# CHAPTER 3 – GIVING EFFECT TO TEMPORARY RESIDENCE POLICY

## Aiming for efficient and effective processes

3.1 In order to give effect to Temporary Residence policy in a manner which enables temporary entry to take place as easily as possible, but without unwanted consequences for the Australian community, it is necessary to look carefully at the processes involved in assessing visa applications. The aim is to further improve the DIMIA's ability to facilitate the entry of people who will bring benefit to Australia with a minimum of cost in terms of both money and time, to the parties involved and the community more broadly. To achieve this the intention is to simplify and streamline processes where possible in order to carry them out in the most efficient and thus cost-effective way possible.

3.2 Matters raised in the course of this Review include:

- Processing times for some visas are longer than clients would prefer. In the case of sponsored employees the delays can have costly implications for the organisation awaiting the skilled labour.
- The large range of visas to choose from can be confusing for clients, especially those who do not use the visas regularly. If a person lodges an application for the wrong visa it must be refused and they must start the process again by applying for the correct visa.
- The consequent need for staff to provide advice to clients about the appropriate visa is time-consuming for both staff and clients.
- The complexity of arrangements and inconsistencies lead to client confusion and incomplete applications that in turn lead to delays in processing.
- Subjective criteria for some visas create uncertainty for applicants who cannot self-select whether to lodge an application or not, and dissatisfaction with decision-making if their application is refused.
- A comparison between application arrangements for temporary resident visas and electronic visas (ETAs) leads to criticism. ETAs are applied for at the same time as obtaining an airline ticket to Australia and involve minimal processing. They are generally granted almost instantly and have no processing fee, reflecting the minimal processing involved in granting these visas. The progressive introduction from 1996 of ETAs has had implications for how the other temporary visa processing arrangements are viewed:

> *…the introduction of Electronic Travel Authority arrangements (ETAs) for a number of countries has thrown into sharp relief the complexity of the temporary entry regime, with its multitude of categories and subcategories.*
> (Submission from the Department of Foreign Affairs and Trade)

3.3 Just as temporary residence policy is developed in accordance with the five policy parameters discussed in the previous chapter, putting this policy into practice requires administrative parameters. Consistent with DIMIA's strategic plan, these are:

- client service;
- efficiency;
- accountability; and
- cost recovery.

3.4 This chapter therefore discusses the processes involved in administering Temporary Residence policy in terms of

these parameters with a view to developing procedures which, to the extent possible, will:

- be simple for clients and staff to understand and relatively quick to undertake;
- provide for consistent and equitable outcomes;
- encourage and enable complete visa (and sponsorship) applications;
- encourage as much information and documentation as possible to be provided at the time of lodging the visa application;
- encourage clients to initiate health and character assessments as early as possible;
- ensure that, once received, applications are handled efficiently so that processing costs and times are minimised;
- ensure that where there are other government agencies or bodies that have expertise in particular assessments, those bodies undertake these assessments rather than DIMIA officers for whom it is not their core business;
- allow maximum use to be made of electronic facilities for application lodgement, processing, notification and other communication with clients; and
- ensure appropriate cost recovery for all visa, sponsorship and nomination processing.

## CLIENT SERVICE

### Speed of Processing

3.5 Comments made in submissions to this Review indicate the importance that clients place on improvements that will result in faster processing:

> *…business needs to be able to respond very quickly to satisfy the needs of its clients. However, we still suffer significant periods of time in the granting of visas…Business needs things resolved in a day or two, not unknown weeks… Anything…that can help to speed up processes should be seriously considered.* (Submission from JK Penny Pty Limited)
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> *Murdoch University finds the current requirements for employers in the visa process too time consuming, especially where labour market testing requirements are involved. We believe that the process can be simplified, and efficiency improved.* (Submission from Murdoch University)
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> *Applications can take up to two months to be approved. This can have major implications on the award of research grants to the University and therefore the delay can be costly.* (Submission from Adelaide University)

### Clear Client Information

3.6 Features of an ideal processing arrangement that would make the visa processing more efficient and therefore quicker for all concerned would include the following:

- clients should be able to easily identify the right visa for which to apply;
- it should be simple for clients to understand the appropriate visa requirements and processes;
- there should be checklists of requirements for each visa;
- as discussed in Chapter 2, the visa criteria should be as objective as possible, so as to make it easier for clients to self-assess their eligibility, faster to process and less subject to dispute;
- clients should be made aware of their rights and responsibilities:
  - sponsors should fully understand their obligations,
  - visa applicants should understand the sponsor obligations and commitments and how to seek a

remedy if the sponsor does not meet these, and they should understand and acknowledge the terms of their visa (in relation to access to Medicare, social security benefits etc, and other matters that the sponsor has undertaken to be responsible for);

- client expectations should be appropriately managed, for example in relation to processing times for different services and in relation to the consequences of incomplete applications;
- staff should be able to administer requirements in a quick and sensible manner.

3.7 An example of the benefits of clear client information is the introduction of visa application booklets in July and November 1999 for permanent visa applicants. These booklets clearly explain the visa requirements and processing arrangements for each visa. These have received favourable feedback from both clients – because they result in less confusion – and staff – because they now spend less time explaining visa requirements and can thus focus on processing.

3.8 It is important for clients and staff that visas and visa requirements be clear and therefore any restructuring of the Temporary Residence visa program must pay special heed to the need for clarity. Given the need for clear client information, consideration should be given to the introduction of application booklets for all temporary resident visas, subject to the successful introduction of a number of temporary residence booklets in 2001 (Sponsoring a temporary overseas employee to Australia, Visiting Australia, Working Holiday Visas, Medical and Students). Applicant information and forms would also be improved by the inclusion of document checklists, steps that applicants should complete before lodging an application and service standards.

### Minimising Incomplete Applications

3.9 One of the major processing issues under the current arrangements relates to the large proportion of applications which do not contain sufficient information or documentation when they are lodged to enable the decision-maker to make a decision on the application. DIMIA's strategic plan aims to increase the percentage of completed applications lodged (see paragraph 1.36). It is in the interests of clients who want faster processing to provide all the necessary information at the time of lodging their application. However, sometimes they do not understand all the information they should include in their application. Another possible reason for incomplete applications is the culture of lodging an application to "kick off" the process. This needs to be changed to a culture of organising and lodging all the necessary documentation and information with the application. Improved client information about visa requirements and visa processes will facilitate such a change. DIMIA is currently developing a strategy to deal with incomplete applications.

### Front-End Loading

3.10 In order to encourage complete applications, the question of how much information and documentation should be provided by applicants at the time they lodge their visa application must be resolved. DIMIA's strategic plan makes explicit reference to greater emphasis on front-end loading for valid applications. By requiring that documentation and assessments be provided with the visa application, delays in obtaining these can be avoided during the application

processing with the result that DIMIA can resolve applications much more quickly after they are received.

3.11 Submissions supported this approach as a means of making processing more efficient:

> *I believe that a requirement for sponsorship should be lodged at the same time as the visa application. This should be more efficient for visa processing. Evidence of support [required to be provided before certain visas can be granted] at the start of the application is a good option because it reduces the time consuming process of "chasing" the sponsor. I agree with the proposal, which states that applicants are to be encouraged to do their health checks before or at the start of the application process.* (Submission from The Australian Lebanese Christian Federation)
>
> *Front-end loading is appropriate as a means for reducing costs to clients and DIMA…Limited front-end loading in the case of health assessment is accepted as being the most appropriate measure*. (Submission from the Greater Murray Area Health Service) and
>
> *…[I] would support front-end loading of [letters of support for visiting academic visa applicants] if it would reduce the processing time.* (Submission from CSIRO Corporate Centre)

3.12 Documentation can be required to be provided at the time of lodging an application such that the application cannot be lodged without it. An example of this principle is the introduction of the requirement for points-tested skill category applicants to obtain their skills assessment and lodge it with their visa application – applicants cannot lodge their application until they have had their skills assessed. This means that DIMIA can process the visa application much more quickly after it is lodged because the skills assessment has already been done. It also provides more certainty for clients – clients whose skills are not recognised for practice in Australia can avoid the uncertainty, effort and cost associated with a visa application that would have failed because their skills were not recognised.

3.13 This approach provides a clear framework for clients. However it may have operational and legal implications and therefore each evidentiary or documentary requirement needs to be considered on a case-by-case basis. For example, it may be inappropriate to <u>require</u> that applicants provide documentation at the time of application where a decision-maker needs to first make a judgement as to whether a particular requirement applies to them. Other considerations have been raised in Submissions:

> *To the extent practicable, clients are actively encouraged to provide all possible documentation to be lodged with the visa application and sponsorship. There are occasions where it is impossible to front-end load an application to the desired degree. For example, documents such as police clearances can be difficult to obtain in locations with limited technology. It may be physically impossible to obtain a police clearance from certain countries without having a representative physically attend the police offices, and the waiting period can be extensive.* (Submission from Arthur Anderson)

> *…with the best of intentions people doing their own applications, and experienced or less experienced agents sometimes make mistakes. You can only go so far with front end loading. If such a system were to become legislated it runs the risk of overriding the realities of everyday life.* (Submission from the Migration Institute of Australia)

**Use of Expert Parties for Specialist Assessments**

3.14 Ideally DIMIA would not undertake, as part of its visa or sponsorship decisions, assessments that could be more appropriately done by another department or expert third party who has more specialised expertise in certain areas, for example skill, training plan, or health assessments. This was discussed in Chapter 2 in the context of labour market assessments. Specific features of this general principle include the following:

- use of expert third parties for specialised assessments where DIMIA does not have appropriate expertise relative to other organisations or government agencies;
- specifically, DIMIA should not be involved in skill assessments – where there are reasons to doubt the skills claimed, the matter should be referred to an appropriate skills assessment body;
- where assessments need to be obtained from an expert third party, that assessment is required to be obtained prior to visa lodgement and evidence of the assessment lodged along with the visa application;
- where assessments are done by another organisation that assessment record can be accessed electronically by DIMIA.

3.15 An example of this principle is the requirement for applicants (from July 1999) for points-tested skill categories to obtain external skill assessments. Applicants are now required to obtain a formal skills assessment from the relevant assessment body in Australia. As discussed above, the assessments are required to be lodged with the visa application, thereby contributing to faster visa processing.

3.16 Submissions were cautiously supportive of this approach:

> *I am generally supportive of the idea…to out-source any assessments currently done by DIMIA decision makers that are better handled by another agency. However, I am concerned that there is a potential for this to delay the processing while a sponsor deals with more than one agency.* (Submission from CSIRO Corporate Centre)

3.17 While this will involve seeking advice from another agency, where that agency is the expert on that matter they should be able to do these assessments faster than DIMIA. Where other agencies make the assessment, evidence of this must be provided at time of application and would ensure that visa processing is streamlined. It would also mean that sponsors would need to plan ahead and assemble the required documents before lodging a visa application. In some cases it will still be DIMIA that is the appropriate body to make an assessment. In these cases it is necessary that staff have the appropriate skills to make the assessments required of them.

**Persons Who Need to Travel to Australia Urgently**

3.18 Under current arrangements there is an Emergency (Temporary Visa Applicant) visa for overseas applicants for temporary resident visas who meet all the criteria for the visa but have not yet finished the processing of their health and character

assessments. If they have urgent and compelling reasons for travelling to Australia before these criteria can be assessed, they can be granted an emergency visa. Under current policy, this visa is usually granted for up to four months, on the basis that this would be enough time to complete the outstanding processing after arrival in Australia. After those outstanding assessments have been completed, they may be granted a temporary resident visa for the period initially requested (up to the maximum period for that visa).

3.19 The Confirmatory visa (subclass 446) is the mechanism that was intended to be used in such cases. It provides a free visa application for such people once their outstanding assessments have been done, that only requires the decision-maker to assess those remaining criteria. Alternatively, once the remaining assessments are done, the person can apply for the temporary resident visa that they originally applied for, as they will now meet all the criteria. In recent years all such people (about 40 per year) have been processed this way, rather than using the Confirmatory visa. There has not been a single usage of this visa in the past few years.

3.20 Rather than maintain a visa that is not being used the Confirmatory visa could be abolished and the current practice that, where eligible, these people be granted a visa of the type for which they originally applied overseas (once they have completed the outstanding assessments onshore) should be continued. This is considered the preferable way to 'regularise' the status of these persons, because:

- they obtain the appropriate temporary residence visa which is recognisable, for example for employer purposes;
- they pay a second visa processing charge reflecting the fact that they have been provided with two rounds of visa processing;
- for monitoring and reporting purposes it is more useful to know which visa these persons meet the criteria for.

3.21 *RECOMMENDATION:*
*That holders of an emergency (temporary) visa apply for and be considered for a visa of the same kind as that originally applied for overseas, and that the Confirmatory Visa be abolished.*

**Interdependent Partners of Temporary Resident Visa Applicants**

3.22 Migration law provides for the grant (in or outside Australia) of a permanent visa to persons in an 'interdependent relationship' with an adult Australian citizen, Australian permanent resident or eligible New Zealand citizen. (It similarly provides for the grant of a permanent visa to certain family unit members of interdependency visa holders.) These provisions are consistent with the *Marriage Act*. However under current arrangements there is no provision for temporary residents to bring their interdependent partners with them, unless their partner is eligible for a visa in their own right. Sometimes they use visitor visas that do not give them the right to work. The discussion paper raised this issue, noting that provision currently exists for such partners under the permanent visa arrangements.

3.23 Comments made in the consultations on this Review support provision for temporary residents to bring their interdependent partners with them to Australia:

*We believe that there should be provision for including interdependent (same sex) partners in the same manner as for defacto relationships. We*

*have had several instances where an employee did not accept transfer to Australia because their same sex partner would not be included in the temporary residence sponsorship. There are several permanent resident visa classes that cater for interdependent partners and there seems to be no reason why this should not be extended to temporary residence subclass 457 visas under employer sponsorship.* (Submission from National Australia Bank)

*Significant Australian employers report difficulties for highly sought after candidates who are unable to be accompanied to Australia by their same sex partner. This is considered by employers (and nominees) to be discriminatory... This arrangement cannot be justified in circumstances where spouses and de facto spouses of a subclass 457 visa holder have no stronger a relationship with a sponsoring employer than does the same sex partner of a nominee.* (Submission from Arthur Anderson).

3.24 There is a need for some provision for same sex partners for temporary resident applicants, although it may not be necessary or appropriate for these provisions to be extended to all the visas in this review. For example, it would not be appropriate for family relationship visa applicants who are required to be under 18 years of age. In addition, it may be that this arrangement is not considered appropriate where the period of intended stay is relatively short – this would reflect the costly processing involved in assessing interdependent relationships.

**Use of Electronic Communication**

3.25 Developments in relation to electronic communications, and in particular the electronic lodgement of visa applications will allow all aspects of the application process to be brought together, regardless of where the applicant and sponsor are located. This is an important feature of DIMIA's strategic plan. While this can be achieved under the current paper processing arrangements, electronic lodgement and the linking of onshore and offshore visa processing systems, will allow for a more coordinated process, enhance convenience to clients and improve processing times.

3.26 Submissions supported the use of electronic facilities to the extent possible:

*It would be desirable to establish e-mail contact between the officers at DIMA and University staff. At the present time communication is by hard copy correspondence, which is unnecessarily time-consuming.* (Submission from Adelaide University).

3.27 In recognition of the relative speed and efficiency of electronic communications, their use should be maximised. Where possible use should be made of electronic facilities for interacting with clients and for communication in relation to the visa and sponsorship applications including both within DIMIA and between DIMIA and other departments or expert bodies involved in parts of the assessment process. This could include applicants and sponsors using:

- the Internet to select the appropriate visa;
- the Internet to lodge applications; and
- electronic DIMIA records to check relevant requirements for a valid application.

3.28 DIMIA could use such facilities to:

- advise clients electronically of outstanding documentation and any further steps in processing,
- obtain expert assessments electronically

from third parties,
- to communicate with clients during visa and sponsorship processing,
- notify applicants electronically of visa grant, and
- grant visas electronically where appropriate.

3.29 DIMIA is moving towards achieving these goals. Consistent with the requirements of the *Electronic Transactions Act 2000*, the ability to lodge applications electronically, communicate electronically with clients and grant visas electronically is being progressively implemented. DIMIA's On-line Lodgement Service (DOLLS) already exists for certain visas. Greater use is being made of electronic communications between sponsors, visa applicants and DIMIA, including in the following areas:
- requests by DIMIA for more information;
- progress inquiries on applications;
- notifications about visa decision; and
- other communications between visa applicants and DIMIA.

**Who Can and Who Cannot Apply for Temporary Residence Visas After Arrival In Australia**

3.30 There are currently a number of restrictions on who can apply for certain visas after arrival in Australia. Visitors, for example, cannot apply for migration. This type of restriction is both logical and necessary. There is, however, a wide range of restrictions which may benefit from re-examination. A number of these restrictions appear only to slow processing, require clients to undergo needless changes of category to access certain visas and add significantly to the complexity of visa arrangements. The inconsistent application of these restrictions across the Temporary Resident Program further adds to this complexity. Where they are applied they take little account of the fact that an application still has to meet the legal criteria for the grant of a visa and do not recognise that people's circumstances can genuinely change after arrival. In addition, they make little sense if an applicant can easily travel to a nearby overseas post to obtain the visa.

3.31 There is value in retaining such restrictions only where there are sound policy reasons to do so. There are a few instances where current restrictions should be retained:
- it is government policy that holders of diplomatic visas and domestic worker (diplomatic or consular) visas are not permitted to change to other temporary visas while in Australia. Restrictions for these visa holders will therefore need to be retained;
- holders of transit visas and temporary humanitarian visas are currently not permitted to change onshore to temporary residence visas – the policy governing those visas is not part of this review;
- restrictions on AusAID students are discussed below;
- restrictions on students are discussed below;
- restrictions on persons whose substantive visa has ceased are discussed below.

3.32 There are also a number of inconsistencies in these restrictions across the temporary residence visas. Some appear to be unintentional errors or redundant provisions. These should be corrected.

3.33 Government policy restricting certain people from applying for temporary resident visas onshore might be better reflected in legislation by stating the restrictions in terms of the visas that are <u>not</u> to be held by applicants for temporary resident visas, rather than the visas that <u>must</u> be held by applicants.

- ***Overseas students***

3.34 Overseas students who are studying in Australia face limitations on who can apply for further visas and what visas they can apply for. They can only be granted certain temporary residence visas while in Australia, and not others. Of the visas currently under review, students can be granted exchange, educational, medical practitioner, public lecturer and temporary business (long stay) visa, provided they have successfully completed their course in Australia at associate diploma level or above. For students who wish to apply for any other temporary resident visa, they must leave Australia and apply overseas.

3.35 Some submissions suggested that these arrangements should be retained:

> *The current restrictions on student visa holders…should be maintained. This is to ensure their original intention of coming to Australia to study can be ascertained. If they are permitted to change to the visas onshore then DIMA should no longer apply a stringent criterion of genuine study intentions in assessing student visa applications offshore. This situation would open a flood gate for all sort[s] of people to try to come to study first then apply for other visa categories. Allowing international student graduates to work in Australia even for occupation training will adversely affect the employment prospects of local graduates. The higher unemployment rate as a result will look bad for the government too. The restrictions should therefore be maintained.* (Submission from Dr K.K.Shum)

3.36 Others argued that the current restrictions are no longer appropriate:

> *Students who have studied in Australia have the advantage of already being acclimatised to the social, cultural, political and industrial norms of Australia. Their qualifications are of Australian standard. The argument that their ongoing stay defeats temporary residence policy is a spurious one… If after some years studying in Australia the visa holder, having worked part-time… has previous experience which is relevant… it is a curious result … when a nominee with skills in demand cannot be granted a subclass 457 visa because the visa holder has been studying in Australia at their own expense…These same students can enter Australia with intention to study for the purpose of obtaining the minimum qualification to qualify themselves for a permanent residence application under the Independent category.* (Submission from AMIS Consultants Pty Limited)

3.37 The rationale for students being able to be granted some temporary residence visas and not others needs to be reconsidered. Recently there has been recognition that students who complete courses in Australia may have skills that Australia requires. In addition, having already spent several years in Australia as students, they will have developed their English to a good standard and will be aware of the culture and lifestyle in Australia and therefore will not be subject to settlement shocks. As a result there has been a move away from prohibiting them from obtaining further visas and, following recent changes to legislation, student visa holders can now be granted permanent skilled visas.

3.38 The discussion paper raised the issue of the ongoing appropriateness of excluding overseas students from changing status to temporary residence visas and particularly

the rationale for them being able to obtain some visas and not others. Under the proposals in this report, some of the current complexity will be removed if many of the temporary resident visas which allow overseas students to apply are amalgamated into the temporary business entry visa.

3.39 Unless specifically changed, the remaining visas will continue to exclude overseas students from applying for these visas onshore. There is little justification to retain these restrictions on the remaining visas (with the exception of the short stay visa discussed in Chapter 6) – they represent a relatively small proportion of the total number of temporary resident visa grants. Overseas students can apply for temporary resident visas after they leave Australia and are not subject to these restrictions (except for the restrictions on AusAID students). From 1 July 2001 AusAID and overseas government sponsored students have under policy, a no further stay condition applied to their visas.

3.40 RECOMMENDATION:
*That, while in Australia, overseas students (other than AusAID students and overseas-government sponsored students) be able to obtain any of the temporary residence visas included in this Review (subject to their having completed their course, not being subject to the restrictions for AusAID and overseas government sponsored students and their meeting all the criteria for the visa).*

- ***Private subsidised students***

3.41 For those temporary resident visas that overseas students can apply for onshore under current policy, there is an additional restriction for "private subsidised students". There must be a strong case on economic grounds for the grant of the visa, and it must not be detrimental to Australia's overseas student policies to grant the visa. These were students subsidised under the former Subsidised Overseas Student Program. This program ceased in 1989 and there are not expected to be any people still affected by this provision. It is proposed to remove this restriction as it is redundant.

- ***AusAID students***

3.42 For those temporary resident visas that overseas students can apply for onshore, there is an additional restriction for those who have come to Australia to study under AusAID assistance. This restriction applies equally to onshore and offshore applicants, and all family members as well. This criterion is intended to support Australia's aid program objectives by ensuring that AusAID sponsored students return to their home country and put their skills and knowledge gained through education and training programs in Australia to use in the further development of their home country. The restriction applies for two years unless AusAID or DIMIA waive this requirement; DIMIA may only waive the requirement in certain compelling circumstances. The case for retention of this restriction remains. No change to this restriction is proposed as any change would undermine Australia's aid program.

**Additional Requirements for Persons Whose Visas Have Expired**

3.43 Where a visa holder remains in Australia beyond the validity of their visa they must meet additional criteria when applying for another visa onshore. One of these criteria requires that if a former visa holder does not lodge a further application within the time period specified, they are not able to be granted another visa while in Australia. This is designed to discourage non-citizens from remaining in Australia beyond the period allowed by their visa and to prevent them from benefiting by remaining in Australia unlawfully. These requirements

**TABLE 3: SUMMARY OF VISA ARRANGEMENTS**

| Previous visa held (which has expired) | Time limit (during which another application must be lodged) |
|---|---|
| Electronic Travel Authority | 12 months |
| Visitor visa – short stay or long stay | 12 months |
| Student (where eligible) | 12 months |
| All other temporary resident visas + confirmatory visa | no time limit |
| Visitor visa applicants | 28 days |
| Aged dependent relative applicants | 12 months |
| Carers visa applicants | 12 months |
| Spouse visa applicants | 28 days |

send a message to overseas residents that they are expected to hold a valid visa at all times while in Australia. There is, however, some flexibility to make concessions as there may be compelling reasons for granting a further visa.

3.44 Table 3 provides a summary of current arrangements. It shows the various time limits that apply once different sorts of visas have expired. These time limits are the period the person concerned has to lodge another visa application after the expiry of their last visa.

3.45 As can be seen from the table above there is considerable variation in the time limits that apply to different visas. There is a need to standardise the current arrangements for temporary resident applicants in order to improve integrity and reduce complexity in the temporary residence regime. The lack of any time limits for most former temporary visa holders sends a message that it does not matter if their temporary resident visa ceases and they take months or years to seek a further visa. This message is not consistent with other government policy in relation to immigration law.

3.46 It is suggested that the appropriate time limit for lodging a further temporary resident visa application onshore should be 28 days. This represents a reasonable time period to allow flexibility without sending a message that it is acceptable to remain in Australia without a visa. There are other criteria for people whose visa has expired, for example that there were factors beyond their control that prevented them from applying for a visa sooner. This criterion should be retained as it further supports the Government requirement that all non-citizens hold a visa at all times while in Australia, while retaining sufficient flexibility where there are circumstances beyond the applicant's control.

3.47 *RECOMMENDATION:*
*That time limits for lodging further temporary residence applications onshore where the previous temporary residence visa has expired be standardised- to 28 days for all temporary residence visas.*

**Location of Applicant at Time of Grant**

3.48 For many of the visas under Review there is a requirement that the applicant (and their family members) be in the same place at the time of visa grant as when he or she lodged their visa application – that is, if the applicant was outside Australia at the time of application, the applicant must be outside Australia at the time of visa grant and, if the applicant was in Australia at the time of application, the applicant must be in Australia at the time of visa grant. This requirement reflects historical separation of onshore and offshore applications, different processing systems

for onshore and offshore applications and different review rights for onshore and offshore applicants.

3.49 This requirement may cause inconvenience for some clients who have for example travelled to Australia on a visitor visa after lodging their application for a temporary residence visa, but before the visa is granted. Currently, people in these circumstances are required to travel offshore again in order for their visa to be granted, a requirement that is both inconvenient for clients and difficult to justify. While there appear to be relatively few instances where this is occurring it is a requirement that bears reconsideration.

3.50 In the case of the short stay business visitor visa (subclass 456) the requirement to be outside Australia would need to be retained as this is exclusively an 'offshore' visa (ie it can only be obtained offshore). However this is not the case for the other visas included in this Review, all of which can be applied for inside and outside Australia. In these cases it would appear to be desirable that this impediment to granting the visa based on the location of the visa applicant be removed, provided that this does not undermine policy objectives – for example, where there are slightly different requirements to be met for onshore and offshore applicants and there are different review rights for each of these groups. These policy issues would need to be addressed. In addition, there may be some operational issues that would require consideration. However, subject to these issues, the removal of this requirement would appear, in principle, to be desirable as it would overcome the need for an applicant to either leave (or enter) Australia purely to have their visa granted.

3.51 The requirement that the applicant must be in the same location (that is, onshore or offshore) at the time of visa application and at the time of visa grant causes some inconvenience for clients and DIMIA should investigate the feasibility of removing the requirement.

## EFFICIENT HANDLING OF APPLICATIONS

3.52 For reasons of client service and administrative efficiency applications should be processed as quickly as possible with a minimum of handling. Features of an efficient handling system include:

- processing applications as soon as possible after receipt;
- 'streaming' applications for processing priority, upon receipt;
- minimising double handling;
- minimising the involvement of more than one staff member on any one application and focussing client contact on one officer in one office; and
- concurrent (rather than sequential) processing.

### On-the-Spot or Immediate Processing and 'Streaming' Applications

3.53 In an ideal processing environment, all applications would be processed as soon as they are received – either on-the-spot or with minimal delay. In reality this is not possible because:

- it would take too long to do so (and thereby delay counter staff from attending to clients waiting for simple counter services); and
- in many cases more information is needed to make a decision.

3.54 Less complex visa requirements and appropriately skilled staff would permit a greater proportion of on-the-spot decision-making, subject to the above limiting factors.

3.55 To the extent that applicants can be encouraged or required to lodge 'complete' visa and sponsorship applications (as discussed earlier in this chapter), they will be able to be processed soon after being

lodged. Client information should, as a result, make it clear what the consequences of an incomplete application can be, in terms of delays in processing.

3.56 Some assessment at the time of receiving applications may assist subsequent processing. Applications that cannot be processed on-the-spot could be streamed into separate processing priority streams, according to completeness or the need for further information. Allocating these streams separate processing resources would allow faster processing of complete applications as they would no longer be held up by the processing of more time consuming incomplete applications lodged earlier.

3.57 On-the-spot processing is preferable where it is feasible to do so and therefore:
- the possibilities for on-the-spot processing should be fully explored
- on-the-spot processing should be introduced where possible
- where it is not possible, outstanding documentation or requirements should be identified and requested as soon as possible; and
- where it is not possible, applications should be streamed according to completeness in order to achieve faster processing times for complete applications.

### Concurrent Processing

3.58 There are many checks that are done in the course of granting a visa. These include assessments against the specific criteria for the visa, as well as more generic criteria (like health and character checks and bona fides criteria). Some of these checks are done by DIMIA and some are done by other organisations, for example, the police authorities of relevant governments do penal checks. In some cases DIMIA needs to obtain information from other sources.

3.59 If an applicant does not meet one of the criteria for the visa for which they have applied, they cannot be granted the visa. Because of this, the decision-maker may wait until information or an assessment that has been sought from another agency are received, before doing the outstanding processing in relation to other visa criteria. In some cases they may wait until a sponsorship or nomination has been approved, if an approved sponsorship or nomination is a visa requirement, before commencing to process the visa application.

3.60 This sequential processing is sometimes motivated by a desire to save the client the time and trouble of completing the remaining assessments and paying the associated processing costs, where the applicant fails to meet one of the criteria. While minimising costs to clients is a worthwhile objective, sequential processing does extend processing times significantly. It also has inefficiencies associated with the repeated handling of the same application by one or more staff.

3.61 Feedback from stakeholders during the course of this review suggested that, where an employer needs an overseas employee for their particular skills, the speed of processing is more important than these relatively minor processing costs. Therefore scope for concurrent processing in the visa processing arrangements should be pursued so that as soon as a prerequisite requirement is met, the subsequent processing can be completed (rather than started). Indeed this is what already happens in processing offices when they need to expedite urgent cases.

### Single Point of Contact and Single Application Package

3.62 DIMIA's strategic directions recognise the need for "time-efficient client contact".

Current temporary resident processing is characterised by different parts of the processing for one visa being completed in different offices of DIMIA. For example, sponsorship applications are processed in Australia, which has better information about sponsors' local claims. Visa applications are generally processed in the office in which they are lodged, that is, where the applicant is, either in Australia or overseas. This means that the sponsor may be dealing with staff in Australia about the sponsorship (and nomination) part of the process, while the visa applicant is dealing with the overseas office in relation to the visa application part of the process. This has the potential for client confusion about what has been approved and what stage processing is at.

3.63 It should be possible to focus communication between the employer who is seeking to bring an overseas resident to Australia and one contact officer in one DIMIA office. In the case of sponsored employees – where the reasons that the temporary resident is coming to Australia is to meet a need for their skills by an Australian employee or business – the appropriate contact link would seem to be between the sponsor and the relevant Australian office. For other cases, for example where the impetus for the temporary resident is personal business, the visa applicants themselves will be the appropriate point of contact for all dealings about the application. Creating one point of contact should be more convenient and efficient for both the clients and DIMIA. For clients it would eliminate delays associated with DIMIA trying to make separate contact with more than one party in relation to one application; for DIMIA it will put the onus on the sponsor and the employee to communicate with each other rather than through DIMIA.

3.64 In this context it is appropriate to consider whether to require applicants and sponsors to lodge all documentation together at one office, which would then coordinate the processing from the very start. To this end, there would be significant advantages if all three application elements could be brought together into one application package. This would see the three separate applications lodged together (that is, there would be no delay in the lodgement of the subsequent applications) and would allow the three parts of the process to be commenced immediately and processed <u>concurrently</u> to the extent possible. This should allow for faster overall processing. Chapter 5 discusses the development of a single application package for temporary business entry (subclass 457) visa applications that would contain the sponsorship, nomination and visa applications. For other temporary residence visas, this proposal would entail the combination of the sponsorship and visa applications into one package.

> *There would be advantages to allowing sponsorships to be lodged at the same time as the visa application. Currently the delay in processing either can potentially drag the time out considerably. While there may be some risks in introducing this, I believe the benefits are greater.* (Submission from CSIRO Corporate Centre)

3.65 In the context of electronic capabilities and faster communications within the Department and between the Department and its clients, it is less important which office processes particular visas. In this respect the circumstances are right for introduction of single point of contact arrangements.

3.66 It would be more convenient for sponsors to deal with a single point of contact within DIMIA in relation to all aspects of an application, and application processes which have an Australian sponsor should be reviewed to this end.

3.67 <u>RECOMMENDATION:</u>
*That, where appropriate, a single application package be developed to replace the sponsorship, nomination (where applicable) and visa applications.*

### Single Application Fee

3.68 It is proposed that, with the introduction of a single application package, a single application fee, to cover the cost of processing the sponsorship, nomination (where applicable) and visa applications, should replace the current fee regime for these services. One consolidated charge would be simpler for clients to understand and simpler to administer than the current regime of separate charges for each application.

3.69 Chapter 5 also proposes that with the introduction of a single application package for temporary business entry (subclass 457) visa applications, a single application fee should replace the current fee regime. For other temporary residence visas, this proposal would entail the combination of the fees for sponsorship and visa applications.

3.70 This arrangement is not intended to change the total level of fees payable therefore the rate should be set to equate with the total of current charges. The implications of this change in fee structure for pre-qualified business sponsors (PQBS) and standard business sponsors (SBS) are discussed in Chapter 5.

3.71 <u>RECOMMENDATION:</u>
*That, where appropriate, processing fees be amalgamated into one application charge.*

## ACCOUNTABILITY

3.72 In addition to integrity in terms of temporary residence policy, the visa arrangements should aim for transparency in their administration, consistency in outcomes and accountability in all operations. To this end some recommendations of this review involve the replacement of subjective criteria with more objective criteria – this will result in greater transparency in and consistency of decision-making.

3.73 There must also be accountability for all parties involved in the visa system – departmental staff (eg for the information they provide to clients), decision-makers (for the quality of their decisions), visa applicants and sponsors (eg, for the information they provide and the undertakings they make). The visa regime must incorporate appropriate scrutiny to ensure that there are checks on all parties to foster accountability.

3.74 One of the mechanisms used to ensure the accountability of applicants for the information they provide in their applications (and consequently the integrity of the temporary entry program) is the need to abide by visa conditions. These conditions are used to give effect to the policy settings discussed in Chapter 2.

### Visa Conditions

3.75 Visa conditions are rights or restrictions attached to the visa which specify what the visa holder is permitted and not permitted to do while in Australia on that visa. They make the visa holder accountable for his actions. They usually cover issues of work and study rights but may also cover other matters, for example, a requirement to maintain health insurance,

or a requirement to depart Australia no later than another visa holder. The conditions that can be imposed on each visa are limited to the conditions specified in the legislation – these are determined as a matter of Government policy as conditions relevant to that particular visa.

3.76 The visa conditions for each of the temporary resident visas included in this review are at Appendix I. Most of the temporary resident visas in this review have the same conditions but there are some differences reflecting the different nature of the visas, for example, a person on a visiting academic visa cannot receive a salary (whereas many temporary residents are working and therefore receive a salary).

3.77 If a visa holder breaches a visa condition, their visa may be cancelled. Whether it is cancelled or not will depend on the circumstances of the particular case. If the visa is cancelled, they will be required to depart Australia in most cases. Even if a decision is taken not to cancel their visa, the breach of the visa condition may affect their eligibility for visas in the future (as there is a visa criterion regarding compliance with previous visa conditions).

3.78 Visa conditions can be either mandatory or discretionary:

- mandatory conditions are those that are imposed on every visa applicant, by law (ie the decision maker does not have to decide if the condition is relevant in each particular case). In these cases the Government has decided that there are good policy grounds, based on the nature of that visa, for imposing the condition on every holder of that visa;
- discretionary conditions are those that may be imposed on a visa holder, at the discretion of the decision maker, based on the circumstances of each particular applicant. Under policy, these conditions are rarely imposed.

- ***Visa conditions for the 'main' visa applicant***

3.79 For all temporary resident visas (except the confirmatory visa), people who qualify for a visa, for example on the basis of having a particular skill, can bring their family members (eg spouses and dependent children) with them. They are all technically visa applicants under the law but different visa requirements and conditions apply to them. For ease of reference they will be referred to respectively as the 'main' visa applicant (the one with the special skills or attributes) and family members (their spouse and children).

- ***Mandatory conditions for the 'main' visa applicant***

3.80 The only mandatory conditions for the main applicant (as opposed to family members of that applicant which are discussed below) are those in relation to employment:

- for most of the temporary resident visas (except 456 and 442 visa) the visa holder is not permitted to change their employer or occupation without the express permission of DIMIA (visa condition 8107). This reflects the fact that the visa has been granted on the basis of the specific activities proposed to be undertaken – these visas are not granted on the basis of unrestricted permission to work on unspecified activities. This reflects the policy objective of temporary residence to ensure that the entry of temporary residents does not impact on employment (and training) opportunities for Australians;
- for occupational trainees (subclass 442) the 'main' applicant is restricted to work in relation to the proposed study or training; no other work is permitted (visa condition 8102). This reflects the fact that this visa is granted on the basis of a specific training

proposal – the visa is not a visa to undertake unspecified occupational training. This reflects the policy objective of temporary residence to ensure that the entry of temporary residents to undertake occupational training does not impact on employment or training opportunities for Australians.

3.81 It is appropriate that these conditions remain mandatory for temporary residents. There would otherwise be the potential for those visa holders for whom the condition 8107 was not imposed, for example, to come to Australia on the basis of a skilled position for which there is a shortage of skilled local workers available, and then move. This could be to another position or region where the skill shortage does not exist and where working conditions are more favourable, in direct competition with Australian workers. Likewise, an occupational trainee could otherwise enter Australia on the basis of undertaking particular work-based training and then instead choose to enter the Australian workforce in a non-trainee, and possibly higher paid, capacity. These outcomes are inconsistent with the policy objectives of temporary residence. The policy objectives behind these conditions remain valid. The use of such mandatory conditions also reassures the Australian community that there are appropriate measures in place to prevent temporary residents competing with Australian workers. It is therefore appropriate to retain these conditions as mandatory conditions.

3.82 It should be noted that the 8107 work condition does not completely remove the right of a worker to move to another employer. Such a move can occur lawfully, provided DIMIA's approval is obtained first. If there is benefit to Australia and appropriate sponsorship arrangements for the new employer are put in place, DIMIA may approve the employee moving to another employer.

3.83 The proposed changes to the long stay business visa (subclass 457) discussed in Chapter 5 will remove any assessment of the specific activities of the proposed position and replace it with an assessment of the skill classification of the position. The specific activities will only be relevant to the assessment of the appropriate skill classification for a position. Under these arrangements, the mandatory visa condition which prevents the visa holder from changing employer will still be appropriate, given that the arrangements will still require the applicant to be sufficiently skilled, the prospective employer to have a skilled position and to have been unable to find an Australian employee. This mandatory condition should therefore remain for the temporary business visa under the new arrangements.

3.84 In the course of this Review an issue was raised in relation to the interpretation of the mandatory 8107 work condition. The condition stipulates that "The holder must not change employer or occupation in Australia without the permission in writing of the Secretary". The policy intention is to ensure that no other work is undertaken by the visa holder outside the activities or employment for which they were granted a visa. However, the way in which the regulation is currently worded does not currently prevent a visa holder from undertaking additional employment, provided they continue to perform the activities for which they were granted a visa. Yet this it not what was intended by this condition. Therefore this condition may inadvertently provide a loophole with some implications for the Australian labour market. This issue has been raised as there is evidence of increasing incidence of visa holders taking on additional employment. The 8107 work condition continues to be appropriate but there would be merit in re-phrasing the visa condition to ensure that, as with changing employer, any additional employment for the visa holder

would not be allowed without DIMIA's permission, thus making the policy intention enforceable.

- ***Discretionary visa conditions for the 'main' visa applicant***

3.85 There are also several discretionary conditions that the decision maker may impose (or not) on the basis of the particular circumstances of each applicant. For example, a condition that the visa holder must not enter Australia before another specified person has entered Australia, is only relevant to cases where a family member is accompanying another visa holder. Under policy, these conditions are not generally imposed.

3.86 Certain bona fides concerns about particular applicants can be addressed by imposing the 'no further stay' condition on a visa. This condition prevents the visa holder from applying for any other visa (except a protection visa) while they remain in Australia. It is discussed in more detail in Chapter 2.

3.87 Because the discretionary conditions are rarely imposed, there is little evidence on their operation and there were no issues raised about them in any of the submissions to the review or by any DIMIA staff. Therefore it appears there are no grounds to alter them at this stage. The discretionary conditions for temporary residents should remain unchanged as discussed in Chapter 2.

**Consistency of visa conditions**

3.88 Visa conditions are reasonably consistent across the temporary residence visas, although there are some differences reflecting the fact that some visas are intended for sponsored employees and others are intended for persons doing other activities with a more cultural focus. The diversity of activities (eg work, training, participating in a sporting event) limits the standardisation that can be achieved in relation to visa conditions.

3.89 There are, however, some minor inconsistencies that appear to be unintentional and could be removed. For instance, the condition 8303 (that the visa holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community) is not a discretionary condition for the educational visa but is for all the other temporary resident visas. This is clearly an unintended omission and should be corrected. Inconsistencies should be analysed with a view to standardising these conditions where appropriate.

- ***Visa conditions for family members***

3.90 The access to visas for accompanying family members and the restrictions on these visas are relevant considerations for visa applicants in making their decision to work in Australia temporarily, rather than some other country. Some countries do not automatically allow family members of temporary residents to work. Australia's relatively generous arrangements in this respect have resulted in a competitive advantage in attracting temporary residents. Both Canada and the USA have more recently moved to a similar approach. In an environment where the supply of skilled workers who are internationally mobile falls short of the demand for these skills, it is particularly important for Australia to maintain its competitive position.

3.91 In relation to permission to work, the main applicant for a temporary residence visa can usually only change their employer or occupation with DIMIA's permission. On the other hand, family members of temporary residence applicants are usually (although not always) granted a visa with

unrestricted permission to work. There are however, a few exceptions to this general rule:

- family relationship (subclass 425) visa – family members are not allowed to work;
- domestic worker – diplomatic and consular (subclass 426) visa – family members are only allowed to work in the same household as the main applicant,
- occupational trainee (subclass 442) – family members are not allowed to work at all, and
- short stay business visa (subclass 456) – family members are limited to work that could not otherwise be done by an Australian.

3.92 The current arrangements whereby most family members of temporary residents are granted full permission to work reflect the historically low levels of temporary residence movement, the expectation that small numbers of family members actually accompany the 'main' applicant and the resulting small numbers of people who would thus have little impact on the labour market. However, it is appropriate to revisit this issue, in view of the increasing size of the temporary residence program and the fact that the skill levels and working intentions of family members are not taken into consideration when granting temporary resident visas.

3.93 A range of views were expressed in submissions to the Review, with some focussing on the impact on Australian workers. Others focussed on the importance of attracting skilled workers to Australia and on a spouse being allowed to work being an important selling point that makes Australia an attractive destination:

> *Our experience with husband/wife employee combinations, and other working couples, is that the spouse wants to work while in Australia. We believe that restricting the work rights of the spouse and other family members would mean that some good employees might not accept an overseas appointment to Australia if their spouse could not work. The USA experience is a prime example, where spouses cannot work, and this has been a long running irritant... Restricting work rights could be a serious impediment to our need to bring overseas employees into Australia.* (Submission from National Australia Bank Limited)
>
> *[We recommend] that accompanying family members are required to comply with criteria such as not working in areas with a current oversupply of Labour and, if working in the Health Profession, complying with Health assessments.* (Submission from Dentist Job Search)
>
> *Current restrictions in relation to permission to work for family members of temporary residence visa holders are adequate. Given the relatively small numbers of temporary residence visa grants (apart from the Business 457 class visas), there is no justification for introducing measures to control the labour market impact of secondary applicants… emergency measures could be drawn out to deal with labour market impact… in case there is an unexpected increase in temporary visa grants, especially where family members are having an impact on the labour market by working in areas where there is surplus labour.* (Submission for the Australian Lebanese Christian Federation Inc)
>
> *To restrict the working arrangements of dependants of the sponsored individual (457) would be seriously*

*detrimental to the ability of Australian companies attracting offshore personnel. As it is an undertaking that remuneration for these people is to be in line with the local standards, they are clearly disadvantaged if their partner is not entitled to work and assist in the support of the family and or commitments in the home country…It is very un-Australian…* (Submission from Paul Ingle and Associates).

3.94 It is clear that the availability of work rights for family members is important for skilled workers who expect their spouse to be able to continue to work while in Australia. These work rights are an important means by which Australia can attract highly skilled workers in a competitive international environment for skilled labour. Work rights for family members of temporary business (subclass 457) visa applicants should therefore be retained.

3.95 It would be appropriate to recognise the difference between those Economic stream visas that involve skilled workers, being paid Australian levels of salary and which have an economic benefit to Australia, and other visas that may not involve skilled workers or where the visa holders usually stay in Australia for very short periods of time and therefore are unlikely to bring family members with them with the expectation of working in Australia. The policy should also take into consideration the expectation that temporary residents should be largely self-sufficient during their stay in Australia, either as a result of funds they bring with them or because they will be paid a salary while in Australia that is sufficient to meet the costs of living in Australia.

3.96 It is therefore proposed that full work rights for family members be retained for the following temporary residence visas:

- those that are part of the economic stream;
- those that have diplomatic or international relations implications where it is supported by the Department of Foreign Affairs and Trade;
- those that have existing unrestricted permission to work where the 'main' visa holder is approved for a period of stay longer than 12 months; and
- immediate family of Australian citizens or permanent residents who use the Supported Dependant visa. This group would be eligible for permanent visas with full work and other rights and it would not be appropriate to remove their work rights. (Chapter 13 discusses arrangements for these persons and raises the possibility of abolishing this visa. If it is determined that appropriate alternate arrangements could not be made if this visa were to be abolished, the visa might be retained, in which case it is recommended that users of this visa retain their access to full work rights.)

3.97 This approach would mean that some short-term visas which currently give family members work rights would no longer do so. Under this approach the particular types of permission to work would be retained for the following visas:

- Domestic Worker – Diplomatic or Consular (subclass 426) visa, which would retain permission to work in the same household as the 'main' applicant; and
- Short stay business (subclass 456) visa, which would retain the permission to undertake work that could not otherwise be done by an Australian citizen or permanent resident.

3.98 The implications of this proposed approach are discussed in those visa-specific chapters where the work rights for family members would be changed under this approach. A summary of the implications for each visa is at Appendix J.

3.99 An alternative approach would be to provide work rights to family members selectively, taking into account the existence of reciprocal arrangements in their home country. This may be viable as a means of providing some incentive for other countries to make such rights available. Such a move may have foreign affairs and trade implications that would have to be taken into account. It would also add a layer of complexity to application processing. Accordingly, this alternative is not recommended, although it could remain an option for consideration in bilateral negotiations in the future.

3.100 There are no restrictions in relation to study for any of the visas, so dependants may attend primary, secondary and tertiary institutions (although they may be subject to overseas student charges).

3.101 No other concerns with current visa conditions were raised in the course of consultations on this Review.

3.102 *RECOMMENDATION:*
*That existing unrestricted permission to work be retained for family members accompanying temporary residents to Australia in cases where:*
- *the visa is part of the economic stream;*
- *the visa is diplomatic in nature or contributes to Australia's international relations objectives;*
- *the 'main' visa holder is approved for an intended period of stay longer than 12 months or*
- *the applicant has been granted a Supported Dependant (subclass 430) visa.*

## COST RECOVERY FOR DIMIA PROCESSING SERVICES

### General Principles for Government User-charging

3.103 The Government user-charging policy involves charging those people who use particular government services a fee for the use of the service. The level of the fee should be set to broadly cover the cost of providing that service. In the absence of user-charging the Australian community pays for the provision of the service through the taxation system. Whether user-charging is appropriate depends on the circumstances of each case:
- in many cases it is appropriate that the user pays the full cost of using a service;
- in some cases cost sharing may be appropriate;
- charging between (and sometimes within) government agencies may also be appropriate;
- in some cases it is appropriate for the government (through the taxation system) to cover the cost of certain services, for example, certain health services, or where there are reciprocal arrangements with other countries or international agreements (as in the case of diplomats); and
- sometimes it is more expensive to recover the costs of providing the service so charging is not appropriate.

3.104 Charging sends an important price signal, even for relatively cheap services, that there is some administrative cost associated with that service. Within the policy of user-charging, the principles that govern good charging policy involve:
- minimising exemptions which create resource allocation distortions and are costly to administer; and

- transparency of government expenditure/revenue decisions so that, where it is considered that financial assistance should be given to particular individuals or organisations, it is done so via direct subsidy rather than through exemptions from certain fees and charges or exemptions from other requirements.

3.105 It is not an objective to make a profit from the provision of immigration services. The electronic visa for stays of one month and a validity of one year incurs no DIMIA charge, for example. This reflects the relatively low processing costs for these visas, which do not justify the administrative effort of managing charges.

3.106 There are currently some exemptions and discounts available to certain applicants and organisations. These arrangements were put in place many years ago and have not been subject to review. Consideration has therefore been given to the continuing appropriateness of the current fee structure (a summary of current arrangements, including exemptions and group discounts, for temporary residence visa applications is at Appendix K). These principally apply to Sport and Entertainment visas.

**Fee Exemptions**

3.107 Where there is an exemption from the visa application charge or the sponsorship fee the processing costs of the applications are borne by other applicants and the Australian community in general. Some of these exemptions apply in cases of bodies receiving Australian Government subsidy. This reflects historical arrangements whereby government bodies did not charge processing fees to persons or organisations that were receiving government funding. It is therefore appropriate under the terms of reference for this review to consider whether this arrangement is the most efficient and effective means of delivering such subsidy.

3.108 As a general principle, fee exemptions are a subsidy to particular individuals or organisations and reflect public policy objectives to provide particular support to particular persons or organisations. However, the use of fee exemptions is not an ideal mechanism for providing a subsidy because it is not transparent (ie the subsidy is concealed).

3.109 There is also an additional resource cost in processing requests for fee exemptions. Considerable administrative resources may be used in assessing requests for an exemption and there is no way to recover these costs. This also diverts resources from visa processing and delays processing of applications. It is estimated for example, that approximately 50 per cent of sports and entertainment visa applicants are granted an exemption under current arrangements.

3.110 The current fee exemption regime can be complicated for clients, especially occasional users of the system. Unless there are strong reasons to the contrary, a more standardised regime would be fairer in terms of user pays principles and would also be easier for clients to understand and for staff to administer. This was recognised in some submissions:

> *As there is such an array of charges for the various visa applications and sponsorship/nomination applications, it would seem more streamlined to bring all the fees into line.* (Submission from International Banks and Securities Association of Australia.)

3.111 Not surprisingly, some stakeholders sought the retention of fee exemptions for their constituents while others sought

exemptions that do not currently exist, for example:

> *We submit that the main guiding principle in fee setting should be based on whether the applicant's primary purpose of entry is to engage in paid work. There could be 2 fee scales, the higher one for income-generating entries, and the lower one for other entries…*
>
> *We are aware of the counter-argument that as paid workers contribute more economic benefits for Australia, therefore they should be charged less in recognition of that. However, applicants' contributions to the economy are related more to length of stay than income or economic benefit…*
>
> *In relation to fee exemptions, earlier in this Submission we recommended that exemptions or burden lightening could be based on the (religious worker applicant's) sponsor's lack of capacity to pay. Consistent with this theme, we submit that this could have wider application, extending to sporting clubs (sponsoring sports people), poor families (sponsoring children under 18) etc.* (Submission from the Vietnamese Community in Australia)

3.112 Identifying the benefit that current sponsorship fee exemptions provide and requiring organisations to respond by providing DIMIA with an efficiency benefit is considered , more equitable. This change in fee structures is not intended to alter the level of revenue raised, but is designed to pass on the processing costs to the users under the simplest, fairest and most efficient arrangement. This view was supported by submissions although fees were not supported in all cases:

> *Generally if there is economic benefit being derived by sponsoring an applicant to temporarily reside in Australia, as in the temporary business visa, then a fee should be incurred for sponsorship …If there is no direct economic benefit derived by the sponsor, then there should be no sponsorship or nomination fee, just an application fee.* (Submission from Council Exchanges)

3.113 The existence of fee exemptions also results in confusion for staff, additional workload and associated processing delays. In certain limited circumstances fee exemptions are provided in order to meet Australia's obligations under international treaties to which it is a signatory. An example of this is the exemption provided to persons to be accorded privileges and immunities (see Chapter 13). Fee exemptions should otherwise be provided only where the organisation granted the exemption delivers a corresponding benefit to the organisation granting the exemption in terms of greater efficiency. This would mean lodging all applications made under the exemption at the same time and with all relevant documentation, that is DIMIA would obtain some benefit from the ability to deal with a fee-exempt organisation in an efficient and speedy manner. Applications lodged subsequently or separately would not attract the exemption.

3.114 *RECOMMENDATION:*
*That fee exemptions for the temporary residence visas included in this Review apply only to sponsorship and visa applications lodged together and with complete documentation unless provided for under international treaties.*

3.115 The effect of this refinement relating to fee exemptions for particular visas is discussed in more detail in the visa-specific chapters following.

**Group Discounts**

3.116 In line with the user-charging principles outlined above, group discounts should be provided only where sufficient economies of scale can be achieved in assessing subsequent applications. Where there is a group discount that does not reflect genuine economies of scale, the cost of offering the service is not covered by the processing fees; as a result the Australian community subsidises the service.

3.117 As discussed above in relation to fee exemptions such subsidies are not transparent and may even require significant additional resources to administer. There are few economies of scale associated with processing subsequent visa applications because each one involves the assessment of the particular circumstances of an individual applicant.

3.118 Group discounts for sponsorship fees do, however, reflect the economies of scale that may apply in cases where the sponsorship information is the same for a large number of cases lodged at the same time and therefore subsequent processing after the first assessment is relatively streamlined.

3.119 Current arrangements provide a group discount for sponsorship fees in the form of a capped fee equivalent to the cost of 10 sponsorships for more than 10 sponsorships lodged together. The group discount does not operate as a discount on subsequent applications. Rather there is a capped fee that equates to eliminating the fee after 10 applications.

3.120 Under these arrangements there is a point at which the amount paid for processing does not cover the cost of providing the service. Once any economies of scale are dissipated, the processing costs associated with processing the additional sponsorships are borne by the community and the organisation effectively receives a subsidy from the community.

3.121 Once the sponsorship and visa application forms and fees are combined (see paragraphs 3.62–3.71 above) it would be conceptually and administratively difficult if not impossible to retain group discounts for certain parts of a combined application fee. The proposed amalgamation of applications and consequent rationalisation of fee structures is designed to achieve more efficient processing. Feedback during the Review was supportive of any measures to reduce processing times and there is unlikely to be much concern about changes to some group discounts if the revised arrangements result in faster processing arrangements. As with fee exemptions, group discounts should only apply where applications are lodged at the same time and are complete. Applications lodged separately or incomplete should not fall within group discount arrangements.

3.122 In addition, the current sponsorship fee provisions also contain an exemption for Domestic Worker (Diplomatic or Consular) visa applicants. This reference is redundant as there is no sponsorship requirement for that visa; this reference is confusing and should be removed.

3.123 _RECOMMENDATION:_
*That group discounts for the temporary residence visas included in this Review apply only to sponsorship and visa applications lodged together and with complete documentation.*

### Current Level of Charges

3.124 There is also the question of whether the current level of visa application charge and sponsorship fee for temporary residence applications reflects the processing costs involved in the average application. The charges are currently indexed annually to reflect inflation rates, but there have not been other increases in temporary residence fees for many years. DIMIA is currently in the process of undertaking activity-based costing exercise and benchmarking of activities to better identify the actual costs of its different activities as a basis for improving management and appropriate pricing of its services.

3.125 Feedback from various stakeholders during the course of the consultations on the issue of fees and charges expressed the following views:

- the level of processing fees and application charges are appropriate for the amount of work involved;
- DIMIA fees and charges are relatively low, when compared with other fees for service;
- most clients are prepared to pay reasonable processing fees, provided the service is efficient and fast;
- business clients would be prepared to pay higher fees for better service – they are not prepared to accept slow processing arrangements on the basis that they allow for minor savings; and
- some clients who are currently eligible for certain fee exemptions do not want the exemptions removed because they would face additional costs.

3.126 Limiting fee exemptions and group discounts to circumstances where DIMIA is able to obtain some benefit in terms of efficiency will ensure that there is appropriate cost-recovery in the Temporary Residence program without the need to increase any of the fees or charges. Temporary residence fees should continue to be set to recover processing costs.

### Revenue Neutral Impact of Fee Restructuring

3.127 The combining of sponsorship, nomination (where appropriate) and visa application fees is not intended to increase revenue from fees, but rather to simplify fee structures for clients and result in more efficient administration of user charging arrangements. In addition, limiting fee exemptions and group discounts is designed to remove administrative inefficiencies and processing delays associated with the exemptions and discounts.

3.128 The proposed changes to exemptions and group discounts are not expected to result in much increase in revenue from fees. This is because the modifications will not affect the bulk of temporary resident applicants. Those applicants who currently obtain such exemptions and discounts will still have access to them although they will be required to lodge the relevant applications together and with all supporting documentation.

## CONCLUSION

3.129 The current range of different requirements and different processes for different visas results in considerable client (and staff) confusion and consequent inefficiency. In some cases the differences do not reflect any public policy objective. A more standardised approach is desirable from the point of view of greater efficiency and reduced confusion and was strongly supported in public submissions as a means of creating a simpler regime. Ideally, visa requirements and processes would be standardised. However, standard requirements and processes are not always possible because of the specific

requirements of particular clients, particular segments of the labour market etc. Standardised requirements are sometimes too blunt an instrument for public policy. The proposals set out in this Chapter seek to achieve the maximum amount of standardisation of requirements and processes, while retaining appropriate policy flexibility and visa integrity.

3.130 Consideration of these processing enhancements for the visas included in this Review has involved consideration of client service objectives in the context of transparency and accountability.

3.131 DIMIA is not in a position to realise all of these proposals at this stage because of practical and operational considerations. For example, the capacity to make on-the-spot decisions regarding visa eligibility does not currently exist for many visas because of a range of factors such as the need to obtain independent assessments from third parties in relation to health or skill assessments. However, as developments occur for instance in electronic communications, these operational objectives will increasingly be able to be realised. The Department should therefore continue moving progressively towards achieving the goals outlined in this Chapter. Where initiatives are being pursued in relation to particular visas, a discussion is included in the appropriate visa-specific chapter.