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# QA Review: Use of Country of Origin Information (COI) in assessing protection obligations

Humanitarian Program Capability Branch

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## 1. Executive Summary

This Report outlines the results of the quality assurance (QA) review conducted jointly by Assurance and Integrity Framework Section (AIFS) and Country of Origin Information Services Section (COISS). The review tested whether Protection Obligations Decision Makers (PODMs) used country of origin information (COI) in accordance with the current policy and procedural instruction requirements contained in the Procedural Instruction (PI) for Use of Country of Origin Information<sup>1</sup>.

PODMs using the latest COI is a key control in the Onshore Humanitarian Program Risk Plan<sup>2</sup>. The Report also considered the threshold measurements in the risk plans as part of this QA review.

Managing risk and integrity in making quality and lawful decisions is also outlined in the Humanitarian Program Quality Management (HPQM) Framework<sup>3</sup>. The use of COI, including selection, application and referencing, in assessing protection claims is a crucial aspect to demonstrate whether a decision has met key criteria for a quality decision<sup>4</sup>, including it:

- is legally sound where all relevant legal tests are applied correctly, including taking into account all relevant information that is authoritative, relevant, balanced, accurate, current, transparent and traceable
- is a well-reasoned and well-evidenced decision which demonstrates a robust investigation of available evidence including COI and is objective and based on evidence and facts of the case
- uses relevant information, i.e. it references COI that is pertinent to the circumstances of the applicant and the issues raised by the case
- is consistent with other determinations on like circumstances, and, where this is not the case, the decision record sets out clear, evidence-based reasoning, including through the use of COI, as to why relevant information raised by or with the applicant was not used or did not determine the final outcome.

Decisions from five countries (Afghanistan, Egypt, Ethiopia, Iraq and Pakistan) were reviewed in relation to the use of COI. Three of the countries, Afghanistan, Iraq and Pakistan are in the top 10 top countries with decided cases for the period 1 January to 30 April 2019. These three countries also feature in the top countries with on-hand applications (top 11).<sup>5</sup> The five countries were selected as they were amongst the top twenty for the number of primary decisions made for the program year 2018–2019 and provide a good variety of claims and corresponding COI.

### Key outcomes

To meet the criteria of a well-reasoned and balanced quality decision, a decision must demonstrate that robust investigation of available evidence including COI has occurred. This is part of broader, best-practice administrative decision making.

The QA review team identified 18 examples of good practice (23 per cent of decisions reviewed), where the decisions used COI that was current and relevant and the COI was interpreted and applied accurately. These 18 decisions were made by 15 of the 56 (26 percent) PODMs whose decisions were included in this QA review.

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<sup>1</sup> Policy and Procedural number: VM-3245

<sup>2</sup> Attachment A: Onshore Humanitarian Program Risk Plan ADD2018/3932459

<sup>3</sup> Humanitarian Program Quality Management (HPQM) Framework (ADD2018/3807037).

<sup>4</sup> For definition of what is a quality decision see Humanitarian Program Quality Management (HPQM) Framework (ADD2018/3807037).

<sup>5</sup> Excluding stateless person, People's Republic of China and Malaysia (Source: Public Information and Reporting Section, November 2019).

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The results from the Review are grouped into the following three categories of outcome: high compliance; high compliance with issues of concern; and low compliance.

### High compliance

The QA review found there was high compliance by PODMs with the following use of COI:

- COI contained in CISNET holdings, including COISS products, was used in the decision record – 96 per cent
- Relevant COI to the particulars of the applicant's claims and circumstance was used in the decision record – 85 per cent
- Quoted, paraphrased or summarised COI was used in the decision record and accurately reflected the content of the original source document – 91 per cent
- The COI was referenced in the 'Material before the PODM' section of the decision record – 96 per cent.

### High compliance with issues of concern

Although a number of measures returned nominally high-compliance rates they remain issues of significant concern given the weight they carry in protection obligations assessments; and in meeting best practice expectations, including 100 per cent compliance with Ministerial Direction No.84. or where the expected compliance rate should be high or 100 per cent. This includes:

- The relevant Department of Foreign Affairs and Trade (DFAT) report was considered as per Ministerial Direction No.84<sup>6</sup> – non-compliance rate: 10 cases (13 per cent).
- The non-compliance rate of 26 per cent (21 cases) where it was assessed the PODM had not interpreted the COI accurately. Incorrect interpretation of COI, including through attributing statements of facts incorrectly or drawing conclusions not supported by the facts contained in the COI, may result in a jurisdictional error with a court ruling that there was 'no evidence' to support the finding.<sup>7</sup>
- The non-compliance rate of five per cent (four cases) which either did not use any relevant DFAT report or used the relevant DFAT report as the sole source of COI for the entire decision. DFAT reports are not intended to be the sole basis for assessments and Direction No.84 instructs PODMs that they should consider any other relevant COI. PODMs must decide how much weight to give to DFAT reports in a protection obligations assessment.

### Low compliance

The review also found there are a number of areas where compliance rates were low. These findings highlight areas where improvements could be focused to ensure PODMs adhere to the PI which outlines how COI should be used to support decisions. In particular the following areas had high non-compliance rates:

- Use of most up-to-date- COI – non-compliance rate: 61 per cent
- Use of the most recent COISS Common Claims document if one is available at the time of the decision – non-compliance rate: 44 per cent
- Use sufficient COI in assessing all material – non-compliance rate: 54 per cent
- Weighing conflicting COI in the decision records – non-compliance rate: 73 per cent
- All COI items used were footnoted accurately and adequately as per the requirements in the PI – non-compliance rate: 75 per cent.

**Attachment A** to this report provides review findings by caseload including examples of non-compliance.

<sup>6</sup> Ministerial Direction No.56 was revoked and superseded by Ministerial Direction No. 84, on 25 June 2019.

<sup>7</sup> AZADY v Minister for Immigration & Anor [2014] FCCA 1051



## Findings against risk controls – control effectiveness rating

The QA review assessed the sample against the Onshore Humanitarian Program Risk Plan, in particular, the requirement to use the latest COI to mitigate Risk control 2: Failure to identify and address visa application fraud and Risk control 3: the Humanitarian Program does not uphold non-*refoulement* obligations. Given that the review found a low compliance rate in the use of current COI (31 cases or 39 per cent), the review concluded that the control effectiveness rating is partially effective.<sup>8</sup>

## Recommendations

### Recommendation 1 – PODMs and supervisors

- EL1s managing PODMs to communicate the issues identified in this QA review and set a clear expectation that PODMs are required to ensure that they have a current knowledge of the COI they are referring to and ensure that it accurately addresses the issues in the matter before them. PODMs are to access CISNET to source current and relevant COI as an input to their assessment.
- OPPS to issue a SharePoint announcement as an additional reminder to PODMs to refresh their knowledge and refer to the Use of Country Information policy instruction if they require guidance on the use of COI and Ministerial Direction No. 84.
- EL1 supervisors are reminded as part of Quality Control (QC) checking to reference the QC checks – Protection obligations assessment guidance document<sup>9</sup> in assessing adherence with the two COI related QC questions, including PODMs consider the DFAT report, where relevant, in making their decision, as directed under Ministerial Direction No.84.
- The results from this QA review are used to inform the EL1 Community of Practice focusing on use of COI which would explore best practice and how to better support PODMs.

### Recommendation 2 – Procedure

- Protection Assessment Support Section (PASS) consider revising the Guide for recording positive pathway assessments in ICSE<sup>10</sup> to require the year of publication of COI be referenced so as to assist EL1 supervisors when QC checking to ensure the COI cited is the most current (see 'Any other issues' for further detail).

### Recommendation 3 – Procedural Instruction (the PI)

- COISS restructure the PI to include two distinct sections, one for COI researchers and one for PODMs in the use of COI. An overall review of the useability of the PI could be undertaken with feedback sought from PODMs and EL supervisors. This could include consideration of whether page numbers of the source, if available, must be referenced.
- The instruction to PODMs on the need to consider the DFAT report be updated to specify that where DFAT has made relevant assessments on the same topic in consecutive reports that are relevant to the decision, PODMs must use the most current DFAT report available at the time of decision, as per the Ministerial Direction.
- The PI should also include detail on what is meant by sufficient COI, and guidance on weighing up of COI including the need to articulate why more weight has been placed on certain COI.

### Recommendation 4 – Training

- A focus on writing 'concise high quality decisions' was identified in the recent Learning & Change Support Section (LCSS) survey for training needs for PODMs as the highest training need. Training

<sup>8</sup> Partially effective: The control is in place, checks are being conducted; however it is not fully functioning (Control Owner Guidance Trim: ADD2019/6531182).

<sup>9</sup> QC checks – Protection obligations assessment guidance document ADD2018/4313778

<sup>10</sup> 'The Guide for recording Guide for recording Protection visa positive pathway assessments in ICSE' (TRIM ADD2016/1126312).

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for new PODMs should include the use of COI - selection, weighting, sufficiency, application and referencing of COI), in accordance with the PI, legislative and training requirements.

- As part of the Humanitarian Program continuing professional development (CPD) strategy, ongoing awareness training on CISNET and the Use of COI to be delivered to operational teams throughout 2020, in conjunction with operations managers and LCSS. CPD Training for PODMs should include the use of COI - selection, weighting, sufficiency, application and referencing of COI), in accordance with the PI, legislative and training requirements.
- Recommendation 5 – QA
- Another QA review on the Use of COI, to be scheduled once the above recommendations have been implemented, to assess whether there are improvements in practice following this report. This QA review will be in line with the new Humanitarian Program Integrity Risk Framework and Plan (currently in draft). Expected compliance targets for the QA review will be articulated, as part of the scoping of the QA activity and prior to the QA review commencing.

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## 2. Purpose

The purpose of this quality assurance (QA) review is to test whether Protection Obligations Decision Makers (PODMs) used Country of Origin Information (COI) in accordance with the current policy and procedural instruction requirements. The requirements are contained in the Procedural Instruction (PI) for Use of Country of Origin Information (the PI), released in May 2018. The PI provides guidance on research of COI by researchers in the Country of Origin Information Service Section (COISS) and use of COI by PODMs in assessing protection obligations.

The PI outlines risks to the Humanitarian Program as a result of using country information sources that do not meet the COI evaluation criteria of reliability, accuracy, traceability and transparency. The risk is that the 'quality' of decisions could be impacted if PODMs rely on information that does not meet COI evaluation criteria and may also lead to incorrect assessments being made in relation to conditions in an applicant's country of origin and return of applicants to situations of danger.

This QA review assessed the use of COI in a sample of cases selected from five countries by testing the adherence to the PI by PODMs in selecting, using, presenting and referencing COI in decision records. The review also sought to identify any improvements required in procedural advice, and/or training in relation to the use of COI in assessing protection obligations.

This QA review also tested the effectiveness of risk controls as outlined in the Onshore Humanitarian Program Risk Plan<sup>11</sup>. For further detail see 'Scope and methodology, Expected compliance rates'.

## Background

### COI Policy and tribunal/court decisions

The current COI policy as stipulated in the PI is responding to a large increase in protection visa applications. The PI instructs PODMs to apply the COI methodology in preparing for and assessing claims, evaluating and selecting different sources, and presenting COI in decision records in a transparent and traceable manner.

PODMs are instructed to assess COISS products<sup>12</sup> such as Common Claims documents and Thematic Briefs as a first step in case planning, together with DFAT country information reports relevant to the case at hand. Using the relevant and current Common Claims document enables PODMs to streamline their research and ensures a range of the most up-to-date COI is consulted in the assessment of protection obligations. It is then the PODMs' role to analyse relevant COI in light of the applicant's individual circumstances to determine whether or not the applicant engages Australia's protection obligations. PODMs must also demonstrate they have considered relevant COI, including COISS products in their decision record. PODMs must demonstrate that relevant and material evidence, in the form of COI, whether favourable or adverse to the applicant's claims, is considered and weighted as part of the protection obligations assessment to support their findings. If a finding on an individual claim in the protection obligations assessment is based on COI the PODM must demonstrate that they have used COI that is relevant, current, balanced, accurate, transparent and traceable from reliable sources.

Issues with the use of COI have been identified in other quality management reviews/reports, such as the QC quarterly reports and Immigration Assessment Authority (IAA) feedback. The issues include use of outdated COI, including DFAT reports, irrelevant COI, and a high prevalence of incorrect/incomplete referencing of COI. Further detail is provided at **Attachment B** on previous QC and QA findings as well as relevant information from merits and judicial review bodies.

<sup>11</sup> Attachment A: Onshore Humanitarian Program Risk Plan 208-19 TRIM reference: ADD2018/3932459, page 27.

<sup>12</sup> COISS products include: Common Claims documents; thematic Briefs and Situational updates; Question and Answer services and CISNET repository and resource guides.

In several Federal Court judgements (see **Attachment B**) the Federal Court emphasised the importance of using relevant and current COI and applying due diligence in evaluating COI in the protection obligations assessments. The Federal Court held that attention to current information is not merely preferable, it is a core aspect of lawful formation of a state of satisfaction<sup>13</sup>. In another case the Federal Court held that a failure to have regard to relevant material which is so fundamental that it goes to jurisdiction may amount to jurisdictional error (AUV15 v MIBP [2018] FCA 812). The courts have consistently emphasised the importance of evaluating COI and the need to demonstrate that a process of weighing and evaluation of evidence has occurred. The absence of any evaluation of the country information in the decision record, together with an absence of findings of fact that might be seen as consequential on that evaluation, amounts to a constructive failure to exercise jurisdiction as there has been a failure to undertake the requisite steps to form the state of satisfaction required.<sup>14</sup>

The IAA has previously commented that relying on a narrow range of COI is frequently a point of criticism from migration agents. This can give the appearance that the PODM is doing so to support their pre-determined conclusion, and failing to consider alternative points of view, or whether other sources of country information support DFAT's assessment, or take into account the individual circumstances of the applicant<sup>15</sup>. This issue could potentially be challenged at judicial review that there is a legal error of failing to take into account relevant information.

Confidence of the courts, independent merits review bodies and the community's confidence in Australia's protection system is predicated on consistent decisions being made when presented with cases with common/similar circumstances. This can only be achieved if all PODMs are drawing on and consistently applying the same country of origin information to the same or similar circumstances.

### **CISNET enhancements and definitions for COI quality standards**

In 2019 CISNET was upgraded and new country pages created for approximately 25 of the major caseload countries. There have been further improvements to search functioning and in the presentation of search results.

The PI defines the key quality standards for COI (PI section 4.4.1.6):

#### **Relevance**

The information is pertinent to the circumstances of the applicant and the issues raised by the application.

#### **Currency**

The information is up-to-date. Information is generally regarded as current if it reflects an event or situation as it stands at the time of researching. In some cases, the most recent information available on an issue can be several years old but still be regarded as current because the issue being reported on has not changed (for example, an historical event).

#### **Reliability**

The information is from a reliable source. When assessing the reliability of a source and the credibility of information provided, a range of factors need to be considered, including:

- the expertise and reputation of the source
- the intent and agenda of the source
- whether the information is first-hand (obtained by the source)
- whether the information is consistent with, and can be corroborated from, other sources
- the language and tone used by the source (accusatory and judgemental vs neutral language)
- whether the source presents observable facts or its opinion.

#### **Accuracy**

<sup>13</sup> Federal Court WAEE v MIMIA [2013] FCAFC 184

<sup>14</sup> BSL15 v MIBP [2018] FCA 1898 (Kenny J, 29 November 2018)

<sup>15</sup> IAA feedback 2nd Quarter 2019 (Attachment B)



The information conforms to factual reality as much as it can be determined.

#### **Traceability and transparency**

The source of information (person or institution) is identified. Information is presented in a clear and unequivocal manner and its meaning is not distorted.

There is a clear responsibility for decision-makers to corroborate information found, address inconsistencies, and take account of the quality of the available sources. For detailed information, see PI section 4.4.3 for Corroborating information, and 4.4.4 for Contradictory or inconsistent information.

Refer to **Attachment C** for a summary of available CISNET products and support tools for PODMs for all five countries selected for this review.

### **3. Scope and methodology**

As per the scoping document<sup>16</sup> the QA review considered cases from five countries: Afghanistan, Egypt, Ethiopia, Iraq and Pakistan. These countries were amongst the top twenty for the number of primary decisions made for the program year 2018–2019. They were selected to provide a good variety of claims and corresponding COI. For countries such as Afghanistan, Iraq and Pakistan there is a wealth of COISS holdings including specifically produced Common Claims documents available, while for smaller caseloads (such as Ethiopia) COI holdings are not as fulsome and PODMs are required to conduct their own research to source sufficient COI to support their decision.

#### **Sample selection**

A sample of 80 cases was judgementally selected from the five countries, including primary refusal and grant decisions in the Protection visa (PV) subclass 866, Temporary Protection visa (TPV) subclass 785 and Safe Haven Enterprise visa (SHEV) subclass 790 caseloads.

The sample covers decisions dated from 1 January to 30 April 2019 across most processing locations including NSW, VIC, QLD, and WA. The 80 cases were selected from a total of 479 finalised decisions over the reporting period for the five caseloads, which is 17 per cent of the total finalised. This means there is a 95 per cent certainty in the findings with a confidence interval (margin of non-compliance) of 10 per cent.

Due to the shortened version of assessment notes in ICSE for TPV/SHEV grant cases (where COI is briefly referenced with a CISNET number), a higher number of refusal cases and PPV grants were selected from the Afghan, Pakistani and Iraqi caseloads. By way of background positive TPV/SHEV assessments are recorded directly in ICSE and accordingly do not conform to the referencing style contained in the PI. Positive TPV/SHEV decisions were, therefore, excluded from two questions on referencing (Questions 9 & 10 – see Table 1) and the results recorded as being “Not Applicable”.

The 479 decisions were made by 124 PODMs of which 56 PODMs were included in the 80 sampled cases (with some PODMs represented across multiple cases selected). This means that nearly half (45 per cent) of the PODMs within scope were included in the review. The review noted some PODMs had finalised far more cases than others (11 PODMs finalised more than 10 cases each with one PODM having finalised 29 cases alone, while the average number of cases per PODM for 479 cases would equate to around four cases each). This presented a challenge for the review to select cases within scope and to include more PODMs. For further detail see Limitations below.

<sup>16</sup> QA review use of COI – Scoping document ADD2019/2287745.

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Summary of finalised cases by country and processing state (decision finalised from 1 January to 30 April 2019) (data provided by Public Information and Reporting Section):

Country	NSW	VIC	WA	QLD	SA	ACT/TAS	Total
Afghanistan	81	s. 47F(1)	26	s. 47F(1)			144
Iraq	23		11				74
Pakistan	109		23				194
Egypt	25		0				27
Ethiopia	10		5				40
<b>Total</b>	<b>248</b>	<b>118</b>	<b>65</b>	<b>22</b>	<b>21</b>	<b>5</b>	<b>479</b>

Summary of sample cases by processing state:

Country	NSW	VIC	WA	QLD	Total
Afghanistan	8	5	6	1	20
Iraq	9	9	1	1	20
Pakistan	17	5	3	0	25
Egypt	8	0	0	0	8
Ethiopia	1	5	1	0	7
<b>Total</b>	<b>43</b>	<b>24</b>	<b>11</b>	<b>2</b>	<b>80</b>

Summary of sample cases by country of citizenship:

Country	Grants	Refusals	Total
Afghanistan	5	15	20
Iraq	10	10	20
Pakistan	5	20	25
Egypt	4	4	8
Ethiopia	3	4	7
<b>Total</b>	<b>27</b>	<b>53</b>	<b>80</b>

### Reviewers

The review was conducted by COISS and AIFS QA team, with the preparatory work completed by the QA team in consultation with COISS. A Terms of Reference document<sup>17</sup> was prepared by the QA team to provide guidance to reviewers and standardise the review approach to ensure consistency in recording findings against the question set (see Table 1 below).

The review of the sampled cases was completed by experienced COI senior research officers, with the Egyptian, Ethiopian and Afghan caseload results verified by the relevant EL1 from COISS. For each case reviewers read the decision record and recorded findings against the question set.

### Expected compliance rates

The Immigration and Settlement Services Group (ISSG) Line 1 Assurance Activities Procedural Instruction<sup>18</sup> includes a benchmark target of 95 per cent accuracy, with an error rate of 5 per cent, for procedural questions. The two QC questions on use of COI (see **Attachment B**) are procedural questions and are included as elements of the ten questions in this QA review.

The Onshore Humanitarian Program Risk Plan outlines policy and procedure controls to mitigate risks that impact on the program. Risks 2 and 3 are relevant to this review (as detailed below)<sup>19</sup> and one of the control measures is in 100 per cent of cases processing officers used the most up to date COI available at time of decision. While the QA review question set did not include specified compliance rates, there is an expectation that compliance with Ministerial Direction No.84. is 100 per cent, and that

<sup>17</sup> QA Review – use of COI – Terms of Reference ADD2019/3326800

<sup>18</sup> ISSG Line 1 Assurance Activities Procedural Instruction ADD2019/4014767

<sup>19</sup> Attachment A: Onshore Humanitarian Program Risk Plan 208-19 TRIM reference: ADD2018/3932459, pages 19 & 27.

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compliance with key aspects critical to quality decision making are assessed as meeting the requirement to a compliance rate of 85 per cent.

<b>Risk 2:</b> Failure to identify and address visa application fraud
<b>Risk control 2.2.2:</b> 'Processing officers use the latest COI information available'
<b>Risk control Measurement:</b> Quality assurance activity, including review of AAT remits, shows that processing officers referenced the latest available COI at time of decision.
<b>Risk 3:</b> The Refugee and Humanitarian program does not uphold Australia's non-refoulement obligations
<b>Risk control 3.2:</b> Processing officers and managers attend Protection Obligations training on the relevant legislative and policy frameworks used to assess claims
<b>Risk control 3.3:</b> Processing officers use the most relevant and up to date COI available.
<b>Risk control Measurement 3.2:</b> Quality assurance and reporting activity shows that in 100 per cent of cases processing officers used the most up to date COI available at time of decision
<b>Risk control Measurement 3.3:</b> Quality assurance and reporting activity shows that processing staff know how to access, interpret and use COI products appropriately.

### Limitations

The QA review team manually selected the sample from the data set provided by Public Information and Reporting Section. Cases refused on credibility grounds where COI was not paramount to the decision and no COI was used were excluded. This means the sample could not be drawn from the total population or selected randomly.

The following parameters are also out of scope:

- the assessment of COI used to support interviews or other COI considered but not included in the decision record
- whether procedural fairness was offered to the applicants in relation to the use of COI
- whether the refusal or grant decision was well reasoned.

The following limitation in conducting this QA review also applies:

- PODMs are delegated by the Minister to make protection obligation decisions and reasonable minds can differ when assessing the same information.

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## 4. Statistical Summary

**Table 1: Summary of key findings**

Quality Measure	Met	Not Met	N/A	Compliance rate	Non-compliance Rate
1. Is it demonstrated in the decision record that the COI contained in CISNET holdings including COISS products was used (as per the PI)?	77	3	0	96%	4%
2. Did the PODM use the most up-to-date COI (excluding relevant DFAT report)?	31	49	0	39%	61%
2.1 Did the PODM consider the most recent COISS Common Claims document if one is available at the time of the decision? <sup>20</sup>	40	31	9	56%	44%
3. Did the PODM consider relevant DFAT reports under Direction 84 <sup>21</sup> ?	70	10	0	87%	13%
4. Was all COI used relevant to the particulars of the applicant's claims and circumstance?	68	12	0	85%	15%
5. Did the PODM consider sufficient COI in assessing all material claims?	37	43	0	46%	54%
6. Did the PODM interpret the COI accurately to support the decision?	59	21	0	74%	26%
7. Does any quoted, paraphrased or summarised COI accurately reflect the content of the original source document?	71	7	2	91%	9%
8. If relevant, in cases where the available COI is inconsistent or the country information conflicts, did the PODM demonstrate they had considered the COI, giving reasoning for placing weight on one source of COI over another source and articulate their findings in the decision record?	7	19	54	27%	73%
9. Were all COI items used in the body of the decision record footnoted accurately and adequately as per PI requirements (refusal decisions and PPV grants only)?	18	53	9	25%	75%
10. Was the COI referenced in the 'Material before the PODM' section of the decision record by either listing each COI item or referring to the footnotes by stating 'Country information as footnoted throughout the assessment record (refusal decisions and PPV grants only)?	68	3	9	96%	4%

<sup>20</sup> This question is not applicable to the Ethiopian caseload as there is no Common Claims document for Ethiopia.

<sup>21</sup> Ministerial Direction No.56 was revoked and superseded by Ministerial Direction No. 84 on 25 June 2019.

## 5. Analysis

### Good practice

The review assessed 18 cases (23 per cent) as compliant with the PI in relation to currency, relevancy and accuracy (Questions 1-8) in the use of COI in assessing protection obligations. These 18 decisions were made by 15 individual PODMs which means 26 per cent of PODMs included in this review demonstrated their understanding and ability to apply COI to support findings in their decisions in accordance with the requirements in the PI.

### Analysis by theme

The ten questions have been grouped by theme:

- Use of relevant DFAT reports (Question 3)
- Currency of COI (Questions 2 and 2.1)
- Use of sufficient, relevant COI (Questions 4-5)
- Engaging with COI - Interpreting and quoting COI accurately and weighing up of COI (Questions 6 – 8)
- Transparency and traceability – referencing COI (Questions 9 -10)

More detailed findings by question and caseload is at **Attachment A**.

### Use of relevant DFAT reports

Ministerial Direction No. 84, Consideration of Protection visa applications, issued under s499 of the *Migration Act 1958*, requires that where DFAT has prepared a country information assessment expressly for protection status determination purposes, and that assessment is available to the PODM, the PODM must take into account that assessment, where relevant, in making their decision.

Section 4.2.8 of the PI states that, if a DFAT country information assessment contains any information that is relevant to an applicant, the PODM must take it into account, weighing and balancing it with other relevant information where appropriate. Failing to use the relevant DFAT report is both a legal error in failing to have regard to current evidence or material before the decision maker, and a breach of the Ministerial Direction.

All country information and thematic reports published by DFAT are available on CISNET. COISS issues announcements to all staff when a new DFAT report is issued. In addition, references to the relevant and most up to date DFAT reports are in Common Claims documents under each topic and can be readily accessed and used by PODMs through CISNET.

If there are a number of DFAT reports on the same topic that are relevant to the decision, PODMs must use the most current DFAT report. If an outdated DFAT report is used the PODM needs to clearly state the reason why it was used, for example to address a specific incident which was not covered in the current DFAT report.

The review found that in 70 cases (87 per cent) the PODMs used the most current and relevant DFAT reports. In nine cases (11 per cent) assessed as 'non-compliant' more current versions were available at the time of the decision, but were not referenced in the decision records. In one Pakistani case where the PODM did not reference a DFAT report, the QA reviewer assessed that the DFAT country report on Pakistan was relevant and should have been used.

The highest non-compliance rate (four cases or 20 per cent) was in the Iraqi caseload. Decisions made in November 2018 or 2019 referenced a 2017 DFAT report on Iraq rather than the more recent version published in October 2018. Pakistan had the next highest non-compliance rate (four cases or 16 per cent), with three cases referencing outdated DFAT reports when current and relevant DFAT reports were available at the time of the decision.



## Currency of COI

The review found a high non-compliance rate in the use of current COI (Question 2). While the overall non-compliance rate is 49 cases (61 per cent), this was even higher for the Afghan (16 out of 20 cases or 80 per cent) and Iraqi (14 out of 20 cases or 70 per cent) caseloads. In a fluid environment such as Afghanistan and Iraq, currency of COI is paramount to inform a protection obligations assessment. Also failing to use current COI may lead to legal error of not having taken into account relevant information.

For Afghan cases the QA reviewers noted that in the majority of the decisions there was an overreliance on outdated UNHCR and DFAT reports. In some decisions the PODMs did not demonstrate consideration of relevant, current and available COI, which appeared to coincide with the PODM not using the most-up-to-date COISS Common Claims document.

Common Claims documents are issued by COISS based on the most frequently made claims from high volume countries and are updated regularly to reflect changes in the country situation drawing on a range of major government and non-government publications, such as UNHCR and DFAT reports. COISS Common Claims products are designed to ensure the consistent and efficient use of COI in decision-making in response to a high-volume, complex and increasingly mixed-risk PV caseload.

The review found 31 cases (44 per cent) did not use the most up-to-date Common Claims documents available at the time of the decision (Question 2.1). There was a very high non-compliance rate in the Egyptian and Afghan caseloads: six Egyptian cases (75 per cent) and 14 Afghan cases (70 per cent).

## Use of sufficient and relevant COI

The review found that in the majority of cases (68 cases or 85 per cent) the COI used in the decision was relevant to the particulars of the applicant's claims and circumstances (Question 4).

In 11 cases (14 per cent) the review found PODMs used COI which was either irrelevant to the applicant's claims and circumstances or did not consider COI relevant to the case. In these cases it was not apparent to the reviewer that the PODM engaged with the COI used in the decision or exercised due diligence in selection and evaluation of COI as supporting evidence for the decision.

In more than two thirds of these 11 cases (eight cases or 72 per cent) this error was mainly due to copy-pasting COI from other decisions (Afghanistan (two), Iraq (four), Egypt and Pakistan, one each). The review found examples of text which appeared to be copied from one decision record to another, for example the gender or ethnicity was not consistent with the details of the case.

PODMs must exercise caution when re-using COI from outdated products or previous decisions. PODMs should ensure that genuine and proper consideration of the individual circumstances of the applicant is evident in the decision record.

Failing to use relevant COI may lead to legal error of not having taken into account relevant information (see Federal Court judgments cited in **Attachment B**). Using irrelevant COI also raises issues for the review bodies such as the IAA in that the IAA then needs to consider all the country information cited by the PODM, rather than rely on specific country information relevant to the applicant's claims (see IAA Feedback cited in **Attachment B**).

In contrast to the high compliance rate (85 per cent) of using relevant information (Question 4), the review found PODMs did not use sufficient COI (Question 5) in 43 cases (54 per cent). For Afghan, Iraqi and Egyptian caseloads the non-compliance rates are above 50 per cent. Afghanistan had the highest 'non-compliance' rate of 70 per cent (14 cases), comprising two grant and 12 refusal decisions, where it was identified there was a lack of relevant, current and available COI.

## Engaging with COI - Interpreting and quoting COI accurately and weighing up of COI

The QA review found in 21 cases (26 per cent) PODMs did not accurately interpret the COI in the decision record (Question 6). The non-compliance rate was highest in the Afghan caseload (nine cases or 45 per cent), noting all these cases were refusal decisions, followed by the Iraqi caseload (five cases or 25 per cent). The reviewers found that in these cases using limited and dated COI also contributed to the incorrect interpretation of COI when assessing an applicant's claims.

The quality of a protection obligations assessment depends on the accuracy and relevancy of the COI that the PODM has considered and on how well they have interpreted that COI to inform their reasoning and support the findings made. When making a finding or drawing an inference based on COI, it is important to interpret the COI accurately. Incorrect interpretation of COI, including through attributing statements of facts incorrectly or drawing conclusions not supported by the facts contained in the COI, may result in a jurisdictional error.

The review found there was a high rate (71 cases or 91 per cent) of compliance with PODMs exercising due diligence when quoting, paraphrasing or summarising COI to support their assessment (Question 7). In the seven cases (nine per cent) PODMs did not accurately reflect the content of the original source document in their decisions.

The review found in cases where COI was inconsistent or conflicted there was a high non-compliance rate (73 percent) of demonstrated weighting and reasoning of the COI in the decision record, with this being most evident in the Afghanistan sample (Question 8).

The review found in these cases the PODMs used a limited and outdated range of sources and did not demonstrate why they had considered and weighted the COI in the decision record, or provided reasoning for a chosen preference.

Selection of information must be without bias and contradictory information relevant to an application should not be omitted from an assessment. PODMs should set out any contradictions or inconsistencies in the available COI, decide how much weight to accord each COI item, including DFAT reports, and give reasons for the weight given to the information from each source and document their reasoning. Federal Court judgments (see **Attachment B**) also emphasised the requirement to consider and weigh COI as part of a lawful decision-making process.

## Transparency and traceability - Referencing COI

Section 4.5.4 of the PI stipulates that all COI items used in the body of the decision record must be footnoted using a transparent and consistent method of referencing. The following elements must be referenced: the title of the report, name of the source (author or organisation), date of publication, and CISNET reference number. In relation to the page or paragraph number the PI states if available these details should be included, and when listing out the elements to be referenced the PI states the page or paragraph number (if available) must be included.

The QA review team agreed the instructions in the PI would be strictly applied in assessing whether the footnoting was correct, meaning that missing one page/paragraph number where available would incur a non-compliance rating.

Of the 71 cases where footnoting in accordance with the PI was applicable 53 cases (75 per cent) were found not to meet the footnoting requirements.

The review found all eight Egyptian cases had missed page/paragraph numbers when referencing DFAT reports on at least one occasion. For the 17 Iraq cases there was a high non-compliance rate (85 per cent). In 13 cases (76 per cent) there were omissions of page/paragraph numbers when referencing the DFAT report. In the remaining four cases there were: missing footnotes, incorrect footnotes, omission of CISNET numbers, no date of publication, and no page/paragraph numbers for reports with multiple pages such as Amnesty International Annual Report and UNHCR position papers.

The review found a very high compliance rate of 68 out of 71 applicable cases (96 per cent) with PODMs generally always referencing the COI used in protection obligations assessments in the 'Material before the decision maker' section of the decision record by either listing each COI item or referring to the footnotes by stating 'COI [and case law] as referenced in footnotes throughout the record'.<sup>22</sup>

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<sup>22</sup> PI Section 4.5.4 : The COI used in protection obligations assessments must also be referenced in the 'Material before the decision maker' section of the decision record by either listing each COI item or referring to the footnotes by stating 'COI [and case law] as referenced in footnotes throughout the record'.

## Any other issues

### TPV/SHEV grants recorded in ICSE

Under current policy guidelines positive TPV/SHEV assessments are recorded directly in ICSE (refer to 'The Guide for recording Protection visa positive pathway assessments in ICSE' (TRIM ADD2016/1126312). The Guide states that country information references can be included in the body of the text or at the end of the ICSE note (there is no footnote function available). The preferred method is to cite the CISNET reference number only with a page number where applicable. The PI reflects this policy and requires a citation or CISNET reference number be recorded in text in the ICSE note.

The reasoning for limiting the COI referencing to the CISNET number only is because each ICSE note is limited to around 620 words (4000 characters). Using CISNET numbers alone means that quality checking of the COI sources used in the assessment requires the QC checkers to open sources in CISNET which is time consuming especially when a large number of sources are listed.

## 6. Conclusion

The QA review found 26 per cent of PODMs whose decisions were reviewed met all quality requirements, as outlined in the PI in the use of COI (excepting Question 9 – footnoting requirements).

The QA review also found a number of areas in the use of COI where non-compliance rates were high and of concern. These findings highlight areas where improvements could be focused to ensure PODMs adhere to the PI which outlines how COI should be used to support decisions. Areas identified for improvement include: engaging with and using current, relevant and sufficient COI, using the most recent COISS Common Claims documents, accurately interpreting and weighing up of COI, and accurately and adequately referencing the sources.

The QA review also found a number of measures returned low non-compliance rates, however, they remain issues of significant concern given the weight they carry in protection obligations assessments, including a requirement for 100 per cent compliance with Ministerial Direction No.84.

Not complying with the PI can impact on the quality of the decision and expose the Department to increased risk and lower the integrity in the protection obligations assessment. Furthermore failing to use current COI may lead to legal error for not having taken into account relevant information.

Based on this result, the QA review assessed that the requirement to use the latest COI to mitigate Risk control 2: Failure to identify and address visa application fraud and Risk control 3: the Humanitarian Program does not uphold non-*refoulement* obligations, is partially effective.

The review has made several recommendations to support any improvement initiatives (see Part 1 - Executive Summary).

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## Attachment A

## Review findings by caseload

The following is a breakdown by question by caseload with examples of non-compliant cases.

**1. Is it demonstrated in the decision record that the COI contained in COISS products and CISNET holdings was used (as per the PI) (excluding DFAT reports)?**

Country	Met	Not met	N/A	Met rate	Non-compliance Rate
Afghanistan	20	0	0	100%	0%
Iraq	20	0	0	100%	0%
Pakistan	23	2	0	92%	8%
Egypt	7	1	0	87.5%	12.5%
Ethiopia	7	0	0	100%	0%
<b>Total</b>	<b>77</b>	<b>3</b>	<b>0</b>	<b>96%</b>	<b>4%</b>

**Examples:**

Three cases (two Pakistan cases and one Egyptian case) used a DFAT report as the sole source of COI in the decision.

**2. Did the PODM use the most up-to-date COI excluding the relevant DFAT report?**

Country	Met	Not met	Met rate	Non-compliance rate
Afghanistan	4	16	20%	80%
Iraq	6	14	30%	70%
Pakistan	11	14	44%	56%
Egypt	3	5	37%	63%
Ethiopia	7	0	100%	0%
<b>Total</b>	<b>31</b>	<b>49</b>	<b>39%</b>	<b>61%</b>

**Example:**

In an Iraqi case a significant number of dated COI was relied upon where more recent sources on a particular matter were available. Most notably, a few reports from 2012 were used to refer to 'pressure put on women to wear Islamic dress' whereas there were more recent COI addressing the same issue at the time of the decision (dated March 2019).

**2.1. Did the PODM consider the most recent COISS Common Claims document if one is available at the time of the decision?**

Country	Met	Not met	N/A	Met rate	Non-compliance rate
Afghanistan	6	14	0	30%	70%
Iraq	17	3	0	85%	15%
Pakistan	15	8	2	65%	35%
Egypt	2	6	0	25%	75%
Ethiopia	0	0	7	N/A	N/A
<b>Total</b>	<b>40</b>	<b>31</b>	<b>9</b>	<b>56%</b>	<b>44%</b>

**Examples:**



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In one Iraqi case the PODM appeared to have drawn upon information included in a January 2016 COISS Q&A response which dealt in part with Christians in Dohuk (CR0D9DEFA5). However, it was not evident that the PODM drew upon the Christians section of the Iraq Common Claims document (December 2018) that was current at the time of the decision, even though it included relevant information on the situation of Christians in the Kurdistan Region of Iraq.

In another Iraqi case the PODM appeared to have drawn upon COI provided in an October 2017 COISS research response on Shia-Sunni mixed marriages in Iraq (CR8DFDCEA351). Page 8 of the decision record was a straight cut and paste from that research response. The PODM did not appear to have drawn at all upon the Common Claims document that was current at the time (January 2018, CR239EC817).

### 3. Did the PODM consider the most current relevant DFAT reports under Direction 84?

Country	Met	Not met	Met rate	Non-compliance Rate
Afghanistan	18	2	90%	10%
Iraq	16	4	80%	20%
Pakistan	21	4	84%	16%
Egypt	8	0	100%	0%
Ethiopia	7	0	100%	0%
<b>Total</b>	<b>70</b>	<b>10</b>	<b>87%</b>	<b>13%</b>

#### Examples:

For the two non-compliant Afghan cases, the reviewers noted multiple and dated DFAT sources were used to support a particular conclusion, with no reason given why dated reports were used.

In one Iraqi case, the PODM included information from the DFAT report, issued in June 2017, which referred to areas of Iraq not being under the effective control of the Iraqi government or Kurdistan Region authorities. The information in this older DFAT report referenced a situation 18 months prior to the date of the PODMs decision, by which time the situation in Iraq was very different - although an IS insurgency persisted, IS were no longer in control of any territory, and the security situation had improved significantly.

In one Pakistani case, while there were multiple sources used to address whether effective protection was available to the applicant from the state authorities in Pakistan, the decision did not reference the DFAT report at all. In this case the DFAT Country Information Report Pakistan, 20 February 2019, has detailed analysis which addresses the issue of whether effective protection was available from the state authorities in Pakistan and should have been referenced in accordance with Direction No. 84, noting the decision record was finalised by the PODM on 22 March 2019.

### 4. Was all COI used relevant to the particulars of the applicant's claims and circumstance?

Country	Met	Not met	Met rate	Non-compliance rate
Afghanistan	17	3	85%	15%
Iraq	16	4	80%	20%
Pakistan	22	3	88%	12%
Egypt	7	1	87%	13%
Ethiopia	6	1	86%	14%
<b>Total</b>	<b>68</b>	<b>12</b>	<b>85%</b>	<b>15%</b>

#### Examples:

In one Iraqi case, the PODM included information on the situation for Sunnis in Baghdad and northern and central Iraq even though the applicant is a Sunni from Basra (southern Iraq). The decision record also included information on the situation for displaced Sunnis in the south, while the applicant is a native of the south rather than an internally displaced person (IDP). This section appears to have been cut and pasted in its entirety directly from the Common Claims document but without any editing that might have made it specific to the applicant's background.



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In one Ethiopian case the applicant's main protection claim was centred on him being a member of a political party. Although the PODM accepted that the applicant was involved with the party, there was no COI which referenced the political party in the decision record.

### 5. Did the PODM consider sufficient COI in assessing all material claims?

Country	Met	Not met	Met rate	Non-compliance rate
Afghanistan	6	14	30%	70%
Iraq	9	11	45%	55%
Pakistan	14	11	56%	44%
Egypt	3	5	37%	63%
Ethiopia	5	2	71%	29%
<b>Total</b>	<b>37</b>	<b>43</b>	<b>46%</b>	<b>54%</b>

#### Examples:

In at least five Afghan cases the reviewers found there was a narrow focus on DFAT reports (with outdated DFAT reports used in some cases) and UNHCR Guidelines where there was a wide range of current and relevant sources available in CISNET, that should have been referred to.

In one Afghan case (decision date: January 2019) when addressing the claim of 'failed asylum seeker' (westernisation and risk of harm upon return) the PODM relied on an out of date source (EASO report December 2017) as the sole source. The relevant DAFT report was not referenced.

In one Egyptian case only one source (CIS38A80129239 from January 2016) was cited on the subject of availability of mental health care. The decision quoted COI that 'Egypt's health care system provided coverage to more than half of the population in 2014', and used this source to support a finding that the applicant had access to health care in Egypt. The QA reviewer considered this one source was insufficient to support the conclusion reached, noting there were other more recent COI sources available.

### 6. Did the PODM interpret the COI accurately to support the decision?

Country	Met	Not met	Met rate	Non-compliance rate
Afghanistan	11	9	55%	45%
Iraq	15	5	75%	25%
Pakistan	19	6	76%	24%
Egypt	7	1	87%	13%
Ethiopia	7	0	100%	0%
<b>Total</b>	<b>59</b>	<b>21</b>	<b>74%</b>	<b>26%</b>

#### Examples:

In two Afghan cases, the PODMs rejected the applicants' claimed nationality of Afghanistan and found them to be Pakistani nationals. The COI sources used on the topic of relocation within Pakistan (Islamabad in both cases) for Shias was selective and did not specifically relate to the applicants Hazara ethnicity. The PODMs did not fully apply the breadth of the assessments DFAT made regarding the increased risk of harm to Hazaras throughout Pakistan due to their distinct physical appearance. The QA reviewers found that the PODMs decision to reject the applicants claimed nationality of Afghanistan appeared to inhibit them then engaging fully with all the applicant's claims.

In another Afghan case the PODMs used dated sources, including statistics from 2016, findings based on a 2012 survey and a 2015 report, when addressing the claims of returnees from the west and young people in Afghanistan. No counter COI was used and recent COI (Common Claims document of December 2019) does not support the analysis and findings made in the decision.

The QA review team noted in one Pakistani case the PODM asserted that there was still violence in Kurram while relevant and current COI suggested otherwise.

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In one Egyptian case the PODM refers to 'Upper Egypt' as a possible site for relocation, stating that 'I identified other parts of Upper Egypt, particularly cities, as the most likely possibility as DFAT identified a significant population of Coptic Christians moved to these areas for work and anonymity'. The QA reviewer found, quite conversely, DFAT assesses that violent incidents are more likely to occur in Upper Egypt (which is the southern part of Egypt), and that 'some Copts from the poorer parts of Upper Egypt have moved to the north coast of the country for better economic support networks'. The PODM appeared to have misconstrued Upper Egypt to mean the north of the country (where Cairo and Alexandria are situated).

### 7. Does any quoted, paraphrased or summarised COI accurately reflect the content of the original source document?

Country	Met	Not met	N/A	Met rate	Non-compliance rate
Afghanistan	17	3	0	85%	15%
Iraq	17	3	0	85%	15%
Pakistan	22	1	2	96%	4%
Egypt	8	0	0	100%	0%
Ethiopia	7	0	0	100%	0%
<b>Total</b>	<b>71</b>	<b>7</b>	<b>2</b>	<b>91%</b>	<b>9%</b>

#### Examples:

In an Iraqi case the PODM stated that IS had declared its intention to march on Shia holy cities including Najaf, and cited a Jane's Sentinel Assessment of January 2015 as the source for this statement. However, on checking this source the reviewer was unable to find any statement to this effect. This is an example of a case where the COI summarised did not accurately reflect the content in the source COI report.

In one Afghan case the reviewers found that COI cited regarding security features of Sabre International identity documents did not support the PODM's finding and conclusions.

### 8. If relevant, in cases where the available COI is inconsistent or the country information conflicts, did the PODM demonstrate they had considered the COI, giving reasoning for placing weight on one source of COI over another source and articulate their findings in the decision record?

Country	Met	Not met	N/A	Met rate	Non-compliance rate
Afghanistan	0	12	8	0%	100%
Iraq	4	3	13	57%	43%
Pakistan	3	3	19	50%	50%
Egypt	0	1	7	0%	100%
Ethiopia	0	0	7	N/A	N/A
<b>Total</b>	<b>7</b>	<b>19</b>	<b>54</b>	<b>27%</b>	<b>73%</b>

#### Example:

In one Afghan case, the decision cited numerous COI sources that on reading indicated contrary COI which did not appear to be considered, referenced, or acknowledged by the PODM before attributing more weight to other COI and the ultimate findings made based on the selected COI. This was an issue throughout the decision record when discussing ethnic minority groups, Shia sectarian violence trends, and mobility and access, as well as the lack of family support (given the applicant's lack of any family members and having never resided in Afghanistan).

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9. Were all COI items used in the body of the decision record footnoted accurately and adequately as per PI requirements (refusal decisions and PPV grants only)?<sup>23</sup>

Country	Met	Not met	N/A	Met rate	Non-compliance Rate
Afghanistan	8	7	5	53%	47%
Iraq	3	17	0	15%	85%
Pakistan	4	18	3	18%	82%
Egypt	0	8	0	0%	100%
Ethiopia	3	3	1	50%	50%
<b>Total</b>	<b>18</b>	<b>53</b>	<b>9</b>	<b>25%</b>	<b>75%</b>

**Example:**

In one Iraqi case, there were multiple occasions where page or section numbers for sources with multiple pages were not provided. The PODM clearly stated in the text of the opening paragraph of page 8 that they were using a UNHCR advisory and includes the CISNET reference number in the text of the decision record, but there was no footnote included in this paragraph. The last paragraph of page 8, which included a quote from the June 2017 DFAT report, also had no footnote.

10. Was the COI referenced in the 'Material before the PODM' section of the decision record by either listing each COI item or referring to the footnotes by stating 'Country information as footnoted throughout the assessment record (refusal decisions and PPV grants only)?

Country	Met	Not met	N/A	Met rate	Non-compliance rate
Afghanistan	15	0	5	100%	0%
Iraq	20	0	0	100%	0%
Pakistan	20	2	3	91%	9%
Egypt	7	1	0	87%	13%
Ethiopia	6	0	1	100%	0%
<b>Total</b>	<b>68</b>	<b>3</b>	<b>9</b>	<b>96%</b>	<b>4%</b>

**Example:**

Two Pakistani and one Egyptian decision did not include this standardised sentence at the end of the decisions record as per the PI requirement.

<sup>23</sup> This question is limited to refusal decisions and PPV grants because TPV/SHEV grants use an abbreviated decision record saved as case notes in ICSE. The short form TPV/SHEV grant decision records do not adhere to the stricter referencing instructions for other types of PV decisions and are excluded from the scope of this question.

## Attachment B

# Summary of previous findings on use of COI and quality of decisions

QC and Specialist QC (SQC) findings on use of COI for the 2018-19 program year:

Question	Non-compliance rate							
	Q4 18/19		Q3 18/19		Q2 18/19		Q1 18/19	
	QC	SQC	QC	SQC	QC	SQC	QC	SQC
Is the decision supported by COI that is relevant and in line with policy?	11.4%	35.8%	5.5%	37%	7.8%	45%	3.7%	38.5%
Is the COI held in the appropriate departmental system and cited appropriately?	7.4%	17%	1.8%	0%	4.5%	10%	4.5%	N/A

The QC questions on use of COI are procedural questions - which refers to an administrative process or action that may not influence a final decision. The benchmark target for procedural questions in EQuIP is 95 per cent accuracy, with an error rate of 5 per cent. However, program areas must take into account that, as accuracy rates fall below 95 per cent, the potential for critical risk exposure to the Department increases. Action must be taken to investigate and review the error to inform any remediation, including improvements to processes and training for staff (ISSG Line 1 Assurance Activities Procedural Instruction (ADD2019/401767)).

## Summary table of quality management (QM) findings, merits review and judicial review decisions/feedback on use of COI by topic:

### DFAT Report

Issue	Source
In one case the delegate relied upon an outdated DFAT report. The delegate also did not rely on significant country information from 2015, which was relevant to the applicant's claim. To resolve this, the IAA had to obtain the information as new information and put this to the applicant for comment, resulting in delays to the fast track process. In another case the delegate referenced only two pieces of country information (one outdated) and failed to refer to the DFAT country report.	IAA Feedback report – 1 <sup>st</sup> quarter (2019-20)
In five cases the PODM did not take into account the current Department of Foreign Affairs and Trade (DFAT) Country Report, and relied upon earlier reports.	QC report – 4 <sup>th</sup> Quarter June 2019
DFAT reports were not considered. In these cases, the IAA had to obtain the reports as new information and put the information to the applicants for comment (three cases).	IAA Feedback report – 4 <sup>th</sup> quarter (2018-19)
The CTC Review found in 47 per cent of cases Assistant Directors did not identify issues that impacted on the COI used to support the decision with 30 per cent of affected cases not demonstrating consideration of the relevant DFAT report and/or the most current DFAT report for the relevant receiving country as per Ministerial Direction 56, to inform the refugee or CP assessments.	QA Review: Check the Checker, July 2019

### Currency

Issue	Source
In two cases the PODM had used out-of-date country information, being twelve and ten years old, to support their finding where it would have been more appropriate to use more recent country information. It is important that country information that is up-to-date and relevant is used in the assessment.	QC report – 4 <sup>th</sup> Quarter June 2019



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PODMs often cited COI that was irrelevant to the claims and personal circumstances of the applicant and/or not adequately tied to the refugee or complementary protection criteria.	QC 2 <sup>nd</sup> Quarter Report
There was no reference to country information from 2018 or 2019. Given the recent major political developments during this time (e.g. the ousting of the President) the Reviewer has had to obtain new country information and put this information to the applicant for comment.	IAA Feedback report – 4 <sup>th</sup> quarter (2018-19)
In two cases the delegate referenced limited and dated country information despite recent and useful information being available.	IAA Feedback report - 3 <sup>rd</sup> quarter (2018-19)
Reference older COI if of relevance to a past event – a reminder to reference country information, even if dated, that provides information about particular past events to assist with assessing what is claimed to have previously happened. For example, if an applicant claims to have been detained and tortured in a particular prison, it is helpful if the latest country information about that prison is referenced, as well as any information about whether it was operating at the time the person claimed to have been detained there. This information needs to be included to provide objective information against which to assess the claim.	IAA Feedback report 1st quarter (2018-19)
Federal Court - Using relevant and current COI is not merely preferable, it is a core aspect of lawful formation of a state of satisfaction.	Federal Court WAEE v MIMIA [2003] FCAFC 184
The CTC Review found in 47 per cent of cases Assistant Directors did not identify issues that impacted on the COI used to support the decision including COI considered is not current.	QA Review: Check the Checker, July 2019

### Relevant COI

Issue	Source
Irrelevant COI: in one case the applicant did not claim to be politically involved, however the delegate cited 91 footnotes and pages of country information on politically motivated violence in Bangladesh and the 2018 elections (neither of which the applicant mentioned). This type of practice raises issues for the IAA in that the IAA then needs to consider all the country information cited by the delegate, rather than rely on specific country information relevant to the applicant's claims. It also potentially provides the applicant with a large body of country information to draw from when making submissions to the IAA.	IAA Feedback report – 1 <sup>st</sup> quarter (2019-20)
In 35.8 per cent of all cases reviewed by Specialist QC this quarter it was found that PODMs did not adequately support their decisions with COI that was relevant and supported by policy (19 out of 53 reviews).  PODMs are reminded that the assessment should demonstrate that they have considered relevant evidence (including COI) and articulate how that evidence applies to the applicant specificity. PODMs need to be mindful when cutting and pasting from earlier decisions or in using Quick Parts that the information referenced in support of the findings made remains current and is relevant to the applicant's particular circumstances.	QC report – 4 <sup>th</sup> Quarter 2019
In 37 per cent of all cases reviewed by Specialist QC it was found that PODMs did not adequately support their decisions with COI that was relevant and supported by policy (10 out of 27 cases).	QC 3 <sup>rd</sup> Quarter Report 2019
In this quarter in 45 per cent of all cases PODMs did not support their decisions with COI that was relevant and supported by policy and in 40 per cent of cases PODMs did not consider and weigh all available evidence.	QC 3 <sup>rd</sup> Quarter Report 2019
The delegate's decision refers to no country information on Iran (the receiving country for this applicant) (one case).  Decisions indicate the acceptance of certain claims without reference to relevant country information about conditions at that particular time. To assess credibility of the claims on review, the IAA Reviewer is required to obtain new country information.	IAA Feedback report – 4 <sup>th</sup> quarter (2018-19)
One Sri Lankan case where the delegate made findings about what happened to the applicant during the war in Sri Lanka referencing recent country information, rather than past country information which was relevant to the applicant's claims about his past. Given that the IAA is required to conduct a review specifically on the material that was before the delegate, it would assist the IAA in assessing and making findings on claims about the past if at least one detailed, authoritative and credible source on what happened during the war in Sri Lanka was also referenced.	IAA Feedback report – 2 <sup>nd</sup> quarter (2018-19)



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The Federal Court held that in this case the absence of any evaluation of the country information in the Tribunal's reasons, in circumstances in which such an evaluation was called for, together with an absence of findings of fact that might be seen as consequential on that evaluation, signifies a constructive failure to exercise jurisdiction in that, as in MZYTS, the Tribunal has failed to undertake the requisite steps to form the state of satisfaction required for the purposes of the review in respect of the criterion in s 36(2)(a) and, here also the criterion in s 36(2)(aa) of the <i>Migration Act</i> .	<b>Federal Court BSL15 v MIBP [2018] FCA 1898 (Kenny J, 29 November 2018)</b>
.. a failure to have regard to relevant material which is so fundamental that it goes to jurisdiction may amount to jurisdictional error.	<b>Federal Court AUV15 v MIBP [2018] FCA 812 (O'Callaghan J, 1 June 2018)</b>
The CTC Review found in 47 per cent of cases Assistant Directors did not identify issues that impacted on the COI used to support the decision including COI was not relevant to the decision or was not considered and/or irrelevant COI has been considered.	<b>QA Review: Check the Checker, July 2019</b>
when considering an application from a person where the material claims were that the applicant was female, the PODM cited general country information about gender. However, the PODM did not state how this information was relevant to the applicant's claims or provide any reasoning why this information supported the assessment. The PODM had not cited any country information that was specific to the applicant's particular circumstances, that is, that the applicant would be targeted and harmed because of her gender.	<b>QA Report - IAA Feedback - Claims not expressly raised</b>
Three cases where the IAA identified that the COI that is referenced in the decisions is of little or no relevance – either not current or not related to the applicant's claims.	<b>IAA remit report October 2018</b>
In one Iranian case the IAA commented that although the delegate considered a claim that the applicant was accused of adultery in Iran the delegate did not refer to any COI relating to treatment of adulterers in Iran.	<b>IAA remit report July 2018</b>
The IAA commented that it seems that multiple sources are being cited for the same fact, rather than selecting one reliable source. The IAA reviewer must consider everything that was before the delegate and where there is an unnecessary or irrelevant amount of country information to wade through; it is not conducive to the Fast Track process.	<b>IAA remit report October 2018</b>

### Sufficient COI

Issue	Source
Two cases where the delegate relied on very limited sources of information, citing almost exclusively the 2017 DFAT country report.  One case where COI was incorrectly referenced: "Iraq December 2009", UK Home Office, 10 December 2009, CISNET1500 is not the correct CISNET reference.	<b>IAA Feedback report - 2nd quarter (2018-19)</b>
In one case the delegate relied on a narrow source of generalised country information, mainly two reports, DFAT's 2017 and the UK Home Office's 2016 reports. The security situation in Iraq was amply covered by 'Musings on Iraq' which was not referenced by the delegate. It assists reviewers if delegates consider and reference a wide range of recent and relevant country information sources.	<b>IAA Feedback report - 3<sup>rd</sup> quarter (2018-19)</b>
In one case the delegate referred to vast amounts of COI. This at times can devalue the effort the delegate has gone to in her research. For example one sentence regarding the application of Sri Lanka's Prevention of Terrorism Act (PTA) is supported by 24 references including seven repeated references to the DFAT report.	<b>IAA Feedback report - 3<sup>rd</sup> quarter (2018-19)</b>
In one Iranian case the IAA commented that it was not clear why the delegate used an older DFAT report while a more recent report was available. The delegate relied mainly on an older version of the DFAT report on the treatment of individuals with tattoos and found that there was no real risk of harm. Conversely, the IAA referenced many more sources of COI and linked it to the applicant's particular circumstances.	<b>IAA remit report – bi-monthly - March-April 2019</b>
One case where the IAA noted the delegate relied almost exclusively on the 2017 DFAT country report which considerably restricted the range of information that the IAA could access and leaves the IAA decision potentially exposed to the same criticism from the agent that the delegate had relied solely on general country information from one source and failed to consider the individual circumstances of the applicant	<b>IAA remit report – October 2018</b>

### Reference

QA Review: Use of Country of Origin Information (COI) in assessing protection obligations

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Issue	Source
In three cases the delegate either failed to provide CISNET references, or provided incorrect CISNET references, for sources referred to in the decision.	IAA Feedback report – 1 <sup>st</sup> quarter (2019-20)
One decision has numerous footnoting errors. In various places the footnote numbers are out of order in both the footer and not in sequence in the text or repeated on the next page without apparent link to the text on that page. In some cases there is a footnote number recorded in the body of the text but there is no corresponding.	IAA Feedback report - 3 <sup>rd</sup> quarter (2018-19)

### Other issues

Issue	Source
In 88.9 per cent of positive cases PODMs also did not clearly set out their reasons for finding the applicant to meet the refugee or complementary protection criteria or clearly deal with adverse information that would not support the finding	QC 2 <sup>nd</sup> quarter Report
COI was provided as hyperlinks to webpages, was not on CISNET, and not provided as documents within the referral PDF. The IAA raised further concerns that relying on hyperlinks creates further issues for the IAA because the content of webpages accessed via hyperlinks changes over time. (three examples)	IAA Feedback report – 4 <sup>th</sup> quarter (2018-19)
Assistant Directors did not identify issues that impacted on the COI used to support the decision including issues with weighting of COI.	QA Review: Check the Checker, July 2019
Assistant Directors did not identify where COI considered in the decision had not been cited appropriately including: where the incorrect CISNET number was used to reference a COI source, where COI was relied on to make findings of fact or s5J assessments, or where a CISNET reference cited in the decision was not in fact uploaded to CISNET (12 per cent of cases).	QA Review: Check the Checker, July 2019
A Federal Court decision held that 'In the context of two or more pieces of apparently pertinent, but contradictory, evidence an expression of a preference for some evidence over other evidence generally requires an articulation of the different effects of the evidence concerned, and then some indication as to why preference is given.... The absence from the recitation of country information of the material referred to it in the post-hearing submissions is indicative of omission and ignoring, not weighing and preference.'	MIBP v MZYTS [2013] FCAFC 114 (Kenny, Griffiths and Mortimer JJ, 16 October 2013).
One case where there were a number of issues identified with the delegate incorrectly citing COI documents	IAA remit report October 2018

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## Attachment C

# Summary of available CISNET products and support tools for PODMs

### Afghanistan

The Afghan caseload is very well resourced with COISS products including Common Claims and regular COISS Conversations, DFAT reports and a wide range of COI available on CISNET. Given the complexity of issues and the highly fluid nature of this cohort it receives daily monitoring updates on CISNET. Afghanistan remains highly volatile and unstable and there is little likelihood of improvement in the short-to-medium term.

### Iraq

The Iraqi caseload is very well resourced with COISS products including: Common Claims, Thematic briefs, resource guides and regular COISS Conversations; DFAT reports; and a wide range of COI available on CISNET. Given the complexity of issues and the highly fluid nature of this cohort it receives daily monitoring updates on CISNET. Whilst the situation is demonstrably improved since the defeat of Islamic State (IS) the recent outbreak of widespread anti-government demonstrations and renewed attacks from IS demonstrate how quickly these trends can shift.

### Pakistan

The Pakistan caseload is very well resourced with COISS products including: Common Claims and regular COISS Conversations; DFAT reports; and a wide range of COI available on CISNET. Although there are improved general trends for Pakistan it remains complex and highly fluid and receives daily monitoring updates on CISNET.

### Egypt

Although a smaller caseload the Egyptian cohort is significant and sensitive with very active local advocates. The Egyptian caseload is well resourced with COISS products including: Common Claims, Thematic briefs, resource guides and regular COISS Conversations; DFAT reports; and a wide range of COI available on CISNET. Although the country is relatively stable at this point sectarian violence – particularly involving Coptic Christians – and the routine suppression of political opposition remain issues that need to be closely monitored.

### Ethiopia

There is a country page for Ethiopia on CISNET but due to the small caseload there are few COISS products, excepting a resource guide. DFAT published a report in December 2017 and all other major reports from the UK Home Office, US State Department, international NGOs and various UN reports are listed on the country page and it is actively monitored. The election of Prime Minister Abiy Ahmed in April 2018 has seen a radical reform program introduce greater political freedom, release of political prisoners and attempts to normalise relations with Eritrea. However there is ongoing ethnic conflict and recent violence could escalate further.

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