

UNITED DAIRYFARMERS OF VICTORA



# Response to the Inquiry into the Business Innovation and Investment Programme

**June 2014**



## Introduction

The United Dairyfarmers of Victoria (UDV) is the collective voice of Victorian dairy farmers, representing its members to governments and industry at state and local levels. As a commodity group of the Victorian Farmers Federation (VFF), the UDV also provides representation on a broad range of agricultural issues affecting all farmers, not just those specific to dairy. The UDV is also the largest member of Australian Dairy Farmers Ltd (ADF), thereby representing Victorian dairy farmers at a national level.

### Summary:

- The UDV has been involved with the BIIP since 2012 when we became aware of the difficulties former New Zealanders, now dairy farming in Victoria, were experiencing with their immigration applications.
- There are many people who are unaware they are eligible to apply through this programme.
- The UDV submits that the decline in application rates is due to:
  - a. Uncertainty surrounding eligibility requirements
  - b. Little confidence in the application process based on previous experiences
  - c. Significant cost of application and no chance of refund
- The UDV has invested significant time and resources in negotiating to have key assessment criteria changed and clarifying terms and assessment criteria.
- Now that this work has been completed, we are communicating the opportunity to our members; therefore more applications will be lodged.

### BIIP – The UDV’s priority

The UDV has been actively involved in the Business and Innovation Program due to what we believe is a significant number of our members being New Zealand citizens and dairy farm owners who have indicated an intention to apply for Permanent Residency. The Special Visa Category (permanent) (subclass 888) is the most appropriate visa for these people given the substantial financial investment these people have made in the economy and the restrictions of other visa options.

The difficulty former New Zealanders have had in gaining Australian permanent residency status and then citizenship has been an issue in the dairy industry for more than five years. In recent years, the UDV has made assisting New Zealanders gain permanent residency a part of our work priorities. This decision was made because:

- It is estimated that 200 - 300 dairy farm owners in Victoria are former New Zealanders.



- The UDV has a database of over 40 farming families who have indicated an intention to apply for permanent residency. These contacts were gained through advertising in Hotline, a Victorian dairy industry magazine produced by the UDV.

### **New Zealanders and the BIIP**

New Zealanders who arrive in Australia without an alternative visa are granted a 444 Special Category Visa upon meeting basic requirements. This is a temporary visa that lets them stay and work in Australia as long as they remain a New Zealand citizen. However, it does not afford them the same rights as being a permanent resident does, including being able to:

- Vote in Australian government elections
- Access some Special Circumstances Assistance (drought and flood assistance)
- Access student loans
- Join the Australian Defence Force
- Obtain ongoing work for the Australian Government

On 1 July 2012, Immigration Laws were changed to create the Business Innovation and Investment (Permanent) (subclass 888) visa. On this same date, the Immigration Department made it possible for subclass 444 visa holders to apply directly for an 888 visa, with fewer requirements than other visa holders.

The UDV believes this is the most appropriate path for New Zealanders who have bought dairy farms in the regions, as it is 'positioned' to target migrants that have demonstrated history of success in innovation and business and are able to make a significant contribution to the national innovation system and to the Australian economy. There are few other options for these New Zealanders to become permanent residents.

Since 2012, the UDV has been liaising with the Immigration Department and Victorian State departments to clarify eligibility.

### **Response to the Inquiry into the Business Innovation and Investment Programme**

Given the UDV's involvement in the BIIP, we wish to address the following two terms of reference in this submission:

1. Consider the conditions involved in the decline in rates of application for the BIIP, in light of rates of application for the previous Business Skills Program.
2. Evaluate the current eligibility criteria, with particular regard to the operation of the BIIP points test, and its effectiveness in selecting suitable migrants.

We will limit our focus to New Zealand applicants who hold SCV 444.



**1. Consider the conditions involved in the decline in rates of application for the BIIP, in light of rates of application for the previous Business Skills Program.**

Our members have indicated a willingness to become permanent residents as a first step to citizenship but have stopped trying due to the near impossibility of success from previous application experiences. These people have indicated they want to apply, and they are eligible, but they just don't know how to. They are motivated by the uncertain status of their children and want to secure their future but have become disengaged with a system that has lacked clarity.

**a. Uncertainty as to who is eligible**

Despite a large number of people eligible to apply for the BIIP, most of them were unaware that they qualified until UDV recently informed them about this visa option. The UDV contends that the decline in rates of application for the new programme is due to a lack of information on the developments that have occurred that is clear, easy to understand, and simple to access.

Both the State Nomination website and the Department of Immigration and Border Control websites were only recently amended to identify that this path is now available.

To gain a Subclass 888, holders of SCV 444 require State Nomination before they can apply. Up until this year, the Victorian State Nomination website <http://www.liveinvictoria.vic.gov.au/visas-and-immigrating/business-visas/888a-business-innovation-permanent-visa> did not list SCV 444 holders as being eligible to apply. It was only due to the UDV lobbying the Department of Immigration and Border Protection outreach Victoria officers that this was amended on 31 January this year.

Similarly, the DIBP website <http://www.immi.gov.au/Visas/Pages/888.aspx> only stated SCV 444 holders were eligible to apply after the UDV repeatedly requested this inclusion be made. It was amended on 17 January this year, despite this process being implemented on 1 July 2012.

After this change was made, the UDV thoroughly examined the DIBP website to assess whether the changes were consistent in process and language, within and between the two websites. At the UDV's insistence, further changes were necessary.

The lack of basic clarity on the two websites has resulted in misinformation being disseminated. At stages, knowledge of the 888 visa option was poor and people were recommended to apply for other permanent visas. One of our members has informed us that they had consulted a Migration Agent last year on whether they were eligible to apply for the BIIP. The migration agent researched



their suitability and later advised that they were unable to apply for this programme. If a specialist is unable to determine eligibility, the challenge facing our members is understandable.

Since the websites have been updated, UDV has been directing eligible New Zealand citizens to them. We believe this, together with clearer information now available from the department, will encourage more people to apply for the BIIP.

#### **b. Uncertainty surrounding eligibility requirements**

The UDV submits that more people would apply for the BIIP if they were sure of the eligibility requirements and were able to access clear definition of terms. We have been contacted by many of our members who are eligible to apply for this program, but are unsure what requirements need to be met and how they can be met.

For example, one of the requirements to show an 'ongoing business involvement' is to prove that the business had an annual turnover of at least AUD300,000 in the 12 months before the applicant applies. However, a nominating state or territory might agree to waive this requirement if the applicant lives and operates the business in a specified regional area of Australia. The UDV found it difficult to ascertain what a 'specified regional area' was on the DIBP website or in the regulations. The UDV requested this information from DIBP on 20<sup>th</sup> January 2014, and clarification was provided via email on 6<sup>th</sup> February 2014. The DIBP conceded that there are many definitions of 'regional' within immigration regulations.

Another problem that has prevented some of our members from applying for the BIIP was the incorrect belief that a Migration Agent was needed to lodge applications. Many of our members stated that they could not afford a Migration Agent or couldn't justify engaging one. This confusion is compounded by the current Live In Victoria website: <http://www.liveinvictoria.vic.gov.au/visas-and-immigrating/business-visas/888a-business-innovation-permanent-visa>.

The website states:

There are three parts to the visa nomination application. You will need to complete:

1. The online application form at [Apply for visa nomination](#)
2. [State Nomination Statement \(PDF, 403 KB\)](#). This needs to be saved and uploaded at the end of your online sponsorship application.
3. [Appointment of an Agent and Sponsorship Conditions Forms \(DOC, 341 KB\)](#). These should be printed, signed, scanned and saved, then uploaded at the end of your online nomination application.



The third requirement incorrectly states that an 'Appointment of an Agent' form is necessary to complete a State Nomination application. The UDV has brought this problem to the attention of the Business Migration Unit (Victorian State department) via phone and email on 26<sup>th</sup> May 2014. We were informed that the problem would be rectified by 1 July by separating the two forms in requirement three. The UDV also requested that the wording of the third requirement be changed to '*Appointment of an Agent (if you have an agent representing you)*'. This request was made via email with no response received at this time.

The DIBP acknowledged that there is confusion surrounding the eligibility requirements and have responded to some of the UDV's requests to ease confusion. In October 2013, the UDV requested DIBP produce a 'Factsheet' specifically for holders of Special Category visa (subclass 444) who wish to apply for BIIP. The final Factsheet was produced on 15<sup>th</sup> March 2014 and is now being distributed to our members. The DIBP has also recently produced a flowchart at our request detailing the steps that need to be made through the application process. This is currently being distributed to our members. We expect that these information sheets will assist applicants understand the eligibility requirements.

The UDV contends that as most of the uncertainty surrounding eligibility requirements have been cleared up, eligible applicants will start applying for BIIP. Given most of these changes have only been made in the past four months; the UDV believes applications will start being made soon. We have also received confirmation from our members that they now feel they have enough information to lodge their applications.

### **c. Little confidence in the application process**

Given the uncertainty surrounding who is eligible and how to meet certain requirements, eligible applicants have had little confidence in the application process. Our members have looked into gaining permanent residency before but have been left stymied by a system which failed to detail basic eligibility requirements. Most of them have also had experience with the previous Business Skills program and found that they were ineligible based on the requirements that needed to be met.

Our members have also expressed frustration at the lack of continuity between processing officers. They cannot get access to one person, but instead have had to deal with several staff members on different occasions, with some applicants receiving conflicting information. It has become apparent that immigration staff has lacked knowledge in this area, significantly impeding applications.

Since 2012, the UDV has requested a dedicated processing officer be appointed to deal specifically with SCV 444 holders who wish to apply for a subclass 888 visa. We made this request to attempt to allay members' concerns and assist them in gaining more confidence in this application process. We



have requested this informally on a number of occasions, both verbally and in emails. Finally in February, we were informed that the request needed to be made in writing before it was considered. On 26<sup>th</sup> February 2014, the UDV send a request to the Business Skills Adelaide mailbox to request the Immigration Department appoint a dedicated processing officer or full time equivalent to ensure expedited processing of applications. This request was denied on 27<sup>th</sup> February 2014 via email.

#### **d. Significant cost of application**

The cost of applying for BIIP, and that there is no option to be refunded should the application fail, deters eligible people who have lost confidence in the system from applying.

Currently the base application fee for one applicant is \$2,255. The additional applicant charge for family members 18 and over is \$1,130 and \$565 for family members under 18. This equates to an application fee of \$4,515 for a family of four (two adults, two children). There is no option for this fee to be refunded should the application fail. As explained above, eligibility requirements have been unclear and there is little confidence the application process works. Therefore, families are reluctant to apply.

To try and rectify this lack of confidence, the UDV lodged a submission with DIBP to waive the application fee for two applicant families to 'test' the system. The application was lodged on 31 January 2014, explaining that the families would invest significant time, energy and resources into the application process and would be significantly financially disadvantaged if the application is stifled at any point. We also submitted that it would also be of great benefit to the Department to be able to maintain confidence in this process, given the number of likely applicants. We received a response to our application from Business Innovation, Occupation and Employer Sponsored Policy Section, Department of Immigration and Border Protection, Director Stuart Bett on 6th March 2014, rejecting our submission, citing there was no provision to waive the Visa Application Charge for this class of visa.

The UDV contends that this was an obstructive result for both our members, and the DIBP.

## **2. Evaluate the current eligibility criteria, with particular regard to the operation of the BIIP points test, and its effectiveness in selecting suitable migrants.**

Since 2012, the UDV has worked with the DIBP to have eligibility requirements changed to accurately reflect our members' commitment to investing in the Australian economy.

One of the major stumbling blocks to our members applying for the BIIP was that the applicants had to meet all three of the following criteria:



1. A net value of business assets of at least AUD200,000 in your nominated main business (or two main businesses) in Australia throughout the year immediately before you apply;
2. A net value of personal and business assets of at least AUD600,000 in Australia throughout the year immediately before you apply; and
3. Employed at least the equivalent of two full-time employees (not family members) in your main business throughout the year immediately before you apply.

The third requirement was particularly difficult for some applicants to evidence. For example, many dairy farms provide employment for the husband and wife who own the farm, relief dairy milkers, casual calf rearers, milk truck delivery drivers, machinery drivers and a range of contractors and service providers. However, these employees may not be directly employed by the farm owner, or only a casual basis. In October 2012 the UDV worked with the DIBP to have these requirements changed, so now only two out of the three criteria have to be met.

Having to employ two or more full time staff (not including family members) was a huge obstacle for most of our members. Now this requirement has been changed, and we are notifying our farmers of these changes, we believe more people will apply for this visa.

### **The BIIP programme must continue**

The UDV urges the government to continue the BIIP in its current form. There are few other options available for New Zealand citizens who have invested significantly in the Australian economy and their local communities to become Australian permanent residents.

The UDV has worked with the DIBP to amend the eligibility requirements and to define the current eligibility requirements. Now this work is done, we believe more applications will be received. Once people see others moving through the system, a greater understanding of the application process will be gained and more applicants will be confident in lodging their applications.