

The Auditor-General
Audit Report No.2 2004–05
Performance Audit

Onshore Compliance—Visa Overstayers and Non-Citizens Working Illegally

**Department of Immigration and
Multicultural and Indigenous Affairs**

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of Australia 2004

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Canberra ACT
15 July 2004

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the Department of Immigration and Multicultural and Indigenous Affairs in accordance with the authority contained in the *Auditor-General Act 1997*. 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 and the accompanying brochure. The report is titled *Onshore Compliance—Visa Overstayers and Non-Citizens Working Illegally*.

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

Yours sincerely

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

Oliver Winder
Acting Auditor-General

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

AUDITING FOR AUSTRALIA

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Contents

Abbreviations	7
Summary and Recommendations	9
Summary	11
Background	11
Audit objective and scope	12
Key audit findings	13
Conclusion.....	18
Recommendations and agency response.....	20
Recommendations.....	21
Audit Findings and Conclusions	25
1. Introduction.....	27
Background	27
Audit objective and scope	33
Conduct of the audit.....	34
Report structure.....	35
2. Reporting Onshore Compliance	36
Introduction.....	36
DIMIA’s performance information relating to onshore compliance	36
DIMIA’s estimate of unlawful non-citizens.....	38
Improving overstayer data accuracy	39
3. Compliance Risk Assessment.....	42
Introduction.....	42
Understanding the characteristics of the compliance target population for risk assessment purposes	43
Building the capability to identify and prioritise onshore compliance risks	48
4. Education as a Compliance Strategy	56
Introduction.....	56
Education and information directed at the compliance target population	56
Education and information directed at employers	62
Assisting non-citizens and employers seeking to comply	76
5. Inter-agency Arrangements.....	80
Introduction.....	80
DIMIA’s overall management of relationships.....	81
DIMIA’s relationship with federal agencies	82
DIMIA’s relationships with State and Territory agencies.....	89
6. Compliance Operations	95
Introduction.....	95
Central Office support for compliance officers	95
Planning onshore compliance operations	106
Implementing onshore compliance operations.....	112
Monitoring and reporting onshore compliance operations.....	116

Appendices	121
Appendix 1: Migration legislation–proposed changes	123
Appendix 2: Number and distribution of onshore compliance staff employed by DIMIA in its State and Territory Offices	126
Appendix 3: Methodological review of estimation of overstayers	127
Appendix 4: DIMIA compliance continuum.....	145
Appendix 5: Visa screening–DIMIA’s risk factor list	146
Appendix 6: Integrated Client Service Environment (ICSE).....	148
Appendix 7: The National Harvest Trail.....	150
Appendix 8: Cross-agency enabling arrangements	151
Appendix 9: Agency comments	153
Index	156
Series Titles.....	158
Better Practice Guides.....	159

Abbreviations

ABS	Australian Bureau of Statistics
AFP	Australian Federal Police
ALO	Airline Liaison Officer
ANAO	Australian National Audit Office
ATO	Australian Taxation Office
BCC	Border Control and Compliance Division
BVE	bridging visa (E)
DFAT	Department of Foreign Affairs and Trade
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
ETA	electronic travel authority
Finance	The Department of Finance and Administration
IATA	International Association of Travel Agents
ICSE	Integrated Client Services Environment
IT	Information technology
MAL	Movement Alert List
MoU	Memorandum of Understanding
NSW	New South Wales
NOSIE	National Overstayers Search Interface Engine
PMO(C)	Principal Migration Officer (Compliance)
QA	quality assurance
The Act	<i>Migration Act 1958 (Cth)</i> , as amended
TRIPS	Travel and Immigration Processing Systems
UNC	unlawful non-citizen

Summary and Recommendations

Summary

Background

How many people overstay their visas each year?

1. Relative to the number of people who visit Australia each year, visa overstayers represent a small proportion (0.2%).¹ The Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) estimates that around 20 000 people stay in Australia each year after their visa has expired. Not all of the 20 000 people overstaying their visas are added to the pool of estimated unlawful non-citizens, as many of them voluntarily leave the country following a short overstay or are located² by DIMIA.

How many overstayers are currently in Australia?

2. DIMIA uses its national overstayers file to estimate the total number of non-citizens in Australia who have overstayed their visa. The file holds cumulative records dating back to 1981. DIMIA estimates that the total number of overstayers at 30 June 2003 was approximately 59 800.³

Which non-citizens can work in Australia?

3. Most temporary visitors to Australia do not have the right to work in Australia. Some classes of visas, for example the working-holiday maker visa, provides for limited work rights that allow visitors to work for a limited length of time. Other classes of temporary visas allow non-citizens to work in Australia, for example, those non-citizens who enter Australia on employer-sponsored business visas.⁴

How many people work in breach of their visa conditions?

4. Although DIMIA publishes its estimate of overstayers, it is unable to provide an estimate of the number of non-citizens who are likely to be in breach of their visa conditions, for example, by working illegally.

¹ DIMIA, 2000 edition, *Protecting the Border*, Canberra, p. 57.

² An unlawful non-citizen or person in breach of visa conditions is located as a consequence of organised field activity and where the location can be traced back to a field operation—for instance, a search warrant. Self-referrals also count as locations. An example of a self-referral is an unlawful non-citizen or lawful non-citizen who is in breach, and presents voluntarily to an immigration office so that their status can be regularised, or they are responding to a DIMIA letter and have been asked to attend an interview.

³ DIMIA, *Annual Report 2002–03*, p. 59.

⁴ DIMIA, 2000 edition, *Population Flows—Immigration Aspects*, Canberra, p. 48.

How many unlawful non-citizens does DIMIA locate?

5. In 2002–03 DIMIA located 21 465 non-citizens who had either overstayed their visa or were in breach of visa conditions. Some 12 185 (57%) of these were self-referrals. The remaining 9 280 locations were made by DIMIA field teams (43%).⁵ These locations relate to non-citizens arriving in Australia in any year since 1981. Of the total number of locations in 2002–03, 14 935 breaches of the Act were resolved.⁶ Of the remaining unresolved cases, some were in detention awaiting removal, while the majority were granted bridging visas to arrange their own departure.⁷

Compliance overview

6. DIMIA advised the ANAO as follows:

Compliance with visa conditions in Australia is treated by DIMIA as an integrity continuum. A critical aspect of this approach is treating some of the risk of people breaching visa conditions by reflecting, in selection requirements, actual country performance. It also involves the use of intelligence, dealing with those facilitating illegal movements or abusing the system, through prosecution or sanctions, and locating and removing those in breach of visa condition. Over the three financial years to 30 June 2003, there was an increase of almost 50 per cent in locations with the estimated level of over-stayers remaining relatively constant.⁸

Audit objective and scope

7. This audit examined DIMIA's administration of onshore compliance under the *Migration Act 1958* (Cth), as amended (the Act).⁹ In particular, it focused on whether DIMIA had implemented appropriate onshore compliance strategies in regard to people who enter Australia lawfully but whose presence becomes unlawful through:

- the expiry of their visa; or
- a breach of visa conditions and cancellation of their visa.

⁵ DIMIA, *Annual Report 2002–03*, p. 59.

⁶ Individual cases may be 'resolved' in a number of ways. Examples include: departure from Australia (including deportation and removal); granting of citizenship; or by ministerial intervention.

⁷ The grant of a bridging visa does not count as 'resolving' a case. This is because the grant is an interim step towards resolving the case.

⁸ DIMIA letter of 23 April, 2004.

⁹ DIMIA's management of offshore measures to prevent and detect unlawful entry to Australia has previously been considered by the Australian National Audit Office (ANAO) in Audit Report No.57, 2001–02, *Management Framework for Preventing Unlawful Entry into Australian Territory*. The 2002 audit made four recommendations for improvement. DIMIA agreed with all recommendations made.

8. The audit did not examine DIMIA's administration of all types of breach of visa conditions. Instead, the audit analysed DIMIA's administration of a significant type of breach, that is, non-citizens working contrary to their visa conditions.

9. Under DIMIA's outcomes and outputs framework, Output 1.1.5 *Students* is resourced separately to Output 1.3.3 *Detection Onshore*. The administration of student visas may be considered in a future ANAO audit but was outside the scope of this audit.

Key audit findings

Reporting onshore compliance (Chapter 2)

How reliable is DIMIA's estimate of the number of unlawful non-citizens (overstayers) in Australia?

10. DIMIA and the Minister for Immigration and Multicultural and Indigenous Affairs annually report to Parliament on the estimated number of unlawful non-citizens within Australia and DIMIA's strategies for reducing this number.

11. DIMIA has systems that produce counts of the number of people whose visas have expired and where there is no record of these people leaving the country. This count is referred to as the 'raw count'. DIMIA is aware that there are erroneous records on the systems that produce the raw counts, although the extent of the errors is not known. To compensate for errors in the overstayers file, DIMIA has statistically calculated an error rate of around 30 per cent, which it applies to the raw count (approximately 90 000 overstayers) before the overstayer estimates are released publicly (approximately 59 800 overstayers).

12. To test the reliability of DIMIA's overstayers estimates, the ANAO contracted the Australian Bureau of Statistics (ABS) Statistical Consultancy Unit to carry out a methodological review of the estimation of overstayers. A full copy of the report is provided at Appendix 3. Overall, the Statistical Consultancy Unit found DIMIA's methodology for estimating the number of overstayers to be generally sound. However, the Unit also found that improvements could be made in key areas of the methodology. These are discussed in Chapter 2.

13. The ANAO suggests that DIMIA could assist users in interpreting the overstayer estimate and enhance transparency and clarity in its external reporting by monitoring and reporting the error rate.

Is DIMIA's overstayers file useable for compliance activities?

14. DIMIA has implemented its Overstayers Project to perform, among other things, data cleansing¹⁰ to improve the accuracy of its overstayers file. This would, in turn, improve the error rate in calculating the overstayers estimate. In addition, DIMIA's ability to pro-actively target overstayers would be facilitated by an improved data matching capability with a range of agencies (such as the Australian Taxation Office (ATO)). A 'clean' overstayers file could also enhance the performance of compliance field teams through the provision of more timely, accurate information.

Is DIMIA able to effectively measure and report its onshore compliance performance?

15. DIMIA has two outcome measures to monitor its effectiveness in achieving onshore compliance under the Act. The audit found that DIMIA's measure to monitor and report its performance in reducing overstayer numbers was relevant and useful. However, DIMIA's effectiveness indicator for measuring its performance in locating people in breach of their visa conditions is of limited value. This is because no comparison is made between the number of non-citizens in breach of their visa conditions located by DIMIA, relative to the total number of non-citizens likely to be in breach of their visa conditions in Australia. Despite this, the ANAO considers that DIMIA's measure could be useful in assessing performance, if used in context within a broader performance management framework.

Compliance risk assessment (Chapter 3)

How effectively does DIMIA use its existing data sources for compliance risk assessment?

16. DIMIA uses its performance information for high-level reporting purposes, but the ANAO found no evidence of ongoing systematic analysis of these data for compliance risk assessment purposes. For example, although self-referrals form 57 per cent of compliance locations, DIMIA does not routinely analyse, or profile its self-referral data, to identify which policies and processes work and why, and to support ongoing improvements in performance including risk management and business planning.

¹⁰ Data cleansing is the act of detecting and removing and/or correcting a database's data that is incorrect, out of date, redundant, incomplete or formatted incorrectly. Data cleansing is also referred to as data scrubbing.

Does DIMIA effectively prioritise its onshore compliance risks?

17. DIMIA is using compliance risk assessment in its NSW State Office, where compliance activities are prioritised based on risk profiles of specific industries and labour markets. However, the ANAO considers that DIMIA's overall onshore compliance response could be improved through:

- further developing an understanding of its onshore compliance population, through a more effective integration of its intelligence capability, with a consistent national approach to onshore compliance target group profiling¹¹; and
- prioritising risks associated with different components of the onshore compliance target groups and identifying appropriate compliance responses.

Education as a compliance strategy (Chapter 4)

Is educational information provided to non-citizens entering Australia relevant, clear and timely?

Printed information

18. DIMIA advised that there is generally no letter or information kit provided to successful visitor visa applicants who apply using Form 48, 'Application to visit Australia for tourism'.¹² Because clear, relevant printed information is not made available to all visitors in a timely way, applicants may not be fully aware of what they can and cannot do in Australia, and the consequences of overstaying their visa or working contrary to their visa conditions.¹³

Electronic information

19. The audit found that the relevance, clarity and timeliness of information provided to visa applicants electronically is of a high standard.

20. The audit also found that Electronic Travel Authority (ETA) visa holders form approximately 25 per cent of the overstayer population.

¹¹ Compliance target group profiling involves the systematic analysis of information to enable an organisation to predict which segments of a population are not likely to comply with a regulatory environment. It is an essential predictive tool, aiding the identification of the causes of non-compliance and opportunities for compliance improvement strategies.

¹² The ANAO notes that DIMIA does provide assistance in the application process through the *Family Visitor Network Information Kit*. The object of the kit is to furnish the onshore client with as much information as possible to enable them to assist their offshore relative to lodge a visitor application overseas.

¹³ DIMIA advises that they would need to carefully consider how to deliver the compliance message as it would not like to convey an overly oppressive first impression, particularly given the miniscule overstay/breach rate for visitors.

Providing information to ETA holders is a compliance strategy that would enhance DIMIA's overall management of the risk of this category of visa holder overstaying, or otherwise not abiding by the legitimacy of their visas.

How effectively is DIMIA targeting its Employer Awareness Campaign?

21. In regard to DIMIA's Employer Awareness Campaign, the ANAO found that DIMIA did not:

- gather and analyse employer feedback to monitor the effectiveness of its strategies to assist employers to comply with the law;
- undertake ongoing analysis and evaluation of the performance information available from the work rights faxback facility and the employers' work rights checking line; and
- profile employer groups and labour suppliers who are likely to employ or refer workers with no authorisation to work (except in its NSW State Office).

Inter-agency arrangements (Chapter 5)

Is DIMIA effectively maintaining strategic relationships with key partners to achieve better compliance outcomes?

22. Previous ANAO performance audits into DIMIA's onshore compliance function found that the development of data transfer arrangements with other agencies at the State/Territory and local authority level had been slow, and noted the importance of effective coordination.¹⁴

23. The audit found that DIMIA had developed a data sharing Memorandum of Understanding (MoU) with the ATO that included a section on how outcomes will be measured by both MoU partners. For DIMIA this includes the number of unlawful non-citizens located in Australia as a result of data exchange and the frequency of data exchange. However, it does not provide any indication as to how, when or to whom this performance information will be conveyed. The data sharing MoU with the ATO could be enhanced by including robust performance reporting measures for each of the MoU partners to allow for transparency and improved accountability for performance. The improved MoU could form the basis of any future data sharing MoUs entered into by DIMIA State and Territory offices for compliance purposes.

¹⁴ ANAO Audit Report No.7 1997–98, *Immigration Compliance Function—Follow-up Audit*, p. 31.

Compliance operations (Chapter 6)

How well developed is DIMIA's approach to managing onshore compliance intelligence?

24. DIMIA's onshore intelligence network, based in its State and Territory offices, was put in place to focus the department on identifying emerging trends that could potentially impact on its core business. DIMIA has available to it a centrally coordinated information gathering and analysis structure. The Intelligence Analysis Section was formed in January 2000. The offshore Principal Migration Officer (Compliance) network was integrated with the Intelligence Analysis Section in early 2000 and, in late 2002, DIMIA's onshore intelligence network of State Intelligence Officers was established.¹⁵

25. In June 2001, DIMIA's Board of Management approved the development of IMtel to cover all Border Control and Compliance Division (BCC) programs, including compliance, investigations, airport operations and intelligence functions. IMtel is designed to be a web-based national intelligence database. It went into production as of 28 April 2003 to a limited number of users.

26. The audit found that IMtel is not linked to any DIMIA systems offshore or to any external agencies, for example, the Australian Customs Service to facilitate intelligence sharing. DIMIA has not conducted any cost-benefit analysis concerning such linkage.

27. IMtel is designed to, among other things, capture data relating to community tip-offs about the compliance target population. However, the audit found that tip-off information is currently captured at State/Territory office level and keyed into stand-alone databases and spreadsheets.¹⁶ DIMIA advised that part of the implementation of IMtel involves integrating approximately 3 000 to 5 000 localised databases or spreadsheets. This has not been achieved to date.

Is DIMIA effectively managing its tip-off data to support targeted compliance responses?

28. Tip-offs are a significant source of information for DIMIA that may lead to the location of non-citizens who are either unlawful or in breach of their visa conditions. DIMIA estimates that in 1999–2000, community information

¹⁵ Five State intelligence officers were appointed in the mainland State capitals, with officers in Melbourne and Adelaide covering Tasmania and the Northern Territory respectively. Support for the Australian Capital Territory Office is provided by the Intelligence Analysis Section in BCC.

¹⁶ For example, in Sydney (Gateway) NEXUS, a database, is used while in Brisbane a spreadsheet is used.

assisted in around 19 per cent of priority locations.¹⁷ DIMIA does not analyse its tip-off data and was unable to provide the ANAO with a national aggregate of the number of community tip-offs it received last financial year, including the number acted upon and the results of these compliance actions.

Is DIMIA effectively monitoring and analysing its performance on search warrant outcomes achieved?

29. The audit found that DIMIA does not aggregate, analyse and evaluate State and Territory office outcomes of search warrants issued for performance evaluation on a national basis. A central monitoring function could undertake this work. Factors to consider could include: the number of warrants issued, the number of non-citizens intended to be located, and the number actually located.

Does DIMIA have effective quality assurance mechanisms to monitor the quality of its onshore compliance processes and systems?

30. Under the deliverable of quality assurance in DIMIA's compliance operational plan, DIMIA commits to: developing a process for identifying and sharing better practice across States; developing a national overview of standard and quality assurance; implementing quality assurance processes; and using a review of quality assurance outcomes to improve reporting and performance monitoring. The ANAO found no evidence that any of the above quality assurance processes are in place or are being considered for development.

Conclusion

31. DIMIA uses a variety of onshore compliance strategies to locate unlawful non-citizens (overstayers) and non-citizens in breach of their visa conditions. Its NSW State Office, for example, prioritises compliance activities based on risk profiles of specific industries and labour markets. Such a model can identify industries likely to employ both overstayers and non-citizens working contrary to their visa conditions.

32. DIMIA also pursues an 'intelligence-driven' model that relies on information about individuals contained in its records (for example, DIMIA's overstayer file) and tip-offs from the community. This model focuses on identifying individual overstayers or non-citizens working illegally, so that appropriate compliance action can be taken.

33. The integrity of DIMIA's overstayer file is crucial in supporting the department's intelligence-driven model. DIMIA advised that it is seeking to reduce the estimated 30 per cent error rate in its overstayer records through its

¹⁷ DIMIA, 2000, *Protecting the Border*, p. 64.

'Overstayers Project'. The ANAO considers that improvements in the quality of DIMIA's overstayer file would provide the following benefits:

- improve the quality of its reporting to key stakeholders concerning the likely number of overstayers in Australia;
- facilitate DIMIA's data matching activities with a range of agencies (such as the ATO) to assist it in pro-actively targeting overstayers; and
- enhance the performance of compliance officers at the State and Territory level through the provision of a reliable and current overstayers' file.

34. Tip-offs from members of the general community are a valuable source of intelligence for DIMIA that may, for example, lead to the location of an overstayer. However, DIMIA does not gather and analyse its tip-off data to improve its intelligence capability. Such analysis would: support DIMIA's onshore compliance target group profiling; assist in setting onshore compliance priorities; and facilitate the allocation of DIMIA's onshore compliance resources.

35. More consistent integration of compliance target group profiling with DIMIA's intelligence gathering and analysis capability, could further assist DIMIA's ongoing development of its national compliance program. Such an approach would assist DIMIA to prioritise the risks presented by the onshore compliance target population.

36. DIMIA's NSW State Office is unique in its approach of implementing industry-based, multidisciplinary compliance teams. This approach may not be appropriate for all State and Territory Offices. However, DIMIA could benefit by analysing the merits of introducing appropriate aspects of its NSW State Office model into its other State and Territory Offices.

37. More generally, DIMIA could enhance its onshore compliance activities by undertaking the following:

- providing better information to make sure that non-citizens are fully aware of what they can and cannot do in Australia, and the consequences of any breaches of their visa conditions;
- enhancing the targeting of its Employer Awareness Campaign through: the regular analysis of employer feedback and of the performance information arising from the various aspects of the campaign; and profiling employer groups and labour suppliers who are likely to employ or refer workers with no authorisation to work;
- developing and maintaining inter-agency arrangements with key partners such as federal, State and Territory police services; and

- implementing its commitments relating to quality assurance systems and processes, contained within its Compliance Section operational plan to enable a consistent, national approach to compliance operations.

Recommendations and agency response

38. The ANAO made seven recommendations concerning DIMIA's administration of onshore compliance. DIMIA agreed with six recommendations and agreed with qualification to one recommendation. DIMIA's full response to the audit is provided at Appendix 9. The following was DIMIA's summary response.

The Department notes that the audit has validated the cornerstones of Australia's onshore immigration compliance program. The audit covers a complex and sensitive area of public administration that is of considerable interest to the Australian community. Australia has long been a migration destination and will continue to be so. However to have an effective and fair migration program brings with it the responsibility to deal with those who might seek to avoid normal requirements by living or working illegally in Australia.

Australia's overall immigration compliance arrangements are arguably the most effective of any country in the world. This has been achieved in part by its tiered approach to entry. This involves offshore screening informed by the way people comply with visa conditions; checking people against lists of concern; placing obligations and potential sanctions on sponsors; screening at the border and then locating in Australia those not conforming with visa conditions. The ANAO audit provides some helpful guidance on how further refinements could be made onshore.

Recommendations

Recommendation

No.1

Para 3.28

To assist in developing appropriate compliance strategies, the ANAO recommends that DIMIA strengthen its analysis by more effectively using its existing data to profile compliance target groups, particularly data relating to self-referrals and illegal work.

DIMIA response: Agreed with qualification.

Recommendation

No.2

Para 3.71

The ANAO recommends that DIMIA develop its compliance risk assessment and priorities by more effectively and consistently integrating its intelligence capabilities with onshore compliance target group profiling.

DIMIA response: Agreed.

Recommendation

No.3

Para 4.31

To assist in deterring non-citizens from overstaying or working contrary to their visa conditions, the ANAO recommends that DIMIA make available:

- clear, relevant printed information to assist visa applicants understand what they can, and cannot do, in Australia, including the consequences of overstaying their visas or working contrary to their visa conditions; and
- relevant, clear and timely visa information to visa applicants in ETA eligible countries.

DIMIA response: Agreed.

**Recommendation
No.4
Para 4.97**

To better enable DIMIA to strategically target its Employer Awareness Campaign, the ANAO recommends that DIMIA:

- put in place a system to collect and analyse employer feedback on employer awareness activities;
- analyse existing data to predict trends in patterns of employment of illegal workers; and
- develop employer and labour supplier profiles, to identify which categories would benefit from employer awareness activities.

DIMIA response: Agreed.

**Recommendation
No.5
Para 6.40**

To assist in monitoring the consistency of performance across all State or Territory offices relating to the management of its search warrant powers, the ANAO recommends that DIMIA Central Office monitor and analyse factors such as: the number of warrants issued; the number of non-citizens intended to be located; and the number actually located.

DIMIA response: Agreed.

**Recommendation
No.6
Para 6.89**

The ANAO recommends that to assist in addressing needs identified in its 'Business Directions 2002–2005' and risks identified in the Border Control and Compliance Division risk management plan, DIMIA undertake:

- a cost benefit analysis to fully develop an integrated intelligence analysis system, to underpin further system development planning activities; and
- the development and implementation of a project brief, for the integration of existing stand-alone tip-off databases and spreadsheets, as part of its implementation of IMtel.

DIMIA response: Agreed.

Recommendation

No. 7

Para 6.102

To assist in achieving a nationally consistent approach to compliance operations, the ANAO recommends that DIMIA implement the quality assurance process identified in its onshore compliance operational plan.

DIMIA response: Agreed.

Audit Findings and Conclusions

1. Introduction

This chapter describes the background to the audit (including the Department of Immigration and Multicultural and Indigenous Affairs' legislative environment and onshore compliance framework), the audit objective and scope, conduct of the audit, and structure of the report.

Background

Visa overstayers

1.1 Relative to the number of people who visit Australia each year, visa overstayers represent a small proportion (0.2 per cent).¹⁸ DIMIA estimates that around 20 000 people stay in Australia each year after their visa has expired. Not all of the 20 000 people overstaying their visas are added to the pool of estimated unlawful non-citizens, as many of them are located¹⁹ by DIMIA or voluntarily leave the country following a short overstay.

1.2 DIMIA uses its national overstayers file to estimate the total number of non-citizens in Australia who have overstayed their visa. The file holds cumulative records dating back to 1981. This date is significant, as on 19 June 1980 the then Minister announced a 'Regularisation of Status Program'. This enabled lawful and unlawful non-citizens who had arrived before 1 January 1980 to apply for permanent residency by the end of the calendar year. DIMIA estimates that the total number of overstayers at 30 June 2003 was approximately 59 800.²⁰

Non-citizens working in Australia

1.3 Most temporary visitors to Australia do not have the right to work in Australia. Some classes of visas, for example the working-holiday maker visa provides for limited work rights that allow visitors to work for a limited length of time. Other classes of temporary visas allow non-citizens to work in Australia, for example, those non-citizens who enter Australia on employer-sponsored business visas.²¹ These arrangements allow employers to fill skill shortages from overseas and to access new ideas, skills and technology for up

¹⁸ DIMIA, 2000 edition, *Protecting the Border*, Canberra, p. 57.

¹⁹ An unlawful non-citizen or person in breach of visa conditions is located as a consequence of organised field activity and where the location can be traced back to a field operation—for instance, a search warrant. Self-referrals also count as locations. An example of a self-referral is an unlawful non-citizen or lawful non-citizen who is in breach and presents voluntarily to an immigration office so that their status can be regularised, or they are responding to a DIMIA letter and have been asked to attend an interview.

²⁰ DIMIA, *Annual Report 2002–03*, p. 59.

²¹ DIMIA, 2000 edition, *Population Flows—Immigration Aspects*, Canberra, p. 48.

to four years. Most of these visa holders are employed in professional and management positions.²²

Non-citizens in breach of visa conditions

1.4 A person is in breach of their visa conditions if they do not meet the conditions of their visa, for example by working in Australia contrary to a condition of their visa. DIMIA is unable to estimate the total number of non-citizens in Australia who are working contrary to their visa conditions. However, DIMIA's NSW compliance operations have an industry focus, targeting problem industries through industry and labour market profiling. Such an approach can identify industries likely to employ both overstayers and non-citizens working contrary to their visa conditions.

Locations information

1.5 In 2002–03 DIMIA located 21 465 people who had either overstayed their visa or were in breach of visa conditions. Some 12 185 (57 per cent) of these were self-referrals. The remaining 9 280 locations were made by DIMIA field teams (43 per cent).²³ These locations relate to non-citizens arriving in Australia in any year since 1981. Of the total number of locations in 2002–03, 14 935 breaches of the Act were resolved.²⁴ Of the remaining unresolved cases, some were in detention awaiting removal, while the majority were granted bridging visas to arrange their own departure.²⁵

Legislation governing the administration of onshore compliance relating to unlawful non-citizens

1.6 The *Migration Act 1958 (Cth)*, as amended (the Act), and associated regulations provide the structured legal environment for DIMIA's onshore compliance operations. Within the Act, an unlawful non-citizen is defined as follows:

- (1) A non-citizen in the migration zone who is not a lawful non-citizen is an unlawful non-citizen.
- (2) To avoid doubt, a non-citizen in the migration zone who, immediately before 1 September 1994, was an illegal entrant within the meaning of the Act, as in force then became, on that date, an unlawful non-citizen.²⁶

²² DIMIA, 2000 edition, *Population Flows—Immigration Aspects*, Canberra, p. 48.

²³ DIMIA, *Annual Report 2002–03*, p. 59.

²⁴ Individual cases may be 'resolved' in a number of ways. Examples include: departure from Australia (including deportation and removal); granting of citizenship; or by ministerial intervention.

²⁵ The grant of a bridging visa does not count as 'resolving' a case. This is because the grant is an interim step towards resolving the case.

²⁶ Section 14 of the Act.

1.7 Subsection 189(1) of the Act provides that if an officer knows or reasonably suspects that a person in the migration zone (other than an excised offshore place) is an unlawful non-citizen, the officer must detain the person.

1.8 Alternatively, section 37 of the Act provides for classes of temporary visas, known as bridging visas, to be granted. If the Minister is satisfied that an eligible non-citizen satisfies the criteria for a bridging visa as prescribed under subsection 31(3) of the Act, the Minister may grant a bridging visa permitting the non-citizen to remain in, or travel to, enter and remain in Australia:

- (a) during a specified period; or
- (b) until a specified event happens.

1.9 It is the bridging visa (E) that allows DIMIA to temporarily 'regularise'²⁷ the status of an unlawful non-citizen, should DIMIA's decision-making processes lead it to do so, rather than detaining²⁸ an unlawful non-citizen.

1.10 A non-citizen's visa may be cancelled under the Act. Section 109 of the Act, provides for cancellation of a visa if information provided is incorrect. Section 116 of the Act describes the power to cancel a visa, while section 501 of the Act provides for visa cancellation on character grounds.

1.11 Proposed changes to the Act, together with relevant changes to the *Privacy Act 1988*, are discussed at Appendix 1.

Overview of DIMIA's onshore compliance framework

Organisational structure

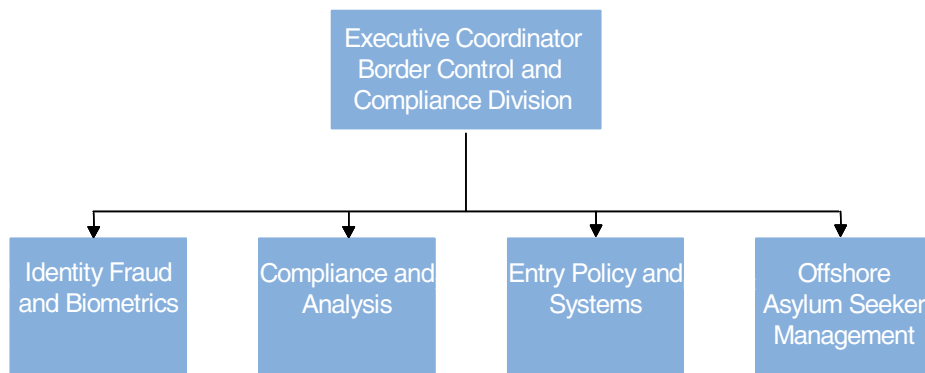
1.12 DIMIA's onshore compliance activities are primarily managed within the Border Control and Compliance Division (BCC), as shown in Figure 1.1.

²⁷ Regularising the status of an unlawful non-citizen does not resolve their future in Australia. It merely provides for the regularised unlawful non-citizen to stay out of detention while making arrangements to either leave Australia or pursue a visa application.

²⁸ In the Act, 'detain' means: (a) take into immigration detention; or (b) keep, or cause to be kept, in immigration detention; and includes taking such action and using such force as are reasonably necessary to do so.

Figure 1.1

DIMIA Border Control and Compliance Division



Source: DIMIA.

1.13 The number and distribution of compliance staff employed by DIMIA in its State and Territory Offices is shown in Appendix 2.

Compliance Section

1.14 The Compliance Section provides coordination, support and direction to compliance officers within the Department’s State and Territory office network, as follows.

- ‘Coordination’—develop and monitor a national compliance program, including advising the State and Territory offices of emerging issues and trends.
- ‘Support’—support compliance officers in State and Territory offices by providing a professional conduct framework, including:
 - a national training program;
 - ‘National Compliance Operational Guidelines’ that incorporate occupational, health and safety issues; and
 - a review of recruitment processes.
- ‘Direction’—guidance and direction through policy-making and development.²⁹

²⁹ DIMIA, 2002, ‘Onshore Compliance Operational Plan’, p. 2.

Focus of onshore compliance

1.15 DIMIA's onshore compliance activities relating to non-citizens are primarily focused on categories 2 and 3, as shown in Figure 1.2 below. For the purposes of this audit, these two categories are referred to as the compliance target population.

Figure 1.2

Focus of DIMIA's onshore compliance activities

Category	DIMIA estimate
Category 1: Non-citizens with no authority to be in Australia.	Estimated by DIMIA not to be significant for DIMIA onshore compliance activities.
Category 2: Non-citizens who have stayed in Australia beyond the period specified in their visas (overstayers).	Estimated by DIMIA in 2002-03 to be approximately 59 800 non-citizens. This category is a significant priority for DIMIA onshore compliance activities.
Category 3: Non-citizens who are in breach of conditions which apply to their visas (eg. Illegal workers).	There is no estimate of the total number of people who are likely to currently be in breach of their visa conditions. This category is a significant priority for DIMIA onshore compliance activities.

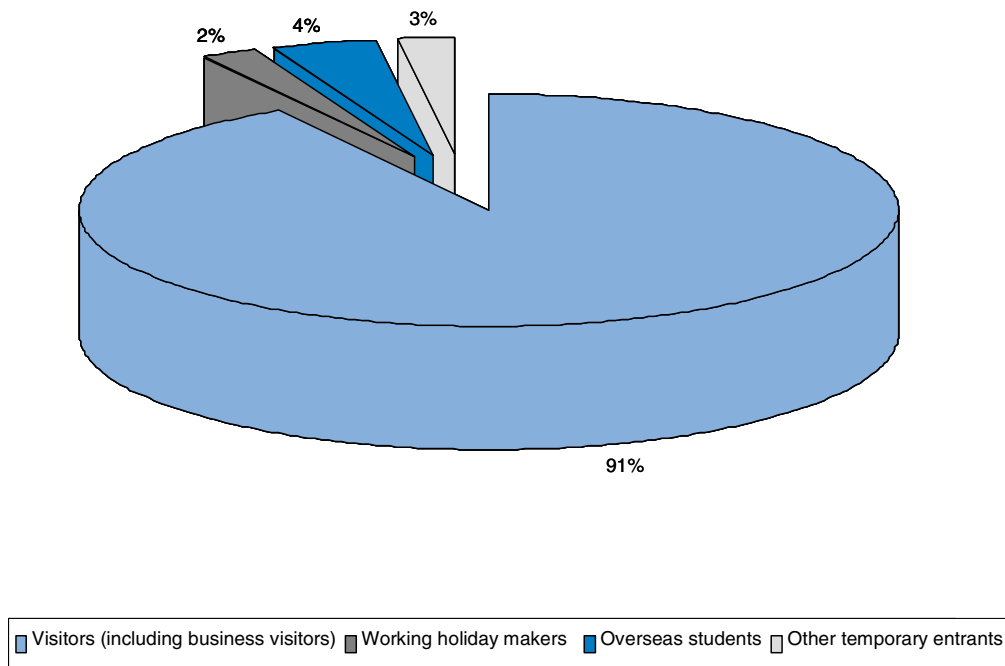
Source: ANAO, based on DIMIA information.

Non-citizens entering Australia

1.16 The Australian National Audit Office (ANAO) examined the number and type of temporary entrants to Australia in 2001–02 to determine composition by group of non-citizens entering Australia. In 2001–02 a total of 3 648 429 temporary entry visas were granted, 3 332 858 of these were for offshore visitors (including business visitors). Working-holiday makers (85 207 visas) and overseas students (151 894 visas) accounted for approximately 75 per cent of the remaining temporary entrants. Consequently, the audit focused on the most significant category of temporary entrants to Australia—offshore visitors (including business visitors). The total number of temporary entrants to Australia for 2001–02, by category, is shown by percentage in Figure 1.3 below.

Figure 1.3

Categories of temporary entrants into Australia, 2001–02



Source: *The Immigration, Population and Citizenship Digest*.³⁰

Compliance operations

1.17 DIMIA compliance work is conducted on a national basis through a network of DIMIA State and Territory offices. It aims to provide the community with confidence in the migration program and to maintain the integrity of the visa program. Outcomes largely depend on the effectiveness of a range of offshore and onshore strategies.

1.18 Certain DIMIA staff have the delegation to issue search warrants for fieldwork activities in accordance with migration legislation. Field activities are conducted in regional and metropolitan Australia and can range from routine door knock visits to more complex site visits. The primary role of compliance officers is to locate non-citizens who have become overstayers or are in breach of their visa conditions.

³⁰ <<http://www.immi.gov.au/statistics/publications/digest/digest.htm>>

1.19 Central Office supports compliance fieldwork by providing a national perspective to compliance work. It has developed a compliance operational plan that includes:

- BCC's purpose;
- how BCC fulfils its role;
- the role and responsibility of the Compliance Section; and
- a description of deliverables, action to be taken by the Compliance Section, and a timeframe for the deliverables.

1.20 Another example of Central Office support for achieving onshore compliance is through providing a national perspective to compliance work. Examples are the deployment of National Compliance Operating Guidelines and the development of a national training program. These activities support decision-makers in the field and seek to ensure a nationally consistent approach to compliance work.

Audit objective and scope

Audit objective

1.21 The objective of this performance audit was to assess whether DIMIA had implemented appropriate onshore compliance strategies in regard to people who enter Australia lawfully but whose presence becomes unlawful through:

- the expiry of their visa; or
- a breach of visa conditions and cancellation of their visa.

Audit scope

1.22 The audit examined DIMIA's administration of non-citizens who have stayed in Australia beyond the period specified in their visas (overstayers). The audit did not examine DIMIA's administration of all types of breach of visa conditions. Instead, the audit analysed DIMIA's administration of a significant type of breach, that is, non-citizens working contrary to their visa conditions.

1.23 In particular, the audit examined the effectiveness of DIMIA's program of onshore compliance activity as follows:

- reporting onshore compliance: how effectively DIMIA reports performance information on onshore compliance outcomes to meet stakeholder needs; the robustness of DIMIA's estimate of unlawful non-citizens (overstayers); and DIMIA's efforts to improve overstayer data accuracy;

- compliance risk assessment: use of onshore compliance risk assessment to effectively and efficiently treat onshore non-compliance;
- education: as a compliance strategy and the strategy's effectiveness in addressing compliance risks;
- enablers: agreements with external agencies that assist DIMIA to perform its onshore compliance work (for example, Memoranda of Understanding with police services); and
- enforcement: actions taken to secure compliance with the Act where a non-citizen is unlawful or working in breach of visa conditions.

1.24 The scope of the audit does not include:

- DIMIA's management of compliance activity in regard to category 1 non-citizens with no authority to be in Australia—shown in Figure 1.2 above;
- DIMIA's management of unlawful non-citizens after they have been located, that is, activities involved in processing or detaining the compliance target population;
- offshore or onshore processing of visa applications; and
- a review of the effectiveness of the visa system as it relates to achieving government migration policy.

1.25 Under DIMIA's outcomes and outputs framework, Output 1.1.5 *Students* is resourced separately to Output 1.3.3 *Detection Onshore*.³¹ The administration of student visas may be considered in a future ANAO audit but was outside the scope of this audit.

Conduct of the audit

1.26 The ANAO conducted audit fieldwork at DIMIA's Central Office in Canberra and regional offices in Canberra, Melbourne, Sydney and Brisbane. This included:

- examining DIMIA documents, databases and files; and
- interviewing DIMIA personnel.

1.27 The audit was conducted in conformance with ANAO auditing standards and cost approximately \$609 000.

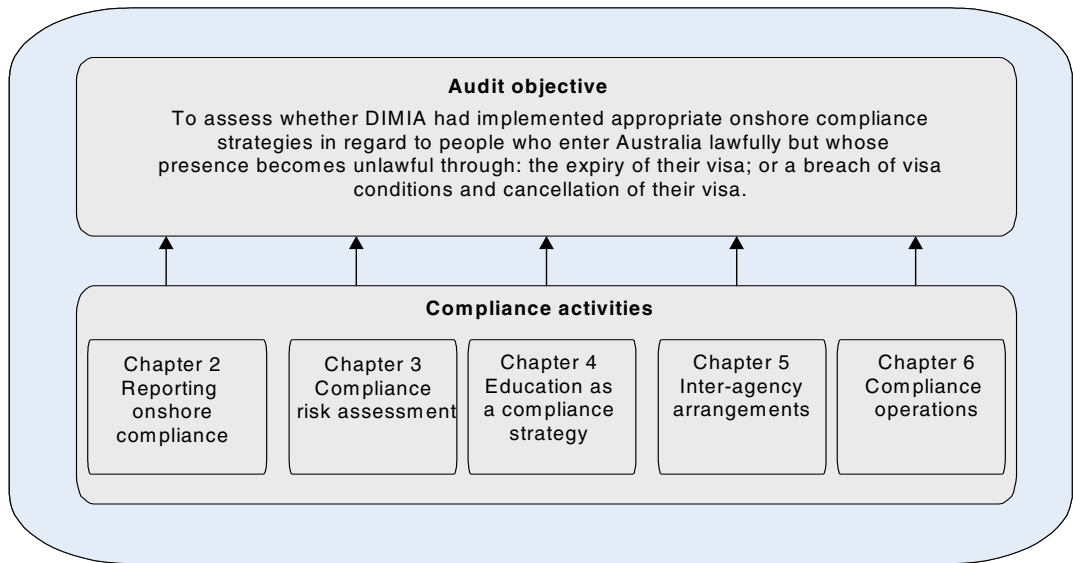
³¹ Output 1.3.3 *Detection Onshore* includes locating people in categories 2 and 3 as shown in Figure 1.2 above.

Report structure

1.28 This report is structured into six chapters. Chapter 1 describes the background to the audit, the audit objective and scope, conduct of the audit, and structure of the report. The structure of the remaining chapters is illustrated in Figure 1.4 below.

Figure 1.4

Report structure



2. Reporting Onshore Compliance

This chapter examines DIMIA's performance information reporting on onshore compliance outcomes. The robustness of DIMIA's estimate of unlawful non-citizens (overstayers) and DIMIA's efforts to improve overstayer data accuracy is also considered.

Introduction

2.1 Better practice in performance reporting involves the specification of clear and precise indicators that are drawn from policies and plans for the agency. Guidance provided by the Department of Finance and Administration (Finance), the ANAO, the Senate Finance and Public Administration Legislation Committee and the Joint Committee of Public Accounts and Audit, indicate the features of a good performance reporting framework.³²

DIMIA's performance information relating to onshore compliance

2.2 Within DIMIA's outcomes and outputs framework, onshore compliance activities appear under Outcome 1 *Contributing to Australia's society and its economic advancement through the lawful and orderly entry and stay of people*. Within its PBS, DIMIA has identified a number of key strategies against Outcome 1. In relation to onshore compliance, DIMIA has identified a key strategy, as 'The extent to which there is adherence to Australian entry and stay requirements'.³³

2.3 Against this key strategy, DIMIA has identified the following effectiveness indicators:

- non-return rate for visitors relative to the approval rate for visitor applications; and
- ratio of the number of people located for non-compliance with temporary entry visa conditions, including those refused entry at the border, to the average number of temporary entrants in Australia.

2.4 DIMIA's first effectiveness indicator is relevant and useful in measuring its performance against Outcome 1 with respect to the number of non-citizens who remain unlawfully in Australia, that is, overstayers or

³² ANAO and Finance, April 2004, *Better Practice in Annual Performance Reporting, Better Practice Guide*, p. 7.

³³ Portfolio Budget Statements 2003–04, *Immigration and Multicultural and Indigenous Affairs Portfolio*, Budget Related Paper No.1.12, p. 79.

unlawful non-citizens. DIMIA has developed a methodology to estimate the number of overstayers in Australia. This estimate can be used to measure DIMIA's effectiveness in locating overstayers and is reported to Parliament and key stakeholders on an annual basis.

2.5 DIMIA's second effectiveness indicator is designed to measure the department's effectiveness in locating people in breach of their visa conditions. The ANAO notes that the Parliament has previously sought information relating to overstayers and non-citizens in breach of visa conditions. In August 2002 the Joint Committee of Public Accounts and Audit conducted a public hearing relating to ANAO Audit Report No.57, *Management Framework for Preventing Unlawful Entry into Australian Territory*. During the hearing, the Committee sought information from DIMIA on the number of unauthorised arrivals, overstayers and people who breached their visa conditions during the audit period. In its response, DIMIA advised that:

In relation to breaches, it is a difficult question to answer precisely but I (First Assistant Secretary Border Control and Compliance) can give you details in relation to the number of visa cancellations.³⁴

2.6 The ANAO considers DIMIA's effectiveness indicator for measuring its performance in locating people in breach of their visa conditions is of limited value. A comparison of the number of people DIMIA has found to be in breach of their visa conditions with the average number of temporary entrants in Australia provides no direct indication of how effective DIMIA is in locating non-citizens in breach of their visa conditions. This is because no comparison is made between the number of non-citizens in breach of their visa conditions located by DIMIA, relative to the total number of non-citizens likely to be in breach of their visa conditions in Australia.

2.7 The ANAO accepts that it would be difficult to estimate the total number of non-citizens likely to be in breach of their visa conditions in Australia. However, DIMIA's performance measure relating to the location of non-citizens in breach of their visa conditions could be useful in assessing performance, if used in context within a broader performance management framework. Therefore, it is important that DIMIA collects information on relevant performance measures that reflect the achievement of objectives related to locating non-citizens in breach of their visa conditions.

2.8 The ANAO notes that although the performance measure is readily determined, it is difficult to ascertain the exact cause of increases or decreases in the number of people located for non-compliance with temporary entry visa conditions without additional qualifying information. Factors that have a

³⁴ Joint Committee of Public Accounts and Audit, Review of Auditor-General's reports, fourth quarter 2001–2002, Friday, 23 August 2002, PA33.

bearing on the number of people located for non-compliance with temporary entry visa conditions include:

- the actual number of people arriving in Australia with temporary entry visa conditions;
- the quality of information/intelligence received by DIMIA relating to non-compliance with visa conditions;
- the coverage undertaken by DIMIA compliance teams;
- accessibility of physical locations of people suspected of being in breach of visa conditions; and
- DIMIA resource levels.

2.9 The ANAO considers that it is important that DIMIA examines factors that have a bearing on the number of people located for non-compliance with temporary entry visa conditions, and reports these factors, to assist users in understanding the extent to which they can rely on the performance information reported. During the audit, DIMIA advised the ANAO as follows:

The Department is reviewing all its PBS indicators and will complete this consideration in time to implement as much as possible for 2004–2005. The ANAO comments will be taken into account when the indicators are rewritten (much of this work has already been done).³⁵

DIMIA's estimate of unlawful non-citizens

2.10 DIMIA and the Minister for Immigration and Multicultural and Indigenous Affairs annually report to Parliament and the Australian people on the estimated number of unlawful non-citizens within Australia and DIMIA's strategies for reducing this number.

2.11 DIMIA estimates the number of unlawful non-citizens in Australia twice a year—at 31 March and 30 September. The estimate is produced from a file containing an estimate of *all* people believed to be in Australia unlawfully at the estimate date. The records examined for the estimate are sourced from a number of DIMIA systems and include arrivals from 1981 onwards. To compensate for errors in the overstayers file, DIMIA has statistically calculated an error rate of around 30 per cent, which it applies to the raw data (approximately 90 000 overstayers) before the overstay estimates are released publicly (approximately 59 800 overstayers).

2.12 The ANAO notes the strategic importance of DIMIA's overstayers file in also:

³⁵ DIMIA email of 5 February 2004.

- informing DIMIA’s visa screening processes offshore; and
- optimising strategic data matching activities with the Australian Taxation Office (ATO) to locate unlawful non-citizens within Australia (discussed in Chapter 5).

2.13 The ANAO considers that accurate and reliable overstayers data would assist DIMIA to enhance its understanding of this component of the compliance target population.

A statistical review of DIMIA’s overstayers estimates

2.14 To test the reliability of the overstayers estimates, the ANAO contracted the Australian Bureau of Statistics (ABS) Statistical Consultancy Unit to carry out a methodological review of the estimation of overstayers. A full copy of the report is provided at Appendix 3.

2.15 The ANAO sought the statistical and methodological expertise of the Statistical Consultancy Unit to:

- validate the sampling methodology to arrive at the estimates;
- assess the quality of the estimates; and
- review DIMIA’s data cleansing³⁶ activities, and their impact on the raw data from which the estimates are drawn.

2.16 Overall, the Statistical Consultancy Unit found DIMIA’s methodology for estimating the number of overstayers to be generally sound. However, it made suggestions for improvements in these areas and also in relation to future changes to the sampling methodology.

2.17 The ANAO considers that DIMIA could benefit from implementing the improvements suggested by the ABS. The ANAO also considers that, noting that the overstayers file has a statistically calculated error rate of around 30 per cent, monitoring and reporting the error rate would assist users in interpreting the overstayers estimate, and enhance transparency and clarity in DIMIA’s external reporting.

Improving overstayer data accuracy

2.18 In November 2001 the Secretary of DIMIA identified a number of issues relating to the methodology used in deriving overstayer figures. A

³⁶ Data cleansing is the act of detecting and removing and/or correcting a database’s data that is incorrect, out of date, redundant, incomplete or formatted incorrectly. Data cleansing is also referred to as data scrubbing.

multidivisional working group was established to identify what needed to be done to produce more accurate overstayers estimates.³⁷

2.19 DIMIA initiated the Overstayers Project in July 2002, within Border Control and Compliance Division (BCC) to:

- decrease the error rate of the overstayers file;
- reduce the number of recorded overstayers; and
- increase the relevance of the overstayers file for compliance.

2.20 Processes designed to reduce the error rate include:

- rectifying identified programming errors in the overstayer suite of programs;
- removing permanent residents records; and
- identifying overstayers seeking ministerial intervention or judicial review.

2.21 DIMIA envisages that a reduction in the total number of overstayers recorded will be achieved through:

- ongoing data matching with the ATO and other agencies;
- confirmation from foreign governments that their citizens have returned; and
- ongoing manual data cleansing of the overstayers file.

2.22 BCC is not the only functional area within DIMIA that can manually 'clean' overstayer records. The cleansing of records from the overstayers file can significantly affect the number of overstayers estimated to be in Australia and the quality of information provided to compliance teams for follow-up action. Consequently, the ANAO sought information from DIMIA about the controls implemented to regulate the cleansing of its overstayer records to ensure consistency of approach, transparency and accountability. For example, data cleansing protocols would assist in ensuring that rules for cleansing overstayer records were applied consistently by all relevant functional areas. Also, reporting on overstayer records cleansed would provide an audit trail supporting transparency and accountability for record cleansing work performed.

³⁷ DIMIA minute addressed to First Assistant Secretary, Border Control and Compliance Division, 4 July 2002.

2.23 The ANAO found that there are no formal data cleansing protocols for functional areas to cleanse overstayer records. The ANAO notes that approximately 2500 overstayer records have been cleansed since commencement of the Overstayers Project. Subsequent to the audit, DIMIA advised the ANAO that, in relation to the cleansing of overstayer records for the Overstayers Project, the merging or correcting of client records is a system-based functionality granted to certain officers who have the demonstrated business need, adequate training, and appropriate security clearances to do so. In addition, all mergers undertaken as part of the Overstayers Project are required to be notified to the Travel and Immigration Processing Systems (TRIPS) helpdesk for auditing purposes. If any records are found to be incorrectly merged, they can be restored to their previous status. To date, DIMIA has not found any records merged by officers of the Overstayers Project to be incorrect.

2.24 The ANAO suggests that DIMIA document its data cleansing procedures and processes relating to overstayer records, in order to support transparency and accountability for the effective management of risks associated with its data cleansing activities.

2.25 The audit also found that there is no coordinated reporting of the cleansing of overstayer records to the Overstayers Steering Committee to support transparency and accountability of the cleansing of overstayer records. DIMIA advised the ANAO that the number of records being cleansed by the Overstayers Project team would not have a significant impact on the error rate of the overstayers file. The ANAO notes that one of the design criteria of the Overstayers Project is to decrease the error rate of the overstayers file. DIMIA's advice suggests that the project has not yet achieved its purpose. The ANAO suggests that, while working to decrease the error rate of the overstayers file, DIMIA monitor and report its data cleansing activities to the Overstayers Steering Committee, in the interests of supporting transparency and accountability for performance.

3. Compliance Risk Assessment

This chapter focuses on the processes DIMIA uses to develop an understanding of the characteristics of the onshore compliance target population in the context of a compliance risk assessment approach.

Introduction

3.1 Australia's entry policies and procedures reflect Australia's sovereign right under international law to control which non-citizens may enter Australian borders. Over the past few years, concerns about international terrorism and security issues have highlighted this aspect of government policy. DIMIA's onshore compliance operations take place in this broad policy setting and in a highly structured legal environment.

3.2 The ANAO considers that to optimise outcomes in locating unlawful non-citizens and non-citizens working contrary to their visa conditions, DIMIA needs to be able to allocate its resources strategically. This allocation would be assisted by an informed, risk-based framework that has regard to:

- the characteristics of the compliance target population;
- government and agency priorities for compliance activity; and
- the relative effectiveness of various compliance strategies.

3.3 The ANAO has identified, in other agencies and contexts, that structured compliance risk assessment is pivotal to developing a cost-effective mix of compliance strategies to treat the levels of non-compliant behaviour.³⁸

DIMIA's compliance continuum

3.4 DIMIA's onshore compliance activity is undertaken within the context of DIMIA's overall compliance continuum, as shown at Appendix 4. The compliance continuum commences before visa issue, proceeds through the visa decision-making processes, and continues while the person is in Australia holding a valid visa or where their visa has expired.

3.5 The continuum seeks to address the groups of non-citizens who comprise the compliance target population, that is, visa overstayers (estimated by DIMIA as 59 800 at 30 June 2003) and non-citizens working contrary to their visa conditions (no estimates available).

3.6 DIMIA considers that these two groups are not significantly different. The primary concern for DIMIA is at what point they are intercepted on the

³⁸ ATO, April 1998, *Improving Tax Compliance in the Cash Economy*, Commonwealth of Australia, p. 20.

compliance continuum—at the border, at the workplace working illegally, or located once they have become unlawful.

Understanding the characteristics of the compliance target population for risk assessment purposes

3.7 DIMIA has offshore compliance risk assessment tools to minimise the likelihood of visa holders arriving in Australia and, subsequently, not complying with Australian migration law. The effectiveness of these tools is beyond the scope of this audit. A brief discussion of DIMIA’s principal offshore risk assessment tool, the risk factor list, is included at Appendix 5.

3.8 The ANAO considers that an understanding of the onshore compliance target population is fundamental to developing cost effective treatments. To enhance its understanding of this population, the ANAO examined how DIMIA:

- uses its existing data sources ; and
- gathers and uses relevant data when the opportunity presents itself.

Effectively using existing data sources

3.9 An improved understanding of the compliance target population can be developed by examining existing data collections, especially data related to the location of unlawful non-citizens and non-citizens working contrary to their visa conditions.

3.10 A DIMIA reporting tool, Seagate reporting, extracts data from its primary onshore processing system—the Integrated Client Services Environment (ICSE) to provide senior management with trends against Portfolio Budget Statement (PBS) targets. A description of ICSE is provided at Appendix 6.

3.11 DIMIA uses its performance information for high-level reporting purposes, but the ANAO found no evidence of ongoing systematic analysis of these data for compliance risk assessment purposes.

3.12 The ANAO noted that when compliance field officers input locations data into ICSE for reporting purposes, they also input considerable amounts of biographical data on these locations. The ANAO is of the view that DIMIA can gain a further appreciation of the compliance target population by analysing ICSE data. ICSE data could also be used to assist in developing compliance target group profiles.

3.13 In this section, the ANAO considers examples of how DIMIA’s data could be used to enhance the development of appropriate compliance responses.

Self-referrals

3.14 DIMIA defines a 'self-referral' as where an unlawful non-citizen, or a lawful non-citizen working contrary to their visa conditions, presents at a DIMIA office. They may present voluntarily or may be asked to attend an interview so that a compliance assessment can be undertaken.

3.15 The ANAO examined DIMIA's locations performance information for the 2001–02 and 2002–03 program years and found that self-referrals form more than 50 per cent of DIMIA's compliance locations.³⁹

3.16 During audit fieldwork, the ANAO became aware that self-referrals are entered onto ICSE. ICSE is a generic application processing system designed to fully integrate client data and application processing, and includes fields the ANAO considers could be used for target group profiling. The ANAO also considers that, if DIMIA gathered an additional item of self-referral data indicating how the client became aware of the self-referral process, DIMIA would be in a position to develop a compliance response further encouraging such actions.

3.17 The ANAO sought data from DIMIA specifically on self-referrals, including biographical details such as gender, age and country of citizenship, to determine which groups of non-citizens were most likely to self-refer to DIMIA. The ANAO considers that the identification of groups of non-citizens who are most likely to self-refer would assist DIMIA in targeting its compliance strategies to further encourage non-citizens in these groups, who have overstayed or are in breach of their visa conditions, to self-refer. DIMIA was unable to provide the ANAO with these data and advised that self-referrals were not routinely analysed or profiled.

Non-citizens working contrary to their visa conditions

3.18 DIMIA was not able to provide an estimate of the number of non-citizens working contrary to their visa conditions. However, DIMIA advised that it has a very good understanding of non-citizens who are in breach of their visa conditions, where it has contact with a third party with a direct monitoring interest⁴⁰, such as educational institutions with overseas students and employers sponsoring temporary residents.

3.19 For example, DIMIA advised that of the approximate 160 000 temporary resident visas granted annually, some 43 000 are for dealings with

³⁹ In program year 2001–02, 58 per cent of compliance locations were self-referrals; in program year 2002–03, 57 per cent were self-referrals. DIMIA advises that nearly one-third of self-referrals come from DIMIA's program concerned with student compliance.

⁴⁰ An example of a third party with a direct monitoring interest is an Australian employer who sponsors an overseas worker under a temporary residence visa. The sponsor is legally responsible for compliance by the overseas worker with the conditions under which the person was allowed to enter Australia.

Australian business. Temporary residents and their sponsoring Australian employers are subject to a range of integrity checks, including the monitoring of business sponsors with targeted site visits, to make sure they are complying with their undertakings as sponsors.⁴¹ These activities are carried out by DIMIA Business Centres in DIMIA State and Territory offices and are discussed in more detail in Chapter 4. DIMIA advised the ANAO that overstay rates remain low within this category of temporary entrant.

3.20 The ANAO notes, however, that DIMIA does not have contact with a third party, with a direct monitoring interest, in respect of the vast majority of temporary entrants to Australia each year (over 90 per cent).

3.21 To gain an understanding of the compliance target population for risk assessment purposes, the ANAO examined the issue of illegal work, especially where non-citizens may be in breach of their visa conditions by working without the appropriate authority. The ANAO also examined DIMIA's assessment and treatment of the varying level of risk presented by members of this category of the compliance target population.

3.22 DIMIA has, in some instances, undertaken compliance target group profiling⁴² to develop strategic responses to illegal workers, including non-citizens who are working in breach of their visa conditions. An example is shown in Case Study 1.

⁴¹ DIMIA, 2002, *In Australia's Interests A Review of the Temporary Residence Program*, Commonwealth of Australia, p. 128.

⁴² Compliance target group profiling involves the systematic analysis of information to enable an organisation to predict which segments of a population are not likely to comply with a regulatory environment. It is an essential predictive tool, aiding the identification of the causes of non-compliance and opportunities for compliance improvement strategies.

Case study 1

Foreign nationals working illegally in the building trades in NSW

Through an analysis of locations performance information where clients were located working illegally, DIMIA noted a disproportionate number of Country X citizens represented in its Illegal Work by Unlawful Reason categories.

These unlawful reasons included bridging visa breaches, bridging visa overstay, student work breaches and visitor work breaches.

Compliance officers from the NSW State Office scanned employment advertisements in several Country X language newspapers in Sydney to identify employers who were recruiting Country X nationals through this method.

Intelligence was also gathered from other sources such as the Australian Federal Police and from the NSW division of the Construction Forestry Mining and Energy Union.

This resulted in the location of a number of Country X citizens working illegally as tilers in the building and construction industry in New South Wales.

In this instance, the NSW State Office followed up the location activity by placing translated versions of DIMIA's employer awareness promotion in Country X language newspapers. These ads included information on how employers could use DIMIA's employers' work rights checking line and its faxback facility to check the work rights of overseas employees. These two services provided by DIMIA are discussed in more detail in Chapter 4.

Source: ANAO, based on DIMIA information.

3.23 DIMIA advised the ANAO that it considers there are some limitations on what can be achieved through informing their onshore processes by analysing what has happened in the past. DIMIA expressed the view that one key limiting factor is that DIMIA's knowledge that particular industries are quite likely to employ unlawful non-citizens and/or non-citizens without work rights, does not help DIMIA to immediately 'treat' the problem.

3.24 For example, DIMIA advised that it is well aware that building trades, particularly in NSW, attract citizens from Country X, who are either unlawful or are working contrary to their visa conditions. DIMIA operations over the past year show that there can be substantial numbers of people involved. However, this does not provide DIMIA with any lawful basis to execute random search warrants on building sites throughout, say, Sydney.

3.25 The ANAO considers that the compliance target group profiling, outlined in the above case study, assisted DIMIA by providing it with information on a group within its compliance target population, enabling the development of effective compliance strategies. The ANAO recognises that, while profiling alone cannot satisfy the requirement for granting a search warrant, it can provide useful information to enable an assessment of the level

of risk presented by this group. It can also, subsequently, inform decision-making and resource allocation for an appropriate compliance response. The compliance target group profiling discussed in the above case study, also assisted DIMIA to inform offshore compliance risk assessment processes at overseas posts.

3.26 In this instance, DIMIA also used its onshore Employer Awareness Campaign proactively, to inform potential employers about their obligations under Australian migration law, to employ only those non-citizens who have the legal right to work.

3.27 The ANAO considers this type of target group profiling opens up opportunities to develop cost-effective compliance responses, and suggests that DIMIA undertakes such profiling on a more consistent basis. Ongoing, systematic analysis of DIMIA existing data sources could improve DIMIA's understanding of compliance target groups for onshore compliance risk assessment purposes.

Recommendation No.1

3.28 To assist in developing appropriate compliance strategies, the ANAO recommends that DIMIA strengthen its analysis by more effectively using its existing data to profile compliance target groups, particularly data relating to self-referrals and illegal work.

DIMIA response

3.29 Agreed with qualification.

3.30 The Department extensively uses profile analysis within the compliance continuum to minimise compliance problems, reflecting a layered approach to border management. Citizens of other countries wishing to travel to Australia are assessed before visa issue, and their identity and entitlement to enter is checked at all points of the travel and immigration clearance process. Performance onshore is then fed back directly into the assessment regime. The implementation of the new SAFEGUARDS system will also help allow additional profile analysis to be put before decision-makers.

3.31 The defining characteristic of compliance actions onshore is that there must be a legal basis for entering premises and questioning people without visas or breaching visa conditions. This requires a 'reasonable cause to believe' and consequently the supporting model revolves around intelligence or observed behaviour rather than profiling, which relates more to risk and does not meet legal requirements. Compliance locations onshore are largely driven by intelligence, whether through dob-ins, data matching or liaison with community groups.

3.32 The Department accepts the need to increase its analytical capacity and has been progressively doing so. This is being done by vertical integration of intelligence (including making it operational); providing decision-makers with analytical tools based on onshore behaviours and the development of data matching.

Building the capability to identify and prioritise onshore compliance risks

3.33 This section considers the role compliance target group profiling can play in providing the information necessary to enable an assessment of the level of risk presented by different components of the onshore compliance target group. It also considers a number of DIMIA initiatives that, in concert with compliance target group profiling, could provide an integrated approach to identifying and assessing onshore compliance risks.

3.34 Non-compliance with any law or regulation can take many forms, from simple errors or oversights to the highest form of criminal activity. In the context of securing onshore compliance with migration law, and mitigating the risks non-compliance presents to the integrity of the migration program, risk assessment and its subsequent management provide a structured approach to enable prioritisation of the risks attached to the various forms of non-compliance. Once risks are identified and prioritised, informed decisions can be made about the allocation of limited resources to treat these levels of risk.

3.35 Concerning the risk presented by illegal workers, BCC's risk assessment and treatment plan worksheet identifies a control environment strength as:

Compliance activities to identify and deter illegal work, including prioritisation of specific industries and labour markets.⁴³

3.36 DIMIA's NSW State Office prioritises its compliance activities based on risk profiles of specific industries and labour markets. However, the ANAO found that DIMIA does not do this consistently throughout its State and Territory office network.⁴⁴

3.37 Concerning the risk presented by overstayers, BCC's risk assessment and treatment plan worksheet identifies a control environment strength as 'Specific targeting of overstayers by compliance and investigation teams'.⁴⁵

⁴³ DIMIA, 2003, 'risk assessment and treatment plan worksheet'.

⁴⁴ The industry focus of NSW State Office compliance operations is discussed further in Chapter 6.

⁴⁵ DIMIA, 2003, op cit.

3.38 However, the audit found that DIMIA does not specifically profile overstayers as part of its compliance fieldwork. DIMIA advised that around 50 per cent of overstayers are working illegally in Australia. Accordingly, DIMIA's approach in NSW of profiling specific industries and labour markets, to identify illegal workers, is also potentially useful for locating overstayers.

3.39 The ANAO considers that profiling overstayers, to identify the risk associated with different components of the overstayer group, could assist DIMIA compliance and investigation teams to specifically target overstayers, and apply resources more efficiently and effectively. This could assist the development of an appropriate compliance response, including education.

3.40 The ANAO notes a possible treatment option in BCC's risk assessment and treatment plan worksheet concerning the risk of overstayers:

Reports to overseas posts on characteristics of overstayer population, return rates and Protection Visa caseload to assist with risk profiling.⁴⁶

3.41 The ANAO acknowledges the value in providing overseas posts with as much onshore information as possible, concerning the characteristics of overstayers to assist in risk profiling for offshore decision-making purposes. The ANAO considers this to mean that DIMIA places importance on profiling for risk assessment purposes, and that DIMIA could undertake onshore compliance target group profiling, on a more consistent basis, to assist in assessing the levels of risk presented by the onshore compliance target population.

Key aspects of DIMIA's compliance continuum

3.42 The ANAO examined key aspects of DIMIA's compliance continuum (see Appendix 4) and the role they play in addressing the risks presented by onshore non-compliance.

3.43 DIMIA has a number of projects under way and at the conceptual stage. These initiatives are spread across two divisions within Central Office—BCC and Migration and Temporary Entry—offshore posts and regional office operations, and are depicted in DIMIA's compliance continuum. The ANAO considered several of these projects, with a view to forming an opinion on DIMIA's organisational capacity to prioritise and treat the risks to the migration program from the onshore non-compliant population.

3.44 The projects considered include:

- DIMIA's onshore intelligence network and associated intelligence products; and

⁴⁶ *ibid.*

- DIMIA's approach to migration agents, including the activities of the Migration Agents Taskforce.

Onshore intelligence network

3.45 An intelligence-driven organisation will have available to it an accurate and timely understanding of emerging threats, trends, and the operational environment, to inform its decision-making processes.

3.46 DIMIA has a centrally coordinated information gathering and analysis structure. The Intelligence Analysis Section was formed in January 2000 to focus the organisation on identifying emerging trends that could potentially impact on its core business. The offshore Principal Migration Officer (Compliance) network was integrated with the Intelligence Analysis Section in early 2000 and, in late 2002, DIMIA's onshore intelligence network, consisting of DIMIA State Office-based Intelligence Officers,⁴⁷ was established.

3.47 The State Office-based intelligence officer network is designed to contribute to improved decision-making in operational and program areas; to facilitate and maintain the flow of information and intelligence between State/Territory and national entities; and to turn various and disparate pieces of information into intelligence, to address aspects of organised migration fraud.

3.48 The State Office-based intelligence officer network acts as a conduit, by reporting to Central Office on immigration malpractice within State caseloads. It also provides State Office-based operations (including compliance officers) with information, through Central Office, from offshore Principal Migration Officer (Compliance) reports of relevance to their onshore compliance work. Such a structure offers the opportunity to effectively manage the flow of information and analysis, between the offshore components of the compliance continuum and onshore activities, and enhance liaison in areas of systemic abuse of migration law.

3.49 The ANAO concludes that bringing onshore compliance officers, who are largely State Office-based, into DIMIA's information sharing and intelligence analysis arena, adds value to the enforcement work of onshore compliance officers. ANAO analysis of the still developing State Office-based intelligence officer reporting arrangements, supports this conclusion. For example, where State Office-based intelligence officers identified the movement of illegal workers in the fruit picking industry across State boundaries, they were able to identify the central role played by 'third parties' in employing these illegal workers.

⁴⁷ Five State intelligence officers were appointed in the mainland State capitals, with officers in Melbourne and Adelaide covering Tasmania and the Northern Territory respectively. Support for the Australian Capital Territory Office is provided by the Intelligence Analysis Section in BCC.

3.50 The ANAO considers that this enhancement of onshore compliance work is a useful tool in enabling DIMIA to strategically assess its onshore compliance target population, within a risk management framework.

IMtel

3.51 DIMIA's intelligence network is supported by an intelligence information system known as IMtel, which 'went live' in April 2003. IMtel covers all BCC programs, including compliance, investigations, arrivals/departures and intelligence. It is intended to provide a shared, cumulative knowledge base to support intelligence analysis and inform decision-making. IMtel is discussed in more detail in Chapter 6.

DIMIA intelligence products

3.52 DIMIA advised the ANAO that the Intelligence Analysis Section in Central Office regularly produces a range of analytical products on groups of particular interest. These intelligence products are distributed to DIMIA offshore and onshore staff, and to selected external agencies such as DFAT and the Department of Defence. The Intelligence Analysis Section draws together information for analysis gathered from a variety of sources, including the offshore Principal Migration Officer (Compliance) network, and the newly created onshore State-based intelligence officer network. This enables the Intelligence Analysis Section to identify and report emerging risks and trends.

3.53 These intelligence products include:

- DIMIA Intelligence Bulletins, which are substantial pieces of analytical work provided to operational areas;
- DIMIA Intelligence Notes, which provide short-term time-intensive intelligence;
- Daily Incident Reports, based on information from airport interdictions over a 24-hour period;
- DIMIA Intelligence Summaries, which provide strategic-level analysis of specific trends or activities;
- Snapshots, which provide a quick one-stop reference document to inform readers about people smuggling and caseload fraud in a particular country; and
- National Security Referrals, which provide to the appropriate agencies information or allegations received by DIMIA that may be relevant to national security.

3.54 One of the risks identified in BCC's risk assessment and treatment plan worksheet is 'emerging patterns of unauthorised entry and breaches of

immigration law unpredicted'. A possible treatment option is provided through DIMIA's intelligence function:

Targeted analysis and reporting to assist with the prioritisation of compliance work.⁴⁸

3.55 In the onshore compliance context, the ANAO considers the following case study illustrates the potential effectiveness of an intelligence-driven approach, to identifying the significant level of risk posed to the integrity of Australia's migration program by particular organised interests.

Case study 2

DIMIA concerns with certain foreign nationals and the electronic travel authority (ETA)

DIMIA records revealed that in 2002-03 visitors from Country Y constituted the largest single group of airport arrivals refused immigration clearance at Australian airports. This was despite the fact that most Country Y nationals arrive with genuine passports containing valid visas/ETAs.

They are refused entry primarily because they are determined to be non bona-fide travellers who acquired ETAs with the intention of gaining employment once onshore or otherwise acting with fraudulent intent against the migration program.

The Principal Migration Officer (Compliance), in Country Y, reported that recruitment agents regularly place advertisements in Country Y newspapers seeking persons interested in working in Australia or elsewhere.

The Principal Migration Officer (Compliance) advised that because Country Y's current and projected economic outlook and employment prospects are poor, it is likely that Country Y nationals will seek employment opportunities in more buoyant economies such as Australia. Information from various sources indicates that organising networks in Country Y are believed to have links to labour supply companies and migration agents in Australia.

A review of protection visa applicants also revealed that increasing numbers of Country Y nationals, once in Australia, apply for a protection visa which automatically provides them with work rights. A number of migration agents within Australia are suspected of being involved in the lodgement of vexatious protection visa applications on behalf of Country Y passport holders.

Onshore compliance activities indicate that Country Y males usually seek unskilled work on farms or in factories and Country Y females seek work mainly in the hospitality and sex industries. Workers located working illegally in the sex industry consistently claim to have travelled to Australia as genuine visitors, but answered advertisements for brothel work when their money ran out.

Country Y work organisers are aware that Country Y ETA eligibility enables Country Y passport holders to obtain an ETA (for a short stay in Australia) without the need to present to DIMIA staff in Country Y.

Source: ANAO, based on DIMIA 'Intelligence Note 45/2003'.

3.56 The ANAO acknowledges that the intelligence note commented that: 'Matters requiring immediate referral and investigation are forwarded to relevant areas for appropriate action'. However, the ANAO has not been able to determine how this intelligence was used to inform and enhance the development of DIMIA's onshore compliance response. Consequently, it is unclear as to how the risk identified by the intelligence note is effectively being treated.

⁴⁸ DIMIA, 2003, 'risk assessment and treatment plan worksheet'.

3.57 Similarly, concerning the risk of overstayers, BCC's risk assessment and treatment plan worksheet identifies the following control environment weakness: 'Large numbers of overstayers from low-risk and ETA eligible countries'.⁴⁹

3.58 The ANAO notes that the plan does not include a possible treatment option to address this weakness. The ANAO considers the lack of a treatment option for this risk further in Chapter 4.

Migration agents

3.59 Through its monitoring processes, DIMIA has become aware of a number of practices employed by certain migration agents, who could be described as undermining migration law and the bona fide role of migration agents within DIMIA's legal framework.⁵⁰

3.60 DIMIA has recently developed a system alert in ICSE for migration agents of interest. This directs decision-makers to seek additional advice from the responsible area within DIMIA, when processing an application from a migration agent that activates this alert. The additional information may give a decision-maker cause to more closely scrutinise certain visa applications lodged by this agent, particularly those for a visa class where there is statistical evidence of a high rate of refusal in DIMIA's recent caseload.⁵¹

3.61 Subsequent to the audit, DIMIA advised the ANAO as follows:

Some important changes to the Act will come into effect on 1 July 2004, following commencement of the *Migration Legislation Amendment (Migration Agents Integrity Measures) Act 2004*, which passed through Parliament in March. It will, for example, sanction agents who engage in "vexatious activity". This scheme is aimed at the small number of registered migration agents who lodge large numbers of visa and review applications that have no chance of success. It allows the Department to refer agents to the Migration Agents Registration Authority for sanctioning if they lodge at least 10 applications, in a particular visa class, over a 6-month period; and maintain a 75% refusal rate (or a 90% refusal rate in the case of Protection visas). Agents who are assessed as meeting the above threshold criteria and who have no

⁴⁹ *ibid.*

⁵⁰ The Act provides for the operation of a Register of Migration Agents and a code of conduct to regulate the activities of migration agents. Migration agents provide advice and assistance, for a fee, to people on migration law, how to apply for a visa, what sort of visa to apply for, and support through the process, amongst other things.

⁵¹ DIMIA interprets this to mean that the migration agent is attempting to extend the stay of the non-citizen in Australia by exhausting all avenues of appeal.

satisfactory reasons for doing so, will be considered for referral to the MARA for a mandatory sanction.⁵²

The Migration Agents Taskforce

3.62 The Migration Agents Taskforce is an initiative, developed across DIMIA's BCC and Migration and Temporary Entry Divisions, to maximise the strategic potential of combining resources and expertise to address integrity issues.

3.63 The objective of the taskforce is to identify, cease or disrupt organised visa fraud carried out by registered and unregistered migration agents, and other suspected organised criminal activity, including people trafficking.

3.64 The taskforce has identified and targeted a number of migration agents, based on: a statistical analysis of the success or failure rate of migration agents and the characteristics of their client caseloads; as well as supporting information from DIMIA onshore and offshore, and from the Migration Agents Registration Authority.

3.65 DIMIA intelligence suggests that some of these agents may be engaged in organised employment scams, some of which involve prostitution and associated people trafficking, and sexual servitude.

3.66 DIMIA advised that four registered migration agents have either deregistered themselves or are not contesting deregistration following scrutiny by the Migration Agents Taskforce. Over 100 witnesses have been interviewed and, in most cases, have given witness statements of evidentiary value. Fifteen witnesses remain in Australia on criminal justice visas issued at the request of the taskforce. Three suspected offenders have been formally interviewed by taskforce staff, and the taskforce is engaged with the Australian Federal Police in two joint investigations of taskforce targets.

3.67 The Migration Agents Taskforce is finalising action (including prosecution) against a number of registered and unregistered migration agents. DIMIA anticipates that the proceeds of crime legislation will be applied to some of these agents following successful prosecution.

3.68 To enhance organisational responsiveness, the ANAO considers that it is important that intelligence gathering, and analysis and compliance target group profiling, not be regarded as separate and discrete activities, and that the synergy between them be further explored and developed.

3.69 The ANAO considers that a number of DIMIA projects, especially those concerned with an integrated approach to the gathering and analysis of

⁵² DIMIA letter of 7 June 2004, responding to ANAO s19 proposed audit report on DIMIA's management of Onshore Compliance— Visa Overstayers and Non-Citizens Working Illegally.

intelligence, could improve its organisational capacity to identify and prioritise the risks presented by the onshore compliance target population. Case Study 2 of this Chapter demonstrates the importance of integrating compliance target group profiling with DIMIA's intelligence function.

3.70 DIMIA is using compliance risk assessment in its NSW State Office where compliance activities are prioritised based on risk profiles of specific industries and labour markets. However, the ANAO considers that DIMIA's onshore compliance response could be improved through:

- further developing an understanding of its onshore compliance population, through a more effective integration of its intelligence capability with a consistent national approach to onshore compliance target group profiling; and
- prioritising risks associated with different components of the onshore compliance target groups and identifying appropriate compliance responses.

Recommendation No.2

3.71 The ANAO recommends that DIMIA develop its compliance risk assessment and priorities by more effectively and consistently integrating its intelligence capabilities with onshore compliance target group profiling.

DIMIA response

3.72 Agreed.

3.73 Please see DIMIA's response to Recommendation No.1 above on the compliance continuum, the use of risk profiling for offshore screening and the need for intelligence to ensure compliance action is lawful.

3.74 The Department agrees that refinement of communication lines and information flows between the departmental intelligence network overseas and around Australia will provide for improved operational targeting. This will be assisted by the changes made late last year to bring together the intelligence, compliance and fraud functions and the growing maturity of the Department's IMtel system.

4. Education as a Compliance Strategy

This chapter considers the extent to which DIMIA has effectively communicated to both visa applicants and Australian employers their legal obligations under migration law and the consequences of not meeting their obligations. It also considers DIMIA's processes to assist non-citizens and employers to comply with migration law.

Introduction

4.1 Education about how to comply with the *Migration Act 1958*, as amended, may target either the identified compliance target population or employers.

4.2 Instruction aimed at the compliance target population, seeks to ensure that visa holders do not breach visa conditions, for example, by working illegally or by overstaying their visas, and are aware of the consequences if they do so.

4.3 Instruction targeted at employers, seeks to address the risk that non-compliance with visa conditions is inadvertently or otherwise facilitated by employers employing visa holders contrary to their entitlement to work.

4.4 Effective risk assessment, allows education strategies to be tailored to address specific compliance risks, minimising overall cost and maximising outcomes.

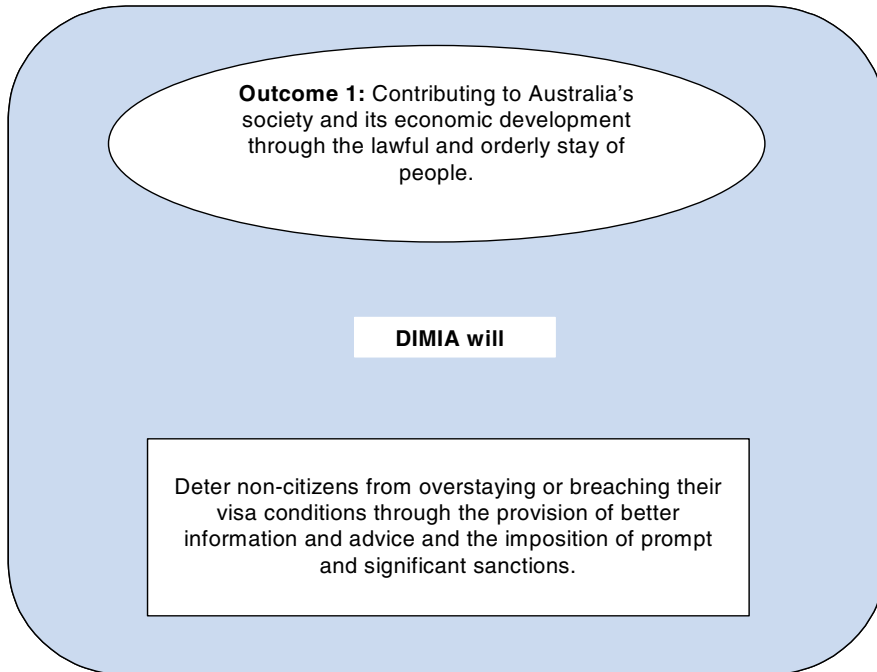
Education and information directed at the compliance target population

What the compliance target population needs to know and why

4.5 Educating visa holders of the consequences of non-compliant behaviour can assist in deterring deliberate contravention of the Act. Education can also address ignorance of the rules applying to visa conditions.

'The compliance message'

4.6 DIMIA acknowledges the importance of better information and advice in its strategic plan, 'Business Directions 2002–2005'. Figure 4.1 provides an extract from this document.

Figure 4.1**Extract from DIMIA's Business Directions 2002–2005**

Source: ANAO, based on DIMIA information.

4.7 Visitors (including business visitors) constitute 91 per cent of temporary entrants to Australia. DIMIA's most recent estimate of unlawful non-citizens, in June 2003, indicates that around 82.5 per cent of visa overstayers are visitors. For these reasons, the audit considered the relevance, clarity and timeliness of information made available to visitor visa applicants, in printed and electronic format, concerning what they can and cannot do while in Australia, and the consequences of working contrary to their visa conditions or overstaying their visa validity date.

How information is presently provided

Printed information—information to visitor visa holders

4.8 Form 48, 'Application to visit Australia for tourism', specifies:

- who should use the form;
- visa charges; and
- the mandatory conditions attached to a tourist visa in Australia.

4.9 The mandatory conditions on the form include:

- requirements not to work;

- not to study for more than three months while in Australia; and
- prescribed health checks if study is longer than four weeks.

4.10 The form contains information that the visa label, which will appear in the applicant's passport, includes the period of authorised stay. Visa labels are discussed later in this chapter.

4.11 The application form states that 'if you do not abide by these conditions, your visa may be cancelled or **you may be subject to other penalties.**' (ANAO emphasis). However, the applicant does not receive information explaining the penalties that apply.

4.12 There are a number of discretionary conditions that can be applied to the grant of a visa by a DIMIA decision-maker. One of these discretionary conditions is condition 8503, 'no further stay'. Condition 8503 is a restriction that can be placed on certain visa classes. It states that 'the visa holder will not, after entering Australia, be entitled to be granted a substantive visa, other than a protection visa while the holder remains in Australia.'⁵³ What this means is that non-citizens with condition 8503 on their current visas, must leave Australia before they are entitled to apply for a further visa for entry and stay. Condition 8503 can be imposed at the discretion of the overseas post decision-maker. The applicant must agree to the condition being imposed and, according to DIMIA policy, the agreement should be in the form of a signed declaration agreeing to its imposition. Once in Australia, the visa holder can apply to have the condition waived under compelling or compassionate circumstances.

4.13 Condition 8503 is a risk management tool designed to further ensure the integrity of Australia's migration program. In 2002–03 just under 45 per cent of all (non-electronic) visitor visa grants had the condition imposed. The short stay tourist visa class (up to three months) had the highest imposition rate of just under 47 per cent.⁵⁴ The ANAO considers the process, associated with the imposition of this condition, contains elements consistent with a sound educative approach—the applicant must agree to its imposition and sign a document that they do agree. This implies that the visa applicant is informed of and understands the legal requirements of the condition.

4.14 DIMIA advised that there is generally no letter or information kit provided to successful visitor visa applicants who apply using Form 48.⁵⁵

⁵³ A substantive visa is any visa other than a bridging visa, a criminal justice visa or an enforcement visa.

⁵⁴ Outcomes Reporting Section, 'Imposition of 8503 condition', 2002–03 year at 30 June 2003.

⁵⁵ The ANAO notes that DIMIA does provide assistance in the application process through the *Family Visitor Network Information Kit*. The object of the kit is to furnish the onshore client with as much information as possible to enable them to assist their offshore relative to lodge a visitor application overseas.

Because clear, relevant printed information is not made available to all visitors in a timely way, applicants may not be fully aware of what they can and cannot do in Australia, and the consequences of overstaying their visa or working contrary to their visa conditions.⁵⁶

4.15 DIMIA is also trialling a non-label arrangement for visitors from the People’s Republic of China who are entering Australia under the Approved Destination Status arrangements.⁵⁷ This trial includes providing an information slip to the visitor that clearly and unambiguously sets out their visa conditions. The ANAO considers there may be capacity to extend this innovation, depending on the results of this trial.

Electronic information

4.16 The Australian Government is committed to encouraging all levels of government, businesses and communities to use online and Internet technologies, and to make services available online, where appropriate. The provision of electronic information through online services, supports a timely response to user enquiries. In this context, the ANAO would expect to see substantial electronic visa advice and information available to DIMIA clients to support online visa application services.

4.17 On DIMIA’s website <www.immi.gov.au> under frequently asked questions—visitor visas—a section titled ‘What are the consequences of being an Unlawful non-Citizen?’ clearly spells out the relevant repercussions:

- You have committed an offence under the Australian Migration Act;
- You may be subject to an ‘exclusion period’;⁵⁸
- If you are detained and removed at Government expense, you will be charged these costs and not be allowed to re-enter Australia until the outstanding debt is repaid.

4.18 DIMIA’s website also contains a Fact Sheet Index. These fact sheets provide background information on Australian immigration and related issues, and are updated as new information or statistics become available.

⁵⁶ DIMIA advises that they would need to carefully consider how to deliver the message as it would not like to convey an overly oppressive first impression, particularly given the miniscule overstay/breach rate for visitors.

⁵⁷ Approved Destination Status arrangements have been in place between China and Australia since 1999. These arrangements mean that tourists from the People’s Republic of China are able to travel to Australia more easily as part of pre-organised tour groups. DIMIA advises that the non-return rate for this particular group has remained at less than 0.5 per cent, well below the global average. These arrangements include safeguards (such as sanctions) to ensure that travel agents and tourists comply with approved destination status conditions.

⁵⁸ Applications for future travel to Australia may be refused for a three-year period if the individual concerned overstayed their previous visa by more than 28 days or was an unlawful non-citizen for more than 28 days.

4.19 DIMIA advised the ANAO that Australian missions overseas have local web sites, providing, in the local language, information on processing requirements and visa conditions, frequently asked questions and some counselling.

4.20 With regard to electronically available information, the ANAO found that the relevance, clarity and timeliness of information provided to visa applicants electronically are of a high standard.

4.21 The ANAO concludes that DIMIA's provision of information to visa applicants/holders is variable, depending on whether it is in an electronic or a printed format.

4.22 The ANAO notes DIMIA's investment of resources in information and communication technologies as a means to keep clients fully informed about their entitlements and obligations.⁵⁹ This is a successful strategy where clients are in a position to access such technologies. However, not all of DIMIA's prospective clients would be in a situation to access these technologies.

4.23 Other Australian Government agencies make sure that clients who do not have access to online facilities can obtain the same information through other forms of media such as printed materials, including booklets, information guides and the like. The ANAO considers that DIMIA needs to ensure that printed information is available to visitor visa applicants who do not have access to Internet technologies.

Electronic travel authority (ETA)

4.24 The introduction of the ETA in 1996 enables visitors from designated 'low risk'⁶⁰ countries to obtain their visas at the same time as booking their travel. The ETA accounts for about 85 per cent of visitors to Australia.⁶¹

4.25 Australia's migration law requires that all travellers must have an authority to travel to and stay in Australia. This permission has traditionally taken the form of a visa label. The ETA is an electronically stored authority to travel to Australia, with the decision-making process being carried out online. The decision-making process includes basic security checks against other DIMIA systems.

4.26 The ETA concept was based on leveraging off the infrastructure used by the international travel industry. Through their international affiliations, travel agents self-select to be part of the ETA system. To support the

⁵⁹ DIMIA Internet statistics indicate that the visitor information page received around 53 500 'page visits' over the period 1 January 2003 to May 2003.

⁶⁰ Countries where DIMIA has determined the risk of non-compliance with visa conditions to be low.

⁶¹ DIMIA, 2002, Fact Sheet 55: *Electronic Travel Authority*.

implementation of the ETA, DIMIA established an overseas network of ETA liaison managers. Their main tasks are to provide support and guidance to travel agents and other ETA users, and to monitor ETA operations.⁶²

4.27 Low-risk ETA countries, such as the United Kingdom and Japan with the highest numbers of visitors, have very low overstay rates in Australia. However, when the population of overstayers as a whole is considered, a slightly different picture emerges. An analysis of DIMIA's estimates of overstayers shows that 13 000, or approximately 25 per cent, of the estimated volume of visitor visa overstayers are ETA visitors.⁶³

4.28 The ANAO queried the level of information provided to ETA visitors to Australia about their entitlements and obligations. Advice, from DIMIA, suggested that in the initial stages (in 1996) of implementing the ETA, the issuing agent handed an ETA brochure to prospective ETA travellers. This brochure set out the conditions to be met, including the no work condition and no stay in Australia beyond a three-month period. The ANAO sought up-to-date performance information from DIMIA about the provision of information concerning ETA conditions to ETA applicants. This information was not made available by DIMIA before the end of the audit.

4.29 The ANAO notes that in the context of the risk presented by overstayers, the BCC risk assessment and treatment plan worksheet identifies a number of key control considerations, including 'the large number of overstayers from low-risk and ETA-eligible countries.'⁶⁴ The ANAO found that the BCC plan does not suggest a corresponding treatment option. The ANAO is unaware of any controls implemented by DIMIA to manage this risk.

4.30 The ANAO considers that providing information to ETA holders, is a compliance strategy that would enhance DIMIA's overall management of the risk of this category of visa holder overstaying, or otherwise not abiding by the legitimacy of their visas.

⁶² ANAO Audit Report No.3 1999–2000, *Electronic Travel Authority*, p. 57.

⁶³ DIMIA statistics.

⁶⁴ DIMIA, 2003, 'risk assessment and treatment plan worksheet'.

Recommendation No.3

4.31 To assist in deterring non-citizens from overstaying or working contrary to their visa conditions, the ANAO recommends that DIMIA make available:

- clear, relevant printed information to assist visa applicants understand what they can, and cannot do, in Australia, including the consequences of overstaying their visas or working contrary to their visa conditions; and
- relevant, clear and timely visa information to visa applicants in ETA eligible countries.

DIMIA response:

4.32 Agreed.

4.33 The Department strongly supports the concept of ensuring that persons coming to Australia are aware of their entitlements and obligations and will continue to work to achieve this. This has resulted in high levels of compliance with visa conditions.

4.34 The Department also notes the audit's very positive assessment of our electronically available information. We continue to take steps to ensure that all visa holders who take advantage of our electronic processes are fully aware of their entitlements, as well as ensuring that their sponsors and agents are equally aware of their obligations.

4.35 One major initiative will be the introduction in 2004 of the Entitlements Verification Online System that will allow non-citizens entering Australia to check their visa conditions on the Internet.

Education and information directed at employers

4.36 Only Australian citizens, permanent residents of Australia, and New Zealand citizens who have entered Australia on a valid passport, are allowed to stay and work in Australia without restriction.

4.37 All foreign nationals who want to travel to and stay in Australia must obtain visas before arriving. If they wish to work in Australia, they must also obtain a visa that gives them the authority to work.⁶⁵

⁶⁵ DIMIA advises that many non-citizens are granted special purpose visas by operation of law, which allows them to come to Australia for work. The main examples are shipping/airline crew and armed forces personnel and their dependants.

4.38 Most temporary visitors do not have the right to work. For example, people who come as tourists, or to visit family and friends, are not entitled to work in Australia. People who hold working-holiday visas and student visas are among those visa holders with limited work rights.⁶⁶

4.39 Illegal workers fall into two categories:⁶⁷

- working in breach of visa conditions: if the person is located by DIMIA compliance field teams, the person may be subject to visa cancellation and hence become an unlawful non-citizen; and
- part of the pool of overstayers⁶⁸: if located by DIMIA compliance field teams, the person may be subject to detention and removal.

What employers need to know and why

'The compliance message'

4.40 An important aspect of DIMIA's compliance work is to educate employers about their legal responsibilities when employing non-citizens and to seek their compliance with the law.⁶⁹

4.41 Employer compliance with Australian law is optimal in circumstances where employers are fully aware of and understand their obligations and the consequences of non-compliance. DIMIA's Employer Awareness Campaign seeks to make sure that employers are fully aware of their obligations concerning the employment of illegal workers.

4.42 An important feature of prevention strategies in a compliance framework is the capacity to monitor and evaluate their impact. Capturing and analysing performance information gathered through employer feedback is crucial to achieving the ongoing effectiveness of these strategies.

4.43 To assist employers to comply with the law, the Government is progressively implementing a number of the recommendations made in the *Review of Illegal Workers in Australia*.⁷⁰ The review recommended a multifaceted approach to dealing with the issue of illegal workers including:

⁶⁶ DIMIA, 2003, 3rd edition, *Protecting the Border*, (draft), p. 46.

⁶⁷ Subsections 235(1) and 253(3) of the Act respectively create an offence where the person is breaching a visa condition by working and where the person is already unlawfully here and working. Both offences carry a fine of up to \$10 000.

⁶⁸ DIMIA estimates that there are around 60 000 people in Australia illegally, having overstayed their visas, and that at least 50 per cent of these have jobs.

⁶⁹ It is an offence under the *Commonwealth Crimes Act 1914* to knowingly aid and abet people to break Commonwealth laws, and employers found doing so may be prosecuted and fined up to \$10 000.

⁷⁰ DIMIA, 1999, *Review of Illegal Workers in Australia: Improving immigration compliance in the workplace*.

- employers and labour suppliers to be fully informed about their obligations through a revised Employer Awareness Campaign;
- measures be put in place to enable employers and labour suppliers to easily and efficiently check employees' work rights, and to provide evidence of that check; and
- the introduction of a scheme of sanctions on employers and labour suppliers who recruit people who do not have work rights.

4.44 Initial community consultations held by DIMIA revealed concern at the introduction of the sanctions legislation, owing to a lack of awareness, especially in the business community, of how to check work rights. This resulted in a phased approach to implementation, commencing with a revised Employer Awareness Campaign supported by measures to assist employers and labour suppliers to check work rights and interpret visa conditions. This was to be followed by a legislative-based employer sanctions regime.

4.45 Since 30 November 2000 DIMIA has helped to raise awareness and increase employers and labour suppliers acceptance, of their responsibilities to check work rights through:

- an enhanced employer information campaign, including printed information, electronic information and a public relations strategy, involving both Central Office and the State and Territory offices;
- support measures such as a centralised work rights faxback facility and a centralised employers' work rights checking line; and
- a system of administrative warnings (illegal worker warning notices) issued to employers and labour suppliers who hire or supply illegal workers for labour.

4.46 The Employer Awareness Campaign, support measures, the system of administrative warnings, and employer response to these combined measures are addressed below.

4.47 The ANAO assessed DIMIA's performance in the area of employer compliance against the criteria of:

- relevance, clarity and timeliness of information available to employers;
- effective targeting of its public relations strategy;
- provision of accessible support services to assist employer compliance; and
- systematic capture, analysis and evaluation of employer feedback on DIMIA's strategies for quality assurance purposes.

4.48 The audit also considered whether DIMIA is systematically capturing, analysing and evaluating performance information relating to its educative strategies, to continually improve its performance.

Information presently provided

An enhanced information campaign—Central Office activities

4.49 DIMIA's national Employer Awareness Campaign is the department's flagship compliance education strategy for communicating legal obligations under migration law, to Australian employers.

4.50 The national Employer Awareness Campaign consists of information kits, pamphlets and awareness sessions, and is coordinated through the Compliance Section of BCC. The awareness campaign is designed to encourage employers and labour suppliers to recruit or refer only people with the right to work. It promotes closer cooperation between employers, labour suppliers and DIMIA, particularly in checking employment rights, and reporting visa overstayers looking for work. The campaign is delivered through DIMIA's network of State and Territory offices.

Relevance, clarity and timeliness of information provided

Printed information

4.51 DIMIA estimated that the pamphlet 'Don't give a job to an illegal worker' has been distributed to more than 800 000 businesses. The information kit, which supplements the pamphlet, has been sent to employer organisations, labour suppliers, large employers and business organisations that deal with backpackers and their work rights. Appendix 7 provides more details on the work being carried out by DIMIA and other government agencies, concerning illegal workers in rural and regional Australia.

4.52 The information kit includes a clear, comprehensive set of printed information relevant to assisting employers check work rights and make an informed decision on who they can legally employ. It includes information about additional services DIMIA provides if employers are not satisfied with their own checking. DIMIA compliance field teams also distribute these kits when they visit workplaces to conduct employer awareness sessions.

Electronic information

4.53 The DIMIA website—under 'working in Australia'—includes an employer help page. This page provides timely information for users of the website in the form of the 'Australian Immigration Guide on Work Rights'. It reproduces in electronic form, clear, relevant information on the importance of

checking work rights, how to do it, and what assistance DIMIA can provide to assist employers comply with migration law.⁷¹

Targeting public relations

4.54 The compliance operational plan includes developing a public relations strategy. The ANAO notes the importance of this strategy to inform employers, as well as the community generally, about issues connected with working illegally in Australia.

4.55 The Compliance Section is in the early stages of developing a coordinated public relations strategy in conjunction with State and Territory offices. As part of this process, it has developed criteria to assist in deciding where and when advertisements will be placed.

4.56 The ANAO considers these criteria to be a very useful decision-making tool, noting that they were developed through a risk management approach. The Compliance Section analysed State and Territory performance information to identify critical areas of risk, and where DIMIA's marketing attention could be effectively targeted.

4.57 Criteria used to decide where to publish include:

- industry publications with a wide readership, distributed throughout Australia;
- publications with a large print run, for example, those sent to a large number of employers; and
- publications targeted to areas of known risk, such as a specific industry sector or ethnic community.

4.58 Generic advertisements were placed in a number of business magazines, such as Citrus Growers Association magazines. Individually tailored advertisements were also placed in publications distributed to known risk groups, such as 'The Word—Backpacking Australia' and the 'NSW Law Society Journal'.

4.59 The ANAO suggests that DIMIA expands this approach, including through market research, if appropriate, to provide DIMIA with the opportunity to develop an understanding of employer needs. This information can then be used to refine and target its Employer Awareness Campaign.

4.60 The ANAO considers that ongoing evaluation of the effectiveness of DIMIA's public relations strategy, provides DIMIA with an opportunity for future development and improvement.

⁷¹ DIMIA Internet statistics indicate that the employer information page received around 52 000 'page visits' over the period 1 January 2003 to May 2003.

Accessibility of support services

4.61 As discussed previously, an optimal approach to educating and assisting employers to comply with their legal obligations includes providing a set of practical support measures. Support measures are not only important tools in themselves, but also provide the opportunity to gather feedback, to test their effectiveness and fine tune arrangements where required.

4.62 DIMIA has two centralised support services for employers—the work rights faxback facility and the employers’ work rights checking line.

The work rights faxback facility available to employers

4.63 An employer or labour supplier needing information about a potential employee can check their work rights status with DIMIA after obtaining the person’s authorisation to do so.⁷² The details are faxed to a centralised work rights toll-free fax number. On receipt of the fax, DIMIA matches this information with its records and provides the employer or labour supplier with information on the person’s work rights status by return fax. The service is available from 8.30am to 5.00pm, Monday to Friday, and has a client service standard of a ‘One Working Day’ response time.⁷³ The ANAO considers that the fax number is easy to access, as it is widely available, and publicised consistently in all components of the Employer Awareness Campaign.

4.64 To capture performance information and provide monthly reports, DIMIA has developed a Fax Back Request Tracking Database. Reports from this database can be disaggregated by region, employer type, and month or year of request.

4.65 The ANAO also notes the facility has an information feedback loop. If the proposed employee is found to be unlawful, their details are forwarded to the relevant compliance manager for ‘further action’. The employer or labour supplier who was seeking the original check, is supplied only with the information that the person has no work rights. In this instance, the normal turnaround time of one working day is held over so the regional compliance field team can act on the information provided. DIMIA does not collect information on how many faxback requests have been referred to compliance officers, when the proposed employee is unlawful to analyse the usefulness of the faxback facility in enhancing onshore compliance.

4.66 Figure 4.2 illustrates the substantial increase in use of this facility by employers in all major industry groups since its inception in 2000. There are

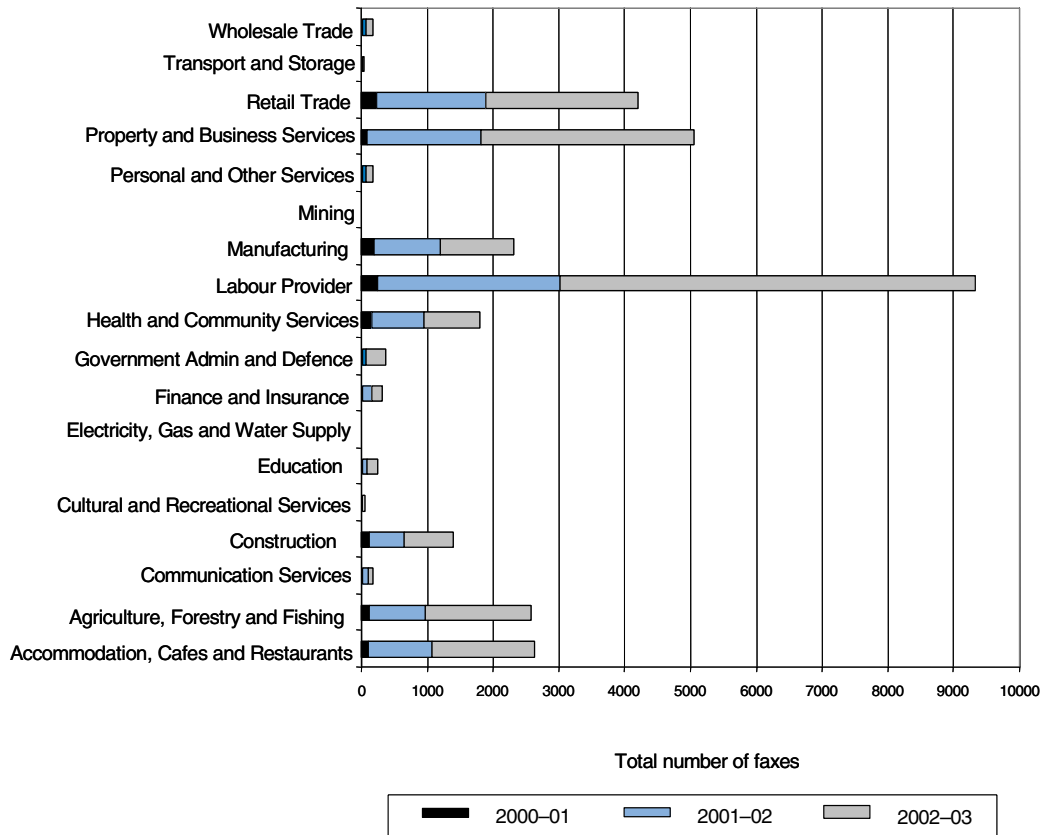
⁷² Under Australian Government Privacy Principles, DIMIA must obtain the permission of the person concerned to release any private information it holds to a third party (an employer).

⁷³ DIMIA advises that this service standard is met in 95 per cent of cases. In the remaining five per cent of cases where DIMIA cannot meet the service standard owing to, for example, inadequate or incorrect information, DIMIA advises employers of the delay within one working day of receiving the initial request.

noticeable increases in the following industries: Retail Trade, Property and Business Services, Agriculture, Forestry and Fishing, and Accommodation, Cafes and Restaurants. Labour suppliers, in particular, are demonstrating a significant increase in use.

Figure 4.2

Work rights faxback facility, 2000–01 to 2002–03



Source: ANAO analysis, based on DIMIA data.

The employers’ work rights checking line

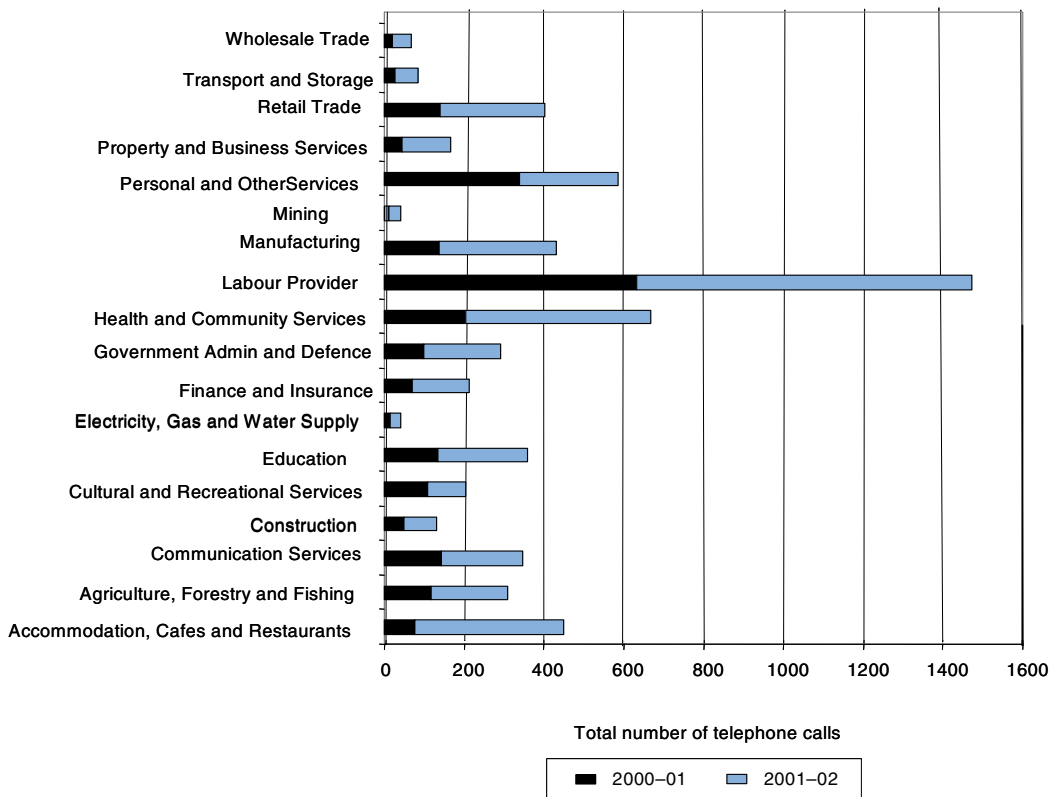
4.67 The employers’ work rights checking line is a centralised phone service that began operation as a pilot call service in 2000. The service operates from 8.00am to 6.00pm, Monday to Friday. The ANAO considers that the toll-free number is also easy to access, as it is widely available and publicised consistently in all components of the Employer Awareness Campaign.

4.68 This support service complements DIMIA’s faxback facility. It provides employers and labour suppliers with assistance in checking work rights, interpreting visa work conditions, information on the illegal worker warning notices scheme, and the proposed employer sanctions regime.

4.69 To provide a degree of comparability with faxback requests by industry sector in its analysis, the ANAO excluded two non-industry categories from the work rights checking line performance information available for 2000–01 and 2001–02. These exclusions were the number of calls made to the checking facility by callers who did not disclose their details, or called with a non-work right or other immigration related matters. Figure 4.3 illustrates the growth in demand for this facility across all industry sectors, including labour suppliers.

Figure 4.3

Employers' work rights checking line (excl. non-industry categories), 2000–01 to 2001–02



Source: ANAO analysis, based on DIMIA data.

4.70 The ANAO considers that DIMIA has invested significant resources in a range of communication strategies and centralised support services, to assist Australian employers become aware of and understand their legal responsibilities. Figures 4.2 and 4.3 suggest that employers are increasingly seeking out these opportunities.

4.71 The ANAO considers that ongoing analysis and evaluation of the performance information available from these two centralised services, would

assist DIMIA in further refining and developing the components of its Employer Awareness Campaign.

An enhanced information campaign—State and Territory office activities

4.72 The network of State and Territory offices throughout Australia, provides DIMIA with an opportunity to be active and have a real presence in the Australian community, through the broad range of services it delivers. This network also provides opportunities to leverage service delivery, including those services delivered to Australian employers.

4.73 DIMIA State and Territory offices are responsible for delivering the various elements of the Employer Awareness Campaign. This includes conducting employer awareness sessions and issuing illegal worker warning notices. The aim of the awareness sessions is to raise employers' understanding of their legal responsibilities, and how they can comply with the law.

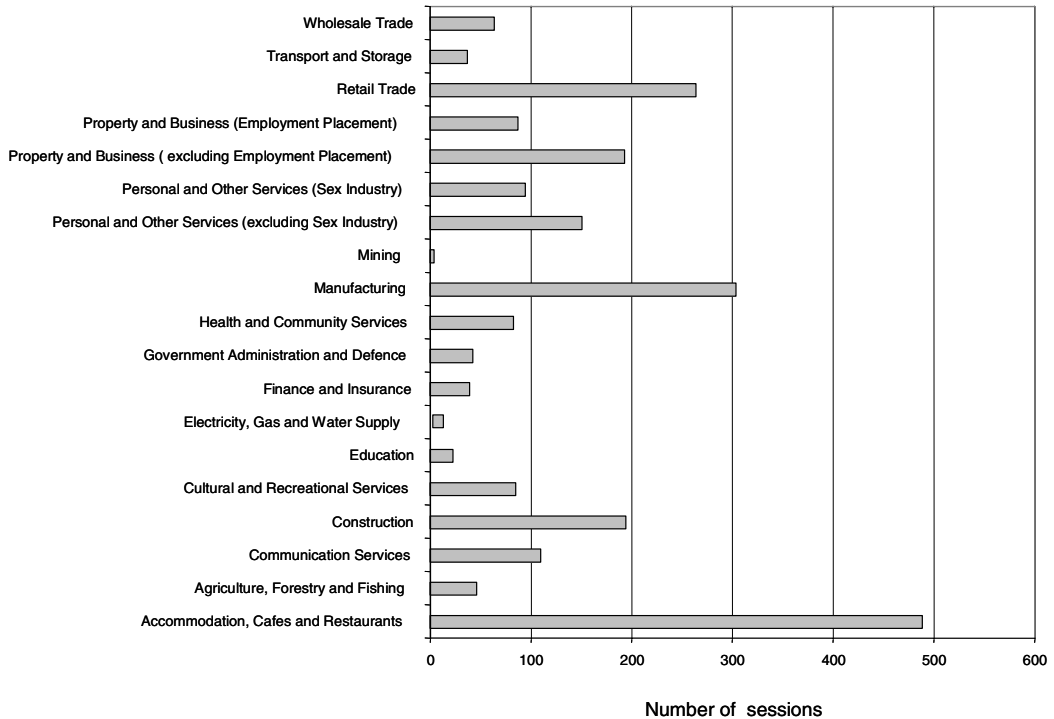
Employer awareness sessions

4.74 Compliance field teams in State and Territory offices devote different levels of resourcing to employer awareness sessions and visits. In 2002–03 DIMIA conducted 2 314 employer awareness sessions, around a 60 per cent increase over the previous year's effort. These sessions were conducted in all States and Territories and across all industry groups. Just under 80 per cent of the sessions were carried out in NSW. This can partially be attributed to NSW's compliance field teams being organised along industry lines. As such, the Employer Awareness Campaign is a vital strategy in their compliance approach.

4.75 As most employer awareness sessions are carried out in NSW, the ANAO considered the most appropriate form of analysis of these sessions is by industry sector. A sectoral analysis reflects the focus on 'traditional' industries, which tend to employ illegal workers. These industries are characterised by high labour turnover, high casual or seasonal demand, and often have low skill requirements. As demonstrated in Figure 4.4, the four industry groups attracting the most sessions include Accommodation, Cafes and Restaurants; Retail Trade; Construction; and Manufacturing.

Figure 4.4

Employer awareness sessions, 2002–03



Source: ANAO analysis, based on DIMIA data.

Illegal worker warning notices

4.76 DIMIA compliance field teams issue illegal worker warning notices, when they enter a workplace where they have reason to believe that illegal workers are employed. Where they find that the employer is employing illegal workers, they issue the employer with a warning notice. DIMIA considers that the warning notices are an important adjunct to the awareness raising campaign. The warning notice process is the mechanism often used to facilitate the compliance team's entry to a workplace to carry out the awareness session. As part of the enhanced information campaign, State and Territory offices support accessibility by also holding information seminars and forums for employers.

4.77 DIMIA introduced its strategy of issuing illegal worker warning notices as a precursor to a legislated employer sanctions system. As the name implies, employers or labour suppliers, who are found to be employing or supplying illegal labour, receive an administrative warning, indicating that they have come to the attention of DIMIA. DIMIA records the issue of these notices. Employers and labour suppliers who have received warning notices are also given information to help them with future work rights checks.

4.78 The ANAO considers that employer feedback, indicating improved understanding of their legal responsibilities, would be one indicator of the effectiveness of illegal worker warning notices.

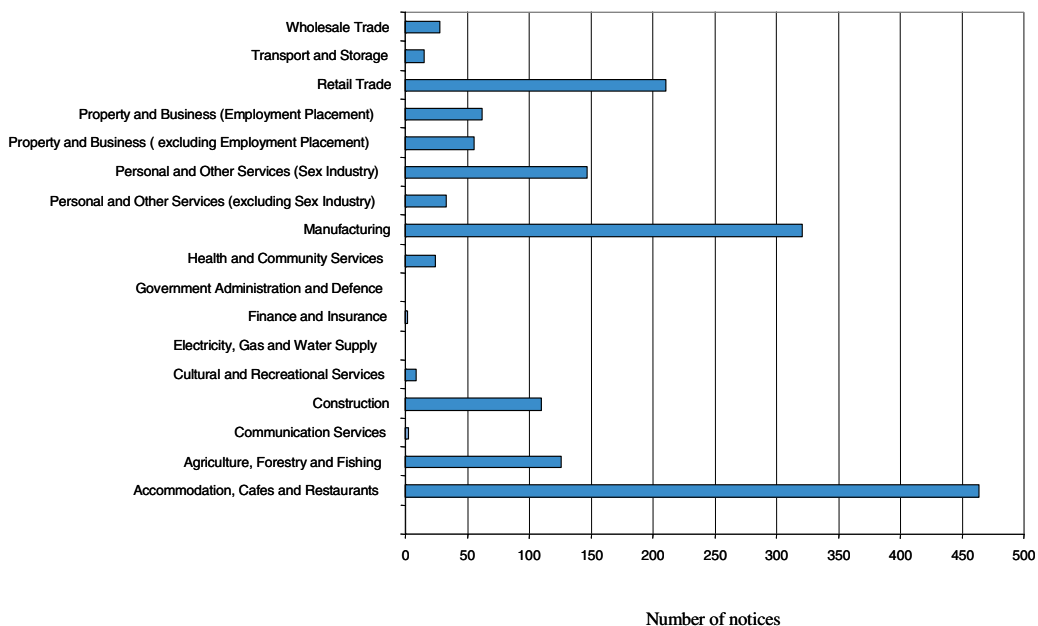
4.79 In the 2002–03 program year, 1 613 illegal worker warning notices were issued across all industry sectors (see Figure 4.5 below). This compares with 1 000 notices issued in the preceding year. In 2002–03, businesses in the Accommodation, Cafes and Restaurants sector, Manufacturing and Retail Trade attracted the most number of warning notices.

4.80 Illegal worker warning notices are issued to companies based on the number of workers found working illegally. If seven illegal workers are identified, seven warning notices are issued.

4.81 DIMIA considers that illegal worker warning notices are a marginal tool in dealing with non-compliant employers until a scheme of sanctions is put in place. The cumulative issue of warning notices to a single employer, will be one of the factors under consideration if an employer sanctions regime is enacted. Other factors may include the level of cooperation provided by the employer, and the degree to which the faxback line is used.

Figure 4.5

Illegal worker warning notices, 2002–03



Source: ANAO analysis, based on DIMIA data.

Business Centres

4.82 DIMIA has established Business Centres in its State and Territory offices in each capital city. The Business Centres offer an integrated service to business clients.

4.83 The Business Centres are responsible for delivering services to businesses that sponsor overseas skilled workers for up to four years under the temporary business sponsor visa arrangements. These arrangements include monitoring business sponsors on a national basis to ensure they are complying with their sponsorship undertakings.

4.84 Business centre arrangements also provide employers with a 'one stop' shop to assist them in complying with their legal responsibilities, both as sponsors of overseas labour and as possible employers of illegal labour.

4.85 DIMIA monitors business sponsorship arrangements on a national basis through the Business Centres. These monitoring activities have improved program integrity, with a number of cases being referred internally to regional compliance or investigations teams for further action.

4.86 Overstay rates are monitored and remain low. DIMIA estimates that 385 former sponsored business visa holders were recorded as overstayers at the end of the 2001–02 program year. This represented less than 1 per cent of the stock of this visa subclass.

4.87 In the 2002–03 program year, the Business Centres distributed 1 605 Employer Awareness Campaign kits during their site visits to sponsoring employers.

4.88 The ANAO considers this a good example of the opportunities available through leveraging services to improve compliance outcomes with Australian employers. The ANAO considers that DIMIA's compliance efforts would benefit from a further exploration of such opportunities.

Employer feedback on DIMIA's educative strategies

4.89 Employer feedback is important for quality assurance purposes. The ANAO considers that DIMIA could gather employer feedback through a variety of methods, such as surveys and focus groups, to monitor the effectiveness of its strategies to assist employers comply with the law. Analysis of employer feedback would enable DIMIA to gauge the effectiveness of its employer awareness activities, and refocus if necessary.

How compliance risks may be more effectively addressed

Evaluating educative strategies

4.90 The ANAO acknowledges that the performance information discussed previously indicates there is a substantial take-up by employers of the

assistance offered by DIMIA. However, the ANAO considers that, without a framework in which to analyse and evaluate their success or otherwise, DIMIA is not able to assure itself that its prevention strategies are succeeding in their objective of educating employers about their legal obligations in respect of employing illegal workers.

4.91 The ANAO found no evidence of DIMIA's use of the performance information—available from its employer faxback facility, its employers' work rights checking line, employer awareness sessions or the issuing of illegal worker warning notices—as a resource to indicate trends in the employment of illegal workers or changes in employer behaviour to inform the targeting of DIMIA's education activities.

4.92 DIMIA advised the ANAO that the above performance information has only become available in its Integrated Client Services Environment (ICSE) system from July 2002, owing to functionality issues with its previous collection systems. DIMIA also advised that system changes will correct the matter over time. The necessary system changes had not been implemented at the time of the audit. The ANAO considers that DIMIA should pursue the required systems changes in ICSE, to obtain opportunities to analyse its performance information in this area. The ANAO considers this would provide DIMIA with some baseline data for comparison, if and when an employer sanctions regime is introduced, including a revised Employer Awareness Campaign.

DIMIA's risk assessment and treatment plan worksheet for illegal work

4.93 The ANAO notes that BCC's risk assessment and treatment plan worksheet identifies a number of key control considerations for illegal work. In particular, under the risk of illegal work, a positive control is identified as:

Compliance activities to identify and deter illegal work, including prioritisation of specific industries and labour markets.⁷⁴

4.94 The ANAO considers that DIMIA could extend its profiling of industries and labour markets (currently undertaken in the NSW State Office only) to include the profiling of employer groups and labour suppliers who are likely to employ or refer workers with no authorisation to work. Such an approach would further assist DIMIA in the effective targeting of its compliance strategies and resources through the Employer Awareness Campaign. The ANAO also considers the possible treatment options, put forward under the BCC risk assessment and treatment plan worksheet, would be enhanced by developing employer and labour supplier profiles.

⁷⁴ DIMIA, 2003, 'risk assessment and treatment plan worksheet'.

4.95 Overall, in relation to DIMIA's education and information directed at employers, the ANAO found that:

- information to assist employers check work rights and make an informed decision on whom they can legally employ (in printed and electronic format) is provided in a clear, relevant and timely way;
- the public relations strategy identified in the compliance operational plan is in the early stages of development. The Compliance Section has analysed State and Territory performance information to identify critical areas of risk and where DIMIA's marketing attention could be effectively targeted;
- DIMIA has invested significant resources in a range of communication strategies and centralised support services to assist Australian employers become aware of and understand their legal responsibilities. Figures 4.2 and 4.3 suggest that employers are increasingly seeking out these opportunities. Both the work rights faxback facility available to employers and the employer work rights checking phone service are easy to access; and
- DIMIA is not systematically capturing, analysing and evaluating feedback from workplace employer awareness sessions, seminar evaluation, focus group results or other ongoing consultative arrangements for quality assurance purposes.

4.96 In relation to the effective use of its performance information, the ANAO found that:

- DIMIA is not using performance information available from its employer faxback facility, its employers' work rights checking line, employer awareness sessions or the issuing of illegal worker warning notices to:
 - evaluate and review its performance; and
 - to develop employer awareness plans targeting industry sectors where new and significant users of these support services are emerging; and
- DIMIA does not profile employer groups and labour suppliers who are likely to employ or refer workers with no authorisation to work.

Recommendation No.4

4.97 To better enable DIMIA to strategically target its Employer Awareness Campaign, the ANAO recommends that DIMIA:

- put in place a system to collect and analyse employer feedback on employer awareness activities;
- analyse existing data to predict trends in patterns of employment of illegal workers; and
- develop employer and labour supplier profiles, to identify which categories would benefit from employer awareness activities.

DIMIA response

4.98 Agreed.

4.99 The Department's employer awareness campaign is focused on those industries that feature in the location of illegal workers. In particular employers that are known to have actually employed illegal workers are specifically subject to the Department's education efforts, and consideration is being given to the use of the Safeguards system to alert decision-makers when processing applications.

4.100 A further means of measuring employer awareness of illegal worker issues will be available once the Entitlements Verification On-line system has been rolled out. This system will allow employers to check quickly the work entitlements of prospective employees who are non-citizens.

4.101 The Department agrees that the results of analysis of the employer education campaign should be used to further develop tasking of State and Territory compliance activities.

Assisting non-citizens and employers seeking to comply

4.102 Non-citizens who enter Australia, except electronic travel authority (ETA) holders and New Zealand citizens, must hold a visa, which appears as a label in their passport. The label currently includes details about the visa, including the length of permitted stay and any applicable conditions, such as access to work.⁷⁵

4.103 Ideally, visa labels should be easy to read and understand, to assist in effectively managing the risk of unintentional non-compliance by visa holders,

⁷⁵ DIMIA, 1999, *Review of Illegal Workers in Australia: Improving immigration compliance in the workplace*, p. 31.

because of a misunderstanding or misinterpretation of the information appearing on their visa.

4.104 DIMIA's 1999 *Review of Illegal Workers in Australia* revealed, among other things that:

- information printed on the visa label may be unclear;
- overall, the format of the visa label is cryptic, difficult to read and understand. It could be improved by removing technical jargon and using short plain-English sentences; and
- it is important that the conditions that apply are clearly expressed, as this may be the only way that the conditions are communicated to the visa holder.⁷⁶

4.105 DIMIA's 1999 *Review of Illegal Workers in Australia* led to among others, the following recommendation:

That the appearance of visa labels be revised in order to make it easier for employers to immediately understand whether the visa-holder has work rights.⁷⁷

4.106 The ANAO recognises that the review focused on illegal workers, and that the review recommendation is targeted at making it easier for employers to understand whether a non-citizen has work rights. However, the ANAO considers that the review's finding also points to the broader issue of the readability of visa labels for visa holders. In this context, the recommendation does not address improving visa labels to assist visa holders as well as employers, to read and understand visa conditions.⁷⁸

4.107 The ANAO considers that there are a number of potential benefits associated with making visa information easier to read and understand for visa holders and other stakeholders, including:

- a possible reduction in the number of applications for work by visa holders who do not have work rights, through an increased understanding of their visa conditions;
- a reduction in the administrative cost, for both DIMIA and employers, associated with having to check work rights relating to non-citizens applying for work when their visa conditions do not permit them to work; and

⁷⁶ *ibid.*, p. 31.

⁷⁷ *ibid.*, p. 34.

⁷⁸ Visa labels may contain a range of information other than that related to work rights. For example, a visa label may include information relating to a non-citizen's permitted length of stay and whether they are permitted to study while in Australia.

- improved compliance from non-citizens relating to visa conditions in general, through better understanding their visa conditions.

4.108 During the audit, the ANAO sought advice from DIMIA on the implementation status of the review recommendation. DIMIA advised the ANAO that the recommendation was ‘under consideration’ (some 5 years later), and that alternative ways of indicating work rights to employers were proposed, through an entitlements verification online system. More generally, DIMIA advised the ANAO of the following.

- DIMIA is planning to move away from visa labels altogether.
- The visa label is not a secure way of verifying entitlements and is prone to forgery and alteration.
- Online verification of visa entitlements is a logical extension of technological developments over the past decade, including the introduction of advanced passenger processing and electronic travel authorities (ETAs). Implementation of such an online verification system would be of immediate benefit to ETA and electronic visa holders, who do not have visa labels in their travel documents. Information displayed on a website has none of the space constraints of a visa label, and clear and concise descriptions of conditions and entitlements are being developed for this purpose.
- Although less than 20 per cent of non-citizens entering Australia have visa labels, some visa labels will continue to be used. For this reason, the design, text and size of visa labels are being reviewed, in part, to make the expression of conditions and entitlements on the face of the label clearer.

4.109 Concerning the clarity of visa labels, the ANAO notes that non-citizens with visa labels in their passports, are regarded by DIMIA as representing a higher risk to non-compliance than non-citizens from countries that DIMIA includes in its ETA system. Consequently, the ANAO considers that it is essential DIMIA provide easy to understand information about visa conditions to visa label holders in order to effectively manage this higher risk.

Entitlements verification online system

4.110 The ANAO examined DIMIA’s planning documents for the development of an entitlements verification online system, in particular, the document outlining business requirements and general transactions.

4.111 DIMIA intends that the entitlements verification online system will be implemented in two phases, with phase one implementation planned for July 2004. This includes providing basic information for visa holders and employers about a visa holder’s work rights. Phase two involves the expansion of the

system to third parties such as educational institutions, health organisations and consulates. No proposed implementation date for this phase was provided to the ANAO.

4.112 The ANAO found that phase one development was limited. DIMIA identified a number of obstacles relating to its implementation, including:

- a number of the issues under consideration (such as general functionality) were found not to be specific to the entitlements verification online project and would need consideration at a broader level, perhaps at division or even departmental level; and
- privacy considerations concerning the level of consent required from a visa holder, before a third party (such as an employer) can access the visa holder's visa entitlements.

4.113 The ANAO suggests that, to improve compliance outcomes, DIMIA also considers improving the capacity of visa holders to verify their own entitlements concerning their period of stay in Australia.

5. Inter-agency Arrangements

This chapter considers the type and range of arrangements that DIMIA has in place with other public sector agencies to achieve Border Control and Compliance Division's (BCC) desired outcome of: 'better compliance outcomes as a result of effective coordination and information sharing with key cross-agency stakeholders'.

Introduction

5.1 Public sector agencies can negotiate a range of administrative arrangements to achieve shared outcomes. These types of arrangements are commonly referred to as a whole-of-government approach. This approach is increasingly a preferred, if not expected, mode of working where the activities of individual agencies intersect either portfolio areas of responsibility or the tiers of government within Australia. While these arrangements may take other forms, they are most commonly negotiated and formalised through a Service Level Agreement (SLA) or a Memorandum of Understanding (MoU) between the participating agencies. Typically, both forms of arrangement provide the framework in which agencies can agree upon what each will do and how they will measure and report on their outcomes.

5.2 In a compliance context, the identification of strategic partnerships and the benefits that accrue from a cooperative working relationship derive from an agency's understanding of:

- who it is seeking compliance from; and
- which inter-agency arrangements would assist in preventing and, where necessary, effectively treating non-compliant behaviour.

5.3 DIMIA is the lead agency responsible for securing compliance with Australian migration law. In the onshore context, this involves developing and managing close working relationships with a range of government agencies, including the Australian Customs Service, the Australian Taxation Office (ATO), the Australian Federal Police (AFP) and law enforcement agencies in each State and Territory.⁷⁹

5.4 The arrangements considered by the ANAO focused on those designed to improve onshore compliance and included DIMIA's:

- overall management of relationships;
- relationships with federal agencies; and

⁷⁹ Under section 5 of the Act, members of the AFP and of the police services of the States and Territories are deemed to be an 'officer' within the meaning of the Act.

- relationships with State and Territory agencies.
- 5.5 DIMIA's performance in this regard was assessed against the criteria of:
- effectiveness of decision-making processes to identify key cross-agency stakeholders;
 - effectiveness of administrative processes to manage strategic partnerships and maintain arrangements; and
 - quality of monitoring and reporting of the performance of inter-agency arrangements.

DIMIA's overall management of relationships

5.6 This section examines DIMIA's processes to identify its strategic partners and to manage these relationships to improve onshore compliance with migration law.

5.7 Effective management of these relationships promotes optimal outcomes and ensures that participating agencies are able to maintain arrangements over time to support the achievement of shared goals.

5.8 The ANAO considers that the effective and efficient administration of strategic relationships in support of whole-of-government outcomes, is founded in a clearly articulated management framework that:

- identifies common goals and outcomes;
- outlines the issues to be addressed, priorities for strategic relationships and the benefits sought;
- enables effective coordination of organisational effort through appropriate liaison and information management provisions;
- identifies roles, responsibilities and reporting arrangements; and
- includes processes for review and renewal.

5.9 In May 2003 DIMIA's Compliance Section within BCC, developed a discussion paper in conjunction with its State and Territory offices to identify key strategic partners to assist in locating unlawful non-citizens. In the discussion paper, State and Territory offices identified strategic partners where more formalised agreements such as MoUs would benefit local compliance operations.⁸⁰ As a result, the Compliance Section is developing a range of MoUs with various partners at the federal, State and Territory level.

⁸⁰ It is important to note that an MoU is not a legally binding document and must be based on legislative authority and conform to current privacy legislation.

5.10 The ANAO found that such initiatives were undertaken in isolation and there was no evidence of coordination within DIMIA through, for example, a register of MoUs.

5.11 In a whole-of-government approach, once DIMIA has identified its strategic partners, the ANAO would expect to see DIMIA implementing an administrative mechanism to formalise and manage these critical relationships, supported by a register of MoUs.

5.12 During fieldwork, the ANAO observed that DIMIA currently has not put in place the necessary administrative arrangements to coordinate and sustain long-term strategic relationships. For example, the ANAO found there is potential for duplication in DIMIA's approaches to the ATO—a critical partner to assist in locating unlawful non-citizens. The ANAO also found that DIMIA's Entry Systems and Movement Alert System Section has a broad based information sharing MoU with the ATO, which includes facilitating administrative procedures to assist DIMIA in locating non-citizens who are unlawfully in Australia. DIMIA's Compliance Section is preparing an additional data sharing MoU with the ATO, with a similar purpose.

5.13 The ANAO notes that DIMIANet—DIMIA's intranet site—contains a page titled 'Agreements with other Agencies' that provides easy access to DIMIA's agreements with other agencies relating to compliance and fraud control. Currently, the site houses two agreements: an MoU between DIMIA, the ATO and Centrelink in relation to the cash economy; and a service level agreement between DIMIA and the AFP concerning the investigation of possible offences. DIMIA advises that the site will contain several more agreements that are being developed and negotiated with other agencies. The audit found no timeframe was developed in this regard.

5.14 The ANAO acknowledges that providing this information via DIMIANet is a step in the right direction, as it provides an opportunity to internally manage the documentation and coordination of arrangements such as MoUs; and, potentially, reduce the scope for duplication and overlap of arrangements with strategic partnerships.

5.15 To support this initiative, the ANAO suggests that DIMIA's onshore compliance activities would benefit from DIMIA putting in place an administrative mechanism to better manage and coordinate BCC's onshore compliance MoUs, including their development and renewal.

DIMIA's relationship with federal agencies

5.16 This section examines DIMIA's progress in facilitating relationships with other agencies and in managing these arrangements. In particular, the ANAO assessed DIMIA's progress in establishing effective data sharing arrangements.

Data sharing

5.17 People who breach Australia's migration law often breach tax laws or illegally claim welfare payments. Sharing of information between the responsible Australian Government agencies, within a framework of national privacy principles, is a vital mechanism to minimise fraudulent activity and its burden on the Australian community.

5.18 The ANAO has previously conducted two performance audits into DIMIA's onshore compliance function. Both recommended that DIMIA vigorously pursue data transfer and develop arrangements with other agencies at the State/Territory and local authority level.

5.19 DIMIA agreed in principle with the proposal following the initial audit conducted in 1993–94, but noted the complexity of implementing it, especially in terms of privacy and DIMIA's legislative authority to be able to transfer personal information.⁸¹

5.20 While DIMIA has been involved in data matching with a number of Australian Government agencies⁸², the follow-up audit conducted in 1998 found that the development of these capabilities had been slow, and noted the importance of effective coordination.⁸³

A model data sharing MoU

5.21 Building on the framework for managing strategic relationships discussed previously, the ANAO expected to find a model data sharing MoU incorporating the following key principles:

- a concise description of the legislative authority on which the MoU is based, including reference to the *Privacy Act 1988* (Cwlth) where required by law;
- unambiguous descriptions of the functions to be performed by participating agencies and related dispute settling procedures;
- a management structure to oversee the operation of the MoU;
- mutually established agency accountability and reporting arrangements; and

⁸¹ ANAO Audit Report No.35, 1993–94, *The Compliance Function–DIMA*, p.18.

⁸² Between 1994 and 1998 DIMIA's overstayer records were regularly matched with the ATO's employer declaration file, however, this ceased in 1998 when its MoU expired.

⁸³ ANAO Audit Report No.7, 1997–98, *Immigration Compliance Function–Follow-up Audit*, p. 31.

- protocols (especially data security) established in line with the Privacy Commissioner's 'Guidelines on the Use of Data Matching in Commonwealth Administration'.⁸⁴

5.22 Data matching with a range of agencies is central to DIMIA's strategy to pro-actively target overstayers. The ANAO notes that DIMIA's Compliance Section is responsible for developing inter-agency data exchange proposals to obtain the most current information to assist in locating unlawful non-citizens.

5.23 The ANAO considers that once DIMIA has developed a model data sharing MoU, it will be in a position to modify and adapt this MoU for data sharing arrangements with other public sector agencies. It will also provide the basis for entering into contractual arrangements to share data with private sector organisations, such as banks and credit reference bodies. This will go towards rectifying some of the data sharing deficiencies found in previous ANAO reports.

DIMIA's overstayers file

5.24 Central to DIMIA's efforts to effectively share data with other agencies is its overstayers file.

5.25 DIMIA's Compliance Section is responsible for the Overstayers Project, which includes a strategy to cleanse the overstayers file of extraneous records and purify existing records to better enable data matching with external agencies such as the ATO. The aim of this exercise is to significantly reduce the capacity of overstayers to avoid detection.

5.26 DIMIA proposes a renewed MoU with the ATO relating to data exchange for the purpose of locating unlawful non-citizens. This proposal is based on exchanging information from a 'cleansed' overstayers file.

5.27 To support data sharing activities before the formalisation of the MoU with the ATO, the Compliance Section cleansed a number of overstay records, and forwarded them to the ATO to match names against the ATO's record of addresses. DIMIA advised that it has two purposes in comparing parts of the overstayers file against ATO records:

- first, to indicate the cohorts of people who are unlikely to be in Australia on the premise that if there is no record whatsoever with the ATO it is likely that the person is not resident in Australia, and hence that their record in the overstayers file is an 'error'; and
- second, to allow DIMIA to refer cases of interest to State and Territory offices after the Compliance Section undertakes further checking.

⁸⁴ Office of the Federal Privacy Commissioner, 2001, National Privacy Principles—*Privacy Amendment (Private Sector) Act 2000*, p.5.

5.28 In relation to the former, the ANAO notes that a number of overstayers will be working in the cash economy, and hence will have no dealings with the ATO. DIMIA is already working with the ATO and Centrelink, to minimise opportunities for non-citizens to be unlawfully employed in this part of the economy. Appendix 8 discusses the joint activities being pursued by the three agencies in this regard.

5.29 The ANAO found that around 1000 of the successful matches with ATO records had been forwarded to State and Territory offices for action. Performance information to date indicates that some 43 unlawful non-citizens have been located as a result of this activity.

5.30 The ANAO also found that there was no reporting framework within DIMIA's Compliance Section to:

- provide information on the quality of the data transferred to DIMIA's network of State and Territory offices;
- assess how the information was used by compliance field teams; and
- report what proportion of the information was acted on and resulted in the successful location of an unlawful non-citizen.

5.31 The ANAO concurs with DIMIA that data matching with the ATO has significant potential to assist DIMIA in identifying and locating unlawful non-citizens. However, without a mechanism to report on the outcomes of the MoU, opportunities for improved performance and accountability will be missed.

Proposed DIMIA MoU with the ATO

5.32 The purpose of the proposed data matching exercise with the ATO is to assist DIMIA in locating people who are unlawfully in Australia.⁸⁵ This can be achieved by obtaining the most recent address held by the ATO from its tax file records. Internal DIMIA legal advice suggests that requests for information of this type fall within the broad powers of section 189⁸⁶ of the Act, and that DIMIA would also comply with its obligations under the *Privacy Act 1988*. Section 189 of the Act is the legislative authority on which the data exchange would rest. Similarly, under paragraph 16(4)(hd) of the *Income Tax Assessment Act 1936*, the ATO is authorised to communicate information to DIMIA for the

⁸⁵ DIMIA is of the view that the ATO is the most appropriate agency to data match with for the purpose of locating unlawful non-citizens as it holds data from a variety of external and internal sources such as Centrelink, the Australian Electoral Commission, Health Insurance Commission; and investment income reports, group certificates, tax file numbers and employment declarations.

⁸⁶ Subsection 189(1) provides that if an officer knows (or reasonably suspects) that a person in the migration zone is an unlawful non-citizen, the officer must detain that person. This provision provides a lawful purpose for requesting information from the ATO, as an up-to-date address would directly identify the whereabouts of that person.

purpose of assisting in locating people who are unlawfully in Australia. As discussed previously, the benefits of such an approach depends on the unlawful non-citizen paying tax and having a tax file number. Where the unlawful non-citizen is not working in the regulated economy, the ANAO suggests that DIMIA needs to investigate other avenues of data matching to locate them.

5.33 DIMIA advises that the proposed MoU concerning data sharing arrangements was forwarded to the ATO in October 2003 for signature.

5.34 The ANAO considered the MoU and found that it contained:

- a concise description of the legislative authority on which the MoU is based, including reference to its power to disclose and collect information in accordance with the relevant privacy principle set out in the *Privacy Act 1988*;
- a description of the functions to be performed by the participating agencies and related dispute settling procedures;
- arrangements to manage the MoU, including a review or variation by listed contact officers;
- a set of protocols on the type of data to be exchanged; the method, frequency and volume of data to be exchanged; procedures for destruction of data in accordance with the Australian Government's Protective Security Manual; and a commitment from both parties to comply with Australian Government policy guidelines on the handling of information;
- outcomes sought by DIMIA, but
- no mutually established agency accountability and reporting arrangements.

5.35 Overall, the ANAO found that the proposed MoU includes a section on how outcomes will be measured by both MoU partners. For DIMIA this includes the number of unlawful non-citizens located in Australia as a result of data exchange under this MoU, and the frequency of data exchange. However, it does not provide any indication on how, when or to whom this performance information will be conveyed.

5.36 The ANAO concludes that the data sharing MoU with the ATO is based on most of the key principles previously discussed. However, the proposed MoU lacks the principle concerning robust performance reporting measures for each of the MoU partners. The ANAO suggests that DIMIA include this principle in its proposed MoU with the ATO to allow for transparency and improved accountability.

5.37 For any future data sharing MoUs, identified by State and Territory offices for compliance purposes, the ANAO considers they need to be underpinned by the key data sharing principles identified previously.

Operational arrangements

5.38 The discussion paper developed by DIMIA's Compliance Section, in cooperation with State and Territory offices, maps existing formal and informal arrangements at the State and Territory office level.

5.39 The ANAO considered DIMIA's role and participation in a cross-agency working group with two other central federal agencies—Centrelink and the ATO. The ANAO concluded that DIMIA is actively contributing to whole-of-government outcomes through its participation in the working group. Details of this cross-agency arrangement are provided at Appendix 8.

5.40 This section focuses, in particular, on arrangements between DIMIA and one of its key operational partners—the Australian Federal Police. While informal arrangements may be suitable in certain circumstances, the ANAO would expect to see formalised, accountable arrangements in place where strategic partnerships are concerned, especially those with law enforcement agencies.

Australian Federal Police (AFP)

5.41 A broad service level umbrella agreement exists between the AFP and DIMIA, aimed at enhancing the effectiveness of services provided by the AFP to DIMIA. The agreement is also intended to strengthen the cooperation and collaboration between the two agencies in dealing with the threat of serious and organised crime against Australia's migration program.

5.42 The service agreement is designed to specifically address organised illegal immigration, in particular people smuggling, through a whole-of-government approach. Both agencies recognise the positive outcomes to be achieved through ongoing cooperation and collaboration.

5.43 Under section 5 of the Act, members of the AFP are deemed to be an 'officer' within the meaning of the Act. This means that members of the AFP are required to detain people who they know, or reasonably suspect, to be unlawful non-citizens.

5.44 The ANAO found the service agreement between DIMIA and the AFP to be an appropriate model for an operational agreement, which DIMIA could adopt for general law enforcement purposes (including with State and Territory police services), as it includes:

- a clearly stated objective for the agreement, detailing mutual responsibilities;
- the legislative authority on which the agreement is based, including reference to protecting the integrity of information and intelligence exchanged between the two agencies;
- descriptions of the functions to be performed by participating agencies, including joint operations;
- well-developed performance measurement and reporting arrangements;
- the establishment of training and operational standards between the agencies concerned; and
- a process for review and renewal.

5.45 Additionally, the service agreement includes an annexure relating to State and Territory based AFP and DIMIA contact officers, allowing for closer cooperation at the local level through the out-posting of officers between the agencies. Two of these local agreements allow for the out-posting of officers between the agencies in both Queensland and NSW.

5.46 DIMIA advised that it is reviewing and broadening the scope of the service agreement as it recently expired. DIMIA's intention is that the revised service agreement will remain the overarching document governing the type of services to be delivered to DIMIA by the AFP, and other MoUs may become annexures to the overarching agreement.

Proposed DIMIA–AFP MoU concerning overstayers data and locating and detaining unlawful non-citizens

5.47 An additional agreement, in the form of an MoU, between DIMIA and the AFP, in relation to information sharing and locating and detaining unlawful non-citizens in Australia, has been drafted.

5.48 The draft document includes most model operational clauses described above and is considerably strengthened in respect of privacy legislation and principles concerning the protection and disclosure of personal information.⁸⁷

5.49 Nonetheless, the ANAO found the draft to be lacking in the following areas:

⁸⁷ DIMIA has obtained legal advice from the Australian Government Solicitor advising that DIMIA is not prevented under the *Privacy Act 1998* from giving personal information contained in the overstayers list to the AFP and State and Territory police. This is on the basis that overstayers are reasonably likely to be aware that information about them will be passed to the proper authorities if they overstay their visa.

- the current performance measurement and reporting arrangements do not allow for an effective assessment of the performance of either MoU partner; and
- under section 11, 'Arrangements for detaining unlawful non-citizens', the ANAO notes reference to, but not the inclusion of, operational guidelines to support these activities. Without the opportunity to consider these guidelines, the ANAO is unable to form a view on the quality of the operational standards likely to be contained in the guidelines.

5.50 The ANAO considers these two areas need improvement before activating the MoU.

5.51 DIMIA advised that the proposed MoU between DIMIA and the AFP concerning data and locating and detaining unlawful non-citizens, may become an annexure to the revised DIMIA–AFP service agreement and subject to its provisions.

5.52 The ANAO concludes that there would be advantages in sub-ordinating the proposed MoU to the broader service level agreement, as it would minimise the development of additional agreements to cover single operational issues. Additionally, it would enhance overall reporting of the effectiveness of the inter-agency arrangement to deal with the threat of serious and organised crime against Australia's migration program.

DIMIA's relationships with State and Territory agencies

5.53 This section examines the relationships DIMIA has in place at the State and Territory level to assist in locating unlawful non-citizens.

State and Territory police services

5.54 Similar to members of the AFP, officers of the police services of the States and Territories are deemed to be immigration officers within the meaning of the Act. Under the Act, they are required to detain a person who they know, or reasonably suspect, to be an unlawful non-citizen.

5.55 Normally police officers would only come to know that a person is an unlawful non-citizen if DIMIA compliance officers specifically informed them. Therefore, any lack of information sharing potentially limits the capacity of police officers to independently carry out their responsibilities under the Act.

5.56 DIMIA has identified data sharing as a way to limit the detrimental effects of any information deficit. The ANAO considers that a cleansed and current overstayer file is also fundamental to facilitating data exchange so that police officers are able to carry out their responsibilities under the Act.

5.57 The ANAO notes that local police may be called upon to provide additional support, including to accompany DIMIA officers on compliance operations where the team leader, following an operational risk assessment, has concluded that the assistance of State/Territory or federal police is required.⁸⁸

5.58 Close working relationships are even more important in rural and remote areas of Australia where local police, acting as immigration officers, investigate and act on information that may lead to the detection of an unlawful non-citizen.

5.59 Local police services may also provide DIMIA field teams with facilities to interview unlawful non-citizens once they have been located and, in some instances, to detain unlawful non-citizens while arrangements are being made to transfer them to a detention facility.

5.60 In most instances, State and Territory offices have developed informal operating arrangements with their local police services, to give effect to the legislative intent that police officers act as immigration officers in certain circumstances.⁸⁹

5.61 Additionally, there is an MoU between DIMIA and the NSW Police Service for providing information and intelligence to facilitate lawful decision-making and criminal investigations. Under the MoU, certain officers of the NSW Police Service are provided with direct access to DIMIA's Movement Records System, and the NSW Police Service provides DIMIA with information, including criminal history records and intelligence reports from its records. The respective information sharing activities of both agencies take place within privacy legislation and policy concerned with disseminating information.

5.62 The MoU enables the placement of a liaison officer from the NSW Police Service with DIMIA's NSW State Office. This officer is responsible for coordinating and facilitating all information and intelligence provided to the other agency. The liaison officer also provides monthly reports to both DIMIA and police service management on activities and issues. This includes the level of information exchange between the two agencies, representational and liaison activities, joint operations and outcomes.

⁸⁸ DIMIA's 'National Compliance Operating Guidelines' include operational risk assessments to assist field team leaders identify where police assistance may be required. These guidelines are discussed in more detail in Chapter 6.

⁸⁹ On a more formal basis, the ANAO notes the MoU developed between DIMIA and the South Australian Police Service for the purposes of locating unlawful non-citizens.

5.63 The ANAO notes a clause within the MoU provides for an annual review of the effectiveness of the MoU, including the provision of performance information.

Template MoU between DIMIA and State and Territory police services

5.64 DIMIA advised the ANAO that it has developed an MoU template for use with State and Territory police services to enable the exchange of data on overstayers and assistance in locating and detaining unlawful non-citizens.

5.65 The ANAO reviewed the template and notes that it is based on the MoU with the AFP. The ANAO found that the template details, for each State and Territory police service, DIMIA's power to disclose and collect personal information from the relevant police service, and the reverse power of the police service to collect and disclose information to DIMIA. To ensure the legality of these arrangements, DIMIA sought legal advice about the applicable privacy regime in each State and Territory. The template can be modified to accommodate the variations in privacy legislation between the jurisdictions, providing for the application of the particular privacy and personal information protection regime.

5.66 The deficits the ANAO found in the proposed DIMIA–AFP MoU are replicated in the proposed arrangements with State and Territory police services, namely:

- the current performance measurement and reporting arrangements do not allow for an effective assessment of the performance of either MoU partner; and
- while reference is made to operational guidelines to support arrangements concerning the detention of unlawful non-citizens, the guidelines were not attached to the MoU template. Without the opportunity to consider these guidelines, the ANAO is unable to form a view on the quality of the operational standards they contain.

5.67 The ANAO suggests these two areas need improvement before finalising the template MoU with State and Territory police services.

Training and education for police officers deemed as officers under the Act

5.68 The ANAO notes the existence of a draft DIMIA document, 'Immigration Handbook for Law Enforcement Officers'. Its stated objective is to better inform law enforcement officers throughout Australia of their responsibilities under the Act. The draft includes reference to the applicable sections of the Act, outlining the legislative authority as it pertains to law enforcement officers. The proposed booklet also includes details of the types of checks to be carried out to determine whether a non-citizen is lawful, and the action to be taken if they are found to be unlawful.

5.69 The ANAO suggests that DIMIA finalise the handbook for law enforcement officers and promulgate it to State and Territory police services through its network.

5.70 In the absence of such a handbook for police officers, the ANAO considered the immigration *aide memoir* developed by the Queensland State Office and found that it was an effective information tool for both AFP and State or Territory police officers. It provides simple details of who is a lawful and an unlawful non-citizen, and the procedures to be followed if a police officer suspects that a non-citizen is unlawful. The leaflet lists the DIMIA Queensland State Office telephone numbers and the national after-hours number. Police services are advised that before they proceed they must contact these offices to confirm lawful status.

5.71 The strategic nature of information sharing and operational arrangements between DIMIA and members of the AFP and State and Territory police services has been discussed earlier in this chapter. The ANAO considers that these arrangements will not achieve their full potential to enhance performance, unless they are supported by appropriate and consistent training and support.

5.72 A number of State and Territory offices carry out regular training/information sessions with their local law enforcement agencies, to better assist them in performing their immigration functions.

5.73 The ANAO suggests that DIMIA Central Office develop a training and support package, to ensure consistency of application of the Act to federal, State and Territory police services, and to provide assurance that police officers are familiar with and can effectively carry out their obligations under the Act.

Proposed arrangements between DIMIA and State and Territory licensing authorities

5.74 DIMIA is examining the licensing regimes in each State and Territory to determine whether there is any scope to use this legal framework to help deter employers from using illegal workers.

5.75 Many of the industries where illegal workers are located have licensing arrangements. For example, licenses are usually required to operate brothels or sell alcohol in clubs. The taxi and domestic building industries are also regulated through licensing regimes.

5.76 The Sydney and Parramatta offices of DIMIA have worked closely with the NSW Government on licensing requirements for people employed in the security industry, for example, as security guards.

5.77 It is now a requirement under the NSW Security Industry Act that licence holders be a permanent resident of Australia. DIMIA advised the

ANAO that enforcement of this requirement has effectively ‘cleaned up’ the industry in NSW from a DIMIA perspective. That is, it has stopped the employment of illegal workers as security guards.

5.78 The ANAO notes this development. DIMIA advised that it is pursuing similar arrangements with licensing authorities in other industries, regulated by State and Territory arrangements. These could deliver significant benefits in ensuring that only those non-citizens with bona fide work rights are employed in these industries.

Informal operational enablers

Section 18 notices to obtain information

5.79 In the absence of formalised data sharing MoUs, compliance field teams in State and Territory offices make requests, under section 18 of the Act, to both public and private sector agencies for personal information to identify or locate an unlawful non-citizen.⁹⁰

5.80 The information that can be obtained through section 18 notices is important in establishing a standard of evidence to satisfy a DIMIA delegate that there is reasonable cause to believe a search of premises may result in locating an unlawful non-citizen or relevant documentation. The administration of DIMIA’s search warrant procedures is considered in more detail in Chapter 6.

5.81 Section 18 notices can be issued only on an individual basis. In addition, section 18 notices can seek information on only one category of DIMIA’s compliance target population, that is, those non-citizens who are unlawful by virtue of overstaying the validity of their visa.

5.82 DIMIA advised the ANAO that it is seeking legislative change to strengthen its legal authority to engage in data matching arrangements with public and private sector agencies and organisations. This includes amendments to the existing power of section 18 of the Act.

5.83 DIMIA is also seeking enhanced powers to locate non-citizens who are either unlawful or who may be liable for visa cancellation⁹¹, deportation or removal. DIMIA advised that these proposed legislative changes were scheduled for the Autumn 2004 legislation program.

⁹⁰ Section 18 of the Act compels organisations to provide information on a particular individual who DIMIA has reason to believe is an unlawful non-citizen. Failure to comply invokes penalties under the Act and the *Criminal Code Act 1995 (Cth)*.

⁹¹ Section 116 of the Act contains the power to cancel visas on the grounds of a breach of the conditions of that visa, including where non-citizens work without the express legal authority to do so.

5.84 The enhanced powers that DIMIA is seeking, concerning both data matching arrangements and powers to locate non-citizens who may be liable for visa cancellation, deportation or removal, are outlined in more detail under proposed legislative changes in Appendix 1.

5.85 Currently, organisations requested for information under section 18 are varied and can range from energy authorities, to local traffic authorities to video companies.

5.86 The ANAO notes that DIMIA, in the long term, seeks to establish MoUs with a range of State and Territory agencies and private sector organisations to reduce the reliance of compliance field teams on section 18 notices.

5.87 The ANAO suggests that DIMIA formalise a timetable for the MoU development to ensure that the information operational needs of State and Territory offices are met.

6. Compliance Operations

This chapter considers DIMIA's management of its compliance operations within State and Territory offices. A particular focus is the level and quality of Central Office administrative support to assist compliance officers to carry out their varied functions lawfully. DIMIA's planning; implementation; monitoring and reporting of onshore compliance operations are also examined.

Introduction

6.1 DIMIA employs around 170 compliance officers in its State and Territory office network. These compliance officers are required to carry out a range of field activities throughout Australia to identify and locate unlawful non-citizens and people in breach of their visa conditions.

6.2 Given the breadth of their activities, the competencies required by compliance officers are numerous. They include a sound knowledge of the legislative and policy settings that authorise their decision-making powers concerning non-citizens; and of operational issues, such as occupational, health and safety and conflict de-escalation, required when locating and detaining members of the compliance target population. Compliance officers also educate employers through the national Employer Awareness Campaign.

6.3 DIMIA undertook a survey of compliance staff to gather information on their self-assessment against core investigation and compliance competencies. Survey results revealed a wide disparity in their knowledge base.

Central Office support for compliance officers

Administrative support for lawful decision-making

6.4 To assist compliance officers in their role, guidelines and instructions are an important tool. The ANAO examined the level of support DIMIA provides to assist its staff in the decision-making process relating to unlawful non-citizens, in accordance with the Act.

6.5 DIMIA provides a comprehensive suite of information to its staff to assist them in the decision-making process. This information includes the following:

- Procedures Advice Manual, which provides an interpretive, edited statement of the Government's policy on a particular topic. The manual is carefully edited to provide a consistent set of papers covering current government policies under the Act and associated Regulations;

- Migration Series Instructions, which relate to the Act, the Migration Regulations and other related legislation (as amended from time to time). The instructions are a temporary instruction format only; they are intended for ultimate incorporation into the Procedures Advice Manual. It is the responsibility of the relevant program area within DIMIA to ensure that the information in an instruction is up to date. Migration Series Instructions are intended to be reviewed 12 months from the date of issue, but remain current until formally replaced, re-issued or deleted;
- written directions by the Minister (section 499 directions) to a person or body with functions or powers under the Act. The direction may give instructions on the performance of those functions; or the exercise of those powers. A section 499 direction cannot prevail over the legislation;
- administrative circulars;
- a Client Service Charter;
- Minister's speeches;
- media releases;
- DIMIA website;
- handbooks and manuals; and
- process maps describing aspects of onshore compliance work.

6.6 The main method of delivery of guidance relating to onshore compliance is through LEGEND, an interactive toolkit available on DIMIA's intranet or on CD-ROM. It encompasses the Act, Migration Regulations, ministerial directions, Migration Series Instructions, and the Procedures Advice Manual.

6.7 The ANAO considered the decision-making powers of onshore compliance officers, the level of guidance they receive for exercising those powers in relation to cancelling visas, and DIMIA's administration of its search warrant powers. The detailed administrative support provided to compliance officers through DIMIA's 'National Compliance Operational Guidelines' and accredited national training arrangements were also examined.

Visa cancellation on section 116 grounds—decision-making

6.8 Migration Series Instruction 368: 'Visa Cancellation under Sections 109, 116, 128 and 140(1)' provides appropriately delegated DIMIA officers with advice on how to proceed to visa cancellation.

6.9 Section 116 of the Act provides for cancellation where ‘its holder has not complied with a condition of the visa’ for example, if a visa holder is found working while holding a visa that does not permit work.

6.10 Section 116 of the Act also provides a code of procedure ensuring that visa holders are accorded procedural fairness. They are first given a ‘notice of intent to cancel’, and then the opportunity to put their case as to why a visa should not be cancelled. Additionally, they are to be notified if there is a decision to cancel.

6.11 Migration Series Instruction 368 advises that under section 116 of the Act, a delegate may consider cancelling a visa (or must cancel in certain circumstances) ‘only if’ they are satisfied that one of the grounds listed in subsection 116(1) is made out. The ANAO notes that subsection 116(1) includes the ground that the visa holder has not complied with a condition of the visa.

6.12 The ANAO examined the level of guidance provided to DIMIA decision-makers in exercising discretion to cancel a visa under section 116 of the Act. As part of its training program, DIMIA advises its officers as follows:

...a cancellation decision is almost always a discretion i.e. there is rarely any duty to cancel.

...even if all the legal pre-conditions have been met, the decision-maker is not obliged to cancel a visa because **cancellation is nearly always discretionary** (i.e. there is choice whether to cancel).⁹²

6.13 Migration Series Instruction 368 provides comprehensive guidance to decision-makers about the grounds for cancelling ETA and business visas (temporary resident visas). Migration Series Instruction 368 also provides advice to DIMIA officers on the primary considerations for cancelling a temporary or permanent visa. For example, advice relating to cancelling a temporary visa includes considerations such as:

- the purpose of the visa holder’s travel to and stay in Australia;
- the extent of non-compliance with any conditions subject to which the visa was granted;
- the degree of hardship that may be caused to the visa holder and any family members;
- whether the cancellation would lead to removal in breach of Australia’s non-refoulement obligations⁹³;

⁹² DIMIA, November 2002, ‘*Lawful Decision Making Training for DIMIA Decision-Makers*’, pp. 5.1.1–5.1.4.

⁹³ That is, removing a person to a country (or a country which will then send the person to such a country) where the person faces persecution (within the meaning of the Refugees Convention), death (including the death penalty), torture, or cruel, inhuman or degrading treatment or punishment.

- the circumstances in which the ground for cancellation arose; and
- the person's behaviour in relation to the department.⁹⁴

6.14 DIMIA training also advises decision-makers that a number of factors must be taken into account to establish whether cancellation is warranted.⁹⁵ Factors to be taken into account include the following.

- Based on the facts of the case and the visa holder's response to the notice to cancel, are there grounds for cancellation?
- If there are grounds for cancellation, are there any circumstances that would lead the decision-maker to conclude that the discretion to cancel should not be exercised?
- Had the information been known at the time of decision, would the decision-maker have granted the visa?
- If not, are there any circumstances that now exist that would warrant not cancelling the visa?

6.15 The audit found that although DIMIA provides advice to decision-makers on the considerations that must be taken into account to establish whether cancellation is warranted, advice is not provided to its officers to assist them in understanding the criteria applicable in determining each of the above considerations, and the weighting (if any) to be given to each consideration in exercising discretion relating to visa cancellation. Without this advice, the discretion exercised by DIMIA officers may vary significantly, possibly leading to inequitable outcomes for DIMIA clients.

6.16 Additionally, the ANAO found no evidence that DIMIA undertakes analysis of the data pertaining to visa cancellation under section 116 of the Act, to provide assurance that its management of visa cancellation under section 116 is efficient, effective and equitable.

6.17 The ANAO suggests that, to assist consistency in decision-making concerning the cancellation of visas, DIMIA:

- provide advice to State and Territory compliance officers on the criteria applicable in determining considerations outlined in Migration Series Instruction 368 and DIMIA training, and the weighting (if any) to be given to each consideration in exercising discretion relating to visa cancellation; and

⁹⁴ DIMIA, 2002, Migration Series Instruction 368: 'Visa Cancellation under Sections 109, 116, 128 and 140(1)', p. 73.

⁹⁵ DIMIA, 'An Overview of Visa Cancellation under the Migration Act 1958', p. 49.

- regularly monitor and review its visa cancellation performance information to assist in managing quality assurance relating to visa cancellation.

6.18 The issue of providing assistance to State and Territory office compliance officers, in exercising their discretion concerning visa cancellation, is considered further under quality assurance later in this chapter.

Administration of DIMIA's search warrants

6.19 DIMIA's powers of entry, search and seizure under sections 251 and 252 of the Act provide the statutory authority to DIMIA compliance officers to enter premises to apprehend non-citizens who are in Australia unlawfully.

6.20 The main power of search under warrant is found in subsections 251(4)-(6) of the Act. This authorises DIMIA officers to enter and search any premises where they have 'reasonable cause to believe' they will locate unlawful non-citizens, non-citizens in breach of their visa conditions, or certain types of documents principally related to the entry of unlawful non-citizens into Australia.

6.21 DIMIA is in a unique position in that its powers of entry, search and seizure under the Act do not require any independent judicial authorisation.

6.22 These powers have been the subject of a number of independent reviews in recent years.⁹⁶ This section does not revisit the considerations of these reviews, but focuses on DIMIA's management of its search warrant powers and their effectiveness in locating unlawful non-citizens.

6.23 The ANAO considers that DIMIA's exercise of its legislated search power to locate specified non-citizens or documents should be:

- transparent;
- consistent with the legislation and associated administrative guidance; and
- recorded and reported internally to assist DIMIA monitor the use of search warrants and that legislated requirements have been met.

6.24 Accordingly, the ANAO considered:

- the effectiveness of DIMIA's formal recording procedure for distributing search warrants to State and Territory offices;

⁹⁶ The Commonwealth Ombudsman's Office released its review of DIMIA powers under the Migration Act in December 1999. This was followed by a report of the Senate Standing Committee for the Scrutiny of Bills on Entry and Search Provisions in Commonwealth Legislation in 2000.

- the transparency of DIMIA decision-making concerning the issue of warrants; and
- the monitoring of outcomes of warrants issued for performance evaluation.

Effectiveness of the formal recording procedure for distributing warrants to State and Territory offices

6.25 The ANAO examined DIMIA Central Office management of procedures concerning the printing and secure storage of search warrants and their distribution to State and Territory offices.

6.26 Central Office is responsible for the manual procedure of ordering a print run of search warrant letterheads, ensuring the batch numbers are in sequence and not duplicated, securely storing the blank forms, and arranging their dispatch to State and Territory offices.

6.27 Compliance units in State and Territory offices are responsible for manually recording the warrants in registers. On completion of a field visit that is supported by a search warrant, the field team leader is responsible for reporting and recording results and acquitting the warrant. The acquittal is held in State and Territory offices.

6.28 When required by Central Office, compliance managers in State and Territory offices manually collate statistical data and develop reports on the issue of warrants from register extracts held in their offices.

6.29 DIMIA is aware that there are inefficiencies associated with the current approach of manually recording, processing and monitoring the use of these warrants within the provisions of the Act, compared with using an electronic system.

6.30 The ANAO noted the contents of an DIMIA minute outlining a range of improvements to the Integrated Client Services Environment (ICSE) system related to developing a way to electronically record, process, and monitor the use of warrants issued in accordance with the relevant provisions of the Act.

6.31 The ANAO sought information on the status of the recommendations contained within the minute. The information was not made available by DIMIA before the end of the audit. The ANAO supports the broad direction to replace the current manual procedures with a structured electronic recording system. Such a system would enable readily accessible returns for each warrant and provide for more efficient processing of information relating to the use of warrants issued in accordance with the relevant provisions of the Act.

Transparency of DIMIA decision-making concerning the issue of warrants

6.32 The approach taken by DIMIA delegated officers to make a decision to issue a search warrant should be consistent with the legal concept ‘reasonable cause to believe’. The concept reinforces the importance of accurate, detailed and timely information being available, to support a decision to issue a warrant. The delegated officer must be personally satisfied that there is sufficient evidence to establish a ‘reasonable cause to believe’ in the mind of an objective person.⁹⁷ In the absence of such a standard of accuracy, the decision-maker’s belief may be called into question.

6.33 DIMIA decision-making in this regard is supported by a Migration Series Instruction⁹⁸, is addressed in the ‘National Compliance Operational Guidelines’, and receives substantial consideration in the new accredited training arrangements.

6.34 The ANAO became aware through fieldwork that relatively senior officers (EL1 and APS 6 level) within State and Territory offices held the necessary delegation to issue warrants.

6.35 The ‘National Compliance Operational Guidelines’ set out the procedure to be followed by compliance officers applying for search warrants and delegates issuing warrants, and the critical features to be addressed by both parties. Considerations include:

- the standard of evidence required;
- the information to be included on the warrant application;
- the delegate to be satisfied of ‘reasonable cause to believe’;
- duration of warrant; and
- repeat visits.

6.36 The ANAO observed an instance of the process undertaken by a delegated officer, to arrive at ‘reasonable cause to believe’⁹⁹ that certain classes of people or documents would be found at an address, and so satisfy the requirements for issuing a warrant. In the instance observed by the ANAO, the compliance officer submitting the request to the delegate took appropriate care in cross-checking the community information received by DIMIA with records held by energy authorities and road and traffic authorities, to reach the

⁹⁷ DIMIA, May 2003, ‘National Compliance Operational Guidelines’, pp. 5–25.

⁹⁸ During the course of the audit, the relevant Migration Series Instruction was being updated in conjunction with compliance units in State and Territory offices, and also to take account of some of the issues raised during the independent reviews of DIMIA’s search and entry powers.

⁹⁹ To meet the requirement to authorise a search under section 251 of the Act.

standard of assurance required by the delegate to issue the warrant. Through the remainder of fieldwork, the ANAO discussed with compliance officers the matter of warrant issue, and obtained evidence indicating that requisite checks were carried out to validate community information to support the issue of a warrant.

Monitoring of outcomes of warrants issued for performance evaluation

6.37 The ANAO found that reporting and analysis of the outcomes of search warrant issue was not undertaken at Central Office but at individual State or Territory offices.

6.38 The ANAO also notes that field teams keep a 'running' sheet recording premises visited in relation to each warrant and its outcomes, in terms of location of the specified non-citizens. The ANAO was advised that in at least one State office these data are analysed monthly, to assist in identifying trends in particular industry sectors or classes of non-citizens. The ANAO found no evidence that this was a common practice across all State and Territory offices.

6.39 The ANAO considers that to assist in monitoring consistency of performance across State or Territory offices, DIMIA could aggregate, analyse and evaluate State and Territory offices' performance information on the outcomes of search warrants issued (including analysis, to assist in identifying trends in particular industry sectors or classes of non-citizens) on a national basis. Factors to consider could include: the number of warrants issued, the number of non-citizens intended to be located, and the number actually located. The ANAO considers that a central monitoring function could undertake this work.

Recommendation No.5

6.40 To assist in monitoring the consistency of performance across all State or Territory offices relating to the management of its search warrant powers, the ANAO recommends that DIMIA Central Office monitor and analyse factors such as: the number of warrants issued; the number of non-citizens intended to be located; and the number actually located.

DIMIA response

6.41 Agreed.

6.42 The Department is running quality assurance processes on Migration Act search warrants which forms a central quality control function.

National Compliance Operational Guidelines

6.43 DIMIA's 'National Compliance Operational Guidelines' provide a set of principles to underpin field operations, irrespective of the scale of the

operation, as a means of ensuring a consistent approach to fieldwork. The principles are as follows.¹⁰⁰

- Regulate
 - DIMIA will regulate the movement of people to and from Australia in a manner that maximises the opportunities to identify those people who have no entitlements to enter or stay in Australia, while ensuring that there is no undue inconvenience to genuine travellers.
- Enforce
 - DIMIA will support the integrity of departmental programs, policies and processes through the detection of breaches and the enforcement of law. DIMIA will enforce the law in a manner that results in the impositions of prompt and significant sanctions.
- Deter
 - DIMIA will deter abuse of departmental programs, policies and processes by identifying sources of abuse, creating disincentives to abuse and promoting a clear message that breaches of law will result in significant legal sanctions.

6.44 DIMIA's National Compliance Operational Guidelines were developed in Central Office following extensive consultation with compliance field officers in State and Territory offices, and are solely devoted to fieldwork operations.

6.45 The first edition of the guidelines was released in December 2002. The purpose of the guidelines is to:

- provide new officers with an overview of compliance field activities;
- ensure a nationally consistent approach to DIMIA's field activities (operations) that complies with legislative and policy requirements; and
- promote occupational health and safety principles as an integral component of the compliance program.¹⁰¹

6.46 A national accredited compliance training program (discussed later in this chapter) has been implemented to support the implementation of the guidelines to assist in achieving a consistent and equitable approach by compliance officers in treating onshore non-compliance.

¹⁰⁰ DIMIA, May 2003, 'National Compliance Operational Guidelines', p. 2-2.

¹⁰¹ *ibid.*, p. 1-1.

Fieldwork planning

6.47 The ANAO observed the process of developing a compliance fieldwork plan but could not form an opinion about the level of guidance provided by the guidelines. The main contribution to the planning process seemed to be the local knowledge and experience of the team leader.

6.48 The ANAO concludes that, while operational knowledge and experience are important aspects of planning processes, and DIMIA's guidelines provide a national and consistent approach to compliance operations, DIMIA needs to monitor their implementation to evaluate their effectiveness.

Operational standards to support fieldwork

6.49 The ANAO considers that, to be effective, the principles contained in DIMIA's 'National Compliance Operational Guidelines' require the development of a consistent set of operational standards for national application.

6.50 The audit found that, in the absence of any other guidance, field teams or units within DIMIA's State and Territory office network were developing and implementing operational standards to support their work. This issue is considered further under quality assurance later in this chapter.

Onshore compliance operations—ICSE data entry

6.51 DIMIA's onshore processing system, ICSE, records associated processes and decisions for compliance activities, including compliance operations. The National Compliance Operational Guidelines require team leaders to ensure that an operation is recorded in ICSE and that ICSE records for all persons of interest are updated with the appropriate information.¹⁰²

6.52 The National Compliance Operational Guidelines advise that funding through the purchasing agreement is directly tied to the recording of statistics in ICSE. This indicates that ICSE entry should be timely and accurate following a compliance field operation.

6.53 However, the ANAO is of the view that another pressing concern exists for the timely entry of operational data into ICSE—the updating and recording of the lawful status of clients who have been located through compliance operations and granted a bridging visa. If the client's lawful status is not recorded in ICSE, the client remains subject to compliance activity by DIMIA officers and the officers of other agencies designated under the Act.

6.54 The ANAO found that no national standards have been set concerning ICSE data entry following field operations. In a number of instances it

¹⁰² *ibid*, p. 5-74.

depended on the State or Territory compliance manager to set their own standards for timeliness for ICSE data entry following operations.

6.55 The ANAO considers that this has resulted in different approaches being taken by State and Territory field teams, as to when they enter into ICSE the lawful status of non-citizens located during the course of their operations. Some operations may last for a week or more, while others are completed within a day or an evening.

6.56 The ANAO considers that DIMIA could improve its timeliness in recording the lawful status of non-citizens, by developing and promulgating a set of ICSE data entry standards to State and Territory offices. This issue is considered further under quality assurance later in this chapter.

6.57 In addition to the need for ICSE data entry standards, compliance field teams need to be able to update ICSE records in a timely manner. DIMIA advised that it has implemented its Global Remote Access Service, to allow DIMIA subscribers to establish a secure 'dial up' connection to the department via the Internet. Subscribers have access to a range of departmental applications, including ICSE. DIMIA estimates it currently has 250 remote access subscribers, although it is not clear how many subscribers belong to compliance field teams. DIMIA also advised that it has commenced a pilot project to explore solutions to mobility issues, including for example, wireless access to mainframe systems.

6.58 The ANAO suggests that, to assist in the timely update of ICSE records, DIMIA review remote access by compliance field teams to ICSE.

Accredited national training arrangements

6.59 In late 2002 DIMIA contracted the Australian Forensic Services to provide accredited training to compliance officers at Certificate IV level, 'Statutory Investigations and Enforcement'.

6.60 Preliminary courses were conducted in early 2003. Following an evaluation, the courses were modified to take account of the specific requirements of compliance officers with respect to their legal authority, and also, occupational health and safety issues that arise during the course of their work.

6.61 DIMIA advised that, following the evaluation, a revised course has been developed that meets accreditation requirements and has course content more closely targeted to the needs of compliance officers.

6.62 The ANAO was provided with course evaluations following the revision. These indicate that the course is being 'pitched' at the correct level for new compliance staff, while providing a refresher for more experienced staff.

Planning onshore compliance operations

6.63 In this section the ANAO considers how DIMIA's onshore compliance strategic planning framework is translated to onshore compliance operational planning within DIMIA's State and Territory office network. Specifically, the audit considered the following:

- Border Control and Compliance Division's (BCC) internal funding arrangement with State and Territory offices—Statements of Works;
- State and Territory onshore compliance operational plans;
- identification and implementation of better practice; and
- management of compliance intelligence.

Internal funding arrangements

6.64 Until July 2003, overall resourcing for compliance activities was governed by a purchasing agreement between DIMIA and the Department of Finance and Administration. The agreement set the onshore compliance outputs that DIMIA would deliver in the context of achieving Outcome 1 *Lawful and Orderly Entry and Stay of People*, and the price the Australian Government would pay for the associated outputs. Internal allocations for 2003–04 were set with a fixed funding base for all DIMIA activities.

6.65 One of the developments related to the purchasing agreement that DIMIA advised the ANAO that it seeks to maintain is the internal funding arrangement, Statements of Works. In this instance the agreements are negotiated between the Executive Coordinator, BCC and State or Territory regional managers. These agreements link funding with State and Territory office performance.

6.66 DIMIA's Statements of Works are designed to translate strategic directions, set through DIMIA's overall planning framework, into a set of coherent practical instructions to be followed by State and Territory offices when they carry out the tasks set out in the agreement. As such, they should include details of what is purchased, targets set and associated measures of efficiency and effectiveness, as well as quality assurance measures.

6.67 In the 2002–03 financial year, the Portfolio Additional Estimates Statements performance targets concerning Output 1.3.3 were:

- 8 150 field locations,
- 7 620 self-referrals; and
- 1 885 illegal worker warning notices.¹⁰³

6.68 These performance targets were allocated proportionally across the State and Territory office network through the Statements of Works funding mechanism. By and large, reporting against the targets was of a statistical nature. The ANAO notes that in their first year of operation, 2002–03, the BCC Statements of Works were not fully developed with respect to the aforementioned measures.

6.69 The ANAO found that the Statements of Works arrangements drive the onshore compliance planning processes in the network. The ANAO considers that without fully developed performance measures there is a lack of guidance to DIMIA staff relating to the level of performance required. Audit fieldwork relating to this issue was completed before BCC issued its Statements of Works for 2003–04.

6.70 Subsequently, DIMIA advised that it agreed with the ANAO that the Statements of Works links to performance measures and standards in its business plan, could be more finely tuned in order to better guide the pursuit of the division’s strategic direction at the operational level. Further, DIMIA noted that:

- performance information was not built into the purchasing agreement model of payment for achieving quantifiable targets and this has impacted on the basic structure of the Statements of Works; and
- it is now in an ‘internal allocation funding framework’ and can consider building more useful links between the BCC Business Plan and Statements of Works for 2004–05.¹⁰⁴

State and Territory onshore compliance operational plans

6.71 Ideally, DIMIA’s overall planning framework, including BCC’s strategic directions, should flow to the State and Territory level. State and Territory compliance operational plans need to set clear priorities for operational units and to allocate resources for achieving onshore compliance targets as set out in the Statements of Works.

¹⁰³ Portfolio Additional Estimates Statements 2002–2003, *Immigration and Multicultural and Indigenous Affairs Portfolio*, p. 77.

¹⁰⁴ DIMIA response to the ANAO audit discussion paper of 1 December 2003.

6.72 Operational plans, developed within compliance areas in State and Territory offices, should identify what they intend to deliver, the resources required, and performance measures against which they can assess their performance and report on it, rather than just listing activities to be undertaken.

6.73 The ANAO analysed a selection of State and Territory Office operational plans and found, overall, that the links between the broader strategic direction and activities on the ground could be made clearer.

Identifying and implementing better practice

6.74 One of the stated responsibilities of DIMIA's Compliance Section in its operational plan, is to coordinate the identification and sharing of better practice in compliance work.

6.75 However, the audit found no evidence of procedures developed within DIMIA, relating to the management of onshore compliance that would facilitate the identification and sharing of better practice approaches to onshore compliance operations within the Central Office and State and Territory office network.

6.76 The ANAO considers that the sharing of better practice approaches to operational planning and implementation could further enhance the performance of State and Territory compliance work.

Managing compliance intelligence

6.77 DIMIA's 'Business Directions 2002–2005' identifies the need for it to consolidate access to onshore and offshore information and develop an intelligence analysis system. In addition, in relation to 'Breaches of visa conditions' the BCC risk management plan identifies, among other things:

- inadequate IT and procedural infrastructure to enable links between departmental data and compliance operations; and
- limited communication and intelligence sharing between onshore compliance and posts.

6.78 The audit examined the extent to which DIMIA is effectively managing the above risks relating to its compliance intelligence systems.

6.79 The effective management of information gathered from external sources, including from the community in the form of tip-offs, enables an agency to assess the level of risk of these allegations, and to appropriately plan and allocate limited resources to treat that risk.

6.80 DIMIA often receives information from the public and other government agencies and uses this information for compliance planning.

DIMIA also gathers information from other government agencies, for example through data matching, to assist in locating suspected unlawful non-citizens.

6.81 Two of DIMIA's strategic partners—the Australian Taxation Office (ATO) and Centrelink have national systems to collect and analyse information provided by the public in relation to tax evasion and welfare fraud respectively.

6.82 Currently, each DIMIA State and Territory office has stand-alone tip-off systems that record community information. Stand-alone systems are not designed to share information with other parts of the organisation and, as such, prove to be a major impediment to effective information management. DIMIA's current community information is dispersed through the network and is unsuited to analysis at a national level, or to any profiling for risk assessment purposes.

6.83 DIMIA recognises the importance of managing community information in an effective and timely manner and has moved to develop a national system to support the storage, management and analysis of information gathered through a variety of means, including from the community.

IMtel

6.84 In June 2001 DIMIA's Board of Management approved the development of IMtel to cover all BCC programs, including compliance, investigations, airport operations and intelligence functions. IMtel is designed to be a web-based national intelligence database. In September 2002 the IMtel project team, in consultation with key stakeholders from BCC, commenced building the IMtel database. It went into production as of 28 April 2003 to a limited number of users.

6.85 To better understand the design and potential functionality of the IMtel system, the ANAO sought system documentation from DIMIA. DIMIA advised that a system specification (including a data dictionary) does not exist. However, DIMIA is upgrading its intelligence system and advised the ANAO that the outsourced provider supplying the system will supply system documentation with the new version of the system.

6.86 There are approximately 130 users (from Central Office and State and Territory offices) who have been trained on data entry for the IMtel system. DIMIA advised that guidelines on how investigators and other officers will use the system have yet to be written. However, a draft version of a training manual for IMtel has been prepared.

6.87 The ANAO considered the functionality of IMtel in supporting onshore compliance activities and found a number of limitations, including the following.

- IMtel is not linked to any DIMIA systems offshore. This affects DIMIA's ability to share intelligence between offshore posts and onshore offices. The ANAO found no strategic plan in place to expand IMtel offshore. The ANAO suggests that DIMIA conducts a cost-benefit analysis for linking IMtel with DIMIA systems offshore via remote access. DIMIA advised the ANAO as follows:
 - it would be desirable to have IMtel available to officers offshore and the use of dedicated Department of Foreign Affairs and Trade (DFAT) communication lines would be preferable; however, obtaining the use of limited communication lines and DFAT accreditation for the use of the software on these lines would be difficult; and
 - remote access from a personal computer using the virtual private network (GRAS) is a practicable interim measure; however, remote access involves considerable cost, including training costs.
- IMtel is not linked to any external agencies to facilitate intelligence sharing, for example, the Australian Customs Service. The ANAO found no strategic plan in place to link IMtel with intelligence systems from external agencies, including agencies that DIMIA has Memoranda of Understanding with to facilitate information sharing. The ANAO suggests that DIMIA conducts a cost-benefit analysis for linking IMtel with external agencies to facilitate intelligence sharing.
- IMtel is designed to be a national intelligence system. It is designed to capture data relating to community tip-offs about unlawful non-citizens, among other things. The ANAO found that tip-off information is currently captured at State/Territory office level and keyed into stand-alone databases and spreadsheets.¹⁰⁵ DIMIA recognises that stand-alone intelligence systems do not provide the synergy offered by a single intelligence system. DIMIA has been encouraging onshore compliance officers to use IMtel to record tip-off information. However, at the time of the audit, the ANAO found that stand-alone systems were primarily used to manage tip-off information. The ANAO considers that to assist in the effective implementation of IMtel, DIMIA advise its staff that it is compulsory to use IMtel to record tip-off information.
- An additional problem facing system users is that, regardless of whether they key client information into IMtel or a stand-alone tip-off

¹⁰⁵ For example, in Sydney (Gateway) NEXUS—a database—is used, while in Brisbane a spreadsheet is used.

system, they are still required to re-key some information into ICSE. If DIMIA were able to successfully link IMtel with ICSE, users would potentially be required to key tip-off information only once. Linking the two systems would also allow access to client histories (from ICSE), including for example, client 'permission' requests where a client seeks citizenship.

- DIMIA advised that part of the implementation of IMtel involves integrating existing tip-off databases and spreadsheets. This has not been achieved to date. DIMIA estimates that IMtel needs to be populated with information held in approximately 3000 to 5000 databases or spreadsheets. The ANAO found no evidence of a project brief providing information on the work to be completed, the allocation of appropriate resources, or timelines for completing the task.

6.88 Further development of the system by DIMIA would assist it in achieving its stated strategic direction to consolidate access to onshore and offshore information; and to develop an effective intelligence analysis system. It will also assist DIMIA to effectively manage its identified risks in the BCC risk management plan relating to breaches of visa conditions, namely:

- inadequate IT and procedural infrastructure to enable links between departmental data and compliance operations; and
- limited communication and intelligence sharing between onshore compliance and posts.

Recommendation No.6

6.89 The ANAO recommends that to assist in addressing needs identified in its 'Business Directions 2002–2005' and risks identified in the Border Control and Compliance Division risk management plan, DIMIA undertake:

- a cost benefit analysis to fully develop an integrated intelligence analysis system, to underpin further system development planning activities; and
- the development and implementation of a project brief, for the integration of existing stand-alone tip-off databases and spreadsheets, as part of its implementation of IMtel.

DIMIA response

6.90 Agreed.

6.91 The intelligence and compliance system known as IMtel has been operational since April 2003 and is now in a production-trial phase. A training program has been implemented around most State offices with over 200 officers now trained in the use of the system. Both training coverage and

the training package require review following user feedback. A post implementation review is being implemented with an objective to formulate strategies to address data up-load, effective system use, user training, and system linkages. An examination will also take place as suggested into the scope for incorporating stand-alone databases into the system.

Implementing onshore compliance operations

6.92 In this section the ANAO examines key aspects of fieldwork across the network, the support provided by operational tools to support a nationally consistent approach to fieldwork, the role played by quality assurance and IT system support for operational work.

Field operations

6.93 DIMIA defines the term ‘field operation’, as any activity undertaken by compliance officers outside the office environment, where the intention is to locate and detain unlawful non-citizens and/or people found to be breaching their visa conditions. Field operations range in magnitude from routine visits by a single field team to complex operations involving other agencies.¹⁰⁶

6.94 Each of the compliance operational plans, developed within the State and Territory office network, identifies and assesses the relevant risk factors that may lead the team leader to seek the assistance of the federal or State/Territory police services. Risk indicators include:

- possible threat of violence;
- criminal activity suspected;
- forced entry to premises required; and
- premises not able to be safely contained.¹⁰⁷

6.95 The ANAO notes that the pro forma compliance field operations running sheet, contained in the national guidelines, does not include a field to register for evaluation purposes, the participation of law enforcement agencies. The ANAO considers this limits DIMIA’s capacity to measure the value added by working closely with federal, State and Territory police officers.

¹⁰⁶ DIMIA, May 2003, ‘National Compliance Operational Guidelines’, p. 5-1.

¹⁰⁷ *ibid*, p. 5-22.

Quality assurance and the management of compliance operations

6.96 Quality assurance (QA) mechanisms enable organisations to monitor the quality of their processes and systems. QA management processes are usually organisation-specific as they are influenced by the needs and objectives of the entity. Generally, within an organisation QA processes are standardised procedures to review existing processes and develop new ones. Successful quality management systems are designed to continually improve the effectiveness and efficiency of organisational performance.¹⁰⁸

6.97 The audit examined DIMIA's planning and implementation of quality assurance mechanisms to monitor the quality of its processes and systems relating to onshore compliance.

6.98 DIMIA's onshore compliance operational plan, developed by the Compliance Section, lists as one of its responsibilities the development and implementation of QA processes for onshore compliance operations.

6.99 Under the deliverable of quality assurance in the operational plan, the Compliance Section commits to:

- developing a process for identifying and sharing better practice across States;
- developing a national overview of standard and QA;
- implementing QA processes; and
- using a review of quality assurance outcomes to improve reporting and performance monitoring.

6.100 The ANAO found no evidence that any of the above QA processes are in place or are being considered for development.

6.101 In this chapter the ANAO identified a number of deficiencies in compliance operations that could benefit from DIMIA applying the QA processes identified in its compliance operational plan including:

- the development of standards to guide lawful decision-making in the visa cancellation process;
- the development of a consistent national set of operational standards to support the implementation of the National Compliance Operational Guidelines, including consistent national standards concerning the timeliness of the entry of locations data into ICSE; and

¹⁰⁸ AS/NZS ISO 9004:2000, 'Quality Management Systems—Guidelines for performance improvements'.

- where checklists are currently used in State and Territory offices, they would benefit from the development of standards for documentation. These standards for documentation need to be uniform, providing for consistency of decision-making, particularly in processes leading to the issuing of search warrants.

Recommendation No.7

6.102 To assist in achieving a nationally consistent approach to compliance operations, the ANAO recommends that DIMIA implement the quality assurance process identified in its onshore compliance operational plan.

DIMIA response

6.103 Agreed.

6.104 The Department recognises the value of quality assurance processes generally and will seek to implement them where appropriate across the onshore compliance program.

6.105 The Department has already introduced internal review and quality assurance processes for Migration Act search warrants and has trialled program involvement in State/Territory operations to examine operational efficiency and adherence to instructions. This process will be extended. In addition, comparative analysis of performance is being undertaken through data review.

IT system support for planning compliance activities

6.106 The provision of an effective and efficient IT system to support onshore compliance operations is integral to the success of DIMIA's onshore compliance activities. An effective IT system to support onshore compliance activities would among other things, support:

- timely capture and processing of client details relating to onshore compliance activities;
- accessibility for system users to assist information retrieval in a timely manner; and
- timely, relevant reporting that assists management for the purposes of evaluation and planning.

6.107 The audit found that DIMIA is trialling a number of approaches to assist State and Territory compliance officers locate unlawful non-citizens. These approaches include the following.

- Providing State and Territory offices with records successfully matched with ATO records of addresses. However, the audit found

that DIMIA's approach was of limited value owing to the usefulness of the matched data, for example, a number of addresses are post office boxes, or addresses such as caravan parks. This requires State and Territory compliance officers to carry out a second level of checking through local authorities to ascertain accurate and current addresses.

- Central Office provides State and Territory offices with reports of recent overstayers and last known addresses. DIMIA advised the ANAO that its Visa Manager system calculates a person's lawful status (nightly) and produces a data set of unlawful non-citizens. These data are held in the system for two weeks (to allow for people who may actually be leaving the country but are outside their visa validity date). After two weeks the data are re-checked and sent to BCC section for checking of record accuracy. Those records considered to be genuine are referred to compliance teams in State and Territory offices (sometimes a data match is performed first to establish the person's latest address).
- A third approach includes forwarding to relevant State or Territory offices a list of recently cleansed overstayers by particular categories, for example, by country of citizenship.

6.108 Feedback from users on the usefulness of these approaches has been variable. The ANAO found there was no performance information available on the relative merits of the approaches, that is, how useful compliance officers in the network found the information, how they used it, and what the results were.

National Overstayers Search Interface Engine (NOSIE)

6.109 A further approach that DIMIA trialled concerns the development of its National Overstayers Search Interface Engine (NOSIE). DIMIA conducted a pilot application for NOSIE with a number of compliance officers to determine its suitability as a search tool for the overstayers file. The file searched was the raw overstayers file of more than 100 000 records. NOSIE uses the data produced by the last run of overstayers from the mainframe. DIMIA has statistically calculated an error rate of around 30 per cent for these data.

6.110 NOSIE extracts data on known overstayers, including their last known address, to assist in locating overstayers. However, given the high error rate of the overstayers file, the ANAO would expect NOSIE's capacity to enhance the performance of compliance officers at the State and Territory office level to be limited. DIMIA's Data Warehouse area has advised BCC that the software for the pilot application will not be supported following the next IT upgrade, and NOSIE will be turned off at that point.

6.111 The ANAO sought performance information from DIMIA relating to the effectiveness of NOSIE in enhancing the performance of compliance officers, as well as advice on whether DIMIA intended to continue using NOSIE.

6.112 DIMIA was unable to provide performance information relating to NOSIE. However, DIMIA advised the ANAO that:

- in July 2003 a teleconference between representatives from Central Office, NSW, Queensland, Western Australia and Victoria was held to discuss whether the NOSIE trial had been a success. All system 'testers' agreed that the systems have been a great success and are an important compliance tool; and
- all system testers were of the opinion that a new system should be built and that NOSIE be continued until such time as the new system is operational. It was considered essential that all compliance officers be given access to the new system.

6.113 Owing to the high error rate in DIMIA's raw overstayer data, the ANAO considers that a more in-depth analysis of the improvement to compliance officers' performance related to the use of NOSIE would assist DIMIA in considering whether to devote further resources to redeveloping NOSIE. The ANAO considers that resources may be more effectively directed towards improving the quality of the overstayers file as a precursor to it being used in the network for operational purposes such as NOSIE.

6.114 The ANAO suggests that to enhance DIMIA's decision-making concerning the useability of NOSIE or its replacement as a system support, DIMIA Central Office, in conjunction with users in the network, undertake an effectiveness review of NOSIE, especially as it relates to improving the performance of compliance officers. The outcomes of such a review would provide DIMIA with a basis to make an informed decision as to the feasibility of devoting further resources to redeveloping NOSIE, or to use these resources more efficiently elsewhere.

Monitoring and reporting onshore compliance operations

6.115 Effective internal management reporting supports decision-making for risk management and business planning. It also provides the basis for aggregating information for external reporting of progress made in delivering outputs to achieve outcomes specified in an agency's Portfolio Budget Statements. The audit considered the robustness of DIMIA's monthly reporting on onshore compliance. The audit also considered DIMIA's monitoring and reporting of its granting of bridging visas (E) (BVEs) as a way of monitoring the integrity of the BVE scheme.

Onshore compliance—monthly reporting

6.116 DIMIA produces internal reports each month on a national basis relating to onshore compliance. These reports primarily relate to:

- number of unlawful non-citizens located;
- visa cancellations; and
- illegal workers.

6.117 These reports are available on the DIMIA intranet to all compliance managers for performance monitoring. A report of the number of overstayers is also produced every six months. In addition to producing national reports, DIMIA State and Territory offices have developed a variety of other internal reports relating to onshore compliance. Many of these internal reports are designed to assist in collating performance information at the national level, for example, the 'NSW Purchasing Agreement Activity Report 2002–03', while some other reports are designed for use at the local level.

6.118 The ANAO notes that a number of DIMIA's internal reports on onshore compliance are statistical in nature without accompanying comprehensive analysis of the information reported. The ANAO considers that including comprehensive analysis as part of DIMIA's internal reporting on onshore compliance would assist in enhancing DIMIA's strategic planning and external performance reporting.

6.119 During the audit, DIMIA advised the ANAO that onshore compliance reporting at the branch and section levels was being reviewed in the light of DIMIA's new business plan. DIMIA envisages that the revised reporting will allow for better analysis of data that will lead to better planning.

Monitoring and reporting on bridging visas (E)

6.120 The BVE subclass 050 (general) can be granted to an eligible non-citizen in the following circumstances:

- making arrangements to depart Australia;
- awaiting final determination of a substantive visa application;
- visa is cancelled and the client wishes to pursue merits review of the decision;
- student visa automatically cancelled and client seeks merit review of decision;
- requested ministerial intervention; or

- in criminal detention.¹⁰⁹

6.121 DIMIA reported that approximately 69 per cent of the unlawful non-citizens located by compliance officers in program year 2001–02 were granted bridging visas, predominantly a BVE, rather than being detained.¹¹⁰ However, the ANAO found no evidence that DIMIA monitors and reports on the proportion of BVE holders who overstay their bridging visa. Doing so would provide useful information for DIMIA in monitoring the integrity of the BVE scheme.

6.122 While DIMIA does not publicly report the annual number of BVEs granted, it does report that only a small proportion of overall locations result in admission to immigration detention facilities.¹¹¹

6.123 Owing to a lack of analysis of BVE performance information, the ANAO sought a download of BVE data since the inception of the scheme. The download DIMIA provided to the ANAO included a BVE grants bio-data table containing just under 250 000 records. This was the table of most interest to the ANAO as it linked biographical information with a unique Personal Identifier.

6.124 The ANAO analysed BVE subclass 050 (general) grants on this table and found that:

- the number of grants per Personal Identifier equalling or exceeding four was around 110 000—or approximately 45 per cent;
- the number of BVEs granted has been increasing dramatically since 1999–2000, from around 24 000 in 1999–2000 to around 43 000 in 2002–03;
- when BVE grants are examined by country of citizenship, the most significant category (40 per cent) is ‘Unknown’, that is, the field ‘country of citizenship’ had a null value when the grant of the BVE was entered into DIMIA’s Integrated Client Services Environment (ICSE) system.

6.125 The ANAO considers that ICSE data integrity presents a risk to DIMIA’s ability to effectively review and report on the performance of some critical aspects of its compliance operations.

6.126 The ANAO concludes that, to maintain the integrity of the bridging visa scheme over time, DIMIA needs to:

¹⁰⁹ DIMIA, April 2003, ‘An Overview of Bridging Visas’, p. 21.

¹¹⁰ DIMIA Information Brief to the Minister for Immigration and Multicultural and Indigenous Affairs, 17 December 2002, ‘Bridging Visas—Current Trends’.

¹¹¹ DIMIA, *Annual Report 2002–03*, p. 59.

- improve ICSE data integrity relating to BVE grants; and
 - regularly review and report on the effectiveness of the BVE scheme, especially in regard to non-citizens who are granted a BVE but overstay this grant.
-

Canberra ACT
15 July 2004



Oliver Winder
Acting Auditor-General

Appendices

Appendix 1: Migration legislation—proposed changes

1. Subsequent to the audit, DIMIA advised the ANAO as follows:

Some important changes to the Act will come into effect on 1 July 2004, following commencement of the *Migration Legislation Amendment (Migration Agents Integrity Measures) Act 2004*, which passed through Parliament in March. It will, for example, sanction agents who engage in “vexatious activity”. This scheme is aimed at the small number of registered migration agents who lodge large numbers of visa and review applications that have no chance of success. It allows the Department to refer agents to the Migration Agents Registration Authority for sanctioning if they lodge at least 10 applications, in a particular visa class, over a 6-month period; and maintain a 75% refusal rate (or a 90% refusal rate in the case of Protection visas). Agents who are assessed as meeting the above threshold criteria and who have no satisfactory reasons for doing so, will be considered for referral to the MARA for a mandatory sanction.¹¹²

2. DIMIA is also planning to introduce the following legislation into the Parliament:

- the Migration Legislation Amendment Bill to:
 - implement the Government’s response to the recommendations of the Joint Standing Committee on Migration’s Report on the Deportation of Non-Citizen Criminals;
 - prohibit the making of a statement in a visa application that is false or misleading;
 - clarify a person’s ability to nominate an authorised recipient under section 494D; and
 - allow authorised officers to disclose International Movements Records to an individual to whom the record relates or to their duly appointed agent; and
- the Migration Legislation Amendment (Employer Sanctions) Bill to implement criminal sanctions on employers who engage illegal workers.

3. During the audit, DIMIA also advised the ANAO of proposed changes to section 18 that are on the Government’s legislation program as part of *Migration Legislation Amendment Bill (No. 3) 2003*. Subsequent to the audit, DIMIA advised the ANAO that the Bill had been scheduled for the Autumn 2004 legislation program.

¹¹² DIMIA letter of 7 June 2004, responding to ANAO s19 proposed audit report on DIMIA’s management of Onshore Compliance— Visa Overstayers and Non-Citizens Working Illegally.

4. DIMIA is seeking to amend both the Migration Act and *Income Tax Assessment Act 1936* to provide enhanced powers to locate non-citizens who are either unlawful or who may be liable for visa cancellation, deportation or removal.

5. The principal power to require the production of information or documents is found at section 18 of the Migration Act. This power relates only to information about unlawful non-citizens—it does not extend to persons who may be in breach of visa conditions or whose visa DIMIA may want to cancel for other reasons (for example, on character or fraud grounds).

6. The power allows only for requiring information to be provided where the high test of ‘reason to believe’ is satisfied and, even then, can be done only on a one-at-a-time basis. The power does not accommodate or lend itself to electronic matching of data.

7. Commonwealth, State and Territory privacy legislation may also restrict other agencies and organisations from disclosing certain information to DIMIA. The recent extension of the *Privacy Act 1988* to the private sector has also provided some uncertainty in the minds of information holders about their ability to disclose information.

8. The limitations on section 18 and the uncertainty arising from the recent extension of the Privacy Act combine, in DIMIA’s view, to limit its ability to identify and respond to breaches of immigration law.

9. DIMIA has the following four key elements to its proposal for change:

- amendments to the existing power in section 18 of the Migration Act to aid in locating unlawful non-citizens, including powers to:
 - issue one section 18 notice in respect of more than one unlawful non-citizen;
 - disclose information to State and Territory police forces; and
 - data match with public and private sector agencies and organisations.
- creation of express powers to gather information about lawful non-citizens working in breach of their work restrictions, including powers to:
 - obtain information or documents about a specified non-citizen;
 - obtain information from the Australian Taxation Office (the Income Tax Assessment Act amendment was approved by Cabinet in 1999);
 - obtain a complete list of employee records from a business;

- seize documents relating to evidence of illegal work; and
- data match with other government agencies.
- creation of a power to obtain information in relation to non-citizens liable for visa cancellation for providing incorrect information in connection with their visa applications including powers to investigate:
 - contrived spousal relationships; and
 - other incidences of fraud.
- creation of powers to gather information about non-citizen criminals liable for visa cancellation or deportation including powers to:
 - identify each non-citizen entering the criminal justice system;
 - collect specific information relevant to ascertaining whether the discretion to cancel a visa or order criminal deportation should be exercised in a given case; and
 - inform criminal justice authorities when a non-citizen offender is being considered for visa cancellation or deportation.

Changes to the *Privacy Act 1988*

10. The ANAO found that in April 2003 DIMIA issued interim advice to all State and Territory compliance managers about changes to the *Privacy Act 1988*. The advice clarified how procedures for checking employment records have been affected by the extension of the *Privacy Act 1988* to the private sector.¹¹³

11. Subsequent to the audit, DIMIA advised the ANAO that it had reviewed and re-issued its interim advice in October 2003 and that the advice is now available to DIMIA staff via its intranet.

¹¹³ With effect from 21 December 2001, the *Privacy Act 1988*, was amended by the *Privacy Amendment (Private Sector) Act 2000* to extend privacy obligations to the private sector.

Appendix 2: Number and distribution of onshore compliance staff employed by DIMIA in its State and Territory Offices¹

State and Territory Offices	Total number of DIMIA compliance staff ²	Percentage of total compliance staff	Total number of DIMIA staff ³	Compliance staff as a percentage of total DIMIA staff
ACT	7.0	4.11	68.0	10.29
New South Wales	81.4	47.77	949.0	8.58
Victoria	26.0	15.26	570.0	4.56
Queensland	24.0	14.08	221.0	10.86
Western Australia	17.0	9.98	229.0	7.42
South Australia	6.0	3.52	204.0	2.94
Northern Territory	6.0	3.52	34.0	17.65
Tasmania	3.0	1.76	36.0	8.33
Total	170.4	100	2 311.0	7.37

Source: DIMIA

- Note:
1. Number of compliance staff does not include DIMIA staff working on student compliance or staff conducting investigations.
 2. Total number of DIMIA compliance staff at December 2003.
 3. Total number of DIMIA staff at June 2003.

Appendix 3: Methodological review of estimation of overstayers

A Report for ANAO

Prepared by the Statistical Consultancy Unit

Australian Bureau of Statistics

November 2003

Disclaimer

Views expressed in this report are those of the ABS Statistical Consultancy Unit and do not necessarily represent those of the Australian Bureau of Statistics. Where quoted or used, they should be attributed clearly to the ABS Statistical Consultancy Unit.

Executive Summary

The methodology used by DIMIA to estimate the number of overstayers is generally sound. The ABS Statistical Consultancy Unit (SCU) has made a number of suggestions to improve the estimates of overstayers. A summary of these suggestions is as follows.

It is suggested that DIMIA consider:

1. using sex in the stratification for some visa categories, in order to avoid small sample sizes at the visa category by sex level
2. introducing a set of procedures for sample enumeration to minimise the impact of non-sampling error
3. further investigating solutions to the problem of deteriorating error rates over time
4. producing accuracy measures for the estimated error rates in order to monitor quality
5. introducing internal clearance procedures to ensure that any future changes to the sampling methodology are appropriately documented and agreed to within the department.

Introduction

The Australian National Audit Office (ANAO) is in the process of undertaking an audit of DIMIA's compliance strategies for Unlawful Non-Citizens in Australia, also known as overstayers. Overstayers are international visitors to Australia whose visas have expired and no records exist of them leaving the country. The primary purpose of the ANAO's audit is to determine whether or not DIMIA has appropriate strategies in place to deal with overstayers.

One aspect being audited is the validity and accuracy of estimates of the number of overstayers, as reported by DIMIA. The figure reported is an estimate of the total number of overstayers in Australia since 1981. The current estimates (30 June 2003) state that there are approximately 60 000 overstayers in Australia.

The estimates are based on a sampling process where the population is a list of expired visas since 1981. The records selected in the sample are matched against other data sources, such as departure data, to check for evidence of the visitors leaving the country. The ANAO requested the ABS SCU to review the sampling methodology to ensure the quality of the estimates.

Another issue of interest for the ANAO relates to a data cleaning process employed by DIMIA. A set of business rules is applied to the post 1994 data to 'clean' the data. For example, persons over the age of 85 in the data set are removed. The ANAO requested advice on the appropriateness of these business rules and the impact on the estimates of overstayers.

Section 1 Validation of the Sampling Methodology

DIMIA has systems that produce counts of the number of people whose visas have expired and there is no record of these people leaving the country. This count is referred to as the 'raw count'. It is known that there are erroneous records on the systems that produce the raw counts, although the extent of the errors is not known. DIMIA take a sample from these records every six months for the purpose of estimating the error rate in all the records for the period. The estimated error rate is then used to deflate the raw count so erroneous records are excluded

from the estimate of the number of overstayers. The total estimate of overstayers is the sum of the estimates from all the six-month periods.

The following section provide more detail about the sampling methodology, in particular the frame, sample size, sample selection, sample enumeration and estimation procedures used.

Frame

A sampling frame is a list of all members (e.g. persons) of the target population for the sampling process. The frame is a list of all people whose visas expired in the three months before the extract dates. This extract combines data from two systems—Visa Manager and Movements. The frame is created twice every year (31 March and 30 September).

All people whose visas expired in the previous three months are extracted from Visa Manager. They are checked against ICSE and other retired systems to check for substantive or bridging visas. The Movements system is used to look at arrivals and departures to identify people whose visas expired in the last three months. The results are checked against the Travel and Immigration Processing System (TRIPS). This produces the frame, which is a list of all potential overstayers.

The frame is stratified by visa category. The visa categories are:

- visitor
- visitor—electronic travel authority (ETA)
- student
- transit
- temporary residence
- nil visa condition
- other.

It is considered that visa category is an appropriate variable to use in stratification. However, in some strata it may be beneficial to stratify further by sex, given that sex is used in the calculation and application of the error rate. This is appropriate when a particular stratum has a

great deal more of one sex than another. If sex is used in the stratification, then a minimum sample size can be ensured such that reliable error rates may be calculated.

Suggestion 1: DIMIA should consider using sex in the stratification for some visa categories, in order to avoid small sample sizes at the visa category by sex level.

Sample Size

The stratum sample sizes are 200, unless the population size is less than 200, in which case the stratum is completely enumerated. This sample size allows error rates to be estimated with reasonable accuracy (see Section 2 for more details on the accuracy). The only issue, as already mentioned above, is that some stratum by sex groups have very small sample sizes which can lead to less reliable estimates of the error rate for those groups.

Sample Selection

Stratified simple random sampling is used to select the sample. This is executed by software that has the capacity to select simple random samples from groups. This method of sample selection is appropriate.

Sample Enumeration

The sample is investigated by staff in the Outcome Reporting Section (ORS) to determine which records are erroneous. A range of DIMIA systems are sourced in the investigations, but there are no set procedures to follow in the investigation. That is, the same information is available to each staff member but the way in which the information is used to draw a conclusion about the validity of a record is not the same.

This introduces potential for non-sampling error to impact estimates. That is, error due to variability between the way staff enumerate the sample (one person's investigation method may detect more erroneous records than another person's method).

Suggestion 2: DIMIA should consider introducing a set of procedures for sample enumeration to minimise the impact of non-sampling error. The procedures should list the steps to be taken in priority order in each

investigation. Staff should be trained in the consistent application of these procedures.

Estimation

Counts of records found to be erroneous (i.e. the person is not an overstayer), are used to estimate error rates. Error rates are calculated separately for males and females within a stratum. The error rate is calculated as the number of erroneous records divided by the sample size for the group of interest. For example, if there are 100 males in the visitor stratum and 20 of them are found to be erroneous records, the error rate for males in the visitor stratum is 20%.

Usually, the estimates of error rates are calculated at 31 March and are then applied at the person level at 30 June to only those people whose visas expired in the reference period i.e. the first six months of the year (similarly for the second half of the year). So, each six month period has its own error rate calculated at a point in time and this rate is applied to the raw count of overstayers whose visas expired in the six month period every time an estimate of the number of overstayers is produced.

This method would be appropriate for applying the error rates if there was no change in the error rate for a particular six-month period over time. However, given the data cleaning activities, it is expected that the error rate does change as time passes. As such, the number of overstayers is likely being underestimated given a higher error rate is being applied than is probably the case.

For example, for a particular six-month period, we may estimate that the error rate for a particular group is 20%. So, we will always count 80% of the number of records in the group to contribute to our total estimate of overstayers. If we do some data cleaning the error rate for that six month period will drop. For example, say it drops from 20% to 10%. As such, we should be counting 90% of the number of records in the group to contribute to our total estimate of overstayers, instead of 80%. However, the current methodology continues to count only 80% of the number of records in the group.

DIMIA has recognised this problem, and for the June 2003 reference period an attempt was made to update the historical error rates. The

plan was to calculate the error rates over an extended reference period (July 1994 to March 2003) and apply the error rates to the entire reference period to get a more up-to-date estimate of the number of overstayers.

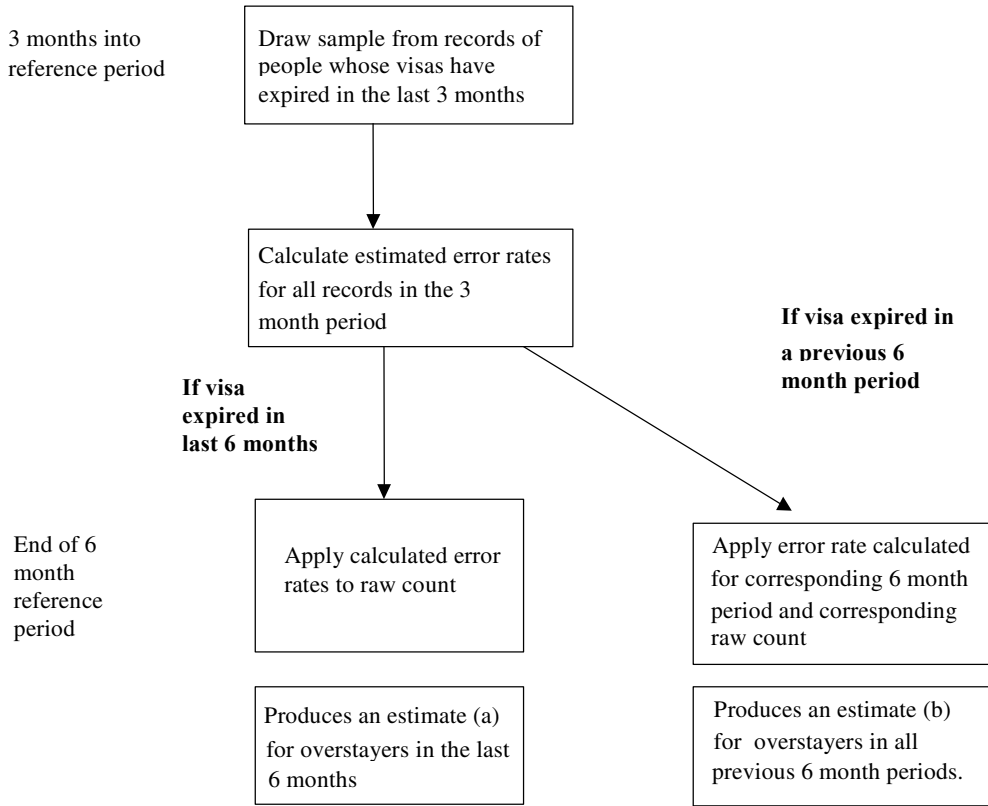
The reasoning behind this was sound, i.e. to account for likely changes to historical error rates and to make estimation of overstayers more accurate. However, the resulting estimates of overstayers produced using this method were not considered reasonable as the change in the estimate of overstayers from the last six-month period was too great. This was likely due to the high level of sampling error in the estimated error rates.

To overcome this problem, some alternative methodologies were considered for the June 2003 period. Section 3 provides details on the alternative methodologies considered. While the alternative methodology employed provided reliable estimates of overstayers for the June 2003 period, the problem of the reliability of error rates deteriorating over time was not resolved.

Suggestion 3: DIMIA should consider further investigating solutions to the problem of deteriorating error rates over time.

Summary of the Methodology

The diagram below attempts to summarise the key steps in the sampling and estimation process.



(a) + (b) = total estimated number of overstayers

Section 2 Assessing the Quality of the Estimates

The quality of the estimates has been assessed using the data quality framework. The framework has been published internationally (Brackstone G., *Managing Data Quality in a Statistical Agency*, (1999) Survey Methodology, Vol. 25, no. 2, Statistics Canada) and has been recommended by the ANAO as 'better practice' in specifying performance measures (*ATO Performance Reporting under the Outcomes and Outputs Framework, Australian Taxation Office, Audit Report No.46 2000–01*, pp.63–64). The framework assesses quality under six headings—relevance, accuracy, timeliness, accessibility, interpretability and coherence.

As a broad indication of the quality of the estimates with respect to each of the areas ticks have been used, with three ticks indicating the appropriate quality standards have been met.

✓✓✓ *Relevance*

According to the data quality framework, relevance is defined as follows:

“The relevance of statistical information reflects the degree to which it meets the needs of the clients. It is usually described in terms of key user needs, key concepts and classifications used, the scope of the collection and the reference period.”

The key purpose of the overstayer estimates is to inform DIMIA about the number of overstayers. Key concepts and classifications (e.g. definition of an overstayer, visa categories) have been appropriately defined. The scope of the collection, or the target population, is all people whose visas have expired for the appropriate reference period. As such, the estimates are highly relevant.

✓✓ *Accuracy*

According to the data quality framework, accuracy is defined as follows:

“The accuracy of statistical information is the degree to which the information correctly describes the phenomena it was designed to measure. It includes measures of both sampling and non-sampling error.”

Two types of error can occur in sampling: sampling error and non-sampling error. Sampling error arises because not all of the population is investigated. Hence a measured sample statistic is not usually identical with the true population behavior. Sampling error can be estimated mathematically. Non-sampling errors cause bias in statistical results and can occur at any stage of the sampling process. It can be caused by such things as errors in data processing or inconsistent application of sampling procedures. Estimating the impact of non-sampling error can be difficult. As such, it is important to be aware of

these errors so that they can be either minimised or eliminated.

As mentioned in section 1, there is potential for non-sampling error in the overstayer estimates, due to the variation in the way a record is assessed. The impact of such non-sampling error can not be quantified, but steps should be taken to minimise the impact through the introduction of set procedures to assess records—see Suggestion 2.

One measure of sampling error is the “standard error”. It is a measure of the precision with which a sample statistic by chance approximates the average results of all possible samples. To assist in interpreting the standard error of an estimate, we can use confidence intervals and relative standard errors (RSEs).

Confidence Intervals

A 95% confidence interval estimates that the true population parameter has a 95% chance of being within the interval. To calculate a 95% confidence interval we use the following formulae to calculate the upper and lower bounds of the interval.

upper bound = estimate + 1.96 x standard error of the estimate

lower bound = estimate - 1.96 x standard error of the estimate

Table 1 below provides the 95% confidence intervals for the estimated error rates for the six month period ending 31 December 2002. The confidence intervals were calculated at the visa category by sex level. This is the level at which the error rates are applied.

Table 1: 95% Confidence Intervals for Error Rates at the Visa Category by sex level

Stratum	Estimate Error Rate	Lower Bound of 95% Confidence Interval	Upper Bound of 95% Confidence Interval
Nil Visa Condition Female*	0.0%	0.0%	0.0%
Nil Visa Condition Male*	33.3%	33.3%	33.3%
Other Female*	28.3%	28.3%	28.3%
Other Male*	30.9%	30.9%	30.9%
Student Female	35.0%	25.0%	45.0%
Student Male	19.3%	14.0%	24.6%
Temporary Resident Female	46.4%	39.3%	53.5%
Temporary Resident Male	37.9%	31.6%	44.2%
Transit Female	50.0%	6.2%	93.8%
Transit Male	54.6%	49.5%	59.7%
Visitor ETA Female	20.4%	12.7%	28.2%
Visitor ETA Male	14.0%	7.7%	20.3%
Visitor Female	29.8%	20.6%	38.9%
Visitor Male	26.7%	19.2%	34.2%

*Note that these categories are completely enumerated, i.e. all records are included in the sample. As such, there is no sampling error in the estimates.

We can use an example, to illustrate how to interpret the above results. For the “Nil Visa Condition, Female” category, all records were included in the sample. As such, there was no sampling error. This is reflected in the upper and lower bounds of the confidence interval being equal. For the “Visitor, Male” category, a sample of records was taken so the estimated error rate is subject to sampling error. So, while we estimate the error rate to be 26.7%, we can be approximately 95% confident that the true error rate is between 19.2% and 34.2%.

Relative Standard Error (RSE)

Another way of interpreting the standard error is the relative standard error (RSE). The RSE is the ratio of the standard error to the value of the sample estimate. It is often expressed as a percentage (RSE%) and provides a convenient description of the size of the sampling errors present in an estimate. The RSE is particularly useful in comparing the accuracy of two different sample estimates.

The formula for calculating the RSE is:

$$RSE\% = (\text{standard error of the estimate} / \text{estimate}) \times 100.$$

As a rough guide, RSEs can be interpreted as follows:

Table 2: Rough Guide to Interpreting RSEs

RSE	Accuracy
Less than 5%	Highly reliable
Between 5% and 10%	Reliable
Between 10% and 15%	Exercise some caution in interpreting results
Greater than 15%	Exercise caution in interpreting results—broadly indicative information only

The table below shows the RSEs achieved for the December 2002 estimated error rates.

Table 3: RSEs at the Stratum by Sex Level

Stratum	Estimated Error Rate	RSE%
Nil Visa Condition Female*	0.0%	0.0%
Nil Visa Condition Male*	33.3%	0.0%
Other Female*	28.3%	0.0%
Other Male*	30.9%	0.0%
Student Female	35.0%	14.5%
Student Male	19.3%	14.1%
Temporary Resident Female	46.4%	7.8%
Temporary Resident Male	37.9%	8.5%
Transit Female	50.0%	44.7%
Transit Male	54.6%	4.7%
Visitor ETA Female	20.4%	19.4%
Visitor ETA Male	14.0%	22.9%
Visitor Female	29.8%	15.7%
Visitor Male	26.7%	14.4%

*Note that these categories are completely enumerated, i.e. all records are included in the sample. As such, there is no sampling error in the estimates.

The accuracy measures show that at the stratum level, the estimated error rates are reasonably accurate. The RSEs are generally less than 15%. The error rates that have larger RSEs come from stratum by sex groups that have small sample sizes. For example, the Transit Female group has a population size of 10 and a sample size of 4. As discussed in Section 1, DIMIA may want to consider stratifying further by sex, such that sufficient sample size is selected in some of these small groups. This will allow more accurate estimation of error rates.

At this stage, DIMIA does not calculate accuracy measures such as these to monitor the quality of the estimated error rates.

Suggestion 4: DIMIA should consider producing accuracy measures for the estimated error rates in order to monitor quality.

✓✓✓ *Timeliness*

According to the data quality framework, accuracy is defined as follows:

“The timeliness of statistical information refers to the delay between the reference point to which it pertains and the date on which the information becomes available.”

There is a short time delay between the end of the reference period (30 June or 31 December) and the release of the overstayer estimates. As such, the timeliness of the data is appropriate.

✓✓✓ *Accessibility*

According to the data quality framework, accuracy is defined as follows:

“The accessibility of statistical information refers to the ease with which it can be referenced by users. It includes the ease with which the existence of information can be ascertained, as well as the suitability of the form or medium through which the information can be accessed.”

The overstayer estimates are presented in a report that is readily available to DIMIA staff. As such, the level of accessibility is appropriate.

✓✓ *Interpretability*

According to the data quality framework, accuracy is defined as follows:

“The interpretability of statistical information reflects the availability of the supplementary information and metadata necessary to interpret and utilise it appropriately. It includes appropriate presentation of data such that it aids correct interpretation.”

The overstayer estimates are presented in a report with appropriate metadata*. Measures of accuracy of the estimates are currently not included, but should be included (at least at a broad level) to aid correct interpretation of the estimates. An additional benefit of providing accuracy measures is to give credibility to the results (assuming that the accuracy is usually much better than in the last six month period).

* metadata is information about the data and about the processes of producing the data.

✓✓✓ *Coherence*

According to the data quality framework, accuracy is defined as follows:

“The coherence of statistical information reflects the degree to which it can be successfully brought together with others statistical information within a broad analytical framework and over time. The use of concepts, classifications and target populations promotes coherence, as does the use of common methodology across surveys.”

The overstayer estimates are able to be brought together with other statistical information and over time as consistent concepts, classifications and methodology are used.

Section 3 Methodology for Estimating Overstayers for June 2003

DIMIA applied a different sampling methodology for the June 2003 estimates. This was done in attempt to tackle the problem of deteriorating error rates over time, as discussed in Section 1.

Rather than drawing the sample from the first three months of the period, the sample was drawn from all records dating back to 1994. The error rates calculated from this period were to be applied to all records dating back to 1994. This method was to be used because DIMIA recognised that the accuracy of the error rates calculated for historical six month periods would be deteriorating over time due to data cleaning activities. As such, it was an attempt to improve the accuracy of the overstayer estimates.

However, while the sampling period was altered, the sample size was not. That is, DIMIA used the same sample size as is used for sampling from a three month period for sampling from the nine year period. The implication was that the sample size was not large enough to provide highly reliable estimates of error rates. That is, more sampling error was present in the estimates than usual.

Consequently, a decision was made to abandon this methodology. An interim methodology was considered whereby the error rates calculated from the 1994 to 2003 sample were applied to the June 2003 raw count,

and the old error rates for previous time periods would be applied as usual.

Subsequently, an alternative methodology involving the application of the December 2002 error rates to the June 2003 raw count was implemented. The old error rates for previous time periods were applied as usual. This approach is considered to be sensible, assuming that the error rates remain relatively constant over time. No information was provided to the ABS SCU to enable an assessment of this assumption.

Suggestion 5: DIMIA should consider introducing internal clearance procedures to ensure that any future changes to the sampling methodology are appropriately documented and agreed to within the department.

A clearance process would involve producing a consistent set of quality indicators, both quantitative and qualitative, each time estimates of overstayers are calculated.

The clearance process would involve documenting the quality indicators with the purpose of obtaining senior management sign-off for releasing the estimates. It may involve senior management meeting with staff to discuss quality issues each reference period.

Some examples of quality indicators that may be useful include:

- description of the sampling methodology used to estimate error rates for the reference period
- visa category by sex level sampling results, including the sample size, the size of the population from which the sample was drawn, the number of errors found in the sample, the estimate error rate and the accuracy of the estimated error rate
- raw counts of overstayers for the six month period at the visa category by sex level
- estimates of overstayers for the six month period at the visa category by sex level

- description of any systems issues or problems that may have occurred in the period
- discussion of any likely issues, such as, the estimate of overstayers is higher than expected and possible reasons for why this occurred.

For the quantitative quality indicators, data can be gradually built into a time series so that anomalies can easily be identified.

The above list is a suggested starting point only. DIMIA staff may wish to add to the list as they are in the best position to determine what information is pertinent in the production of overstayer estimates. When determining what to include in the quality indicators, it is important to remember that their main purpose is to assist in early detection of potential quality concerns. If quality concerns are detected, then the indicators should also provide a useful starting point for determining the cause of the quality concern.

Section 4 Reviewing the Data Cleaning Activities

There are a range of activities currently underway in DIMIA to clean the overstayers data set. Manual cleaning of the data, starting in 2003 and working backwards has been happening for a number of months. This cleaning has been targeted to particular groups of interest. Approximately 2500 records have been cleaned to date. Overstayer groups that are being examined include:

- people over the age of 80 who entered on a medical visa
- Australian overstayers
- children overstayers
- recent overstayers
- permanent resident overstayers.

There is also on-going cleaning to correct records that are affected by known errors. This is usually the result of people spelling their name differently on entry and exit. When a different spelling is used, the person is assigned a new identifier (PID). The TRIPS system matches on PID, so the person is recorded as an overstayer. These errors are usually picked up over time and cleaned when matching happens by

passport number. Further, bulk errors sometimes occur due to system problems, and a thousand records may be cleaned at a time.

The data cleaning results in erroneous records being removed from the overstayer extract. As such, the estimated error rates for each time period become out-of-date. However, these error rates are still applied to get the estimated number of overstayers. This will result in an underestimate of the number of overstayers. This is because we are assuming a higher number of errors in the data than actually exist. The magnitude of the impact is not known.

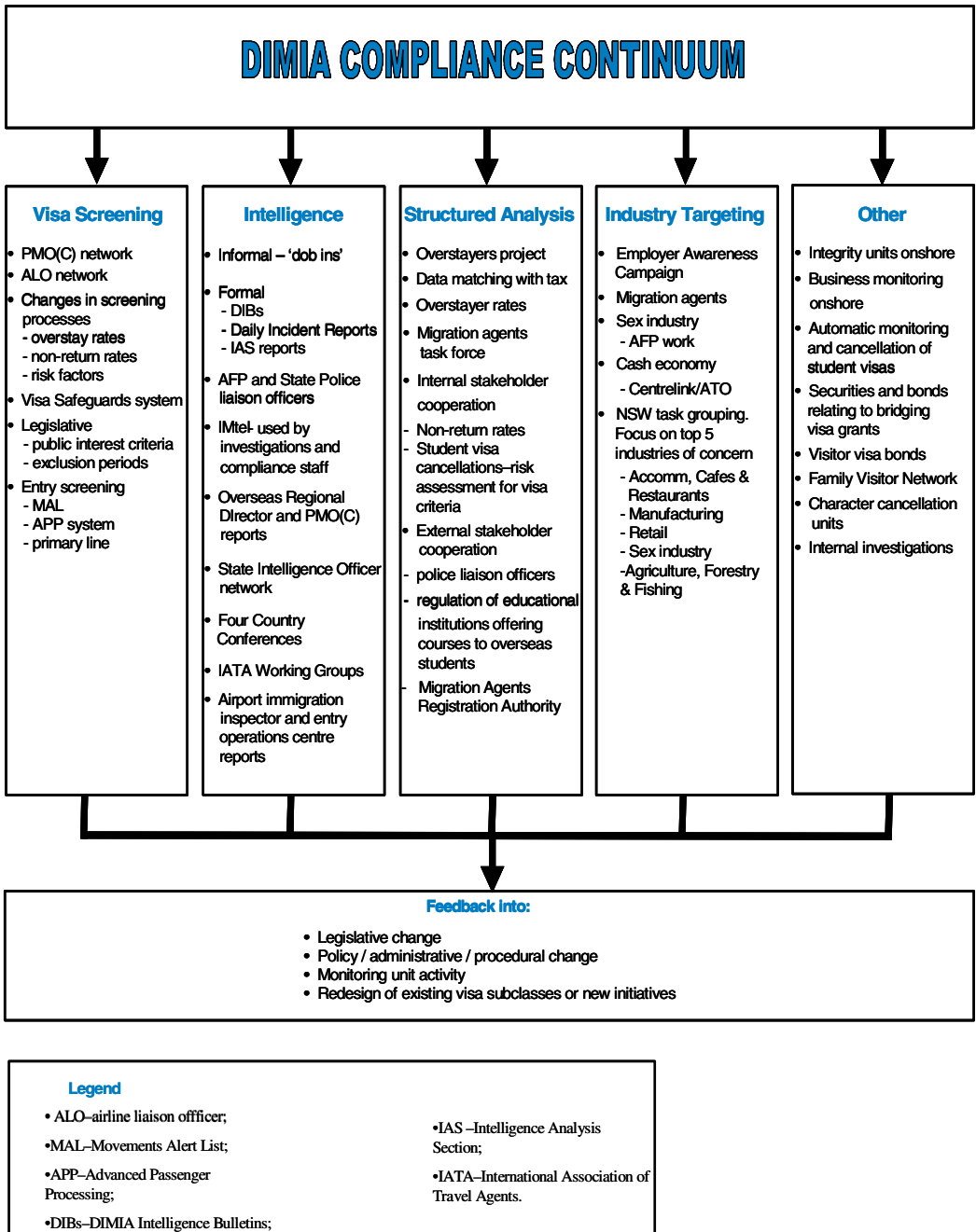
DIMIA has recognised this problem and have attempted to rectify it by re-estimating the error rates for previous reference periods, as discussed above.

Appendix 1–Sample Sizes for December 2002 Error Rates

Sample Sizes for December 2002 Reference Period

Stratum	Sample Size	Population Size
Nil Visa Condition Female	3	3
Nil Visa Condition Male	3	3
Other Female	46	46
Other Male	68	68
Student Female	60	183
Student Male	140	407
Temporary Resident Female	84	150
Temporary Resident Male	116	233
Transit Female	4	10
Transit Male	196	412
Visitor ETA Female	93	830
Visitor ETA Male	107	1098
Visitor Female	84	632
Visitor Male	116	860
Total	1120	4935

Appendix 4: DIMIA compliance continuum



Source: DIMIA.

Appendix 5: Visa screening—DIMIA’s risk factor list

1. DIMIA employs the risk factor list as a benchmark against which to assess visitor visa applications from particular countries. Public Interest Criterion 4011—the risk factor list—is found in Schedule 4 of the Migration Regulations and is integral to the visa decision-making process in overseas posts.

2. This means that applicants who fall within the categories stipulated by the Minister in the risk factor list must provide a higher level of evidence to satisfy overseas decision-makers that there is very little likelihood they will seek to remain in Australia after their initial visa expires.

3. DIMIA actively monitors the visitor non-return rate, which is categorised as the percentage of people who are granted a visitor visa, arrive in Australia and do not comply with the departure conditions of the visa on which they entered Australia. Countries with a non-return rate well above DIMIA’s global average non-return rate are of concern to DIMIA.¹¹⁴ Currently, the risk factor list is based on the visitor non-return rate.

4. The Minister for Immigration and Multicultural and Indigenous Affairs recently announced that a new methodology would be used to calculate the risk factor list in respect of Public Interest Criterion 4011. The new methodology will not come into effect until September 2004. However, in the interim, DIMIA is examining what new sets of data could feed into the risk factor list calculations.

5. The new risk factor list will be calculated using three ‘risk’ indicators¹¹⁵:

- a modified visitor non-return rate, *excluding* those visitors who obtain a further visa in Australia which is deemed to be of benefit to Australia¹¹⁶;
- protection visa lodgements—any country with more than 50 protection visa lodgements in a program year will be automatically included in the risk factor list; and
- visitor locations, that is, visitors located in breach of their visa conditions and/or overstaying.¹¹⁷

¹¹⁴ In 2002–03 the global average non-return rate was 1.56 per cent, down from 1.82 per cent in the preceding program year.

¹¹⁵ DIMIA, ‘Visitor Visa Activity Report’, 2003–04 program year as at 31 July 2003, p.13.

¹¹⁶ This category is included in the calculation of the current non-return rate, but makes no distinction between the types of visa granted onshore and possible benefits to Australia.

¹¹⁷ The current non-return rate uses a slightly different calculation in that it considers proportions of visitors who are classified as overstayers, rather than visitors who are located.

6. Over the last six years there has been a gradual trend increase in the number of visitors to Australia. This increase is accompanied by recognition that traditional tools to identify high-risk and low-risk source countries may become irrelevant in a dynamic international tourist market. For example, the relaxation of passport and exit controls by the People's Republic of China should enable a lot more nationals of that country to travel overseas, with Australia being a preferred destination.

7. The non-return rate has allowed DIMIA to more readily identify countries of low risk and develop appropriate administrative mechanisms (such as the electronic travel authority) to facilitate their entry to Australia.¹¹⁸ At the same time, DIMIA has been able to focus bona fide checking measures on visitors from countries representing a higher risk.

¹¹⁸ Countries where the risk of non-compliance with visa conditions is low are classified by DIMIA as 'low risk'.

Appendix 6: Integrated Client Service Environment (ICSE)

1. DIMIA uses ICSE as its primary onshore processing system. ICSE is a 'client/server' application.¹¹⁹ It is a generic application processing system designed to fully integrate client data and application processing, with a single history record for each client represented by an 'ICSE client identification'. ICSE records processing and decisions for:

- visa applications;
- nominations and sponsorships;
- assurances of support;
- citizenship applications; and
- other business processes such as visa cancellations and compliance activities.

2. ICSE holds client information, including contact details; Australian citizenship status; and citizenship and visa application details (including case notes, assessments, and sponsorship and assurance details). ICSE enables DIMIA staff in State and Territory offices to refuse or grant and evidence over-the-counter visas, and receipt and process other permission requests presented to DIMIA.¹²⁰ ICSE is designed for recording activities and decisions about client requests, but is not designed as a decision support system. DIMIA is developing a new electronic system, Safeguards, to support DIMIA decision-makers in the global working environment.¹²¹

3. ICSE is linked to a number of other DIMIA IT systems¹²² ICSE is also linked with systems in other government agencies, including:

- Australian Federal Police (AFP)–Crim Trac;
- Department of Foreign Affairs and Trade;
- Australian Electoral Commission;

¹¹⁹ 'client/server' application means that some parts of the application reside on a user's workstation (the client) and other parts reside on a mainframe computer (the server).

¹²⁰ 'DIMIA Directory of Information Systems, 2000', p. 70.

¹²¹ 'global working' seeks to locate DIMIA work in the most cost-effective locations, irrespective of where the applicant may be. DIMIA advises that removing this processing load from overseas will free overseas resources for investigating local aspects of their cases (for example, the veracity of claims regarding employment).

¹²² Systems linked to ICSE include the following: Travel and Immigration Processing Systems (TRIPS); Visa Load; Visa Manager; Movement Alert List (MAL); and Systems Applications and Products for data processing (SAP).

- the ATO;
 - Centrelink;
 - Health Insurance Commission
 - Department of Education, Science and Training; and
 - Attorney-General's Department.
4. DIMIA staff are supported in using ICSE through access to:
- the ICSE helpdesk (an in-house service providing support, advice and training for all ICSE users);
 - the ICSE New Starter Learner's Pack (developed as a support tool for staff who are learning how to use ICSE);
 - supervisors and managers; and
 - local ICSE 'advocates'.
5. The BCC Systems Management Unit also provides a range of ICSE support to compliance officers in State and Territory offices.

Appendix 7: The National Harvest Trail

1. A number of parliamentary inquiries, including by the Joint Standing Committee on Migration in 1998, examined the incidence of people working without the appropriate authority, especially in certain industries in rural and regional Australia. In response to these inquiries and associated community concerns, the Minister for Employment Services developed what is commonly referred to as the National Harvest Trail. A number of government agencies, including DIMIA, commenced working with rural employers to implement the concept.
2. The dual objective was to ensure that rural producers had access to seasonal labour at peak periods, and that employment opportunities were made available to unemployed Australians and those non-citizens who are legally entitled to work.
3. The *Review of Illegal Workers in Australia* noted that the Harvest Trail initiative was vital to the supply of legal labour to employers in areas where traditionally it had been difficult to access such a pool.
4. Employer submissions to the *Review of Illegal Workers in Australia* also indicated that a large number of rural employers were under the impression that a majority of backpackers had the same work rights as working-holiday makers.
5. To address this situation, DIMIA is targeting its information campaign on work rights to associations that deal regularly with backpackers. Additionally, the Government has expanded the Working-Holiday Makers program to increase the pool of legal workers available for itinerant rural jobs.
6. As part of an integrated government approach, DIMIA and the Australian Taxation Office trialled a new Tax File Number Declaration Form, with the cooperation of various industry groups, for use on the Harvest Trail. The declaration form was in two parts—one was a standard tax declaration form and the other included provision for employers to record checks of a potential employee's entitlement to work in Australia. There were mixed employer reactions to the trial, especially with respect to the immigration component of the form.

Appendix 8: Cross-agency enabling arrangements

1. In 1997 Centrelink, the Australian Taxation Office (ATO) and DIMIA established an Inter Agency Cash Economy Working Group in recognition of the links between the employment of unlawful non-citizens and those working in breach of their visa conditions, tax evasion and welfare fraud associated with the cash economy.
2. The working group has played an active role in fostering joint activities, extending cooperation, and improving the exchange of information between the three agencies.
3. The ANAO examined DIMIA's role and participation in the working group in the context of establishing strategic enabling arrangements to reduce the likelihood of the employment of unlawful non-citizens and non-citizens in breach of their visa conditions.
4. The ANAO notes that DIMIA estimates 50 per cent of overstayers¹²³ are employed. This is in addition to non-citizens working in breach of their visa conditions.¹²⁴
5. Joint operations between Centrelink, the ATO and DIMIA commenced as a pilot, with an Inter Agency Cash Economy Field Investigation Team located in both Victoria and Queensland. Operations focused on harvesting, fishing, food manufacture and transport, primarily in rural Australia.
6. Over the course of the two-year pilot, DIMIA reported that its compliance staff took part in 48 joint field operations, resulting in the location of 173 people who were either unlawfully in Australia or were working in breach of their visa conditions.¹²⁵
7. Additional resources were made available in the 2002 Budget, enabling Centrelink, as the lead agency, to establish dedicated cash economy investigation teams with a continued focus on inter-agency coordination at both a national and regional level.
8. In recognition of the increase in these joint operations, the three agencies developed a Memorandum of Understanding (MoU) to formalise cash economy compliance activities. These activities included joint project work, joint field operations, industry risk analysis, audit, intelligence and information sharing, prosecution and client education.

¹²³ Estimated to be in the vicinity of 60 000 (DIMIA, June 2003).

¹²⁴ DIMIA provides no estimates in this regard.

¹²⁵ Benefits for Centrelink included savings of around \$6.75 million and the ATO imposed penalties on a number of employers for various offences.

9. The formalised MoU contains:

- the legislative authority on which the MoU is based for each of the three participating agencies, including reference to the *Privacy Act 1988*;
- unambiguous descriptions of the functions to be performed by participating agencies, including the sharing of information and the referral of compliance matters of concern to the responsible agency¹²⁶;
- dispute settling procedures, including procedures to review, amend or terminate the MoU;
- a management structure to oversee the operation of the MoU—in this instance the Inter Agency Compliance Steering Group oversees its operations;
- mutually established agency accountability and reporting arrangements to respective departments and ministers; and
- protocols supporting data security and access to and use of material and information.

Regional Cash Economy Working Groups

10. The work of the national Inter Agency Cash Economy Working Group is supported by Regional Cash Economy Working Groups. These working groups have been established to oversee regional activity and provide quarterly reports on this activity to the national body.

11. The role of the regional working groups includes:

- alignment of strategy between the participating agencies;
- coordination of inter-agency liaison and intelligence sharing functions; and
- analysis of activities undertaken and reporting of outcomes to the national working group.

¹²⁶ For example, where information regarding potential non-compliance with migration law is detected in the course of ATO operations, the ATO will bring the matter to DIMIA's attention.

Appendix 9: Agency comments



Australian Government

Department of Immigration and Multicultural and Indigenous Affairs

Secretary

Mr Pat Barrett AO
Auditor-General
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Mr Barrett

Performance Audit: Onshore Compliance - Visa Overstayers and Non-Citizens Working Illegally

I refer to Mr Greg Watson's letter of 10 May 2004 which provided the proposed audit report on DIMIA's management of Visa Overstayers and Non-Citizens Working Illegally.

In accordance with section 19 of the *Auditor General Act 1997*, I have attached DIMIA's comments on the proposed report, including our response to each of the proposed recommendations. I have also attached a separate document providing some minor updates and editorial corrections which are not intended for publication.

I would like to take this opportunity to thank the ANAO for its professionalism in developing this report. While we do not agree with all of the conclusions contained in the report it has been much improved by the willingness of your staff to listen and engage in constructive debate.

Yours sincerely

A handwritten signature in black ink, appearing to read 'W J Farmer'.

W J Farmer
7 June 2004

Department of Immigration and Multicultural and Indigenous Affairs' Response to ANAO Performance Audit of Onshore Compliance—Visa Overstayers and Non-Citizens Working Illegally

1. The Department notes that the audit has validated the cornerstones of Australia's onshore immigration compliance program and has made positive findings on the effectiveness and efficiency of the onshore compliance program. The audit covers a complex and sensitive area of public administration that is of considerable interest to the Australian community and which needs to be seen as both effective and fair.
2. Australia has long been a migration destination and will continue to be so. To have an equitable migration program brings with it the responsibility to deal with those who might seek to avoid normal requirements by living or working illegally in Australia.
3. The Department regards onshore compliance as part of a continuum. Onshore compliance activity is only one element of Australia's integrated border control and compliance system. The compliance continuum starts outside Australia, at the point of visa application. Citizens of other countries who wish to travel to Australia are rigorously assessed before visa issue, and their identity and entitlement to enter is checked at all points of the travel and immigration clearance process. Once in Australia there is a high level of compliance with visa requirements by visitors and other temporary residents. This is largely a product of our effective offshore arrangements—we try to minimise the problem outside Australia, not after arrival.
4. A critical aspect of treating the risk of people breaching visa conditions is reflecting actual country performance in the selection regime. It also involves the use of intelligence, placing responsibilities on sponsors and agencies and imposing sanctions where they don't comply, dealing with those facilitating illegal movements or otherwise abusing the system by way of prosecution or sanctions, and locating and removing those in breach of visa conditions. Taken together these activities work very effectively to ensure that significant compliance risks are largely dealt with outside Australia rather than onshore after breaches occur.
5. The continuum can also be illustrated by our legislative reform program. Student compliance has been a major issue in both Australia and other countries. Although arguably this problem could have been addressed simply by very significant increases in compliance resources, a more innovative approach was taken. The *Migration Act 1958* and the *Educational Services for Overseas Students Act 2000* were amended to require educational institutions to notify the Department directly of students who are in breach of

academic progress and enrolment visa conditions. This allows visa cancellation action to be initiated immediately and can result in automatic cancellation of a student visa.

6. While the Department's screening processes offshore have been based heavily on risk profiling, the compliance program has been based largely around intelligence and analyses, increasingly through data matching, because of the legal constraints around the powers of immigration officers to enter and search premises. Over the three financial years to 30 June 2003, there was an increase of almost 50% in locations, whilst the estimated level of over-stayers has remained relatively constant. Within the OECD group, Australia has one of the lowest proportions of illegal immigrants.

7. Australia is also probably the only country in the world that has the entry and exit systems in place to identify electronically those within its borders and, amongst that population, visa over-stayers. This is a critical edge in developing compliance and visa strategies.

8. The Department welcomes the findings of the ANAO and will be using its advice to refine the operation of the compliance program.

ANAO comment

9. DIMIA's management of offshore measures to prevent and detect unlawful entry was outside the scope of this audit. This topic has previously been considered in ANAO Audit Report No. 57, 2001–02, *Management Framework for Preventing Unlawful Entry into Australian Territory*, tabled 14 June 2002.

10. Under DIMIA's outcomes and outputs framework, Output 1.1.5 *Students* is resourced separately to Output 1.3.3 *Detection Onshore*. The administration of student visas may be considered in a future ANAO audit but was also outside the scope of this audit.

Index

A

Australian Customs Service, 17, 80, 110
Australian Federal Police, 7, 54, 80, 87, 148
Australian Taxation Office (ATO), 16, 39, 40, 80, 109, 151

B

better practice, 18, 106, 108, 113, 134
bridging visa (E), 7, 29

C

cash economy, 82, 85, 151
Centrelink, 82, 85, 87, 109, 149, 151
compliance continuum, 42, 43, 47, 49, 50, 55, 145, 154
compliance operational plans, 106, 107, 112
compliance reporting, 116, 117
compliance target group profiling, 15, 19, 21, 45, 46, 48, 49, 54, 55
compliance target population, 17, 19, 31, 34, 39, 42, 43, 45, 46, 49, 51, 55, 56, 93, 95

D

data cleansing, 14, 39, 40, 41
data entry, 104, 105, 109
data matching, 14, 19, 39, 40, 47, 48, 83, 84, 85, 93, 94, 109, 155
data sharing, 16, 82, 83, 84, 86, 87, 89, 93
data sources, 14, 43, 47, 129
Department of Defence, 51
Department of Foreign Affairs and Trade (DFAT), 110

E

effectiveness indicator, 14, 36, 37

Electronic travel authority, 60
Employer Awareness Campaign, 16, 19, 22, 47, 63, 64, 65, 66, 67, 68, 70, 73, 74, 76, 95
employer feedback, 16, 19, 22, 63, 64, 72, 73, 76
employers, 16, 27, 44, 45, 47, 56, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 92, 95, 123, 150, 151
entitlements verification online system, 78

F

field operations, 112
fieldwork planning, 104
foreign governments, 40
funding arrangements, 106

I

illegal worker warning notices, 64, 68, 70, 71, 72, 74, 75, 107
Information - electronic, 15, 59, 65
Information - printed, 15, 57, 65
intelligence - managing compliance intelligence, 108
intelligence network, 17, 49, 50, 51, 55
intelligence products, 49, 51
IT system support, 112, 114

L

labour suppliers, 16, 19, 64, 65, 68, 69, 71, 74, 75
lawful decision-making, 90, 95, 113
licensing authorities, 92, 93

M

Memorandum of Understanding, 7, 16, 80, 151
migration agent, 53
Migration Agents Taskforce, 50, 54

N

National Compliance Operational Guidelines, 30, 96, 101, 102, 103, 104, 112, 113
national training arrangements, 96, 105

O

operational arrangements, 87
operational standards, 104
Overstayers Project, 14, 19, 40, 41, 84

P

performance information, 14, 16, 19, 33, 36, 38, 43, 44, 61, 63, 65, 66, 67, 69, 73, 74, 75, 86, 91, 99, 102, 107, 115, 116, 117, 118
police services, 19, 34, 80, 87, 89, 90, 91, 92, 112
Principal Migration Officer, 7, 17, 50, 51
public relations, 64, 66, 75

Q

quality assurance, 113

R

Review of Illegal Workers in Australia, 63, 76, 77, 150

S

search warrants, 18, 32, 46, 99, 100, 101, 102, 114
Section 18 notices, 93
Self-referrals, 11, 27, 44
Service Level Agreement (SLA), 80

V

visa cancellation, 29, 63, 93, 94, 96, 98, 99, 113, 124, 125, 155
Visa labels, 58, 77

W

work rights checking line, 16, 64, 67, 68, 69, 74, 75
work rights faxback facility, 16, 64, 67, 75

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