

**Submission by the South Australian Government to the Joint Standing
Committee on Migration's Inquiry into the Business Innovation and
Investment Program**

Submission made by:

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Discussion

The Business Innovation and Investment Program (BIIP) remains an important way for Australia to attract overseas persons of high net value and with business experience and success. The program is also one of many mechanisms which develop and maintain links between Australia and its trading partners.

South Australia participates in the BIIP by encouraging people who have demonstrated success and experience in operating a business to undertake business investments and establish and maintain international linkages and networks to contribute to the growth of the South Australian economy. The continued flow of BIIP migrants into South Australia will help increase the level of investment into the State as well as encourage investment in employment-generating and value-added activities. The objectives of the BIIP are to contribute to the growth of the South Australian economy. In order that South Australia benefits from participation in the BIIP, it has the following objectives:

- Enhance the of level of business skills in South Australia;
- Increase the number of business migrants who settle in South Australia;
- Develop links with international markets for South Australian businesses;
- Increase the amount of international investment into South Australia;
- Generate employment for South Australian residents, not including the migrants' family members;
- Increase the level of international trade for South Australia;
- Increase competition and commercial activity in South Australia;
- Increase the production of goods and services in South Australia; and
- Introduce new or improved technology to South Australia.

Whilst the activities of business migrants will always comprise a small percentage of overall business activity in Australia, the cumulative and progressive effects of the program cannot be overstated. The generational involvement of business migrant families with the potential for future enterprise growth, the interaction between business migrants and the community, including other migrant streams, and the transfer of established overseas business links within Australia are all important aspects of the BIIP. In addition, the program is still the primary vehicle for attracting overseas persons with business skills, with the general skilled migration program only catering for broad labour market as well as employer needs.

Despite the reforms introduced in 2012, fundamental trends associated with the BIIP remain in place:

- China being the dominant source country;
- A lack of dispersal of business migrants to regional areas of Australia, with Victoria still maintaining almost a 70 per cent share of the national BIIP grants in 2013-14;
- The majority of business migrants operating in restaurants, cafes and retail trade; and
- A number of BIIP visa classes not being utilised.

Terms of Reference of the Inquiry

This submission has been developed in consultation with key government, business and other migration stakeholders.

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

Given that the BIIP was reformed less than two program years ago, the lack of data and relevant information cannot support conclusions about the success or otherwise of the program. However, information gathered during the review of the business migration program in 2010-11 still provides insight for outcomes such as employment and investment.

An assessment of the effectiveness of the program would take into account the following measures or metrics:

- Number of applications, expressions of interest in *SkillSelect* and program outcome (the full allocation of grants);
- Investment in business operations;
- Indirect effects of investment in state and territory bonds;
- Employment outcomes (jobs created) and exports; and
- Business turnover.

Recent data and information provided by the Department of Immigration and Border Protection (DIBP) indicate that:

- Between 1 July 2013 and 28 February 2014 there were only 1,298 primary grants for BIIP across all visa products. The current rate of primary grants, taking into account dependents and grant rates, will be enough to deliver the total program outcome of 7,260 in 2013-14. Even if the program outcome is met, the interest in the program is far from the peaks experienced prior to the reform.
- With respect to business investment, the introduction of the SIV has resulted in a larger percentage of the BIIP attracting applications that do not have a business ownership requirement (whilst ownership of a business operation is a complying investment, essentially all SIV applicants have chosen the option of investing in state and territory bonds). Of the 1,321 primary visa applications lodged between 1 July 2013 and 28 February 2014, 461 (34.9 per cent) involved a visa for which the complying investment was State and Territory bonds (SIV and the 188 Investor). This percentage is a marked increase from eight per cent of all business skills applications registered in 2009-10.
- Given the increasing trend to use State and Territory bonds, the usage of these funds and the outcome of this investment by jurisdictions is an increasingly important aspect of the current BIIP program.
- During the review in 2010-11, the former Department of Immigration and Citizenship (DIAC) found that 70 per cent of the businesses involved in the business migration program employed one to four people, outperforming the domestic business average (24 per cent). If this proportion has been maintained, then the employment aspect of the BIIP would appear to remain successful on this measure.
- The 2010-11 review found a concentration of business skills program businesses that recorded turnover within the range \$200-500,000 (62 per cent of businesses), compared to the domestic business average of 19 per cent. Whether this trend has continued is not known. This reflects the industries in which most business migrants operate and the lack of diversification of those industry types.

In addition to these measures, other trends that have continued for the BIIP are:

Lack of take-up of the 132 Visa Venture Capital Stream and the 188 Investor visa

The lack of take-up of the 132 Venture Capital Stream and the 188 Investor Stream is also a concern. The popularity of a small number of business migration visas has transcended the July 2012 reforms and these two visas are the least popular. Currently, venture capital vehicles are very difficult to start for all domestic businesses in Australia and there are considerable market barriers to undertaking such investments.

The 188 Business Investor visa appears to compete with the SIV – the two visas require essentially the same type of investment but at a different financial threshold. Consideration needs to be given to the future of this visa stream.

Increased use of the Business Investor visa option would be facilitated by broadening the type of designated investments to provide State and Territory governments greater flexibility with how bonds can be purchased (for example through electronic traded bonds via the stock exchange) as well as enabling investments broader than just State or Territory bonds.

Dominance of one country as the primary source of BIIP applicants

China continues to be the dominant source country for the BIIP, accounting for 74.5 per cent of all permanent visa outcomes nationally in the BIIP during the six months to December 2013. The Chinese economy is producing a large number of business owners with high amounts of personal and business assets, which can seemingly provide a cohort of prospective business migrants for years to come. Furthermore, processing such a large number of applications in one market provides administrative efficiencies.

There are, however, other issues to consider. Would the outcomes of BIIP be better with a more diversified source country base or with a different dominant source country? Does having so many business migrants from one country unduly affect the outcomes of the program due to preferences for conducting business and motivations for participating in the program? The South Australian Government recommends that DIBP carries out market analysis of the potential for other countries to be targeted for BIIP.

Dispersal of business migrants across Australia

Data collected for the 2010-11 business migration program review conducted by the former DIAC indicated that the majority of business migration activity was to metropolitan areas, with most of this activity being within Melbourne. Given the current flows between States and Territories for BIIP visas, this trend would appear to be continuing. The potential benefits of the BIIP are currently not being dispersed across Australia and consideration needs to be given to providing incentives for business migrants to settle outside the major metropolitan areas, potentially through the use of lower financial thresholds or reduced criteria.

Adjustments or reforms to the BIIP in the future should include:

- Expanding the types of allowable investments to include direct investment into property, infrastructure or major developments providing an appropriate length of visa (more than four years) for these types of investment. This will enable the program to directly influence significant economic activity as well as provide States and Territories to have more flexibility in promoting their economic priorities.

- Encouraging younger business migrants to apply, particularly for the 132 business talent visa. This will enable them to build up familiarity with doing business in Australia onshore rather than from overseas.
 - Removing the 132 venture capital visa and introduce a 132 regional business visa with lower threshold criteria than the other visa streams in the program. Also consider removing the 188 Investor visa.
 - Improving linkages between BIIP and the Commonwealth Government Department of Industry, Austrade and Regional Development Australia to promote long-term investment and major projects.
 - Diversifying the program source markets through broader promotion into other potential markets such as South East Asia, India, Russia, Japan and Brazil. Consideration should be given to more diversified promotion and in-market activities in a wider number of countries than occurs currently. It is recommended that DIBP, in consultation with Austrade, gather market intelligence about expanding numbers of BIIP from other markets. If feasible, this would be followed by targeted promotions to those countries facilitated by DIBP promotion undertaken jointly with participating jurisdictions. These targeted, joint promotions would benefit from a calendar of forward planning to enable participating jurisdictions to plan for the events (Expos and the like).
 - In terms of improvements to the administration of the program, South Australia recommends exploration of the feasibility of whether the service of assessing applicant's financial assets could be outsourced from the Department of Immigration and Border Protection. In addition, to provide more confidence to prospective applicants it is recommended that any contact between DIBP and applicants is documented (included interview transcripts).
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;*
- The previous Business Skills program was originally introduced to facilitate 'the transfer of business skills [to] benefit Australia in the medium term by adding to and diversifying Australia's existing pool of business expertise'.¹
 - While it is acknowledged that changes made to align the program with innovation and investment may have contributed to the decline in application rates for the BIIP, the changes were, as advised during the 2010 review, introduced, to increase high economic value, as opposed to program numbers – the Business Skills program should play a role "in building Australia's economy, including the economies of regional Australia"². The program has inadvertently attracted less numbers and not attracted a higher calibre of applicants with greater investment potential and the ability to create jobs in Australia.
 - The regulations of the previous Business Skills program allowed the secondary applicant on a provisional visa to apply as the primary applicant for a permanent visa. Approximately 36 per cent of secondary applicants on a provisional visa swap between these roles³. The removal of swapping of roles between the provisional and permanent visa holders would have also contributed to the decline in numbers.

¹ Department of Immigration and Ethnic Affairs, p. 8, Migration of Business People to Australia: Directions for Change, Canberra, 1994, as quoted in McMaugh, D., p.4, Department of Immigration and Citizenship Position Paper: Business skills in the skilled migration program and the national innovation system, 2011,

² Terms of Reference (b) in the Discussion Paper – Review of the business skills visa program, published on the former Department of Immigration and Citizenship (DIAC) website, 24 December 2010.

³ McMaugh, D., DIAC Position Paper, Part 3, Recommendations – Selecting and fostering innovation, p.16, 2011.

- Increasing the permanent visa financial requirements or assets threshold would have impacted on the verification of the financial requirements and may have contributed to the decline as well.
- A sustained, strong Australian Dollar after the Global Financial Crisis would not have assisted the BIIP, which came into effect on 1 July 2012.
- The stringent regulations and implementation of the Fraud Public Interest Criterion would also have led to a decline in the number of business applicants, especially if there were initial ones who had provided fraudulent documents or information that was false or misleading and had been penalised.
- It must be acknowledged that while the reintroduction of the points test was meant to encourage business migrants of high calibre, investment potential, and business acumen to invest in Australia, the points test may have had an adverse effect. This is covered further, in the response to the third terms of reference – operation of the BIIP points test.

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 effectiveness of the points test

The effectiveness of the points test since its introduction seems on the surface to have coincided with a drop in demand for the BIIP. Whether this is a coincidence or not is arguable. However, given that the points test for 188 visas contains an English language component and that the main source market is China where the proportion of English language speakers is low, this indicates some correlation.

The South Australian Government supports the criteria being used to invite the prospective migrants with the highest business skills possible without using a points test. This includes having an English language component. It may be possible, as with the other business visas, to still assess and rank potential applicants using the current criteria (Age, business experience, English levels and so on) but not use the points test.

Active management and residency requirements

A lack of clarity on eligibility requirements for active management and residency requirements is creating uncertainty for applicants. At present, jurisdictions have a different understanding of what is an acceptable timeframe for residency and active management. This provides uncertainty to potential clients as it is then up to interpretation by a DIBP case officer. Where there is no clear direction, there is higher risk on the part of the applicant in their belief of their ability to maintain their PR visa at the review stage. DIBP would need to clearly outline the documents sought to meet the active management component of the 888A assessment.

Linked to active management is the residency requirement – DIBP has stipulated 365 days as a minimum residency requirement by the main applicant. DIBP practice is to fail applications for 888A visa if business migrants spend more than six weeks out of the country during a two year period. It is also expected that during periods of absence from Australia, that evidence of maintaining management of the business is required. The only business types that would consider the main applicant being outside of Australia for more than six weeks are export based businesses, where even then, the main applicant would not pass on a residency of 365 days a year, even though travel is required to see the success of this type of business. The residency requirement is seen as too restrictive, inconsistently applied and not conducive to good business outcomes. South Australia recommends that the active management and residency requirements be reformed to allow the partner of the primary

business migration applicant to contribute to meeting future active management and residency requirements.

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

The BIIP was intended to generate economic growth. The general skilled migration program, on the other hand, was established to address skills gaps experienced by jurisdictions; regional and low population growth areas; and certain industries. Economic growth through the skilled stream would have been a secondary, rather than a primary purpose.

In practice, the general skilled migration stream has, on balance, had more of an economic impact than the BIIP. The reasons for this relate to the broad economic conditions over the last five to six years. The Australian economy has experienced significant trends such as rising business costs and the growth of industries requiring either specialised labour or where labour has to be acquired at relatively short notice to meet business needs. These trends have supported the use of the general skilled migration stream as a tool to facilitate economic growth to a far greater extent than the BIIP.

The BIIP, being significantly smaller than the general skilled migration stream, is understandably going to have a lesser economic impact. To have the desired effect, the market opportunities for small business owners (as has happened in the labour market) need to be available and accessible for the BIIP. Currently, that favourable economic environment to do business is not in place (economy-wide, the total number of business enterprises had not grown for a significant amount of time until just recently).

The business and general skilled migration streams have had economic impacts in differing measures and in differing ways. The general skilled migration program has an economic impact by increasing the pool of labour and increasing the level of employment; additional housing and consumption; and the associated increase in revenue to the Commonwealth and States through taxation and stamp duties. The BIIP generates housing and consumption activity but is also expected to create investment and employment. Whilst a meaningful proportion of BIIP migrants have owned small businesses which employ people, this has mainly been existing rather than newly created enterprises. In addition, investment and other outcomes such as increased trade, improved use of technology and greater levels of innovation have not materialised throughout the life of the BIIP or its former versions.

Given the size of the BIIP, in proportion to the total skilled migration program, the emphasis of the BIIP is probably about right. If the program was reduced, but with the same policy settings in place, the Australian Government would be more likely to meet its visa grants outcome for BIIP, however the issues with the program would remain. Rather than addressing the size of the program, the focus of policy changes should be on making the program more effective through encouraging younger business migrants with a greater focus on local investment and employment generation.