



Inquiry report

Inquiry into immigration matters

Volume 1: Visa and
permit decision-making
and other issues

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Inquiry into immigration matters

Volume 1: Visa and permit
decision-making and other
issues

This is Volume 1 of an independent
report about an audit and inquiry
carried out under sections 16 and 18
of the Public Audit Act 2001.

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Auditor-General's overview

In May 2008, the then Prime Minister and the then Minister of Immigration asked me to carry out an inquiry into Immigration New Zealand, which is part of the Department of Labour (the Department). Several concerns and allegations had been publicly raised about the integrity of Immigration New Zealand's operations.

I agreed to the request and directed my inquiry team to take a wide scope with this inquiry. Many of the allegations were about the actions of the by-then former Deputy Secretary in charge of Immigration New Zealand. However, there were some allegations of systemic issues within Immigration New Zealand. I wanted assurance that this was not the case.

My inquiry team investigated specific allegations about individuals and sections of Immigration New Zealand and carried out an extensive inquiry. They looked at the integrity and probity of Immigration New Zealand's systems, processes, and practices for deciding who will be issued with a visa or permit.

I am pleased to report that my inquiry team did not find widespread integrity and probity issues. The Immigration New Zealand staff with whom my inquiry team met were generally conscientious about their work, honest, and eager to act in good faith when making visa and permit decisions.

However, the inquiry has identified a need for the Department to improve the systems and processes that Immigration New Zealand uses to support Immigration Officers and Visa Officers with making visa and permit decisions. It has also identified some organisational issues that are of concern to me.

Main inquiry findings

Excessive variation between branches

My inquiry team visited 10 Immigration New Zealand branches, interviewed about 100 staff, and looked at more than 400 visa and permit decisions. My team found substantial variation in:

- the overall quality of the visa and permit decisions that were made;
- the job-specific training provided to staff;
- the use of delegations;
- the approaches the branches used to reduce backlogs;
- the systems and practices each branch used to make decisions (including how they assessed risk, how much and how information was documented, and how staff verified evidence submitted to support a visa or permit application); and
- the processes used to check the quality of the visa and permit decisions that were made.

In my view, the quality assurance processes are inadequate and cannot effectively inform the Department about the overall quality of the visa and permit decisions that are made.

Immigration New Zealand's worldwide network of branches means that there are different local issues and challenges for staff to contend with. Some degree of modification to suit local circumstances is necessary and even desirable, because it is impractical to use a "one size fits all" approach to making visa and permit decisions. However, in my view, there should be a clear set of core systems and approaches with steps and checks that cannot be circumvented without appropriate approval. Given the same general circumstances, visa or permit applications should be decided in similar ways in different branches.

Targets focused on quantity and not quality

I am concerned that the performance targets within Immigration New Zealand's branches focused unduly on the number of visas and permits issued. Branches had few targets for the quality of the decisions made. This meant that staff who were under pressure to meet quantity targets had incentives to approve visas and permits rather than decline them. This may have had a detrimental effect on the quality of the decisions made and, in some instances, had clearly damaged staff morale.

Culture in which staff do not feel safe enough to raise concerns

The reluctance of Immigration New Zealand staff to raise workplace concerns is an especially troubling finding. My inquiry team was surprised to learn that the integrity allegations that prompted this inquiry were well known within Immigration New Zealand. The Department needs to introduce effective processes and foster a workplace culture for staff to safely raise work-related concerns, and have those concerns addressed.

Adverse consequences of a "silo" culture and poor management practices

Some organisational context factors seem to have contributed to the substantial variation and inconsistency that we found with immigration practices and the quality of decisions. Common themes emerging from my inquiry included the "silo" culture operating in the Department and some poor management practices between 2004 and 2007. These factors may have contributed to insufficient attention being given to Immigration New Zealand's day-to-day operations. They may also help to explain poor sharing of information and good practice throughout Immigration New Zealand, and the relative isolation of some of its business groups – especially its Pacific Division.

Problems in the Pacific Division

The Pacific Division was established early in 2005 with a mandate and strategic direction that was not clearly understood within Immigration New Zealand. There were no plans made before the Pacific Division started operating to ensure that it had sufficient resources and capability to perform its functions. The Pacific Division operated in isolation from the rest of Immigration New Zealand and adherence to proper processes was sometimes poor. A cumulative effect of these factors was a significantly lower quality of visa and permit decisions made in the Pacific Division compared with other parts of Immigration New Zealand.

My inquiry team also found that the residual places policies were poorly implemented in 2004/05.

The Department had known about the problems in the Pacific Division. In my view, the Department did not recognise and deal effectively or early enough with the cumulative picture of concern that was building. I note, however, that the current Secretary of Labour (the Department's chief executive) commissioned a review in 2008. He is now considering options for the Pacific Division's structure and responding to the recommendations of that review.

I do not want the findings of this report to detract unnecessarily from the achievements of the Pacific Division, which were raised by some of the people my inquiry team spoke with and have been identified in other reviews.

What others knew and did about the integrity allegations

Another focus of my inquiry was to investigate what the Department, the State Services Commission (SSC), and Ministers knew and did about the allegations of improper handling of visa and residence applications for relatives of Mary Anne Thompson. Ms Thompson was the Deputy Secretary of the Department in charge of Immigration New Zealand.

I agree with the conclusions of the SSC investigation into these matters, released in late 2008. Ms Thompson failed to appropriately manage the conflict of interest relating to the applications of her relatives, and the Department was deficient in handling the applications and in responding to the allegations. The SSC had only limited knowledge of the integrity allegations within the Department.

Before 2008, Ministers were also briefed in general terms about the Department's investigations and were not informed of any particular integrity issues. The briefings were only for their information, and reflected Graham Fortune's¹ and Christopher Blake's² limited knowledge at relevant times. The operational matters being investigated had an employment dimension, and Ministers were careful

1 Graham Fortune was acting chief executive from May to October 2007.

2 Christopher Blake was appointed chief executive in October 2007.

to avoid any perception of improper interference on their part in employment matters. Ministers did not take inappropriate action and they did not fail to act when they should have.

Concluding comments

Immigration New Zealand has staff who are generally conscientious, honest, and eager to act in good faith. They need and deserve to be better supported by guidance, systems, and processes that are determined centrally, and open to local modification but only in clearly demarcated ways. Given the amount of discretion and judgement required to make good quality visa and permit decisions – and the importance of those decisions to the country – the staff also need a workplace culture in which they feel safe to voice any concerns.

I am encouraged to learn that the Department is acting to address many of the issues identified in this report.

I wish to thank the nearly 200 people who assisted and co-operated during this inquiry, including many current and former Department staff, SSC officials, Ministers, and members of the public who submitted information to us. I appreciated the time and effort that Department staff willingly devoted to helping my inquiry team with its work.



K B Brady
Controller and Auditor-General

27 May 2009

Our recommendations

We recommend that the Department of Labour:

1. assess whether it has effective internal policies and processes in place for staff to safely raise work-related concerns;
2. carry out police checks of staff hired to make visa or permit decisions;
3. periodically reassess the competency of Immigration Officers and Visa Officers, and their supervisory staff, with interpreting and applying immigration policy;
4. centrally co-ordinate, monitor, and regularly evaluate the extent and sufficiency of training provided to Immigration New Zealand staff who make visa and permit decisions;
5. evaluate the adequacy and consistency of training provided to staff in specialist roles in Immigration New Zealand;
6. ensure that Immigration New Zealand branches and business groups use and maintain staff delegation registers, and improve guidance to staff about their delegated powers;
7. introduce clear and transparent processes to inform Immigration New Zealand staff about the extent and nature of managerial involvement in making visa and permit decisions. If there is a fundamental disagreement, then these processes should include requirements that:
 - staff are protected from approving visa and permit decisions that they disagree with; and
 - staff with delegated authority to overturn or change an immigration decision must, if they do so, record the decision in their own name and delegation;
8. review the emphasis on target setting in Immigration New Zealand branches to ensure that the quality of visa and permit decisions is not compromised;
9. review the workflow management for, and prepare standard approaches to, dealing with backlogs of applications for visas and permits;
10. review the operation of its client risk methodology and evaluate how the methodology's usefulness can be improved;
11. improve the recording of the risk profiling carried out for individual visa and permit applications;
12. consider introducing minimum verification requirements and standards for all visa and permit applications;
13. consider ways to improve sharing of good practice guidance about documentation standards throughout Immigration New Zealand;

14. implement processes to regularly review and monitor the compliance of section 35A decisions with the procedural guidance;
15. redesign Immigration New Zealand's Quality Assurance Programme to improve its effectiveness in monitoring the quality of visa and permit decisions;
16. implement controls to mitigate the risks associated with one individual officer processing and issuing a visa or permit;
17. embed the changes it has made to the systems and processes for certification of amendments to Government Residence Policy, and regularly confirm that certifications are complete;
18. identify the lessons learned from the matters of concern that we have identified in the development, promulgation, and implementation of the residual places policies, consider what changes need to be made to systems, processes, and practices, and implement the necessary changes; and
19. consider how sensitive issues can be appropriately handled by the audit committee.

We recommend that the State Services Commission:

20. take a more systematic approach to establishing how well departments are handling integrity and conduct matters. It should also consider what steps it could take to increase the likelihood that all significant and sensitive issues are covered in briefings to an incoming chief executive.

Part 1

Introduction

- 1.1 In this Part, we explain:
- how our inquiry came about;
 - the scope of our inquiry;
 - Immigration New Zealand’s role;
 - how Immigration New Zealand is organised to make visa and permit decisions;
 - the aspects covered in this volume; and
 - how we carried out our inquiry.

How our inquiry came about

- 1.2 In May 2008, the then Prime Minister and the then Minister of Immigration asked the Auditor-General to look into various concerns and allegations about Immigration New Zealand, a business unit within the Department of Labour.
- 1.3 Concerns and allegations had arisen in the public domain about:
- the operations of Immigration New Zealand’s Pacific Division and incidents involving certain senior personnel;
 - the conduct of Mary Anne Thompson, the former Deputy Secretary (Workforce)¹ of the Department of Labour; and
 - how any integrity concerns had been previously handled by others, including successive chief executives of the Department of Labour, State Services Commissioners, and Ministers.
- 1.4 The Auditor-General agreed to carry out an inquiry, and released the terms of reference on 4 June 2008 (see the Appendix).
- 1.5 The terms of reference acknowledged that other agencies were carrying out related work. We did not seek to duplicate those individual processes, but to clearly and comprehensively assess what had taken place.
- 1.6 Since we began our inquiry, the State Services Commission (SSC) has released its report on the Department of Labour’s response to concerns about immigration matters involving family members of Ms Thompson.² The New Zealand Police also investigated Ms Thompson’s claim to have a doctorate degree (PhD), and in November 2008 she was charged with three offences under the Crimes Act 1961.³ An external review commissioned by the Department of Labour into Immigration

¹ In this role, Ms Thompson was the head of Immigration New Zealand from 2004 until 2008.

² State Services Commission (2008), *Investigation of the Handling by the Department of Labour of Immigration Matters Involving Family Members of the Head of the New Zealand Immigration Service*, State Services Commission, Wellington.

³ The charges are under sections 228 and 229A of the Crimes Act 1961, and relate to claims Ms Thompson made in 1989, 1998, and 2004 about holding a PhD.

New Zealand's Pacific Division was released by the Minister of Immigration in early March 2009.⁴

Scope of our inquiry

- 1.7 The terms of reference for our inquiry stated that we would inquire into:
- the integrity and probity of decision-making systems, processes, and practices within Immigration New Zealand, especially within its Pacific Division, including whether such practices generally comply with relevant law, policies, procedures, and public sector ethical standards;
 - particular situations that raise concerns about the integrity of senior immigration staff;
 - the processes used to recruit Ms Thompson within the public sector;
 - the awareness and management of concerns about integrity issues at Immigration New Zealand (including about Ms Thompson) by the Department of Labour, the SSC, and Ministers; and
 - any other issues that the Auditor-General considers relate to, or arise out of, the above matters.
- 1.8 This volume (Volume 1) covers Immigration New Zealand's visa and permit decision-making and related issues. Volume 2 covers the public sector processes used to recruit Ms Thompson and the handling of recruitment-related concerns.
- 1.9 The Appendix includes information about what we did not seek to do with our inquiry, and refers to reviews that others were carrying out at the time of our inquiry. Where applicable, we comment on some of the findings of those other reviews in this report.

Immigration New Zealand's role

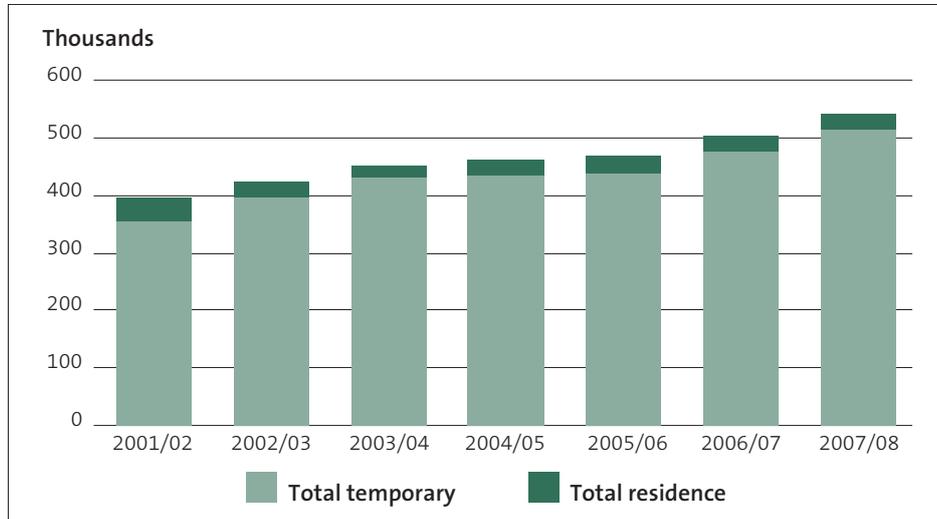
- 1.10 Immigration New Zealand is the part of the Department of Labour responsible for immigration. The Workforce group within the Department of Labour is responsible for making visa and permit decisions, but uses "Immigration New Zealand" as the branding name for its immigration services. We refer to Immigration New Zealand throughout this report because it is the more commonly known name.
- 1.11 Immigration New Zealand's work includes giving policy advice, managing border security (of people rather than goods), operating the country's refugee functions, and making visa and permit decisions.
- 1.12 Visas are issued as proof of a person's permission to travel to the New Zealand border, and people apply for them from offshore. Permits are permission to enter or stay in New Zealand, and people apply for them at or within our country's

⁴ Ernst & Young (2008), *Department of Labour Pacific Division Review: Final Report*, Minister of Immigration, Wellington.

borders. Most visa applications are decided offshore, while all permit applications are considered onshore.⁵

- 1.13 A permit allows a person to stay in New Zealand either permanently or temporarily. People can stay permanently under the family-sponsored, international/humanitarian, or skilled/business streams of the New Zealand Residence Programme. Permanent entry is commonly referred to as residence. Temporary entry allows people to visit, study, or work in the country for a set period.
- 1.14 Figure 1 shows that the total number of visa and permit applications has increased in recent years, although growth has not been steady. The total number of visa and permit applications accepted by Immigration New Zealand grew from 395,000 in the 2001/02 financial year to 543,000 in 2007/08.

Figure 1
Visa and permit applications accepted for processing, 2001/02 to 2007/08



Source: Department of Labour, Business Information Branch.

- 1.15 More than half a million visa and permit decisions were made in 2007/08. Figure 2 shows that most decisions about visas and permits – 95% in 2007/08 – granted applicants temporary entry into the country. Figure 2 excludes people who could temporarily enter the country under one of the more than 50 “visa free” arrangements the Government has with other countries, including our largest tourist markets such as Australia, the United Kingdom, the United States of America, and Japan.

⁵ There were plans under immigration legislation before Parliament at the time of our inquiry to discontinue using the term “permit” and refer only to “visas”.

Figure 2
Number of visa and permit decisions made in 2007/08*

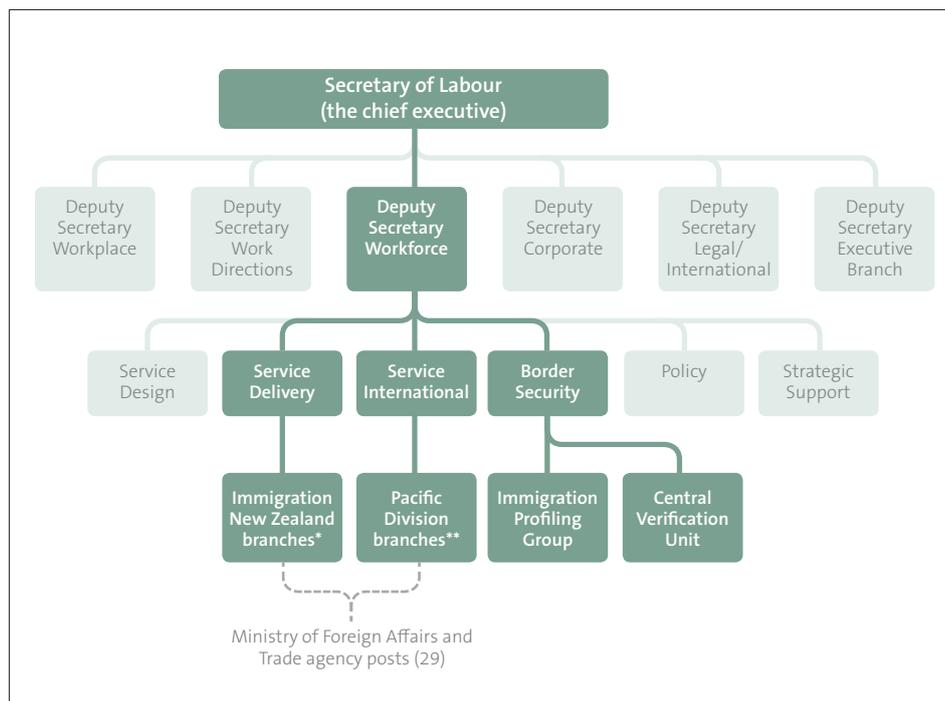
Application types	Number decided in 2007/08	% of all decisions
Permanent entry	27,013	5
Temporary entry	495,319	95
Total number of applications decided	522,332	100

* Excluding people temporarily entering New Zealand under "visa free" arrangements.

How Immigration New Zealand is organised to make visa and permit decisions

- 1.16 Overall, around 60% of the visa and permit decisions are made in branches located in New Zealand (onshore branches). This includes about 80% of the applications from people seeking permanent entry to this country.
- 1.17 The remaining decisions are made overseas in a network of sites around the world. The offshore sites include 16 Immigration New Zealand branches (offshore branches), and 29 Ministry of Foreign Affairs and Trade agency posts. The agency posts are contracted and supervised by Immigration New Zealand to process immigration applications on its behalf. Historically, offshore branches have been set up in response to a demand for visas or perceived risk levels in different regions.
- 1.18 In this report, we discuss three business groups within Immigration New Zealand. Each group has roles and responsibilities for making visa and permit decisions (see Figure 3):
- The Service Delivery group consists of Immigration New Zealand branches in New Zealand and overseas, excluding the Pacific Islands region.
 - The Service International group includes the Pacific Division, which is responsible for managing and delivering immigration services in the Pacific Islands region.
 - The Border Security group contains two specialist units involved in immigration decisions. The Central Verification Unit is responsible for verifying skilled migrant category residence applications in the Auckland region. The Immigration Profiling Group processes and assesses the risk of all visa and permit applications from high-risk countries.

Figure 3
Elements of the Department of Labour's organisational structure involved in making visa and permit decisions



Note: Figure 3 shows only the groups and divisions that are discussed in this report.

* Ten locations onshore, 13 offshore branches.

** One location onshore, three offshore branches.

Aspects covered in this volume

- 1.19 This volume covers the aspects of our inquiry that related to the integrity and probity of making visa and permit decisions, the allegations made, and what others knew and did with concerns about Immigration New Zealand. By integrity and probity, we mean that Immigration New Zealand staff should act honestly and in good faith, and comply with stated requirements when making or managing visa and permit decisions. Doing so helps to ensure that visa and permit decisions are of a good quality – appropriately assessed for risk, consistent with policy and with each other, and complete. Therefore, we examined the practices and behaviour of staff, and we assessed the appropriateness of the systems and processes used to support those staff with making visa and permit decisions.

- 1.20 Many of the allegations that prompted our inquiry related to the period between 2004 and 2007. This period was, therefore, a focus of our inquiry.
- 1.21 However, our examination of visa and permit decision-making, and existing practices and processes, took place in mid- to late 2008. We looked at the quality of the decisions made, the systems and processes supporting good quality decisions, and the wider contextual factors that can affect the quality of the decisions made. These contextual factors include organisational leadership, management practices, and the workplace culture.
- 1.22 Some activities of Immigration New Zealand were excluded from our inquiry because they do not directly relate to making visa and permit decisions or were not specifically raised as concerns when we decided to carry out our inquiry. These activities include managing and settling refugees, and Immigration New Zealand's border security responsibilities.

How we carried out our inquiry

Interviews and documentation review

- 1.23 In carrying out our inquiry, we reviewed a significant amount of Department of Labour and Immigration New Zealand documentation about how visa and permit decisions are managed and made. We also interviewed current and former senior managers and staff in the Department of Labour.
- 1.24 Part of our inquiry examined what the SSC knew and what it did in response to the integrity allegations about Immigration New Zealand. We also interviewed Members of Parliament who held the portfolios of Minister or Associate Minister of Immigration between 2002 and 2008, the current and two former State Services Commissioners, and other current or former staff of the SSC.
- 1.25 We received many submissions from interested parties and members of the public in response to the announcement of our inquiry. We reviewed all these submissions and interviewed some of the people who provided us with information. In some cases, we also investigated specific allegations and reviewed visa and permit decisions based on the information we had received.

Examining systems and processes in Immigration New Zealand branches

- 1.26 A major part of our inquiry involved examining how visa and permit decisions are made at six onshore and four offshore Immigration New Zealand branches. We chose the branches based on the number of visa and permit decisions they made in 2007/08. We also chose branches that operated in risky immigration markets,

or where specific integrity and probity issues had been raised either publicly or with us in submissions for our inquiry.

- 1.27 Figure 4 lists the Immigration New Zealand branches we visited for our inquiry work. In total, we interviewed nearly 100 staff and reviewed more than 400 visa and permit decisions in the 10 branches we visited.

Figure 4
Immigration New Zealand branches visited for our inquiry

Onshore branches within the Service Delivery group	Offshore branches within the Service Delivery group
Auckland Central	Bangkok, Kingdom of Thailand
Christchurch	New Delhi, India
Palmerston North	London, United Kingdom
Wellington	
Pacific Division branches	Border Security group
Pacific Division Manukau	Immigration Profiling Group
Apia, Independent State of Samoa	<i>Central Verification Unit*</i>

* The Central Verification Unit does not make visa and permit decisions, but does verification work for Service Delivery branches in the Auckland region. We did not review visa and permit decisions there.

- 1.28 In each branch we visited, we:
- observed how the branch was organised and managed;
 - interviewed branch staff involved in making or supervising visa and permit decisions; and
 - reviewed a random sample of visa and permit decisions.

Part 2

Organisational context

- 2.1 The organisational arrangements in place within the Department, external events, changes in the Government's immigration policy, and changing immigration practices have all influenced how Immigration New Zealand has operated in recent years. These factors, along with the leadership and management culture within the Department, are important contextual matters affecting the environment within which visa and permit decisions are made.
- 2.2 In this Part, we:
- provide an overview of organisational changes within the Department, focused mainly on the period between 2004 and 2007; and
 - discuss some common themes emerging from interviews with a number of people, both within and outside the Department.

Organisational changes within the Department

- 2.3 We have been told that before 2003 the Department was structured and run as a federation of semi-autonomous business groups, each focused on best achieving their specific objectives. There was less attention paid to achieving connections between business groups and efficiencies throughout the Department. For example, apart from the Legal group there were no central corporate functions (such as Human Resources or Finance), and little interaction between the different business groups.
- 2.4 A view frequently expressed to us during our inquiry was that this organisational structure helped create "silos" within the Department. The inference of this silo terminology is that business groups acted too independently, leading to competition between business groups and resulting in the Department being less effective than it should have been.
- 2.5 A new Secretary of Labour (the chief executive), Dr James Buwalda, was appointed to lead the Department in mid-2003. Dr Buwalda reviewed the Department's strategy and organisational design. He decided to appoint several Deputy Secretaries, who would form a new senior leadership team (known in the Department as the Strategic Leadership Team). The new Deputy Secretaries took up their appointments in mid-2004. Dr Buwalda also started to centralise the core corporate functions that had previously been replicated within individual business groups. He told us that he was surprised by how entrenched and widespread the silo culture was, the limited corporate capability, and the performance issues that were revealed as he started to implement those changes. Changing the organisation was more difficult than he had expected.

- 2.6 In the case of Immigration New Zealand, Mary Anne Thompson was appointed Deputy Secretary (Workforce) and started in the role in July 2004. Ms Thompson had a strong policy background in the public sector. This included senior policy roles in the Treasury, and six years as the Director of the Policy Advisory Group in the Department of the Prime Minister and Cabinet. Ms Thompson and Dr Buwalda came from policy rather than service delivery backgrounds.¹
- 2.7 In mid-2004, Immigration New Zealand was faced with several significant problems. They included:
- difficulty achieving immigration targets and quotas set by the Government;
 - insufficient priority and focus on Pacific immigration matters; and
 - allegations raised in Parliament about inadequate border security.
- 2.8 Ms Thompson reviewed Immigration New Zealand's organisational structure to help address some of these problems. The subsequent reorganisation included appointing a new senior management team, who then appointed junior managers. Many of the new managers were recruited from outside the Department and had limited or no experience with immigration or managing service delivery organisations.

Themes emerging during our inquiry work

- 2.9 A number of themes emerged during our interviews with people both within and outside the Department. These themes primarily relate to the environment, organisation, leadership, and culture of the Department between 2004 and 2007.

A silo culture within the Department

- 2.10 We were surprised at how often concerns were raised about a counterproductive "silo" culture within the Department, and within Immigration New Zealand. The restructuring of the Department after 2003/04 appears to have been only partly successful in creating a suitable culture.
- 2.11 A failure to successfully complete a strategic baseline review was given as one example of a lack of cohesion and co-operation between different parts of the Department. The Department started the strategic baseline review in early 2005, in partnership with the Treasury and the SSC. Its aim was to confirm the Department's main business areas, find ways to improve how the Department operated, and identify future growth areas. The review had to be abandoned because different parts of the Department were unable to provide the necessary financial and performance information about their operations.

¹ Dr Buwalda was previously the Chief Executive of the Ministry of Research, Science and Technology. The Ministry of Research, Science and Technology develops research and innovation policies.

Operation of the senior leadership team

- 2.12 Several people told us that the senior leadership team was seen as operating ineffectively and not addressing the problems facing the Department. Dr Buwalda told us that the process of changing the organisation put a great deal of pressure on the senior leadership team. Concerns expressed about the operation of the senior leadership team included:
- informal meeting procedures that allowed decisions to be revisited or bypassed;
 - poor information sharing, both between senior leadership team members and also from members of the team to the wider Department about decisions made in meetings; and
 - insufficient attention given to addressing operational matters, especially relating to Immigration New Zealand, even though it accounts for around two-thirds of the Department's funding appropriations and employs more than 60% of its staff.
- 2.13 It is difficult to assess how significant these concerns were and how much they affected the overall performance of the Department. But they are unlikely to have helped break down the silo culture in the Department, and may have strengthened it.

Service delivery and immigration experience

- 2.14 The lack of experience in service delivery or immigration among many senior and middle managers is widely believed to have contributed to problems within Immigration New Zealand's operations. Specific examples given were:
- The processing of visas and permits was split between three different business units within Immigration New Zealand.² Separating similar activities may not, in itself, be problematic. However, we were told that the requirements for processing visas and permits were not well understood. This lack of understanding contributed to a failure to share information, quality assurance protocols, and resources among business units, even though those business units were essentially doing the same job. These views were supported by our findings when we reviewed the Pacific Division (see Part 6).
 - SSC officials had concerns about the governance of a major project to introduce a new business model to improve the delivery of immigration services. There was no detailed implementation plan, the project had not been adequately scoped, and no project risks had been identified. It was one part of three in

2 This separation occurred after the establishment in 2005 of two specialist operations – the Pacific Division and the Immigration Profiling Group – removed certain categories of visa and permit processing from the core Service Delivery group. The Pacific Division was set up in the Service International group, while the Immigration Profiling Group was set up in the Border Security group.

an Immigration Change Programme begun in early 2006 to fundamentally reorganise the immigration system.³

General leadership and management practices in Immigration New Zealand

- 2.15 Many examples of poor leadership and management practices by a few senior managers in Immigration New Zealand were brought to our attention in interviews or during our review of documentation. The examples include matters of performance, competence, or operational practice that fall short of the standards expected of senior managers in the public sector.
- 2.16 It is disappointing how often staff told us they felt the leadership failed to adequately and effectively deal with poor practices by senior managers, even though some staff and senior managers within the Department knew about these practices.
- 2.17 Two specific matters we investigated are discussed in detail later in this volume. In Part 6, we discuss the contracting arrangements for a senior manager in the Pacific Division. In Part 7, we discuss incidents relating to the visa and permit applications from relatives of Ms Thompson.

What the State Services Commission and Ministers knew about problems in the Department of Labour

- 2.18 The SSC has a role in reviewing the performance of departments and their chief executives.⁴ The SSC was aware of the main leadership and management problems facing the Department. The Department was considered by the SSC to be one of its high-profile agencies, given the size of the Department and its crucial role.
- 2.19 The SSC considered that the progress and planning of the new business model project and the new immigration legislation were the most critical matters facing the Department.
- 2.20 The focus of the SSC during 2006 and 2007 was the Department's management of the new business model project and other change management matters. The SSC was also concerned about whether the senior management team had the right mix of skills and experience to meet the demands of the project and change management as well as the operational requirements of Immigration New Zealand.

3 The other parts of the programme are comprehensive reviews of immigration legislation (the Immigration Act 1987) and immigration policy.

4 We discuss the SSC's role further in Part 7.

- 2.21 The main mechanism the SSC uses to manage concerns about a department is its performance review of the chief executive. It is through this relationship that a wide range of information is gathered, and support and influence can be exerted. The SSC aims to influence performance and integrity through the ongoing relationships between SSC staff and the department's senior management.
- 2.22 The SSC staff responsible for the Department were mindful that Dr Buwalda did not come from a service delivery background (managing much smaller policy-focused public entities). The SSC sought to ensure that the Department, through the chief executive, was aware of and appropriately managing the problems faced by the Department.
- 2.23 We discussed our inquiry with Members of Parliament who were Minister or Associate Minister of Immigration between 2002 and 2008. Ministers had an appreciation of some of the more general operational concerns we discuss here. Some noticed apparently sloppy processes and mistakes, and weak managerial lines with instances of messages not always getting through. Some had held concerns about a number of allegations being raised about the Pacific Division.

The influence of organisational context

- 2.24 The organisational context matters permeated many of our more detailed findings about systems and processes used to make visa and permit decisions, and include:
- substantial variation and inconsistency between Immigration New Zealand branches in organising and operating the processes used to make visa and permit decisions (branches used different approaches for similar operational issues without any formal evaluation of their effectiveness);
 - poor sharing of information and good practice between Immigration New Zealand business groups and branches;
 - the relative isolation of some parts of Immigration New Zealand, including poor access to resources that are available to other parts to help them with making visa and permit decisions;
 - incidences of a lack of transparency in dealing with problems, and ineffective handling of integrity or performance concerns; and
 - a workplace culture within Immigration New Zealand that failed to support staff in raising concerns.

Events after 2007

- 2.25 Dr Buwalda resigned as chief executive in May 2007. Graham Fortune was acting chief executive until Christopher Blake was appointed as the chief executive in October 2007.
- 2.26 We understand that, under Mr Blake, the Department is acting to improve the organisational culture and leadership and management practices within the Department and in Immigration New Zealand.
- 2.27 The Department intends that its actions will help to address many of the issues covered in this volume. The actions include:
- improving the resources and information available to support Deputy Secretaries;
 - implementing performance agreements for Deputy Secretaries;
 - establishing an Executive branch to support the chief executive and improve risk and assurance capability within the Department;
 - changing the composition of the Department's audit committee to increase the number of external committee members;
 - an increased focus on operational issues by the Department's strategic leadership team;
 - completing stage two of a major business case for new Immigration New Zealand systems; and
 - plans to review business processes within Immigration New Zealand.
- 2.28 A review of the Pacific Division has also been carried out, and staff have been given urgently needed decision-making training. We discuss the Pacific Division in more detail in Part 6.

Part 3

Integrity and probity within Immigration New Zealand

- 3.1 Specific incidents and allegations of a lack of integrity within Immigration New Zealand prompted this inquiry. Most of the allegations related to senior managers, including the former Deputy Secretary (Workforce) in charge of Immigration New Zealand, Mary Anne Thompson.
- 3.2 We decided to make the scope of our inquiry wider than the specific allegations that had been raised. We did so because we wanted to provide assurance about the overall integrity and probity of immigration decision-making. We looked in detail at the behaviour and operating practices within 10 Immigration New Zealand branches, both here and overseas. We gained our information through extensive interviews with management and frontline staff who make visa and permit decisions, relevant documentation reviews, and examining a sample of visa and permit decisions made in each branch.
- 3.3 We expected Immigration New Zealand staff responsible for making or supervising visa and permit decisions to act with appropriate integrity and probity, and in keeping with accepted public sector ethical standards. This includes adhering to established standards of integrity and conduct (including codes of conduct), avoiding or appropriately managing conflicts of interest, and not carrying out any activities that are fraudulent, corrupt, or dishonest.
- 3.4 In this Part, we set out our findings about:
- the organisational attitudes and behaviour of Immigration New Zealand staff;
 - how aware staff were about the code of conduct;
 - how conflicts of interests were identified and managed; and
 - how Immigration New Zealand investigates allegations of misconduct.

Organisational attitudes and behaviour

Generally, Immigration New Zealand staff act with integrity and probity when making visa and permit decisions. A reluctance by staff to raise workplace concerns needs to be addressed by the Department.

- 3.5 Getting approval to migrate to New Zealand, or even just visit, is highly prized by many people from other nations. In some cases, applicants will try to influence or bribe Immigration Officers and Visa Officers to gain a visa or permit. This is an integrity risk associated with the work of Immigration New Zealand staff that cannot be eliminated. It means that the standard expected of staff is high – they must always act with integrity and probity.

Staff integrity and probity

- 3.6 The staff we interviewed and observed at work in Immigration New Zealand branches were generally conscientious about their jobs, honest, and keen to act in good faith. We identified no widespread integrity and probity problems with the frontline staff who carry out the day-to-day responsibilities of assessing more than half a million visa and permit applications each year. This is reassuring, given the public and high-profile integrity allegations that influenced our decision to carry out an inquiry.
- 3.7 The allegations made about the integrity of senior Immigration New Zealand management, especially the former Deputy Secretary (Workforce), have understandably deeply disappointed many of the staff we spoke with. These events have represented to many staff a surprising failure by senior managers to lead by example and uphold the standards expected of staff.

Reluctance of staff to raise concerns

- 3.8 The Department has a policy for investigating staff fraud, corruption, and dishonesty. The policy, called “Facing Up”, contains the expectation that staff report immediately any suggestions of fraud, corruption, or dishonesty. In addition, and as required by the Protected Disclosures Act 2000 (the “whistle-blowing” legislation), the Department has a protected disclosures policy for reporting allegations of serious wrongdoing.
- 3.9 The Department also has processes for raising concerns about any integrity matters or serious wrongdoing. However, in our view, it needs to look at how staff can raise more general work-related concerns. During our interviews with branch staff, we were often advised of work-related concerns that had not been raised within the Department for consideration. They included concerns about recruitment and promotion, inconsistent policy application by staff, and visa and permit decisions made by other staff. Although the concerns raised with us were not, in most cases, serious, and may not have raised questions of fraud, corruption, or dishonesty, we were concerned that staff either did not know the process for raising concerns or had little confidence in the existing process.
- 3.10 Further, many staff – from frontline officers through to senior managers – told us that they believed talking to us was their only avenue to raise concerns about their workplace. These staff members felt they could not raise concerns internally within the Department. Some staff believed that talking to us as external reviewers might be detrimental to their immigration careers. We also heard that other staff had chosen not to talk to us because of similar fears about the possible effect on their jobs.

- 3.11 This is an unsatisfactory and unacceptable situation for staff. The Department urgently needs to address this aspect of its workplace culture. Immigration New Zealand staff must be able to raise concerns about management or other aspects of their workplace without any fear of repercussions.
- 3.12 In our view, the Department needs to assess how easily and safely staff can raise work-related concerns internally, and whether the existing policies are sufficient to cover the range of concerns that an employee may wish to address. It may be informative to survey staff on their views about this.

Recommendation 1

We recommend that the Department of Labour assess whether it has effective internal policies and processes in place for staff to safely raise work-related concerns.

Concerns about internal recruitment

- 3.13 Many staff told us that some internal appointments had not been made fairly and openly. They claimed that this resulted in the promotion of less suitable candidates ahead of more competent or experienced colleagues. The concerns most commonly involved appointments made by several branch managers (who have a significant role in recruiting staff). While we did not examine particular appointments within branches, we noted that similar comments were made to us in several Immigration New Zealand branches and units.
- 3.14 We suggest the Department assess the prevalence of staff dissatisfaction about recruitment to identify if any changes to internal recruitment practices are necessary. This might involve modifying aspects of the recruitment process, increasing the information provided to staff, or improving the workplace culture to encourage staff to raise concerns they may have about particular appointments.

Code of conduct awareness

Generally, staff were aware of and understood the code of conduct requirements.

- 3.15 We expected Immigration New Zealand to help ensure that staff act with integrity and probity when making visa and permit decisions by providing staff with effective training and guidance about the code of conduct requirements.
- 3.16 Immigration New Zealand has a detailed and clear code of conduct for staff involved in making visa and permit decisions. Branch staff we met were aware of and understood the importance of the code of conduct requirements.

- 3.17 In the branches we visited, Immigration New Zealand provided code of conduct training and regularly reminded staff about code of conduct expectations. Sensibly, most branches provided code of conduct training to new staff as part of induction training immediately after they started work in the branches. However, there were a couple of instances where new staff were not given code of conduct training immediately after they started work. This is not ideal, because it raises the risk that new employees might breach the code of conduct through ignorance. For example, we were told that a new officer in a branch looked up information about colleagues and friends in a database used to store information about people entering or leaving New Zealand. The employee was unaware that this was a serious breach of conduct because they had not yet been trained in the code of conduct requirements.
- 3.18 In our view, the Department needs to consider introducing a system to ensure that all staff involved in making visa and permit decisions regularly complete written declarations that they are aware of, and understand, their code of conduct obligations.

Identifying and managing conflicts of interest

Immigration New Zealand staff understood the importance of declaring any potential conflicts of interest.

- 3.19 Frontline staff in the branches we visited were well aware of the importance of declaring any potential conflicts of interest they may have with visa or permit applicants (or with agents representing clients). Several, but not all, of the branches used registers to formally record declared conflicts of interest. In our view, using registers should be standard practice.
- 3.20 Procedures for dealing with conflict of interest declarations were generally clearly set out and well understood in branches. Typically, but not always, responsibility for assessing, deciding, or checking an application was transferred to another branch when there was a known conflict of interest.
- 3.21 We were not aware of any reviews by branch managers or others of declared conflicts of interest to ensure that staff did not later become involved in those applications or decisions. Similarly, there was no functionality within the computer system used for processing and storing visa and permit applications to prevent staff members who have declared a conflict of interest with specific applicants from accessing information about those applicants. In our view, the Department needs to consider including this functionality in any upgrades to its computer system.

Investigating allegations of misconduct

The Department has a specialist unit, and systems in place, to investigate misconduct allegations.

- 3.22 The nature of Immigration New Zealand's work means that serious allegations are sometimes made about how visa and permit decisions are made. Therefore, it is important for the Department to have systems in place to investigate allegations of misconduct.
- 3.23 The Department has an internal investigations unit within its Executive branch to investigate allegations of staff theft, fraud, conflicts of interest, and corruption. The most common claims are allegations that Immigration Officers or Visa Officers have treated particular applications favourably.
- 3.24 The Department investigates all allegations it receives. Figure 5 provides some statistics on the allegations the Department received about Immigration New Zealand in the five years to June 2008. The statistics show that a large number of allegations were found to be unsubstantiated.

Figure 5
Immigration New Zealand's internal investigation statistics, 2003/04 to 2007/08

Year	Allegations received	Allegations unsubstantiated	Allegations substantiated		Allegations unable to be substantiated
			Dishonesty	Performance	
2003/04	97	73	16	8	0
2004/05	125	82	27	16	0
2005/06	116	78	22	8	8
2006/07	109	70	20	8	11
2007/08	86*	43	16	2	18

* This includes seven investigations that were still under way at the time of our audit.

Source: Department of Labour.

- 3.25 Of the substantiated allegations each year, many of them were for what the Department categorised as dishonesty – where staff were found to have acted without authority or used deceit. A smaller number of substantiated allegations were performance matters, where staff had failed to carry out a task, instruction, control, or procedure as required. Some allegations cannot be substantiated because they involve cases of reported losses of money or items where the

investigation had not found evidence that the losses occurred in branches or were because of staff dishonesty.

- 3.26 Although substantiated allegations of misconduct are always of concern, the Department does have systems in place to investigate allegations when they arise, and to take appropriate action.
- 3.27 We did not specifically examine the operations of the investigations unit, except where we read the relevant investigation reports relating to individual visa and permit decisions that we reviewed. However, the Department has commissioned independent quality assurance reviews of its internal investigation processes. This includes a contract started in 2008 for external quality assurance of the Department's process for responding to allegations. The contract is for assurance "as and when required". In our view, this is a useful arrangement to provide assurance about the quality of the investigation unit's work.

Part 4

Competency and powers of staff making visa and permit decisions

- 4.1 In this Part, we set out our findings about:
- the nature of making visa and permit decisions;
 - competency requirements of staff making visa and permit decisions;
 - staff training and competency assessment;
 - delegations of staff making and supervising visa and permit decisions; and
 - powers of managers to direct staff in making visa and permit decisions.
- 4.2 We expected Immigration New Zealand staff with responsibility for assessing visa and permit applications to be suitably skilled, supervised, and trained to ensure that they made good quality decisions in keeping with their delegated powers.

The nature of making visa and permit decisions

Immigration Officers and Visa Officers have significant discretion when making visa and permit decisions. This discretion requires the use of informed judgement.

- 4.3 The legal basis for making visa and permit decisions is contained in the Immigration Act 1987 (the Act). To make an immigration decision, a person must be designated by the Secretary of Labour as an Immigration Officer, Visa Officer, or Refugee Status Officer. For our inquiry, we examined only the roles of Immigration Officers and Visa Officers (because managing and settling refugees was not within the scope of our inquiry). In practice, staff making visa and permit decisions in onshore branches are Immigration Officers, while Visa Officers make decisions in offshore branches.
- 4.4 Residence applications must be decided in line with the Government's immigration policy. Temporary entry applications can be decided as exceptions to policy, but the reasons for the exceptions must be recorded.

The role of Immigration Officers and Visa Officers

- 4.5 The main role of Immigration Officers and Visa Officers is to assess and decide visa or permit applications. The decision-making process requires officers to:
- assess if applications are complete;
 - check that applicants meet relevant immigration policy; and
 - evaluate whether authentic evidence has been supplied in support of an application.¹
- 4.6 The work of Immigration Officers and Visa Officers involves some routine administrative tasks, but also the use of a large degree of discretion and informed judgement. The use of judgement occurs in two important ways. First,

¹ Immigration Officers and Visa Officers are required to act fairly and with natural justice throughout this decision-making process.

officers need to interpret and apply relevant immigration policy to the specific circumstances of applicants. Although different interpretations of policy or balancing of factors could result in two officers making a different decision about similar visa or permit applications, decisions need to be made on a consistent basis.

- 4.7 Secondly, officers must be satisfied that applicants for visas or permits are genuine and meet specified health, character, and other policy requirements. Officers have a great deal of discretion in deciding how much verification work is done about an applicant – or the information the applicant has provided – to test that the applicant meets the specified requirements. We discuss verification, and the role of risk assessment in deciding the extent of verification, in Part 5.
- 4.8 In our view, the combined effect of these discretionary powers makes it imperative that Immigration Officers and Visa Officers are suitably trained and assessed for competency to carry out their roles. It is also important that staff understand the different powers delegated to them.
- 4.9 We noticed that most branches did not require police checks of new staff before they were warranted to make visa and permit decisions. In our view, the Department should introduce routine police checks for staff hired to make visa and permit decisions as an additional risk mitigation process.

Recommendation 2

We recommend that the Department of Labour carry out police checks of staff hired to make visa or permit decisions.

Competency requirements of staff making visa and permit decisions

Immigration warrants are evidence of formal training to make visa and permit decisions. Immigration warrants were held in almost all the cases we examined.

- 4.10 An immigration warrant is evidence that a person has been designated as an Immigration Officer. Obtaining a warrant requires an employee to first complete a formal training programme co-ordinated by Immigration New Zealand trainers, and then be considered competent to carry out the functions of an Immigration Officer.² Designated Immigration Officers are provided with a warrant and a letter from the Department of Labour's chief executive detailing any delegated powers they may use.

² There is also a provision for the Secretary of Labour to use their discretion to designate someone as an Immigration Officer and issue them a warrant.

- 4.11 The competency requirements for Visa Officers are similar to Immigration Officers. Visa Officers also must complete a training programme co-ordinated by Immigration New Zealand trainers, and be considered competent to perform the functions of a Visa Officer. A difference noted in Immigration New Zealand's operational manual is that Visa Officers are not necessarily required to hold a warrant.³ However, we found that it was usual practice for Visa Officers to do similar training courses as Immigration Officers that resulted in them sitting a test to get a warrant.

Warrants held by staff to make visa and permit decisions

- 4.12 Staff making visa and permit decisions in the Immigration New Zealand branches we visited all had immigration warrants. In some branches, support staff who were not directly making visa and permit decisions also held immigration warrants.
- 4.13 Some staff at two branches we visited had, in the past, been making or supervising visa and permit decisions before receiving training to earn their warrants. We acknowledge that there can sometimes be logistical difficulties in scheduling warrant training for new staff, especially for offshore branches that rely on being trained by Immigration New Zealand trainers based in New Zealand. However, in the absence of alternative training arrangements to formally assess the competence of new staff, it is important that all staff complete their warrant training before they start to make visa and permit decisions.
- 4.14 Some branches had a practical way to overcome the problem of aligning the provision of formal warrant training with staff recruitment. In these branches, new staff were allowed to start assessing applications, but a warranted officer checked their work and authorised the final decision.

Staff training and competency assessment

Many Immigration New Zealand staff felt that they had received insufficient training for their jobs. There was significant variation between branches in the level and type of training provided to staff, with only limited organisational-wide co-ordination and monitoring.

Staff views on the amount of training they get

- 4.15 A clear and strong opinion often expressed to us by Immigration New Zealand staff was that they felt they had received insufficient training to do their jobs. In our view, the Department needs to investigate and evaluate the adequacy

³ The operational manual covers government policy for granting visas and permits. It includes policy and process requirements that officers are expected to follow.

and provision of training to frontline staff involved in making visa and permit decisions, given the widespread dissatisfaction expressed to us.

Warrant training and the role of on-the-job training

- 4.16 Warrant training is the only mandatory training provided to all new staff who will be making visa and permit decisions. At the time of our inquiry, warrant training for new staff involved five days of largely theoretical tuition on interpreting immigration policy (as set out in Immigration New Zealand's operational manual) and applying it to case studies. Participants had to pass a test at the end of the training and be considered competent to get a warrant.

The timing of warrant training

- 4.17 The theoretical nature of warrant training means that Immigration New Zealand branches routinely combine it with various forms of on-the-job training to build the overall competency of new Immigration Officers and Visa Officers. However, the timing of when new officers do the warrant training varied among the branches we visited. This was partly because of the logistical difficulty of timing a round of training to match when new staff start. However, we also found that some branches prefer to start new staff with warrant training, while others give new staff a few weeks of on-the-job experience first. Staff we interviewed were mixed in their opinions about whether warrant training should occur before or after they have learned some of the practical aspects of their roles.
- 4.18 We have not formed a view about when new Immigration Officers and Visa Officers should receive their warrant training. However, we consider that it would be useful for Immigration New Zealand to do its own evaluation of when best to time warrant training for new staff to achieve the best possible learning results.

On-the-job training

- 4.19 On-the-job and induction training is an important part of establishing the competency of new staff. However, we found significant variation between branches in how new staff are trained. In some branches, staff we interviewed were immediately put in "sink or swim" situations in their branch and expected to cope with all types and complexity of visa and permit decisions. Understandably, this was stressful for some staff. In other branches, more structured induction competency programmes were used, involving a mix of theoretical and practical instruction and supervision. These staff were initially assigned straightforward visa or permit applications to assess. They were progressively given more complex applications as they gained experience and competence in making visa and permit decisions.

Assessing ongoing staff competence

- 4.20 Officers were not required to participate in any formal refresher training after they had earned their warrants. Although officers were expected to keep up to date with any policy changes, there was no organisation-wide assessment of how well they were doing this. In our view, Immigration New Zealand should consider ongoing competency assessments for the staff involved in making visa and permit decisions.
-

Recommendation 3

We recommend that the Department of Labour periodically reassess the competency of Immigration Officers and Visa Officers, and their supervisory staff, with interpreting and applying immigration policy.

Organisation-wide monitoring of staff competency and training

- 4.21 Beyond the mandatory warrant training, there was limited organisation-wide co-ordination or monitoring of staff training and competency in making visa and permit decisions.
- 4.22 Branch managers were largely responsible for deciding what training was provided, including training by an internal training provider, and how it was delivered, to their staff. This helps to explain the significant variation we observed in training.
- 4.23 We recognise that branches will have different training needs because of their specific circumstances and the diverse markets and regions they operate in. This makes a one-size-fits-all approach to staff training undesirable. However, the lack of centralised co-ordination and monitoring of training provided to branch staff means that Immigration New Zealand cannot easily:
- track the extent or sufficiency of training provided to staff making visa and permit decisions;
 - compare and evaluate staff competency levels in different branches or regions to identify training needs; and
 - ensure that visa and permit decisions are consistent throughout its organisation.
-

Recommendation 4

We recommend that the Department of Labour centrally co-ordinate, monitor, and regularly evaluate the extent and sufficiency of training provided to Immigration New Zealand staff who make visa and permit decisions.

Training for staff in specialist roles

- 4.24 Staff in specialist or supervisory jobs in branches frequently told us that they had received either no or only very limited training specific to their roles. This included technical advisers, who have an important role in supervising and mentoring Immigration Officers and Visa Officers. Technical advisers are appointed based on their experience with making visa and permit decisions. They are then expected to share the skills they have learned on the job with other staff. The lack of specialist training for technical advisers limits the ability of Immigration New Zealand to monitor and guide the consistency and quality of on-the-job support provided by technical advisers to Immigration Officers and Visa Officers.
- 4.25 We observed or heard similar experiences about a lack of specific training from other staff in specialist roles, including some immigration managers and some verification officers.
- 4.26 In our view, the Department needs to evaluate the adequacy and consistency of training provided to staff in specialist roles.

Recommendation 5

We recommend that the Department of Labour evaluate the adequacy and consistency of training provided to staff in specialist roles in Immigration New Zealand.

Delegations of staff making and supervising visa and permit decisions

Many staff were unclear about their delegated powers. In our view, the guidance and documentation in branches about staff delegations needs to improve.

Delegated powers to immigration staff

- 4.27 Under the Act, the Minister of Immigration can delegate various powers to Immigration Officers, Visa Officers, and managers. Immigration New Zealand's operational manual states the different levels of delegated powers staff have depending on what Schedule to the Minister's instrument of delegation their job position comes under. Four Schedules are currently used to define delegated powers. Schedule 1 has the most delegated authority, and Schedule 4 has the least. For example, a branch manager on Schedule 1 has more delegated decision-making powers than an Immigration Officer on Schedule 4. Schedules 1 to 3 all require staff to have a warrant.

Staff understanding of their delegations

- 4.28 Staff we interviewed in Immigration New Zealand branches were often unclear about their official delegated powers, or only knew what they could decide as Immigration Officers or Visa Officers by verbal direction from their line managers. Branch documentation registering staff delegations was often patchy or non-existent.
- 4.29 Confusion among staff about their delegated powers had been complicated by the use of partial delegations in many branches. For example, staff with a Schedule 1 delegation can technically exercise a wide range of powers under the Act. Schedule 1 staff can include some Immigration Officers, Technical Advisers, and various levels of management through to the Department's chief executive, the Secretary of Labour. However, many branches limited to senior staff the power to approve waivers or exceptions to policy.
- 4.30 In our view, branches should maintain registers of the delegated powers of staff members. More practical and transparent guidance should be provided in branches about staff delegations. This guidance should list the delegations each staff member has and the different immigration decision-making powers these delegations give them. Details about delegations are currently provided in Immigration New Zealand's operational manual, but the information is given in a very legalistic way with numerous cross-references. It is difficult to translate that information into practical instructions for staff.
- 4.31 Branches should also consider explaining delegations as part of their staff training programmes. Only one of the 10 branches we visited specifically trained staff about their delegations and what they consequently could and could not do in their roles.
- 4.32 The lack of clarity about delegations raises the risk that officers may inadvertently make unauthorised visa and permit decisions.⁴ However, despite some confusion about delegations, we found that staff making decisions had the necessary warrants to do so and that staff generally understood when to escalate a decision to a more senior staff member (such as a manager).

Recommendation 6

We recommend that the Department of Labour ensure that Immigration New Zealand branches and business groups use and maintain staff delegation registers, and improve guidance to staff about their delegated powers.

⁴ In our sample of decisions, we did not look at whether officers had the required delegation because the information was not readily available.

Computer system for processing visa and permit decisions does not restrict access

- 4.33 The Application Management System (AMS), Immigration New Zealand's core computer system used by staff to process and record visa and permit decisions, cannot restrict access and actions based on delegated authority. We are aware that the Department wants to replace the AMS with a new and more sophisticated computer system as part of its Immigration Business Transformation proposals. We encourage the Department to include this sort of functionality with any future upgrade or replacement of the AMS.

Powers of managers to direct staff in making visa and permit decisions

The Department is investigating instances where staff may have felt pressured by managers to make visa and permit decisions that they disagreed with. In our view, staff need clear guidance about this from the Department, and officers should not be required to make visa and permit decisions that they fundamentally disagree with.

- 4.34 In October 2008, the SSC released a report setting out the findings of its investigation into the handling of visa and permit decisions for relatives of Ms Thompson (we discuss the SSC's report in Part 7). The SSC's report reiterated some earlier concerns raised by David Oughton in his 2007 investigation⁵ into the lawfulness of residence permits for Ms Thompson's relatives (see Volume 2 of this report).⁶ The concerns included a finding that some frontline staff involved in processing the applications had felt pressured to follow instructions from senior managers and make decisions that they disagreed with. To protect themselves, some frontline staff had entered "as instructed" into the AMS records for some applications. Mr Oughton did not believe the use of this practice was isolated and recommended that the Department examine in detail the extent to which this practice was used.
- 4.35 The SSC considered this to be an appropriate recommendation, but found that the Department had not adopted it. Therefore, the SSC report repeated the recommendation that the Department conduct an in-depth investigation into the use of "as instructed" entries and other instances where staff have refused to comply with managerial requests to approve applications.

5 Oughton, David (2007), *Review of Apparently Unlawful Immigration Decision*, provided to the Secretary of Labour.

6 Office of the Auditor-General (2009), *Inquiry into immigration matters – Volume 2: Public sector recruitment processes involving Mary Anne Thompson and related issues*, Wellington.

The Department's investigation into the extent of, and practices for, registering disagreement with instructions from managers

- 4.36 The Department has started to investigate the use of “as instructed” and similar entries in the AMS. An internal audit began in late 2008, focusing on visa and permit decisions for Kiribati applicants and decisions made by the Pacific Division. We understand that this audit has identified a number of cases that have raised concerns that need to be investigated. The Department was also planning, at the time of our inquiry, to widen its audit investigations to include visa and permit decisions made by other parts of Immigration New Zealand.
- 4.37 We are pleased that the Department is carrying out these investigations. Our own inquiry work and interviews with staff identified many of the same cases covered by the SSC's report. We also learned of other similar situations where frontline staff felt pressured by more senior staff to decide applications in a certain way.
- 4.38 The Department, in its public response to the findings of the SSC's report, commented that:
- The use of the term “as instructed” or similar notations — properly documented — can simply reflect an appropriate and lawful process where a senior officer with delegated authority instructs a junior officer to proceed in a certain manner. Legitimate reasons exist for this judgement to be exercised.*
- Examples include humanitarian reasons and cases of likely benefit to New Zealand where policy requirements (such as medical or character) are not met.*
- 4.39 We broadly agree with the Department on this matter, but consider that very clear guidelines and processes need to be introduced to inform staff about what to do if they disagree with directions from managers. This relates to our finding discussed earlier of a general reluctance by many staff to raise concerns internally.
- 4.40 Staff we spoke with who had been involved in “as instructed” or similar cases were often anxious and confused about the involvement of senior managers in individual cases. Senior managers' actions or comments on individual cases tended to be seen by officers as directions about how they were to decide applications, regardless of whether this was the intention. It shows that senior managers need to act very carefully when getting involved with individual cases.
- 4.41 We also consider that the Department should not require officers to approve visa and permit decisions that they fundamentally disagree with. This, ultimately, was why some staff resorted to using terms like “as instructed” with some visa and permit decisions. In our view, managers or more senior officers are entitled to overturn or change an officer's assessment — if it is lawful and within their delegated authority — but they should record their actions in their own name and delegation.

Deputy Secretary (Workforce) and senior managers' involvement in cases

- 4.42 We were told by some immigration staff that comments made by the former Deputy Secretary (Workforce) or other senior managers were often perceived to suggest the outcome that was expected. We reviewed a number of visa and permit decisions and found some cases where the former Deputy Secretary (Workforce) or other senior managers had provided comments to staff about how to handle a decision, query, or complaint – including, for example, asking them to discuss the matter with the senior manager before deciding or responding. In some cases, a clear expectation was expressed about the decision or response that should be made. There was no indication that the former Deputy Secretary (Workforce) or other managers intended for applicants or complainants to be treated preferentially. However, these comments were sometimes perceived by junior staff as directions about how to proceed, to decide the application or complaint in a particular way, or to treat the person favourably.
- 4.43 It is entirely appropriate for the Deputy Secretary (Workforce)⁷ or other senior managers – if they are warranted Immigration Officers – to provide comment or direction on what should be taken into account when considering and responding to an application, query, or complaint. However, special care is required when the comments are made by such a senior officer – instructions should be clear and documented. Informal comments could be mistakenly perceived as an instruction to respond to the applicant or complainant in a particular way, inconsistent with the views and considerations of the officer handling the matter.

Recommendation 7

We recommend that the Department of Labour introduce clear and transparent processes to inform Immigration New Zealand staff about the extent and nature of managerial involvement in making visa and permit decisions. If there is a fundamental disagreement, then these processes should include requirements that:

- staff are protected from approving visa and permit decisions that they disagree with; and
 - staff with delegated authority to overturn or change an immigration decision must, if they do so, record the decision in their own name and delegation.
-

⁷ The former Deputy Secretary (Workforce) held the designation of Immigration Officer and was issued with a warrant.

Part 5

Quality of immigration decisions

- 5.1 In this Part, we set out our findings about:
- the quality of the visa and permit decisions that we reviewed;
 - the influence of quantity targets and application backlogs on the quality of visa and permit decisions;
 - risk assessment and profiling;
 - verifying the information in visa and permit applications;
 - documentation standards of visa and permit decisions;
 - the computer system used to process and record visa and permit decisions;
 - granting permits under section 35A of the Immigration Act 1987;
 - quality assurance of visa and permit decisions; and
 - procedures to deal with appeals and complaints.
- 5.2 To process more than half a million visa and permit applications every year, Immigration Officers and Visa Officers need to assess applications against policy requirements, verify the accuracy of information provided by applicants, and process applications within reasonable timeframes. Weaknesses in any of these areas could have a detrimental effect on the quality of visa and permit decisions. Therefore, systems need to be in place for Immigration New Zealand to be assured of the quality of visa and permit decisions.
- 5.3 We expected staff to adhere to Immigration New Zealand policy and process requirements when assessing visa and permit applications. Policy requirements for assessing visa and permit applications should be applied consistently between branches. We expected any deviations from standard policy requirements to be specified and approved by a staff member with the appropriate delegated authority, or to be within the scope of any permissible discretion.

Quality of the visa and permit decisions that we reviewed

Nearly two-thirds of the visa and permit decisions that we reviewed were of a good quality. However, just over one-fifth of the decisions we reviewed were either questionable or poor, based on the supporting evidence available to us. Overall, the quality of decisions made was better in most offshore branches we reviewed than it was in many onshore branches.

How we reviewed and evaluated the quality of decisions

- 5.4 We reviewed visa and permit decisions made in each branch we visited during our inquiry. We selected a random sample from a stratified population¹ of all visa and permit applications decided in the 2007 and 2008 financial years. Our sample

¹ A stratified population is a population divided into groups (such as temporary or permanent entry visa or permit types, and year of decision) so that separate samples can be taken from each group.

was not chosen to be statistically representative of the population. Therefore, our results do not provide estimates that can be applied to all visa and permit decisions. The results for the branches we visited are presented in Figure 8.

- 5.5 We also received many submissions for our inquiry. Some of these included complaints or concerns about specific visa and permit decisions. We examined these decisions where they were relevant to our inquiry terms of reference. The results for these decisions are presented in Figure 9.
- 5.6 We also selected some individual visa and permit decisions in permit categories that were of particular interest to us, and these are also included in Figure 9. This sample included decisions from:
- the Residual Pacific Access Category Places Policy for citizens of Kiribati, Tonga, and Tuvalu;²
 - the Residual Quota Places Policy for Samoan citizens; and
 - residence permits granted under section 35A of the Act (which can be used to grant a person unlawfully in New Zealand a permit in certain circumstances).³
- 5.7 We examined, for each visa or permit decision in our sample, the notes and documentation in the AMS and in physical files. This was to assess whether:
- processes followed to make the decisions complied with policy and process requirements as stated in Immigration New Zealand's operational manual and other relevant guidance; and
 - the decision was suitably explained and supported by the documentation and supporting evidence.
- 5.8 We grouped the findings from our reviews into four categories. Figure 6 explains these categories and the criteria used to assign individual visa or permit decisions to them.

2 Fiji was suspended from the Pacific Access Category in December 2006.

3 These residual places policies and the provisions of section 35A of the Act are important. We discuss them in more depth later in this Part and in Part 6.

Figure 6
Assessment categories used for grouping the sample of visa and permit decisions that we reviewed

Good quality decision	The documentation was complete and had been reviewed, process steps were complete, the AMS and file records explained the immigration decision, policies were complied with, and the decision was expected given the information in the file.
Adequate decision	There were minor process or documentation discrepancies or gaps, but these were not significant to the decision. The decision was consistent with the AMS and file records.
Questionable decision	There was a lack of documentation to the extent that we could not determine if immigration policy had been followed, or if every process step had been followed (for example, the requirement to assess state of health and character, or to put potentially prejudicial information to the applicant). There may have been inadequate consideration given to immigration risk, or the applicant's previous immigration history. There may have been inadequate verification performed. In summary, we were unable to conclude that the decision was made in keeping with policy and process requirements.
Poor decision	This category included cases where the decision was not made in keeping with policy and process requirements, or was unexpected based on our review of the supporting evidence.

The quality of the decisions in our sample

5.9 The analysis below does not include any evaluation of the risk assessment used to decide what work to carry out in assessing an application, or which officer to assign to the case. The branches had no standard approach to assigning or assessing visa and permit applications based on risk, so any comparison of results would be meaningless.

5.10 We also did not assess whether the officer making a decision had the required delegation because the information on delegations was not readily available.

Overall results for all visa and permit decisions we reviewed

5.11 Overall, nearly two-thirds of the visa and permit decisions⁴ that we examined were of a good quality (see Figure 7). This included many instances where we found careful and diligent assessments by Immigration Officers and Visa Officers that were well documented and logically explained how they had reached their decisions to approve or decline applications.

5.12 However, in our assessment just over one-fifth (21%) of all the visa and permit decisions we reviewed were either questionable or poor.

4 This includes decisions made under section 35A of the Act (see paragraphs 5.95-5.110).

Figure 7
Assessed quality of all visa and permit decisions that we reviewed

Category	Number of decisions in this category	%
Good quality decision	287	66
Adequate decision	59	13
Questionable decision	60	14
Poor decision	30	7
Total	436	100

- 5.13 Of the 436 decisions that we reviewed, more detailed information about our assessment of 389 is presented in Figure 8. Figure 9 presents more detailed information about our assessment of the remaining 47 decisions.

Comparing results between offshore and onshore Service Delivery branches and Pacific Division branches

- 5.14 Figure 8 provides a more detailed breakdown of the 389 decisions that we selected to review in the branches we visited. They are broadly grouped into whether the officer who made the decision was in an onshore Service Delivery branch or the IPG branch⁵, an offshore Service Delivery branch, or in the Pacific Division branches we visited. The results for these three groups varied significantly.
- 5.15 We note that factors other than branch location affected the quality of the decisions. These factors included the operating environment and procedures, and the skills of managers.
- 5.16 Overall, the quality of visa and permit decisions we examined was higher in the offshore Service Delivery branches. We considered 85% of the decisions in our sample from these branches to be good quality decisions. The equivalent proportions for onshore Service Delivery branches and IPG, and the Pacific Division, were 69% and 40% respectively.

⁵ The Immigration Profiling Group (IPG) is in the Border Security group of Immigration New Zealand, not the Service Delivery group.

Figure 8
Assessed quality of 389 visa and permit decisions we reviewed, by broad groups of branch location

	Offshore Service Delivery branches		Onshore Service Delivery branches and IPG		Pacific Division	
	Number	%	Number	%	Number	%
Good quality decision	112	85	118	69	35	40
Adequate decision	15	11	22	13	15	17
Questionable decision	2	2	22	13	29	33
Poor decision	3	2	8	5	8	9
Total	132	100	170	100	87	100

Note: Because of rounding, percentages may not add up to 100.

Results for individual visa and permit decisions of particular interest to us

- 5.17 Figure 9 summarises our findings for the 47 visa and permit decisions that were either brought to our attention by submitters to our inquiry or were taken from the residual places quota categories and used section 35A of the Act (we explain the significance of the quotas in Part 6, and section 35A of the Act later in this Part).
- 5.18 These 47 decisions were identified at least in part because quality concerns had already been raised or were suspected. We expected to find a higher incidence of quality concerns, and we did. There were problems with many of these decisions, including significant problems with nearly a quarter (23%) of them. In our view, another 15% of the decisions were questionable.

Figure 9
Assessed quality of 47 visa and permit decisions we reviewed, of particular interest to us

	Number	%
Good quality decision	22	47
Adequate decision	7	15
Questionable decision	7	15
Poor decision	11	23
Total	47	100

The influence of quantity targets and application backlogs on the quality of visa and permit decisions

Strong emphasis on meeting quantity targets in some branches can have a detrimental effect on the quality of visa and permit decisions. Substantial backlogs of visa or permit applications may have contributed to this problem.

Quantity targets for processing visa and permit applications

Funding branches based on the number of visa and permit decisions

- 5.19 Immigration New Zealand branches are funded based on the number of visa or permit decisions they make in a year. An Immigration Fees Model is used to calculate how many fulltime equivalent employees are required. This takes into account both the estimated average time taken to process different visa or permit types (for example, visitor visas or work permits) and the number of applications by type that each branch is forecast to decide. These forecasts are linked to achieving annual residence targets set by the Government. The Department also monitors the number and timeliness of visa and permit decisions made by the branches.
- 5.20 Meeting targets for the number of visa or permit decisions made is therefore an operational focus of branches. The expectation that targets will be met flows down through the staff tiers. Branch managers are expected to meet their forecast numbers of visa or permit applications decided each month for their branches. In turn, immigration managers⁶ (the next level of branch management) are expected to meet targets for their teams. Finally, Immigration Officers and Visa Officers are usually set targets for the number of applications they are expected to decide.
- 5.21 Targets can be a useful and objective way for an organisation to monitor workflow and staff performance. However, the quantity of visa and permit decisions needs to be carefully balanced with maintaining the quality of decisions. In our view, an excessive focus on meeting targets for the number of visa and permit decisions made has had a detrimental effect on the quality of the decisions and, in some branches, on staff morale.

Emphasis on quantity targets varies between branches

- 5.22 The emphasis placed on targets in branches was strongly influenced by the attitudes of branch management. Some branch managers rigorously monitored how many visa or permit decisions their staff were making. In some branches, achieving the targets was a performance measure in the individual performance

⁶ Immigration managers are responsible for managing teams of Immigration Officers or Visa Officers, and sometimes also manage support staff. Immigration Officers and Visa Officers were usually organised into teams specialising in specific types of visa or permit applications (for example, skilled migrant category applications or temporary entry applications).

agreements of Immigration Officers and Visa Officers and their managers. In some of those branches, failing to achieve the targets was viewed as a significant staff performance issue.

- 5.23 In other branches, management focused more on the timeliness of decision-making by staff, or ensuring that the quality of decisions was not compromised by the quantity targets.

Negative aspects of too much emphasis on quantity targets

- 5.24 We noticed that the branches with the strongest emphasis on quantity targets also tended to have poorer staff morale. Staff told us that the pressure to meet targets meant that they either had or had felt pressure to:

- reduce the amount of assessment they did of applications, including reducing the work they carried out to verify applicants' stated circumstances;
- decrease how well they documented how they had reached their decisions to approve or decline applications; and
- select straightforward applications to work on while neglecting the complicated applications that require greater assessment effort.

- 5.25 These are worrying admissions by staff. A risk they also present – one that some staff we spoke with allege already occurs – is that staff under pressure to meet quantity targets have greater incentive to approve visas and permits than decline them. People who are granted a visa or permit to enter or stay in New Zealand are highly unlikely to challenge that decision. It takes more work to fairly and fully assess an application (including contacting applicants about any potentially prejudicial information in their applications) than it does to simply approve an application.

Assessing the complexity of applications varied between branches

- 5.26 Branches have varying practices and levels of sophistication in screening applications for complexity before allocating them to officers. In some branches, Immigration Officers or Visa Officers are simply required to manage a set caseload of applications and meet set targets for deciding applications by the type of visa or permit. New applications are allocated to them as they complete cases, without any screening of the level of complexity and work those applications could require.
- 5.27 In other branches, various procedures were in place to assess the risk level or complexity of different applications before they were allocated. Higher-risk applications were assumed to require more time to assess, and the quantity targets for individual staff were adjusted according to the complexity of the applications they were assessing. Targets varied significantly between the branches we visited, even though staff were often doing essentially the same types of work.

Reviewing the role of targets would be useful

- 5.28 Reviewing the role of quantity targets used in branches could usefully provide direction to branches to ensure that the targets set are realistic and achievable. Any review should consider how quantity targets can affect the quality and timeliness of decisions.

Recommendation 8

We recommend that the Department of Labour review the emphasis on target setting in Immigration New Zealand branches to ensure that the quality of visa and permit decisions is not compromised.

The effect of backlogs on the quality of decisions

- 5.29 Pressure on branch staff to meet targets can be exacerbated by the prevalence of substantial backlogs of visa or permit applications to be processed. Trying to address backlogs can also create pressure on staff, self-imposed or from management, to decide applications with less scrutiny than staff would otherwise prefer. We noticed that the branches with large application backlogs tended to have weaker staff morale.
- 5.30 There were substantial backlogs in several of the branches we examined. For example, one onshore branch had – at the time of our visit in September 2008 – more than 2000 temporary permit and 700 permanent entry applications waiting to be assigned for processing by staff. At another branch, some permanent entry applications lodged in 2005 had not yet been assigned to a staff member. There were also delays of nearly six months for final approval of decided applications because of a backlog in quality assurance checks.
- 5.31 We found no single systemic issue or explanation for the substantial backlogs in some branches. For some branches, there had been unexpectedly high growth in the number of applications lodged. In other branches, we considered that weaknesses in how queues of applications were managed and how work was prioritised were contributing to the backlogs.

Lack of a standard approach to tackle application backlogs has sometimes compromised decision quality

- 5.32 Immigration New Zealand does not have a standard approach to manage the workflow for application backlogs, so branches have created their own. Some of the branches' initiatives have, in our view, compromised the quality of visa and permit decisions.

- 5.33 For example, the Christchurch and Sydney branches used an unsanctioned initiative called Project Crusade during part of 2008 to clear a substantial backlog of temporary visa and permit applications. It involved using application assessment procedures that were inconsistent with the policy requirements set out in Immigration New Zealand's operational manual (see Figure 10).

Figure 10

An initiative, created by a branch, to reduce backlogs

Project Crusade

Project Crusade was an initiative created in Immigration New Zealand's Christchurch branch to clear a substantial backlog of temporary permit applications. It involved staff applying a set of guidelines that reduced the scrutiny and verification normally carried out on such applications. For example, some of the easing of the requirements contained in Immigration New Zealand's operational manual included:

- work permit applicants who provided inadequate evidence of their experience or qualifications were granted a two-year permit, with a letter informing them that their background had been accepted on face value;
- work permit applicants with incomplete job offers were still approved, with a letter telling them that job contracts must comply with New Zealand legislation;
- applicants who were required to provide evidence of a medical assessment for their permit were granted a 12-month permit and told to provide the evidence of a medical assessment later; and
- applicants for a visitor permit who had not provided adequate evidence of funds (to support their stay in the country) were accepted anyway.

Project guidelines instructed staff to identify in the AMS that applications had been approved under Project Crusade parameters.

Review of Project Crusade

Project Crusade operated between April and July 2008. It was halted after an anonymous letter to a newspaper criticising the project prompted the Department to order a review of all decisions under the project. In total, 1770 temporary permits were identified from notes in the AMS to have been decided under Project Crusade. Most of these were decided by the Christchurch branch.

The review identified that 370 (21%) of the 1770 applications decided under Project Crusade needed remedial work. The applications for all 370 were reassessed. The Department told us that the managers involved were held accountable for not adhering to the expected quality standards.

Recommendation 9

We recommend that the Department of Labour review the workflow management for, and prepare standard approaches to, dealing with backlogs of applications for visas and permits.

Risk assessment and profiling

Immigration New Zealand's online client risk methodology, was designed to standardise and co-ordinate risk profiling, but is seldom used by staff. Instead, branches have prepared their own risk profiles that they use to assess the risks presented by applicants. The risk assessment and profiling used to inform visa and permit decisions varied considerably between branches and needs to improve.

Risks in making visa and permit decisions

- 5.34 There is always an element of risk in making visa and permit decisions. People might present false or misleading information to gain entry or the right to stay here. There is also a risk that people will breach the terms and conditions of visas or permits they have been granted. At the extreme end of a risk continuum, some people might present a risk to New Zealand's security or international reputation if they were granted entry.
- 5.35 Immigration Officers and Visa Officers must manage these types of risk every day when they are assessing visa and permit applications. This is often a demanding task. As well as checking that applications are complete and comply with immigration policy, officers also need to assess the credibility of applicants and be satisfied that the evidence provided is genuine.

Differences in assessing permanent and temporary entry applications

- 5.36 There is an important difference between the types of judgement required by Immigration Officers and Visa Officers when deciding permanent or temporary entry visas and permits. In general, permanent entry assessments involve verifying the authenticity of evidence of past behaviour. For example, an officer assessing an application for someone to migrate here as a skilled migrant must be satisfied of such things as the validity of their qualifications and past work experience.
- 5.37 In contrast, assessing temporary entry applications requires officers to make judgements about the future behaviour of applicants. For example, considering if there is a risk that a visitor might illegally overstay. This is the area where the use of judgement and balancing different factors can result in different officers correctly assessing an application as being within policy yet they may reach different conclusions.

Using profiles to identify and consider risks

- 5.38 Immigration Officers and Visa Officers are required to follow risk profiling procedures when assessing visa and permit applications. Risk profiling is the identification of individual characteristics which, when combined, might indicate

a greater chance of a specific outcome. Risk profiling can help maintain the consistency of decisions by guiding officers' judgement. Immigration Officers and Visa Officers use risk profiling to determine how much effort is required for the assurance processes they should use with a particular application and the accompanying information.

Organisation-wide co-ordination of risk assessment

The client risk methodology

- 5.39 The co-ordination of risk profiling guidance for all Immigration New Zealand branches has been largely limited to the availability since 2006 of an online client risk methodology. The aim of the client risk methodology is to guide Immigration Officers and Visa Officers in assessing the risk of applicants. It was intended that the client risk methodology would consolidate best practice throughout Immigration New Zealand for assessing an applicant's risk against the value that applicant could offer if they were granted entry.
- 5.40 Clients' risk and value profiles are included in the AMS and cover identity, character, employability, and settlement. The client risk methodology is designed to automatically activate risk and value assessments at different stages of the application process. These prompt "pop-up" messages to appear in the AMS that alert an Immigration Officer or Visa Officer about risks they might need to consider as part of their assessments.
- 5.41 The client risk methodology was seldom used by officers in the branches we visited. Staff often told us that this was because the risk profiles in the client risk methodology were too blunt (and sometimes out of date or inaccurate) to be useful risk identification tools. The profiles tended to continuously trigger "pop up" alerts in the AMS about general risks that staff were either already aware of or had even greater knowledge about.
- 5.42 In some branches, the client risk methodology had been deactivated because officers were getting too many unhelpful risk alerts when they were processing applications. This meant that some Immigration Officers and Visa Officers we interviewed had never experienced the client risk methodology working.
- 5.43 The accuracy and usefulness of the client risk methodology as a risk profiling tool largely depends on the quality of risk intelligence fed into it. The knowledge of offshore branch staff about risks in their local and regional markets is a rich source of this intelligence. Their ability to provide this intelligence in a systematic way needs to be looked at.

- 5.44 It is unfortunate that the implementation of the client risk methodology has been unsuccessful. It has potential, but needs to first be adequately resourced then promoted and made mandatory throughout Immigration New Zealand branches. For now, there is limited analysis of how risk profiles are actually used by Immigration Officers and Visa Officers.

Recommendation 10

We recommend that the Department of Labour review the operation of its client risk methodology and evaluate how the methodology's usefulness can be improved.

Risk profiling within Immigration New Zealand branches

- 5.45 Because the client risk methodology was not useful enough, branches have built their own risk profiles to suit their local or regional markets. Risk profiling approaches varied considerably in the different Immigration New Zealand branches that we visited.

Guidance for applying risk profiles could be improved

- 5.46 Risk profiles adopted in individual branches were generally well understood by the branch staff we interviewed. Branch staff also tended to have a good appreciation of local market risks, especially in most offshore branches we visited. However, a lot of the risk profiling we observed in use was also relatively informal and partly relied on the experience of individual officers with assessing certain types of applications or nationalities of applicants. Overall, there was a lack of written guidance or formal protocols in many branches to guide officers with risk profiling. This heightens the possibility of inconsistent risk assessment by officers, especially if relatively high staff turnover in a branch means that inexperienced staff members are assessing applications.
- 5.47 In our view, there is scope for more formal written guidance about risk profiling to be used by Immigration New Zealand staff when they are assessing visa and permit applications. This guidance does not need to be complicated or difficult to compile. Our own observations of how branches profile risk suggest that in many cases it would simply involve better documenting the risk assessment skills and knowledge currently used by experienced officers. Doing this would also help branches to check the consistency of risk profiling by staff as part of their quality assurance processes.

Some risk profiles were applied too bluntly

- 5.48 Risk profiling, by its nature, involves using generalisations about a person's background or circumstance to inform a judgement about the level of risk they may present. Therefore, risk profiling needs to be carefully managed and monitored to avoid being applied too bluntly.
- 5.49 Overall, Immigration New Zealand branches monitor how individual officers balance and apply different risk factors to visa and permit decisions through:
- the quality assurance processes used in branches; and
 - discussing common or tricky scenarios in team meetings.
- 5.50 In our sample, we found visa or permit decisions where we consider risk profiles were applied too bluntly and determined the outcome of the assessment, without any other factors being considered. For example, in one branch many applicants were declined entry to visit New Zealand simply because they were unemployed men in a certain age range from a particular country. They were not considered to be genuine applicants with enough economic or social incentive to return to their home country if they were granted entry to New Zealand.

Risk assessments performed were not always documented

- 5.51 When we reviewed individual visa or permit decisions, we were often unable to identify what risk profiling had been done by officers, or how the risks of applicants had been assessed. Figure 11 gives an example from our review of visa and permit decisions. In our view, it is important that risk profiling and assessments of applicants are recorded in the AMS.

Figure 11**An example of insufficient recording of how risk assessments were made**

Immigration Officers and Visa Officers typically assess the incentives for visitors to return to their home country before deciding whether to grant an applicant temporary entry. In one case, a child was applying for a visitor's visa. Their mother had died in their home country and their father was known to be living unlawfully in New Zealand.

The visitor visa was granted and the applicant was assessed as presenting a low risk of overstaying.

There was no documentation to explain how this assessment had been reached.

- 5.52 People commonly apply for many different visas and permits over time, each involving some form of risk profiling or assessment by officers. Documenting the risk profiling already carried out about an applicant lets staff assessing later visa or permit applications take those previous risk assessments into account as part of their decision-making.

Recommendation 11

We recommend that the Department of Labour improve the recording of the risk profiling carried out for individual visa and permit applications.

Use of risk assessments to assign visa and permit applications varied between branches

- 5.53 The ways that branches used risk assessments to assign visa or permit applications to staff varied considerably. In some branches, there was no initial risk assessment of applications before they were allocated to Immigration Officers or Visa Officers. In other branches, various risk profiling methods were used to assess applications before they were allocated to staff. This typically resulted in applications being divided into either low-risk or high-risk groups. As noted earlier, this was sometimes used to estimate how much work was likely to be involved in deciding applications, or to adjust the quantity targets staff were set.
- 5.54 Initial risk assessments were used in some branches to allocate applications to teams of officers specialising in either low-risk or high-risk cases. One of the examples we saw was a “Breakthrough Model” used by the Auckland Central branch. Using this model, teams specialised in processing temporary entry permit applications of different risk and value levels (see Figure 12). High-risk applications were given greater scrutiny, while some low-risk applications were quickly approved.

Figure 12**The “Breakthrough Model” to allocate and decide applications by risk level**

The “Breakthrough Model” was introduced in Auckland branches of the Service Delivery group in 2004. Its aim was to reduce major customer queues and backlogs caused by a substantial increase in applications in that region. The model sought to streamline the processing of low-risk temporary entry permit applications, and apply greater scrutiny to higher-risk applications.

Under the model, each temporary entry permit application was automatically profiled against a detailed series of profile rules. This gave each application an overall risk and value score. Applications were then grouped by their risk and value scores and allocated to specialist teams in branches to process.

Some teams specialised in the quick approval of applications considered to be of low risk and not needing much scrutiny. Other teams assessed higher-risk applications that required more verification and possibly interviews or direct contact with applicants.

The “Breakthrough Model” has been successful in reducing customer queues and tackling application backlogs in the Auckland region.

- 5.55 The different approaches we observed for allocating applications based on risk partly reflected the way that branches adjust processes to suit their local conditions. However, we are not aware of any organisation-wide co-ordination or evaluation of the different approaches (although the client risk methodology has been an attempt to provide risk profiling tools to staff). This may be a missed opportunity for Immigration New Zealand to share good practice and possibly improve the efficiency of some visa and permit processing.

Different approaches to risk assessment between onshore and offshore branches

Concerns about insufficient consideration of application history by onshore branches

- 5.56 Staff in offshore branches expressed to us a view that Immigration Officers in onshore branches sometimes inadequately considered the risk assessments of applicants carried out by offshore branches. This included claims that the AMS warnings⁷ by offshore staff were ignored. Many offshore branch staff also believed that onshore branches tended to take a more lenient approach to extending visas or approving permits for people who had been granted restricted visas from offshore because of specific risk concerns.
- 5.57 The prevalence of these views shows that concerns are held within Immigration New Zealand about the consistency with which visa and permit decisions are made.
- 5.58 Our own review of samples of visa and permit decisions did identify many cases where it was unclear or undocumented if onshore Immigration Officers had considered the application history of applicants or any risk assessments already made about them.⁸ (Although, as we noted above, we also found that risk assessments were not always documented.) Figure 13 provides some examples of permit decisions where there appeared to have been insufficient consideration by onshore Immigration Officers of a person's application history.

7 A warning placed in the AMS is designed to alert an Immigration Officer or Visa Officer to consider specified risks or circumstances when assessing any subsequent visa or permit applications from a particular individual.

8 Immigration New Zealand's operational manual requires officers to check for information from previous applications.

Figure 13
Examples of insufficient evidence that previous application history had been considered

Example 1

A person had been convicted for drink-driving while in New Zealand on a visitor permit. An AMS warning recorded concerns that the applicant might intend to stay indefinitely in New Zealand and might have been working illegally.

When the person applied to stay in New Zealand, an Immigration Officer assessed the applicant as presenting a low risk. The person was approved a work permit for a job involving driving. The Immigration Officer did not check whether the applicant had been disqualified from driving when they were convicted for the drink-driving offence.

Example 2

A person was granted a short-stay visitor visa by an offshore branch based on strong stated incentives to return to their country (including holding a steady job). Once in New Zealand, the person had their stay extended by more than six months by an onshore Immigration Officer, and there was no reason provided in the AMS for the extension. The person was then granted a work permit.

Example 3

Notes in the AMS from an interview with an applicant stated they had incentive to return to their home country because they lived there with their father and their mother was deceased. There was no evidence that the Immigration Officer had checked a previous application record in the AMS where the applicant had declared that their father was deceased.

Specialist risk management positions in offshore branches

- 5.59 Three of the offshore branches we visited during our inquiry had specialist risk management staff. The Bangkok and New Delhi branches both had dedicated risk manager positions, which were established several years ago after corruption problems were found in those branches. The London branch had a verification officer who, in practice, had also assumed a very strong risk assessment and profiling role.
- 5.60 The roles and responsibilities of these risk management people varied a lot between the three offshore branches. For example, one risk manager was heavily involved in training and coaching staff about risk assessment and profiling. Another was more focused on internal controls and quality assurance within the branch. All three positions had varying roles liaising with other governments' foreign missions, but this role was especially strong in one branch.
- 5.61 These specialist personnel made important contributions to risk management in these branches, especially given that the branches deal with applications from some high-risk countries. However, there were some indications from staff interviews and our own observations that risk management staff are stretched

in their positions and lack backup staff. We note, however, that the Department has identified a need for more verification officers for these offshore branches. These additional staff, if funded and deployed, would also have a useful risk management role.

Verifying the information in visa and permit applications

Immigration Officers and Visa Officers have a great deal of individual discretion to decide how much of the evidence supporting applications they will verify. Verification practices and resources varied greatly in the branches that we visited. The Department needs to consider introducing minimum standards of verification. The Department has recognised the need to increase the number of specialist verification officers in offshore branches with high-risk applications.

The role of verification in making visa and permit decisions

- 5.62 Immigration New Zealand's operational manual sets a general obligation on Immigration Officers and Visa Officers to take necessary or appropriate steps to verify any documentation or information relevant to making visa or permit decisions.
- 5.63 Verification involves checking the evidence submitted with an application to ensure that it is genuine and valid. It is an important process used by officers to help assess that people seeking visas or permits:
- are genuine applicants;
 - meet character and health requirements; and
 - meet specific policy requirements for different visa or permit types.
- 5.64 It is impractical and unnecessary to fully verify all of the more than half a million visa and permit applications decided each year. This would place excessive resource burdens on the immigration system. It would also create unacceptable entry delays for visitors and some migrants, which would be detrimental to our country's interests.
- 5.65 Verification is a practical risk management tool. Immigration Officers and Visa Officers are expected by Immigration New Zealand to use risk assessments and profiling to help them determine how much verification is required for different visa and permit applications.

Quality of verification work for visa and permit applications

Officers have discretion to decide the amount of verification done

- 5.66 In the branches we visited, Immigration Officers and Visa Officers had a great deal of individual discretion to decide what evidence was verified, and how much verification work was carried out. This was especially the case with temporary entry visa and permit applications.
- 5.67 Most branches we visited had no set standards or mandatory requirements for the amount or type of verification work officers should do for temporary entry applications.⁹ Individual officers used their experience and skills to decide how much verification work was needed for any particular application. Because of this, the extent and sometimes the quality of verification work varied widely in the sample of temporary entry visa and permit decisions that we examined. This was partly influenced by the quality of the documentation about that verification work.
- 5.68 Well documented visa and permit decisions clearly demonstrated what evidence had been verified and why. In contrast, we could not tell with some temporary entry visa and permit decisions what supporting evidence, if any, had been verified. Figure 14 provides examples of cases where we consider that evidence supporting the applications was insufficiently verified.
- 5.69 The Department should consider assessing if minimum standards for verification of various types of temporary entry visas and permits should be adopted, to improve the consistency of verification practices between Immigration New Zealand branches.

Recommendation 12

We recommend that the Department of Labour consider introducing minimum verification requirements and standards for all visa and permit applications.

Pressure to meet targets can affect the amount of verification work carried out

- 5.70 Several officers we interviewed admitted that the pressure to meet processing targets sometimes resulted in them verifying less evidence than they would prefer (because verification means it takes more time to process applications). These admissions are a concern. They raise the risk that shortcuts with verification might result in ineligible applicants being inappropriately granted visas or permits. In our view, these admissions strengthen the need for minimum standards of verification for different visa and permit application types.

9 There are more structured verification requirements for assessing permanent entry applications.

Figure 14
Examples where the information supporting applications was insufficiently verified

Example 1

An applicant sought a work permit for a position supervising 25 manual workers. The prospective employer claimed in the application that the position required a professional teaching qualification, which the applicant had. It was unclear to us why the position required this qualification.

The employer claimed that they had unsuccessfully tried advertising for two months to fill the position. The officer had not attempted to verify this claim.

The salary initially offered was substantially below what we would expect for this type of supervisory position (or for a teacher). The salary was challenged by the officer, which resulted in the applicant – not the employer – responding that they would be offered a new salary nearly 30% higher than the initial one. The officer accepted this response without verifying it.

Example 2

This work permit application presented a case made by an employer to fill a management position. The application claimed a very specific tertiary qualification was required for the job. This qualification was held by the applicant. We concluded, after looking at the application evidence, that the job was that of an assistant in a retail store.

The officer should have done more work to verify the job offer. Our view was supported by a later review of a permanent entry application for the person under the Skilled Migrant Category. A verification report prepared by a verification officer for this later application found the applicant had provided false and misleading information, and their job was the equivalent level to that of a checkout operator.

Example 3

For this work permit, the applicant was a plumber but the job was for a builder. The officer did not verify the qualifications claimed by the applicant.

The employer claimed to have satisfied the labour market test – that a New Zealander could not be hired to do the job. The employer stated that the job was advertised for three months with no response. The only evidence for this comprised three very brief classified advertisements that contained only minimal information about the job.

The agent representing the applicant had several alerts against them in the AMS about working with employers making fake job offers. There was no indication in the AMS or file records that the officer considered these alerts, or used them to judge the amount of verification required of the application.

Verification guidance and review

The need for more guidance on verification has been recognised

- 5.71 In 2007, we published a report on a performance audit that examined the Department's management of immigration identity fraud.¹⁰ One of our findings then was that Immigration New Zealand lacked organisation-wide and specific guidance on how verification is carried out. We recommended that the Department prepare specific guidance on how identity verification is to be done throughout the Department to provide for consistency in verification practice.

¹⁰ Department of Labour: *Management of immigration identity fraud*, Wellington.

This organisation-wide guidance was being introduced at the time of our branch visits from late August to December 2008.

Online tools to assist officers with verification were not widely used

- 5.72 An online verification toolkit was introduced in 2006, along with the client risk methodology, to guide officers with verification. The toolkit includes information such as contacts for verifying different information types, and a database of training materials and examples of known genuine and fraudulent documents. However, like the client risk methodology, this toolkit was rarely used by Immigration Officers and Visa Officers in the branches we visited. The slow speed of the intranet in some offshore branches we visited contributed to the limited use of the toolkit.
- 5.73 In our view, the Department should examine why the verification toolkit has not been widely adopted by Immigration New Zealand staff. This examination could be part of a wider review of the client risk methodology that we cover in Recommendation 10 following paragraph 5.44.

Onshore branches do not review how temporary entry permit applications are verified

- 5.74 Although individual officers have a great deal of discretion when deciding what verification work they do, the processes Immigration New Zealand uses to review the consistency of that discretion are limited.
- 5.75 In onshore branches, there is a quality assurance process where a second person checks how permit applications were assessed – but it excludes most temporary entry permit decisions.¹¹ There is no formal and routine review within onshore branches of the consistency of verification practices of Immigration Officers. In contrast, in the Bangkok and New Delhi offshore branches (but not in London), supervisors checked how temporary entry applications had been assessed. This included reviewing the verification work carried out for each application.

Using specialist staff and third party providers for verification

Significant variation in the use of specialist staff for verification

- 5.76 There was much variation in the use of specialist verification officers in the branches we visited. Some branches had no access to specialist verification staff, while branches in the Auckland region had exclusive use of a specialist Central Verification Unit.¹² Figure 15 provides examples of the variation in use of verification officers between some of the branches we visited.

11 In some branches, a second person checked how temporary entry permit applications were assessed by new Immigration Officers, until those Immigration Officers were considered to be competent. We discuss quality assurance processes in more detail later in this Part.

12 The Central Verification Unit (part of the Border Security group) verifies information supplied by Skilled Migrant Category applicants in the Auckland region only.

Figure 15
Variation in using verification officers in some of the Immigration New Zealand branches we visited

Branch	Number of full-time equivalent verification officers	Main type of verification work done by verification officers
Auckland Central	24*	Skilled Migrant Category permanent entry applications
Pacific Division, Manukau	1.5	Mostly verification of job offers
Christchurch	3	Mostly Skilled Migrant Category permanent entry applications
London	1	A range of verification work
Wellington	0**	

* This refers to the number of verification officers at the Central Verification Unit as at December 2008. These officers also do verification work for the three other Service Delivery branches in the Auckland region. (It excludes the Pacific Division's Manukau branch, which is in the Service International group.)

** A staff member was being trained to be a verification officer at the time of our visit in late August 2008.

- 5.77 We were told that this variation in the numbers of verification officers was a result of decisions about staffing made mainly at a regional or branch level, rather than the result of a systematic assessment of risk for all of Immigration New Zealand. This has been a serious shortcoming that Immigration New Zealand is seeking to address.
- 5.78 Immigration New Zealand has identified the need for more verification officers as part of its Immigration Business Transformation (IBT) project. This project includes a proposal to increase the number of verification officers working in offshore markets that present the greatest risks to New Zealand.
- 5.79 Boosting the number of verification officers in high-risk offshore locations also acknowledges that it is easier to stop unwanted people before they enter New Zealand, than to try and remove them once they are here. Immigration New Zealand also has a view – which we support – that verification work is best done within, or as close as possible to, the market where visa applications and supporting information originate.
- Outsourced verification services**
- 5.80 Immigration New Zealand uses third-party organisations to provide verification services in some countries, particularly where it does not have representation.¹³

¹³ These services include verifying documents, interviewing applicants, and helping with the collection of DNA samples.

- 5.81 Some countries, or regions within them, present practical difficulties that make it necessary for Immigration New Zealand to rely on locally engaged staff of third-party organisations to carry out verification work. These difficulties include:
- a higher incidence of fraud and corruption in some areas, which both heightens the need for verification of information supporting applications and reduces the effectiveness of remote forms of verification (such as telephone interviews); and
 - some areas being too remote, inaccessible, or dangerous for branch staff to visit without unacceptable expense or risk to personal safety.
- 5.82 It is mainly the offshore branches that outsource verification work, although the Immigration Profiling Group also contracted a third-party organisation to help with verifying information from applicants in many high-risk countries.
- 5.83 Immigration New Zealand relies mainly on the observations of branch managers and staff to monitor the quality of verification work carried out by contracted third-party organisations. Resource constraints have limited quality assurance by individual branches to periodic reviews of the work carried out by contracted third-party providers. For example, the New Delhi branch has occasionally performed a full review of a sample of application verifications done by a third-party provider. The branch has sometimes sent branch staff out with locally engaged verifiers to monitor their work. The verification officer in the London branch has occasionally visited African countries to check on the work of contracted verification providers.
- 5.84 Because of these resource constraints, Immigration New Zealand relies on branch staff, especially offshore risk managers, to build and maintain close working relationships with other governments' missions in local regions. These missions have greater resources for monitoring and auditing the work of contracted third-party verification providers.
- 5.85 Relying on locally engaged people from third-party organisations will always present risks of corruption and fraud in some countries or markets. In our view, the Department needs to be confident that its existing arrangements for monitoring the quality of outsourced verification work are sufficient to counter these risks. It would be sensible to regularly review and assess the adequacy of monitoring arrangements for outsourced verification work.

Documentation standards of visa and permit decisions

Many visa and permit decisions we examined were well supported and explained by the associated documentation, but the quality of documentation varied between individual officers and branches.

- 5.86 Immigration New Zealand requires Immigration Officers and Visa Officers to properly document their decisions about applications for visas and permits. This includes making accurate, clear, complete, and factual file records. Officers should also state the full reasons for their decisions (without prejudicing any risk profiles they may have used). We used these expectations to guide our work when we reviewed our sample of visa and permit decisions.
- 5.87 We examined many decisions that were well documented and explained in the AMS and file records by the deciding officers. In these cases, the work an officer had carried out to reach a decision on an application was clear and logical. In the branches we visited, documentation standards were consistently high in the three offshore Service Delivery branches: Bangkok, New Delhi, and London. The documentation for decisions was also of a consistently high standard in the Immigration Profiling Group.
- 5.88 However, the quality of the documentation of visa and permit decisions in many branches appeared to depend largely on the skills or practices of individual officers. The consistency and quality of the documentation about visa and permit decisions often varied considerably.
- 5.89 There were some common areas where the documentation about visa and permit decisions could have been improved:
- Many decisions by officers appeared to rely on work assumed to have been done with previous applications for the same applicants, with no documented evidence of what that work had involved.
 - It was not always clear from the documentation what risk or complexity assessments had been carried out.
 - It was sometimes unclear whether an officer had considered alerts or warnings in the AMS about an applicant before deciding on their application.
 - Sometimes we could not tell from the AMS and file documentation what checks of an applicant had been performed, including any verification of evidence.
- 5.90 Some branches (or teams within them) had used or trialled templates or checklists to help guide officers with expected standards of documentation. These were local initiatives. We are unaware of any organisation-wide sharing of good

practice guidance about documentation standards. Immigration New Zealand needs to consider providing guidance to staff about the expected standard of documentation.

Recommendation 13

We recommend that the Department of Labour consider ways to improve sharing of good practice guidance about documentation standards throughout Immigration New Zealand.

Computer system used to process and record visa and permit decisions

The computer system used to process and record visa and permit decisions has serious shortcomings. The Department of Labour is aware of these problems and wants to replace the system.

- 5.91 The Application Management System (AMS) is Immigration New Zealand's core computer system used to process and record visa and permit decisions. The Department is aware that it is outdated and needs to be replaced.
- 5.92 We used the AMS extensively during our inquiry to review our samples of visa and permit decisions at each branch we visited. We observed fundamental weaknesses with the system, including:
- The AMS cannot store some basic identity and verification information about applicants, including photographs and scanned copies of passports or other pieces of evidence submitted to support visa or permit applications.¹⁴ Officers have to rely on paper-based files to store and review this information. This is cumbersome, and prevents staff throughout Immigration New Zealand from accessing, at the same time, all the information about an applicant. Files are either routinely sent between branches to allow a new visa or permit application for an applicant to be processed, or officers have to rely on the quality of notes previously entered into the AMS about applicants. As we noted earlier, the quality of notes in the AMS detailing how decisions were made, how information was verified, or how risk was assessed, varied greatly between branches and individual officers.
 - Family members can only be linked in the AMS in a haphazard way. The system relies on officers manually entering family information. Often, this did not happen – reminders from supervisors to staff about entering family information was a common training issue in several branches.
 - The operational speed of the AMS varied considerably between different branches. In some branches, especially offshore, the AMS' slow operation

significantly slowed down the efficiency with which officers could do basic tasks when processing applications.

- The technology is unstable. The AMS repeatedly froze on us, operated erratically, or required restarting. We were told that the AMS was built with a now-obsolete programming language, so it is costly and difficult to maintain or upgrade.

- 5.93 We were told of another serious shortcoming with the AMS during our interviews with staff. Most of the 29 offshore Ministry of Foreign Affairs and Trade (MFAT) agency posts that process visa applications on Immigration New Zealand's behalf do not have the AMS. These agency posts process nearly 40,000 visa applications each year without access to the applicant's application history and travel history or any warnings or alerts stored in the AMS. The relevant information about each visa issued by these MFAT agency posts has to be manually transcribed and transferred to New Zealand to be loaded into the system. This is an inefficient and risky shortcoming.
- 5.94 The Department is fully aware of the problems with the AMS. A major part of its IBT business case is a proposal to replace the AMS with a new computer system. The new system would allow all the information about an applicant to be linked and available to all immigration decision-makers, including the MFAT agency posts.

Granting permits under section 35A of the Immigration Act 1987

Good procedural guidance for staff making section 35A decisions is important because of the broad discretion given to decision-makers. The Department has improved its guidance. Processes need to be introduced to regularly review and monitor the compliance of section 35A decisions with the guidance.

- 5.95 Separate to visa and permit decisions, for which a person formally applies, Immigration New Zealand staff may make decisions about permits under section 35A of the Act. Section 35A allows the Minister of Immigration to grant (or refuse to grant) a permit of any type to restore lawful immigration status to individuals in certain circumstances.¹⁵ This Ministerial power is delegated to all onshore Immigration Officers with Schedule 1 delegations.¹⁶
- 5.96 Immigration New Zealand told us that this power recognises that people may legitimately need to be repositioned lawfully within the system so that they can either continue their stated purpose for being in New Zealand or apply under the

¹⁵ A permit can be granted under section 35A only to a person who is in New Zealand, is required to hold a permit to be in New Zealand but does not hold one, and is not subject to a deportation or removal order.

¹⁶ The power was delegated only to Schedule 1 Immigration Officers in 1994, three years after section 35A was inserted into the Act.

usual formal policies. People can have genuine reasons for being in New Zealand unlawfully. For example, their permit might have expired while they were ill and hospitalised. In such cases, their prompt action in trying to remedy their unlawful status can demonstrate that it was a genuine oversight.

- 5.97 Immigration Officers have complete discretion when deciding whether to consider a request under section 35A. They do not have to consider requests, or tell a person why a request was not considered or was rejected.
- 5.98 Immigration New Zealand views section 35A as an important mechanism for granting a permit, if appropriate. Immigration Officers have to consider each case on its merits and in the widest possible context, and balance the factors involved with the interests of New Zealand. The Department describes the high-level framework used in considering requests as “appropriate immigration outcomes for New Zealand and those who want to be here”.
- 5.99 Directly granting residence permits under section 35A is expected to be rare. A person who seems to be otherwise eligible for residence – but cannot apply because they are here unlawfully – is usually given a temporary permit to allow them to test their eligibility for residence by formally applying.

Procedural guidance provided to Immigration Officers about section 35A decisions

- 5.100 Given the broad discretion provided to decision-makers under section 35A, we expected the Department to have good procedural guidance for staff making such decisions.
- 5.101 Although section 35A decisions are discretionary, to ensure that the process is transparent Immigration New Zealand requires Immigration Officers to take a standard approach to deciding if a permit should be granted by completing an assessment guide and template. The factors that Immigration Officers consider with section 35A requests include:
- the person’s previous immigration history;
 - the reasons for their request and their current situation;
 - their character and health;
 - whether the person is likely to qualify for residence;
 - whether the person is “well settled” in New Zealand, with strong family connections here; and
 - whether the person poses a security risk, or whether any international obligations are relevant.

- 5.102 Immigration New Zealand has provided guidance since the early 1990s to staff making section 35A decisions. A circular in December 2004 included a template setting out the process to be followed and the factors to be considered.
- 5.103 It was apparent that there was considerable confusion among staff and managers at that time about the circumstances under which permits could be issued under section 35A. More guidance documents were issued between March and May 2005 to supplement the guidance in the circular. However, it was clear that the uncertainty persisted. Particular matters of ambiguity included:
- the factors to take into account when considering requests – particularly what the term “well settled” meant;
 - whether residence permits could be granted;
 - whether the person needed to qualify under a residence policy before a permit could be issued; and
 - how jobs and jobs offers needed to be assessed.
- 5.104 There were particular problems with section 35A decisions in the Pacific Division, which we discuss in Part 6.
- 5.105 Immigration New Zealand continued to provide guidance to staff through training workshops and focus group discussions between 2006 and 2008.
- 5.106 A revised circular was issued in April 2008. In our view, this circular provides much clearer guidance to staff making decisions under section 35A. Importantly, it asked branch managers to review the processes in place for appropriately managing the risks with section 35A decisions, and introduced some “escalation” controls. For example, if an officer was proposing to grant a residence permit to anyone who appeared ineligible under the residence policy, the case had to be escalated to the branch manager. Such controls are appropriate because only the Minister has the power to approve formal applications for residence that do not fit within the policy.
- 5.107 Having a second person in the branch check how a request has been assessed (a second-person check) is not required for section 35A decisions, but we understand that some branches do use this control in some cases.
- 5.108 There is a weakness in the access controls for section 35A decisions in the AMS. A section 35A decision is not listed as a decision type in the AMS (because the underlying decision is a residence or temporary permit decision). Therefore, although only Immigration Officers with Schedule 1 delegations can make section 35A decisions, there is no control in the AMS to prevent officers with Schedule 2, 3, or 4 delegations from granting permits under section 35A.

- 5.109 We reviewed 41 section 35A decisions made by onshore branches and found that 83% were either good or adequate. The remaining 17% appeared questionable (because we were unable to conclude whether the decisions had been made in keeping with requirements) or poor. Figure 16 describes a problematic decision that we examined.

Figure 16
Example of a problematic section 35A decision

A family had been in New Zealand on a number of visitor and work permits between 1998 and 2002. After 2002, the family remained in New Zealand without valid permits.

In 2007, the family members were granted residence permits under section 35A. The AMS notes show that the residence permits were considered appropriate because it appeared that an earlier failure to obtain visas as returning residents when travelling had caused them to lose their resident status.

There was no evidence that the family had ever had residence status, so they could not have inadvertently lost it when travelling.

- 5.110 Given the broad discretion that goes with section 35A decisions, it is important for the Department to have processes to regularly monitor compliance with the procedures for section 35A decisions, and to ensure that the controls in place are operating effectively. At present, the only ways to check compliance and the effectiveness of controls are through the internal audit (if the internal auditor carries out an audit in this area), and regular certification by managers of their particular controls on section 35A requests. In our view, this is not enough.

Recommendation 14

We recommend that the Department of Labour implement processes to regularly review and monitor the compliance of section 35A decisions with the procedural guidance.

Quality assurance of visa and permit decisions

Immigration New Zealand's organisation-wide quality assurance programme provides insufficient monitoring and evaluation of the overall quality of immigration decision-making. In some branches, internal controls would not prevent an individual officer from processing and issuing a visa or permit without any other staff member reviewing their decision.

- 5.111 We expected effective quality assurance processes to be used to ensure that visa and permit decisions are made appropriately, consistently, and in keeping with stated policy and process requirements.

Quality assurance processes used

5.112 Immigration New Zealand uses two formal processes for monitoring the quality of visa and permit decision making: second-person checking, and an organisation-wide Quality Assurance Programme (QAP). These formal processes are complemented by various informal monitoring of staff work, by managers and supervisors in branches.

Second-person checking of visa and permit assessments

5.113 Second-person checking involves either line managers or other staff members in branches checking how Immigration Officers or Visa Officers have assessed visa or permit applications. This checking occurs before decisions are finalised for visa or permit applications. Second-person checking looks at:

- the timeliness of processing an application;
- adherence to policy and process requirements;
- the record made of the decision-making process that was used;
- the verification of the information provided in an application;
- whether decisions, waivers, or exemptions to policy requirements have been made by someone with appropriate delegated authority; and
- whether the correct decision (to approve or decline the application) has been made.

The Quality Assurance Programme

5.114 The QAP is managed by Immigration New Zealand's national headquarters. Its purpose is to help the Department measure its performance against the measures in its Output Plan, especially a measure for 95% of visa and permit decisions to be decided in keeping with immigration policy.

5.115 Each week, 5% of the completed visa and permit decisions from each branch are randomly selected.¹⁷ In contrast to the second-person checking, this occurs after decisions have been finalised for visa and permit applications. Selected staff in each branch – usually immigration managers or technical advisers – assess the quality of the sample of decisions using standard questionnaires for different visa or permit types. The results are then aggregated into single percentage scores for each branch and reported back to national headquarters each month.

¹⁷ Most visa and permit types are included in the QAP sampling, but there are some exclusions. For example, transit visas are not sampled, and a range of permanent entry permit types that are covered by outdated immigration policy.

Strengths and weaknesses of existing quality assurance processes

Strengths of the quality assurance processes

- 5.116 The QAP and second-person checking processes help inform management in branches of the quality and timeliness of visa and permit decisions. They are also useful as staff training tools and help to monitor the consistency of decisions made within branches. Branches we visited typically use the results, particularly the second-person checking results, to identify common problems or mistakes made by staff deciding visa and permit applications. The matters are then covered in team training meetings or, if necessary, directly with individual staff members in coaching sessions. Some Immigration Officers and Visa Officers we spoke with also found second-person checking a useful way of getting immediate feedback on their work.
- 5.117 We have identified some areas for improvement with the existing quality assurance processes, especially the QAP.

Areas for improvement with the Quality Assurance Programme

- 5.118 The main weakness of the QAP is that assessments of decisions focus mostly on operational or administrative procedures. For example, whether fees have been receipted within the required timeframes, and whether the data has been entered correctly. There is only minimal evaluation of the quality of the decisions made. In our view, the Department should improve the focus of the QAP, and assess how well officers meet the various policy and process requirements that influence the overall quality of visa and permit decisions.
- 5.119 A second shortcoming of the QAP process is that results are aggregated into single percentages for each branch. We cannot see how this provides Immigration New Zealand with meaningful information about the quality of the visa and permit decisions made in all the branches. Problems with timeliness, policy and process compliance, or decision quality cannot be identified from the single percentage marks for each branch.
- 5.120 Several branch managers we interviewed found the QAP results insufficient to inform them about the quality of decisions made and levels of staff competency in their branches. Other factors reducing the usefulness of the QAP for quality control in branches are its timing and coverage. Visa and permit assessments are included after they have been decided, typically with a significant time lag. This means that any issues identified in the QAP can relate to decisions made several months earlier. Any significant errors in a visa or permit decision cannot be easily fixed. Also, a concern that the sample covered by the QAP is too small for overall quality control has prompted several branches to pick extra visa and permit decisions to include in their own quality assessments.

Recommendation 15

We recommend that the Department of Labour redesign Immigration New Zealand's Quality Assurance Programme to improve its effectiveness in monitoring the quality of visa and permit decisions.

Coverage of visa and permit types checked by a second person

- 5.121 All branches routinely do second-person quality assurance checks on permanent entry decisions, but not on temporary visa and permit decisions. This is mainly because second-person checking the high volumes of temporary visas and permits processed each year would be prohibitively draining on staff resources and cause unacceptable delays in processing.
- 5.122 There were two exceptions to this general policy not to check temporary visa and permit applications. First, many branches typically, and sensibly, do extra checking of the assessments and decisions of new staff until they build demonstrable experience and competency. Secondly, some offshore branches (including the Bangkok and New Delhi branches we visited) also do second-person checks on temporary visa assessments.
- 5.123 The requirement in the Bangkok and New Delhi branches for second-person checks on temporary visa assessments was introduced several years ago, after internal fraud cases were found in these branches. In these branches, the portal into the AMS prevents a visa application being decided and labels issued for a passport without a second person checking the information.
- 5.124 We did not see evidence of any similar controls in the other branches we visited to prevent one person from both lodging and deciding a visa or permit application. In our view, this is a weakness in the existing internal controls of these branches that Immigration New Zealand needs to address. We do not recommend second-person checking of all visa and permit applications because of its impractical resource implications. However, the Department should assess the use and design of internal controls to ensure that they mitigate the risk of individuals fraudulently processing and issuing visas or permits.
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Recommendation 16

We recommend that the Department of Labour implement controls to mitigate the risks associated with one individual officer processing and issuing a visa or permit.

Independence of quality assurance checkers

- 5.125 Some branches used immigration managers or technical advisers to carry out second-person checks, while in other branches the Immigration Officers or Visa Officers checked each others' work. Except in rare circumstances, these quality assurance processes are typically performed by staff within the same branch, and often the same team.
- 5.126 The integrity of these quality assurance processes relies heavily on the work of the checkers. There are circumstances where there is a potential incentive for bias or a conflict of interest with how quality assurance is performed:
- In branches where there was a strong emphasis to meet targets, weaker quality assurance checking would help to push through the required number of visa and permit decisions. Some staff we talked to alleged that this happened in their branches.
 - Some Immigration Officers or Visa Officers claimed that cursory checking of visa and permit decisions sometimes occurred between colleagues who were friends.
- 5.127 We did not see any examples of these practices, but note that the potential for them to occur does exist. In our view, the Department should consider whether adequate independence and control is built into its processes for quality assurance of visa and permit decisions.

Procedures to deal with appeals and complaints

We suggest that the Department regularly analyse complaints to identify any potential improvements to service delivery or the quality of visa and permit decisions.

- 5.128 Immigration New Zealand calls any complaints addressed either to the Deputy Secretary (Workforce) or to any title suggesting the head of the Department, as "Deputy Secretary Complaints". Applicants sometimes complain about the service they have received, an application in progress, or a decision made not to approve their application.
- 5.129 The procedures for handling Deputy Secretary Complaints were revised in late 2006, and set out who is responsible for responding to the complainant and the principles to apply when responding to them. Deputy Secretary Complaints are referred to the applicable branch for comment and clearance through the regional manager.
- 5.130 Since late 2006, the Deputy Secretary (Legal) has been responsible for maintaining an overview of the complaints process, and he is notified of each complaint. He

may decide to become involved directly in the response (after a review report is received from the branch manager or regional manager), he may make comments for the responding branch to consider, or he might do nothing and let the complaint follow the normal process. The Deputy Secretary (Legal) told us that he usually became involved if the complainant had complained repeatedly or if the complaint suggested grossly unfair treatment.

- 5.131 Immigration New Zealand does not analyse the nature of complaints or whether the complaint resulted in the Department changing its original decision. In our view, such an analysis would be useful and would enable the Department to see if there were common deficiencies that could be dealt with to improve service standards or the quality of visa and permit decisions being made. The Department told us that it has started a project to analyse complaints data.

Knowledge of complaints processes

- 5.132 We received an expression of concern from a member of the public that the complaints procedures were hard to find. Certainly, it is not possible to easily submit a complaint either through the Department of Labour website or through the Immigration New Zealand website. We were told that the Department is reviewing the publicly available descriptions of, and means of access to, the complaints procedures.
- 5.133 In our view, members of the public should be able to easily find out how to raise concerns with Immigration New Zealand and know how their concerns will be dealt with.

Part 6

The Pacific Division

- 6.1 Many of the public concerns and allegations that prompted our inquiry related to Immigration New Zealand's Pacific Division. These concerns were broadly about the integrity and probity of staff and compliance with systems, policy, procedures, and the law. Many particular incidents of concern involved senior staff, including the visa and permit applications for relatives of Mary Anne Thompson, which we discuss in Part 7.
- 6.2 Earlier Parts of this report described matters that apply to several, if not all, of the Immigration New Zealand branches that we visited. The matters discussed in this Part are specific to the Pacific Division.
- 6.3 When we started our inquiry, the chief executive of the Department had commissioned an external review of the Pacific Division.¹ The chief executive is now responding to the recommendations of the review and the Minister of Immigration's direction that he consider reintegrating all activities of the Pacific Division back into the core of Immigration New Zealand.
- 6.4 In this Part, we describe some important background material – the wider context of immigration in the Pacific, and how and why the Pacific Division was established – before discussing;
- leadership and management within the Pacific Division;
 - visa and permit decisions made within the Pacific Division;
 - implementation of the residual places policies; and
 - our overall conclusions.

Immigration and the Pacific region

- 6.5 New Zealand is a member state of the Pacific region.² Pacific Island countries are among our closest neighbours and New Zealand has long-standing historical, constitutional, political, social, and economic connections within the Pacific. For example, citizens of Niue, Tokelau, and the Cook Islands have New Zealand citizenship and there has been a special Treaty of Friendship with the Independent State of Samoa since 1962.
- 6.6 New Zealand's interests in the Pacific are in regional leadership and stability, economic development, and security. New Zealand provided about \$180 million in development assistance to the region in 2007/08.

1 This external review was commissioned in February 2008 and occurred in two phases. The first phase established the terms of reference for the review of the Pacific Division and was completed in July 2008. The second phase reviewed the operation and structure of the Division to make an assessment of achievements, issues, and areas requiring attention. The final report on the second phase was completed in December 2008 and released publicly in March 2009.

2 The Pacific region includes 22 Pacific Island countries and territories.

6.7 Immigration policy is an integral part of New Zealand's wider economic, security, and development policy in the Pacific.

6.8 There are usually large numbers of Pacific Islands people wanting to visit New Zealand for various reasons. The reasons include, for example, established historical, family, and community links with people living here, the generally low level of economic development and prospects in many Pacific countries, and the availability of social assistance (education and health in particular) in New Zealand.

Immigration New Zealand's work in the Pacific

6.9 Most of Immigration New Zealand's work in the Pacific region is in making visa and permit decisions. Policy advice and relationship management with Pacific governments and communities (onshore and offshore) are also aspects of its work.

6.10 In 2007/08, Immigration New Zealand issued 43,753 temporary permits for people from the Pacific, including permits issued under the Recognised Seasonal Employer Scheme (which we did not include as part of our inquiry).³

6.11 There are two main schemes for granting residence to applicants from the Pacific:

- Under the Samoan quota scheme, each year there are 1100 places for Samoan citizens.⁴
- Under the Pacific Access Category quota scheme, each year there are 250 places for citizens of Tonga, 75 for citizens of Kiribati, and 75 for citizens of Tuvalu.

6.12 These schemes recognise New Zealand's special relationship with these countries. A residual places policy is in place to offer any unfilled places under each of these schemes to Pacific people already legally in New Zealand.

6.13 There are challenges – some of which exist in other offshore branches – in the operating environment for Immigration New Zealand's branches in the Pacific. For example:

- Visas are commonly processed face to face because the local infrastructure is poor and there are cultural preferences for operating this way.
- The visa applications are often difficult to assess because the policy requires an assessment of the applicant's standard of health in environments where the population health profile is generally poor, and because it can be difficult to confirm a person's identity and background.

3 The Recognised Seasonal Employer Scheme has operated since 2007, allowing the temporary entry of overseas workers to work in the horticulture and viticulture industries to meet labour shortages. The scheme is geared towards Pacific countries. Workers must apply for limited purpose work visas, meet health and character requirements, and show that they will leave New Zealand at the end of their stay.

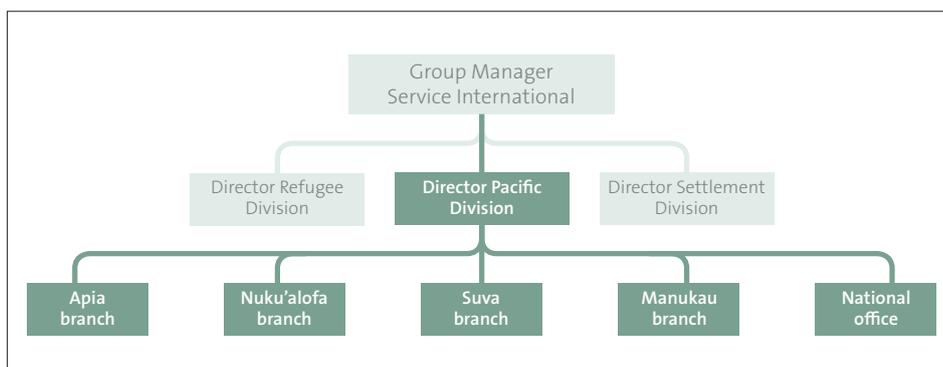
4 The Samoan quota scheme was established in 1970 under the Treaty of Friendship.

- There can be significant pressure on staff because of family and cultural obligations, particularly where the New Zealand public sector standards may contrast significantly with local norms.
- We understand that the public profile of Immigration New Zealand's operations in Apia and Nuku'alofa is higher than in other offshore locations.

How and why the Pacific Division was established

- 6.14 The Pacific Division started operating in January 2005. Particular external pressures and concerns that led to setting up the Pacific Division were:
- a failure to fill quotas;
 - an insufficient priority and focus on Pacific immigration matters; and
 - uncertainty about whether offshore Pacific branches were adequately resourced and structured to address the challenges of operating in the Pacific.
- 6.15 Various Cabinet decisions at the time addressed some of these concerns, such as:
- setting up the residual places policies in November 2004 (described later in this Part);
 - providing more settlement information to Pacific migrants;
 - a communications campaign in New Zealand and in Pacific countries to improve relationships; and
 - steps to better match Pacific migrants with potential employers.
- 6.16 The Pacific Division formally became a part of the newly established Service International⁵ group in June 2005. The organisational structure of the Pacific Division is shown in Figure 17.

Figure 17
Organisational structure of the Pacific Division



⁵ We did not look at the Refugee and Settlement Divisions as part of our audit.

- 6.17 The purpose of the Pacific Division was to “specialise and lead our work with the Pacific, which will include our offshore offices in Apia, Nuku’alofa and Suva”.⁶
- 6.18 We were told during our interviews that the main areas of focus for the newly established Pacific Division were:
- filling the Samoan quota and Pacific Access Category quota;
 - implementing the residual places policies; and
 - improving relationships with other nations in the Pacific region by taking a different approach to interacting with them.

Leadership and management within the Pacific Division

In our view, the leadership and management practices within the Pacific Division contributed to our findings about visa and permit decision-making and the implementation of the residual places policies.

Lack of clarity about the role and the direction of the Pacific Division

- 6.19 We were given copies of presentations and speeches to help explain the vision and work of the Pacific Division. These emphasised the reason for creating the Pacific Division, the need for it to get under way quickly, and the value it would add. The Group Manager, Service International, told us that there were many attempts to explain the “value proposition” of the Pacific Division to staff in the Department. Despite these attempts, some staff (wrongly) thought that the new focus was because of the then Deputy Secretary (Workforce)’s empathy for the Pacific, rather than because the Pacific region was a strategic priority.
- 6.20 It was clear to us that the role and the strategic direction of the Pacific Division were never clearly understood by all staff, particularly those outside the Pacific Division.⁷
- 6.21 Crucially, this lack of clarity led to a low level of understanding and even misunderstanding of the role, mandate, and objectives of the Pacific Division. The lack of clarity contributed to some of the specific management and immigration decision-making issues we discuss in this Part. These include the isolation of the Pacific Division, the lack of co-operation between the Pacific Division and other parts of Immigration New Zealand and the wider Department, and a “facilitation” approach taken to approving visa and permit applications.

⁶ Consultation document produced by the Department of Labour (October 2004), *Making Workforce Work – Proposing a Way Forward*, Wellington.

⁷ Both the 2006 post-establishment review and the December 2008 review of the Pacific Division identified similar concerns (see Figure 19 following paragraph 6.46).

Inadequate operational planning for establishing the Division

- 6.22 The speed with which the Pacific Division was set up was mentioned often in our interviews with current and former staff. The Group Manager, Service International, told us that he was asked to bring forward the establishment date by seven months because of concerns raised in 2004 about immigration issues, such as not meeting immigration quotas.
- 6.23 The Pacific Division started operating without any establishment or implementation plans. The former Director of the Pacific Division told us that the immediate focus of the Pacific Division was on filling quota places and meeting targets under extreme urgency, and the necessary early planning work was never done. The Group Manager, Service International, told us that an internal review carried out in mid-2005 (see Figure 19) considered the nature and scope of the Pacific Division's activities against what was already in place, and the changes required to meet deliverables. He considered that this was, effectively, the first establishment plan.
- 6.24 In our view, there was inadequate operational planning to ensure that the Pacific Division had sufficient resources and capabilities to carry out its functions effectively before it started operating. The shambolic way in which the residual places policies were implemented in 2004/05 also clearly illustrates the lack of planning – see paragraphs 6.61-6.99.

Once established, the Pacific Division often operated in isolation

- 6.25 Another view often expressed during our interviews was that the Pacific Division, during its early years, operated in isolation from the rest of Immigration New Zealand.
- 6.26 There was a lack of information-sharing and co-operation between the Pacific Division and the other parts of Immigration New Zealand. Tensions in the working relationships between the groups were clearly evident. The Group Manager, Service International, told us that the Pacific Division needed to carry out aspects of its work in a different way from the other parts of Immigration New Zealand to achieve its objectives.
- 6.27 An internal audit report in 2007 of the Pacific Division's Manukau branch found that the Pacific Division had put considerable effort into designing systems and processes that were already being used in other parts of Immigration New Zealand. The Pacific Division operated some of these systems without the support of the Service Delivery and Service Design groups.

- 6.28 We were often told that a lack of immigration experience among key managers in the Service International group and Pacific Division was the reason for many of the Pacific Division's operational problems. In our view, however, the more critical concern was the way in which the Division operated in isolation from the rest of Immigration New Zealand, without adequate co-operation, co-ordination, support, and resources.
- 6.29 We note that from early 2008, steps started to be taken to integrate the Pacific Division with the rest of Immigration New Zealand.

Poor managerial practices

- 6.30 We noted examples of poor managerial practices in the Service International group and its Pacific Division. These practices were identified in external and internal reports and reviews. Some of them suggested an "ends justifies the means" approach that meant poor adherence to proper public sector processes. The practices included poor budgetary practices and a lack of financial accountability, examples of questionable discretionary expenditure, and poor procurement and contracting practices. We discuss one example in detail because we considered it particularly concerning.

Contracting and recruiting to fill the position of Director of the Pacific Division

- 6.31 We looked at the Department's contracting and recruiting practices to fill the position of Director of the Pacific Division. Concerns about this appointment have been raised publicly. The matter was the subject of an investigation in 2005, but we have found further problems. We do not comment on the suitability or performance of Mai Malaulau, the person who filled the position. Rather, our focus was on the actions of the Department in managing the contracting and recruiting arrangements.
- 6.32 The details of our findings are set out in Figure 18. Overall, Immigration New Zealand did not use a competitive process to fill the position of Director of the Pacific Division. Contracts, and later short-term employment agreements, were successively rolled over for more than 3½ years, with no reviews of Ms Malaulau's performance. Attempts to fill the position permanently were belated, few, and inadequate. There was a conflict of interest involved at the outset. Although the conflict was known about, it was not adequately managed until after an investigation was carried out. The Department's answers to select committee and parliamentary questions about the contracting and employment arrangements were inaccurate and incomplete.

Figure 18**Our findings on the contracting and recruiting practices to fill the position of Director of the Pacific Division****Initial contracting for the position**

Ms Malaulau was appointed as the Pacific Division's Establishment Director in January 2005. Initially, she was appointed as an independent contractor, for a period of three months. She was paid a daily rate.

Ms Thompson and Mr Tavita (Group Manager, Service International) had held a number of discussions about the need to appoint a Director of the Pacific Division. The position reported to Mr Tavita. During their discussions, Ms Malaulau's name kept coming up as someone who had the right credentials and capabilities. Mr Tavita, at the request of Ms Thompson, was asked to provide a list of some suitable candidates for the position of Director of the Pacific Division. Ms Malaulau was included in this list. Mr Tavita contacted Ms Malaulau to see whether she might be interested in the role. Mr Tavita and Ms Thompson did not talk to any other potential candidates.

The position was not advertised, and a competitive process for the contract, or formal proposals or applications, did not occur. Instead, Mr Tavita and Ms Thompson started discussions with Ms Malaulau based on their knowledge of people who might be suitable for the role. Ms Thompson made the appointment.

Mr Tavita had a personal connection to Ms Malaulau. His wife and Ms Malaulau together owned and ran a consultancy business. Mr Tavita had previously been involved in that business.

Concerns were raised by a staff member about the appointment soon afterwards. The Department commissioned an investigation by an external lawyer into that and other matters. The investigator reported in August 2005. He found that there were various discussions between the parties leading up to the signing of the contract. These discussions focused on details, including the rate Ms Malaulau would be paid. Most of the discussions appear to have taken place between Mr Tavita and Ms Malaulau, with Mr Tavita then reporting progress to Ms Thompson, who was the decision-maker.

The investigator concluded that, overall, he had "not found anything improper or untoward". He noted that the personal connection had never been hidden, but he indicated that it "would have been more prudent and appropriate had Mr Tavita played no, or a lesser role in the negotiations".

In our view, Mr Tavita had a conflict of interest and it was inappropriate for him to have been involved in the negotiations. There was a risk of an appearance of cronyism or favouritism in the appointment, and the informal and non-competitive selection process significantly increased that risk. Mr Tavita was excluded from later dealings about Ms Malaulau's contract and Ms Thompson managed it.

The investigation noted that Ms Malaulau's initial contract had been extended for reasons that were sensible and appropriate. However, the extension had been handled informally and was not properly documented. The investigator noted that that was being addressed, and that in any case "steps are being taken to appoint a fulltime employee".

Subsequent issues with the contractual arrangements

At that time, Ms Malaulau had been working for the Department for about seven months. The investigator had appropriately looked at the arrangements based on it being a short-term contract that was about to end. However, Ms Malaulau ended up staying in her role for more than 3½ years.

There were several other problems with the way the Department handled the contractual arrangements.

A further lengthy extension of the contract was not documented. Despite the adverse comment made in the investigation report about documentation, there were no records kept about extending the contract for the 15 months from September 2005 to December 2006.

Ms Malaulau continued as an independent contractor for two years, which cost the Department about \$400,000. Her daily rate would not have been out of the ordinary for a consultancy contract to deliver a very specific service, project, or outcome in a defined period of time, but that is not what she was doing. In effect, she was acting as a long-term fourth-tier manager within the Department.

Recruiting for the position

In December 2006, Ms Malaulau's status was changed to an employee, under a fixed-term employment agreement. The substance of her role carried on largely as before. The term was extended a further three times, and she remained with the Department until September 2008. We were told that the series of short terms was because Ms Malaulau had made it clear that she did not want to work for the Department permanently.

The Department made two attempts, in 2005 and 2006, to recruit for the position, without success. One of those attempts was an internal advertisement only.

We understand that matters like this are sometimes overlooked for a while when there are more urgent operational issues to deal with. However, in our view, the Department did not try hard enough to fill the position permanently – especially during the two-year period when the position was being paid at consultancy rates.

In 2007 and 2008 it seems that no recruitment efforts were made at all, even though the incumbent was continuing on a series of fixed-term arrangements (and even though the appointing letters indicated that attempts would be made to find a permanent employee for the role).

There were no formal contract reviews at the end of each successive consultancy contract or fixed-term employment agreement. There were no formal performance reviews during Ms Malaulau's time as an employee.

We were told that the position was always intended to be permanent, and was focused on running the operations of the Pacific Division.

Department's answers to parliamentary and official information requests

At times, the Department was not as open as it could have been in answers to select committee and parliamentary questions and official information requests about the arrangements. Answers in 2007 did not provide the full costs of the consultancy contract, and wrongly suggested that the contract had begun in May 2006.

The Department's answers to other questions indicated that the contract had come to an end because an employee had been appointed to the position. Those answers were correct but incomplete. They did not explain that the contractor had become that employee.

Visa and permit decisions made within the Pacific Division

We found no evidence of widespread problems with integrity or probity in the Pacific Division. Staff were well aware of, and careful with, potential conflicts of interest. Visa and permit decision-making in the Pacific Division was of a significantly lower quality than it was in the rest of Immigration New Zealand. Concerns identified about the quality of decision-making were not acted on early or effectively enough.

Integrity and probity within the Pacific Division

- 6.33 As with our overall findings for Immigration New Zealand, we have not found any evidence of widespread problems with the integrity and conduct of staff in the Pacific Division. Operating in the Pacific does pose particular challenges and it is inevitable that integrity issues sometimes arise. This makes it important for the Department to have effective systems and processes in place to manage the risks.
- 6.34 Staff in the Pacific Division recognised that conflict of interest risks could be more acute because of pressure on staff from family, community, or cultural obligations.⁸ Staff were generally aware of the need to identify and manage conflicts of interest, both actual and perceived.
- 6.35 Staff in the Pacific branches we visited often took a broad interpretation of what constituted a conflict of interest. For example, if an applicant lived on their street or their neighbourhood, or had the same family name, they would declare it as a conflict of interest even if they did not know the person. In other situations, visa and permit applications would not be allocated to an Immigration Officer for processing if the applicant and Immigration Officer were of the same nationality. While these situations do not constitute conflicts of interest, we consider such an approach has been beneficial. It has reinforced the importance of managing conflicts of interest, and also protected staff who may feel pressure from their family or the community.
- 6.36 Some branches also took steps to manage potential conflicts of interest that could arise because of local customs and norms. For example, we were told that the Tongan branch office has signs advising applicants that gifts would not be accepted by Immigration Officers. This is a useful initiative that other branches could adopt.
- 6.37 We did find one area of concern. The former Director of the Pacific Division told us that the former Deputy Secretary (Workforce) received many direct and informal requests from people she knew (or who knew of her as the head of Immigration New Zealand) to help with their application or to answer enquiries. These informal enquiries were usually referred to the Director for action, who

⁸ These issues are not uncommon, and are faced in varying degrees by staff in other regions and countries.

would pass it to the branch concerned. We were told that such direct approaches became known within the Pacific Division as “the express service”. We were also told that some staff were annoyed about receiving queries from people who used Ms Thompson’s name. Ms Thompson told us that she did not encourage these approaches. She told us that an email was sent to all staff telling them to be cautious about people using Ms Thompson’s name, and asking staff to follow the correct process.

- 6.38 It is important that senior managers recognise the risks that can arise from staff perceptions in such situations. Senior managers need to manage the risks carefully with clear communication and behaviour consistent with that communication.

“Facilitation” approach to handling visa and permit applications

- 6.39 A particular focus for the newly established Pacific Division was to fill quotas and improve relationships with external stakeholders, including Pacific governments and communities.
- 6.40 The former Deputy Secretary (Workforce), Ms Thompson, established a change in approach in Immigration New Zealand. Her expectation was that staff would be facilitative, transparent, and customer-focused in how they approached their work. This was commonly called “facilitation” within Immigration New Zealand.⁹ While this approach was adopted throughout Immigration New Zealand, it was particularly evident in the Pacific Division.
- 6.41 Ms Thompson told us that facilitation meant a customer-service approach that tried to help the public identify which particular policy had requirements they might meet, rather than simply telling them they did not meet the policy requirements. Facilitation was described to us as being helpful rather than obstructive. Ms Thompson also said that internal communications were clear that the facilitation approach was to be based on lawfulness and integrity – it was not about favouritism, and it was not about breaking the law.
- 6.42 It was clear from our interviews and reviews of files that the Pacific Division placed a great deal of emphasis on communicating and helping people to apply and meet immigration policy. It was seen as a tangible way in which the Department could demonstrate to Pacific governments and communities that it was addressing their concerns about immigration. Some examples of facilitative activity were:
- providing advice and settlement information to migrants under the Samoan quota scheme and the Pacific Access Category quota scheme;

⁹ We were told that the notion of “facilitation” was first introduced to Immigration New Zealand in 2002, for dealing with applications for the skilled migrant scheme of the New Zealand Residence Programme.

- holding community meetings to give information to Pacific communities about the new residual places policies; and
- building relationships with employers to help people successful in the Samoan quota and Pacific Access Category quota ballot¹⁰ find jobs.

6.43 The facilitation approach helped to fill the quotas. However, the approach was sometimes interpreted by Immigration Officers too broadly. For example:

- An Immigration Officer who was presented with evidence that a job offer was fraudulent allowed the applicant to resubmit another job offer, without adequately considering what the initial fraudulent job offer indicated about the applicant's character (another policy requirement).
- An application was being considered for a long time and the Pacific Division was "facilitative" on many aspects of the policy requirements – including the job offer, and acceptable standard of health and character. While the final decision was not technically outside policy, we did not see a similar approach being taken in other parts of Immigration New Zealand, meaning that Immigration New Zealand was inconsistent in its dealings with the public on immigration applications.

6.44 The 2006 post-establishment review of the Pacific Division found that there were risks, particularly in the Auckland branch, in the appropriate balance between facilitation and making visa and permit decisions. The review found that branch staff were "highly facilitative in their approach to filling the various Pacific quotas despite the fact that they are solely responsible for related decisions". Separating the two functions was considered best practice and desirable, and we agree with these views.

6.45 Immigration New Zealand did not act to mitigate the risks identified by the post-establishment review. In our view, Immigration New Zealand did not recognise the full extent of the risks involved in the facilitation approach, and did not provide staff with adequate guidance and training about using the approach. As a result, the risks were not adequately managed.

Quality of visa and permit decisions made in the Pacific Division

6.46 There have been various reviews of the Pacific Division in its short life. The nature of these reviews is summarised in Figure 19.

¹⁰ See paragraph 6.68 for a description of how the ballot system operates.

Figure 19
Various reviews of the Pacific Division commissioned by the Department

2005 internal review

An internal review was carried out in mid-2005, to determine the nature and scope of Immigration New Zealand's presence and service in the Pacific. The review recommended two phases of changes. Phase one of the changes was implemented from January 2006, and centralised residence decisions for the Pacific region in the Manukau branch. The branch was made permanent and increased its staff numbers. Other changes included sending New Zealand staff to offshore branches to support branch managers, using a regional verification and liaison officer to enhance border security, and the enhancement of functions in offshore branches (such as community outreach and employer engagement). Phase two of the changes was never implemented because of funding constraints.

2006 post-establishment external review

An external consultant carried out a post-establishment review of the Pacific Division in October 2006. The review looked at, among other aspects, the purpose of the Pacific Division, the funding for activities (existing and planned) and the processes for customer services and ensuring the quality and consistency of decision-making. Various areas for improvement were identified, including the need to more precisely define the role, responsibilities, and desired outcomes of the Pacific Division, and to balance the risk between facilitation and decision-making.

2008 external review

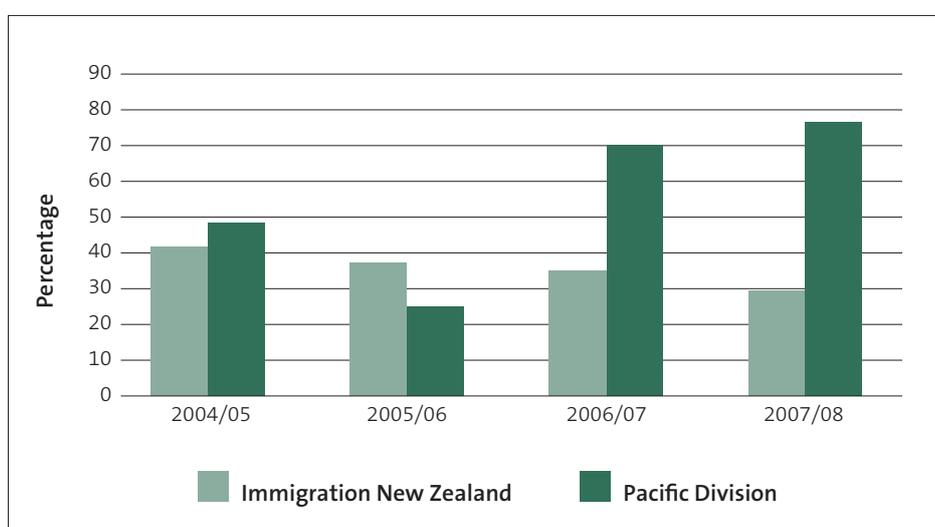
An external review, commissioned in February 2008, occurred in two phases. The first phase established the terms of reference and was completed in July 2008. The second phase reviewed the operation and structure of the Pacific Division. The final report on the second phase was completed in December 2008. The review made several non-structural recommendations covering strategic and operational matters. It also recommended that the Department should, in the long term, consider the organisational structure that would best deliver Pacific immigration services, and presented options for structural change.

- 6.47 There were some concerns being identified as early as January 2006 about aspects of the visa and permit decisions made in the Pacific Division. The 2005 internal review (completed in 2006) of the Pacific Division identified “concern about processing and decision-making carried out in overseas locations by locally engaged staff who may not have a strong and informed appreciation of New Zealand’s interests”. These concerns would have pre-dated the establishment of the Pacific Division because the overseas locations became part of the Pacific Division only in mid-2005. Changes were made after this review, as described in Figure 19.
- 6.48 The 2006 post-establishment external review commented on the verification practices in the Pacific Division. It found that:
- the requirement that applicants under the Samoan quota scheme, and Pacific Access Category quota scheme, and residual places policies, have a minimum level of earnings led to significant risks with fraudulent job offers; and

- the absence of sufficiently qualified verification officers (1.5 full-time equivalent staff in the Pacific Division's Manukau branch, managing a workload of 160 files at that time) was cause for concern.
- 6.49 There were no additional verification officers in the Pacific Division's Manukau branch when we carried out our fieldwork in late 2008.
- 6.50 The external review of the Pacific Division in 2008 found that the withdrawal of the Central Verification Unit's services in 2005/06 (because it was not funded for Pacific Division activity) had a significant effect on workloads and quality.
- 6.51 In May 2007, a meeting of senior managers of the Pacific Division acknowledged that there had been a pattern of errors or omissions in practices, identified from complaints to the Deputy Secretary (Workforce), and that there was a need to improve systems, processes, tools, and skills in the Pacific Division.
- 6.52 In July 2007, the Residence Review Board¹¹ provided Immigration New Zealand with an analysis of residence applications decided by the Pacific Division's Manukau branch that had been appealed to the Board in the six-month period from 1 January to 30 June 2007. This report showed that 74% of the appealed decisions had been reversed or sent back to the Pacific Division for reconsideration because the assessment was incorrect. This compared unfavourably with the overall Immigration New Zealand figure (which included the Pacific Division) of 30%. Common errors included a failure to put potentially prejudicial information to applicants, or flaws in the way in which they were put, and inadequate reasons provided for the decision to decline residence.
- 6.53 The Residence Review Board report confirmed that urgent action was needed to remedy systemic errors. Immigration New Zealand's response to the Residence Review Board analysis noted that one of the reasons for the errors was the challenging transition to having all residence decision-making moved onshore to the Manukau branch from 1 January 2006.
- 6.54 Figure 20 shows some statistics of the Residence Review Board decisions for Immigration New Zealand and the Pacific Division for the four years ending 2007/08. It shows that an extremely high proportion of Pacific Division decisions appealed to the Residence Review Board were incorrect in 2006/07 and 2007/08, compared to Immigration New Zealand as a whole.

11 The Residence Review Board is an independent judicial appeal body established under the Immigration Act 1987 that hears appeals by unsuccessful applicants for New Zealand residence visas or permits.

Figure 20
Decisions reversed or sent back to Immigration New Zealand or the Pacific Division by the Residence Review Board, as a percentage of the residence decisions appealed to the Residence Review Board



- 6.55 An August 2007 internal audit report of the Pacific Division’s Manukau branch found “overall systems, procedures and controls at the branch were operating inconsistently” and the “documentation and disclosure of decision making was inadequate in many of the applications” reviewed. The review also raised concerns about verification, timeliness of decision-making, and poor workflow management.
- 6.56 The Deputy Secretary (Legal) also reviewed particular complaints in late 2007 and found serious systemic deficiencies such as inconsistent and low-quality decision-making, a lack of adequate supervision and quality control, and a lack of training.
- 6.57 A Pacific Quality Training programme was delivered in the Pacific Division branches between May and July 2008.¹² The programme was aimed at addressing the skill and procedural shortcomings identified in how visa and permit decisions were made. Staff in the branches we visited told us that this training was long overdue and welcomed. Many staff expressed the view that they now understood what they had to do and felt better equipped to do their job.

Our review of visa and permit decisions

- 6.58 The overall results of our review of visa and permit decisions (across all the branches that we visited) are discussed in Part 5. The Pacific Division had a much higher proportion of decisions (compared to Service Delivery branches) that we

¹² A small amount of training was provided in the Pacific Division from late 2007. It identified the need for further training, and led to the Pacific Quality Training initiative.

categorised as questionable or poor, compared to the Service Delivery branches.¹³ We found:

- inadequate verification;
- a failure to put potentially prejudicial information to applicants;
- a lack of clarity about how core policy requirements, such as the eligibility or health of applicants, was assessed (in some cases, it was difficult to understand how these requirements were met given the information on files); and
- a greater than acceptable level of inconsistency between Immigration Officers in how applications were assessed and documented.

6.59 There were many early indicators of concern about how visa and permit decisions were made in the Pacific Division. We would have expected action much earlier to address the concerns.

6.60 We acknowledge that we reviewed decisions made in the two-year period ending 30 June 2008. Therefore, it was too early for us to assess what effect the Pacific Quality Training programme might have had.

Implementing the residual places policies

The residual places policies were poorly implemented. There was inadequate planning and resources for the implementation, which led to disorganised systems for processing applications. An oversight in the policy led to lengthy delays for some applicants in gaining residence. Guidance for staff on how section 35A processes related to the residual places policies was late and unclear, which meant that people were likely to have been given inconsistent information. Some decisions were made that seemed to contradict the intent of the residual places policies.

6.61 Implementing the residual places policies was a significant focus for the newly established Pacific Division. The residual places policies, however, were not prepared by the Pacific Division. The SSC noted in an investigation it completed into Immigration New Zealand in 2008 (discussed in Part 7) that it had difficulty establishing simple facts about how the residual places policies were administered, and that there was much confusion among staff about how the policies were intended to apply in practice.¹⁴ Some of the submissions we received from members of the public when we started our inquiry also raised concerns about the residual places policies. For these reasons, we decided to examine in detail how these policies were implemented.

¹³ We examined both temporary entry and permanent residence decisions. Permit categories we examined included the residual places policies and decisions made under section 35A of the Immigration Act. We did not examine decisions made under the Recognised Seasonal Employer scheme.

¹⁴ State Services Commission (2008), *Investigation of the Handling by the Department of Labour of Immigration Matters Involving Family Members of the Head of the New Zealand Immigration Service*, State Services Commission, Wellington, Appendix J.

Background

- 6.62 In 2004, the Government asked the Department to review the operation of the Samoan quota and Pacific Access Category quota schemes, after the quotas were not filled in previous years. The review resulted in the creation of the residual places policies, allowing some places to be filled from within New Zealand by citizens of the Independent State of Samoa or Pacific Access Category countries who were lawfully in New Zealand and had a job offer. The Residual Quota Places Policy for Samoan citizens and the Residual Pacific Access Category Places Policy for citizens from the Pacific Access Category countries came into effect on 15 November 2004 and became part of the official government policy for residence in New Zealand. The specific intent of the residual places policies was to make sure that the Samoan quota and Pacific Access Category quota were full.
- 6.63 Initially, there were 1297 residence places available for the Residual Quota Places Policy for Samoan citizens and 684 for Residual Pacific Access Category Places Policy for citizens from the Pacific Access Category countries.¹⁵ Applications had to be submitted between 1 December 2004 and 31 January 2005. The deadline for applications was later extended to 31 March 2005.
- 6.64 The Pacific Division promoted the residual places policies extensively to Pacific communities in New Zealand. The Pacific Division held several community meetings in major cities, particularly Auckland, and had regular advertising slots on Pacific radio networks. Senior managers, including Ms Thompson, attended some of these meetings.
- 6.65 The Palmerston North Service Delivery branch was responsible for processing the first 370 applications received. It stopped processing applications after 30 June 2005. The Pacific Division's Manukau branch was responsible for processing the remaining applications when it was established in January 2005. We examined the systems in place for the applications processed by the Pacific Division's Manukau branch, because this was the area in which concerns were raised.
- 6.66 The critical requirements of the residual places policies were that applicants were lawfully in New Zealand at the time of their application for residence, and had an acceptable offer of employment (or had a partner who had an acceptable offer of employment). The health (medical certificate) and character (police checks) requirements did not have to be submitted at the time of the application.
- 6.67 The residual places policies stated that "applications that are lodged in the prescribed manner (that meet all mandatory lodgement requirements) will be processed in the order in which they have been received".

¹⁵ There was some uncertainty at the time about the numbers of places available under the residual places policies, because the numbers depended on the results of the 2004 ballot process for the Samoan quota scheme and Pacific Access Category quota scheme.

- 6.68 A ballot system is used for the Samoan quota and Pacific Access Category quota schemes. Registration is required, and if a registrant is successful in the ballot then they are invited to apply for residence. The ballot system is used to manage the fairness and equity for each registrant and also to enable the Department to manage the numbers of applications. We were told that a ballot system was not used for the residual places policies because of the longer timeframes involved in a ballot system.

Implications of the lack of a lapsing provision

- 6.69 The residual places policies did not have a lapsing or declining provision. In other words, applications could not be turned down because there were no places available. Both policies said:

If more applications are received than there are places to fill, the additional applications will be accepted and processed first if there are further places to fill.

- 6.70 There was considerable interest in Pacific communities about the residual places policies and the Department's communication campaign was very successful. Because of this, the number of applicants greatly exceeded the initial number of places available under the Pacific Access Category residual places policy (see Figure 21).

Figure 21
Residual places policies: total applicants and applicants who met policy requirements, compared to places initially available

	Total applicants*	Number of residual places available (A)	Applicants who met residual places policy requirements (B)	(Shortfall of places available) / Places left over (A – B)
Pacific Access Category quota	3471	684	2418	(1734)
Samoan quota	1320	1297	1034	263
Total	4791	1981	3452	(1471)

* For applications submitted between 1 December 2004 and 31 March 2005.

- 6.71 Because the places in the Pacific Access Category residual places policy were over-subscribed, the Government approved a further 1800 places under the Pacific Access Category residual places policy during the three-year period from 1 July 2005 to 30 June 2008.

- 6.72 We were told that the lack of a lapsing provision in each residual places policy was an oversight. That oversight was corrected in November 2005, well after the application closing date of 31 March 2005. It is unclear why the deadline for applications was extended for both policies from the original end date of 31 January 2005 to 31 March 2005.¹⁶ Before the extension, it was evident that demand for places was high.
- 6.73 Because of the lack of a lapsing provision, a large number of applicants have had to wait a number of years to gain residence, even though their applications met the policy requirements. In the meantime, they have had to apply to have their temporary permits renewed (sometimes more than once). Also, applications under residual places policies have not been opened since March 2005 because of the need to first deal with the backlog of applications.
- 6.74 This has been an unsatisfactory situation for the Department, applicants, and would-be applicants. We make no comment on the residual places policies but, in our view, this situation is a reminder of the need for policy to be carefully prepared, so there are no unintended consequences that can adversely affect people and public resources.

Some Cabinet decisions were not certified as Government policy for residence

- 6.75 The Act requires Government policy for residence (Government Residence Policy, or GRP) to be in writing and certified by the Minister of Immigration. Decisions made by Cabinet have to be certified before they become GRP.
- 6.76 After an internal review of Pacific residence policies in 2008, Immigration New Zealand found five instances where Cabinet decisions transferring or re-allocating residence places under the Samoan quota and Pacific Access Category quota and their respective residual places policies had not been certified as GRP.
- 6.77 This oversight affected two groups of people – those already granted residence permits outside the GRP, and those applicants whose applications had been put on hold until further residence places became available.
- 6.78 Action has been taken to ensure that the affected applicants are not disadvantaged by the departmental oversight.
- 6.79 We are pleased that Immigration New Zealand has made changes to its systems and processes to ensure that all Cabinet decisions involving changes to GRP receive the appropriate certification.

¹⁶ The time limit was not specified in Cabinet papers or Government residence policy. It was specified in Internal Administration Circulars, which have the status of an instruction to Immigration Officers. No Immigration Officer had the authority to accept applications received after the closing date.

Recommendation 17

We recommend that the Department of Labour embed the changes it has made to the systems and processes for certification of amendments to Government Residence Policy, and regularly confirm that certifications are complete.

Systems for processing residual places applications were inadequate

- 6.80 When responsibility for processing applications under the residual places policies was transferred to the Pacific Division in January 2005, the Pacific Division:
- did not have any implementation plans in place setting out how it would carry out its new responsibility;
 - did not have adequate processes in place to deal with applications;
 - had insufficient resources, both staff and physical; and
 - had not received any particular training to ensure that staff knew what to do, and to ensure that the policies would be consistently interpreted.
- 6.81 Staff involved with processing these applications described the situation as chaotic.
- 6.82 Each policy required the applications to be processed “in the order in which they were received”. Staff told us that they tried to process applications in date order as best they could. However, they were not always able to do so:
- Applications were not always date-stamped when they were received. Some applications were sent to another Immigration New Zealand branch without being date-stamped, and were then forwarded in bulk to the Pacific Division. Staff had to look at parts of the application (such as the date of signing) to see if they could reasonably approximate the date of receipt.
 - Applicants were not required to submit health and character documentation with their application, but were asked to do so at a later stage. It took longer to get these documents for some applicants, so staff had to put the processing of such applications on hold and move onto the next application. From a workflow management perspective, this was clearly necessary. However, there was confusion among staff about how the policy was to be interpreted – did “processed in the order in which they have been received” mean fully processing until the application was decided, or did it just mean lodging the application?
 - Until the end of June 2005, the Palmerston North branch was processing applications at the same time as the Pacific Division. This added further complication to the processing, and in identifying when the residual places were filled.

- 6.83 Immigration New Zealand had an obligation to put basic processing controls in place to ensure that these applications were processed in keeping with government policy. It failed to do so.
- 6.84 We cannot give any assurance that residual places policy applications were processed in the order in which they were received. However, because of the lack of a lapsing provision in each policy, it is unlikely that applicants would have been improperly denied residence. At worst, they would have had to wait until further places became available before gaining residence. It is hard to be definite about the numbers of applicants who may have been affected in this manner because of the poor systems in place.
- 6.85 We note that the Department's internal audit group did some work to provide assurance that the closing date for the residual places policies was implemented correctly. This audit identified the decisions involving Ms Thompson's relatives, discussed in Part 7.

Section 35A decisions and the residual places policies

- 6.86 In Part 5, we described Immigration New Zealand's ability to grant permits of any type under section 35A of the Act to restore lawful immigration status to individuals in certain circumstances.
- 6.87 The Pacific Division had widely promoted the residual places policies to Pacific communities in New Zealand. Staff told us that it was evident from an early stage that people unlawfully in New Zealand became interested in whether the residual places policies provided an opportunity to rectify their unlawful status. This increased the interest in the policies.
- 6.88 Immigration New Zealand had not anticipated the interest in the residual places policies from people unlawfully in New Zealand. There was no policy guidance in place before the residual places policies were introduced on how to deal with section 35A requests from people wanting to apply for a residual place.
- 6.89 We were told that senior managers presenting at the community meetings encouraged people unlawfully in New Zealand to come forward to rectify their status. Although the residual places policies were not meant to be an opportunity for those unlawfully in the country to change their status, it was clear that many people in the community perceived it this way.

- 6.90 On 1 March 2005, a guideline entitled *Section 35A Customised Service Process* was issued to the Immigration New Zealand senior management team, service managers, and the Pacific Division to provide some guidance. The guideline noted that the aim was to:
- encourage genuinely well-settled people who may be unlawfully in New Zealand to come forward (with an outcome of reducing the “deep seated overstayer situation”); and
 - ensure that the integrity of section 35A requirements and procedures as set out in the internal administration circular was preserved.
- 6.91 The guideline went on to note that:
- The instruction was not to be misconstrued as providing a “defacto [sic] source of candidates” for the quotas. The facilitative approach was not to be seen as a way of bypassing the Government’s decision that only people lawfully in New Zealand were eligible for the quotas and the residual places policies.
 - The Pacific Division would act as advisors to delegated officers by conveying insights on individual cases and linking with Pacific communities.
 - Clients had to demonstrate genuine commitment to lodging a section 35A request – if they did they would be allowed a two-month grace period to prepare their section 35A submission.
- 6.92 A further memorandum was issued on 24 May 2005 to provide more guidance and to ensure consistency in the application of section 35A. It was issued to answer questions that had arisen since the 1 March guideline. This memorandum – intended to guide staff in making their decisions – stated that:
- The applicant did not need to indicate they wanted to apply for residence nor should they otherwise expect to qualify for residence in deciding to grant a section 35A permit. The residence policy under which the applicant would be expected to apply did not have to be open.*
- 6.93 The Office of the Ombudsmen received a number of complaints about how section 35A requests were considered by the Pacific Division when the residual places policies were involved. The Ombudsmen noted that a common theme in the complaints was a lack of understanding or certainty among complainants about the relationship between the section 35A processes and the residual places policies. Complainants had gained the impression that there were inconsistencies in Immigration New Zealand’s decision-making.
- 6.94 Based on our discussions with staff and review of the relevant guidance documentation, we can understand why people dealing with the Pacific Division formed this view. We expected guidance to have been prepared at an early stage

to ensure that clear messages were given to staff and to the people making section 35A requests about how section 35A processes related to the residual places policies. Although guidance was developed later, it did not resolve the uncertainties.

- 6.95 During the period that the residual places policies were open, the Pacific Division received many requests for permits under section 35A. About 322¹⁷ temporary permits were granted under section 35A to allow 812 people to test their eligibility under the residual places policies. About 642 of the 812 people obtained residence. This represents about 19% of all the applicants who met policy requirements and obtained residence.
- 6.96 A staff member told us that priority was given to section 35A requests because of the deadline for the residual places policies. One staff member told us that they spent “three minutes” on each request during this peak time. We had concerns about some section 35A decisions we examined. Figure 22 summarises one particularly problematic example. The example highlights problems both in the section 35A temporary permit decision and the subsequent residence decision.

Figure 22

Example of a problematic section 35A and residual places policy decision

A person had been in New Zealand unlawfully for about eight years. Two previous requests to the Associate Minister of Immigration to intervene and grant residence had been declined. A section 35A request was declined on 22 March 2005. A second section 35A request was accepted and the person was granted a temporary work permit on 29 March 2005.

The notes in the AMS show that the decision-maker knew that previous Ministerial requests had been declined but decided that the applicant was well settled, had a genuine job offer, and was likely to qualify under the residual places policy.

The person applied for residence under the applicable residual places policy on 30 March 2005. While the residence application was being considered the person was convicted on two counts of serious assault and one count of drink-driving. The person had also had two earlier convictions for drink-driving when not on a lawful permit. These convictions were not identified as part of the section 35A work permit decision, which requires the decision-maker to consider the applicant's character.

The decision-maker approved a character waiver to the residence application and granted a residence permit on 12 December 2006. The reasons given for the character waiver were the person's clean police record in their home country, completion of reparation and community work hours and an anger management course, the job being on the skills shortage list, and the person being well settled. Letters of support were received from the family, employer, and community leaders.

While the decision-maker had the delegation to approve the character waiver and make the decisions, we had significant concerns with both decisions because it was hard to understand how the decision could be reached given the information on the files. This case also illustrates how different judgements can be reached by different decision-makers.

17 We cannot be exact about the numbers because section 35A requests are not directly linked in the AMS system to the later residual places policy application. We have estimated the numbers by identifying how many requests for section 35A decisions were made within two months of a residual places policy application.

- 6.97 We were also told that there were tensions in Immigration New Zealand about what was seen as the Pacific Division's facilitative approach to section 35A requests and how other branches approached the same requests. This added to the misunderstanding about the role and mandate of the Pacific Division and may have added to the Pacific Division's isolation from the rest of Immigration New Zealand.
- 6.98 The policy guidance was clear that section 35A requests were not to be used to bypass the residual places policies' requirement for applicants to be lawfully in New Zealand. However, the end result was that many people unlawfully in New Zealand were granted residence under the residual places policies by first restoring their lawful status through section 35A. This outcome seems to contradict the intent of the residual places policies.
- 6.99 We have no comment on the residual places policies, but we consider that inadequate thought was given to the practical matters that would arise when they were implemented, which would need policy guidance. The Pacific Division was not adequately prepared to deal with section 35A requests in a consistent and effective manner that met the intent of the residual places policies.

Recommendation 18

We recommend that the Department of Labour identify the lessons learned from the matters of concern that we have identified in the development, promulgation, and implementation of the residual places policies, consider what changes need to be made to systems, processes, and practices, and implement the necessary changes.

Overall conclusions

- 6.100 We have found many leadership, management, and decision-making issues that have severely affected the operation of the Pacific Division since it was established in 2005. The lack of any proper planning for setting up the Pacific Division meant that staff in the Manukau branch in particular had to cope with the difficult and challenging task of implementing new residual places policies without adequate planning, resources, guidance, or support.
- 6.101 Many of these concerns were identified in internal audit reports or other reviews of the Pacific Division and were known to the management of the Department. It was clear that there was a level of concern about the Pacific Division's performance among the wider Department and these concerns were brought to the attention of the former Deputy Secretary (Workforce) and the chief executive. However, we consider that the cumulative picture of concern that was building

was not recognised and dealt with early enough. While there were some attempts by the Department to take action and ensure that the managers were held to account for changes needed, it was not sufficient or effective. We acknowledge that some action has been taken recently by the Department to remedy some of these issues, such as the lack of training.

- 6.102 It is important to note that the Pacific Division did achieve some of the outcomes it was seeking to achieve, in particular meeting targets for the Samoan quota and the Pacific Access Category quota schemes. The external review of the Pacific Division in 2008 also found that the Pacific Division had helped improve external stakeholder relationships, and played a significant role in developing and implementing the Recognised Seasonal Employer scheme.
- 6.103 The chief executive is considering the options for change in the Pacific Division now that the review he commissioned in 2008 is complete.

Part 7

Handling of visa and permit applications from relatives of Mary Anne Thompson

- 7.1 As discussed in Part 3, Immigration New Zealand staff generally act with integrity and probity when making visa and permit decisions. However, sometimes there are – perhaps inevitably in a large organisation – exceptions to this. When the exception involves a senior manager, the consequences for the organisation are more serious.
- 7.2 One of the significant public concerns that led to our inquiry related to allegations of improper handling of visa and residence applications for relatives of Ms Thompson while she was Deputy Secretary (Workforce) in charge of Immigration New Zealand.
- 7.3 In this Part, we discuss:
- the visa and residence applications and related investigations;
 - the results of the SSC’s investigation;
 - our observations;
 - what the SSC knew about these matters before it investigated; and
 - what the responsible Ministers knew about these matters.
- 7.4 During our inquiry, it was clear that stories had circulated within Immigration New Zealand about the involvement of a senior manager in decisions affecting their family members. Some of these visa and permit decisions became well known in parts of Immigration New Zealand, including in offshore branches.
- 7.5 Gossip and rumour about the integrity of a senior manager can be damaging to the culture and morale of an organisation. Although a few staff members raised this issue as a matter of concern, the fact that other people appeared to know something of the incidents but took no action also shows a disappointingly low level of knowledge of, or confidence in, Immigration New Zealand’s processes for raising concerns.

The visa and permit applications and related investigations

Relatives of Ms Thompson received visa waivers and residence permits that were not consistent with policy requirements, leading to some concerns about Ms Thompson’s involvement.

- 7.6 The visa waivers and residence permit applications that caused concern involved members of Ms Thompson’s Kiribati family. We describe briefly what took place because it is important to the rest of this Part of our report. The circumstances are discussed in detail in the SSC’s investigation report.

Visa waivers

- 7.7 In 2004 and 2005, some of Ms Thompson's relatives travelled to New Zealand. Ms Thompson helped them with their applications. In some instances, this assistance involved email discussions with relevant Immigration New Zealand staff, which resulted in the applicants being granted waivers from the usual requirements that they obtain visas for their travel. The decisions to grant the visa waivers were made by other staff, and did not comply with Immigration New Zealand's policy.
- 7.8 Dr Buwalda, the chief executive at that time, became aware of some of these visa waivers in 2005, and spoke with Ms Thompson about her involvement. We discuss this in more detail later in this Part.

Residence permits

- 7.9 Three residence permits were granted to relatives of Ms Thompson in March 2006 under the residual places policy for the Pacific Access Category quota scheme.

Internal audit report

- 7.10 Internal audit staff identified concerns with some visa and permit applications for relatives of Ms Thompson. It was brought to the attention of the audit staff by a manager in the Pacific Division during a branch review early in 2007.
- 7.11 The concerns were brought to Dr Buwalda's attention, and he asked for further investigation into these applications. The resulting internal audit report (described as a "preliminary background investigation", dated March 2007) identified a number of issues and inconsistencies with these applications, including instances where requirements were waived or policies breached. The report recommended that an urgent meeting of the Department's audit committee be called to help the chief executive in handling this matter, and that the chief executive commission a further independent investigation into it.

Involving the audit committee

- 7.12 The role of an audit committee is to provide the chief executive with independent advice on strategic, performance, assurance, and compliance matters.¹ At that time in 2007, the Department's audit committee comprised two independent members (one of whom chaired the committee), the chief executive, and two Deputy Secretaries. Dr Buwalda told us that he did not formally refer the matter to the audit committee because the report involved a senior manager, and two members of the committee were her peers. Instead, he discussed the issues

¹ Audit committees have a valuable contribution to make in improving the governance, and so the performance and accountability, of public entities. We discuss the role of audit committees in our 2008 publication, *Audit committees in the public sector*.

separately with the two independent members and sought their advice on the approach he should take for an independent investigation.

- 7.13 This meant that there was no formal consideration by the audit committee of the internal audit report into the visa and permit applications, and the committee was not aware of all of the issues highlighted by the report.
- 7.14 In our view, to achieve the benefits associated with audit committee independence, most of the audit committee members for entities should be external appointments. We are pleased that the Department's audit committee now comprises two independent members (one of whom is the chairperson) and the Deputy Secretary (Legal). The audit committee should consider the process it will use for appropriately handling sensitive issues.

Recommendation 19

We recommend that the Department of Labour consider how sensitive issues can be appropriately handled by the audit committee.

Mr Oughton's investigation

- 7.15 Dr Buwalda initiated an external investigation into the lawfulness and policy compliance of the residence decisions for Ms Thompson's relatives, who was responsible for making them, and whether there were any irregularities in the decision-making process. This investigation was carried out in 2007 by Mr Oughton. Mr Oughton did not comment on the lawfulness of the decisions, but concluded that the applications did not qualify under the Department's current policies. It became an employment matter once Mr Oughton had looked into it further, and one staff member in the Pacific Division was found to have acted inappropriately in issuing the permits.
- 7.16 Ms Thompson signed the application forms for the permits to acknowledge her assistance in completing the forms, which is necessary and required by the form when someone assists an applicant in this way. She was not involved in the decision-making process.

The State Services Commission's investigation

The SSC found that Ms Thompson failed to appropriately manage the conflict of interest involving her relatives, and the Department was deficient in handling the visa and permit decisions and in responding to concerns raised internally.

- 7.17 The SSC investigated these visa and permit decisions because of public concern about the effectiveness of the Department's response. The SSC reported its

findings in October 2008.² The SSC's report comprehensively describes the visa and permit decisions, the actions of Ms Thompson and other relevant staff, and the Department's handling of the concerns.

- 7.18 We agree with the SSC's findings and conclusions. We reviewed a considerable amount of documentary evidence from the Department and the SSC, and we interviewed some of the same individuals as the SSC as part of our inquiry.
- 7.19 Although it is unnecessary for us to provide further detail about the circumstances of the investigated allegations, it is useful to summarise the SSC's comments about the way these applications were processed and the Department's handling of those concerns. These particular issues illustrate broader problems we also found throughout our inquiry.

The SSC's findings

- 7.20 The SSC found that Ms Thompson failed to appropriately manage the conflicts of interest relating to the applications involving her family. She did not advise the chief executive (as her manager) of any of the details of her involvement with her family's immigration applications.
- 7.21 The SSC found that the Department was deficient in the handling of these visa and permit decisions and in its response to concerns being raised.
- 7.22 The SSC found that the visa waivers and residence permits were granted in circumstances where they normally would not have been, but were lawful. There were two main problems with these decisions:
- Although Immigration Officers have discretion to grant visa waivers, they are normally only granted in special circumstances. There were no special circumstances in these cases, and the visa waivers were given simply for the convenience of Ms Thompson and her family.
 - A late application for residence was accepted and inappropriately processed ahead of other applications that had been received within time. This was contrary to policy, and the manager who made the decision rejected advice from staff about it. The SSC found that the manager was influenced by Ms Thompson's name on the application form when making that decision. The manager may also have been influenced by the Group Manager, Service International. Other senior staff also took an active interest in the processing of the application after Ms Thompson expressed a general concern about documents going missing and used these applications as an example. This caused significant anxiety for some frontline staff.

² State Services Commission (2008), *Investigation of the Handling by the Department of Labour of Immigration Matters Involving Family Members of the Head of the New Zealand Immigration Service*, State Services Commission, Wellington, and the *Comments of the State Services Commissioner in respect of report on NZ Immigration Service matters*, 3 October 2008 (see www.ssc.govt.nz).

- 7.23 The SSC found that the Department failed to effectively investigate the concerns raised about these visa and permit decisions. Concerns about some of the visa waivers were raised in 2005 with Dr Buwalda. He spoke to Ms Thompson informally, but Ms Thompson did not appreciate that the matter was serious. Dr Buwalda was not aware of the full extent of the waivers at the time, and he had received inadequate assurance about the appropriateness of the visa waivers from the Group Manager, Service International. The SSC found that the actions taken by Dr Buwalda were not effective in terms of clearly establishing what happened and in dealing with the conflict of interest.
- 7.24 The SSC accepted the reasoning for having Mr Oughton conduct a focused investigation, but said that there needed to be a plan for investigating the other issues identified in the internal audit report, which was not done.
- 7.25 When Mr Oughton's report was completed in July 2007, the new acting chief executive, Mr Fortune, was unaware of all the other matters that needed to be addressed. He responded to what he believed to be a single incident. One staff member was disciplined, and Ms Thompson was asked to progress some actions arising out of the investigation. This included developing more formal protocols to cover applications from people who have relatives or extended family members employed in the Department, to ensure the integrity of the Department's systems.
- 7.26 The SSC's investigation concluded that, overall, the Department did not deal with the issue in a timely or effective fashion until the end of 2007. Ineffective investigations meant Ms Thompson's actions were dealt with too informally and leniently in relation to her conduct. The SSC's report said:
- Staff who raised serious concerns did not see any significant response by the Department. The damaging lesson that staff could take away from this is that there is little or no point in raising concerns with management, as little will be done. I consider it is clear that doubt and loss of trust arising in the minds of the various [Immigration New Zealand] officers concerned was having significantly corrosive effects.*
- 7.27 Dr Buwalda acknowledged after the SSC investigation was released that, in hindsight, he should have more thoroughly investigated Ms Thompson's involvement in immigration matters about her family, and dealt with the matter more formally. Ms Thompson has also acknowledged an error of judgement in that she could have better handled the matter.
- 7.28 The State Services Commissioner (the Commissioner) notes in his report that the current chief executive, Mr Blake, began to take comprehensive action on several issues, including those identified in the SSC investigation, after joining the Department in October 2007. The Commissioner stated that Mr Blake's leadership gave him confidence that the issues identified would be successfully managed.

Our observations

The visa and permit decisions relating to Ms Thompson's relatives highlight wider issues we have discovered in this inquiry.

- 7.29 We discuss here some further observations about these incidents, drawing on our broader review of how visa and permit decisions are made.

Identifying and managing conflicts of interest

- 7.30 In our guidance publication about conflicts of interest,³ we comment that conflicts of interest are often natural and unavoidable. The existence of a conflict of interest does not necessarily mean that someone has done something wrong, and it need not cause problems. However, it needs to be identified and carefully managed to preserve the integrity and fairness of the decision-making process.
- 7.31 The matters discussed in this Part illustrate the importance of dealing with conflict of interest issues in an effective and transparent way. In this case, the fact that Ms Thompson had relatives who wanted to come to New Zealand need not have caused a problem. Her relatives should not have been given preferential treatment, but equally they should not have been improperly disadvantaged because of her position. Similarly, the fact that she personally helped them with their application forms and paid their fees was not in itself wrong, and doing so was not prohibited by departmental policy.
- 7.32 In our view, some of Ms Thompson's actions to help her relatives would have been quite legitimate if her conflict of interest had been properly disclosed and managed. She needed to tell her manager (the chief executive) precisely what she was planning to do, so that proper steps could be taken to ensure that the matter was handled fairly and that Ms Thompson, relevant staff, and the Department, were all protected. The risks here were particularly acute because of Ms Thompson's very senior position, which meant that frontline staff might feel pressured to act in her favour. Suitable steps to manage her situation might be different from those taken if a junior Immigration Officer was in a similar situation. But, in our view, the risks could still have been managed.
- 7.33 For example, appropriate steps in the case of the residence application might have included instructing Ms Thompson (and, if necessary, those staff close to her) not to communicate with staff processing the application. They might have included ensuring that the application was assigned to a suitably senior and experienced immigration officer, with instructions to process it in the same way as any other application and strictly in keeping with relevant policies. They might also have included requiring an extra level of review by a senior or independent person

3 Office of the Auditor-General (2007), *Managing conflicts of interest: Guidance for public entities*, Wellington.

who did not work in Ms Thompson's part of the Department, or by having the application checked by the chief executive.

- 7.34 In January 2005, Ms Thompson distributed a memo to immigration staff headed "Staff Disciplinary Issues", as a result of two instances of serious misconduct by staff that breached the Department's code of conduct. The memo discussed the question of whether staff can act as sponsors for applications from family members, stating that this was permissible, provided the person's manager had been previously informed so that the application could be processed by another office. Ms Thompson breached these instructions later in 2005.

The cumulative effect of Ms Thompson's actions

- 7.35 The cumulative nature of Ms Thompson's involvement in several immigration applications compounded the problems, because the result was a series of poorly handled decisions. Matters have also been made worse because the issues were not comprehensively addressed by the Department when her involvement first became clear in 2005.
- 7.36 Incidents were considered in isolation when there was a cumulative picture that needed to be considered. Regrettably, that did not happen until the SSC's investigation. Dr Buwalda told us that Mr Oughton's investigation was an essential step in this process, and the outcome would then assist him to determine what further action might have been needed. Dr Buwalda resigned before the investigation was complete.
- 7.37 The current chief executive, Mr Blake, became aware when he joined the Department that there had been some previous issues concerning applications for Ms Thompson's relatives. The Department received an official information request about these matters in December 2007, which prompted Mr Blake to read Mr Oughton's report. Mr Blake began to follow up with Ms Thompson on the outstanding issues.
- 7.38 We do not have any criticisms to make of Mr Blake about this matter. By the time he had arrived at the Department and become familiar with the issues, his options were limited. He was concerned about what he discovered and he actively considered whether he could reopen the matter, including seeking Crown Law advice. But he could not discipline Ms Thompson a second time for matters that had already been dealt with (such as the visa waivers that Dr Buwalda had spoken to her about), nor could he discipline her about a matter where the relevant inquiry had essentially cleared her.

7.39 What Mr Blake did do was seek certain assurances from Ms Thompson about her involvement, and follow up certain process improvements that she had been required to action following Mr Oughton's report. It is clear to us that he did so diligently. He took a close interest in the Department's handling of a series of detailed official information requests that had begun to arrive about the issues. He also began to examine the operations of the Pacific Division.⁴

Relevance to other matters we have investigated

- 7.40 The visa and permit decisions for Ms Thompson's relatives illustrate some of the wider problems we have seen in our inquiry, and which we discuss elsewhere in this report:
- They involved situations where some managers misunderstood the extent of their own authority to make visa and permit decisions, or made decisions that did not comply with policy. There was confusion about policy requirements in some cases.
 - They show that some managerial staff were not sufficiently alert to integrity risks that arise out of conflicts of interest, where well-meaning or facilitative actions can very easily lead to perceptions of preferential treatment or improper influence, and where more junior staff can feel obliged to deal with applications in a particular way against their better judgement.
 - They show that some managerial staff did not have sufficient concern for following proper processes, and were not mindful of the need to take greater care in cases where any integrity risks may exist.
 - It was clear that staff are sometimes unsure about how best to deal with their concerns, and their confidence in the Department can be seriously damaged when they feel managers are not interested in following proper process or that managers could be breaching the rules for their own benefit.

What the State Services Commission knew

The SSC's knowledge of integrity issues within Immigration New Zealand was limited. The SSC needs to look at what steps can be taken so that significant or sensitive issues are fully covered in briefings to incoming chief executives.

7.41 In this section we discuss the ongoing monitoring role of the SSC with the Department, separate from the investigation discussed in the preceding paragraphs, and what the SSC knew about the integrity issues within Immigration New Zealand.

4 This review is discussed in Part 6.

The State Services Commission's role

- 7.42 The SSC is one of three central agencies responsible for providing leadership, co-ordination, and monitoring throughout the public sector.⁵ It is the Government's lead advisor on public management systems, and works with government agencies to support the delivery of quality services to New Zealanders, and to ensure that the government operates effectively and efficiently.
- 7.43 The SSC's role is to support the Commissioner in discharging the Commissioner's statutory functions and responsibilities. These include:
- appointing and employing public service chief executives and reviewing their performance; and
 - investigating and reporting on departmental performance matters.
- 7.44 The Commissioner has other responsibilities that relate to the operation of the public service as a whole, the state services, or wider state sector. These include setting minimum standards of integrity and conduct.
- 7.45 We spoke with various individuals within the SSC who were responsible for the SSC's relationship with the Department during the period 2004 to 2007, and who liaised regularly with the chief executive and senior managers within the Department.

Knowledge of any integrity issues

- 7.46 The SSC appreciated that Immigration New Zealand was an area within the Department where integrity concerns were more likely to arise, because of the nature of the decisions it makes and because it has a large number of offshore staff operating in different cultural environments. However, no widespread integrity issues had come to the attention of the SSC through its regular meetings with senior management of the Department. This is consistent with our finding in Part 3.
- 7.47 Earlier in this Part, we discussed Mr Oughton's investigation into visa and permit decisions for relatives of Ms Thompson. Some details of the matter were provided to the SSC by the Department at this time.
- 7.48 Dr Buwalda, the then chief executive, informed the SSC in April 2007 that an issue had arisen about potentially illegal visa and permit decisions involving relatives of Ms Thompson and that he was setting up an investigation. The SSC understood that the review was not focused directly on Ms Thompson's actions and whether she had a conflict of interest, but on the legality of the visa and permit decisions and their compliance with policy. The investigation was not complete at the time of Dr Buwalda's resignation in May 2007.

⁵ The other central agencies are the Treasury and the Department of the Prime Minister and Cabinet.

- 7.49 The SSC was not provided with a copy of Mr Oughton's report when it was finalised, but staff were briefed on its findings. The former Commissioner's impression was that it was not a major issue, and that it did not raise integrity concerns about Ms Thompson.
- 7.50 The SSC was not aware of the visa waiver issues until late 2007 or early 2008 when they became the subject of official information requests to the Department. The SSC was not aware that the residence applications were part of a pattern of behaviour.
- 7.51 In our view, the SSC appropriately managed its interaction with the Department about Mr Oughton's investigation, based on the information the SSC had received. It will always be a matter of judgement for departments and their chief executives to decide which issues are significant enough to discuss with the SSC.
- 7.52 To the extent that the issues considered by Mr Oughton's investigation were employment matters, they remained the responsibility of the Department's chief executive. However, the SSC has a role in providing appropriate leadership and guidance to the chief executive if it is required.
- 7.53 It is important that issues the SSC is aware of, and that are relevant to its role, are followed up and resolved. In our view, this happened when the SSC followed up on Mr Oughton's report.
- 7.54 Although the SSC appreciated that making visa and permit decisions could heighten the risk of integrity issues, it was not clear that the SSC routinely asked questions of the Department about how it was handling integrity and conduct matters. The SSC may wish to consider its approach to such matters. For example, the Department's internal auditors produce regular statistics on incidents of misconduct within the Department. These do not appear to have been provided to, or requested by, the SSC.

Induction of chief executives

- 7.55 Before Mr Oughton's report was finalised, the chief executive resigned and a new acting chief executive was appointed by the Commissioner. We considered how handovers are generally handled for a new chief executive, because the change in chief executive at the Department meant a lack of continuity in dealing with a sensitive issue. This had a significant effect on how the issues were dealt with by the Department.

Handovers within the Department of Labour

- 7.56 When Dr Buwalda left the Department in May 2007, he had briefed the SSC about Mr Oughton's investigation. Part of Dr Buwalda's intention in doing so was that there would be continuity of information which could be used for the SSC's induction of the incoming chief executive, but he was not explicit about this with the SSC. Dr Buwalda mentioned Mr Oughton's investigation to the incoming acting chief executive, Mr Fortune, and said that the Deputy Secretary (Legal) was holding the file for him. Dr Buwalda did not brief Mr Fortune on the wider context of the visa waivers and the internal audit report. Nor was the SSC aware of this wider context.
- 7.57 More detailed briefings were usually provided to an incoming chief executive of the Department by each member of the senior management team (the Deputy Secretaries), about their areas of the organisation. However, because the issues about Ms Thompson concerned a member of the senior management team, they were being handled primarily by Dr Buwalda with assistance on some aspects from the Deputy Secretary (Legal). As the report involved a member of the senior management team, it was more difficult for the chief executive to fully brief another senior manager.
- 7.58 The Deputy Secretary (Legal) had some involvement with Mr Oughton's investigation, and he briefed Mr Fortune about the status of it. Another Deputy Secretary was also aware of the investigation, and raised it with Mr Fortune and Mr Blake.
- 7.59 Mr Fortune was not aware of the wider context of Mr Oughton's investigation. He told us that he did not come across any record or comment about the earlier visa waiver issues on Ms Thompson's personnel file, nor did he see the internal audit report.
- 7.60 When the current chief executive, Mr Blake, took over in October 2007, he was told by Mr Fortune about the general issues coming out of Mr Oughton's report. He did not become aware of all of the earlier visa waiver issues until he was briefed in early 2008 about responses to official information requests.

SSC's role in chief executive inductions

- 7.61 As the employer of department chief executives, the Commissioner is responsible for some of the induction process for new chief executives within the public service. This includes briefing the chief executive on the SSC's view of the department, introducing them to relevant people outside the department, and ensuring that they understand the sector in which they will be operating. The

extent of the SSC's involvement in an induction is tailored to the organisation and the individual being appointed, and may also depend in part on the individuals within the SSC.

- 7.62 The SSC's induction discussions with Mr Fortune included reference to Mr Oughton's investigation. It was identified as an issue that needed to be finalised and resolved by Mr Fortune before the new chief executive was appointed. The SSC told us that it commented to Mr Blake about following up on the outstanding action points that Mr Fortune had raised with Ms Thompson about Mr Oughton's report. Mr Blake does not recall this comment.
- 7.63 However, the main focus of the SSC's inductions for both Mr Fortune and Mr Blake was the wider organisational issues faced by the Department. We refer to some of these in Part 2.
- 7.64 Dr Buwalda told us that he did not recall receiving any explicit advice or suggestions from the SSC about its expectations for briefing his successor.
- 7.65 We expect the SSC to take a lead role in arranging an induction appropriate to the individual and the organisation. However, we acknowledge that the SSC can only help ensure continuity of significant or sensitive issues if it is aware of them. This will always be difficult with a sensitive matter, especially one involving a second-tier manager. It will also depend on the judgement of all those involved about whether it is necessary for the SSC or the new chief executive to be briefed about a particular issue.

Recommendation 20

We recommend that the State Services Commission take a more systematic approach to establishing how well departments are handling integrity and conduct matters. It should also consider what steps it could take to increase the likelihood that all significant and sensitive issues are covered in briefings to an incoming chief executive.

Handovers between SSC staff

- 7.66 We also considered how the SSC manages handovers of responsibilities between its staff. Between 2004 and 2007, there were several changes in staff responsible for the relationship between the SSC and the Department.
- 7.67 Generally, internal staff handovers involve a written briefing paper and a discussion, but this varies depending on the approach taken by the individuals involved. Sensitive matters being handled by the Commissioner are normally the subject of discussions between outgoing and incoming Commissioners. These issues would often not be documented.

- 7.68 We reviewed the content of the SSC's written and electronic files about the Department from 2003 to 2008. We had commented in a performance audit of the SSC in 2004 that, outside the chief executive performance review process, the SSC had few records describing the nature and extent of staff interactions with departments. We were concerned about this lack of documentation, and we suggested that the SSC should ensure that staff maintain records of all significant exchanges they have with departments.⁶
- 7.69 Despite our report, the SSC had few records of staff interactions with the Department. Different staff in the SSC had different practices for the sort of records they kept. We note that the SSC finalised, in September 2008, a policy on documentation requirements for meetings with chief executives and agencies. It requires staff to document material points from discussions with chief executives and agency staff, acknowledging that judgement is needed to decide whether an issue might become material and should be recorded. Compliance with this policy should improve record-keeping and enhance the handover of issues within SSC. We expect the SSC to monitor staff compliance with this policy.

What Ministers knew

Before 2008, Ministers were not informed of any particular integrity issues within the Department. They did not take inappropriate action and did not fail to act when they should have.

- 7.70 When some of these matters emerged in the public domain in 2008, questions were raised about whether Ministers had been aware of the issues and, if they were aware, what they did or should have done. We spoke to the individuals who held the posts of Minister of Immigration and Associate Minister of Immigration between 2002 and 2008.

The relationship between Ministers and their departments

- 7.71 The relationship between a department, and in particular its chief executive, and the responsible Minister can be complex and requires careful balancing.
- 7.72 The chief executive of a department is responsible to the appropriate Minister for several areas, including providing advice and the general conduct of the department.⁷ However, when making decisions about individual employees, the chief executive is not responsible to the appropriate Minister but must act

⁶ *The State Services Commission: Capability to recognise and address issues for Māori*, Wellington. An absence of formal records and poor information flows within the SSC was also commented on in the *Hunn report – Investigation into the public service recruitment and employment of Ms Madeleine Setchell, to the State Services Commissioner from D K Hunn*, Crown Law Office, dated 12 November 2007, at paragraph 23.1(d)(iv)(d).

⁷ Section 32, State Sector Act 1988.

independently.⁸ The Cabinet Manual notes that the duty of independence and the obligation to act as a good employer will usually mean it is inappropriate for a chief executive to involve the Minister in any staffing matter.⁹

7.73 However, these requirements may, in some instances, need to be balanced against the “no surprises” principle. This requires that chief executives should promptly inform Ministers of matters of significance within their portfolios, especially where those matters may be controversial or become the subject of public debate.¹⁰

7.74 The “no surprises” principle means that judgements must continually be made by chief executives and their officials about what Ministers ought to be told. Some matters, although significant, may properly be kept from a Minister. Employment issues will often fall into this category, except when the matter is likely to become the subject of public debate.

7.75 This tension was discussed by the former State Services Commissioner, Dr Prebble, in his inquiry report into the employment of Madeleine Setchell.¹¹ He said:

A Minister’s request that they have no surprises does not override the Chief Executive’s good employer responsibility to handle employment matters with discretion.

Requests by Ministers that they be kept informed on a “no surprises” basis cannot and do not mean that Chief Executives must inform Ministers of everything they do. Much of what Chief Executives do is not the business of Ministers and both efficiency and propriety dictate that such matters should not be brought to Ministers. Chief Executives should keep Ministers informed of anything with significance within their portfolio responsibilities, but there should be good and particular reason why the Chief Executive would bring matters that are the Chief Executive’s statutory responsibility to the attention of Ministers.

Knowledge of investigations

7.76 Successive Ministers of Immigration were aware from briefings by the Department’s chief executive at various points from April 2007 onwards that an issue had arisen about visa and permit applications from Ms Thompson’s Kiribati relatives. Briefings were provided to Ministers in general terms about the commissioning of Mr Oughton’s investigation, and again at its conclusion. The briefings were for their information only and based on the “no surprises” principle.

8 Section 33, State Sector Act 1988.

9 Department of the Prime Minister and Cabinet (2008), *The Cabinet Manual*, Wellington, paragraph 3.26.

10 Department of the Prime Minister and Cabinet (2008), *The Cabinet Manual*, Wellington, paragraph 3.16.

11 State Services Commission (November 2007), *Report on the Public Service recruitment and employment of Ms Madeleine Setchell*, Wellington.

Ministers did not know about the issues in any depth, and they were not given the investigation reports.

- 7.77 Some Ministers expressed disappointment at the way the Department dealt with the matters at the relevant times, and they felt that the issues may not have been adequately addressed when they arose. However, they understood that Mr Fortune and Mr Blake had limited knowledge at relevant times and had not identified the full extent of the issues. Another chief executive might have chosen to share Mr Oughton's report with their Minister but, in our view, it was a judgement decision about an operational matter that could have been made either way.
- 7.78 In this particular case, the operational matters discussed in Mr Oughton's report were complicated by the employment dimension to the findings.
- 7.79 Ministers would not normally be informed about an employment issue unless there was a decision or action taken by the chief executive that was likely to attract public comment or be relevant to Ministers. It might be appropriate to inform the Minister if the matter was likely to affect day-to-day operations between the department and the Minister. This could involve providing a "for your information" briefing to the Minister.
- 7.80 The Ministers were extremely careful to distance themselves from the matter, and they did not ask for copies of the investigation reports. They took careful note of the limits on their role under the State Sector Act, given the contemporary Setchell and Curran¹² matters. They were careful to avoid any perception of improper interference on their part.
- 7.81 Based on the information provided to them, Ministers did not take inappropriate action and they did not fail to take action when they should have. Ministers were generally aware of the boundaries of their roles, especially with employment matters.

12 See *Investigation into the Engagement of Clare Curran by the Ministry for the Environment – Report to the State Services Commissioner*, 19 December 2007, and the *Commissioner's conclusions in respect of the Clare Curran investigation*, 20 December 2007 (www.ssc.govt.nz).

Appendix

Terms of reference for the inquiry

Inquiry into matters arising out of Immigration New Zealand

4 June 2008

The Controller and Auditor-General has decided to carry out an audit and inquiry (the inquiry) into a range of integrity concerns arising out of Immigration New Zealand (which is part of the Department of Labour). These terms of reference set out the nature and scope of the inquiry.

The inquiry is being carried out at the request of the Prime Minister and the Minister of Immigration. That request was in response to various concerns and allegations that have been discussed in the public domain recently. Some issues relate to the operations of Immigration New Zealand's Pacific Division, and incidents involving certain senior personnel. Some issues relate particularly to the conduct of Mary Anne Thompson, the former Deputy Secretary (Workforce). Some issues relate to how the concerns have been previously handled by others, including chief executives of the Department of Labour, the State Services Commissioner, and Ministers.

The inquiry will examine the following matters:

- the integrity and probity of immigration decision-making systems, processes, and practices within Immigration New Zealand, especially within its Pacific Division, including whether such practices generally comply with relevant law, policies, procedures, and public sector ethical standards;
- particular situations that raise concerns about the integrity of senior immigration staff;
- public service recruitment processes about Mary Anne Thompson;
- the awareness and management of concerns about integrity issues at Immigration New Zealand (including about Mary Anne Thompson) by:
 - the Department of Labour, and
 - the State Services Commission, and
 - Ministers; and
- any other issues that the Auditor-General considers relate to, or arise out of, the above matters.

Although many of the issues to be examined in this inquiry arise out of Immigration New Zealand, this inquiry is not limited to Immigration New Zealand, nor the wider Department of Labour. Where relevant, it will also include looking at the actions of others in the public sector.

The inquiry is intended to address the particular issues that have already been discussed in the public domain, but its focus will not necessarily be limited to those issues.

The inquiry will not seek to:

- overturn immigration decisions affecting particular individuals;
- consider the appropriateness of current immigration policy;
- review the organisational structure or direction of Immigration New Zealand or its Pacific Division; or
- determine criminal liability.

The Auditor-General notes that related work, by several other agencies, is also under way. This includes:

- an investigation by the Police into Mary Anne Thompson's qualifications;
- a report by the State Services Commission on the Department of Labour's response to concerns about immigration matters involving relatives of Mary Anne Thompson;
- an independent review commissioned by the Department of Labour into Immigration New Zealand's Pacific Division; and
- ongoing investigations by the Ombudsmen into complaints about decisions affecting individuals.

The Auditor-General will liaise, as necessary, with the persons managing that other work.

The inquiry will be conducted under sections 16(1) and 18(1) of the Public Audit Act 2001, under the Auditor-General's mandate as an independent officer of Parliament and the statutory auditor of all public entities.

The Auditor-General will report the findings of the inquiry to the House of Representatives. The Auditor-General may decide to report in stages.

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