

30 April 2014



Business Innovation, Occupation and Employer Sponsored Policy
Department of Immigration and Border Protection
6 Chan Street
Belconnen ACT 2617

By email: business.innovation@immi.gov.au

Dear Sir/Madam

Review of the Significant Investor Visa Programme

The Law Council of Australia welcomes the opportunity to make this submission to the Department of Immigration and Border Protection (DIBP) on the review of the Significant Investor Visa (SIV) Programme (SIV Programme).

This Submission was prepared by members of the Law Council's International Law Section Migration Law Committee.¹ The Law Council is the peak national representative body of the Australian legal profession – it represents some 60,000 legal practitioners nationwide. **Attachment A** provides a profile of the Law Council. **Attachment B** provides a profile of the International Law Section.

This submission responds to the key objectives of the review which are to:

- assess whether the current policy settings are conducive to the effectiveness of the Programme;
- identify measures to enhance the benefits of the Programme;
- examine options to improve processing efficiency and service standards;
- explore the feasibility of introducing a visa stream that does not require State/Territory nomination; and
- consider options for the international promotion of the Programme.

Assess whether the current policy settings are conducive to the effectiveness of the Programme

The current policy settings allow investors and business people to invest \$5million into complying investments. The visa holder must then live in Australia for 160 days in the 4 year period to then be eligible for permanent residence.

Feedback received from investors mainly from the Peoples' Republic of China, is that they want to be able to obtain permanent residence in the shortest time possible. Investors want to invest the \$5million, however the four year waiting period is not considered to be an attractive incentive.

Feedback also suggests that investors with more than the minimum \$5million will look at other countries in the international marketplace and investor programmes which may offer permanent residency in a shorter timeframe.

¹ The lead author is Ms Lena Hung.

If the Government is keen to attract the multimillion or billion dollar investors, the Law Council suggests it consider ways to make the Programme more competitive in the international market. The abovementioned investors do not want to obtain citizenship (especially the Chinese investors, as they do not want to relinquish their Chinese nationality), however they want to obtain permanent residence for their families, mainly children, for educational opportunities.

When deciding to apply for an SIV, the investors will compare the requirements with the Business Talent (subclass 132) and Business Innovation Stream within the subclass 188. The Business Talent Visa is a direct pathway to permanent residence, and holders of the 188 A (Business Innovation Stream) may be eligible for permanent residence after operating their business in Australia for two years. These visas however, require the holder to maintain direct management of a qualifying business. Significant investors may not want to be directly involved in the management of a qualifying business, which is why the options of investing in Government Bonds and ASIC managed funds may be an attractive feature of the Programme.

If one of the aims of the Programme is to attract investors to park their money in Government bonds and ASIC managed funds, and then use those funds to inject into government projects, infrastructure and other important projects aimed to promote the Australian economy, then the Programme appears to be heading in right direction.

The SIV Programme may be more attractive to investors if it is more flexible. As stated above the 4 year wait is quite a long period to obtain permanent residence. To attract the multimillion or billion dollar investors, the Government may wish to consider introducing an addition direct pathway to permanent residence, similar to the Business Talent (subclass 132) pathway, by offering permanent residence to investors who invest more than \$10 million into complying investments. If the investors withdraw their investments after a certain period of time, then their visas could be subject to visa cancellation, similar to the requirements already in place for the Business Talent (subclass 132) visa.

Identify measures to enhance the benefits of the Programme

The Law Council suggests the following measures could enhance the benefits of the SIV Programme:

- Introduce an additional pathway to permanent residence, whereby investors invest a minimum of \$10million into complying investments.
- Clarify the source of funds requirements to ensure only investors with legitimate sources of funds can apply for the SIV Programme.

Examine options to improve processing efficiency and service standards

The Law Council suggests the following options to improve the processing efficiency and service standards:

- Clarify the source of funds requirements, by specifying the timeframe and the evidence required to be provided by the applicant to prove their source of funds. This can be provided in policy, specifying examples that are acceptable to the DIBP.
- Clarify how to prove the source of funds. If funds were provided as a gift to the applicant, or the funds were inherited, then it may be difficult for the applicant to prove the source of funds.
- Specifying how funds can be transferred from countries with currency restrictions when asked to make the complying investments. Currently there is quite a lot of confusion over how funds can be transferred out of China PRC, where currency

restrictions are in place. The DIBP could make it clearer which funds transfers are acceptable, ie whether using an intermediary is acceptable, or using funds borrowed or loaned from a bank, which is loaned against assets in China.

- The DIBP could employ more staff with business backgrounds who can understand complex business structures and business arrangements (or encourage current staff to undertake training in this area).

Explore the feasibility of introducing a visa stream that does not require State/Territory nomination

In Victoria, the State nomination process is relatively straightforward and quick. The guidelines are clear and uncomplicated. Other states and territories may require investments into their government bonds and additional requirements which may make it less attractive to the investor.

The Law Council suggests the DIBP consider introducing a direct pathway to permanent residence without State/Territory nomination whereby applicants invest \$10million into complying investments.

Consider options for the international promotion of the SIV Programme

The SIV Programme is well-known in the Chinese community, and is promoted in China and other Asian countries. The Programme could be promoted to other countries to attract the multimillion and billion dollar investors.

As stated previously, the SIV Programme needs to be more attractive to investors by offering a direct pathway to permanent residence.

The DIBP may wish to consider improving the information available on its current website. Applicants searching for more information may not know that "SIV" is not a visa subclass, rather it falls within the Business Innovation and Investment visas (subclass 188 and 888). To promote the SIV on the website, the DIBP could consider adding an additional category titled "Investing in Australia or Doing Business in Australia" to its current categories on the website (Visit Australia, Study in Australia and Work in Australia.)

To promote the Programme effectively internationally, the information needs to be readily available and accessible by the public.

If you have any questions or would like to discuss any of the Law Council's suggestions, please contact the ILS Administrator, Ms Nicole Eveston, on (02) 6246 3753.

Yours sincerely



MARTYN HAGAN
SECRETARY GENERAL

Attachment A: Profile of the Law Council of Australia

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

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

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

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

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

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

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

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

Attachment B: Profile of the International Law Section

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

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

Members of the 2013-14 ILS Executive are:

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

The ILS Committees are:

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