

2 May 2014

Committee Secretary
Joint Standing Committee on Migration
PO Box 6021
Parliament House
Canberra ACT 2600



By email: jscm@aph.gov.au

Dear Sir/Madam

Inquiry into the Business Innovation and Investment Programme (BIIP)

The Law Council welcomes the opportunity to make a submission to the House of Representatives Joint Standing Committee on Migration's inquiry into the Business Innovation and Investment Programme (BIIP), excluding the Significant Investor Visa stream.

The Migration Law Committee of the Law Council of Australia's International Law Section prepared this submission. **Attachment A** provides a profile of the Law Council of Australia. **Attachment B** provides a profile of the International Law Section. The Migration Law Committee is comprised of legal practitioners experienced in immigration law. Many members are accredited specialists in immigration law and many have experience in advising and assisting clients with the business and investment visas which are the subject of this submission.

The BIIP is designed to increase entrepreneurial talent and diversify business expertise in Australia. The BIIP is comprised of three visa subclasses: Business Innovation and Investment (Provisional)(188); Business Innovation and Investment (Permanent)(888); and Business Talent (Permanent)(132). The Significant Investor Visa stream is subject to a review by the Department of Immigration and Border Protection (DIBP) and as a consequence is not included in this inquiry.¹

The terms of reference of the inquiry are to:

- a. assess whether the BIIP is meeting its intended objectives and if any adjustments are necessary.
- b. 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.
- c. evaluate the current eligibility criteria, with particular regard to the operation of the BIIP points test, and its effectiveness in selecting suitable migrants.
- a. 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.

¹ On 30 April 2014, the Law Council made a submission to the Department of Immigration and Border Protection's review of the SIV programme. The submission is available at <http://www1.lawcouncil.asn.au/ILS/index.php/committees-and-chapters/ils-migration-law-committee>.

The BIIP superseded the Business Skills Migration Program on 1 July 2012, with the objective of attracting and increasing entrepreneurial talent and diversifying business expertise in Australia. The changes were a result of a far-reaching review of the Business Skills Migration Program by the Government to attract people who are prepared to make significant investments to enhance job opportunities for Australians and boost Australia's economic growth. The changes were also a move to remain competitive with other countries around the world, including Canada, the UK and Singapore, in attracting capital investment from overseas investors.²

The objectives of the programme are to contribute to the growth of the Australian economy by:

- a. generating employment;
- b. increasing the export of Australian goods and services;
- c. increasing the production of goods and services in Australia;
- d. introducing new or improved technology;
- e. increasing competition and commercial activity;
- f. developing links with international markets; and
- g. increasing the dispersal of business migrants across Australia through state and territory government sponsorship.³

The most recent statistics provided by the Business Innovation and Investment Policy section of the DIBP are as follows:

1 Jul 2012- 31 Mar 2014

	Business Innovation	Investor	Business Talent
Primary Applications	1168	127	241
Primary Grants	388	18	72

These statistics show a large discrepancy between the number of applications lodged and those approved. According to DIBP, there have been no subclass 132 visas granted under the Venture Capital Entrepreneur (VCE) stream. It would appear therefore that the VCE stream has been the most unsuccessful of all application streams within the BIIP.

On a broad level, the Law Council considers that the following aspects may have acted as deterrents to applicants:

- a. lengthy processing times;
- b. onerous documentation requests by the Australian Consulate General in Hong Kong;

²

http://www.deloitte.com/view/en_AU/au/services/tax/globalemployerservices1/485b4fdc413e7310VgnVCM200001b56f00aRCRD.htm

³ <https://www.immi.gov.au/media/fact-sheets/27business.htm>

- c. difficulties in providing sufficient evidence in relation to source and ownership of funds;
- d. lack of clarity in relation to options for the transfer of funds to Australia; and
- e. demanding eligibility criteria.

Feedback from applicants suggests the current eligibility criteria may be too high, thus excluding applicants who would otherwise be suitable business people or investors in terms of their ability to contribute to the objectives of the programme. A key example would be an applicant who may meet all criteria for Significant Business History stream of the subclass 132 visa other than the age requirement; or an applicant who meets all of the criteria for the Business Investor or Business Innovation streams of the subclass 188 visa yet fails the points test. The Government may therefore wish to consider whether adding these additional requirements and the resultant complexity, is really necessary.

The Australian Venture Capital and Private Equity Association (AVCAL), has echoed this view. While broadly supporting of the VCE stream of the subclass 132, AVCAL is of the opinion that the \$1 million investment is a prohibitive threshold. Also, the VC industry in Australia is very small and there are only around eight VC members of AVCAL from which visa applicants can source funding. The chances of obtaining funding from one of these members are slim due to competition for such limited funds.

Given this difficult environment in terms of securing funding, it might be better to lower the VC investment threshold. Both Canada and Singapore have similar programmes with lower investment thresholds. These countries also have comparable VC industries to Australia in terms of size and maturity and attract similarly demographics in terms of migrants. The Government may therefore wish to consider making the Australian programme consistent with these countries so we are more competitive internationally. Another suggestion would be to diversify the funding options and include types of funding that are a precursor to VC funding, such as Seed Funding or funding from an Angel Investor.

The BIIP has been viewed, for the most part, very positively, both within Australia and internationally. However, the enthusiasm for and support of the programme has not resulted in its success. The Skilled Stream of the migration programme has been quite successful in terms of numbers of applicants and visas granted. It is also a very competitive program internationally. The Law Council supports any measures taken by Government to broaden the BIIP and revise the eligibility requirements to ensure a greater level of uptake by applicants.

If you have any questions or would like to discuss any of the issues raised in this submission, please contact the ILS Administrator,

Yours sincerely

MARTYN HAGAN
SECRETARY-GENERAL

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Independent Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of approximately 60,000 lawyers across Australia.

The Law Council is governed by a board of 17 Directors – one from each of the Constituent Bodies and six elected Executives. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive, led by the President who serves a 12-month term. The Council's six Executive are nominated and elected by the board of Directors. Members of the 2013 Executive are:

- Mr Michael Colbran QC, President
- Mr Duncan McConnel President-Elect
- Ms Leanne Topfer, Treasurer
- Ms Fiona McLeod SC, Executive Member
- Mr Justin Dowd, Executive Member
- Dr Christopher Kendall, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

Attachment B: Profile of the International Law Section

The International Law Section (ILS) provides a focal point for judges, barristers, solicitors, government lawyers, academic lawyers, corporate lawyers and law students working in Australia and overseas, who are involved in transnational and international law matters, migration and human rights issues.

The ILS runs conferences and seminars, establishes and maintains close links with overseas legal bodies such as the International Bar Association, the Commonwealth Lawyers' Association and LAWASIA, and provides expert advice to the Law Council and its constituent bodies and also to government through its Committees.

Members of the 2013-14 ILS Executive are:

- Dr Gordon Hughes, Section Chair
- Dr Wolfgang Babeck, Deputy Chair
- Ms Anne O'Donoghue, Treasurer
- Mr Fred Chilton, Executive Member
- Mr John Corcoran, Executive Member
- Mr Glenn Ferguson, Executive Member
- Ms Maria Jockel, Executive Member
- Mr Andrew Percival, Executive Member
- Dr Brett Williams, Executive Member.

The ILS Committees are:

- The Alternative Dispute Resolution Committee (Ms Mary Walker, Chair)
- The Comparative Law Committee (Dr Wolfgang Babeck and Mr Thomas John, Co-Chairs).
- The Human Rights Committee (Dr Wolfgang Babeck and Mr Glenn Ferguson, Co-Chairs)
- The Migration Law Committee (Mr Erskine Rodan, Chair and Ms Katie Malyon Vice-Chair)
- The Trade & Business Law Committee (Mr Andrew Percival, Chair)