Management of Student Visas

Department of Immigration and Citizenship

Canberra ACT
31 May 2011

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Department of Immigration and Citizenship with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit and the accompanying brochure to the Parliament. The report is titled *Management of Student Visas.*

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—http://www.anao.gov.au.

Yours sincerely

Ian McPhee
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

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For further information contact:
The Publications Manager
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Telephone: **(02) 6203 7505**
Fax: **(02) 6203 7519**
Email: **webmaster@anao.gov.au**

ANAO audit reports and information about the ANAO are available at our internet address:

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Audit Team
Peter Jones
Freya Markwell
Steven Kouparitsas
Tom Clarke

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Abbreviations

AEI	Australian Education International
AL	Assessment Level
CoE	Confirmation of Enrolment
COAG	Council of Australian Governments
CRI	Country Risk Index
DEEWR	Department of Education, Employment and Workplace Relations
DFAT	Department of Foreign Affairs and Trade
DIAC	Department of Immigration and Citizenship
ELICOS	English Language Intensive Courses for Overseas Students
ESOS	*Education Services for Overseas Students Act 2002*
ETA	Electronic Travel Authority
GISC	Government and Industry Stakeholder Committee
GM	Global Manager
GMOI	Global Manager Operational Integrity
GMV(T)	Global Manager Visas (Temporary)
GSM	General Skilled Migration
ICSE	Integrated Client Services Environment
IELTS	International English Language Testing System
IQIG	International Quality Implementation Group

IRIS	Immigration Record Information System
ISR	Identity Services Repository
MAL	Movement Alert List
MODL	Migration Occupations in Demand List
MOU	Memorandum of Understanding
MRT	Migration Review Tribunal
NCN	Non-Compliance Notice
NOM	Net Overseas Migration
PAM	Procedures Advice Manual
PRISMS	Provider Registration and International Students Management System
PV	Protection Visa
RMA	Registered Migration Agent
SCV	Student Course Variation
SOL	Skilled Occupations List
TRIM	Total Records Information Management
TRIPS	Travel and Immigration Processing System
VET	Vocational Education and Training
VEVO	Visa Entitlement Verification Online
VPO	Visa Processing Officer

Summary and Recommendations

Summary

Introduction

1. The international education and training sector is Australia's third largest export industry, behind coal and iron ore, and was worth an estimated $18.6 billion in 2009. The Department of Immigration and Citizenship (DIAC) is responsible for the entry of students to Australia through its administration of the *Migration Act 1958* (the Migration Act) and assessment of student visa applications. DIAC is also responsible for the compliance of student visa holders with their visa conditions once they are onshore.

2. DIAC works with the Department of Education, Employment and Workplace Relations (DEEWR) in administering the student visa program. DEEWR is responsible for the *Education Services for Overseas Students Act 2000* (the ESOS Act), which sets out the legal framework governing the education provided to international students that hold a student visa.

3. DIAC's objective for the Visa and Migration Program is that its targeted migration program will continue to respond to Australia's changing economic and social needs through, among other things, ongoing 'assistance to the tourism and education industries to expand, including into new markets, whilst ensuring a high degree of immigration integrity'.

4. There are seven subclasses of visa available for students to enter Australia for the express purpose of studying. The subclasses correspond to the different education sectors, as follows:

- independent English Language Intensive Courses for Overseas Students (ELICOS) sector (subclass 570);

- schools sector (subclass 571);

- vocational education and training (VET) sector (subclass 572);

- higher education sector (subclass 573);

- postgraduate research sector (subclass 574);

- non-award sector (subclass 575); and

- AusAID or Defence sector (subclass 576).

The relative size of each subclass and trends in visas granted per subclass are shown in Figure S1.

Student visa grants by subclass from 2004–05 to 2009–10
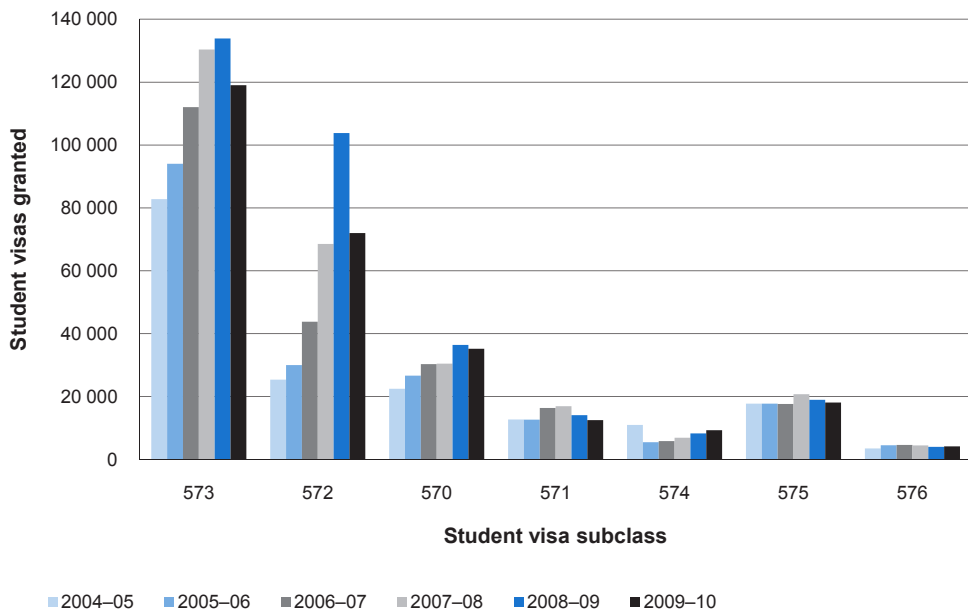
5.   The student visa population comprises students from 197 countries. Approximately one third of the caseload is from the top two source countries (China and India); one third is from the next eight largest source countries[1]; and the final third from the remaining 187 countries.

6.   DIAC assesses and manages immigration risk in this large caseload, primarily through a process of setting and periodically reviewing the assessment levels (ALs) for each country and education sector. The designated AL determines the evidentiary requirements that an applicant for a student visa is required to satisfy for a visa to be granted. There are five ALs, with AL1 representing the lowest immigration risk and therefore having the least onerous evidentiary requirements.

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[1]   The next eight in 2009–10, in descending order, were the Republic of Korea, Thailand, Brazil, Malaysia, Vietnam, Indonesia, USA, and Saudi Arabia.

7. The student visa program grew at an average of 15 per cent per annum over the decade prior to 2009–10. In 2009–10, DIAC received 296 558 student visa applications, a decrease of 19 per cent from 2008–09. This was the first year of negative growth in total applications in many years.

8. A number of factors that contributed to the decline in student visa applications in 2009–10 have been identified, including the:

- high value of the Australian dollar;

- impact of the global economic downturn;

- impact of migration policy changes;

- increased competition in the international student market from other countries;

- negative publicity about student safety in Australia following attacks on Indian students in 2009;

- strengthened quality requirements for education providers; and

- uncertainty created by college closures.

Responding to the growth of the student visa program

9. During 2008–09, it became apparent to DIAC that many overseas students were deciding to study in Australia for the purpose of gaining permanent residence under the skilled migration program, which requires applicants to pass a points test. The pathway to permanent residence was opened in 2005 by the inclusion in the Migration Occupations in Demand List (MODL) of a number of trade occupations and the availability of additional points for qualifications in these trades.

10. The availability of this pathway led to an annual average growth in overseas student enrolments in the VET sector of 36 per cent from 2005 to 2009, with major growth in courses such as hospitality and hospitality management, cookery and hairdressing. These courses were shorter and cheaper than higher education courses but potentially yielded the same permanent migration outcome.

11. This trend had several negative impacts. Skilled migration is a capped program closely linked to the management by government of capacity constraints and skills shortages in the economy. The growing number of student visa applicants for permanent residence in the skills stream was creating a pool of ex-students in Australia with relatively low value and low

priority skills in a lengthening application queue. This trend, if unchecked, would impact on the level of Net Overseas Migration considered desirable by the Government.[2]

12.   Furthermore, students using the student visa program to gain a permanent residence outcome were not coming to Australia with a genuine intention to study, as is required for a student visa grant, and return home afterwards. Education agents also played a role in promoting student visas as a guaranteed permanent residence outcome and facilitated the applications of clients with that motivation.

13.   In 2009–10, a number of policy changes were introduced by the Government with the aim of strengthening the integrity of the student visa program. These included the announcement between August 2009 and April 2010 of a series of student visa integrity measures. In February 2010, the Government also announced changes to the general skilled migration program, including the abolition of the MODL in favour of a tighter Skilled Occupations List, thereby significantly restricting the pathway to permanent residence for student visa holders.

14.   Commenting on these policy changes, the then Minister for Immigration and Citizenship described the growth in the VET sector as unsustainable and stated that 'students is a classic example of where governments lost control of the program'.[3] He also noted that the practice of overseas students seeking permanent residence through low quality education courses damaged the integrity of both the migration program and the education industry.[4]

15.   On 16 December 2010, the Government announced a strategic review of the student visa program to be conducted by the Hon Michael Knight AO. The review was tasked with enhancing the continued competitiveness of the international education sector, as well as strengthening the integrity of the student visa program. The review will report by mid-2011.

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[2]   Net Overseas Migration is the difference between permanent and long-term arrivals and permanent and long-term departures. It includes all long-term temporary (including student visa holders) and permanent migrants, the majority of whom have work rights.

[3]   Senator the Hon Chris Evans, Minister for Immigration and Citizenship, evidence to Senate Estimates Committee (Additional Estimates), *Hansard*, Canberra, 9 February 2010, p. 29, p 66.

[4]   Senator the Hon Chris Evans, (Minister for Immigration and Citizenship), 2010, *Australia continues to welcome international students*, media release, Parliament House, Canberra, 8 September.

Audit objective

16.   The objective of the audit was to assess the effectiveness of DIAC's management of the student visa program. Three key areas were examined in the audit: the processing of student visa applications; ensuring compliance with student visa conditions; and cooperation between DIAC and DEEWR.

Overall conclusion

17.   The international education and training sector is Australia's third largest export industry and was worth an estimated $18.6 billion in 2009. The student visa program is a critical enabler of this significant export industry. In managing the program, DIAC is required to keep two interests in balance —supporting the expansion of the industry while maintaining a high level of integrity in the visa program.

18.   Over the past decade, DIAC's management of the student visa program has successfully supported the growth of one of Australia's largest export industries and enabled over a million and a half students to access high quality education in Australia. However, the permanent residence pathway available to overseas students though skilled migration caused an unsustainable level of growth in the program and compromised its integrity. As a consequence, the Government introduced policy changes during 2009–10 to restrict this pathway.

19.   The student visa program presents more processing challenges for DIAC than any other temporary visa class. DIAC has introduced a number of initiatives over the years to assist it to meet these challenges and manage a growing workload, including:

- the assessment level process, introduced in 2001, to assess and manage risk in the program;

- an innovative electronic visa lodgement (eVisa) facility to speed up visa processing for students, introduced for low risk cohorts in 2001–02 and for four higher risk countries in 2004 and 2005, including China and India, the two largest source countries; and

- an eHealth initiative, implemented progressively from 2002, reducing the time required for finalisation of an offshore visa applicant's health assessment from 4–6 weeks to 48 hours.

20. Overall, the ANAO concluded that a number of DIAC's key administrative structures and processes were not sufficiently robust to effectively meet the challenges involved in achieving the Government's objective for the student visa program of balancing industry growth and program integrity. Fundamental to this is maintaining alignment between the student visa program and the contemporary international education environment. Irrespective of the particular problems and policy changes associated with the permanent residence pathway issue, visa processing arrangements and compliance functions, as well as the primary collaborative relationship with DEEWR, have not kept pace with the demands of this dynamic program environment.

21. Visa processing arrangements provide for a risk-based approach to setting visa requirements, and an eVisa facility to manage large application caseloads. There is considerable scope for the department to strengthen its process for determining the risk-based assessment levels for countries and education sectors, to better align student visa requirements with contemporary program integrity risks. There would also be benefit in the department evaluating the client service and processing efficiency benefits of eVisa for students, given that evaluations of the eVisa facilities conducted by DIAC in 2007 were never finalised or implemented. One of those evaluations identified early indications of deficiencies in the department's monitoring of the performance of eVisa agents participating in a trial of the eVisa facility for students from four higher risk countries. A subsequent review of eVisa agent access to the trial in 2009–10 led to the deregistration of some 300 eVisa agents and the introduction of a more stringent Deed of Agreement for eVisa agents. It will be important for DIAC to maintain a regular program of audits and evaluation of eVisa agent compliance with the terms of the new Deed of Agreement.

22. The rapid growth of the program, with over 400 000 overseas students living in Australia in 2009–10, placed significant pressure on DIAC's compliance functions. DIAC's integrity and compliance units were hampered in managing this pressure by the department's failure to update its national compliance priorities after 2008, and by the backlog of Non-Compliance

Notices[5] for student visa holders, estimated to be in excess of 350 000 by the middle of 2010. While much of this backlog related to relatively minor administrative matters, it potentially obscured serious cases of student non-compliance. There are also significant problems with the effectiveness of DIAC's visa cancellation procedures for the mandatory visa conditions relating to students maintaining satisfactory course progress and attendance, and their working rights allowance of 20 hours per week. The enforceability of both these mandatory conditions requires careful review.

23. There are strong interdependencies between DIAC and DEEWR, that require close collaboration. Each department is reliant on the effective performance of the other's functions to achieve the Government's objectives for international education. While the relationship between the departments is effective at the working level, it lacks mechanisms to provide a shared strategic direction and agreed priorities to guide the interaction of the student visa program with the international education sector. Although the relationship has recently been strengthened by secondments and there are plans to establish a regular policy forum between the two departments, the membership and remit of that forum should be formulated to enable it to perform a strategic role.

24. In response to the acknowledged problems with the student visa program, DIAC instituted a number of organisational improvements during 2010, many as part of the DIAC transformation program initiated by the Secretary late in 2009. These include the appointment of Global Managers to manage particular business lines on a corporate-wide basis. The Global Managers responsible for Temporary Entry Visas and for Operational Integrity have both introduced initiatives that should support the promulgation of better practice and management of caseloads in student visa processing and student visa integrity and compliance. The appointment of an eBusiness Global Manager and development of an eBusiness Strategy provides for better corporate ownership and direction of the eVisa facility. Action is also underway to reduce the backlog of NCNs.

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[5] A Non-Compliance Notice (NCN) is an internal notification within DIAC of a change to a student's circumstances that is automatically generated by reports received from education providers via DEEWR. NCNs attach to the student's data record within DIAC's processing system. Not all NCNs relate to breaches of mandatory visa conditions, which triggers visa cancellation action, but all NCNs prevent further visa grants to the student until the NCN has been examined by DIAC compliance staff and finalised.

25.   These organisational changes, when bedded down, can be expected to improve DIAC's management of the student visa program. In terms of the objective of the program, DIAC is now emphasising, in the visa and migration program deliverables listed in its Annual Report, that growth in international education must be sustainable. In the context of the outcomes of the current strategic review of the program, and the establishment of a new Interdepartmental Forum on International Education, it will be important for DIAC to define the meaning of sustainable growth for the future direction of the program. Continued reform in DIAC's student visa processes and governance structures, and more effective collaboration with DEEWR, is required to achieve and maintain an appropriate alignment between the program and the demands of the international education environment, as well as achieve the required balance between sustainable growth and program integrity.

26.   The ANAO has made six recommendations directed towards strengthening DIAC's management of student visa processing, student visa compliance and the quality of its relationship with DEEWR.

Key findings

Administration of student visa processing

27.   Student visa processing is a highly complex activity because of the number of source countries for overseas students, the number of education sectors and visa subclasses, the range of visa rules and requirements and the options available for lodging visa applications. Extensive corporate policy guidance and the business rules built into DIAC's visa processing systems provide a generally effective and unified framework for the processing of student visas. However, there is no business model setting out standard processing practice for all student visa processing centres to follow and there are variations in practice between different centres, which carries the risk of inconsistent decision-making. DIAC has commenced work to map student visa processes to assist with the determination of best practice. It will be important that DIAC codify the outcomes of this work in an appropriate corporate guidance document.

28.   There are two peak periods a year for student visa applications. The major peak in February–April represents approximately 25 per cent of the annual caseload and can generate up to 1000 applications in a day. DIAC aims to process 75 per cent of student visa applications within processing times

published in its service standards. However, it has not met this target since 2001, partly due to the pressure on processing resources during the peak periods. Despite its awareness of the peak periods as a characteristic of student visa processing, DIAC only instituted a Student Peak Plan and dedicated Student Peak Processing Team for the first time for the February–April 2010 peak. The introduction of a Student Peak Plan was a positive initiative, but to confirm its value as an ongoing strategy there would be benefit in DIAC evaluating the Peak Processing Team's effectiveness in improving performance and achieving the financial return of $2.42 million estimated from its operation.

29.   A fundamental requirement of a student visa grant is that the student must have a valid Confirmation of Enrolment (CoE) from a registered education provider. The ANAO analysed 615 726 student visa records covering the two years from 1 July 2008 to 30 June 2010 for inconsistencies between client data recorded in DIAC's Integrated Client Services Environment (ICSE) and CoE data recorded on DEEWR's Provider Registration and International Student Management System (PRISMS), particularly whether any student visas were attached to an incorrect CoE. A minimal number—less than a half of one per cent—of inconsistencies were found. This positive outcome was partly the result of ongoing monitoring and manual correction by DIAC and DEEWR officers of differences in data between their respective systems.

Determining student visa assessment levels

30.   DIAC determines the level of immigration risk posed by students from each country and education sector/visa subclass through a risk assessment tool called an assessment level. There are five assessment levels, with AL1 representing the lowest immigration risk and AL5 the highest. AL1 countries have the least onerous evidentiary requirements. DIAC reviews assessment levels periodically.

31.   The assessment level review process is struggling to cope with the current scale and complexity of the program. Its methodology is not up-to-date and may not reflect the current integrity risks. It uses risk factor weightings dating from 2004 and benchmarks set in 2007 based on performance data from 2002–2005. Nor is the methodology robust: the application of rules for small countries is problematic; ratings are often distorted by the high risk weighting given to Protection Visa applications; and 'on notice' warnings to countries to improve integrity performance are ineffective. Some features of the methodology reduce its agility to respond to emerging integrity trends. These

include the basing of prospective assessment level rankings on retrospective data analysis; and improved rankings being implemented immediately, whereas the implementation of deteriorating rankings is delayed. The methodology is also inconsistently applied. In some cases, this was due to DIAC officers modifying risk rating outcomes distorted by problems in the methodology. While there is provision in the methodology for modifications to risk rating outcomes to be made during the process, in a number of cases the reasons for modified outcomes were neither documented nor transparent.

32.   According to DIAC, the purpose of the assessment levels is to align visa requirements to the demonstrated risk of the visa applicant and to clear, objective, evidence of compliance rates. However, a number of interventions to modify risk ratings resulted in AL1 countries remaining at that level when quantitative analysis against risk factors would have increased the assessment level. In reality, the assessment level process necessarily negotiates between DIAC's integrity interests; its program objective of assisting the growth of the international education industry; and its interests in increased efficiency in visa processing. The interplay of these interests was illustrated by the outcomes of the 2010 assessment level review, which included a reduction in the ranking for the China and India higher education sectors from AL4 to AL3, when the review's quantitative analysis of risk factors indicated a risk rating for these sectors at AL4 and AL5 respectively.

The eVisa facility for students

33.   eVisa is an electronic lodgement and payment service for selected visa classes, including student visas. One of the major benefits identified by DIAC when it introduced eVisa lodgement for all low risk (AL1) offshore and onshore student visa applicants in 2001–02 was faster processing and savings resulting from reduced manual involvement by DIAC staff. DIAC regularly publishes performance information showing the take-up rate of eVisa to be around 75 per cent. This statistic gives an incomplete picture of the efficiency impact of eVisa. Applications lodged through eVisa can potentially be electronically processed through to the automatic grant of a visa (an autogrant) requiring no involvement by processing staff, but DIAC does not measure the proportion of eVisa applications that are autogranted. ANAO analysis found that the autogrant rate stood at only 16 and 17 per cent of AL1 grants for the past two financial years, down from over 65 per cent in 2003–04. There is considerable scope for DIAC to more actively monitor the autogrant rate and examine options for achieving an increased number of autogrants.

34. DIAC conducted an evaluation of the eVisa facility for low risk applicants in 2007, but this evaluation was never finalised or formally considered, meaning that the facility officially remains unevaluated more than eight years after its introduction. It is important that the performance of the eVisa facility for the student visa program be properly evaluated, to assess whether the objectives set out at its commencement in 2002 are being achieved and remain appropriate, and whether the facility is meeting the needs of the student visa program in 2011. This would also help to inform DIAC's plans to move to eLodgement for all visa and citizenship products under its eBusiness Strategy.

35. DIAC also evaluated a trial of eVisa for four higher risk (AL2-4) countries—China, India, Thailand and Indonesia—which was introduced in 2004 and 2005. An initial evaluation of the trial's implementation was undertaken in 2005 and a full evaluation in 2007, which was updated in 2008. Neither the 2007 evaluation nor its update in 2008 were finalised or formally considered. As a result, the 'trial' has never been formally concluded—after nearly seven years in operation—and is overdue for resolution and for an evaluation of its performance in meeting its stated aims.

36. Unlike the AL1 eVisa facility, the AL2-4 eVisa trial requires lodgement of applications through a registered eVisa agent. The terms of the trial set out minimum performance standards for agents to meet, but with the rapid expansion both in the program and the number of registered agents (to over 2500 by 2009), the 2007 evaluation found that there were inconsistencies in the frequency and intensity of audits of agent performance by posts. Its recommendation of a regular auditing regime was not implemented because the evaluation was not finalised.

37. The role of agents in inappropriately promoting student visas as a means to a permanent residence outcome was highlighted in audits undertaken by DIAC some 18 months later during 2009. DIAC reviewed eVisa agent performance as part of the integrity measures announced in August 2009, resulting in the registration of some 300 eVisa agents being cancelled and a new, more stringent Deed of Agreement for eVisa agents being introduced in 2010. Given this history, it will be important for DIAC to effectively implement, manage and resource a regular program of audits and evaluation of eVisa agent compliance with the terms of the new Deed of Agreement.

Program integrity

38. Integrity in the student visa program is provided through a series of layers, from the risk-based setting of visa requirements through to onshore compliance activities. The student visa program suffered significant integrity abuse in some caseloads during the period of rapid expansion of the program between 2006 and 2009. As a consequence, a number of integrity measures were introduced between August 2009 and April 2010.

39. One measure was an increase in the financial requirement placed on students to meet living expenses, from $12 000 to $18 000 per annum, to better match the true cost of living in Australia and protect student welfare. Risk assessments prepared by DIAC during the development of this measure identified a risk that students might resort to immigration fraud to meet the increased requirement.[6] While DIAC appropriately identified this as a minor risk for the program as a whole, particular caseloads, such as India, are more sensitive to the changes to the financial requirement than others. Consideration of future student visa integrity measures would benefit from more detailed analysis of the potential impact on significant individual caseloads.

Compliance with mandatory student visa conditions

40. Student visas carry certain mandatory conditions, the main ones being that holders must achieve satisfactory course progress and satisfactory course attendance, and cannot engage in work for more than 20 hours per week while their course is in session. Active monitoring by DIAC of the individual compliance of over 400 000 student visa holders in Australia with these visa conditions is not feasible. Prioritisation of the compliance workload is therefore essential. DIAC's compliance priorities were last published in its overall Compliance and Integrity Plan for 2007–08. Notwithstanding commitments to update the Plan, this has not occurred. Student visa compliance was one of the priorities listed in the Plan. The lack of an up-to-date annual compliance plan and supporting planning process means that there has been no process in place to review priorities in the light of subsequent developments. These include the growth of the student visa program, its proportional impact on the compliance

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[6] In the context of visa applications, immigration fraud refers to the supply of false, misleading or bogus information or documents by a visa applicant. In the student visa caseload, the majority of immigration fraud relates to financial documentation supporting the applicant's claim to meet the financial requirements of a student visa. This includes, for example, loan documentation, bank deposits, income tax returns and overdraft statements.

workload, and the increase in integrity concerns around the program. In the absence of up-to-date corporate compliance priorities, DIAC's state and territory office student integrity and compliance units informally established their own priorities focusing on mandatory visa requirements. DIAC has advised that a new Compliance Priorities Plan is being developed and is planned to be finalised by 2011–12.

41.   Students who do not meet mandatory visa requirements for course attendance and progress are reported to DEEWR by their education provider. These reports are automatically passed to DIAC via a systems link between PRISMS and ICSE. Students have 28 days to present themselves to DIAC. If they do not, their visa is automatically cancelled. If they do, their visa is subject to mandatory cancellation unless exceptional circumstances can be demonstrated.

42.   There are systemic flaws and vulnerabilities in the regime for automatic and mandatory cancellation of student visas for breaches of the course progress and attendance condition. In particular, the system of automatic cancellation is highly vulnerable to legal challenge, with all automatic cancellations made between May 2001 and December 2009 being overturned by the courts for all but five months of that period, affecting some 19 000 cases. With respect to mandatory cancellation, DIAC officers are regularly exercising discretion not to cancel on the basis of exceptional circumstances or process errors in education providers' reporting of students. The requirement for DIAC integrity and compliance units to respond to every education provider report of these breaches through a visa cancellation process is resource intensive and restricts their capacity to pursue targeted areas of compliance concern. There would be benefit in DIAC progressing the planned review of the student visa cancellation regime it announced in 2009, and examining the effectiveness and efficiency of the regime in achieving its integrity and compliance objectives. In response to the audit, DIAC advised that it plans to review cancellation processes by June 2012, in consultation with staff, other government stakeholders and the international education industry.

43.   Student visa holders have limited work rights. As previously mentioned, students are allowed to work for up to 20 hours per week while their course is in session. There are problems with enforcing this restriction, particularly when allied with the lack of provision in the Migration Regulations for decision-makers to exercise discretion. As a result, local practices have been adopted within DIAC to avoid making a cancellation decision for a breach of the 20 hour limit except in the clearest cases. For one

area of employment, an informal modification has been made by DIAC officers to the definition of the 20 hour period. The operation of the condition limiting student work rights requires review in relation to evidentiary requirements, decision-maker discretion and the impact on compliance resources.

Reporting student attendance and progress via electronic systems

44.   Education providers report changes in student circumstances to DEEWR, and these are recorded in PRISMS as Student Course Variations (SCVs). There are 24 SCV codes and 21 of these codes are automatically sent from PRISMS to DIAC's ICSE system. The two codes concerning the mandatory visa conditions on course attendance and progress immediately convert to a Non-Compliance Notice (NCN) in DIAC's system to trigger visa cancellation action. Others automatically convert to NCNs after 28 days if no action is taken by compliance officers to finalise them. The NCNs in this category were given low priority by DIAC due to resource demands, creating a growing backlog of unactioned NCNs.

45.   The backlog of NCNs was not effectively addressed by DIAC following its identification and acknowledgement as a problem in 2006, and the backlog had grown to over 350 000 NCNs by mid 2010, when action was taken to deal with the issue. By the end of March 2011, over 145 000 NCNs had been finalised. While a large number of NCNs in the backlog are trivial and carry no compliance implications, there are potentially serious cases of student non-compliance 'hidden' within the backlog, particularly in the category of 'non-commencement of course'. The backlog has prevented these cases from being identified and dealt with. DIAC's current efforts to cleanse the backlog are appropriate, but a long-term solution is required which addresses the necessity for each type of SCV to be reported to DIAC and whether they should automatically convert to NCNs.

Cooperation between DIAC and DEEWR

46.   The interaction of the student visa program with the international education sector it services creates interdependencies between DIAC and DEEWR that require a collaborative relationship between the two departments.

Electronic data exchange between DIAC and DEEWR

47.   DIAC and DEEWR use different information as an identifier for students in their respective systems. The option of moving to a single, unique student identifier was raised in late 2005, and a preferred identifier—a visa

grant number and check digit—was developed by a DIAC–DEEWR working party during 2006 and 2007. This option has not been implemented as funding proposals advanced within DIAC on two occasions to implement the necessary systems changes were not successful. In light of the endorsement by COAG of a national student identifier, it would be appropriate for DIAC to re-examine and conduct a thorough cost-benefit analysis of proceeding with a unique student identifier.

48.   In relation to assuring data quality between key business systems, DEEWR performs a daily reconciliation of the number of transactions sent from DIAC's ICSE system to DEEWR's PRISM system. However, DIAC does not perform a reconciliation of the information received from DEEWR and assurance that information in its systems is accurate requires manual checking and matching of visa and CoE information between the systems. This process is resource intensive and subject to the effects of changing priorities and resource availability. Pending progress on developing a unique student identifier, it would be desirable for DIAC to implement systematic reconciliations of records sent from PRISMS with the records received into ICSE.

Cooperative structures

49.   While there are extensive contact points between DIAC and DEEWR, there are gaps in the structure of the relationship which are inhibiting fully effective collaboration. There is no overarching formal agreement or MOU setting out a framework for cooperation between the departments and the goals that such cooperation should aim to advance. While there is regular interaction in multi-agency meetings and whole-of-government policy forums, forums for cooperation between the two departments are restricted to working level issues. As a consequence, a number of longstanding issues have not been able to be resolved, including addressing the growing backlog of NCNs and the lack of progress on the implementation of a unique student identifier.

50.   The Government's announcement in late 2010 of the establishment of an Interdepartmental Forum on International Education, chaired by DEEWR, is a positive move, but the membership and focus of that Forum is broad. There remains a need for a high-level forum between DIAC and DEEWR to maintain a dialogue about their respective strategic policy directions and settings as they affect overseas students, to establish priorities for cooperative activity, and to develop an agreed strategic approach to the interaction of the student visa program and the international education sector.

Summary of agency responses

51. A copy of the proposed report was provided to DIAC. Relevant extracts of the proposed report were also provided to DEEWR. DIAC provided the following summary response, and its full response is shown at Appendix 1:

> The Department of Immigration and Citizenship (DIAC) has welcomed the opportunity to contribute to the ANAO performance audit *Management of Student Visas* and agrees with the recommendations made in the report. The ANAO's report recognises that DIAC's management of the student visa program has successfully supported the unprecedented growth of one of Australia's largest export industries and has enabled over a million and a half students to access high quality education in Australia.

> The complexity of the student visa program presents a number of challenges for the Department and the ANAO has identified several administrative structures and processes where there is scope for improvements to be made. The Department believes the implementation of the ANAO's recommendations will strengthen DIAC's management of student visa processing, student visa compliance and cooperation between DIAC and DEEWR.

52. DEEWR provided the following summary response, and its full response is shown at Appendix 1:

> DEEWR appreciates the opportunity to participate in the Performance Audit of Management of Student Visas by the Department of Immigration and Citizenship. DEEWR notes that the ANAO has referred to this Department in two of the Report's recommendations, and that these recommendations are directed to DIAC as the lead agency. DEEWR acknowledges that both Recommendation 5 and 6 are aimed at improving existing management practices and further strengthening current processes in relation to the Student Visa Program.

Recommendations

Recommendation No. 1 Para 3.59	To improve DIAC's management of risk in the student visa program, and to better align student visa requirements and immigration risk, the ANAO recommends that DIAC undertake a review of its process for determining country and education sector assessment levels for student visa applications.

DIAC Response: *Agreed.*

Recommendation No. 2 Para 4.51

To confirm that the eVisa lodgement facility for students is meeting its objectives and the needs of the student visa program, the ANAO recommends that DIAC evaluate the facility with a view to:

- incorporating the findings in planning for the further development of eLodgement and eVisa; and

- formally resolving the status of the eVisa 'trial' for higher risk countries.

DIAC Response: *Agreed.*

Recommendation No. 3 Para 4.53

To effectively manage the performance of eVisa agents registered under the eVisa facility for higher risk countries, the ANAO recommends that DIAC maintain a program of audits and evaluation of eVisa agent compliance with the terms of the facility's Deed of Agreement.

DIAC Response: *Agreed.*

Recommendation No. 4

Para 6.56

To improve the effective application of the mandatory conditions attached to student visas, the ANAO recommends that DIAC review:

- whether the student visa cancellation regime applying to the visa conditions for student course attendance and progress is achieving DIAC's integrity and compliance objectives; and

- the operation of the student work rights limitation in relation to evidentiary requirements, decision-maker discretion and compliance resources.

DIAC Response: *Agreed.*

Recommendation No. 5

Para 6.78

To better manage the flow of Non-Compliance Notices, and to assist in the better targeting of DIAC's compliance resources, the ANAO recommends that DIAC review the:

- necessity for each type of Student Course Variation to be reported by DEEWR to DIAC; and

- appropriateness of each type of Student Course Variation converting automatically to a Non-Compliance Notice.

DIAC Response: *Agreed.*

Recommendation No. 6

Para 7.65

To improve collaboration arrangements, the ANAO recommends that DIAC establish, in conjunction with DEEWR, an appropriately high-level forum to:

- develop an agreed strategic approach to the interaction of the student visa program and international education; and

- establish priorities for cooperative activity between the departments relating to overseas students.

DIAC Response: *Agreed.*

Audit Findings

1.   Introduction

This chapter provides background and policy context on the student visa program and describes how the ANAO undertook the audit.

Background

1.1   The international education and training sector is Australia's third largest export industry, behind coal and iron ore, and was worth an estimated $18.6 billion in 2009.[7]

1.2   The Department of Immigration and Citizenship (DIAC) is responsible for the entry of students to Australia through its administration of the *Migration Act 1958* (the Migration Act) and assessment of student visa applications. DIAC is also responsible for the compliance of student visa holders with their visa conditions once they are onshore.[8]

1.3   DIAC works with the Department of Education, Employment and Workplace Relations (DEEWR) in administering the student visa program. DEEWR is responsible for the *Education Services for Overseas Students Act 2000* (the ESOS Act), which sets out the legal framework governing the education provided to international students on a student visa. Education providers must be registered under the ESOS Act and must meet a set of minimum standards under the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (the National Code).

1.4   The Migration and ESOS Acts interact across a number of areas of the student visa program, in both the visa application stage and in ensuring compliance with visa conditions.

Objective of the student visa program

1.5   DIAC's objective for the Visa and Migration Program indicates that its targeted migration program will continue to respond to Australia's changing economic and social needs through, among other things, ongoing 'assistance to

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[7]   DEEWR, *Annual Report 2009–10*, p. 109.

[8]   DIAC, *Submission to the Senate Inquiry into the Welfare of International Students*, September 2009, p. 6.

the tourism and education industries to expand, including into new markets, whilst ensuring a high degree of immigration integrity.'[9]

1.6 In its submission in late 2009 to a Review of the ESOS Act conducted by the Hon. Bruce Baird, DIAC stated that it 'supports sustainable growth in the international education industry and believes that the aim of sustainable growth is complemented by high levels of integrity in the student visa program.'[10] In DIAC's Annual Report for 2009–10, the program deliverable of supporting continued growth of the Australian education industry was similarly linked to the principle of sustainability, with the result for this deliverable stated as supporting the 'sustainable growth of the education industry through facilitating the entry of genuine overseas students'.[11]

Student visa classes and trends

1.7 There are seven subclasses of visa available for students to enter Australia for the express purpose of studying. The subclasses correspond to the different education sectors, as follows:

- independent English Language Intensive Courses for Overseas Students (ELICOS) sector (subclass 570);

- schools sector (subclass 571);

- vocational education and training (VET) sector (subclass 572);

- higher education sector (subclass 573);

- postgraduate research sector (subclass 574);

- non-award sector (subclass 575); and

- AusAID or Defence sector (subclass 576).

DIAC also has a separate subclass (580) for student guardians who accompany students under the age of 18 to Australia.

1.8 In 2009–10, DIAC received 296 558 student visa applications, a decrease of 19 per cent from 2008–09. Of these applications, 270 499 were granted. As illustrated in Table 1.1, 2009–10 was the first year of negative growth in

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[9]   DIAC, *Portfolio Budget Statements 2010–11*, p.22.

[10]   DIAC, *Submission to the Review of the Education Services for Overseas Students Act 2000,* undated, p. 1.

[11]   DIAC, *Annual Report 2009–10*, p. 46.

applications in a number of years. Growth in recent years had averaged 15 per cent per year with the total number of student visa applications nearly doubling between 2004–05 and 2008–09.

Table 1.1

Total student visa applications and grants from 2004–05 to 2009–10

Year	Student visa application lodgements	Percentage variation on previous program year	Student visas granted	Percentage variation on previous program year
2004–05	188 866	-	175 818	-
2005–06	214 457	13.5	191 347	8.8
2006–07	256 618	19.7	230 807	20.6
2007–08	305 496	19.0	278 715	20.8
2008–09	365 823	19.7	319 632	14.7
2009–10	296 558	(18.9)	270 499	(15.4)

Source: DIAC data.

1.9 The share of international student visas granted per sector is shown in Figure 1 1. Prior to 2009–10, the VET sector had been the area of strongest growth, driven in large part by students using courses in this sector as a pathway to permanent residency under the skilled migration program. In February 2010, the Government introduced policy changes to restrict this pathway.

Student visa grants by subclass from 2004–05 to 2009–10
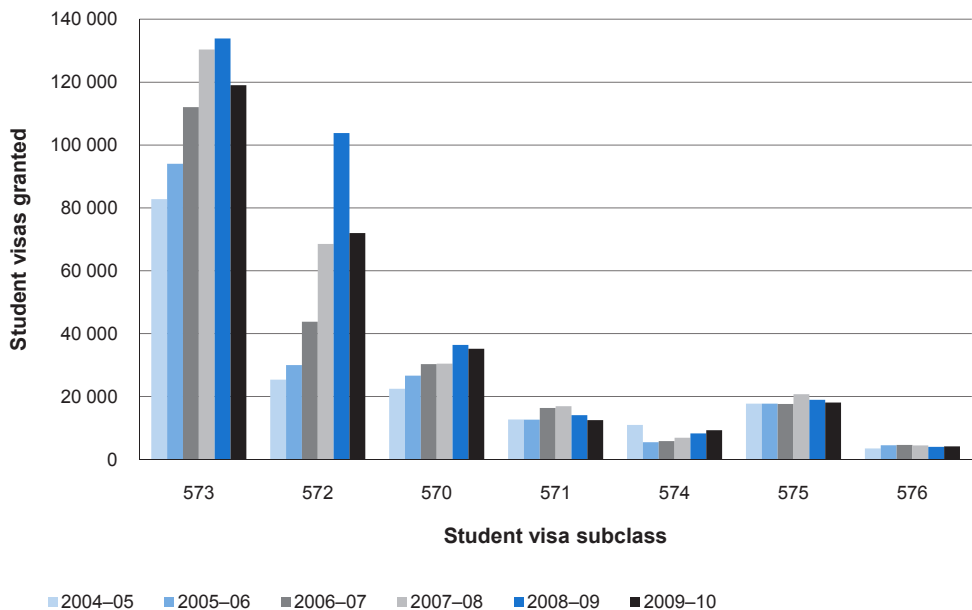
Source: ANAO analysis of DIAC data.

1.10   The student visa population comprises students from 197 countries. Approximately one third of the caseload is from the top two source countries (China and India); one third is from the next eight largest source countries; and the final third from the remaining 187 countries. The top eleven nationalities for student visa applications in 2009–10 are shown in Table 1.2, along with trends from previous years.

Table 1.2

Student visa applications (lodgements) from 2004–05 to 2009–10 for the top source nationalities

Nationality	2004–05	2005–06	2006–07	2007–08	2008–09	2009–10	Percentage variation from 2008–09 to 2009–10
China	33 772	38 640	45 118	54 868	63 575	58 181	(8.5)
India	16 274	25 169	39 127	54 784	80 238	38 504	(52.0)
Republic of Korea	15 413	18 155	19 941	19 691	18 156	16 492	(9.2)
Thailand	8 825	9 376	10 316	12 029	14 118	12 853	(9.0)
Brazil	4 764	7 120	8 802	11 141	13 234	11 569	(12.6)
Malaysia	8 903	8 819	9 978	10 732	11 890	10 699	(10.0)
Vietnam	2 474	3 268	4 447	8 154	11 425	10 335	(9.5)
Indonesia	7 952	8 002	7 899	8 650	9 295	9 153	(1.5)
United States of America	11 185	10 646	10 229	10 105	9 770	9 059	(7.3)
Saudi Arabia	1 167	1 833	3 733	6 747	7 834	7 825	(0.01)
Nepal	958	1 671	7 219	10 955	18 484	7 417	(59.9)

Source: DIAC data.

1.11   A number of factors for the decline in student visa applications in 2009–10 have been identified, including the:

- high value of the Australian dollar;
- impact of the global economic downturn;
- impact of migration policy changes;
- increased competition in the international student market from other countries;
- negative publicity about student safety in Australia following attacks on Indian students in 2009;
- strengthened quality requirements for education providers; and
- uncertainty created by college closures. [12]

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[12]   See DEEWR, *Annual Report 2009–10*, p. 101, and J Phillimore, P Koshy, *The Economic Implications of Fewer International Higher Education Students in Australia*, John Curtin Institute of Public Policy, Curtin University of Technology, Perth, August 2010, p. 24-25.

Policy context

Overseas students in the skilled migration stream

1.12   One of the migration policy changes that affected the student visa program in 2009–10 was the announcement by the then Minister for Immigration and Citizenship (the Minister) on 8 February 2010 of changes to the General Skilled Migration (GSM) program, which included revoking the Migration Occupations in Demand List (MODL).

1.13   Since July 2001, overseas students in Australia have had the right to apply for a permanent residence visa under the skilled independent and related categories of GSM, and to remain in Australia and work while their application was assessed. To be eligible for the grant of a visa under this category, applicants needed to pass a points test. Points could be claimed under a range of factors, including for nominating an occupation listed on the MODL.[13]

1.14   In 2005, the MODL was expanded to include more trade occupations, thereby allowing additional points to be available for permanent skilled migration for overseas students obtaining trade qualifications in the VET sector. By 2010, the MODL comprised 106 occupations.

1.15   The availability of this pathway led to an annual average growth in overseas student enrolments in the VET sector of 36 per cent from 2005 to 2009, with major growth in courses such as hospitality and hospitality management, cookery and hairdressing. These courses were shorter and cheaper than Higher Education courses but potentially yielded the same permanent migration outcome. Growth in the student visa program interacted with two issues relevant to DIAC's permanent migration interests: the long-term demographic trend resulting from the ageing of the Australian population, and the impact of the global financial crisis, particularly on the demand for employment.

Overseas students and Net Overseas Migration

1.16   The long-term demographic challenge inherent in the ageing of the Australian population was reinforced by Treasury's second Intergenerational Report released in 2007. Very soon, Australia is expected to reach a situation where more people will be retiring than will be joining the workforce. From

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[13]   From 1 September 2007, applicants were required to both nominate, and have experience working in, an occupation listed on the MODL.

that point, as noted by DIAC's Secretary, immigration will be the only source of net labour force growth.[14]

1.17 In 2008, DIAC commissioned research into the impact of Net Overseas Migration (NOM) on the labour force and on GDP over the next 40 years. NOM is the difference between permanent and long-term arrivals and permanent and long-term departures. It is considered by DIAC to be the best measure of the impacts and benefits of immigration because it encapsulates all long-term temporary and permanent migrants, the majority of whom have work rights.

1.18 The research indicated that a long-term NOM average of between 150 000 and 230 000 per annum would contribute most to maintaining an appropriate ratio between those over 65 and those of working age.[15] In 2008, NOM was projected by DIAC to reach the upper limit of that range by the end of that year.[16] International students were the largest single contributor to this figure, due to the significant growth in the student visa program and the number of students remaining onshore after the conclusion of their course seeking permanent residency.

Skilled migration policy changes

1.19 The global financial crisis, which occurred during the second half of 2008, presented the Government with the prospect of a sharp decline in economic growth and an increased unemployment rate. Settings for the skilled migration program at that time were predicated on addressing capacity constraints and skills shortages in a growing economy, and therefore required adjustment in response to the changed economic conditions.

1.20 From December 2008, the then Minister announced a series of changes to the skilled migration program, to better target the program to skills needed in the economy by moving from a supply-driven program to a demand-driven program.[17] The Minister noted the growth in the numbers of international

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[14] A Metcalfe, 'Migration as a policy tool to manage the global economic crisis', address to the Australia and New Zealand School of Government, 3 September 2009, p. 7.

[15] ibid., p. 8.

[16] The actual level of NOM in 2008 peaked at 301 200, above the level anticipated by DIAC. NOM then declined through to the second half of 2010 and was estimated by DIAC to be around 200 000 in October 2010.

[17] Senator the Hon Chris Evans (Minister for Immigration and Citizenship) 2008, *Changes to the 2008–09 skilled migration program*, Ministerial Statement, Parliament House, Canberra, 17 December.

students arriving on temporary student visas and then applying for permanent residence under the skilled migration program.

1.21 The skilled migration program is a capped program, whereas the student visa program is uncapped. By March 2009, DIAC estimated that there were approximately 40 000 former students with permanent visa applications in the system awaiting decision. DIAC projected that student visa holders already in Australia plus those estimated to arrive by 2013–14 would generate some 491 000 applications for onshore skilled migration.

1.22 Furthermore, overseas student enrolment data showed that the supply of skills from the international student cohort was not in fact matching the demand for skills from industry. DIAC observed in relation to the growth in VET courses that 'almost all of these fields of study support occupations which are not in critical shortage.'[18] DIAC's concern was that there would be a continuing increase in student visa applicants for permanent residence in the independent skills stream, adding both to a growing pool of ex-students living in Australia with relatively low value skills in a lengthening application pipeline, and to NOM.[19]

1.23 Following a review of the MODL, the Government announced changes to the skilled migration program on 8 February 2010. These changes included the abolition of the MODL and its replacement, from 1 July 2010, with a Skilled Occupations List (SOL) with a smaller number of occupations. These changes substantially restricted the pathway to permanent residence for overseas students.

1.24 While the changes were prospective and did not affect applications for skilled migration already in the system and made after September 2007, they would affect students who had already commenced courses in Australia with an intention to apply for permanent residence, but had not yet done so. Some 455 000 overseas students were studying in Australia at the time of the change and DIAC estimated that approximately 150 000 of these had intentions to apply for permanent residence. The majority of these would be ineligible under the new SOL.

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[18] DIAC, *Submission to the Senate Inquiry into the Welfare of International Students*, September 2009, p. 28.

[19] A Metcalfe, 'Migration as a policy tool to manage the global economic crisis', address to the Australia and New Zealand School of Government, 3 September 2009, p. 9.

1.25 In recognition of this impact, the Government provided certain transitional arrangements. In particular, students studying for occupations not on the new SOL would have until 31 December 2012 to apply for a temporary skilled graduate visa on completion of their studies. This would enable them to spend up to 18 months in Australia to acquire work experience and seek sponsorship from an employer.[20]

Program integrity initiatives

1.26 Maintaining the integrity of the migration program is a major and abiding concern for DIAC. The student visa program objective makes reference to the entry to Australia of genuine full-time students. Schedule 2 of the Migration Regulations requires an applicant for a student visa to be a genuine applicant, and applicants must satisfy DIAC that they are: seeking to enter/stay in Australia for the purposes of study; will abide by visa conditions; and will not become an unlawful non-citizen.

1.27 During 2008–2009, it became apparent to DIAC that many students were basing their decision to study in Australia upon the prospect of gaining permanent residence. This conclusion was supported both by surveys of overseas student intentions and by the significant growth in enrolments in VET courses by overseas students. The then Minister described this growth as unsustainable and commented subsequently that 'students is a classic example of where governments lost control of the program'.[21]

1.28 The changes to the skilled migration program in February 2010 removed incentives for international students to seek permanent residence through low quality education courses, a practice which the Minister described as damaging the integrity of both the migration program and the education industry.[22] Following the February 2010 change, the Minister stated the Government's position: 'We welcome students, but all they get when they get a student visa is a right to study here.'[23]

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[20] Senator the Hon Chris Evans (Minister for Immigration and Citizenship) 2010, *Migration reforms to deliver Australia's skills needs*, media release, Parliament House, Canberra, 8 February.

[21] Senator the Hon Chris Evans, Minister for Immigration and Citizenship, evidence to Senate Estimates Committee (Additional Estimates), *Hansard*, Canberra, 9 February 2010, p. 29, p. 66.

[22] Senator the Hon Chris Evans (Minister for Immigration and Citizenship), 2010, *Australia continues to welcome international students*, media release, Parliament House, Canberra, 8 September.

[23] Senator the Hon Chris Evans, Minister for Immigration and Citizenship, *ABC 7.30 Report*, 10 February 2010.

1.29 Proposals for a number of integrity measures were developed from early 2009 to complement the development of new policy approaches to the skilled migration program, and were implemented during 2009–10. These integrity measures comprised:

- strengthening of student visa checks for particular cohorts, announced by the Minister on 20 August 2009;

- an increase in the living costs requirement from $12 000 to $18 000 per year, effective from 1 January 2010, and stronger discretion for decision-makers to refuse an application if they were not satisfied that funds declared by the applicant would be genuinely available to them;

- tighter assessment level (AL) rules applying to course packaging[24], requiring that applicants be assessed against the highest AL applying to any of the courses in the package, rather than just to the final course in the package; and

- tighter course deferral rules, reinforcing that such deferrals must be on the basis of compelling or compassionate reasons.

ESOS Act review

1.30 A periodic review of the ESOS Act was scheduled for 2010–11. Due to increased concerns over the international education sector, the commencement of the review was brought forward to 2009. The Hon Bruce Baird was appointed to undertake the review. In advance of the Baird review, the then Minister for Education, Employment and Workplace Relations introduced in August 2009 a number of amendments to the Act to strengthen registration and requirements provisions for education providers, and require the re-registration of all providers by the end of 2010.

1.31 Mr Baird's final report, *Stronger, simpler, smarter ESOS: supporting international students* was released on 9 March 2010 and made 19 recommendations encompassing:

- strengthening the registration process for international education providers;

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[24] Course packaging is where a student applies to undertake two or more courses on the one visa.

- more effective monitoring and enforcement of ESOS provisions and standards; and

- improved information, complaints handling, and stronger consumer protection mechanisms for international students.

1.32 One recommendation related directly to DIAC's management of student visas, being 'that the *Migration Act 1958* be amended to enable a more flexible approach to the current visa cancellation requirements for students who are reported for failing to maintain satisfactory course progress or attendance.'[25]

1.33 The Government is responding to the recommendations in stages. The first stage of changes to the ESOS Act was introduced to Parliament on 23 June 2010 through the *Education Services for Overseas Students Legislation Amendment Bill 2010.* However, this Bill lapsed when Parliament was prorogued for the 2010 Federal election. It was reintroduced on 27 October 2010 and subsequently received Royal Assent on 8 April 2011. The Bill focuses on risk management and more effective enforcement and introduces provisions to strengthen the registration process for approved international education providers. It also seeks to extend the jurisdiction of the Commonwealth Ombudsman to include complaints about private providers.

1.34 Development of the second stage of changes in response to the Baird Review was in progress at the conclusion of the audit. On 8 December 2010, a consultation paper on the second stage of changes was released by DEEWR. The paper sought feedback by 21 January 2011 on:

- the risk assessment and management approach to the registration and ongoing monitoring of education providers delivering courses to overseas students;

- strengthening the tuition protection framework;

- a range of recommendations for making ESOS stronger, simpler and smarter; and

- the regulatory effect on providers of these proposals and recommendations.

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[25]   B Baird, *Stronger, simpler, smarter ESOS: supporting international students,* Final Report, 2010, p. 29.

Strategic review of the student visa program

1.35 On 16 December 2010, the Minister for Immigration and Citizenship and the Minister for Tertiary Education, Skills, Jobs and Workplace announced that the Government had commissioned a strategic review of the student visa program. The Government appointed the Hon Michael Knight AO to undertake the review.

1.36 In announcing the review, the Ministers noted that the Australian international education sector had come under increasing pressure as a result of the rising value of the Australian dollar, the ongoing impact of the global financial crisis in some countries, and increased competition for international students from other countries. The Ministers also noted that the size and nature of the sector had changed dramatically over the past decade.

1.37 The review was tasked with enhancing the continued competitiveness of the international education sector, as well as strengthening the integrity of the student visa program. In particular, the review will examine and make recommendations on a more effective partnership framework between the key stakeholders and the requirements for student visa applicants. The review will also look at ways to better manage immigration risk in the student visa caseload and deter breaches and misuse of the program, as well as considering the suitability of separate visas for different education sectors.[26]

1.38 The review is to report by mid 2011. Mr Knight released a Discussion Paper on 7 March 2011.

Audit objective and scope

1.39 The objective of the audit was to assess the effectiveness of DIAC's management of the student visa program. The audit focused on:

- the administration of the student visa application and decision–making process;

- activities to ensure compliance with student visa conditions; and

- cooperation between DIAC and DEEWR in supporting the program.

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[26] The Hon Chris Bowen (Minister for Immigration and Citizenship) and Senator the Hon Chris Evans (Minister for Tertiary Education, Skills, Jobs and Workplace Relations) 2010, *Review of the student visa program*, media release, Parliament House, Canberra, 16 December.

1.40   The audit did not examine DEEWR's administration of the ESOS Act and the National Code. Such an audit could be conducted at a later date when the Baird Review recommendations have been implemented and the resulting changes bedded down.

Audit methodology

1.41   The audit team undertook fieldwork within DIAC's national office and regional offices, and DEEWR's central office. The audit methodology included:

- interviews with relevant DIAC staff in Canberra;

- observation of visa application processing and interviews with relevant processing and compliance staff in DIAC's Perth, Adelaide and Sydney regional offices;

- examination and review of DIAC documentation and files;

- definition, capture and analysis of data from the key IT systems supporting student visa processing;

- observation of key meetings, including a Government and Industry Stakeholder Committee (GISC) meeting, a DEEWR–DIAC Liaison (DDL) meeting and PRISMS Technical Working Group meeting;

- interviews with relevant DEEWR staff in Canberra; and

- examination and review of DEEWR documents surrounding the relationship with DIAC.

1.42   The audit was conducted in accordance with the ANAO auditing standards at a cost of approximately $476 000.

Report structure

1.43   In addition to this introductory chapter, the report includes six chapters as outlined in Figure 1.2.

Figure 1.2

Structure of the report

Chapter 1
Introduction

- Background
- Policy context
- Program integrity initiatives
- ESOS Act review
- Strategic review of the student visa program
- Audit objective and scope

Chapter 2 Administration of Student Visa Processing

- Governance arrangements
- IT systems supporting student visa processing

Chapter 3
Determining Student Visa Assessment Levels

- Assessment level reviews and outcomes
- Quantitative aspects of assessment level review
- Qualitative aspects of assessment level review

Chapter 4
The eVisa Facility for Students

- Effectiveness of eVisa
- The 2007 AL1 eVisa evaluation
- The AL2-4 eVisa trial

Chapter 5
Program Integrity

- Targeted integrity measures
- The relationship between integrity and compliance

Chapter 6
Compliance with Mandatory Student Visa Conditions

- Compliance priorities
- Visa condition 8202—course attendance and progress
- Visa condition 8105—work rights
- Reporting student attendance and progress via electronic systems

Chapter 7
Cooperation Between DIAC and DEEWR

- Electronic data exchange between DIAC and DEEWR
- Interdepartmental agreements
- Inter-agency meetings

2. Administration of Student Visa Processing

This chapter examines the organisation and governance arrangements for DIAC's student visa processing and the IT systems supporting student visa processing.

Introduction

2.1   Requirements for the application and granting of student visas are set out in the *Migration Regulations 1994* (the Regulations).[27] These requirements aim to achieve a balance between facilitating the entry of genuine students and maintaining the integrity of the student visa program. DIAC has stated that the current student visa framework is designed to assist decision-makers to make consistent and transparent decisions against largely objective criteria.[28]

2.2   Student visa processing is a highly complex activity because of the number of source countries for overseas students, the number of education sectors and visa subclasses, the range of visa rules and requirements and the options available for lodging visa applications. The flow charts at Appendices 2 and 3 illustrate this complexity. The following paragraphs summarise the principal features of student visa processing.

2.3   Student visa applications can be lodged both offshore and onshore, with most overseas students applying for their first student visa offshore. Generally, only applicants from low risk countries ranked at assessment level 1 (AL1) are eligible to be granted their first student visa by applying onshore.

2.4   Applications for student visas can be lodged via electronic and paper-based channels. Electronic lodgement is available for all onshore applicants; for offshore applicants from AL1 countries and sectors; and for offshore applicants from four higher risk countries (the Peoples Republic of China (China), India, Indonesia and Thailand) under a trial arrangement. The lodgement flow chart is shown at Appendix 2.

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[27] Student visas are assessed against criteria listed under the Student (Temporary) visa class (Class TU) in Schedule 2 of the Migration Regulations.

[28] DIAC, *Submission to the Senate Inquiry into the Welfare of International Students*, DIAC, Canberra, September 2009, p. 11.

2.5 The place of lodgement and the channel used determines which DIAC IT system will support the processing of an application, and where the application will be processed. Offshore paper-based applications are processed using the Immigration Records Information System (IRIS). Onshore paper-based applications are processed through the Integrated Client Services Environment (ICSE). Offshore and onshore eVisa applications are also processed through ICSE.

2.6 Paper-based applications lodged offshore are normally processed at the relevant overseas post.[29] Onshore paper-based applications are normally processed at the relevant state and territory office. The processing of offshore eVisa applications is divided between centres in Perth and Adelaide:

- Perth is responsible for the offshore AL1 caseload and for the Indonesia and Thailand caseload under the eVisa trial; and

- Adelaide is responsible for the China and India caseload under the eVisa trial.

2.7 From 1 July 2010, onshore eVisa applications are processed at Onshore Student Processing Centres in the Sydney CBD office, Perth and Adelaide.[30]

Governance arrangements

2.8 Ongoing work placement changes within DIAC are consolidating student visa processing into particular locations, but every DIAC state and territory office and overseas post still undertakes some student visa processing. The ANAO examined the governance arrangements for processing student visas across this distributed structure, particularly with respect to consistency across the program.

2.9 The governance arrangements have recently been subject to significant change through a DIAC-wide transformation program announced by the Secretary on 13 October 2009. A key change was the introduction of Global Manager positions with responsibility for managing specific product lines on an organisation-wide basis. The objective is to deliver a higher standard of client service by ensuring that consistent business practices are adopted and

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[29] An exception to this is that, under a decision dating from 2002–03, Chinese student visa paper-based applications are directed to the Adelaide Offshore Student Processing Centre (AOSPC) for processing.

[30] DIAC advised the ANAO that a review was being undertaken early in 2011 with regard to work placement and lead offices within the onshore caseload.

best practice is shared within the Global Manager's product line, regardless of where the work is taking place.

2.10 Student visa processing falls within the responsibility of the Global Manager Visas (Temporary) (GMV(T)). This position was established in the Perth Office in March 2010.

2.11 Prior to the establishment of the GMV(T), there was no single point of accountability for student visa processing. Consistency of approach has been promoted through a combination of factors, including:

- the guidance contained in Generic Guideline G of DIAC's Procedures Advice Manual, which covers: policy and legislation for the program; visa application requirements; assessment of applications; granting and evidencing visas; and visa conditions;

- business rules, checks and balances in the supporting IT system architecture, which prevent visas being granted unless the necessary requirements are satisfied;

- guidance contained in the periodic Student Policy Newsletter issued by the Student Policy Section in Canberra, and the maintenance by that Section of a Help Desk to respond to queries from visa processing officers (VPOs);

- centrally directed corporate planning and performance monitoring and reporting requirements; and

- management initiatives applying to the processing network, such as the 2010 student peak processing strategy.

2.12 These factors, in combination, provide a generally robust and unified framework for the processing of student visas. However, there has not been a business model setting out standard processing practice for all student visa processing centres to follow. Given the GMV(T)'s advice to the ANAO that the student visa program presents more processing challenges than any other visa class, this is an area of risk in the program's governance requiring ongoing management attention.

Variations in practice between student visa processing centres

2.13 In its visits to the major student visa processing centres in Perth and Adelaide and to the NSW Students Centre in Sydney Office, the ANAO observed various practices that had been developed and were unique to each

centre. These practices ranged from simple aide-memoire checklists for VPOs to guide their processing actions to more extensive local initiatives and organisational arrangements.

2.14 The Perth centre has developed a local office sub-directory, consolidating reference and guidance material, including help cards, ready reckoners for calculating financial requirements, contact information, country profiles and functioning HTML web links. This directory is a very useful single point of reference for VPOs in Perth, but is not accessible by other DIAC offices.

2.15 The Sydney Student Centre has developed a Student Visa Processing Best Practice document with guidance covering the steps to be taken in assessing applications, how to minimise requests for additional documentation, managing batches and time management to support total case management. It also contains a section titled 'The Golden Rules of Student Visa Processing', emphasising the importance of using the assessment checklist in ICSE and making case notes to track the progress of visa applications.

2.16 Some of these local practices appropriately reflect the nature of the specific caseload being handled by each centre. The Adelaide centre handles the larger paper-based application caseload from China as well as the Chinese eVisa caseload. The centre's administrative services area is closely integrated into the student processing area and provides an extended service for VPOs, not only registering and entering the application information into ICSE but also performing the initial integrity checks of the Movement Alert List (MAL) and the Safeguards system before the application is passed to a VPO for decision.

2.17 In contrast, the Perth centre primarily handles AL1 eVisa applications. For the relatively small number of onshore paper-based applications which it receives, the administrative area registers and enters into ICSE only the basic information in the application and then passes the application to a VPO.

2.18 In some circumstances, there has been no alternative to the development of local arrangements due to the inability of DIAC systems to support a uniform approach across the department. For example, standard forms and correspondence templates are either not available or cannot be electronically populated by information in ICSE, meaning that each business area designs its own forms and each office creates its own stationery. This impacts on efficiency—VPOs have to spend time cutting and pasting information into a range of official letters to clients, some of which can be five

pages long, on an individual case basis. This was identified as a problem during the eVisa evaluation in 2006–07 but a technical solution has not yet been implemented. Furthermore, the variations in forms used across DIAC is inconsistent with achieving the goal of global eLodgement for all visa types. In this context, the simplification and standardisation of forms is being addressed by the department in the context of its Client Services Transformation Strategy.[31]

2.19 The ANAO noted that the best practice material separately developed by each processing centre demonstrated similar and positive characteristics in being concerned to promote service standards, efficient practice and appropriate adherence to Regulations. However, there had been no coordination mechanism to provide for the best practice tools developed by one centre to be shared with the others or for unnecessary duplication to be avoided.

Better practice initiatives

2.20 By July 2010, the GMV(T) had designated lead offices in the onshore processing network to take the lead in developing and promoting best practice. In October 2010, the Perth office was designated as the lead office for the student visa program. Responsibilities of the lead offices include:

- developing and updating Business Operating Models and Standard Operating Procedures;

- identification of learning and development needs;

- maintenance of sensitive case registers;

- development of stakeholder engagement plans;

- workforce planning;

- liaison with national office on policy change requirements; and

- driving best practice.

2.21 DIAC advised that it has commenced mapping student visa processes to assist with discussions and determination of best practice and consistency in student visa processing. The student processing network has agreed to

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[31] DIAC advised the ANAO in May 2011 that, with the roll-in of the Generic Visa Portal, all VPOs will have access to consistent letter templates through the Enterprise Correspondence Service.

implement a Community of Practice to drive this. The ANAO observed that a Business Operating Model for the student visa program was at an early draft stage in mid-2010 but had not proceeded to consultation within the student processing network. At the conclusion of the audit, it was too early to assess the impact of these developments but they represent potentially positive moves to promote DIAC-wide consistency in the processing of student visa applications. Given the different practices and tools in evidence in different centres, early completion and active promulgation of consolidated best practice guidance is important.

Performance standards and peak processing periods

2.22   Student visa application flows are influenced by the timing of the commencement and cessation of courses. There are two peak periods. The major peak in February–April each year represents approximately 25 per cent of the annual caseload and generate up to 1000 applications in a day. A second peak or 'mini-peak' occurs in August–September.

2.23   Managing these peaks while adhering to published service standards is a challenge for DIAC. The service standards for the processing of student visas from the time the application is lodged are shown in table 2.1. DIAC aims to process 75 per cent of cases within these service standards.

Table 2.1

DIAC's student visa processing standards

	Applicant in Australia at time application is lodged		Applicant outside Australia at time application is lodged		
Assessment level	1 and 2	3 and 4	1	2	3 and 4
Processing time	14 days	30 days	14 days	21 days	90 days

Source: DIAC website, accessed 1 July 2010.

2.24   In its internal planning for the February–March 2010 student peak, DIAC acknowledged that it had not managed the inflow of work at the required level, despite knowing that the peak occurs every year. At that point, half way through 2009–10, only 44 per cent of applications had been finalised within the service standard against the target of 75 per cent. The last time that the service standard had been met was 2001.

2.25   DIAC identified the peak period as a major contributing factor to this performance, with more than 33 per cent of student lodgements occurring in those months compared with 18 per cent of finalisations. It also acknowledged

that its method of allocating staff to student processing centres on a 12-month basis, without providing for the impact of peaks and troughs, was inhibiting effective management of the student peak.

2.26 Following a workshop with student processing centre representatives in January 2010, a Student Peak Plan was developed with a focus on:

- improving performance to meet service standards;

- reducing the number of unfinalised applications constituting the 'on hand' caseload; and

- supporting improved funding allocations through increased activity, (given that funding for processing operations is based on case finalisations).

2.27 The Plan's principal initiative was the creation of a dedicated Student Peak Processing Team in the Perth centre in February 2010, combining experienced team leaders with up to 30 non-ongoing staff. The Team assumed responsibility for processing components of the onshore caseload from Sydney, Brisbane and Melbourne. After the peak passed, the Team continued to operate until June 2010 to assist with any backlogs of 'on hand' cases held in particular offices.

2.28 The Student Peak Plan had noted that, if the intended successes from the Plan were realised, it would become the agreed approach for future student peaks. By the conclusion of the ANAO's fieldwork, the effectiveness of the Student Peak Processing Team had not been evaluated by DIAC to assess whether the Team's operations had delivered:

(a)   improved performance in 2010–11 against the processing service standards; and

(b)   a return of $2.42 million in additional funding predicted by the funding model in the Plan.

2.29 The introduction of a Student Peak Plan was a positive initiative to address the impact on performance of the structural characteristics of the program, but its effectiveness has not been demonstrated. The ANAO suggests that DIAC evaluate the Plan to address the issues identified in paragraph 2.28, and that the evaluation also take into account:

- the impact on future peak management of trends in the student visa program; and

- DIAC's increasing capability to move caseloads around the onshore processing network.

IT systems supporting student visa processing

2.30 As noted in the introduction to this chapter, student visas are processed via both electronic and paper-based applications. Paper-based applications from clients onshore and electronic eVisa applications from both onshore and offshore applicants are processed in ICSE. Paper-based offshore applications are processed using IRIS.

2.31 The ANAO analysed these systems and the student visa data they hold to examine whether adequate controls had been incorporated into the design of the systems to ensure that data is accurate, complete and protected as required, and that the systems effectively support student visa processing.

The Confirmation of Enrolment (CoE) requirement

2.32 Before applying for a student visa, students must have been offered an enrolment for full-time study in a registered course in Australia. That offer takes the form of a Confirmation of Enrolment (CoE). The CoE is recorded by the education provider in the Provider Registration and International Student Management System (PRISMS), which is managed by the Department of Education, Employment and Workplace Relations (DEEWR). A copy of the CoE, when issued to the student, is sent to DIAC electronically and stored within ICSE on a CoE table. The CoE is also transferred through to the Central IRIS database and the relevant overseas post.

2.33 When a student visa application is received by DIAC, the relevant CoE is selected from the set provided by PRISMS and is recorded in ICSE. Once selected, automatic checks are performed to determine whether the:

- date of birth on the CoE matches the client's date of birth;

- CoE has been used previously; and

- limit of nine CoE's per client per application has been exceeded.

For paper-based applications, these checks do not include a check of the applicant's name between the CoE and the application.

2.34 The ANAO noted one weakness in the transfer of CoE information in relation to correct date of birth information. If a provider inputs an incorrect date of birth for a student on PRISMS and the date of birth is then corrected after the CoE has been sent to DIAC, the date of birth is updated on the CoE

table but ICSE continues to recognise the initial data as valid. In these circumstances, if a VPO enters the correct date of birth for the student, ICSE will recognise it as a different date and will generate an error, stopping the decision process until this error is corrected and reversed or overridden. This does not occur frequently, and DIAC advised that data to quantify the number of these occurrences is not available.

Analysing the consistency between CoE data and student data in ICSE

2.35 A student visa should not be granted without a valid CoE. The ANAO analysed 615 726 student visa client records covering two program years from 1 July 2008 to 30 June 2010. This analysis included a comparison between the client data on the CoE and that recorded in ICSE. While the vast majority of records were consistent, inconsistencies were found as follows:

- 2422 applications (or 0.4 per cent of the total), had differences in either the name or date of birth between the client data on the visa recorded in ICSE and the data on the CoE;

- 18 visa applications showed the CoE attached to both the primary visa holder and a dependent (a CoE should not be attached to a dependent); and

- four visas were granted on the basis of an incorrectly attached CoE.

2.36 These inconsistent records represent less than half a per cent of the total. With respect to the first group of inconsistencies, the ANAO's examination of each record showed that these were caused overwhelmingly by the alternative order in which days and months can be expressed in dates and by alternative name spelling—both can result from simple transposition errors by DIAC officers when recording identity data. In these cases, the risk that the CoE and the person granted the visa are not the same person is minimal.

2.37 The second group of inconsistencies, involving the incorrect attachment of a CoE to a dependant, results from mistaken recording of information by DIAC officers. The consequences of this are primarily for data consistency between ICSE and PRISMS, given that the CoE in these cases was correctly recorded for the primary visa holder.

2.38 Of most concern are the cases where a visa is attached to the incorrect CoE. In three of the four cases identified, the ANAO was able to locate CoEs for these clients within PRISMS, however, the incorrect CoE (a CoE relating to another client) had been mistakenly attached within ICSE. In the fourth case, a

valid CoE could not be located anywhere in PRISMS, meaning that this visa should not have been granted.

2.39   Both DIAC and DEEWR were aware of the problem of incorrect CoEs being attached to student visas, and work was being undertaken to align the data in PRISMS to DIAC data. DEEWR staff regularly monitor data differences between PRISMS and ICSE and communicate discrepancies to DIAC, allowing these to be corrected. However, this process relies on manual checking and intervention and is therefore vulnerable to changes in departmental priorities and personnel.

2.40   Although four instances of incorrect attachment of a CoE may appear to be a minimal occurrence in two years of data, the four instances identified by ANAO were all found in data for the first six months of 2010. DIAC advised that the data monitoring process had been interrupted during this time. The ANAO was unable to detect in its data analysis how many such instances had been identified and corrected prior to 2010.

2.41   A potential systems solution to the problem of data consistency is available in the form of a unique student identifier, and this is examined in Chapter 7. In the interim, the ANAO considers that DIAC, assisted by DEEWR, should maintain checking of any differences in names and dates of birth between CoEs and the student visas to which the CoEs have been attached, and take appropriate remedial action to resolve any errors identified.

2.42   There is also room for DIAC to consider improving its controls with respect to CoE processing. For example, the checks listed in paragraph 2.33 do not include a name check between the CoE and the visa application in cases where applications are paper lodgements. Three of the four cases ANAO found where the attached CoE did not match the name on the visa application came through this channel. DIAC could consider implementing a name check to address this gap.

2.43   While DIAC considers that the risk of a CoE being used for multiple clients is small, IRIS has a control preventing this from occurring. ICSE currently does not have such a control, but it would be possible for DIAC to implement a change in ICSE that flags every time a mismatch occurs between the details on a CoE and the visa application. DIAC could also consider providing for CoE corrections on date of birth information to be automatically updated in ICSE.

Duplicate records in ICSE

2.44   ICSE is a client-based system. Processing actions in relation to a client's visa application, or in relation to successive applications from the same client, should all appear when that client's file is accessed in ICSE. However, as a client-based system, ICSE is particularly vulnerable to the quality of the information entered into the system. The client themselves may be responsible for this, where they are lodging their own application though eVisa. If the client lodges further eVisa applications but records their identity details in a different way, ICSE may not match this information to the same client for whom it already has a record. If there is no exact match, ICSE will request the creation of a new client record.

2.45   ICSE has several controls and system checks available to assist VPOs in identifying possible duplicate clients, but these are not automatic and it is the responsibility of the VPO to correctly identify clients at the time of processing to prevent duplicates being created. If a duplicate client record has been created and is subsequently found, VPOs are not empowered to merge these records. In view of the serious consequences of mistakenly merging the records for different people, duplicate client records are reported to a central client team, who performs the merge.

2.46   In mid-2010, the central client team was undertaking approximately 2500 merges per month for all visa types. The student visa component of that workload is comparatively small. The ANAO's analysis of 615 726 student visa client records covering two program years from 1 July 2008 to 30 June 2010 found 2429 instances (0.4 per cent) where student visa clients had been merged. The requirement to link student visa applications to a CoE, and the additional biodata check that that represents, may be a factor in the relatively low rate of duplicate client records for overseas students.

2.47   While a student visa application is processed and the decision to grant a visa is made in ICSE, the visa grant is actually managed by DIAC's Travel and Immigration Processing System (TRIPS). A client record in TRIPS is based on passport data and TRIPS will automatically merge any multiple client records that match five of the seven personal identifiers recorded in a passport. This enables TRIPS to effectively manage clients with multiple identity records. Although an analysis of TRIPS data was outside the scope of the audit, the ANAO was advised by DIAC that, as a result of the design of TRIPS, there is a negligible risk that duplicate records for an overseas student in ICSE could lead to that student being issued with multiple visas.

2.48   Notwithstanding this control, the vulnerability of ICSE to duplicate client records is undesirable and the requirement for DIAC officers to identify and merge duplicate records is inefficient. DIAC is in the process of creating a single client data hub, as part of the development of its Systems for People program, that will consolidate client biographic data from its existing IT systems, including TRIPS, ICSE and IRIS. DIAC advised that it also has several other projects underway to help address issues around duplicate/multiple clients in DIAC systems.

System controls

2.49   The ANAO examined the mandatory data, business rules and event requirements within ICSE, IRIS and eVisa that are required to be recorded and satisfied to achieve the grant of a student visa. In summary, a number of checks of the mandatory requirements for a visa grant are performed by ICSE and IRIS, as illustrated in Appendix 3.

2.50   The ANAO noted that ICSE provides the VPO with a structured assessment checklist to record parts of the decision-making process. However, this is not mandatory and, in practice, VPOs follow the administrative arrangements determined in each processing centre. The proposed development of consolidated best practice guidance by GMV(T) for student visa processing is an opportunity to reinforce the use of the assessment checklist during processing.[32]

2.51   The ANAO observed that in both ICSE and IRIS, VPOs have the discretion to override the Identity Services Repository, security referral service, Safeguards and health assessment permission checks, and that second officer approval or quality assurance follow-up for such overrides is not mandatory. In contrast, any Movement Alert List overrides are subject to approval by the central Border Operations Centre.

2.52   The ANAO understands that DIAC intends to include formal quality assurance measures in the planned Generic Visa Portal with respect to actions made in relation to visa applications. The ANAO suggests that DIAC consider improving its system controls with respect to event overrides in ICSE and IRIS. For example, when key events are reversed or overridden in relation to health,

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[32]   DIAC advised the ANAO in May 2011 that the roll-in of the Generic Visa Portal will include document and assessment checklists for VPOs across the DIAC network.

Safeguards and security, that there is consistent, formal quality assurance checking on a risk assessed basis.

Conclusion

2.53 Extensive corporate policy guidance and the business rules built into DIAC's visa processing systems provide a generally effective and unified framework for the processing of student visas. However, there is no business model setting out standard processing practice for all student visa processing centres to follow and there are variations in practice between different centres, which carries the risk of inconsistent decision-making. DIAC has commenced work to map student visa processes to assist with the determination of best practice. It will be important for DIAC to codify the outcomes of this work in an appropriate corporate guidance document.

2.54 DIAC aims to process 75 per cent of student visa applications within processing times published in its service standards. However, it has not met this target since 2001, partly due to the pressure on processing resources during the two peak periods for student visa applications each year. The introduction of a Student Peak Plan and Student Peak Processing Team for the February–April 2010 peak was a positive initiative, but to confirm its value as an ongoing strategy, there would be benefit in DIAC evaluating the Team's effectiveness in improving performance and achieving the financial return of $2.42 million estimated from its operation.

2.55 The ANAO's analysis of 615 726 student visa records covering two years from 1 July 2008 to 30 June 2010 found that less than half of one percent of these contained inconsistencies between client data recorded in ICSE and CoE data recorded on PRISMS. This was a positive outcome, partly due to ongoing monitoring and manual correction by DIAC and DEEWR officers of differences in data between their respective systems. While controls are generally effective, there is room for DIAC to consider some further improvements to its checks and controls within ICSE to prevent data inconsistencies occurring.

3. Determining Student Visa Assessment Levels

This chapter examines DIAC's approach for determining assessment levels that set the requirements for overseas student visa applications.

Introduction

3.1   Immigration risk is defined within DIAC as risk to the integrity of Australia's immigration programs in the categories of identity, character and compliance. More particularly, risk is largely the extent of potential immigration fraud that DIAC may experience in visa applications.

3.2   DIAC determines the level of immigration risk posed by students from each country and education sector/visa subclass through a risk assessment tool called an assessment level (AL). ALs were introduced on 1 July 2001, replacing a system of gazetted/non-gazetted countries. ALs are specified by country of passport and subclass (education sector) of student visa by a gazette notice signed by the Minister. The AL of a country and sector determines the evidentiary requirements that need to be met by an applicant in order for a student visa to be granted. DIAC states that the purpose of ALs is 'to align visa requirements to the demonstrated risk of the visa applicant. This serves to support the integrity of the student visa program and to align visa requirements to clear, objective evidence of compliance rates'.[33]

3.3   There are five assessment levels, with AL1 representing the lowest immigration risk and AL5 the highest. AL1 countries have the least onerous evidentiary requirements. Students from AL1 countries are able to lodge applications online through the eVisa platform with the possibility of an automatic grant (autogrant) of their visa. As the AL increases, more evidentiary requirements are placed on the student in terms of English language proficiency, financial requirements and previous studies. Appendix 4 shows the evidentiary requirements for each AL.

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[33]   DIAC, *Submission to the Senate Inquiry into the Welfare of International Students*, September 2009, p. 13.

3.4   In examining DIAC's administration of ALs, the ANAO analysed the:

- outcomes of periodic AL reviews;

- quantitative and qualitative analysis undertaken;

- effectiveness of warning notices;

- timing of reviews; and

- training and guidance provided to officers undertaking reviews.

Assessment level reviews and outcomes

3.5   ALs are reviewed periodically to ensure that they reflect the changing risk status of each student visa caseload.[34] AL reviews are undertaken using a combined approach of quantitative and qualitative analysis including consultation with internal and external stakeholders.

3.6   Where a country and education sector shows a statistical improvement in its integrity and compliance, and where qualitative analysis supports such an approach, DIAC may lower the AL. This is usually done immediately. Where data analysis shows deterioration in integrity and compliance for a country and education sector, DIAC issues a warning through placing the sector 'on notice'. When a sector has been placed 'on notice', the AL may be increased in the following review if compliance does not improve. ALs typically have not been increased in the same review period as the compliance deterioration.

3.7   Since the introduction of ALs in 2001, there have been seven AL reviews. These were in 2002, 2004, 2005 (in April and November), 2007, 2008 and 2010. Since ALs were implemented:

- 611 education sectors across 201 countries have had a reduction in AL;

- 22 education sectors across 10 countries have had their AL increased;

- 114 education sectors across 50 countries have been placed 'on notice'; and

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[34]   The AL review applies to all student visa subclasses except for the AusAID/Defence subclass, which is classified as AL2. The post graduate research subclass was excluded from the 2010 review due to a Government policy decision announced in March 2010 to reduce ALs for this sector, in response to a report tabled by the House of Representatives Standing Committee on Industry, Science and Innovation, *Building Australia's Research Capacity.* As a result, DIAC reduced 14 AL2 countries to AL1, and 17 AL3 and 4 countries to AL2 in the post graduate research sector.

- no country or sector has been placed at AL5.

Figure 3.1 shows the improvements, downgrades and sectors placed 'on notice' in each review.

Figure 3.1

Number of AL changes (sectors changed) in each review period
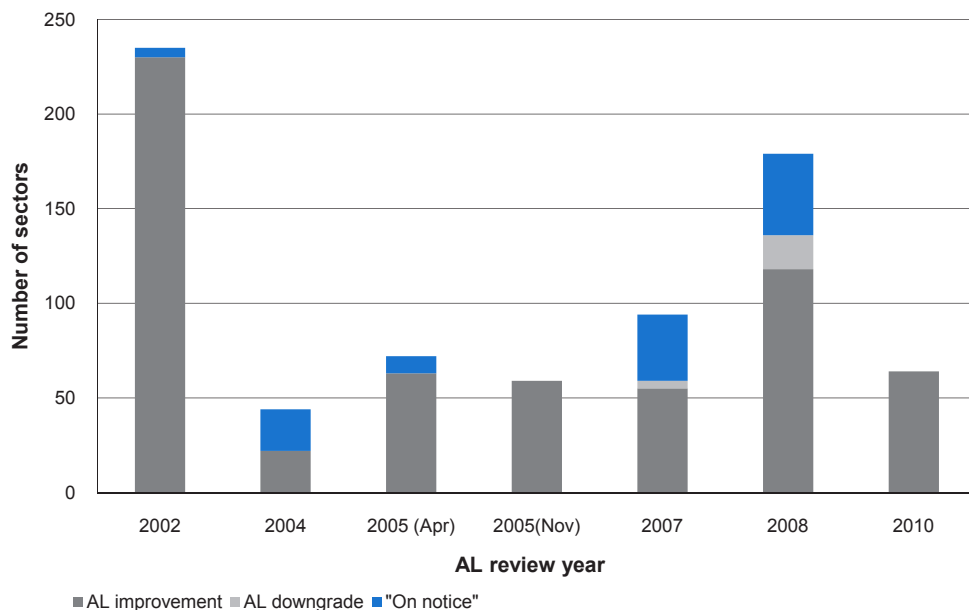
Source: ANAO analysis of DIAC data.

3.8   Until the 2007 review, all AL changes were reductions in the level; there were no AL increases over that period. DIAC regards the lowering of ALs, where appropriate, as beneficial since it facilitates reduced processing requirements and times due to the lower evidentiary requirements imposed on applicants. Access to the eVisa channel for AL1 applicants also facilitates more efficient visa processing, both in terms of individual processing and DIAC's ability to flexibly manage electronic caseloads, for example, by distributing them between visa processing locations. Figure 3.2 shows the preponderance of movements to AL1 status.

Figure 3.2

Movements of sectors to AL1 and AL1 sectors given a warning
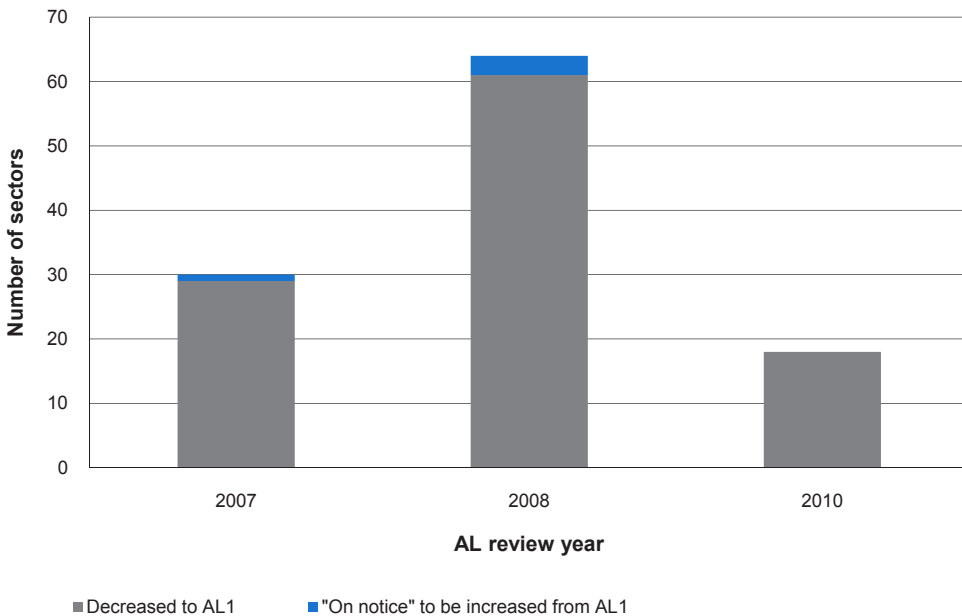
Source: ANAO analysis of DIAC data.

3.9   Given the benefits of eVisa access, DIAC regards a shift from AL1 to AL2 as having a greater market impact than upward shifts in the higher ALs. The ANAO notes that not all AL1 countries showing decreasing compliance statistics have been placed 'on notice' (see paragraphs 3.41–3.44).

Outcome of the 2010 AL review

3.10   The 2010 AL review was conducted concurrently with the audit. Due to delays, the qualitative stage of the AL review process was still in progress at the conclusion of the audit's fieldwork. The outcomes of the review were announced by the Minister on 16 December 2010.[35] Noting that the international education sector was under increasing pressure, and to assist in streamlining the visa application process for lower risk cohorts, the Minister announced that 38 countries would have their AL reduced across one or more sectors from April 2011. No countries had their AL increased at this time, and 'on notice' warnings were not issued.

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[35]   The Hon Chris Bowen (Minister for Immigration and Citizenship) 2010, *Review of the student visa program*, media release, Parliament House, Canberra 16 December.

3.11 The Minister also announced that the assessment level for the China and India higher education sectors would be reduced from AL4 to AL3. The results of the review's quantitative analysis had indicated a risk rating for these cohorts of AL4 and AL5 respectively. In those cases, the department advised the Minister that the integrity measures implemented over the last 12 months would mitigate the risk. Pending the outcome of the current Review of the Student Visa Program, DIAC intends to undertake another review of ALs in 2011.

3.12 References within this chapter to 2010 AL data refer to the ANAO's analysis undertaken on the provisional ALs resulting from the quantitative and qualitative analysis stages of the review, prior to the Minister's decision on the review outcomes. Where appropriate (for example, in paragraph 3.7 and Figures 3.1 and 3.2), the final outcome of the 2010 review as announced by the Minister is included.

Quantitative aspects of assessment level review

Immigration risk factors and weightings

3.13 The risk indicators used in an AL review are set out in the Migration Regulations. The Minister must have regard to one or more of the statistics prepared by DIAC's Secretary when determining the AL for a cohort of students. In determining a country and sector's AL, DIAC considers all of the risk indicators outlined in the Migration Regulations through the following rates:

- fraudulent documentation;
- visa cancellation;
- unlawful student;
- applications for residence (excluding residence on the basis of skill);
- visa application (offshore) refusal; and
- applications for protection visas.[36]

3.14 Each of these rates is given a weighting, reflecting DIAC's view of the significance of the non-compliance risk involved. The weightings are

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[36] *Migration Regulations 1994* (Cth) reg 1.41.

28 per cent each for the visa cancellation, fraudulent documentation and unlawful student rates; and eight per cent each for applications for residence and visa application refusals rates, totalling 100 per cent. The sixth risk factor, protection visa (PV) applications, is given an absolute value in the country risk index (CRI) calculation, that is, the actual number of applications is counted rather than applying a percentage weighting.

3.15 Once data is collected by DIAC for each risk factor, the combination of all the risk indicator rates adds up to a CRI figure for each country and education sector. The CRI figure then determines the preliminary AL for that country and education sector, prior to the commencement of the qualitative stage of the review.[37]

3.16 The AL process in use from 2001 to 2006 compared a country's CRI score to a global average score for each risk factor. In 2006–07, the global average methodology was replaced by the current benchmarking approach, where the AL is determined by comparing a country's CRI score to the benchmark CRI range for each AL. The benchmarks were based on data from 2002 to 2005 and have not been reviewed since their introduction.

3.17 The weightings given to the immigration risk factors have not been reviewed since they were included in the methodology in 2004. Given that the weightings reflect perceptions of immigration risk at that time, it would be timely for them to be reviewed to confirm their current validity.

Absolute value for protection visa applications

3.18 The basis for giving an absolute weighting to PV applications is DIAC's high level of concern about any potential for abuse of Australia's protection obligations. In the current methodology, the total number of PV applications is added to the weighted rates of the other factors to determine the CRI for a country and education sector. This means that a small number of PV applications would lead to a higher preliminary AL (more than four PV applications equates to AL4), even if the other risk factors point to low immigration risk.

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[37] The provisional AL corresponds to the following CRI ranges: for AL1, a CRI below 1; for AL2, a CRI between 1 and 2.7; for AL3, a CRI between 2.7 and 4.2; for AL4, a CRI between 2.7 and 50; and for AL5, a CRI over 50.

3.19 The ANAO's examination of the 2008 and 2010 AL reviews showed the distorting effect the absolute number weighting for PVs can have on a country and sector's CRI, as follows:

- for four sectors across three countries in the 2008 review, DIAC decided that although the CRI pointed to an increase in the AL, these sectors would not be placed 'on notice' due to the data being distorted by the manner in which the PV rate is counted; and

- the 2010 CRI calculation for the schools and higher education sectors of one country, with only five and four PV applications within active visa numbers of 6 923 and 15 563 respectively for those sectors, indicated an increase from AL1 to AL4. Both sectors were provisionally kept at AL1 by DIAC due to the impact of the absolute PV value on the CRI data.

3.20 The ANAO also looked at six other countries and education sectors (excluding small countries with fewer than 100 students) that had four or five PV applications for the 2010 review period. In five of these cases, excluding the absolute PV rating from the CRI calculation resulted in ALs between one and three levels lower than the provisional AL outcome.

3.21 These cases call into question the utility of including an absolute PV number in the quantitative calculation when other risk factors are calculated as a rate and then weighted. Some countries have been kept at the same AL due to 'skewing' effects of the PV rate whereas other countries have been increased, even where other risk data points to a lower risk level.

3.22 Moreover, PV application rates can be volatile. In the wake of the changes to skilled migration policy in February 2010, DIAC anticipated that some affected students could react by applying for a PV. Indeed, DIAC received 556 PV applications from student visa holders in the last quarter of 2009–10, an increase of 94 per cent over the same quarter in 2008–09. If this 2010 data is included in analysis for the next AL review, it is likely to distort the CRIs for the relevant countries and sectors.

3.23 The ANAO considers that, if DIAC continues to include PV application rates in the AL risk calculation, a better approach to rating this risk would be to move PV applications from the quantitative calculation of the CRI to the qualitative part of the AL review process. This would remove the potentially distorting effect of absolute PV application rates on the CRI.

Small country rules

3.24 As noted in Chapter 1, approximately two thirds of the student visa caseload is supplied by the top 10 countries, leaving the other third made up by 187 countries. Many of these send only a few students each year. In determining the AL for these countries, DIAC has what it terms 'small country rules' which apply to countries/sectors with fewer than 100 overseas students in Australia with visas expiring in the review period. Some 168 countries in the 2010 AL review had a least one sector with under 100 student visa holders.

3.25 The small country rules state that those countries which have access to an Electronic Travel Authority (ETA) for visitor visas, and European Union countries which have access to an eVisitor visa, will be classified as AL1. There are 33 such countries. This approach means that DIAC is relying on the ETA and eVisitor risk assessment processes to determine the level of immigration risk students from those countries pose. In a previous audit[38], the ANAO found that the ETA risk rating was used to add countries to the ETA list but DIAC had not (up to 2004) subsequently withdrawn a country's access, even where immigration risk had deteriorated. In the case of the eVisitor visa, DIAC advises that the caseload is monitored and risk profiles are adjusted as necessary. Nevertheless, the ANAO notes that the risk ratings flowing through to the AL review process for these small countries may not reflect current objective data.

3.26 Moreover, DIAC's own analysis of the risk in some of these countries indicates a rating of higher than AL1. In the 2010 AL review, there were 12 sectors within eight of these countries that showed a proposed AL higher than AL1 or were provisionally listed as on notice to be increased from AL1.

3.27 With respect to non-ETA/eVisa countries, the method of calculating their AL has changed over time. For the 2008 review, non-ETA countries were assigned an AL based on the statistical data. In the course of the 2010 review, this was modified so that non-ETA countries are given an AL based on rates of immigration fraud, and whether there is support from the relevant overseas post to have the country and sector at the proposed AL.

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[38] ANAO Audit Report No. 2 2007–08, *Electronic Travel Authority Follow-up Audit,* p. 61–62.

Application of small country rules

3.28   Small country rules are meant to be applied to countries or education sectors with fewer than 100 students with visas expiring in the review period. The ANAO's examination of the 2008 AL review found that DIAC generally applied the small country rules on a country basis rather than on a sectoral basis. That is, the rules were applied to countries with a total number of expiring visas (across all sectors) of less than 100, and not applied to countries with more than 100 visas in total, even where the country's caseload contained sectors with under 100 expiring visas.

3.29   Within this general practice, however, there were unexplained exceptions. Small country rules were applied to seven countries with total visas greater than 100. For one country, every sector had fewer than 100 expiring visas. For the other six countries, at least one sector had more than 100 visas expiring in the period. The ALs for these seven countries were kept at AL1 due to the country's ETA status.

3.30   Most notably, two of the largest countries (the tenth and eleventh ranked) with more than 100 visas in every sector had their ALs maintained at their existing level on the basis of their ETA status under the small country rules and not their CRI score.

3.31   The ANAO also found that numerous subjective adjustments were made in both the 2008 and 2010 reviews to the AL outcome for small sectors for which AL data was determined through a CRI calculation rather than application of the small country rules. The reasons given for such interventions were the small size of the caseload and inconsistencies in AL trends when compared to other sectors from the same country.

3.32   In the 2010 review, 283 out of the 634 sectors that showed a change in AL according to the CRI outcome (45 per cent) were provisionally kept at the same AL due to the 'sample being too small'. Not all of these sectors were from small countries. As DIAC has acknowledged, and the number of interventions confirms, the results of quantitative analysis for countries with small numbers of overseas students can readily be distorted by chance variations in the compliance rates, thus not reflecting the real risk of the student cohort. On the other hand, effective application of a set of small country rules requires confidence that the rules appropriately measure the risk and provide a reliable basis for an AL rating.

3.33   The handling of small country and sector caseloads in the AL review process has inherent difficulties, but DIAC's current approach to assessing ALs

for small countries and sectors lacks consistency. If similar size countries and education sectors are to receive equal treatment, the ANAO suggests that DIAC review and, if appropriate, confirm the principle that small sectors should be assessed by a different method than large sectors, and seek to consistently apply small country rules to all small sectors. While it is appropriate to provide for provisional AL ratings to be adjusted during the qualitative stage of the review process, it is desirable that DIAC codify the criteria for such adjustments to provide more transparency.

Qualitative aspects of assessment level review

3.34 Once a CRI score is determined through quantitative analysis, consultation with stakeholders is undertaken to assess country-specific issues and any broader regional concerns. DIAC consults initially with internal stakeholders such as the state and territory offices and overseas posts, and then with the education sector peak bodies as well as relevant Australian Government agencies including DEEWR, DFAT and Austrade, before the ALs are put forward to the Minister for approval.

Recording of consultations and decisions

3.35 The ANAO's examination of the 2008 AL review found that decisions in cases where the final AL outcome differed from the outcome of the quantitative analysis were not documented for 16 sectors across 13 countries, representing five per cent of the total sectors in the top 50 countries. In one of these instances, quantitative analysis of the schools sector for a major country indicated an AL5 risk rating. This sector was kept at AL4 and not placed 'on notice' despite external stakeholder concern over this caseload. DIAC was unable to provide documentation explaining the reasons for this decision.

3.36 For the 2010 review, DIAC improved its documentation of the reasons for not changing ALs on the data spreadsheet. Responses from posts, either supporting the changes or raising concerns over the changes, were clearly documented in addition to support and concerns raised by state and territory offices and the GM Temporary Entry. However, there were still four instances where the statistics showed a decline in compliance rates, indicating that the AL should have been provisionally increased, but this was not done and the reasons were not documented.

3.37 DIAC's consultation process with internal and external stakeholders provides a sound basis for understanding additional risks relating to caseloads beyond the quantitative calculation of compliance rates. However, decisions to

vary the final AL outcome from the rating indicated by quantitative calculation have not always been documented. Recording the basis for all decisions made is important for the transparency and consistency of the review process.

Placing countries and sectors 'on notice'

3.38   As noted in paragraph 3.6, countries and sectors are placed 'on notice' when their compliance rates deteriorate. This approach was adopted in order to manage the impact of AL changes on markets, stakeholders and departmental offices. In particular, the warning gives education providers, education agents and migration agents the opportunity to prepare for the possible impact an increase in a cohort's AL might have on their student markets.

3.39   DIAC also sees the warning period as giving the country placed 'on notice' an opportunity to improve the compliance rates for their students. DIAC issues a formal 'on notice' notification to the government of the country through its mission in Australia, seeking its assistance in addressing the declining compliance rates.

'On notice' warning creates a time lag

3.40   Quantitative analysis supporting AL review outcomes is retrospective, whereas the AL outcomes are prospective, in that they remain in place or 'on notice' until a future review. This creates the potential for a substantial period to elapse between the time a country and sector first shows an increased integrity risk to when this risk is recognised in a change to its AL rating. In the most extreme case, if the behaviour of concern arises soon after one review, with the sector then being placed 'on notice' at the next AL review and the following review is delayed, this time lag could extend to up to four years. In a dynamic international education environment, the potential for a widening disconnect between the actual integrity risk of a sector and its official risk status as signified by its AL is a matter of concern.

Consistency in applying the 'on notice' rule

3.41   The ANAO's examination of the 2008 and 2010 AL reviews found that the 'on notice' rule was not applied consistently across the caseloads, contrary to internal DIAC guidance stating that it should be.

3.42   In the 2008 review, the data for the top 50 countries showed there were 36 sectors from 25 countries that were not placed 'on notice' when compliance rates showed deterioration. Instead, DIAC decided to monitor these caseloads for another period. The reasons recorded for not placing sectors 'on notice'

were the inconsistency in the trend between the relevant sector and other sectors in the same country, and giving additional time for trends in a sector to be monitored following an increase in the AL for that sector in the previous review.

3.43 Twenty-nine of the 36 sectors (80.6 per cent) not placed 'on notice' following the 2008 review were AL1 sectors, indicating DIAC's reluctance to move countries/sectors out of AL1, which would cease their right to access eVisa lodgement.

3.44 In the course of the 2010 review, DIAC changed the 'on notice' rules to allow for more flexibility to respond to integrity concerns and address the time lag issue mentioned in paragraph 3.40. The changes allow a country that is showing an increase of more than one AL (for example, currently at AL2 with a CRI indicating AL4 or AL5), or a country with significant compliance concerns, to be increased by one AL in that review. The ANAO considered this to be a positive step to better align a cohort's risk rating with its current level of immigration risk.

3.45 Notwithstanding this change, the ANAO found instances of the inconsistent application of these rules in the 2010 review, including:

- various AL1 sectors across three countries showed a decline in compliance rates to AL3, but the provisional outcome for these was to be placed 'on notice' rather than being immediately increased as stated in the revised 'on notice' rules;

- AL1 sectors from three other countries trending to AL3 and AL4 were provisionally increased immediately to AL2; and

- two countries placed 'on notice' in the 2008 review were kept 'on notice' despite worsening compliance trends in the 2010 review.

3.46 These inconsistencies in the application of the 'on notice' rules potentially result in varied treatment of countries and education sectors with the same AL and detract from the objectivity of the AL review process.

Effectiveness of 'on notice' warnings

3.47 Part of the purpose of an 'on notice' warning is to improve country performance. However, there is little effort to engage in follow-up work with countries after the formal letter notifying the country's government of its 'on notice' status has been sent. The ANAO analysed the countries placed 'on

notice' in the 2005, 2007, and 2008 reviews to determine their compliance performance in the subsequent 2007, 2008, and 2010 reviews (see Figure 3.3).

Figure 3.3

Performance of sectors 'on notice' from a prior review
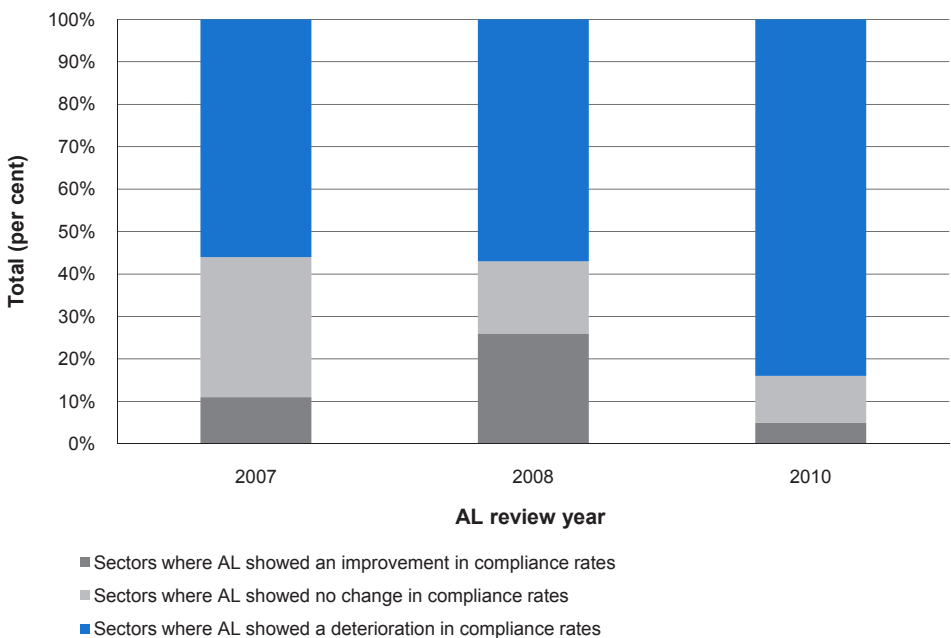
Source: ANAO analysis of DIAC data.

Note: The 2008 review included five countries put 'on notice' for the postgraduate research sector. In March 2010 changes came into place where the postgraduate research sector ALs were reviewed and changed. Therefore, the performance of these postgraduate research sectors was excluded when looking at the 'on notice' improvements in the 2010 review.

3.48 The ANAO found that the effectiveness of warnings has decreased over the three review periods with only five per cent of the sectors placed 'on notice' after the 2008 review showing an improvement in compliance statistics (the CRI) in the 2010 review. The aim of improving country performance is therefore not being achieved. Closer examination of the reasons for this trend and for the ineffectiveness of the 'on notice' approach is warranted, as well as examination of options for engaging more actively with countries placed 'on notice' to improve their performance against the compliance risk factors.

Timing of assessment level reviews, training and guidance

3.49   Since their introduction, AL reviews have regularly been referred to in DIAC's internal and public documents as an annual review process. More recently, DIAC has referred to the reviews being performed 'periodically', which is a more accurate reflection of the timings of previous reviews at irregular intervals of one to two years. The time periods between reviews are important insofar as they affect the time lag between the identification of integrity concerns with a sector and action to increase its AL.

Timeliness of review completion

3.50   DIAC aims to implement AL changes outside peak student processing periods and in line with DIAC's scheduled IT system change cycle. The 2010 review outcomes were planned to be announced in September 2010. The quantitative analysis stage of the review was interrupted by a problem with the accuracy of data being captured. The business rules supporting the data capture had not been updated to reflect actual practice in recording one category of compliance information. A delay of three months was then exacerbated by the extended caretaker period either side of the August 2010 Federal election. Changes to AL levels from the 2010 review were announced by the Minister on 16 December 2010, and were implemented on 2 April 2011.

3.51   Failure to implement the 2010 review within deadlines was classified as a significant risk in DIAC's risk plan for the review, which noted that a substantial delay to implementation could mean that cohorts are maintained at either a lower or higher AL than is justified by their actual compliance outcomes. Given the delay, the AL changes in April 2011 resulting from the 2010 review will be based on compliance data over a year old. While the consultation during the qualitative stage of an AL review may identify contemporary risk trends, the foundation of the review as an objective process is the quantitative data analysis. As this analysis is inherently retrospective, lengthy time gaps between, and delays within, reviews may lead to ALs not accurately representing the changing integrity risk of particular caseloads, as recognised in DIAC's risk plan. Maintaining a tighter schedule of AL reviews would improve the correlation between review outcomes and the current risk status of student visa cohorts.

Training and guidance

3.52   Generally, a different officer will conduct each AL review. This in itself is not a cause for concern, but the ANAO was informed that no formal training or guidance is provided to officers undertaking the AL review. There are also

no documented training or guidance materials for officers to refer to, other than the example of the previous review. As well as the potential for errors that this situation creates, opportunities for applying lessons learnt to support continuous improvement of the process are inhibited because officers conduct each review the way it was done previously. Preparation of appropriate guidance material would better support officers conducting AL reviews, and evaluating this material at the conclusion of each review would enhance its usefulness.

Conclusion

3.53 DIAC's use of a risk-based process to guide requirements for and assessment of student visa applications is sound. However, any such process requires a robust and up-to-date methodology and the methodology needs to be applied consistently. The AL review process falls short of these requirements and, as a result, is not ensuring in all cases that visa requirements are aligned to demonstrated risk.

3.54 The risk factor weightings underpinning the quantitative analysis and the allocation of preliminary ALs have not been reviewed or updated since they were introduced. Weightings were determined in 2004 and benchmarks are based on performance figures from 2002–2005. This means that current AL risk assessments are based on the perceptions of immigration risk that applied at those times. They are overdue for consideration of whether they accurately reflect the current risk.

3.55 The ANAO found a number of inconsistencies in recent AL reviews, in the application of protection visa weightings, small country rules, and 'on notice' rules. These inconsistencies, coupled with the lack of transparency surrounding the basis for decisions in all cases, increase the risk of inequitable treatment between countries and education sectors. It also indicates that the review methodology is not being applied consistently and is struggling to cope with the complexity of the program.

3.56 Interventions by DIAC to modify outcomes from the application of the small country rules, 'on notice' rules and the absolute value of protection visas have often resulted in AL1 countries remaining at AL1. Because AL decisions sit at a key point of intersection between DIAC's visa integrity interests and other considerations in regard to facilitating growth of international education and efficient visa processing, the reasons for AL ranking outcomes need to be more transparent and better documented by DIAC.

3.57 The outcome of the 2010 AL review, which resulted in the ALs for 38 countries being reduced and none being increased, highlights both the interplay of these competing interests and the difficulty that the current assessment level methodology faces in managing these interests.

3.58 The methodology for establishing and reviewing ALs requires review. In addition to the particular issues identified by the ANAO, such a review could also usefully address several broader challenges for the AL process. These include how best to:

- provide appropriately for changing integrity risks in a dynamic environment through a process based on retrospective data which has prospective application;

- balance the size, complexity and resource demands of a process assessing students from 197 countries across the six education sectors, covering large and small caseloads, with the desirable frequency of conducting reviews;

- deliver transparency in the process, which has been shown to involve many subjective judgements, not all of which have been consistently or adequately documented; and

- balance flexibility and objectivity in a process that inevitably negotiates between DIAC's integrity interests and its interests in more efficient visa processing and the sustainable development of the international education industry.

Recommendation No.1

3.59 To improve DIAC's management of risk in the student visa program, and to better align student visa requirements and immigration risk, the ANAO recommends that DIAC undertake a review of its process for determining country and education sector assessment levels for student visa applications.

DIAC Response: *Agreed.*

3.60 The Strategic Review of the Student Visa Program announced by Ministers Bowen and Evans on 16 December 2010, being undertaken by the Hon Michael Knight AO, will examine and make recommendations on "approaches to more effectively gauge and manage immigration risk in the Student visa caseloads, including considering the suitability of the Assessment Level model" (Review Terms of Reference, no. 3: <www.immi.gov.au/students/_pdf/review-terms-of-reference.pdf>).

3.61 It is possible that as a result of the Knight Review's outcomes, the Assessment Level framework may need to undergo significant changes.

3.62 Until the outcomes of the Knight Review are known, it is proposed that the 2011 review of Assessment Levels be undertaken according to best practice principles as identified in the ANAO report.

4.   The eVisa Facility for Students

This chapter examines the use of the electronic visa (eVisa) lodgement facility for student visa applications.

Introduction

4.1   eVisa is an electronic lodgement and payment service for selected visa classes, which supports:

- automated checks to ensure applications are valid;

- automated checks against departmental warning lists;

- automated referral to follow up health concerns;

- email notification of visa grants where all requirements are met;

- an online inquiry function to enable clients to check the status of their applications; and

- online credit card payment and receipting functions.

4.2   eVisa for student visa applications was initially released on a trial basis for a very limited number of low-risk cohorts in August 2001. Further releases in February and July 2002 extended the service to all onshore and to offshore AL1 applicants over 18, establishing the major features of the service as it still functions today.

4.3   Subsequently, on 1 November 2004, DIAC commenced a trial of electronic lodgement for major source countries in the AL2-4 category, commencing with China, India and Thailand. Indonesia was added to the trial in August 2005. The eVisa trial remains in operation for those four countries. The ANAO examined the use and effectiveness of eVisa within the student visa program for AL1 applicants and the current AL2-4 eVisa trial.

Effectiveness of eVisa

4.4   The introduction of eVisa to the student visa program was to manage the growing caseload, which exerted significant pressure on processing resources during the two peak periods a year, combined with the desire to free resources from low value work so that they could be targeted on integrity issues. It was also intended to provide more accessible cost-effective services to student visa applicants.

4.5 The principal benefits identified by DIAC from eVisa fell into two broad categories:

1) faster processing and savings resulting from reduced manual involvement by DIAC staff in processing visa applications. In particular, information in applications lodged through eVisa does not need to be manually keyed into ICSE by DIAC staff; and applications which meet all the visa requirements are able to proceed through to an automatically granted visa (an autogrant) without manual handling by a VPO; and

2) more flexible and efficient data management. For example, an electronic caseload can be readily transferred to a selected processing location to achieve economies of scale, or can be moved between offices to better manage variations in demand and workload.

4.6 In the case of the eVisa trial for AL2-4 countries, individuals can only access eVisa through an eVisa agent.[39] Because of the need for VPOs to check whether evidentiary requirements for these higher risk ALs have been met, autogrant is not available. Efficiencies from the eVisa trial caseloads therefore derive from the number of eVisa applications that are received from agents by DIAC in a 'decision-ready' state, with all the documentation required for assessment and decision included.

eVisa take-up rates

4.7 DIAC regularly publishes data on the usage of eVisa (the eVisa take-up rate) as a performance measure in its Annual Reports and in submissions to inquiries and reviews. The trends in take-up rates for offshore AL1 eVisa and the AL2-4 eVisa trial are shown in Figure 4.1. This indicates that AL1 eVisa take-up rates have stabilised at just above 75 per cent, after a steady decline from a high point of 89 per cent achieved in 2005–06.

4.8 The reasons why take-up rates have never exceeded 90 per cent and now sit under 80 per cent largely reflect the characteristics of particular cohorts. In some Middle East countries, for example, there is a cultural preference for dealing personally with government authorities through the

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[39] The term eVisa agent, rather than the generic term 'education agent', is used throughout this report to describe agents who have been approved to access the AL2-4 eVisa Lodgement Facility. eVisa agents. comprise education agents based in the four trial countries and registered migration agents based in Australia.

paper-based application channel rather than through an impersonal electronic medium. In other instances, particular education agents in some countries prefer to lodge applications with the local post rather than use eVisa. In addition, in any given cohort, there will be some individuals who do not trust electronic systems.

Figure 4.1

Percentage trends in eVisa lodgement for eligible caseloads
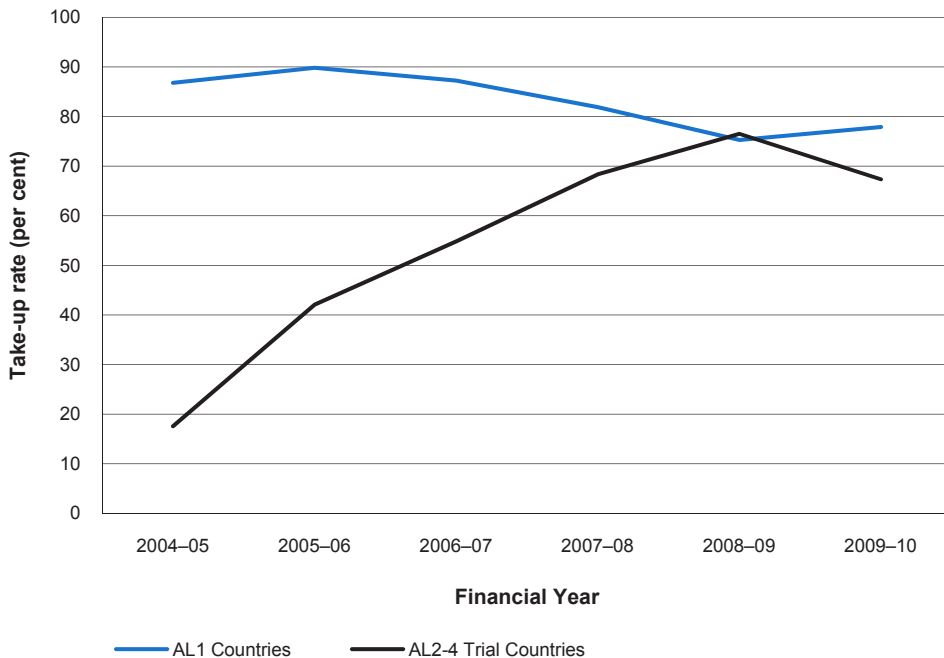
Source: ANAO analysis of DIAC data.

Note: The eVisa trial for AL2-4 countries commenced on 1 November 2004. The data for 2004–05 for AL2-4 countries therefore is from 1 November 2004–30 June 2005. Data for the full program year is used for all other years.

AL1 eVisa autogrant outcomes

4.9   Take-up rates measure the input side of eVisa. However, the output side of eVisa, in particular, applications that pass through the system to an autogrant, from which maximum efficiency is derived, is not regularly measured.

4.10   DIAC evaluated AL1 eVisa between 2005 and 2007 and produced a draft report in April 2007. The evaluation noted that because the AL1 subclass is inherently low risk, requiring a minimum of evidentiary requirements, it

would be reasonable to expect a high autogrant rate and the incidence of manual intervention by VPOs to be correspondingly low.

4.11 Initially, the AL1 student eVisa countries were fairly homogenous and high autogrant rates were achieved. In 2003–04, eVisa applications in three of the six visa subclasses achieved an autogrant rate of over 80 per cent, and the lowest rate for any of the subclasses was 65 per cent. Since that time, the rate of autogrants has declined significantly. The addition of more countries becoming eligible for eVisa following AL reviews, and the extension of eligibility to applicants under 18 years of age introduced in November 2004, has made the program more complex. These changes have also resulted in an increase in the number of applications requiring additional supporting documentation. These applications are not able to proceed to autogrant.

4.12 In particular, students undertaking longer courses entailing a stay in Australia of over 12 months require health assessments, including a chest x-ray. The requirement for health assessments is determined separately from the AL review and is not related to countries' AL status. Accordingly, many AL1 countries attract a requirement for health assessments, which stops the autogrant for applicants from those countries.

4.13 Under DIAC's eHealth initiative, health examinations and x-ray results can be sent electronically from an eHealth-capable offshore medical clinic to the Health Operations Centre in Sydney for assessment. Most assessments can be finalised within 48 hours. Health clearances under the previous paper-based system could take between 4–6 weeks. Once the assessment has been made and the applicant cleared, the visa grant process resumes. Given the stoppage in the process, a visa automatically granted after health checking is termed a delayed autogrant.

4.14 Because of the increased complexity and checking requirements in the AL1 caseload, the eVisa evaluation report noted that autogrant rates had declined to 18 per cent by 2007 and observed that they 'have probably reached their limit'. The ANAO's analysis of DIAC's recent performance with regard to autogrant rates confirms the 2007 evaluation's observation, with rates for the past two years slightly under the 2007 rate (see Table 4.1).

Table 4.1

Autogrant rates 2008–2009 and 2009–2010

Year	Total AL1 student visa grants	AL1 student visa autogrants	Autogrants as a percentage of total grants
2008–09	106 460	17 722	16.64
2009–10	108 401	18 462	17.03

Source: ANAO from DIAC data.

Note: This table does not include delayed autogrants.

4.15   The eVisa take-up rate gives an incomplete picture of the impact of the facility on the program. Regular measurement and monitoring of autogrant rates would provide more balanced information. In addition, given the passage of time since the 2007 evaluation, it is timely that DIAC examine:

- the reasons why the autogrant rate has settled at between 16 and 18 percent;

- the benefits that would result from an increase in the autogrant rate;

- the obstacles to increasing the autogrant rate; and

- whether any of those obstacles can be lessened or removed.

It would also be useful for such an analysis to include an examination of the rate of delayed autogrants and their contribution to program efficiency.

The 2007 AL1 eVisa evaluation

4.16   The key findings of the 2007 evaluation were positive, concluding that AL1 eVisa was an excellent initiative that had delivered improved processing times, substantial savings and generally good client service. The savings over four years from autogrant were estimated at $4.9 million. The savings from processing eVisa applications at the Perth centre rather than paper-based applications at posts was estimated to be $1.5 million.

4.17   The 2007 evaluation included seven recommendations in its draft report and made a further 15 suggestions to address systems deficiencies that were preventing optimal eVisa processing efficiency. In particular, the inability of DIAC systems to populate data from one to another meant that much of the caseload involved substantial data entry duplication, including a complicated procedure of copying and pasting back and forth from templates in Word, ICSE and DIAC's records management system, TRIM. The Perth centre was

also relying on local spreadsheets to track referrals, monitor performance targets and collect data on outcomes. During its visit to the Perth centre in May 2010, the ANAO observed that some of these issues, and the work practices that had been developed locally to work around them, were still in place.

eVisa evaluation not finalised

4.18 The 2007 eVisa evaluation never progressed to a final report, nor were its recommendations formally considered. Part of the reason for this was that when the evaluation commenced in 2005, it was part of a broader evaluation of the then 'Global Working' initiative.[40] By 2007, the 'Global Working' initiative had run its course and the evaluation criteria, which directly related to that, were no longer relevant.

4.19 Another factor in the 2007 evaluation not being finalised or actioned was the complex state of eVisa governance. eVisa is a lodgement system that depends on other systems within DIAC, such as ICSE, and systems supporting those systems, such as the Identity Services Repository (ISR). These dependencies create complexity for eVisa functionality, in terms of fixing problems and implementing system enhancements, and for eVisa management and administration, given the number of different areas responsible for components vital to eVisa.

4.20 DIAC experienced problems between 2007 and 2009 in providing focus and direction for the development of eVisa. During this time, there was no single business owner for eVisa and therefore no-one to take the 2007 evaluation forward. One late draft of the 2007 evaluation commented that 'in many ways the horse has bolted on this evaluation' and noted that, after its completion in early 2007, 'it has languished without direction and clearance for much of the interim.' In June 2009, the first version of DIAC's eBusiness Strategy acknowledged that investment in the online self-service channel 'has been very limited, leaving the maturity of this channel largely unchanged for a number of years'.[41]

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[40] In the student visa program, the decision in 2005 to repatriate the China paper-based application caseload onshore to the Adelaide Offshore Student Processing Centre for processing was made as part of the 'Global Working' initiative. This arrangement was still in place in 2010.

[41] DIAC, *eBusiness Strategy*, version 1.0, 16 June 2009, p. 7.

4.21 DIAC moved to improve eVisa's reliability and capability in 2009–10, identifying 28 eVisa enhancements in July 2009 in priority order with costings. Of these, the top five priorities were agreed for development and implementation. These enhancements were implemented on 1 July 2010.

Future eVisa development

4.22 The Client Services Transformation Strategy within the overall DIAC transformation strategy has given renewed clarity and impetus to the development of eVisa. One of the Strategy's aims is to achieve eLodgement for all DIAC's visa and citizenship products. This will, in turn, support achieving the objective of a paperless processing environment. The experience of the student visa program with eVisa is a knowledge resource that DIAC could exploit as it moves forward to implement global eLodgement.

4.23 A new Global Manager position responsible for eBusiness was established and filled in May 2010. This position is responsible for enhancing and expanding DIAC's eBusiness channels and improving DIAC's e-products, including eVisa. Accordingly, there is now a single business owner for eVisa, although that ownership must work in conjunction with the owners of particular visa classes and DIAC's IT systems.

4.24 The fact that the 2007 evaluation was never finalised or formally considered means that the AL1 eVisa facility officially remains unevaluated more than eight years after its introduction. It is important that the performance of the eVisa facility be evaluated, to assess whether:

- the objectives for the facility set out at its commencement in 2002 are being achieved and the assumptions underpinning them remain valid;

- the operation of the facility is meeting the needs of the student visa program in 2011; and

- additional performance improvements from the facility are available.

4.25 In view of the passage of time, much of the 2007 evaluation has been overtaken. Its largely positive conclusions about processing efficiencies, resource savings, client service and integrity should be re-examined by a new evaluation. It would also be a useful exercise for DIAC to review the 2007 evaluation report's content to confirm whether there are any systems issues identified in it that are still impacting on processing efficiency, and that these are appropriately recognised in current planning for the development of eVisa.

The AL2-4 eVisa trial

4.26 During 2004 and 2005, the eVisa facility was extended to four higher risk countries—China, India, Thailand and Indonesia. China and India have been the largest source countries for overseas students studying in Australia in the past few years. The eVisa trial potentially has assisted DIAC in managing the increasing processing workload generated by those countries. The outcomes sought from the trial were:

- increased efficiency and speed of eVisa processing;

- to make eVisa more user-friendly;

- increased integrity of visa processing;

- minimise client complaints;

- reduce the need for face-to-face contact;

- reduce eVisa workload for overseas posts;

- develop adequate infrastructure for long term growth of eVisa;

- establish, clear consistent statistical reporting for all Visa processing;

- increase awareness of eVisa issues outside eVisa processing centres;

- place DIAC at the forefront of electronic visa best practice; and

- ensure genuine students are granted visas and non-genuine are prevented.

4.27 As with the AL1 eVisa facility, DIAC measures take-up rates for the trial countries. These are detailed in Table 4.2 and show a steady increase in the take-up rate to 2008–09 with a decline in 2009–10. Indonesia has demonstrated a slower rate of take-up than the other three countries, due to a lack of the necessary nationwide infrastructure to support eVisa at the trial's commencement. This included a low number of participating eVisa agents and relatively immature communications and e-commerce facilities.

4.28 The decline in the overall take-up rate in 2009–10 is a product of the substantial decline in the Indian caseload in that year and its relative impact on the overall figure, given the high rate of Indian participation in the trial.

Table 4.2

Offshore eVisa take-up rates for AL2-4 trial countries

Year	Total applications	eVisa applications	eVisa take-up rate (percentage)
2004–05 (Nov–June)	24 992	4 383	17.5
2005–06	51 204	21 553	42.1
2006–07	71 807	39 366	54.8
2007–08	94 693	64 712	68.3
2008–09	119 722	91 592	76.5
2009–10	62 870	42 339	67.3

Source: ANAO from DIAC data.

4.29   The extension of the eVisa facility to the four higher AL countries has always been described as a 'trial' by DIAC. Accordingly, the ANAO expected to find criteria and a defined timeframe for the trial and an evaluation process assessing the worth of the trial prior to the expiration of that timeframe. In fact, the trial continued to be described as a trial through 2010, six years after its initiation. DIAC officers commented to the ANAO that the introduction of a new Deed of Agreement early in 2010 governing the participation of eVisa agents in the trial represented a 'de facto' conclusion of the trial period, but the trial has never been formally concluded.

Evaluations of the AL2-4 eVisa trial

4.30   The ANAO reviewed three evaluation reports of the AL2-4 eVisa trial prepared within DIAC. The first, which produced a draft report in December 2005, examined progress with the implementation of the trial after its first year and covered only China, India and Thailand, given that Indonesia's participation was delayed until August 2005. The 2005 evaluation was essentially a progress report on the trial's implementation rather than a final assessment.

The 2007 and 2008 evaluations

4.31   The second evaluation was conducted by DIAC in mid-2007 and produced a draft report in November 2007. A third evaluation report, dated December 2008, was essentially the 2007 report updated to include 2007–08 data and to incorporate policy and administrative changes in the interim. Neither of these evaluations was officially finalised or considered.

4.32   The objective of the 2007 evaluation was to assess the degree to which the AL2-4 eVisa trial had met the policy objectives of the student visa program. The key criteria and measures used were the impact:

- on client service, measured by eVisa take-up rate and a comparison of processing times in the trial countries; and

- of the trial on integrity, measured by compliance data.

While the measurement of processing times partly addressed the efficiency benefits of the trial, how effective the trial had been in delivering 'decision-ready' applications was not measured.

4.33   The draft evaluation report concluded that, overall, the trial had been a success in allowing DIAC to manage a rapidly growing caseload, without any considerable stress on resources, staff, accommodation and processing times. The evaluation found that the trial was a positive experience in terms of DIAC's efforts to engage third parties in helping to achieve service delivery and integrity goals. The evaluation made nine recommendations, classed as high priority, to more effectively support the existing eVisa model; and eight recommendations, classed as medium priority, to improve, refine and extend the scope of the model.

4.34   With respect to the aims of the trial in terms of program integrity and the genuineness of applicants for student visas, and in light of subsequent developments, one of the significant issues raised in the evaluations was the role of eVisa agents.

eVisa agent compliance and program integrity

4.35   Education agents are individuals or organisations, operating in or outside Australia, who recruit overseas students and refer them to education providers. As part of their activities, the agent may provide education counselling to overseas students, as well as marketing and promotion services to education providers.[42]

4.36   Education agents are regulated under the ESOS Act framework and its associated *National Code of Practice for Registration Authorities and providers of Education and Training to Overseas Students 2007* (the National Code). Standard

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[42]   An education agent is not the same as a Registered Migration Agent (RMA), although individuals or organisations are not prohibited from operating as both. An RMA must be registered with the Migration Agents Registration Authority as set out in Part 3 of the *Migration Act 1958*.

4 of the National Code sets out minimum standards and obligations for education providers in their use of education agents.

4.37 The requirements for education agents to participate in the eVisa trial as eVisa agents were set out in a Facilities Access Agreement: agents had to be approved by the local post and the Agreement required a minimum of 50 lodgements a year by an agent and a 90 per cent success rate in visa approvals.

4.38 The 2005 evaluation commented that the use of eVisa agents to assist in the lodgement of eVisa had both advantages and disadvantages. Outside the trial framework, DIAC had little ability to monitor or sanction unscrupulous agents. Accordingly, one of the advantages was the ability to monitor and audit the performance of agents and sanction those who failed to comply with the facilities agreement. In terms of disadvantages, the 2005 evaluation noted that DIAC was relying on third parties to protect the integrity of the program, which required resources for training and for monitoring and auditing eVisa agents to ensure compliance. Any advantage gained was also dependent on those resources.

4.39 During consultations supporting the 2007 evaluation, there were warning signs about the adequacy of agent auditing and monitoring. The New Delhi post commented that the audit process needed to be strengthened to ensure agent compliance and that the geographic spread of agents and other demands on the posts resources were constraining a desire to conduct audits more frequently. In China, the Shanghai post commented that ongoing eVisa auditing and monitoring were vital to ensuring the integrity of the Visa program and that, without additional resources, it would become increasingly difficult to audit every eVisa agency in the same way as had been done previously. The Guangzou post commented that 'with tight budgets, the audits can tend not to get done. If we don't have a good audit regime, [the Adelaide processing centre] can't trust that the agents are only lodging quality cases and the whole purpose of the program falls apart'.

4.40 The 2007 evaluation reported inconsistencies between posts on the frequency and intensity of audits carried out on eVisa agents, and included a high priority recommendation that a regular auditing regime for eVisa agents be instituted and funded and that cyclical audits be conducted biannually, in addition to targeted and desktop audits. The identical recommendation was included in the December 2008 update of the evaluation

4.41 Because the 2007 evaluation was never finalised nor formally considered, the problems it identified with the administration of eVisa agents were not addressed for 18 months, during which period the number of applications from the major trial countries increased significantly.

Agent sanctions and the new Deed of Agreement

4.42 Over time, the substantial growth of the student visa market was matched by the growth in the number of eVisa agents. By the middle of 2009, there were over 2 500 agents registered as users of the AL2-4 eVisa trial facility.

4.43 Audits of education agents conducted in early 2009 revealed widespread non-compliance by agents with the requirements of the Facilities Access Agreement; including:

- sub-contracting operations to various sub-agents and sharing their exclusive eVisa log-on identification with these sub-agents;

- failing to maintain adequate visa application records; and

- recruitment of applicants with no attention given to the genuineness of their intention to study or their supporting documentation.

4.44 In light of this, one of the enhanced integrity measures announced by the Minister on 20 August 2009 was the removal or restriction of agents' eVisa access where there was evidence of fraud or inactivity.[43] The department established a Student Visa Processing and Integrity Taskforce to manage the integrity measures and review agent access to the eVisa trial. Between September 2009 and February 2010, just under 300 eVisa agents had their access to the trial terminated for inactivity in not meeting the lodgement requirement, or for not meeting the 90 per cent approval requirement after submitting applications containing fraudulent documentation.

4.45 Early in 2010, DIAC developed a Deed of Agreement (the Deed) to replace the previous Agreement and address the problems with it. Existing eVisa agents had to apply to re-register under the new Deed and provide documentary evidence of bona fides and performance to enable departmental officers to assess their application.

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[43] Senator the Hon Chris Evans (Minister for Immigration and Citizenship) 2009, *Student visa checks strengthened*, media release, Parliament House, Canberra, 20 August.

4.46   The re-registration process under the new Deed commenced in February 2010. Applications for re-registration by offshore eVisa agents were assessed by the relevant post. Applications by onshore RMAs were assessed by the Student Visa Policy Section in Canberra. Re-registration was completed in August 2010.

4.47   The review of eVisa agent access to the eVisa trial and the new Deed of Agreement were effective responses by DIAC to the problems involving eVisa agent compliance. However, they were initiated more than 18 months after problems were highlighted in the incomplete 2007 evaluation. This delay enabled those problems to continue to compromise the integrity of the trial and the student visa program. Maintaining a high level of integrity among participating education agents will depend on DIAC's ability to monitor and enforce the more stringent requirements of the new Deed of Agreement.

Conclusion

4.48   DIAC took appropriate action in preparing evaluations in 2007 of the eVisa facility for AL1 applicants and for the AL2-4 eVisa trial. However, these evaluations were not finalised or formally considered, even when, in the case of the eVisa trial, an updated evaluation report was subsequently prepared in December 2008. This lack of formal action means that DIAC has not confirmed that the facility is achieving its planned objectives and efficiency benefits, and that improvements identified in the draft evaluation reports have been systematically pursued.

4.49   As with the AL1 eVisa evaluation report, the overall finding of the 2007 and 2008 AL2-4 eVisa evaluation was that the trial was a success, and there is evidence that some of the issues and recommended enhancements identified in the evaluation were addressed separately. However, the lack of formal consideration of the evaluation meant that emerging concerns identified in the evaluation about the compliance of eVisa agents with the terms of the trial's Facilities Agreement, and the ability of posts to audit that compliance, were not addressed in a timely manner. Over the following 18 months, fraudulent behaviour and the lodgement of non-genuine applications grew significantly as the student visa program expanded rapidly in the main trial countries, India and China. The extent of the problem was highlighted in 2009 and addressed with changes to the trial and the sanctioning of almost 300 eVisa agents accredited to it. Given this history, it will be important for DIAC to effectively implement, manage and resource a

regular program of audits and evaluation of eVisa agent compliance with the terms of the new Deed of Agreement introduced in 2010.

4.50 The AL2-4 eVisa 'trial' has been underway since 2004 and has never been formally concluded. The ANAO considers that the status of the trial is overdue for resolution and for an objective assessment of its performance in meeting its aims.

Recommendation No.2

4.51 To confirm that the eVisa lodgement facility for students is meeting its objectives and the needs of the student visa program, the ANAO recommends that DIAC evaluate the facility with a view to:

- incorporating the findings in planning for the further development of eLodgement and eVisa; and

- formally resolving the status of the eVisa 'trial' for higher risk countries.

DIAC Response: *Agreed.*

4.52 DIAC agrees to review the eVisa lodgement facility as recommended. DIAC is currently in the process of finalising a student eVisa agent registration process and, once completed, work can begin on an evaluation of the eVisa lodgement facility for students. In conjunction with the finalisation of the current registration process, the status of the eVisa 'trial' for higher risk countries will be formally resolved and references to the trial removed from all public information.

Recommendation No.3

4.53 To effectively manage the performance of eVisa agents registered under the eVisa facility for higher risk countries, the ANAO recommends that DIAC maintain a program of audits and evaluation of eVisa agent compliance with the terms of the facility's Deed of Agreement.

DIAC Response: *Agreed.*

4.54 DIAC agrees that a regular program of audits and evaluation of registered eVisa agents would ensure a high level of integrity among participating agents and further enhance the integrity of the Student visa program.

5. Program Integrity

This chapter outlines the student visa integrity framework, and examines integrity measures introduced in 2009–10. The relationship between integrity and compliance is also discussed.

Introduction

5.1   Integrity has a wide meaning in the context of DIAC's functions. In its broadest meaning, it concerns the public's confidence in Australia's migration and citizenship systems—that people who are entitled to receive visas and citizenship receive them, and that people who are not entitled do not. Integrity also describes a set of functions and resources available to the department to support good decision-making.

5.2   The department's Client Services Transformation Strategy, released in July 2010, identifies three principles—integrity, efficiency and client service—as the key areas of improvement that are critical to DIAC moving to a high performing, client service-oriented culture. Integrity is ranked as the highest priority of the three principles, meaning that it is pursued ahead of other competing interests.

The student visa integrity framework

5.3   As previously noted, the student visa program objective makes reference to the entry to Australia of genuine full-time students. Schedule 2 of the Migration Regulations requires an applicant for a student visa to be a genuine applicant. Applicants must satisfy DIAC that they are seeking to enter/stay in Australia for the purposes of study; will abide by their visa conditions; and will not become an unlawful non-citizen.

5.4   The student visa integrity framework adopts a layered approach that includes:

- the risk-based setting of visa requirements through the assessment level process;

- auditing and review of eVisa agents' performance and access to the eVisa facility;

- automatic checking in the Integrated Client Services Environment (ICSE) and the Immigration Record Information System (IRIS) of alert systems during visa processing;

- tools developed by individual posts focusing on the risk characteristics of their local caseloads;

- targeted integrity measures, such as those introduced in 2009–10; and

- compliance operations once students are onshore.

5.5 Of these activities, the ANAO examined the assessment level process (Chapter 3); eVisa agents (Chapter 4); and compliance operations (Chapter 6). The local management of risk tools at overseas posts was not examined. DIAC's targeted integrity measures are discussed below.

5.6 The automatic checking of alert systems has been separately reviewed and, as a consequence, was outside the scope of this audit. The key alert systems are the Movement Alert List (MAL) and the Safeguards System. MAL contains details of people of concern to Australia for reasons including national security, character and health, and information about lost, stolen, cancelled and bogus foreign travel documents. DIAC's management of MAL was examined in the ANAO's Report No. 35 of 2008–09 *Management of the Movement Alert List*.

5.7 Safeguards is a risk management system introduced in 2004 that automatically alerts a VPO to cases where an applicant meets the characteristics of a profile.[44] A Safeguards alert in itself is not a basis for refusing a visa; it only prompts a VPO to consider whether further analysis or integrity checking is required before the visa application is decided. The Commonwealth Ombudsman conducted an 'own motion' Inquiry into the Safeguards System in 2008. The Inquiry's recommendations covered improving the transparency of the Safeguards system to the public, quality assurance arrangements, the currency of profiles and consistency in recordkeeping. [45] Implementation of these recommendations was completed by DIAC in 2009.

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[44] Profiles may include alerts against passports, provinces/states, education sector indicated by visa subclass, courses of study, education providers, Migration Agents and education agents, financial institutions and employment. At May 2010, there were 70 Safeguards profiles relating to student visas, out of a total of 570 profiles in the Safeguards System.

[45] Commonwealth Ombudsman, *DIAC: The Safeguards System*, Report No. 07/2008, Canberra, July 2008.

Targeted integrity measures

5.8 A record number (362 193) of student visa applications were received in 2008–09. Of these, 27 698 applicants were refused visas in that year, an increase of 68 per cent over the previous year. As previously noted, several initiatives targeting student integrity issues were developed by DIAC from early 2009, and introduced during 2009–10, to complement the development of new policy approaches to the skilled migration program. These integrity measures included:

- strengthening of student visa checks for particular cohorts, announced by the Minister on 20 August 2009;

- an increase in the living costs requirement from $12 000 to $18 000 per year, effective from 1 January 2010, and stronger discretion for decision-makers to refuse an application if they were not satisfied that funds declared by the applicant would be genuinely available to them;

- tighter assessment level rules applying to course packaging, requiring that applicants be assessed against the highest AL applying to any of the courses in the package, rather than just to the final course in the package; and

- tighter course deferral rules, reinforcing that such deferrals must be on the basis of compelling or compassionate reasons.

5.9 The latter two measures did not take effect until March 2010 and it was too early for their outcomes to be assessed by the audit. Indications of the impact of the first two measures were available, and these are discussed below.

Strengthening of student visa checks

5.10 DIAC analyses student visa caseloads for compliance performance as part of the periodic review of assessment levels. It also monitors irregular patterns and trends, and has the capacity to initiate audits of suspect caseloads. Prior to the creation of the Risk, Fraud and Integrity Division in 2010, such audits were performed on an ad hoc basis by integrity units within individual posts and by the National Visa Analysis Centre in Adelaide.[46]

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[46] In April 2010, the National Visa Analysis Centre was brought under the Risk, Fraud and Integrity Division and became part of a new National Integrity Analysis Service.

5.11 For example, the New Delhi post's integrity section reviewed a sample of student visa applications within the Nepalese caseload in November 2008 and found an immigration fraud[47] rate of 45 per cent in the sample, with multiple organisations identified as producing or providing fraudulent supporting documentation. As a consequence, a number of financial institutions were removed from the Acceptable Financial Institutions list for Nepal. A follow-up audit in July–August 2009 found an immigration fraud rate of 81 per cent within a sample of 300 student visa applications from Nepal across four visa subclasses.

5.12 In response to this analysis and other indications of fraudulently-based student visa applications, on 20 August 2009, the Minister announced a number of student visa integrity measures, including:

- upgrading the interview program to build a strong evidence base around immigration fraud;

- removing or restricting access to the electronic visa (eVisa) application facility for education agents where there was evidence of fraud or inactivity;[48] and

- restricting access to eVisa for some segments of the caseload if analysis demonstrated that restricted access would allow for better control of immigration fraud.[49]

5.13 Under these measures, parts of the student visa caseload in India, Mauritius, Nepal, Brazil, Zimbabwe and Pakistan were targeted for enhanced checking of document fraud and other financial capacity issues, identification and bona fides. In all but one of these countries, there were indications of immigration fraud. In relation to Brazil, however, the caseload had not been analysed nor had it demonstrated a propensity for immigration fraud. Given the increased demand for student visas from that country, however, it was considered desirable to test the genuineness of that increase.

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[47] In the context of visa applications, immigration fraud refers to the supply of false, misleading or bogus information or documents by a visa applicant. In the student visa caseload, the majority of immigration fraud relates to financial documentation supporting the applicant's claim to meet the financial requirements of a student visa. This includes, for example, loan documentation, bank deposits, income tax returns and overdraft statements.

[48] As noted in Chapter 4, implementation of this measure led to the eVisa access of almost 300 eVisa agents being withdrawn.

[49] Senator the Hon Chris Evans (Minister for Immigration and Citizenship) 2009, *Student visa checks strengthened*, media release, Parliament House, Canberra 20 August.

5.14 The enhanced checking of these caseloads involved 100 per cent face-to-face interviewing of applicants to establish the veracity of their supporting documents and the genuineness of their intention to study. The student visa refusal rates for the targeted countries are shown in Table 5.1.

Table 5.1

Visa refusals as a percentage of total applications for countries subject to the August 2009 targeted integrity measures

Country	Refusals 2007–08 Per cent	Refusals 2008–09 Per cent	Refusals 2009–10 Per cent
Brazil	1	1	3
India	8	10	32
Mauritius	2	11	17
Nepal	7	18	30
Pakistan	18	18	25
Zimbabwe	10	20	28

Source: ANAO analysis of DIAC data.

5.15 These figures indicate that the introduction of targeted checking for these caseloads was effective. The impact was strongest for India and Nepal. For Mauritius, Nepal and Zimbabwe, integrity concerns that were already evident in the refusal rate for 2008–09 were confirmed and the trend in refusals continued.

5.16 The result for Brazil indicates that concerns about the integrity of its caseload were unfounded. The very small increase in refusals for Brazil also suggests that applying resource-intensive interviewing on a random basis to any caseload will not automatically result in increased immigration fraud detection and visa refusals. This supports a targeted and evidence-based approach. DIAC is moving to institute more regular testing of caseloads for integrity issues.

Student visa financial requirements

5.17 The Migration Regulations require that a student visa holder has the financial capacity to fund their course and living expense costs in Australia without breaching their visa conditions. The amount set for living costs had been held at $12 000 a year since 2001. In recognition that this amount no longer matched the true cost of living expenses for students in Australia, and was therefore having a potentially negative impact on student welfare, the

amount was increased from 1 January 2010 from $12 000 a year to $18 000 a year.[50]

5.18   The financial requirement has an integrity dimension, as DIAC's experience is that a student visa applicant having sufficient funds is one of the key indicators of a genuine intention to study in Australia. Furthermore, the living costs requirement is intended to ensure that students do not need to rely on income from their limited work right (20 hours per week when their course is in session) to meet all their expenses. Setting the living costs requirement at an unrealistically low level may lead to students breaching this visa condition.

5.19   The evidence of sufficient funds required to be shown by an applicant is dependent on their assessment level. AL3 and AL4 students must show that they have funds for, respectively, the first 24 and 36 months of their stay in Australia, and declare that they have sufficient funds for the remainder of their proposed stay in Australia. In addition to demonstrating sufficient funds, AL3 and AL4 students who choose to provide evidence in the form of cash deposits (through bank account statements) must also demonstrate a savings history showing that funds have been held consistently for, respectively, three and six months prior to application.[51]

5.20   The changes to the financial requirement did not introduce any new evidentiary requirements. As an additional integrity measure, new regulations were introduced on 1 January 2010, in conjunction with the increase in the living costs requirement, to provide discretion to decision-makers to refuse an application if they were not satisfied that an applicant had genuine access to the funds required. To support such a decision, DIAC officers assessing an application were provided with discretion to check:

- a prospective student's previous financial and immigration history;
- the employment history of the student or the person providing the student with financial support; and

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[50]   Living cost requirements also apply to student dependants, and are set as a proportion of the requirement for the student visa holder. These proportions are 35 per cent for a spouse travelling with the student ($6 300); 20 per cent for the first child ($3 600); and 15 per cent each for any further children ($2 700). The living costs amounts are intended to contribute to the cost of living in Australia. DIAC encourages overseas students to undertake their own research into the cost of living in Australia, taking into consideration their own circumstances.

[51]   AL3 and AL4 students may also demonstrate that they have sufficient funds through an education loan or a scholarship, which do not require a savings history.

- the source of income used.

Further checking can include whether the student has unrestricted access to the funds and, if they are provided through a bank loan, whether the student has the financial capacity to service the loan. The aim of this initiative was to reduce the number of student visas granted to non-genuine applicants.

Risk assessment of the change to the financial requirements

5.21   DIAC's advice to the Minister in September 2009, recommending the increase in the living cost requirement to $18 000 per annum, described the proposed increase as substantial. It identified a risk that the increase may be expected to result in a decline in applications in the short to medium term, and that this would be managed by a comprehensive communications plan.

5.22   During the development of the proposal earlier in 2009, DIAC had also identified in a briefing to the Minister the risk that 'students may resort to [immigration] fraud to meet the higher financial requirements'. DIAC advised the ANAO that it considered this risk to be minor, and it was therefore not included in the formal submissions to the Government, which supported consideration of the initiative. For the same reason, it was not the subject of any written analysis or impact assessment.

5.23   DIAC further advised that it did not consider the risk of increased immigration fraud had subsequently occurred following the change in requirements. Considering the issue on a whole-of-program basis, DIAC advised that, if this risk had materialised, it would have expected to see an increase in refusal rates. In fact, the grant rate for the overall student visa program for the six month period following the change on 1 January 2010 was consistently higher (89.2 per cent) than the six months preceding the change (82.8 per cent).

5.24   However, this picture is more complex in some caseloads. For example, in May 2010, DIAC received reporting from its post in New Delhi that a significant number of Indian student visa applicants could not afford to meet the financial requirements without entering into fraudulent financial arrangements. In view of this, the ANAO examined application and grant rates for offshore applications in the Indian student caseload.

5.25   Figure 5.1 shows that a dramatic decline occurred in Indian offshore student visa applications in 2009–10. In July 2009, DIAC received 5 061 offshore student visa applications from Indian students; in June 2010, it received only 609. This decline commenced in August 2009, recovered slightly

from October to December, and then declined again dramatically in January 2011.

Figure 5.1

Trend in applications and grant rates for the offshore Indian student visa caseload 2009–10
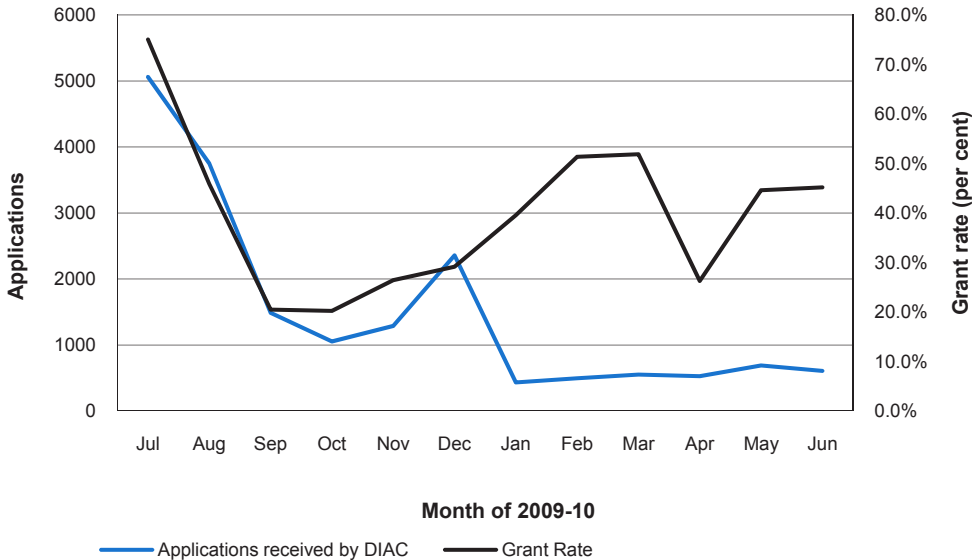
Source: ANAO analysis of DIAC data.

5.26 The ANAO notes that the decline in Indian applications in January 2010 coincided with the introduction of the increased living costs requirement. However, as mentioned in Chapter 1 (paragraph 1.11), there were also a range of factors that contributed to the overall decline in the student visa program in 2009–10, including the high value of the Australian dollar, the impact of the global economic downturn, migration policy changes and negative publicity relating to student safety. The negative publicity about student safety followed attacks on Indian students during 2009 and could be expected to have had a relatively stronger impact on the Indian market. Given the range of factors at play, it is difficult to isolate the impact on the application rate of any one factor, such as the increased living costs requirement, from the others.

5.27 Figure 5.1 also shows the grant rate for offshore Indian student applications for 2009–10. As visa grants result from the consideration of lodged visa applications against visa requirements, this rate is subject to a more specific range of influences than the application rate. These influences include integrity measures. The grant rate fluctuated during 2009–10, commencing at

75 per cent in July 2009 and ending the year at 45 per cent in June 2010. The largest decline occurred in August and September 2009, and there is no particular correlation between subsequent declines during the year and the introduction of the increased living costs requirement in January 2010.

5.28   While the extent to which the increased living costs requirement impacted on the decline in Indian student visa applications and grants during 2009–10 is unclear, there is a relationship between the financial requirements and integrity in the Indian caseload. Assessment levels for Indian students are either AL3 or AL4, with the exception of the schools sector, and therefore attract more stringent financial requirements. As noted in the previous section, India was one of the caseloads included in the August 2009 integrity measures, which targeted immigration fraud with respect to financial capacity issues. As a consequence, the refusal rate of Indian student visa applications tripled in 2009–10 (see Table 5.1). The data in Figure 5.1 shows a steep decline in the student visa grant rate for India in August and September 2009, concurrent with the introduction of that enhanced integrity checking. In May 2010, in the midst of the fall in applications, reporting from the New Delhi post suggested that growing a better caseload in India depended on an overhaul of the student financial requirements.

5.29   In terms of DIAC's risk assessment, the data is inconclusive about whether the introduction of the increased living costs requirement increased the risk of immigration fraud within the Indian student visa cohort. However, the volatility in the Indian student market in 2009–10, the second largest student visa source country, and its sensitivity to the financial requirements, illustrates the limitations of assessing the risk impacts of student visa integrity changes on a broad whole-of-program basis. In contrast, DIAC's assessment level approach to risk management appropriately considers the particular characteristics of source countries and their student cohorts. The ANAO considers it desirable that DIAC risk assessments supporting proposals for integrity changes to the program similarly incorporate more detailed analysis of the integrity characteristics of, and potential impact on, significant caseloads.

Review of financial requirements

5.30   DIAC organised a workshop with education industry peak body representatives in June 2010 to explore alternative financial models which would improve client service, support the student visa program and maintain immigration integrity.

5.31 The paper provided by DIAC to support the workshop noted that, notwithstanding the changed financial requirements, reports from some departmental offices had indicated that:

- it is still difficult to be confident that sufficient funds will actually be accessible to the student when they arrive in Australia, either because they were never truly available or because the student's family do not transfer the funds to Australia; and

- applicants find it difficult to demonstrate that they have held the required level of funds in a bank deposit for the relevant period of time.

The paper also noted that the department had continued to uncover contrived and fraudulent loan arrangements.

5.32 The audit team attended the financial workshop as observers and noted DIAC's preparedness to identify alternative approaches to the financial requirement. DIAC advised the ANAO that examination of alternative financial requirement options would be incorporated within the current Review of the Student Visa Program's consideration of the underlying principles of student visa requirements generally. The work that was undertaken for the workshop had been fed into the review process.

The relationship between integrity and compliance

5.33 Until recent organisational changes under DIAC's transformation program, integrity and compliance were managed separately. The term 'integrity' broadly referred to actions taken before the grant of a visa, both offshore and onshore, to ensure that visas are only granted to genuine students. Such integrity actions encompass:

- setting a hierarchy of visa requirements that match identified risk through the assessment level process;

- identifying high-risk cohorts of visa applicants and other participants in the process, such as education agents and providers, and reflecting these in Safeguards profiling and targeted interviewing and auditing activity offshore; and

- checking by VPOs of individual visa applications, and referral to posts as necessary for investigation and examination.

5.34 In contrast, the term 'compliance' referred to onshore operations after the grant of a visa in relation to student visa holders complying with their visa conditions.

5.35 A key principle underpinning the approach DIAC takes to integrity and compliance is that the more successful integrity measures are in ensuring only genuine students are granted visas and enter Australia, the less requirement there will be for compliance action.

5.36 This approach is considered to be more cost-effective given that compliance action is comparatively resource intensive. For example, some integrity measures are incorporated into electronic visa processing and therefore attract the efficiencies associated with eVisa and the ability to move electronic caseloads to particular processing centres. In contrast, compliance action requires that students attend a DIAC office to be interviewed, a face-to-face client contact that must be undertaken in the relevant geographic location.

5.37 Furthermore, a refusal to grant a visa application is less complex and has fewer consequences for resources than cancelling a granted visa. Applicants who have been refused a student visa are not prevented from submitting further applications. Students who have had their visa cancelled may be excluded from being granted a visa for three years. Unless they leave Australia, they become unlawful non-citizens and may be subject to detention and removal action. In all onshore visa cancellation cases, the student has the right of appeal to the Migration Review Tribunal. If the student's visa has been cancelled automatically, they can apply to have the cancellation revoked.

5.38 The Client Services Transformation Strategy acknowledges that while integrity is the most important output from the Department's operations, it is also the hardest to measure accurately and systematically. The cost-effectiveness assumptions underpinning integrity operations vis-a-vis compliance operations have not been tested by DIAC. Such testing would be a useful exercise in terms of assessing the respective performance of the functions, confirming efficiencies and identifying opportunities for further efficiencies. It would also clarify the dynamics of the relationship between offshore integrity as an upstream function and onshore compliance as a downstream function.

5.39 In this context, the ANAO notes that the introduction of major integrity measures in 2009–10 indicated that the student visa program had been suffering significant integrity abuse in some caseloads during a period of

strong growth in the program. This abuse would have resulted in numbers of non-genuine students being granted visas. There would be benefits for DIAC in examining any subsequent impact of the entry of these non-genuine students on the demand for onshore compliance action, including whether such an impact was reflected in the concurrent growth in the backlog of Non-Compliance Notices (discussed in Chapter 6).

Governance arrangements for student integrity and compliance

5.40 As part of the DIAC transformation program, the Client Services Transformation Strategy seeks to cover all 'client life stages' in their interaction with the department, thereby formally linking upfront visa processing with onshore compliance. Structurally, the new Global Manager Operational Integrity (GMOI) is pursuing this holistic 'client life' principle by seeking to develop an end-to-end student integrity process. A key initiative in this respect is the integration of onshore and offshore integrity processes, encompassing:

- referrals from processing centres;

- caseload and trend analysis;

- new reporting and escalation frameworks and a communications strategy to enhance information flows between offshore and onshore; and

- the establishment of a Migration Integrity Officer network liaison section in Adelaide as a linking point between onshore and offshore operations.

Feedback channels from onshore compliance to the remainder of the integrity network largely remain limited to inputs to risk profiles and to the assessment level review process.

5.41 The GMOI has assumed national coordination responsibility for compliance operations and initiated the identification of key integrity and compliance issues at a workshop of all state and territory office student integrity and compliance areas in April 2010. Products of that workshop included the establishment of a working group to address the backlog of Non-Compliance Notices and a Student Integrity Practitioners' forum.

5.42 Under the new arrangements, officers performing student compliance functions are considered to be student integrity officers, and their reporting lines have been clarified to show that they are the responsibility of GMOI in the Visa and Offshore Services division. There is still some blurring of the lines

as some student integrity officers also report to the Global Manager Compliance for particular matters. Furthermore, the organisation of compliance operations in individual state and territory offices is still specific to those offices. The ANAO observed that some units operate under a student integrity title; others continue to be referred to as student compliance; some are stand alone units and others are incorporated within the state and territory offices' visa processing area. However, these structural changes and initiatives are in their infancy and will take time to bed down.

5.43   GMOI has indicated a desire to broaden the focus of state and territory office integrity and compliance units from individual breaches of visa conditions to identifying systemic and organised risks to the student program through immigration fraud. GMOI's immediate focus is on reducing the backlog of NCNs in the system, which has overwhelmed state and territory office integrity and compliance units, and examining ways to reduce these in the future.

Conclusion

5.44   DIAC's integrity framework for student visas is currently in transition, adjusting both to the practical impacts of the integrity measures introduced in 2009–10 and to the closer integration of integrity and compliance functions under the DIAC transformation program and the Global Manager Operational Integrity position.

5.45   The intention to move to an end-to-end student integrity process is a positive initiative, particularly its incorporation of more regular and centrally directed integrity testing of student visa caseloads to replace the previous ad hoc approach. In progressing this initiative, it will be useful for DIAC to understand the dynamics of the relationship between integrity and compliance as upstream and downstream functions. It will also be important to incorporate into the development of the end-to-end approach to integrity future developments in other activities relevant to student visa program integrity considered in this report. In particular, any changes to the assessment level process, the ongoing supervision and auditing of eVisa agents and developments in the student visa compliance regime.

6. Compliance with Mandatory Student Visa Conditions

This chapter examines DIAC's strategies to ensure compliance with the mandatory visa conditions placed on student visas in relation to course attendance and progress and the work rights allowance.

Introduction

6.1   It is a general principle under the Migration Act that if a person fails to comply with a condition of their visa, that visa may be cancelled. Student visas carry certain mandatory conditions, the main ones being that holders:

- must achieve satisfactory course progress and satisfactory course attendance (condition 8202);

- cannot engage in work for more than 20 hours per week while their course is in session, except for work specified as a requirement for their course (condition 8105); and

- must maintain adequate arrangements for health insurance while in Australia (condition 8501).

6.2   The audit examined DIAC's compliance priorities and strategies to enforce the first two of these mandatory conditions.

6.3   With regard to the third condition relating to health insurance, overseas students are required under the Migration Regulations, as a condition of their visa, to maintain health insurance cover while they are in Australia. Evidence of Overseas Student Health Cover (OSHC) is required at the visa application stage before the visa is granted by DIAC. For all visa applications lodged on or after 1 July 2010, international students must obtain OSHC for the proposed duration of their visit (prior to this, 12 months of insurance was required to be shown). To further ensure that students have adequate OSHC for the duration of their stay, visas are being granted for the same period as the OSHC policy.

6.4   These changes were announced in April 2010 by the Council of Australian Governments (COAG) in the context of its International Student Strategy. They support the findings of the Baird Review[52] relating to overseas

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[52]   B Baird, *Stronger, simpler, smarter ESOS: supporting international students,* Final Report, 2010.

students allowing their OSHC to lapse, therefore being left without access to basic medical services. As the initiative came into effect on 1 July 2010, its effectiveness was not able to be assessed by this audit.

Compliance priorities

6.5   With some 440 000 overseas students and dependants in Australia in the first half of 2010, DIAC is not able to actively monitor the compliance of every student visa holder. Given the potential demand on departmental resources, the ANAO assessed whether DIAC has adequately identified its strategic compliance priorities to guide the allocation of resources.

6.6   A compliance priorities matrix is contained in an undated document titled *Compliance and integrity in Australia's immigration and citizenship programs*. This document was DIAC's Compliance and Integrity Plan for 2007–08 (the Plan), approved by the DIAC Executive Committee in November 2007. The Plan has an Introduction by the Secretary to the Department and sets out DIAC's compliance strategy, framework, guiding principles, activities and priorities.

6.7   The priorities matrix in the Plan is divided into mandatory and high priority work, and also has a list of compliance and integrity 'hot spots'. The individual priorities listed are not numbered and it is not clear if the order in which they are listed designates their order or priority. Seven priority areas are listed in the 'mandatory work' category and a further seven in the 'high priority work' category. 'Overseas students in breach and educational institutions suspected of fraud' is listed in the 'high priority' category.

6.8   Fourteen 'hot spots' are identified as areas of focus within the priority matrix framework. Each 'hot spot' has a short of list of actions to be taken. These are not expressed as strategies to achieve particular objectives. Combating student non-compliance is one of the 'hot spots'. Five actions are listed, three of which focus on education institutions, one on checks during visa processing and one on the cancellation of visas of non-compliant students.

6.9   The Plan was provided to the then Minister for Immigration and Citizenship for information in February 2008, with the advice that the department would consult with the Minister's office to develop a new Plan for the 2008–09 program year. Work on developing a new Plan commenced in April 2008 but a 2008–09 Plan was never finalised or issued. Nor was the Plan updated for 2009–10. Moreover, the Plan outlined a compliance planning cycle that included: an environmental scan; scenario planning; program forecasting;

gap/risk analysis; the development of compliance strategies; and ongoing monitoring and evaluation. This cycle was never implemented.

6.10 In the absence of up-to-date guidance, state and territory office student integrity and compliance areas have informally established their own priorities. High priority is given to cases where non-compliance leads to mandatory cancellation, in particular, breaches of condition 8202, represented by Non-Compliance Notice (NCN)[53] code 8 (unsatisfactory attendance) and code 10 (unsatisfactory course progress). High priority is also given to NCN code 28, which is where providers report unsatisfactory welfare arrangements for students under 18 years of age. Issues that are determined to be program integrity issues may also be given priority. These may include issues of particular Ministerial interest, such as areas of illegal work that may involve student visa holders.

6.11 An unactioned NCN creates a decision bar in ICSE on an individual and prevents a VPO from granting a new visa to that individual. Compliance areas will normally respond as a priority to a request from the VPO to examine the NCN and finalise it if appropriate, thereby removing the decision bar.

6.12 Lower priority is given to NCNs that do not lead to mandatory cancellation, such as reporting a student's change of circumstances. In reality, the demand generated by the high priority NCNs means that compliance areas have been unable to deal with lower priority issues, which has contributed to a growing backlog of NCNs—addressed later in this chapter. It also means that compliance areas have little capacity to proactively target non-compliant activity. The Student Compliance unit in Victoria estimated early in 2010 that 80 per cent of its resources were directed towards breaches of condition 8202.

6.13 The lack of up-to-date guidance on compliance priorities is a matter of concern. It represents a breakdown between departmental management and its compliance operations that has persisted for more than two years. While there are some internal feedback avenues that include the student integrity

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[53] A Non-Compliance Notice (NCN) is an internal notification within DIAC of a change to a student's circumstances automatically generated by reports received from education providers via DEEWR. NCNs attach to the student's data record within DIAC's processing system. Not all NCNs relate to breaches of mandatory visa conditions, which triggers visa cancellation action, but all NCNs prevent further visa grants to the student until the NCN has been examined by DIAC compliance staff and finalised.

network[54], there has been no formal mechanism during this time for DIAC's management to incorporate such feedback in an ongoing compliance and integrity planning process.

6.14 The relatively low overall priority given to student compliance in 2007–08 may have continued to be appropriate. One of the factors considered in assigning a risk priority for compliance is the number of overstayers. Student visa holders demonstrate a low rate of overstaying behaviour and therefore represent a low risk by that criterion. For example, at 30 June 2009, there were an estimated 48 500 overstayers in Australia. Of these, 3500 or 7.2 per cent, were student visa holders. Student visa overstayers represented just 0.8 per cent of the total overseas student population in Australia at that time of 400 000.

6.15 Notwithstanding this positive aspect of student compliance behaviour, the lack of a functioning annual compliance plan and planning cycle has meant that there has been no process in place to review the 2007–08 priority ranking in the light of subsequent developments, in particular the:

- growth of the student visa program in 2008–09 and its proportional impact on compliance demand;

- increase in integrity concerns around the program;

- growing backlog of unactioned NCNs; and

- potential impact of the restriction of the pathway to permanent residence on the compliance behaviour of overseas students onshore.

6.16 The ANAO considers that there would be merit in DIAC re-establishing an annual compliance priorities process as soon as possible, appropriately informed by strategic and operational information, to guide student visa compliance operations. In the course of the audit, DIAC advised that a new draft Compliance Priorities Plan has been developed in consultation with the DIAC compliance network, incorporating student visa compliance issues, and is planned to be finalised by 2011–12.

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[54] DIAC advised that the student integrity network is represented on the DIAC Executive's Student Visa Steering Committee, and can also provide feedback through the Operational Integrity Steering Committee.

Visa condition 8202—course attendance and progress

6.17   Under the ESOS National Code, education providers are responsible for monitoring and recording overseas students' course progress, and for implementing intervention strategies to assist students at risk of failing to achieve satisfactory course progress. Where applicable, providers are also required to monitor students' attendance.[55]

6.18   Where a student has been found to fail to meet progress and/or attendance requirements, education providers must offer students access to internal and external appeals on this finding. If, following the appeals process, a student is found to have failed to meet progress and/or attendance requirements, section 19 of the ESOS Act requires that providers report students to DEEWR through its Provider Registration and International Students Management System (PRISMS). This information is then passed to DIAC via an automated link to DIAC systems.

6.19   Section 20 of the ESOS Act sets out the manner in which providers must report. The notice that is sent to the student by DIAC informs them that their visa is liable for cancellation and that the student must report to DIAC within 28 days of the notice in order to resolve their visa status. If a student does not report to DIAC within the required period, their visa is automatically cancelled in accordance with section 137J of the Migration Act. The student may subsequently apply for a revocation of the automatic visa cancellation.

6.20   Even if the student does report to DIAC within the 28 day period, the Regulations require that the delegate must cancel the visa if a breach is found to have occurred, unless the non-compliance was due to exceptional circumstances beyond the visa holder's control. For both automatic and mandatory visa cancellation, the student is entitled to seek a review of the decision through the Migration Review Tribunal. Appendix 5 shows the cancellation process for a breach of condition 8202.

6.21   The premise for visa condition 8202 is that a student's ability to make satisfactory course progress is a measure of their bona fides, as it shows that

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[55]   The student attendance requirement is to attend a minimum of 80 per cent of their course contact hours, except in the higher education sector, which is not required to monitor attendance. VET providers who have entered into an approved course progress policy arrangement may also be exempt from course attendance monitoring requirements.

the student is genuinely undertaking the course, and the course is appropriate to their educational background and English language ability.

6.22 However, the regime of automatic and mandatory visa cancellation is potentially severe given that it has limited flexibility and may be triggered by minor infractions. The ANAO observed that the regime has also been affected by both the outcome of legal challenges and by how it is being applied in practice by departmental officers.

Legal challenges to automatic cancellation

6.23 There have been multiple legal challenges over a number of years to the validity of automatic cancellation decisions made under s.137J of the Migration Act. In *Uddin v Minister for Immigration and Multicultural and Indigenous Affairs (2005)*, the Federal Court held that the ESOS Act section 20 notice used by the education provider to notify/report students that were not meeting course progress and/or attendance requirements was defective. The defect was in the statement in the notice that the student was to attend the nearest departmental office rather than any departmental office. The effect of this decision was to overturn all automatic cancellations made under s.137J between May 2001 and 16 August 2005.

6.24 A subsequent court decision on defective s.20 notices similarly invalidated all automatic cancellations under s.137J between 16 August 2005 and 3 February 2007. The effect of these decisions was that approximately 12 000 automatic visa cancellations between 2001 and 2007 were reversed.

6.25 In March 2010, the Federal Court decided that the s.20 notices issued to two students by their education provider were invalid because they did not specify the prescribed visa condition that the students had breached. The effect of the decision was that any visa cancellation under s.137j which flowed from a s.20 notice in the same form and was issued between 1 July 2007 and 16 December 2009 was not effective and all such cancellations were reversed. This affected approximately 6800 visa cancellations. The defect in the s.20 notice was remedied by legislative amendment that commenced on 17 December 2009, so the Court's decisions do not affect s.20 notices issued after that date.

6.26 The effect of these legal judgements is that between May 2001 and December 2009, the automatic visa cancellation regime for breaches of condition 8202 was valid for only five months. Almost 19 000 overseas

students were affected, many of whom had left Australia due to the automatic cancellation of their visas prior to those cancellations being overturned.

6.27   While the issues which rendered the automatic cancellations invalid in these cases were essentially procedural, and have now been corrected by legislative amendment, comments by members of the judiciary indicated concern about the 'draconian' nature of the automatic cancellation regime and concerns over whether it is 'reasonably proportionate'. The procedural vulnerabilities are the product of a complex regime requiring the interaction of the ESOS Act and the Migration Act and their relevant instruments being interpreted and applied by members of both government (DIAC officers) and non-government (education providers) agencies. It is therefore likely that the student visa cancellation regime will continue to be tested in the courts, with the possibility of further findings of invalid cancellations.

6.28   The costs of these cases to DIAC include reputational costs as well as the expenses associated with the litigation and the costs of implementing remedial measures. These include attempting to contact affected students who are still onshore to advise them of their changed visa status. The legal decisions also make the operation of the student compliance regime more complex and difficult as DIAC officers have to consider an increasingly complex body of case law when making visa cancellation decisions.

Mandatory visa cancellation and the application of discretion

6.29   If the student who has received a s.20 notice presents to DIAC within 28 days, a Notice of Intention to Consider Cancellation is issued to the student giving them five working days to provide a written response outlining why the ground for cancellation does or does not exist and why their visa should not be cancelled.

6.30   If the DIAC decision-maker is satisfied that the student did not comply with condition 8202, the visa must be cancelled unless the student can show that the non-compliance was due to exceptional circumstances beyond their control.

6.31   Ministerial Direction No. 38 issued under section 499 of the Migration Act on 19 September 2007 gives guidance on matters falling within the definition of exceptional circumstances. These include but are not limited to:

- a political upheaval or natural disaster in a particular country affecting the student's ability to comply with condition 8202; and

- provider errors in the process of reporting non-compliance, including monitoring of the student's performance and access to the complaints handling and appeals process as required under the ESOS National Code.

6.32 The Ministerial Direction directs that decision-makers must consider all the facts of a case in total and come to their own view as to whether they are satisfied that the non-compliance was not due to exceptional circumstances beyond the visa holder's control. The weight to be given to relevant matters is a matter for decision-makers.

6.33 DIAC has stated that 'under current arrangements, once a provider reports a student under these [ESOS Act s.19 and 20] provisions …, DIAC officers have very limited discretion to intervene to avoid visa cancellation.'[56] The flow chart of the process that DIAC provided to the Senate Inquiry into the Welfare of International Students, reproduced at Appendix 5, similarly states that the decision-maker has 'no discretion'.

6.34 Performance statistics provided to the ANAO by the student integrity units in Sydney and Melbourne indicate that, in fact, visa cancellation is far from mandatory and that DIAC decision-makers are finding exceptional circumstances and/or applying discretion in many cases.

6.35 Outcomes reported from DIAC's NSW Student Integrity Unit for 2009–10 show that, of 2050 student visa cancellations finalised in that period, 747 or 36 per cent were not cancelled. In the 349 cases where students who were subject to automatic cancellation applied to have that cancellation revoked, 219 or 63 per cent of the cancellations were revoked.

6.36 In Victoria, DIAC's Student Compliance Unit statistics show that for the period from July to December 2009, of the total visas reported for cancellation action, 78 per cent were not cancelled. This figure incorporates the outcome of appeals to the MRT, which set aside approximately 50 per cent of the cancellations referred to it. In terms of applications for revocations of automatic visa cancellations over the same period, a decision was made to revoke the cancellation in 72 per cent of cases.

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[56] DIAC, *Submission to the Review of the ESOS Act 2000*, undated, p. 22, found at <http://www.deewr.gov.au/Highereductaion/Documents/ESOSsubmissions/DepartmentImmigrationCitizenship.pdf> [accessed 23 February 2010].

6.37 The Student Compliance Unit in Victoria reported that a significant proportion of student visas are not cancelled, even where a clear breach was established, due to errors made by education providers. It reported that the rate of provider error remained high even after errors were pointed out and efforts made to educate providers on complying with reporting processes.

Conclusion

6.38 There are systemic flaws and vulnerabilities in the regime for automatic and mandatory cancellation of student visas for breaches of condition 8202 relating to course progress and attendance. In particular:

- the system of automatic cancellation is highly vulnerable to legal challenge, with the result so far being that all automatic cancellations made between May 2001 and December 2009 were overturned for all but five months of that period;

- applications to revoke automatic cancellations are successful in over 60 per cent of cases;

- poor performance by providers in conforming to ESOS Act and National Code requirements in reporting students is contributing to a significant number of non-cancellation decisions by DIAC decision-makers; and

- the requirement for student visa integrity and compliance units to respond to every provider report of a condition 8202 breach through a visa cancellation process is resource intensive and restricts their capacity to pursue proactive or targeted action in relation to specific areas of compliance concern.

6.39 In its submission to the Baird Review of the ESOS Act, DIAC stated that it had 'already undertaken to review the current student visa cancellation regime, which includes automatic and mandatory cancellation provisions'.[57] At the time of the audit, this review had not been undertaken.

6.40 In light of the previous commitment and the findings of this audit, the ANAO considers that DIAC should progress its planned review of the student visa cancellation regime. Given the systemic weaknesses noted by the ANAO,

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[57] DIAC, *Submission to the Review of the ESOS Act 2000*, undated, p. 23, found at <http://www.deewr.gov.au/Highereductaion/Documents/ESOSsubmissions/DepartmentImmigrationCitizenship.pdf> [accessed 23 February 2010].

the review should critically examine the performance of the regime in achieving DIAC's integrity and compliance objectives in a cost-effective manner. In response to the audit, DIAC advised that it plans to review cancellation processes by June 2012, in consultation with staff, other government stakeholders and the international education industry.

Visa condition 8105—work rights

6.41   Student visa holders have limited work rights while studying in Australia. Visa condition 8105 allows students to work for up to 20 hours per week while their course is in session, and for unlimited hours during course breaks. Work required as part of the student's course and unpaid volunteer work are excluded from the restriction.

6.42   Until 26 April 2008, students had to make a separate Permission to Work application in addition to their student visa application. From that date, permission to work as defined in visa condition 8105 was automatically included with the grant of a student visa.

6.43   The limitation on work rights reflects the fact that the purpose of a student visa is to allow entry to Australia to study, not to work. The allowance of 20 hours recognises that there are benefits to the student from participating in the workforce during their study in Australia, in terms of community interaction and the development of language and professional skills. The allowance is also consistent with practice in other countries providing international education, and therefore helps maintain Australia's international competitiveness.

6.44   The purpose of the work allowance is to enhance the student experience, and is not intended to be relied upon by students to pay course fees or living expenses. Accordingly, prospective income from work in Australia cannot be included when applicants for student visas demonstrate that they can meet the financial requirements of the grant of a student visa.

Enforcement of the work rights condition

6.45   Due to the large number of student visa holders in Australia, it is reasonable that DIAC does not monitor compliance with visa conditions on an individual basis. Unlike visa condition 8202, there is no regular reporting to DIAC of students' status or behaviour as far as their employment is concerned. If exceeding the work allowance is impacting on a student's course attendance

or progress, this may be identified indirectly through provider reporting on those issues. DIAC has no power to compel employers to produce records.

6.46   Students working in breach of their visa conditions are a subset of a broader group of people working illegally in Australia for which DIAC has responsibility under the migration legislation. DIAC's overarching compliance strategy aims to work collaboratively with employers who wish to do the right thing and not employ illegal workers. As a prevention strategy, DIAC assists employers with awareness programs and the Visa Entitlement Verification Online (VEVO), which allows them to check the visa status and entitlements of a visa holder whom they are considering for employment.

6.47   This prevention program is managed by the Employer Compliance area of DIAC. Its focus is on employers in industries of concern, not on any particular class of visa holders. However, there is some crossover with the interests of student integrity and compliance where a particular industry is associated with student employment, for example, the taxi industry.

6.48   Students who are in breach of the working hours restriction come to DIAC's notice in a variety of ways including:

- self-presentation to a DIAC office to clarify their immigration status, often in response to a s.20 notice relating to a breach of condition 8202 (this is how the majority of students in breach of condition 8105 come to notice);

- reports from the community through the Immigration Dob-In Line; and

- as a by-product of DIAC investigations into industries, employers and labour hire intermediaries suspected of employing or referring illegal workers.

6.49   Cancellations for breach of the work rights condition are made under s.116 of the Migration Act, which is the general power to cancel for non-compliance with visa conditions. In 2009–10, 3210 student visas were cancelled under s.116. Of these, 76 were cancellations for breaches of condition 8105 and 56 for breaches of condition 8104, which restricts work rights for dependants. These numbers represent four per cent of the total cancellations made under s.116 in 2009–10.

Application of discretion

6.50 Unlike the mandatory cancellation provisions in relation to the breach of condition 8202, which allows for exceptional circumstances beyond the student's control to be taken into account by a decision-maker, a decision-maker has no discretion to take exceptional, compassionate or compelling circumstances into account where a student visa holder is found to have breached work condition 8105. As stated by DIAC, 'where a student may have only breached the 20 hour limit by one hour, the delegate would have no option but to decide to cancel.'[58]

6.51 The ANAO found that, in practice, DIAC compliance staff are applying discretion in their case management of work rights breaches based on resource availability and their concern to be satisfied that the evidence of the breach would withstand an MRT review of the cancellation. The ANAO was advised that, in most cases, definitive employment records showing evidence of the alleged breach are either not available or not reliable and that they cannot compel employers to produce such records where they might exist.

6.52 The approach being taken is to give priority to those cases of work rights breaches where the evidence of the breach (often volunteered by the students themselves) is clear and overwhelming, especially in terms of:

• the number of hours worked over the limit; or

• where the breach is indicative of other irregularity, such as systemic employment of illegal workers by a particular employer.

Cases where the breach may only be one or two hours above the 20 hour limit are not given priority and therefore never formally activate the decision-maker's inability to exercise discretion under the Regulations.

6.53 This lack of discretion in relation to exceeding an allowance to work a specified number of hours under condition 8105 was contrasted by DIAC integrity and compliance staff in the Adelaide office with condition 8101 applying to other visa classes.[59] Condition 8101 allows no work rights but gives the decision-maker discretion in deciding to cancel or not cancel the visa.

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[58] DIAC, *Submission to the Senate Inquiry into the Welfare of International Students*, September 2009, p. 20.

[59] Visa condition 8101 prohibits any work for holders of certain classes of visas, particularly a range of temporary visitor visas and bridging visas.

6.54 DIAC integrity and compliance units have also found it impractical to apply the specific 20 hour limit in at least one area of employment. That area is the taxi industry where, in some places, a standard shift is 12 hours. A student working two such shifts in a week would breach the 20 hour work limit. However, DIAC takes the approach that it is not unreasonable to conclude that drivers would be taking breaks during these shifts. On that basis, the ANAO was informed that there is an understanding in the department—unwritten because it conflicts with the Regulations—that a student working two shifts of 12 hours each in a week totalling 24 hours will not be considered in breach of condition 8105.

Conclusion

6.55 There are problems with the enforceability of the 20 hour a week work restriction in student visa condition 8105, particularly when allied with the lack of provision in the Migration Regulations for decision-makers to exercise discretion. The problems this situation presents for DIAC's compliance units are demonstrated by the local practices that have been adopted to avoid making a cancellation decision in all but the clearest cases, and the informal modifications made by DIAC staff to the definition of the 20 hour period for employment in the taxi industry. To improve its ability to effectively enforce the mandatory conditions of student visas, DIAC should review the operation of student visa condition 8105.

Recommendation No.4

6.56 To improve the effective application of the mandatory conditions attached to student visas, the ANAO recommends that DIAC review:

- whether the student visa cancellation regime applying to the visa conditions for student course attendance and progress is achieving DIAC's integrity and compliance objectives; and

- the operation of the student work rights limitation in relation to evidentiary requirements, decision-maker discretion and compliance resources.

DIAC Response: *Agreed.*

6.57 DIAC agrees that the student visa cancellation regime and the operation of the student work rights limitation need to be reviewed.

6.58   It is expected that the Knight Review of the Student visa program will present findings in relation to both of these areas and a review will be considered within this context.

Reporting student attendance and progress via electronic systems

6.59   Providers are required under the ESOS Act and the National Code to provide information to DEEWR relating to students enrolled with the provider. This information includes non-commencement of a course, changes to a course, early completion of a course, and particulars of any breach of a student visa condition. Providers report student non-compliance to DEEWR's Provider Registration and International Student Management System (PRISMS) using prescribed codes. The information that comes into DEEWR via PRISMS is called a Student Course Variation (SCV). Each code number reported in PRISMS relates to a prescribed type of SCV.

Student course variations and Non-Compliance Notices

6.60   There are 24 SCV codes in PRISMS, with 21 of these codes being sent to DIAC's ICSE system. DIAC relies on these SCVs as the primary source of information as to whether a student is meeting their visa conditions. There are three codes where the SCV is immediately converted to a Non-Compliance Notice (NCN) within ICSE—when the student has unsatisfactory attendance or course progress (code 8 and 10) or if the student is deceased.[60] The remaining SCVs are converted to NCNs in DIAC systems after 28 days.[61]

6.61   NCNs relating to code 8 or 10 inform DIAC that the student is in breach of visa condition 8202. As outlined previously, automatic visa cancellation is triggered and the student has 28 days to attend a DIAC office before the visa is automatically cancelled under the Migration Act. Other NCNs are considered low to medium risk and do not attract automatic cancellation, but may be investigated by a compliance officer who will decide whether or not to cancel the student's visa.

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[60]   Education providers are responsible for approving welfare arrangements for overseas students under 18 years. Where providers consider welfare arrangements to be unsatisfactory, this is reported through PRISMS (but not as an SCV) and converts immediately to a code 28 NCN.

[61]   Of the 21 SCVs sent to DIAC, four are for information purposes only and do not convert to NCNs.

6.62   All NCNs place a decision bar on a client's record in ICSE. This prevents the client from being granted another visa until this decision bar has been investigated and lifted (via finalisation of the NCN) by a compliance officer. Most NCNs are finalised soon after the compliance officer is notified as many are no longer valid.

6.63   By July 2010 there was a backlog of over 350 000 unactioned NCNs in ICSE, with DIAC receiving an average of 13 000 new NCNs each month. Some of these NCNs had been in the system for several years without being investigated or resolved due to lack of resources.

Background to the backlog

6.64   The issue of unfinalised NCNs was first identified in 2006, at which time the number of NCNs in ICSE was estimated to have grown to 80 000. At this time, there were 12 SCVs in operation and all became NCNs, regardless of the student conduct to which they related. A review of SCV codes undertaken by DIAC in 2006–07 aimed to reduce the number of new NCNs being created by allowing 28 days before the SCVs converted to NCNs. This was based on the assumption that giving the student 28 days to depart Australia or to apply for a new visa would mean that the NCN would not need to come into effect. However, there is no expiry date for NCNs, and they are not automatically cleared when a student visa expires or the student has left the country.

6.65   Student integrity work in this area has been reactive rather than proactive and action is not routinely taken to finalise low to medium risk cases. As a result SCVs continued to convert into NCNs after 28 days and the number of NCNs in the system continued to grow, especially with the rapid increase of students coming to study in Australia since 2007. Figure 6.1 shows the growth in NCNs from 2001.

Figure 6.1

NCNs created in ICSE each year
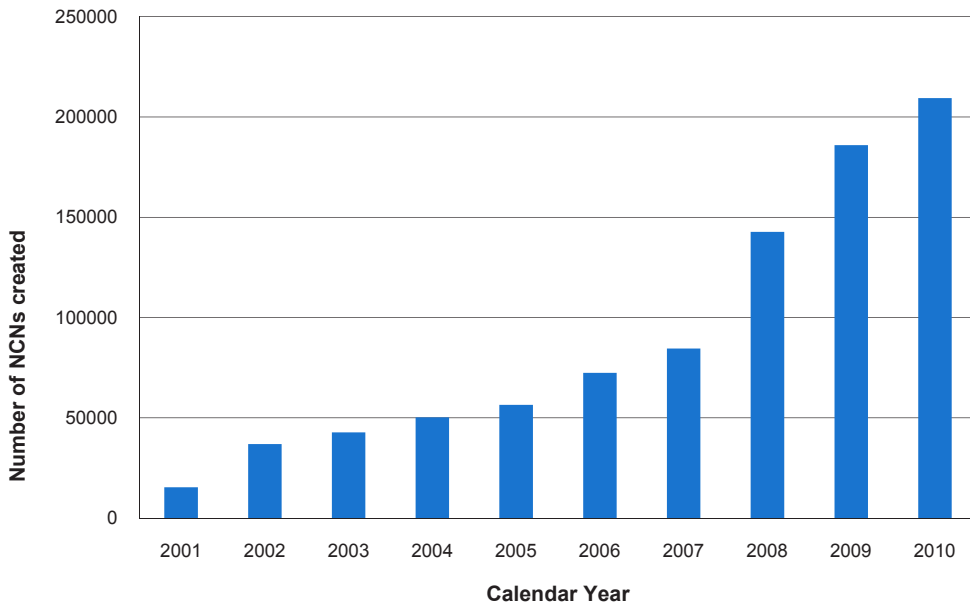
Source: ANAO analysis of DIAC data.

Dealing with the backlog

6.66   The continued growth of unfinalised NCNs was on the task list for the PRISMS Strategic Steering Committee and its Working Group between 2007 and 2009, but was never effectively addressed. Key issues preventing resolution of the backlog were identified by DIAC in 2010 as resourcing; lack of ownership over the task; and no specific area funded to perform the finalisation of NCNs. It was also noted that the issue was a low priority in terms of the overall DIAC compliance hierarchy.

6.67   DIAC developed a Transition Plan for NCN backlog processing on 31 March 2010 in response to the recommendations of an internal Service Delivery Functional Review endorsed in July 2009. The plan outlined outstanding issues relating to the backlog, including the need for clearly documented instructions from DIAC's national office for priority processing of NCNs in state and territory offices; an automated batch job to clear the backlog of administrative NCNs; and more dynamic and flexible reporting to allow priority processing.

6.68 The establishment of the Global Manager Operational Integrity position in 2010 provided momentum to efforts to address the backlog of NCNs. At a Student Integrity Workshop in April 2010, every one of the larger offices (NSW, Victoria, South Australia and Western Australia) highlighted the NCN backlog issue as a key risk. Rationalisation of NCNs and resourcing constraints for NCN work were seen as preventing DIAC from achieving the ideal integrity process.

6.69 As an outcome of the Workshop, an NCN working group was established. The working group agreed that the issues of the backlog and the future handling of NCNs would be treated separately. It noted that finalising NCNs automatically on cessation of a student visa or the departure of a student from Australia would require a system change, and planned to examine this option once the backlog had been reduced. Issues to be considered in that context were flagged by the NCN working group as including:

- which SVCs ought to convert to NCNs;

- which NCNs ought to be subject to automatic finalisation; and

- provider behaviour in issuing NCNs unnecessarily, maliciously, or not at all.

6.70 Under the auspices of the NCN working group, DIAC commenced cleansing of the NCN backlog in mid-2010 to automatically finalise invalid NCNs (for example where visas have ceased) and low risk NCNs. By the end of March 2011, over 145 000 NCNs had been finalised through this process.

Implications of the NCN backlog

6.71 During the years of inaction to resolve the NCN backlog, some state and territory offices directly affected by the problem conducted their own analysis of its extent and implications.

6.72 In 2008–09, the NSW Student Integrity Unit set up a taskforce to look at code 6 NCNs, which apply to students reported for non-commencement of their course. The focus of the taskforce was to cleanse the data for NCNs linked to 19 education providers of concern, for the seven month period from June to December 2008. Of 2091 records examined, 73 per cent were resolved administratively and 27 per cent were identified for potential cancellation for breaches of visa conditions. The taskforce found a number of non-genuine students within the sample, indicating the existence of an integrity risk if

code 6 NCNs were not investigated and resolved. However, given the high percentage of cases resolved administratively, the taskforce concluded that making non-commencement of course a basis for mandatory visa cancellation was not warranted.

6.73   In a separate study of the impact of NCNs, DIAC's Victorian office found that the majority of its integrity work was concerned with code 8 and 10 breaches, with little capacity left to investigate code 6 and 16 (cessation of studies) breaches, which also pose an integrity threat. The Victorian state office's proposed solution to the backlog was that only certain higher risk NCN codes (6, 8 ,10 ,16 and 28) be allowed to generate an NCN, with all other low to medium risk NCNs, and those for which visas have ceased, being subject to automatic finalisation

6.74   The NCN backlog has an impact on areas outside the student integrity and compliance units. When an NCN causes a 'decision bar' in ICSE, this prevents an autogrant outcome for the application. It also causes a delay to the processing time of an application, as the VPO has to refer the case to the compliance section and wait until the NCN has been finalised. Time is spent by the compliance officers to remove the decision bar, with the NSW office estimating that it had to lift 6 000 NCN decision bars in one year.

6.75   As NCNs are being reactively rather than proactively cleared, there is also an integrity implication. The ANAO notes that NCNs in the system that are not being investigated and finalised pose an integrity risk for the program. These NCNs may include non-genuine students in breach of their visa conditions. The NSW NCN taskforce found that some students reported under codes 6 and 16 for non-commencement and cessation of studies were non-genuine.

Conclusion

6.76   The NCN backlog was not effectively addressed by DIAC despite its identification and acknowledgement as a problem between 2006 and 2010. With the rapid growth of the student visa program from 2006–07, the backlog was out of control for several years and impacted on processing times and compliance resources.

6.77   The examination of a sample of code 6 NCNs relating to non-commencement of course by DIAC's NSW office found cases of non-genuine students, and it is likely that there are potentially serious cases of student non-compliance hidden within the backlog. The backlog has prevented

DIAC from identifying and resolving these cases. Given the number of redundant NCNs and NCNs not related to mandatory visa conditions, the ANAO supports DIAC's current efforts to cleanse the backlog but considers that a long-term solution is required.

Recommendation No.5

6.78 To better manage the flow of Non-Compliance Notices, and to assist in the better targeting of DIAC's compliance resources, the ANAO recommends that DIAC review the:

- necessity for each type of Student Course Variation to be reported by DEEWR to DIAC; and

- appropriateness of each type of Student Course Variation converting automatically to a Non-Compliance Notice.

DIAC Response: *Agreed.*

6.79 DIAC agrees to this recommendation, while noting that it is expected that the Knight Review of the Student visa program may also recommend changes pertaining to this aspect of the program. Work is already underway to review the appropriateness of each type of Student Course Variation converting automatically to a Non–Compliance Notice and a proposal has been developed to implement the required system changes.

7.   Cooperation Between DIAC and DEEWR

This chapter examines the framework of cooperation between DIAC and DEEWR and whether it supports an effective collaborative relationship between the two departments.

Introduction

7.1   The Department of Education, Employment and Workplace Relations (DEEWR) administers the ESOS Act and its associated instruments, particularly the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (the National Code) and the *Commonwealth Register of Institutions and Courses for Overseas Students* (CRICOS).

7.2   The ESOS legislative framework protects the rights of students coming to Australia on student visas, and sets out the roles and responsibilities of education institutions providing courses for overseas students. Any education institution that recruits, enrols or teaches overseas students must be registered on CRICOS. Each course offered to overseas students must also be registered on CRICOS.[62] The National Code provides nationally consistent standards for the conduct of CRICOS registered providers and also sets out the roles and responsibilities of the Australian Government and state and territory governments in discharging their regulatory functions.[63]

7.3   Within DEEWR, the Department's International Group, known externally as Australian Education International (AEI) is responsible for international education and regulation, including managing the ESOS legislative framework and implementing Government policy in relation to the higher education as well as the vocational education and training sectors, where it relates to international education. These responsibilities include monitoring provider compliance with the standards in the National Code; investigating breaches of the ESOS Act and the National Code and initiating

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[62]   Department of Education, Employment and Workplace Relations (DEEWR), 'Easy Guide to ESOS', DEEWR website <http://aei.gov.au/AEI/ESOS/EasyGuide_ESOS.htm> [accessed 22 November 2010].

[63]   DEEWR, *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*, Commonwealth of Australia 2007, p. 1.

enforcement action for such beaches as appropriate. Management of the Provider Registration and International Student Management System (PRISMS) is also a function of AEI.

Interdependencies between DIAC and DEEWR

7.4   There is close interaction between the ESOS Act and the Migration Act, with this interaction serving to align the respective legislation so that each complements and supports the objectives of the other.

7.5   The Migration Act supports the ESOS framework by generally only allowing the grant of a student visa to an applicant with a Confirmation of Enrolment (CoE) issued by an education provider registered on CRICOS.[64] The ESOS framework supports the integrity of the student visa program. For example, through the standards in the National Code, which set out the steps that providers must follow before issuing a CoE to a prospective student. Furthermore, as outlined in Chapter 6, the ESOS framework requires that providers report students to DEEWR in particular circumstances relevant to the conditions of their visa.

7.6   The interaction between the ESOS Act and the Migration Act sets the terms for the relationship between DIAC and DEEWR. Although international education has been treated on a whole-of-government basis for some issues, the particular interaction of the student visa program with the international education sector it services primarily concerns DIAC and DEEWR and therefore entails a collaborative relationship between the two departments.

7.7   In key areas, each department is reliant upon functions of the other to achieve its objectives. DEEWR is reliant upon DIAC's visa processing operations to ensure that visas are granted to genuine students in sufficient time to allow them to arrive in Australia to take up their courses. DIAC is reliant upon PRISMS, which is owned by DEEWR, and on DEEWR's performance, in conjunction with state and territory governments, in regulating provider behaviour in accordance with the standards of the National Code.

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[64]   The ESOS Act applies to overseas students in Australia on a student visa, with the exception of international students on scholarships, such as Endeavour Award students. The ESOS Act does not cover overseas students on other kinds of visas.

7.8 In view of these interdependencies, policy decisions or initiatives affecting overseas students coming to Australia taken by one department affect the interests of the other. There may also be circumstances where one department makes an internal policy change in relation to its own responsibilities or priorities which may also affect the other department's interests.

7.9 Both DIAC and DEEWR are on record as stating that they work closely together.[65] The ANAO examined the framework of cooperation between DIAC and DEEWR and whether that framework supports an effective collaborative relationship between the two departments.

Electronic data exchange between DIAC and DEEWR

7.10 PRISMS was implemented in July 2000 to support the ESOS legislative framework and the student visa program. DEEWR is the owner of PRISMS and the system is used by both DEEWR and DIAC to transfer information about international students between each other.

7.11 PRISMS is used by DEEWR to manage the registration of education providers and their associated courses, which are listed on CRICOS. Once a student's visa application has been processed by DIAC, the outcome of the decision is sent to PRISMS from DIAC systems. DIAC sends visa grant, non-grant and movement data to PRISMS. PRISMS is also used by providers to report information such as the enrolment of a student, changes to student course enrolments, and student compliance with visa conditions to DIAC as required under the ESOS Act. Figure 7.1 shows the data flows between DIAC and DEEWR.

7.12 The Internet-based PRISMS was developed in conjunction with the development of an electronic CoE so that education providers could notify DEEWR and DIAC of the successful enrolment of a student. This system replaced paper-based forms, and DIAC accepts an electronic CoE as proof of enrolment. DIAC's visa processing officers are able to log on to PRISMS to confirm the enrolment of a student when processing the visa application.

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[65] See, for example, DEEWR evidence to the Senate Education, Employment and Workplace Relations References Committee in a public hearing on its inquiry into the welfare of international students, *Hansard*, 18 September 2009, p. 87.

Figure 7.1

Information transferred between DEEWR and DIAC via the PRISMS interface
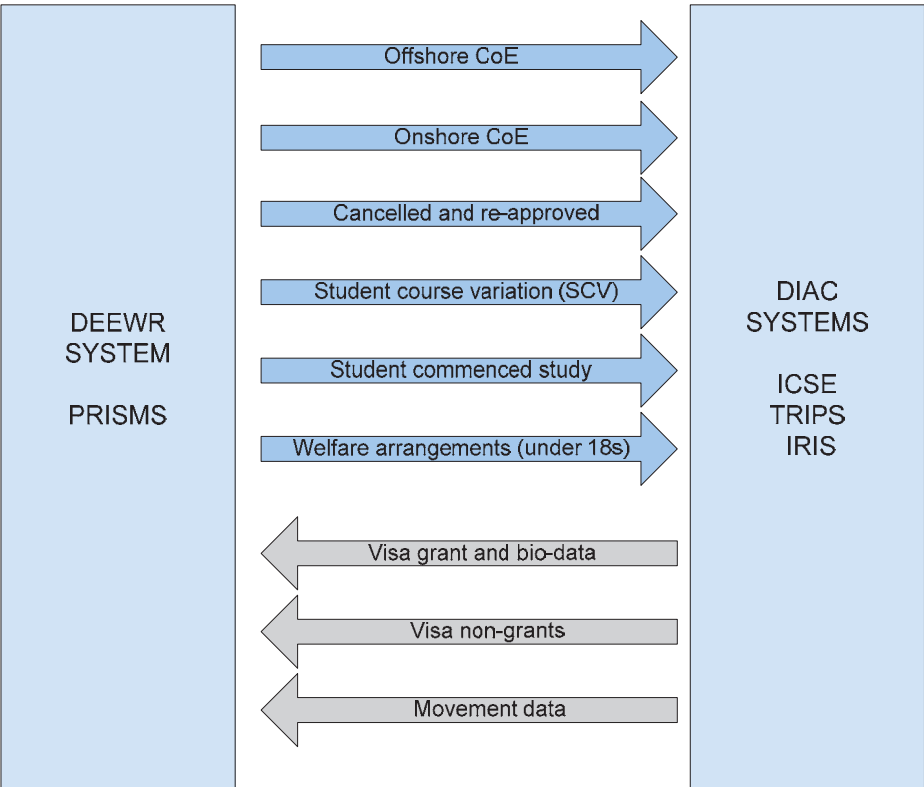
7.13   To issue a CoE, the provider will record the student's details on PRISMS. A copy of the CoE is sent to the student, and also sent to DIAC systems through Fedlink (which is responsible for all data transfers between PRISMS and DIAC systems). When a CoE is received by DIAC systems, it is stored within ICSE on the CoE table. The CoE is also transferred through to DIAC's IRIS system to the relevant post and the eVisa system to allow electronic lodgement for eligible applicants.

7.14   When a student visa is granted, DIAC sends information to PRISMS. Visa grant information is stored on PRISMS in relation to each CoE created by an education provider. DIAC also sends movement data to PRISMS to assist DEEWR to correctly set the status of a CoE (for example, changing 'Visa Granted' status to 'Studying' status).

Data exchange and quality

7.15 In 2003, in response to a previous ANAO audit[66], an MOU titled *Protocol for the Development and Enhancements of Electronic Data Exchange and Systems Interoperability for DEEWR and DIAC Relating to International Education* was established. This MOU was renewed in November 2008. The MOU sets out governance arrangements; the roles and responsibilities of the two departments; and the detailed cooperative arrangements relating to data transfer. In the MOU, the two departments acknowledge that it is critical to maintain effective, accurate and timely data transfer.

7.16 In a previous audit of DEEWR's e–Business applications in 2007–08, the ANAO found that there were ongoing issues in the data exchange between the two departments.[67] These included the timeliness of the data transfer from DIAC to DEEWR, and inadvertent changes made by DIAC compliance officers to data transferred from DIAC to DEEWR, which affected the completeness and accuracy of PRISMS records. The audit found that DIAC had addressed these problems through manual intervention, due to DIAC's competing priorities for IT project expenditure, and through reliance on DEEWR's technical resources.

7.17 Part of the problem with data quality is that student records in PRISMS are created by education providers and agents. Duplicate records are generated through poor searching by providers and agents when creating new CoEs, incorrect data entry, and the lack of use of official documentation at the time of creating the student record. The creation of a duplicate can potentially also be used by providers to avoid National Code standards.

7.18 To support data quality between PRISMS and ICSE, DEEWR performs a daily reconciliation of the number of transactions sent from DIAC that are received into PRISMS, and a confirmation of transmission is sent to DIAC of these totals. However, DIAC does not perform an automated reconciliation of the information received from DEEWR via PRISMS. This has resulted in the need for an ongoing manual match of visa and CoE information between the systems to ensure information in the systems is accurate.

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[66] ANAO, *Management of e-Business in the Department of Education, Science and Training,* Report No 33, 2002–03, tabled 19 March 2003.

[67] ANAO Audit Report No.39 2007–08, *Managing e–Business Applications—Follow–up Audit*, p. 45.

7.19   As noted in Chapter 2, manual matching of visa and CoE data can be resource intensive and is subject to the effects of changing priorities and resource availability. Pending any adoption of a systems solution—such as the unique student identifier discussed below—it is desirable that DIAC continue to take action to ensure that the records sent from PRISMS and the records received into ICSE are appropriately reconciled.

Unique student identifier

7.20   DIAC and DEEWR use different information as an identifier for an overseas student. DIAC identifies a student using the personal identification number (PID) which is generated when a record is created in ICSE for the student. To identify a student in DEEWR's PRISM system, a combination of at least two of the following search criteria are used: first or second name; family name; or date of birth; and gender.

7.21   Implementation of a unique student identifier means that there would be a single record for each student in PRISMS. From DEEWR's perspective, a unique identifier would facilitate the application of many aspects of the ESOS legislation and DIAC's student visa compliance program. The benefits of this identified by DEEWR include:

- a significant improvement in data integrity and reliability due to the validation of student data when entered by education providers into PRISMS, which would mean that providers would not be able to incorrectly allocate a CoE to a student record;

- a reduction in the number of duplicate records as the data in PRISMS would be validated against data held by DIAC;

- better management and monitoring of a student's progression through their education pathway, including a clearer view of a student's immigration history, and improved statistical analysis and reporting;

- a reduced number of SCVs sent by DEEWR to DIAC as PRISMS would be able to directly attach visa grant data to onshore CoEs;

- improved compliance with National Code Standard 7, relating to the transfer of a student between providers, as providers would be able to check a student's prior enrolment;

- improved compliance with National Code Standard 9, relating to the completion of studies within the expected timeframe, as providers would be able to monitor the enrolment of each student;

- provision of proactive migration advice to students as visa expiry dates approach, so that students are able to apply for a further student visa if required; and

- potential efficiency gains in visa processing as the unique student identifier would support automatic validation of paper-based applications as well as eVisa applications.

7.22 Consideration by DIAC and DEEWR of options for a unique student identifier commenced as early as late 2005. Following work by the PRISMS Technical Working Group, the departments agreed in principle in 2006–07 that the visa grant number and check digit could be used as a unique student identifier.

7.23 Funding proposals were subsequently put forward within DIAC in 2007 and 2008 to enable the visa check digit to be transmitted to DEEWR (at an estimated cost of $300 000). Neither of these bids was successful. In January 2009, DIAC advised the PRISMS Technical Working Group meeting that it was unlikely that funding for this work would become available in 2008–09 or subsequent years. Consequently, the unique student identifier and single student record project is currently on hold, although DEEWR has undertaken additional work for the project should DIAC be in a position to implement the project at a later date.

7.24 The ANAO notes that the Council of Australian Governments (COAG) gave in–principle support on 7 December 2009 for the introduction from 2012 of a unique student identifier for the VET sector, capable of being fully integrated with the entire education system. In response to this, the Ministerial Council for Tertiary Education and Employment prepared a business case for the introduction of a national student identifier and, at its meeting on 19 November 2010, endorsed progressing the business case to COAG for consideration of scope, design, concept and implementation.

7.25 In light of this development, the ANAO considers that it would be timely for DIAC to undertake, in cooperation with DEEWR, a cost-benefit analysis of implementing a unique identifier for overseas students.

Governance arrangements for data exchange

7.26 The *Protocol for the Development and Enhancements of Electronic Data Exchange and Systems Interoperability for DEEWR and DIAC Relating to International Education* states that the implementation of the Protocol will be under the guidance of a DIAC/DEEWR Strategic Steering Committee, with

representation at First Assistant Secretary level and which is to meet biannually.

7.27 The MOU also provides for a Technical Working Group to manage the day-to-day operations, maintenance and project work between the departments relating to PRISMS and the interaction between the parties' systems.

7.28 The PRISMS Technical Working Group has maintained a regular meeting schedule over several years. Examination of the records of these meetings, and direct observation of the May 2010 meeting by the audit team, indicated that an effective working relationship exists between DIAC and DEEWR staff. This includes regular out-of-session contact. Technical issues arising with PRISMS have been effectively addressed at a practical level.

7.29 However, the ANAO observed that that the work of the Technical Working Group was not being adequately directed or supported by the Strategic Steering Committee. This has meant that some issues requiring higher-level direction and priority were not able to be resolved at Working Group level. Examples previously discussed in this report include the inability to clear the growing backlog of NCNs generated from PRISMS, and the lack of progress on the implementation of a unique student identifier as the solution to the persistent challenge of ensuring data consistency between PRISMS and DIAC systems.

7.30 The ANAO's audit report *Managing e-Business Applications in DEEWR*, tabled in June 2008, noted that the MOU had not been wholly effective in addressing data transfer issues in a timely way. The audit found that the Technical Working Group was actively engaged in achieving successful data transfer but that the meeting of the Strategic Steering Committee held in March 2008 was its first in over 14 months.

7.31 The MOU was re-signed in November 2008, and states that the Parties will ensure that the Strategic Steering Committee:

- oversees the development of PRISMS and the relationship of data transfer between DIAC and DEEWR, as detailed in this MOU;

- guides the Technical Working Group in the prioritisation of project work conducted by the Technical Working Group;

- provides executive support and implements governance processes for projects; and

- resolves any issues raised by the Technical Working Group in relation to data transfer and joint projects that affect both Parties which are unable to be resolved at the Technical Working Group level.

7.32 By August 2010, a considerable time had again elapsed since the previous meeting of the Strategic Steering Committee, which took place on 22 April 2009. That meeting was a special meeting, with representation at Assistant Secretary level, to discuss progress and prospects for the unique student identifier proposal. As noted earlier, DIAC was unable to give any assurances regarding funding or priorities for that project. DIAC's internal brief for the special meeting commented that 'there are some ongoing systems issues that the working group has tried to resolve, however, because of DIAC's lack of resources, most of these issues have been delayed or postponed.'

7.33 In practice, the Strategic Steering Committee has not performed its role as set out in the MOU since April 2009. As a consequence, DIAC has placed too much reliance on the Technical Working Group to keep data exchange between PRISMS and DIAC's systems functioning effectively. However, there are limits to the capacity of such a working-level group to resolve issues requiring policy direction or to set and maintain a change agenda in the absence of higher-level strategic direction and guidance.

7.34 The ANAO acknowledges that DIAC has a range of systems issues competing for funding priority, and that it is appropriate that systems developments relating to PRISMS and the student visa program proceed through DIAC's internal prioritisation process on their merits. To date, prioritisation decisions have restricted the ability of the Strategic Steering Committee to pursue systems enhancements. Notwithstanding this limitation, the ANAO considers that DIAC should work with DEEWR to reinvigorate the Strategic Steering Committee, given the ongoing importance of data exchange between DIAC and DEEWR for the effective administration of the student visa program. The ANAO suggests that the Strategic Steering Committee oversee an up-to-date stocktake of PRISMS functionality, and develop a new strategic plan for PRISMS enhancements.

Interdepartmental agreements

7.35 At the general policy level, a *Memorandum of Understanding (MOU) on the Promotion of Australian Education Internationally* was finalised in August 2003 between seven Australian Government departments and agencies,

including the then Department of Education, Science and Training (DEST) and the then Department of Immigration and Multicultural and Indigenous Affairs (DIMIA).

7.36   This MOU was developed in the context of renewed attention given by the former Government in 2002 and 2003 to strengthening Australia's engagement in international education and training and building Australia's share of the international education market.[68] The purpose of the MOU was to provide additional impetus to a whole-of-government approach to international education, through:

- clarifying respective roles and responsibilities for the promotion of Australian international education;

- establishing a framework to facilitate cooperation and avoid duplication;

- providing for the most effective use of relevant Commonwealth resources; and

- identifying and addressing priority issues for early attention.

7.37   The Interdepartmental Committee on International Education, chaired by DEEWR, was listed as a primary mechanism for cooperation, and to which progress on action arising under the MOU was to be reported. All parties to the MOU agreed to build cooperative working relationships through:

- consulting at an early stage on policy initiatives and program changes that would affect the international education industry and business opportunities for Australian providers of education, training and scientific services;

- taking into account immigration risk when determining priority markets and marketing strategies relating to study in Australia;

- sharing market intelligence;

- providing advance notice to other agencies and, where relevant, to the industry of routine administrative changes or portfolio announcements of interest; and

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[68]   The then Howard Government's objectives for the international education sector were set out in a ministerial statement, *Engaging the World through Education*, released by the then Minister for Education, Science and Training, the Hon. Brendan Nelson, in October 2003.

- working together to produce complementary outcomes in priority areas.

7.38 At the commencement of the audit, the MOU was still technically in place, having not formally been superseded, but had lost currency and was no longer operational. With the passage of time, particular initiatives mentioned in the MOU had either been implemented or modified and its priorities had not been updated. The Interdepartmental Committee on International Education to which progress against these priorities was reported had lapsed. A three-year strategic plan for AEI foreshadowed in the MOU was published as AEI Strategic Directions 2005–2008, and this was not replaced until November 2010, with the launch of a new AEI Strategic Plan 2010–2015.

7.39 On 1 July 2010, AEI transferred responsibility for the international marketing and promotion of Australian education and training to the Australian Trade Commission (Austrade), implementing a Government decision taken in 2009. In conjunction with this transfer, DEEWR and Austrade signed an *MOU in relation to the international marketing and promotion of Australian education*.

7.40 Notwithstanding the similarity of the names of the two MOUs, the MOU between DEEWR and Austrade is not a replacement of the 2003 MOU, being directed specifically to the practical implementation of the functional transfer between the agencies.[69] In accordance with this purpose, DIAC was not invited to participate in the MOU but was included in consultations during its development.

7.41 There remains a whole-of-government aspect to international education in the form of the *COAG International Students Strategy for Australia 2010–2014*, released in October 2010. The MOU with Austrade records that DEEWR leads the whole-of-government approach to the implementation of the Strategy. However, there is now no high-level agreement between all the key agencies setting out strategic priorities and cooperative arrangements to achieve these in the same way as contained in the 2003 MOU.

7.42 The ANAO identified only one other document in the nature of an inter-agency agreement between DEEWR and DIAC. This is a document

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[69] The objectives of the MOU are to define the relationship and services provided by Austrade and DEEWR/AEI, following the functional transfer; and establish procedures and mechanism for delivery of services and the accountability for deliverables.

setting out protocols for key stakeholders to assist international students following the closure of an education provider. These protocols clarify the critical processes and stakeholders' roles and responsibilities involved in the management of provider closures under the ESOS Act. The aim is to achieve minimal disruption for overseas students affected by a provider closure.

7.43   DEEWR generally takes the lead in managing such closures, but specific DIAC responsibilities are identified in the protocols. While the management of provider closures is outside the scope of the audit, DIAC did not raise any particular issues with the ANAO in relation to the effective functioning of these protocols during the provider closures that occurred in 2009–10.

Inter-agency meetings

Multi-agency meetings

7.44   The international education sector and the ESOS legislative framework which governs it include roles for state and territory government agencies, industry groups and various Australian Government departments. There are a range of meetings involving these parties in which DIAC and DEEWR participate.

7.45   At the national level, the Joint Committee on International Education (JCIE) supports the Ministerial Council on Education, Employment, Training and Youth Affairs. Under this framework, an ESOS Implementation Group, comprising DEEWR, DIAC and relevant state and territory agencies was set up in 2001 to ensure national consistency in the registration of providers under CRICOS and the implementation of the National Code. In early 2009, JCIE agreed to broaden the focus of the ESOS Implementation Group and it was re-established as the International Quality Implementation Group (IQIG) in August 2009.

7.46   IQIG is chaired by DEEWR and the majority of its business falls within DEEWR's responsibilities for managing the ESOS framework, where coordinated action with state and territory authorities is required. While DIAC is a full member of IQIG, it rarely has specific action items. Its primary involvement is working with DEEWR to ensure that immigration policy settings for the student visa program are appropriately represented in advice to the JCIE and in the IQIG work program.

7.47   The principal industry consultation forum is the Government Industry Stakeholder Consultation (GISC) meeting. This meeting takes place at six monthly intervals and hosting and chairing responsibility is shared between DIAC and DEEWR on an alternating basis. The meeting is used by the departments to brief and receive feedback from the peak bodies representing the various education sectors providing courses to overseas students on current and planned activities affecting overseas students. Both departments also meet as required with industry representatives for specific consultation on particular areas of policy. DIAC's financial requirements workshop with industry representatives in June 2010, mentioned in Chapter 5, is an example.

7.48   As well as these meetings, there are also various interdepartmental committees that are established to manage particular issues, such as the IDC on the Safety of International Students, established and chaired by the Department of the Prime Minister and Cabinet to coordinate the Government response to attacks on Indian students in 2009.

DIAC-DEEWR meetings

7.49   The abovementioned forums are multi-agency meetings where DIAC and DEEWR are either jointly representing Australian Government interests, or contributing as individual departments to a broader, multi-agency undertaking. While they constitute a broad and healthy framework of meetings where DIAC and DEEWR interact, they are not suitable forums for DIAC and DEEWR to negotiate their relationship on student visa program issues.

7.50   In terms of meetings comprising only DIAC and DEEWR for such a purpose, the PRISMS Strategic Steering Committee and the PRISMS Technical Working Group discussed earlier in this chapter are specific purpose forums focused on systems interoperability and data exchange through PRISMS.

7.51   Provision for a monthly liaison meeting between DIAC and DEEWR was made in a document titled *DEST-DIMIA Protocol for Cooperation and Information Exchange*, dating to 2003. This meeting evolved into the DEEWR-DIAC Liaison (DDL) meeting, which provides a regular forum for discussion of policy and administrative issues relating to the student visa program and international education. The DDL meetings are hosted and chaired alternately by DIAC and DEEWR.

7.52   Up to and including 2008, DDL meetings occurred every two months on average. Wider intervals between meetings became the trend during 2009

and 2010. Four meetings took place in 2009 and the first meeting for 2010 occurred in February, followed by an interval of four months before the second DDL meeting of the year in July 2010.

7.53 The 2003 Protocol stated that the objective of the monthly liaison meetings was to address operational issues regarding the ESOS and Migration legislation in order to facilitate a greater understanding and a more practical implementation. The majority of issues raised in the DDL forum remain issues arising from day-to-day operations, such as the visa requirements for particular student cohorts and education sectors, the interaction of PRISMS with DIAC's compliance operations, provider actions supporting the ESOS framework requirements and the interpretation of provisions of each department's legislation.

7.54 Given the DDL's focus on such operational issues, there has been no standing forum to develop or negotiate higher-level policy issues. The development of major migration policy initiatives in 2009–10, such as the changes to the skilled migration program and student visa integrity measures, were developed and negotiated in separate forums attached to Cabinet processes.

7.55 DIAC created an internal International Students Taskforce to coordinate and negotiate its participation in several major policy processes taking place in 2009–10, including the Baird Review of the ESOS Act, the development of COAG's International Students Strategy, and the Senate Education, Employment and Workplace Relations Committee Inquiry into the Welfare of International Students. That Taskforce dealt directly with DEEWR and other departments on those issues as required and it lapsed once this work was completed.

7.56 As the only regular meeting between DIAC and DEEWR addressing issues on the student visa program as a whole, the DDL could act as a forum for policy coordination between the departments. That potential role, however, is constrained by the lack of any higher-level forum sitting above the DDL to task it, receive reports and recommendations and guide its deliberations. The absence of such a forum also means that the DDL is unable to develop and work on a forward agenda of strategic issues. It therefore remains a reactive body, limited to information exchange and to facilitating the resolution of operational issues.

Working level contact

7.57 The audit team observed a good level of working cooperation between DIAC and DEEWR participants in the PRISMS Technical Working Group. With regard to more general contact between the Student Policy Section of DIAC and AEI, the DDL is used as the main conduit for the passage of information. The effectiveness of this approach depends, however, on how regularly the DDL meets. As already noted, the interval between DDL meetings can vary and has been getting longer. Accordingly, it would be desirable for DIAC to consider providing the range of reports and information it produces on the student visa program automatically to DEEWR.

7.58 DIAC does not have responsibility for education providers but, in the course of administering the student visa program, becomes aware on occasion of issues relevant to provider behaviour and performance. DIAC passes such information to the compliance area of AEI on an ad hoc basis, and AEI assesses and responds to these referrals in accordance with its regulatory responsibilities and priorities. The ANAO considers that it would be useful for the departments to consider standardising arrangements for the passage of such information to DEEWR and feedback to DIAC on each referral, particularly given that there are jurisdictional limitations in some cases on DEEWR's ability to take action of which DIAC may not be fully aware.

7.59 DIAC advised the ANAO that, in late 2010 and early 2011, information exchange and cooperation with DEEWR had been further facilitated through:

- the secondment of a DEEWR officer to the secretariat supporting the current Review of the Student Visa Program;

- the appointment of a permanent officer from DEEWR to head DIAC's Student Visa Policy Section; and

- plans to establish a regular policy forum between DIAC and DEEWR at the Assistant Secretary and Director level.

7.60 Furthermore, as part of its decision to commission the Review of the Student Visa Program, the Government established a new Interdepartmental Forum on International Education, chaired by DEEWR, with representation from DIAC, the Department of the Prime Minister and Cabinet, the Department of Industry, Innovation, Science and Research, the Department of Foreign Affairs and Trade, Austrade and AusAID. The terms of reference for this Forum are to support and monitor the Review and develop a whole-of–

government approach to international education. This Forum held its inaugural meeting in February 2011.

Conclusion

7.61 There are extensive contact points between DIAC and DEEWR relating to the student visa program and international education, but there are structural gaps in the quality of these contacts which are inhibiting a fully effective collaborative relationship. There is no overarching formal agreement or MOU setting out a framework for cooperation between the departments and the goals that such cooperation should aim to advance. There is regular interaction in multi-agency meetings and whole-of-government policy forums, but forums for cooperation between the two departments are restricted to working level issues. This has meant that some longstanding problems have not been able to be resolved, including addressing the growing backlog of NCNs and the lack of progress on the implementation of a unique student identifier. The one committee structure—the PRISMS Strategic Steering Committee—mandated by an MOU that is meant to operate at a strategic level and with senior level representation at First Assistant Secretary level has not met since April 2009.

7.62 In particular, there is no high-level forum for DIAC and DEEWR to maintain a dialogue about their respective strategic policy directions and settings as they affect overseas students, to establish priorities for cooperative activity, and to develop an agreed strategic approach to the interaction of the student visa program and the international education sector. Such a capacity is a prerequisite for working towards a shared strategic vision for the future development of international education and the student visa program's contribution to the sector.

7.63 There are currently a number of key developments and emerging policy challenges in the student visa and international education policy environment, including the:

- implications of the decline in overseas students coming to Australia in 2009–10 and the resulting contraction of the international education sector;

- Government's commitment to achieving a sustainable international education sector, and determining what that will entail;

- functional changes within DEEWR deriving from the transfer of the responsibility for the overseas promotion of international education to

Austrade, the implementation of the recommendations of the Baird Review of the ESOS Act, and the release of DEEWR's *Re:New AEI Strategic Plan 2010–2015*; and

- ongoing impact of the DIAC transformation process on the student visa program, including developments such as the Generic Visa Portal, risk tiering and the move to one hundred per cent electronic visa lodgement.

7.64 The Review of the Student Visa Program can also be expected to initiate an agenda for change to address a number of these challenges. In order to effectively manage these developments and improve collaboration, the ANAO considers that a high-level forum between DIAC and DEEWR is required to provide for appropriate strategic dialogue between the departments.

Recommendation No.6

7.65 To improve collaboration arrangements, the ANAO recommends that DIAC establish, in conjunction with DEEWR, an appropriately high-level forum to:

- develop an agreed strategic approach to the interaction of the student visa program and international education; and

- establish priorities for cooperative activity between the departments relating to overseas students.

DIAC Response: *Agreed.*

7.66 DIAC agrees to establish a high–level strategic forum in conjunction with DEEWR as recommended. Effective cooperation between DIAC and DEEWR is critical to the effectiveness of the Student visa program and the continuing development of a high quality, sustainable international education industry.

7.67 Discussions with DEEWR have already commenced at the Assistant Secretary level about the establishment of a group to discuss each Department's respective strategic policy directions and settings as they affect overseas students, to establish priorities for cooperative activity, and to develop an agreed strategic approach to the interaction of the student visa program and the international education sector. It is envisaged that the group will be underpinned by a Terms of Reference.

7.68   The Interdepartmental Forum, which is being managed within DEEWR, will also ensure the development of a whole–of–government strategic approach to international education. DIAC is represented by high–level officers at this forum.

Ian McPhee   Canberra ACT

Auditor-General   31 May 2011

Appendices

Appendix 1: Agency comments

Department of Immigration and Citizenship

GCD
1·1 MAY 2011
9.30

Australian Government
Department of Immigration and Citizenship

SECRETARY

5 May 2011

Ms Barbara Cass
Acting Group Executive Director
Performance Audit Services Group
Australian National Audit Office

11/5/2011

Dear Ms Cass

ANAO Performance Audit: Management of the Student Visa Program

Thank you for your letter of 14 April 2011 and the opportunity to comment on the proposed audit report on *Management of Student Visas*.

The Department of Immigration and Citizenship (DIAC) agrees with the recommendations in the report. DIAC's formal response to each of the recommendations has been included at **Attachment A**.

Additional detailed commentary, including of an editorial nature, has been included in the form of a table as **Attachment B**.

As requested, please find below a short summary of DIAC's comments for inclusion in the report summary and brochure:

> The Department of Immigration and Citizenship (DIAC) has welcomed the opportunity to contribute to the ANAO performance audit *Management of Student Visas* and agrees with the recommendations made in the report. The ANAO's report recognises that DIAC's management of the student visa program has successfully supported the unprecedented growth of one of Australia's largest export industries and has enabled over a million and a half students to access high quality education in Australia.

> The complexity of the student visa program presents a number of challenges for the Department and the ANAO has identified several administrative structures and processes where there is scope for improvements to be made. The Department believes the implementation of the ANAO's recommendations will strengthen DIAC's management of student visa processing, student visa compliance and cooperation between DIAC and DEEWR.

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Should you require any further clarification about this matter, please contact Regina Camara, Director, Student Visa Policy, on (02) 6264 2015 or via email at regina.camara@immi.gov.au.

Yours sincerely

(Andrew Metcalfe)

Attachment A

Response to the ANAO's audit report on the *Management of Student Visas*

Recommendation No. 1

To improve DIAC's management of risk in the student visa program, and to better align student visa requirements and immigration risk, the ANAO recommends that DIAC undertake a review of its process for determining country and education sector assessment levels for student visa applications.

DIAC Response: Agreed.

The Strategic Review of the Student Visa Program announced by Ministers Bowen and Evans on 16 December 2010, being undertaken by the Hon Michael Knight AO, will examine and make recommendations on "approaches to more effectively gauge and manage immigration risk in the Student visa caseloads, including considering the suitability of the Assessment Level model" (Review Terms of Reference, no. 3: www.immi.gov.au/students/_pdf/review-terms-of-reference.pdf).

It is possible that as a result of the Knight Review's outcomes, the Assessment Level framework may need to undergo significant changes.

Until the outcomes of the Knight Review are known, it is proposed that the 2011 review of Assessment Levels be undertaken according to best practice principles as identified in the ANAO report.

Recommendation No. 2

To confirm that the eVisa lodgement facility for students is meeting its objectives and the needs of the student visa program, the ANAO recommends that DIAC evaluate the facility with a view to:

- *incorporating the findings in planning for the further development of eLodgement and eVisa; and*

- *formally resolving the status of the eVisa 'trial' for higher risk countries.*

DIAC Response: Agreed.

DIAC agrees to review the eVisa lodgement facility as recommended. DIAC is currently in the process of finalising a student eVisa agent registration process and, once completed, work can begin on an evaluation of the eVisa lodgement facility for students. In conjunction with the finalisation of the current

registration process, the status of the eVisa 'trial' for higher risk countries will be formally resolved and references to the trial removed from all public information.

Recommendation No. 3

To effectively manage the performance of eVisa agents registered under the eVisa facility for higher risk countries, the ANAO recommends that DIAC maintain a program of audits and evaluation of eVisa agent compliance with the terms of the facility's Deed of Agreement.

DIAC Response: Agreed.

DIAC agrees that a regular program of audits and evaluation of registered eVisa agents would ensure a high level of integrity among participating agents and further enhance the integrity of the Student visa program.

Recommendation No. 4

To improve the effective application of the mandatory conditions attached to student visas, the ANAO recommends that DIAC review:

- *whether the student visa cancellation regime applying to the visa conditions for student course attendance and progress is achieving DIAC's integrity and compliance objectives; and*

- *the operation of the student work rights limitation in relation to evidentiary requirements, decision-maker discretion and compliance resources.*

DIAC Response: Agreed.

DIAC agrees that the student visa cancellation regime and the operation of the student work rights limitation need to be reviewed. It is expected that the Knight Review of the Student visa program will present findings in relation to both of these areas and a review will be considered within this context.

Recommendation No. 5

To better manage the flow of Non-Compliance Notices, and to assist in the better targeting of DIAC's compliance resources, the ANAO recommends that DIAC review the:

- *necessity for each type of Student Course Variation to be reported by DEEWR to DIAC; and*

- *appropriateness of each type of Student Course Variation converting automatically to a Non-Compliance Notice.*

DIAC Response: Agreed.

DIAC agrees to this recommendation, while noting that it is expected that the Knight Review of the Student visa program may also recommend changes pertaining to this aspect of the program. Work is already underway to review the appropriateness of each type of Student Course Variation converting automatically to a Non–Compliance Notice and a proposal has been developed to implement the required system changes.

Recommendation No. 6

To improve collaboration arrangements, the ANAO recommends that DIAC establish, in conjunction with DEEWR, an appropriately high-level forum to:

- *develop an agreed strategic approach to the interaction of the student visa program and international education; and*

- *establish priorities for cooperative activity between the departments relating to overseas students.*

DIAC Response: Agreed.

DIAC agrees to establish a high–level strategic forum in conjunction with DEEWR as recommended. Effective cooperation between DIAC and DEEWR is critical to the effectiveness of the Student visa program and the continuing development of a high quality, sustainable international education industry.

Discussions with DEEWR have already commenced at the Assistant Secretary level about the establishment of a group to discuss each Department's respective strategic policy directions and settings as they affect overseas students, to establish priorities for cooperative activity, and to develop an agreed strategic approach to the interaction of the student visa program and the international education sector. It is envisaged that the group will be underpinned by a Terms of Reference.

The Interdepartmental Forum, which is being managed within DEEWR, will also ensure the development of a whole–of–government strategic approach to international education. DIAC is represented by high–level officers at this forum.

Department of Education, Employment and Workplace Relations

GED
1 2 MAY 2011
10am

Australian Government
Department of Education, Employment and Workplace Relations

Secretary
Lisa Paul PSM

Ms Barbara Cass
Group Executive Director
Performance Audit Services Group
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

12/5/2011

Dear Ms Cass

Performance Audit of the Department of Immigration and Citizenship's Management of Student Visas

Thank you for providing the Department of Education, Employment and Workplace Relations (DEEWR) with an opportunity to comment on the relevant elements of the Section 19 Report of the ANAO's Performance Audit on DIAC's *Management of Student Visas*.

While DIAC was the primary auditee, DEEWR is a key stakeholder. In noting Recommendations 5 and 6, the department will work with DIAC to strengthen existing processes to ensure that the Student Visa Program operates effectively.

As requested, the department's response to the Section 19 Report (Attachment A) includes a short summary which will be included in the report brochure and the body of the report as well as our response to the relevant recommendations.

If you have any queries regarding this matter please contact Mr Colin Walters, Group Manager, International Group on 6240 8140.

Yours sincerely

Lisa Paul

May 2011

50 Marcus Clarke Street, Canberra ACT 2601
GPO Box 9880, Canberra ACT 2601 | Phone (02) 6121 6000

www.deewr.gov.au | ABN 63 578 775 294

Attachment A

DEEWR's Response to ANAO Report

1. <u>DEEWR Management Response for inclusion in the Audit Report on the Management of Student Visas, Department of Immigration and Citizenship</u>

The Department of Education, Employment and Workplace Relations (DEEWR) appreciates the opportunity to participate in the Performance Audit of the Management of Student Visas by the Department of Immigration and Citizenship (DIAC).

DEEWR notes that while the ANAO referred to the Department in two of the Report's recommendations, and that these recommendations are directed to DIAC as the lead agency, DEEWR acknowledges that both Recommendations 5 and 6 are aimed at improving existing management practices and further strengthening current processes in relation to the Student Visa Program.

DEEWR welcomes the ANAO's findings that:

1. The relationship between the Departments [DIAC and DEEWR] is effective at the working level (Summary, para 23).

2. Both DIAC and DEEWR are on record as stating that they work closely together (para 7.9).

3. To support data quality between PRISMS and ICSE, DEEWR performs a daily reconciliation of the number of transactions sent from DIAC that are received into PRISMS, and a confirmation of transmissions is sent to DIAC of these totals (para 7.18).

4. The PRISMS Technical Working Group has maintained a regular meeting schedule over several years. Examination of the records of these meetings, and direct observation of the May 2010 meeting by the audit team, indicated that an effective working relationship exists between DIAC and DEEWR staff. This includes regular out-of-session contact. Technical issues arising with PRISMS effectively addressed at a practical level (para 7.28).

5. The forums [mentioned in the ANAO report] are multi-agency meetings where DIAC and DEEWR are either jointly representing Australian Government interests, or contributing as individual departments to a broader, multi-agency undertaking (para 7.49).

DEEWR's response to each of the audit's recommendations is as follows:

Recommendation No. 5

To better manage the flow of Non-Compliance Notices, and to assist in the better targeting of DIAC's compliance resources, the ANAO recommends that DIAC review the:

- *necessity for each type of Student Course Variation to be reported by DEEWR to DIAC; and*

- *appropriateness of each type of Student Course Variation converting automatically to a Non-Compliance Notice.*

Noted.

DEEWR will assist DIAC in reviewing each type of Student Course Varitaion for ongoing reporting purposes.

Recommendation No. 6

To improve collaboration arrangements, the ANAO recommends that DIAC establish, in conjunction with DEEWR, an appropriately high-level forum to:

- *develop an agreed strategic approach to the interaction of the student visa program and international education; and*

- *establish priorities for cooperative activity between the departments relating to overseas students.*

Agreed.

An Interdepartmental Forum, which includes DEEWR and DIAC, was established in December 2010 by the Government, to ensure a comprehensive strategic review of the student visa program and develop a long-term whole of government strategy for international education.

2. <u>Short Summary of DEEWR's comments for inclusion in preparation of report summary and brochure</u>

DEEWR appreciates the opportunity to participate in the Performance Audit of Management of Student Visas by the Department of Immigration and Citizenship.

DEEWR notes that the ANAO has referred to this Department in two of the Report's recommendations, and that these recommendations are directed to

DIAC as the lead agency. DEEWR acknowledges that both Recommendation 5 and 6 are aimed at improving existing management practices and further strengthening current processes in relation to the Student Visa Program.

Appendix 2: Student visa application lodgement process

Figure A 1

Student visa applications—the lodgement process
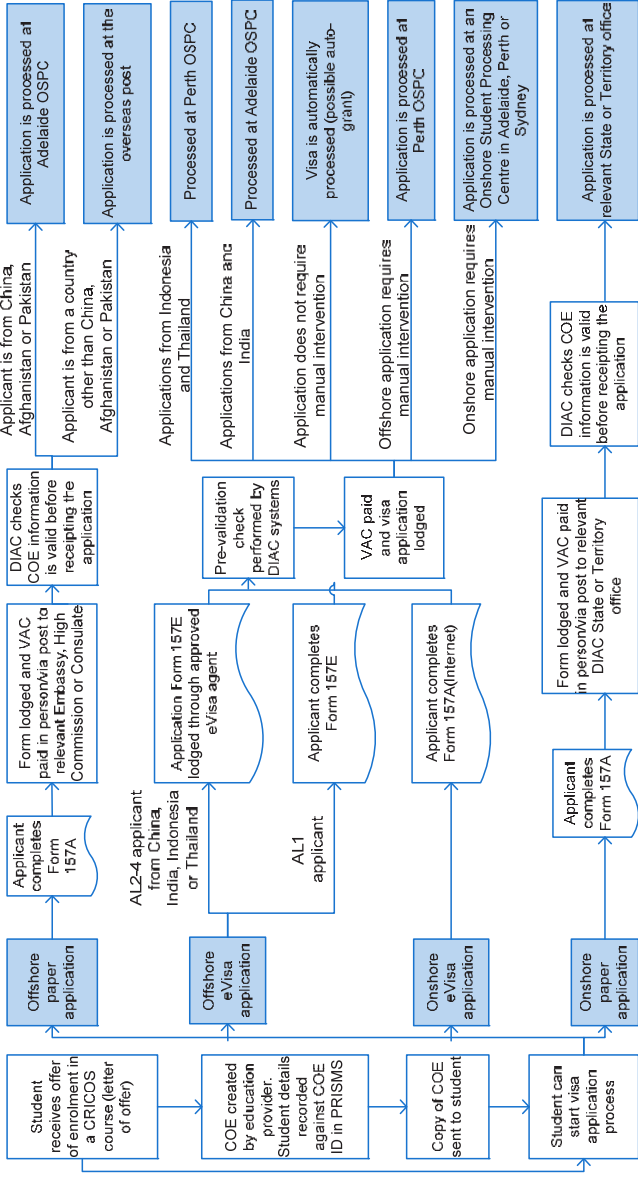
Source: ANAO analysis of DIAC data.

Appendix 3: Student visa application decision-making process

Figure A 2

Student visa applications—the decision-making process
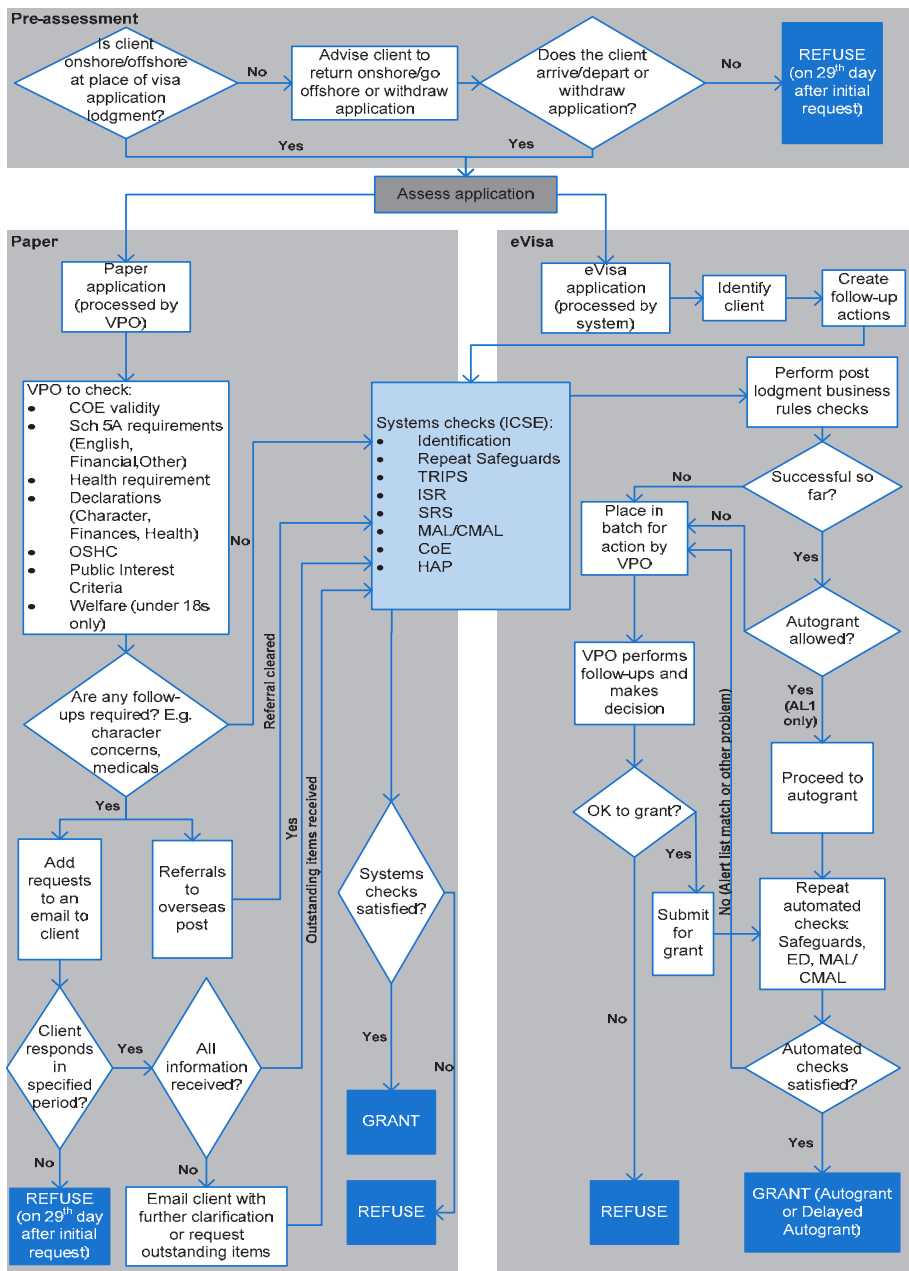
Source: ANAO analysis of DIAC data.

Appendix 4: Overview of assessment level requirements

Table A 1

Evidentiary requirements for AL1 to AL5 student visa applications

	Evidence of English Language Proficiency	Evidence of Financial Capacity	Academic Qualifications	Age
AL1	Enrolment by education provider.	A declaration that they have sufficient funds to support their entire stay in Australia.	Enrolment by education provider.	Minimum 6 years of age.
AL2	Enrolment by education provider.	- Evidence of funds to pay for their expenses for the **first 12 months** of their stay; - A declaration that they have sufficient funds to support the remainder of their stay in Australia; and - Funds can be provided by any individual willing to support the applicant if they can demonstrate their income stream.	**Postgraduate Research**: Undergraduate degree. **All other sectors**: Enrolment by education provider.	Minimum 6 years of age.

	Evidence of English Language Proficiency	Evidence of Financial Capacity	Academic Qualifications	Age
AL 3	**Independent ELICOS and Schools**: Enrolment by education provider. **VET and Non-Award**: 5.5 IELTS or 4.5 IELTS with a preliminary ELICOS course. **Higher Education and Postgraduate Research**: 6.0 IELTS or 5.0 IELTS with ELICOS course.	- Evidence of funds to pay for their expenses for the **first 24 months** of their stay (or duration of time from arrival in Australia to start of course plus first 12 months of principal course for Postgraduate Research students applying from overseas. First 12 months of principal course for Postgraduate research students applying in Australia); - A declaration that they have sufficient funds to support the remainder of their stay in Australia; - Funds can be provided by any individual willing to support the applicant if they can demonstrate their income stream; and - If evidence of funds is a money deposit, must show a **3 months savings history** (except for Postgraduate Research Students).	**Schools**: Completed Year 6 **VET**: Completed Year 11 **Higher Education**: Completed Year 12 or Year 11 and foundation studies or Cert IV **Postgraduate research**: Undergraduate degree	Minimum 6 years of age.

	Evidence of English Language Proficiency	Evidence of Financial Capacity	Academic Qualifications	Age
AL4	**Independent ELICOS**: 5.0 IELTS **Schools**: If over 16 years and outside Australia: 5.0 IELTS or 4.0 IELTS with preliminary ELICOS. **VET and Non-Award:** 5.5 IELTS or 5.0 IELTS with a preliminary ELICOS course. **Higher Education and Postgraduate Research**: 6.0 IELTS or 5.0 IELTS with ELICOS course.	- Evidence of funds to pay for their expenses for the **first 36 months** of their stay (or duration of time from arrival in Australia to start of course plus first 12 months of principal course for Postgraduate Research students applying from overseas. First 12 months of principal course for Postgraduate research students applying in Australia); - A declaration that they have sufficient funds to support the remainder of their stay in Australia; - Funds must be provided by close relatives only who can demonstrate their income stream; and - If evidence of funds is a money deposit, must show a **6 months savings history.**	**Schools**: Completed Year 9 **VET**: Completed Year 12 **Higher Education**: Completed Year 12 or Year 11 and foundation studies or Cert IV **Postgraduate research**: Undergraduate degree	Minimum 6 years of age.
AL5	**All subclasses:** IELTS 7.0.	- Evidence of funds to pay for their expenses for the **full period** of their stay; - Funds must be provided by the applicant; - Evidence of income stream; and - If evidence of funds is a money deposit, must show a **5 year savings history**.	**Postgraduate research:** Undergraduate degree **All other sectors (excluding Schools sector):** Year 12. **Schools:** Year 9.	Minimum 6 years of age.

Source: DIAC.

Note: The above table offers a summary of key evidentiary requirements for student visa applicants. It is not intended as a comprehensive list of all requirements/forms of evidence in Schedule 5A to the *Migration Regulations 1994*.

Appendix 5: Cancellation process for breaches of student visa condition 8202

Figure A 3

Cancellation process for breaches of condition 8202

Source: DIAC.

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