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ATTN: The Director, Skills and Innovation Policy Section
Migration Planning and Visa Policy Branch
Department of Home Affairs

By email:

Submission on Business Skills Review
Business Innovation and Investment Program: Getting a better deal for Australia

Thank you for the opportunity to provide our firm's views on the opportunities to streamline and/or amend the Business Innovation and Investment program (BIIP).

Lena Hung & Associates is a Melbourne-based immigration law firm and a stakeholder in the Business Innovation and Investment program. Our firm has a number of existing and former clients who have used the Business Innovation and Investment program, and we therefore have a keen interest in the efficient and effective administration of the BIIP.

Key aspects of the program which we would like to see improved are the long processing times, unclear or misleading naming of the streams of the Subclass 188 and Subclass 888 and a lack of waivers or concessions for certain significant investor visa holders, where their investments have been poorly managed by fund managers. We believe these issues presently have a negative impact on the perception of users of the program, and we believe are a factor in dissuading potential users of the program from considering and proceeding with an application.

Question 1. How can the investment thresholds be increased to provide the best outcome for Australia?

Any increase in the minimum investment thresholds must be managed carefully to ensure that it does not dissuade potential investors and visa applicants from choosing Australia as their investment destination. With the uncertain global economic outlook investors may be more sensitive to increases in investment thresholds in future. However if the visa processing is streamlined and processing times (and therefore risk and opportunity-cost) greatly reduced, this would go a long way to reassuring prospective investors.

Question 2. How could we achieve better outcomes for the Australian economy through the composition of designated investments for the Investor and Significant Investor visas?

The Business Innovation and Investment Program should give investor applicants greater choice in making their investments. The present requirement that a Significant investor visa (SIV) holder must leave their investments in the hands of a fund manager creates the real risk of that manager making non-complying investments. If the fund manager does not invest in complying investments then the visa holder's permanent visa pathway is jeopardised. If the requirement is to be that the SIV holder must leave the investments in the hands of the fund managers, then there should be concessions available in the event that a visa holder's fund manager makes non-complying investments. This could be in the form of a waiver condition in the event that the non-complying investment arose from events outside of the control of the visa holder.

Question 3. How could a simplified BIIP framework make the program more efficient and effective in maximising benefit to Australia?

Currently there are too many different streams, which leads to confusion for applicants and prospective applicants. Having all the variants in one subclass could cause even greater confusion for applicants, agents and the Department. The current structure of the various steams leads to confusion. For example, when completing the required SkillSelect application, on the Expression of Interest (EOI) form, the questions do not match the stream type. For example, with the Investor stream, applicants who do not have ownership interests are being asked about their business details, and in some circumstances additional points under schedule 7A are incorrectly applied.

This confusion causes Australia to miss out on genuine applicants who are put off applying, or who are confused by the process and abandon applications before they are submitted. It also allows for non-eligible applicants to submit EOIs and receive invitations from State/Territory Government sand ultimately fail, but only after using valuable department and client resources.

It would be preferable to re-structure the BIIP program so that each stream type was put into its own, clearly defined subclass, and the Entrepreneur stream may be better placed in a separate class or subclass.

The names of the different streams/subclasses should be amended to properly reflect the applicable criteria. For example, Business Innovation stream should be reverted back to its original (2003 name) "Business Owner" visa. The Entrepreneur stream would more accurately be labelled the Venture Capital funding visa. The program could be broken down in to several visa subclasses:

> **Business Owner** (similar to Business innovation stream) - this could include a wider scope of business structures and senior managers (similar to the former "Senior

Manager" or "Senior Executive" visas from 2003), not requiring State or Territory Government involvement;

State or Territory Government nominated visas – this allows State or Territory Governments to nominate particular business people to conduct specified businesses or investment activities. There could be a direct pathway to Permanent residency similar to the current Business Talent, Significant Business History stream;

Investor (similar to Investor stream) - this would encompass a wider scope of direct investments based on local projects or State Government needs;

Managed Funds (similar to the Significant Investor and Premium Investor streams) - this would provide for more flexibility in the types of available funds; and

Entrepreneurs and Distinguished talent – this would be focused on the highly skilled business people or entrepreneurs who have recognised business acumen.

Question 4. How can the points test be adapted to encourage investments above the minimum threshold?

The age limits are too prohibitive and make genuine business applicants ineligible to apply. More points should be awarded for the over 33 age categories and should not be reduced further for over 45 age applicants. The same points should continue to be awarded for over 55 year old applicants. This is to reflect the fact that the larger majority of persons with high net worth and business skills have attained such status through decades of industry experience, knowledge and advancement.

The English language points should be restructured to capture applicants with competent English, and should be tiered to include three levels of English, namely vocational, competent and proficient.

The points for qualifications are not effective, and less emphasis should be placed on this, given that a large number of successful business people may not hold formal qualifications and therefore miss out on 5 and 10 points. The recognition of specific fields of study is also too ambiguous, and is not relevant to business.

The business experience points category is effective in awarding points in recognition of business experience, however the requirement to own the business as a "Main business" and to only allow up to two main businesses is too restrictive. The experience component should purely be based on the experience, not ownership interest. Many successful business owners have accumulated their experience by managing successful businesses that they may not own, or if they do own it, they may not have substantial ownership interest as prescribed in regulation 1.11 as a Main business, or meet the strict definition of ownership interest as set out under s. 134. The program would benefit if the definition of "Main business" were made clearer for applicants. For example if the Department prefers that an applicant be a Director of the main

business, this should be clearly defined in the application requirements, to screen out non eligible applicants at the earliest possible stage.

The financial assets and turnover requirements are very confusing as they can be based on two different periods, namely turnover based on 2 out of 4 fiscal years and the financial assets based on the last 2 immediate fiscal years. This means the applicant would be required to provide a number of financial statements for different periods. It would be preferable to keep any time-based requirements to be consistent.

Turnover is not necessarily a good indicator of success, as the figure does not take into account the costs of goods or services that are used to generate the revenue. The financial assets are also not a good indicator of business success as the figure allows for adding back loans made by the business owner to the business, which effectively double counts the assets available to the applicant.

The points test in the current state has certain aspects that pose a hindrance to the visa program, as it can deem a very successful business person ineligible because of the weighing of the points given to irrelevant considerations such as age, English and qualifications. If a points test is adopted, it is recommended to be used only for State or Territory Governments in their considerations in their nomination process.

Question 5. How can incentives be provided to encourage prospective migrants to operate a business in regional Australia?

To encourage prospective migrants to operate a business in regional Australia, concessions could be made offering either more points or lower thresholds. This would open up the program to more prospective applicants who would otherwise not have had access to the program, despite having significant assets and a willingness to invest. The exact nature of the concessions would need to be based on the local needs, and could be determined based on the needs of the relevant State or Territory government.

Question 6. What factors should be considered in introducing any changes, including phrasing in changes over time?

It is important that adequate notice be given of any prospective changes to the program, and that these changes do not apply retrospectively. Ideally a clear date would be given from which any new requirements would take effect, to enable potential visa applicants to prepare so as not to be taken by surprise at or after lodgement of their applications. Given the large sums to be invested, and the commitment being asked of applicants, there should be a transitional period for any changes in investment requirements, to enable applicants' investments to remain compliant.

Recent (now reversed) retrospective changes to Australia's citizenship laws, and other migration law changes which were introduced with little or no warning have given rise to a

perception in certain prospective visa applicants that Australia can (and will) change eligibility requirements without notice. We believe this may be a factor in certain business and investment visa applicants choosing not to proceed out of concern that the requirements may change before their matter is finalised.

Conclusion

To remain competitive in the global market, Australia needs to update its business skills programme to keep up with current and evolving business trends and avoid enacting legislation which would have the effect of limiting or hindering its business skills visa programme.

We thank you for your time in acknowledging our submissions and hope you take our comments above with due consideration. Should you have any comments or wish to contact us directly, please send any correspondences through to visas@lenahung.com.au

Should you have any queries please don't hesitate to contact me.

Kind regards,

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