

The Auditor-General
Audit Report No.56 2010–11
Performance Audit

Administering the Character Requirements of the *Australian Citizenship Act 2007*

Department of Immigration and Citizenship

Australian National Audit Office

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of Australia 2011

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Canberra ACT
23 June 2011

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Department of Immigration and Citizenship with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit and the accompanying brochure to the Parliament. The report is titled *Administering the Character Requirements of the Australian Citizenship Act 2007*.

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 and title.

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

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Abbreviations

AAT	Administrative Appeals Tribunal
ACIs	Australian Citizenship Instructions
ANAO	Australian National Audit Office
APS	Australian Public Service
Citizenship Act	<i>Australian Citizenship Act 2007</i>
CTP	Citizenship Training Program
DIAC	Department of Immigration and Citizenship
EL	Executive Level
GM-Citizenship	Global Manager-Citizenship, Settlement and Multicultural Affairs
IRN	Interpol Red Notices
MAL	Movement Alert List
Migration Act	<i>Migration Act 1958</i>
MOU	Memorandum of Understanding
Minister	Minister for Immigration and Citizenship
NatO	National office
NCCC	National Character Consideration Centre
OPC	overseas penal certificate
PBS	Portfolio Budget Statements
s501	Section 501 of the <i>Migration Act 1958</i>
STOs	State, territory, regional and area offices

Summary and Recommendations

Summary

Introduction

1. The Department of Immigration and Citizenship's (DIAC's) purpose is to build Australia's future through the well-managed entry and settlement of people. To achieve its purpose, in 2010–11, DIAC had a budget of \$2.2 billion and 7284 full-time staff located in Australia and overseas.¹

2. The concept of Australian citizenship was introduced in 1949 and is viewed as a privilege and the desirable culmination of a person's migration journey. A person may become an Australian citizen automatically or by application. Generally, persons born in Australia to one or more parents who are Australian citizens or permanent residents acquire citizenship automatically. Persons born outside Australia can apply for citizenship in four ways—by descent, adoption, resumption or conferral. Since 1949, over four million people have successfully applied for and become citizens. In 2009–10, 139 167 applications for citizenship were decided and 131 371 applicants acquired citizenship.

3. DIAC is responsible for administering Australian citizenship in accordance with the *Australian Citizenship Act 2007* (Citizenship Act), the *Australian Citizenship (Transitionals and Consequentials) Act 2007* and the *Australian Citizenship Regulations 2007*. The *Australian Citizenship Instructions* (ACIs) support the Citizenship Act and outline DIAC's policy as it relates to citizenship. To become a citizen by application, applicants must meet eligibility criteria, as outlined in the Citizenship Act, including requirements relating to the applicant's character.

The good character requirements

4. The Citizenship Act requires that applicants for citizenship satisfy the Minister for Immigration and Citizenship (Minister) that they are of good character at the time of a decision on their application. Good character has not

¹ Department of Immigration and Citizenship, *Portfolio Budget Statements 2010–11, Immigration and Citizenship Portfolio, Budget Related Paper No.1.13*, Commonwealth of Australia, May 2010, pp.6, 13, 21, 30, 39, 46, 64 and 72.

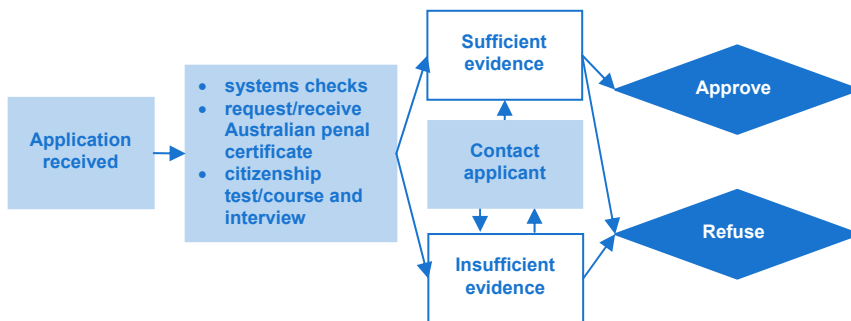
been defined, but the ACIs outline the factors that should be considered when assessing character, including:

- type, seriousness and recurrence of criminal behaviour, in Australia and overseas, and the penalty conferred;
- involvement in crimes against humanity;
- length of time between last offence and application for citizenship;
- employment status, community involvement and reputation in the community; and
- stability of family life.

5. Case officers in DIAC's state, territory, regional and area offices (STOs) have been delegated the authority to assess and decide citizenship applications, including those from applicants of potential character concern. Figure 1 illustrates the key steps in the path from DIAC receiving a citizenship application to its decision whether to approve or refuse citizenship (Appendix 2 describes the process in more detail).

Figure 1

Key steps—citizenship application to approval/refusal



Source: ANAO representation.

6. In the vast majority of cases, DIAC approves the application because the applicant meets the eligibility criteria and the Minister is satisfied that they are of good character. However, in a small number of cases, the Minister was not satisfied that the applicant was of good character and citizenship was refused on the grounds that the person did not meet the good character requirements. Of the 2.5 per cent (3443) of applicants refused citizenship in 2009–10, seven per cent (242) of applicants were refused citizenship on character grounds.

Audit objective and scope

7. The objective of this audit was to assess the effectiveness of DIAC's administration of the character requirements of the Citizenship Act. Particular emphasis was given to the following areas, as they related to the character requirements:

- policies, guidance and training for staff to support the administration of the character requirements;
- processes to identify clients of character concern, administer cases and make decisions; and
- management arrangements supporting citizenship processing.

8. Concurrent with this audit, the ANAO audited the effectiveness of DIAC's administration of the character requirements of the *Migration Act 1958* (Migration Act). The migration audit (ANAO Audit Report No.55 2010–11, *Administering the Character Requirements of the Migration Act 1958*) has been tabled as a compendium report to this audit.

Overall conclusion

9. DIAC encourages and facilitates people becoming citizens, enabling them to fully participate in all aspects of Australian life. However, DIAC must balance this objective with the need to maintain the integrity of the Citizenship Act and gain reasonable assurance that applicants granted Australian citizenship meet the eligibility requirements.

10. To be approved for citizenship, the applicant must satisfy the Minister that they are of good character. Of the approximately 140 000 applications DIAC finalises each year, only a small proportion (242 applicants in 2009–10) are refused citizenship on character grounds. While the number of applicants refused citizenship on character grounds was relatively small, it is important that DIAC effectively administer the good character requirements to increase the likelihood that those approved citizenship are of good character and to reduce the risk that persons of significant character concern are granted citizenship.

11. Overall, DIAC has established an appropriate framework for administering the character requirements of the Citizenship Act and to conclude that an applicant is of good character. This framework includes clear roles and responsibilities that are understood by all stakeholders, comprehensive training for decision-makers about the character requirements

and sound processes for recording citizenship decisions. DIAC also has satisfactory processes for identifying applicants of potential character concern.

12. However, there are aspects of the implementation of this framework that reduce its effectiveness. These include:

- variability in the application of processes for decision-making by DIAC case officers;
- the term ‘good character’ is not defined, for administrative purposes, in DIAC’s policy and guidance materials; and
- limited interaction between the areas within DIAC that administer the character requirements of the Migration Act and the Citizenship Act in relation to the processing and referral of cases concerning the same client.

13. The variability in the application of processes for decision-making is the result of a number of factors. Citizenship decision-making is decentralised, with most decisions, including character decisions, being made by around 150 junior officers in DIAC’s state and territory offices. Such administrative arrangements place a premium on guidance and training for staff along with effective arrangements to oversee the quality of decision-making. However, the guidance available to decision-makers is general and, in some cases, out of date. While citizenship training is comprehensive, it is not mandatory for all decision-makers and attendance has been variable. Input or review of decision making by senior officers also varies, but is generally minimal.

14. The Citizenship Act and relevant guidance do not define ‘good character’. This allows decision-makers considerable discretion when applying the character requirements. In practice, DIAC has focused on criminal convictions when interpreting the character requirements. Other factors that might be relevant to a person’s character, such as general conduct and associations with criminal individuals or groups, are not often considered when identifying applicants of potential character concern. This is, primarily, because reliable evidence to support a decision on these grounds is generally more difficult to obtain and may be less definitive.

15. The separate character requirements of the Migration Act and the Citizenship Act intersect at certain key points. However, there is no policy or protocol to facilitate interaction between the areas within DIAC that administer the character requirements of the Migration Act and the Citizenship Act. This lack of communication and coordination has resulted in uncertainty about how

to process persons who have applied for citizenship and who are also being considered for visa cancellation under the Migration Act, and persons refused citizenship on serious character grounds not being referred for character consideration under the Migration Act.

16. DIAC's administration of the character requirements would be strengthened if the department determined, for administrative purposes, the standards of behaviour it considers acceptable for applicants to meet the good character requirements of the Citizenship Act. Reviewing the guidance materials, mandating the citizenship training program for all decision-makers and implementing a national assessment and decision review process would also contribute to greater consistency in citizenship decision-making. Also, developing a protocol for administering the character requirements of the Migration Act and Citizenship Act would establish a basis for enhanced cooperation between the relevant areas within DIAC and facilitate the more effective processing of DIAC's visa and citizenship clients. To this end, the ANAO has made three recommendations aimed at improving the effectiveness of DIAC's administration of the character requirements of the Citizenship Act.

Key findings

Policy, guidance and training

17. Citizenship decision-making, including consideration of an applicant's character, is decentralised. Case officers in DIAC's STOs receive, process and decide citizenship applications. In 2009–10, the 187 delegated citizenship decision-makers located in STOs made 91 per cent of citizenship decisions. Appropriately, most citizenship decisions are straightforward and are made by junior case officers (usually at the APS 4 level). However, even complex cases that require judgement and discretion, such as those involving character issues, were made by junior case officers with little or no input or review by team leaders or supervisors. DIAC's guidance does not provide direction to case officers about when to escalate or discuss a case with senior officers and approaches differed between STOs.

18. The Citizenship Act provides the legislative framework for Australian citizenship and includes requirements regarding a citizenship applicant's character, but it is not prescriptive. The ACIs support the Citizenship Act and outline DIAC's policy as it relates to the process for granting citizenship. The ACIs are, in turn, supplemented by a Citizenship Processing Manual and Citizenship Helpdesk.

19. The ACIs, which provide high-level policy guidance, are open to interpretation and case officers are unclear about some of the fundamental concepts, including character. Also, despite being a fundamental concept in the Citizenship Act, the ACIs do not define what constitutes 'good character' or the behaviour that may indicate that an applicant is or is not of good character.

20. Until it was reissued in May 2011, the Citizenship Processing Manual, which provides operational and systems instructions for processing applications, was out-of-date and not endorsed by DIAC's national office (NatO). The Citizenship Helpdesk provides operational and policy advice to staff. However, very few enquiries relate to the character requirements (less than 0.5 per cent in 2009–10) and case officers did not consider that the Helpdesk provided useful additional advice when processing complex cases requiring the exercise of discretion. The ACIs are also supplemented by an average of two emails a week containing ad hoc policy and operational advice, which is not always disseminated to all case officers.

21. The quality of, and approach to, inducting new officers into citizenship teams varied between and with STOs. By contrast, citizenship training includes sessions on good character and other topics relevant to character, and is provided by NatO officers. In addition, two-thirds of the 24 case officers interviewed by the ANAO expressed positive opinions about the training. However, attendance is not mandatory and 25 per cent of delegated decision-makers in STOs have not completed the course, including 21 per cent of junior case officers.

Identifying applicants of character concern

22. To mitigate the risk that persons of character concern are granted citizenship, DIAC seeks to gather a range of information to inform the assessment of these applicants' character. DIAC employs various approaches to gather that evidence. Applicants are asked to answer questions on the citizenship application form that address character issues. It is not certain, however, that applicants who are not of good character will willingly declare the information. For example, 31 per cent of 104 cases examined by the ANAO that involved applicants with Australian criminal histories, did not declare those histories on their application forms and 24 (73 per cent) of these applicants were refused citizenship. For this reason, DIAC accesses other sources of evidence.

23. DIAC checks departmental information systems, such as the Movement Alert List, to ascertain if the applicant is the subject of an alert. However, an alert will only be raised if the applicant has been previously entered on the system. Finally, DIAC sources Australian and overseas penal certificates (OPCs), where appropriate. The effectiveness of OPCs as a reliable source of character evidence is limited by several factors, including DIAC's reliance on applicants volunteering information about their overseas travel and aliases, inconsistent approaches across the STOs when administering the OPC requirements, and the questionable reliability of OPCs from some countries.

24. The sources of evidence citizenship case officers collect to identify applicants of character concern focus primarily on criminal activity. They are not likely to uncover evidence of general conduct or association that may also be relevant to a consideration of character. When describing the behaviours that constitute good character, DIAC will need to clarify expectations about the standards of behaviour that are acceptable, including whether the term is expected to include general conduct and associations. The department will also need to provide appropriate guidance to its staff implementing this definition.

Processing and deciding character cases

25. If DIAC has evidence suggesting that a person is not of good character, the case officer contacts the applicant to discuss the character concerns and requests additional information if necessary. Applicants were generally contacted regarding their application and given the opportunity to address any character concerns. However, DIAC's interaction with applicants varied, between and within STOs, in terms of:

- response periods granted to applicants to provide requested information—one STO granted a response period of 35 days while other STOs generally allowed 28 days;
- the number of times applicants were contacted—applicants refused on character grounds received an average of three requests for information, with 30 per cent of these applicants receiving three or more written follow-up requests for information; and
- the type of information requested from applicants—one STO requires written details about the applicant's travel outside Australia, while other STOs rely on verbal confirmation of overseas travel.

26. There was also variation in STO's approaches to reviewing case officers' work prior to finalising an assessment. Two STOs limit the review of

work to that of underperforming case officers, while in another STO supervisors review a sample of all their team members' work.

27. DIAC has not established a protocol for interaction between citizenship areas and the DIAC's National Character Consideration Centre (NCCC), which processes visa application and holder character cases under the Migration Act. As a result, staff in these areas are uncertain about the appropriate approach to adopt when processing character cases from the same client. Case officers were unclear about which areas should be processing a client first and practice varied significantly between the STOs.

Making character decisions

28. The Citizenship Act and the ACIs provide non-prescriptive, high-level guidance which allows case officers considerable discretion when interpreting the character requirements. When case officers were asked by the ANAO to respond to a number of questions about character cases, they often arrived at different decisions, despite being provided with the same information about an applicant's character.

29. Under the Citizenship Act, applicants under the age of 18 at the time they lodge their application are not required to meet the good character requirements. Prior to August 2008, the ACIs and materials provided to potential applicants incorrectly stated that the good character requirement applied to applicants 16 years and over. Between May 2007 and May 2008, four applicants under the age of 18 were refused citizenship on character grounds and DIAC had decided that these applicants would not be advised of the incorrect decision made in their cases, nor would their cases be reopened.

30. Decisions to approve or refuse citizenship were recorded in the appropriate DIAC system and, if refused, documented in a decision record. Applicants were advised of the decision in writing. However, there were inconsistencies, within and between STOs, in the way in which applicants were advised of decisions and the format and content of decision records. DIAC is drafting a decision record template for refusals on character grounds that will require case officers to assess applicants against all the eligibility criteria and record that assessment in the decision record. The ANAO noted that case officers do not generally write decision records for approvals, even in cases where the decision was finely balanced and judgement has been exercised.

31. While many applicants refused citizenship on character grounds would not necessitate subsequent consideration by the NCCC for potential cancellation of their visa, a small proportion of citizenship refusal cases do. For

example, applicants with serious criminal records and those suspected or found guilty of involvement in crimes against humanity may warrant referral. However, applicants refused citizenship on character grounds, even those refused as a result of serious character concerns, are not routinely referred to the NCCC. For example, the ANAO's sample of 300 citizenship applications included one applicant with serious driving offences and another with drug offences, both resulting in substantial periods of imprisonment. Neither of these applicants for citizenship were referred to the NCCC for consideration against the character requirements of the Migration Act.

Management arrangements to support citizenship processing

32. DIAC's suite of planning documents refers to citizenship at the program level and do not specifically identify the character requirements. DIAC's Strategic Risk Profile 2010–11 mentions citizenship as an element in two risks, which relate to fraud and stakeholder management. The Strategic Risk Profile does not include risks relevant to the character requirements. DIAC's key performance indicators and external performance reporting also focus on the citizenship program as a whole; no reference is made to the character requirements of the Citizenship Act.

33. To assist it to manage the citizenship caseload, DIAC has developed an internally reported citizenship service delivery standard. The standard focuses on timeliness of processing—80 per cent of citizenship conferral applications decided within 60 days of lodgement. Between 9 November 2007, when a new standard was introduced, and 30 June 2010, 80.3 per cent of applications were decided within 60 days of lodgement. DIAC's analysis of the citizenship caseload, which is reported internally, focuses on quantitative measures, such as the number of applications received, number of applicants awaiting appointments and citizenship tests, and age of cases. The indicators, standard and data analysis do not measure or report on whether the Australian citizenship program is being delivered effectively in line with Australia's citizenship law and government policies.

Summary of DIAC's response

34. DIAC provided the following summary response, and its full response is shown at Appendix 1.

35. The Department of Immigration and Citizenship (DIAC) welcomes the opportunity to contribute to the ANAO performance audit *Administering the Character Requirements of the Australian Citizenship Act 2007* and agrees with the recommendations made in the report. The ANAO report acknowledges that DIAC has in place an appropriate framework for administering the character requirements of the Citizenship Act.

Recommendations

Recommendation No.1

Paragraph 2.31

To clarify the standards of behaviour that would satisfy the Minister that an applicant meets the 'good character' requirements of the *Australian Citizenship Act 2007*, the ANAO recommends that DIAC define, for administrative purposes, what constitutes 'good character'.

DIAC's response: Agreed.

Recommendation No.2

Paragraph 4.28

The ANAO recommends that DIAC conclude the assessment of the applications from the four applicants incorrectly refused citizenship on character grounds when they were under 18 years of age as a matter of priority.

DIAC's response: Agreed.

Recommendation No.3

Paragraph 4.46

To facilitate communication and cooperation between the areas administering the character requirements of the *Migration Act 1958* and *Australian Citizenship Act 2007*, the ANAO recommends that DIAC agree and implement a protocol that includes procedures for:

- processing clients who have applied for citizenship and are also being considered for visa cancellation under s501 of the *Migration Act 1958*;
- referring to the NCCC clients refused citizenship on character grounds, including guidelines outlining when a referral would be appropriate.

DIAC's response: Agreed.

Audit Findings

1. Introduction

This chapter provides an overview of the character requirements of the Citizenship Act 2007 and DIAC's administration of the requirements. The audit objective and scope are also outlined.

1.1 Each year over four million non-citizens enter Australia and around 140 000 people apply for Australian citizenship. At any point in time, there are approximately 1.4 million non-citizens in Australia.² The Department of Immigration and Citizenship (DIAC) is responsible for implementing the Government's immigration and citizenship policies. Its purpose is to build Australia's future through the well-managed entry and settlement of people. To achieve this purpose, in 2010–11 DIAC had a budget of \$2.2 billion and 7284 full-time staff located in offices in all Australian states and territories and in Australian embassies and high commissions in over 60 countries.³

Australian citizenship

1.2 Australian citizenship is viewed as a privilege and the desirable culmination of a person's migration journey. A person may become an Australian citizen automatically or by application. Generally, persons born in Australia to one or more parents who are Australian citizens or permanent residents acquire citizenship automatically. Persons born outside Australia can apply for citizenship by application. There are four ways to apply for citizenship, as shown in Figure 1.1.

² Based on 2006 Australian Census data (ABS Cat.No.2068.0–2006 Census Tables). In the 2006 census, 1.4 million people identified themselves as non-citizens, 17.1 million people identified themselves as citizens, and 1.3 million people did not respond to the question.

³ Department of Immigration and Citizenship, *Portfolio Budget Statements 2010–11, Immigration and Citizenship Portfolio, Budget Related Paper No.1.13*, Commonwealth of Australia, May 2010, pp.6, 13, 21, 30, 39, 46, 64 and 72.

Figure 1.1

Australian citizenship by application



Source: ANAO representation of Section 2A of the *Australian Citizenship Act 2007*.

1.3 Since 1949, when the concept of Australian citizenship was introduced, over four million people have successfully applied for and become citizens, including around 130 000 people who became citizens by application in 2009–10. Table 1.1 gives a summary of citizenship outcomes in 2009–10.

Table 1.1

Citizenship outcomes, for the period 1 July 2009 to 30 June 2010

	Decided	Approved/ Acquired	Refused
Citizenship by descent	15 999	15 453	267
Citizenship by adoption	14	14	0
Citizenship by resumption	414	313	39
Citizenship by conferral	122 740	114 112	3 137

Note: Decided is not the sum of Approved/Acquired and Refused. Other possible outcomes include counselled, invalid, withdrawn and otherwise finalised.

Source: Department of Immigration and Citizenship, *Outcome 6.1, Citizenship Applications, RAS Report Id 282*, (unpublished), June 2010, pp.11, 24, 29.

1.4 DIAC is responsible for administering Australian citizenship in accordance with the *Australian Citizenship Act 2007* (the *Citizenship Act*), the *Australian Citizenship (Transitionals and Consequentials) Act 2007* and the *Australian Citizenship Regulations 2007*. The current *Citizenship Act* replaced the *Nationality and Citizenship Act 1948*, which enshrined in legislation the concept of Australian citizenship.⁴ Prior to the 1948 Act, all Australian-born persons

⁴ The *Nationality and Citizenship Act 1948* is now referred to as the *Australian Citizenship Act 1948*.

and persons naturalised in Australia were British subjects. The *Australian Citizenship Instructions*⁵ (ACIs) support the Citizenship Act and outline DIAC's policy as it relates to citizenship.

1.5 To become a citizen by application, applicants must meet the eligibility criteria, as outlined in the Citizenship Act. Generally, the criteria include the citizenship applicant's length of residence in Australia, intention to reside in Australia and character.

The character requirements

1.6 The Citizenship Act outlines the character requirements that apply to applicants for Australian citizenship. Applicants are required to satisfy the Minister for Immigration and Citizenship (Minister) that they are of good character at the time of a decision on their application. The Citizenship Act does not define good character, unlike section 501 of the *Migration Act 1958* (Migration Act), which includes a character test for visa applicants and holders.

1.7 The Citizenship Act is supported by the ACIs and outlines DIAC's policy regarding citizenship. The ACIs recommend that the decision-maker should be guided by the ordinary use of the words 'good character' and ordinary community standards of behaviour. The ACIs outline the factors that should be considered when assessing character, including:

- type, seriousness and recurrence of criminal behaviour, in Australia and overseas, and the penalty conferred;
- involvement in crimes against humanity;
- length of time between last offence and application for citizenship;
- employment status, community involvement and reputation in the community; and
- stability of family life.

1.8 Unlike the Migration Act, decisions about character in the context of Australian citizenship are devolved to case officers in DIAC's state, territory, regional and area offices (STOs). The assessment of applications, including

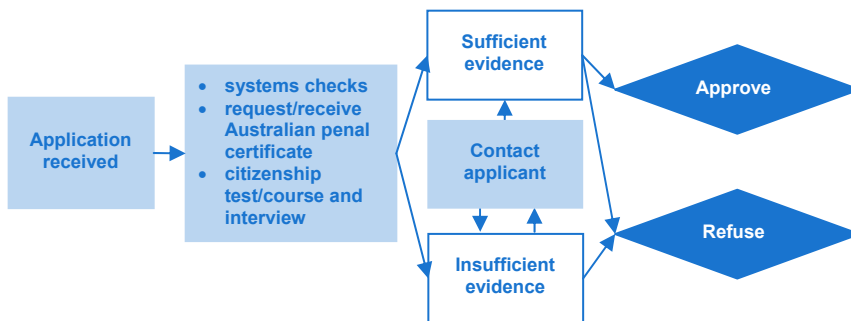
⁵ Department of Immigration and Citizenship, *Australian Citizenship Instructions*, Commonwealth of Australia, September 2010.

those from applicants of potential character concern, and the decision to approve or refuse citizenship is usually undertaken by relatively junior officers. These administrative arrangements deliver benefits in terms of flexibility and efficiency, but also carry the inherent risk of inconsistent decision-making. The appropriate management response to minimising the risk of inconsistencies under such arrangements is to focus on delivering suitable guidance and training for staff, supported by effective supervision of decision-making practices.

1.9 Figure 1.2 illustrates the key steps in the path from DIAC receiving a citizenship application to its decision whether to approve or refuse citizenship (Appendix 2 describes the process in more detail). If an application for citizenship is approved, the applicant becomes a citizen on the day they take the pledge of commitment.⁶

Figure 1.2

Key steps—citizenship application to approval/refusal



Source: ANAO representation.

1.10 Annually, DIAC finalises around 140 000 applications for citizenship. In the vast majority of cases, DIAC approves the application because the applicant meets the eligibility criteria and the Minister is satisfied that they are of good character. In 2009–10, 139 167 applications for citizenship were decided. Of these, 2.5 per cent (3443 applications) were refused, primarily because the applicant did not meet the residency requirements. In the same period, 131 371 applicants acquired citizenship. The ACIs state that applicants are presumed to be of good character unless the decision-maker has evidence to the contrary. If the decision-maker is not satisfied that the applicant is of

⁶ The Act describes applicants not required to take the pledge of commitment, including applicants under 16 years of age or with a permanent physical or mental incapacity.

good character after assessing the evidence, they must refuse the application on the grounds that they do not meet the good character requirements. This occurs in only a small number of cases. Of the 3443 applications refused in 2009–10, seven per cent (242 applicants) were refused citizenship on character grounds. Notwithstanding the small number of character refusals, sound administration of the good character requirements is necessary to:

- increase the likelihood that those approved for citizenship are of good character;
- reduce the risk that persons of significant character concern are granted citizenship; and
- protect the integrity of the citizenship program.

Previous ANAO audits

1.11 The ANAO has not previously audited DIAC's administration of the character requirements of the Citizenship Act. In 2004–05, the ANAO audited the department's administration of citizenship services⁷ and, in 2008–09, DIAC's management of the Movement Alert List.⁸

The audit

Audit objective and scope

1.12 The objective of this audit was to assess the effectiveness of DIAC's administration of the character requirements of the Citizenship Act. Particular emphasis was given to the following areas:

- policies, guidance and training for staff to support the administration of the character requirements;
- processes to identify applicants of character concern, administer cases and make decisions; and
- management arrangements supporting citizenship processing.

1.13 Concurrent with this audit, the ANAO audited the effectiveness of DIAC's administration of the character requirements of the Migration Act. The

⁷ ANAO Audit Report No. 14 2004–05, *Management and Promotion of Citizenship Services*.

⁸ ANAO Audit Report No.35 2008–09, *Management of the Movement Alert List*.

migration audit (ANAO Audit Report No.55 2010–11, *Administering the Character Requirements of the Migration Act 1958*) examined similar areas to those described above and has been tabled as a compendium report to this audit.

Audit methodology

1.14 In undertaking the audit, the ANAO reviewed relevant DIAC files and documentation and interviewed key DIAC personnel in six STOs. The ANAO also examined a sample of 300 citizenship cases. The judgemental sample was selected from all applications considered in 2009–10, was weighted towards refused applications, and consisted of:

- 148 refused applications (49 per cent of the sample), including 78 applications (26 per cent) which were refused on character grounds;
- 114 approved applications (38 per cent of the sample);
- 35 undecided applications (12 per cent of the sample); and
- three applications that were otherwise decided (one per cent of the sample).⁹

1.15 The audit was conducted in accordance with the ANAO Auditing Standards at a cost of \$222 000.¹⁰

⁹ One application was withdrawn by the applicant; processing of one application was halted because the applicant was an Australian citizen; and DIAC was in the process of cancelling the visa of one applicant.

¹⁰ As mentioned in paragraph 1.13, this report is one of a compendium (with ANAO Audit Report No.55). The combined cost was \$444 000.

Report structure

1.16 This report is divided into a further four chapters, as described in Figure 1.3.

Figure 1.3

Report structure

Chapter 2 Policy, Guidance and Training	This chapter outlines the roles and responsibilities of relevant DIAC officers and the legislative framework of the character requirements. The guidance and training provided to DIAC's citizenship case officers is also examined.
Chapter 3 Identifying Applicants of Character Concern	This chapter examines DIAC's processes for gathering the evidence necessary to identify applicants of potential character concern, including requesting information from applicants and checking DIAC information systems.
Chapter 4 Processing and Deciding Character Cases	This chapter examines the key stages in DIAC's approach to processing character cases and making decisions about citizenship applications. The chapter also reviews DIAC's administration of appeals of its citizenship decisions.
Chapter 5 Management Arrangements to Support Citizenship Processing	This chapter examines DIAC's management arrangements to support citizenship processing. These include its planning processes, risks management strategies and the monitoring and reporting of its performance.

2. Policy, Guidance and Training

This chapter outlines the roles and responsibilities of relevant DIAC officers and the legislative framework of the character requirements. The guidance and training provided to DIAC's citizenship case officers is also examined.

2.1 Legislation and policy provide the framework for administering the functions and services of government. This framework should be supported by clear and current guidance materials and effective training that assists departmental staff to perform effectively in their roles. Those roles, and the responsibilities of staff, should be clear and well-defined.

2.2 The ANAO reviewed DIAC officers' roles and responsibilities and the legislative framework governing the administration of the character requirements of the Citizenship Act. The guidance provided to case officers and the induction and training for decision-makers about the character requirements of the Citizenship Act were also examined.

2.3 Administration of the character requirements is an element of DIAC's overall administration of Australian citizenship. As such, this chapter discusses the policy, guidance and training as it applies to citizenship as a whole, with specific reference to DIAC's administration of the character requirements, where this is separately identified.

Roles and responsibilities

2.4 Roles and responsibilities for administering citizenship are distributed between the Citizenship Branch in DIAC's national office (NatO), the Global Manager-Citizenship, Settlement and Multicultural Affairs (GM-Citizenship) and case officers in the STOs. Table 2.1 lists NatO's responsibilities, and the responsibilities of the GM-Citizenship and case officers are summarised below.

Table 2.1**Citizenship Branch's responsibilities**

Section	Responsibilities include:
Citizenship Policy	Changes to the ACIs guidance on citizenship law and policy; training
Citizenship Program Management	Quality assurance; performance monitoring and reporting.
Citizenship Operations	DIAC's Memorandum of Understanding with CrimTrac; Citizenship Helpdesk systems support.
Citizenship Ceremonies and Promotion	Ceremonies; events coordination; promotion of Australian citizenship.

Source: ANAO representation.

2.5 The GM-Citizenship is responsible for managing the delivery of the citizenship program. DIAC case offices in STOs receive, process and decide citizenship applications. Case officers in the STOs report, through their team leaders and managers, to the GM-Citizenship, who is ultimately accountable for all citizenship decisions.

Citizenship decision-makers

2.6 The Minister delegates powers and authorises persons and classes of persons to make citizenship decisions on his behalf. Unlike the section 501 (s501) of the Migration Act decision-making model, citizenship decision-making is decentralised. As at November 2010, there were 187 delegated citizenship decision-makers located in DIAC's STOs, where most citizenship decisions are made.¹¹

2.7 Most citizenship decisions are straightforward, being:

- approvals where the information necessary to make a decision has been provided by the applicant and no concerns about the applicant's character or compliance with the other eligibility criteria have been identified; or
- refusals on the grounds that the applicant does not meet the eligibility requirements.

¹¹ In 2009–10, 91.3 per cent of citizenship decisions were made in the STOs, with the remaining decisions made by DIAC officers overseas.

2.8 The ANAO observed that these straightforward decisions are generally made by junior, Australian Public Service (APS) level 4, case officers, which is appropriate. However, not all citizenship decisions are straightforward; some cases require that case officers exercise judgement and discretion. The ANAO observed that even cases requiring judgement and discretion, including those involving character issues, were made by junior case officers with little or no input or review by team leaders or supervisors.

2.9 When reviewing citizenship cases, the ANAO also noted that DIAC's guidance (discussed below) does not guide case officers on when to escalate or discuss a case with senior officers; and the approach to escalating cases differed between STOs. For example, only one STO had a systematic approach for assigning cases, including complex character cases, to officers with expertise in particular areas.

Legislation and guidance

2.10 The Citizenship Act provides the legislative framework for Australian citizenship. The Citizenship Act is supported by the ACIs, which, in turn, are supplemented by a Citizenship Processing Manual, Citizenship Helpdesk, and ad hoc policy and operational advice.

Citizenship Act

2.11 The Citizenship Act sets out, inter alia, how a person can become an Australian citizen and the circumstances in which a person may cease to be a citizen. As previously discussed, the current Citizenship Act was passed in 2007. It was written using plain language; it is not intended to be prescriptive and all encompassing. In contrast, the Migration Act is prescriptive and contains detailed guidance about the character requirements.

Australian Citizenship Instructions

2.12 The ACIs support the Citizenship Act and outline DIAC's policy as it relates to the process for granting citizenship. The ACIs address each of the elements of the Citizenship Act, providing high-level policy guidance for citizenship decision-makers. Given the many scenarios that may arise in practice, the ACIs are also not intended to be prescriptive. Case officers have flexibility in applying the ACIs, as appropriate to individual situations.

2.13 However, as a result, the ACIs are open to interpretation by different decision-makers. For example, one of the factors case officers consider when

assessing character is that there is a reasonable length of time between an applicant's last offence and their application for Australian citizenship. A 'reasonable' length of time is not defined. Furthermore, if the decision-maker has concerns about an applicant's character, the onus is on the applicant to demonstrate a change in their character since they last offended, but no suggestions are given about how the applicant might demonstrate this change.

2.14 Citizenship officers use the Citizenship Act and the ACIs as a source of guidance. However, 64 per cent of citizenship officers interviewed (21 of 33 officers) were critical of the ACIs. Of these, one third (11 officers) described the ACIs as subjective and open to interpretation, while 39 per cent (13 officers) expressed a desire for more and/or clearer guidance.

Citizenship Processing Manual

2.15 In the past, a Citizenship Processing Manual provided operational and systems instructions for officers processing citizenship applications. The manual included detailed guidance for processing each type of citizenship application, as well as information about administering the citizenship test, obtaining Australian criminal histories, and the steps taken when deciding an application. Until recently, the manual had not been updated since May 2009, and NatO did not endorse its use. During visits to DIAC offices, the ANAO noted that some officers continued to use the manual, which was available electronically on local network drives, despite it being out-of-date. DIAC advised the ANAO that an updated manual was disseminated in May 2011.

Citizenship Helpdesk

2.16 The Citizenship Helpdesk provides operational and policy advice to DIAC staff and citizenship verification services to third parties.¹² The helpdesk receives only a small number of character enquires, as shown in Table 2.2. DIAC informed the ANAO that character enquiries were generally related to overseas penal certificates (OPCs)¹³ and how to interpret offences in different circumstances.

¹² DIAC verifies a person's citizenship status on request from third parties such as Centrelink, the Department of Foreign Affairs and Trade and the Australian Electoral Commission. Around 80 per cent of enquiries to the Helpdesk concern citizenship verification.

¹³ OPCs, which provide information about an applicant's overseas criminal history, are discussed in Chapter 3.

Table 2.2**Helpdesk enquiries regarding the character requirements, for the period 2005–06 to 2009–10**

	2005–06	2006–07	2007–08	2008–09	2009–10
Number of character enquiries	146	179	155	117	96
Percentage of total enquiries	2.8	2.2	1.3	0.6	0.5

Source: ANAO analysis of DIAC data.

2.17 Citizenship Policy Section responds to all policy queries, including character enquiries. Appropriately, answers are provided directly to the case officer who raised the issue. However, responses covering the interpretation of key policy issues are not communicated more broadly at the same time, for example, to the Helpdesk or to all case officers. This means that case officers are assessing applications according to different advice provided at different times, and officers dealing with similar situations may not be aware of the latest guidance. Nonetheless, staff in the Citizenship Policy Section informed the ANAO that, if they notice a trend in the policy queries received, the response is incorporated into the Citizenship Training Program (CTP) and the answer disseminated to case officers via an advice email.

2.18 Eight of 25 case officers surveyed mentioned the Helpdesk as a source of guidance. Case officers who reported using the Helpdesk advised the ANAO that they generally received adequate responses to most queries. However, if a query related to a discretionary requirement and/or a complex or unusual application, advice from the Helpdesk was regarded as being impractical or too general to be helpful. For example, a query regarding character considerations on a particular application may elicit a response outlining the policy position, as described in the ACIs, for the decision-maker's consideration. Because the ACIs contain only high-level policy guidance to which all staff have access, case officers did not consider that the Helpdesk provided useful additional advice when processing complex cases involving issues such as character.

Policy and operational advice

2.19 The Citizenship Policy Section supplements the ACIs with email advice to case officers as necessary. The advice covers policy and implementation matters, and may address upcoming changes to the ACIs.¹⁴ Due to the absence of definitive guidance and the need to provide clarity on various aspects of the policy and practice, NatO issues a large volume of advice. For example, from 1 January 2010 to 11 October 2010, Citizenship Policy Section issued 83 advice emails; an average of over two emails a week. The ANAO observed that these emails were provided to citizenship managers but were not always disseminated to all case officers. With case officers not always receiving updates, coupled with the high volume of emails, there is an increased risk that case officers are not aware of, and not implementing, the latest policy or operational advice, resulting in inconsistent practices across DIAC offices.

Other guidance and advice

2.20 Case officers receive other guidance and advice through:

- regular videoconference, teleconference and email communication with the GM-Citizenship to provide information about performance against the service delivery standards and discuss processing issues;
- an ongoing program of visits by NatO personnel to discuss complex cases, policy and procedures; and
- team meetings to discuss cases and share experiences and lessons learnt.

2.21 During visits to the STOs, the ANAO also noted that citizenship officers have developed their own tools for individual or local office use. While this guidance may assist processing officers, it has not been reviewed by NatO or the GM-Citizenship for accuracy or consistency. There is a risk that the existence of locally developed tools and guidance will perpetuate differing interpretations of policy and may result in inconsistent approaches and outcomes.

¹⁴ The ACIs are reviewed and reissued three times a year. Changes to be implemented in anticipation of the ACIs being reissued are emailed to the STOs as necessary.

What is ‘good character’?

2.22 While DIAC provides various sources of guidance and advice, to supplement the Citizenship Act and to assist its case officers to administer the character requirements, these materials do not define character for administrative purposes. That is, neither the Citizenship Act nor the ACIs define what constitutes character or, more specifically, ‘good character’. This contrasts with the approach taken in the Migration Act, which contains a character test.

2.23 However, as mentioned in paragraph 1.7, the ACIs do outline the factors that should be considered when assessing the character of an applicant. These are listed in Table 2.3.

Table 2.3

Factors to consider when assessing ‘good character’

Type and seriousness of criminal offences.	Repeat convictions for the same offence or repeat criminal behaviour over time.
Length of imprisonment.	Involvement in crimes against humanity.
Concealment of offences.	Convictions for offences in another country.
Associations with other criminals or criminal organisations.	Length of time between last offence and application for Australian citizenship.
Employment status, including length of employment.	Extenuating circumstances in relation to the convictions.
Age of applicant when crime committed.	Stability of family life.
Community involvement.	Reputation in the community.

Source: Department of Immigration and Citizenship, *Australian Citizenship Instructions*, Commonwealth of Australia, September 2010, p.161.

2.24 The ACIs also state that when assessing character the decision-maker should be guided by the ordinary use of the words and ordinary community standards of behaviour, while recognising that an applicant’s behaviour does not have to be faultless. However, an individual’s perception of ‘ordinary’ will be influenced by various factors, such as their age, socio-economic background, experiences and values. Nor do the ACIs, when saying that behaviour does not have to be faultless, describe what behaviour may be acceptable to satisfy the Minister that the applicant is of good character. Furthermore, the ACIs do not provide guidance about the thresholds to apply when assessing an applicant’s background against the factors listed in Table 2.3 or indications as to the weight to be given to various factors (for

example, should convictions for certain types of crimes be weighted more heavily than other crime types).

2.25 The ANAO also recognises that there is a limit to the extent to which standards of behaviour can be prescribed in DIAC policy; there will always be the need for the case officers to exercise a degree of discretion and judgement. However, the concept of character is a fundamental element of the Citizenship Act. Stating that the citizenship decision-maker should be guided by the ordinary use of the words and ordinary community standards of behaviour does not provide sufficient guidance to citizenship officers assessing the character of applicants. In addition, as previously discussed, case officers described the ACIs as being subjective and open to interpretation and did not consider the Citizenship Helpdesk to be useful when processing complex cases involving issues such as character.

Improving the guidance

2.26 It would assist applicants and DIAC decision-makers to understand the standards of behaviour that would satisfy the decision-maker that a person is of 'good character' if the term was defined, for administrative purposes, in the relevant guidance materials. The elements of good character could be further illustrated through case studies and integrated into citizenship training. When implementing the definition of good character, DIAC would also need to have assurance that it was being consistently applied by decision-makers.

2.27 Given the high-level focus of the ACIs, the volume of supplementary guidance disseminated by NatO and evidence of locally produced guidance, there would be benefit in DIAC:

- reviewing the ACIs to make sure that the focus and level of guidance provided is appropriate; and
- reviewing the additional guidance material developed by STO officers to confirm that it does not introduce inconsistencies within and between offices, and that it is in accordance with nationally prescribed guidance.

These actions would assist in promoting a consistent national approach to assessing the character of citizenship applicants.

Conclusion

2.28 Roles and responsibilities for administering citizenship are distributed between DIAC's NatO, the GM-Citizenship and STOs. Most citizenship decisions are straightforward and are generally made by junior case officers (usually at the APS 4 level) in DIAC's STOs. However, even cases that require that officers exercise judgement and discretion, such as those involving character issues, were made by junior case officers with little or no input or review by team leaders or supervisors. DIAC's policies and procedures do not provide guidance to case officers about when to escalate or discuss a case with senior officers and approaches differed between STOs. It would be appropriate for DIAC to formalise arrangements to escalate cases to more senior officers when character decisions are not straightforward. Clearer procedures could be included in the ACIs, requiring that all discretionary character decisions exhibiting certain characteristics be decided or, at a minimum, reviewed by more senior officers.

2.29 The Citizenship Act provides the legislative framework for Australian citizenship and is supported by the ACIs. This high-level policy guidance is open to interpretation and case officers are unclear about some of the fundamental concepts, including character. The ACIs are supplemented by a Citizenship Processing Manual, Citizenship Helpdesk and ad hoc policy and operational advice. Improvements could be made to better integrate this guidance.

2.30 The fundamental concept of 'good character' is not defined in the Citizenship Act or the ACIs; nor do they describe the behaviour that might be acceptable to satisfy the Minister that the applicant is or is not of good character. It would assist applicants and DIAC decision-makers to understand the standards of behaviour that would satisfy the character requirements if the term 'good character' was defined for administrative purposes and case officers were provided with appropriate guidance that assists them to apply the definition when assessing the character of applicants. Therefore, to promote a consistent national approach to assessing the character of citizenship applicants, there would be benefit in DIAC reviewing and, where necessary, updating the guidance available to citizenship case officers.

Recommendation No.1

2.31 To clarify the standards of behaviour that would satisfy the Minister that an applicant meets the 'good character' requirements of the *Australian Citizenship Act 2007*, the ANAO recommends that DIAC define, for administrative purposes, what constitutes 'good character'.

DIAC response: Agreed.

2.32 The Department agrees to further define the policy surrounding the legislative requirement of 'good character'. The Department expects that enhanced policy instructions relating to the standards of behaviour that are appropriate to 'good character' will be available to Citizenship Officers by October 2011.

Induction and training

2.33 To administer Australian citizenship as per the Citizenship Act and guidance, DIAC should provide adequate induction and training to its citizenship officers.

Induction

2.34 The quality of, and approach to, inducting new officers into citizenship teams varied between and within DIAC's STOs. Practice ranged from new starters receiving little or no induction to a tailored, structured process implemented over a period of time. In most cases, officers reported that their induction involved receiving a brief overview of citizenship then being assigned work of increasing complexity, including assessing applications from persons whose character may be an issue. Also, the quality of induction varied depending upon the knowledge and ability of the inducting officers. Case officers advised the ANAO that their induction ranged from being very poor to excellent. Case officers would benefit from a consistent national approach to induction, which could build upon the more successful approaches currently adopted in some STOs, such as the structured approaches implemented over time that involved introducing work of increasing complexity as the case officer's experience grew.

Citizenship Training Program

2.35 In 2007, following the introduction of the new Citizenship Act, DIAC developed the CTP. The CTP is a one week full-time course held two or three times a year in NatO or in an STO if there are sufficient participants. The

course is delivered by NatO's citizenship branch and is accredited with DIAC's College of Immigration, which clears the materials and provides advice on course delivery techniques.¹⁵

2.36 The CTP provides an overview of citizenship legislation, policy and process. It includes sessions on good character, as well as identity, the circumstances outlined in the Act that prohibit an approval of citizenship (which relate to an applicant's offending behaviour), good decision-making and writing decision records. The ANAO reviewed the CTP materials and considers that they adequately cover the necessary policy and operational requirements for case officers administering the character requirements.

2.37 CTP sessions are modified as necessary based on questions directed to the Citizenship Helpdesk and feedback on previous courses. The CTP does not address specific competencies as DIAC has not identified core or desirable competencies or capabilities for its citizenship case officers and managers. Core areas could include critical interviewing and accountable decision-making.

2.38 The CTP is targeted at citizenship decision-makers (those at the APS 4 level and above), but attendance is not mandatory. Of the 187 APS 4 to Executive Level (EL) 1 DIAC officers working in citizenship in STOs, 141 (75.4 per cent) have attended a CTP.¹⁶ The number of officers who have completed the CTP varies across levels, as shown in Table 2.4. The proportion of APS 4 officers who have attended a CTP also varies from 50 to 100 per cent in different STOs. Of the 103 APS 4 officers who have attended a CTP, half (51 officers) attended a course recently (in 2009 or 2010).

¹⁵ DIAC established the College of Immigration on 3 July 2006 to improve the quality of training packages delivered to its staff.

¹⁶ This analysis was carried out following CTP15, held in July 2010.

Table 2.4**Citizenship officers who have attended a CTP**

	APS 4	APS 5	APS 6	EL 1	Total
Total officers	131	32	12	12	187
Proportion of officers who have attended a CTP	78.6%	81.3%	58.3%	41.7%	75.4%

Note 1: APS 4 includes substantive and acting APS 4 officers.

Note 2: Up to and including CTP15, held in July 2010.

Source: ANAO analysis of DIAC data.

2.39 While APS 3 officers may attend a CTP if there is capacity, DIAC does not encourage attendance as these officers are not delegated decision-makers. However, in practice, APS 3 officers frequently act at the APS 4 level, processing citizenship applications and making decisions. As at August 2010, there were 26 acting APS 4 and 34 APS 3 citizenship officers. Of these, only 16 (62 per cent) and five (15 per cent) respectively had completed the CTP.

2.40 Staff opinion of the CTP is largely positive. For example, 92 per cent of participants in a CTP in July 2010 rated the overall relevance of the content of the course to the role of a citizenship decision-maker as high or very high.¹⁷ During interviews with 24 officers, two thirds expressed positive opinions about the CTP to the ANAO. Five officers expressed only negative opinions about the course, including three who stated that it was not practical and/or appropriately focused.

2.41 Other than the CTP, citizenship training is on-the-job. Several DIAC officers suggested to the ANAO that supervisory training and advanced training focusing on complex cases and issues, including character, would be useful. However, the Citizenship Branch informed the ANAO that budget and resource restrictions have prevented the development of a citizenship refresher course, as well as planned training for supervisors and managers.

2.42 To further enhance citizenship training, the ANAO suggests that all new citizenship decision-makers (that is, STO officers at the APS 4 level and above, including those acting in APS 4 positions) attend a CTP as soon as practicable after starting in their new roles. Officers who have been in citizenship for a longer period and have not attended a CTP recently, or at all,

¹⁷ 13 of the 15 CTP participants responded to DIAC's online evaluation.

would also benefit from attendance given the changes in citizenship legislation and policy over the past few years.

2.43 The ANAO further suggests that DIAC consider making the CTP mandatory for all decision-makers, link citizenship training to core competencies and explore ways to provide follow-up/refresher training to citizenship staff and supervisory training for citizenship managers. Such training would assist DIAC to deliver a nationally consistent citizenship program and benefit staff by reiterating and increasing their knowledge of citizenship issues, including character, and reinforcing good practice administration and decision-making.

Overseas Training Course

2.44 Applications for citizenship by descent may be decided by DIAC officers posted overseas. While this category constitutes a small percentage of overall citizenship decisions¹⁸, it is important that personnel overseas have adequate training and knowledge to appropriately process applications. As such, NatO provides half a day of citizenship training as part of the Overseas Training Course. The course provides an overview of citizenship law, policy, procedures, resources, and the role of a processing officer overseas. While reference to the character requirements is brief it is, nevertheless, sufficient to allow case officers to finalise the small number of applications processed overseas.

Conclusion

2.45 The quality of, and approach to, DIAC's induction of new officers into citizenship teams varied between and with STOs, with case officers advising that their induction ranged from being very poor to excellent. By contrast, two thirds of the 24 case officers interviewed by the ANAO expressed positive opinions about the citizenship training. The structured program includes sessions on good character and other topics relevant to character, and is provided by NatO officers. However, attendance is not mandatory and 25 per cent of delegated decision-makers in STOs have not completed the course, including 21 per cent of junior case officers. The quality of the current citizenship training could be further enhanced by ensuring that all new

¹⁸ 14 005 applications were decided by overseas officers in 2009-10, constituting 8.7 per cent of total citizenship decisions. All but one of these decisions related to an application for citizenship by descent.

citizenship decision-makers attend a CPT as soon as practicable after commencing in their new roles, and providing refresher training to citizenship staff and supervisory training to citizenship managers.

3. Identifying Applicants of Character Concern

This chapter examines DIAC's processes for gathering the evidence necessary to identify applicants of potential character concern, including requesting information from applicants and checking DIAC information systems.

3.1 The Citizenship Act requires that the Minister must be satisfied that all applicants are of good character at the time of the decision on their application. As such, DIAC does not 'identify' applicants to be considered against the character requirements of the Citizenship Act. The character of all applicants is, notionally, considered and the ACIs state that applicants are assumed to be of good character unless there is evidence to the contrary. Therefore, DIAC must manage the risk that persons of potential character concern are taken to be of good character because evidence to the contrary is not available to the case officers at the time they assess citizenship applications.

3.2 The ANAO examined the information provided to potential applicants about the character requirements and DIAC's processes for gathering evidence that might suggest that a person is not of good character, including:

- requiring that applicants declare any potential character considerations;
- checking DIAC information systems;
- obtaining Australian penal certificates; and
- requiring that applicants provide overseas penal certificates, if necessary.

Information to potential applicants

3.3 DIAC provides information to potential citizenship applicants through its offices and on its website¹⁹, including instructions on how to apply for citizenship, application options and forms (paper and online), documentation requirements and contact details. The website also hosts the Citizenship Wizard, an interactive information program for potential applicants. The website refers to the good character requirement, giving instructions on how to obtain an OPC and describes the circumstances that prevent the approval of an

¹⁹ <<http://www.immi.gov.au>> and <<http://www.citizenship.gov.au>>.

application for citizenship. Citizenship application forms also describe the good character requirement, and request information about overseas travel and criminal activity.

3.4 The ANAO considers that the information provided to potential applicants about the information to be provided in and with an application is adequate. However, the link between the good character requirement and how the information provided is used to assess an application could be more clearly described. For example, while Form 1300t Application for Australian Citizenship – General Eligibility states that an applicant aged 18 years or over needs to show that they are of good character, it does not provide any information about how the applicant may do so. DIAC should provide information that clearly explains the character requirements of the Citizenship Act and how those requirements will be assessed.

3.5 The Citizenship Act lists certain circumstances relating to criminal offences that prevent the approval of an application for citizenship by conferral. These circumstances are referred to as prohibitions on approval.²⁰ A significant minority of applicants refused citizenship are refused on these grounds. For example, 26 per cent of the 148 citizenship refusal cases reviewed by the ANAO were due to a prohibition on approval. This suggests that it is not clear to some applicants that if they are subject to a prohibition their application will not be approved. To reduce the number of applications accepted and refused due to a prohibition on approval, the information provided to potential applicants, including application forms, should clearly state that if the prohibition circumstances apply the potential applicant should not apply for citizenship at this time.

Character declarations

3.6 One of the approaches DIAC uses to gather evidence that might suggest that a person is not of good character is to question applicants via an application form. Applicants for Australian citizenship complete one of several application forms, depending on the pathway to citizenship they are applying for and their individual circumstances.

²⁰ The prohibitions include if an applicant is in prison or has been in prison in the two years prior to their application, has proceedings pending against them or if they are on parole or subject to a good behaviour bond.

3.7 The forms ask a series of questions relevant to the character of the applicant, including about:

- criminal convictions;
- imprisonment;
- involvement in war crimes;
- current probation orders, good behaviour bonds and parole;
- proceedings pending for a charge or offence;
- illegal movement of people; and
- terrorist acts or associations.

3.8 Applicants answering 'yes' to any of the questions are instructed to provide details and any necessary supporting documents. Applicants are also required to sign a declaration that the information in the form is complete, truthful and correct. In the majority of cases, it is reasonable to assume that applicants are truthful when completing the form. However, it is also reasonable to assume that applicants who are not of good character may not be forthcoming with that information. For example, it is possible that an applicant will not declare that they have been involved in the illegal movement of people or terrorist acts. Of the 104 cases examined by the ANAO that included applicants with Australian criminal histories²¹, 33 applicants (32 per cent) had not declared those histories on their application forms. Of these applicants, 24 (73 per cent) were refused citizenship.

3.9 Therefore, while it is necessary to require that applicants answer questions about character, the answers cannot be relied upon by decision-makers without some verification. For this reason, DIAC accesses other sources of evidence.

²¹ Evidenced in a CrimTrac report (discussed later in this chapter).

DIAC systems

3.10 DIAC also uses its information systems and databases as a source of evidence that might indicate that a person is not of good character. The key database relevant to character is the Movement Alert List (MAL).²²

Movement Alert List

3.11 In a process similar to that applied to visa applications, when assessing an application for citizenship, case officers check if the applicant is listed on MAL. A MAL check may be run more than once, but DIAC's guidance directs case officers to check an applicant against MAL within 24 hours prior to approving the application. If a MAL alert is active for an applicant, the case officer checks the reason for the alert. However, MAL will only alert case officers to potential character concerns if an applicant has previously been entered on the MAL database. MAL alerts include potential war criminals and persons subject to an Interpol Red Notice (IRN) (discussed below).

War criminals

3.12 The ACIs note that involvement in crimes against humanity is an important consideration in the assessment of a citizenship applicant's character. Eight of the 300 cases examined by the ANAO involved possible war crimes, with five of the applicants refused citizenship as a result.²³ The good character section of the citizenship application forms asks applicants if they have committed, or been involved in the commission of, war crimes or crimes against humanity or human rights. Even if an applicant answers 'no' to the relevant question, case officers may become suspicious of war crime activity through DIAC information systems or suspicious or inconsistent answers to questions. These methods are not guaranteed to identify all applicants who have been involved in such crimes.

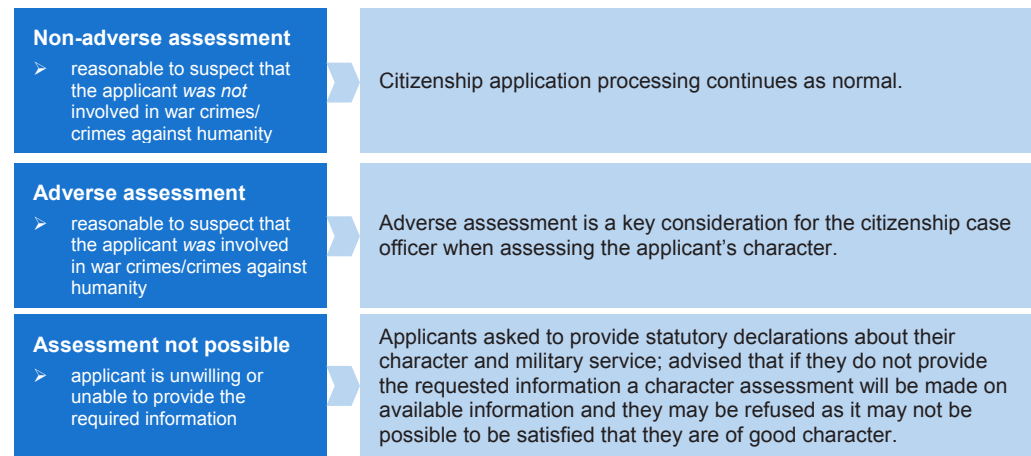
²² MAL is a computer database developed by DIAC to store personal details and information on travel documents of immigration concern. As at 30 June 2010, there were 660 000 identities of interest listed on MAL.

²³ Two applicants were approved citizenship and one case was undecided at the time of the ANAO's review.

3.13 If a case officer is suspicious about an applicant’s possible involvement in war crimes, the ACIs direct the case officer to advise DIAC’s War Crimes Unit, which undertakes a War Crimes Assessment. There are three possible outcomes of a War Crimes Assessment.

Figure 3.1

War Crimes Assessment Outcomes



Source: ANAO representation of Department of Immigration and Citizenship, *Australian Citizenship Instructions*, Commonwealth of Australia, September 2010, pp.158-159.

3.14 In most cases, a citizenship decision is based on this assessment. However, if the War Crimes Unit is not able to complete an assessment, citizenship case officers must still make a judgement to approve or refuse an application on the basis of the information available.

Interpol Red Notices

3.15 Interpol, on behalf of member countries, circulates IRNs to seek the arrest or provisional arrest of persons wanted for prosecution or to serve a sentence as decided by a court. IRNs issued for persons wanted for prosecution pose a dilemma for DIAC applying the character requirements of the Migration Act and the Citizenship Act. These persons may not have been found guilty of a crime and, in some cases, they may not have been formally charged. If the IRN is the only basis for determining that a person is not of good character, evidence to support a decision is limited. As with inconclusive war crimes cases, DIAC must balance the presumption of innocence with its responsibility to verify that persons granted a visa or citizenship have satisfied the character requirements.

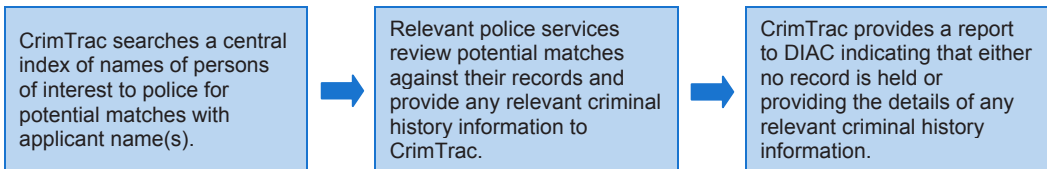
3.16 At any point in time, DIAC processes around 10 to 15 citizenship applications from persons who are the subject of an IRN. The ACIs do not contain any guidance for case officers assessing these applications. Nor does *PAM3: Act – Character s501 – The character test, visa refusal & visa cancellation*.²⁴ In the absence of an agreed policy, approach or guidance, case officers informed the ANAO that they are often uncertain about how to proceed. It would assist case officers if DIAC developed a national policy for processing citizenship applicants subject to IRNs that is consistent with DIAC's approach when processing visa applications and cancellations. The policy should be articulated in the ACIs and disseminated to the STOs.

Australian penal certificates

3.17 As part of its character checking procedures DIAC obtains Australian criminal histories for all applicants aged 18 years or over.²⁵ Unlike the process used when assessing character under the Migration Act, where Australian penal certificates are sourced from the Australian Federal Police, citizenship officers access this information through a Memorandum of Understanding (MOU) with CrimTrac. Under the MOU, CrimTrac provides reports from its National Police Checking Service. Figure 3.2 illustrates the main steps.

Figure 3.2

National Police Checking Service



Source: ANAO representation of clause 2.1 of the MOU between DIAC and CrimTrac.

3.18 While this is an effective method of accessing Australian penal certificates, it has some limitations, acknowledged in the MOU, which potentially compromises the reliability of the information provided.²⁶ The

²⁴ Department of Immigration and Citizenship, *PAM3: Act – Character s501 – The character test, visa refusal & visa cancellation*, (unpublished) 1 January 2010. This document provides guidance to DIAC staff implementing the character requirements of the Migration Act.

²⁵ For the purpose of assessing applications against s24(6) of the Citizenship Act, which relates to offences, DIAC obtains criminal histories for 16 and 17 year old conferral applicants and may obtain histories for younger applicants.

²⁶ The MOU between DIAC and CrimTrac states that the system does not purport to be a complete and comprehensive search of all Australian police records.

accuracy and completeness of the information produced is a product of the quality of police records, accurate identification of the applicant and relevant spent convictions legislation.

3.19 Criminal histories provided to DIAC by CrimTrac include known aliases. Of course, the information cannot include unknown aliases. In addition, applicants of character concern are unlikely to volunteer all aliases, leaving a potential gap in the information DIAC is receiving. The criminal histories provided by most state and territory jurisdictions, via CrimTrac, include spent convictions and proceedings pending, which are considered by case officers when assessing an applicant's character.²⁷ However, information from Tasmania does not include spent convictions and criminal histories from the Northern Territory and Tasmania do not include proceedings pending. Resolving this issue would increase the consistency and completeness of information received from state and territory jurisdictions.

Overseas penal certificates

3.20 To be satisfied about whether an applicant is of good character, it is important that DIAC obtains information about an applicant's overseas criminal history. This information is supplied by applicants. The ACIs state that applicants are required to provide OPCs if requested by the case officer and for any country in which they stayed more than three months since:

- being granted permanent residence (applicants for citizenship by conferral); or

²⁷ A person's conviction of an offence is spent if:
(a) the person has been granted a pardon for a reason other than that the person was wrongly convicted of the offence; or
(b) the person was not sentenced to imprisonment for the offence, or was not sentenced to imprisonment for the offence for more than 30 months, and the waiting period for the offence has ended.

(Section 85ZM(2), *Crimes Act 1914*)

A charge against a person for an offence is pending if the person has not yet been charged with the offence, but:

- (i) the person has been arrested for the offence, unless the person has been later released without being charged with an offence; or
- (ii) a summons to appear before a court to answer a charge for the offence has been served on the person.

(Section 15MC(1)(b), *Crimes Act 1914*)

- within the past 10 years (applicants for citizenship by descent, resumption or adoption).²⁸

3.21 DIAC's ability to obtain a complete view of an applicant's overseas criminal history is limited by several factors. Firstly, visa applicants are required, in some cases, to provide OPCs.²⁹ However, the ANAO found that citizenship case officers generally do not access all DIAC files, such as temporary and permanent residency visa files, relating to an applicant. The ACIs state that:

An assessment that a person meets the character requirements under the Migration Act does not mean that the person is necessarily of good character for the purposes of the Citizenship Act.³⁰

Therefore, to make an assessment about character as per the Citizenship Act, independent of any character decisions under the Migration Act, case officers should be accessing and reviewing all DIAC files relating to the applicant. This is particularly the case for conferral applicants, who need only provide OPCs since permanent residency.³¹

3.22 Secondly, case officers rely on an applicant volunteering information about their overseas travel to determine if an OPC is required. Applicants are not asked to list all countries visited and the relevant dates, as is necessary when applying for a visa. Without this information, it is difficult for case officers to identify if and when an OPC is required. Requesting this information would increase the likelihood that DIAC has an accurate account of an applicant's movements overseas.

3.23 Thirdly, applicants do not have to provide OPCs for places they visited for less than three months. This is a pragmatic approach to information requirements; requiring that applicants provide OPCs for all countries visited would be time consuming and expensive. However, again it means that case officers will not always have a complete overseas criminal history.

²⁸ DIAC has advised the ANAO that the requirement will be changed for applicants for citizenship by descent. Under the new requirement, descent applicants will be required to provide OPCs covering the previous 20 years.

²⁹ See ANAO Audit Report No.55 2010–11, *Administering the Character Requirements of the Migration Act 1958*.

³⁰ Australian Citizenship Instructions, p.155.

³¹ Generally, a person may be granted permanent residency as little as one year prior to lodging their application for citizenship.

3.24 Lastly, the issue of aliases, as discussed in the context of Australian penal certificates, also applies to OPCs. As DIAC does not see the OPC request in most cases, it cannot be sure that the request was made for the correct identity and covered all aliases. In addition, an applicant is unlikely to request an OPC in the name of an otherwise unconnected alias.

3.25 The ANAO also noted some inconsistencies in the approaches taken to administering the OPC requirements. The ANAO noted several cases where citizenship had been refused on character grounds because the elderly applicant, who had been in Australia since childhood or early adulthood and did not have an Australian criminal record, had not provided the necessary OPC(s). While DIAC encourages case officers to use their common sense and discretion in these circumstances, the ACIs do not reflect this flexibility.

3.26 In some cases, a statutory declaration attesting to the fact that the applicant does not have criminal convictions in the relevant country may be substituted for an OPC. The circumstances where this is permissible are outlined in the ACIs. The ANAO observed that the use of statutory declarations in lieu of OPCs, and the stage of the process they are accepted, varied across the STOs. As a result, in some cases citizenship was refused when OPCs were not provided, but was approved in similar cases when a statutory declaration was accepted.

3.27 In addition, the OPC requirements are inconsistent. As mentioned in paragraph 3.20, applicants for citizenship by descent, resumption or adoption are required to provide an OPC for the previous 10 years, while conferral applicants are required to provide OPCs for travel since being granted permanent residency. It would be preferable if all applicants for citizenship, regardless of type, were assessed on the basis of the same information covering the same time period. DIAC informed the ANAO that it is reviewing the requirements with a view to achieving greater consistency.

3.28 The reliability and veracity of some OPCs is also questionable. DIAC's *PAM3: Sch4 – PIC 4001 – Penal checking procedures*³² identifies the processes for accessing OPCs from different countries. While useful for decision-makers, the fact that each country has different processes and rules for recording criminal convictions impacts on the availability and reliability of OPCs. In addition, the

³² Department of Immigration and Citizenship, *PAM3: Sch4 – PIC 4001 – Penal checking procedures*, September 2009, (unpublished).

lack of centralised criminal databases, rules for non-recording of spent convictions and corruption in some countries means that OPCs may be incomplete and/or unreliable. The ANAO found that only four of the 300 cases reviewed included OPCs with criminal histories. Furthermore, the ANAO observed that many case officers did not use or were not aware of *PAM3: Sch4 – PIC 4001 – Penal checking procedures* and that OPCs were accepted on face value, even if DIAC's guidance stated that OPCs from the country in question may not be reliable.

3.29 The ANAO recognises that it will not be possible to require a verified and complete overseas criminal history for every applicant and that there are no reliable alternative sources to access all overseas criminal histories or verify OPC data. Nevertheless, case officers should be aware of the risk of relying on possibly incomplete OPCs that have not been verified and may not be reliable. Also, to improve its administration with regards to OPCs, including consistency within the STOs, the ANAO suggests that DIAC:

- revise its application forms to require that applicants list all countries visited and the relevant dates for the period in question;
- direct that case officers access and review all relevant information available to them, including the information contained in DIAC information systems and files;
- clearly articulate DIAC's position on accepting statutory declarations in lieu of OPCs;
- make sure that case officers are aware of and, when necessary, refer to the guidance on OPCs (particularly, *PAM3: Sch4 – PIC 4001 – Penal checking procedures*).

A focus on criminal convictions

3.30 Australian citizenship is a privilege that should be conveyed only after a full assessment of an applicant's character, including their general conduct and associations. Individually, the approaches to identifying persons of potential character concern, as discussed in this chapter, have some limitations. The limitations include relying on applicants to truthfully declare potential character concerns and provide information about overseas travel, and the difficulty of obtaining reliable OPCs from some countries. Even so, taken together the approaches minimise the risk that a person of potential character concern could be taken to be of good character because evidence to the

contrary is not available to the case officer at the time the citizenship application is assessed.

3.31 However, while the ACIs state that general conduct and associations may be relevant to a consideration of character, the sources of evidence collected by citizenship case officers primarily focus on criminal activity. The ANAO recognises that a focus on criminal activity is more straightforward. In such cases, the applicant has been convicted of a crime and evidence is available on which to base a decision. Evidence of general conduct or associations with criminal individuals or groups is not always readily available and may not be reliable.

3.32 However, to fully assess good character, case officers need to look at all aspects of character. When defining good character for administrative purposes (see Recommendation No.1), DIAC will need to clarify expectations about the standards of behaviour that are acceptable, including whether the term is expected to include general conduct and associations. The department will also need to provide appropriate guidance to its staff implementing this definition. In forming the definition, it would be appropriate to take into account the approach adopted in the administration of the character requirements of the Migration Act.

Conclusion

3.33 DIAC provides adequate information to potential applicants through its offices and on its website. However, the link between the good character requirements and how the information provided by applicants is used by DIAC to assess an application could be more clearly described. Also, the information should clearly state that if applicants are subject to a prohibition on approval, they should not apply for citizenship at that time.

3.34 To mitigate the risk that persons of character concern are granted citizenship, DIAC seeks to gather a range of information to inform the assessment of these applicants' character. DIAC uses various approaches to gather this evidence, including:

- asking applicants to answer questions on the citizenship application form that address character issues;
- checking its information systems, such as MAL; and
- sourcing Australian penal certificates and OPCs, where appropriate.

3.35 However, these approaches have some limitations. Applicants who are not of good character may not willingly declare that information, an alert will only be raised in a DIAC system if the applicant has been previously entered on that system, and DIAC does not have a national policy for processing clients subject to an IRN. Also, the effectiveness of OPCs as a reliable source of character evidence is limited by several factors, including DIAC's reliance on applicants volunteering information about their overseas travel and aliases, inconsistent approaches across the STOs when administering the OPC requirements, and the questionable reliability and veracity of OPCs from some countries.

3.36 It would assist case officers if DIAC developed and disseminated a national policy for processing citizenship and visa applicants subject to IRNs. DIAC should also make case officers aware of the risk of relying on possibly unverified, incomplete and/or unreliable OPCs when making citizenship decisions and improve its administration in this area by revising its application forms, clearly articulating its position on accepting statutory declarations in lieu of OPCs, and making sure that officers refer to the OPC guidance when assessing applications.

3.37 The sources of evidence citizenship case officers collect to identify applicants of character concern focus primarily on criminal activity. They are not likely to uncover evidence of general conduct or association that may also be relevant to a consideration of character. When defining good character for administrative purposes, DIAC will need to clarify expectations about standards of behaviour that are acceptable, including whether the term is expected to include general conduct and associations, and provide appropriate guidance to its staff.

4. Processing and Deciding Character Cases

This chapter examines the key stages in DIAC's approach to processing character cases and making decisions about citizenship applications. The chapter also reviews DIAC's administration of appeals of its citizenship decisions.

4.1 It is important that DIAC appropriately assesses the character of citizenship applicants, including requiring that officers obtain sufficient evidence to assess character and subjecting assessments to sufficient review prior to decision-making. Once a decision has been made on a citizenship application, that decision should be adequately documented.

4.2 The ANAO examined the key stages in DIAC's assessment of character cases, decision-making processes for cases and its administration of appeals of citizenship decisions.

Assessing character

4.3 If, as a result of the processes examined in Chapter 3, DIAC has evidence suggesting that a person is not of good character, the case officer initiates a more detailed character assessment. This involves contacting the applicant to discuss any character concerns and request additional information.

4.4 The ANAO's examination of DIAC's assessment of character cases focused on the:

- frequency and type of contact with applicants to request information;
- type of evidence requested from applicants;
- procedures for assessing a citizenship application when an applicant's visa is being considered for cancellation under section 501 (s501) of the Migration Act; and
- level of review to which assessments are subject.

Contacting applicants

4.5 Case officers request evidence by letter, telephone and/or email. The frequency and type of contact is at the discretion of case officers. The ANAO observed that there was considerable variation in the response periods granted

to applicants by case officers. For example, one STO used a 35 day deadline for response to information requests other than OPCs, while other STOs generally allowed 28 days. In some cases, this response period was reduced to 14 days or seven days for final requests. For OPCs, the required response time varied from 60 to 70 days.³³

4.6 In terms of the number of contacts with applicants, practice varied from case officer to case officer and even to individual cases. When reviewing a sample of 300 case files, the ANAO found that practice ranged from one follow-up request before refusal, to a case in which an applicant was issued with seven written follow-up requests for information about their criminal history and contacted by telephone at least three times before their application for citizenship was refused on character grounds. On average, applicants refused on character grounds received two written requests for information following the first request (that is, three written requests in total), with 30 per cent of these applicants receiving three or more written follow-up requests for information.

4.7 Applicants subject to prohibitions on approval received an average of one written request for information, following the first request. However, 29 cent of applicants subject to a prohibition on approval were not contacted prior to the case officer refusing their application. This approach is in breach of the ACIs and DIAC's MOU with CrimTrac, which require that adverse information the decision-maker is likely to rely on to refuse an application be put to the applicant.³⁴

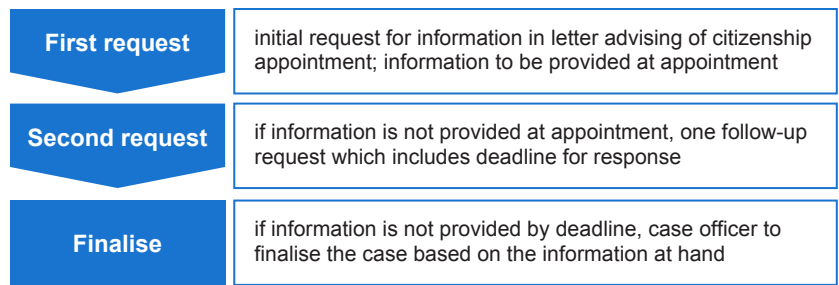
4.8 In September 2010, following consultation with NatO and the STOs, the GM-Citizenship issued a paper, *Stronger Case Management Framework for Citizenship Applications*, recommending the following approach to requesting information from applicants.

³³ The response time allowed for providing a New Zealand OPC was shorter (28 days).

³⁴ Department of Immigration and Citizenship, *Australian Citizenship Instructions*, Commonwealth of Australia, September 2010, p.159.
Memorandum of Understanding between the CrimTrac Agency and the Department of Immigration and Citizenship, Schedule C.1.1.

Figure 4.1

Stronger Case Management Framework for Citizenship Applications – information requests



Source: ANAO representation.

As the framework is new, the ANAO did not examine its effectiveness in addressing the issues described above.

Evidence requested

4.9 The type of evidence DIAC requests from applicants includes statutory declarations, character references and other supporting documents, such as sentencing remarks, employment records, evidence of community involvement, education records and details about travel outside Australia. However, the ANAO found that, while applicants are contacted regarding their applications and given the opportunity to address any character concerns, the type and amount of supporting documentation requested from applicants varied between STOs and case officers. For example, one STO requires written details about an applicant’s travel outside Australia while other STOs rely on verbal confirmation of overseas travel. As a result, depending on the office in which an application is lodged and even the case officer assigned to the case, an applicant’s experience will vary, including their opportunity to respond to information requests, the time in which they are required to respond and the type of information requested.

4.10 The GM-Citizenship’s paper, Stronger Case Management Framework for Citizenship Applications, is a first step towards improving the consistency of communications between DIAC and citizenship applicants. Providing sufficient guidance to its STOs about the type and form of information to be requested from applicants would further improve these interactions.

4.11 Supporting documents provided by applicants are generally accepted at face-value. For example, case officers rarely verify whether character references are genuine and that the referees are Australian citizens, as required

by the ACIs. Given that case officers rely on these documents when making a decision, it is important to verify, if possible, that they are accurate and genuine. This is particularly true when the documents are used to balance a criminal record or other information suggesting that an applicant is not of good character and citizenship is approved, or as the basis of a decision to refuse citizenship on character grounds.

Section 501 of the Migration Act

4.12 Section 501 of the Migration Act establishes the character requirements for visa applicants and holders. The character requirements of the Migration Act and the Citizenship Act, and DIAC's approach to administering the requirements, are notably different.³⁵ These differences include:

- the ACIs, which are high-level and not prescriptive, compared with the *PAM3: Act – Character s501 – The character test, visa refusal & visa cancellation*, which is detailed and prescriptive; and
- decision-making, which is devolved to junior officers under the Citizenship Act and centralised under the Migration Act.

4.13 However, many of the issues DIAC faces when administering the character requirements under the two Acts are similar. These issues include identifying and accessing reliable information sources, assessing the veracity of information, and processing potential war criminals and persons subject to IRNs.

4.14 One point at which DIAC's administration of the two Acts should interact is when a citizenship applicant's visa is being considered for cancellation under s501 of the Migration Act. However, DIAC does not have a policy or protocol that facilitates interaction between citizenship areas and the National Character Consideration Centre (NCCC), which processes s501 cases, and that articulates processing priorities when individuals who have applied for citizenship are also being considered under s501 of the Migration Act. As a result, staff in these areas are uncertain about the appropriate approach to processing character cases from the same client; case officers were unclear about which area should be processing a client first and practice varied significantly between the STOs. One STO reported to the ANAO that it would

³⁵ See ANAO Audit Report No.55 2010–11, *Administering the Character Requirements of the Migration Act 1958*, which was tabled as a compendium with this report.

not finalise a citizenship application if the applicant's visa was being considered under s501 of the Migration Act, another said that it would finalise the citizenship application first, while a third stated that it would process the application simultaneously with the s501 consideration, but that citizenship takes precedence over possible visa cancellation.

4.15 There would be benefit in the character policy and service delivery areas within DIAC sharing their knowledge and experience of common issues and agreeing to a protocol for administering the character requirements of the Migration Act and the Citizenship Act. The protocol should include procedures for effectively processing clients who have applied for citizenship and are being considered for visa cancellation under s501 of the Migration Act. Effective communication and consultation would assist DIAC to develop a more cooperative and effective approach to processing persons of potential character concern.

4.16 Later in this chapter, the ANAO recommends that DIAC agree and implement a protocol to facilitate effective communication and cooperation between the areas administering the character requirements of the two Acts (see Recommendation No.3). The protocol should include procedures for effectively processing clients who have applied for citizenship and are being considered for visa cancellation under s501 of the Migration Act.

Reviewing assessments

4.17 Reviewing a case officer's work prior to finalisation (a live review) can be an effective method of decreasing the risk that an applicant's character is not adequately assessed. The benefits of a live review system are that errors are noted and actioned prior to a decision being made, individual development opportunities can be identified, and systemic issues, such as inconsistencies in interpretation and decision-making, can be identified and addressed. The need for review is particularly important in character cases, given the number and level of citizenship decision-makers, the discretion allowed when making decisions, and the pressure on case officers to meet time oriented service delivery standards.

4.18 Three of the STOs visited by the ANAO carry out some form of live review. In two of these STOs, review was limited to underperforming case officers, while in some teams in another STO, supervisors periodically observed a sample of the work of all team members. In addition, the

supervisor in one small STO, with a low volume of character refusals, reviews all decision records before they are sent to the unsuccessful applicant.

4.19 The ANAO suggests that DIAC, building on the review processes in place in some STOs, develop and implement a consistent system of live reviews, whereby a sample of assessments by case officers are periodically reviewed by senior citizenship officers.

Making character decisions

4.20 After assessing an application, two decision options are available to case officers—approve or refuse. That is, if the case officer is satisfied that the applicant is of good character, and they have satisfied all other eligibility criteria, the case officer approves the application for citizenship. If the case officer is not satisfied that the applicant is of good character or cannot be satisfied due to insufficient information, the case officer refuses the application for citizenship.³⁶

4.21 Insufficient information generally results because an applicant has not responded to a request. For example, when DIAC requests an OPC, applicants are informed that if they do not provide the required documents, a decision will be made on the information available to the decision-maker. If an applicant does not produce the OPC as requested, the case officer will not be in a position to make an informed decision about their character and the application for citizenship may be refused.

4.22 The ANAO's examination of DIAC's decision-making covered:

- the variability of case officers' decisions;
- specific decisions relating to applicants under 18 years of age;
- approaches to documenting decisions; and
- referrals of unsuccessful citizenship applicants for consideration for visa cancellation under s501 of the Migration Act.

³⁶ The application may also be refused if the applicant does not meet one or more of the other eligibility criteria.

Variability in decision-making

4.23 As mentioned in Chapter 2, case officers have considerable discretion when interpreting the character requirements and may be influenced by various factors, such as their age, socio-economic background, experiences and values. When reviewing 300 citizenship cases, the ANAO observed variation in decision-making in cases that appeared to be similar. To test this observation, the ANAO conducted structured interviews with 23 case officers in five STOs, posing hypothetical case scenarios and asking the case officers what would be their likely decision. Table 4.1 shows three scenarios and the responses provided by case officers when asked, in each scenario, if an applicant did not declare the offences on their application form and were unresponsive to requests for further information.

Table 4.1

Scenarios and responses by case officers

Scenarios		Responses
Scenario 1	<ul style="list-style-type: none"> two counts of theft (shoplifting); no conviction recorded, two \$400 fines; two years before lodgement 	Approve: 16 case officers Refuse: 2 case officers Uncertain: 5 case officers
Scenario 2	<ul style="list-style-type: none"> one count of assault (fight in bar); one month imprisonment suspended, good behaviour bond for one year and required attendance at a behaviour management course; three years before lodgment one count drink driving; licence suspended for six months; one year before lodgment 	Approve: 8 cases officers Refuse: 9 cases officers Uncertain: 6 cases officers
Scenario 3	<ul style="list-style-type: none"> various counts of assault, theft and burglary, drunk driving, reckless driving, minor drugs charges; total of five years imprisonment, fines, good behaviour bonds and community service; consequences of last conviction were completed 10 years before lodgment 	Approve: 3 case officers Refuse: 12 case officers Uncertain: 8 case officers

Source: ANAO.

4.24 The variability of these responses demonstrates that case officers often arrive at different decisions when provided with the same information. Defining what constitutes ‘good character’ in DIAC’s policy and guidance, ensuring that guidance and training provided to case officers is adequate and up-to-date, and reviewing case officers’ assessments and decisions will assist DIAC to promote greater consistency in character decision-making.³⁷

³⁷ Citizenship guidance and training was examined in Chapter 2 and approaches to reviewing the work of case officers was discussed earlier in this chapter.

Applicants under 18 years of age

4.25 Under the Citizenship Act, applicants under the age of 18 at the time they lodge their application are not required to meet the good character requirements. Therefore, character assessments carried out on applicants younger than 18 years old are *ultra vires*.³⁸ In mid 2008, DIAC became aware of a discrepancy between the Citizenship Act and the ACIs and materials provided to potential applicants, including citizenship application forms. At that time, the ACIs and other materials stated that the good character requirement applied to applicants 16 years and over. In August 2008, DIAC corrected the ACIs and its guidance, circulating advice to case officers that the character requirements only applied to applicants aged 18 years and older.

4.26 However, between May 2007 and May 2008, four applicants under the age of 18 had been refused citizenship on character grounds.³⁹ One applicant was aged 14, one was 16, and two applicants were 17 years old when they lodged their applications for citizenship. Prior to the ANAO's audit, DIAC had become aware of the incorrect decisions but had decided that these applicants would not be advised of this fact and that their cases would not be reopened. The reason for this decision was that the applicants were advised in writing at the time of refusal that the citizenship decision was reviewable by the Administrative Appeals Tribunal (AAT). However, in response to questions from the audit team, DIAC advised that it had received legal advice and was reconsidering its approach to these cases. At the time of finalising this report, these cases were not yet concluded.

4.27 DIAC has an obligation to conclude the assessment of these applications in compliance with the legislation promptly and to advise the applicants of the outcomes of the assessment, as appropriate.

³⁸ *Ultra vires*—going beyond the legal power or authority of an agent, company, tribunal, etc (*The Macquarie Dictionary*, 2011).

³⁹ A further seven applicants under the age of 18 were refused citizenship on character grounds, but have since become citizens.

Recommendation No.2

4.28 The ANAO recommends that DIAC conclude the assessment of the applications from the four applicants incorrectly refused citizenship on character grounds when they were under 18 years of age as a matter of priority.

DIAC's response: Agreed.

4.29 The Department agrees to conclude the remedial action already underway to resolve the applications from the four applicants. Remedial action had already commenced prior to the audit, including re-writing the relevant policy instructions available to officers and a re-examination of the four cases. The Department has since written to the four applicants and will resolve their applications as soon as possible.

Documenting decisions

4.30 Decisions about whether an application for citizenship is approved or refused should be recorded in DIAC's information systems and may also be documented in a decision record. Applicants should be advised of the decision in writing.

4.31 Letter templates, including a letter template advising an applicant that their application for citizenship has been refused on character grounds, are available on DIAC's intranet. The character refusal letter is brief and covers only situations where refusal is due to the applicant's criminal history. DIAC has identified improving the letters as a key priority area. The department does not currently have a template for recording citizenship decisions, but is drafting a decision record template for refusals on character grounds. However, due to the complexity of the character area and the number of possible scenarios, the template has not been finalised.⁴⁰ In the absence of a standard template, the STOs have devised their own decision records.

4.32 The ANAO observed that, in the 265 finalised cases reviewed, the decision to approve or refuse a citizenship application was recorded in the appropriate DIAC information system. However, the ANAO noted inconsistencies, within and between STOs, in the way in which applicants were advised of decisions and the format and content of decision records. The

⁴⁰ In March 2011, DIAC advised the ANAO that the new template will be implemented in May 2011.

contents of the letter and/or decision record varied from a brief overview of the grounds and reasons for refusal to records that included a list of the evidence relied upon to assess the application and a comprehensive explanation of the case officer's assessment of the relevant evidence and its relative weighting. To improve the consistency of the form and content of decision records, the ANAO encourages DIAC to complete and disseminate the revised refusal letter template and decision record template as soon as practicable.

4.33 In all cases reviewed by the ANAO, the decision record only documented the case officer's assessment against the specific section of the Citizenship Act under which citizenship was refused. That is, where the grounds for refusal was character, the decision record did not document the case officer's assessment of the applicant's eligibility for citizenship under the other criteria. Until mid-2010, this was accepted practice. Case officers are now encouraged to assess applicants against all the eligibility criteria, including character, and document that assessment in the decision record. The ANAO considers that this is a positive change and encourages DIAC to mandate the approach. It ensures that case officers consider applicants against all relevant criteria of the Citizenship Act and, in refusing cases, adequately document the assessment.

4.34 Case officers do not generally write decision records for approvals. The ANAO found only one approval decision record during its review of 300 citizenship cases. This approval decision record outlined the reason why the case officer formed the opinion that the applicant was of good character, including the weight given to the information on which they based their decision. It is good administrative practice to clearly document decisions and retain a complete decision-making audit trail.⁴¹ Therefore, the ANAO suggests that DIAC take steps to require case officers to keep records documenting finely balanced decisions where judgement has been exercised, such as cases where an applicant has a criminal history and their good character has been questioned.

4.35 Under the agreement with CrimTrac, DIAC cannot store criminal history reports permanently; records must be destroyed within three months. This condition has been communicated to processing officers. However, the

⁴¹ Additionally, Section 28 of the *Administrative Appeals Tribunal Act 1975* states that any person affected by a decision may request a statement of reasons for the decision, including the evidence or other material on which those findings were based and giving the reasons for the decision.

guidance is ambiguous. The CrimTrac manual⁴² states that if a case officer approves a citizenship application where a match is returned (that is, where an applicant has a criminal record), a note must be made in DIAC's information systems giving the reason for approval. The guidance is silent about how to record a match if an application is refused. Recent advice to the STOs stated that 'citizenship officers are not to record *any* criminal history information obtained from CrimTrac reports in ICSE ...' (emphasis added).⁴³ As a result, officers are unclear about what information can and cannot be recorded in DIAC's information systems, decision records and case files. It would benefit case officers if DIAC issued clear guidance about how to record a CrimTrac match.

Referring unsuccessful citizenship applicants for s501 consideration

4.36 When a citizenship applicant is refused on character grounds, the severity of the character concern may warrant consideration of the applicant's visa under s501 of the Migration Act. However, the NCCC's referral guidelines focus on referrals of visa applicants from processing centres, not on referrals of applicants from citizenship to the NCCC. Also, as discussed earlier in this chapter, DIAC does not have a policy or protocol to facilitate interaction between the NCCC and citizenship areas. As a result, applicants refused citizenship on character grounds are not routinely referred to the NCCC when referral may be warranted.

4.37 Many of the applicants refused citizenship on character grounds would not necessitate consideration under s501 of the Migration Act. In many cases, the citizenship refusals are due to applicants not providing requested documents or behaviour that would not warrant consideration under s501 of the Migration Act. However, a small proportion of citizenship applicants refused on character grounds should be referred to the NCCC, including applicants with serious criminal records and those suspected or found guilty of involvement in crimes against humanity. For example, the ANAO's sample of 300 citizenship applications included one applicant with serious driving offences and another with drug offences, both resulting in substantial periods

⁴² Department of Immigration and Citizenship, *Procedures for Citizenship Onshore Police Checks*, April 2010, (unpublished).

⁴³ The Integrated Client Services Environment (ICSE) is a DIAC system used to record citizenship processing and outcomes.

of imprisonment, and five applicants refused citizenship on the basis of adverse war crimes assessments, including two who were convicted in absentia. Until the ANAO's audit, none of these applicants for citizenship had been referred to the NCCC and only one had been considered for visa cancellation.⁴⁴ In March 2011, DIAC advised that, in response to the ANAO's findings, the five applicants with adverse war crimes assessments have been referred to the NCCC.

Appeals of citizenship decisions

4.38 In general, applicants for citizenship can appeal decisions to the AAT and the Federal Court, and subsequently to the Full Court of the Federal Court. Sections 52 and 53 of the Citizenship Act outline the types of decisions and the conditions under which such an appeal can be made. In 2009–10, 188 citizenship appeal cases were concluded. The majority (184) were appealed to the AAT, three to the Federal Court and one to the Full Court of the Federal Court. Of the 188 appeal cases, 31 related to character.⁴⁵

Table 4.2

Citizenship appeal outcomes, for the period 1 July 2009 to 30 June 2010

	All cases	Character cases
DIAC won	49	12
Applicant won	7	0
DIAC withdrew	75	15
Applicant withdrew	57	4
Total	188	31

Source: ANAO analysis of DIAC data and AAT data (available at <<http://www.austlii.edu.au/au/cases/cth/aat/>>).

4.39 When an applicant withdraws from a case, DIAC's original decision stands. When DIAC withdraws from a case, the department has made an assessment that the original decision may be difficult to defend or because new evidence has been made available as a consequence of the appeal process. The latter reason accounts for most of DIAC's withdrawals from character cases. In

⁴⁴ One of the applicants refused citizenship was considered under s501 in 2005, prior to the war crimes assessment but in response to a conviction in absentia for war crimes.

⁴⁵ DIAC did not classify 46 (24.5 per cent) of the 188 cases. The ANAO reviewed DIAC's Citizenship Litigation Reports and the AAT's decisions, reducing the number of unclassified cases to 14. The remaining 14 cases may include character cases, potentially increasing the total number of character cases concluded in 2009–10.

such cases, an applicant may, for example, have had their applications refused because they did not provide an OPC in the time allocated by DIAC. If the applicant produces an OPC as part of their application for appeal, and the DIAC decision-maker is now satisfied that the applicant meets the character requirement, DIAC will withdraw from the appeal process and approve citizenship.

4.40 DIAC's Enforcement and Citizenship Litigation Section compiles Citizenship Litigation Reports, which are fortnightly summaries of litigation outcomes for the preceding two-week period. These reports include data on litigation outcomes and significant matters arising from the cases and note whether the outcome of the individual cases has wider implications for the citizenship caseload. The Citizenship Policy Branch reviews the reports in an ad hoc manner and takes action as appropriate. These actions might include incorporating appeal outcomes and any significant matters arising from the cases into the CTP and providing policy advice to the STOs. In this way, lessons are learnt from appeal cases.

Conclusion

4.41 If DIAC had evidence suggesting that a person is not of good character, applicants were generally contacted regarding their application and given an opportunity to address any character concerns. However, DIAC's interaction with applicants varied, between and within STOs, in terms of the response periods granted to applicants to provide requested information, the number of times applicants were contacted and the type of information requested from applicants. STO approaches to reviewing case officers' work prior to finalising an assessment also varied. DIAC's interactions with citizenship applicants would be improved if it provided sufficient guidance to its STOs about the type and form of information to be required from applications. Citizenship assessment processes would also be strengthened with the introduction of a consistent system of live work reviews, whereby a sample of assessments by case officers are periodically reviewed by senior citizenship officers.

4.42 Case officers have considerable discretion when interpreting the character requirements and they often arrived at different decisions, despite being provided with the same information about an applicant's character. Defining 'good character' for administrative purposes and ensuring that guidance and training provided to case officers is adequate and up-to-date and that decisions are reviewed would improved consistency of character decision-making.

4.43 DIAC has corrected the ACIs and materials provided to potential applicants that erroneously stated that the good character requirement applied to applicants 16 years and over. However, the department has not concluded processing of the four applicants under the age of 18 refused citizenship on character grounds between May 2007 and May 2008. These applicants should have been advised of the incorrect decisions made and the assessment of their applications should be finalised as a matter of priority.

4.44 Decisions to approve or refuse citizenship were recorded in the appropriate DIAC system and, if refused, documented in a decision record. Applicants were advised of the decision in writing. However, the ANAO noted inconsistencies, within and between STOs, in the way in which applicants were advised of decisions and the format and content of decisions records. The new decision record template for refusals on character grounds DIAC is drafting is a positive initiative and its use should be mandated when finalised. DIAC should also encourage case officers to document the reasons for finely balanced approval decisions where judgement has been exercised.

4.45 As DIAC has not established a protocol for interaction between citizenship areas and the NCCC, staff in these areas are uncertain about the appropriate approach to processing character cases from the same client. Case officers were unclear about which areas should be processing a client first and practice varied significantly between the STOs. In addition, applicants refused citizenship on character grounds, even those refused as a result of serious character concerns, are not routinely referred to the NCCC. While many applicants refused citizenship on character grounds would not necessitate subsequent consideration by the NCCC for potential cancellation of their visa, a small proportion of citizenship refusal cases do. Agreeing to a protocol for administering the character requirements of the Migration Act and the Citizenship Act would assist DIAC officers to share knowledge and experience of common issues and develop a more cooperative and effective approach to processing persons of potential character concern.

Recommendation No.3

4.46 To facilitate communication and cooperation between the areas administering the character requirements of the *Migration Act 1958* and *Australian Citizenship Act 2007*, the ANAO recommends that DIAC agree and implement a protocol that includes procedures for:

- processing clients who have applied for citizenship and are also being considered for visa cancellation under s501 of the *Migration Act 1958*;
- referring to the NCCC clients refused citizenship on character grounds, including guidelines outlining when a referral would be appropriate.

DIAC's response: Agreed.

4.47 DIAC agrees to work closely with the relevant areas of the Department to develop the protocols as recommended. It is expected that the protocols will be developed by October 2011.

5. Management Arrangements to Support Citizenship Processing

This chapter examines DIAC's management arrangements to support citizenship processing. These include its planning processes, risk management strategies and the monitoring and reporting of its performance.

5.1 Effective administration of government programs relies, in part, on effectively managing risks and performance. A level of risk is inevitable in administering government programs; but significant risks must be managed actively within considered bounds. The key objectives of effective risk management is to understand and articulate risks, and manage them using appropriate mitigation strategies. The existence of a sound framework to measure performance and the achievement of objectives is also essential. The framework should include objectives that are clearly linked to government policy and outcomes, a range of qualitative and quantitative indicators that provide stakeholders with useful and reliable performance information, and appropriate reporting of outcomes.

5.2 The ANAO examined DIAC's management arrangements, including its planning process and the management of the risks associated with its administration of the character requirements for citizenship. DIAC's measurement of, and reporting on, its performance was also reviewed.

Planning process

5.3 DIAC's suite of planning documents guide its activities. They include the following, which are relevant to citizenship:

- *The DIAC Strategic Plan 2010–11;*
- Citizenship, Settlement and Multicultural Affairs 2010–11 Division Business Plan;
- 2010–11 Citizenship Branch Plan; and
- individual plans for sections within the Citizenship Branch.

5.4 The documents contain the objectives appropriate to the level of planning, and describe how these objectives will be achieved. Each document

is supportive of and consistent with its predecessor. However, none of the planning documents, including those for the Citizenship Branch or its sections, refer specifically to character issues.⁴⁶ In a changing environment, and given the significance of character issues and the consequences of not adequately mitigating the risks associated with administering the character requirements, DIAC should consider how character issues can be best reflected in the relevant branch and section planning documents.

Managing risks

5.5 DIAC's Risk Management Framework outlines the processes and structures through which the department manages risk. The Framework covers DIAC's risk management strategy, governance structures, internal culture and capability and risk management processes. Annually, DIAC develops, within the context of the framework, a Strategic Risk Profile. The DIAC Strategic Risk Profile 2010–11 describes the 16 key risks identified by the department, as well as the controls and inherent and residual risk ratings relevant to each of the risks. Citizenship is mentioned in the Strategic Risk Profile as an element in two of the risks relating to fraud and stakeholder management. The Strategic Risk Profile does not specifically include risks as they relate to DIAC's administration of the character requirements of the Citizenship Act. Nor have the risks been articulated at the division, branch or section levels.

5.6 The key risks relevant to DIAC's administration of the character requirements of the Citizenship Act are that persons of character concern are not identified or appropriately assessed, and that inappropriate decisions are made with respect to the character requirements. As discussed in this report, DIAC has adopted various strategies to mitigate the risks, including providing guidance and training to its case officers and requiring evidence in support of a citizenship application.

5.7 Refusing citizenship to a person of good character does not necessarily impact on that person's visa or their opportunity to remain in Australia and there are no restrictions on that person reapplying at any time. However, once citizenship is approved it can only be revoked in limited circumstances, as

⁴⁶ The 2010–11 Citizenship Policy Section Plan refers to character in the context of the CTP and identity issues. As at November 2010 this document was incomplete.

described in section 34 of the Citizenship Act.⁴⁷ Only 14 persons have had their citizenship revoked since the introduction of Australian citizenship in 1949, nine of which occurred between 2005 and 2007. Of these nine persons, eight are currently in Australia.⁴⁸ Therefore, while the residual risk arising from not adequately managing citizenship risks is generally moderate, the impact of inappropriately approving a citizenship application can be substantial.

5.8 As discussed in this report, DIAC has adopted various strategies to mitigate citizenship risks. Nevertheless, in view of the changing environment and DIAC's experiences in administering the character program over time, it would be appropriate for the department to periodically reassess character-related risks and its management of those risks.

Measuring and reporting performance

Key performance indicators

5.9 DIAC is responsible for achieving six government outcomes, with one outcome relating to citizenship.

Outcome 6: A cohesive, multicultural Australian society through promotion of cultural diversity and a unifying citizenship, decisions on citizenship status, and multicultural and citizenship policy advice and program design.⁴⁹

5.10 The 2010–11 Portfolio Budget Statements (PBS) describe the program objectives, deliverables and key performance indicators relevant to Outcome 6 and DIAC reports on its performance against the key performance indicators in its annual report. Tables 5.1 and 5.2 show the elements specific to citizenship.

⁴⁷ Generally, to revoke citizenship by conferral, descent or adoption the person must be convicted of an offence in relation to their application to become a citizen. If a person has acquired citizenship and, subsequently, evidence comes to hand to suggest that they are not of good character, DIAC is not able to reconsider their application or revoke their citizenship unless the evidence is a conviction in relation to their citizenship application. Also, citizenship cannot be revoked for an offence committed after a person becomes an Australian citizen.

⁴⁸ The visas of the seven of the nine persons whose citizenship has been revoked since 2005 were considered under s501 of the Migration Act. One was cancelled and the person removed from Australia, four were not cancelled and two are still being considered.

⁴⁹ Department of Immigration and Citizenship, *Portfolio Budget Statements 2010–11, Budget Related Paper No.1.13, Immigration and Citizenship Portfolio*, Commonwealth of Australia, May 2010, p.70.

Table 5.1**Citizenship objectives and deliverables**

Program objectives	<ul style="list-style-type: none"> Efficient and effective delivery of the Australian citizenship program in line with Australia's citizenship law and government policies. Promote the value of Australian citizenship.
Deliverables	<ul style="list-style-type: none"> Deliver lawful citizenship decisions under Australian citizenship legislation. Implement a communication strategy that promotes the value of Australian citizenship and encourages eligible non-citizens to become Australian citizens.

Note: The program objectives noted above are two of three relating to Program 6.1: Multicultural and Citizenship Services. The other objective relates specifically to multicultural services. The deliverables are two of seven relating to Program 6.1.

Source: Department of Immigration and Citizenship, *Portfolio Budget Statements 2010–11, Budget Related Paper No.1.13, Immigration and Citizenship Portfolio*, Commonwealth of Australia, May 2010, p.73.

Table 5.2**Citizenship indicators and outcomes**

Key performance indicator ¹	Target	Outcome
Percentage of refusal decisions for Australian citizenship overturned through an appeal process.	< 1%	< 1%
Percentage of client conferral applications decided within service delivery standards.	80%	<ul style="list-style-type: none"> until 09/11/09, 89.2% of cases decided within old service standard of 95% of conferral applicants decided within 90 days² after 09/11/09, 80.3% of cases decided within new service standard of 80% of conferral applications decided with 60 days
Increased awareness of, and interest in, Australian citizenship.	80 000 visits to the Citizenship Wizard	428 242 visits to the Citizenship Wizard

Note 1: The key performance indicators noted above are three of six relating to Program 6.1.

Note 2: In DIAC's 2009–10 annual report the old service standard was incorrectly reported as: 90 per cent of conferral applicants decided within 90 days.

Source: Department of Immigration and Citizenship, *Department of Immigration and Citizenship Annual Report 2009–10*, Commonwealth of Australia, October 2010, p.251.

5.11 DIAC's indicators focus on the citizenship program as a whole. However, the objective of the program requires that citizenship is administered in line with citizenship law and government policies. This includes that applicants for citizenship satisfy the Minister that they are of

good character at the time of a decision on their application. The PBS and annual report do not refer to the character requirements of the Citizenship Act or include objectives or indicators that specifically relate to these requirements.

5.12 Developing indicators would allow DIAC to more effectively manage and measure its administrative performance, report against the program's objectives and inform any further managerial response, as required. For example, DIAC could develop indicators that address the proportion of staff that have completed citizenship training, the effectiveness of its guidance for staff, and the consistency of assessment and decision-making by case officers.

Service standards

5.13 To assist it to manage the citizenship caseload, DIAC has a citizenship service delivery standard that measures the time from receipt of an application until the time a decision has been made. The standard focuses on timeliness of processing: 80 per cent of citizenship conferral applications decided within 60 calendar days of lodgement.⁵⁰ Between 9 November 2009 and 30 June 2010, 80.3 per cent of applications were decided within 60 days of lodgement.

5.14 Of the cases not finalised within the service delivery standard, some take months, even years, to reach conclusion. In September 2010, 78 applications on-hand had been lodged over 12 months prior. There are a number of reasons why processing times for applications exceed the service delivery standard. Some of these reasons relate to character considerations, and include:

- investigations by various areas within DIAC, such as the War Crimes Unit and visa compliance, and third parties, such as the Australian Federal Police and Australian Security Intelligence Organisation;
- waiting times for OPCs, which can be more than six months from some countries; and
- applicants not providing supporting documents with applications or not responding to requests for documents by established deadlines.

5.15 If one or more of these factors occurs, it is likely that it will take longer than 60 days to finalise an application. For example, if an investigation, such as a War Crimes Assessment, is conducted, the time to finalise an application is

⁵⁰ Prior to 9 November 2009, the service standard was 95 per cent decided within 90 days.

likely to be considerably protracted. Seven of the 300 cases examined by the ANAO involved possible war crimes.⁵¹ These cases took between one year and 5.8 years to finalise, with an average processing time of three years. The ANAO considers that there is room for more refined service standards that recognise that a small, but significant, minority of cases will take much longer to finalise than straightforward cases.

Data analysis

5.16 DIAC's analysis of the citizenship caseload also focuses on quantitative measures. For example:

- number of applications received;
- number of applicants awaiting appointments and citizenship tests;
- number of citizenship tests administered and waiting times for tests;
- days from lodgement to decision and to acquisition;
- number of cases on hand and decided; and
- age of cases.

5.17 DIAC has not analysed the available data, including Citizenship Helpdesk enquiries, to identify systemic issues resulting in or contributing to processing delays or determine the factors that underlie the quantitative indicators.

Reporting

5.18 DIAC's external performance reporting focuses on the citizenship program as a whole. Citizenship statistics cited on its website focus on the former nationality of new citizens and outcomes of the citizenship test. DIAC's annual report outlines its performance against the key performance indicators listed in the PBS, as well as the number of citizenship decisions made during the year and the number and outcome of citizenship tests administered.

5.19 For internal management and reporting purposes, citizenship data (as discussed) is arranged into a series of 19 reports and is disseminated to STOs. Overall, STOs considered that these reports were useful for managing the citizenship caseload and as the basis for data analysis specific to individual STOs.

⁵¹ One additional case involving possible war crimes was not finalised at the time of the ANAO's review. The citizenship application was lodged in May 2008.

Conclusion

5.20 DIAC has a suite of planning documents that are internally consistent, but do not specifically identify the character requirements. DIAC's Strategic Risk Profile 2010–11 mentions citizenship as an element in two risks, which relate to fraud and stakeholder management, but does not include risks relevant to the character requirements. Given the significance of character issues and the consequences of not adequately mitigating the risks associated with the character requirements, the ANAO considers that character issues should be reflected, as appropriate, in citizenship planning documents and the department should periodically reassess character-related risks and its management of those risks.

5.21 DIAC's key performance indicators and external performance reporting also focuses on the citizenship program as a whole; no reference is made to the character requirements of the Citizenship Act. The citizenship service delivery standard focuses on timeliness of processing and its analysis of the citizenship caseload, which is reported internally, focuses on quantitative measures, such as the number of applications received, number of applicants awaiting appointments and citizenship tests, and age of cases.

5.22 As such, DIAC's current indicators and delivery standard, and its data analysis, focus on quantitative measures. They do not assist DIAC to measure or report on the quality of citizenship decision-making or whether it is effectively delivering the Australian citizenship program in line with Australia's citizenship legislation and government policies. While it is necessary to balance the cost and effort required to develop and implement performance indicators with the value they provide, the ANAO considers that developing and implementing a range of relevant performance indicators and collecting, analysing and reporting performance data against these indicators would assist DIAC to measure its administrative performance, report against the program's objectives and inform any further managerial response, as required.



Ian McPhee
Auditor-General

Canberra ACT
23 June 2011

Appendices

Appendix 1: DIAC's Response to the Proposed Report

The Department of Immigration and Citizenship (DIAC) welcomes the opportunity to contribute to the ANAO performance audit *Administering the Character Requirements of the Australian Citizenship Act 2007* and agrees with the recommendations made in the report. The ANAO report acknowledges that DIAC has in place an appropriate framework for administering the character requirements of the Citizenship Act.

Recommendation No.1

To clarify the standards of behaviour that would satisfy the Minister that an applicant meets the 'good character' requirements of the *Citizenship Act 2007*, the ANAO recommends that DIAC define, for administrative purposes, what constitutes 'good character'.

DIAC response: Agreed.

The Department agrees to further define the policy surrounding the legislative requirement of 'good character'. The Department expects that enhanced policy instructions relating to the standards of behaviour that are appropriate to 'good character' will be available to Citizenship Officers by October 2011.

Recommendation No. 2

The ANAO recommends that DIAC conclude the assessment of the applications from the four applicants incorrectly refused citizenship on character grounds when they were under 18 years of age as a matter of priority.

DIAC response: Agreed.

The Department agrees to conclude the remedial action already underway to resolve the applications from the four applicants. Remedial action had already commenced prior to the audit, including re-writing the relevant policy instructions available to officers and a re-examination of the four cases. The Department has since written to the four applicants and will resolve their applications as soon as possible.

Recommendation No.3

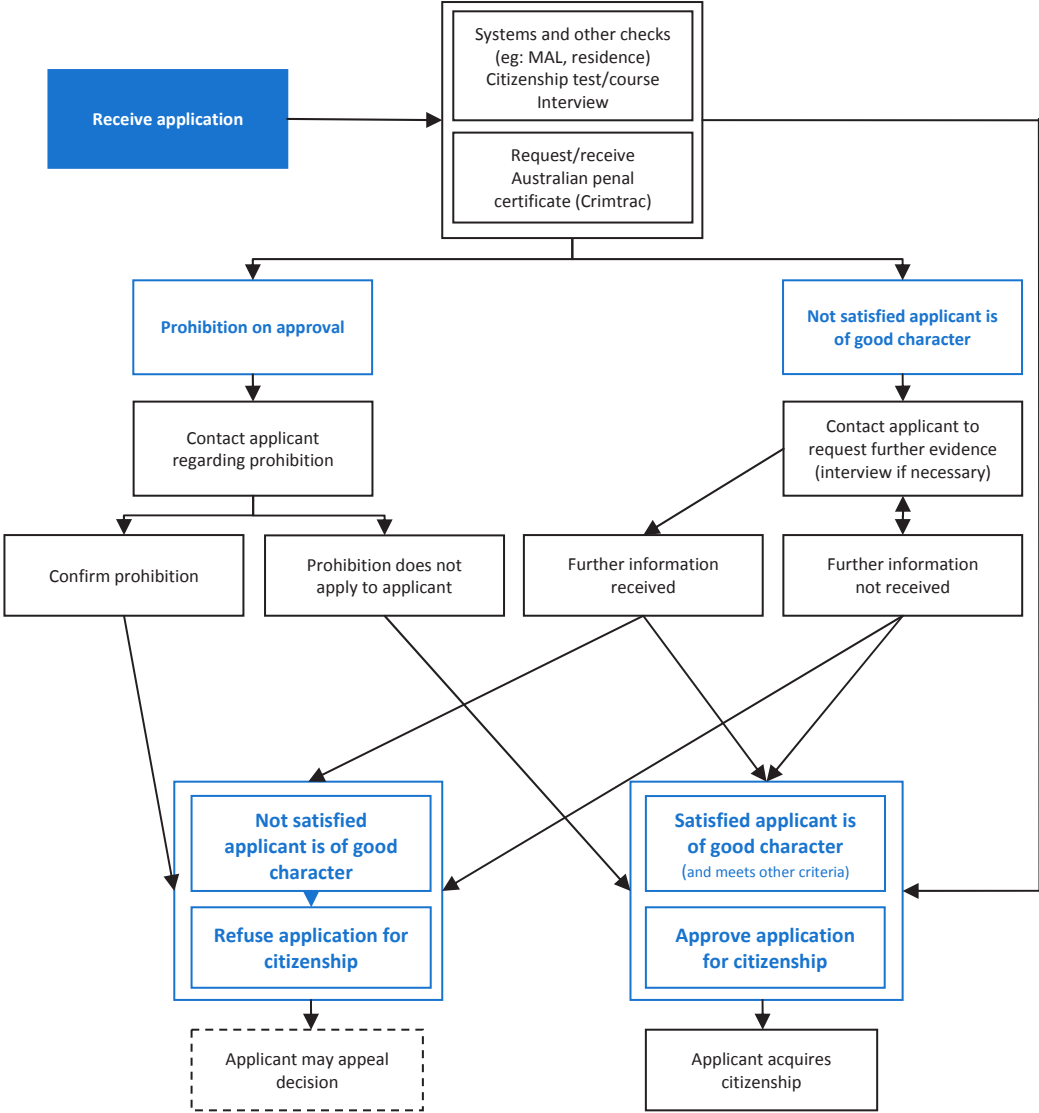
To facilitate communication and co-operation between the areas administering the character requirements of the *Migration Act 1958* and *Citizenship Act 2007*, the ANAO recommends that DIAC agree and implements a protocol that includes procedures for:

- processing clients who have applied for citizenship and are also being considered for visa cancellation under s.501 of the *Migration Act 1958*;
- referring to the NCCC clients refused citizenship on character grounds, including guidelines outlining when a referral would be appropriate.

DIAC response: Agreed.

DIAC agrees to work closely with the relevant areas of the Department to develop the protocols as recommended. It is expected that the protocols will be developed by October 2011.

Appendix 2: Processing Applications for Citizenship



Note: The above representation focuses on the process for assessing whether citizenship applicants are of good character.

Source: ANAO representation.

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