



Delays in processing of applications for Australian Citizenship by conferral

INVESTIGATION INTO THE
DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION'S
ADMINISTRATION OF A COHORT OF APPLICANTS REQUIRING
ENHANCED INTEGRITY AND IDENTITY CHECKS

December 2017

Report by the Commonwealth Ombudsman,
Michael Manthorpe, under the *Ombudsman Act 1976*

REPORT NO. **03 | 2017**

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EXECUTIVE SUMMARY

Currently, the Department of Immigration and Border Protection (the department) is receiving approximately 200,000 applications per year for Australian citizenship by conferral, which is an increase of about 70,000 applications over the past five years.¹ In this same period, the department has become more aware of the risk of identity fraud, which has increased the need for the department to apply greater effort to the task of verifying the identity of applicants before conferring Australian citizenship on them.

Consequently, an increasing volume of applications, and an increasing effort to process them, has meant a slow-down in decision-making. This has also meant that in early 2016, the Commonwealth Ombudsman's Office started to experience an increase in complaints from people awaiting decisions on their citizenship applications for more than a year, and sometimes over two years. In the past year and a half, we have received approximately 300 complaints about delays by the department in deciding citizenship applications, and we have investigated approximately one third of these complaints.

In July 2016 we commenced an own motion investigation to consider the systemic issues involved in the management of the citizenship by conferral caseload, and the reasons for the extended periods of time taken to reach a decision for a certain cohort of cases. As part of our investigation, we considered the June 2015 Australian National Audit Office (ANAO) performance audit of the effectiveness of the department's identity verification arrangements for applicants in the citizenship program. We used the audit and its recommendations as a guide for considering how the department can better administer the caseload in terms of identity-related risk. Before the ANAO audit and other strategic changes across the department, it appears decision-making around identity lacked rigour, there was more benefit of the doubt in grant decisions, and quality assurance checking was performed after the decision was made.

Having considered the legislation, departmental instructions, information provided by the department, relevant court decisions, and individual complaint investigations, the reasons for the time taken to decide certain cases (those considered to be part of the assurance caseload), rests largely with the department. The department has not suggested that an external agency, tasked with undertaking a character or security-related check, is responsible for systemic delays.

In recent years, the increased awareness of identity fraud and the increased focus on ensuring the applicant is who they say they are before they are granted citizenship, has most likely caused decision-makers to take more time with high risk applications. This approach is one that is encouraged by the department. The department knows that if its delegates make a mistake, a citizenship decision is difficult to undo. The

¹ In 2016–17 the department received 201,250 applications for citizenship by conferral, and in 2011–12 a total of 127,331 applications.

department is acutely conscious of the fact that after a person has been approved for citizenship, it is difficult to cancel it later if it is determined the person has lied about their identity. The department provided us with ten case studies to demonstrate this dilemma, and to explain why it needs to be cautious.

We make four recommendations for the department to assist with its administration, mindful of the risks it is trying to mitigate. These include the implementation of overarching strategies, which should assist the citizenship program to better manage its increasing caseload of complex identity matters. In our view, if integrity and identity issues are better treated and resolved before a person applies for citizenship, and if departmental systems are more innovative and advanced, with enhanced instructions and improved accessibility, it will assist a citizenship delegate to make a decision on identity more quickly and with greater satisfaction. With improved technological innovation that the department envisages implementing, this should result in improved efficiencies and effectiveness for citizenship decisions as well. In our view, the very real question of unreasonable and unlawful delay, as found by the Federal Court of Australia in one notable case, is not a problem for the citizenship program to solve on its own, but one that requires a departmental response.

The Ombudsman's four recommendations are for the department to:

1. Continue its efforts to ensure the Australian Citizenship Instructions provide adequate guidance to delegates on how to be satisfied of an applicant's identity; the thresholds to be met to enable consistent decision-making and to give delegates confidence to make a decision.
2. Continue to develop the Australian Citizenship Instructions to include more information about how to assess and be satisfied that an applicant is of good character, as well as the development of an internal instruction (not for public release) when considering protected intelligence information and allegations, as opposed to criminal convictions. The department should provide us with a copy of both instructions once complete.
3. Continue to develop the Australian Citizenship Instructions to include information about determinations made under section 26(3) of the *Australian Citizenship Act 2007*, and lawful decision-making, and that it provides us with a copy of the revised instructions once complete.
4. Continue its efforts to implement the capability developments it has envisaged in its Identity Strategy, as this may assist the citizenship program to manage its backlogs.

Part 1: INTRODUCTION AND SCOPE OF INVESTIGATION

Introduction

1.1. In July 2016, the Commonwealth Ombudsman commenced an own motion investigation into the Department of Immigration and Border Protection's processing of applications for Australian citizenship by conferral that require enhanced identity and integrity checks. This was in response to increasing complaint volumes to our Office from people who are subject to enhanced integrity and identity checks that resulted in extended processing times for their citizenship applications. Given it appeared that some people had applications pending for over 18 months, without having been referred for identity and integrity checks, we considered that a systemic investigation into these issues was more appropriate than a series of individual complaint investigations.

Meaning of citizenship by conferral

1.2. The *Australian Citizenship Act 2007* sets out the law relating to Australian citizenship, including automatic acquisition, citizenship by descent, citizenship for persons adopted in accordance with *The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (Hague Adoption Convention) or a bilateral arrangement, and citizenship by conferral.

1.3. Citizenship by conferral requires an application, and applicants must meet certain eligibility requirements set out in section 21(2) of the Australian Citizenship Act, including:

- being over 18 years of age at the time the person made the application
- being a permanent resident and satisfying the general residence requirements
- understanding the nature of the application
- possessing a basic knowledge of the English language
- an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship
- likelihood of residing, or continuing to reside, in Australia or maintaining a close and continuing association with Australia
- being a person of good character.

1.4. Citizenship by conferral includes four stages: the application, the citizenship test, departmental decision-making and the ceremony stage which involves making the pledge of commitment.

Identity provisions in the legislation

1.5. Section 24(3) of the Australian Citizenship Act provides that the Minister must not approve the person becoming an Australian citizen unless the Minister is satisfied of the **identity** of the person. In the majority of cases, departmental decision-makers appear to be satisfied of the identity of the person applying for citizenship by conferral. Section 23A(4) also prohibits the applicant from sitting the citizenship test unless the Minister is satisfied of the identity of the person.

Scope of the investigation

1.6. Based on our analysis of individual complaint investigations, we identified the following four key issues as relevant to investigating the question of systemic delay in citizenship application decision-making:

- the department's implementation of the ANAO recommendations from its 2014–15 performance audit, *Verifying Identity in the Citizenship Program*
- clarifying who the cohort is requiring enhanced integrity and identity checks
- other enhancements to processing citizenship by conferral applications
- what is a reasonable amount of time to take to decide an application?

1.7. The statistics provided in the next part of this report were provided by the department to our Office prior to the commencement of the own motion.

Implementation of the ANAO recommendations from 2014–15 performance audit

1.8. Before commencing the own motion, the department had advised that processing delays are in part due to the fact that it is implementing a range of measures in response to the ANAO's performance audit. This concerned the effectiveness of the department's identity verification arrangements for applicants in the citizenship program.

1.9. The ANAO made five recommendations designed to strengthen and improve the department's administration of the citizenship program. Our investigation is not a repeat of the ANAO audit. Rather, we have investigated what progress the department has made towards implementing the ANAO's recommendations to assist us to better understand the reasons for the delays across the citizenship program. In particular, we wanted to identify at which step(s) in the citizenship process (applications stage, test and decision-making stage, and ceremony stage) applications are being delayed.

Clarifying who the cohort is requiring enhanced integrity and identity checks

1.10. In May 2016, the department told us it estimated that approximately 8,000 (five per cent) of the current annual caseload of approximately 190,000 citizenship (by conferral) applications may require some level of additional integrity checking as part of the citizenship assessment process.

1.11. The department also said that as at March 2016, the total number of citizenship by conferral applications lodged but not finalised for more than 12 months is 2,716. For the same period, applications from people of more than 145 nationalities were being assessed outside the published service standard at the time, which was 80 per cent in 80 days to decision.² The department also identified the Afghan caseload as a particular cohort of applications with integrity issues.

1.12. Based on the information already provided, it appears the high risk cohort consisted of applicants with the following backgrounds:

- applicants with freedom of information (FOI) name/date of birth/place of birth changes
- people from Afghanistan
- people who were former Irregular Maritime Arrivals (IMAs)
- people who were former Irregular Air Arrivals (IAAs)
- people who were unaccompanied humanitarian arrivals
- people who are orphan relative/last remaining relatives
- people who are humanitarian cases sponsored by an IMA or former IMA
- people who are family cases sponsored by an IMA or former IMA.

Other enhancements to processing citizenship conferral applications

1.13. The department advised us there have been increasing volumes of Australian citizenship applications for some time, with the number of people applying for Australian citizenship by conferral more than doubling from the 2010–11 program years to the 2014–15 program years. The department also advised that it has seen an increase in the complexity of some applications, which require further assessment.

1.14. We noted the ANAO performance audit report highlighted general quality issues with the processing of citizenship by conferral applications. For example, the ANAO reported that citizenship officers are not consistently implementing the department's identity verification processes at the initial application and citizenship appointment stages. With this own motion investigation, we were interested to know what the department was doing to address quality more broadly.

What is a reasonable amount of time to take to decide an application?

1.15. Noting that a large number of citizenship by conferral applications are taking more than a year to finalise, and up to two years in some cases, we were interested to

² The service standard for processing citizenship applications, as well as visa applications, no longer exists, instead the department publishes global visa and citizenship application processing times, see: border.gov.au/about/access-accountability/service-standards/global-visa-citizenship-processing-times.

know what the department considers a reasonable amount of time for it to process and finalise applications.

1.16. Additionally, to understand and assess how the department is administering the citizenship by conferral caseload to address backlogs, and the challenges it faces in doing so, we requested the department provide a range of quantitative and qualitative information against the four issues for our Office to assess. We also met with key departmental officers to gather information. This included an opening interview, a presentation of its new Citizenship Caseload Prioritisation Tool (CCPT), and meeting to discuss a selection of complex integrity and identity cases.

Part 2: THE CHANGING IMMIGRATION AND BORDER PROTECTION CONTEXT

2.1. Before looking at the citizenship program and its administration, it is important to place it within the broader context of the department it operates within, and the policy settings that have been influencing it in recent years.

2.2. The department's vision is to be Australia's trusted global gateway; to be the conduit through which legitimate travellers, migrants, potential citizens and goods can pass, and for the department to close the gate against those who intend to circumvent our border controls. The department's mission is to protect Australia's border and manage the movement of people and goods across it. This is a marked change to the previous mission, 'People, our business'.³ This change in vision and mission reflects the significant strategic policy shift of recent years.

2.3. Since 2014–15, there has been an increased focus on integrity and identity as an issue impacting all departmental decisions, not just citizenship. The *Immigration and Border Protection Strategy 2020 (Strategy 2020)*⁴ provides a guide for the department to fulfil its vision and mission through its four key objectives, which are to: protect Australia; promote responsive migration; advance trade and revenue; and lead border innovation. Strategy 2020 highlights how the department is the Commonwealth's first opportunity to establish the identity of non-citizens intending to come to Australia, and how it intends to develop organisational and technological capability, including biometrics and document examination in border processes. Strategy 2020 also talks about routine functions and processes being automated to free up staff to devote to assessment, judgement and agility.

2.4. Strategy 2020 is complemented by the *Identity Strategy 2015–16* (the Identity Strategy), which includes a range of measures to build the department's identity capability. For example, the department plans to move from multiple client data entry and record-keeping systems to a single identity-centric, biometric-anchored client system, and it considers this will significantly enhance the integrity and efficiency of its business by:

- eliminating the potential for duplicate records and multiple potentially fraudulent identities
- allowing for expedited transactions once initial identity is confirmed
- reducing the administrative burden on clients and staff
- substantially automating processes, allowing for a more agile workforce that can be directed towards areas of emerging or high risk

³ On 1 July 2015, with the integration of the department and Australian Customs and Border Protection Services, the purpose changed to 'protect Australia's border and manage the movement of people and goods across it'.

⁴ See border.gov.au/CorporateInformation/Documents/strategy-2020.pdf.

- providing greater availability of client self-service where the risk is acceptable.

2.5. When discussing the role of the department, the Identity Strategy states that the department plays an important role, recognised across government, in establishing identity for non-citizens, and individuals who want to trade at the border. There is also a strong link made in the strategy with the issue of identity playing a critical role in national security. The document references the *Martin Place Siege, Joint Commonwealth–New South Wales review, January 2015*⁵ as recognising that Australian and state and territory government agencies need to conduct more robust checks on identity, improve information sharing, and make better use of biometrics to mitigate public security risks.

2.6. The extent to which the department has implemented its Identity Strategy has not been the focus of this investigation. However, it is a useful and guiding document which contains some of the solutions to better managing the citizenship by conferral caseload.

2.7. To assist us to understand the risks involved and the complexity of the task, the department provided ten examples of cases where the department had become aware of persons who have successfully obtained Australian citizenship in earlier years who were later found to have provided inconsistent, incorrect, false and/or fraudulent information to the department about their claimed identity in which they obtained Australian citizenship. Of the ten, seven arrived as Irregular Maritime Arrivals, the others arrived in Australia with visas. The department advised that it is considering if there are grounds for prosecution, and if this proceeds and results in a conviction, the revocation of Australian citizenship provisions may be enlivened.

2.8. It is clear that the department seeks to minimise the risk of this happening in future, which is part of why it is taking longer to make decisions. The department would prefer to make decisions with integrity up-front, because it is harder to revoke someone's citizenship than it is to refuse to grant it in the first place.

⁵ The *Martin Place Siege, Joint Commonwealth–New South Wales review, January 2015*, makes two recommendations on identity as follows: first, agencies should adopt name-based identity checks to ensure that they are using the National Identity Proofing Guidelines and the Document Verification Service, and by improving arrangements for sharing formal name change information between Australian and state bodies (timing and budgetary impacts to be identified by all jurisdictions). Second, agencies that issue documents relied upon as primary evidence of identity (for example, drivers' licences, passports, visas) should explore the possibility of strengthening existing name-based checking processes through greater use of biometrics, including via the forthcoming National Facial Biometric Matching Capability.

Part 3: IMPLEMENTATION OF ANAO RECOMMENDATIONS

3.1. The ANAO recommendations are aimed at assisting the department to guide decision-makers on the question of identity, better manage identity-related risks, and monitor performance. Based on the information provided by the department, it appears that it has made significant progress with most of the five recommendations largely implemented. Implementation of each recommendation is discussed briefly below.

ANAO audit recommendation 1

3.2. Recommendation one required the department to clearly outline in the Australian Citizenship Instructions (ACIs), the key elements of identity that decision-makers are to consider when assessing citizenship applications. Further, it recommended the department establish a central repository for interim policy guidance to be accessible to all staff.

3.3. The department advised us it completed its implementation of this recommendation and referred us to the ACIs published in September 2016, which included a new chapter 13, on identity. However, we expressed concerns that chapter 13 focuses on offences under the Australian Citizenship Act which relate to surrendering or altering evidence of Australian citizenship, and accessing, disclosing, modifying and destroying personal information and personal identifiers, as opposed to the key elements of identity to be considered by decision-makers. We noted that it was difficult to see how chapter 13, or any other chapter of the current ACIs, clearly outline for decision-makers the key elements of identity to be considered.

3.4. The department has since prepared a revised draft ACI on identity⁶. In our view, the revised instruction provides clearer guidance to decision-makers on how to be satisfied of a citizenship applicant's identity. The instruction discusses the 'three pillars of identity' and 'identity trail' which formed part of the department's 'Identity Assessment Framework—Citizenship', and identifies where decision-makers can seek further assistance and access supporting information.

3.5. These changes should better support delegates to assess identity issues which arise in the assurance caseload. However it will be important for the department to monitor and evaluate their implementation to assess whether the changes foster improvements in the quality and timeliness of decision-making.

3.6. The department considers that TRIM, which is its corporate record management system, is the relevant central repository for its interim guidelines. The department provided a list of such interim guidance and copies, however, it appears that some of that interim guidance is not intended to ever be incorporated into the ACIs. This raises the question of the status of these instructions and the ongoing

⁶ October 2017.

transparency and awareness of these documents for decision-makers beyond the ad hoc reminders and training the department says it does to ensure that these are considered.

3.7. In our view, relying on delegates accessing TRIM for the most relevant and the latest documents to guide their decision-making is not a sustainable position and presents some risks to quality decision-making.

Training

3.8. In addition to its revision of the identity ACI, the department advised us it is in the process of building staff and technical capability to deliver improvements in timeliness of decision-making and to address integrity and identity risks, and that it is rolling out a suite of training enhancements to support decision-makers. In October 2017, the department provided us with its identity training module.

3.9. The training module broadly reflects the key principles outlined in the Identity ACI and refers decision-makers to relevant resources and tools to support their decision-making, including the ACI and the department's Enterprise Identity Procedural Instruction. However, the training module appears to cover a lower level of detail about the elements of identity decision-makers must consider, and does not appear to cover some sections of the ACI relating to name changes and bogus documents. The additional resources identified in the training module are also more limited than those contained in the ACI, and notably do not include the National Identity Proofing Guidelines, DIBP Naming Conventions Guide, Bogus Documents—Detention Seizure and Retention and the AUSTRAC Information for Citizenship Procedural Instruction. To ensure consistency in the information provided to delegates, the department should consider expanding this training module to more effectively reflect the identity material covered into the ACI.

ANAO audit recommendation 2

3.10. Recommendation two from the ANAO audit required the department to more effectively assess and report on the objectives of the citizenship program, and that it develop and report against key performance indicators assessing the quality of the department's citizenship decisions. The department has advised that within the citizenship program there has been significant investment and progress to ensure the quality of approval and refusal decisions, meeting the objectives of the ANAO's recommendation. However, the department says reporting on these is subject to the completion of its broader Enterprise Performance Measures review. The department says it is aiming to move away from volumetric, effort-based output measurements, to evaluative, effect-based, outcome measures. In our view, a combination of quantitative and qualitative measures is likely to be most helpful for the department in managing this caseload to ensure good decision-making, which includes timeliness.

ANAO audit recommendation 3

3.11. Recommendation three from the ANAO audit was that, to improve the quality assurance process for the citizenship program, the department extend its quality

assurance program to include a risk-based approach and consider the appropriateness of decisions, including whether the identity of the applicant has been properly verified. The department reports that it has completed the implementation of this recommendation, subject to formal closure by the Departmental Audit Committee.

3.12. We note the department defines risk, in an organisational context, as the 'effect of uncertainty on objectives'. The department states that it engages in risk management to ensure that any uncertainty regarding its ability to meet its objectives is avoided, decreased, removed or modified. Based on the information the department has provided, over the past two years, it has clearly built upon its risk profiles for citizenship decisions. In November 2015, there were eight identified high risk cohorts, and by December 2016, the department had increased the number and broadened the scope to include at least 25 risk indicators.

3.13. The department recently conducted a risk-based quality assurance exercise which it appears to have learnt from, and has taken steps to refine the process decision-makers use when considering applications. Notably, this exercise demonstrated to the department that a greater level of assessment was needed up front to identify which applications posed a higher level of identity and integrity risk, rather than waiting to quality assure a decision after it was made.

3.14. In December 2016, the department implemented the CCPT, across the citizenship program. The CCPT contains the 25 risk indicators mentioned above. The tool assists decision-makers by identifying if a risk might exist and flagging that there is relevant information about the applicant on various departmental systems. The decision-maker then needs to investigate the flagged risk and resolve it before a case can progress further. The CCPT information is supported by a guidance document which provides decision-makers with risk treatment recommendations for each one. This helps the decision-maker to understand the risk, where to find the relevant information, what actions to take, when they might need to escalate the case, and how to record actions and outcomes. Delegated decision-makers using the CCPT are also supported by a range of internal stakeholders, which include:

- Identity Business Support—Community Protection Division
- Document Examination Unit
- Offshore Integrity Unit (Overseas Post)
- Protection Visa Integrity
- General Cancellation Network
- National Security, Assessments and Counter Proliferation
- Risk Assurance Officer Network.

3.15. Our assessment is that before the introduction of the CCPT, it appears that relevant identity information could easily have been missed because certain departmental information technology systems do not speak to each other.

3.16. While the CCPT assists decision-makers, it does not bring the information together from the various sources. Rather it simply tells the decision-maker they need to go look for it and where to find it. The question of whether a decision-maker is satisfied as to an applicant's identity remains a delegate's decision supported by information that needs to be examined, weighted and verified. There is no automated tool or balance sheet available to decision-makers to say at this point you can be reasonably satisfied of the identity of the applicant—that this is the threshold the department considers needs to be met before you can be satisfied. For this reason, the CCTP is largely a management tool. It is critical that the department continues to ensure that the identity guidance material and training available to delegates is sufficient to allow delegates to properly assess and investigate the risks flagged by the CCPT.

ANAO audit recommendation 4

3.17. Recommendation four from the ANAO audit was that, to strengthen the identity verification activities conducted at citizenship ceremonies, the department include stronger personal identifiers, such as the facial image of approved applicants, in the Pledge Verification List provided to ceremony officers. The department has reported that it has partially completed this recommendation. Since the ANAO audit, the capability to deliver personal identifiers has been enabled in departmental systems, but not yet in the Pledge Verification List. According to the department, time and resource constraints have impacted on the ability to fully implement this technological enhancement, but the department continues to consider full implementation. In the interim, during 2016, the department conducted a series of facial recognition identity training sessions for 125 local government council staff across Australia who are involved in validating conferee identity at citizenship ceremonies using a photo-to-face mechanism.

ANAO audit recommendation 5

3.18. Recommendation five from the ANAO audit was that, to provide greater assurance that the identity of citizenship applicants has been appropriately verified, the department put in place arrangements to alert citizenship decision-makers when an applicant amends their personal details under freedom of information provisions prior to citizenship conferral. The department reported that it has completed this recommendation, subject to formal closure by the Departmental Audit Committee. Since May 2015, in one way or another, arrangements have been in place to alert decision-makers to changes to an applicant's personal details, so they can consider this information as part of the identity question. The CCPT now incorporates this particular identity risk amongst the 25 identified risks.

Comments on implementation

3.19. In summary, we acknowledge that the department's implementation of ANAO audit recommendations has, in part, added to the time taken to process citizenship by conferral applications. The ANAO report exposed a number of weaknesses and deficiencies in the department's administration in relation to its verification of identity, and for this reason, the department now appears to be better at

administering its responsibilities, or at least it has now implemented some improved systems and tools with this aim in mind. That said, in our view, the department has more work to do in order to make robust decisions in a timely manner which mitigate the risk that a person is granted citizenship based on a false identity, as will be discussed further.

Part 4: THE COHORT REQUIRING ENHANCED INTEGRITY AND IDENTITY CHECKS (THE ‘ASSURANCE CASELOAD’)

4.1. To clarify with the department which cohort requires enhanced integrity and identity checks, and how many people it includes, we requested a range of quantitative information. In gathering this information, we focused on the department’s previous eight identified high risk cohorts from November 2015, so we could assess the volume of the caseload, get an indication of time taken to resolve cases, and get a sense of whether applicants from a particular background or migration experience, whether a risk or not, were more likely to be scrutinised than others, and where backlogs in processing might occur.

4.2. The department reported that, as at November 2016, there were 13,024 assurance cases on-hand and of these 11,590 (89 per cent) had been on-hand for greater than 80 days. See the table below for more detail.

Number of assurance applications on-hand by age group (at 6 November 2016)	
Age group	Number of applications
0–80 days	1,434
81–180 days	2,273
6–12 months	3,695
1–2 years	5,284
Greater than 2 years	338
Grand total	13,024

4.3. The department advised that the oldest assurance case had been on-hand for four years and five months, and we were told was approaching a final decision. A total of 483 applications involving Orphan Relative and Last Remaining Relative⁷ visa holders were undergoing further assurance assessments.

4.4. The department has since reported that its total on-hand assurance cases, as at 30 June 2017, has reduced overall and across most age ranges:

⁷ Orphan Relative visas (subclasses 117 and 837) allow a child to travel to and live permanently in Australia with their sponsoring relative; both parents must be deceased, permanently incapacitated or of unknown whereabouts. Remaining Relative visas (subclasses 115 and 835) allow someone outside, and in Australia, whose only near relatives are living in Australia, to live in Australia as a permanent resident.

Number of assurance applications on-hand by age group (at 30 June 2017)	
Age group	Number of applications
0–80 days	115
81–180 days	1,024
6–12 months	2,870
1–2 years	4,961
Greater than 2 years	1,902
Grand total	10,872

4.5. The numbers of applications on-hand across most age ranges has diminished, in some cases quite considerably. However, the number of on-hand cases under consideration for greater than two years has increased considerably, by over 450 per cent. This indicates that, although the department has made progress in reducing the overall backlog of applications, its assessment of more complex cases is still an area for improvement.

4.6. The department also provided statistics on the number of assurance applications on-hand for more than 80 days by the top 10 nationalities, as follows:

Number of assurance applications on-hand for more than 80 days by top 10 nationalities, at 6 November 2016	
Nationality	Number of applications
Afghanistan	3,914
Iraq	1,738
Iran	1,239
Stateless person	798
Lebanon	672
Sri Lanka	503
Myanmar	366
Pakistan	312
China	172
Sudan	141
All other countries	1,735
Total	11,590

4.7. Seven months later, as at 30 June 2017, the total number of cases on hand across these nationalities had reduced:

Number of assurance applications on-hand for more than 80 days by top 10 nationalities, at 30 June 2017	
Nationality	Number of applications
Afghanistan	5,102
Iran	1,076
Iraq	979
Stateless person	880
Myanmar	497
Pakistan	453
Sri Lanka	408
Lebanon	186
Sudan	79
China	67
All other countries	1,030
Total	10,757

4.8. At the time of responding, in January 2017, the department was not able to provide the more detailed statistical reporting on the cohorts we requested. The department said the reason for this was in part because the systems do not allow it, and in part because the cohorts are not mutually exclusive.

4.9. We asked the department about the proportion of the cases taking longer than 80 days to be finalised, which it has referred to its Identity Business Support (IDBS) section. In seeking this information we were trying to ascertain whether decision-makers were referring too many cases due to an overly high risk averse approach, rather than having a real identified risk for each case that required further examination and support from a specialist team. The department did not provide the proportion, but advised that applications undergoing assurance checking may or may not need to be referred to IDBS. Additionally, the department advised that several hundred citizenship assurance identity assessments had been referred to IDBS and all of these applications were taking longer than 80 days to finalise. This undoubtedly had an impact on the limited resources of IDBS, which meant that the department then devoted time and effort to train citizenship staff on a range of identity assessment skills to support the referral of more complex assessments to IDBS.

4.10. We also asked about what stages in the process applications are referred to IDBS, that is: the initial application stage; after an applicant sits the citizenship test

and during the decision-making stage; and at the ceremony stage. The department advised that applications are mostly referred to IDBS during the assessment stage, prior to an applicant being invited to sit the citizenship test and/or to attend their citizenship appointment. However, applications can be referred to IDBS at any stage in the assessment process. This response meant it is difficult to identify the stage in processing where applications are delayed the most, and we have seen that applications can be delayed at any point.

4.11. While it is the case that there are specific high risk cohorts which form part of the assurance caseload, the department's internal guidance document, 'Identity Assessment Framework—Citizenship' makes it clear that each application needs to be carefully assessed. When discussing how identity is assessed, this document has a section on the satisfaction framework on page 3, which states that:

It is departmental policy that every officer who is dealing with a visa and/or citizenship cases has a role in verifying the applicant's identity and to consider the identity information the applicant is presenting—irrespective of the stage of immigration/citizenship processing. This means that every time a citizenship officer is, for example, provided with a document, reads a file or interviews a client, they are to be mindful of the consistency of the documents, personal identifiers and the person's life story in terms of verifying the person's identity.

The legislative provision in the Citizenship Act clearly requires the decision-maker to be satisfied of the person's identity; otherwise the person cannot be approved or, the evidence of citizenship cannot be issued. To put it another way, it is Parliament's intention that the decision-maker reaches a point of satisfaction whereby they can clearly explain the reason for being satisfied or not being satisfied of the applicant's identity. This is quite a different test to an officer using a check list to be satisfied of a person's identity. Assessing identity is not a 'one-size-fits-all' test; officers are required to consider all the facts before them on a case by case basis and use their judgement.

4.12. The newly introduced CCPT mentioned earlier, which contains the 25 risk indicators, provides more information about who the cohort is requiring enhanced integrity and identity checks. The current list of indicators shows the department has significantly expanded the cohort requiring enhanced integrity and identity checks from that which it was focusing on from November 2015, when the department issued the 'Citizenship Red Notice 2015–16—citizenship assurance high risk business process', which contained seven high risk cohorts. The risks being considered now capture what appears to encapsulate a broader group than people from Afghanistan, IMAs and IAAs. With this expansion of risk indicators requiring checking, it would seem logical that the time taken to process will also expand because the assurance caseload has significantly increased. For each flag that appears on a file, a delegate must investigate and resolve it as part of their assessment before the case can progress.

4.13. The department reported that from 1 March 2015 to 30 November 2016 it finalised 3,809 citizenship by conferral applications that had undergone further assurance checking. Of those, 3,530 applications were approved, and 279 applications (7.32 per cent) were refused. A further 268 applications have been referred for consideration of visa cancellation, and a large number are undergoing various stages of processing.

4.14. In the seven months prior to June 2017, the department reported that the number of finalised citizenship by conferral application increased to 4,457. It also reported that, over the two periods the monthly approval and refusal figures increased (222 approvals per month up from 176 and 24 refusals per month up from 14). The department suggested that this indicates that, although the numbers of citizenship applications it receives continues to increase, decision-makers are supported and confident in making positive and adverse decisions.

4.15. This new data is positive and, with the introduction of better guidance to delegates, it is to be hoped that the department can continue to reduce the backlog of cases. However, the reduction in overall on-hand applications needs be balanced against the marked increase in applications on-hand for over two years, as noted above. The significant rise in applications in this age range is a trend the department should seek to monitor while it works to improve delegates' resources and capability.

Part 5: OTHER ENHANCEMENTS TO PROCESSING

CITIZENSHIP BY CONFERRAL APPLICATIONS

5.1. Since 2015, the department has been implementing, and exploring, a range of other measures, which have impacted on the timeliness of decision-making for the citizenship by conferral caseload for a small proportion of cases. However, these measures may also have contributed to the quality of decisions in terms of integrity. These measures have included:

- security-related enhancements initiated by the External Agency in order to apply a greater level of scrutiny to certain cases
- application form enhancements
- trialling of biometric facial matching to assist with the identification of citizenship applicants
- utilising the expertise of specialist identity analysts to conduct complex identity assessments
- capability enhancements, which is essentially training to improve the skills of decision-makers to assess identity, as well as the use of identity specialist mentors.

5.2. With the increased focus on integrity in decision-making and increasing timeframes for decisions to be made, we wanted to know if the department had also increased its staffing levels in the citizenship program to tackle the backlogs. The department reported that in recognition of the complexity of applications to be decided, it has introduced additional staffing at the APS5/6 level as Caseload Assurance Officers (CAOs). The CAOs support decision-making, which is otherwise largely performed at the APS4 level. The department also reported that the 2014–15 departmental recruitment freeze impacted resourcing in the citizenship program, as well as budget reductions and the introduction of a fixed and then reducing staffing level via the average staffing level (ASL) cap from 1 July 2016.

5.3. Since 2013, the department has had between 198 to 210 staff allocated to the citizenship by conferral caseload, while over this period the number of applications have increased. The department also emphasises that there is a cumulative effect to this volume, particularly when some applications are presenting increased indicators of risk and complexity.

5.4. The department provided the following statistics on the increasing number of applications it has to process:

Financial year	Citizenship by conferral applications (clients) received
2011–12	127,331
2012–13	168,822
2013–14	185,838
2014–15	191,750
2015–16	196,392
2016–17	201,250

5.5. With an increased emphasis on integrity and identity across the department, not just within the citizenship program, other areas like IDBS are also impacted as more and more decision-makers seek its support for complex identity assessments, training and referrals. It does appear the citizenship program was referring a larger proportion of complex cases to IDBS than it could manage, and has consequently had to train its own staff to better deal with questions of identity and only refer through the more complex identity cases to IDBS. Whether this strategy will ultimately shorten decision-making times is something for the department to monitor, and will need to be balanced with ensuring quality decisions.

Part 6: WHAT IS A REASONABLE AMOUNT OF TIME

6.1. The key question for this own motion investigation concerns one of the elements of good administrative decision-making, which is timely decision-making. For this reason, given the stated complexity of some of the cohort of applicants, which may only continue to grow in volume, and given the time taken already to resolve, we asked the department what it thinks is a fair and reasonable amount of time for an applicant to wait.

6.2. In response, the department referred to a judgment of the Federal Court of Australia, *BMF16 v Minister for Immigration and Border Protection* [2016] FCA 1530 (16 December 2016). The judgment, amongst other issues, dealt with the question of whether there was unreasonable delay by the department in making a decision on two applications for citizenship by conferral. In the case of BMF16, the applicant had been waiting some 18 months for a decision when he sought relief from the Court. The other applicant, BMG16, had been waiting some 23 months. The department said to us it was considering the judgment and did not offer further comment on it.

6.3. In the circumstances, it is relevant to consider what the Court had to say on hearing the matter. In summary, Federal Court Justice Bromberg considered four administrative law issues to decide whether there was: unreasonable delay in making a decision; legal unreasonableness and whether it amounted to jurisdictional error; procedural fairness; and discretion to exercise jurisdiction and grant relief. The outcome in both cases BMF16 and BMG16 was that Justice Bromberg declared there had been unreasonable delay by the department in making a decision under section 24(1) of the Australian Citizenship Act to approve or to refuse to approve the applicants becoming Australian citizens.

6.4. Justice Bromberg's judgment should be read in full to understand the complexity of law and evidence considered. In summary, however, of most relevance to this investigation is the question of unreasonable delay. The wording of the relevant legislative provision is:

Section 7(1) of the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act)

Applications in respect of failures to make decisions

(1) Where:

- (a) a person has a duty to make a decision to which this Act applies;
- (b) there is no law that prescribes a period within which the person is required to make that decision; and
- (c) the person has failed to make that decision;

a person who is aggrieved by the failure of the first-mentioned person to make the decision may apply to the Federal Court or the Federal Circuit Court for an order of review in respect of the

failure to make the decision on the ground that there has been unreasonable delay in making the decision.

6.5. The court considered whether by reference to the Australian Citizenship Act there had been, in all of the circumstances, delay in making the decision which was not justified. The court looked beyond whether processing took longer than average (80 per cent of citizenship applications processed within 80 days), and instead looked at inactivity. Inactivity being long periods where an application simply sits around waiting to be processed, or waiting for some particular step in the process to be taken, which provides a more compelling basis for establishing unreasonable delay.

6.6. Where there were delays due to periods of inactivity, the Minister had the onus of providing a meaningful explanation for the inactivity. The Court considered the evidence of the department about the scarcity of resources contributing to the delay to be too general and non-specific to sensibly evaluate. Further, it considered whether a scarcity of resources is a reasonable justification in any case. In the end, Justice Bromberg decided that there was not a reasonable explanation for failing to take any significant step to process the two applications for some 14 and a half months, and concluded that there had been an unreasonable delay in the processing of each citizenship application. Justice Bromberg also stated that his conclusion is reinforced by his impression about the time it should reasonably have taken to process each application, this being between six and seven months after completion of the citizenship test in both cases.

6.7. No doubt, this judgment is critical for the department to consider in administering the citizenship program as well as other area experiencing high volumes and complexity. In responding to this investigation on the questions of what is a reasonable amount of time to take, the department answered in a manner which suggests that it considers that decision-making will take as long as it needs to take in order to resolve the complexity of issues presented to ensure the integrity of decisions, and that the question of true identity of the applicant can be satisfied. The department did not address the issue examined by the court concerning periods of unexplained inactivity, and what this means for the department when it comes to making lawful decisions.

6.8. Rather, the department highlighted in its response to our Office that its own internal audit of June 2014 and the ANAO audit have recognised the work effort required to address growing risks in the program. The department's view is that, given the higher volumes of more complex applications being received, the changed security environment, and the finite number of staffing resources that can reasonably be allocated to the caseload, it is not unreasonable to expect that processing times will necessarily lengthen, and in some cases quite considerably where there are questions that need to be resolved.

6.9. The department advised that the Assistant Minister for Immigration and Border Protection decided in late 2016 to make changes to the department's service standards framework by replacing the external publication of service standards with the regular publishing of current global visa and citizenship processing times on the

department's website. The reason for this decision was to provide more accurate information for applicants about how long it takes to process visa and citizenship applications. The department has since implemented this decision.

6.10. While we understand that each case must be considered on its merits, in our view, the Federal Court's decision in BMF16 provides important guidance for the department when considering the question of what is a reasonable timeframe for processing citizenship applications. The decision is indicative of the point at which delays in decision-making may become unreasonable, for example where applications for citizenship that are not actioned for lengthy periods of time without a reasonable justification. As the department's handling of these cases is open to challenge in the courts, the department should review the guidance provided in this decision to ensure it has processes in place to enable it to administer its increasing caseload of complex cases in a timely manner and to ensure applications are not subject to periods of substantial inactivity or unreasonable delay.

Part 7: LESSONS FROM OUR INDIVIDUAL COMPLAINT INVESTIGATIONS

7.1. We have finalised the investigation of 98 complaints about delays by the department in deciding citizenship applications. Mostly when investigating, we are checking to see that the application has been received and it is progressing, and has not suffered from administrative drift.

7.2. From these individual investigations, we observed in some cases that a decision has been made towards the end of our investigation, when at the beginning the department was indicating the existence of almost intractable issues. This has caused us to question whether the integrity and identity issues were as complex as originally stated, or whether our investigation prioritised decision-making for a particular case, above others in a pile of possibly inactive cases, or whether it attracted specialist and more senior attention such that it could be resolved.

7.3. Either way, we expect the department is taking lessons from each investigation we conduct and provide comments on, together with feedback received from the complaints it has handled through its own Global Feedback Unit, and relevant Federal Court decisions, to assist it to make continual improvements. While it is an obvious point, it is worth highlighting, that our investigations are not aimed at getting positive results for complainants, but to ensure there is good administrative decision-making, and that can also include a refusal decision if it is warranted.

Case study 1: Applicant A

7.4. The following case highlights two key issues: what appears to be lawful and unlawful ways to prolong decision-making while trying to resolve complex identity and integrity issues; and the impact on processing applications while paying greater attention to integrity and identity issues.

7.5. In November 2013, Applicant A lodged an application for Australian Citizenship by conferral. In October 2014, after a number of processing steps occurred, including Applicant A failing the citizenship test twice and passing on the third attempt and a range of identity and integrity checks being undertaken, his application was approved and he was invited to attend a conferral ceremony. When Applicant A complained to our Office, he said that soon after being invited to attend a conferral ceremony, he received a letter from the department deferring conferral of his citizenship. The letter advised that the department was considering whether he had given incorrect information to the department at the time of his protection visa application. The letter also advised that the department would contact him within 12 months to inform him of the outcome.

7.6. The department advised us that after approving the citizenship application for Applicant A, his case was referred in early November 2014 for checks as his application was within the cohort requiring further identity and integrity checking. A few days later, in November 2014, the Minister for Immigration and Border

Protection made a written determination under section 26(3) of the Australian Citizenship Act (section 26(3) determination), meaning the applicant could not make the pledge of commitment (and become an Australian citizen) for a period of 12 months.

7.7. In May 2015, the identity checking was finalised. Applicant A was considered as non-genuine with 'serious concerns' as to his identity due to discrepancies between details of names and dates of birth of children listed on two visa applications. In early September 2015, his file was sent to IDBS for further assessment. A year later, in September 2016, IDBS decided it wished to conduct an interview with the applicant in October 2016. This was after the citizenship program managed to get the case escalated and allocated to an IDBS case officer for assessment. In responding to our enquiries about this case, the department noted that IDBS provides services for a number of areas of the department and demand for service is greater than what can be delivered at times, and citizenship program did not have priority at the time the department responded.

7.8. In November 2016, approximately two years after the Minister's section 26(3) determination, Applicant A had not yet had his citizenship conferred, so we put forward our views on the matter for the department to consider. We acknowledged the department's ongoing concerns relating to the applicant's identity, which needed to be resolved. We noted the Minister's section 26(3) determination which was for a period of up to 12 months, had expired (12 months previously), and yet Applicant A had not been invited to a citizenship ceremony.

7.9. We noted the department's own legal advice on the operation of section 26(3) and the use of administrative processes to delay applicants from attending a commitment ceremony, taking the pledge of commitment and becoming Australian citizens. We said that this advice would appear to suggest that the use of administrative processes to delay approved applicants from attending commitment ceremonies puts the department at risk of legal action. Consequently, we suggested the department immediately take steps to finalise the processing of the applicant's citizenship. Soon after, the applicant was invited by the department to attend a ceremony, which he did, and he is now an Australian citizen.

7.10. The department noted there is nothing to prevent an applicant attending a ceremony and making a citizenship pledge in these circumstances, but noted it is unlikely that the presiding officer would allow the person to take the pledge, given that they would not be on the pledge verification list nor would the council be in possession of a citizenship certificate for the person attending. Notably, the department did not address the issue of whether it could lawfully defer decision-making in this case, and instead referred to it being appropriate to undertake further investigation and assessment where adverse information becomes available after the approval of an application, but prior to the person attending a ceremony. The department referred to its obligation to the Australian community to ensure that only those people who are eligible are given the privilege of becoming an Australian citizen. In the circumstances of this case, however, we told the department in our view it had 12 months to undertake the relevant processing and make a decision. In

finalising the investigation, we advised the department that we remain of the opinion, that the department's action (and inaction) in delaying the applicant from making the pledge of commitment for more than 12 months following the expiry of a section 26(3) determination appears to have no legislative basis and, as such, appears to be a contravention of the Australian Citizenship Act.

Case study 2: Applicant B

7.11. In this case, we wrote to the department in October 2016 putting forward our preliminary views on a complaint about delay by the department in finalising a citizenship application, and in February 2017 we presented our final views. The following is a summary of our investigation, comments, and suggestions.

7.12. Based on information provided by the department, it appeared that Applicant B's citizenship application was approved in January 2014. Following approval, it appears the processing of Applicant B's application was affected by the presence of doubt about his character. This occurred in the absence of criminal charges, convictions for criminal offences, and an adverse security assessment. However, the doubt about his character appears to have prolonged the decision-making process because the department advised us that there was insufficient information to cancel Applicant B's visa (and subsequently the consequential cancellation of the approval of his citizenship application). However, the citizenship section is required, under the Australian Citizenship Act, to resolve the character concerns raised by these considerations, prior to a decision being made on his citizenship application.

7.13. The department also advised our Office that resolution of Applicant B's character concerns may involve the disclosure of sensitive information to him for procedural fairness. The department was concerned however, about the information having been provided to it under the *Migration Act 1958*, which allows for the use of and protection of sensitive and protected information. Whereas, the Australian Citizenship Act does not contain an equivalent provision and as a result, the department argued that such information cannot be considered in relation to a decision under the Australian Citizenship Act unless the agency agrees or is willing to provide a redacted version of the information for release to the applicant.

7.14. While acknowledging the department's concerns about Applicant B's character and the limitations on disclosure of certain information impacting procedural fairness, we noted that Applicant B's application for citizenship was approved on 30 January 2014, and in February 2017 he had yet to be invited to attend a conferral ceremony. The department had not identified a basis (legislative or otherwise) that allows the department to delay inviting Applicant B to attend a conferral ceremony, or alternatively, delay cancelling his citizenship approval. For these reasons, we stated that it appeared that finalisation of his citizenship by conferral application was subject to ongoing administrative drift. In our view, given the absence of sufficient information to cancel the citizenship approval given in January 2014, which was over three years ago, not proceeding to finalise the case appears to be unreasonable.

7.15. Considering this, we suggested the department seek legal advice regarding the processing of Applicant B's citizenship application including:

- the necessity of release of information the department is aware of, that is relevant to a decision on his citizenship application

- the availability of any avenues to disclose this information to Applicant B for the purposes of making a decision under the Australian Citizenship Act
- the basis on which the department is able to delay inviting Applicant B to a conferral ceremony, noting that his application for citizenship appears to have been approved in January 2014, and not finalising the case appears to be unreasonable.

7.16. We requested a copy of any legal advice the department received on this case, or which was otherwise applicable.

7.17. The department responded that after further consultation with relevant authorities and the department's National Character Consideration Centre and discussion with the citizenship program, the delegate had come to the view that they would not pursue the existing character allegations against Applicant B. For this reason, there was no need to obtain legal advice that was suggested. The delegate was then required to address Applicant B's wish to have his personal data changed, an issue to be resolved before the application could be finalised, which the delegate intended to do as soon as possible. We decided to finalise the investigation at this point and advised Applicant B that his application was progressing, and he was welcome to return to us if he did not hear from the department by the following month. We have not yet heard back from Applicant B.

Possible lessons

7.18. The information provided to us by the department indicates that it has made progress in reducing the backlog of cases and improving the guidance available to decision-makers to enable more confident and assured decision-making. However, our complaint investigations, together with the department's recent data showing a substantial rise in applications on-hand for over two years, suggest the department still has some way to go and that in some cases delegates are struggling with a lack of evidence to support a positive or negative decision with absolute certainty. It appears that in some difficult cases, rather than decide, delegates take time to consult, await further evidence and refer to another subject matter expert. These are all valid processing options, however, the department needs to be alert to the risk that delegates may be reluctant to make decisions for fear of making the wrong decision.

7.19. The department has told us it is currently developing guidance in the ACIs to assist decision-makers in cases where the Minister issues a section 26(3) determination. In doing so, the department needs to ensure delegates are aware of the limited timeframe available to make a decision once a section 26(3) determination is issued, and ensure the case is prioritised within the assurance caseload, so that it can be decided within the timeframe specified by the Minister, which **cannot** exceed 12 months. The department needs to be mindful that preventing an applicant from taking the pledge after the expiry of the section 26(3) determination may not be lawful.

7.20. When it comes to making a decision that someone is not of good character, the ACIs focus on considering criminal convictions. However, there is little guidance

available in the citizenship program to assist a delegate to make an adverse character decision if all they have is allegations, suspicions, and doubt. It is these cases that appear to suffer from administrative drift. The department has advised us it is developing its ACIs in order to provide guidance to decision-makers as to how they can be satisfied that someone is of good character, which is a positive development. The department should consider as part of this process what issues delegates are actually seeing in applications and struggling with. Ensuring improvements to the ACIs reflect the areas of uncertainty for delegates may assist delegates to progress cases more quickly through the procedural fairness steps and to make a refusal decision, if warranted, or a grant decision, if there is a lack of evidence to suggest otherwise.

Part 8: DISCUSSION

8.1. There is no doubt the department has a number of challenges to confront but these are not, in our view, insurmountable. One challenge can be described as an increased awareness of identity fraud, and/or an increase in identity fraud. However, there is definitely an increased focus on the need to ensure when granting someone Australian Citizenship, the delegate is satisfied the person is who they say they are. Giving applicants the benefit of the doubt when it comes to identity and character, or not properly checking documentation, as it appears may have been happening in the past, is simply not permissible. Another challenge is the increasing volume of applications, and the limited number of people dedicated to decision-making.

8.2. The department has emphasised to us that decision-making under the Migration Act in relation to identity is not as high a bar, or at least is a different test, to that which is contained in the Australian Citizenship Act. This difference in thresholds has been presented as a challenge the citizenship program faces because people have been issued with visas by the department, in particular protection visas, and their identity has not been thoroughly examined. It is not clear to us that the difference is legislative, but an issue of practice and good decision-making in the different programs at varying times and depending on what pressures are being applied to decision-makers. An undocumented asylum seeker claiming to be an Afghan national, who is actually a Pakistani national, should have had their identity and claims thoroughly examined before being granted a visa. From our discussions with the department, however, it appears that it is concerned that this was not the case, and it has another opportunity to correct any errors made in relation to identity with the first or previous visa decisions, when the person then applies for Australian citizenship.

8.3. In addition to the improvements implemented, or soon to be implemented following the ANAO audit, the department has a range of measures it has considered implementing as part of its Identity Strategy. If these measures are fully implemented, these may assist with meeting some of the challenges and help speed up decision-making. For example, implementation of an integrated biometric-based identity management system; automating more processes; and creating a centralised ICT system to achieve the aim of 'one person, one identity, one consolidated record'. The centralised system is listed in the strategy as a long-term capability development, the others were intended to be immediate.

8.4. The department has made positive improvements to the Identity ACI, but it needs to remain committed to ensuring these changes are effective and fit-for-purpose, and to have in place a process for monitoring and evaluating their implementation and the degree to which the instructions meet the needs of its staff tasked with weighing up questions of identity.

8.5. The department should also continue to develop adequate guidance to decision-makers in relation to assessing an applicant's character. From what we have seen in complaint investigations, it is not just identity verification that causes delay,

but character-related assessments, particularly those subject of allegations and/or protected intelligence information, without criminal convictions. Delegates appear concerned about making character-related decisions in these cases. Consequently, these cases appear to suffer from administrative drift. As noted above, in developing the ACIs, the department should draw from the difficulties currently facing delegates and ensure the changes it develops create practical improvements to aid in the decision-making process.

8.6. Decisions on citizenship by conferral applications that take one to four years to decide will not satisfy applicants. In some cases, like the case of Applicant A discussed above and those of BMF16 and BMG16, the department risks unlawfully delaying citizenship conferral for some applicants while it either defers decision-making because it is too hard, struggles with a lack of verifiable evidence, or while it allows an application to be inactive (not processed) for long periods of time.

8.7. The risk is the department will have more and more applications taking not just one year to decide but more than two years to decide, which may very well lead to increased applications to the courts to force the department to make a decision, increasing internal complaints that it needs to respond to, and increasing complaints to this Office. The more this activity occurs it is a distraction from the real decision-making, creates more work for the department, and makes it more difficult for the department to make timely decisions. To avoid an escalation of the problem, the department must manage applications to ensure they are being reasonably actively considered, and not sitting for long periods of time awaiting allocation or waiting for a case officer to take the next step or decide the case, and support this process by providing decision-makers with the capability, support and guidance they need to make timely and sound decisions.

Part 9: RECOMMENDATIONS

9.1. Based on the information the department has provided in response to this own motion investigation and the information we have gathered during individual complaint investigations, we consider the following actions may assist the department to meet the various challenges it faces in administering the citizenship by conferral caseload.

Recommendation 1: The Ombudsman recommends the department continue its efforts to ensure the Australian Citizenship Instructions provide adequate information for delegates on how to be satisfied of an applicant's identity; the thresholds to be met to enable consistent decision-making and to give delegates confidence to make a decision.

Recommendation 2: The Ombudsman recommends the department continues to develop the Australian Citizenship Instructions to include more information about how to assess and be satisfied that an applicant is of good character, as well as the development of an internal instruction (not for public release) when considering protected intelligence information and allegations, as opposed to criminal convictions. The department should provide us with a copy of both instructions once complete.

Recommendation 3: The Ombudsman recommends the department continues to develop the Australian Citizenship Instructions to include information about determinations made under section 26(3) of the *Australian Citizenship Act 2007* and lawful decision-making, and that it provides us with a copy of the revised instructions once complete.

Recommendation 4: The Ombudsman recommends the department continue its efforts to implement the capability developments it has envisaged in its Identity Strategy, as this may most assist the citizenship program to manage its backlogs.

ATTACHMENT A



Australian Government
**Department of Immigration
and Border Protection**

Response to recommendations of the Commonwealth Ombudsman's report on '*Delays in processing of applications for Australian Citizenship by conferral*'

Recommendation 1	
<p>The Ombudsman recommends the department continue its efforts to ensure the Australian Citizenship Instructions provide adequate information for delegates on how to be satisfied of an applicant's identity; the thresholds to be met to enable consistent decision-making and to give delegates confidence to make a decision.</p>	
Department's Response	
<p>Agree</p>	<p>The department agrees with the recommendation and notes that it acknowledges the considerable work that has already occurred to address a range of complex program management and integrity issues. The department is preparing a suite of Australian Citizenship Instructions which are envisaged to be published in early 2018. These will include an instruction on identity and how it is assessed under the <i>Australian Citizenship Act 2017</i>.</p> <p>A separate instruction has also been drafted which sets out the three pillars of identity framework with detailed information related to each of the three pillars of identity including biometrics, documents and life story when assessing identity of a citizenship applicant. This also provides comprehensive information on procedural instructions to be followed by officers on examining and weighing evidence for reaching a reasonable and logical identity decision. This document will be classified at the Protected level and will not be published on LEGEND as it provides a level of detail on the department's operations that if publicly available could harm the integrity of the citizenship program.</p>

Recommendation 2	
<p>The Ombudsman recommends the department continues to develop the Australian Citizenship Instructions to include more information about how to assess and be satisfied that an applicant is of good character, as well as the development of an internal instruction (not for public release) when considering protected intelligence information and allegations, as opposed to criminal convictions. The department should provide us with a copy of both instructions once complete.</p>	
Department's Response	
<p>Agree</p>	<p>The department is preparing a suite of Australian Citizenship Instructions which are envisaged to be published in early 2018. This will include a stand-alone instruction on character which addresses factors that contribute to the assessment of good character including the relationship between inconsistent identity information and character.</p>

	<p>A separate internal instruction will also be developed for processing officers which details approaches to considering protected intelligence information or allegations that may include adverse character information. The Instruction takes into account outcomes from the Administrative Appeals Tribunal and provides links and references to tools available in the department to assist officers.</p> <p>Internal instructions and processes that consider nationally classified information regarding an applicant will continue to be developed, documented and stored in accordance with appropriate Information Security Protocols, and made available to individuals with an appropriate security clearance.</p>
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Recommendation 3

The Ombudsman recommends the department continues to develop the Australian Citizenship Instructions to include information about determinations made under section 26(3) of the *Australian Citizenship Act 2007*, and lawful decision-making, and that it provides us with a copy of the revised instructions once complete.

Department's Response

Agree	<p>The department is preparing a suite of Australian Citizenship Instructions which are envisaged to be published in early 2018 and this will cover cancellation of approval and the delay of making the Pledge made under section 26(3) of the <i>Australian Citizenship Act 2007</i>. The Australian Citizenship Instruction includes procedures to be followed when making decisions to cancel approval and written determination to delay a person making a Pledge.</p> <p>The Australian Citizenship Instructions being prepared include substantially more guidance on progressing applications and the correct steps that need to be taken to ensure each application is being actively processed.</p>
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Recommendation 4

The Ombudsman recommends the department continue its efforts to implement the capability developments it has envisaged in its Identity Strategy, as this may most assist the citizenship program to manage its backlogs.

Department's Response

Agree

Citizenship is a privilege not a right and the department has a duty to thoroughly assess all aspects, including identity, of citizenship applications. To support this, new capability is being progressively implemented in identity to align with the department's Identity Strategy. The new capability will assist with future citizenship caseloads to ensure that any future pipelines are not driven by systemic identity risks flowing from the visa programs into the citizenship program.

The department continues to enhance its capability in intelligence and biometrics that will assist the citizenship program to better profile risk within the current caseload and also provides the opportunity to expedite some of the existing caseload pipeline within the citizenship program.

The department is also progressing the ten year Immigration Reform plan to transform Australia's visa system, including enhancing identity, risk and intelligence management. Enhancements to biometrics will assist to establish and verify identity of travellers and strengthening of the Visa Risk Assessment to improve department's analytical capability to gain a better understanding of the people crossing the border.