
The Parliament of the Commonwealth of Australia

Report of the Inquiry into the Business Innovation and Investment Programme

Joint Standing Committee on Migration

March 2015
Canberra

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Contents

Foreword	vii
Membership of the Committee	ix
Terms of reference	xi
List of abbreviations	xiii
List of recommendations	xv
1 Introduction	1
Conduct of the inquiry	1
Structure of the report	2
2 Background	3
The Business Skills Programme.....	3
Structure of the Business Skills Programme	4
Review of Business Skills Programme	5
Business Innovation and Investment Programme	6
Programme objectives	6
Visa subclasses	6
Visa application process	8
Eligibility criteria	9
Application rates for the Business Innovation and Investment Programme.....	19
Source of applicants.....	22
Business and investment proposals by applicants	23
Dispersal of business innovation and investment migrants	25

	Size of the migration programme	26
	Size of the Business Innovation and Investment Programme	27
	Committee Comment.....	30
3	Meeting objectives	33
	Economic objectives of the programme	35
	Committee comment.....	39
4	Application rates	43
	Application rates in Victoria.....	47
	Removal of the role reversal ability.....	48
	Committee comment.....	52
	Lack of coordinated marketing and promotion	53
	Committee comment.....	56
	Lengthy processing times.....	56
	Committee comment.....	59
5	Eligibility criteria.....	61
	Innovation Points Test.....	61
	Committee comment.....	67
	Financial criteria.....	67
	Committee comment.....	72
	Other eligibility requirements	73
	English language requirements.....	73
	Early-stage entrepreneurs.....	74
	Attracting graduates	75
	Attraction of investment in regional Australia	76
	Committee comment.....	79

Appendix A: List of submissions	81
Appendix B: List of exhibits	83
Appendix C: List of public hearings	85
Canberra, Wednesday, 14 May 2014	85
Sydney, Thursday, 12 June 2014	85
Sydney, Friday, 13 June 2014	86
Canberra, Wednesday, 18 June 2014	87
Canberra, Wednesday, 25 June 2014	87
Canberra, Wednesday, 16 July 2014	87
Canberra, Wednesday, 27 August 2014	87
Appendix D: Summary of the main criteria for visas under the Business Skills Programme	89
Independent Provisional (temporary) Visas	89
Business Owner (Subclass 160)	89
Senior Executive (Subclass 161)	89
Investor (Subclass 162)	90
State/Territory Sponsored Provisional (temporary) Visas	90
State/Territory Sponsored Business Owner (Subclass 163)	90
State/Territory Sponsored Senior Executive (Subclass 164)	90
State/Territory Sponsored Investor (Subclass 165)	91
Independent Permanent Visas	91
Established Business in Australia (Subclass 845)	91
Business Owner (Subclass 890)	91
Investor (Subclass 891)	92
State/Territory Sponsored Permanent Visas	92
Regional Established Business in Australia (Subclass 846)	92
State/Territory Sponsored Business Owner (Subclass 892)	92
State/Territory Sponsored Investor (Subclass 893)	93
Business Talent visa (subclass 132)	93

LIST OF TABLES

Table 2.1	Permanent Skilled visa processing performance against the service standards	9
Table 2.2	Innovation Points Test	18
Table 2.3	Business Innovation and Investment Programme Delivery.....	19
Table 2.4	Number of applicants sponsored by the Victorian Government and visa status	21
Table 2.5	Victoria – proposed businesses for nominees from 1 July 2012 - 31 July 2014.....	24
Table 2.6	Intended business location of BIIP nominees	26
Table 4.1	Business Skills Programme Delivery	44

LIST OF FIGURES

Figure 4.1	BIIP Visa application lodgements to end March 2014.....	45
Figure 4.2	Business Visa Application Lodgements June 2010 to end March 2014.....	45
Figure 4.3	Visas granted, and remaining cases on hand.....	46
Figure 4.4	BIIP and BS Victorian Nominations	47



Foreword

For over two hundred years, Australia has been a destination for migrants who have often travelled vast distances and overcome significant challenges in the hopes of establishing a better life for themselves and their families. Migrants provide a substantial contribution across all facets of Australian life: economic, social and cultural.

The goal of Australia's migration programme is to meet Australia's economic and social needs through building the economy, shaping society, supporting the labour market and reuniting family.

The Business Innovation and Investment Programme is designed to meet those needs by attracting high quality investors and entrepreneurs to invest in Australia. It is important to encourage the creation of genuine and sustainable business opportunities that will generate economic growth, benefiting both the Australian economy and workforce.

With an increasingly important economic objective, the Committee held the view that it would be beneficial to inquire into the programme and assess its effectiveness.

However, the Committee faced a number of challenges during the course of its inquiry which impacted on its ability to address its terms of reference.

Most notably was the distinct lack of empirical evidence. As the programme is administered by the Federal Department of Immigration and Border Protection and each State and Territory Government, the Committee invited the Governments to provide submissions and attend public hearings. However, the information, and in particular the data provided by the Governments was limited and furnished little evidence that the programme was actually meeting any of its objectives.

Other challenges included the exclusion of a key component of the programme (the Significant Investor Visa stream); the contradictory nature of the recommendations made by the various stakeholders; the relatively short timeframe from when the programme commenced in its current form to the commencement of this inquiry; and the announcement by the Government that it would expand the Significant Investor Visa, task Austrade to become a nominating entity for the visa, conduct a survey on the 2015-16 migration programme as well as undertake a review of the skilled migration and temporary activity visa programmes.

The Committee therefore recommends that the Department of Immigration and Border Protection examine the programme as part of the 2015-16 migration programme survey and in its reviews of the skilled migration and temporary activity visa programmes with a focus on the:

- suitability and attainability of the objectives set for the BIIP;
- role that States and Territories have in administering the BIIP and, specifically, the accountability of these jurisdictions and whether the programme should instead be solely administered by the Commonwealth;
- means of collecting data at the State and Territory level, its dissemination to the Department and evaluation;
- promotion and marketing of the programme;
- application processing and service standards;
- removal of the ability for the secondary applicant to become the primary applicant;
- English language requirements;
- innovation points test; and
- attracting investment in regional Australia, graduates, early-stage entrepreneurs, and venture capitalists.

The Committee would like to sincerely thank all of the stakeholders, peak bodies, organisations and individuals for their time, effort and resources to make submissions and appear at public hearings. I would also like to thank my hard working colleagues on the Committee.

Mrs Louise Markus MP
Chair



Membership of the Committee

Chair Mrs Louise Markus MP

Deputy Chair Ms Maria Vamvakinou MP

Members	Senator Chris Back (<i>from 26/6/14</i>)	Mr Craig Kelly MP
	Senator Sam Dastyari	Mr Craig Laundy MP
	Senator Sean Edwards	Hon Matt Thistlethwaite MP
	Senator Sarah Hanson-Young	Mr Tony Zappia MP
	Senator John Williams (<i>until 26/6/14</i>)	

Committee Secretariat

Secretary	Mr Jerome Brown
Inquiry Secretary	Mr Paul Zinkel
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Terms of reference

The Joint Standing Committee on Migration shall inquire into the Business Innovation and Investment Programme (BIIP), excluding the Significant Investor Visa stream.

The inquiry shall:

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



List of abbreviations

ABCC	Australia British Chamber of Commerce
ACT	Australian Capital Territory
AUSA	AUSA Migration & Education Service Pty Ltd
AVCAL	Australian Private Equity and Venture Capital Association
BIIP	Business Innovation and Investment Programme
BMC	Western Australian Business Migration Centre
BSP	Business Skills Programme
DEDTA	Tasmanian Department of Economic Development, Tourism and the Arts
DIBP	Department of Immigration and Border Protection
DoB	Northern Territory Department of Business
DSDBI	Victorian Department of State Development, Business and Innovation
EDD	ACT Economic Development Directorate
EOI	Expression of Interest
GACIC	German-Australian Chamber of Industry and Commerce

IPT	Innovation Points Test
ISL	Immigration Solutions Lawyers
LCA	Law Council of Australia
MIA	Migration Institute of Australia
Migration Alliance	Migration Alliance Inc.
MPR	Migration Programme Report
NSW	New South Wales
NT	Northern Territory
PIV	Premium Investor Visa
SEZs	Special Economic Zones
SIV	Significant Investor Visa
UDV	United Dairy farmers of Victoria



List of recommendations

5 Eligibility criteria

Recommendation 1

The Committee recommends that the Department of Immigration and Border Protection examine the Business Innovation and Investment Programme (BIIP) as part of the 2015-16 migration programme survey and in its reviews of the skilled migration and temporary activity visa programmes. The reviews should focus on the:

- suitability and attainability of the objectives set for the BIIP;
- role that States and Territories have in administering the BIIP and, specifically, the accountability of these jurisdictions and whether the Programme should instead be solely administered by the Commonwealth;
- means of collecting data at the State and Territory level, its dissemination to the Department and evaluation;
- promotion and marketing of the Programme;
- application processing and service standards;
- removal of the ability for the secondary applicant to become the primary applicant;
- English language requirements;
- innovation points test; and
- attracting investment in regional Australia, graduates, early-stage entrepreneurs, and venture capitalists.

Introduction

Conduct of the inquiry

- 1.1 On 18 March 2014, the Minister for Immigration and Border Protection, the Hon Scott Morrison MP, asked the Committee to inquire into and report on the Business Innovation and Investment Programme (BIIP), excluding the Significant Investor Visa stream. The terms of reference of the inquiry were to:
- Assess whether the BIIP is meeting its intended objectives and if any adjustments are necessary.
 - 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.
 - Evaluate the current eligibility criteria, with particular regard to the operation of the BIIP points test, and its effectiveness in selecting suitable migrants.
 - 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.
- 1.2 The Committee invited an array of stakeholders, groups and individuals to submit to the inquiry, including relevant Federal, State and Territory government departments, peak bodies, Chambers of Commerce, Business Councils, and industry groups.
- 1.3 The Committee received 23 submissions and five exhibits from a range of Federal, State and Territory government departments, peak bodies, migration lawyers and agents.

- 1.4 The Committee also took evidence from 20 organisations and individuals at seven public hearings held in Canberra and Sydney over the course of the inquiry.¹

Structure of the report

- 1.5 The Committee's report is structured around the inquiry's terms of reference. This introductory chapter provides an outline of the conduct of the inquiry.
- 1.6 Chapter two provides a brief background on the previous Business Skills Programme, the BIIP, the State and Territory nomination process and a comparison of the BIIP against the whole skilled migration programme.
- 1.7 Chapter three examines whether the objectives of the BIIP are being met.
- 1.8 Chapter four focuses on the application rates and whether there has been a decline.
- 1.9 Chapter five examines the eligibility criteria including the innovation points test and suggestions for attracting skilled business migrants and entrepreneurs to Australia.

1 See appendices A, B and C.

Background

- 2.1 Business migration to Australia formally commenced in 1981, with the business skills class of visas introduced as part of the Business Skills Programme (BSP) in 1992.¹
- 2.2 The BSP was reviewed in 2003 and again in 2010-11 and was eventually superseded by the Business Innovation and Investment Programme (BIIP) on 1 July 2012.²
- 2.3 The following chapter provides a brief background on the previous BSP and the BIIP, including the programmes objectives, eligibility criteria and Innovation Points Test (IPT), the application rate, and the size of the BIIP.

The Business Skills Programme

- 2.4 The BSP, which preceded the BIIP, had the objective of increasing the economic value of skilled migration and to enhance Australia's national innovation system. In its submission, the Department of Immigration and Border Protection (DIBP) stated that the BSP sought to:
 - ...enable successful business owners and investors to invest or enter into business in Australia and contribute to the growth of Australia's economy.³
- 2.5 The DIBP added that, at that time, the BSP was:

1 Department of Immigration and Border Protection, *Submission 14*, Attachment B, p. 3.

2 Department of Immigration and Border Protection, *Submission 14*, p. 3.

3 Department of Immigration and Border Protection, *Submission 14*, p. 4.

...a niche category within Australia's skilled migration programme distinct from general skilled migration and the employer sponsored visa categories in that it directly creates business, and visa holders become business owners, rather than supporting existing businesses and industries at risk of skill shortages with a supply of skilled employees.⁴

Structure of the Business Skills Programme

- 2.6 The BSP had 13 subclasses of visas consisting of both temporary and permanent visas. Applicants could either independently apply for the visas or could seek sponsorship from a State or Territory Government.⁵
- 2.7 Except for the Business Talent visa (subclass 132), which provided a direct pathway to permanent residence, each visa subclass was generally the first stage towards a permanent visa under the BSP.⁶
- 2.8 The temporary visas available at the time were:
- Business Owner (subclass 160) visa
 - Senior Executive (subclass 161) visa
 - Investor (subclass 162) visa
 - State/Territory Sponsored Business Owner (subclass 163) visa
 - State/Territory Sponsored Senior Executive (subclass 164) visa
 - State/Territory Sponsored Investor (subclass 165) visa.⁷
- 2.9 Applicants who satisfied the requirements of the provisional visa over the four years could then proceed to the second stage and apply for one of the permanent visas under the programme, which included:
- Established Business in Australia (subclass 845) visa
 - Business Owner (subclass 890) visa
 - Investor (subclass 891) visa
 - State/Territory Sponsored Regional Established Business in Australia (subclass 846) visa
 - State/Territory Sponsored Business Owner (subclass 892) visa
 - State/Territory Sponsored Investor (subclass 893) visa
 - Business Talent (subclass 132) visa.⁸

4 Department of Immigration and Border Protection, *Submission 14*, p. 4.

5 Department of Immigration and Border Protection, *Submission 14*, Attachment A, p. 1.

6 Department of Immigration and Border Protection, *Submission 14*, Attachment A, pp. 1-4.

7 Department of Immigration and Border Protection, *Submission 14*, Attachment A, pp. 1-4.

8 Department of Immigration and Border Protection, *Submission 14*, Attachment A, pp. 1-4.

- 2.10 Details on the various requirements of the subclasses of visas under the BSP are set out in Appendix D.

Review of Business Skills Programme

- 2.11 As noted above, the then Department of Immigration and Citizenship conducted a review of the BSP in 2010-2011 following the global financial crisis to 'ensure that the strategic objectives of the programme could be met in a changed business environment.'⁹
- 2.12 Another factor considered under the review was the concern that provisional business visas may have stifled risk-taking and innovation as migrants would act conservatively to secure permanent visas.¹⁰
- 2.13 The review recommended a number of reforms including reducing the number of visa subclasses from thirteen to three by removing independently nominated visas, under-used visas and absorbing separate visas as streams under a single visa subclass.¹¹
- 2.14 With regard to the changes made on 1 July 2012, the DIBP argued that there were a number of benefits for rationalising the programme including:
- simplified visa options for new business migrants
 - better economic outcomes from higher threshold criteria
 - reduced costs to administer the programme
 - State and Territory sponsorship facilitates a more targeted migration intake
 - a more streamlined programme for possible incorporation into the Skilled Migrant Selection Model
 - a significant contribution towards visa simplification and deregulation. The proposed restructure would result in a large reduction of Business Skills visas and contribute substantially to the fifty per cent target reduction.¹²
- 2.15 The three visa subclasses that formed the BIIP were the Business Talent (Permanent) (subclass 132) visa; Business Innovation and Investment (Provisional)(subclass 188) visa and Business Innovation and Investment (Permanent)(subclass 888) visa.¹³
- 2.16 The following section provides some additional information on the reforms and the three visa subclasses under the BIIP.

9 Department of Immigration and Citizenship, 'Fact Sheet: Frequently Asked Questions Reforms to the Business Skills Program July 2012', p. 1.

10 Department of Immigration and Border Protection, *Submission 14*, p. 4.

11 Department of Immigration and Border Protection, *Submission 14*, p. 5.

12 Department of Immigration and Border Protection, *Submission 14*, p. 5.

13 Department of Immigration and Border Protection, *Submission 14*, Attachment B, p. 2.

Business Innovation and Investment Programme

Programme objectives

- 2.17 In its submission, the DIBP pointed out that the strategic priority of the BIIP is 'to attract high quality investors and entrepreneurs to invest in Australia.'¹⁴
- 2.18 In addition, the submission highlights that the objectives of the BIIP are to:
- generate employment
 - increase the export of Australian goods and services
 - increase the production of goods and services in Australia
 - introduce new or improved technology
 - increase competition and commercial activity
 - develop links with international markets
 - increase the dispersal of business migrants across Australia through State and Territory government nomination.¹⁵
- 2.19 A number of peak bodies and individuals put forward the view that the BIIP was not meeting its objectives. Chapter three examines whether the objectives of the BIIP are being met.

Visa subclasses

- 2.20 Under each of the visa subclasses there are a number of streams with different requirements for the applicant to meet. The three visa subclasses and their streams are:
- Business Talent (Permanent) (subclass 132) visa
 - ⇒ Significant Business History stream
 - ⇒ Venture Capital Entrepreneur stream.
 - Business Innovation and Investment (Provisional)(subclass 188) visa
 - ⇒ Business Innovation stream
 - ⇒ Investor stream
 - ⇒ Significant Investor stream
 - ⇒ Business Innovation Extension stream
 - ⇒ Significant Investor Extension stream.

14 Department of Immigration and Border Protection, *Submission 14*, p. 17.

15 Department of Immigration and Border Protection, *Submission 14*, p. 8.

- Business Innovation and Investment (Permanent)(subclass 888) visa
 - ⇒ Business Innovation stream
 - ⇒ Investor stream
 - ⇒ Significant Investor stream.¹⁶
- 2.21 The BIIP maintains some similarities with the BSP. The Business Talent visa subclass was kept as a direct channel to permanent residence. While the two Business Innovation and Investment visa subclasses remained a two-stage process toward permanent residence. Eligible migrants are first granted the provisional 188 visa subclass and on satisfaction of certain business and investment requirements, they are eligible to apply for the permanent 888 visa subclass.¹⁷
- 2.22 However there were also a number of notable changes to the programme. The BIIP became a State or Territory nominated programme with the removal of independent applications. The DIBP stated that this enabled States and Territories to attract the appropriate business people and skills to facilitate economic growth and address development needs of their jurisdictions.¹⁸
- 2.23 A number of additional key changes were made to the programme as part of the reforms. These changes included:
- Recommendations of the review and the BIIP application process were incorporated in the SkillSelect database¹⁹
 - Financial and asset thresholds were increased²⁰
 - The Venture Capital Entrepreneur stream was introduced to bring ‘foreign entrepreneurial expertise to Australia’s national innovation system’²¹
 - The IPT was introduced as a key component of the provisional 188 visa subclass²²

16 Department of Immigration and Border Protection, *Submission 14*, Attachment B, p. 2.

17 Department of Immigration and Border Protection, *Submission 14*, p. 8.

18 Department of Immigration and Border Protection, ‘Fact Sheet 27 – Business Migration’, viewed on 17 October 2014, <<https://www.immi.gov.au/media/fact-sheets/27business.htm>>. The State and Territory nomination process is discussed later in this chapter.

19 Department of Immigration and Border Protection, *Submission 14*, p. 3; SkillSelect is an online service where applicants can lodge expressions of interest (EOIs) and visa applications. SkillSelect manages the skilled migration programme and facilitates State or Territory sponsorship by matching expression of interests with the priorities and requirements set by each jurisdiction.

20 Department of Immigration and Border Protection, *Submission 14*, p. 10.

21 Department of Immigration and Border Protection, *Submission 14*, p. 11.

22 Department of Immigration and Border Protection, *Submission 14*, p. 11.

- The ability for role reversal between the primary and secondary applicants was also eliminated under BIIP.²³

2.24 As a result of the changes, the process for individuals wanting to apply for a BIIP visa were also amended.

Visa application process

2.25 For the most part, there is a common process for applying for each BIIP visa subclass and its separate stream.

2.26 Applicants must first lodge an Expression of Interest (EOI) on the SkillSelect database. As part of the EOI, the applicants must indicate the visa they are applying for as well as their preferred States or Territories.²⁴

2.27 States and Territories then review the relevant EOIs against their own nomination criteria and select applicants that they are willing to nominate.²⁵

2.28 The nomination is communicated to the DIBP and an invitation is sent out to the applicant to make a full application for one of the visa subclasses on SkillSelect. Then the DIBP considers the application at one of its two assessment locations in either Hong Kong or Adelaide.²⁶

2.29 Applicants may be required to attend an interview; however the DIBP indicated that this is rarely necessary.²⁷ Once an assessment is completed, the DIBP will either grant a visa or reject the application.

2.30 At their appearance before a public hearing, the DIBP remarked that 95.5 per cent of applications are finalised within the service standard of nine months.²⁸

2.31 Table 2.1 provides some additional detail on the length of time the DIBP takes to process permanent skilled visas.

23 Department of Immigration and Border Protection, *Submission 14*, p. 23; Under the BSP, the secondary applicant at the provisional visa stage could swap to become the primary applicant at the permanent visa stage. This allowed flexibility between the applicants for the day-to-day management of the business interest in Australia and fulfilment of the visa criteria.

24 Mr Wilden, Department of Immigration and Border Protection, *Transcript*, 14 May 2014, p. 1.

25 Mr Wilden, Department of Immigration and Border Protection, *Transcript*, 14 May 2014, p. 1.

26 Mr Fleming, Department of Immigration and Border Protection, *Transcript*, 14 May 2014, p. 2.

27 Mr Wilden, Department of Immigration and Border Protection, *Transcript*, 14 May 2014, p. 2.

28 Department of Immigration and Border Protection, *Supplementary Submission 14.1*, p. 3; The DIBP's annual report for 2013-14 provides some more detail on the grant rate of the visa subclasses in the BIIP (see Table 2.1).

Table 2.1 Permanent Skilled visa processing performance against the service standards

Category	Onshore		Offshore	
	Low-risk ²⁹	High-risk ³⁰	Low-risk	High-risk
Business innovation and investment—business skills (subclass 132)				
Target for subclass 132	75% finalised in 11 months	75% finalised in 22 months	75% finalised in 9 months	75% finalised in 28 months
Result	100.0%	100.0%	100.0%	98.9%
Business innovation and investment—provisional (subclass 188)				
Target for subclass 188	75% finalised in 11 months	75% finalised in 22 months	75% finalised in 9 months	75% finalised in 28 months
Result	77.3%	100.0%	76.4%	100.0%
Business innovation and investment—permanent (subclass 888)				
Target for subclass 888	75% finalised in 11 months	75% finalised in 22 months	75% finalised in 9 months	75% finalised in 28 months
Result	N/A	100.0%	N/A	100.0%

Source Department of Immigration and Border Protection, *Annual Report 2013-14*, pp. 55-56.

Eligibility criteria

2.32 When making the application, there are a number of common eligibility criteria across the various visa subclasses under the BIIP. These include:

- health requirements
- character requirements
- applicant/s must not have any outstanding debts to the Australian Government at the time of application³¹
- applicant/s are required to sign the Australian Values Statement.³²

2.33 Health and character requirements apply to all of the applicant's dependent family members regardless of their migration status. Details on the health³³ and character³⁴ requirements are listed on the DIBP website.

29 The terms 'Low risk' and 'High risk' indicate whether passport holders are eligible to apply for an Electronic Travel Authority (ETA). Low risk applies to nationals from countries which issue ETA eligible passports.

30 See footnote above.

31 Department of Immigration and Border Protection, 'Business Innovation and Investment (Provisional) visa (subclass 188)', viewed on 7 October 2014, <<http://www.immi.gov.au/living-in-australia/values/statement/short/>>.

32 Department of Immigration and Border Protection, 'Australian Values Statement - Temporary', viewed on 7 October 2014, <<http://www.immi.gov.au/living-in-australia/values/statement/short/>>.

33 Department of Immigration and Border Protection, 'Health requirement', viewed on 7 October 2014, <<http://www.immi.gov.au/allforms/health-requirements/>>.

- 2.34 The following section provides a brief summary of the eligibility requirements of each visa subclass and their respective streams.

The Business Talent (Permanent) (subclass 132) visa

- 2.35 The Business Talent visa provides a direct path to permanent residence for migrants who desire to start or develop an existing business in Australia.³⁵
- 2.36 The Business Talent visa has two streams:
- Significant Business History stream
 - Venture Capital Entrepreneur stream.

Significant Business History stream

- 2.37 This stream is open to applicants who have a bona fide interest in doing business in Australia, can meet minimum thresholds for assets, have a proven business history and can show capacity and the ability to run a business successfully in Australia.
- 2.38 In addition to the general health and character requirements outlined above, to meet the requirements for this stream, the applicant, the applicant's partner or both combined must:
- Have a bona fide and realistic intention to own and manage a business in Australia
 - Have \$1.5 million in net business assets that are legally acquired and can be transferred to Australian within two years after the visa is granted
 - In two of the four years immediately before the application
 - ⇒ Have total net assets of at least \$400,000 as ownership interest in one or more qualifying businesses
 - ⇒ Have at least \$3 million in total annual turnover in one or more of the main businesses

34 Department of Immigration and Border Protection, 'Character and police certificate requirements', viewed on 7 October 2014, <<http://www.immi.gov.au/Visas/Pages/188.aspx>>.

35 Department of Immigration and Border Protection, 'Business Talent (Permanent) visa (subclass 132)', viewed on 7 October 2014, <<http://www.immi.gov.au/Visas/Pages/132.aspx>>.

- ⇒ Ownership of at least: 51 per cent of a business with less than \$400,000 turnover per year; 30 per cent of a business with more than \$400,000 turnover per year or 10 per cent of a publicly listed company.³⁶

- 2.39 Generally, the applicant must also be less than 55 years of age however this can be waived with State or Territory support.³⁷

Venture Capital Entrepreneur stream

- 2.40 This stream is open to applicants who have entered into a formal agreement with a member of the Australian Venture Capital Association Limited to secure at least \$1 million in funding³⁸ for a 'start-up phase, product commercialisation, business development or expansion of a high value business idea in Australia.'³⁹
- 2.41 In its submission, the DIBP stated that the objective of the venture capital stream is to bring 'foreign entrepreneurial expertise to Australia's national innovation system.'⁴⁰
- 2.42 The DIBP reported that as of 12 May 2014, only one applicant had applied for this visa under the BIIP.⁴¹

The Business Innovation and Investment (Provisional) (subclass 188) visa

- 2.43 This visa is the first stage towards permanent residence being granted under visa subclass 888.
- 2.44 There are three streams under this visa subclass
- Business Innovation stream
 - Investor stream
 - Significant Investor stream.

36 Department of Immigration and Border Protection, *Submission 14*, p. 8. and Department of Immigration and Border Protection, 'Business Talent (Permanent) visa (subclass 132)', viewed on 8 October 2014, < <http://www.immi.gov.au/Visas/Pages/132.aspx>>.

37 Department of Immigration and Border Protection, *Submission 14*, p. 8. and Department of Immigration and Border Protection, 'Business Talent (Permanent) visa (subclass 132)', viewed on 8 October 2014, < <http://www.immi.gov.au/Visas/Pages/132.aspx>>.

38 Department of Immigration and Border Protection, *Submission 14*, p. 8. and Department of Immigration and Border Protection, 'Business Talent (Permanent) visa (subclass 132)', viewed on 8 October 2014, < <http://www.immi.gov.au/Visas/Pages/132.aspx>>.

39 Department of Immigration and Border Protection, *Submission 14*, p. 11.

40 Department of Immigration and Border Protection, *Submission 14*, p. 11.

41 Department of Immigration and Border Protection, *Submission 14*, p. 11.

2.45 There are common thematic requirements across the three streams. To meet these requirements, the applicant must:

- Generally, be less than 55 years old
- Have a proven, successful business history or investment record
- Have no involvement with unacceptable business or investment activities
- Have a bona fide and realistic commitment to reside, own and manage the business or investment in the State or Territory that nominated the applicant.⁴²

However there are different requirements for the applicant to meet under each stream.

Business Innovation stream

2.46 Applicants applying for the Business Innovation stream must meet the following eligibility requirements:⁴³

- Score at least 65 on the innovation points test [described below]
- For two of the four fiscal years immediately before application, have owned interest in an established business or businesses that had at least \$500,000 turnover in each of those years
- Owned at least one of the following percentage of the nominated main business
 - ⇒ 51 per cent, if the business has a turnover of less than \$400,000 per year
 - ⇒ 30 per cent, if the business has a turnover of \$400,000 or more per year
 - ⇒ 10 per cent, if the business is a publicly listed company.

If the nominated business provides professional, technical or trade services, the applicant must have spent no more than half the time providing those services as opposed to general management of the business.⁴⁴

42 Department of Immigration and Border Protection, 'Business Innovation and Investment (Provisional) visa (subclass 188)', viewed on 8 October 2014, <<http://www.immi.gov.au/Visas/Pages/188.aspx>>.

43 Department of Immigration and Border Protection, 'Business Innovation and Investment (Provisional) visa (subclass 188)', viewed on 1 October 2014, <<http://www.immi.gov.au/Visas/Pages/188.aspx>>.

44 Department of Immigration and Border Protection, 'Business Innovation and Investment (Provisional) visa (subclass 188)', viewed on 1 October 2014, <<http://www.immi.gov.au/Visas/Pages/188.aspx>>.

The applicant, applicant's partner or both combined must also have total net assets of \$800,000 that are available to be transferred to Australia within two years of the visa being granted.⁴⁵

Investor stream

2.47 This stream is open to applicants who have a proven investment record and have a bona fide commitment and capacity to make an investment in Australia.

2.48 To meet the requirements of this stream, the applicant must:

- Show at least three years of direct management experience
- Have a bona fide commitment to continue the business and investment activity in Australia after the original investment has matured
- Have a bona fide intention to live in the State or Territory of the investment for at least two years
- Score at least 65 on the innovations points test.⁴⁶

2.49 The applicant, the applicant's partner or both combined must:

- For at least one of the five fiscal years preceding the application, have directly managed
 - ⇒ An interest of at least 10 per cent in a business owned by either or both parties; or
 - ⇒ At least \$1.5million investment owned by either or both parties; and
- Have at least \$2.25 million in net business, investment and personal assets that are available for transfer to Australia within two years of the visa being granted
- Make a designated investment of \$1.5 million to be held for at least four years in the nominating State or Territory.⁴⁷

Significant Investor stream

2.50 The Significant Investor stream has a higher threshold for investment than the Investor stream. The trade-off is a lower and more flexible requirement to live in Australia during the period of the provisional visa. The innovations points test does not apply to this stream.

45 Department of Immigration and Border Protection, 'Business Innovation and Investment (Provisional) visa (subclass 188)', viewed on 1 October 2014, <<http://www.immi.gov.au/Visas/Pages/188.aspx>>.

46 Department of Immigration and Border Protection, *Submission 14*, p. 9.

47 Department of Immigration and Border Protection, 'Business Innovation and Investment (Provisional) visa (subclass 188)', viewed on 1 October 2014, <<http://www.immi.gov.au/Visas/Pages/188.aspx>>.

- 2.51 To meet the requirements of the stream, the applicant, the applicant's partner or both combined must have net assets of \$5 million for the applicant to invest and hold continuously for at least four years in:
- Commonwealth, State or Territory government bonds
 - Eligible managed funds; or
 - Direct investment into private Australian proprietary companies that operate a business and in which the applicant has ownership interest.⁴⁸
- 2.52 The applicant must also have a bona fide and realistic commitment to:
- Continue the investment in Australia after it has matured
 - Reside in the nominating State or Territory
 - Live in Australia for at least 160 days over the provisional visa's four year period.⁴⁹
- 2.53 The applicant and all members of the applicant's family over the age of 18 must also indemnify the Commonwealth against any action arising from loss from the complying investment.

The Business Innovation and Investment (Permanent)(subclass 888) visa

- 2.54 This visa is open to applicants who have fulfilled the requirements of the provisional subclass 188 visa and seek to progress to this permanent residence visa.⁵⁰
- 2.55 The applicant's evidence in respect of health and character requirements, State or Territory nomination and their bona fide commitment to maintain business or investment in Australia remain relevant considerations in the assessment for this visa subclass.⁵¹
- 2.56 The applicant is not required to submit a new expression of interest and does not have to be invited to apply.⁵²

48 Department of Immigration and Border Protection, *Submission 14*, p. 15.

49 Department of Immigration and Border Protection, 'Business Innovation and Investment (Provisional) visa (subclass 188)', viewed on 1 October 2014, <<http://www.immi.gov.au/Visas/Pages/188.aspx>>.

50 Department of Immigration and Border Protection, 'Business Innovation and Investment (Permanent) visa (subclass 888)', viewed on 1 October 2014, <<http://www.immi.gov.au/Visas/Pages/888.aspx>>.

51 Department of Immigration and Border Protection, 'Business Innovation and Investment (Permanent) visa (subclass 888)', viewed on 1 October 2014, <<http://www.immi.gov.au/Visas/Pages/888.aspx>>.

52 Department of Immigration and Border Protection, 'Business Innovation and Investment (Permanent) visa (subclass 888)', viewed on 1 October 2014, <<http://www.immi.gov.au/Visas/Pages/888.aspx>>.

- 2.57 On grant of this visa, the applicant can stay in Australia indefinitely, continue to manage business and investments in Australia, work, study, enrol in Medicare, sponsor relatives for permanent residence, apply for Australian citizenship if eligible and travel to and from Australia for five years from the date the visa is granted.⁵³

Business Innovation stream

- 2.58 To meet the requirements of the Business Innovation stream, the applicant must:
- Have obtained an Australian Business Number for the nominated businesses
 - For the two years immediately before the application
 - ⇒ Have had and continue to have ownership interest and a direct and continuous management role in an operating main business
 - ⇒ Have submitted Business Activity Statements to the Australian Tax Office.
 - For the year immediately before the application
 - ⇒ Have had an annual turnover of at least \$300,000 from the nominated business
 - ⇒ Have owned at least one of the following percentages of the main business
 - 51 per cent, if the business has a turnover of less than \$400,000 per year
 - 30 per cent, if the business has a turnover of \$400,000 or more per year
 - 10 per cent, if the business is a publicly listed company.⁵⁴
- 2.59 The applicant, the applicant's partner or both combined must also show that in the year immediately preceding the application that they achieved at least two of the following requirements:
- Earned a net value of business assets of \$200,000 in the nominated businesses
 - Have a net value of personal and business assets of at least \$600,000 in Australia

53 Department of Immigration and Border Protection, 'Business Innovation and Investment (Permanent) visa (subclass 888)', viewed on 1 October 2014, <<http://www.immi.gov.au/Visas/Pages/888.aspx>>.

54 Department of Immigration and Border Protection, 'Business Innovation and Investment (Permanent) visa (subclass 888)', viewed on 1 October 2014, <<http://www.immi.gov.au/Visas/Pages/888.aspx>>.

- Employed at least the equivalent of two full-time employees in the nominated businesses who are not family members and are Australian citizens, permanent residents or holders of valid New Zealand passports.⁵⁵

Investor stream

- 2.60 To meet the requirements of this visa, the applicant must satisfy the residence and investment requirements, being:
- The applicant must have been in Australia and held the provisional visa for at least two of the four years immediately before the application
 - The applicant, the applicant's partner or both combined must have held the complying investment with the nominating Australian State or Territory for at least four years.⁵⁶

Significant Investor stream

- 2.61 To meet the requirements of this stream, the applicant must have stayed in Australia for:
- 160 days in the past four years as a holder of the Significant Investor stream visa
 - 240 days in the past six years as a holder of the Significant Investor extension stream visa
 - 320 days in the past eight years as a holder of the Significant Investor extension stream visa.⁵⁷
- 2.62 The applicant, the applicant's partner or both combined must also show that they have:
- Held the complying investments continuously for at least four years of the provisional visa
 - Managed a business under the private Australian company in which the applicant has made the investment, if applicable.⁵⁸

55 Department of Immigration and Border Protection, 'Business Innovation and Investment (Permanent) visa (subclass 888)', viewed on 1 October 2014, <<http://www.immi.gov.au/Visas/Pages/888.aspx>>.

56 Department of Immigration and Border Protection, 'Business Innovation and Investment (Permanent) visa (subclass 888)', viewed on 1 October 2014, <<http://www.immi.gov.au/Visas/Pages/888.aspx>>.

57 Department of Immigration and Border Protection, 'Business Innovation and Investment (Permanent) visa (subclass 888)', viewed on 1 October 2014, <<http://www.immi.gov.au/Visas/Pages/888.aspx>>.

58 Department of Immigration and Border Protection, 'Business Innovation and Investment (Permanent) visa (subclass 888)', viewed on 1 October 2014, <<http://www.immi.gov.au/Visas/Pages/888.aspx>>.

Innovation Points Test

- 2.63 The IPT was introduced in July 2012 as part of the reforms which established the BIIP.⁵⁹ It is a key component of the provisional subclass 188 visa and its streams. The requirements of the IPT are set out in Schedule 7A of the *Migration Regulations 1994*.
- 2.64 The DIBP stated that the points test was adopted as a mechanism to potentially increase the quality of the business applicants entering the BIIP.⁶⁰ They added:
- A combination of the points test and objective measures of business performance, should be an effective method for selecting a better standard of business migrant.⁶¹
- 2.65 On its website, the DIBP stated that the IPT also includes:
- ...objective measures of business performance. It aims to select innovative entrepreneurs who will transfer their skills to Australia and diversify our existing pool of business expertise.⁶²
- 2.66 The IPT is a standardised assessment of the applicant's personal attributes and business history. Points are awarded on the basis of various factors on a sliding scale including: age, English language ability, qualifications, experience in business or investment, net personal business assets, business turnover, and innovation. Higher points are accrued where the applicant falls under more desirable brackets under each of the factors.⁶³
- 2.67 Table 2.2 lists the elements of the IPT and the number of points awarded for each criteria.

59 Department of Immigration and Border Protection, 'Innovation points test for the Business Innovation and Investment Program', viewed on 28 October 2014, <http://www.immi.gov.au/skilled/business/_pdf/innovation-points-test.pdf>.

60 Department of Immigration and Border Protection, *Submission 14*, p. 11.

61 Department of Immigration and Border Protection, *Submission 14*, p. 11.

62 Department of Immigration and Border Protection, 'Innovation points test for the Business Innovation and Investment Program', viewed on 28 October 2014, <http://www.immi.gov.au/skilled/business/_pdf/innovation-points-test.pdf>.

63 Department of Immigration and Border Protection, 'Innovation points test for the Business Innovation and Investment Program', viewed on 28 October 2014, <http://www.immi.gov.au/skilled/business/_pdf/innovation-points-test.pdf>.

Table 2.2 Innovation Points Test

Factor	Description	Points
Age	18 – 24 years	20
	25 – 32 years	30
	33 – 39 years	25
	40 – 44 years	20
	45 – 54 years	15
	55 and older	0
English Language	Vocational English: IELTS 5 on each of the four components of speaking, reading, listening and writing	5
	Proficient English: IELTS 7 or OET score B on each of the four components of speaking, reading, listening and writing	10
Qualifications	Australia trade certificate, Diploma or Bachelor degree or a bachelor degree by an Australian education institute; or A bachelor qualification recognised by an education institution of a recognised standard	5
	Bachelor degree in business, science or technology by an Australian institution; or a bachelor qualification by an education institution of a recognised standard	10
Special endorsement	The nominating State or Territory government agency could decide that your proposed business is of unique and important benefit to the State or Territory where the nominating government agency is located	10
Financial assets	Net business and personal assets of you, your partner or you and your partner combined in each of the preceding two years of at least:	
	\$800,000	5
	\$1.3 million	15
	\$1.8 million	25
	\$2.25 million	35
Business turnover	Annual turnover in your main business during a period of at least two years of the preceding four fiscal years of at least:	
	\$500,000	5
	\$1 million	15
	\$1.5 million	25
	\$2 million	35
Business Innovation stream only	You have held one or more businesses before you were invited to apply for the visa for:	
Business experience	Not less than four years within the preceding five years	10
	Not less than seven years within the preceding eight years	15

Investor stream only	Eligible investment of at least \$100,000 held for:	
Investment experience	At least four years before the time of invitation to apply for the visa	10
	At least seven years before the time of invitation to apply for the visa	15
Business innovation qualifications At the time of invitation to apply for the visa:	Evidence of registered patents or registered designs	15
	Evidence of trademarks	10
	Evidence of joint venture agreements	5
	Evidence of export trade	15
	Evidence of ownership interest in a gazelle business	10
	Evidence of receipt of grants or venture capital funding	10
State or Territory nomination	Special endorsement (limited places)	10

Source Department of Immigration and Border Protection, '*Business Innovation and Investment (Provisional) visa (subclass 188) – Points test*', viewed on 23 October 2014, <<http://www.immi.gov.au/Visas/Pages/188.aspx?tab=3>>.

2.68 An examination of the IPT and the views provided by submitters on its effectiveness as a measure of business acumen are considered in chapter 5.

Application rates for the Business Innovation and Investment Programme

2.69 The DIBP provided statistics on three visas under the current BIIP, noting that there was limited data for subclass 888 as not enough time had elapsed since the reforms for 188 migrants to progress to the permanent visa.⁶⁴ These statistics are included in Table 2.3.

Table 2.3 Business Innovation and Investment Programme Delivery

Subclass	Streams	2012-2013		2013-2014 (to 31 March 2014)	
		<i>Lodged</i>	<i>Granted</i>	<i>Lodged</i>	<i>Granted</i>
132 Business Talent (Direct Entry)	Significant Business History	97	15	144	57
	Venture Capital Entrepreneur	0	0	1	0
188 BII (Provisional)	Business Innovation	429	46	739	342
	Investor	54	2	73	16
	Significant Investor	306	4	466	170
888 BII (Permanent)	Business Innovation	5	0	11	12

Source Department of Immigration and Border Protection, *Submission 14*, p. 18.

64 Department of Immigration and Border Protection, *Submission 14.1*, p. 5

- 2.70 The DIBP's 2013-14 Annual Report stated that a total of '6,150 places were granted in the BII programme in the 2013-14 reporting period.'⁶⁵
- 2.71 The DIBP's 2013-14 Migration Programme Report (MPR), however, stated that 6,160 places were granted in the 2013-14 reporting period.⁶⁶
- 2.72 The MPR also states that while the demand for places in the BIIP increased over the 2013-14 reporting period, the number of clients within the BIIP has decreased:
- Demand for places in this category increased by over 125 per cent in 2013-14, with over 7,380 applications made. Just over 7,180 clients remain in the pipeline, a decrease of 12.6 per cent (or just over 1,030 applications) over the 2013-14 programme year.⁶⁷
- 2.73 Of those 6,160 places, 3,628 were targeted at state-specific and regional migration.⁶⁸
- 2.74 A number of States and Territories also provided some evidence on the application rates in each of their jurisdictions.
- 2.75 According to the Government of South Australia, Victoria sponsored about 70 per cent of the national BIIP grants in 2013-14.⁶⁹
- 2.76 Evidence from the Victorian Department of State Development, Business and Innovation (DSDBI) showed that between the commencement of the BIIP on 1 July 2012 and 31 July 2014, the Victorian Government approved 1,822 nominations. Of those, 468 were granted a visa, 47 were rejected, 57 were withdrawn and 1,250 are pending a decision by the DIBP.⁷⁰ The number of applicants sponsored by the Victorian Government and their visa status is listed in Table 2.4.

65 Department of Immigration and Border Protection, *Annual Report 2013-14*, p. 54.

66 Department of Immigration and Border Protection, *2013-14 Migration Programme Report*, p. 15.

67 Department of Immigration and Border Protection, *2013-14 Migration Programme Report*, p. 10.

68 Department of Immigration and Border Protection, *2013-14 Migration Programme Report*, p. 15.

69 Government of South Australia, *Submission 16*, p. 2.

70 The Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 5.

Table 2.4 Number of applicants sponsored by the Victorian Government and visa status

	Victorian Government's Nomination's Approved	DIBP Visa Decision			
		<i>Granted</i>	<i>Rejected</i>	<i>Withdrawn</i>	<i>Pending</i>
132 – Business Talent	118	25		11	82
188A – Business Innovation	1,587	430	45	42	1,070
188B – Investor	112	12	2	4	94
888A – Business Innovation	5	1			4
Grand Total	1,822	468	47	57	1,250

Source Victorian Department of State Development, Business and Innovation, Submission 23, p. 5.

- 2.77 While not as detailed as the statistics provided by the DSDBI, New South Wales (NSW) Trade and Investment provided some information on its BIIP application rates, stating that:
- Since 1 July 2012, 104 applicants have been nominated under BIIP, excluding the Significant Investor Visa
 - From 2010-2014, 433 migrants on the provisional business visa applied to NSW for nomination for permanent visas.⁷¹
- 2.78 The Northern Territory (NT) reported that there have been no applications seeking its nomination under the current programme.⁷² Tasmania and the Australian Capital Territory (ACT) commented that their intakes from the BIIP were 'very small'⁷³ and 'not significant in comparison to other jurisdictions'.⁷⁴
- 2.79 In its submission, the DIBP noted that the number of applications lodged for the BIIP visas had dropped slightly.⁷⁵ Submitters' views on the possible cause for the decline in the application rate for the BIIP is examined in chapter 4.

71 New South Wales Trade and Investment, *Submission 22*, p. 1.

72 Northern Territory Department of Business, *Submission 18*, p. 5.

73 Tasmanian Department of Economic Development, Tourism and the Arts, *Submission 9*, p. 1.

74 Australian Capital Territory's Economic Development Directorate, *Submission 7*, p. 1.

75 Department of Immigration and Border Protection, *Submission 14*, p. 18.

Source of applicants

- 2.80 Evidence appears to suggest that China is the dominant source country for applicants of the BIIP. The Government of South Australia reported that nationally, 74.5 per cent of all business migrants who successfully acquired the permanent visa during the six months to December 2013 were from China.⁷⁶
- 2.81 Similar figures are reflected in statistics provided by the Government of Victoria. Chinese applicants dominated across the Business Talent visa and both stages of the Business Innovation and Investment visa. The DSDBI reported that:
- From 1 July 2012 and 31 July 2014, 97 per cent of 132 visa stream nominees were from China. In relation to the 188A and 188B visas, the top five source countries were as follows:
- China: 79 per cent
 - Iran, Islamic Republic of: 8 per cent
 - Vietnam: 2 per cent
 - Pakistan: 2 per cent
 - Malaysia: 2 per cent.⁷⁷
- 2.82 The DIBP stated that a 'large proportion of the caseload for the programme currently comes from countries such as China and Iran'.⁷⁸
- 2.83 Commenting on the Significant Investor Visa at a public hearing, the DIBP remarked that 92 per cent of applicants were from China, with small numbers from the United States, South Africa, Malaysia, and the United Kingdom.⁷⁹
- 2.84 China is a major source country for the entire migration programme. The DIBP 2013-14 Migration Programme Report states that the three largest source countries are India, China and the United Kingdom:
- India was Australia's largest source country of migrants with an outcome of 39,026 places or 23.1 per cent of the total 2013-14 Migration Programme. The second and third largest source countries were China with 26,776 places and the United Kingdom with 23,220 places.

76 Government of South Australia, *Submission 16*, p. 4.

77 The Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 9.

78 The Department of Immigration and Border Protection, *Submission 14*, p. 21.

79 Mr Wilden, Department of Immigration and Border Protection, *Transcript*, 14 May 2014, p. 8.

The outcome for India decreased by 2.6 per cent from 40,051 places in 2012–13 to 39,026 places in 2013–14. The outcome for China fell by 2.0 per cent from 27,334 to 26,776 places, and the outcome for the United Kingdom increased by 7.0 per cent from 21,711 to 23,220 places.⁸⁰

Business and investment proposals by applicants

- 2.85 The DIBP was not able to provide any statistics on the favoured businesses or investments of migrants under the BIIP, noting that ‘departmental systems record limited information on the nature of enterprises that business migrants buy into or establish in Australia.’⁸¹
- 2.86 However, the Victorian DSDBI was able to provide a breakdown of proposed businesses under the BIIP for its State (see Table 2.5). Between 1 July 2012 and 31 July 2014 a total of 1,587 Business Innovation and Investment visa applicants nominated to establish businesses in Victoria. A majority of those businesses nominated by those applicants were in retail (51%), followed by the service industry (15%) and the trade export industry (10%).⁸²
- 2.87 During the same period, a total of 118 Business Talent visa applicants nominated to establish businesses within the manufacturing industry (20%), primary industry (11%) and hospitality (8%) being the most popular amongst applicants.⁸³

80 Department of Immigration and Border Protection, *2013-14 Migration Programme Report*, p. 3.

81 The Department of Immigration and Border Protection, *Supplementary Submission 14.1*, p. 5.

82 The Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 8.

83 The Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 8.

Table 2.5 Victoria – proposed businesses for nominees from 1 July 2012 - 31 July 2014

	<i>Proposed Business Type</i>	<i>Number</i>	<i>%</i>
188A – Business Innovation	Other Services	1	0%
	Accommodation and Food Services	1	0%
	Unknown	3	0%
	Primary Industry	14	1%
	Trade	17	1%
	Manufacturing	58	4%
	Trade Import	67	4%
	Wholesale Trade	108	7%
	Hospitality	115	7%
	Trade Export	161	10%
	Service	232	15%
	Retail Trade	810	51%
	<i>Subtotal 188A – Business Innovation</i>	<i>1587</i>	
188B - Investor	<i>Not applicable</i>	<i>112</i>	
132 – Business Talent	Investment (non-passive)	1	1%
	Trade Import	1	1%
	Other Services	3	3%
	Retail Trade	3	3%
	Wholesale Trade	7	6%
	Hospitality	9	8%
	Trade Export	13	11%
	Primary Industry	14	12%
	Manufacturing	24	20%
	Service	43	36%
	<i>Subtotal 132 – Business Talent</i>	<i>118</i>	
Grand Total		1817	

Source Victorian Department of State Development, *Business and Innovation, Submission 23*, p. 8.

2.88 NSW, Queensland and the NT provided general comments on sectors that they favoured. NSW Trade and Investment remarked that it has Industry Action Plans for:

The digital economy, professional services, international education and research, ...the creative industries and manufacturing, and is developing one for agriculture.⁸⁴

84 New South Wales Trade and Investment, *Submission 22*, p. 4.

- 2.89 Trade and Investment Queensland reported that it encouraged businesses within agriculture, tourism, infrastructure, construction, resources and education sector for nominations to visa subclass 188.⁸⁵
- 2.90 The NT Government gives favourable consideration to business or investment activities that will benefit its three-hub economy which is focussed on:
- Mining and energy
 - Tourism and international education
 - Primary industries and fisheries/food exports.⁸⁶
- 2.91 Since the commencement of the BIIP, the Federal, State and Territory ministers responsible for trade and investment have agreed to five national investment promotion priorities in the following sectors:
- Food and agribusiness
 - Resources and energy
 - Major Infrastructure
 - Tourism
 - Advanced manufacturing, services and technologies.⁸⁷

Dispersal of business innovation and investment migrants

- 2.92 The DIBP could not provide statistics on the dispersal of BIIP migrants.⁸⁸ However, the Victorian DSDBI was able to provide detailed data on the intended location of businesses to be established under BIIP, whether it be in metropolitan areas or regional areas in the State. Between 1 July 2012 and 31 July 2014 a total of 1,817 applicants indicated that they would establish businesses in Victoria with 1,758 of those businesses located in metropolitan areas and 56 in regional areas.⁸⁹
- 2.93 Table 2.6 provides further information on the intended business location of BIIP nominees.

85 Trade and Investment Queensland, *Submission 12*, p. 2.

86 Northern Territory Government, 'Northern Territory nomination Business Innovation & Investment visa guidelines', viewed on 20 October 2014, <<http://www.australiasnorthernterritory.com.au/Working/bsm/business/Pages/innovation-investment.aspx>>.

87 Australian Trade Commission, *Submission 11*, p. 1.

88 The Department of Immigration and Border Protection, *Supplementary Submission 14.1*, p. 6.

89 The Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 7.

Table 2.6 Intended business location of BIIP nominees

	<i>Metro</i>	<i>Regional</i>	<i>% Regional</i>	<i>Unknown</i>	<i>Total</i>
132 – Business Talent	110	8	7%	0	118
188A – Business Innovation	1537	47	3%	3	1587
188B – Investor	111	1	1%	0	112
Grand Total	1758	56	47	3	1817

Source Victorian Department of State Development, Business and Innovation, Submission 23, p. 7.

Size of the migration programme

2.94 The total national migration programme is set at 190,000 places for 2014-2015 and consists of two major streams (Skill and Family) and one smaller stream (Special Eligibility).⁹⁰

2.95 The purpose of each stream is as follows:

- The Skill stream attempts to manage the economic and the labour market needs
- The Family stream aims at reuniting Australians with their immediate family members overseas
- The Special Eligibility stream allows previous permanent residents who have maintained close ties with Australia to return permanently.⁹¹

2.96 Out of the total number of places available:

- the Skill stream accounted for 67.7 per cent, delivering 128,550 places
- the Family stream accounted for 32 per cent, delivering 60,885 places
- the Special Eligibility stream accounted for 0.3 per cent, delivering 565 places.⁹²

2.97 The Skilled stream, of which the BIIP is a part, 'allows for the entry of skilled workers who are sponsored by employers in Australia as well as skilled workers who qualify independently based on their skills and other attributes.'⁹³

90 Department of Immigration and Border Protection, *Setting the Migration Programme for 2015-16 – Discussion paper*, p. 5.

91 Department of Immigration and Border Protection, *Setting the Migration Programme for 2015-16 – Discussion paper*, p. 5.

92 Department of Immigration and Border Protection, *Setting the Migration Programme for 2015-16 – Discussion paper*, p. 5.

93 Department of Immigration and Border Protection, *Setting the Migration Programme for 2015-16 – Discussion paper*, p. 5.

- 2.98 The DIBP, in its discussion paper for the 2015-16 migration programme, states that the Skill stream is designed to help address the medium and long term labour market as well as the States and Territories economic needs:

This stream helps to address medium term labour market needs through employer sponsored migration, where migrants come to specific jobs. The long term labour market needs are addressed through points tested skilled migration that selects migrants based on their highly skilled attributes to ensure labour market success on their arrival in Australia. State/territory and regional nominated migration, which is also a points tested skilled migration, helps the states and territories respond to varying regional and economic needs through supplementing the labour force in key industries and regions.⁹⁴

- 2.99 The Skill stream is comprised of five categories: Employer Sponsored (including regional sponsored), Skilled-Independent, State/Territory and Regional Nominated, Business Innovation and Investment Programme, and Distinguished Talent. The Employer Sponsored and Skilled-Independent categories are the two largest components delivering 47,250 places and 44,990 places respectively.⁹⁵

Size of the Business Innovation and Investment Programme

- 2.100 By comparison, the BIIP is a niche category in the Skill stream and even more so within the national migration programme. As noted above, in the 2013-14 reporting period, 6,160 BIIP places were granted.⁹⁶ The planning levels for 2013-14 and 2014-15 set by the DIBP are 7,260.⁹⁷
- 2.101 This constitutes 5.6 per cent of the Skill stream and 3.8 per cent of the overall migration programme.⁹⁸
- 2.102 In its submission, the DIBP commented that there was a 'minor downward revision in the Skill stream...to ease pressure on the domestic labour.'⁹⁹

94 Department of Immigration and Border Protection, *Setting the Migration Programme for 2015-16 – Discussion paper*, p. 6.

95 Department of Immigration and Border Protection, *Setting the Migration Programme for 2015-16 – Discussion paper*, p. 5.

96 See paragraph 2.69.

97 Department of Immigration and Border Protection, *Setting the Migration Programme for 2015-16 – Discussion paper*, p. 5.

98 Department of Immigration and Border Protection, *Setting the Migration Programme for 2015-16 – Discussion paper*, p. 5.

99 Department of Immigration and Border Protection, *Submission 14*, p. 17.

The DIBP reported that 700 places were shifted from the Skills stream to the Family stream as:

...a natural consequence of some years of high levels of skilled migration and increasing global mobility among Australians and the international community.¹⁰⁰

- 2.103 Of those 700 places, 140 places were taken from the BIIP program. The DIBP explained that this reduction allowed the programme to 'refocus and target the highest quality migrants' and was in response to 'slightly lower demand for the programme following the reforms in 2012.'¹⁰¹
- 2.104 The majority of States and Territories called for a greater emphasis on the BIIP in the overall migration programme.
- 2.105 The BMC recommended increasing the BIIP's planning level to 10 per cent of Australia's migration programme.¹⁰²
- 2.106 The ACT Economic Development Directorate (EDD) recommended removing the upper limit on the planning level altogether.¹⁰³
- 2.107 The Northern Territory Department of Business submitted that the BIIP had the potential to generate more economic growth per applicant than other elements of the Skilled stream and agreed with the view that the BIIP should not be capped. They added, however, that 'there is a much more limited pool of quality business persons and investors who would qualify for the BIIP.'¹⁰⁴
- 2.108 The Tasmanian Department of Economic Development, Tourism and the Arts remarked that they would like to see the planning levels of the BIIP expanded.¹⁰⁵
- 2.109 NSW Trade and Investment supported the call to increase numbers in the BIIP noting that 'applicants have a significant impact on the economy and the businesses in which they invest.'¹⁰⁶

100 Department of Immigration and Border Protection, *Submission 14*, p. 17.

101 Department of Immigration and Border Protection, *Submission 14*, p. 17.

102 Western Australian Business Migration Centre, *Submission 3*, p. 6.

103 Australian Capital Territory Economic Development Directorate, *Submission 7*, p. 4.

104 Northern Territory Department of Business, *Submission 18*, p. 8.

105 Tasmanian Department of Economic Development, Tourism and the Arts, *Submission 9*, p. 3.

106 NSW Trade and Investment, *Submission 22*, p. 7.

- 2.110 Trade and Investment Queensland indicated that they ‘would prefer to see a reduction in places from the Independent Skill stream as the independent migration scheme allows a migrant to enter the country without necessarily using the skills and experiences on which they were originally nominated.’¹⁰⁷
- 2.111 The Government of South Australia commented that the BIIP will have a lesser economic impact due to its size in comparison with the general Skilled Migration stream.¹⁰⁸ They considered that the emphasis placed on the BIIP was about right. They added:
- 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.¹⁰⁹
- 2.112 The view of other submitters to this inquiry ranged from some suggesting that the BIIP be expanded and others suggesting that the programme remain unchanged, as follows.
- 2.113 The Law Council of Australia said that they would support any Government measures to ‘broaden the BIIP and revise the eligibility requirements to ensure a greater level of uptake by applicants.’¹¹⁰
- 2.114 The Migration Institute of Australia recommended that the BIIP be made a larger component of the Skilled Migration Stream.¹¹¹
- 2.115 Mr Findley, a registered migration agent, suggested making only minor changes to the Business Skills visa program and other skilled worker programmes, stating:
- We urge that the only changes to the Business Skills visa program or other skilled worker programmes, are to make the process simpler, and to improve the visa application processing times, to cut the waiting period from 18 months to 2 months.¹¹²
- 2.116 The United Dairy farmers of Victoria argued that the BIIP should remain unchanged and urged the government to continue the BIIP in its current form.¹¹³

107 Trade and Investment Queensland, *Submission 12*, p. 3.

108 Government of South Australia, *Submission 16*, p. 7.

109 Government of South Australia, *Submission 16*, p. 7.

110 Law Council of Australia, *Submission 8*, p. 3.

111 Migration Institute of Australia, *Submission 15*, p. 12.

112 Mr Findley, *Supplementary Submission 6.1*, p. 8.

113 United Dairy farmers of Victoria, *Submission 20*, p. 7.

Committee Comment

- 2.117 The Committee notes that the objective of the BIIP is to target high-quality business migrants to contribute to Australia's economic growth by filling gaps in the national innovation system and agreed investment promotion priorities.
- 2.118 The Committee also notes the five national investment promotion priorities in the areas of food and agribusiness; resources and energy; major infrastructure; tourism; and advanced manufacturing, services and technologies.
- 2.119 Based on the limited evidence received for this inquiry, it appears as though the majority of applicants establish or invest in businesses that are in either the retail, service or manufacturing industries.
- 2.120 In addition, the vast majority of businesses or investments made as part of the BIIP are in metropolitan areas.
- 2.121 The Committee acknowledges that the States and Territories receive an economic benefit from the modest number of BIIP visa holders residing in their jurisdictions.
- 2.122 However, based on the evidence, it is difficult to conclude that the programme meets any of the following key objectives:
- increase the export of Australian goods and services
 - increase the production of goods and services in Australia
 - introduce new or improved technology
 - develop links with international markets
 - increase the dispersal of business migrants across Australia through State and Territory government nomination.
- 2.123 The Committee questions whether the BIIP is effective in attracting high-quality business migrants to fill Australia's innovation requirements.
- 2.124 The Committee also notes the announcement by the Government on 14 October 2014 that it will expand the significant investor visa programme.¹¹⁴
- 2.125 The announcement stated that changes to the programme, which would take effect during 2014-15 will include:
- streamlining and speeding up visa processing, further promoting the programme globally and strengthening integrity

114 The Hon. Tony Abbott MP, Prime Minister, The Hon. Andrew Robb AO MP, Minister for Trade and Investment, The Hon. Scott Morrison MP, Minister for Immigration and Border Protection, 'Enhancing Significant Investor Visa programme', Joint Media Release, 14 October 2014, p. 1.

- measures, to increase the attractiveness of investing and settling in Australia while ensuring Australia's interests are protected
- aligning the criteria for eligible investments with the Government's national investment priorities. The investment eligibility criteria will be determined by Austrade in consultation with key economic and industry portfolios
 - introducing a Premium Investor Visa (PIV), offering a more expeditious, 12 month pathway to permanent residency than the SIV, for those meeting a \$15 million threshold
 - tasking Austrade to become a nominating entity for the SIV [Significant Investor Visa] (complementing the current State and Territory governments' role as nominators) and to be the sole nominating entity for the PIV.¹¹⁵
- 2.126 In addition, the Committee notes that the DIBP is conducting a survey on the 2015-16 migration programme as well as undertaking a review of the skilled migration and temporary activity visa programmes.¹¹⁶
- 2.127 The Committee is of the view that it would be worthwhile for the DIBP to examine how best to achieve the objectives of the BIIP as part of the 2015-16 migration programme survey and, in particular, in its reviews of the skilled migration and temporary activity visa programmes.

115 The Hon. Tony Abbott MP, Prime Minister, The Hon. Andrew Robb AO MP, Minister for Trade and Investment, The Hon. Scott Morrison MP, Minister for Immigration and Border Protection, 'Enhancing Significant Investor Visa programme', Joint Media Release, 14 October 2014, p. 1.

116 Department of Immigration and Border Protection, 'Discussion papers', viewed on 22 October 2014, <<http://www.immi.gov.au/pub-res/Pages/discussion-papers/overview.aspx>>.

Meeting objectives

- 3.1 As noted in chapter 2, the objectives of the Business Innovation and Investment Programme (BIIP) are to:
- generate employment
 - increase the export of Australian goods and services
 - increase the production of goods and services in Australia
 - introduce new or improved technology
 - increase competition and commercial activity
 - develop links with international markets
 - increase the dispersal of business migrants across Australia through State and Territory government nomination.¹
- 3.2 The chapter assesses whether the programme is meeting these objectives.
- 3.3 A number of peak bodies and individuals submitted that the BIIP was not meeting its objectives. These are summarised as follows.
- 3.4 The Migration Institute of Australia commented that the current programme would be unable to ever meet its intended 'purpose of bringing significant entrepreneurial talent and business expertise for several reasons':
- The inherently unattractive features of the programme has not resulted in attracting the business people it intended.
 - The focus of the BIIP is on high technology and high value businesses.

1 Department of Immigration and Border Protection, *Submission 14*, p. 8.

- When the Business Skills Programme (BSP) became the BIIP, it went from a situation where the BSP was sometimes exploited (eg, small retail establishments which in some cases did not last much past the visa grant date), to where the focus is on high end technology and businesses and BIIP is missing the middle ground.
- Inherent differences in national commercial practices and environment.
- Lack of support for business migrants in Australia.²

3.5 When commenting on the inherent differences in national commercial practices and environment, the MIA added:

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.³

3.6 The MIA also commented that its members submitted ‘that many business migrants would benefit from greater support and assistance in understanding their new business environment and related legislative requirements.’⁴

3.7 The Australian Private Equity and Venture Capital Association (AVCAL) agreed that the BIIP would be unable to meet its objectives, stating:

But the reality is that since the introduction of this visa stream some two years ago, very few visas – in fact, to our knowledge only one such visa has been granted thus far. In our view, this modest level of interest is unlikely to realise the program's primary objectives of increasing entrepreneurial talent and diversifying business expertise in Australia.⁵

2 Migration Institute of Australia, *Submission 15*, pp. 5-7.

3 Migration Institute of Australia, *Submission 15*, p. 6.

4 Migration Institute of Australia, *Submission 15*, p. 7.

5 Mr El-Ansary, Australian Private Equity and Venture Capital Association, *Transcript*, 13 June 2014, p. 18.

- 3.8 Immigration Solutions Lawyers (ISL) suggested that the failure of the BIIP may in part be due to the Department of Immigration and Border Protection (DIBP) acting as ‘gatekeeper’, resulting in ‘the imposition of multiple and often irrational requirements which only complicates the application and processing process.’⁶
- 3.9 ISL added:
- Its objectives are good but there have just been a number of implementation issues. The criticisms we have made in our submission are intended to be constructed so that Australia can be open for business. It has to be a benefit to Australia and just not always to the visa applicant.⁷
- 3.10 Immigration lawyers, Mr Christopher Levingston and Mr Dolf Van Zyl, also commented that the BIIP was not meeting its objectives.
- 3.11 Mr Levingston submitted that the reason the BIIP failed to meet its objectives is because applications were not processed in a timely manner and that the programme:
- ...requires a significant “adjustment” to the extent that DIBP needs to apply sufficient resources, and remove artificial barriers to the approval of applicants who intend to come to Australia and contribute to the development of Australia.⁸
- 3.12 Mr Van Zyl argued that ‘the current programme is a dismal failure and not reaching any objects whatsoever.’⁹
- 3.13 The Law Council of Australia, however, was ‘very supportive of the current programmes underlying objectives in relation to attracting international talent and stimulating economic growth.’¹⁰

Economic objectives of the programme

- 3.14 States and Territories were, for the most part, complimentary of the BIIP and advised that it had met its objectives, particularly the broader economic objectives of the programme.
- 3.15 The Western Australian Business Migration Centre (BMC) stated that there ‘is no doubt that to date business migrants coming to Western Australia are meeting the economic objectives of the program.’¹¹

6 Immigration Solutions Lawyers, *Submission 13*, p. 3.

7 Mrs O'Donoghue, Immigration Solutions Lawyers, *Transcript*, 13 June 2014, p. 26.

8 Mr Levingston, *Submission 1*, p. 1.

9 Mr Van Zyl, *Submission 2*, p. 1.

10 Ms Chowdhury, Law Council of Australia, *Transcript*, 25 June 2014, p. 1.

- 3.16 The BMC provided some statistics on the economic benefits the BIIP had provided to Western Australia, noting that:

In the last four fiscal years to June 2013, the business migrants have injected more than \$1 billion in capital into the State's economy and generated over 1,000 new jobs for Western Australians.

A critical issue faced by [the small business] sector throughout the state is under capitalisation. Business migrants are successfully filling this need having a major impact on this feature of the small business economy.¹²

- 3.17 New South Wales (NSW) Trade and Investment also noted the value that BIIP migrants make to the NSW economy:

Since 1 July 2012, the start of the current BIIP, NSW has nominated 104 applicants for the program, excluding Significant Investor Visa applicants. From 2010 to 2014, 433 migrants who had been in Australia on provisional business visas applied to NSW T&I [Trade and Investment] for nomination for a permanent visa. Cumulatively these applicants had created 412 new jobs, attracted \$36.4 million business investment and delivered just under \$90 million worth of exports.¹³

- 3.18 The Victorian Department of State Development, Business and Innovation (DSDBI) considered that the BIIP was effective in attracting business migrants to Victoria, but noted that 'more could be done to increase the value and diversity of business activity undertaken by business migrants.'¹⁴

- 3.19 The DSDBI argued that consideration be given to redirecting more investment and business activity and creating incentives to diversify investment:

Consideration could be given to how more investment and business activity can be redirected from 'passive' investments (e.g. government bonds) and 'low value' business activity (e.g. retail franchises) towards 'productive' (job creating) and other high value business activity.¹⁵

- 3.20 DSDBI pointed out that business migrants intended to invest nearly \$500 million in the Victorian economy:

11 Western Australian Business Migration Centre, *Submission 3*, p. 1.

12 Western Australian Business Migration Centre, *Submission 3*, p. 1.

13 NSW Trade and Investment, *Submission 22*, p. 5.

14 Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 5.

15 Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 5.

In 2013-14, under the BIIP, Victoria nominated 1679 business migrants through the 188 and 132 visa streams. Of these, 1029 were Business Innovation stream applicants whose stated intention is to invest a combined \$488,175,829 into the Victorian economy; 68 Business Talent stream applicants who intend to invest \$165,500,000; 76 Investor stream applicants who intend to invest \$114,000,000; and 506 Significant Investor stream applicants who intend to invest up to \$2,532,800,000.¹⁶

3.21 However, the DSDBI noted that 'conclusions cannot be drawn regarding the economic benefit of the program from these migrants.'¹⁷

3.22 When asked about how many additional jobs had been created under the BIIP compared with the previous programme, DSDBI stated:

In 2013-14, of the 1679 nominated business migrants, 1134 indicated that they intended to create a total of 2869 jobs as part of their business activity. In the previous Business Skills Program in 2012-13, nominated business migrants indicated that they intended to create a total of 1370 jobs as part of their business activity.¹⁸

3.23 While noting that the numbers of BIIP visa applicants sponsored by the Australian Capital Territory (ACT) are not significant compared with other States/Territories, the Economic Development Directorate stated that 'the business migrants who successfully establish a business/invest in Canberra do have a positive economic impact on the ACT economy.'¹⁹

3.24 The Tasmanian Department of Economic Development, Tourism and the Arts also highlighted that its small numbers of BIIP migrants were making a contribution to the state:

Even though Tasmania's BIIP intake is very small, the Tasmanian Government recognises the great contributions made to the state by BIIP migrants.

This goes well beyond the injection of capital. Migrants also bring a variety of benefits to the state such as creating new employment for Tasmanians, new ways of doing business, unique business cultures and stronger international linkages. I consider that the business migrants coming to Tasmania are meeting the objectives of the program.²⁰

16 Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 11.

17 Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 11.

18 Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 11.

19 ACT Economic Development Directorate, *Submission 7*, p. 2.

20 Tasmanian Department of Economic Development, Tourism and the Arts, *Submission 9*, p. 1.

- 3.25 Trade and Investment Queensland also noted the benefits of attracting foreign companies and individuals:

Attracting innovative foreign companies and individuals to migrate and/or invest in Australia will not only boost a competitive environment for local businesses but also introduce new ideas and opportunities.²¹

- 3.26 The South Australian Government advised that 'the cumulative and progressive effects of the program cannot be overstated.'²²

- 3.27 The South Australian Government also remarked that long term business migrant families provide many potential benefits:

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.²³

- 3.28 The South Australian Government did highlight that it was difficult to assess the effectiveness of the BIIP:

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.²⁴

- 3.29 The Northern Territory (NT) Government, however, did not believe that the BIIP was meeting its objectives of 'cultivating entrepreneurship, building business activity and injecting investment capital into the Northern Territory.'²⁵

- 3.30 The NT Government highlighted some issues which it thought prevented the BIIP from meeting its objectives in the NT, including:

- Centres on the eastern seaboard of Australia are more attractive to the majority of international migrants
- Applicants are not basing business decisions on investment return, opportunity or market factors but rather on safety and convenience

21 Trade and Investment Queensland, *Submission 12*, p. 1.

22 South Australian Government, *Submission 13*, p. 2.

23 South Australian Government, *Submission 13*, p. 2.

24 South Australian Government, *Submission 13*, p. 3.

25 Northern Territory Government, Department of Business, *Submission 18*, p. 3.

- Quality of applicants
 - International competitiveness of the BIIP program.²⁶
- 3.31 The DIBP advised that they could not provide current details on whether the migration requirements of the BIIP are being met and that 'it is generally the states that you would have to ask about their review mechanisms.'²⁷
- 3.32 The DIBP also advised that the States and Territories were undertaking the quality control and the primary assessment of the businesses under the BIIP, adding:
- They [the States and Territories] are doing the need, yes, and whether or not what is being offered through the nomination process meets the specific economic or labour need that they may have.²⁸
- 3.33 In its submission the DIBP provided some information on whether the previous BSP had achieved its objectives. The DIBP highlighted that an internal review of the programme undertaken in 2010 and 2011 found that:
- Generally the programme achieved its objectives of generating employment in Australia, increasing competition and commercial activity, and developing links with international markets.²⁹
- 3.34 The review also concluded that:
- Probably that more things needed to be done to refine the program and to target it a bit more because we found that the previous program did not look very much at the human capital attributes that the migrants were bringing.³⁰

Committee comment

- 3.35 Administration of the BIIP is shared between the Federal Department of Immigration and Border Protection and each State and Territory Government.

26 Northern Territory Government, Department of Business, *Submission 18*, pp. 3-5.

27 Mr Wilden, Department of Immigration and Border Protection, *Transcript*, 14 May 2014, p. 3.

28 Mr Wilden, Department of Immigration and Border Protection, *Transcript*, 14 May 2014, p. 3.

29 Department of Immigration and Border Protection, *Submission 14*, p. 3.

30 Mr Fleming, Department of Immigration and Border Protection, *Transcript*, 14 May 2014, p. 3.

- 3.36 Consequently, at the commencement of the inquiry, the Committee wrote to the DIBP and the Premiers and Chief Ministers in each State and Territory inviting them to provide a submission on the terms of reference.
- 3.37 However, responses from the States and Territories, and in particular the two largest sponsoring States (NSW and Victoria), were not forthcoming.
- 3.38 As a result, the Committee wrote again to the Premiers of NSW and Victoria inviting them to participate in the inquiry and to make officials available to attend public hearings to provide evidence on the BIIP.
- 3.39 After a protracted period, each State and Territory did provide some written evidence to the inquiry.
- 3.40 However, the evidence provided by each State and Territory was quite limited and gave very little evidence that the BIIP was actually meeting any of its objectives.
- 3.41 The DIBP also appeared unable to provide evidence on the success of the BIIP in meeting its objectives, referring instead to the States and Territories significant role in the administration of the BIIP.
- 3.42 In particular, when asked about the types of businesses or investments favoured under the BIIP, the percentage of applications assisted by migration agents, and the percentage of business migrants in rural and regional areas compared to metropolitan areas, the DIBP advised that:
- The DIBP has limited nor no data
 - DIBP systems record limited information on the nature of enterprises that business migrants buy into or establish in Australia
 - Departmental systems do not record this information. The department has confirmed that the States/Territories do record some information on this matter but it is not readily available to the department on an ongoing basis.³¹
- 3.43 Based on the limited evidence received during the course of this inquiry, the Committee is unable to make an assessment of whether the objectives of the BIIP are currently being met.
- 3.44 It is the Committee's view that obtaining appropriate evidence is complicated by the States and Territories significant role in the administration of the BIIP, apparent lack of communication with the DIBP and lack of responsiveness to this Committee.
- 3.45 It would seem that the States and Territories have almost full administration of the BIIP, with the DIBP only focussing on issuing visas and compliance.
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31 Department of Immigration and Border Protection, *Supplementary Submission 14.1*, pp. 4-6.

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- 3.46 As a Federal Government Programme, oversight and ultimate responsibility for its administration rests with the DIBP. As stated above, from the evidence received it is difficult to assess the ability of the programme to attract and retain entrepreneurial talent and business expertise.
- 3.47 This situation points to what may be a systematic challenge in migration. The responsibility for the BIIP is clearly a Commonwealth matter, but in practice the administration of the programme relies on the States and Territories. This division on responsibility makes it difficult to assess the effectiveness of the programme.
- 3.48 Whether the BIIP should become the sole responsibility of the Federal Government, with elements currently administered by the States and Territories no longer delegated, is a matter that must be examined.

Application rates

- 4.1 As part of the inquiry, the Committee considered the conditions involved in the decline in rates of application for the Business Innovation and Investment Programme (BIIP), in light of rates of application for the previous Business Skills Programme (BSP).
- 4.2 This chapter examines whether there was in fact a decline in application rates and the potential causes that may have contributed to any such decline.
- 4.3 Table 4.1 provides information on the number of visas lodged, granted and cancelled under the BSP in each subclass.
- 4.4 During the period of 1 July 2010 to 31 March 2014, nearly 12,000 BSP visa applications were lodged with the DIBP. Over 12,000 were granted and around 80 cancelled.

Table 4.1 Business Skills Programme Delivery

1 July 2010 – 31 March 2014			
<i>Subclasses</i>	<i>Lodged</i>	<i>Grants</i>	<i>Cancelled</i>
Business Skills Provisional visas (closed to new primary applicants)			
160	69		
161	7	73	0
162	9	9	0
163	5262	6	5
164	518	6109	30
165	665	392	0
		553	46
Business Skills Residence visas			
890	554	331	0
891	14	16	0
892	3893	3166	2
893	398	362	0
Business Skills Direct Entry Visas (Repealed on 1 July 2012)			
845	307	205	TBA
846	11	9	TBA
Business Talent 1 July 2010-1 July 2012			
132	163	177	TBA

Source Department of Immigration and Border Protection, *Submission 14*, pp. 17-18.

4.5 In its submission the Department of Immigration and Border Protection (DIBP) noted that the number of applications lodged for the BIIP visas had dropped slightly. The DIBP attributed this to increased applications prior to the start of the new programme:

A significant contributing factor to this was the considerable spike in applications for visas under the previous programme made in May and June 2012. This is consistent with our previous experience in making major changes to visa programmes will normally give rise to a sharp increase in applications prior to the date of effect and a subdued lodgement rate for an extended period after changes take effect.¹

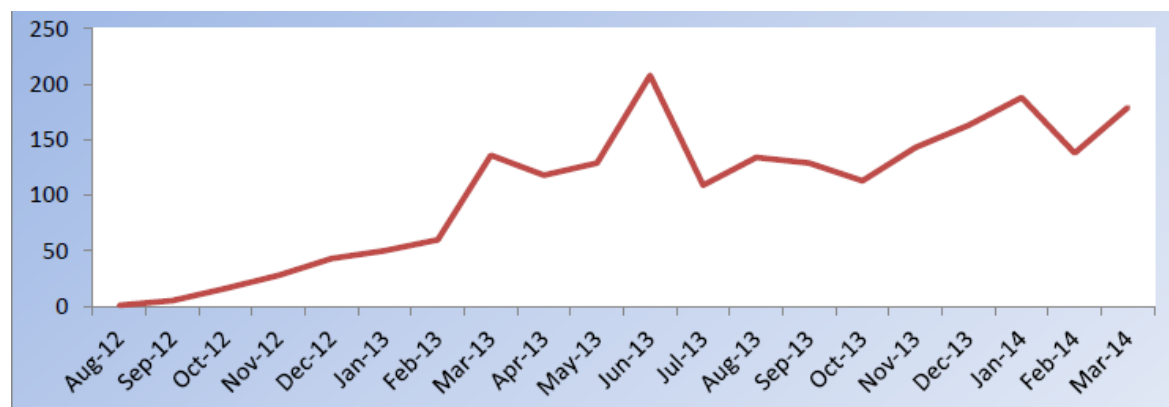
4.6 The DIBP added that since the commencement of the BIIP in July 2012, lodgements had increased overall but that it was too early to assess if the lodgement rate would return to previous levels.²

4.7 Figure 4.1 highlights that there were substantial fluctuations in the application rates since the commencement of the BIIP.

¹ Department of Immigration and Border Protection, *Submission 14*, p. 18.

² Department of Immigration and Border Protection, *Submission 14*, p. 19.

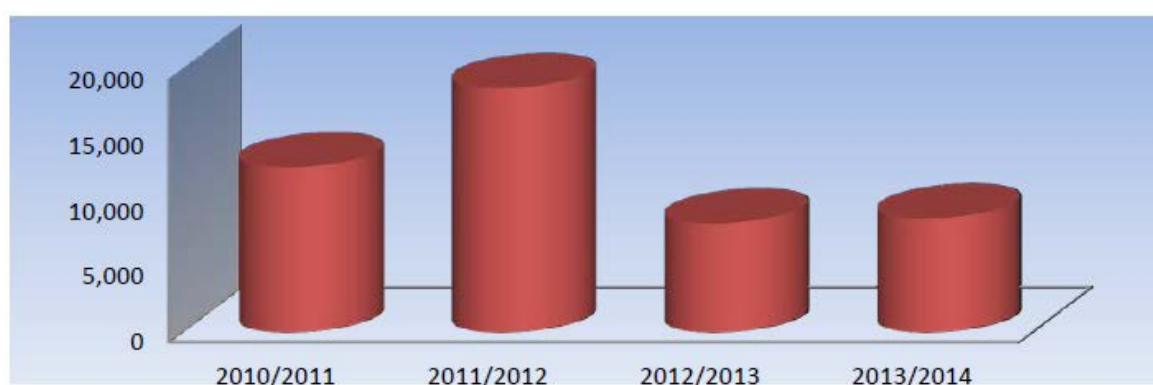
Figure 4.1 BIIP Visa application lodgements to end March 2014



Source Department of Immigration and Border Protection, Submission 14, p. 19.

4.8 Figure 4.2 below shows that there were a significant number of applications lodged in the 2011-2012 year compared with the previous year.

Figure 4.2 Business Visa Application Lodgements June 2010 to end March 2014



Source Department of Immigration and Border Protection, Submission 14, p. 19.

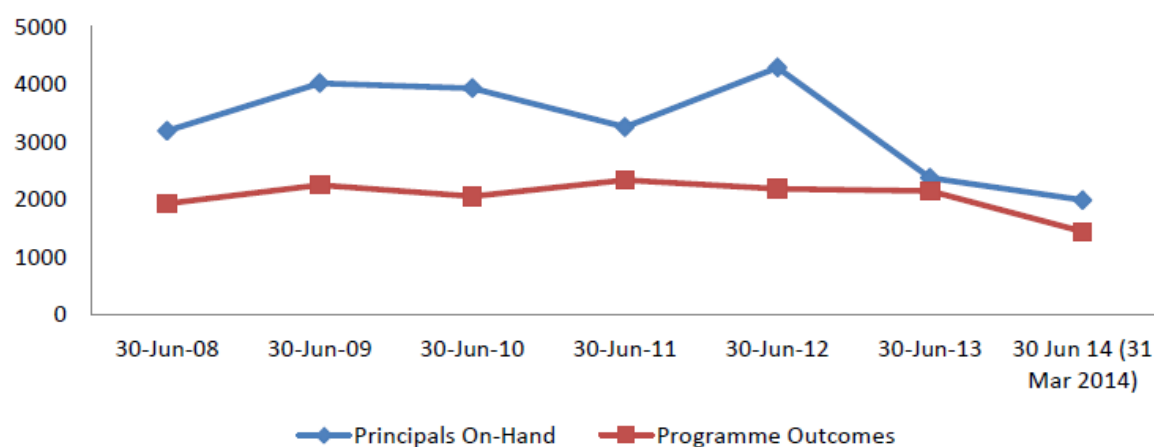
4.9 The DIBP advised that meeting future targets may be doubtful:

Delivery of the BIIP for 2013-14 will include a mix of applications lodged under the old Business Skills programme, in addition to applications lodged under the new visas. However, meeting similar targets in future years is more doubtful. At current rates of processing and with similar programme expectations, the pipeline of Business Skills applications is likely to be exhausted during either the 2014-2015 year, or in the 2015-2016 year.³

4.10 Figure 4.3 shows the decline of Business Skills applications, against the number of programme grants over recent years.

3 Department of Immigration and Border Protection, Submission 14, p. 19.

Figure 4.3 Visas granted, and remaining cases on hand



Source Department of Immigration and Border Protection, *Submission 14*, p. 20.

4.11 The DIBP also highlighted that the application rate under the previous Business Skills programme was too high to match the available places, but that the new settings under the BIIP may have reduced demand:

Should the permanent migration programme continue to plan on the delivery of a similar number of business migrants for those future years, the application rate under the BIIP will need to increase. While the application rate under the Business Skills programme generally ran too high to match the places available, leading to the build-up of a substantial pipeline of applications awaiting processing, the BIIP visa settings may have gone too far in reducing demand for business migration. Maintaining a balance between obtaining better quality applicants, and sufficient quantity to meet programme planning levels, has not yet been achieved.⁴

4.12 The DIBP, noting that it would be difficult to estimate the impact any changes would have, did suggest three options to increase demand in the BIIP:

- reducing the points test pass mark
- adjusting aspects of the points test to better reflect the attributes of the available cohort
- reducing the financial thresholds in order to allow a wider range of applicants.⁵

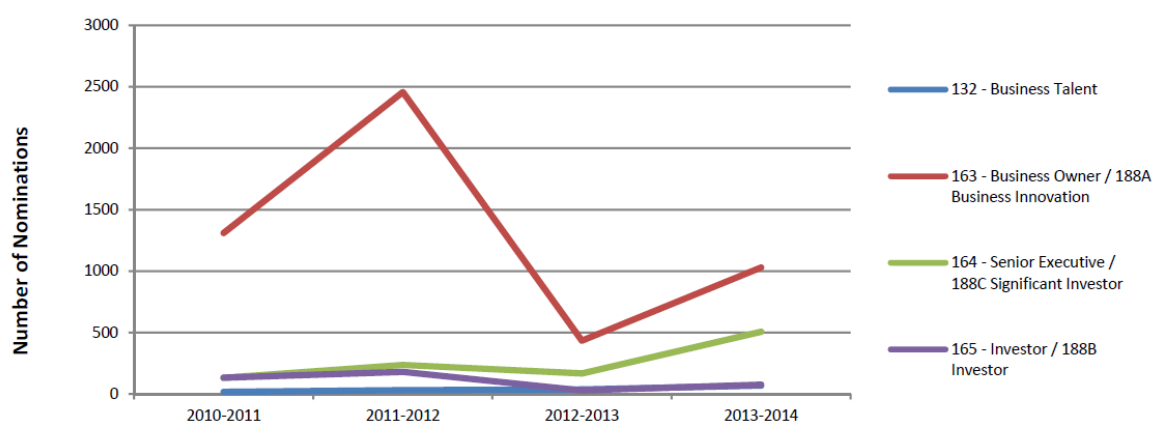
4 Department of Immigration and Border Protection, *Submission 14*, p. 20.

5 Department of Immigration and Border Protection, *Submission 14*, p. 20.

Application rates in Victoria

- 4.13 Of all the States and Territories that were engaged during this inquiry, the Victorian Department of State Development, Business and Innovation (DSDBI) were the only jurisdiction that provided statistics on the number of applicants they sponsored and the number that obtained a visa.
- 4.14 As noted in chapter 2, between the commencement of the BIIP on 1 July 2012 and 31 July 2014, the Victorian Government approved 1,822 nominations. Of those, 468 were granted a visa, 47 were rejected, 57 were withdrawn and 1,250 are pending a decision by the DIBP.⁶
- 4.15 Figure 4.4 below shows that there was a decline in nomination applications between 2011 and 2013, particularly for the 163 Business Owner and 188A Business Innovation visas.⁷

Figure 4.4 BIIP and BS Victorian Nominations



Source Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 10.

- 4.16 The DSDBI advised that this may be attributed to higher financial thresholds, and removal of the role reversal ability where the secondary applicant becomes the primary applicant.⁸
- 4.17 Other State/Territory Government Departments, peak bodies and individuals also provided their views on factors that were perceived to have affected the application rate for the BIIP including:
- Removal of the role reversal ability
 - Lack of coordinated marketing and promotion of the BIIP
 - Lengthy processing times
 - Financial requirements and the Points test

⁶ Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 5.

⁷ Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 10.

⁸ Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 10.

- Competition with other countries
 - Demanding eligibility criteria.⁹
- 4.18 An evaluation of the eligibility criteria, including the points test and financial requirements, will be examined in chapter 5. The additional views that were perceived to have affected the application rate noted above are examined in more detail below.

Removal of the role reversal ability

- 4.19 The majority of States and Territories considered that the removal of the ability for the secondary applicant to become the primary applicant was a significant factor in the declining rates of application.
- 4.20 The Western Australian Business Migration Centre (BMC) submitted that:
- The business activity should be assessed and evaluated on its ability to provide economic benefit rather than on how business operations are shared between the primary and secondary applicants.
- This criteria was removed from the current BIIP with no evidence to support the rationale that businesses managed by the primary applicant are more successful than businesses managed by the secondary applicant and should be reintroduced.¹⁰
- 4.21 The Australian Capital Territory (ACT) Economic Development Directorate (EDD) agreed that the removal of the ability for a role reversal when applying at the permanent 888 visa was a major factor contributing to the decline in the application rate. The EDD stated:
- Removing this role reversal ability has reduced the attractiveness of the provisional BIIP to overseas investors, as it is extremely unlikely that a successful business person will cease their business interests overseas (which are also the source of their assets), to operate a small business in Australia for 12 months in order to meet the permanent visa criteria.

9 Western Australian Business Migration Centre, *Submission 3*, pp. 3-4; Law Council of Australia, *Submission 8*, pp. 2-3; Tasmanian Department of Economic Development, Tourism and the Arts, *Submission 9*, p. 2; Migration Institute of Australia, *Submission 15*, pp. 8-9.

10 Western Australian Business Migration Centre, *Submission 3*, p. 3.

The Department of Immigration and Border Protection should assess the economic benefit of the Australian business activity, rather than assess how the business management is shared between the primary and secondary applicants.¹¹

- 4.22 The Tasmanian Department of Economic Development, Tourism and the Arts (DEDTA) commented that it was understandable for primary and secondary applicants to try and share the business management and workload:

It is understandable that they try to share the management workload in Australia between the primary and secondary applicants, and in many cases the original secondary applicant is in a better position to qualify for 888. This newly introduced inflexibility seems to be perceived as a challenge to many prospective applicants. Since 888 has comprehensive and quantifiable requirements such as turnover, asset transfer and employment generation, it may be reasonable to consider that meeting such requirements would be sufficient to realise the economic benefits (hence meeting the program objectives) regardless of who within the family managed the Australian business.¹²

- 4.23 Trade and Investment Queensland suggested that the contribution of the secondary applicant be recognised:

In some cases, the secondary applicant has equal or greater responsibility than the primary applicant in running the business, and as such should be recognized if the primary applicant is unable to meet permanent residency requirements in their own right.¹³

11 Australian Capital Territory Economic Development Directorate, *Submission 7*, p. 2.

12 Tasmanian Department of Economic Development, Tourism and the Arts, *Submission 9*, p. 2.

13 Trade and Investment Queensland, *Submission 12*, p. 2.

- 4.24 The Government of South Australia highlighted that the previous business skills programme allowed the secondary and primary applicants to swap roles:

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 roles. The removal of swapping of roles between the provisional and permanent visa holders would have also contributed to the decline in numbers.¹⁴

- 4.25 The Government of South Australia added that a 'lack of clarity on eligibility requirements for active management and residency requirements is creating uncertainty for applicants.'¹⁵

- 4.26 New South Wales (NSW) Trade and Investment proposed that the business be evaluated on its ability to provide economic benefit:

...rather than the way in which management of the business operations is shared between the primary and secondary applicants. Evaluating the success of the business will allow a State or Territory to retain both the economic benefit of the business and the long-term benefits of the residency of BIIP families who make a genuine and substantial commitment to living in the State or Territory concerned.¹⁶

- 4.27 DSDBI agreed that the economic benefit that a business provided was valuable, stating:

The primary focus of the policy and program settings for all business migration visa streams should be on how to encourage more productive, higher value investment and business activity. Businesses should have the choice of which personnel are selected to operate the business, as long as they deliver substantial business activity.¹⁷

- 4.28 AUSA Migration & Education Service Pty Ltd (AUSA) commented that it was unreasonable to expect the primary applicant to abandon their existing business overseas and focus entirely on the Australian business, recommending that role swapping also be allowed.¹⁸

14 Government of South Australia, *Submission 16*, p. 5.

15 Government of South Australia, *Submission 16*, p. 6.

16 NSW Trade and Investment, *Submission 22*, p. 6.

17 Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 13.

18 AUSA Migration & Education Service Pty Ltd, *Submission 19*, p. 3.

- 4.29 Registered Migration Agent, Mr John Findley, held a different perspective and did not think that it was too much to expect the primary applicant to spend time running a business in Australia:

... the main applicant in the primary application must be the main applicant, not the secondary. That means he must meet the residence requirement, which does not sound too hard – 12 months in two years – but that is half of the time he has to spend here. Most businesses are not huge; most are relatively small businesses that employ 10 to 15 people – entrepreneurs. How is the business going to run without him there? My business could not run without me on the front line. It is the same for these guys, and so he has to make a choice.¹⁹

- 4.30 Immigration Solutions Lawyers (ISL) spoke more broadly commenting that the residency requirements under the BIIP were not competitive internationally:

Residency is an issue. I [ISL] put on and chaired a conference in March this year to which we brought overseas immigration lawyers. They were talking about different aspects of business entrepreneurs. You really will not get the type of entrepreneur you are looking at with the residency requirements that you have now. You are going to get the ones that perhaps want their children educated here and will move that way, but Australia needs basically to have less reduction on residency and a faster tracking to citizenship, if you want to be competitive internationally.²⁰

- 4.31 Z5 Venture Capital agreed that it was an incentive to attach permanent residency status to an application in order to remain globally competitive.²¹ They added:

The whole concept of a permanent visa ... makes us a very attractive market for people who want to relocate from their country of birth. In that context, we have a great opportunity here to be able to fund and to bring talent and entrepreneurial skill into Australia to benefit the whole of the economy and communities in Australia. That is the thing I think we need to focus on.²²

19 Mr Findley, Shanghai Resources Pty Ltd, *Transcript*, 12 June 2014, pp. 28-29.

20 Mrs O'Donoghue, Immigration Solutions Lawyers, *Transcript*, 13 June 2014, p. 27.

21 Mr Shi, Z5 Venture Capital, *Transcript*, 13 June 2014, p. 25.

22 Mr Nelson, Z5 Venture Capital, *Transcript*, 13 June 2014, p. 25.

- 4.32 In its submission, the DIBP indicated that swapping of roles between the primary and secondary applicant was disallowed in 2012:

...on the basis of having established a points tested system to select high quality applicants to transfer their business skills to Australia, and we should protect the integrity of that objective by requiring the primary applicant to make a genuine commitment to the new business in Australia.²³

- 4.33 The DIBP did however acknowledge that there should be a focus on the residency requirements of secondary applicants and family members:

...in order for that family to anchor themselves in Australia. Families located in Australia would see children going to Australian schools and universities, and in turn taking over those businesses and moving the centre of gravity of their families' global commercial operations to this country. The programme would provide the opportunity for them to make their international family business an Australian family business.²⁴

- 4.34 The DIBP also noted that they had been getting feedback that the decline in application rates was partly due to the removal of the role reversal ability and that they were examining this matter.²⁵

Committee comment

- 4.35 The Committee notes the views made by submitters that the application rates for the BIIP have declined due to the removal of the role reversal ability.
- 4.36 However, the Committee has not received any empirical evidence as part of this inquiry that would support this conclusion. Australia wants to attract the best for our national interests without forgoing our standards and quality controls.
- 4.37 The Committee is therefore not persuaded that reverting back to the previous residency requirements under the former business skills programme is appropriate at this time.

23 Department of Immigration and Border Protection, *Submission 14*, p. 23.

24 Department of Immigration and Border Protection, *Submission 14*, p. 23.

25 Mr Wilden, Department of Immigration and Border Protection, *Transcript*, 14 May 2014, p. 4.

Lack of coordinated marketing and promotion

- 4.38 Several States and Territories also suggested expanding the marketing and promotion of the BIIP in order to attract more applicants.
- 4.39 The BMC noted that currently ‘State and Territory Governments operate their own marketing strategies in their prime markets.’²⁶ The BMC considered this approach to be fragmented and commented that they were getting very little assistance from the DIBP.²⁷
- 4.40 The BMC suggested that a coordinated marketing approach with the following elements would achieve improved results:
- Specialist Business Visa Expos coordinated by the Department of Immigration and Border Protection (DIBP) and paid for by the exhibitors in key cities in prime market countries
 - Exhibitors made up of Federal, State and Territory Governments, migration service providers and representatives of complying investments
 - Titled under an all Australia name such as “Australia – Open For Business” or similar and to stage six events over a full program year
 - As the targeted markets are high net-worth investors, the layout of the expo should be in the form of a business lounge rather than booths.²⁸
- 4.41 The DSDBI also advocated for additional marketing strategies to ‘increase awareness of Australia as a business and investor migration destination.’²⁹
- 4.42 It was their view that:
- commercially run migration expos were not effective in attracting business migrants
 - they have had some success with jointly run highly targeted events focused on skilled migrants in the UK
 - one-on-one relationship management has been the most effective marketing approach.³⁰
- 4.43 The EDD and DEDTA agreed that a coordinated marketing strategy was worthwhile. The EDD, in particular, commented that a marketing strategy could leverage the ‘Australia - Open for Business’ brand.³¹

26 Western Australian Business Migration Centre, *Submission 3*, p. 4.

27 Western Australian Business Migration Centre, *Submission 3*, p. 4.

28 Western Australian Business Migration Centre, *Submission 3*, p. 4.

29 Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 5.

30 Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 5.

31 Tasmanian Department of Economic Development, Tourism and the Arts, *Submission 9*, p. 2; Australian Capital Territory Economic Development Directorate, *Submission 7*, p. 3.

- 4.44 Trade and Investment Queensland also recommended jointly promoting the BIIP internationally with DIBP and States and Territories, adding:

...business migrants place extreme importance on speaking directly to government officials who can make decisions about the scheme. ... Queensland would support and contribute funding to a DIBP roadshow or similar that is attended by Commonwealth, State and Territory Government officials only and would be keen to investigate co-branding or similar arrangements for offshore events.³²

- 4.45 Trade and Investment Queensland cautioned 'a co-operative road show with business organisations, managed funds, councils and other stakeholders who seek to "leverage" the representation of government officials as a means of inferring the legitimacy of their investment products.'³³

- 4.46 The Government of South Australia recommended diversifying the programme in addition to gathering broader market intelligence prior to targeted promotion of the BIIP, stating:

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).³⁴

32 Trade and Investment Queensland, *Submission 12*, p. 2.

33 Trade and Investment Queensland, *Submission 12*, p. 2.

34 Government of South Australia, *Submission 16*, p. 5.

- 4.47 The Northern Territory Department of Business (DoB) did not consider that the marketing and promotion of the BIIP they had undertaken had been worthwhile. The DoB advised that interest in the BIIP had been minimal even though they had allocated significant resources to working with migration agents and marketing at Australian and international events, particularly in the People's Republic of China.³⁵
- 4.48 A survey undertaken by the Migration Institute of Australia (MIA) of its members questioned whether the State and Territory Governments were promoting the BIIP effectively. The MIA noted that responses to the question were mixed:
- Some comments indicated the states and territories were doing a better job at promoting these visas than the Federal Government. Some states were better at this promotion than others. Those states that are marketing well and have the more flexible threshold requirements are receiving the majority of applications.³⁶
- 4.49 Mr Findley expressed the view that 'except for that which is undertaken privately by professional migration advisers, Australia makes little effort marketing itself to prospective immigrants'.³⁷
- 4.50 Z5 Venture Capital and the Australian Private Equity & Venture Capital Association Limited (AVCAL) agreed with the view that the Government had done little to promote the BIIP overseas.³⁸ AVCAL added:
- I think one of the recurring themes that have emerged from discussion around the industry on this is about how to lift and improve the level of awareness. To come to your question, I think there is a compelling proposition that is being put through this program, but one of the barriers identified is certainly that which relates to the awareness around that. I think that, in and of itself, would play a role in helping to better realise the objectives of the program and clearly there are a range of other considerations as well. But, as a starting point, that appears to be a very logical area to concentrate some further effort in the near future.³⁹
- 4.51 Ord Minnett Ltd suggested that Austrade assist with marketing as well as adding business migration to its key initiatives.⁴⁰
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35 Northern Territory Department of Business, *Submission 18*, p. 3.

36 Migration Institute of Australia, *Supplementary Submission 15.1*, p. 9.

37 Mr Findley, *Supplementary Submission 6.1*, p. 6.

38 Mr Shin, Z5 Venture Capital, *Transcript*, 13 June 2014, p. 20; Mr El-Ansary, Australian Private Equity & Venture Capital Association Limited, *Transcript*, 13 June 2014, p. 20.

39 Mr El-Ansary, Australian Private Equity & Venture Capital Association Limited, *Transcript*, 13 June 2014, p. 20.

40 Mr Headland, Ord Minnett Ltd, *Transcript*, 12 June 2014, p. 49.

- 4.52 The DIBP advised that there is currently no Federal funding allocated for promoting the BIIP internationally, advising that:

Each jurisdiction is responsible for marketing to prospective investors and each State and Territory operates their own marketing strategies. Certain industries, namely the financial services and property funds industry, also promote this programme in key international markets.⁴¹

Committee comment

- 4.53 The Committee is of the view that it would be more efficient to provide federal funding to market and promote Australia's entire skilled migration programme, rather than the small subset comprised of the BIIP.
- 4.54 However, without obtaining the appropriate evidence, it is difficult to assess the benefits of conducting a jointly administered marketing and promotion strategy, albeit that this seems to be the logical way to proceed.
- 4.55 The Committee therefore believes that it would be beneficial to gather broader market intelligence prior to promoting the skilled migration programme overseas.

Lengthy processing times

- 4.56 Another issue commonly suggested as leading to a decline in application rates is lengthy processing times for visa applicants.
- 4.57 The Law Council of Australia (LCA) and the Migration Alliance Inc. (Migration Alliance) suggested that lengthy processing times may have acted as a deterrent to applicants.⁴²
- 4.58 ISL agreed that processing applicants in a timely manner was a factor deterring potential applicants. ISL also considered that the target timeframes for finalising applications were quite long:

The targets for finalising applications were all met in 2012-2013, however the target timeframes themselves were quite long. For the onshore low-risk category 75% of applications were finalised within 11 months, and for the high-risk applications they were finalised within 22 months. For the offshore low-risk category 75%

41 Department of Immigration and Border Protection, *Supplementary Submission 14.1*, p. 6.

42 Law Council of Australia, *Submission 8*, p. 2; Mrs Allan, Migration Alliance Inc., *Transcript*, 12 June 2014, p. 19.

were finalised within 9 months, and for the high-risk category they were finalised within 28 months.⁴³

- 4.59 The MIA stated that the lengthy processing times for business visa applications in Australia was an unattractive feature.⁴⁴
- 4.60 The DoB recognised that 'the processing time has reduced over the past few years and is competitive with the processing times for migration competitors, a further reduction in processing time will boost the competitiveness of Australia's visa system internationally.'⁴⁵
- 4.61 The DoB added:
- Genuine business people and investors will consider not only what they need to do to obtain permanent residency but also choose investments and business activities that will maximise returns. Within 6-8 months investment and business opportunities can evaporate, forecasts and projections become less reliable and economic conditions can change substantially.⁴⁶
- 4.62 Mr Findley was also of the view that the processing times were too long and that it would be a competitive advantage for the migration programme to offer a quick turnaround of visa applications.⁴⁷
- 4.63 PricewaterhouseCoopers, Ord Minnett Ltd and AVCAL all agreed that there appeared to be a delay in processing times.⁴⁸
- 4.64 Z5 Venture Capital suggested that the delay in processing times, in particular for the processing centre in Hong Kong, was partly due to the number of staff engaged to process visa applications.⁴⁹
- 4.65 Mr Van Zyl also pointed out that overseas offices like Hong Kong were very slow to process applications.⁵⁰
- 4.66 AUSA suggested that Australia provide priority processing for applicants applying for permanent residence who have made a significantly larger investment:

Applicants for permanent residence who have made larger investments in Australia significantly above minimum

43 Immigration Solutions Lawyers, *Submission 13*, p. 8.

44 Migration Institute of Australia, *Submission 15*, p. 10.

45 Northern Territory Department of Business, *Submission 18*, p. 5.

46 Northern Territory Department of Business, *Submission 18*, p. 5.

47 Mr Findley, *Supplementary Submission 6.1*, pp. 9-10.

48 Mrs Zhao, PricewaterhouseCoopers, *Transcript*, 12 June 2014, p. 40; Mr Headland, Ord Minnett Ltd, *Transcript*, 12 June 2014, p. 40; Mr El-Ansary, Australian Private Equity & Venture Capital Association Limited, *Transcript*, 13 June 2014, p. 18.

49 Mr Shin, Z5 Venture Capital, *Transcript*, 13 June 2014, p. 29.

50 Mr Van Zyl, Van Zyl Lawyers, *Transcript*, 18 June 2014, p. 4.

requirements should be rewarded with priority processing for their visa applications. This would provide an incentive for greater business commitments as well as rewarding applicants who make commitments well above most other applicants.⁵¹

- 4.67 The Migration Alliance and the MIA also suggested offering incentives for larger investors.⁵² The MIA recommended:

...that consideration be given to offering incentives for higher levels of investment in complying businesses, eg, priority processing or fast tracked permanent residence for those applications.⁵³

- 4.68 The Australia British Chamber of Commerce (ABCC) highlighted that the United States and United Kingdom have premium processing visas:

...where you can pay an additional fee for a faster turnaround. Now that the subclass 400 are electronic, my migration agent colleague tells me that his are often approved in 24 to 48 hours and five days tops. That seems to be working well.⁵⁴

- 4.69 ISL noted that Portugal also offered a premium visa, the Golden visa, where applications will be validated within a maximum of 72 hours from the time of lodgement and approximately between 14 to 45 days for a decision.⁵⁵

- 4.70 While agreeing that processing times could be deterring potential applicants for applying, ISL commented that Australia does not need to compare itself with the processing times of other countries, but rather the processing times of other Australian visa subclasses:

...processing times are too long compared to other subclasses that we have in our country. So we do not need to go further and compare ourselves to other countries, there are other options for migrants to get to permanent residency much quicker and much easier.⁵⁶

- 4.71 In its submission, the DIBP provided some statistics on the length of time it has taken to process visa applications:

Since July 2012, under the new Business Innovation and Investment Programme, 95.5 percent of applications have been finalised within the service standard of nine months. The longest

51 AUSA Migration & Education Service Pty Ltd, *Submission 19*, p. 5.

52 Mrs Allan, Migration Alliance Inc., *Transcript*, 12 June 2014, p. 23.

53 Migration Institute of Australia, *Supplementary Submission 15.1*, p. 6.

54 Mr Amoils, Australia British Chamber of Commerce, *Transcript*, 12 June 2014, p. 10.

55 Immigration Solutions Lawyers, *Supplementary Submission 13.1*, p. 1.

56 Miss Shin, Immigration Solutions Lawyers, *Transcript*, 13 June 2014, p. 29.

time taken to grant a visa under the new Business Innovation and Investment Program is 532 days. This was for a subclass 188 visa, lodged on 26 October 2012 and granted on 11 April 2014. This delay resulted from the time taken by the applicant to fulfil the requirements of the health check.⁵⁷

- 4.72 The DIBP advised, however, that it was difficult to advise a ‘normal’ time frame for processing applications:

...because it depends on when they put in and at each of those stages there is flexibility. It can be quite fast if they put in an expression of interest and they already have an agent who is talking to, for example, the relevant state authority. They know applications are coming and they reach in quickly and applications are prepared early. As we see across many of our visa types, we give people natural justice to put their information together and apply. It can be done in a couple of months, but it can take six, nine or 12 months. It really does depend on the individual circumstances.⁵⁸

- 4.73 The DIBP added that they ‘usually find that the delays tend to be at the client end in terms of how ready they are to provide information.’⁵⁹

- 4.74 The Law Council of Australia agreed that processing delays were at the client end, adding:

When the SIV was first introduced there probably were delays on the part of the Australian consulate-general in Hong Kong, who were processing applications from the People’s Republic of China, simply because it was all so new. They probably were trying to digest how it worked. Initially the delays were probably from both sides, but now that the program has run for a year and a half, I would say that the delays that are occurring are more from the applicants side – for certain applicants only, from certain countries.⁶⁰

Committee comment

- 4.75 The Committee acknowledges that lengthy processing times may be acting as a deterrent to potential visa applicants.

57 Department of Immigration and Border Protection, *Supplementary Submission 14.1*, p. 3.

58 Mr Wilden, Department of Immigration and Border Protection, *Transcript*, 14 May 2014, p. 1.

59 Mr Wilden, Department of Immigration and Border Protection, *Transcript*, 14 May 2014, p. 2.

60 Ms Chowdhury, Law Council of Australia, *Transcript*, 25 June 2014, p. 9.

- 4.76 However, it is difficult to attribute the cause of the delays to any one issue: whether it is under-resourced visa processing staff; financial verification requirements; specific country requirements; or failure on the part of visa applicants.
- 4.77 The Committee concludes that it would be worthwhile for the DIBP to examine the options for improving application processing and service standards as part of the 2015-16 migration programme and, in particular, in its review of the skilled migration and temporary activity visa programmes.

Eligibility criteria

- 5.1 As noted in chapter 2, there are a number of eligibility requirements for individuals wishing to apply for a visa under the Business Innovation and Investment Programme (BIIP). Some of the key eligibility requirements include:
- lodging an Expression of Interest, being nominated by a State or Territory government, having the required amount of assets and owned a business or made an investment
 - for some visa subclass streams: meeting the Innovation Points Test (IPT), having obtained funding from an Australian venture capital firm, and be less than 55 years old.¹
- 5.2 Of the key eligibility requirements, submitters focussed on the IPT and the financial requirements of the BIIP. The concerns about these criteria are considered below.

Innovation Points Test

- 5.3 In his submission, Mr Christopher Levingston submitted that the current IPT enables applicants with a low level of skill or expertise to qualify. Mr Levingston commented that the perfect candidate would be 'a person with no less than 4 years continuous experience in business, a business with a turnover of no less than \$1 million, \$1.3 million in assets and between 35-39 years of age.'²

1 Department of Immigration and Border Protection, *Submission 14*, pp. 8-10.

2 Mr Levingston, *Submission 1*, p. 2.

- 5.4 He added however that the perfect candidate would prefer to remain in the People's Republic of China (PRC) because of Australia's compliance regime as compared to the relatively light taxation and government regulations in the PRC.³
- 5.5 At a public hearing, Mr Findley commented that a formula designed to assess 'the characteristics of potentially successful entrepreneurs is just a step too far.'⁴
- 5.6 Mr Dolf Van Zyl called for the points test to be abolished and to place emphasis on the business history and business acumen of suitable migrants.⁵
- 5.7 The Western Australian Business Migration Centre (BMC) commented that while the points test was a suitable way of assessing an applicant's age, English language ability and qualifications from the core factors for qualification, it did not believe that this was an appropriate way to assess an individual's business expertise, stating:
- ...it is not an appropriate method of determining a business skills qualification where the core factors are in non personal areas such as business turnover and assets. A points test becomes too prescribed for assessing business skills and tends to favour personal attributes rather than business achievements.⁶
- 5.8 The BMC commented that assessing BIIP applicants' age, English language ability and qualifications benefited 'potential employers and addresses the nation's skilled labour needs', adding that:
- ...in the context of assessing the potential contribution of a migrant in terms of business growth, investment and job creation there is little value in this approach as it cannot offer any assessment of business skill or success of business owners and investors; and should be removed from the BIIP.⁷

3 Mr Levingston, *Submission 1*, p. 2.

4 Mr Findley, Shanghai Resources Pty Ltd, *Transcript*, 12 June 2014, p. 26.

5 Mr Van Zyl, *Submission 2*, p. 2.

6 Western Australian Business Migration Centre, *Submission 3*, p. 5.

7 Western Australian Business Migration Centre, *Submission 3*, p. 5.

- 5.9 The Australian Capital Territory (ACT) Economic Development Directorate (EDD) supported the BMC's view that the points test was not an appropriate way to assess an individual's business expertise and suggested that it be removed from the BIIP.⁸ The EDD added:
- In addition, the points test does not recognise the benefits of a provisional visa pathway that allows the visa holder four years to prove their business/investment expertise in Australia before being eligible to apply for permanent residence.⁹
- 5.10 Trade and Investment Queensland also agreed with the view that the points test was a suitable way to assess skills and abilities but not business expertise:
- In the context of assessing the potential contribution of a migrant in terms of business growth, investment and job creation there is little value in a points test approach as it cannot offer any assessment of business skill or success of business owners and investors.¹⁰
- 5.11 Trade and Investment Queensland also recommended removing the points test.¹¹
- 5.12 The Northern Territory Department of Business (DoB) commented that the points test was not a suitable way of choosing entrepreneurs adding:
- ...we think that if the program was tweaked to take away that sort of qualitative focus to better look at the attributes that make a successful business person then that too would assist.¹²
- 5.13 When asked about what attributes would be suitable to measure business acumen, the DoB suggested looking at the success the business person has had overseas as well as analysing the success of the businesses they operate.¹³
- 5.14 Immigration Solutions Lawyers (ISL) called the points test ineffective, commenting that:
- It does not make it very difficult for applicants with low skill and expertise levels to pass
 - The language requirement may deter many applicants.¹⁴

8 Australian Capital Territory Economic Development Directorate, *Submission 7*, p. 3.

9 Australian Capital Territory Economic Development Directorate, *Submission 7*, p. 3.

10 Trade and Investment Queensland, *Submission 12*, p. 3.

11 Trade and Investment Queensland, *Submission 12*, p. 3.

12 Ms Martin, Northern Territory Department of Business, *Transcript*, 16 July 2014, p. 2.

13 Ms Martin, Northern Territory Department of Business, *Transcript*, 16 July 2014, p. 2.

14 Immigration Solutions Lawyers, *Submission 13*, p. 4.

- 5.15 ISL highlighted that the States and Territories can award special endorsement points to a unique business which it considered:
- ... a positive attribute of the current points test. It allows these skilled migrants to meet any skill shortages that are present in local labour markets.¹⁵
- 5.16 The Migration Institute of Australia (MIA) stated that the eligibility criteria was subjective, providing the following example:
- 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.¹⁶
- 5.17 On the points test, the MIA said it provided 'a suitably wide range of opportunities for applicants to achieve points.'¹⁷
- 5.18 The Government of South Australia was of the opinion that the introduction of the points test led to a drop in demand for the BIIP:
- 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.¹⁸
- 5.19 While they supported the criteria used in the points test (age, business experience, English levels, etc.), the Government of South Australia suggested removing the points test from the BIIP.¹⁹
- 5.20 The DoB also called for the removal of the points test advising that the current settings:
- ...do not favour high calibre applicants without formal qualifications who have successful business backgrounds in the more 'traditional' areas of business. A points test cannot accurately access applicants' business skills and attributes which are better gauged through an examination of the applicants' businesses.²⁰

15 Immigration Solutions Lawyers, *Submission 13*, p. 13.

16 Migration Institute of Australia, *Submission 15*, p. 10.

17 Migration Institute of Australia, *Submission 15*, p. 12.

18 Government of South Australia, *Submission 16*, p. 6.

19 Government of South Australia, *Submission 16*, p. 6.

20 Northern Territory Department of Business, *Submission 18*, p. 7.

- 5.21 The DoB stated that the points test could assess attributes of skilled migrants, and that it should focus on 'job creation and increasing business activity.'²¹ The DoB added that 'diversity and investment such assessments tend to skew the results away from true business outcomes.'²²
- 5.22 New South Wales (NSW) Trade and Investment suggested replacing the points test with an alternative assessment of a business' success, stating:
- ... consideration could be given to alternative methods of assessing an applicant's likelihood of business success, such as a smaller set of criteria targeted to the BIIP visa stream concerned. The turnover and assets of the original home country business (or businesses) and personal assets appear to be key predictive indicators. Consideration should be given to expanding the innovation demonstration requirements to include less-formal evidence.²³
- 5.23 The Victorian Department of State Development, Business and Innovation (DSDBI) thought that it was more appropriate to create incentives to diversify investments and business choices rather than use the points tests and selection criteria to select skilled migrants:
- Creating incentives to diversify investment and business choices and reward migrants who make substantial or high value investments may be a better approach than attempting to set selection criteria (such as the points test) to screen business migrants in an attempt to predict success²⁴
- 5.24 As noted in chapter 2, the points test was adopted as a mechanism to potentially increase the quality of the business applicants entering the BIIP.²⁵

21 Northern Territory Department of Business, *Submission 18*, p. 7.

22 Northern Territory Department of Business, *Submission 18*, p. 7.

23 NSW Trade and Investment, *Submission 22*, p. 6.

24 Victorian Department of State Development, Business and Innovation, *Submission 23*, pp. 5-6.

25 Department of Immigration and Border Protection, *Submission 14*, p. 11.

5.25 The DIBP submitted:

Previous evaluation of the labour market outcomes of points tested migrants observed that in each case, those migrants with more favourable attributes as determined by the general skilled migration points test had greater early success in finding jobs, were employed in skilled occupations and had a high incidence of using their qualifications in their employment. It is reasonable to assume that a points test geared towards innovation would be just as successful, particularly if it recognises innovation attributes unacknowledged in the Business Skills programme.²⁶

5.26 In its submission, the DIBP advised that 'it had undertaken some analysis of the make-up of points claimed by successful applicants to date', but that it was difficult to draw conclusions due to possible incomplete data and variations by visa processing officers.²⁷

5.27 As part of that analysis, the DIBP observed that:

- around 60% of applicants claimed the maximum points - 35 points – for annual business turnover over AUD2 million. This would suggest that the programme is catering more for established businesses
- approximately only 10% of applicants claimed the points available for English language skills, suggesting that business migrants continue to have lower capacity in this area than most other skilled stream migrants
- nearly a quarter of successful applicants claimed points in one of the innovation categories, suggesting that this approach is attracting migrants who will make a contribution to innovation in the Australian economy.²⁸

5.28 The DIBP also pointed out that while they look at a potential applicant's net assets, turnover and the requirements of the points test, the states and territories, and in particular their commerce and industry departments, would undertake an assessment of the business's commercial viability and likelihood of success.²⁹

26 Department of Immigration and Border Protection, *Submission 14*, p. 12.

27 Department of Immigration and Border Protection, *Submission 14*, p. 14.

28 Department of Immigration and Border Protection, *Submission 14*, p. 14.

29 Mr Fleming, Department of Immigration and Border Protection, *Transcript*, 14 May 2014, p. 6.

Committee comment

- 5.29 The Committee acknowledges the views of submitters that the points test should be removed from the BIIP because it is not a good measure of business acumen.
- 5.30 The Committee has found that there have been some difficulties in assessing the effectiveness of the points test because:
- the BIIP and the points test has only been operating in its current form for a short period of time
 - a lack of evidence on its ability to effectively select suitable migrants.
- 5.31 Additionally, entrepreneurship and business acumen are very broad concepts that are particularly challenging to define. There is no one mechanism that has been identified as being able to consistently and effectively measure an individual's business acumen or entrepreneurship.
- 5.32 DIBP staff who process business visa applications may not necessarily have the capacity to effectively make an assessment of an applicant's business acumen.
- 5.33 Therefore, the Committee is of the view that the points test should continue to be used as one mechanism, in a suite of mechanisms, to assess the suitability of prospective visa applicants.

Financial criteria

- 5.34 DEDTA were of the opinion that the financial requirements of the BIIP had reduced the scope of the targeted audience, noting that as part of the 2010-2011 review³⁰ described in chapter 2, DEDTA suggested:
- ...greater flexibility for the first stage and tightening up the second stage requirements. In this way, the program would be more accessible to a wider audience who have a genuine entrepreneurial intention (i.e. give them a chance to try), but only those who achieved the 888 requirements would be granted permanent residency.³¹

30 See Chapter 2.

31 Tasmanian Department of Economic Development, Tourism and the Arts, *Submission 9*, p. 2.

- 5.35 Mr Dolf Van Zyl submitted that the current asset requirements were too high and adjustments needed to be made:
- ...to the business innovation stream by lowering the total asset requirement from \$800,000 to \$500,000. By lowering the annual turnover from \$500,000 to \$350,000 and by lowering the 51% shareholding requirement of a business with turnover from \$400,000 per year to \$250,000.³²
- 5.36 The Government of South Australia proposed that the increase in 'the permanent visa financial requirements or assets threshold would have impacted on the verification of the financial requirements' which may have contributed to a decline in visa applications.³³
- 5.37 Trade and Investment Queensland agreed:
- Although BSMQ [Business and Skilled Migration Queensland] agree that a higher level of investment and assets was required to encourage applicants who have greater wealth and or entrepreneurial talent, higher thresholds may have contributed to a decline in interest in the programme.³⁴
- 5.38 Nearly 90 per cent of MIA members, in response to a survey, reported that the number of business skills visa application lodgements fell since the BIIP visas were introduced. Nearly 80 percent of MIA members advised that the increase in monetary thresholds was the cause for the drop in applications. The MIA stated:
- The increase in monetary thresholds was the most strongly reported reason for the drop in applications, with 79.37% of MIA Members reporting this as a factor in the decline. The increase in the applicants' current business qualifying thresholds were cited as the next highest category at 66.67% and more difficult financial assessment requirements as the third highest by 55.56% of MIA Members.³⁵
- 5.39 The MIA recommended that 'consideration be given to the monetary thresholds for some streams of the BIIP visas being reduced to allow greater access to the programme.'³⁶

32 Mr Van Zyl, *Submission 2*, p. 1.

33 Government of South Australia, *Submission 16*, p. 6.

34 Trade and Investment Queensland, *Submission 12*, p. 2.

35 Migration Institute of Australia, *Supplementary Submission 15.1*, p. 12.

36 Migration Institute of Australia, *Supplementary Submission 15.1*, p. 13.

- 5.40 NSW Trade and Investment also suggested the option of reducing ‘financial thresholds to encourage greater participation’, particularly from incoming venture capital entrepreneurs.³⁷ NSW Trade and Investment also suggested providing lower thresholds to ‘attract greater numbers of business and investor migrants to regional Australia.’³⁸
- 5.41 The MIA also pointed out that the migration programme offers other:
...regional versions of visas, sometimes with lower threshold requirements, to try to attract people. So I think one of the ways the current program is not meeting Australia’s needs is that it is not meeting our regional needs.³⁹
- 5.42 Rockwell Olivier, a law firm that operates across the Pacific and into emerging markets, noted that emerging markets, like Papua New Guinea, felt ‘that the investment threshold requirement is a bit high for them.’⁴⁰
- 5.43 The Australia British Chamber of Commerce (ABCC) highlighted that other countries appear to have a lower threshold for investors and entrepreneurs, stating:
We are looking for entrepreneurs and investors, but it is interesting that, in those countries which are trying to be restrictive, you seem to have a much lower threshold for your investors and entrepreneurs. The entrepreneur visa in the UK is £200,000 and, in some cases, if certain government programs are sponsoring the project you are on, it is as little as £50,000.⁴¹
- 5.44 The ABCC added that the financial thresholds requirements of the BIIP could be less attractive compared with other countries, stating:
...if you are putting \$5 million into the Australian dollar when you have it in other currencies at a time when the currencies are high and we have a much smaller market here – if I am going to set up a new business, I have 65 million-plus people in the UK to market to versus 22 million here. If you are going to make it more difficult for me, it just becomes less and less attractive. I think it is really on the entrepreneurs and significant investors that Australia could sharpen up in comparison.⁴²

37 NSW Trade and Investment, *Submission 22*, p. 7.

38 NSW Trade and Investment, *Submission 22*, p. 7.

39 Mr Lane, Migration Institute of Australia, *Transcript*, 13 June 2014, p. 4.

40 Mr Pal, Rockwell Olivier, *Transcript*, 12 June 2014, p. 41.

41 Mr Amoils, Australia British Chamber of Commerce, *Transcript*, 12 June 2014, p. 2.

42 Mr Amoils, Australia British Chamber of Commerce, *Transcript*, 12 June 2014, p. 4.

- 5.45 More specifically, Australian Private Equity and Venture Capital Association (AVCAL) held the view that the threshold applied to the venture Capital Entrepreneur stream of the BIIP was limiting the number of applicants, stating:
- ...very few foreign entrepreneurs would qualify given the size and scale of the Australian VC industry (unless there is a significant influx of new capital into Australian VC funds). Such low visa take-up levels are unlikely to significantly help achieve the BIIP's objectives of increasing entrepreneurial talent and diversifying business expertise in Australia.⁴³
- 5.46 AVCAL recommended 'lowering the \$1 million investment requirement to \$100,000 for consistency with comparable regional markets such as New Zealand and Singapore.'⁴⁴
- 5.47 The German-Australian Chamber of Industry and Commerce (GACIC) also provided information on the entrepreneurial or investor visa in Germany, noting that:
- there were no specific investment thresholds
 - Germany allows individuals interested in investing in a specific area, in a specific business, to enter the country temporarily if they do not hold a European Union visa or passport
 - individuals can pitch their idea to the local authorities and a group that is made up of the local chamber of commerce
 - it is then vetted by local institutions
 - the local immigration office, Ausländeramt, is able to approve a three-year temporary immigration visa that then, after three years, gets reviewed and can be converted into a permanent resident visa.⁴⁵
- 5.48 ISL agreed that the thresholds that Australia has at the moment is putting the country at a competitive disadvantage and, as a result, capital and entrepreneurial skills are being lost to other countries.⁴⁶
- 5.49 ISL also suggested lowering the investment threshold as well as diversifying funding options.⁴⁷

43 Australian Private Equity & Venture Capital Association Limited, *Submission 10*, p. 3.

44 Australian Private Equity & Venture Capital Association Limited, *Submission 10*, p. 3.

45 Mr Wolf, German-Australian Chamber of Industry and Commerce, *Transcript*, 12 June 2014, pp. 2-3.

46 Mrs O'Donoghue, Immigration Solutions Lawyers, *Transcript*, 13 June 2014, p. 28.

47 Immigration Solutions Lawyers, *Submission 13*, p. 15.

- 5.50 The LCA submitted that lowering the threshold for start-ups and for early venture capital businesses and having a tiered approach to the Venture Capital stream of subclass 132 and the business talent migration visa would be helpful.⁴⁸
- 5.51 The LCA proposed two options to develop the visa subclasses:
- Have a temporary version, a four year visa, for start-ups with a lower threshold. At the end of a certain period, if the applicant could demonstrate they had made effort to run a business, they could obtain a permanent visa.
 - Have different streams within the business talent visa: a start-up stream, a venture capital stream, a private equity stream to reflect the different stages of a business.⁴⁹
- 5.52 Z5 Venture Capital held a slightly different view, stating that the million dollar threshold was not that high for a single fund player compared with the broader fund managers.⁵⁰
- 5.53 Z5 Venture Capital added:
- Certainly, it is good enough to keep as a barrier on the selection of the talent that we need to attract. If we were to lower our standard to a lower level, then we may not necessarily attract the right number of people into the country. In our business dealings, we think a million dollars of funding for a certain project is not that challenging if there is the right project for it.⁵¹
- 5.54 The DSDBI submitted that the total asset requirements of the Business Innovation stream were not too high:
- The BIIP targets entrepreneurs with a proven business history. As such, applicants should be able to demonstrate access to sufficient assets to invest in substantial business activity of benefit to Australia, and sufficient funds to support their families to settle. Australia is a premium destination and can ensure appropriate thresholds for business and investor migration are in place.⁵²

48 Ms Chowdhury, Law Council of Australia, *Transcript*, 25 June 2014, p. 1.

49 Ms Chowdhury, Law Council of Australia, *Transcript*, 25 June 2014, pp. 3-4.

50 Mr Shi, Z5 Venture Capital, *Transcript*, 13 June 2014, p. 20.

51 Mr Shi, Z5 Venture Capital, *Transcript*, 13 June 2014, pp. 20-21.

52 Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 12.

- 5.55 The DIBP indicated that the provisional visa thresholds were:
... consistent with the Australian Bureau of Statistics' records of the average net worth of Australian business owners in 2006, so these thresholds are a suitable minimum for potential entry into Australia.⁵³
- 5.56 The DIBP added that while 'lowering threshold requirements would ensure a higher level of visa lodgements, it is also likely to lower the quality of visa applicants.'⁵⁴
- 5.57 As noted above, the DIBP did however suggest the option of 'reducing the financial thresholds in order to allow a wider range of applicants' and increase demand.⁵⁵

Committee comment

- 5.58 As the DIBP noted in their submission, 'making major changes to visa programmes will normally give rise to a sharp increase in applications prior to the date of effect and a subdued lodgement rate for an extended period after changes take effect.'⁵⁶
- 5.59 If this is correct, then the proposed changes announced by the Government on 14 October 2014 to the Significant Investor visa will affect the application rates for the BIIP both prior to and after they have been implemented.
- 5.60 Given the recent announcement, and the review of the skilled migration and temporary activity visa programmes, the Committee concludes that it would be premature to make any recommendations on the BIIP's financial requirements or assets threshold requirements prescribed for each visa until the changes have been implemented and operating for some time.
- 5.61 However, the Committee urges the DIBP to consider these issues as part of its review of the skilled migration and temporary activity visa programmes.

53 Department of Immigration and Border Protection, *Submission 14*, p. 10.

54 Department of Immigration and Border Protection, *Supplementary Submission 14.1*, p. 16.

55 Department of Immigration and Border Protection, *Submission 14*, p. 20.

56 Department of Immigration and Border Protection, *Submission 14*, p. 18.

Other eligibility requirements

- 5.62 A few submitters highlighted some additional areas for consideration such, as the English language requirements of the BIIP, attracting early-stage entrepreneurs and graduates, attracting investment in regional Australia and assisting businesses in distress. These additional areas are discussed in this section.

English language requirements

- 5.63 It was the DoB's experience that genuine business migrants who are not fluent in the English language were still able to produce business outcomes:
- Experience in the Northern Territory suggests that genuine business people who don't have good English language skills engage professional advisers and interpreters to assist them with their investment decisions and business developments. It also suggests that those who are fluent in languages other than English, particularly the languages of our key trading partners such as Mandarin and Chinese dialects, Indonesian and Japanese, are able to produce quality business outcomes in the highly desirable areas of export and overseas market development.
- 5.64 Based on this experience, the DoB called for the English language requirement of the BIIP to be removed.⁵⁷
- 5.65 As noted earlier in this chapter, the Government of South Australia was of the view that the English language component of the points test may have led to a drop in demand.⁵⁸
- 5.66 The Migration Alliance Inc. suggested that the strict English language test made it difficult for applicants to obtain a visa.⁵⁹ They agreed with the DoB that a business person could engage an interpreter to assist them with the management of the business.⁶⁰
- 5.67 Mr Findley also agreed that a high level of proficiency in English was not 'necessary to meet the objectives of migration programs.'⁶¹

57 Northern Territory Department of Business, *Submission 18*, p. 7.

58 Government of South Australia, *Submission 16*, p. 6.

59 Mrs Allan, Migration Alliance Inc., *Transcript*, 12 June 2014, p. 19.

60 Mrs Allan, Migration Alliance Inc., *Transcript*, 12 June 2014, p. 19.

61 Mr Findley, Shanghai Resources Pty Ltd, *Transcript*, 12 June 2014, p. 25.

- 5.68 The DIBP, in its submission, pointed out that 'there is no English requirement for State/Territory sponsored applicants but those having less than functional English must pay an additional visa application charge.'⁶²
- 5.69 ISL also noted that there were no mandatory English requirements but that the applicant does not score anything on the points test if they do not have a certain level of English proficiency.⁶³ ISL added that this may deter many applicants.⁶⁴

Early-stage entrepreneurs

- 5.70 AVCAL posited the notion that it would be beneficial for Australia to attract more early-stage entrepreneurs.⁶⁵
- 5.71 AVCAL recommended the BIIP be broadened to include an additional eligibility requirement designed to attract early-stage entrepreneurs:
- Broaden the programme to include start-up founders and allow acceptance into a qualifying incubator programme as an alternative eligibility requirement.⁶⁶
- 5.72 AVCAL added that attracting and retaining early-stage entrepreneurs was extremely important:
- Australia can reap significant early adopter benefits by attracting founders of high potential businesses that are still in the incubation or the start-up phase. We believe it would also be in Australia's interest to attract more early stage entrepreneurs to live here and to remain invested in growing Australian jobs and operations, such as through investing in research and development, and manufacturing and export market development. Even after their start-ups mature and expand beyond our borders, retaining such talent here in Australia is hugely important.⁶⁷
- 5.73 NSW Trade and Investment⁶⁸ and Trade and Investment Queensland also held the view that it was important to encourage investment by venture capitalists:

62 Department of Immigration and Border Protection, *Submission 14*, p. 6.

63 Miss Shin, Immigration Solutions Lawyers, *Transcript*, 13 June 2014, p. 30.

64 Immigration Solutions Lawyers, *Submission 13*, p. 4.

65 Australian Private Equity and Venture Capital Association, *Submission 10*, p. 3.

66 Australian Private Equity and Venture Capital Association, *Submission 10*, p. 2.

67 Mr El-Ansary, Australian Private Equity & Venture Capital Association Limited, *Transcript*, 13 June 2014, p. 18.

68 NSW Trade and Investment, *Submission 22*, p. 7.

Queensland supports initiatives that encourage investment by venture capitalists into Australia's small to medium enterprises and believes its economy would benefit from this investment.⁶⁹

- 5.74 The MIA suggested creating a start-up business stream in the BIIP as a way of attracting additional suitable migrants.⁷⁰ The MIA outlined that the proposed start-up business stream would include three stages. Stage 1 would be provisional for twelve months, allowing the applicant to start the business. Stage 2 would provide provisional renewal to run the business for up to 3 years. After that time, if the business could prove that it had met all requirements, the applicant could apply for a permanent visa.⁷¹
- 5.75 Mills Oakley Lawyers were a little more specific, calling for greater flexibility for investment visas:
- [T]here does need to be some flexibility on the investment classes, on the basis that, with things like venture capital and early start-ups, there could be tax concessions afforded for investors in that space. If we can get a balance between ensuring that we have the capital retained in the country and giving them the incentive to keep it here by way of those tax concessions.⁷²
- 5.76 The Venture Capital Entrepreneur stream of the Business Talent (Permanent) (subclass 132) visa is part of the BIIP. As noted in chapter 2, the stream allows entrepreneurs 'to fund the start-up phase, product commercialisation, business development or expansion of a high value business idea in Australia.'⁷³

Attracting graduates

- 5.77 The MIA also suggested creating a self-employment stream for graduates of Australian universities in the BIIP:

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

69 Trade and Investment Queensland, *Submission 12*, p. 3.

70 Migration Institute of Australia, *Submission 15*, pp. 10-12.

71 Migration Institute of Australia, *Submission 15*, p. 11.

72 Ms Yeo, Mills Oakley Lawyers, *Transcript*, 12 June 2014, p. 48.

73 Department of Immigration and Border Protection, *Submission 14*, p. 11.

is not only in the independent skilled migration streams, but also for young business entrepreneurs who have studied in Australia.⁷⁴

- 5.78 The DSDBI asked the Committee to consider broadening the sources of entrepreneurial talent, noting in particular the UK Government's Graduate Entrepreneur visa which 'recognises innovative young business people amongst its international students.'⁷⁵
- 5.79 The DSDBI added that the 'BIIP program tends to attract applicants with an older age profile because it targets only business migrants with a proven business history.'⁷⁶
- 5.80 The ABCC commented that Australia had an advantage in retaining graduates compared with other countries like the US, and also suggested establishing entrepreneur streams for new graduates.⁷⁷

Attraction of investment in regional Australia

- 5.81 Several submitters proposed that the BIIP should be attracting more investment in regional and rural areas.
- 5.82 The DoB submitted that more regional incentives were needed, adding:
- If Australia is to realise the greatest benefit from the BIIP program then the geographic dispersal of those investments and business activities across Australia is essential. It is unlikely that regional or priority areas of Australia will achieve an appropriate proportion of the entrepreneurial skills and investment unless there are incentives to encourage this dispersal.⁷⁸
- 5.83 The DoB added that concessions to the BIIP such as either increasing thresholds or business activity in metropolitan areas or relaxing requirements for regional areas could be beneficial:
- The concept of concessions based on regional areas already exists within current migration policy. An example of this is the state/territory nominated visas under the General Skilled Migration program. Concessions are recognised ways of encouraging migrants to settle in areas that are perceived as less attractive.⁷⁹

74 Migration Institute of Australia, *Submission 15*, p. 12.

75 Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 6.

76 Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 6.

77 Mr Amoils, Australia British Chamber of Commerce, *Transcript*, 12 June 2014, p. 15.

78 Northern Territory Department of Business, *Submission 18*, p. 4.

79 Northern Territory Department of Business, *Submission 18*, p. 4.

- 5.84 In its submission, the DoB suggested that the appeal of regional areas could be increased by developing regionally-based migration incentives, and noted that it was in discussions with the Federal Government on ‘developing Special Economic Zones (SEZs), which would create financial incentives for migrants to invest and move to regional areas.’⁸⁰
- 5.85 At a public hearing, the DoB expanded on an incentive for businesses who would like to come to regional Australia:
- We consider that rewards should be given to investors or business people from overseas who are looking at establishing new businesses rather than buying into existing ones or, if they are buying into existing ones, then looking to how they add value, as opposed to just business as usual. We also believe that the state governments for remote or regional businesses – or regional business per se – should be able to have a certain number that we could use to attract the people whom we need or we want.⁸¹
- 5.86 NSW Trade and Investment called for reconsideration of the regional attraction thresholds for the BIIP, suggesting that they should be ‘lowered to attract greater numbers of business and investor migrants to regional Australia.’⁸²
- 5.87 Mr Findley argued that the migration programme would only be able to encourage the dispersion of entrepreneurs and business people to regional and low growth areas through the regulatory framework.⁸³
- 5.88 ISL noted one objective of the BIIP to increase the dispersal of business migrants across Australia, commenting that the DIBP ‘should more actively encourage business migrants to establish businesses in rural, regional or low growth areas of Australia.’⁸⁴

80 Northern Territory Department of Business, *Submission 18*, p. 8.

81 Ms Martin, Northern Territory Department of Business, *Transcript*, 16 July 2014, p. 2.

82 NSW Trade and Investment, *Submission 22*, p. 7.

83 Mr Findley, *Supplementary Submission 6.1*, p. 8.

84 Immigration Solutions Lawyers, *Submission 13*, p. 9.

- 5.89 They suggested that Australia consider adopting a similar visa to the US EB-5 immigration visa which has a lower threshold for individuals willing to set up a business in rural or areas with higher unemployment:

One possibility might be to introduce a model that has more relaxed requirements for areas of low population and growth that is similar to the US model. This might help to encourage a more even distribution of investment funds. For example, the US EB-5 immigration visa does have a minimum qualifying investment of US \$1 million but this is reduced to \$500,000 in rural areas that are in need of employment creation and in areas that have unemployment that is 150 percent above that of the national average.⁸⁵

- 5.90 Mr Van Zyl, Ord Minnett Ltd, ISL and the ABCC all highlighted the EB-5 immigration visa and suggested it was a good idea to consider a similar visa for Australia.⁸⁶
- 5.91 The Government of South Australia advised that the BIIP should play a role in 'building Australia's economy, including the economies of regional Australia.'⁸⁷
- 5.92 They suggested that the 132 venture capital visa be removed from the BIIP and 'introduce a 132 regional business visa with lower threshold criteria than the other visa streams in the program.'⁸⁸
- 5.93 When they appeared before a public hearing, the MIA commented that the business migration programme was ineffective for states and territories other than Victoria and NSW, and in particular Melbourne and Sydney.⁸⁹ The MIA submitted that the current programme was not meeting Australia's regional needs, pointing out that:
- In all sorts of areas of the migration program, there have been regional versions of visas, sometimes with lower threshold requirements, to try to attract people.⁹⁰
- 5.94 Statistics provided by the DSDBI showed that only a very small percentage of BIIP nominees intended to locate their business in a regional area of Victoria.⁹¹

85 Immigration Solutions Lawyers, *Submission 13*, p. 9.

86 Mr Van Zyl, Van Zyl Lawyers, *Transcript*, 18 June 2014, p. 3; Mr Headland, Ord Minnett Ltd, *Transcript*, 12 June 2014, p. 42; Mr Amoils, Australia British Chamber of Commerce, *Transcript*, 12 June 2014, pp. 5-6; Miss Shin, Immigration Solutions Lawyers, *Transcript*, 13 June 2014, p. 30.

87 Government of South Australia, *Submission 16*, p. 5.

88 Government of South Australia, *Submission 16*, p. 5.

89 Mr Lane, Migration Institute of Australia, *Transcript*, 13 June 2014, p. 4.

90 Mr Lane, Migration Institute of Australia, *Transcript*, 13 June 2014, p. 4.

- 5.95 The United Dairy farmers of Victoria (UDV) pointed out that there were many definitions of ‘regional’ within the immigration regulations which could pose as a potential hurdle to establishing regional zones or lowering thresholds for regional or rural areas.⁹²
- 5.96 As noted in chapter 2, the previous Business Skills Programme contained a Regional Established Business (subclass 846) visa which was removed. At that time, the threshold for the Regional Established Business visa was \$200,000.⁹³
- 5.97 The DIBP, in its submission, highlighted that the visa was removed due to the low uptake (four cases granted 2008-09 and six cases in 2009-10) and the cost of administering the programme.⁹⁴
- 5.98 When asked for the number of business migrants located in rural and regional areas compared to metropolitan areas, the DIBP advised that it had no data available for the BIIP.⁹⁵

Committee comment

- 5.99 The Committee appreciates the many proposals designed to increase the attractiveness of the BIIP that were provided by those who submitted to this inquiry.
- 5.100 Attracting greater investment, particularly in regional and rural areas as well as areas of underemployment, and retaining the best and brightest graduates are key components that will create economic benefit for Australia.
- 5.101 However, as stated previously, it would be premature to make any recommendations on these eligibility criteria given the recent announcement.
- 5.102 The Committee urges the DIBP to consider these issues as part of its review of the skilled migration and temporary activity visa programmes.

91 Victorian Department of State Development, Business and Innovation, *Submission 23*, p. 7.

92 United Dairy farmers of Victoria, *Submission 20*, p. 4.

93 Department of Immigration and Border Protection, *Submission 14*, Attachment B, p. 8.

94 Department of Immigration and Border Protection, *Submission 14*, p. 7.

95 Department of Immigration and Border Protection, *Supplementary Submission 14.1*, p. 6.

Recommendation 1

The Committee recommends that the Department of Immigration and Border Protection examine the Business Innovation and Investment Programme (BIIP) as part of the 2015-16 migration programme survey and in its reviews of the skilled migration and temporary activity visa programmes. The reviews should focus on the:

- suitability and attainability of the objectives set for the BIIP;
- role that States and Territories have in administering the BIIP and, specifically, the accountability of these jurisdictions and whether the programme should instead be solely administered by the Commonwealth;
- means of collecting data at the State and Territory level, its dissemination to the Department and evaluation;
- promotion and marketing of the programme;
- application processing and service standards;
- removal of the ability for the secondary applicant to become the primary applicant;
- English language requirements;
- innovation points test; and
- attracting investment in regional Australia, graduates, early-stage entrepreneurs, and venture capitalists.

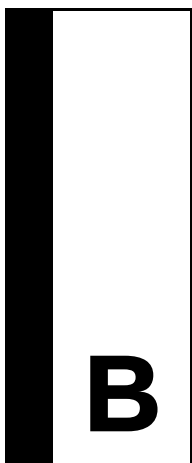
Mrs Louise Markus MP
Chair



Appendix A: List of submissions

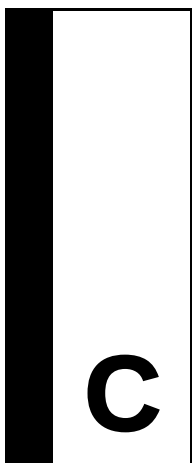
- 1 Mr Christopher Levingston
- 2 Mr Adolf van Zyl, Van Zyl Lawyers
- 3 The Business Migration Centre, Small Business Development Corporation, Western Australia
- 4 Confidential submission
- 5 Australian Bureau of Statistics
- 6 Mr John Findley
- 6.1 Mr John Findley – Supplementary submission
- 6.2 Mr John Findley – Supplementary submission
- 7 ACT Economic Development Directorate
- 8 Law Council of Australia
- 9 Tasmanian Department of Economic Development, Tourism and the Arts
- 10 Australian Private Equity and Venture Capital Association
- 11 Australian Trade Commission
- 12 Trade & Investment Queensland
- 13 Immigration Solutions Lawyers
- 14 Department of Immigration and Border Protection
- 14.1 Department of Immigration and Border Protection – Supplementary submission
- 15 Migration Institute of Australia
- 15.1 Migration Institute of Australia – Supplementary submission
- 16 Government of South Australia
- 17 Migration Review Tribunal

- 18 Northern Territory Government
- 19 AUSA Migration & Education Service P/L
- 20 United Dairy Farmers of Victoria
- 21 AXL Legal
- 22 NSW Trade & Investment
- 23 Victorian Department of State Development, Business and
Innovation



Appendix B: List of exhibits

1. Migration Institute of Australia
The Aspirations of Chinese Business Migrants in Australia, Dr Ling Deng
2. European Australian Business Council
Review of Australian Temporary Work Visas
3. Department Immigration and Border Protection
Form 1010: Survey of Business Skills visa holders
4. Department Immigration and Border Protection
Form 1139A: Statement of Assets and Liabilities Position
5. Department Immigration and Border Protection
Form: 1229: Consent to grant an Australian visa to a child under the age of 18 years



Appendix C: List of public hearings

Canberra, Wednesday, 14 May 2014

Department of Immigration and Border Protection

Mr Garry Fleming, Acting Deputy Secretary, Policy and Program Management Group

Mr David Wilden, Acting First Assistant Secretary, Migration and Citizenship Policy Division

Sydney, Thursday, 12 June 2014

Australia British Chamber of Commerce

Mr Matthew Amoils, Member

Basis Point Consulting

Mr David Chin, Founder and Managing Director

Migration Alliance Inc.

Mrs Liana Allan, Secretary

Shanghai Resources Pty Ltd

Mr John Findley, Managing Director

Ord Minnett Ltd

Mr Luke Headland

Swiss-Australian Chamber of Commerce and Industry

Mr Michael Kobras, Member

European Australian Business Council

Mrs Silke Koernicke, Honorary Lawyer and President, Finland Australia Chamber of Commerce Inc.

Rockwell Olivier

Mr Nitij Pal, Principal

German-Australian Chamber of Industry and Commerce

Mr Kristian Wolf, Executive Director

Mills Oakley Lawyers

Ms Jennifer Yeo, Special Counsel

PricewaterhouseCoopers

Mrs Renee Zhao, Private Client - China Market Head

Mr Christopher Levingston – Private capacity

Sydney, Friday, 13 June 2014

Migration Institute of Australia

Ms Angela Chan, National President

Mr Kevin Harold Lane, Chief Operating Officer

University of Sydney

Dr Dimitria Groutsis, Senior Lecturer, Managing Global Migration Research Group, Business School

Associate Professor Diane Van Den Broek, Co-convenor, Managing Global Migration Research Group, Business School

Australian Private Equity & Venture Capital Association Limited

Mr Yasser El-Ansary, Chief Executive Officer

Z5 Venture Capital

Mr Stuart Nelson, Director/Partner

Mr Howard Shi, Director/Partner

Australian Private Equity & Venture Capital Association Limited

Ms Kar Mei Tang, Head of Research

Immigration Solutions Lawyers

Mrs Anne O'Donoghue, Director and Principal Lawyer

Miss Esther En Jung Shin, Solicitor and Registered Migration Agent, Head of Corporate Migration

Canberra, Wednesday, 18 June 2014

Van Zyl Lawyers

Mr Adolf Jacobus Jonker Van Zyl, Principal

Canberra, Wednesday, 25 June 2014

Law Council of Australia

Ms Rita Chowdhury, Steering Committee Member, Migration Law Committee

Canberra, Wednesday, 16 July 2014

Northern Territory Department of Business

Mr Alastair John Shields, Chief Executive

Ms Mary Adelaide Martin, Director Workforce Growth and Skilled Migration

Canberra, Wednesday, 27 August 2014

Victorian Farmers Federation

Mr Vin Delahunty, UDV Manager

Miss Adele Luisa Beasley, UDV Project and Policy Officer



Appendix D: Summary of the main criteria for visas under the Business Skills Programme¹

Independent Provisional (temporary) Visas

Business Owner (Subclass 160)

This visa is for people who have a successful business career, and a genuine and realistic commitment to be involved as an owner in a new or existing business in Australia.

- Net business assets of \$200,000 and net business/personal assets of \$800,000
- Annual business turnover of \$500,000
- Aged less than 45 years and have vocational English skills

Senior Executive (Subclass 161)

This visa is for senior executive employees of a major overseas business, who have significant net assets and a genuine and realistic commitment to participate in the management of a new or existing business in Australia.

- Occupied a position in top 3 management levels of a major business
- Net business/personal assets of \$800,000
- Aged less than 45 years and have vocational English skills

1 Department of Immigration and Border Protection, *Submission 14*, Attachment A, pp. 1-4.

Investor (Subclass 162)

This visa is for people who have a successful business or investment career, and have a genuine and realistic commitment to be involved in investing or business in Australia.

- Will make a designated investment of \$1,500,000
- Net business/personal assets of \$2,250,000
- Aged less than 45 years and have vocational English skills

State/Territory Sponsored Provisional (temporary) Visas

State/Territory Sponsored Business Owner (Subclass 163)

This visa is for people sponsored by a state or territory of Australia, with a successful business career, and a genuine and realistic commitment to be involved as an owner in a new or existing business in Australia.

- Net business/personal assets of \$500,000
- Annual business turnover of \$300,000
- Aged less than 55 years, and
- No English requirement but applicants having less than functional English must pay additional visa application charge (VAC)

State/Territory Sponsored Senior Executive (Subclass 164)

This visa is for senior executive employees of a major overseas business, sponsored by a state or territory of Australia, who have significant net assets and a genuine and realistic commitment to participate in the management of a new or existing business in Australia.

- Occupied a position in top 3 management levels of a major business
- Net business/personal assets of \$500,000
- Aged less than 55 years, and
- No English requirement but applicants having less than functional English must pay additional VAC

State/Territory Sponsored Investor (Subclass 165)

This visa is for people sponsored by a state or territory of Australia, who have a successful business or investment career, and have a genuine and realistic commitment to be involved in investing or business in Australia.

- Will make a designated investment of \$750,000
- Net business/personal assets of \$1,125,000
- Aged less than 55 years,
- No English requirement but applicants having less than functional English must pay additional VAC

Independent Permanent Visas

Established Business in Australia (Subclass 845)

This visa is for people who, as a temporary resident, have established a business in Australia, and have a proven ownership interest in one or more successful businesses in Australia.

- Ownership in a business for at least 18 months
- Net business assets of \$100,000 and net business/personal assets of \$250,000
- Annual turnover of \$200,000 or exports of \$100,000
- Employ at least 3 Australian permanent residents/citizens
- Score 105 points in the established business points test

Business Owner (Subclass 890)

This visa allows an applicant from a provisional visa to stay in Australia on a permanent basis for the purpose of owning a new or existing business.

- Ownership in a business for at least 2 years
- Net business assets of \$100,000 and net business/personal assets of \$250,000
- Annual turnover of \$300,000
- Employ at least two Australian permanent residents/citizens

Investor (Subclass 891)

This visa is for people who hold an Investor (provisional) visa and have maintained their designated investment/s for at least 4 years.

- Holder of a provisional investor visa for at least 2 years in the 4 years immediately prior to making an application
- Have a genuine and realistic commitment to continue business or investment activity in Australia
- Held a designated investment in Australia for at least 4 years

State/Territory Sponsored Permanent Visas

Regional Established Business in Australia (Subclass 846)

This visa is for people who, as a temporary resident, have a proven ownership interest in one or more successful businesses in Australia and are sponsored by a state/territory government authority.

- Ownership in a business for at least 2 years
- Net business assets of \$75,000 and net business/personal assets of \$200,000
- Annual turnover of \$200,000 or exports of \$100,000
- Score 105 points in the established business points test

State/Territory Sponsored Business Owner (Subclass 892)

This visa is for people who hold a provisional visa, sponsored by a state or territory of Australia, to stay in Australia on a permanent basis for the purpose of owning a new or existing business.

- Ownership in a business for at least 2 years
- Net business assets of \$75,000 and net business/personal assets of \$250,000
- Annual turnover of \$200,000
- Employ at least 1 Australian permanent residents/citizens

State/Territory Sponsored Investor (Subclass 893)

This visa is for people who hold an Investor (provisional) visa and have an overall successful record of business or investment activities, and significant net assets to invest in a designated investment in Australia for four years.

- Holder of a provisional investor visa for at least 2 years in the 4 years immediately prior to making an application
- Have a genuine and realistic commitment to continue business or investment activity in Australia
- Held a designated investment in Australia for at least 4 years

Business Talent visa (subclass 132)

This visa is for high calibre business people, sponsored by a state or territory of Australia, who are owners or part owners of an overseas business and have a genuine and realistic commitment to participate in the management of a new or existing business in Australia.

- Direct pathway to permanent residence for high calibre business migrants
- For at least 2 of the 4 fiscal years immediately before the application is made
- Must have had net assets of at least \$400,000 in a qualifying business
- Main business had an annual turnover of \$3,000,000
- Able to transfer net personal and business assets of at least \$1,500,000 to Australia.