guidance, finalised in January 2024. Neither this methodology, nor the resulting amount, are recorded in the AMEP general service provider contracts or AMEP Service Provider Instructions.
3. The third quarterly fee is an 'adjusting' invoice, in that the department determines, based on provider reported delivery over the quarter (reported actual volumes and classification of tuition and child care), the total amount that a provider should be paid for the quarter, less that already paid in Month 1 and Month 2 of the quarter. The quarter's third invoice is for the balance. As such, over payments in Month 1 and 2 of the quarter would be reflected in a smaller Month 3 payment, while under payments in Month 1 and 2 of the quarter would be reflected in a high payment in Month 3.
4. While not covered by the AMEP general service provider contract nor the AMEP Service Provider Instructions, internal departmental guidance allows for the fixed monthly rate to be adjusted 'where there is significant over or underspend through the quarterly reconciliation process, indicating a change of the demand for the delivery in the regions and adjustments to the fixed payment is imminent.'
5. ANAO notes that the methodology to determine the fix monthly price is flawed as taking 'the previous year's expenditure' and simply divided by 12 does not allow for:
  - the Wage Price Index planned for in the contract to be applied to fees on 1 July each year and, as such, the previous year's expenditure would be best estimated to also increase by the same index;
  - demand for the program including impacts of changes to migration rates, rates that the Department of Home Affairs reports to the ABS and historical AMEP enrolment rates; and
  - variations made to fees throughout the year, that impact on the total expenditure (for example, in December 2020 agreeing to vary fees for providers would have a six-month impact on the 2020–21 financial year and an annualised impact on the 2021–22 expected total cost).

### Reliance on unverified data

6. As detailed in Chapter 4, the quality controls and verification activities required by the department from the quality assurance provider have declined over the life of the AMEP quality

assurance Contract. Not only did this work inform the assessment of general service provider performance against the fourth key performance indicator (accuracy of assessment) it also provided a degree of assurance over the accuracy of the data used for invoicing and payments (see paragraphs 3.2 to 3.9).

7. The ANAO raised with the department the lack of control and verification of provider inputted data, and reliance on its accuracy for reporting, measurement and payments. In December 2023, the department advised the ANAO that it had identified a potential issue that it was working to quantify. The department identified that controls and verification of data used for the quarterly reconciliation were insufficiently robust, and lead to a potential risk of duplicated or repeated payments, or alternatively missed payments.

8. In determining the quarterly adjustment invoice, the department relies on the data input by providers. The department requires, through the AMEP General Service Provider Instructions, that providers 'enter all AMEP activity data for each month into [the information management system] by the 10<sup>th</sup> Business Day of the following month.' While the department may apply contract clauses to enforce compliance it has instead relied on invoice generation to motivate compliance with the timeframe.

9. The department identifies the adjustment invoice amount based on a point in time extract from the department's reporting system. The department has not reconciled this report to previous reports to ensure that payments are not duplicated. For example, commencement fees are to be paid (in general) once per student. In August a provider may claim to have commenced a student. In September's adjusting invoice this was included in the report and paid. In October the provider may change the date of the commencement of the student, and so appear to have claimed commencement for the student in October.<sup>87</sup> In December's adjustment, this same student would appear in the report generated of activities for payment, and the commencement fee paid again. The department does not have controls between the AMEP management system and its financial management system to prevent duplicated payments. The department has commenced application of an interim manual monitoring process to reconcile reports between quarters. As at December 2023, the department had 'identified discrepancies in the last financial quarter of 2022–23 was approximately \$4000'. The department has not yet completed a full review of all payments in all fee types across the years to quantify the full impact. In February 2024, the department advised the ANAO that it has also commenced:

- running a 'final reconciliation report for the year' to identify 'where duplicate payments (quarterly and monthly) have occurred and payments adjusted';
- providing 'client detailed reports' to providers to enable them to 'reconcile and check their local records'; and
- use of a system script 'to rule out the second Initial Assessment data for the same client for expenditure calculation' as well as running 'point in time ad hoc reports to examine changes to records (possible duplicates) overtime'.

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87 Payments may be similarly missed, when in October a provider inputs a commencement fee with an August date, and the department would then be of a false understanding that payment for that commencement was made in Quarter 1.

## Services outside of the contract

10. The 'Exceptional Circumstances' Work Order was issued between 8–10 July 2020, for COVID-19 adjusted services to be delivered from 1 April 2020 (three months prior to the work order being issued) to 30 September 2020. This work order essentially added additional services and associated fee schedule to the arrangement with all AMEP general service providers for a fixed period, and included four options to extend the work order for a period of three months each. The Exceptional Circumstances Work Orders were all extended on 1 September 2020 to 31 December 2020.

11. It is not clear that there was sufficient and appropriate authority within the contract to develop such a work order, and to vary the fees in such a manner. Internal advice from April and May 2020:

- recommended that the program team 'conduct a detailed review of the AMEP Agreement at first instance, to determine if the requirements ... set out in the Agreement ... are suitable, or if a variation to the AMEP Agreement itself (through a Deed of Variation) may also be required';
- noted that the 'AMEP Agreement contains no *force majeure* clause, or options for [service] postponement, which may have otherwise assisted' to response to the COVID-19 pandemic circumstances; and
- advised that the AMEP Agreements at the time include a 'narrowly defined' option for virtual participation, and broadening the definition through a deed of variation could accommodate the department's needs, noting that the 'negotiated Fees for each service provider to undertake virtual services should be introduced within these DoVs at Chapter 4 of the AMEP Agreement under a separate subheading along the lines of "Virtual participation Fees"'.

12. The department decided to vary the AMEP Agreement to broaden the definition of virtual participation. It did not seek to vary the agreement to included virtual participation fees as 'the fees [are] not necessarily appropriate beyond this situation'.

## Indexation

13. The contract stipulated that the fees in the fee schedule were to be indexed on 1 July each year 'in accordance with the Wage Price Index (WPI) for all industries and sectors for total hours, but excluding bonuses, using the March-to-March increase published in May of each year' for services rendered on or after 1 July.

14. The Australian Bureau of Statistics (ABS) provides three version of the WPI: the original; the seasonally adjusted; and the trend. The contract does not specify which version of the WPI the department will use to index the fees.

15. In December 2023 the department advised the ANAO that it uses the seasonally adjusted version of the WPI. The evidence cited by the department was an email from October 2016 (prior to execution of the current contracts, which occurred in April 2017) which stated:

Seasonally adjusted or original series are unlikely to have much if any variance as it is comparing the same quarter, but most people are comfortable with seasonal adjustment so I thought we should go that way ... I recall this being agreed at a TWG meeting.

16. The department's internal AMEP finance manual from October 2023 does not make it clear which of the three ABS WPI indices to use.

17. The ANAO's analysis is that, given the long term nature of the AMEP contracts, and the design of the term scheduling in AMEP, the program and its fees are not impacted by 'seasonal influences' described by the ABS: 'the effect of the weather, social traditions, or administrative practices' or 'other kinds of calendar related variations, such as the number of trading days, Easter or the proximity of significant days in the year (e.g. Christmas)'.

18. The WPI Original Index and the WPI Seasonal Index were different in only two years over the life of the contract, at the end of 2019–20 and at the end of 2022–23 (impacting the expected fees for the 2020–21 and 2023–24 financial years). This has an impact on alignment of expected fees from 1 July 2020. Between 1 July 2020 and 30 June 2023, for the 2020–21 financial year:

- services were varied, through the implementation of the 'Exceptional Circumstances Work Order'.<sup>88</sup> This had the effect of implementing a second service and associated fee schedule, the basis of which was used to determine invoice amounts. The 'Exceptional Circumstances' Work Order included two service and associated fee tables, one for the period 1 April 2020 to 30 June 2020, and another for the period 1 July 2020 to 30 September 2020.<sup>89</sup> As such the effect of inconsistent application of the WPI index was removed from invoicing for this period; and
- fees were varied to existing services through a deed of variation on 17 December 2020. This has the effect of removing the inconsistent indexation for those AMEP General Services included in the contract.

19. ANAO also examined the 2023–24 fee schedule generated by the 2022–23 WPI Index. A 0.1 per cent difference between the two ABS indices, resulted in a difference between what the fees were expected to be, and what the department used to determine the fees payable. For the first quarter this resulted in a total difference, across all provider invoices of \$83,488.40. Variations to fee schedules were agreed through deeds of variation with two providers, one effective as at 1 August 2023, and the second effective as at 1 January 2024.

20. The application of the seasonal WPI index will create continued divergence between the contract's expected fees schedule and the fee schedule developed and implemented by the department.

21. The agreements through correspondence (see paragraphs 2.15 and 2.28) with the contractor have been incorporated by the department into the fee schedules applied when generating invoices for quarter one payments, these variations through correspondence are

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88 The work order was initially a time limited six-month period of 1 April 2020 to 30 September 2020, but had four extension options, each of three months. The work orders were ultimately extended on 1 September 2020 for a revised end date of 31 December 2020. The extension to the work orders also extended the period that the second fee schedule in the Work Order applied, the 1 July 2020 to 30 September 2020 fee schedule.

89 The Work Order also varied the fees payable for existing services, specifying variations to fees for Face-to-Face tuition of both the Pre-employment and Social Stream. Different fees were to be applied, if returning to the classroom between 1 April 2020 and 30 June 2020, and a second set of fees for the same service if returning to the classroom between 1 July 2020 and 30 September 2020.

contract variations however are not recorded in the department's Contract Management Tracking Register.<sup>90</sup>

## GST

22. Part 2, paragraph 4.5 of each of the General AMEP service provider contracts set out the fees (GST exclusive) that each provider may claim for the range of AMEP Services. Each provider's fees are different, and specific to individual contract regions. Each provider's contract only includes the fees for the contract regions that they have been contracted to service.

23. The AMEP providers are required to all be registered training organisations, and are a mix of state/territory government entities and private sector providers. In February 2017, prior to execution of the AMEP contracts, the Australian Taxation Office issued a private ruling to the department to determine whether GST was payable by AMEP general service providers on any of the AMEP general services. The Australian Taxation Office determined that the supply of AMEP General Services is for a GST-free service, as 'an education course ... under section 38-85 of the GST Act'. The advice noted that a supply of services is 'GST-free' if the services is an 'education course' or 'administrative services directly related to the supply of such a course'. As such the when the department generates the monthly invoices (including adjustment invoices) that it seeks the providers to issue so the department may make payment, all invoices are exclusive of GST.

24. The ruling from the Australian Taxation Office came before innovative projects were added to the AMEP general service provider contracts through the second deed of variation made between 2 May and 4 June 2018. Although innovative projects are not required to be an education course, an updated ruling was not sought to address GST payments on innovative projects.

25. Reports extracted from the department's finance management system record an inconsistent treatment of innovative projects. Reports provided by the department in March 2024, the system recorded 42 purchase orders, for 43 innovative projects, of which 12 are categorised as to have GST applied<sup>91</sup> and 30 are categorised as not to have GST applied.

26. An additional three work orders for innovative projects to be delivered by three providers between 16 December 2019 and 30 June 2020, were not clearly described in the department's finance management system as innovative projects. Instead these three purchase order were given, and continue to have, descriptors which implied they were for AMEP general services, all three recorded GST to be applied. The ANAO notes that GST was included in the fee schedule for all three work orders:

- One innovative project was for a provider to develop a 'realistic workplace introduction Program where students develop their language, numeracy and workplace knowledge and skills, out of the classroom'. This innovative project was expected to cost of \$87,968 (excluding GST).
- A work order for another provider was executed to deliver a program that focused on 'developing English language and numeracy skills for the hospitality industry' where

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90 Seven agreements through correspondence were made, impacting four providers. These agreements had the effect of increasing selected fees for impacted providers.

91 However, the value of these three purchase orders in the financial management system is equivalent to the GST-exclusive value of the executed work order.

students would be ‘immersed in a working kitchen, allowing them to understand the expectations and requirements of the Australian workplace.’ This was to cost of \$89,550 (excluding GST).

- Another work order for the second mentioned provider was executed for a program focused on transitioning ‘AMEP Mature-Age’ student to work for a cost of \$83,776.54 (excluding GST).

### **Backdating of invoices to accommodate variations and in-principle agreements**

27. As early as March 2018, internal advice was being sought on the validity of varying fees and backdating an increase to fees to the beginning of the contract. The advice from the procurement team was that the department’s procurement and contract policy ‘does not stop you from taking action to increase pricing on fees or indeed backdating an increase to fees’ but that ‘ultimately it is for the delegate to agree to any recommendations taking into account legal and policy advice plus your expertise in the management of the programme and desired outcomes.’

28. The ANAO, in locating the agreements through correspondence, identified seven letters with four providers. Of these letters, five (with three providers) specifically state that payments would be backdated to accommodate changes to the fee schedule. The ANAO identified a further two letters (with two providers) where retrospective changes were made to the fee schedules, but has not been clear as to whether backdated payments would be made for services already rendered.

### **Fees outside of written agreements**

29. Over the period 1 July 2019 to 30 June 2023, the fees used to generate quarter one invoices for two providers did not align with either the contract (and expected indexation, including application of seasonal index) or agreements made through correspondence:

- The fees for one contract region were not correctly updated in the invoice to reflect the December 2020 variation to fees. The hourly tuition fees were less than agreed in the contract. For the Quarter 1 invoice this resulted in an underpayment of \$5,200. When identified by the provider, the department undertook to rectify the error in the following quarterly payment.
- Child care fees for another contract region did not align with contract or agreements through correspondence for the 2019–20 Quarter 1 invoice, and was overstated in the 2020–21 Quarter 1 invoice as well. The contract region impacted is a very small contract region. The department is responsible for maintaining an accurate fee schedule, and using that fee schedule to determine invoice amounts. If this same overstatement occurred in the provider’s other contract region, or with the providers detailed above and below, the impact would be significant.
- Continuation of fees agreed through correspondence beyond the agreement’s expiry date:
  - The child care fees for another provider were increased for the period 1 July 2018 to 30 June 2020 through correspondence. The department continued to apply the increased fee as the basis of invoices, despite no variation made to the contract,

and no additional agreement through letters to extend the term of the agreement. As a result, the invoice generated for Quarter 1 calculated a child care administration fee of \$624,045, which is \$366,205 greater than fee provided for by the contract.

- The initial assessment fee for another provider was overstated in its 2020–21 Quarter 1 invoice. The provider was party to an expired agreement through correspondence, with the fee increased from that expired agreement subsequently incorporated into the December 2020 variation. The amount used to generate the invoice for Quarter 1 was either the expired rate from the agreement through correspondence or the December 2020 variation rate, despite not yet being in effect. As a result, the invoice generated was overstated for the commencement of five students that quarter.
- The child care fee for another provider was overstated for the 2020–21 Quarter 1 Invoice. The fee used reflects an agreement made through correspondence In June 2019, where the higher fees were only to apply until 30 June 2020. As result, the invoice generated for Quarter 1 was overstated by \$70,005. No variations were made to the contract, and there were no additional agreements through correspondence to extend the term of the arrangement.



## Appendix 6      Invoicing issues identified with quality assurance provider

### Monthly instalment payments and quarterly adjustments

1. The approach to market set out that invoicing and payment arrangements for the quality assurance provider would be similar to those for the General Services Providers, and this was the basis on which respondents tendered. Specifically, that invoicing and payments would involve monthly instalments and quarterly adjustments. Consistent with the approach to the market, the contract that was signed with the successful tenderer reflected the approach to market in that it provides for monthly instalment payments of fees based on the annual plan, with quarterly adjustments.
2. The invoicing and payment arrangements do not involve monthly instalments based on the annual plan with a quarterly adjustment. Rather, the quality assurance provider invoices the department for the services provided in the prior period (which is often one month but has been longer).

### Engaging for services outside the contract

3. Agreeing services and fees outside of formal contracting arrangements undermines the integrity of a contract.
4. Under the contract, the annual plan is to perform a key role in the invoicing and payment arrangements. The contract states that the quality assurance provider ‘has been engaged to provide Quality Assurance for AMEP Services’ as described in the Part 3 of the contract upon receipt of a work order issued by the Commonwealth. The quality assurance provider is to submit an annual plan to the Commonwealth for approval (clause 2.3), and the Commonwealth may approve that plan or make amendments to that plan. Quality assurance services to be ‘incorporated into any Work Order’ are specified in the contract (clause 2.7). Where services outside of the specified quality assurance services are identified as required, the department is to specify the scope of services, seek a quote, and on acceptance of the quote issue a work order.
5. Notwithstanding the terms of the contract, the annual plan has been used by the department to significantly vary the work to be delivered by the quality assurance provider such that quality assurance comprised only 15 per cent of work in 2023–24, compared to 78 per cent in the first year of the contract (as illustrated above by Figure 4.1). In the Annual Plan approvals, no value for money considerations were documented, and no reference was made to deviations from the original scope of the requested works at the time of tender evaluation. By way of example:
  - In 2021–22, five online professional development workshops were included on the invoice, despite the contract’s fee schedule never including a fee for such a service.
    - In December 2023, the department advised ANAO that the ‘2021–22 Annual Plan provided for Online Workshops were approved as part of the Annual Plan, not via a formal variation.’
    - The department advised ANAO that this approach was consistent with clause 2.3 of Part 3 of the Agreement. Clause 2.3 of Part 3 of the Agreement requires the preparation of an Annual Plan and this clause does not allow for variations outside

the specified quality assurance services outlined in the contract. Rather, the contract requires that work outside of the specified services (specifically program delivery documents) are to be quoted on, approved, and a work order issued.

- In 2022–23, two Communities of Practice Workshops held online were included on an invoice, despite the contract’s fees schedule not including a fee for such a service. ANAO could not locate a separate work order or quote for such a service. ANAO notes that the fee for these workshops was greater than the fees for the online workshops invoiced for in 2021–22.
  - In December 2023, the department advised ANAO that the ‘22-23 Annual Plan provided for COP Workshops were approved as part of the Annual Plan, not via a formal variation.’
- In 2019–20, invoicing for a Professional Development workshop to be held in Orange NSW, when the contract does not specify a rate for Orange NSW. ANAO could not locate delegate approval for a variation to the contract, or for an in principle (outside of contract) agreement to use another region rate. Previously the department had varied the contract to incorporate Wagga Wagga as a costed region when a workshop was to be held there.
  - In December 2023, the department advised the ANAO that ‘Orange has not been added to the Agreement’ and that instead this was ‘approved via the 2019–2020 Annual Plan process’, where the invoiced amount was included in the approved Annual Plan. The ANAO notes that the Annual Plan processes does not allow for variations outside the specified quality assurance services outlined in the contract, and that work outside of the specified services (specifically program delivery documents) are to be quoted on, approved, and a work order issued. There was no separate work order, or variation to existing work order to incorporate Orange into the contract.

## GST

6. The approach to market enabled respondents to tender fees that were either GST inclusive or GST exclusive, or both. The contract provides that the fees are on a GST exclusive basis, as it states that an additional amount must be paid to the supplier for any taxable supplies.<sup>92</sup> Notwithstanding the clear terms of the contract, invoicing and payments have been administered on the basis that the contracted fees are inclusive of GST.

7. In responding to the ANAO on this issue, the department did not reference the terms of the contract instead citing an email from 2017 where an acting Director of the AMEP’s ‘Assurance Unit’ sought confirmation from a team member that the fee schedule aligned with the contract, and advised the junior team member that ‘the prices in the attachment [the fee schedule] are gst inclusive.’

8. The junior team member identified misalignment between item costs. The acting Director then replied with a ‘final version’ of the prices for contracted quality assurance services. This final

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92 The quality assurance provider’s original tender submission in response to the request for tender in 2016 included GST inclusive and exclusive fees. The fees included in the tender response (on either a GST inclusive or GST exclusive basis) were not those later included in the contract. The fees for the quality assurance services in the tender were greater than those included in the contract, while the travel fees and ATB Management fees were less than what was contracted.

version stated that the fees included GST. ANAO notes that neither party to this correspondence had authority to vary the contract.

## Invoicing and payment anomalies

9. Errors were identified by ANAO in the sample of invoices examined. These included:

- In 2017–18, incorrectly charging travel to Regional NSW for activity in the ACT, when the fee schedule specified a lower rate for ACT travel. This error was not corrected by the department.
  - In December 2023, the department advised ANAO that this ‘may be an error that was not picked up when the invoice was progressed for payment in 2017, however due to passage of time and MOG changes we are unable to verify this.’
- In 2018–19, incorrectly charging travel to Regional QLD for onsite quality assurance activity of the Distance Learning provider that is based in metropolitan NSW.
  - In December 2023, the department advised ANAO that supporting evidence from the time recorded that the travel taken was only to NSW not Queensland and that the invoicing ‘may be an error that was not picked up through invoice payment process, however due to the passage of time and MOG changes we are unable to verify this.’
- In 2019–20, unexplained and unevidenced increase to the fee for Work Experience File Verifications.
  - In December 2023, the department advised ANAO that ‘this may be an error that that was not picked up when the invoice was progressed for payment.’
- For 2020–21, the delegate approved on 4 September 2020, an annual plan with a fee schedule that did not align with the contract terms (indexation and GST application). The contract manager (who did not have sufficient delegation) subsequently confirmed with the quality assurance provider the fee schedule on 1 October 2020.<sup>93</sup> No subsequent deed of variations were entered into to reflect this agreement from the delegate or the contract manager in the contract.
  - In December 2023, the department advised ANAO that ‘Approval of the 2020–21 QA Annual Plan ... was completed on 4 September 2020’ and that ‘[the contract manager] did not seek to vary the agreed rates through this exchange’. The department noted that the rates referred to by the contract manager were the same ‘as approved by the delegate on 4 September 2020’.
- In the 2020–21 annual plan the cost of the Assessment Task Bank Management was set to \$299,839. This does not align with the expected annual fee of \$306,136. The following year, the annual plan reduced the fee below the expected fee to \$282,480. No records could be identified to explain these changes, with the department confirming that ‘a data entry error ... led to the misalignment between the ex-GST rates as documented in this Plan’ and the fees in the contract.

<sup>93</sup> This was the COVID 19 impacted year, where on 13 July 2020, the department first approved a Quarter 1 Plan rather than an Annual Plan. On 4 September 2020, the department then proceeded to approve an Annual Plan, with a revised fee schedule.