

The Auditor-General
Audit Report No.2 2007–08
Performance Audit

Electronic Travel Authority Follow-up Audit

Department of Immigration and Citizenship

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of Australia 2007

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Canberra ACT
18 July 2007

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the Department of Immigration and Citizenship 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 *Electronic Travel Authority Follow-up Audit*.

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 'Ian McPhee', is positioned above the printed name.

Ian McPhee
Auditor-General

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

AUDITING FOR AUSTRALIA

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

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Abbreviations and Glossary

ALO	Airport Liaison Officer. DIAC's ALOs conduct document screening and provide advice to airlines and host governments on passenger documentation.
APP	Advance Passenger Processing. The APP system allows particulars of each traveller to be checked before boarding at an overseas air or seaport.
CMAL	Central Movement Alert List. A centralised onshore MAL Centre to assess MAL matches.
Customs	Australian Customs Service
DIAC	Department of Immigration and Citizenship
ELMs	ETA Liaison Managers. Their role within DIAC is to support, monitor and report on ETA operations in their area of responsibility.
EOC	DIAC's Entry Operations Centre in Canberra. The centre provides a helpdesk facility to carriers who wish to enquire about the status of passengers or crew who are travelling to Australia.
ETA	Electronic Travel Authority. An ETA is an electronically stored authority for travel to Australia.
ETAS	Electronic Travel Authority System. The computer system that supports delivery of ETA visas.
eVisa	An electronic facility for providing visas over the Internet. This is separate from the ETAS (see para. 1.18).
MAL	Movement Alert List. MAL is a computer database that holds information about people and travel documents of immigration or security concern to Australia (see Chapter 3).
MSIs	DIAC's Migration Series Instructions. These instructions are issued from time to time as an additional guide for decision-makers, and are intended to be incorporated in PAM3 over time.
MoU	Memorandum of Understanding
NRR	Non-Return Rate. The NRR is the proportion that remains, legally or illegally, after expiry of their original visa.

Overstay Rate	The overstay rate for a country is the proportion of visitors from that country that remains illegally after their visa expires.
PAM3	DIAC's Policy Advice Manual. PAM3 contains detailed instructions designed to assist decision-makers to interpret and apply the <i>Migration Act 1958</i> and Migration Regulations 1994.
PIC	Public Interest Criterion. The criteria that a visa applicant must satisfy in order to obtain a visa, including character, national security, health and other risk factor assessments, set out in Schedule 4 of the Migration Regulations 1994.
RIF	Remote Input Facility. A mechanism for entering, updating and deleting information in MAL.
VAC	Visa Application Charge. A charge that must be paid to the Commonwealth by those who apply for certain visa types.
VWP	Visa Waiver Programme. A US programme which enables nationals of certain countries, including Australia, to travel to the United States without obtaining a visa, if certain requirements are met.

Summary and Recommendations

Summary

The Electronic Travel Authority

1. Any non-citizen who wishes to visit Australia must have a valid visa. Most visitors use an Electronic Travel Authority (ETA) visa, obtained from the Department of Immigration and Citizenship (DIAC). ETAs are available to visitors from a limited range of 'low risk' countries and are obtained quickly and conveniently, by computer, from their overseas location.
2. DIAC designed the ETA in the 1990s, when there was pressure to make international travel easier and the security environment was more benign. Adopting the ETA allowed Australia to maintain its universal visa system while making it easier for visitors to get a visa and, in addition, allowing Australians easier access to some overseas countries.
3. The ANAO completed a performance audit of the ETA and its supporting systems in July 1999.¹ It concluded that the ETA system is an innovative, Australian developed system which had the support of the travel industry, delivered efficiencies and made issuing visas more effective. The ANAO made nine recommendations to improve DIAC's administration of the ETA. They related to IT security; management of data; relationships with travel agents and other third parties involved in delivering the ETA; and contract and financial management. DIAC accepted all recommendations.

Audit objective and scope

4. The objective of this audit is to examine DIAC's implementation of the nine recommendations made in the earlier audit. The audit has also taken into account changed circumstances since the original audit. These include a heightened security environment after 11 September 2001 and the results of other relevant ANAO performance audit and financial statement work.
5. The audit also examined ETA decision-making processes to gain assurance about its robustness in a changing risk environment. This issue came to attention in recent audits of visa management processes.

¹ ANAO Audit Report No.3 1999–2000 *Electronic Travel Authority*.

Conclusion

6. The ANAO concluded that DIAC had implemented the recommendations from the earlier audit. Six had been fully implemented, one substantially implemented and two partially implemented. Set out below in the key findings are the original recommendations as agreed by DIAC, and a summary of the ANAO's assessment of progress against each.

7. In implementing the recommendations and revising arrangements DIAC has improved its administration of the ETA. Two areas relating to the original audit warrant further attention. These concern completing work to improve the robustness of DIAC's computer link with its contractor and specifying, in its Memorandum of Understanding with Customs, performance information for passenger processing.

8. The ANAO considers that there are opportunities for improvement in ETA decision-making processes. These reflect areas where regulations and administrative practice are no longer fully aligned. DIAC has undertaken to review the ETA regulations with a view to aligning policy and practice.

9. The ANAO also considers that the completeness of data entered into the Movement Alert List (MAL)² would be improved if DIAC introduced a programme of quality assurance. This would give the department greater confidence in its decision-making when assessing ETA applications. In addition, DIAC could improve compliance by ETA visa-holders visiting Australia by ensuring that they are more aware of their visa conditions. DIAC has advised it will review ways to better inform clients about visa conditions.

² The Movement Alert List is a computer database that holds information about people and travel documents of immigration or security concern to Australia.

Key Findings

ETA computer system security (Chapter 2)

Original recommendation 1: The ANAO recommends that, to ensure that the required level of security is achieved for the ETA information technology environment, DIAC develop and institute appropriate:

- change and password control procedures;
- UNIX security policies and procedures;
- telecommunications and mainframe security procedures; and
- procedures which ensure ongoing review of the ETAS [ETA System] security arrangements to provide assurance about the required level of security.

Finding

10. DIAC has substantially implemented this recommendation. It has proceeded appropriately after the original audit by:

- satisfying itself that its contractor had addressed all of the specific IT security matters raised; and
- basing its subsequent Security Risk Management Plan on the requirements of Australian Government standards set out in *Australian Government Information Technology Security Manual—Australian Communication—Electronic Security Instruction 33* (ACSI 33). Work has begun but is not yet complete on one of the recommendations set out in that plan to implement redundancy in its communications links.

11. DIAC has advised that the ETA system has not been subject to substantial security violations and is performing with a high degree of reliability. It has begun work to upgrade its computer link with its contractor to improve the robustness of that link. It has yet to implement a capacity to verify independently the system performance information provided by its contractor.

The Movement Alert List (Chapter 3)

Original recommendation 2: The ANAO recommends that DIAC develop standard operating procedures for:

- entering and following-up information provided by law enforcement agencies to provide adequate assurance of data quality; and
- reviewing new MAL entries on a risk managed basis to ensure information is relevant, adequate and listed correctly.

Original recommendation 3: To develop a cooperative and effective working relationship with law enforcement agencies, the ANAO recommends that DIAC establish formal liaison arrangements with these agencies, such as a forum on MAL-related issues or incorporate MAL into an appropriate, existing, discussion forum.

Finding

12. DIAC has fully implemented these recommendations.

13. DIAC has provided evidence of regular cooperation with law enforcement agencies through the Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA) meetings and law enforcement working group meetings. In addition, it has also formalised its relationship with some law enforcement agencies through Memoranda of Understanding (MoU).

14. DIAC acknowledges that MAL data quality is a continuing challenge. However, the ANAO considers that DIAC has provided adequate evidence of progress in procedures for entering and reviewing MAL entries.³

DIAC and external parties (Chapter 4)

Travel agents

Original recommendation 4: The ANAO recommends that, to manage the quality of travel agents' contribution to the ETA system, DIAC should develop:

- a long-term strategy for providing guidance, training and support services to travel agents; and
- effective quality control processes to ensure data integrity.

³ A potential performance audit of MAL to commence in 2007 is expected to examine in detail, inter alia, the issue of data quality within MAL.

Finding

15. DIAC has fully implemented this recommendation. ETA system (ETAS) training and support is readily available for both travel agents and airlines. Travel agents and airlines can access hard-copy and online information, and can discuss any issues with post staff, telephone help desk staff and Airport Liaison Officers (ALOs). In addition, the introduction of a data validation screen was a useful step towards improving the integrity of data entered into ETAS.

Airlines

Original recommendation 5: The ANAO recommends that DIAC negotiate a MoU or a service agreement with ETA airlines. This could cover issues such as: service standards; arrangements for reviewing these standards; the procedures and the circumstances for handling infringements; responsibilities of parties involved; and arrangements for ongoing training and support.

Finding

16. DIAC has fully implemented this recommendation. Advance Passenger Processing (APP) is now compulsory for all airlines flying to Australia and it is no longer necessary that DIAC have MoUs with these airlines. Airline infringements, which were growing in 1999, have dropped since APP became mandatory in 2003, and are no longer a substantial concern.

MoU with Customs

Original recommendation 6: The ANAO recommends that DIAC, in consultation with the Australian Customs Service, complete the development of a MoU or a service agreement to facilitate passenger processing at the primary line and to establish performance standards in relation to cost and quality of checks undertaken.

Finding

17. DIAC has partially implemented this recommendation. It introduced an MoU with Customs in 2002, and has activities such as joint training exercises in place, which should improve staff skills in passenger processing.

18. DIAC has not, however, established the recommended performance standards to assess passenger processing performance. The ANAO considers it is important to do this to provide DIAC with assurance that Customs is achieving the appropriate balance between timeliness and quality. This would also enable Customs to monitor its own performance.

Systems development processes (Chapter 5)

Original recommendation 8: The ANAO recommends that DIAC adopt a formal and visible approach to approval and accountability for future significant developments. This may include:

- reviewing the overall effectiveness of the systems development processes; and
- drawing out lessons for the future.

Finding

19. DIAC has partially implemented the original recommendation. Audit testing during the course of annual ANAO financial statements work for 2006–07 has found evidence of improvement to change management. However, IT project governance and systems development methodology remain critical issues, given the scale of DIAC’s current IT developments and their importance in supporting DIAC’s substantial change programme. These issues will continue to be examined as part of the ANAO’s ongoing work on DIAC’s financial statements, and will be reported in the ANAO’s report on the financial statements of Australian Government entities.

Contract and financial management (Chapter 6)

20. Following the original audit in 1999, Audit Report No.34 2005–06, Advance Passenger Processing (APP) also made a recommendation relevant to contract management. The APP system, developed as an enhancement to ETAS, allows the particulars of travellers to be checked before boarding at an overseas port. It was included as a variation to the ETA contract. In this audit, the ANAO considered the APP recommendation concurrently with Recommendation 7 of the original ETA audit.

Contract management

Original recommendation 7: The ANAO recommends that, to ensure the Commonwealth’s interests are adequately protected, DIAC:

- devote appropriately trained and experienced resources to managing its contract with [its contractor]; and
- seek revised contractual provisions at an opportune time that would better protect the Commonwealth interests, (for example, access to documents and systems and contingency provisions for accountability purposes).

APP Recommendation 3: To assist in protecting the interests of the Commonwealth in its dealings with external parties, the ANAO recommends that DIAC:

- identify its contract management risks relating to APP, analyse these risks, implement treatments, and monitor and review the success of its controls;
- consider developing a performance-based contract by linking its contractor's fee base to key performance areas and outcomes for APP;
- establish a performance management system relating to service levels for APP;
- maintain and organise contract-related documentation for easy and reliable access; and
- define processes and procedures to assist in managing contract variations relating to APP.

Finding

21. DIAC has fully implemented these recommendations. The ANAO's review of the new contract shows that it addresses the findings of both the original ETA audit and the subsequent APP audit. For example, the contract requires that appropriately trained and experienced resources manage the contract, and includes strengthened contingency provisions. During the audit's fieldwork, these contract management arrangements were being put in place.

Financial management

Original recommendation 9: The ANAO recommends that DIAC establish procedures to enable it to verify that invoiced services have been delivered prior to certification of contract payments.

Finding

22. DIAC has fully implemented this recommendation. Under the new contract, invoices are simpler because charges have been streamlined into one agreed monthly service charge. In addition, an enhanced system enables DIAC staff to track the contractor's progress more easily when they are completing development tasks.

ETA decision-making and risk (Chapter 7)

23. The audit also examined ETA decision-making processes to gain assurance about its robustness in a changing risk environment. This came to attention in recent audits of visa management processes.

Finding

24. ETAs are available only to a selected group of 'low-risk' countries, based on DIAC's risk-rating. Having a valid passport from one of those countries is a criterion that must be met by an applicant to be granted an ETA. When it receives an application from a person with an ETA-eligible passport, DIAC must make a decision, based on the information it gathers, whether to grant or refuse to grant an ETA visa. These decisions must be made in accordance with the *Migration Act 1958* and Migration Regulations 1994. However, there are several areas where the requirements and administrative practice are no longer fully aligned, for example, the testing of the bona fides and the health status of applicants. DIAC has undertaken to review the regulations for the ETA with a view to bringing policy and practice into alignment.

25. Making visa-holders aware of their visa conditions (such as work rights while in Australia) is important in achieving compliance with those conditions. DIAC has acknowledged that ETA-holders, who form a quarter of the over-stayer population, are currently unlikely to be aware of their visa conditions. DIAC has agreed to examine ways in which clients can be better informed about the conditions of their ETAs.

26. In examining ETA decision-making the ANAO found that DIAC does not quality assure the data it enters into its Movement Alert List (MAL). The completeness of this data and promptness of data entry is important because DIAC uses MAL to help it decide whether ETA applicants satisfy regulatory criteria. The ANAO has recommended that DIAC undertake a programme of quality assurance in this area.

DIAC response

27. The Department welcomes the follow-up performance audit of the ETA and agrees with the two recommendations. The findings of the audit will be used to build on the ongoing work to enhance the ETA, and will contribute to the strengthening of it as a key plank of DIAC's layered approach to border management.

28. The ANAO report concluded that DIAC had implemented the recommendations from the earlier audit, while noting that more work is required in relation to some recommendations.

29. The ETA remains cutting edge technology in terms of visa facilitation and border security. Around 3.5 million ETAs are issued by Australia each year, with 26 million issued since the system was established in 1996.

30. The ETA system continues to provide benefits to all parties. DIAC is able to conduct the necessary checks as applicants make their travel plans, and applicants themselves have more certainty as they are granted a travel authority electronically before embarking on an international trip. In addition, airlines have seen their infringement fines (for bringing undocumented passengers to Australia) plummet.

31. Australia continues to be a pioneer in the electronic visa regime. Subsequent to the introduction of the ETA, eVisa arrangements were introduced for overseas students and working holiday makers who could apply online for a visa. The technology has been well received, vastly reducing waiting times and manual processing demands on DIAC staff, while security procedures have remained paramount.

32. We are also pleased to note that the ANAO has confirmed the Department's contract and financial arrangements with the service provider. The new contract provides DIAC with more certainty; greater flexibility; includes comprehensive service levels and enhanced governance arrangements.

Recommendations

Recommendation No. 1

Para. 4.27

The ANAO recommends that DIAC work with Customs to:

- establish performance indicators to track the timeliness, quantity and quality of passenger processing; and
- regularly review performance against these indicators.

DIAC response: Agreed.

Recommendation No. 2

Para. 7.28

The ANAO recommends that DIAC undertake a programme of quality assurance of the immigration data it enters into the Movement Alert List to test its completeness and currency.

DIAC response: Agreed.

Audit Findings

1. Why Australia has an Electronic Travel Authority

This chapter provides the background to the Electronic Travel Authority, an update of key developments since the last audit, and how the ANAO undertook this follow-up audit.

The ETA helped Australia to maintain a universal visa system

1.1 Anyone who is not an Australian citizen and who wants to travel to Australia, enter and stay legally, must have permission.⁴ That permission is a valid visa under Australia's universal visa system, which it has had since 1975.⁵ Most visitors to Australia use an Electronic Travel Authority (ETA) visa, obtained from the Department of Immigration and Citizenship (DIAC). ETAs, available only to low-risk travellers, comprise three categories of tourist and business visa and provide electronically-stored authority for travel to Australia.⁶ Low-risk travellers are those with a passport from a specified list of 34 countries and regions.⁷

1.2 Most commonly, an applicant's travel agent applies for an ETA on their behalf, by computer, when making arrangements for the applicant's visit. An applicant can also get an ETA personally over the Internet. Either method is quick and convenient. Each applicant's details are checked by computer against DIAC's Movement Alert List (MAL)—which contains details of persons and travel documents of concern—and, provided no match occurs, an ETA will be granted. Where a match occurs, the applicant is referred to a DIAC overseas post to have their application considered.⁸

⁴ Under the Trans-Tasman Agreement, New Zealand citizens have right of entry to Australia, subject to meeting health and character criteria. They can travel visa-free and are granted an electronic visa at airport immigration clearance on arrival.

⁵ Australia's universal visa system is created by the *Migration Act 1958*.

⁶ An ETA is any one of three subclasses of visa under the Migration Regulations: Subclass 956, *Business Entrant—Long Validity*; Subclass 976, *Visitor*; and Subclass 977, *Business Entrant—Short Validity*.

⁷ DIAC states that 'High Risk is defined as those nations for whom ETA is not available.' See, for example, DIAC, *Portfolio Budget Statements 2006–07*, budget related paper no. 1.12, DIAC, Canberra, 2006, p. 60, available from <http://www.immi.gov.au/about/reports/budget/budget06/_pbs-pdf/2006-07_ima_pbs_00_complete_document.pdf> [accessed 20 February 2007].

⁸ MAL is a DIAC computer database integrated with the department's visa issuing and border entry processes. The ETA arrangements are highly dependent on the operation of MAL. See Chapter 3.

1.3 DIAC designed the ETA in the 1990s, when the tourism industry had questioned the need for visitors to get a visa to come to Australia.⁹ In the industry's view, this was a disincentive to travel. DIAC developed the ETA to give low-risk travellers greater access to efficient visa services, which it has described as "'visa-free"-like entry to Australia'.^{10,11}

An Electronic Travel Authority is a visa

DIAC documents sometimes refer to a 'visa or an ETA', as though the two were different.¹² In fact, an ETA is a visa. A visa is not a physical object but simply permission given to a non-citizen to travel to, enter and remain in Australia. DIAC records on its computers that a person has been granted an ETA visa. Such information can be accessed by those with a need to know about the person's status, for example, airline check-in staff. Hence, a traditional visa label is unnecessary.

The term 'visa' has connotations both of a physical object—such as a label in a passport—and the traditional methods of getting it, such as by visiting an Australian overseas post. The term 'Electronic Travel Authority' has the benefit of distinguishing the newer, easier, electronic arrangements. DIAC has been improving its service delivery by introducing further electronic systems for providing visas—like its more modern eVisa system. As this progresses, the value of maintaining this informal terminological distinction will diminish.

A Parliamentary committee supported introduction of the ETA

1.4 The ETA, then still in prospect, was considered by the Joint Standing Committee on Migration in its 1996 report *Australia's Visa System for Visitors*. The inquiry focused on whether Australia had streamlined visitor entry sufficiently or whether the visa requirement for visitors should be abolished. This would mean abandoning the universal visa system.

⁹ Work commenced in 1994. In June 1995, the department stated it was 'developing ... the ETA which could be operative within two years, subject to the recommendations of the Joint Standing Committee on Migration, and would greatly facilitate tourist entry to Australia without compromising the integrity of our borders.' (Answer to Question on Notice No. 2355, 30 June 1995).

¹⁰ Joint Standing Committee on Migration, (Reference: Immigration entry requirements for the Olympic Games), transcript of evidence, 5 February 1999, p. 10.

¹¹ DIAC, *Portfolio Budget Statements 1999–2000*, budget related paper no. 1.12, 1999, p. 26, available from <<http://www.immi.gov.au/about/reports/budget/budget99/pbs99.pdf>> [accessed 20 February 2007].

¹² For example, ETA Internet website reads, on its 'Welcome' page: 'If you are planning a holiday visit or a short business trip to Australia, you will need to apply for *either a visa or an ETA* (Electronic Travel Authority) [emphasis added].' DIAC, *Australian Electronic Travel Authority*, CPS Systems Pty Ltd, Australia, date unknown, available from <<http://www.eta.immi.gov.au/>> [accessed 14 February 2007].

1.5 DIAC's view was that providing visa-free entry would simply transfer checking visitor details from before departure to the point of arrival, a less convenient option. The Committee concluded that the debate should focus on whether Australia has a visa system which does not inconvenience travellers and ensures that undesirable persons do not enter Australia.¹³ It noted DIAC's view that use of MAL was critical to the ETA and recommended the ETA's widespread implementation.¹⁴

1.6 In January 1996, the responsible minister announced a decision to develop and implement the ETA.¹⁵ The United States of America then stated it would allow Australians easier access through its visa waiver programme (VWP). DIAC began implementation on 11 September 1996¹⁶ and the original roll-out was considered complete in July 1999, with a view to consolidation before the Sydney Olympic Games.¹⁷

1.7 Adopting the ETA allowed Australia to maintain its universal visa system while making it easier for visitors to get a visa and, in addition, allowed Australians easier access to some overseas countries.

DIAC outsourced the ETA computer systems work

1.8 In 1996, DIAC engaged a private company to develop, implement and operate the ETA computer system (ETAS) under a five-year contract. It later sought the development of additional facilities (such as the Advance Passenger Processing (APP) system) under the same contract.

ETAs are popular and others are now following Australia's lead

1.9 As forecast, ETA use has grown substantially and, in 2005–06, some 2.9 million out of 3.7 million visitors to Australia (over 80 per cent) obtained an

¹³ The Committee noted (para. 6.133, p. 157) these claims from the tourism industry were not supported by evidence. Similarly, its later report *Going for Gold: Immigration Entry Arrangements for the Olympic and Paralympic Games* (September 1999) found no unequivocal evidence to substantiate claims that the abolition of visas in other countries had increased tourism (para. 6.13, p. 44).

¹⁴ Joint Standing Committee on Migration 1996, op. cit., Recommendation 1, p. 162.

¹⁵ Minister for Immigration and Ethnic Affairs 1996, *Invisible visa a world first for Australia*, press release, 17 January.

¹⁶ DIAC's ETA implementation commenced with Singapore on 11 September 1996. See Parliament of Australia, *Senate Estimates: Department of Immigration and Multicultural Affairs*, APH, Canberra, 25 September 1996, available from <http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?TABLE=ESTIMATE&ID=7720> [accessed 29 March 07].

¹⁷ DIAC, minute, Interdepartmental Committee (IDC) on the possible expansion of the *Electronic Travel Authority* (ETA), 15 February 2001.

ETA.¹⁸ A recent government publication describes the ETA as ‘the world’s most advanced and streamlined travel authorising system.’¹⁹

1.10 In November 2006, the USA announced it would develop an Electronic Travel Authorisation program for its VWP travellers to give advance information on their travels to the United States. In return, VWP travellers will be given electronic authorisation to travel to that country. The programme would be modelled on ‘a similar program that has been used in Australia for many years.’ This is clearly an intention to adopt a system similar to Australia’s ETA.

DIAC has made some important changes since 1999

DIAC introduced Internet access to the ETA

1.11 In May 2001, the then Minister agreed to a trial of a system to allow applicants to obtain an ETA over the Internet. Implementation began in June 2001. That mechanism now works alongside the original ETA system and currently deals with over 16 per cent of ETA applications.

DIAC introduced Advance Passenger Processing

1.12 DIAC began implementing APP for airlines travelling to Australia in 1998. The APP system, developed as an enhancement to ETAS, allows the particulars of each traveller to be checked before boarding at an overseas port.²⁰ After the events of 11 September 2001, the government made reporting through APP mandatory for all passengers and crew of airlines and international cruise ships arriving in Australia.²¹

DIAC has reviewed MAL and is introducing CMAL

1.13 The 2003–04 Budget provided \$1.4 million for a review of MAL, to report on both the efficacy of operations and make recommendations on its future development. The review began in August 2003 and was completed in

¹⁸ Department of Immigration and Multicultural Affairs, *2005–06 Annual Report*, Commonwealth of Australia, Canberra, 2006, p. 63.

¹⁹ Department of the Prime Minister and Cabinet, *Protecting Australia Against Terrorism 2006: Australia’s National Counter-Terrorism Policy and Arrangements*, Commonwealth of Australia, Canberra, 2006, available from <http://www.pmc.gov.au/publications/protecting_australia_2006/index.htm> [accessed 29 March 2007].

²⁰ This helps Australia to prevent people arriving in Australia by air when they do not have authority. DIAC, *Border Control*, DIAC, Canberra, date unknown, available from <<http://www.immi.gov.au/managing-australias-borders/border-security/border.htm>> [accessed 20 February 2007].

²¹ The *Border Security Legislation Amendment Act 2002* amended both the *Customs Act 1901* and the *Migration Act 1958*. See ANAO Audit Report No.34 2005–06, *Advance Passenger Processing*.

August 2004. Its main recommendation was the establishment of a centralised onshore MAL Centre to assess MAL matches. Implementation of a new mode of operation for MAL (known as 'Central MAL' or 'CMAL') was under way during the course of this audit.

DIAC has implemented the entry documentation project

1.14 With funds from the 2004–05 Budget, DIAC, with other Commonwealth agencies, undertook a project to enable early identification of passports of concern—such as fraudulent passports—at points other than the border. Anyone seeking to enter Australia, including those using an ETA, was then required to provide additional information, country of issue; date of issue and place of issue.²²

1.15 Before this project, DIAC collected some of this data as a matter of course in visa processing. For the ETA, it led to some additional data being collected²³ and the ETAS was amended accordingly.

DIAC has signed a new contract with its contractor

1.16 In early 2006, DIAC acted to address key contract management concerns identified in an ANAO audit of APP,²⁴ and negotiated a variation with its contractor. This was in effect until the existing contract expired and DIAC established a new contract for ETAS delivery.

1.17 In 2006, after deciding to proceed by direct sourcing, DIAC commenced negotiating with the same contractor a new contract for ETAS/APP and related border control systems. This was signed on 1 December 2006 and commenced on 4 February 2007.

DIAC has introduced eVisa, a more modern electronic visa system

1.18 DIAC developed its eVisa Internet system in 2001. This is a separate facility for providing visas over the Internet. It is more sophisticated than the ETAS, collects more data and allows easier integration with other DIAC computer systems. The ETA system's strengths lie in its use of older communications technologies within the travel industry. The eVisa system

²² DIMA 2004, internal minute, 'Entry Documentation Project', from Executive Co-ordinator, Border Control and Compliance Division, May.

²³ For ETAS, these data items comprised place, date and country of issue. See minutes, CPS–DIMIA meeting, 19 August 2004.

²⁴ ANAO Report No.34 2005–06, *Advance Passenger Processing*.

provides electronic access to visas such as the working holiday maker visa (sub-class 417) and the tourist visa (sub-class 676).²⁵

Further changes are in prospect with a focus on eVisa, not ETA

1.19 There have been calls for an expansion of ETA availability, but few actual changes.²⁶ Recently, there has been pressure from the European Union (EU) to extend the ETA, which wants similar access for all its member states.²⁷

1.20 Australia has been reluctant in recent years to expand ETA access in the current security environment. DIAC has recently confirmed that the ETA is no longer being made available to additional countries.²⁸

1.21 In December 2006, the responsible minister announced changed visa arrangements for EU citizens, from 1 July 2007, to ensure 'visa reciprocity with the EU and equal treatment of all member states'.²⁹ This measure did not extend the ETA but made tourist visas and business short stay visas available through eVisa and without a visa application charge.³⁰

1.22 The new arrangements involve the following:

- In early 2007, the reduction of the length of the online application form and the additional documentation required for the eVisa service (e676).
- From 1 July 2007, the elimination of the visa application charge for three-month e676 and short stay business visitor visas for new EU member states.

²⁵ The latter would be an appropriate choice, for example, for tourists seeking to come to Australia from countries that do not have ETA access, and is a counterpart to the sub-class 976 ETA visitor visa.

²⁶ The only countries to be added since 1999 have been Portugal (1 August 2001) and San Marino (1 July 2002).

²⁷ Regulation (EC) No 851/2005 of 2 June 2005 aims to establish reciprocity with countries outside the EU which continue to impose a visa requirement on the nationals of some EU Member States although those member states do not impose the same requirement on nationals of those non-EU countries. Gateway to the European Union, *Reciprocity regarding visa exemptions*, EU, Europe, 2006, available from <<http://europa.eu/scadplus/leg/en/lvb/l14513.htm>> [accessed 19 February 2007].

²⁸ DIAC, advice of 15 December 2006.

²⁹ Kevin Andrews, *Australia reciprocates fee-free visa arrangements with EU*, Department of Immigration and Citizenship, Canberra, 2006, available from <<http://www.minister.immi.gov.au/media/media-releases/2006/v06292.htm>> [accessed 19 February 2007].

³⁰ The new EU member countries whose nationals would benefit from the measure are Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

- Extension of the e676 autogrant³¹ facility to new EU member states, as they achieve compliance levels at or better than the global average of compliance with Australia's visa requirements.³²
- In 2008, implementation of a new electronic visa service for tourists and business visitors (eVisitors) that will merge the internet platform of the ETA and the e676 service.³³
- DIAC will examine technical options to move to a single platform for tourist and business visas that would apply across the EU, for implementation in due course.

1.23 DIAC currently has no obvious technical solution to achieving a full integration of ETAS with eVisa. This means that the ETA in its current form is likely to be in place for some years.

The previous audit found the ETA effective but with opportunities for improvement

1.24 The ANAO completed a performance audit of DIAC's ETA arrangements in July 1999.³⁴ The objective was to assess the administrative effectiveness of the ETA with particular regard to:

- the reliance that can be placed on information technology (IT) systems;
- the contribution of MAL to the effective operation of the ETAS;
- management by DIAC of external parties in the operation of ETAS; and
- financial management of ETAS.

1.25 The audit concluded that the ETAS is an innovative, Australian developed system which had the support of the travel industry, delivered efficiencies and made the issuing of visas more effective.

1.26 The ANAO made nine recommendations directed at improving DIAC's administration of the ETA. They related to IT security; management of data for

³¹ 'Autogrant' means that DIAC's computer systems automatically grant the visa where the applicant has provided appropriate information in the electronic application and certain electronic checks by DIAC's computer systems are satisfied.

³² How DIAC assesses compliance, together with associated risk management matters, are addressed in Chapter Seven, *ETA Decision Making and Risk*.

³³ Minister for Immigration and Multicultural Affairs, letter to the Ambassador, Delegation of the European Commission.

³⁴ ANAO Audit Report No.3 1999–2000, *Electronic Travel Authority*.

MAL; relationships with travel agents and other third parties involved in delivering the ETA; and contract and financial management. DIAC accepted all recommendations. Each recommendation and DIAC's subsequent action is examined in this follow-up audit.

1.27 The current audit has taken account of other reviews since the 1999 audit concluded and changes brought about by external events, such as those on 11 September 2001 in the United States of America.

Other reviews have recommended improvements

1.28 Following its January 1996 report *Australia's Visa System for Visitors*, the Joint Standing Committee on Migration considered the ETA again in its 1999 inquiry into arrangements for the Sydney Olympics.³⁵ Its report found broad agreement that the ETA satisfactorily minimised formalities and sped visitor entry while protecting Australia's border integrity.

1.29 As part of this follow-up audit, the ANAO has examined matters relevant to the ETA in the following performance audits:

- Audit Report No.2 2004–05, *Onshore Compliance—Visa Overstayers and Non-Citizens Working Illegally*. This made a recommendation to improve compliance by ETA-holders, a large proportion of overstayers;
- Audit Report No.34 2005–06, *Advance Passenger Processing*. This recommended improvements in contract and financial management.

1.30 DIAC evaluated the Internet ETA interface in 2001³⁶ and undertook an internal audit of the interface in 2002.³⁷

1.31 DIAC has not undertaken an evaluation of the ETA. However, DIAC has undertaken an internal audit of the ETA in parallel with the current ANAO follow-up audit. This was not complete when the current audit was being finalised.

³⁵ Gallus, Chris, *Entry Arrangements for the Games (tabling speech for 'Going for Gold' report)*, Australian Parliament House, Canberra, 27 September 1999, available from <<http://www.aph.gov.au/house/committee/mig/reports.htm>>, [accessed 20 February 2007].

³⁶ DIAC, *An Evaluation of the Internet Electronic Travel Authority Interface: A study of the effectiveness and efficiency from 1 June 2001 to 31 August 2001*, Entry Strategies and Movement Alert Section, Entry Branch, Border Control and Compliance Division, October 2001.

³⁷ DIAC, *Review of the Internet Electronic Travel Authority (Internet ETA) Interface*, Audit and Evaluation Section, October 2002. This review focused mainly on security.

How the ANAO undertook this audit

1.32 The objective of this audit is to examine DIAC's implementation of the nine recommendations made in Audit Report No.3 1999–2000, *Electronic Travel Authority*. The audit has had regard to the issues underlying the recommendations, changed circumstances and new administrative issues affecting their implementation and the operation of the system.

1.33 The ANAO has recently examined DIAC's management of other visas reviewing the department's adherence to the *Migration Act 1958* and Migration Regulations 1994. In that light, this audit also examined ETA decision-making processes to gain assurance about its robustness in a changing risk environment. This was not specifically examined in the original audit.

1.34 The ANAO received briefings from DIAC staff with relevant expertise at DIAC's national office in Canberra. It examined DIAC's records—both electronic and hard copy files—to gather evidence on DIAC's progress. The ANAO addressed specific questions to DIAC and has drawn on its written responses in forming its views.

1.35 MAL was examined in the course of the original performance audit of the ETA. In its *Planned Audit Work Programme 2007–2008*, the ANAO has listed a potential performance audit of MAL for 2007–08. DIAC is now making major changes to MAL. In recognition, the ANAO has limited its current examination of MAL to following up the original recommendations.

2. ETA Computer System Security

This chapter considers whether DIAC has implemented the ANAO's recommendation to improve security of the ETA computer system (ETAS).

The importance of ETAS security

2.1 DIAC's delivery of the ETA depends on the continued successful operation of the ETAS computer system. Therefore it is important that a high level of system security and integrity be maintained. This includes general robustness of the system and protection from unauthorised access.

2.2 Given the introduction of the Internet ETA facility in 2001, after the previous audit, the ANAO also considered its security, as well as that of the ETAS. The ANAO considered security in terms of the current Australian government security requirements, as set out in the Commonwealth Protective Security Manual (PSM).

The previous audit identified actions to improve security

2.3 The ANAO found that, while physical security was adequate, IT security was not. It gave DIAC a detailed list of actions to ensure:

- DIAC could continue data processing with adequate security;
- the security function relating to the installation, administration and use of the operating system would be effective; and
- telecommunications system security would be adequate.

2.4 A number of these actions were categorised as high priority. The ANAO considered many were easy to implement and DIAC had advised the ANAO that it was actioning these. Given the security implications of releasing detailed findings, the ANAO made one overall recommendation:

Original recommendation 1: The ANAO recommends that, to ensure that the required level of security is achieved for the ETA information technology environment, DIAC develop and institute appropriate:

- change and password control procedures;
- UNIX security policies and procedures;
- telecommunications and mainframe security procedures; and

- procedures which ensure ongoing review of the ETAS security arrangements to provide assurance about the required level of security.

DIAC response: *Agreed.*

DIAC has acted to improve IT security

2.5 The ANAO considers that DIAC is taking appropriate action to improve IT security, and has substantially implemented the recommendation. It has yet to upgrade its computer link with its contractor to improve the robustness of that link and implement a capacity to verify independently the system performance information provided by its contractor.

Detailed technical procedures have been addressed

2.6 DIAC provided evidence that it had satisfied itself that its contractor had addressed each of the detailed concerns that arose in the original audit, including in relation to change and password procedures; UNIX security policies and procedures; telecommunications and mainframe procedures and procedures to ensure ongoing review of the ETAS security arrangements.

DIAC has ensured that Internet ETA is secure

2.7 Shortly after DIAC introduced Internet ETA, it evaluated it (October 2001) and concluded that ETAS and the Internet interface were operating within acceptable risk levels.³⁸ An internal audit twelve months later found that DIAC had done substantial planning to address security. For example, DIAC had originally sought Defence Signals Directorate (DSD) certification for the Internet Gateway in August 2000. The audit made seven recommendations for security improvements.³⁹ This included DIAC getting DSD certification for the Internet Gateway. It agreed to do this by May 2003.

2.8 In practice, DIAC has encountered difficulties beyond its control. Although it has used the most secure modems available for communications, no suitable DSD-approved modems have become available. The ANAO is satisfied that DIAC has been actively pursuing an appropriate course. DIAC has advised that it is continuing to monitor the situation.⁴⁰

³⁸ DIAC, *An Evaluation of the Internet Electronic Travel Authority Interface*, October 2001, p. 41.

³⁹ DIAC, *Review of the Internet Electronic Travel Authority (Internet ETA) Interface*, Audit and Evaluation Section, October 2002, p. 1.

⁴⁰ DIAC advice of 25 January 2007.

Australian government security environment

2.9 The Protective Security Manual establishes the framework of policies, practices and procedures for the Australian government public sector in protecting Commonwealth functions and official resources from harm. The PSM refers to the *Australian Government Information Technology Security Manual—Australian Communication—Electronic Security Instruction 33* (ACSI 33) for more detailed policies and guidance on information technology. ACSI 33 outlines the minimum standard for information and communication technology security in government agencies. The ANAO therefore considered DIAC's position with ETAS security in terms of ACSI 33.

DIAC prepared a Security Risk Management Plan

2.10 In August 2003, DIAC's contractor began preparing a Security Risk Assessment (SRA) of the ETA/Advance Passenger Processing System. This document declared itself one of the deliverables of a security audit by DIAC.⁴¹ It acknowledged that although the ETAS had been implemented in late 1996, the security audit aimed 'to bring to the surface any issues ... previously overlooked' and which should 'ideally have been carried out prior to the system going live in 1996.' It notes the ANAO's original audit among earlier reviews of ETA security and states that the contractor 'has worked with [DIAC] to implement the recommendations of the reviews and audits.'⁴²

2.11 A completed Security Risk Management Plan (SRMP) was approved by relevant parties in mid-2006.⁴³ The SRMP declares itself to be based on ACSI 33. It identifies only two risks for which treatment must be considered:

- *Failure of the communications link between DIAC's computer systems and the ETA/APP System over the DIAC network.* The SRMP recommends upgrading the redundancy in the links and that any other 'single points of failure' in the DIAC network be identified and addressed; and
- *Spurious visa data being submitted and stored.* It recommends that the risk of such data being created be accepted.

⁴¹ CPS Systems, *Security Risk Assessment: ETA/APP System*, version 1.4, CPS Systems, Australia, 20 February 2004, p.12.

⁴² *ibid.*, p. 3. However, this work does not, in its detail, refer further to the ANAO audit.

⁴³ The SRMP was approved by the DIAC system owner (Assistant Secretary, Entry Policy), DIAC Security (AS, Security & IT Resources) and the CPS Systems Project Manager) in June and August 2006.

2.12 DIAC accepted these recommendations.⁴⁴ On the first, it has raised a project initiation brief to upgrade the current link and that work is under way. There is not yet a timetable for completion.⁴⁵

System downtime is low and security violations infrequent

2.13 As a check on the robustness of the ETA arrangements the ANAO sought advice on any system downtime and records of security violations.

2.14 DIAC provided a copy of a report compiled by its contractor on ETAS system availability over the last five years, detailing the time, reason, length of outages and a range of other useful data. This reports that the system has generally been available with a high degree of reliability. However, there are two aspects where DIAC could improve its understanding of system performance:

- (1) it could seek to validate independently its contractor's reports on the latter's own performance in maintaining ETAS performance;
- (2) it could obtain better assurance of overall, end-to-end performance by monitoring the communications link between DIAC IT systems and ETAS. This would include DIAC's contribution to ETAS operations.

2.15 The ANAO examined the first of these items as part of its APP audit, in which it recommended that DIAC analyse and validate system availability statistics provided by its contractor. This would enable DIAC to assure itself as to the reliability of the performance information provided by the contractor. DIAC agreed to this recommendation but, to date, it has not provided evidence of progress in this area.

2.16 In relation to the second item, DIAC has advised the ANAO that:

In February 2006, [DIAC] sought a systems change which would provide reporting on the transmission of data between CPS and DIAC. In the light of the major change process occurring in DIAC's systems environment this change has not been introduced to date. However, it remains a high priority in the Border Security Division's systems maintenance program and is expected to be introduced early in 2007–08.⁴⁶

⁴⁴ DIAC, email advice to the ANAO of 21 January 2007 and 15 February 2007.

⁴⁵ DIAC, *ETAS/APP System Communications Links*, ITPO Project Initiation Brief V0.3, 15 September 2006.

⁴⁶ DIAC advice to the ANAO, 13 April 2007.

2.17 DIAC wrote to the contractor in December 2004 seeking (i) yearly reports on reviews undertaken of security access to buildings and equipment and (ii) immediate notification to DIAC of any security-related incidents.⁴⁷ These are now being supplied.

2.18 DIAC has advised the ANAO that:

There have been no substantial violations of security in relation to the ETAS production site since production rollout commenced in 1996, and more recently, the ETAS Disaster Recovery site. There have been no security incidents in relation to unauthorised ETA System access.⁴⁸

⁴⁷ DIAC, email advice to the ANAO, 22 January 2007.

⁴⁸ DIAC advice to the ANAO, 13 April 2007.

3. The Movement Alert List

This chapter considers whether DIAC has implemented the ANAO's recommendations to implement standard operating procedures to improve the sufficiency of data in MAL and formalise its working relationship with law enforcement agencies.

MAL has a role in immigration and national security

3.1 The Movement Alert List (MAL) stores data on people and travel documents of concern to immigration, law enforcement and security authorities. It interacts with DIAC computer systems to give decision-makers information to help regulate, in the national interest, the entry to and presence in Australia of non-citizens. MAL has been described as 'Australia's principal electronic alert information system'.⁴⁹

3.2 For immigration purposes, MAL identifies persons on whom DIAC holds information relevant to visa grant, border clearance and citizenship. For example, when DIAC considers a visa application, each applicant's details are checked to see if they match information held by MAL. If a match occurs, the information will be used to help decide whether to grant or refuse the visa.

3.3 As well as its immigration functions, MAL has accrued an increased law enforcement/security function, especially since September 2001. It is a 'key part of our overall national border security and counter-terrorism arrangements'.⁵⁰ In line with this changed emphasis, MAL data is increasingly provided by law enforcement and national security authorities.

MAL has a critical role in granting ETAs

3.4 The only test DIAC performs before granting an ETA is to compare the details it receives electronically from the applicant (or their agent) with the data it holds on MAL. Where a match occurs, the system refers the applicant to a DIAC overseas post for further consideration of their application. Most cases referred to a post are subsequently granted a visa.

3.5 DIAC performs further checks after an ETA visa grant, including when the visitor arrives at their embarkation point, while they are en route to Australia, and at the border. These later checks are also substantially depen-

⁴⁹ Department of the Prime Minister and Cabinet 2004, *Protecting Australia Against Terrorism*, p. 38.

⁵⁰ Senate, Legal and Constitutional Affairs Legislation Committee, transcript of estimates, 1 November 2005, p. 84.

dent on MAL. However, a decision to cancel a visa and refuse entry is inherently more difficult than refusing a visa in the first place. This is because the onus of proof has been reversed. The decision-maker, when preparing to cancel a visa, must have substantial evidence. When preparing to refuse a visa a decision-maker needs only reasonable suspicion that relevant criteria are not satisfied.⁵¹

3.6 Thus MAL performs an essential role in the entire ETA operation, but most particularly before grant. DIAC recognised from the outset that it had ‘started on the process of becoming MAL dependent’.⁵²

Findings of the previous ANAO audit

(1) DIAC needed to assure itself of data quality of new MAL entries

3.7 DIAC receives data for MAL from several sources, including law enforcement and national security agencies. The ANAO found that, while there were guidelines on International Criminal Police Organisation (INTERPOL) alerts, there were no procedures for entering and following up data from other sources, including DIAC. Formalising these procedures would provide greater assurance of data quality and protect against loss of corporate knowledge.

3.8 At the time, the Entry Operations Centre (EOC) reviewed data that DIAC airport staff entered into MAL daily to ensure it was adequate and listed in the correct risk categories. However, it did not regularly review data entered by other DIAC sections. There was no review of data entered by EOC staff. These findings led the ANAO to recommend as follows:

Original recommendation 2: The ANAO recommends that DIAC develop standard operating procedures for:

- entering and following-up information provided by law enforcement agencies to provide adequate assurance of data quality; and
- reviewing new MAL entries on a risk managed basis to ensure information is relevant, adequate and listed correctly.

DIAC response: *Agreed.*

⁵¹ DIAC, *Good Decision-Making: Training for DIMA Decision Makers*, version 1.06, October 2006, p. 52.

⁵² Joint Standing Committee on Migration, *Australia’s visa system for visitors* (minutes of evidence), 1 June 1995, pp. 1152, 1155.

(2) DIAC needed to develop good liaison arrangements with other agencies

3.9 The quality of MAL data has a direct bearing on the effectiveness of MAL. Co-operation between DIAC and agencies supplying data for MAL is important to facilitate information flow.

3.10 Previously, the ANAO noted that earlier reviews had recommended DIAC develop a more cooperative relationship with security and law enforcement agencies providing MAL data.⁵³ An Interdepartmental MAL Steering Committee was then established but this ceased in June 1998 and there was no new forum at the time of the audit. As MAL is of most use when it includes comprehensive information the ANAO recommended:

Original recommendation 3: To develop a cooperative and effective working relationship with law enforcement agencies, the ANAO recommends that DIAC establish formal liaison arrangements with these agencies, such as a forum on MAL-related issues or incorporate MAL into an appropriate, existing, discussion forum.

DIAC response: *Agreed.*

Findings of the follow-up audit

3.11 The ANAO considers that DIAC has fully implemented these recommendations.

(1) DIAC has implemented a mechanism to improve the quality of data entry

3.12 DIAC revised its procedures for entering data into MAL in its Migration Series Instruction 333 (31 May 2002). This revision was done specifically to 'increase the integrity of data being input into the MAL system'.⁵⁴ That document emphasised the use of the 'Remote Input Facility' (RIF) as the means of entering data into the system. The department stated that all MAL entries sourced with DIAC must be entered through the RIF function.⁵⁵

3.13 DIAC incorporated MSI 333 in its Policy Advice Manual (PAM3), with further expansion and updates. It states:

[MAL] records are created, updated or deleted by using the [RIF]. RIF is located as an option in the menu for MAL. ... RIF is an electronic in-tray which lets specialised users, such as the EOC, quality check entries made by other users to ensure they meet the requirements. Only after RIF records have been

⁵³ ANAO Audit Report No.3 1999–2000 *Electronic Travel Authority*, p. 51.

⁵⁴ DIMIA, internal minute, *Re: Revision of MAL MSI 333*, 31 May 2002.

⁵⁵ DIAC, advice at meeting with ANAO of 20 March 2007.

processed by EOC are changes recorded in MAL. ... A limited number of staff ... have the ability to create and update MAL records directly.⁵⁶

3.14 DIAC showed that updates to MAL are possible through RIF only when certain minimal sets of data are provided.

3.15 The PAM3 guide also specifies roles and responsibilities for MAL users. In particular, DIAC expects EOC staff, inter alia, to 'provide an initial quality assurance service by checking RIF records meet the guidelines specified in this instruction'.⁵⁷ Further, it expects MAL unit staff to 'provide a second level of quality assurance by regularly auditing MAL records'.⁵⁸ DIAC provided evidence that its staff audit MAL records from time to time.

(2) DIAC has improved liaison arrangements with other agencies

3.16 DIAC is a member of the Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA) meetings. These include high level discussion of a broad range of issues, including DIAC access to law enforcement databases. DIAC also provides updates on MAL.

3.17 DIAC advised that it participates in a working group with law enforcement agencies. The working group's initiatives include developing a National Police Training Package, and reviewing engagement with police to rationalise and 'improve existing arrangements'.

3.18 In addition to the above forums, DIAC has established some formal liaison arrangements with law enforcement agencies. At the time of the previous audit, DIAC had a Memorandum of Understanding (MoU) in place with the Australian Federal Police (AFP).

3.19 In 2002, in addition, DIAC negotiated a service agreement with the AFP. This provides a further framework for cooperation and notes that 'the AFP will provide to DIAC all criminal intelligence relevant to immigration matters'.⁵⁹ The ANAO considers that the MoU and service agreement together provide a solid basis for a cooperative and effective working relationship between DIAC and the AFP.

⁵⁶ DIAC 2006, *PAM3: GenGuideA; MAL (Movement Alert List)—Policy & Procedures*, section 25.1, 1 July.

⁵⁷ DIAC 2006, *ibid.*, section 27.4.

⁵⁸ DIAC 2006, *ibid.*, section 27.6.

⁵⁹ This term of this service agreement was set at two years (p.1). DIAC could not provide evidence of review or renewal of this agreement. The ANAO noted, however, that the agreement is currently available on the DIAC intranet—indicating that it is still being used as if it were current.

3.20 DIAC also provided other evidence to illustrate improved liaison arrangements with other agencies. These included an MoU with the New South Wales Police Service and evidence of fortnightly meetings with the Australian Security Intelligence Organisation (ASIO).

4. DIAC and External Parties

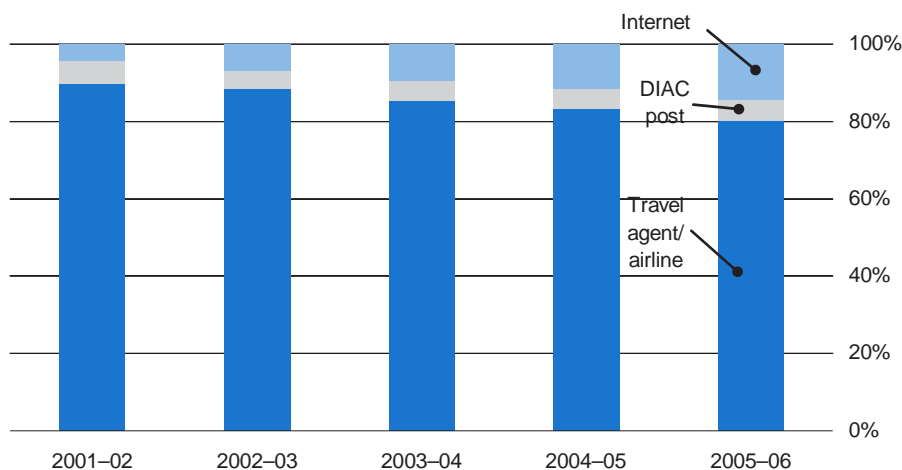
This chapter considers whether DIAC has addressed the ANAO’s recommendations to manage the quality of travel agents’ contribution to ETAS, and to negotiate Memoranda of Understanding with both ETA airlines and Customs.

Managing travel agents’ contribution

4.1 Travellers can obtain ETAs through travel agents, airlines, DIAC posts overseas or the Internet. In 2005–06, travel agents and airlines⁶⁰ were responsible for processing over 80 per cent, or over two million, of all ETAs (see Figure 4.1). This means that over 80 per cent of data in the ETAS is entered by travel agents. As ETAS requires correct data input to operate effectively, it is important for DIAC to educate travel agents and airlines to use the ETAS.

Figure 4.1

Percentage of ETAs granted by processing point



Source: DIAC

DIAC needed to support travel agents

4.2 At the time of the previous audit, DIAC’s direct support for travel agents was important to ensure the effective operation of the ETAS. DIAC had appointed ten ETA Liaison Managers (ELMs) to assist with the use of the

⁶⁰ As both airlines and travel agents process ETAs, the ANAO considers that this recommendation applies to both parties equally. Consequently, this analysis will refer to both parties.

system. It placed them in overseas posts to support travel agents and other ETA users, and to monitor ETA operations. Their tasks included training travel agents and airlines, answering queries about the system, and marketing the use of the ETAS.

4.3 Data input error was a major issue. Incorrect entry of names and dates of birth contributed to delays at both check-in and the border. Staff spent considerable time amending computer records to ensure the accuracy of DIAC databases. The ANAO therefore made the following recommendation:

Original recommendation 4: The ANAO recommends that, to manage the quality of travel agents' contribution to the ETA system, DIAC should develop:

- a long-term strategy for providing guidance, training and support services to travel agents; and
- effective quality control processes to ensure data integrity.

DIAC response: *Agreed.*

Findings of the follow-up audit

4.4 DIAC has fully implemented this recommendation. DIAC has provided evidence of a formal long-term training strategy and quality control processes aimed at improving ETAS data integrity.

DIAC's training strategy is sufficient

4.5 DIAC has a range of training products aimed at travel agents and airlines. For example, it offers comprehensive training manuals, online and in hard copy, for ETAS and APP. These cover a range of scenarios for ETAS. In addition, DIAC offers seven online 'e-tutorials' which illustrate steps such as issuing a visitor ETA and determining the status of an ETA. In addition, DIAC has a help desk in Canberra, which can be accessed by telephone or email.

4.6 DIAC does not have a formalised long-term training strategy document as recommended in the original audit. However, the training products that DIAC has available satisfy the intent of the original recommendation.

4.7 DIAC disbanded the ELM program in 2000. After four years, few ETA-related inquiries were coming to the ELMs and their role was integrated into the responsibilities of the staff members at overseas posts. The ANAO considers that this was reasonable, as travel agents had sufficient time to become familiar with the ETAS.

4.8 DIAC also implemented the Airport Liaison Officer (ALO) initiative in 2001. During 2005–06, there were 22 ALOs at 16 international locations. ALOs provide advice to airlines and host governments on passenger documentation. They also answer queries about ETAs.

4.9 DIAC’s training strategy is adequate to provide guidance, training and support to both travel agents and airlines. Online information, hard-copy manuals, ALOs and DIAC personnel are available to provide information regarding the ETA.

DIAC has implemented controls on data quality

4.10 After the original audit, DIAC implemented a validation screen to ensure the accuracy of data entered into ETAS. This screen requires the user to enter essential data identically a second time before processing can continue.⁶¹ The ANAO considers that the introduction of this screen was an acceptable measure to control data inaccuracy flowing from careless data entry.

Managing the airlines’ contribution

4.11 The ETAS was first introduced on a trial basis in September 1996, for Singapore and US passport holders travelling to Australia on Qantas and Singapore airlines. By the time of the previous audit in 1999, some 54 participating airlines had access to ETAS.⁶²

Airline implementation difficulties were causing infringements

4.12 During the previous audit, the ANAO noted that airlines supported the ETAS; however, they acknowledged difficulties in its implementation. For example, airlines acknowledged that ETAS had contributed to a rise in infringements for airlines carrying passengers without visas to Australia.⁶³

4.13 The ANAO considered that the establishment of Memoranda of Understanding (MoUs) between DIAC and airlines would improve communication and consultation, reduce inadmissible arrivals and promote clear understanding of Australian government expectations.⁶⁴ Consequently, the ANAO made the following recommendation:

⁶¹ ANAO Audit Report No.3 1999–2000 *Electronic Travel Authority*, p. 61.

⁶² ANAO Audit Report No.3 1999–2000, *Electronic Travel Authority*, pp. 33, 61.

⁶³ Under the Migration Act, carriers may be subject to infringement penalties or fines if the non-citizens they bring to Australia do not hold valid travel documents and visas on arrival.

⁶⁴ ANAO Audit Report No.3 1999–2000, *Electronic Travel Authority* pp. 63–64.

Original recommendation 5: The ANAO recommends that DIAC negotiate a Memorandum of Understanding or a service agreement with ETA airlines. This could cover issues such as: service standards; arrangements for reviewing these standards; the procedures and the circumstances for handling infringements; responsibilities of parties involved; and arrangements for ongoing training and support.

DIAC response: *Agreed.*

Findings of the follow-up audit

4.14 DIAC has fully implemented this recommendation.

Infringements have declined substantially since the previous audit

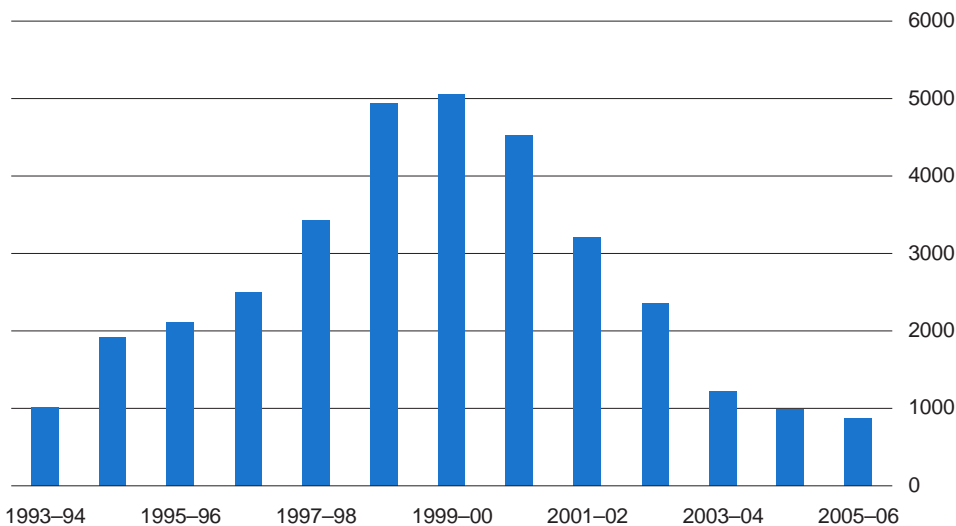
4.15 By 2001, DIAC had entered into MoUs with nine airlines. These covered the APP system, which was an extension to the ETAS. DIAC advised that, after 11 September 2001, it did not enter into any new MoUs as the Australian Government was considering mandating APP for all international airlines travelling to Australia. In January 2003, APP became compulsory and MoUs were no longer required.⁶⁵

4.16 The ANAO's recommendation aimed to improve communication between DIAC and airlines, and to minimise problems such as the rise in infringements. Figure 4.2 illustrates that the number of infringements has dropped by over 70 per cent since the original audit in 1999. To take account of changes in the number of international passengers over the period, Figure 4.3 further illustrates that the number of infringements issued per thousand air passengers to Australia has also declined.

⁶⁵ Under APP, airlines are required to provide DIAC with advance information on all passengers travelling to Australia. Department of Immigration and Multicultural and Indigenous Affairs, *Australia's APP: Advance Passenger Processing System. Check-in guide*, Commonwealth of Australia, 2005, p. 1.

Figure 4.2

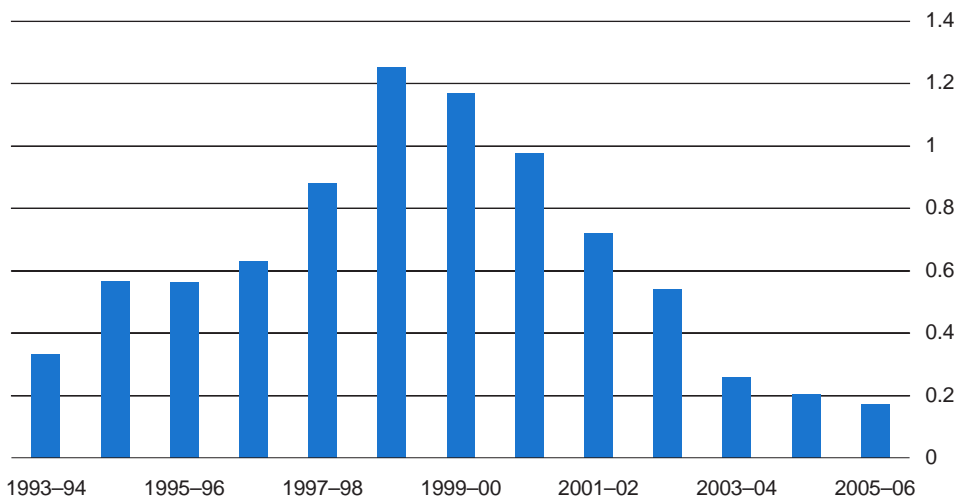
No. of airline infringements each year since 1993–94



Source: DIAC

Figure 4.3

No. of airline infringements each year per ‘000 airline passenger arrivals



Source: DIAC

Customs performs Immigration functions at the border

4.17 Under the *Migration Act 1958*, Customs staff are delegated authority to exercise certain critical immigration functions at the border. Customs processes arrivals at the border seeking entry, and its responsibilities include:

- visually checking that the passport photo matches the passenger;
- checking the passport to establish its validity and authenticity; and
- checking for the existence of an ETA or other visa.⁶⁶

4.18 DIAC trains Customs officers to carry out these tasks at the border.

DIAC and Customs needed to formalise arrangements

4.19 At the time of the previous audit, the ANAO found that Customs and DIAC have a good working relationship. However, it found there was a trade-off between timeliness and quality in processing passengers and documents; and Customs staff had difficulty in determining if some ETAs existed.

4.20 The ANAO considered that a formal agreement covering topics such as service standards, quality assurance and training, would strengthen the relationship between DIAC and Customs and would improve ETAS operation. This led the ANAO to make the following recommendation:

Original recommendation 6: The ANAO recommends that DIAC, in consultation with Customs, complete the development of a Memorandum of Understanding or a service agreement to facilitate passenger processing at the primary line and to establish performance standards in relation to cost and quality of checks undertaken.

DIAC response: *Agreed.*

Findings of the follow-up audit

4.21 DIAC has partially implemented this recommendation. DIAC signed an MoU with Customs in 2002 but has not yet established performance standards to assess passenger processing performance.

⁶⁶ ANAO Audit Report No.3 1999–2000 *Electronic Travel Authority*, p. 66.

DIAC and Customs now have a Memorandum of Understanding

4.22 The MoU states roles and responsibilities for clearance of passengers and crew at air and seaports. It refers to schedules containing detail of processing, performance and training; however, these were not final until two years after the MoU was signed. The ANAO has evidence of rigorous staff testing in one state (Queensland), and considers that this training would help DIAC to gain assurance about staff proficiency in ETA operation.

4.23 In the MoU, Customs and DIAC agreed they would 'establish regular liaison procedures' at national and operations levels. Quarterly meetings began in November 2006, four years after the MoU began.

Performance assessment arrangements are not yet in place

4.24 DIAC and Customs agreed to adopt a set of performance measures to assess the efficiency and effectiveness of immigration clearance. They agreed to evaluate performance against these measures regularly.

4.25 Customs provides basic reports against service standards on its performance in processing the arrival of international passengers. The original recommendation envisaged comprehensive measures, assessing performance of clearance work. These have not been devised, nor has there been regular performance assessment or evaluation. DIAC advised, however, that it is developing a Passenger Performance Framework, to be used as a quality assurance tool for passenger clearance.

4.26 In October 2006, an internal DIAC review of arrangements for air arrivals noted the absence of formal performance measurements in the MoU. DIAC agreed with the review's recommendation that it put these in place.⁶⁷

Recommendation No.1

4.27 The ANAO recommends that DIAC work with Customs to:

- establish performance indicators to track the timeliness, quantity and quality of passenger processing; and
- regularly review performance against these indicators.

DIAC response: Agreed.

⁶⁷ DIAC, *Review of Arrangements for Arrivals*, Governance and Assurance Branch, 2006, p. 3.

5. Systems Development Processes

This chapter considers whether DIAC has implemented the ANAO's recommendation about computer systems development.

The importance of sound IT governance

5.1 Sound IT governance is an integral part of agency governance. It ensures that the agency's IT strategy is aligned with and supports the agency business strategy, and that:

- control structures are implemented;
- IT-related risks are managed appropriately and resources are used responsibly; and
- IT performance is measured and managed.

5.2 In summary, IT governance is a system of control that ensures that business objectives are achieved. Adopting a systems development life cycle methodology is a normal part of sound IT governance.

The previous audit found deficiencies in systems development processes

5.3 In the earlier audit, the ANAO sought to establish whether, as part of its systems development approach, DIAC had prepared a Business Case for ETAS. It found that the department had adopted a considered approach in developing and implementing ETAS. However, the department had difficulty in demonstrating that it had established a business case. This led the ANAO to make the following recommendation:

Original recommendation 8: The ANAO recommends that DIAC adopt a formal and visible approach to approval and accountability for future significant developments. This may include:

- reviewing the overall effectiveness of the systems development processes; and
- drawing out lessons for the future.

DIAC response: Agreed.

5.4 The ANAO also concluded at that time that DIAC should have used such a review of the ETAS to inform its approach to the implementation of Advance Passenger Processing (APP). When the ANAO examined APP (2005) it found substantial deficiencies in DIAC's system development process and documentation.⁶⁸

IT governance was reviewed in 2005–06

5.5 More recently, as part of its assurance audit work on DIAC's financial statements for 2005–06 the ANAO reviewed the governance, policies, procedures and current practices in place for change management—including project management—at DIAC at an organisational level. It found, inter alia:

- a lack of overall project governance;
- inconsistencies between the employed and approved Systems Development Life Cycle methodologies; and
- limited documentation to evidence a uniform and consistent approach to the approval of changes.⁶⁹

5.6 As a result, the ANAO had made a further recommendation that DIAC review its project management, SDLC and change management policies.

5.7 In the course of the current audit, DIAC advised the ANAO:

The Department has undergone significant changes over the past 18 months in particular much improved governance processes and arrangements have been put in place...

In November 2005 the Border Systems Board was established with oversight of all border-related systems and IT projects including governance of CPS-related projects. This has provided improved visibility of these projects and increased rigour in project management practices...

It is fair to say that not all systems have been brought under the above governance processes yet as some of these systems were managed under contracts with external service providers. However, we are gathering information on these systems as a second wave of process improvements to be implemented in the Department's overall implementation of Project Management, Change Management, Problem Management and Incident Management. These are

⁶⁸ ANAO Audit Report No.34 2005–06, *Advance Passenger Processing*, Chapters 2, 5 and Appendix 4.

⁶⁹ ANAO Audit Report No.48 2005–06, *Interim Phase of the Audit of Financial Statements of General Government Sector Entities for the Year Ending 30 June 2006*. p. 172.

seen as our highest priority processes to be implemented under the [IT Infrastructure Library] framework.

5.8 DIAC has partially implemented the original recommendation. Audit testing during the course of annual ANAO financial statements work for 2006–07 has found evidence of improvement to change management, in particular. However, IT project governance and systems development methodology remain critical issues, given the scale of DIAC’s current IT developments and their importance in supporting DIAC’s substantial change programme. These issues will continue to be examined as part of the ANAO’s ongoing work on DIAC’s financial statements, and will be reported in the ANAO’s report on the financial statements of Australian Government entities.

6. Contract and Financial Management

This chapter considers DIAC's progress in improving its contract management arrangements as recommended in both the original and a subsequent audit. It also considers DIAC's progress in addressing financial management weaknesses raised in the original audit.

Importance of contract management

6.1 Contracting is an integral element in business for Australian Government departments. All contract management activities must be well managed if the contract is to be a success. These activities can be broadly grouped into three areas:

- service delivery management, which ensures that the service is being delivered as agreed, to the required level of performance and quality;
- relationship management, which keeps the relationship between the two parties open and constructive, aiming to resolve or ease tensions and identify problems early; and
- contract administration, dealing with the formal governance of the contract and changes to the contract documentation.⁷⁰

The previous audit found contract management was inadequate

6.2 The ANAO noted that the relationship between DIAC, the contractor and subcontractor was positive. The audit found, however, that DIAC's contract management practices had not provided adequate assurance that the Commonwealth's interests were protected for the future.

6.3 There was no formal monitoring of the contract between DIAC and the contractor. Although the contract included requirements such as regular meetings of a management committee, this was not occurring on a formal basis. The DIAC section responsible for managing the contract had a poor understanding of key terms of the contract.

⁷⁰ Office of Government Commerce, *Contract management guidelines: principles for service contracts*, Her Majesty's Stationery Office, UK, 2002, p .5, available from <http://www.ogc.gov.uk/documents/Contract_Management.pdf> [accessed 13 February 2007]. During the course of this audit, the ANAO also published a Better Practice Guide on Contract Management: ANAO, *Developing and Managing Contracts*, ANAO, Canberra, 2007.

6.4 Some important contract elements were missing or inadequate:

- DIAC did not have access to contractor/subcontractor documents and systems; and
- the ANAO did not have access to contractor/subcontractor records or systems associated with ETA services.⁷¹

6.5 These findings led the ANAO to make the following recommendation:

Original recommendation 7: The ANAO recommends that, to ensure the Commonwealth's interests are adequately protected, DIAC:

- devote appropriately trained and experienced resources to managing its contract with CPS Systems; and
- seek revised contractual provisions at an opportune time that would better protect the Commonwealth interests, (for example, access to documents and systems and contingency provisions for accountability purposes).

DIAC response: *Agreed.*

A further audit also found deficiencies in contract management

6.6 The same issues came to attention again when the ANAO undertook its performance audit of the Advance Passenger Processing (APP)⁷² system. Implementation of APP had been included as a variation into the original ETA System Agreement contract. The audit found weaknesses in DIAC's management of this contract, including:

- a lack of defined procedures to manage contract variations;
- inadequate contract risk management for APP;
- poor processes for formal monitoring and review of the contract;
- absence of both service level agreements and a performance-based arrangement linked to the Contractor's fee base; and
- inadequate succession planning.

⁷¹ ANAO Audit Report No.3 1999–2000 *Electronic Travel Authority*, pp. 73–74.

⁷² APP is also discussed earlier in paras 1.12 and 4.14.

6.7 The audit also found that, although DIAC had paid the contractor to develop the ETAS, DIAC did not own the intellectual property relating to the ETA System (including the APP and Internet ETA systems).⁷³

6.8 Consequently, when the APP audit was tabled in March 2006, the ANAO made the following recommendation:

APP recommendation 3: To assist in protecting the interests of the Commonwealth in its dealings with external parties, the ANAO recommends that DIAC:

- identify its contract management risks relating to APP, analyse these risks, implement treatments, and monitor and review the success of its controls;
- consider developing a performance-based contract by linking its contractor's fee base to key performance areas and outcomes for APP;
- establish a performance management system relating to service levels for APP;
- maintain and organise contract-related documentation for easy and reliable access; and
- define processes and procedures to assist in managing contract variations relating to APP.

DIAC response: *Agreed.*

ANAO's findings from current audit

6.9 DIAC has fully implemented these two recommendations.

Contract variation addressed APP recommendations

6.10 DIAC acted promptly to address the key concerns outlined in the APP audit and negotiated a contract variation, effective from 3 March 2006.

6.11 The ANAO analysed the variation and found that:

- it included comprehensive service levels;
- it introduced comprehensive contract-related documentation, and included reference to newly-updated system specification documents such as the 'ETAS Business System Design'; and
- it referenced procedures for managing contract variations.

⁷³ ANAO Audit Report No.34 2005–06, *Advance Passenger Processing*, p. 120

6.12 The variation did not include new procedures for identifying, analysing or implementing treatment to manage contract risks. It did not include mechanisms to measure risk management success; however, it was only in place for a year.

The new contract strengthens management arrangements

6.13 DIAC and the contractor signed a new contract for the 'provision of the ETAS and APP and related border control systems' on 1 December 2006, effective from 4 February 2007.⁷⁴

6.14 The ANAO analysed the new contract for progress against findings from the original ETA audit and the APP audit, and found that DIAC had addressed all findings arising from these two audits (see Table 6.1).

Table 6.1

DIAC's improved contract management arrangements

Original finding	Current status
No formal monitoring/review of the contract	Contract requires comprehensive contract monitoring and review. DIAC and the contractor are to form: an Executive Committee; a Management Committee; and a Service Delivery Committee to oversee all work under the contract. Also specifies the roles and responsibilities of both parties to maintain a working relationship.
DIAC had no appropriately trained and experienced resources to manage contract with contractor	DIAC and contractor required to establish a Contract Executive role, to work with each other and progress the contract's goals and objectives. DIAC required to establish a Contract Manager, with operational responsibility for the Contract and all contractor deliverables.
DIAC did not have access to contractor and subcontractor premises, documents or systems	Contract requires contractor to '...cooperate with the Commonwealth and any Other Consultant engaged by the Commonwealth to carry out an external audit...'
No ANAO access to contractor/subcontractor records or systems associated with ETA services	Contract requires contractor to '...cooperate with the Commonwealth and any Other Consultant engaged by the Commonwealth to carry out an external audit...'
DIAC to cover subcontractor if it failed to perform its contractual obligations	DIAC no longer has to cover subcontractor if it fails to perform its contractual obligations.

⁷⁴ The contract is titled 'Contract between Commonwealth of Australia represented by and acting through the Department of Immigration and Multicultural Affairs and CPS Systems Pty Ltd for the provision of Services in relation to the Electronic Travel Authority System, Advance Passenger Processing and related border control systems.'

Original finding	Current status
Inadequate contingency provisions	Contract includes a Deed of Continuity of Service which requires the subcontractor to assist the Commonwealth to maintain the continuity and integrity of the System and provide to the Commonwealth those services which CPS provided to the Commonwealth under the contract.
Lack of defined processes and procedures to manage contract variations	Contract requires requests for additional services to form a separate binding contract, signed by both DIAC and CPS. All requests are to be tracked and reported through the Request Tracker tool (discussed further in paragraph 6.21).
Inadequate contract risk management processes	Contractor is responsible for implementing a Project Risk Assessment and a Risk Management Plan.
The need for a performance-based contract	Contract requires benchmarks for evaluation of contractor's performance against the cost of the Services. Contract includes an 'at risk' amount, and in the event of a service level default the contractor is liable to pay DIAC a credit. There is potential to earn back money lost.
DIAC poorly organised contract-related documentation for easy and reliable access (specifically contract variations information and specification documents)	Contract requires detailed specification documentation for all parts of the ETAS and APP Systems, including the ETA System Communications Gateway, and the ETA System Internet Gateway. Rigorous contract variation procedures required, as discussed above.
Contractor owned Intellectual Property Rights (IPR)	The Commonwealth owns the IPR for any new project services.

Source: ANAO analysis of DIAC information.

Financial management

6.15 Government agencies have responsibility for the sound management of public resources. Procurement is an important activity for many departments, and a focus on achieving value for money is required.⁷⁵ The Australian Government's *Financial Management and Accountability Regulations 1997* require that an approver must not approve a proposal to spend public money unless they are satisfied that the proposed expenditure will make efficient and effective use of that public money.⁷⁶

⁷⁵ Department of Finance and Administration, *Commonwealth Procurement Guidelines—January 2005*, Commonwealth of Australia, Canberra, 2004, p.v, available from <http://www.finance.gov.au/procurement/docs/CPGs_-_January_20051.pdf> [accessed 13 February 2007].

⁷⁶ Financial Management and Accountability Regulations 1997, Statutory Rules 1997 No. 328 as amended; made under the Financial Management and Accountability Act 1997, 1 December 2004.

The previous audit found inadequate financial management

6.16 At the time of the audit the ANAO found that the contractor charged DIAC for ETAS transactions and an annual infrastructure fee. There was no mechanism in place, however, to verify that all invoiced services had been delivered before DIAC paid for them. Furthermore, open-ended fees such as travel and accommodation also required verification before payment.

6.17 Consequently, the ANAO made the following recommendation.

Original recommendation 9: The ANAO recommends that DIAC establish procedures to enable it to verify that invoiced services have been delivered prior to certification of contract payments.

DIAC response: *Agreed.*

ANAO's findings from current audit

6.18 The ANAO considers that DIAC has fully implemented this recommendation.

Situation before new contract did not improve

6.19 From the time of the previous audit until March 2006 DIAC continued with existing contract payment arrangements. It could not provide evidence that procedures were in place to verify that services were delivered before it made contract payments.

DIAC now has means to verify invoice charges

6.20 Under the new contract discussed above, previously separate charges (for example transactions and infrastructure), are now streamlined into a flat-fee monthly 'systems services charge'. The contractor must also provide key reports to DIAC on a monthly basis, including detailed tax invoices and performance against service standards. The contractor must certify that the services claimed in each invoice have been carried out in accordance with the contract. Provided that delivery of services has been satisfactory, DIAC pays invoices for the month in arrears.

Requests for additional work

6.21 New requests for work that fall outside of the ordinary services under the contract are charged on either a fixed price or time and materials basis. Since June 2005, all requests for additional work must be entered into the 'Request Tracker' system. Under this system, new development request tasks are entered and allocated a unique activity code. All charges must then be associated to the relevant activity code.

6.22 From March 2007, DIAC was able to provide evidence it has implemented a system to verify that services had been delivered before it paid for those services. Procedures under the new contract give greater assurance that contracted services are delivered prior to payment.

7. ETA Decision-Making and Risk

This chapter considers DIAC's management of its ETA decision-making process in terms of its legislative framework and associated risk management.

The robustness of ETA decision-making

7.1 The audit examined ETA decision-making processes to gain assurance about its robustness in a changing risk environment. This issue came to attention in recent audits of visa management processes.

7.2 ETAs are available only to a selected group of 'low-risk' countries, based on DIAC's risk-rating. Having a valid passport from one of those countries is a criterion that must be met by an applicant to be granted an ETA. When it receives an application from a person with an ETA-eligible passport, DIAC must make a decision, based on the information it gathers, whether to grant or refuse to grant an ETA visa. These decisions must be made in accordance with legislative provisions.

7.3 DIAC has described the process of getting an ETA as 'a very, very light touch visa process.'⁷⁷ It is important that, nevertheless, the process be robust. Therefore, in this chapter, the ANAO examines:

- first, DIAC's risk rating process in granting ETA access to countries;
- second, DIAC's application of the rules for granting an ETA, set out in the *Migration Regulations 1994*. In particular, the discussion focuses on:
 - testing an applicant's bona fides when they apply;
 - testing applicants against public interest and special return criteria set out in the regulations. This requires DIAC to have entered certain data into MAL;
 - testing an applicant's health status;
 - clarifying who makes ETA grant decisions, and when; and
 - whether ETA-holders are aware of their visa conditions.

⁷⁷ DIAC evidence, Senate Legal and Constitutional Affairs Legislation Committee, Budget Estimates hearing, 22 May 2006, p. 122. Available at: <http://www.aph.gov.au/hansard/senate/commtee/S9331.pdf> [accessed 28 February 2007].

Risk-rating countries for ETA eligibility

7.4 A country is included in the ETA list by a gazette notice signed by the minister.⁷⁸ This list has grown only slightly over the years, San Marino being the sole addition since September 2001. Noting that DIAC does not intend to propose any expansion of the list, the ANAO examined how DIAC has managed admission to it.

7.5 DIAC has traditionally focused its assessment of immigration risk for visitors from each country on records of overstay and non-return rates (NRR) of that country's nationals.⁷⁹ It has said that it 'develops visa services for each country based on objective measures relating to visa compliance and associated security or other checks required—this is particularly important in the current global security environment.'⁸⁰ Its strategy for the ETA flows from the work of an interdepartmental committee in late 2000 (see below).

How DIAC risk-rates countries for ETA expansion (19 February 2001)

The then Minister for Immigration and Multicultural Affairs agreed on 19 February 2001 to a range of objective criteria to be used for all future consideration of expansion of the ETA:

- An objective assessment of the immigration risk involved, including:
 - an analysis of the level of protection visa activity by nationals of the particular country over the past two years;
 - NRR trends over the past two years for nationals of the particular country who enter Australia on visitor visas;
 - an objective analysis of the level of fraudulent documentation in the offshore visitor visa application caseload and the security of the national travel document;
 - the rate of cancellation of visitor visas at Australian points of entry and after arrival in Australia; and
 - offshore visitor visa rejection rates;
- satisfactory resolution of financial issues associated with implementation;

⁷⁸ This is achieved under the law by a requirement (r. 1208A(3)(c)) that an applicant hold an ETA-eligible passport, being (r. 1.11B) a valid passport of a kind specified by gazette notice.

⁷⁹ The overstay rate for a country is the proportion of visitors from that country that remains *illegally* after their visa expires. The NRR is the proportion that remains, *legally or illegally*, after expiry of their original visa. The government declined to expand the ETA to countries in South America, citing their relatively high NRR. See government response to the Joint Standing Committee on Foreign Affairs, Defence and Trade report *Building Australia's Trade and Investment Relationship with South America*, (Report No.94, Australian Government, Canberra, 2000), 24 May 2001. Available at: <<http://www.aph.gov.au/house/committee/jfadt/samer/SAresponse.pdf>> [accessed 28 February 2007].

⁸⁰ DIAC, Australian Submission in respect of EU Regulation 851/2005. It has long maintained that inclusion of countries on the ETA list is an objective decision. See, for example, Joint Standing Committee on Migration, transcript of evidence, 5 February 1999, p. 15.

- resolution of any security concerns (on advice);
- consideration of bilateral foreign affairs and trade issues (on advice); and
- tourism issues (on advice) including:
 - whether the particular country has been identified by Tourism Australia (TA) as a key emerging market; and
 - the size and yield of the current tourism market and TA estimates of the size and yield of the market in future.

Where relevant, consideration is given to whether the United States of America, Canada or the Schengen states⁸¹ have offered visa waiver status to the country under consideration.

7.6 Under this approach, DIAC's starting point when considering ETA expansion has remained the NRR for the country. Only where the NRR rate is around or below the global NRR average would other criteria be examined.⁸²

7.7 DIAC uses these ETA-eligibility categories in other ways, for example, to set performance targets for visa processing. It reports its processing performance to Parliament for 'high risk' and 'low risk' countries, where a 'high risk' country means one not on the ETA list⁸³ and 'low risk' means one that is.⁸⁴

ETA risk-rating is not determined by formula

7.8 Although DIAC's approach uses several objective measures of compliance, ETA access is not determined by formula, for the following two reasons:

- (1) First, risk rating has been used in *adding* countries to the ETA list. But Australia has never subsequently *withdrawn* access to the ETA, even where immigration risk has subsequently deteriorated to the point which would prohibit access for a new country with similar figures.

⁸¹ The 1985 Schengen Agreement among certain European states abolishes border controls between participating countries and includes provisions on common policy on temporary entry, harmonisation of external border controls and cross-border police co-operation.

⁸² DIAC, *Immigration issues: Poland, Slovakia and the Czech Republic*, email from DIAC to the Department of Foreign Affairs and Trade, 22 November 2001.

⁸³ DIAC is sometimes inconsistent in its use of these categories. For example, for another visa type it states that 'No Working Holiday Maker Agreements are in place with High Risk nations' (Portfolio Budget Statement 2006–07, p. 64). However, such an agreement exists for Cyprus, which is not an ETA-eligible country and, by the above definition, is 'high-risk'.

⁸⁴ See, for example, Department of Immigration and Multicultural Affairs, *2005–06 Annual Report*, Commonwealth of Australia, Canberra, 2006, pp. 90–5. The department has set performance targets and reported performance for its Output 1.1 (Non-humanitarian entry and stay) using these two categories in recent years.

For example, DIAC developed integrity concerns for applicants from certain countries, such as Greece, Malaysia and the Republic of Korea. In these cases, it examined making the e676 electronic visitor visa available instead of the ETA, to improve security. However, DIAC regards such a move as a last resort.⁸⁵

- (2) Second, the objective measures DIAC uses are required only to be 'taken into account'. It must also consider discretionary matters, especially where it depends on advice from other agencies.

7.9 This means that ETA-eligibility as an indicator of immigration risk has limitations: it may not reflect current objective data and may reflect other government priorities. For example, ETA access has recently been represented by DIAC as a 'reciprocity issue': it is provided by Australia as 'quid pro quo' for visa-free access to that country by Australians.⁸⁶

7.10 DIAC has limited capacity to change the ETA system to gather more information from applicants to improve security checking. This has led to its current position of not seeking to add countries to the list. In any case, DIAC confirmed that it does not monitor and update the calculation of the risk rating of ETA countries on a routine basis.⁸⁷ Given that it is also impracticable to remove countries from the list, that list is now effectively frozen as a representation of a pre-2001 view of immigration risk.

7.11 A further complexity has been introduced with the recognition that some individuals from low immigration risk countries can pose security risks—the 'home-grown terrorist' problem.⁸⁸

7.12 DIAC's actual management of the risk of allowing individuals to enter Australia depends primarily on the processes it applies at visa grant (discussed

⁸⁵ DIAC, *Strategies for Managing the Visitor Visa Program*, November 2004. DIAC has done an analysis of ETA countries to determine which pose compliance and integrity problems ('The ETA Project'). This identified Malaysia and the Republic of Korea as needing high priority attention but did not consider possible changes to regulations or the possibility of removing countries from the ETA list.

⁸⁶ See, for example, Senate Legal and Constitutional Legislation Committee, transcript of estimates hearings, 4 November 2003, pp. 70 and 72.

⁸⁷ DIAC, email advice to the ANAO, 15 December 2006. In contrast, in mid-1998 departmental officials advised a Senate committee that the department was 'always reviewing what countries are on the ETA'. (Legal and Constitutional Legislation Committee, estimates transcript, 3 June 1998, p. 144).

⁸⁸ This was canvassed in evidence to the Joint Standing Committee on Migration. See: transcript of evidence to Joint Standing Committee on Migration, *Immigration entry arrangements for the Olympic Games*, 3 March 1999, p. 203. It was also noted at the highest levels of government following the terrorist attacks in London in July 2005. Prime Minister of Australia, 2005, *Joint Press Conference with the Attorney General*, available from <<http://www.pm.gov.au/media/interview/2005/Interview1632.cfm>> [accessed 2 March 2007].

below) and those associated with travel to Australia and clearance processes at the port of entry (including the passenger card).

7.13 Taken together, all of this casts doubt on the continued usefulness of DIAC's current division of countries into 'high-risk' and 'low-risk' as it is, at best, dated and of declining accuracy. The ANAO considers that DIAC needs to reconsider its use of these categories.

7.14 DIAC's future strategy, based on the proposed 'eVisitor' platform for all visitor visas, is planned to include an enhanced capacity to seek information from applicants and check claims on a risk basis. This is an approach that can provide improved flexibility in managing risk.

Law and process: getting an ETA

7.15 DIAC has done no specific risk analysis of processes for ETA decision-making. This means that it has not systematically analysed and reviewed potential or actual opportunities for improvement or refinement in the system of rules and their practical implementation.⁸⁹ DIAC advised that: 'We update the ETA policy when we have seen a need, either by receiving requests from overseas posts or a complaint from the client users. The policy updates are on an ad hoc basis, though.'⁹⁰

7.16 The ANAO considered DIAC's processes for ETA-decision-making against the legal and policy framework that governs the ETA, as set out in the *Migration Act 1958*, the Migration Regulations 1994 and DIAC's PAM3 guidelines. Appendix 1 sets out a summary of essential requirements, identifying relevant law, regulation and principal processes.

DIAC cannot test the applicant's bona fides at application

7.17 The bona fides criterion for an ETA requires the applicant to state an intention to visit Australia only temporarily for tourism or business purposes. 'Bona fides' is a reference to the genuineness of that intention. DIAC considers this criterion has been satisfied unless there is contrary evidence.⁹¹ But even where contrary evidence is available (such as through MAL), the relevant regulation does not allow DIAC to test the applicant's intention.

⁸⁹ This is a separate issue from a risk analysis of components of the operational system, such as the equipment and communications facilities. The only compliance and integrity analysis of ETA use that the ANAO is aware of is the ETA Project, referred to in footnote 85.

⁹⁰ DIAC advice to the ANAO, 15 December 2006.

⁹¹ DIAC, PAM3: Sch2Visa 975 Electronic Travel Authority (ETA), Item 7.1.

7.18 In Seoul, in September 2005, an ETA applicant's legal adviser challenged a DIAC decision to refuse an ETA. DIAC's subsequent legal advice was that:

once a person has stated an intention only to visit Australia temporarily for tourism purposes they have done enough to meet the criteria [sic] in clause 976.222 [of the Regulations]. A delegate cannot look behind the stated intention and test it for genuineness.⁹²

7.19 This means that this regulation requires only that the applicant make the statement but does not provide for the truth of the statement to be tested. Thus, the drafting of the criterion is not effective.

7.20 The legal opinion also explains that it remains possible to cancel such a visa.⁹³ Subsequently, DIAC advised its Seoul post that:

if the applicant insisted on proceeding with the ETA, they could not refuse. However, we suggested they counsel the applicant that grant of an ETA would likely lead to questioning and possible cancellation of the visa at the border and ... they could offer the alternative of a s/c 676 application, which would offer more certainty.⁹⁴

7.21 The ANAO considers this would be better addressed by seeking changes to the wording of the regulation. DIAC advised that it was aware of the issue and was considering when would be the best time to seek a legislative change.⁹⁵

7.22 This is not a new issue: it first arose several years ago. For example, in 2004, an internal DIAC legislative change proposal to amend similar wording for the sub-class 676 visitor visa stated, *inter alia*:

⁹² DIAC, internal legal advice provided to Tourism Delivery Support Section, September 2005.

⁹³ *ibid.*, 'Paragraph 2.43(1)(k) provides that a subclass 976 visa may be cancelled, despite the grant of the visa, if the Minister is satisfied that the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to visit Australia temporarily for tourism purposes.'

⁹⁴ DIAC, email advice from Director, Tourism Delivery Support Section to A/g Assistant Secretary Temporary Entry Branch, 12 July 2006.

⁹⁵ DIAC advice to the ANAO, 2 February 2007. DIAC also advised that 'there may be reasons for other forms of harmonisation between the policy settings for ETA and non-ETA types of visitors.' The ANAO takes this as a reference to DIAC's strategic direction in the further development of the eVisa system through the implementation of the proposed eVisitor platform with an increased capacity for tailored collection of information from applicants and better security checking.

The regulations do not contemplate the situation where an applicant may state acceptable answers but the case officer assessing the application wishes to undertake further checks about the applicant's bona fides.⁹⁶

7.23 DIAC further advised it will 'review the legislative criteria relating to an applicant's purpose and intention of visit across all ETA subclasses with a view to bringing them into line with the current policy and practice of the ETA.'⁹⁷

Data entry into MAL is not quality assured, limiting effectiveness

7.24 DIAC's decision-making process for ETAs is critically dependent on its use of MAL (as discussed in Chapter 3). A comparison of the applicant's details with records on MAL is the only way of identifying an applicant—before the visa decision—who might not satisfy a public interest criterion or a special return criterion.⁹⁸

7.25 DIAC is uniquely placed to record certain information in MAL. To maximise the effectiveness of MAL, DIAC needs assurance that its own officers enter this information reliably, consistently and promptly. For example, it should be possible to compile from other DIAC records a list of removals and deportations and check that against MAL to ensure its records are complete.

7.26 DIAC has procedures for entering relevant data of this sort into MAL. But it has not done any quality assurance of the sort outlined above. Therefore it cannot be confident that these procedures are carried out to its satisfaction.⁹⁹

7.27 DIAC has, however, adopted a new national quality assurance framework. This provides an opportunity to quality assure that part of data entry into MAL over which DIAC has end-to-end control.

⁹⁶ DIAC, Legislative Change Plan, 22 October 2004. Another similar change occurred on 1 July 2005 for the subclass 417 Working Holiday Maker (WHM) visa. Before that change, WHM visa applications lodged on the Internet were 'not legally able [to be] assessed for bona fides like applications using paper forms.' If an applicant using the Internet, *stated* that they met the requirements of the WHM visa in their application, a visa was granted and a decision maker could not refuse a visa on bona fides grounds.

⁹⁷ DIAC, email advice of 26 March 2007.

⁹⁸ When DIAC designed the ETA it specifically intended that MAL would be the mechanism for detecting those who might not satisfy these criteria. See DIAC, minute to the minister, 'Proposed Amendments to the Migration Regulations 1994 to introduce the Electronic Travel Authority', undated but *circa* May 1996.

⁹⁹ A related issue was raised in a DIAC internal audit in February 2003 (*Review of the Movement Alert List in a Business and System Context*, s. 3.10, p. 20) which found that character refusal cases which should be entered into MAL 'may at times be overlooked'.

Recommendation No.2

7.28 The ANAO recommends that DIAC undertake a programme of quality assurance of the immigration data it enters into the Movement Alert List to test its completeness and currency.

DIAC response: Agreed.

DIAC does not satisfy itself as to applicants' health status

7.29 To grant an ETA the delegate must be satisfied that the applicant satisfies Public Interest Criterion (PIC) 4005, which requires, among other things, that they be free of tuberculosis and other conditions that could threaten public health in Australia. However, in practice, DIAC does not test this health criterion before granting an ETA. DIAC's policy instruction says:

- although PIC 4005 is a prescribed Schedule 2 criterion for all ETA sub-classes, ETA applicants do not make a health declaration when they apply for their visa.¹⁰⁰ Instead, if, before or after ETA grant, it comes to attention that an ETA holder does not satisfy PIC 4005, steps would be taken to block or cancel the ETA;
- A MAL listing for health or any other reason would preclude ETA grant.¹⁰¹

7.30 This reflects the fact that DIAC collects no information about the health of ETA applicants through the ETAS.¹⁰² DIAC poses no questions of applicants about their health when they apply for an ETA. The only occasions when DIAC does hold such information in advance is:

- where a person has visited Australia before and come to departmental attention for a health-related reason; or
- where they have previously applied for a visa, have been refused and failing PIC 4005 was a part or whole of the basis of refusal.

¹⁰⁰ 'Declaration' is the term used to refer to an assertion by an applicant in their application, about their circumstances, relevant to deciding whether to grant the visa.

¹⁰¹ This is an inaccuracy in the DIAC policy instruction. A MAL listing does not, of itself preclude the grant of a visa. Rather, it draws to the attention of the delegate making the visa decision information that they may need to take into account in making that decision.

¹⁰² DIAC has advised a Senate Estimates committee: 'the Electronic Travel Authority is not set up so that the issue of health concern is assessed as part of the visa. It is assessed as part of the incoming passenger card ...' (Legal and Constitutional Legislation Committee, transcript of estimates, 1 November 2005, p. 121.)

7.31 Many ETA applicants are unlikely to have sought a visa or visited Australia before. DIAC will not hold any information on their health in MAL. This means that, when they apply for a visa, the delegate is expected to attain a state of satisfaction about the health of these applicants with no relevant information except their country of passport and age.

7.32 Research during the course of the audit showed that DIAC had not originally envisaged including a health criterion among those to be satisfied for an ETA grant. From the outset, the department intended to control the health risk of ETA visitors, particularly in relation to tuberculosis, not at the point of visa grant but by applying a condition to the visa that the holder be free of TB and questioning them using the passenger card they must complete upon arrival.¹⁰³

7.33 DIAC advised that its policy on this matter was settled in agreement with the then Department of Health and Family Services in May 1996, before ETA implementation. DIAC then decided to include the health criterion. Its objective in doing so had been primarily to detect applicants who, after being refused a visa of another type, then sought an ETA. Thus it had not intended to check the health of every ETA applicant: it merely wished to identify those who had previously been refused and who were seeking a way of overcoming that refusal by obtaining an ETA.¹⁰⁴

7.34 This means that DIAC sought to include a criterion in the regulations knowing that, in practice, it would not follow it in most instances. DIAC has characterised this as administering beneficially: that is, in the absence of information, it assumes the best for the applicant.

7.35 Presumably, it would not be satisfactory for DIAC to elect to 'administer beneficially' in the absence of *any* information about the client where that information is required to satisfy regulatory criteria. It is not clear where DIAC derives the authority to treat any particular ETA criterion this way. This raises doubts as to the robustness of DIAC's approach.

¹⁰³ See DIAC, minute to the minister, 'Proposed Amendments to the Migration Regulations 1994 to introduce the Electronic Travel Authority', undated but *circa* May 1996 and also evidence provided by DIAC to the Joint Standing Committee on Migration in 1995. DIAC advised the ANAO (10 January 2007) that there has been no cancellation over the two years 2004–06 for health reason where the passenger has ticked the tuberculosis box on the incoming passenger card.

¹⁰⁴ DIAC has not confirmed (or challenged) this interpretation.

7.36 On the face of it, a better strategy to achieve DIAC's objectives would have been to propose a criterion specifically directed at those ETA applicants who had previously been refused a visa for a health reason.

7.37 DIAC advised that it will 'review PIC 4005 relating to the health requirement with a view to bringing it into line with the current policy and practice of the ETA.'¹⁰⁵

It is not clear who makes ETA grant decisions, or when

7.38 At the time of application for an ETA, when an ETA applicant's details are submitted to the ETAS Application Processor, provided no match occurs against MAL, a message is sent back to the applicant or travel agent stating 'ETA Approved'. Prima facie, the actual decision to grant each ETA is formally made later by the Entry Operations Centre (EOC) shift supervisor. This is done in batches, on-screen, within hours of the 'ETA Approved' message being transmitted.¹⁰⁶

7.39 The ANAO sought to clarify whether there are risks in advising the applicant that an ETA is 'approved' before a formal grant has taken place. DIAC advised that all 'approved' ETAs become granted ETAs:

When the client/agent is advised that the ETA has been 'approved' the department accepts, and indeed intends, that they will interpret the message to mean the ETA has been granted. Whilst technically in the background the ETA has not yet been granted by the EOC officer, ALL ETAs that are sent to the EOC are granted [emphasis in original].¹⁰⁷

7.40 If every ETA that is sent to the EOC is granted then it is doubtful that the EOC is making any decision about the grant. The EOC is merely recording the fact of the grant on DIAC's computer systems. For any particular case, uncertainty about whether an ETA will be granted is terminated as soon as the 'ETA approved' message is returned. This must, therefore, be the actual point at which the decision is made.

7.41 Under s. 67 of the Migration Act, a decision to grant a visa is made by recording it. On the face of it, that decision is made by a computer program, in the Application Processor, by being recorded in a batch of visa details later

¹⁰⁵ DIAC, email advice of 26 March 2007.

¹⁰⁶ DIAC advised that it does not monitor the elapsed time between batches of data arriving from the Application Processor and grant by the EOC. It advised that 'EOC staff periodically in each shift retrieve the batch for grant.' (DIAC email advice to the ANAO, 2 February 2007.)

¹⁰⁷ DIAC email advice to the ANAO, 2 February 2007.

transmitted to DIAC. ETAS system documentation shows the system includes an explicit process entitled 'Grant Visa', which supports this interpretation.¹⁰⁸

DIAC has made no arrangements for ETAs to be granted by computer

7.42 The Migration Act was amended in 2001 to allow the minister to make an arrangement for the use of computer programs under the minister's control to make decisions (s. 495A). DIAC originally intended to use this power to allow computer decision-making for the ETA.¹⁰⁹ It has not sought to implement computer-based decision-making for the ETA and has not made such an arrangement under the Act.

7.43 If the Applications Processor is making the decisions DIAC needs to address two matters:

- First, it should put in place a suitable arrangement to authorise decision-making by computer.
- Second, it should consider whether the computer program now making the decisions is under the control of the minister. This is a requirement for arrangements under the Act for computer decision-making. The computer program in this case is the property of a private contractor and operates on private equipment located in private premises.

7.44 DIAC advised the ANAO that:

The department believes its processing arrangements for ETAs have been correct to date. However, the department intends to ensure that the ETA auto-grant processing arrangements are covered under s. 495A of the Migration Act, consistent with recent changes made for the e-Working Holiday Maker visas, to remove any ambiguity about the decision making process.¹¹⁰

ETA holders are unlikely to be aware of visa conditions

7.45 The grant of any of the three sub-classes of ETA automatically attracts a set of mandatory conditions set out in the Migration Regulations.¹¹¹ These

¹⁰⁸ CPS Systems, ETA System—Business System Design, v. 1.0, 30 June 2006, pp. 48–9.

¹⁰⁹ DIAC advised the ANAO that it had first sought legal advice from AGS on 14 January 1999 regarding possible Migration Act amendment options to create an authority in the Act for ETA electronic grants (DIAC 2006, 'Summary of development of s. 495A—final', paper prepared to answer questions posed by the ANAO, 7 March).

¹¹⁰ DIAC, advice to the ANAO, 24 March 2006.

¹¹¹ Schedule 8 of the Migration Regulations specifies all of the conditions that may be applied to visas. The conditions differ among ETA subclasses: in short, visitors attract a 'no work' condition (8101) but business entrants attract a 'no work that could be done by an Australian citizen/resident' condition (8112).

conditions may, for example, prohibit or limit the visa-holder's rights to work while they are in Australia.

DIAC agreed to improvements recommended in 2004

7.46 If visitors are not aware of their visa conditions they are less likely to adhere to them. The ANAO found, in its performance audit in 2004 of DIAC's onshore compliance strategy, that ETA visa holders form around a quarter of the overstayer population.¹¹² Effective delivery of information to ETA holders about their obligations was queried by the ANAO. The audit recommended:

To assist in deterring non-citizens from overstaying or working contrary to their visa conditions, the ANAO recommends that [DIAC] 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.¹¹³

7.47 The department agreed, saying it would '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.' It did not specify what those steps would be.

7.48 DIAC's current onshore compliance strategy reinforces this intention:

individuals must be aware of the conditions of entry to Australia on visas for which they apply, and be convinced that breaches of those conditions will be detected.¹¹⁴

DIAC has not improved its performance in informing ETA-holders

7.49 DIAC advised that, where an applicant seeks an ETA through the Internet, he or she will always see the conditions attached to the grant of the ETA. They are displayed on-screen to during the application process.¹¹⁵ Those

¹¹² ANAO Audit Report No.2 2004–05, *Onshore Compliance—Visa Overstayers and Non-Citizens Working Illegally*, p. 61.

¹¹³ *ibid.*, Recommendation No.3, p. 62.

¹¹⁴ Department of Immigration and Multicultural Affairs, *DIMA onshore compliance strategic plan: to June 2006*, DIAC, Canberra, 2005, p. 17.

¹¹⁵ CPS Systems Pty Ltd, date unknown, *Australian Electronic Travel Authority*, available from: <<http://www.eta.immi.gov.au/ETAAus5En.html>> [accessed 5 March 2007].

applicants referred to an overseas post will be counselled by DIAC staff. For the great majority, who use a travel agent, DIAC makes available a short brochure on its Internet site that it expects travel agents to print and provide to their customers after arranging an ETA.¹¹⁶ This appears to be the same approach that has been in place since the inception of the ETA. The ANAO found that this brochure sets out a general and incomplete version of the visa conditions applicable to ETAs.¹¹⁷

7.50 The ANAO sought DIAC's advice as to what assurance it has that ETA-holders are aware of their visa conditions. It is impractical to expect the department to ensure that travel agents reliably and consistently provide the DIAC brochure to clients or that those who use the Internet application mechanism always read and understand the conditions set out on-screen. But it would be possible for the department to test awareness, perhaps through a sample survey of visitors entering Australia. DIAC's evidence to a Parliamentary committee in May 2006 shows that it doubts that ETA holders are aware of their conditions:

For the vast majority of tourists that come to Australia, for example, they go through a very, very light touch visa process and they are not across all the details of the conditions that might apply. The vast majority of them come on an electronic travel authority where these things are just not laid out in any detail.¹¹⁸

7.51 DIAC advised the ANAO that it will 'examine ways in which clients can be better informed about the conditions of their ETAs.'¹¹⁹



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18 July 2007

¹¹⁶ DIAC, *ETAS Electronic Travel Authority Information for ETA Holders*, DIAC, 2002, available from: <http://www.immi.gov.au/allforms/booklets/iforms_alpha.htm#e> [accessed 27 February 2007].

¹¹⁷ For example, the leaflet does not mention the condition restricting access to study or training and it gives an inaccurate account of the condition relating to criminal convictions.

¹¹⁸ DIAC evidence, Senate Legal and Constitutional Affairs Legislation Committee, Budget Estimates hearing, 22 May 2006, p. 122. Available from: <<http://www.aph.gov.au/hansard/senate/commtee/S9331.pdf>> [accessed 28 February 2007].

¹¹⁹ DIAC, email advice to the ANAO, 26 March 2007.

Appendices

Appendix 1: DIAC's ETA Decision-making Process

Legal requirement	Process
A non-citizen who wants an ETA visa (Class UD) must apply for a visa of that class (s. 45). There is no specified application form (r. 1208A(1)). They can apply in person, by telephone, in writing or electronically (rr. 1.18, 2.07AB).	Generally, a person applies through a travel agent or airline office, over the Internet, or at a DIAC overseas post. 'Minimal bio-data only is required.' Applications from travel agents/airline offices are transmitted to ETAS Communications Gateway, Atlanta, which does data validation and transmits it to ETAS Application Processor, Sydney. Similarly, Internet data flows via Internet server to Application Processor. ¹²⁰
Application may be made outside Australia or in immigration clearance (r. 2.07AB(2)).	The ETAS Application Processor checks DIAC records on its TRIPS system to ensure the applicant is not recorded as being currently in Australia.
Visa application charge (VAC) is payable only for a subclass 956 (Business Entrant—Long Validity) ETA (r. 1208A). Application is invalid if VAC not paid; must not be considered (s. 46).	ETAS Application Processor enables the VAC payment to be made by credit card and does not allow the transaction to progress without a successful payment transaction. (Subclass 956 ETAs are not available over the Internet.)
Delegate must grant visa if and only if satisfied health and other prescribed criteria are satisfied (s. 65(1)); specific criteria set out below (rr. 956.2; 976.2 and 977.2).	ETAS Application Processor tests application data against criteria (see the next four items in this table, below).
Applicant must hold an ETA-eligible passport.	ETAS Application Processor checks that applicant's country of passport is eligible.
['Bona fides' requirement]: applicant states intention only to visit Australia temporarily for business/tourism purposes	DIAC's policy guide (PAM3) states that 'It is policy that an applicant satisfies this criterion unless there is evidence to the contrary.'
Applicant satisfies public interest criteria (4002, 4003, 4004, 4005, 4013 and 4014). If applicant has previously been in Australia, they satisfy special return criteria 5001 and 5002.	A check against MAL determines if these criteria are met. ETA Application Processor checks applicant's details against MAL. If match occurs, further processing stopped; applicant referred to DIAC post for further consideration.

¹²⁰ CPS Systems, *ETA System: Business System Design*, v. 1.0, 30 June 2006.

Legal requirement	Process
Applicant must be outside Australia at time of grant (r. 976.412 et al). Delegate must notify applicant in prescribed way of decision to grant visa (s. 66(1)).	Provided no match occurs against MAL, a message is sent to the applicant or agent: 'ETA Approved'.
Minister may arrange for a computer program to make decisions (s. 495A).	No arrangements have been made for ETA visa to be granted by computer.
Decision to grant a visa may be made at any time after application is made (s. 63(1)). A visa is to be granted causing a record of it to be made (s. 67).	Every five minutes, ETAS Application Processor batches and downloads application records to DIAC systems. Entry Operations Centre shift supervisor formally grants visas, in batches, on-screen, from minutes to hours later.
ETA holders subject to a range of conditions including restrictions on work, study or training while in Australia (s. 41, r. 2.05).	Internet applicant will see ETA conditions on web site. ¹²¹ DIAC states it instructs travel agents to counsel clients about conditions or hand out a paper form. ¹²² DIAC states its overseas posts counsel clients on conditions.
ETA-holder travels to Australia and must complete passenger card on arrival (s. 166(1)(b), r. 3.03).	Passenger card includes the questions: (a) 'Do you currently suffer from tuberculosis?'; and (b) 'Do you have any criminal conviction/s?' (r. 3.02). Card must be given to Customs officer at the primary line.

¹²¹ CPS Systems, *Australian Electronic Travel Authority*, CPS Systems, Australia, 2007, available from <<http://www.eta.immi.gov.au/ETAAus5En.html>> [accessed 27 February 2007].

¹²² DIAC, *ETAS Electronic Travel Authority*, Department of Immigration and Citizenship, 2002, available from <<http://www.immi.gov.au/allforms/pdf/1147.pdf>> [accessed 27 February 2007].

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