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This report has been developed and produced by the DIAC Programme Fraud and Investigation Support Section.

The content of this report was developed in consultation with key internal and external stakeholders.

Comments and suggestions for continuous improvement of this resource are encouraged. If you wish to comment, please contact Programme Fraud and Investigation Support Section.

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- an appropriate level of **English language capability**. Fraudulent certification of English language proficiency is a major risk exposure. Although DIAC can check IELTS online, one of the major problems is the use of impostors.

Comment: DIAC will issue a visa once it has confirmed: enrolment, sufficient financial capacity and pre-enrolment qualifications. These requirements become more onerous the higher the AL level. An improved **programme integrity** outcome could possibly be achieved, however, through focussing on the documents required for the visa process with DIAC rather than on those required for the enrolment process with the provider. This would create consequences for both education providers and education agents.

The question of whether DIAC's risk management process is effective is a matter for further examination. The government's tolerance for risk in the programme would need to be clear as would the real level of fraud. The real level of fraud could only be determined through an objective and comprehensive empirical survey method that would include Rolling Random Sample Surveys (RRSSs) which would sample and review the full decision making process to test for levels of error and fraud.

5.6 The role of State/Territory registration authorities

State and Territory Governments are responsible for regulating education for international students studying in their jurisdictions. They have a crucial role in deciding what courses are approved. Each State and Territory government also regulates the delivery of education services to domestic students. The ESOS framework recognises this pivotal role of state and territory governments and minimises the regulatory burden on registered providers by applying existing registration, accreditation and compliance systems to underpin regulation of the education and training for overseas students studying in Australia. Under the ESOS framework, the designated authority in each state and territory assesses the registration and re-registration of courses on CRICOS and monitors compliance with the National Code. Some state and territory governments also have legislation that specifically relates to providing education services to overseas students. While DEST is primarily responsible for investigating and instigating enforcement action for breaches of both the *ESOS Act 2000* and the National Code, state and territory governments often have enforcement mechanisms available through their legislation. Pursuing enforcement action through these mechanisms may be more appropriate given the nature of the breach, particularly if the state or territory government has specific legislation related to ESOS matters.¹⁵

5.7 Education agents¹⁶

To maximise growth and 'market share' in the business of providing Australia-based education services to full-fee paying students from overseas, nearly all Australian universities and other education providers contract companies, known as agents, to recruit overseas students to their programmes. Education providers have recruitment agents overseas and in Australia. Each provider has its own arrangements, contracts and fee structures for its agents. Some agents have contracts with more than one provider. The contracts vary in duration from one to three or more years, and set the fees the provider will pay the agent. These fees are paid to the agent for each student successfully recruited, i.e., each student who enrolls at the provider and stays enrolled past a threshold date - the withdrawal deadline and fee refund cut-off date, which is usually

¹⁵ Department of Education Science and Technology.

¹⁶ Report dated 15 October 2004 under section 14(2) of the Independent Commission Against Corruption Act 1988 into fraudulent applications for enrolment of overseas full-fee paying students at the University of Sydney.

about four weeks after commencement of the programme. Some markets, such as India and China, are particularly dominated by agents.

5.8 Conflict of interest by education agents

A major part of the role of an agent is to assist students with the enrolment process and to undertake the enrolment on the student's behalf, if the student wants this service. Agents are able to conduct these services from overseas or within Australia. Depending on the arrangement with the provider, contractual or otherwise, agents may also be authorised to sight and certify copies of a student's original documents, thus enabling copies to be provided to the provider instead of originals. This practice is of concern. Being authorised to certify documents and be paid for the successful enrolment of that same student involves a clear **conflict of interest** for an agent and represents an obvious corruption risk within the system.

Agents may refer students to colleges that pay large commissions to agents, rather than advising them of their full range of options and attempting to identify a course and education provider most appropriate to the individual student.

The majority of overseas students enlist the assistance of an agent to help them through the process of seeking offers and then enrolment. However, students can also apply directly to a university. Agents advertise their services in their home country and in Australia, in print media and on the internet.

5.9 Risk exposure to education agents

Recruiting is very lucrative for the many hundreds of agents who have started up as a result of the growth and value of this business. Recruiting companies vary in size from one-person enterprises to large global companies with many staff and offices around the world. Agents carry out their business in every Australian capital city. Apart from a number of statements in the guide to the *ESOS Act 2000*, coinciding with provisions in the National Code that set out what agents must not do, the industry is largely unregulated, making it vulnerable to corruption risks in the education sector, risks that extend beyond the fabrication of documents. It should be noted that the *ESOS Act 2000* only applies to providers and not agents. Some standards do, however, govern the way in which providers deal with agents.

Comment: MARA is able to take action against registered migration agents who misuse fees paid to them by clients. However, under the current system, there is no capacity for a government agency to ensure that education agents do not misuse funds.

5.10 ESOS requirements for education agents

The guide to the Commonwealth's *ESOS Act 2000* states that agents must not:

- make any inaccurate claims of association with any other provider or organisation;
- give inaccurate/dishonest advice as to (the student's) acceptance into another course; and
- engage in false or misleading advertising or recruitment practices.

Under the National Code, the provider (the university) is required to cease dealing with an agent who breaches the provisions of the guide to the *ESOS Act*. The provider is not to be held to

account for an agent's misdeeds; however, the provider can be held to account for continuing to deal with an agent that it knows to be offending.

5.11 Pre-requisite requirements for study in Australia

The process for enrolling international students and granting them a visa, although linked, are nevertheless separate processes. The former is the responsibility of education providers and the latter is the responsibility of DIAC.

Once an overseas student has decided to apply to a university in Australia, they must first be able to demonstrate a requisite level of academic achievement and proficiency in oral and written English. This quality assurance mechanism operates in either of two ways: prospective students must provide documentary evidence of the required standards to enable them to enrol directly into a degree programme, or, if the available evidence does not meet requirements, a student can enrol in what is generally referred to as a foundation studies programme, usually for one year, at one of the many public and private institutions that offer it - for a fee. A number of universities offer this service. UNSW offers a Foundation Studies Course, administered through the UNSW Foundation Studies Office; the University of Sydney runs a Foundation Programme.

On completion of the programme the student receives a grade point average score (GPA). This score determines the student's eligibility for enrolment at a particular university and degree programme. If the student stays on at the same university to take their degree, the enrolment is quite straight forward as all of the required information is already in the university's student records system.

When a student seeks to enrol in a different university the required information can be transmitted electronically. This method is preferred by the universities as it seems to work well. Few problems have been reported to date. Sometimes, however, students prefer to undertake enrolment at the different university personally, or have an agent undertake the enrolment on their behalf. It is these latter two methods that provided the medium for the frauds described in this report. For example, a case was recently identified in which a student entered a Masters program at a university, after submitting a bogus Bachelor degree.

6. Analysis

6.1 A strategic perspective

There has been some excellent operational analysis by the AIB, and by STOs in NSW and Victoria. Although this work is largely tactical in nature, Operations Blueberry and Dachshund have achieved much. The types of fraud are known and now well understood. There is also anecdotal evidence that it is widespread. In strategic terms, however, DIAC cannot know what it does not know. A realistic risk assessment of the student visa programme would need to be based on an accurate and objective understanding of the extent of fraud in the programme and the strategic risks driving fraud, malpractice and error. There has been no objective and complete cross-programme and cross-agency **strategic assessment** to accurately determine the extent of fraud in the international education sector. This is the next logical step to build on the work of the STOs and the AIB.

6.2 The international strategic environment

Proactive policy responses in a rapidly changing global environment are preferable to a culture of short-term reactive 'fixes'. The impact of policy changes by foreign governments can have significant effects on the international education sector in Australia. DIAC's role in assessing student applications changed significantly in 2003/2004, for example, as a reaction to policy decisions by a major competitor in the international education sector. Terrorism concerns in a post 9/11 world saw the United States Government tighten entry barriers for international students.

The end result for Australia was that our student programme operating out of the Gulf region saw a significant increase in applications¹⁷. In 2002 - 2003 there were 290 visas granted. This rose to just over 2000 in 2004 - 2005. s33(a)(iii) [redacted] s47E(d), s37(2)(b) [redacted]

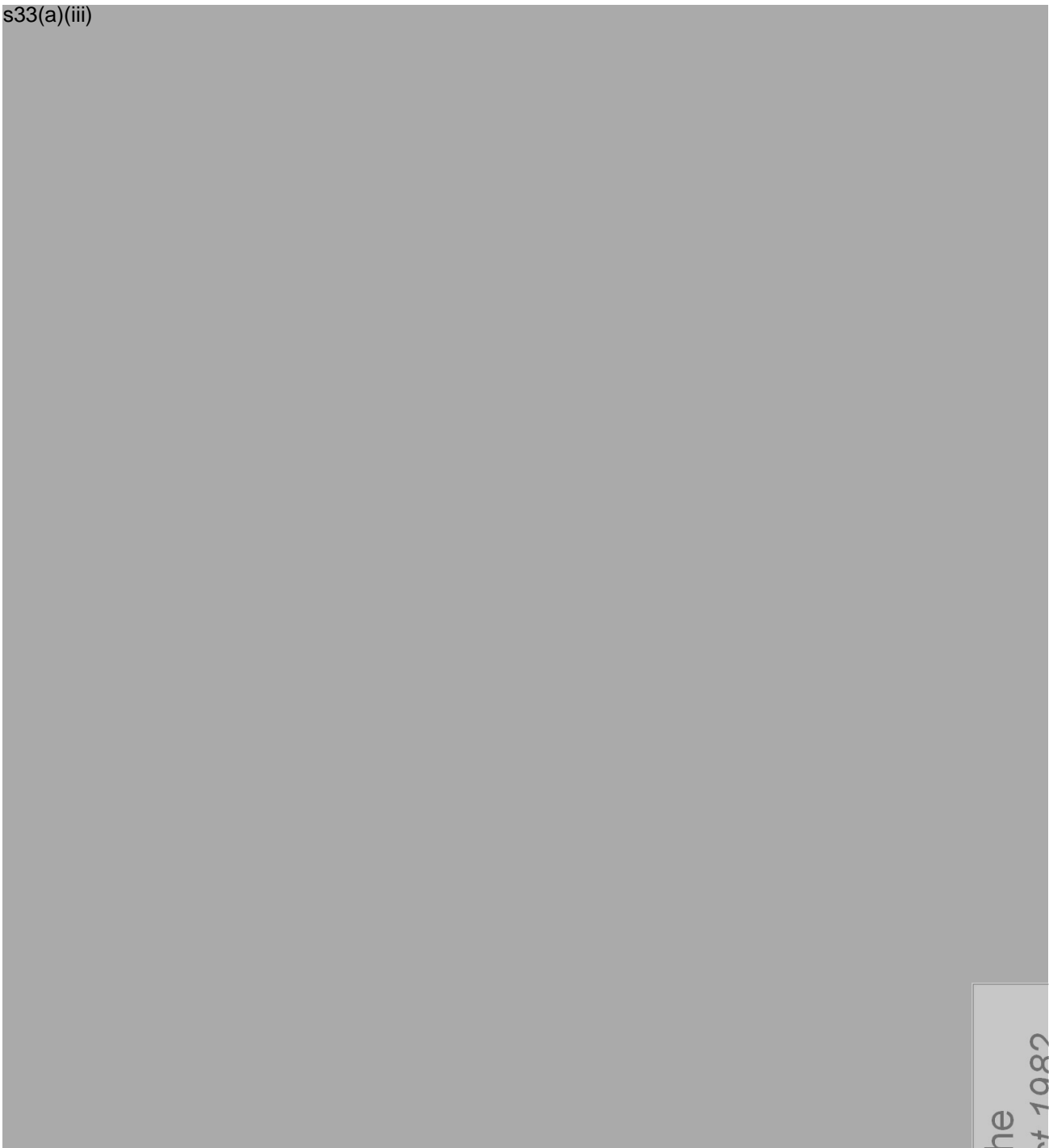
DIAC's position has been that if an applicant has the money and an education provider accepts them then DIAC's only role is to grant a visa. s33(a)(iii) [redacted]

They are accepted, for example, almost without question into a Master of Arts in Law or Economics programme. The precarious financial situation of Australian universities provides the incentive for this behaviour. There appears to have been no strategic appreciation of the consequences of such short-term reactionary policy making.

The consequences could, however, be profound. Many DIAC officers feel they are under pressure to grant as many visas as possible with academic institutions effectively deciding who is granted a visa. The implications for both the reputation of Australia's multi-billion dollar international education sector and our national security are obvious. There are increasing reports of international students returning home dissatisfied with the quality of their education experience in Australia.

s33(a)(iii) [redacted]

¹⁷ Email from s22(1)(a)(ii) [redacted] to s22(1)(a)(ii) [redacted] dated 17 September 2007.
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6.5 The United Kingdom

For the second year in a row, the number of foreign, non-EU students starting first degrees in the UK is down, according to figures released this week by the UK Higher Education Statistics Agency. Undergraduate enrolments fell from 48,600 in 2004 - 2005 to 45,900 in 2005 - 2006, a fall of nearly six per cent. The previous year they had fallen by three per cent. The two consecutive years of declines mean a total financial loss to British universities estimated at between £30 million and £40 million. The findings seem to confirm the fears of many university officials, who are concerned that new visa costs and delays would combine with stepped-up competition

¹⁸ s33(a)(iii)


s33(a)(iii)

from North America, Australia and new entrants to the market such as Singapore to stem the flow of new students to Britain. The total number of foreign, non-EU undergraduate students in the UK edged up by one per cent over last year, to 99,300.²⁰

6.6 The USA

A total of 142,923 new international students commenced studies at American campuses in the year 2005 - 2006. This was eight per cent more than the previous year, according to a recently released survey by the Institute of International Education (I.I.E.). There had been concerns in US for the previous three years that there would be a slow and steady decline in the number of international students studying in the country. It appears, however, that the decline is ending. The institute also released recently its annual report, which contains data on the number of foreign students in the US up to last year. According to that report, there were 564,766 foreign students in the U.S. in 2005 - 2006. This was 273 more than the previous year. Numbers had fallen considerably during the two years before that. There were five per cent fewer students from India studying in the U.S. last year over 2004 - 2005, although India remained the biggest source country.²¹

s33(a)(iii)



²⁰ Figures show drop in overseas undergraduates: Article published in the Guardian newspaper on 9 January 2007.

²¹ Foreign students resume influx at US colleges: Article published in the International Herald Tribune newspaper on 13 November 2006.

The bona fides of applicants as being a genuine student are therefore certainly relevant to DIAC and should be addressed at the time of decision by DIAC, s37(2)(b), s47E(d)

6.8 The Nature of Strategic Assessments

A strategic risk assessment would include a broad view of global and regional trends. These would be integrated with an assessment process that would greatly benefit from a programme of Rolling Random Sample Surveys (RRSS). This would take a representative sample and review them for fraud and error to make an empirical **quantitative** measurement of the level of fraud. It would also use **qualitative** measures by programme owners.

A full risk assessment of the student visa programme would determine whether current systems, processes and risk treatments are adequate in relation to the growing and profitable international education sector in Australia for full-fee paying overseas students. Poor reporting practices may be inconsistent with good governance, good management and the public interest. These may be also inconsistent with protecting the international reputation of Australian education institutions and qualifications. This could well represent a threat to the sector's long term viability, Australia's economic development and human capital resources.

The lack of appropriate attention to, and proper management of, risks may be a specific threat to the integrity of DIAC's student visa programme and, more broadly, circumvent the "well managed entry of people". Core process deficiencies therefore need to be identified.

To some extent, however, the cross-agency management of the international education sector means that DIAC's risk exposure is a function of factors it can control and factors under the control of other stakeholders. The decision to grant, refuse or cancel a visa and ultimately remove a person is a downstream activity governed in part by DEST, State and Territory authorities and providers.

6.9 The domestic strategic environment

Changes to reporting requirements for international students and education providers are an example of how domestic developments can change the strategic environment for DIAC. The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students (the National Code 2007) is administered by DEST. Changes to the National Code took effect on 1 July 2007. Registered providers of educational services to international students were always required to report to DEST but under changes in *Section 19 of the ESOS Act 2000* this reporting now comprises:

6.10 Changes to student enrolment

- completed program early;
- did not commence program;
- left education provider (transferred to another program at another provider);
- enrolled in the same/another program (same educational provider);
- cessation of studies;
- enrolment cancelled due to non-payment of fees;
- incorrect enrolment in a semester; and

Any breach by the student of a student visa condition relating to:

- attendance at classes; and/or
- satisfactory academic progression.

6.11 Changes to the National Code

A number of the changes to the National Code have also resulted in several amendments to the Migration Regulations relating to three areas of the student visa programme:

- **Welfare requirements for student visa applicants²².**

In order for a student under the age of 18 to be granted a student visa they must demonstrate that they have adequate welfare arrangements in place for the length of the student visa or until they turn 18. Under the *Migration Regulations 1994*, student visa applicants under the age of 18 must demonstrate that they will be accompanied by a parent or legal custodian, a suitable relative or that the student's education provider approves arrangements for the student's accommodation, support and general welfare. Education providers who approve welfare arrangements for students under 18 years old will be able to nominate the period for which they will approve the arrangements.

- **Student transfer between education providers²³**

Education providers will now be responsible for assessing and approving a student's request to change provider within the first six months of the student's principal course of study. In most circumstances the new education provider will be restricted from enrolling the student if they have not completed 6 months of the main course of study for which their visa was granted. Students wishing to change the level of their qualification, eg a Bachelors Degree to a PHD, will need to apply for a new student visa because their visa subclass will change. Students who wish to change education sector at any time will still be required to lodge a new student visa application.

²² DIAC Fact Sheet: Changes to the Migration Regulations relating to student visa holders under 18 years of age

²³ DIAC Website - Students: Changing courses or education providers
Student Visas – Risk Management Plan
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- **Course progress and attendance requirements**²⁴

Education providers are required to assess whether a breach of course progress or attendance requirements was due to compassionate or compelling circumstances prior to reporting a student to DIAC. This change gives education providers more autonomy to make decisions that relate to educational matters and are more appropriately handled by the education provider. Once a student is reported, DIAC will not be able to consider compassionate or compelling circumstances and in most cases will cancel the student visa.

Changes to the National Code and Migration Act Regulations were driven at least in part by perceived abuses in the student visa programme. There is a perception that they are intended to shift risk to some degree to education providers. Their compliance would be monitored by DEST and State/Territory registration authorities, who would also share a greater degree of risk. DIAC's responsibilities would effectively be limited to granting visas and monitoring compliance of conditions. DIAC would act on advice from education providers and DEST when carrying out these functions.

Whilst the effectiveness of the changes is yet to be evaluated, it is difficult to argue that DIAC would escape public, media and parliamentary criticism in the event of any subsequent reports of widespread fraud and abuse becoming public knowledge. DIAC could not rely on a defence that it had essentially acted on the advice of the international education sector, partner agencies such as DEST and DEWR, and State/Territory registration authorities. DIAC remains responsible for its self-proclaimed mission of **'managing the lawful and orderly entry and stay of people in Australia'** of people. It therefore has a key national security role in border security. That is likely to remain the public perception in any media debate on fraud, malpractice and error in the student visa programme. A strategic risk assessment would therefore need to also:

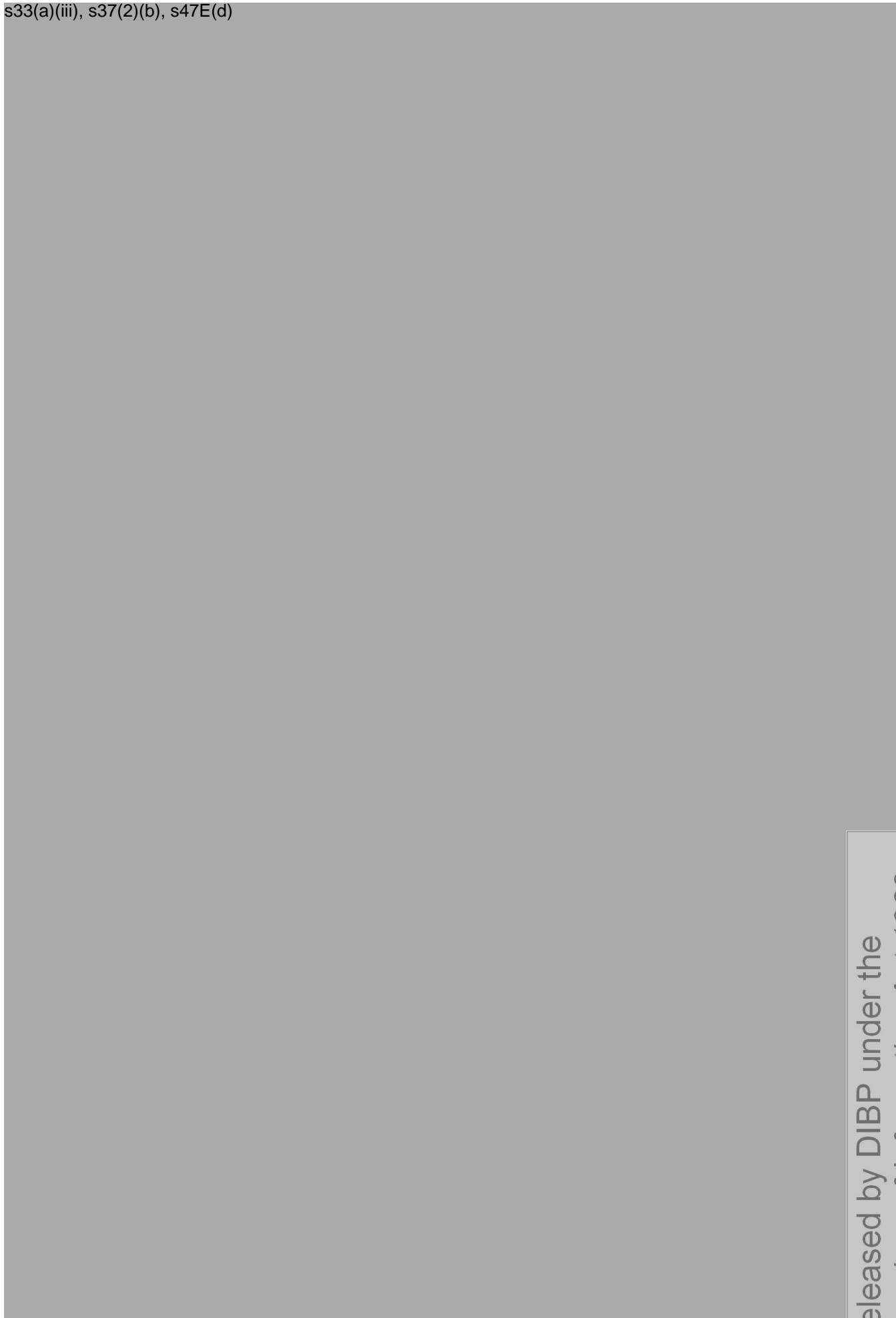
- assess the effectiveness of changes of changes to the National Code and the Migration Regulations;
- determine any changes to DIAC's risk exposure stemming from these changes; and
- recommend treatment options to mitigate against these risks.

Improvement of the management of risk in the student visa programme will lead to improved results for the sector. Faster processing for individuals genuinely engaged in the business of international education, whether they be students, providers or agents, will help sustain Australia's competitive advantage in a highly competitive business.

²⁴ DIAC Fact Sheet - Changes to the migration regulations: overseas students who are reported for failing to maintain course progress or attendance
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Table 1 (repeated): Some key risk exposures & impacts in Australia’s international education sector

Sources of risk	Risk event
Human behaviour	Fraud and error by applicants Fraud and error by agents Fraud and error by education/training providers
Technology and technical issues	Implications of eVisas for fraud and error Implications of online courses for fraud
Occupational health and safety	Threat to students and their families from loan sharks in home countries Threat to students of unscrupulous education agents and education providers Threat to community safety from untrained or poorly trained graduates settled in Australia under the skilled migration programme Threat of exploitation of indebted students in Australia by brothels and other employers: vulnerable clients engage in risky behaviour with implications for health and safety Threat to well-being of unaccompanied minors, without adequate guardianship (AG) ⁴ Education providers failing to meet safety requirements for high risk courses such as cooking
Economic	Decline in the international reputation of Australian qualifications results in a contraction of market share and mobility of Australian workers Decline in professional and vocational standards in the Australian economy reduces productivity Downstream revenue risks, eg welfare fraud, tax and Medicare/PBS Greater participation by vulnerable students in the unregulated economy threatens revenue collection and distorts the labour market.
Legal, Administrative & Regulatory issues	Failure of the cross-portfolio legal and regulatory framework to effectively administer programme Ease of committing fraud and lack of penalties if detected seen as giving a green light to committing fraud against other agencies and institutions
Political	Damage to Australia’s relations with countries in the region from perception their nationals are being exploited in Australia Loss of domestic public and political support for the international education sector Damage to Australia’s tertiary education sector as students leave universities for ‘paper’ or ‘easy’ colleges and legitimate universities are pressured to compete Damage to Australia’s reputation with the proliferation of ‘paper’ colleges and colleges set up by people who are not fit and proper Devaluing of Australian training and education provided as aid by DFAT and other agencies Loss of standing/face for regional elites whom were educated in Australia
Border security	Organised crime groups use the student visa programme to facilitate criminal activity Terrorist groups use the student visa programme to facilitate covert entry and recruiting activities in Australia
Financial/market	Damage to Australia’s reputation as an international education and training provider causes a decline in market share Distortion of the education market, including the diversion of resources to non-productive activity



Identification of Systemic Risks

Key Exposures - Offshore Risks

7.6 Recruiting agents

Recruiting agents are contracted to particular universities, with whom specific arrangements are made in conformity with the requirements of the *ESOS Act 2000* and the National Code. Contracts used by Australian education providers should include measures to control agents' authority to verify copies of students' original documents. Many of these documents represent, or claim to represent, study undertaken at educational institutions overseas.

Comment: This aspect of the agent's role is an unregulated and informal arrangement, which constitutes a major corruption risk arising out of a serious conflict of interest. Agents should not be permitted to verify student documents. In cases where it is not possible to undertake on-line verifications of students' qualifications, Australian providers should, for enrolment purposes, only accept original documents. In verifying documents at overseas locations best practice standards will need to be developed and practice monitored. In all cases, only original

³⁵ s33(a)(iii), s37(2)(b)

documentation should be submitted to the certifying authority. A counter argument is that there is not much to be gained by having providers assess documents rather than agents. This is a proposition that should perhaps be tested.

7.7 Document and identity fraud by intending students

There is growing anecdotal evidence that many applicants are dispensing with the services of corrupt agents. They avoid paying agents by sourcing their own documents to establish false prerequisite qualifications or English language ability, or false identities in the case of previously rejected applicants.

s47E(d)

Key Exposures - Onshore Risks

7.9 Students not complying with visa conditions

There are increasing reports of students using doctors' certificates to avoid exams or explain poor course attendance. Under changes to the *ESOS Act 2000*, DIAC will no longer see medical certificates. Other reports mention the use of false reports of the death of a family member to avoid exams or explain poor course attendance and the failure to meet other course requirements. Many students are reported to have insufficient English language capacity to successfully complete courses and this is accompanied by false certification of English language capacity.

7.10 The Student visa programme and permanent entry into Australia

The residency status of hundreds of overseas students could be in question after the University of New England, in northern New South Wales, admitted many were being investigated for cheating. The Armidale University says a "significant number" of the 210 full-fee paying students in its Master of Information Technology honours course allegedly plagiarised material for their theses between 2004 and 2006. Completion of the course guarantees student's permanent residency in Australia.³⁷

The above example will add to a growing perception that student visas are seen in the student community as a device for permanent entry. There are anecdotal reports that international students are:

- transferring from courses to undertake an easier course that is on the Migration Occupation Demand List (MODL);
- transferring from University to TAFE to pass a course in order to obtain permanent residency eg changing from a Bachelor of Economics at a university to a Certificate III in Hairdressing at a TAFE;
- breaching visa conditions by working over the limit of 20 hours per week, or by working 10 hours one week and 30 the next during semesters (condition does not apply during holidays);

³⁶ Source: s22(1)(a)(ii)

³⁷ Source: 'Uni cheats' may be deported: Article dated 22 August 2007 published online by the ABC

- cash economy concerns, such as the exploitation of students by employers or students using false identities to access work with multiple employers;
- education institutions failing to adequately monitor and report mandatory course performance and attendance to DEST with no resulting downstream reporting to DIAC for consideration of visa cancellation;
- decline in academic standards at financially troubled education institutions leading to perceptions they are “degree factories” or “diploma mills”, resulting in damage to the international reputation placed on Australian qualifications;
- committing identity fraud to access the FEE HELP student loans system available to Australian citizens and departing the country once they have obtained their education.

Central Queensland University is suffering a decline in international students, which it has attributed to competition from the vocational education sector. The student community believes this to be a cheaper and easier passage to permanent residency.³⁸

³⁸ University funding among lowest in OECD – article in the Sydney Morning Herald on 19 September 2007.
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Table 2: Identifying risk in the student visa programme

Sources of risk	Risk event
Human behaviour	Fraud and error by applicants Fraud and error by education and immigration agents Fraud and error by education/training providers
Technology/technical issues	eVisa for fraud and error Online courses
Occupational health and safety	Threat to students and their families from loan sharks in home countries Threat to students from unscrupulous education agents and providers Threat to community safety from untrained or poorly trained graduates settled in Australia under the General Skilled Migration programme Threat of exploitation of indebted students in Australia by brothels and other employers: vulnerable clients engage in risky behaviour with implications for health and safety Threat to well-being of unaccompanied minors without adequate guardianship Education providers failing to meet safety requirements for high risk courses such as cooking
Economic	Decline in the international reputation of Australian qualifications results in a contraction of market share and mobility of Australian workers Decline in professional and vocational standards in the Australian economy reduces productivity Distortion of the labour market and cash economy concerns by vulnerable students participating in the unregulated economy Downstream revenue/expenditure risks eg tax, welfare & Medicare/PBS
Legal, administrative & regulatory issues	Failure of the cross-portfolio legal and regulatory framework to effectively administer programme Ease of fraud and lack of penalties if detected see as giving a green light to committing fraud against other agencies
Political	Damage to Australia's relations with countries in the region from perception their nationals are being exploited in Australia Loss of domestic public and political support for the international education sector Policy decisions by foreign governments competing in the international education sector sees a down stream change in the number, nature and source of applications to study in Australia Damage to Australia's tertiary education sector as students leave universities for 'paper' or 'easy' colleges Damage to Australia's reputation with the proliferation of 'paper' colleges and colleges set up by people who are not fit and proper Devaluing of Australian training and education provided as aid by DFAT and other agencies Loss of standing/face for regional elites educated in Australia
Border security	Organised crime groups use the student visa programme to facilitate criminal activity Terrorist groups use the student visa programme to facilitate covert entry and recruiting activities in Australia
Financial/market	Damage to Australia's reputation as an international education and training provider causes a decline in market share Distortion of the education market, including the diversion of resources to non-productive activity

8. Response

8.1 Risk management as part of integrated response

A full risk assessment process would analyse fraud and other data to identify current or emerging risks and trends. To be effective, risk assessments would need to integrate with a number of other inter-related measures forming a holistic best practice approach to fraud control³⁹:

- **Fraud detection capacity.** The department has currently no capacity to undertake **intelligence-led investigations**. It relies almost solely on tip-offs from the general public and needs a facility to detect fraud and non-compliance cases by applying technology to the multiple data sources. Targeted case detection will enable the department to identify and anticipate fraudulent and non-complaint behaviour, particularly organised criminality and fraud. Fraud detection and strategic intelligence analysis needs to be closely allied to fraud and investigation operational areas to ensure currency and relevance of case outputs. Both PRISMS and IRIS allow for fraud (either fraudulent information or failure to enter required information) to be recorded. This information must be crosschecked against Production Notice Results and/or unannounced site visits. PRISMS is owned and managed by DEST. It is a slow and difficult process, even for DEST compliance officers to obtain system changes to better identify and document fraud.

Resources need to be allocated in order to conduct **case profiling** facilitated by data mining and internal referrals. Currently, there is no systematic environmental scan of departmental programmes for fraud. Targeted case detection would enable the department to identify and anticipate fraudulent non-compliant behaviour, particularly organised criminality and fraud.

Comment: The student caseload has characteristics that make it particularly well suited to a risk management approach. It is a data-rich environment with student enrolment and visa processing involving the collection of significant amounts of information that is stored on DEST and DIAC systems. This data, used correctly, would provide a sound and efficient basis for managing the student caseload. There would be inevitable resource implications in order to realise the full potential of existing data. The gains would, however, be significant. Effectively isolating the risk parts of the caseload would allow DIAC to reframe its business processes and improve processing arrangement for the low risk part of the caseload.

- **Defined fraud governance structure.** Previously, there was no unit within the department responsible for fraud matters. Identification of fraud cases, fraud analysis, recording fraud data and reporting fraud outcomes was ad-hoc. s22(1)(a)(ii) recent Governance report highlighted these problems and the Executive Committee has now approved a corporate response.
- **Cross jurisdictional investigation capacity.** The department has only a limited capacity to identify organised cross-jurisdictional crime and fraud. It also has a limited capability to investigate these matters. In NSW, however, there has been progress in the form of tripartite meetings between DEST, DIAC and VETAB (and at times NEAS). These are held to discuss emerging trends and methods of addressing fraud by education

³⁹ Investigation and Fraud Governance paper dated 18 June 2007 by s22(1)(a)(ii) for Deputy Secretary Bob Correll

providers. Although appropriate action is now being taken, the time required to impose sanctions or cancellation action is still too long. The agencies responsible for cancelling or suspending a provider's accreditation are DEST and, in NSW, VETAB. They are now aware of the extent of fraud in the international education sector and are examining ways to improve the effectiveness and speed of their enforcement action. The NSW experience could serve as a model for future joint agency approaches to fraud that has onshore, offshore, multi-jurisdictional and cross-agency management considerations.

Comment: The DIAC Investigation function structure must change in order to ensure flexible, efficient, effective and skilled responses to cases. The department has no case management system to facilitate multi-jurisdictional investigations around the country.

- **Formal feedback loop between risk exposure identified by fraud and investigation activities and programme areas.** Lessons learned by investigations staff need to be fed back to programme owners to ensure identified risks are addressed by programme owners.

Comment: To be fully effective, however, this process needs to be supported at the national level through structured feedback to relevant policy areas. Programme owners need to accept responsibility for addressing risk in their programmes.

- **Analysis of current regulatory powers.** The *ESOS Act 2000* provides administrative sanctions for education providers who fail to report breaches of student visa conditions. Instances of providers failing to monitor or report student breaches detected by compliance officers or by the use of Production Notices have led to additional audits of suspect colleges. In at least two cases audits have resulted in the cancellation of a college's CRICOS accreditation. As suspect providers cannot attract domestic students, the loss of CRICOS accreditation has resulted in the closure of colleges. DEST and VETAB have also imposed conditions on providers. This includes further recruitment and enrolment of students together with much tighter monitoring of student attendance reporting.

Comment: The *ESOS Act 2000* also contains powers that allow the DIAC Minister to suspend an education provider for reasons related to immigration non-compliance. These powers have, however, never been used. Consideration could be given to this option. This would require policy and legal analysis to determine the proper basis for using these powers and the appropriate processes to be followed.

- **Analysis of problems in the legislation.** The *Migration Act 1958* requires student visa holders to attend at least 80 per cent of their classes. However, some colleges operate with teaching blocks as short as 3.5 weeks. If a student is sick for a week, they may be reported for a breach of their visa conditions. Some providers have structured their timetables with either excessively short or long terms in order to avoid the requirement to report non-attending students.

This report highlights how such a **comprehensive fraud control model** could operate. The current report is largely based, however, on tactical and operational data obtained as a result of investigating individual cases. Operational and tactical risk identification remains largely reactive by nature. A comprehensive response would be accomplished through a combination of risk assessment processes such as qualitative reviews, seeking input from programme owners and other practitioners; and quantitative reviews, gaining empirical measure of fraud and error levels by a statistically valid sampling process. A fully developed programme would include

identification of strategies, risks and emerging issues. A full risk assessment could include a range of issues that could be broadly categorised as DIAC specific issues and issues for other stakeholders that impact on DIAC.

8.2 DIAC specific issues

Although DIAC has no powers under the ESOS Act, a full risk assessment could include a range of issues that could be broadly categorised as DIAC specific issues and issues for other stakeholders that impact on DIAC.

- How effective are the current provider reporting requirements and the secure electronic confirmation of enrolment system (CoE) in supporting the Australian Government's migration policy?
- Are the increased monitoring powers assisting the Australian Government and State Governments to take action against providers who facilitate student visa fraud and/or misuse?
- What changes, if any, are needed to the *ESOS Act 2000* to strengthen support for migration policy? What changes, if any, are needed in State equivalents (eg VETAB Act)?
- Do the current monitoring and enforcement powers enable Australian Government agencies to act quickly and decisively against providers who do not comply with the *ESOS Act 2000*? This is an example of a downstream risk for DIAC. It requires other agencies to use their powers effectively before DIAC can make appropriate visa decisions.
- How efficient has the management and implementation of the legislation been?

8.3 Issues for other stakeholders

- Determine whether written policies and procedures relevant to identifying, reporting and managing problem enrolments are sufficient to ensure that DIAC receives timely advice of poor course performance and attendance;
- Determine whether there is scope for improved cross-checking student documents prior to making offers of enrolment so as to prevent the inappropriate granting of visas;
- Adequate of knowledge of, and adherence to, reporting procedures by education providers so that DIAC can consider visa cancellation and removal at the earliest opportunity;
- Management of the risks associated with the involvement of agents in the enrolment process and, in particular, the inappropriate reliance on agents to verify original documents despite the obvious conflict this presents;
- The adequacy of performance management content in a standard agent contract, including no agreed arrangements for a performance review and no statement prohibiting sub-agents.

- Assess the extent of document fraud, given the financial imperatives of the education sector and the reliance on overseas students to contribute significantly to university income. The sector as a whole is vulnerable to fraud. At the institutional level, it would be useful to ascertain whether institutions need to further address the specific issues identified in audits carried out by DEST and State/Territory registration authorities.
- Determine how effective consumer protection provisions (including the assurance fund and tuition assurance schemes) are in ensuring that students' tuition and refund entitlements are appropriately protected.
- Determine how well stakeholders understand their rights and obligations under the *ESOS Act 2000*, as this has a major downstream effect on DIAC's administration of student visas.
- Assess how effectively the *ESOS Act 2000* meets its regulatory objectives through the activities of Australian government agencies and State and Territory authorities.
- Determine whether there are any duplications, gaps or inconsistencies between the *ESOS Act 2000* and other Commonwealth and/or State and Territory legislative or standards requirements that impede DIAC's capacity to administer student visas.
- Determine, from a DIAC perspective, whether the *ESOS Act 2000* is the most effective means of meeting the Australian Government's regulatory objectives for the education and training export industry.
- Recommend what changes, if any, are needed to the *ESOS Act 2000* to improve the regulatory framework from a DIAC perspective.
- Assess the extent to which cooperation between governments and associations of providers contribute to the effective administration of the *ESOS Act 2000* and DIAC's downstream administration of student visas.
- Assess whether reporting about the administration of the legislation is adequate, relevant and timely.
- Assess whether any unintended consequences have arisen from the administration of the *ESOS Act 2000* for other DIAC programmes and service delivery areas.
- Determine any changes required to enhance the effectiveness of the administration of the *ESOS Act 2000* as it impacts on DIAC's administration of student visas.

At a sectoral level, greater transparency and cooperation in problem solving is needed between all internal and external stakeholders. Education providers have a growing and common problem to address. Measures to protect and fortify the reputations of individual institutions will be pointless if the reputation of the sector continues to fall into disrepute.

Appendix 1 - The full risk assessment method

The concepts and tools used in risk management are based on the current best practice standard for managing risk detailed in the Australian Standard AS/NZ 4360:2004. The Australian Standard defines risk as “the chance of something happening that will have an impact on objectives”. In English usage, the concept of risk usually has connotations of loss. The management of risk, however, can have powerful positive impacts through the identification and exploitation of opportunities for improving programme integrity and enhancing organisational outcomes. Risks may be regarded as uncertain future events that could influence the achievement of the organisation’s strategic, operational and financial objectives.

The best practice risk management process defined in the Australian Standard comprises five key steps which are supported by accompanying processes of consultation, communication, monitoring and review. The key activity and process steps are designed to ask and, through inquiry and analysis, answer a series of questions.

1.1 Establishing the context of the risks faced by the organisation

- What are the internal and external boundaries of the risks faced by the organisation?
- What is the risk appetite of the organisation?
- What structures are needed to effectively manage risk?

1.2 Identifying the risks

- Within these boundaries, what is the range of risks faced by the organisation?
- What can happen, why, where and when?

1.3 Analysing the risks

- How likely are these risk events to occur and what would be the consequences?
- What control measures are there currently?

1.4 Evaluating the risks

- Which risks are priorities for the organisation?
- Can they be treated? - from AS/NZS 4360:2004 Risk Management.

1.5 Treating the risks

- What options are there to mitigate or manage the risk?
- What is the best plan?
- What residual risk remains if the plan is implemented?
- Who will be the risk owner, ie responsible for implementing treatments and managing risks?

Risk management process – in detail

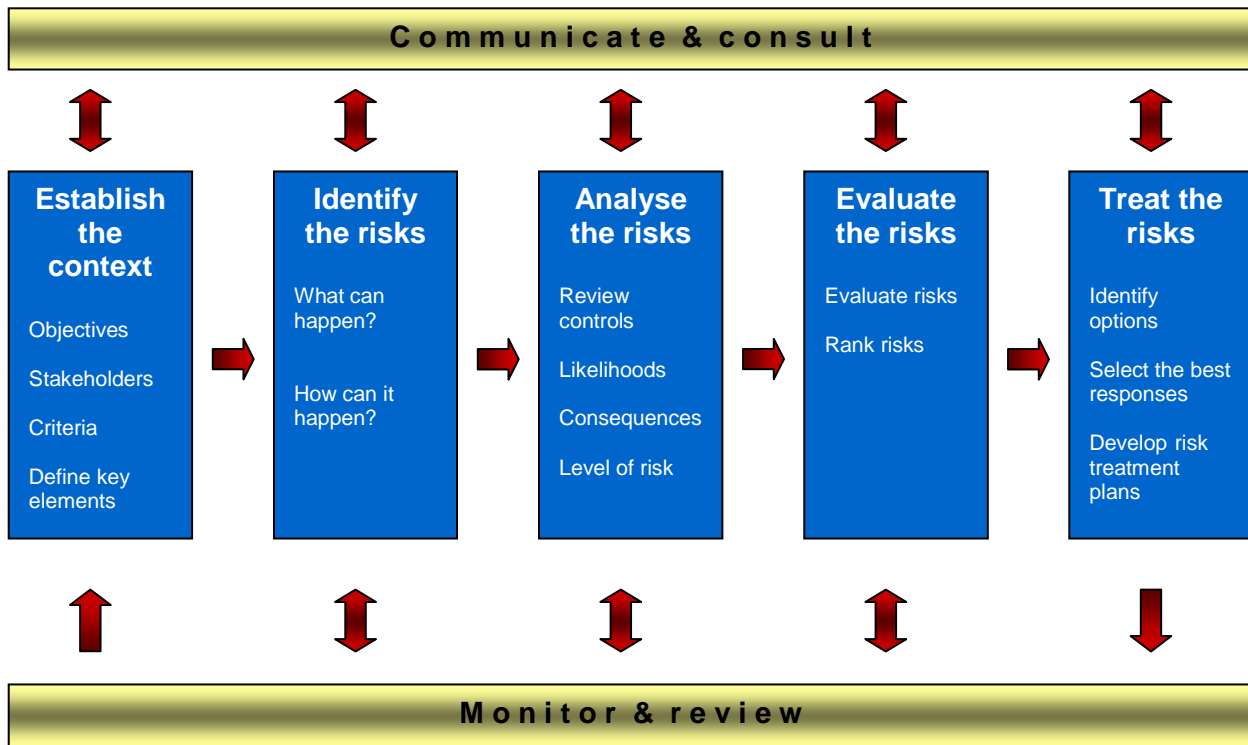


Figure 1: Adapted by the Programme Fraud and Investigation Support Section⁴⁰.

⁴⁰ Source: Standards Australia: Australian and New Zealand Risk Management Standard AS/NZS 4360:2004. p.13
 Student Visas – Risk Management Plan
 V Draft 0.4. 01/10/07

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