



Migration Institute
of Australia

SUBMISSION

**Joint Standing Committee on Migration's inquiry
into the Business Innovation and Investment Visa**



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Enclosed is the Migration Institute of Australia's submission to the Inquiry into the Business Innovation and Investment Programme (BIIP).

The **Migration Institute of Australia** (MIA) is the peak organisation representing the Australian migration advice profession. The MIA represents Australian Registered Migration Agents (RMAs) and lawyers who are involved in the provision of migration advice.

The MIA is a member of Professions Australia, a national organisation of professional associations.

The MIA would be happy to discuss this submission with the Joint Standing Committee on Migration.

Should you require any further information, please contact our Chief Operating Officer.

Yours faithfully,

Angela Chan FMIA
National President, MIA

Executive Summary

The Migration Institute of Australia (MIA), as the peak professional organisation representing registered migration agents, holds interests in all areas of migration policy development and appreciates the opportunity to comment on the Business Innovation and Investment Programme, to ensure the objectives of the programme can be refined and better met.

While the BIIP is specifically designed to increase entrepreneurial talent and to improve business expertise in Australia, current deficiencies in the program have limited its uptake and prevented the program achieving its intended objectives.

The programme incorporates a number of inherently unattractive features:

- The focus of the BIIP is on high technology and high value businesses, and ignores smaller enterprises.
- The programme demonstrates a lack of understanding of inherent differences in national commercial practices and environments between the originating country and Australia.
- There is a lack of business support for business migrants in Australia.
- Comparisons of business opportunities between similar countries and economies to Australia are unfavourable.
- Australia's BIIP business visa threshold requirements also compare unfavourably with other similar countries that also provide this visa pathway.
- The two stage provisional/permanent nature of the visa creates uncertainty for visa holders and then possible difficulties when attempting to access Resident Return Visas and Citizenship.

The MIA makes the following recommendations for changes to the BIIP programme to enhance its desirability to overseas business skills applicants and increase the uptake of the programme:

Recommendation 1

The MIA recommends that if there is a difficulty in attracting interest from high end entrepreneurs and investors, consideration should be given to targeting the middle level of business people who could still make a useful and valuable contribution to the Australian economy.

Recommendation 2

The MIA recommends that the geographic target market for the BIIP should be broadened.

Recommendation 3

The MIA recommends that there should be more business support for business visa holders in Australia.

Recommendation 4

The MIA recommends that the residency requirements for BIIP provisional visas, Resident Return visas and Citizenship be reviewed in the context of the needs of migrant business visa holders.

Recommendation 5

The MIA recommends that consideration should be given to making Australia's business visa requirements more attractive in the context of competition from similar countries.

Recommendation 6

The MIA recommends that consideration should be given to expanding the range of Australian investors who can provide capital for BIIP purposes.

Recommendation 7

The MIA recommends that the funding requirement for the Venture Capital Stream should be reduced to a figure much less than \$1 million and more like seed-funding.

Recommendation 8

The MIA recommends that consideration should be given to having more objective requirements which will inevitably speed up processing of BIIP applications.

Recommendation 9

The MIA recommends that there should be two additional streams in the BIIP; a start-up business stream and a self-employment stream for graduates of Australian universities.

Recommendation 10

The MIA recommends that consideration should be given to making the BIIP a larger component of the Skilled Migration Stream.

MIA Submission

to the Joint Standing Committee on Migration's inquiry into the Business Innovation and Investment Visa

(excluding the Significant Investor Visa stream)

The Migration Institute of Australia (MIA), as the peak professional organisation representing Registered Migration Agents, many of whom deal with visa applications in the Business Innovation and Investment Programme, offers this submission in the interest of ensuring that the objectives of the programme can be refined and better met.

Terms of Reference 1

Assess whether the BIIP is meeting its intended objectives and if any adjustments are necessary.

The Business Innovation and Investment Programme (BIIP), which superseded the Business Skills Programme, was specifically designed to increase entrepreneurial talent. The programme aimed at improving business expertise in Australia by attracting business people of higher net worth with medium to larger businesses, rather than smaller “family” businesses.

Current BIIP cannot meet its intended objective

It is unlikely that the current BIIP can ever be able to properly meet its intended purpose of bringing significant entrepreneurial talent and business expertise for several reasons.

- (i) The inherently unattractive features of the programme [See our discussion in Terms of Reference 2, below] has not resulted in attracting the business people it intended.
- (ii) The focus of the BIIP is on high technology and high value businesses.
However, Australia's population is too small to encourage or support the establishment of many of these businesses in Australia.
- (iii) When the Business Skills program became the BIIP, it went from one extreme to the other.
From a situation where the Business Skills program was sometimes exploited (eg, small retail establishments which in some cases did not last much past the visa grant date), we now have the situation where the focus is on high end technology and businesses and BIIP is missing the middle ground.

Recommendation 1

The MIA recommends that if there is a difficulty in attracting interest from high end entrepreneurs and investors, consideration should be given to targeting the middle level of business people who could still make a useful and valuable contribution to the Australian economy.

(iv) Inherent differences in national commercial practices and environment.

There can be particular issues for business people from other commercial environments who may be contemplating business migration to Australia: different commercial laws, procedures and customs, and the English language, all of which are important for operating a business and gaining local knowledge and networking.

The target “market” for Australia’s BIIP may not be wide enough, as many of the top source countries for this programme operate in different commercial jurisprudences to that of Australia.

“ ... In terms of attracting business people who would feel more comfortable with Australia’s commercial reality, it would make sense to have a wider target market for Australia’s BIIP program to include countries which have a more similar commercial environment.”¹

Recommendation 2

The MIA recommends that the target market for the BIIP should be broadened.

(v) Lack of support for business migrants in Australia.

By far the top source country for business visa grants in Australia is currently China.

An important study provided by Dr Ling Deng for the Migration Institute of Australia analyses the experiences of Chinese business people in Australia and the implications for government policy. The study states that there should be greater support for business migrants if Australia is to achieve the goals of the BIIP program.² [See ATTACHMENT 1]

¹ Dr Ling Deng, “The Aspirations of Chinese Business Migrants in Australia: Barriers, Opportunities and Implications for Government Policy Development”, *Migrating to Australia*, Issue 2, 2011. The Migration Institute of Australia. <http://www.miapublications.org.au/general-publications/migration-australia-journal-vol2/aspirations-chinese-business-migrants-australia/>

² Deng, op cit.

It is the experience of many MIA Members that many business migrants would benefit from greater support and assistance in understanding their new business environment and related legislative requirements.

Recommendation 3

The MIA recommends that there should be more business support for business visa holders in Australia.

Terms of Reference 2

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.

In the last Migration Program year, 2012-13, there was a 37.3 per cent decrease in demand for the program.³

| | Planning level | Outcomes | Number of Applications | Increase/decrease in demand | Applications in pipeline |
|----------------|-----------------------|----------------------|-------------------------------|------------------------------------|---------------------------------|
| 2013-14 | 7,260 | 3,097 (to June 2014) | | | |
| 2012-13 | 7,014 | 7,010 | 8,219 | -37.3% | 12,035 |
| 2011-12 | 7,200 | 7,202 | 1,017 | +33.6% | 11,273 |
| 2010-11 | 7,796 | 7,796 | 11,480 | -8.8% | 11,314 |
| 2009-10 | 6,800 | 6,789 | 12,099 | -18.8% | 14,246 |
| 2008-09 | 7,500 | 7,397 | 13,631 | +12.7% | 13,603 |
| 2007-08 | 6,000 | 6,565 | 11,540 | +4.6% | 11,665 |

Public statistics for the 2013-14 program year are scarce, but the number of BIIP visas granted (3097) in the first half of that program year was only 42 per cent of the annual planning level, and may suggest either a further decrease in interest, or a higher rate of refusals.

In the last year and a half there has been an increased interest in and applications for the Significant Investor Visa (SIV) Stream of the BIIP program. While the SIV stream is outside the remit of this inquiry, it has to be noted that the increase in applications

³ DIBP Reports on Migration Programs, <http://www.immi.gov.au/media/statistics/statistical-info/visa-grants/index.htm>

for the SIV would indicate that there is even less interest in the rest of the BIIP program.

Inherent unattractive features of the BIIP

The BIIP programme, and its Business Skill predecessor, contains inherently unattractive features:

(i) The two stage Provisional/Permanent nature of the visa.

The two stage process – may mean that provisional business visa holders are unwilling to make the full commitment and investment in their Australian business, without the certainty of permanent residence. This may mean that any job creation that the business could achieve could be limited before permanent residence is granted. This is both a reality and a disincentive for serious business investors.

(ii) The residency requirements for the Provisional Stage and for the Permanent Stage in order to access a Return Resident Visa or Citizenship.

The nature of the business operations of medium to large business people in overseas countries, the need to maintain and develop businesses in the home country, and the ever-increasing global nature of business operations, means that a requirement for BIIP Provisional visa holders to remain in Australia for most of any one year is unreasonable for a great number of potential business visa applicants. Indeed, the introduction of the SIV, with its much reduced residency requirements at the provisional stage, was a clear recognition of this.

While there are no residency requirements per se in the Permanent BIIP visas, the nature of business peoples' global business commitments can mean that they may not be able to meet the unreasonable residency requirements to qualify for a Return Resident Visa or Australian Citizenship.

It could further be argued that these unrealistic residency requirements mean that the program is really only attractive to those less well-off business people, without international business operations, who are not the target of the program.

Recommendation 4

The MIA recommends that the residency requirements for BIIP provisional visas, Resident Return visas and Citizenship should be reviewed in the context of the needs of migrant business visa holders.

(iii) The unfavourable comparison between business opportunities provided by Australia and countries similar to Australia.

Apart from the small Australian population which inhibits Australia's economic growth, there is the still significant problem of the tyranny of distance suffered by Australia, despite the internet. Transport costs, for example, may be a disincentive to invest in Australia.

(iv) The unfavourable comparison of Australia's BIIP with the business visa threshold requirements provided by countries similar to Australia. [See ATTACHMENT 2]

An indication that there is a need for making Australia's BIIP program more attractive was the decision by the NSW Government in March 2014 to relax its visa requirements for the Subclass 132 (Business Talent) and the Subclass 405 (Investor Retirement) visas.

Recommendation 5

The MIA recommends that consideration should be given to making Australia's business visa requirements more attractive in the context of competition from similar countries.

Venture Capital Stream

There has been almost no uptake of the Venture Capital stream of BIIP. This may be because venture capitalists are unwilling to invest funds as significant as \$1 million at such an early stage in product development as is required under the Venture Capital Stream.

Venture Capital is usually only invested in the later stages of product development once commercialisation pilots have been completed.

The requirement for an investment of A\$1 million may be an attempt to ensure the success of start-up enterprises, but the number of Australian (not migrant) companies who have had venture capital investment which go on to commercial success is small.⁴

Another issue is that in Australia there are only eight companies registered with AVCAL to provide venture capital for BIIP purposes.

⁴ The Australian, 15 March 2014. <http://www.theaustralian.com.au/business/markets/carnegies-capital-idea-for-innovators/story-e6frg916-1226855223893#>

Recommendation 6

The MIA recommends that consideration should be given to expanding the range of Australian investors who can provide capital for BIIP purposes.

Recommendation 7

The MIA recommends that the funding requirement for the Venture Capital Stream should be reduced to a figure much less than \$1 million and equivalent to seed-funding.

Lengthy visa processing times

A further unattractive feature of the BIIP is the lengthy processing times for business visa applications in Australia.

Recommendation 8

The MIA recommends that consideration should be given to having more objective requirements, which will inevitably speed up processing of BIIP applications.

Terms of Reference 3

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

The current eligibility criteria for BIIP are in some ways too subjective. Examining the business history of someone from China, for example, where the commercial environment is vastly different from Australia's, can be a much more subjective and complex task than checking that taxation requirements have been met.

DIPB should not be in the position of trying to identify entrepreneurial talent.

"... investor backing is like employer selection for work visas: it allows the government to outsource selection decisions to organizations that are well placed to assess an individual's skills. At the same time, this approach screens out passive investors with little active role in managing the company who may be using their own money to "purchase" admission."⁵

⁵ Migration Policy Institute, Visa for Entrepreneurs: How Countries are Seeking Out Immigrant Job Creators. <http://www.migrationpolicy.org/article/visas-entrepreneurs-how-countries-are-seeking-out-immigrant-job-creators>

New BIIP streams

A greater pool of suitable business migrants could be created by the creation of new streams in the BIIP.

(i) Start-up business stream

Stage 1 Provisional for 12 months

Threshold requirements:

- (i) the applicant has undertaken an accredited small business courses
- (ii) have a sound business plan
- (iii) sufficient funds to support the start-up of the business and settlement, the amount of which would increase per family member. (cf Student Visa financial requirements)

Stage 2 Provisional renewal

Demonstrate meeting objective requirements:

- (i) Taxation (Company tax, personal income tax, BAS)
- (ii) Meeting Payroll, PAYG, Fairwork requirements
- (iii) Safety (relevant Workcover insurances, safety audit)

Stage 3 after 2 to 3 years: Permanent Visa

Threshold requirements:

- (i) Turnover and/or profit and/or taxation paid
- (ii) Job creation
- (iii) Personal and business assets

Such a start-up stream would be based on independent, objective criteria. The Irish and New Zealand governments “do not have set thresholds for revenue raising and job creation. Irish immigrant entrepreneurs must simply maintain an operational business, while New Zealand applicants must demonstrate that their business benefits the country economically (for example, through job creation, tax payments, or exports)”.⁶

Start-up stream visa holders would be on a level playing field with Australian businesses, with no possibility of criticisms sometime levelled at migrant businesses in Australia.

Any objection to the Stage 1 provisional visa on the grounds that it would be difficult to remove people from Australia who could not meet the final threshold for permanent residency can be countered by the example of the Subclass 457 visa, where there is no guarantee of it being a pathway to permanent residency.

⁶ Migration Policy Institute, op cit.

(ii) A self-employment stream for graduates of Australian universities.

The nexus between study in Australia and permanent residence through independent skilled migration has been to a large extent broken, but there is a place for it, especially since reforms to improve the integrity of the Student Visa programme, because there can be value in having migrants with the experience, knowledge and skills that study in Australia can bring. That place is not only in the independent skilled migration streams, but also for young business entrepreneurs who have studied in Australia.

Recommendation 9

The MIA recommends that there should be two additional streams in the BIIP; a start-up business stream and a self-employment stream for graduates of Australian universities.

The BIIP Points Test

The BIIP Points Test appears to provide a suitably wide range of opportunities for applicants to achieve points.

Terms of Reference 4

Weigh the size of the current BIIP programme against the emphasis placed on other elements of the skilled stream of the migration programme in generating economic growth.

Australia has two specific skills needs:

- (i) Skilled professional and trades people
- (ii) Skilled business people and entrepreneurs.

The current BIIP is a relatively small component of the larger Skilled Migration Stream of Australia's Migration Programme.

While there is a need and a demand for skilled migrants, especially those who are employer sponsored, to help meet Australia's skills shortages, the ability of a well-designed and effective business migration program could help satisfy Australia's skills needs through job creation. That may mean that businesses may have to sponsor skilled employees.

There may, therefore, be a case for the BIIP be a larger part of the overall Skilled Migration Stream.

Recommendation 10

The MIA recommends that consideration should be given to making the BIIP a larger component of the Skilled Migration Stream.

ATTACHMENT 2

| Business and Entrepreneur Visas - Eligibility Criteria by Country | | | | |
|---|--|--|--|--|
| Country | Program | Primary requirements for initial entry | Primary criteria for permanent stay | Time to permanent residence |
| New Zealand | Long term Business Visa (Temporary) and Entrepreneur (Permanent) | <ul style="list-style-type: none">• Sound business plan for venture that will benefit NZ, and• Demonstrate relevant knowledge and business experience.• No official investment threshold• After 9 months, must demonstrate progress towards establishing the business to renew visa. | <ul style="list-style-type: none">• Be self employed for at least 2 years in business benefitting NZ• Fast track for investment of at least NZ\$500,000 (~AUD 460,000) and create 3 jobs. | Fast track or 2 years |
| Singapore | Entrepass | <ul style="list-style-type: none">• Ready to start or own minimum 30% of registered company with minimum capital of at least SG\$50,000 (~AUD43,000) and• Venture Capital funding of SG\$ 100,000 or hold registered IP or collaboration with recognised research institution.• Indefinite yearly renewals. | <ul style="list-style-type: none">• 4 jobs created and business spending minimum of SC\$150000 (~AUD129,000) | 1 year after first yearly renewal |
| Ireland | Start-up Entrepreneur | <ul style="list-style-type: none">• EUR€75,000(~AUD112, 000) in start-up capital for business deemed high potential in export orientated industries or innovation field. | <ul style="list-style-type: none">• Maintain operational business to renew visa after 2 years. | 5 years |
| UK | UK : Tier 1 (Entrepreneur) Visa | <ul style="list-style-type: none">• Minimum £50,000 (~AUD 90,000) sourced from qualified investor, or• £200,000 (~AUD 365,000) from any other source | <ul style="list-style-type: none">• Create 2 jobs within 2 years | 5 years |
| | UK: Graduate Entrepreneur (Points tested) | <ul style="list-style-type: none">• Endorsement from higher education institution with an established process from nurturing entrepreneurs or UK Trade and Investment. | <ul style="list-style-type: none">• Minimum £50,000 (~AUD 90,000) from any legal source within 2 years• Create 2 jobs within 4 years | 3-5 years (3yrs = £5,000,000 income and 10 jobs) |
| USA | Proposed Startup Visas have not been ratified in legislation as at March 2014 (Offshore) | | | |
| Canada | Currently revamping Business Investor and Entrepreneur visa programs | | | |

Sources: <http://www.migrationpolicy.org/article/visas-entrepreneurs-how-countries-are-seeking-out-immigrant-job-creators/>; www.cic.gc.ca/english/immigrate/; <http://www.mom.gov.sg/foreign-manpower/passes-visas/entrepass/before-you-apply/8-passes/default.aspx>; <https://www.gov.uk/visas-immigration>