

Skilled & Business Migration to Australia

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History of Migration to Australia

In 1770 the British Navigator, Captain James Cook landed in Botany Bay on the south-eastern coast of Australia and claimed the great unknown land for Britain. The British decided to use the new territory as a penal settlement and in 1788 the colony was set up. This area is now known as Sydney and attracted in excess of 20,000 migrants in the 12 months up to 30 September 2003 (see Annexure 1).

Following the end of World War II in 1945, the Australian government offered incentives to migrants in an attempt to promote recovery and development of the national economy. This resulted in a significant number of migrants from European countries. More recently, since the 1970s, Australia has seen a large number of migrants arriving from Asia, to a point where they now make up a large number of migrants to Australia each year.

In addition, as a signatory to the United Nations Refugees Convention, Australia has an obligation to take people who meet the definition of a refugee. This forms a small but significant part of the migrant population accepted into Australia each year (see Annexure 2).

The United Kingdom still represents the largest country of birth for settlers in Australia, being in excess of 14,000 for the 12 months up to 30 September 2003 (see Annexure 3). Interesting, of these, only approximately 10% settled in Sydney (see Annexure 4), unlike Asian migrants such as the Chinese, of whom nearly 50% settled in Sydney in the same period. It might be an interesting exercise to identify where migrants from the United Kingdom prefer to settle, and their reasons for doing so.

Migration Legislation

Under Australia's Constitution, The Federal Government is responsible for migration legislation. The Migration Act 1958 provides the statutory regime, which is then detailed in the Migration Regulations 1994. Similarly, the Australian Citizenship Act 1948 and the Australian Citizenship Regulations 1960 provide the legislative framework in relation to citizenship in Australia. Policy Advice Manuals (PAMs) provide guidelines on the lodgement and processing of applications, as do the Migration Series Instructions (MSIs). Since their introduction these Acts and Regulations have undergone regular amendment to reflect the current Government's views in relation to migration.

Since 1996, when the current Government came to power, Australia has seen a significant change in its migration policies. Emphasis has moved from family reunion to skilled migration, and requirements in both skilled and business migration categories have tightened. Planning levels since the 1999-2000 shows an increase in Migration Program figures of 30,000 to the year 2002-2003, most of which is given to the skilled migration program (see annexure 5). The planning level for 2003-2004 shows an anticipated 60.3% of migrants will come from the skill stream (see annexure 5).

For many, Australia has been seen as the land of opportunity and, following recent international events, considered a relatively safe country. Australia appears to easily fill its quota of migrants in the skilled and business categories each year, despite regular changes to criteria resulting in tougher requirements. However, significant amendments to the business migration programme on 1 March 2003 may be a true test of Australia's attractiveness to the international business community.

Part I - The Skilled Migration Program

The skilled migration stream of Australia's migration (non-humanitarian) program is now specifically designed for migrants who have skills or outstanding abilities that will contribute to the Australian economy.

Government policy sees that the migration to Australia of people with qualifications and relevant work experience addresses specific skill shortages in Australia and enhances the size, skill level and employability factor of the Australian labour force. Under previous administrations, skilled migration was divided into two broad categories: independent skilled migration and concessional family migration. The present government, since it came to power in March 1996, has expressed itself strongly in favour of enhancing the skills based migration categories at the expense of non-skilled family sponsored categories. A review of the previous points test conducted in 1997/1998 resulted in recommendations to the Minister, which have been incorporated in the 1 July 1999 visa categories which include, broadly, two skilled categories, namely the independent category and the family sponsored category.

Within the **independent category** there are the following sub-classifications:

1) **Skilled – Independent (subclass 136)**

An applicant must be highly skilled and have education, skills and employability which will contribute to the Australian economy, and must satisfy the basic requirements and pass the points test.

2) **Skilled – State/Territory Nominated Independent (subclass 137)**

An applicant must meet basic requirements and pass the points test or meet the pool mark, and apply for consideration under the skill matching scheme, whereupon the details will be placed in a skill matching database for possible nomination by a State or Territory government or employer.

3) **Skilled – Onshore Independent New Zealand Category (subclass 861)**

This is similar to the Skilled – Independent visa category but is only available to New

Zealand citizens in Australia wishing to apply for permanent residence under this category, who must pass the points test as well as satisfy the basic requirements.

4) **Skilled – Independent Overseas Students in Australia category (Subclass 880)**

This is similar to the Skilled – Independent visa category but is only available to eligible overseas students in Australia wishing to apply for permanent residence under this category, who must pass the points test as well as satisfy the basic requirements, and must nominate at least a 60 point occupation from the SOL and hold a satisfactory skills assessment.

Within the **family sponsored** categories there are the following sub-classifications:

1) **Skilled – Australian Sponsored (subclass 138)**

For potential skilled migrations whose sponsors live outside the certain designated areas covered by the Skilled – Regional Sponsored category. The applicant must have a sponsor (related) and an assurer (a person living in Australia who agrees to provide financial support) who may or may not be the same person, and must satisfy the basic requirements and the points test.

2) **Skilled – Designated Area Sponsored (subclass 139)**

Under this category, the Australian Government is seeking skilled migrants to settle in certain designated regions of Australia. The applicant must have a related sponsor and an assurer. Again, the sponsor and assurer can be the same person. The applicant must also satisfy the basic requirements, but this category is not points tested.

3) **Skilled – Onshore Australian Sponsored New Zealand Citizen (subclass 862)**

This is similar to the Skilled – Australian Sponsored visa category but is only available to New Zealand citizens in Australia wishing to apply for permanent residence under this category, who must pass the points test as well as satisfy the basic requirements.

4) **Skilled – Onshore Designated Area Sponsored New Zealand Citizen (subclass 863)**

This is similar to the Skilled – Designated Area Sponsored visa category but is only available to New Zealand citizens in Australia wishing to apply for permanent residence under this category.

5) **Skilled – Australian Sponsored Overseas Student (subclass 881)**

This is similar to the Skilled – Australian Sponsored visa category but is only available to eligible overseas students in Australia wishing to apply for permanent residence under this category. They must pass the points test as well as satisfy the basic requirements and must nominate at least a 50 point occupation from the SOL and hold a satisfactory skills assessment.

6) **Skilled – Designated Area Sponsored Overseas Student (subclass 882)**

This is similar to the Skilled – Designated Area Sponsored visa category but is only available to eligible overseas students in Australia wishing to apply for permanent residence under this category. Applicants must provide a satisfactory skills assessment in any listed skilled occupation from the Skilled Occupations List (SOL). In addition, they must submit a satisfactory sponsorship form with their application.

Broadly, it will be seen that there are both offshore and onshore variants of the various different programs. They contain technical differences, which will be the subject of this paper. Although, due to time restrictions the discussion of the differences will be limited to a comparison of the visa subclasses 136 and 880.

The Points Test

The intention of the current skilled based programme is to enhance the selection process to ensure that migrants will be able to gain employment on arrival and thereby make a positive contribution to Australia's economy. The points test maintains the focus on age, skills and English language ability which existed in the previous points test, but changes substantially the structure of the points test to maximize the ability of younger, English speaking, skilled migrants to pass.

Prerequisite Requirements

All categories contain core criteria that must be met as a prerequisite of eligibility. These are:

a) Skills

The points test incorporates the concept of the Skilled Occupations List ("SOL"). An applicant must nominate his or her skilled occupation that fits their skills and qualifications (though it need not be the job in which the applicant has current work experience). An applicant whose occupation does not appear on the SOL at the time of application cannot apply. The list incorporates only occupations which have skill level requirements in Australia of a degree, diploma or trades certificate, based on the ASCO Dictionary, (the Australian Standard Classification of Occupations), although not all such occupations are in fact listed. Notable exclusions include some business professionals (e.g. manufacturers, wholesalers, exporters and farmers), artists and people involved in artistic pursuits, most occupations in the hospitality and tourism industry and agricultural professionals. The list changes from time to time. Applicants (except those applying under the designated area sponsored categories, where reduced periods apply) must also have at least 12 months in the recent 18 months, or 24 months in the recent 36 months post qualification work experience in an occupation, also based on the SOL (usually the nominated occupation).

This requirement is waived for certain applicants who have completed (which term is strictly defined) an Australian qualification (at diploma level or above) of at least 2 years full time study (also strictly defined) in Australia in the six months immediately before their migration application has been lodged. The Australian qualification must be relevant to the nominated occupation from the SOL.

In a major departure from the previous regime, **all** applicants must have their skills assessed for the occupation **before** the application is submitted by a prescribed professional or trade organisation in Australia and produce evidence of this with the application. The assessment must be given with the application, otherwise it is not valid. If qualifications are not assessed as suitable and meeting Australian standards, while the application can be lodged, it will be refused. The date of suitability is the date of decision, and this may be significant for sponsored applications that have appeal rights. One consequence of this change is more expeditious migration processing after the application has been submitted, and also it means applicants who must be refused do not waste money on the migration application fee, which is not refunded if the application is refused (but is refunded where an application is invalid).

b) Age

All applicants must be under 45 at the time of lodging the migration application. There is no exception to this rule.

c) English Ability

Applicants, except those applying under the designated area sponsored categories (where different criteria, including a lower threshold applies) must be proficient in English at the vocational level which is defined as evidenced where an applicant achieves a score of 5 or better in each of the 4 subtests of the International English Language Testing System ("IELTS") test. Testing centres are located all over the world, usually associated with Australian or British Embassies or the local office of the British Council. In Australia, New Zealand and the UK, some universities conduct the tests. This is a different level to that which previously applied where vocational English was met where an applicant secured an average of 6 or better based on the 3 best of the 4 test results. Although not mandatory, applicants are encouraged to submit the IELTS test result with the migration application. An IELTS result remains valid for 12 months from the date of test. Note, however, that some assessing authorities insist on a higher score as part of their specific assessment processes for certain occupations.

Having met the above requirements, applicants must then pass the points test. Points are allocated in addition to the 3 core factors of skill, age and English language ability for 5 additional factors where the application is for a Skilled (Independent) visa (Onshore and offshore subclasses) and 6 factors where the application is for one of the Skilled Australian sponsored categories. The current pass score for independent visa classes is 115, and for onshore and offshore sponsored categories, 110 points. The pool entry for offshore independent visa classes is 70 and 115 for the onshore classes and the pool entry for the offshore family sponsored category is 105 and 110 for the onshore categories. The scores do change. Note that now applicants are assessed against the score in effect at the time of application.

Most applicants can then proceed to lodge a migration application and are assessed under the criteria applicable for the relevant chosen skilled migration category. Within these categories, points are allocated as follows:

a) Skills

40, 50 or 60 points are allocated depending on the occupation nominated by the applicant as prescribed in the SOL. Generally, 40 points are allocated for occupations which have diploma skill level requirements, 50 points for professions requiring degree qualifications though no specific recognition, and 60 points for professions which require specific recognition, and managers, and all trades. Generally, for 40 or 50 point occupations, the qualifications need not be specifically related to the nominated occupation.

b) Age

The following points are allocated for age, namely:

18 to 29 = 30 points;

30 to 34 = 25 points;

35 to 39 = 20 points; and

40 to 44 = 15 points.

Age is calculated at the date of application.

c) English

Applicants who score 5 or better in each of the four IELTS subtests are allocated 15 points. 20 points are allocated for applicants who score 6 or better in each of the 4 subtests. In limited situations, the requirement for the IELTS test can be

waived. The IELTS test should be no more than 12 months old at the time of application.

d) Work Experience

5 points are allocated where the applicant has nominated an occupation on the SOL which attracts 40 or 50 points under the skills factor and has worked in that occupation for 3 of the 4 years prior to application; and 10 points are allocated where the applicant has nominated an occupation which attracts 60 points under the skills factor and has worked in that occupation for 3 of the 4 years prior to application.

It is very important to note that applicants cannot rely on work experience in Australia if the applicant did not have a valid substantive visa (as distinct from a bridging visa) authorizing employment when undertaking this work.

e) Occupational Targeting

10 points are allocated for applicants who have recognised skills in the nominated occupation, on the Migration Occupations in Demand List (“MODL”). This list changes quite regularly and anyone seeking to rely on points for this factor must check first. The points are allocated if the nominated occupation is on the MODL at the time of assessment (not application). Occupations on the list as at 1 November 2003 are:

Occupation	ASCO 2 Code
Professionals	
Registered Nurses	2323
Registered Midwives	2324
Registered Mental Health Nurses	2325
Hospital Pharmacists	2382-11
Retail Pharmacists	2382-15
Occupational Therapists	2383
Physiotherapists	2385
Medical Diagnostic Radiographers	2391-11
Radiation Therapists	2391-13
Sonographers	2391-17

Occupation	ASCO 2 Code
Associate Professionals	
Chefs (excluding Commis Chef)*	3322 (part)
Tradespersons	
Refrigeration and Airconditioning Mechanics	4312-11
Hairdressers	4931-11

*Chefs would normally be expected to have a relevant trade level (or higher) qualification, and at least 3 years relevant experience following the completion of that formal qualification.

A further 5 points are awarded to applicants who have a genuine job offer of full time employment in an occupation listed in the MODL by an Australian employer whose business meets certain minimum standards of size. Note (contrary to popular belief) this is the only factor under which an applicant can get points for a job offer.

f) Australian Qualifications

5 points are awarded where the applicant obtained a bachelor degree, diploma, trade qualification from an Australian educational institution after a period of at least 2 years full time study in Australia as a fully self-funded student. 10 points are allocated if the applicant completed a Ph D.

g) Bonus

5 bonus points will be allocated if the applicant satisfies any one of the following:

- (i) 6 months of work experience in Australia in a designated skilled occupation within the previous 4 years, provided the applicant held a substantive visa authorizing work at the time of undertaking the work experience.
- (ii) Evidence that the applicant has deposited at least \$100 000 Australian in a designated government investment for at least 12 months on being requested so to do by DIMIA; or
- (iii) Evidence of language fluency in a designated community language, met either by proving that the applicant completed a recognized University

degree in that language or by having recognition of language ability by passing the NAATI professional level.

h) Spouse Skills

5 points are awarded where the applicant's spouse also meets the above described requirements for skills in a nominated occupation, having obtained the relevant skills assessment, including work experience, vocational English language ability and is under 45. The spouse needs the positive skills assessment from the relevant assessing authority at the time of application.

a) Australian Sponsor

For the skilled Australian sponsored categories 15 points are allocated where the applicant has an Australian sponsor who is a parent, non-dependent child, brother or sister, aunt or uncle.

General Requirements

All applicants (including members of their family unit) must pass the usual strict health and character requirements. This is increasingly a problem for people who may have breached visa conditions where they were previously (or are currently) in Australia.

Skilled Australian sponsored applicants need a required Assurance of Support on the designated form and must deposit a refundable bond of \$3,500 for the main applicant and \$1,500 for each additional adult applicant included in the application. Joint assurances are now accepted prior to the time of decision. There are strict financial requirements imposed in relation to evidencing the ability of the assurer to meet his or her obligations. Sometimes skilled independent migrants may be asked to give a discretionary Assurance of Support, if they are assessed as being a potential charge on Australia's social welfare budget.

In all categories, if there is an applicant aged over 18 included in the application who doesn't have functional English (defined as having an overall IELTS score of 4.5), an English Education Charge of AUS\$2,560 is also payable prior to approval, which entitles the person to a certain period of English education post arrival (subject to certain conditions) by a designated method.

All applications must now be lodged with the Department in Adelaide with the designated application fee (currently AUS\$1,795), which is not refunded if the application is refused (but is returned if the application is invalidly made).

Conclusion

An analysis of the regime highlights the difficulties that applicants coming from countries where English is not the first language will have in meeting the points test. Not only do such persons have the structural problem that their qualifications are frequently not recognised, but such persons will also have difficulty meeting the mandatory English language requirement.

Whilst appeal rights continue to applicants refused for the Skilled-Australian sponsored visas and for onshore applicants, no such rights apply in respect of applicants refused the offshore Independent Skilled visas. The regime however places a greater importance on applicants having their qualifications assessed prior to the lodgment of the migration application by the relevant assessing authority. It may well be that appeal rights will lie against refusals by these authorities who may find that they have swallowed a bitter chalice by accepting the government's tender to assess qualifications of impending migrants, although following some such appeals, legislation was passed to give these authorities greater powers to determine their assessment criteria.

The system highlights the importance of ensuring applications for skilled recognition are properly completed. Fortunately, applicants will not lose their migration filing fee if qualifications are not recognised, as was previously the case, as they will have not reached the stage of lodging a migration application.

The system also represents a great bonus to overseas students who have legitimately completed courses of tertiary study in Australia. Provided such applicants lodge their applications within 6 months of completing their course they have a good chance of securing recognition of their qualifications for migration purposes, and also passing the points test.

The skilled migration system described in general in this paper is complex and the rules frequently change. Applicants are encouraged to obtain professional advice before proceeding with, what for many, will be the most important application that they will be

making in their lives. There are many technicalities that must be met, particularly with regard to the onshore applications where, for example, a failure to submit a particular document can have the fatal consequence of the application being declared invalid, with often disastrous consequences for an applicant. The apparent simplicity of the system hides in fact a minefield of complexity, with many traps for the unwary.

Part II – The Business Migration Program

Australia has traditionally been a popular destination for business migrants. Many successful businesspeople are drawn by the quality of lifestyle and the many business opportunities offered by an exceptionally stable and safe country with an excellent infrastructure.

In the past, a business migrant could migrate to Australia by applying for a permanent residence visa (at first instance) on a number of grounds. These included migration as a business owner, senior executive, or by making substantial investments in state treasury bonds in the investment linked category.

The new business migration program was introduced on 1 March 2003. This program was introduced to target business migrants who wish to invest and settle in Australia on a long-term basis. Where previously five categories of direct permanent business visas existed, this has now been reduced to one, being the business talent visa. All other categories are now effectively a two stage process, with the introduction of a "probationary" temporary residence visa granted to business applicants for a period of up to four years. The applicants can then apply for a permanent residence visa, subject to meeting prescribed criteria. However, in most cases, they will be eligible to be granted permanent residence status after two years of temporary residence. (See Annexure 6 for a summary of the relevant visas).

This would appear to be a further indication that Australia is not concerned about attracting business migrants to Australia, and it in fact appears to have intentionally set out to make it more difficult for migrants interested in bringing their business to Australia. Initial reports indicate that there has been a significant decline in the number of visa applications under the new business skills regime. However, it is too early to obtain meaningful statistics on migrants, given the new transition time of at least two years between temporary and permanent residence.

A summary of the new visa subclasses is provided below:

As noted, the only direct permanent residence visa is the following:

1) Business Talent Visa (subclass 132)

The applicant must:

- a) be less than 55 years of age unless exceptional circumstances exist; and
- b) show that he or she has a realistic commitment to either establish or participate in a qualifying business (as defined) in Australia; and
- c) obtain State or Territory government sponsorship for this visa category; and
- d) maintain a substantial ownership interest (as defined) in that business and 'maintain direct and continuous involvement in management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy'; and
- e) show that for at least two of the four fiscal years immediately before the application is made, the applicant and or the applicant's spouse had an ownership interest of at least AUD400 000 in the business (or if the business is operated by a publicly listed company, 10% of the total issued capital of the company); and
- f) have significant business and personal assets (of at least AUD1,500,000), able to be transferred to Australia within two years of visa grant; and
- g) have achieved a significant annual turnover in his or her main business (AUD3,000,000 for at least two out of the last four fiscal years); and
- h) have had an overall successful business career; and
- i) have no history of unacceptable business activities.

The temporary residence visa subclasses are as follows:

2) Business Owner (Provisional) Visa (Subclass 160)

This is a temporary residence visa granted to applicants who wish to establish and maintain an ownership interest in a business in Australia.

The applicant must:

- a) be less than 45 years old; and
- b) have an overall successful business career; and
- c) show that for at least two of the four fiscal years immediately before the application is made, the applicant had an ownership interest was at least AUD200 000 in the

business (or if the business is operated by a publicly listed company, 10% of the total issued capital of the company); and

- d) have achieved an annual turnover in his or her main business of no less than AUD500,000 for at least two out of the last four fiscal years; and
- e) have significant business and personal assets (of at least AUD500,000 (can include spouse's assets)), able to be transferred to Australia within two years of visa grant; and
- f) have sufficient net assets to settle in Australia; and
- g) have no history of unacceptable business activities; and
- h) have vocational English; and
- i) have notified the relevant State or Territory authorities of his or her business history and intention to establish and maintain a business interest in that State or Territory.

3) **State/Territory Sponsored Business Owner (Provisional) Visa (subclass 163)**

As with the Business Owner Provisional Visa, the State Territory Business Owner (Provisional) visa is a temporary residence visa granted to applicants who wish to establish and maintain an ownership interest in a business in Australia. However, as the applicant is sponsored by a State or Territory, a number of the threshold requirements have been lowered (as highlighted). The requirements are as follows:

The applicant must:

- a) be less than **55 years old** (or higher if further waiver is obtained); and
- b) have an overall successful business career; and
- c) show that for at least two of the four fiscal years immediately before the application is made, the applicant had an **ownership interest** in a main business or businesses that had **annual turnover of no less than AUD300,000**; or has had a sound continuous **employment record in a senior management role** in a qualifying business for at least 4 years immediately before the application is made and has demonstrated a high level of management skill; and
- d) have business and personal assets (of **at least AUD250,000** (can include spouse's assets)), able to be transferred to Australia within two years of visa grant; and
- e) have sufficient net assets to settle in Australia; and
- f) have no history of unacceptable business activities; and
- g) be sponsored by the appropriate regional authority (as gazetted).

- h) **There is no English language requirement.**

4) Senior Executive (Provisional) Visa (Subclass 161)

This is a visa granted to applicants who wish to establish and maintain an ownership interest in a business in Australia.

The business migrant must:

- a) be less than 45 years old; and
- b) have an overall successful business career; and
- c) show that he or she occupied a position in the three highest levels of the management structure of a major business (as defined, including an annual turnover of at least AUD50,000,000) for a total of at least two years in the four years immediately before the application is made, and was responsible for strategic policy development affecting a major component or a wide range of operations of that major business; and
- d) have a commitment to maintain an ownership interest in a business in Australia and direct and continuous involvement in management of that business; and
- e) have notified the relevant State or Territory authorities of his or her business history and intention to establish and maintain a business interest in that State or Territory; and
- f) demonstrate that there is a need for him or her to be temporarily resident in Australia to conduct or establish the proposed business activity; and
- g) have significant business and personal assets (of at least AUD500,000 (can include spouse's assets)), able to be transferred to Australia within two years of visa grant; and
- h) have sufficient net assets to settle in Australia; and
- i) have vocational English; and
- j) have no history of unacceptable business activities.

5) State/Territory Sponsored Senior Executive (Provisional) Visa (Subclass 164)

This is a temporary residence visa granted to applicants who wish to establish and maintain an ownership interest in a business in Australia. However, as the applicant is sponsored by a

State or Territory, a number of the threshold requirements have been lowered (as highlighted).

The applicant must:

- a) be less than **55 years old** (or higher depending on waiver); and
- b) have an overall successful business career; and
- c) show that he or she occupied a position in the three highest levels of the management structure of a major business (as defined, including an annual turnover of at least **AUD10,000,000**) for a total of at least two years in the four years immediately before the application is made, and was responsible for strategic policy development affecting a major component or a wide range of operations of that major business; and
- d) have a commitment to maintain an ownership interest in a business in Australia and direct and continuous involvement in management of that business; and
- e) demonstrate that there is a need for him or her to be temporarily resident in Australia to conduct or establish the proposed business activity; and
- f) have significant business and personal assets (of at least **AUD250,000** (can include spouse's assets)), able to be transferred to Australia within two years of visa grant; and
- g) have sufficient net assets to settle in Australia; and
- h) have no history of unacceptable business activities; and
- i) be sponsored by the appropriate regional authority.
- j) **There is no English language requirement.**

6) Investor (Provisional) Visa (Subclass 162)

This visa is a temporary residence visa granted to business migrants who wish to invest in a security issued by an Australian State or Territory government authority for a period of four years.

The applicant must:

- a) be less than 45 years old; and
- b) have a successful record of eligible investment activity (as defined) or qualifying business activity; and
- c) have a total of at least three years experience of direct involvement in managing one or more qualifying businesses or eligible investments; and

- d) show that for at least one of the five fiscal years immediately before the application is made, the applicant maintained direct involvement in managing a qualifying business in which the applicant and or the applicant's spouse together had an ownership interest of at least 10%; or the applicant maintained direct involvement in managing eligible investments of the applicant or the applicant's spouse, or of both, that had a net value of AUD1,500,000; and
- e) have demonstrated a high level of management skill in relation to an eligible investment or qualifying business activity; and
- f) have notified the relevant State or Territory authorities of his or her business history and intention to establish and maintain a business interest in that State or Territory; and
- g) show that throughout the two fiscal years before immediately before the visa application is made, the net value of the assets of the applicant or the applicant's spouse, or of both, was no less than AUD2,250,000; and
- h) have vocational English; and
- i) have no history of unacceptable business activities; and
- j) the designated investment, at this stage, is gazetted to be AUD1,500,000.

7) State/Territory Sponsored Investor (Provisional) Visa (Subclass 163)

This is a temporary residence visa granted to applicants who wish to invest in a security issued by an Australian State or Territory government authority for a period of four years.

However, as the applicant is sponsored by a State or Territory, a number of the threshold requirements have been lowered (as highlighted). The applicant must:

- a) be less than **55 years old** (or higher depending on waiver); and
- b) have a successful record of eligible investment activity or qualifying business activity; and
- c) have a total of at least three years experience of direct involvement in managing one or more qualifying businesses or eligible investments; and
- d) show that for at least one of the five fiscal years immediately before the application is made, the applicant maintained direct involvement in managing a qualifying business in which the applicant and or the applicant's spouse together had an ownership interest of at least 10%; or the applicant maintained direct involvement in

- managing eligible investments of the applicant or the applicant's spouse, or of both, that had a net value of **AUD750,000**; and
- e) have demonstrated a high level of management skill in relation to an eligible investment or qualifying business activity; and
 - f) show that throughout the two fiscal years before immediately before the visa application is made, the net value of the assets of the applicant or the applicant's spouse, or of both, was no less than **AUD1,125,000**; and
 - g) have no history of unacceptable business activities; and
 - h) be sponsored by the appropriate regional authority; and
 - i) the designated investment, at this stage, is gazetted to be **AUD750,000**.
 - j) There is **no English language** requirement.

The New Permanent Residence Visa Subclasses – The Precondition that a Temporary Residence is First Held

There are four subclasses of permanent residence visas associated with the above six subclasses of temporary residence visa.

8) Business Owner (Residence) Visa (Subclass 890)

This subclass includes business migrants who have been granted a Senior Executive (Provisional) visa.

To be granted the Business Owner (Residence) visa, the business migrant must:

- a) hold any of the Business Skills (Provisional) visas; and
- b) have an ownership interest in one or more actively operating main businesses for at least two years immediately preceding the lodgment of the permanent residence visa application (ensuring that all relevant taxation requirements have been met); and
- c) employ at least two Australian citizens, Australian permanent residents, or New Zealanders, or a combination thereof, being other than family members, for the 12 months immediately preceding the lodgment of the permanent residence visa application; and
- d) have business and personal assets (can include spouse's assets), being no less than AUD250,000 for the 12 months immediately preceding the lodgment of the permanent residence visa application; and

- e) have substantial net assets in business, being no less than AUD100,000 for the 12 months immediately preceding the lodgment of the permanent residence visa application; and
- f) have achieved an annual turnover in the business, being no less than AUD300,000 for the 12 months immediately preceding the lodgment of the permanent residence visa application; and
- g) have no history of unacceptable business activities; and
- h) The business migrant must have been in Australia as the holder of a qualifying visa for a total of at least one year in the two years immediately preceding the lodgment of the permanent residence visa application.

9) State/Territory Sponsored Business Owner (Residence) Visa (Subclass 892)

This subclass includes business migrants who have been granted a State/Territory Sponsored Senior Executive (Provisional) visa. However, as the applicant is sponsored by a State or Territory, a number of the threshold requirements have been lowered (as highlighted).

To be granted the Business Owner (Residence) visa, the business migrant must:

- a. have an ownership interest in one or more actively operating main businesses for at least two years immediately preceding the lodgment of the permanent residence visa application (ensuring that all relevant taxation requirements have been met); and
- b. subject to waiver, **employ at least one** Australian citizen, or Australian permanent resident or New Zealander, being other than a family member, for the 12 months immediately preceding the lodgment of the permanent residence visa application; and
- c. have business and personal assets (can include spouse's assets), being no less than **AUD250,000** for the 12 months immediately preceding the lodgment of the permanent residence visa application; and
- d. have substantial net assets in business, being no less than **AUD75,000**, for the 12 months immediately preceding the lodgment of the permanent residence visa application; and
- e. have achieved an annual turnover in the business, being no less than **AUD200,000**, for the 12 months immediately preceding the lodgment of the permanent residence visa application; and

- f. have no history of unacceptable business activities; and
- g. have been in Australia as the holder of a qualifying visa for a total of at least one year in the two years immediately preceding the lodgment of the permanent residence visa application; and
- h. be sponsored by an appropriate regional authority.

10) Investor (Residence) Visa (Subclass 891)

To be granted the Investor (Residence) visa, the business migrant must hold an Investor (Provisional) visa for a total of at least two years in the four years immediately before the permanent residence visa application is made.

The business migrant must:

- a) have maintained the designated investment for the minimum four years; and
- b) have no history of unacceptable business activities; and

11) State/Territory Sponsored Investor (Residence) Visa (Subclass 893)

To be granted the State/Territory Sponsored Investor (Residence) visa, the business migrant must hold a State/Territory Investor (Provisional) visa for a total of at least two years in the four years immediately before the permanent residence visa application is made. However, as the applicant is sponsored by a State or Territory, a number of the threshold requirements have been lowered (as highlighted).

The business migrant must:

- a) have maintained the designated investment for the minimum four years; and
- b) have no history of unacceptable business activities; and
- c) have a realistic commitment, after the grant of the permanent residence visa, to continue to maintain business or investment activity in Australia; and
- d) continue to be sponsored by the appropriate regional authority at the time a decision is made to grant a visa.

Conclusion

The attempt by Australia to attract genuine business migrants, and in particular to regional areas, is a courageous one. Under the new regime it is now more difficult for a business migrant to obtain a temporary residence business visa. This might deter business migrants from settling and investing in Australia, even though the granting a subsequent permanent residence visa should be relatively straightforward. Whether or not it will be successful will become apparent over the next four years. Hopefully critics of the new regime will be disappointed.

ANNEXURE 1

Migrant/Refugee Numbers by Migration Stream - Sydney

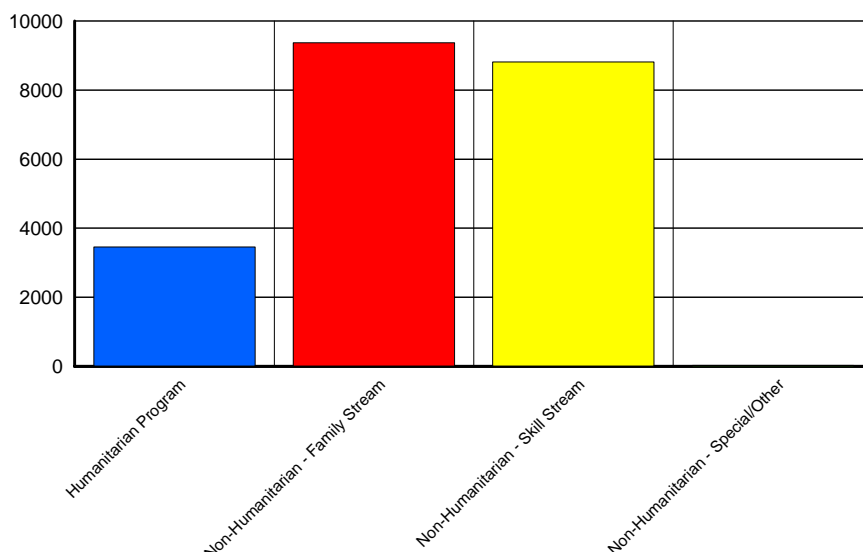
Migration Stream: All Streams

Ethnicity: All Settlers

Capital City: Sydney

Sex: All Persons

Settlers Arriving From 01 Oct 2002 To 30 Sep 2003



Migration Program/Stream	Number of Settlers
Humanitarian Program	3,461
Non-Humanitarian - Family Stream	9,370
Non-Humanitarian - Skill Stream	8,817
Non-Humanitarian - Special/Other	30
Non Humanitarian Program - Total	18,217
Total Settlers	21,678

**Source: Department of Immigration & Multicultural & Indigenous Affairs Settlement Database.
Data extracted on 06/10/2003**

Notes:

1. The data shown here includes both persons who arrived during the reference period as migrants and persons who arrived as temporary entrants and were later granted permanent resident status onshore.
2. Data on non-visaed permanent arrivals (eg New Zealanders) is not included.
3. The data in this report has been compiled from a number of information sources within DIMIA. The collection of some data items in these information systems is not mandatory. As a consequence there may be a large number recorded as 'unknown' for some items, including some of the selection variables on which this report is based. Because of the possibility of a high number being recorded as 'unknown' for some items, the data shown here should only be taken as indicative of the actual number of settlers with these characteristics.

4. It has recently been found that the Settlement Database is undercounting records, both onshore and offshore, particularly in the Skill stream in recent years. For example, for arrivals in 2001-02, the Skill stream is undercounted by 5%, the Family stream by 3% and Humanitarian by 0.5%. Though estimates of settlement patterns will not be greatly affected, correction of this problem is proceeding as a priority.

ANNEXURE 2

Migrant/Refugee Numbers by Migration Stream – Australia

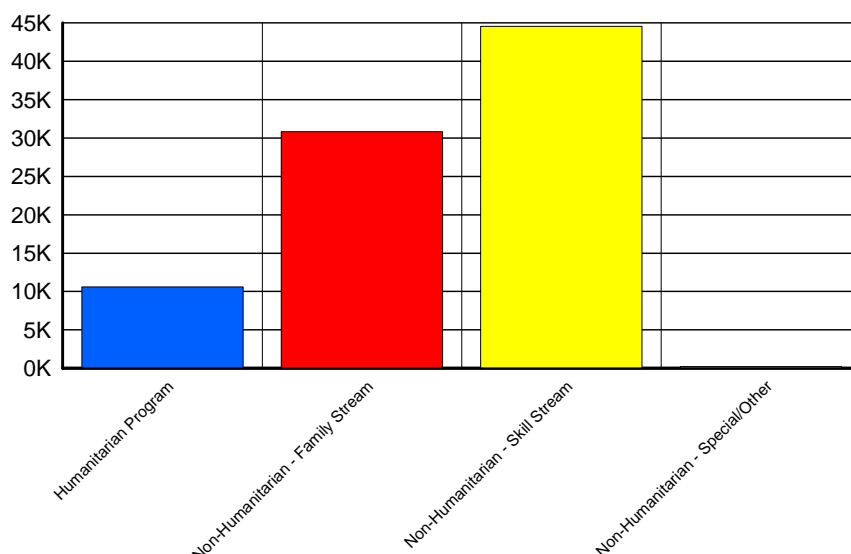
Migration Stream: All Streams – All of Australia

Ethnicity: All Settlers

Geographic Area: All of Australia

Sex: All Persons

Settlers Arriving From 01 Oct 2002 To 30 Sep 2003



Migration Program/Stream	Number of Settlers
Humanitarian Program	10,613
Non-Humanitarian - Family Stream	30,847
Non-Humanitarian - Skill Stream	44,557
Non-Humanitarian - Special/Other	198
Non Humanitarian Program - Total	75,602

Total Settlers **86,215**

Source: Department of Immigration & Multicultural & Indigenous Affairs Settlement Database.
Data extracted on 06/10/2003

Notes:

1. The data shown here includes both persons who arrived during the reference period as migrants and persons who arrived as temporary entrants and were later granted permanent resident status onshore.
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ANNEXURE 3

Top 10 Countries of Birth - Australia

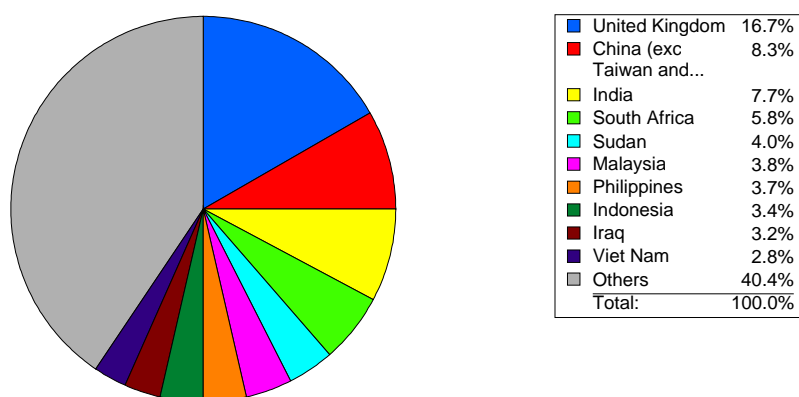
Migration Stream: All Streams

Ethnicity: All Settlers

Geographic Area: All of Australia

Sex: All Persons

Settlers Arriving From 01 Oct 2002 To 30 Sep 2003



Note: Chart excludes 'Birthplace Unknown'

Country of birth	Number of settlers
United Kingdom	14,296
China (exc Taiwan and SARs)	7,103
India	6,638
South Africa	5,016
Sudan	3,470
Malaysia	3,223
Philippines	3,192
Indonesia	2,942
Iraq	2,783
Viet Nam	2,438
Others	34,669
Total Birthplace Known	85,770
Birthplace Unknown	526
Total	86,296

Source: Department of Immigration & Multicultural & Indigenous Affairs Settlement Database. Data extracted on 06/10/2003

Notes:

1. The data shown here includes both persons who arrived during the reference period as migrants and persons who arrived as temporary entrants and were later granted permanent resident status onshore.

2. Data on non-visaed permanent arrivals (eg New Zealand citizens) is not included.

3. The data in this report has been compiled from a number of information sources within DIMIA. The collection of some data items in these information systems is not mandatory. As a consequence there may be a large number recorded as 'unknown' for some items, including some of the selection variables on which this report is based. Because of the possibility of a high number being recorded as 'unknown' for some items, the data shown here should only be taken as indicative of the actual number of settlers with these characteristics.

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5. nfd = not further defined nec = not elsewhere classified

6. Former Yugoslavia nfd comprises those settlers who state their birthplace only as 'Yugoslavia'.

ANNEXURE 4

Top 10 Countries of Birth - Sydney

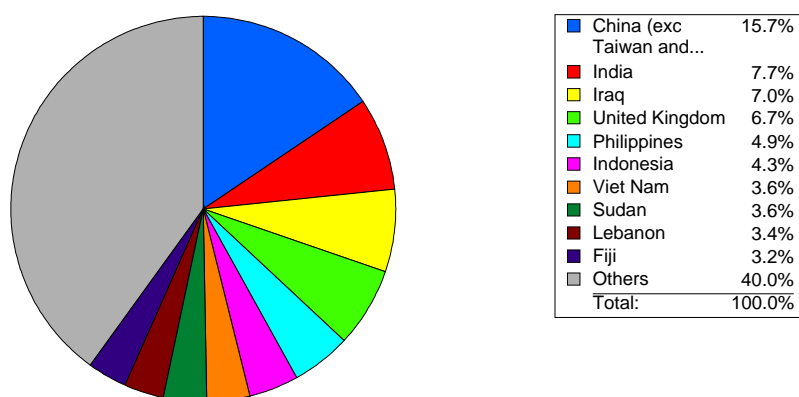
Migration Stream: All Streams

Ethnicity: All Settlers

Geographic Area: Sydney

Sex: All Persons

Settlers Arriving From 01 Oct 2002 To 30 Sep 2003



Note: Chart excludes 'Birthplace Unknown'

Country of birth	Number of settlers
China (exc Taiwan and SARs)	3,373
India	1,654
Iraq	1,499
United Kingdom	1,434
Philippines	1,061
Indonesia	914
Viet Nam	773
Sudan	772
Lebanon	733
Fiji	680
Others	8,611
Total Birthplace Known	21,504
Birthplace Unknown	199
Total	21,703

**Source: Department of Immigration & Multicultural & Indigenous Affairs Settlement Database.
Data extracted on 06/10/2003**

Notes:

1. The data shown here includes both persons who arrived during the reference period as migrants and persons who arrived as temporary entrants and were later granted permanent resident status onshore.

2. Data on non-visaed permanent arrivals (eg New Zealand citizens) is not included.

3. The data in this report has been compiled from a number of information sources within DIMIA. The collection of some data items in these information systems is not mandatory. As a consequence there may be a large number recorded as 'unknown' for some items, including some of the selection variables on which this report is based. Because of the possibility of a high number being recorded as 'unknown' for some items, the data shown here should only be taken as indicative of the actual number of settlers with these characteristics.

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ANNEXURE 5

Department of Immigration and Multicultural and Indigenous Affairs

Fact Sheet Number 20 - Migration Program Planning Levels

<http://www.immi.gov.au/facts/20planning.htm>

ANNEXURE 6

Summary of Business Visa Categories

NAME OF VISA	TYPE OF RESIDENCE	CLASS	SUBCLASS	NAME OF VISA	TYPE OF RESIDENCE	CLASS	SUBCLASS
Business Talent	Permanent Residence	EA	132				
Business Owner (Provisional)	Temporary Residence	UR	160	Business Owner	Permanent Residence	DF	890
State/Territory Sponsored Business Owner (Provisional)	Temporary Residence	UR	163	State/Territory Sponsored Business Owner	Permanent Residence	DF	892
Senior Executive (Provisional)	Temporary Residence	UR	161	Business Owner 'Senior Executive'	Permanent Residence	DF	890
State/Territory Sponsored Senior Executive (Provisional)	Temporary Residence	UR	164	State/Territory Sponsored Business Owner 'Senior Executive'	Permanent Residence	DF	893
Investor (Provisional)	Temporary Residence	UR	162	Investor	Permanent Residence	DF	891
State/Territory Sponsored Investor (Provisional)	Temporary Residence	UR	165	State/Territory Sponsored Investor	Permanent Residence	DF	893

DAVID BITEL

Bio-Data

Born in Sydney, David Bitel has a BA (Hons) in History and an LL B from Sydney University. He has been a practising attorney since 1976 and is a senior partner of the Sydney law firm Parish Patience established in 1888. He specialises in all aspects of immigration and administrative law. He is a registered migration agent and an accredited immigration law specialist by NSW Law Society.

His professional associations include:

- Judicial Member of the Equal Opportunity Tribunal of New South Wales since 1990 presiding over complaints under the Anti-Discrimination Act.
- Secretary General of the Australian Section of the International Commission of Jurists since 1986.
- Current President of the Refugee Council of Australia, Convenor the Board of Trustees of the Australian Refugee Foundation and executive member of the Refugee Council of Australia since 1985.
- Founding Secretary of the Australian Legal Resources International, a lawyers NGO which provides legal assistance to countries in need.
- Member of the migration law sub-committees of the Law Society of NSW, Law Council of Australia and the International Bar Association.
- Consultant author of Butterworth's Australian Immigration Law Service.

He is an honorary solicitor to a number of organisations in the Bangladesh, Egyptian, Filipino and Indonesian communities and writes regular feature articles for these community newspapers. His articles can also be found on the home page for Parish Patience at www.parishpatience.com.au.

With over twenty years of experience providing legal advice on immigration matters, David Bitel is an acknowledged leader in the field and he has a large team of specialist lawyers working with him. Registered Migration Agent no. 9255523.

Sharon McCabe

Sharon McCabe has been a member of Parish Patience's Immigration Lawyers practice since 1988. As a registered Migration Agent, Sharon assists clients with business and skilled migration, including assessment of qualifications; company sponsorships; and general migration for spouses, partners, parents and children. She also assists clients with their applications for migration to New Zealand. Prior to joining Parish Patience, Sharon practised as a qualified radiation therapist in New Zealand and in the Australian Capital Territory. Registered Migration Agent no. 9802999.