

Audit Report No. 34, 2005-06, Advance Passenger Processing

Background

- 13.1 The vast majority of travellers arrive in Australia by air, with around 9.3 million passengers arriving this way in 2003-04. People arriving in Australia by ship are usually the crew members of visiting commercial ships. In 2003-04 around 333,000 people arrived in Australia by sea.
- 13.2 The Australian Government operates a 'layered approach' to border control, whereby the particulars of each traveller are checked against Department of Immigration and Multicultural Affairs (DIMA)¹ systems at several points on their journey to ensure the traveller is properly authorised to enter Australia.
- 13.3 The introduction of Advance Passenger Processing (APP) on a mandatory basis commenced on 1 January 2003 and was a major component of the Government's border security response to the events of 11 September 2001.

1 At the time of the audit, the Department was the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). Following machinery of government changes announced on 27 January 2006, its name changed to the Department of Immigration and Multicultural Affairs (DIMA). It is referred to as DIMA throughout this chapter.

- 13.4 APP is the third key technological development in Australia's border processing system and links DIMA with airline departure control systems. The overall effect of APP is to extend the border to the last point of embarkation – the airline check-in point overseas. The system is designed to prevent people boarding who do not have authority to enter Australia or who are adversely recorded by DIMA. For passengers that are checked-in, all information needed for APP processing is collected when that person checks in with an airline carrier overseas and forwarded electronically to Australia. This allows passengers and crew to be immigration screened in flight.²
- 13.5 CPS Systems Pty Ltd was selected as the prime contractor to develop, implement and provide ongoing support for DIMA's Electronic Travel Authority (ETA) system after a tendering process in 1995. The relationship between DIMA and its contractor is covered by the ETA System Agreement, which provides among other things for enhancements to the ETA system. APP was developed as an enhancement to the ETA system.

Audit objective and scope

- 13.6 The objective of the audit was to assess whether DIMA's information systems and business processes were effective in supporting APP to meet its border security and streamlined clearance objectives. The audit focused upon:
- mandatory APP-Stage 1 (MAPP1) project management;
 - MAPP1 IT development and system performance;
 - APP performance reporting;
 - contract management; and
 - financial management.
- 13.7 The audit did not include:
- an assessment of the security of the APP system;
 - DIMA's implementation of MAPP2 as this work was still being completed at the time of the audit;
 - DIMA's Movement Alert List; or

2 ANAO Audit Report No. 34, 2005-06, p. 40.

- the processing of air passengers and crew by Customs and DIMA once they have arrived at the border.

13.8 The audit also focussed upon DIMA's administration of MAPP1 for air passengers and crew and excluded the maritime industry.

Overall audit conclusion

13.9 The audit highlighted weaknesses in the development and operation of mandatory APP in a number of key areas:

- it was not apparent that DIMA had a clear strategy for managing its relationship with its contractor, including contract succession, so that the Commonwealth's interests were protected;
- DIMA did not employ a structured approach to the delivery of APP; and
- DIMA's contractual and financial arrangements were poorly documented and exposed the Commonwealth to risk in the event of a dispute between the parties.

13.10 The audit found that although DIMA reports APP performance in its Annual Report, it does not provide information that would allow the impact of mandatory APP on border security to be assessed. In particular, it does not report against the intent of the *Border Security Legislation Amendment Bill 2002* 'to assess passengers and crew, prior to their arrival in Australia, for the risk they may present to a range of Commonwealth laws'.

13.11 DIMA used correspondence to manage its relationship with the contractor, rather than a clearly documented contractual arrangement. The ANAO considered that in the absence of formal contract variation documentation this increased the risk of disputation over the scope of what the parties intended to be delivered, the terms on which it would be delivered, and the risk that required approvals under the FMA Act would be overlooked.

13.12 In addition, the business rationale and authority for some departmental decisions was not evident, nor were key business decisions relating to the financial arrangements for APP documented. For example, the terms and conditions that DIMA had agreed with its contractor relating to the financial arrangements for voluntary APP were unclear. There was a lack of documentation to substantiate the rationale for a payment of \$900 000 to the contractor.

- 13.13 The department also advised the ANAO that it paid the development costs of the APP system, which is ultimately owned by the contractor.
- 13.14 The ANAO considers that the manner in which DIMA managed its contractual and financial arrangements with its contractor exposed the Commonwealth to unnecessary risks.

ANAO recommendations

The ANAO made six recommendations, which were all agreed to by DIMA.

Table 13.1 ANAO recommendations, Audit Report No. 34, 2005-06

1.	<p>The ANAO recommends that to assist in managing potential risks to border security, to monitor contractor performance and, to assist airlines in meeting legislative requirements relating to Advance Passenger Processing, DIMA:</p> <ul style="list-style-type: none"> • Analyse and validate system availability statistics provided by its contractor; and • Identify any common problems experienced by airlines relating to system outages and develop timely solutions in consultation with airlines to assist airlines in meeting legislative requirements relating to Advance Passenger Processing. <p><i>DIMA response: Agreed</i></p>
2.	<p>The ANAO recommends that to improve its performance reporting relating to border security, DIMA develops and reports on performance measures relating to the following:</p> <ul style="list-style-type: none"> • The number of non-citizens who were not allowed to board an aircraft to travel to Australia, as a result of being processed by Advance Passenger Processing, owing to the risk they may present in relation to a range of Commonwealth laws; and • The number of non-citizens who were refused entry at the Australian border, owing to the risk they may present in relation to a range of Commonwealth laws, that should (or could) have been detected at the point of embarkation using Advance Passenger Processing. <p><i>DIMA response: Agreed. There may be some system and practical limitation in refining the data to this point but this will be fully explored.</i></p>
3.	<p>To assist in protecting the interests of the Commonwealth in its dealings with external parties, the ANAO recommends that as part of its review of contractual arrangements with its contractor, DIMA:</p> <ul style="list-style-type: none"> • Identify its contract management risks relating to Advance Passenger Processing, analyse these risks, implement treatments, and monitor and review the success of its controls; • Consider developing a performance-based contract by linking its contractor's fee base to key performance areas and outcomes for Advance Passenger Processing; • Establish a performance management system relating to service levels for Advance Passenger Processing; • Maintain and organise contract-related documentation for easy and reliable access; and • Define processes and procedures to assist in managing contract variations relating to Advance Passenger Processing. <p><i>DIMA response: Agreed. Some of these issues are being addressed in work previously commissioned.</i></p>
4.	<p>The ANAO recommends that to support its future negotiation of contractual arrangements with a service provider for the provision of operational and support services relating to border control systems, DIMA document its business strategy and include clear terms and conditions within the contract, and for variations, relating to the financial arrangements between the parties.</p> <p><i>DIMA response: Agreed.</i></p>

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5. The ANAO recommends that DIMA document future approvals to spend public monies relating to Advance Passenger Processing, consistent with the requirements of the *Financial Management and Accountability Act and Regulations 1997*.
- DIMA response: Agreed*
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6. The ANAO recommends that to improve transparency for Internet Electronic Travel Authority applicants, DIMA include on its website appropriate notices outlining the relationship between itself and its contractor, and notifying applicants that any transaction entered into through the Internet interface would be with DIMA's contractor, and not DIMA.
- DIMA response: Agreed*
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The Committee's review

- 13.15 The Committee held a public hearing on 2 June 2006 with witnesses from the Department of Immigration and Multicultural Affairs and the Australian National Audit Office. Questions on notice were forwarded to the DIMA following the hearing and are published as a submission to the inquiry.

Mandatory Advance Passenger Processing – Stage 1 (MAPP1)

- 13.16 Following the introduction of mandatory APP, 95 percent of airline passengers into Australia were being processed using APP by 30 June 2003. Additional functionality was required however to increase this coverage to include airline transit passengers, non-visa passengers, airline crew, and cruise ship passengers and crew. The MAPP1 project was to develop a new version of APP that would provide this functionality.³
- 13.17 The Committee notes that the ANAO's examination of DIMA's project management for MAPP1, including time, cost and quality expectations, revealed weaknesses in a number of areas. The key issues identified by the ANAO included:
- the target implementation date for MAPP1 was 1 January 2004. While DIMA reported to its Minister that MAPP1 went live on 6 January 2004, the ANAO found that the majority of airlines implemented MAPP1 after May 2004 as they were unable to complete their system development before then. More than 90% had implemented MAPP1 by August 2004;
 - DIMA's costing for the project was incomplete. There was no overall picture of the total cost of the project and DIMA was unable to provide the ANAO with evidence that it had approved a project budget or developed a basis to manage expenditure. Further,

3 ANAO Audit Report No. 34, 2005-06, p. 46.

DIMA was unable to provide evidence that it had recorded expenditure against a project budget or provided project budget reports to DIMA senior management; and

- DIMA did not adequately define the quality requirements for MAPP1, which reduced the department's ability to identify and apply adequate quality controls. In particular:
 - ⇒ DIMA documentation did not address IT requirements relating to the quality of the products to be delivered and important criteria such as reliability, useability, accuracy and performance;
 - ⇒ there was no indication of the expected life of the system;
 - ⇒ DIMA did not document its quality expectations for the non-technical products, such as user documentation, training materials, and communication strategies; and
 - ⇒ the document outlining the test strategy was not comprehensive, covered only user acceptance testing, and was not finalised.

13.18 The Committee is pleased that DIMA employed an experienced project manager and used a structured project management approach for the second stage of this project (MAPP2), which was outside the scope of this audit.⁴ The Committee considers it essential that the department adopt a formal project management methodology to address the 'major weaknesses in key areas of project management' identified by the ANAO.⁵

Information technology development and system performance

13.19 The ANAO examined the development and testing of MAPP1, including whether DIMA had applied a structured methodology in order to facilitate delivery of the project to the required quality within time and cost constraints. It also examined whether DIMA had managed risks associated with its development approach. The ANAO found that:

- in June 2003, DIMA developed a draft Mandatory APP Development Strategy. While the methodology addressed a range of requirements, DIMA did not reference either a DIMA standard or any other documented development standard; and

4 ANAO Audit Report No. 34, 2005-06, p. 47.

5 ANAO Audit Report No. 34, 2005-06, p. 133.

- DIMA did not require its contractor to follow any agreed development methodology in developing MAPP1.⁶
- 13.20 While the approach adopted by the contractor and DIMA was essentially consistent with that in the draft Mandatory APP Development Strategy, the ANAO considered that this should have been fully developed and properly authorised prior to the commencement of development work.
- 13.21 The ANAO considered that DIMA did not adequately identify and manage the risks associated with its approach, which placed considerable reliance on the expertise and experience of the team (DIMA and its contractor) to 'make it work' within very tight timeframes.⁷
- 13.22 The ANAO also examined the business requirements for MAPP1, which were focused upon achieving 100 percent processing of the groups not covered by the existing APP system. High level business requirements were issued on 4 July 2003 covering all proposed requirements for Stages 1 to 3 of the project. The ANAO found that the requirements did not clearly address important issues, including:
- the need to avoid duplicate reporting by airlines to both DIMA and Customs for crew members; and
 - the need for performance reporting to monitor airlines' use of APP to help DIMA determine the level of airline compliance and identify any remedial action required.
- 13.23 The ANAO also found that Customs was not invited to comment on the high-level business requirements, even though substantial Customs involvement would be required to achieve DIMA's objectives.⁸
- 13.24 Although DIMA and Customs signed off on a proposed solution to crew processing in July 2002, it was not until MAPP2 was implemented on 23 February 2005 that the need for duplicate reporting was removed.⁹ When asked at the hearing about the length of time taken to implement this solution, DIMA told the Committee that the delay resulted from Customs having to change its system to accept this data and that because of system complexities following the

6 ANAO Audit Report No. 34, 2005-06, p. 52.

7 ANAO Audit Report No. 34, 2005-06, p. 52.

8 ANAO Audit Report No. 34, 2005-06, p. 53.

9 ANAO Audit Report No. 34, 2005-06, pp. 54-55.

further release of APP in January 2004, DIMA and Customs were unable to work together to implement the changes.¹⁰ The Committee notes that this did subsequently occur in late 2004, with implementation in February 2005.

- 13.25 DIMA's business requirements for MAPP1 did not include a requirement for performance reporting to monitor airlines compliance with mandatory APP requirements. DIMA advised the ANAO at the time of the audit that '[r]eporting beyond the levels developed prior to MAPP1 was not seen as an imperative'.¹¹
- 13.26 DIMA advised the ANAO that it was working to address deficiencies in its performance information through the development of a system to support a proposed fines regime for airlines that do not process all passengers and crew using the APP system. The ANAO considered that it would have been prudent to include performance reporting functionality as a requirement of MAPP1, given the significance of mandatory APP to DIMA's layered approach to border control.¹²
- 13.27 The ANAO found that not all business requirements for MAPP1 were developed and finalised in a timely and controlled manner.¹³ Similarly, although the ANAO considered the overall quality of DIMA's functional design for MAPP1 was adequate, there were some deficiencies in the linkages between design elements and business requirements, design documentation for the web solution, and evidence that the system complied with DIMA IT security standards.¹⁴

System testing

- 13.28 The ANAO examined whether DIMA had undertaken comprehensive and timely testing of the MAPP1 system before it was implemented and found a number of weaknesses in the testing regime.¹⁵ DIMA did not develop an overarching test plan and did not monitor testing by its contractor to ensure that agreed plans and processes were being followed. The ANAO considered that DIMA was exposed to increased risk as DIMA relied on sign-off by the contractor. There

10 Mr Brett Simpson, Department of Immigration and Multicultural Affairs, *Transcript of Evidence*, 2 June 2006, p. 27.

11 ANAO Audit Report No. 34, 2005-06, p. 55.

12 ANAO Audit Report No. 34, 2005-06, p. 56.

13 ANAO Audit Report No. 34, 2005-06, pp. 56-57.

14 ANAO Audit Report No. 34, 2005-06, p. 57.

15 ANAO Audit Report No. 34, 2005-06, pp. 60-62.

were also issues identified by the ANAO with user acceptance and usability testing, and outstanding issues when MAPP1 went live on 1 January 2004.

- 13.29 The ANAO considered that testing for MAPP1 should have been more timely and comprehensive to provide assurance that any problems had been detected and rectified before the system was implemented.
- 13.30 Importantly, the Committee notes that the ANAO considered that the sign-offs provided by DIMA did not constitute a clear business sign off that MAPP1 was complete, nor a direction to implement the system.¹⁶

System performance

- 13.31 In its report, the ANAO argued that it is critical that DIMA monitors APP system outages to assess:
- potential risks to border security;
 - individual stakeholder performance relating to contractual obligations; and
 - the impact on airline's ability to meet legislative requirements related to APP.
- 13.32 At the hearing, the Committee queried the ANAO's finding that there was a high level of availability of the APP system overall although in some months the target of 99.7 percent was not achieved. The Committee was told that statistics upon system availability are received from DIMA's contractor and that the ANAO considers DIMA should independently validate these statistics for accuracy. DIMA advised that its subsequent sampling has suggested that the data is correct. The department is also currently examining its independent reporting capacity.¹⁷
- 13.33 In surveying airlines' satisfaction with system performance, the ANAO found that airlines were generally satisfied with system response times, but were considerably less satisfied with the level of outages they experienced. There was also general satisfaction with scheduled system outages, although one airline indicated they were

16 ANAO Audit Report No. 34, 2005-06, p. 62.

17 Mr Vincent McMahon, Department of Immigration and Multicultural Affairs, Transcript of Evidence, 2 June 2006, p. 25.

very dissatisfied with the notification provided.¹⁸ The ANAO highlighted at the hearing that problems with connectivity could often exist at the airlines' end rather than with DIMA's system.¹⁹

Performance reporting

- 13.34 The ANAO examined DIMA's corporate and business planning for APP, performance measurement and monitoring, and reporting for compliance and accountability purposes. It found that APP had been adequately included in DIMA's corporate and business planning framework and that its performance measures are relevant.
- 13.35 In addition to reporting APP performance against its Portfolio Budget Statements, DIMA also considers the number of infringement notices that are issued.

Airline infringement notices

- 13.36 Carriers can be fined for bringing non-citizens to Australia without proper documentation. The number of infringement notices dropped 76 percent in the five years to 2003/04 from 5048 to 1211.²⁰ This figure represents approximately 0.01 percent of arrivals. The ANAO concluded from its analysis that the generally tighter security environment since 11 September 2001 may have impacted upon these statistics in addition to the introduction of APP.²¹
- 13.37 Noting that the focus of APP has shifted to increased border control, the ANAO considered that DIMA should include information relating to APP in its Annual Report that would allow the impact of mandatory APP on border security to be assessed, such as the number of non citizens not allowed to board an aircraft and the number refused entry at the Australian border. The Committee concurs with this recommendation.
- 13.38 The ANAO reviewed the accuracy, relevance and sufficiency of DIMA's APP performance information used for external reporting and airline compliance monitoring. It found that this information is unreliable to some degree, due to:

18 ANAO Audit Report No. 34, 2005-06, p. 63.

19 Mr Mark Rogala, Australian National Audit Office, *Transcript of Evidence*, 2 June 2006, p. 24.

20 ANAO Audit Report No. 34, 2005-06, p. 71.

21 ANAO Audit Report No. 34, 2005-06, p. 74.

- code sharing arrangements between airlines;
 - passengers crossing the primary line after midnight;
 - charter flights;
 - system errors; and
 - check-in mistakes.
- 13.39 DIMA has been unable to quantify the impact of these factors on the accuracy of its statistics. The ANAO considered that a lack of accurate performance information reduces DIMA's ability to monitor whether airlines are using APP as required by legislation, to enable DIMA to assess passengers and crew prior to their arrival in Australia for the risk they may present in relation to a range of Commonwealth laws.²²
- 13.40 When asked about the impact of these factors upon border security more generally, DIMA emphasised to the Committee that because Australia does not have visa-free entry, full checks will still be undertaken against a person's right of entry around their visa even when APP does not occur.²³
- 13.41 The Committee noted that DIMA was working to address deficiencies in its performance information through the development of an APP Infringement Reporting System to support a proposed fines regime for airlines that do not process all passengers and crew using the APP system.
- 13.42 It was intended that the fines regime will allow DIMA to fine all airlines that do not process all passengers and crew using the APP system. DIMA expected that this system would improve the accuracy of its APP performance information used for external reporting and airline compliance monitoring.²⁴

Contract management

- 13.43 The Committee is concerned that the ANAO considered that DIMA's management of its contractual arrangements for APP exposed the Commonwealth to unnecessary risks.

22 ANAO Audit Report No. 34, 2005-06, p. 79.

23 Mr Vincent McMahon, Department of Immigration and Multicultural Affairs, Transcript of Evidence, 2 June 2006, p. 27.

24 ANAO Audit Report No. 34, 2005-06, p. 81.

- 13.44 DIMA's contract with CPS Systems (the contractor) included a clause that provides for enhancements to be made to DIMA's Electronic Travel Authority system, including but not limited to advance passenger information and advance passenger clearance functionality.²⁵ The contract also provides that if the contractor is requested to carry out enhancements, the contract is to be varied by agreement in writing between the both parties.
- 13.45 The ANAO found that the contractor had developed a business system design for APP on 26 November 1998, which included a section seeking written endorsement from DIMA senior managers. This endorsement was not given, and the ANAO could not find any other documented basis for a variation to the contract. The ANAO also found that DIMA had not effectively varied the contract through written agreement executed by both parties.
- 13.46 Without this variation, the ANAO considered that the risks of disputation over the scope of the work, the terms on which it would be delivered and that required approvals under the FMA Act will be overlooked, were increased.²⁶
- 13.47 The ANAO also examined ongoing contract risk management and found that DIMA had not adequately identified the contract management risks relating to APP and had therefore not managed these risks. In its day-to-day management of the contract, the ANAO found that DIMA had not:
- established service-level agreements for the APP system;
 - developed a performance-based contract linking its contractor's fee base to key performance areas and outcomes for APP;
 - established a performance management system relating to service levels for APP;
 - maintained and organised contract-related documentation for easy and reliable access; and
 - defined processes and procedures to assist in managing contract variations relating to APP.²⁷

25 ANAO Audit Report No. 34, 2005-06, p. 85.

26 ANAO Audit Report No. 34, 2005-06, p. 87.

27 ANAO Audit Report No. 34, 2005-06, pp. 89-90.

- 13.48 In addition, although DIMA had agreed with a recommendation in ANAO Audit Report No. 3 1999-2000 *Electronic Travel Authority* to devote appropriately trained and experienced resources to managing its contract with its contractor, it was not until July 2004 that DIMA engaged an officer to oversee all contractual matters.²⁸ DIMA advised the Committee that in addition to this contract manager, Executive staff within the relevant Division are also now closely overseeing contract negotiations and ongoing management of the contract.²⁹
- 13.49 The Committee notes that DIMA also engaged a consultant to review and update the contract to address system enhancements and changes to the financial arrangements since 1996 that have been implemented through exchanges of correspondence. This included development of a new set of contract documents and a draft Deed of Variation was provided to the contractor in June 2005. DIMA has advised the Committee that the Deed of Variation was signed on 6 March 2006, consolidating and making more explicit contract variations agreed over time through correspondence.³⁰
- 13.50 The Committee noted that the contract period had been extended to 3 February 2007. The ANAO examined DIMA's succession planning and found a number of issues, concluding that DIMA has not adequately addressed these matters so as to facilitate a smooth transition from one contract to another.³¹ The Committee considered it important that DIMA put in place adequate arrangements for the contract transition period.

Financial management

- 13.51 The ANAO sought to identify from available documentary sources, the financial and ownership arrangements that DIMA had put in place with its contractor relating to the development of APP. It found that under the ETA system agreement (1996) the contractor owns the intellectual property relating to the ETA system (including the APP and ETA Internet systems).
- 13.52 The ANAO examined an arrangement reached between DIMA and the contractor in 1998, whereby DIMA would pay the contractor \$500 000 towards the development costs of APP. This was to be

28 ANAO Audit Report No. 34, 2005-06, p. 90.

29 DIMA submission, p. 2.

30 DIMA submission, p. 1.

31 ANAO Audit Report No. 34, 2005-06, p. 91.

repaid by the contractor through reduced transaction fees from the commencement of APP until such time as the funds were repaid in full.³²

13.53 However on 28 June 2001, DIMA confirmed with the contractor an oral agreement for the costing structure for APP that provided for the department to pay the total development costs of APP up to 30 June 2001 of \$900 000. The \$500 000 advance was to be offset against this amount.

13.54 The ANAO found that DIMA and the contractor had differing positions on the purpose of the \$500 000 and its relationship to the APP transaction fee structure.³³ Due to a lack of documentation, the ANAO concluded that it was not possible to determine with certainty the precise nature of DIMA's financial or service delivery arrangements with its contractor.

13.55 DIMA was unable to demonstrate its business rationale for:

- its initial payment of \$500 000 to the contractor;
- its decision it would pay \$900 000 to the contractor several years after development work on APP commenced; and
- the basis for the transaction fee structure for APP.

13.56 The ANAO considered that DIMA exposed the Commonwealth to risks through its poor contractual and financial arrangements. Due to these arrangements:

- there was no consideration of the time value of money in making an advance of \$500 000 to the contractor;
- there was no formal variation to the contract to clearly specify the development work to be completed, quality standards and a timeframe for delivery; and
- a transaction fee structure was not agreed before the system was developed. This lack of agreement left DIMA exposed and reliant upon the goodwill of the contractor to negotiate transaction fees at a reasonable level.³⁴

32 ANAO Audit Report No. 34, 2005-06, pp.97-98.

33 ANAO Audit Report No. 34, 2005-06, pp.98-101.

34 ANAO Audit Report No. 34, 2005-06, p. 102.

Approval of expenditure

- 13.57 As at the time of the audit, expenditure for services provided by DIMA's contractor was:
- development costs of \$1 849 555 (\$900 000 relating to voluntary APP and approximately \$949 555 relating to mandatory APP); and
 - up to April 2005, approximately \$8.955 million for APP transaction fees.
- 13.58 The ANAO examined whether DIMA had acted in a manner consistent with the requirements of the FMA Regulations. It found that DIMA was unable to provide evidence that a proposal to spend money had actually been approved under FMA Regulation 9 to cover APP development and transaction costs of approximately \$10 804 555.
- 13.59 Accordingly, DIMA is unable to demonstrate that a delegated officer had formed a view that the expenditure incurred under its arrangements with its contractor represented efficient and effective use of the public money involved.³⁵
- 13.60 At the hearing, the Committee expressed its considerable concern about this potential breach of the FMA Act. DIMA sought to emphasise to the Committee that the key issue is that DIMA is unable to produce evidence that the approvals took place in the proper way, therefore it is not clear that the department was in breach of the Act.³⁶
- 13.61 Notwithstanding this, however, the Committee considers that the department needs to take immediate steps to ensure that all expenditure is properly approved and documented. It is pleased that DIMA has strengthened its governance and oversight arrangements and that staff involved in procurement and contract management are receiving enhanced training. The Committee considers that the department needs to ensure that its staff, including senior managers, are fully aware of their obligations under the FMA Act and regulations, and the department's Chief Executive Instructions. It therefore makes the following recommendation.

35 ANAO Audit Report No. 34, 2005-06, p.104.

36 Mr Vincent McMahon, Department of Immigration and Multicultural Affairs, Transcript of Evidence, 2 June 2006, p. 23.

Recommendation 21

The Committee recommends that the Department of Immigration and Citizenship (DIAC) ensure that its staff, including senior managers, receive appropriate training in their obligations and responsibilities under the FMA Act and regulations.

Payment of APP expenses

- 13.62 DIMA has a cost recovery arrangement with its contractor, designed so that part of the \$20 service charge collected by the contractor per ETA application made over the Internet is used to offset expenses relating to the operation of the ETA system. The ANAO examined whether the cost recovery and offsetting arrangements were consistent with guidelines issued by the Department of Finance. It found that DIMA based its cost recovery arrangement with its contractor on legal advice it received from the Australian Government Solicitor.³⁷ This advice indicated that the contractor could collect the fee but that there needed to be contract variations to incorporate the Internet interface into the system specifications and to include provision for the contractor to charge a fee for service and offset this against moneys owed by DIMA. The ANAO found that DIMA did not complete a formal contract variation.
- 13.63 The legal advice also stated that if the contractor were collecting fees on behalf of the Commonwealth rather than in its own right, the amounts concerned would be 'public money' and subject to the requirements of the FMA Act and regulations. DIMA was unable to provide evidence that it clarified whether its contractor was collecting the internet fee in its own right.
- 13.64 The ANAO raised two issues:
- the ETA website stated that the website was operated by DIMA's contractor 'on behalf of' DIMA; and
 - the only contractual document in existence between DIMA and its contractor did not contain any clause negating an agency relationship between DIMA and the contractor.

37 ANAO Audit Report No. 34, 2005-06, pp. 111-113.

- 13.65 The ANAO considered that this matter needed to be addressed as a priority, with amendments to the website as necessary or alternatively, if the contractor is acting as an agent of the Commonwealth, through a section 31 agreement under the FMA Act with the Department of Finance.³⁸
- 13.66 The ANAO found that DIMA had not consulted with the Department of Finance on its arrangement with the contractor, as required by the Attorney General's Department 'Legal Services Directions' but had relied solely on legal advice from the Australian Government Solicitor.

Committee comment

- 13.67 The Committee acknowledges that APP provides a very substantial basis for Australia's border security and that DIMA has had considerable success in implementing APP since 2003. While the ANAO identifies certain weaknesses in DIMA's project management of MAPP1, it appears that DIMA had already begun to address these matters at the time of the audit through adopting a more formal project management methodology for MAPP2, which was outside the scope of this audit.
- 13.68 The Committee is concerned however about a number of the ANAO's findings in relation to contract and financial management. It finds it disturbing that the ANAO repeatedly found throughout this audit that DIMA was unable to provide the rationale for numerous business decisions or to provide documented evidence relating to these decisions. This suggests systemic failures within the department. The Committee is particularly concerned that key business decisions relating to the financial arrangements for APP were not documented. Further, the lack of evidence to substantiate approval under FMA Regulations for \$10 804 555 paid for APP development and transaction costs means that the department may have acted in breach of the FMA Act.
- 13.69 The Committee is pleased that DIMA has undertaken a number of actions since the audit was conducted to ensure that all key business decisions, including financial approvals, are fully documented. In addition to ensuring that ensuing contract negotiations are progressed in line with the Chief Executive Instructions, which are based on the FMA regulations, DIMA has advised that the department has:

38 ANAO Audit Report No. 34, 2005-06, p. 117.

- strengthened governance and oversight arrangements through appointment of a contract manager and closer oversight of contract negotiations and ongoing management of the contract by executive staff within the relevant division of DIMA;
- improved arrangements to ensure that the conditions of the contract are not changed informally; and
- strengthened records management processes in line with the findings of the Palmer Report.

13.70 The Committee notes that, at the time of the public hearing, DIMA was in negotiations with the contractor to develop a new contract. This contract commenced in February 2007.³⁹ DIMA engaged consultants with specialised skills in business, financial benchmarking/value for money, legal and probity, to ensure that the procurement process is transparent, accountable and conducted in accordance with the Commonwealth Procurement Guidelines.⁴⁰

13.71 As with its consideration of Audit Report No. 32, 2005-06, which also examined DIMA's contracting processes, the Committee notes that this audit predates substantial administrative changes within the department announced by the then Minister in October 2005 in response to the Palmer Report. These changes include creation of a Legal Coordination and Procurement Branch within a newly established Legal Division, to put in place a uniform governance and assurance framework for DIMA's contract and procurement processes. This framework includes:

- establishment of a high-level Procurement Assurance Board to ensure that procurements have the necessary structural attributes;
- updating Chief Executive Instructions and other guidance to staff on procurement and contract management;
- enhanced training for staff involved in procurement and contract management;
- managing procurement and contracting risks with risk profiling and model contract management plans; and

39 URL: <http://www.dimia.gov.au/about/contracts-tenders/murray12.pdf>, accessed 2 March 2007,

40 DIMA submission, p. 2.

- mandatory contract management plans for medium and long term contracts, including a risk treatment plan.⁴¹

13.72 The Committee is pleased to note that the ANAO and the Department of Finance and Administration have agreed that:

the programme is sound, addresses audit and other criticisms, is consistent with best practice and a positive step towards improving the governance and assurance arrangements for procurement and contract management processes.⁴²

13.73 As indicated in relation to Audit Report No. 32, the Committee intends to monitor the department's progress in improving its procurement and contract management.

41 DIMA submission, pp. 2-3.

42 DIMA submission, p. 3.

