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Joint Committee of Public Accounts

REPORT 310

BUSINESS MIGRATION PROGRAM



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Joint Committee of Public Accounts

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BUSINESS MIGRATION PROGRAM

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JOINT COMMITTEE OF PUBLIC ACCOUNTS
SEVENTEENTH COMMITTEE

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1. Appointed 6 March 1991
 2. Discharged 6 March 1991

DUTIES OF THE COMMITTEE

Section 8(1) of the Public Accounts Committee Act 1951 reads as follows:

Subject to sub-section (2), the duties of the Committee are:

- (a) to examine the accounts of the receipts and expenditure of the Commonwealth including the financial statements transmitted to the Auditor-General under sub-section (4) of section 50 of the Audit Act 1901;
 - (aa) to examine the financial affairs of authorities of the Commonwealth to which this Act applies and of inter-governmental bodies to which this Act applies;
 - (ab) to examine all reports of the Auditor-General (including reports of the results of efficiency audits) copies of which have been laid before the Houses of the Parliament;
 - (b) to report to both Houses of the Parliament, with such comment as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;
 - (c) to report to both Houses of the Parliament any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; and
 - (d) to inquire into any question in connection with the public accounts which is referred to it by either House of the Parliament, and to report to that House upon that question,
- and include such other duties as are assigned to the Committee by Joint Standing Orders approved by both Houses of the Parliament.

PREFACE

This Report concerns Australia's Business Migration Program and is the first of two reports on an Inquiry into the Business Migration Program and Control of Visitor Entry.

After announcing its Inquiry, the Committee found there was widespread concern about the operation of the Business Migration Program and so decided that it would be appropriate to partition the Inquiry, and examine the Business Migration Program before proceeding to matters relating to the Control of Visitor Entry.

In examining the Business Migration Program, the Committee conducted ten public hearings and five in-camera hearings around Australia - taking over 1000 pages of evidence. The Committee also met with officials from Canada to gain an understanding of that country's equivalent scheme.

Australia's migration program has provided a category of entry for migrants with business skills since the introduction of the Entrepreneurial Category in 1976. Since that time there has been widespread community debate about the Government's immigration policy and the need for a sharper economic focus within the migration program.

In the course of its Inquiry the Committee heard across the board support for the concepts of both economic immigration and the entry of migrants with business and entrepreneurial skills. In examining the Business Migration Program, the Committee was not examining the need for a category of entry for migrants with business skills but rather the ability of the Program to achieve its economic objectives.

Implementation of the Committee's recommendations contained in this Report will bring about significant changes to business migration into Australia. The Committee's belief is that this Report will contribute towards the development of a much improved system of migration for those individuals with business skills who wish to migrate to Australia.

The Committee is grateful for the cooperation it has received from numerous individuals and organisations throughout the Inquiry. The Committee thanks the Secretary of the Department of Immigration, Local Government and Ethnic Affairs and notes its appreciation for the assistance given to the Inquiry by his staff. The Committee also gratefully acknowledges the support given by its Secretariat.

For and on behalf of the Committee.

Hon G F Punch, MP
Chairman

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RECOMMENDATIONS

The Committee has made a number of recommendations which are listed below, cross-referenced to their location in the text.

The Committee recommended that:

1. The Accredited Agent Scheme be abolished. (paragraph 6.71)
2. *As a matter of priority the Department of Immigration, Local Government and Ethnic Affairs investigate the circumstances surrounding the limited number of instances of individuals with criminal links entering Australia under the Business Migration Program with a view to remedying any deficiencies in its screening procedures identified during these investigations. (paragraph 7.12)*
3. The concerns expressed by the Australian Federal Police concerning the exchange of information between itself and the Department of Immigration, Local Government and Ethnic Affairs be examined by the liaison groups established following the meeting of law enforcement officials and officials from the Department of Immigration, Local Government and Ethnic Affairs and the Department of Foreign Affairs and Trade in May 1990. (paragraph 7.16)
4. The Australian Taxation Office investigate the possibility for abuse of the withholding tax provisions by migrants, and review the adequacy of information provided to business migrants about their obligations in respect of all tax matters. (paragraph 7.23)
5. The migration program continue to have a category of entry which recognises business and entrepreneurial skills as eligible criteria for entry into Australia. (paragraph 8.8)
6. The primary purpose of this entry category be the establishment of businesses in Australia. (paragraph 8.8)
7. Attention be given to the clear articulation of the goals and operational objectives of this category of entry, such that their achievements can be readily monitored and evaluated. (paragraph 8.8)

8. *A category of entry that recognises business skills as a criterion for entry into Australia be created. (paragraph 8.15)*
9. *A category of entry based on the assessment of business skills be developed to replace the Business Migration Program. (paragraph 8.15)*
10. *The establishment of a business in Australia be incorporated into the objectives of this category of migration. (paragraph 8.15)*
11. *Selection under this category of migration be based on a points system. (paragraph 8.15)*
12. *The determining factor in developing a points test for business skills should be demonstration of a successful business background by the applicant. (paragraph 8.22)*
13. *The components of this criterion should be the ownership and operation of a successful, bona fide business in the applicant's country of origin. (paragraph 8.22)*
14. *In developing assessment systems for applicants in this category of migration, the Department of Immigration, Local Government and Ethnic Affairs allow immigration officers the option of drawing on the expertise of the private sector to assist in their determination of the suitability of applicants. (paragraph 8.22)*
15. *A separate points test for the age qualification be developed for business migrants. (paragraph 8.24)*
16. *The language skill qualification set out in the existing points system be applied to the points test for business skills entry. (paragraph 8.26)*
17. *The transfer of capital be recognised as a criterion for granting points under the business skills entry category. (paragraph 8.30)*
18. *The scheme currently used to monitor the transfer of funds under the Business Migration Program be used to monitor the transfer of funds under the business skills category of migration for a period of two years after the migrant's arrival in Australia. (paragraph 8.30)*

19. The points allocated to capital transfer should not be sufficient to make this the predominant factor in the assessment of an application. (paragraph 8.33)
20. A monitoring scheme be implemented for migrants arriving in Australia under the business skills category of entry. (paragraph 8.39)
21. The monitoring scheme should explore the extent to which the program's goals have been met by each migrant and identify any obstacles to the establishment of migrants in the Australian business environment. (paragraph 8.39)
22. This scheme be composed of:
 - the issue of two survey forms to migrants at the time of granting them their visas, and
 - the return of these survey forms after 12 and again after 24 months following the migrants' arrival in Australia. (paragraph 8.39)
23. Compliance with the scheme's survey be mandatory. (paragraph 8.39)
24. A financial penalty, similar to the penalties contained in s.14 and s.15 of the Census and Statistics Act 1905, be imposed on migrants who do not comply with the survey. (paragraph 8.39)
25. An ongoing information and awareness campaign be developed to inform business migrants of the availability of publicly funded business advisory services. (paragraph 8.46)
26. This campaign be targeted at both the source countries of business migrants and ethnic business associations in Australia. (paragraph 8.46)
27. The Minister for Immigration, Local Government and Ethnic Affairs request the Minister for Small Business and Customs to place on the agenda of the meeting of Federal/State Ministers for Small Business the development of methods to improve access to business advisory services by business migrants. (paragraph 8.46)

28. The Government consider:
- the concept of encouraging the transfer of whole businesses to Australia; and
 - the means by which this might be achieved, including the feasibility of issuing group visas to the chief executive and other key personnel of a business. (paragraph 8.52)
29. Conditional visas not be applied to migrants entering under the business skills category of migration. (paragraph 8.58)

ABBREVIATIONS

| | |
|----------------|---|
| AAS | Accredited Agent Scheme |
| AFP | Australian Federal Police |
| AMCA | Australian Migration Consultants Association |
| BCA | Business and Consumer Affairs (New South Wales) |
| BMP | Business Migration Program |
| DILGEA | Department of Immigration, Local Government and Ethnic Affairs |
| HRSCFPA | House of Representatives Standing Committee on Finance and Public Administration |
| JCPA | Joint Committee of Public Accounts |
| NCA | National Crime Authority |
| NSWPS | New South Wales Police Service |

CHAPTER 1

OVERVIEW

Introduction

1.1 This is the first report of the Joint Committee of Public Accounts on its Inquiry into the Business Migration Program and Control of Visitor Entry. Following the announcement of the Inquiry in June 1990, the majority of submissions received by the Committee concerned the Business Migration Program (BMP). In view of the public concern expressed in this response, the Committee resolved to examine and report on the BMP prior to its examination of issues arising from the control of visitor entry.

1.2 This Chapter provides an overview of the report and contains the major recommendations made by the Committee. A list of all recommendations is located at page x.

Program Objectives

1.3 The BMP forms part of the economic stream of migration to Australia and is designed to facilitate the entry of people with business skills and capital. Since 1983, 8928 business migrants have entered Australia under the BMP. The objective of the BMP is to bring economic benefit to Australia specifically through:

- the creation of employment, or retention of employment that would otherwise be lost;
- the introduction of new and improved technology;
- export expansion; and
- import substitution.

1.4 In setting the BMP objectives the Department of Immigration, Local Government and Ethnic Affairs (DILG&EA) made an implicit requirement that a business migrant establish a business in Australia. It has specified that one of the

desired outcomes of the BMP is that 60% of business migrants establish businesses. However, what is not articulated is whether or not the establishment of a business is, in itself, a desirable objective. The Committee considers that the objectives of a business skills based category of migration should state that a desired outcome is the establishment of a business in Australia.

Program Monitoring

1.5 The establishment of an effective system of monitoring the achievement or otherwise of program goals administered by Commonwealth departments is an essential element of the accountability of administrators to the Parliament and the Australian people.

1.6 Until July 1988, DILGEA used surveys of samples of business migrants as the principal means of gathering data from business migrants on the achievement of BMP objectives. Since July 1988, all business migrants have been asked to return survey forms at periods of 12 and 24 months following their arrival in Australia.

1.7 The Committee considers that the surveys and the recently introduced monitoring scheme have not generated enough data from which to make an informed evaluation of the achievement of BMP objectives. The survey results have not provided conclusive evidence that the BMP is achieving its objectives.

1.8 It was pointed out to the Committee that the BMP was the only category of migration that followed up migrants in this way. These witnesses suggested that the concept of migrants being expected to participate in surveys of their activities amounted to discrimination against a group of people.

1.9 The Committee was not persuaded by this view. The BMP has an economic focus which incorporates certain desired outcomes of an economic nature which are not expected from other categories of migration. The BMP also has a unique selection criteria, in that applicants are not subject to a points test, and a unique method of processing applications incorporating the private sector. Because of these features of the BMP, the Committee considers that some scrutiny should be applied to ensure that BMP objectives are being achieved.

Post Settlement Services

1.10 The Committee considers that there is a need to provide some form of post settlement assistance to business migrants to facilitate their entry into the business environment following their arrival in Australia. These services must be provided with regard for the difficulties encountered by both private and public sector bodies attempting to access business migrants, and the sensitivities of business migrants themselves.

1.11 There are several sources of information available to business migrants to assist them in establishing a business once in Australia. Information is provided by Government bodies or the private sector, notably accredited agents. However, accredited agents have found that business migrants were reluctant to use their services due to the cost of access to those services and also cultural barriers. Furthermore, business migrants are reluctant to utilise services provided by Government bodies due to cultural barriers and a suspicion of government agencies in general.

Accredited Agent Scheme

1.12 The Accredited Agent Scheme (AAS) was introduced on 1 July 1988, following approval in August 1987 by the then Minister for Immigration, Local Government and Ethnic Affairs. It was designed as a self-financing means of providing counselling services and assessment of applications for business migrants outside the usual immigration processing avenues.

1.13 The principal purposes of the AAS were:

- to give the Government a measure of control over the activities of the group of private sector consultants who were assisting business migrants with their applications for settlement in Australia;
- to harness private sector expertise to attract business migrants and give them a better business advisory service; and
- to reduce the processing workload for DILGEEA's overseas posts.

1.14 Accreditation is granted by means of a 12 month renewable contract between the Commonwealth and approved agencies. Each agent is required to pay \$4000 in consideration of the use of the BMP logo, and an additional \$500 for each application submitted on behalf of a client under the BMP.

1.15 A further feature of the operations of accredited agents is their use of sub-agents. Sub-agents are overseas based and foreign owned migration advisers. They operate primarily in the principal source countries of business migrants, Hong Kong and Taiwan. Their role is to make the initial contact with the potential business migrant and obtain preliminary information about clients for accredited agents.

1.16 The evidence presented to the Committee identified two concerns about the operations of sub-agents which the Committee felt had a significant impact on the selection of business migrants:

- sub-agencies, owned and operated by foreign nationals outside Australia, are beyond the control of DILGEA; and
- the reliance that accredited agents place on sub-agencies to assist in the generation of BMP applicants to maintain the viability of the agencies.

1.17 In examining the AAS, the Committee was aware that any administrative scheme involving both the public and private sector would inevitably have teething problems. However, the Committee identified a number of basic flaws in the concept and operation of the AAS, as well as the inevitable teething problems.

1.18 First, there is a basic conceptual flaw in the AAS. Under the AAS, the Commonwealth has delegated its authority to assess immigration applications to the private sector. However, the private sector agents owe their allegiance primarily to their clients, the applicants, and not to the Commonwealth.

1.19 Second, the speed with which the AAS was introduced, combined with the adoption of a broad set of criteria for agent accreditation, brought a large number of accredited agents, with varying degrees of experience, into the migration consultancy arena. This resulted in DILGEA's control over the administration of both the AAS and, through it, the BMP being reduced.

1.20 The third critical factor in the introduction of the AAS was the number of accredited agents and the size of the available client base. This resulted in accredited agents being under pressure to process cases put to them in order to survive financially and had the effect of accredited agents chasing marginal cases.

1.21 The fourth critical factor in the AAS was the role of overseas based and foreign owned sub-agents who were in a position to exploit the financial vulnerability of accredited agents by acting as first point of contact between potential applicants and the accredited agents.

1.22 The Committee concludes that the combination of these factors, together with the lack of any effective monitoring scheme of business migrants made the BMP vulnerable to abuse. This vulnerability was exploited in two ways:

- first, by the use of illicit means such as false and forged documentation to obtain a BMP visa; and

- second, by the agents' focus on selling the BMP to applicants rather than concentrating on assessing the applicants' backgrounds and suitability for migration under the BMP.

1.23 The Committee believes that some of the conditions that led to this situation still exist.

1.24 The Committee concludes that the total responsibility for the assessment of applications and issue of visas under the BMP should lie clearly with DILGEA.

1.25 The Committee therefore recommends that:

- the Accredited Agent Scheme be abolished.
(paragraph 6.71)

1.26 Notwithstanding this, the Committee recognises that there is an ongoing role for the private sector to assist applicants for migration to Australia. However, this should remain a private arrangement between the applicant and the agent, with no Commonwealth involvement.

Criminal Involvement in the Business Migration Program

1.27 Since the inception of the BMP, allegations have linked the BMP with criminal activity. These allegations have concerned the possible movement of financial and personal assets derived from criminal sources into Australia via the BMP and the use of the BMP for money laundering operations. During the Inquiry, allegations were also made that abuse of provisions for the withholding tax could be connected to the BMP.

1.28 In light of the allegations made about the possible involvement of organised crime in the BMP, the Committee examined two aspects of the problem. One was the extent to which the procedures used by DILGEA to screen intending migrants are adequate to reveal any links between the business migrant applicants and organised crime. Here the Committee formed the view that the procedures used by DILGEA to conduct security checks on applicants for migration under the BMP are probably as extensive as is practicable, given the size of the overall migration program, and that DILGEA is dependent upon the goodwill of law enforcement agencies in the applicants' countries of origin.

1.29 The second aspect considered by the Committee was whether there is any evidence of an association between organised crime and the BMP. From the information provided to it, the Committee considers that there have been a limited number of instances where criminal figures have entered Australia under the BMP. However, the evidence provided by the Australian Federal Police (AFP), the New South Wales Police Service (NSWPS) and Victoria Police indicates that the potential for exploitation of the BMP by criminal groups exists. From this information, the Committee concludes that:

- . the BMP has not been the subject of large scale assault by organised criminal groups; and
- . there is only a limited number of instances of penetration of the BMP by identified criminal figures; but
- . the potential exists for criminal abuse of the BMP.

1.30 **The Committee recommends that:**

as a matter of priority the Department of Immigration, Local Government and Ethnic Affairs investigate the circumstances surrounding the limited number of instances of individuals with criminal links entering Australia under the Business Migration Program with a view to remedying any deficiencies in its screening procedures identified during these investigations. (paragraph 7.12)

1.31 Evidence was received by the Committee concerning the possible abuse of withholding tax provisions by migrants entering Australia under the BMP. This evidence indicated that the withholding tax can be or is being used for money laundering purposes. However, it also appears that business migrants may be failing to meet their withholding tax liabilities through ignorance rather than criminal design.

1.32 While the evidence indicates that there may be a window of opportunity for exploitation of the withholding tax by business migrants, this opportunity is not restricted solely to business migrants. The Committee considers that in this matter, business migrants should be considered in the context of the wider business community.

1.33 Allegations concerning money recycling have been associated with the BMP since its inception. The term money recycling describes a situation in which capital is transferred into Australia for the purposes of qualifying for a visa under the BMP and is then transferred back to the migrant's country of origin.

1.34 Prior to 1989, DILGEA had no formal monitoring scheme to ensure that monies transferred to Australia for the purposes of the BMP remained in the country and relied on aggregate information provided by banks to give an overview of the patterns of cash transfers by business migrants. In November 1989, DILGEA introduced the BMP Declaration, a document which intending migrants must sign. It states that the funds transferred to Australia are personally owned by the applicant and are unencumbered, and authorises the recipient bank to disclose to DILGEA details of the transactions of the accounts containing the funds for a period of three years.

1.35 Under this system, DILGEA examines bank accounts in response to any allegations of funds recycling and regularly monitors the accounts of 5% of all

business migrants who enter Australia. The banks also continue to provide DILGEA with an aggregate overview of the movement of BMP money.

1.36 The Committee concludes that:

- *money recycling has occurred. However, in the absence of any systematic monitoring of the transfer of funds offshore by business migrants before November 1989, the full extent of this recycling cannot be determined; and*
- *the system adopted by DILGEA for the purposes of monitoring the flow of funds into, and out of, Australia by migrants under the BMP, and the actions taken when recycling has been detected, should be an effective deterrent against further funds recycling.*

Business Skills Based Migration

1.37 The Commonwealth's migration program has provided a category of entry for migrants with business skills since the introduction of the Entrepreneurial Category in 1976. This category was revised and upgraded to become the BMP in 1981 and actively promoted as an avenue for entry to Australia.

1.38 In the course of receiving evidence as part of this Inquiry, the Committee heard across the board support for the concepts of both economic immigration and the entry of migrants with business and entrepreneurial skills. The Committee wishes to place on record its own support for the entry to Australia of migrants with business and entrepreneurial skills and seeks, through the findings of this report, to better utilise these skills for the benefit of the migrants and the Australian economy.

1.39 **The Committee recommends that:**

- **the migration program continue to have a category of entry which recognises business and entrepreneurial skills as eligible criteria for entry to Australia;**
- **the primary purpose of this entry category be the establishment of businesses in Australia; and**

- **attention be given to the clear articulation of the goals and operational objectives of this category of entry, such that their achievements can be readily monitored and evaluated. (paragraph 8.8)**

1.40 The Committee considers that the business skills category of migration should have its own identity as a sub-category within the independent category of migration. The assessment of business skills should be carried out in an administrative manner similar to the assessment of independent entrants, that is, under a points test. Such a test provides clear guidelines to both potential migrants and officials of DILGEA.

1.41 The Committee recommends that:

- a category of entry that recognises business skills as a criterion for entry into Australia be created;
- a category of entry based on the assessment of business skills be developed to replace the Business Migration Program;
- the establishment of a business in Australia be incorporated into the objectives of this category of migration; and
- selection under this category of migration be based on a points system. (paragraph 8.15)

1.42 The Committee considers that the points test for migrants with business skills should consist of prescribed qualifications in three areas:

- business skills;
- age; and
- language skills.

1.43 The determining factor in developing a points test for business skills should be the demonstration of a successful business background by the applicant and that the components of this criterion should be the ownership and operation of a successful business in the applicant's country of origin. The Committee is aware

that the determination of such a criterion for the purposes of developing a points test is a difficult task, but considers that it is necessary to clarify, for both immigration officers and intending migrants, those skills and attributes which will be considered in assessing an application. As part of the application process, a statement of intent by migrants should be prepared which outlines the intentions of the migrants in relation to the establishment of a business in Australia.

1.44 **The Committee recommends that:**

- the determining factor in developing a points test for business skills should be demonstration of a successful business background by the applicant;
- the components of this criterion should be the ownership and operation of a successful, bona fide business in the applicant's country of origin; and
- in developing assessment systems for applicants in this category of migration, the Department of Immigration, Local Government and Ethnic Affairs allow immigration officers the option of drawing on the expertise of the private sector to assist in their determination of the suitability of applicants. (paragraph 8.22)

1.45 The Committee considers that, in determining points based on age for entry of persons with business skills, allowance must be made for two factors. The first factor is that business skills improve with age, at least over the first 20 to 30 years of a business person's career. The age points system that is used for the independent class of migration is thus unsuitable for assessing migrants with business skills because it awards most points to the youngest adults and least to the oldest. The second factor is the need to prevent the category of entry from being used as a de facto retirement scheme by older migrants.

1.46 **The Committee recommends that:**

- a separate points test for the age qualification be developed for business migrants. (paragraph 8.24)

1.47 The Committee considers that English language skills are critical for migrants arriving in Australia, and in particular for business migrants if they are to do business in Australia. The English language skills qualification already exists for the independent entry category and should be included in the points test for business skills entry in Australia.

1.48 **The Committee therefore recommends that:**

the language skill qualification set out in the existing points system be applied to the points test for business skills entry. (paragraph 8.26)

1.49 The transfer of capital to Australia by business migrants provides two benefits. Firstly, it provides a source of start-up capital for the migrants and secondly, it adds to the capital base of the Australian economy. The Committee strongly supports the transfer of capital to Australia as part of the business skills entry program, but is cautious in recommending that points be awarded on the basis of the amount of capital transferred. The Committee does not propose that the transfer of capital alone be seen as a means of generating enough points to gain entry into Australia.

1.50 Furthermore, the Committee is aware that the transfer of capital component of the BMP was subject to abuse until the implementation of a monitoring program. The Committee therefore considers that a monitoring system on capital transfer should be used to ensure that capital transferred to Australia for business purposes is, in fact, used for these purposes.

1.51 The declaration form currently used to monitor the transfer of funds by applicants under the BMP has proved to be an effective mechanism of scrutiny, and acts as a deterrent for abuse. The Committee considers that such a system should be adopted to monitor the transfer of capital for a period of two years after the migrant's arrival in Australia.

1.52 **The Committee therefore recommends that:**

the transfer of capital be recognised as a criterion for granting points under the business skills entry category; (paragraph 8.30)

the points allocated to capital transfer should not be sufficient to make this the predominant factor in the assessment of an application; (paragraph 8.33) and

the scheme currently used to monitor the transfer of funds under the Business Migration Program be used to monitor the transfer of funds under the business skills category of migration for a period of two years after the migrant's arrival in Australia. (paragraph 8.30)

Monitoring Future Business Skills Based Migration

1.53 The lack of an adequate monitoring system has been a critical factor in DILGEEA's failure to evaluate the effectiveness of the BMP in achieving its goals. The Committee notes, however, that the adoption of the monitoring program implemented on 1 July 1988 established the basis for an effective monitoring scheme.

1.54 The Committee considers that such a monitoring scheme should be adopted for the business skills entry category recommended above. The monitoring scheme should be designed to assess the extent to which the program's objectives are being achieved and to ascertain the nature of any difficulties the migrants are facing. This information would form the basis for planning effective services to assist the migrants.

1.55 In the opinion of the Committee, the voluntary returns achieved by the current monitoring scheme do not generate enough data to determine that the outcomes of the BMP are in line with its objectives. The Committee therefore considers that compliance with the monitoring scheme should be mandatory and should involve all business migrants to establish the extent to which the migrants are setting up businesses.

1.56 **The Committee recommends that:**

- a monitoring scheme be implemented for migrants arriving in Australia under the business skills category of entry;
- the monitoring scheme should explore the extent to which the program's goals have been met by each migrant and identify any obstacles to the establishment of migrants in the Australian business environment;
- this scheme be composed of:

- the issue of two survey forms to migrants at the time of granting them their visas, and
- the return of these survey forms after 12 and again after 24 months following the migrants' arrival in Australia;
- compliance with the scheme's survey be mandatory; and
- a financial penalty, similar to the penalties contained in s.14 and s.15 of the Census and Statistics Act 1905, be imposed on migrants who do not comply with the survey. (paragraph 8.39)

Post Settlement Services for Future Business Skills Based Migrants

1.57 The lack of post settlement support services has hampered the efficiency of the BMP by delaying the entry of business migrants into businesses after their arrival in Australia. The Committee therefore considers that an ongoing information and awareness campaign should be implemented, aimed at informing business migrants of the availability of these services. This campaign should be linked to the results of the monitoring program, in order to ensure that the provision of information to business migrants is relevant to their information needs. State and Federal industry development departments and the Australian Taxation Office should also be consulted in the development of the campaign.

1.58 **The Committee recommends that:**

- an ongoing information and awareness campaign be developed to inform business migrants of the availability of publicly funded business advisory services;
- this campaign be targeted at both the source countries of business migrants and ethnic business associations in Australia; and
- the Minister for Immigration, Local Government and Ethnic Affairs request the Minister for Small Business and Customs to place on the agenda of the meeting of Federal/State Ministers for Small Business the development of methods to improve access to business advisory services by business migrants. (paragraph 8.46)

CHAPTER 2

BACKGROUND

Background to the Inquiry

2.1 The Inquiry into the Business Migration Program and Control of Visitor Entry arose from criticisms made by the Auditor-General in his September 1988 and April 1989 reports to the Parliament.

2.2 In September 1988 the Auditor-General reported to the Parliament on an audit on the administration of the Business Migration Program (BMP). The audit was conducted to determine whether adequate controls and procedures existed to ensure that the BMP was administered effectively.¹ The Auditor-General criticised the BMP on three counts:

- its objectives were very broad, which made any performance assessment very difficult;
- the performance of accredited agents was not monitored; and
- the post-settlement review of the activities of business migrants was inadequate.²

2.3 The audit report concluded that, in order to provide adequate controls and procedures to ensure that the BMP is administered effectively, DILGEA needed to improve its oversight of the BMP.³

2.4 In April 1989 the Auditor-General reported on an audit of the Visitors and Entry Subprogram of the Migration and Visitor Entry Program. This report found control weaknesses, procedural breakdowns and system deficiencies within

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1. The Auditor-General, Report on audits to 30 June 1988, AGPS, Canberra, September 1988, p.67.
 2. JCPA, Reports of the Auditor-General - March 1988, September 1988 and April 1989, Report 300, AGPS, Canberra, November 1989, p. 23.
 3. The Auditor-General, Report on audits to 30 June 1988, AGPS, Canberra, September 1988, p.70.

visa issue and entry operations, which the audit report stated created a 'serious inherent risk' that entry could be granted to people contrary to the national interest. The report also noted that, despite these findings, the audit showed "no evidence to suggest that administrative effectiveness had been compromised".⁴

2.5 The Committee considered both the Auditor-General's September 1988 and April 1989 reports in its Report No. 300, tabled in November 1989. In preparing Report 300, the Committee invited the Department of Immigration, Local Government and Ethnic Affairs (DILGEA) to comment on the Auditor-General's criticisms of both programs. In its findings relating to the BMP, the Committee considered that "concern about the Business Migration Program (should be) directed at both its management and its effectiveness, that is, the question of whether it is achieving its objectives."⁵ The Committee concluded that further monitoring of the BMP was warranted.⁶

2.6 In examining the Auditor-General's Report on the Visitors and Entry Sub-Program, the Committee considered that the deficiencies found reflected a more general, underlying problem in DILGEA, in that problems in specific areas were not being handled as efficiently and effectively as they might be.⁷

2.7 The Committee concluded that examination of these areas had highlighted two further examples of a perennial issue in any examination of Commonwealth administration, namely:

the effective management of government programs, which particularly involves monitoring the effectiveness of programs utilising appropriate performance measures, and providing requisite management information systems.⁸

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4. The Auditor-General, Report on audits to 31 December 1988, AGPS, Canberra, April 1989, p. 177.
 5. JCPA, Reports of the Auditor-General - March 1988, September 1988 and April 1989, Report 300, AGPS, Canberra, November 1989, p. 16.
 6. JCPA, Reports of the Auditor-General - March 1988, September 1988 and April 1989, Report 300, AGPS, Canberra, November 1989, p. 25.
 7. JCPA, Reports of the Auditor-General - March 1988, September 1988 and April 1989, Report 300, AGPS, Canberra, November 1989, p. 30.
 8. JCPA, Reports of the Auditor-General - March 1988, September 1988 and April 1989, Report 300, AGPS, Canberra, November 1989, p. 49.

2.8 The Committee considered that further monitoring of both programs was warranted.

Terms of Reference

2.9 In commencing the Inquiry, the Committee indicated that it would examine the efficiency and effectiveness of the Business Migration Program and the Visitors and Entry Sub-Program of the Migration and Visitor Entry Program.

2.10 In particular, the Committee announced that it would examine:

- the effectiveness of the evaluation package applying to the BMP;
- the adequacy of DILGEA's policy and procedures applying to the Migrant Alert List;
- the adequacy of DILGEA's computerisation program for monitoring over-stayed visitors; and
- DILGEA's response to the Auditor-General's criticisms concerning visitor entry.

2.11 The Terms of Reference for the Inquiry were advertised nationally in June 1990. In addition, invitations to make submissions were extended to Federal and State Government departments, individuals and organisations with a specific interest in the Inquiry.

Conduct of the Inquiry

2.12 Forty-six submissions to the Inquiry were received, a list of which can be found at Appendix 1. The Committee conducted ten public hearings and five in-camera hearings in Canberra, Sydney, Melbourne and Brisbane. Appendix B provides a list of witnesses who gave evidence at these hearings. The Committee was also briefed by Mr M Burstein, Director, Strategic Policy, Canada Employment and Immigration Commission and Mr T Ryan, Consul (Immigration) Canadian Consulate General on the operation of the Canadian Business Immigration Program.

First Report

2.13 The majority of submissions received by the Committee in response to the Inquiry referred to the Term of Reference dealing with the BMP. In view of the public concern about the BMP expressed in these responses, the Committee resolved to examine and report on the BMP prior to undertaking a detailed examination of the Terms of Reference dealing with the control of visitor entry.

2.14 Consequently, this report deals exclusively with the first of the Terms of Reference of the Inquiry, which required the Committee to review the effectiveness of DILGEEA's revised monitoring and evaluation package applying to the BMP.

Government Review of the Business Migration Program

2.15 On 30 April 1991, the Minister for Immigration, Local Government and Ethnic Affairs announced in a press release that the Government intended to review the BMP, with a view to implementing recommendations arising from the review early in the next program year.⁹ In evidence to the Committee, DILGEEA indicated that the timetable for the review would see its completion in late June 1991.¹⁰

2.16 In announcing this review, the Minister indicated his desire to have the benefit of the views of the Committee concerning its Inquiry into the BMP. To this end, the Committee Chairman, the Hon Gary Punch, MP, and a Committee member, Mr Ken Aldred, MP, met with the Minister on 29 May 1991 and discussed the major issues which had arisen during the Inquiry. A similar briefing was given to the Shadow Minister, Mr P M Ruddock, MP by Mr Ken Aldred, MP.

2.17 The Committee notes the cooperation of the Minister in timing the review of the BMP to coincide with the release of this Report. The Committee also notes the fruitful discussion held with the Minister, and believes that recommendations contained in this Report will provide a useful input to the process of review of the BMP.

9. Minister for Immigration, Local Government and Ethnic Affairs, Media Release, 30 April 1991, p. 5.

10. Evidence, pp. 1008-9.

CHAPTER 3

THE BUSINESS MIGRATION PROGRAM

Introduction

3.1 The Business Migration Program (BMP) had its origins in the Entrepreneurial Migration Category, which was incorporated into the general Australian migration program in November 1976. This category was introduced to provide a means of entry for migrants who would be unable to qualify under other categories of migration, but could be expected to benefit Australia by applying their business skills and capital in the Australian economy.¹

3.2 The criteria for migration under the Entrepreneurial Category required an applicant to have:

- detailed proposals to participate actively in enterprises which could be expected to:

- introduce new designs, techniques or technology;
- expand exports; or
- promote employment opportunities; and

- sufficient personal, unencumbered, legally transferable funds so that the proposed business had a reasonable chance of succeeding.²

3.3 The Entrepreneurial Migration Category existed until 1981, when it was replaced by the BMP. When it began, the BMP had two elements. One element maintained essentially the same criteria for entry as the Entrepreneurial Migration Category, in that applicants were required to provide proposals which would either introduce new designs, techniques or technology, or create employment or develop export markets. The other element allowed entry for self employed persons, which covered successful professionals and tradespeople with their own firms. While no minimum level was set, the BMP required that each applicant have sufficient personal capital to transfer to Australia so that they might carry out a proposed

1. Evidence, p. S253.

2. Evidence, pp. S253-4.

business.³ The two elements of the BMP were amalgamated into a single stream in January 1983.

3.4 The BMP experienced modest growth in the early 1980s but numbers escalated rapidly after 1986. From 1982-83 to 1985-86 an average of 375 principal applicants arrived in Australia annually. In 1986-87, arrivals under the BMP doubled to 885 principal applicants and doubled again in 1987-88 to 1793 principal applicants. In 1988-89 the number of approved principal applicants had reached 2458, representing a total immigration intake of 10,039 people (principal applicants and their families).⁴ DILGEA expects the intake under the BMP to fall in 1990-91, to a total of 7,500 immigrants (principal applicants and their families).⁵

Program Objectives

3.5 The BMP forms part of the economic stream of migration to Australia and is designed to facilitate the entry of people with business skills and capital. Unlike other categories of skilled migration, business migrants are not required to have skills in specific areas or industries, but are required to demonstrate a successful business background.

3.6 The objective of the BMP is to bring economic benefit to Australia specifically through:

- . the creation of employment, or retention of employment that would otherwise be lost;
- . the introduction of new and improved technology;
- . export expansion; and
- . import substitution.⁶

3. Evidence, p. S254.

4. Evidence, pp. S255-6.

5. Minister of Immigration, Local Government and Ethnic Affairs, Media Release, 30 April 1991, p. 6.

6. Evidence, p. S257.

3.7 In addition, DILGEA has a number of operational objectives for the BMP against which performance can be measured. The objectives are:

- . the achievement of a total capital transfer into Australia of not less than \$1.5 billion for the 1990-91 program year;
- . the engagement of 30% of principal applicants in business within one year of arrival and 60% within two years of arrival;
- . the generation of an average of eight jobs by each business migrant;
- . 15% of principal applicants to be involved in exports within two years of arrival; and
- . 10% of principal applicants to introduce new technology or products within two years of arrival.⁷

3.8 Chapter 4 discusses the issue of program objectives in more detail.

Selection Criteria

3.9 To qualify for migration under the BMP, an applicant must have:

- . a successful business record;
- . unencumbered and personally owned assets available for transfer for business and settlement purposes. Amounts required for business purposes are:
 - \$350,000 for applicants under 40 years,
 - \$500,000 for applicants between 40 and 58, and
 - \$850,000 for applicants over 58;
- . a settlement amount of \$150,000 if Sydney or Melbourne is the intended destination, or \$100,000 if elsewhere, as additional funds to those required for business purposes; and
- . an intention to settle permanently in Australia.

7. Evidence, p. 16.

- 3.10 Additionally, applicants are required to demonstrate:
- . how they will meet BMP objectives;
 - . how they will meet other regulatory requirements; and
 - . how their business background, their proposed activities in Australia and their understanding of the Australian economic environment satisfy BMP requirements.⁸

3.11 Before visas are issued, applicants are required to transfer specified funds and to have that transfer confirmed by a recipient bank in Australia. The applicant is also required to sign a declaration stating that these funds are personally owned, unencumbered and intended for business and settlement purposes.⁹ This declaration authorises the recipient bank to disclose to DILGEA, on request, details of transactions in the relevant account(s) for a period of three years from the date of approval of the applicant to migrate.¹⁰ This requirement was introduced in November 1989.

Program Administration

3.12 The BMP is administered by DILGEA's Central Office in Canberra, which has responsibility for policy and procedural development, co-ordination of promotional activities, agent accreditation and re-accreditation, training of staff and agents, and BMP monitoring and evaluation.

3.13 Officers at Australia's overseas missions are responsible for handling all individual Program applications from enquiry to visa issue. Two missions, Hong Kong and Kuala Lumpur, have officers wholly or largely dedicated to the BMP.¹¹

Accredited Agent Scheme

3.14 A unique feature of the administration of the BMP is the use of accredited agents to assist DILGEA in the assessment of applications made under the BMP.

8. Evidence, p. S258.

9. Evidence, p. S366.

10. Evidence, pp. S257-8.

11. Evidence, p. S259.

3.15 The Accredited Agent Scheme (AAS) was introduced on 1 January 1988 as a self-financing means of providing private enterprise based counselling services and assessment of applications for business migrants.¹²

3.16 In evidence to the Committee, a representative of DILGEA stated that the Scheme filled a gap in the expertise of DILGEA, in that:

We believe generally, while [DILGEA] had migration expertise, it lacked business expertise ... the accredited agents scheme was largely designed to provide us business expertise in the examination of applications by business migrants. Their prime part in the whole process is the examination of the business records and the certification that this person has a successful business background.¹³

3.17 In addition, DILGEA saw that the formal involvement of migration agents and other migrant and business advisory bodies would assist potential business migrants in establishing a business in Australia by being able to offer a wide range of services related to setting up a business.¹⁴

3.18 Accreditation is based on a contract between the Commonwealth and approved agencies, renewable after 12 months. Each agent is required to pay DILGEA a licence fee of \$4,000, and an additional \$500 with each BMP application lodged.¹⁵

3.19 When giving evidence to the Committee, DILGEA stated that there were 244 organisations registered as accredited agents and that over 70% of all BMP applications are lodged through accredited agencies.¹⁶

3.20 During the Inquiry, the role of accredited agents in the approval processes for business migration came under close scrutiny. Chapter 7 of the Report considers the issue of accredited agents in greater detail.

12. Evidence, pp. S261-2.

13. Evidence, pp. 24-5.

14. Evidence, p. S262.

15. Evidence, p. S263.

16. Evidence, pp. 25-6, S262-3.

Australian Migration Consultants Association

3.21 The Australian Migration Consultants Association (AMCA) was formed in November 1987. In its submission to the Committee, AMCA stated that a primary reason for its formation was to offer to DILGEA a single cohesive representation of the migration consultancy industry. At the time of its formation AMCA was aware of the proposed plan for accreditation for migration consultants participating in the BMP.¹⁷

3.22 The membership of AMCA is composed of representatives of banks, State Government agencies and non-accredited migration agents.¹⁸ Approximately 150 accredited agents are members of AMCA.¹⁹

3.23 AMCA is recognised by DILGEA as the professional umbrella group representing the migration consulting industry and has been closely involved with the development of the AAS and the BMP. The objectives of AMCA extend to developing industry standards of practice and training schemes for members.²⁰

Program Monitoring

3.24 Since the launching of the BMP in 1981, DILGEA has relied on surveys of business migrants as a means of monitoring the BMP. DILGEA conducted surveys in 1982 and 1985 and the Bureau of Immigration Research conducted a major survey in 1990.²¹ Additionally, other interested groups have conducted surveys, including a major study conducted by the South Australian Government in 1988.²²

3.25 A formal monitoring scheme was introduced on 1 July 1988 as a means of obtaining information about the activities of accredited agents, the effectiveness of Program promotion and the extent to which business migrants met Program objectives and expectations.²³

17. Evidence, p. 237.

18. Evidence, p. S262.

19. Evidence, p. 248.

20. Evidence, pp. 237-8.

21. Evidence, pp. S267-8.

22. Evidence, p. S268.

23. Evidence, p. S268.

3.26 This monitoring scheme consists of questionnaires given to business migrants at the time of visa approval, with a request that they be returned to DILGEA at 12 and 24 month intervals. DILGEA stated in its submission to the Committee that it has also adopted a policy of actively following up and seeking from business migrants the return of these questionnaires. Compliance with the monitoring scheme is voluntary.²⁴

3.27 At the time of its initial appearance before the Committee on 19 October 1990, DILGEA was achieving a 50% return rate of survey forms.²⁵

3.28 Chapter 4 of the Report addresses the issues of monitoring in more detail.

24. Evidence, pp. S268-9.

25. Evidence, pp. 6-7.

CHAPTER 4

PROGRAM OBJECTIVES AND PROGRAM MONITORING

Program Objectives

4.1 At a time when the Australian Public Service is introducing program budgeting and focussing on 'managing for results' it is of fundamental importance that any Government program have clearly defined objectives and a well formulated method of monitoring. This is particularly so where the administration of a program is shared between the public and private sectors. Confusion about objectives or failure to properly monitor the implementation of a program contributes to the development of administrative 'grey areas' and makes any assessment of results difficult.

4.2 The Committee recognised that the intent of the BMP was to attract business skills and expertise to Australia. However, the Committee was concerned that DILGEA had more than one interpretation of the purpose of the BMP. In its submission to the Committee, DILGEA stated that the BMP exists 'primarily for its perceived economic benefit to Australia',¹ and went on to state that the BMP:

... is a major element in the integration of economic migration policy with broader macro and micro-economic reforms.²

4.3 In correspondence to the Committee, DILGEA took up a point from the Auditor-General's September 1988 Report³ and stated:

The Business Migration Program is not a foreign investment program but part of an overall migration program. Although it is one of the programs by which the Government has sharpened the economic focus of the migration program, it should always be viewed in the context that it is a people program.⁴

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1. Evidence, p. S253.
 2. Evidence, p. S257.
 3. The Auditor-General, Report on Audit to 30 June 1988, AGPS, Canberra, September 1988, p. 67.
 4. See Appendix 3, p. 93.

4.4 In discussing the mechanisms for selecting migrants under the BMP at its public hearing on 19 October 1990, DILGEA stated to the Committee:

It has tended to operate more the way the rest of the migration program operates in that we say, well, we are after people with a certain set of characteristics and we just look at whether people have a successful business background and whether they have some capital to do something in Australia.⁶

4.5 However, at the same hearing, DILGEA stated:

Saying that we are not requiring the business migrant to put up a specific business proposition pre-arrival is not saying that we do not require business migrants to go into business. That is the objective of the program.⁶

4.6 The Committee considers that these two statements place vastly different emphases on the purpose of the BMP. The Committee also considers that these statements represent an ambiguity in the interpretation of the overall economic purpose of the BMP.

4.7 This ambiguity was also apparent in other evidence presented to the Committee. Witnesses were divided between the view that the effectiveness of the BMP should be measured by the number of businesses established in Australia by business migrants, and the view that the effectiveness of the BMP should be measured in terms of the migration of people with business skills to Australia.⁷

4.8 In order to achieve the BMP goals as currently outlined, the Committee considers that there is an implicit requirement that a business be established. However, what is not established in the articulation of the BMP objectives is whether or not the establishment of a business is, in itself, a desirable goal.

5. Evidence, p. 17.

6. Evidence, p. 21.

7. For example see Evidence, pp. 290, 440, 589-90, 642-3.

4.9 The Secretary of DILGEA did, however, indicate that there is scope for considering as one of the BMP's objectives that a business migrant go into business.⁸

4.10 The Committee considers that the articulation of program goals for a business skills based category of migration should state that a desired outcome of the category is the establishment of a business in Australia by a migrant entering under that category.

4.11 The objectives of the BMP, as outlined in paragraph 3.6, are to bring economic benefit to Australia specifically through:

- . the creation of employment, or retention of employment that would otherwise be lost;
- . the introduction of new and improved technology;
- . export expansion; and
- . import substitution.

4.12 In evidence to the Committee, Dr Robert Birrell from Monash University stated that:

When originally introduced, the program's main purpose was to attract enterprising, technologically innovative entrepreneurs. The focus was on Europe in the hope we would draw such business persons from the most advanced economies. The program has attracted some capable European investors, often drawn by the prospects of a safer environment than Europe appeared to offer.

More recently, the justification offered has been the inflow of foreign investment. Partly because of this, and partly because of European disinterest, most business migrants now come from Asia, particularly Hong Kong and Taiwan.⁹

8. Evidence, p. 944.

9. Evidence, p. 436.

4.13 The Committee notes that the number of migrants from Hong Kong and Taiwan has increased rapidly since the launch of the BMP and now represents the majority of migrants granted visas under the BMP. The Committee is aware that significant push factors for migration exist in this area and they have added to the numbers of applicants in all categories of migration.

4.14 In examining the evidence concerning migration under the BMP from this region, the Committee wishes to state categorically that its concern does not lie with the location of the source countries of the majority of the migrants entering Australia under the BMP, nor the ethnic background of those migrants. However, the Committee is disturbed that, over time, what was intended as a global program has become largely concentrated on one region. The concern of the Committee is in examining the procedures applying to the selection of migrants under this category of entry and the suitability of these procedures to ensure that migrants selected under the BMP have the attributes needed to fulfil Program objectives.

4.15 The source countries for business migrants for the period July 1982 to March 1990 are:

| | |
|------------------|------------------------|
| · Hong Kong | (32.29%) |
| · Taiwan | (15.33%) |
| · Malaysia | (12.04%) |
| · United Kingdom | (7.81%) |
| · Indonesia | (5.57%) |
| · Singapore | (4.78%) |
| · S Korea | (4.52%) |
| · W Germany | (2.68%) |
| · S Africa | (2.34%) |
| · Japan | (2.10%) |
| · Other | (10.55%) ¹⁰ |

BMP arrivals by country of last residence for the period July 1982 to June 1990 are shown at Figure 1.

10. Evidence, p. S279.

FIGURE 1.

SETTOP20.XLS

BIMP SETTLER ARRIVALS (principals and total), BY COUNTRY OF LAST RESIDENCE : JULY 1982 - JUNE 1990
(SORTED BY TOTAL SETTLER ARRIVALS FOR JULY 1982 - JUNE 1990)

| COUNTRY OF LAST RESIDENCE | 1982E3 | | 1983Q4 | | 19843S5 | | 19852R6 | | 19862R7 | | 19877R8 | | 19880R9 | | 19889R0 | | TOTAL JUL 82 - JUN 90 | |
|---------------------------|------------|--------------|------------|--------------|------------|--------------|------------|--------------|------------|--------------|--------------|--------------|--------------|---------------|--------------|---------------|-----------------------|---------------|
| | Principals | Total | Principals | Total | Principals | Total | Principals | Total | Principals | Total | Principals | Total | Principals | Total | Principals | Total | Principals | Total |
| Hong Kong | 19 | 75 | 58 | 264 | 101 | 433 | 108 | 463 | 245 | 1,004 | 640 | 2,517 | 721 | 3,059 | 806 | 3,264 | 2,674 | 11,073 |
| Taiwan | 4 | 17 | 4 | 17 | 12 | 40 | 39 | 164 | 127 | 539 | 196 | 824 | 398 | 1,475 | 631 | 2,490 | 1,367 | 5,549 |
| Kuwait | 25 | 114 | 44 | 170 | 75 | 323 | 50 | 205 | 87 | 378 | 179 | 747 | 266 | 1,227 | 202 | 852 | 948 | 4,016 |
| United Kingdom | 141 | 496 | 55 | 199 | 24 | 81 | 35 | 99 | 71 | 222 | 140 | 482 | 163 | 601 | 116 | 407 | 745 | 2,566 |
| Indonesia | 1 | 7 | 27 | 118 | 36 | 165 | 22 | 95 | 60 | 259 | 54 | 277 | 98 | 448 | 116 | 513 | 414 | 1,882 |
| Singapore | 3 | 13 | 29 | 93 | 32 | 136 | 28 | 128 | 49 | 195 | 72 | 308 | 99 | 395 | 77 | 316 | 399 | 1,574 |
| Korea, South | 1 | 3 | | | 1 | 5 | 20 | 13 | 60 | 74 | 306 | 147 | 631 | 127 | 563 | 367 | 1,584 | |
| Germany, West | 18 | 63 | 72 | 290 | 34 | 114 | 18 | 49 | 27 | 65 | 49 | 137 | 37 | 129 | 25 | 76 | 280 | 865 |
| Japan | 6 | 15 | 2 | 8 | | | 1 | 4 | 12 | 37 | 58 | 207 | 77 | 253 | 56 | 187 | 212 | 713 |
| South Africa | 11 | 29 | 17 | 63 | 9 | 38 | 24 | 103 | 33 | 140 | 23 | 99 | 50 | 185 | 28 | 122 | 196 | 780 |
| Burma | 5 | 13 | 1 | 6 | 7 | 32 | 8 | 25 | 26 | 72 | 39 | 157 | 60 | 242 | 13 | 62 | 155 | 661 |
| China PR of | | | | | | 6 | | 6 | 1 | 2 | 8 | 28 | 12 | 42 | 66 | 284 | 57 | 236 |
| USA | 17 | 40 | 19 | 52 | 9 | 30 | 12 | 42 | 17 | 67 | 23 | 93 | 26 | 72 | 10 | 60 | 133 | 458 |
| Fiji | | | | | 1 | 6 | 4 | 20 | 2 | 7 | 57 | 199 | 30 | 115 | 23 | 87 | 117 | 435 |
| Philippines | | | 3 | 16 | 1 | 4 | 7 | 25 | 11 | 49 | 38 | 187 | 36 | 174 | 11 | 64 | 107 | 519 |
| Canada | 11 | 34 | 8 | 23 | 3 | 15 | 4 | 12 | 5 | 12 | 7 | 25 | 13 | 44 | 6 | 27 | 57 | 192 |
| Switzerland | 4 | 16 | 6 | 19 | 2 | 7 | 1 | 5 | 3 | 9 | 14 | 38 | 9 | 20 | 11 | 31 | 50 | 145 |
| United Arab Emirates | 3 | 13 | 3 | 11 | | | | | 3 | 9 | 11 | 36 | 17 | 60 | 9 | 28 | 46 | 160 |
| Egypt | 1 | 5 | 1 | 4 | 1 | 7 | | | 2 | 10 | 10 | 34 | 14 | 56 | 10 | 42 | 39 | 158 |
| Iran | 2 | 2 | 2 | 6 | 1 | 4 | 4 | 21 | 7 | 35 | 8 | 41 | 11 | 43 | 5 | 16 | 38 | 168 |
| Other | 44 | 139 | 54 | 180 | 32 | 132 | 41 | 188 | 84 | 321 | 131 | 504 | 145 | 564 | 147 | 594 | 678 | 2,622 |
| TOTAL | 310 | 1,079 | 403 | 1,472 | 379 | 1,561 | 408 | 1,649 | 865 | 3,655 | 1,791 | 7,219 | 2,148 | 10,039 | 2,482 | 10,001 | 9,118 | 38,555 |

MB (1) Some years may show figures in total, yet no figures in principal. This is due to dependants of the principal applicant arriving during the next period, or dependants

who have stated that they live in a different country to the principal applicant

(2) Although there are a large number of arrivals stated as their country of last residence as the Peoples Republic of China, they are more likely to have been Taiwan or Hong Kong residents.

Source DILGEA, OCTOBER 1990

4.16 The BMP has an economic focus which incorporates certain desired outcomes of an economic nature. These outcomes are not expected from the independent skills category, nor from other categories of migration. The BMP also has unique selection criteria, in that applicants are not subject to a points test, and a unique method of processing applications incorporating private migration agents.

Surveys

4.17 Since the inception of the program, four surveys have been undertaken to ascertain the outcomes of the BMP. These surveys were undertaken in 1982, 1985, 1988 and 1990.

4.18 The results of the surveys have generally shown that the BMP was providing some benefit to the Australian economy. For example:

in 1982, an ad-hoc survey of 60 business migrants found that over 60% of respondents had gone into business and each employed, on average, 13 persons;

in 1985, a survey of 90 migrants found that many of the respondents were in business, and employed an average of 14 persons each;

in 1988, a survey of 50 South Australian migrants carried out by that State's Department of State Development and Technology found that 60% of business migrants had established a business and 50% of businesses set up involved the export of Australian products;¹¹ and

in 1990 a survey, conducted by the consultancy MSJ Keys Young Planners Pty Ltd, of 160 migrants who entered Australia between 1984 and 1987 found that 66% of those surveyed were in business in Australia, and the average number of people employed per business was 10. This survey represents the most extensive conducted so far on the BMP.¹²

11. Evidence, pp. S267-8.

12. MSJ Keys Young Planners Pty Ltd, Expectations and Experiences. A Survey of Business Migrants, AGPS, Canberra, 1990, pp. xi-xii.

4.19 The 1990 survey concluded that the results present a reasonably positive picture of the BMP¹³. It found, for example, that:

- . business migrants are maintaining and in some cases creating employment opportunities in Australia;
- . a number of the businesses were involved in exporting goods and services;
- . the information generated by the study was not sufficiently detailed to form the basis of judgements about the program objectives relating to import replacement or the introduction of new technology.¹⁴

4.20 In examining the results of the surveys of business migrants, the Committee was very concerned at the relatively small number of surveys and the poor response to these surveys in relation to the total number of migrants entering Australia under the BMP.

4.21 The Committee noted that the survey conducted in 1982 could only draw from a relatively small pool. However, the surveys conducted from 1985 onwards have had a much larger pool from which to seek respondents.

4.22 The Committee acknowledges that such surveys were not designed to seek out each business migrant, but select a sample for interview and extrapolate results. However, in view of the importance placed on survey results by DILGEA for assessing how well the BMP is achieving its objectives, the reliance on survey results from such a small number of respondents is questionable.

4.23 This point is also made by MSJ Keys Young in its report. In drawing conclusions from this survey, MSJ Keys Young stated:

Given that the total number of respondents was smaller than initially sought, and that the reasons for non-response are not fully clear, some caution is necessary in drawing general conclusions on the basis of the survey results.¹⁵

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13. MSJ Keys Young Planners Pty Ltd. Expectations and Experiences. A survey of Business Migrants. AGPS, Canberra, 1990, p. 66.
 14. MSJ Keys Young Planners Pty Ltd. Expectations and Experiences. A Survey of Business Migrants, AGPS, Canberra, 1990, p. 67.
 15. MSJ Keys Young Planners Pty Ltd. Expectations and Experiences. A Survey of Business Migrants, AGPS, Canberra, 1990, p. 20.

4.24 MSJ Keys Young had intended to interview a sample of 300 business migrants. However, it proved impossible to trace that number of migrants and consequently a sample of 160 was used.¹⁶

July 1988 Monitoring Scheme

4.25 In July 1988 DILGEA introduced a comprehensive monitoring scheme designed to capture information on the post settlement activities of business migrants. The scheme relies on questionnaires which are sent to migrants at the time that their business migration visas are approved. Migrants are requested to return them to DILGEA at 12 and 24 month intervals following their arrival in Australia.

4.26 In evidence to the Committee, DILGEA stated that the purpose of the monitoring scheme currently in place is to:

...gain an understanding of what happens to business migrants after they arrive in Australia - the extent to which they are going into business, the time taken to do it and the problems they might encounter or which prevent their early entry into business. As further information builds up, we are using this to refine the program, to maximise the advantages and seek to minimise unsuccessful outcomes.¹⁷

4.27 In the questionnaire, migrants are requested to supply information concerning:

- . details of cash transferred in the course of migrating to Australia;
- . the type of their business;
- . the number of employees;
- . approximate annual turnover;
- . annual value of exports; and
- . the ways in which their business achieves Program objectives.¹⁸

16. MSJ Keys Young Planners Pty Ltd. Expectations and Experiences. A Survey of Business Migrants, AGPS, Canberra, 1990, p. 3.

17. Evidence, pp. 7-8.

18. Evidence, p. S346.

4.28 In the course of examining the issue of program monitoring, a number of witnesses pointed out to the Committee that the BMP was the only category of migration that involved follow-up of migrants. These witnesses suggested that the concept of migrants being expected to participate in surveys of their activities amounted to discrimination against a group of people.¹⁹ The Committee was not persuaded by this view and considers that the BMP has long term economic objectives that require monitoring to ensure that they are met.

4.29 As noted previously, the BMP has an economic focus which incorporates certain desired outcomes of an economic nature, which has heightened expectations of the BMP's outcomes compared to other categories of migration. Because of these distinguishing features, the Committee considers that some scrutiny should be applied to ensure that the BMP objectives are being achieved.

4.30 In its submission to the Committee, DILGEA provided an assessment of the results of the monitoring scheme based on results received to 11 July 1990. Responses were obtained from 46% of the migrants entering Australia under the BMP.

4.31 The survey showed that 46.9% of business migrants stated that they had established a business. These businesses were by industry classification:

| | |
|------------------------------|-------------------------|
| · services | (51.89%) |
| · export | (19.40%) |
| · primary | (3.27%) |
| · secondary - manufacturing | (7.81%) |
| · tertiary - high technology | (4.79%) |
| · other | (12.85%). ²⁰ |

4.32 It is difficult to draw clear cut conclusions from the results that have been produced by the monitoring scheme so far. The results represent the experiences of migrants who have been in Australia for only a year. It is recognised that the results received in the next 12 months could provide more indicators of the long term business establishment trends of business migrants, particularly as two

19. Evidence, pp. 258-9.

20. Evidence, p. S360.

years is generally considered the period of time that it takes most migrants to establish a business in Australia. A second factor that presents difficulty in interpreting the results is the relatively low response rate.

4.33 Furthermore, the results only show the business establishment pattern of approximately 25% of the total number of migrants entering under the BMP. What the remaining 75% have done is not known; nor is it known whether the results obtained can be extrapolated to this 75%.

4.34 Bearing in mind the limitations of the data, the Committee noted the high proportion of businesses that were established in the service industry. This was of concern in view of the supposed emphasis of the BMP on the introduction of new technology, export expansion and import substitution. The only one of the four objectives listed in paragraph 4.11 that service businesses meet is the provision of employment.

Insufficient Monitoring

4.35 The Committee considers that the establishment of an effective system of monitoring the achievement or otherwise of program goals administered by Government departments is an essential element of the accountability of administrators to the Parliament and the Australian people.

4.36 The Committee agrees with DILGEA's view of the role of monitoring within the BMP and considers that the current monitoring scheme is beginning to generate the type of information needed to make an informed evaluation of the BMP and the achievement of its goals. However, it notes with concern the relatively small pool of business migrants from whom data has been obtained to determine whether program goals have been achieved. The Committee considers that, while the data obtained provide useful indicators as to the operation of the BMP, their use as a basis for extrapolating results for the overall success of the program could be questioned.

4.37 The Committee considers that the lack of effective monitoring of the BMP in the past has seriously hampered the effective administration of the Program, in that Program administrators have very limited data from which to evaluate the effectiveness of the BMP in achieving its goals and from which to fine tune the BMP to ensure that the selection criteria for business migrants were appropriate for the achievement of those goals.

4.38 Equally, the lack of comprehensive data on the BMP's effectiveness has also affected business migrants. Impediments to business migrants establishing or expanding businesses which would achieve the BMP's goals were not identified which meant that suitable steps could not be taken to assist business migrants in those areas.

4.39 The lack of effective evaluation of the BMP is also reprehensible in the light of the BMP's promotion. In 1987 DILGEA initiated a promotion campaign to expand the scale and geographical scope of the BMP and improve the level of information delivery to intending migrants to Australia.²¹ This campaign led to a significant increase in BMP numbers, with visa approvals increasing from 885 cases in 1986/87 to 1793 cases in 1988/89.

4.40 The Committee considers monitoring should have been a critical ingredient in evaluating whether this campaign had been effective, and whether business migrants had, in fact, established businesses. It is a matter of concern that such a promotional program was undertaken without the implementation of a monitoring scheme and that such a scheme was not developed and implemented until July 1988.

4.41 The lack of an effective monitoring system has allowed criticism of the BMP to go unanswered, simply because the data was, and is, unavailable. Additionally, without monitoring, there is the perception that there are no controls over the activities of business migrants. The lack of follow-up has given comfort to those migrants who have the requirements to qualify for entry under the BMP but little intention of actually entering business on arrival in Australia.

4.42 The BMP is unique in the Australian migration program in that it seeks to deliver economic benefits to Australia in a number of ways. The Committee considers that the surveys and monitoring program introduced in July 1988 have not generated enough data to provide conclusive evidence that these objectives are being achieved. This lack of data and the inability to make conclusive judgements on the achievement of the program's objectives devalue the BMP in the eyes of the Australian public.

21. Evidence, p. S260.

CHAPTER 5

POST SETTLEMENT SERVICES

5.1 In examining the Business Migration Program (BMP), the Committee considered the information available to business migrants to assist them in establishing a business once in Australia. The Committee identified several potential sources of such information and noted that it might be provided by Government bodies or the private sector, but notably by accredited agents. This Chapter identifies a number of shortcomings associated with services provided by each of these sectors.

Role of Accredited Agents

5.2 In establishing the Accredited Agent Scheme (AAS), Department of Immigration, Local Government and Ethnic Affairs (DILGEA) expected that accredited agents:

...could offer potential business migrants a wide range of services relating to setting up a business, in addition to personal settlement assistance, comprising all the clients needs pre and post arrival.¹

5.3 Despite this expectation, accredited agents were not, and are not, obliged to provide post settlement business advisory services for business migrants. This service is not part of the contract between accredited agents and DILGEA.² Consequently, the extent to which these services are provided is at the discretion of individual accredited agents.

5.4 While some accredited agents actively seek to assist their clients in establishing a business in Australia as soon as possible after their arrival,³ many others only see their role as assisting their clients to migrate to Australia.⁴ Evidence received by the Committee suggested there were significant problems in this area.

1. Evidence, p. S262.

2. Evidence, p. 50.

3. Evidence, pp. 304-5.

4. Evidence, p. 344.

5.5 In evidence, Queensland solicitors Cannan and Peterson stated:

... most business migrants ... are assisted overseas by licensed agents and there is very little if any follow-up work done here of an effective nature to enable them to convert their business plans into commercial reality ... People are left broadly to their own devices upon their arrival ... within the business advice area, there is a substantial gap in transposing the person's business skills into reality in the commercial marketplace in Queensland.⁵

5.6 This view was supported in a submission from the accredited agency Abitare Pty Ltd, which stated:

In terms of feedback from Abitare's business migration clients, one common reaction is that it is felt that there is not enough assistance to business migrants in advising them on the business environment in Australia and on business opportunities that may be open to them.⁶

5.7 In examining the provision of post settlement business advisory services by accredited agents, the Committee found that many business migrants were reluctant to turn to accredited agents for assistance. Two main reasons for this were suggested to the Committee. First, Abitare Pty Ltd pointed out that:

... business migrants from areas such as South East Asia are very reluctant to pay the sorts of consulting fees required by the consulting industry in Australia in providing such advice.⁷

5.8 Second, it was suggested that an inhibiting factor for business migrants was a distrust of commercial agencies which stemmed from unfamiliarity with Australia's commercial environment and a lack of language skills.⁸

5. Evidence, pp. 606-7.

6. Evidence, p. S798.

7. Evidence, p. S798.

8. Evidence, p. 607.

Services Provided by Government Agencies

5.9 The Committee found that State Governments are involved in the provision of post settlement services for business migrants.⁹ However, this was not a priority at the Federal level. In evidence to the Committee, DILGFA stated that it was giving attention to the question of providing post settlement services for business migrants and was exploring some alternatives in this area.¹⁰

5.10 Services at the State level vary in their approach from assisting in the development of detailed business proposals for business migrants to the organisation of ad hoc informal social gatherings to bring together business migrants and their business peers.¹¹ However, since the introduction of the AAS, the activity of State government agencies in this area has been reduced and business migrants have been 'lost' to this network.¹²

5.11 In examining the involvement of government bodies in providing post settlement services, the Committee noted Abitare's view that:

As far as government services/advice is concerned it is ... felt that the information is normally too general to be of much assistance.¹³

5.12 While some migrants have an aversion to turning to accredited agents for assistance, the Committee found others have a distrust of government agencies. One accredited agent advised the Committee:

There is a natural suspicion, not only amongst Australians but also of Asians and non-Australians, of government organisations. Whilst we may say it is easy ... to set up these post settlement services, it is very difficult because you do not have that trust. Most people avoid filling in forms or getting involved with governments.¹⁴

9. Evidence, p. 338.

10. Evidence, p. 8.

11. Evidence, pp. 96, 338, 559.

12. See, for example Evidence, pp. 558-60.

13. Evidence, p. S798.

14. Evidence, p. 338.

5.13 The Committee considers that the apparent wariness of business migrants in dealing with private consultants and government agencies indicates that the provision of post settlement services is an issue that must be approached with sensitivity. Post-settlement services clearly need to balance the information needs of business migrants with their desire to establish their family and business life in Australia without what they perceive as interference from government agencies.

5.14 In reviewing the evidence on post-settlement services, the Committee concludes that:

- the majority of business migrants are not utilising accredited agents for on-going post settlement business advisory services;
- some difficulty exists for business migrants in accessing the business advisory services provided by government agencies; and
- DILGEA's expectation that accredited agents would provide post-settlement services has not been fully met, resulting in a patchy provision of services.

5.15 The Committee considers that there is a need to provide some form of post settlement assistance to business migrants to facilitate the entry of business migrants into the business environment following their arrival in Australia. The Committee further considers that more effective monitoring of the BMP would have identified this issue earlier in the BMP's life. Action could have been taken then to rectify this neglected area and improve the BMP's achievement of its objectives.

CHAPTER 6

THE ACCREDITED AGENT SCHEME

Introduction

6.1 This Chapter considers the structure of the Accredited Agent Scheme (AAS), including the selection criteria for approving persons to operate as accredited agents, the accreditation contract and the assessment of accredited agents' performance. It comments on the organisations that act as accredited agents and examines the operation of the Scheme since its introduction in 1988, dwelling on those areas where problems have been identified.

Background

6.2 The BMP is unique in the migration programs administered by DILGEA, as the BMP seeks to attract successful business people who are not necessarily affected by the normal 'push' factors applying to other categories of migration. Consequently, a number of incentives to encourage intending migrants have been incorporated into the BMP. Migrants under the BMP are not subject to the points test and, while having to demonstrate a successful business background and transfer capital into Australia, do not have to demonstrate experience in particular industry sectors. The processing of applications under the BMP has been streamlined and, with the introduction of the AAS, business migrants have their applications reviewed, in part, by private sector migration agents.

6.3 The introduction of the AAS fundamentally changed the nature of the administration of the BMP. Following the introduction of the AAS, a large number of officially recognised private migration consultants entered the immigration market actively seeking clients. These agents, while working for their clients, were authorised by the Commonwealth to assess and certify part of their client's application for migration to Australia.

6.4 In examining this aspect of the BMP, the Committee considers that the whole question of privatising the immigration process is one that needs to be developed and implemented with a great deal of forethought and strategic planning to ensure that the desired outcomes are, in fact, achieved.

6.5 The AAS was introduced on 1 July 1988, following approval in August 1987 by the then Minister for Immigration, Local Government and Ethnic Affairs:

... to develop a self-financing means of providing counselling services and assessment of applications outside the usual immigration processing avenues to business migrants.¹

6.6 The principal purposes of the AAS were:

- . to give the Government a measure of control over the activities of the group of private sector consultants assisting business migrants with their applications for settlement in Australia;
- . to harness private sector expertise to attract business migrants and give them a better business advisory service; and
- . to reduce the processing workload for the Department's overseas posts.²

Structure of the Scheme

Selection Criteria for Accredited Agents

6.7 To gain accreditation under the AAS, an agent must:

- . have a registered office in Australia;
- . be under the effective control of an accountable management based in Australia;
- . have at least one principal who is an Australian citizen and is ordinarily resident in Australia;
- . have as approved persons Australian citizens ordinarily resident in Australia (an approved person is a person who certifies, on behalf of the agent, that the

1. Evidence, p. S261.

2. Evidence, p. S262.

requirements and objectives of the BMP have been met);

have, within the accredited agency, personnel (employees) with the appropriate qualifications and experience to assess the business background of BMP applicants and the viability of proposed activities in Australia, and to provide the comprehensive range of services required of an accredited agent

- appropriate qualifications are those relating to accounting, commercial law, commerce, economics or business administration, and
- appropriate experience entails at least three years practical experience in analysis of commercial and financial performance, corporate planning or general business administration in a professional capacity;

be comprised of personnel who are all of good character and have good business reputations:

- good character means that neither the principal(s) nor approved person(s) nor other personnel responsible for BMP processing have had any convictions or have presented migration applications which were found to be deficient in terms of policy objectives and criteria; or are under investigation for suspected malpractice, and
- good business reputation means free of undischarged bankruptcy and having a satisfactory business record and reputation;

have all approved persons who will certify BMP applications attend a compulsory training course approved by the Department during the term of the accreditation contract; and

have indemnity insurance.³

3. Evidence, pp. S301-3.

6.8 Additionally, before agreeing to enter the accreditation agreement, DILGEA must satisfy itself that the agent:

- . intends to be actively involved in the BMP;
- . is capable of offering the wide range of services required;
- . has the expertise and qualifications required to assess the business background of BMP applicants and viability of proposed activities in Australia;
- . has staff of the highest integrity; and
- . will act in accordance with the objectives of the BMP.⁴

6.9 The Committee notes that DILGEA had intended to review the selection criteria for accredited agents, but delayed this review pending the outcome of the Committee's Inquiry.

Accreditation Contract

6.10 Accreditation is granted by means of a 12 month renewable contract between the Commonwealth and approved agencies. Each agent is required to pay \$4000 in consideration of the use of the BMP logo, and an additional \$500 for each application submitted on behalf of a client under the BMP.⁵

6.11 The contract can be terminated if:

- . in the opinion of the Secretary of DILGEA any term of the contract is breached;
- . the agent's certification in any case is found to contain a misrepresentation, is false in any respect or if any of the claims alleged in favour of the applicant is unfounded in any way whatsoever;

4. Evidence, pp. S300-1.

5. Evidence, p. S263.

- there have been repeated complaints from clients (which in the opinion of the Secretary are reasonably based) as to the service provided by the agent;
- in the opinion of the Secretary the service provided by the agent to its clients for purposes of the BMP is inadequate, improper or unsatisfactory; and
- in the opinion of the Secretary the agent has persistently failed to observe and properly apply any policy requirements of the Department.⁶

Accredited Agents

6.12 A variety of organisations have been granted accredited agent status, ranging from Australian banks, legal and accounting firms, statutory authorities, government organisations and other business organisations and consultancies.⁷

6.13 However, the Committee notes that the BMP work is not spread evenly across these organisations. Evidence received during the Inquiry suggests that accredited agents fall into three broad categories:

- those that used accreditation as an entree to other forms of business, for example firms of lawyers and accountants who hope to continue to work for the migrants after the latter's arrival in Australia;⁸
- those that are experimenting in the migration area to explore the potential market; and
- those that are specialist migration consultants relying on business generated by BMP work for their livelihood.⁹

6.14 It is this third group, comprising between 10% and 20% of the total number of accredited agents, that has processed most of the applications made under the BMP.¹⁰

6. Evidence, p. S97.
 7. Evidence, p. S262.
 8. Evidence, p. 50.
 9. Evidence, pp. 196-7.
 10. Evidence, pp. 196, 342.

Assessment of the Accredited Agents' Performance

6.15 The performance of accredited agents is scrutinised in a number of ways:

- immigration officers at overseas posts assess all BMP applications to ensure criteria are met before issuing a visa;
- immigration officers at overseas posts are required to carry out detailed checks of at least 1 in 15 applications certified by each accredited agent;
- where a case is assessed as marginal in any way, it is checked in detail; and
- immigration officers in overseas posts are required to comment on an agent's performance when an accredited agent applies for re-accreditation.

Problems with the Scheme

6.16 In examining the AAS, the Committee is aware that any administrative scheme involving both the public and private sector would inevitably have teething problems. However, the Committee identified a number of basic flaws in the concept and operation of the AAS, as well as the inevitable teething problems. The first flaw is that the accredited agents, although having delegated authority by the Commonwealth to assess migration applications, are not responsible to the Commonwealth, but are acting as agents for their clients. A second problem is the speed with which the scheme was introduced and another problem is the generalised nature of the criteria for selecting accredited agents. A further source of difficulties for the AAS lies in the level of competition in the migration consultancy business. These points are examined in more detail below.

DILGEA's Administrative Difficulties

6.17 The AAS was developed and implemented in a remarkably short period of time. It was approved in August 1987 and implemented on 1 January 1988.¹¹ This brief lead time prevented the development of a clear concept of exactly

11. Evidence, p. S261.

how the AAS was to work. The Committee notes comments made concerning the introduction of the AAS:

...the scheme has been designed without any pre-planning, to the chagrin of Ms S Kirby, the Assistant Secretary responsible for the Scheme. DILGEA quite rightly would have liked more lead time to permit it to develop procedures for assessment of applications and plan for the future ... DILGEA was effectively caught on the hop.¹²

6.18 The Committee considers that, as a consequence, DILGEA was forced into a position of developing administrative controls over the AAS while at the same time having to deal with the administrative problems associated with its implementation. The Committee notes the view of the Auditor-General in his September 1988 report that DILGEA had to cope with preparing 'on the run' policy, procedures and guidelines to assess applications for the accreditation of BMP agents.¹³

6.19 The generalised nature of the selection criteria for an accredited agent has allowed the entry of a large number of new players into the migration industry. This has had two effects. It has increased the competition for the available client base and it has also increased the administrative burden on DILGEA both in terms of processing applicants for accredited agents status and providing guidance about what was expected of accredited agents.

6.20 It is apparent that the selection criteria should have been much tighter to allow for the entry of only a limited number of agents. This would have given DILGEA a greater degree of control over the accredited agents and would have enabled it to develop administrative mechanisms to deal with differing interpretations of migration selection criteria with a manageable number of accredited agents. Furthermore, as DILGEA gained an understanding of the operation of the AAS, the Scheme could have been extended to include other organisations, again on a manageable basis.

6.21 Rapid growth in the AAS also caused problems. In evidence DILGEA stated that the large number of applicants for accredited agents status was unexpected.¹⁴ DILGEA had expected only 50 or 60 applicants for accreditation, but received approximately 350 applications at the introduction of the Scheme. At the

12. Paul Baker. Law Institute Journal, V62(9), September 1988, p. 834.

13. Evidence, p. S288.

14. Evidence, p. 25.

time of making its submission to the Committee, DILGEA had granted accreditation to a total of 244 organisations.¹⁵ At the same time, the number of applicants under the BMP was increasing from 1793 cases in 1988/89, representing 7219 people, to 2458 cases, representing 10,039 people in 1989/90.¹⁶

6.22 The effects of the rapid entry of a large number of newly accredited agents into the migration field are illustrated by the comments of an accredited agent who stated:

I think like any system, when you set up a new system, there are certain things that come out of it which have to be corrected. I think that the major difficulty that occurred in this system is that the Government in its wisdom saw that it could not restrict the number of people applying for accreditation... The difficulty was that there were so many of the new accredited agents who had never been in the industry before. They did not have a clue about how to process an application.¹⁷

6.23 The Committee is of the view that this inexperience resulted in a situation which favoured intending migrants rather than the national interest.

Problems in the Accredited Agents' Business

6.24 The Committee received evidence of the marginal level of profits earned by smaller accredited agencies. It is these smaller agencies that handle the bulk of the business migrant applications.

6.25 Mr John Gillespie of Gilton Business Consultants provided the Committee with financial projections for accredited agents for 1990. These projections indicated that a typical accredited agent could expect an annual income of approximately \$288,000 from BMP work, which had to cover all business, travel and personal expenses for the accredited agency's directors and employees.¹⁸

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15. Paul Baker, Law Institute Journal, V62(9), September 1988, p. 834. See also Evidence, p. S262.
 16. Evidence, pp. S255-6.
 17. Evidence, pp. 298-9.
 18. Evidence, p. 342.

6.26 This evidence was supported by Abitare Pty Ltd which outlined its cost balance sheet as an example of a small accredited agency:

The company last year completed approximately 100 business migration applications ... the gross revenue for the completion of this number of cases is \$500,000.

Concentrating almost exclusively as it does on business migration consulting, Abitare has a staff of five people ... salary expenses alone is of the order of \$190,000.

Given the nature of this international business, travel expenses are also relatively high because of the necessity of accredited agent's staff to both promote their business migration services overseas and to spend time assessing the eligibility of the business migrant in their home country. Travel expenses for completing approximately 100 BM [Business Migration] cases per year would be of the order of \$50,000 to \$60,000 per annum. Given other normal expenses such as rent, office overheads, accreditation fee, advertising/promotion, interest on overdraft etc, it is very difficult for a business migration practice, particularly those operating in the higher cost cities of Sydney and Melbourne, to keep their total yearly expenses below \$450,000 per annum.¹⁹

6.27 This situation, coupled with the numbers of accredited agents, has resulted in intense competition for the business of potential applicants.²⁰ Taken together with the intense profit motive of some accredited agents, the outcome has not always produced application assessments consistent with Australia's national interest. Evidence from one accredited agent stated:

Whilst the concept of Accredited Agents is sound, it is considered that the numbers currently involved in the program could lead to unethical practices.²¹

19. Evidence, pp. S799-800..

20. Evidence, p. 437.

21. Evidence, p. 333.

6.28 Several examples of unethical practices were provided to the Committee arising from evidence of accredited agents undercutting each other and processing unsuitable applicants.²²

6.29 Evidence was presented by Mr Nigel Page of the Taiwan based FBR Pty Ltd company that documentation to support applications had been prepared to suit the requirements of the BMP rather than reflect the business migrants' true intentions:

Mr Page - The business plan which people put together at the moment is basically taken out of the A to Z drawer, whacked in there and they try to correlate it ... 99% of those business plans are false and there is no intention of those persons actually implementing that plan.

Mr ALDRED - It is simply a way of justifying the application?

Mr Page - Yes, most certainly.²³

6.30 Similarly Business and Consumer Affairs (BCA) of New South Wales advised the Committee that:

We have found in the past some proposals have had three names through them, that the consultant or the accredited agent had failed to take out the right name (from the computer generated proforma).²⁴

6.31 Dr Robert Birrell of Monash University referred to, '... a strong financial incentive (to the agent) to "embroider" the applicants' Australian "plans"'.²⁵

22. Evidence, pp. 164, 176, 296.

23. Evidence, pp. 148-9.

24. Evidence, p. 560.

25. Evidence, p. 438.

6.32 One of the consequences of the pressures on accredited agents to maximise the number of applicants processed is seen in the quality of the migrants accepted. NSW's BCA made a similar point:

We do believe that the quality of applicants coming through probably is not as good as it ought to be ... It seems to us in our dealings with the applicants that when we do see them, in some cases they have very little idea of what it is they would like to do in Australia. They certainly have little idea in terms of our business focus, our business community, our regulations, and it obviously makes our job harder in trying to help people get into business and get into business fairly early.²⁶

Role of Sub-Agents

6.33 Sub-agents are overseas based and overseas owned migration advisers. They operate primarily in the principal source countries of business migrants, Hong Kong and Taiwan. Their role is to make the initial contact with the potential business migrant and obtain preliminary information about clients for accredited agents.²⁷

6.34 Mr Nigel Page pointed to the economies that the use of sub-agents provide to accredited agents.²⁸ For agents operating at the margin, sub-agents provided an attractive service.

6.35 The evidence presented to the Committee identified two concerns about the operations of sub-agents which the Committee felt had a significant impact on the selection of business migrants:

sub-agencies, owned and operated by foreign nationals outside Australia, are beyond the control of DILGEA; and,

the reliance that accredited agents place on sub-agencies to assist in the generation of BMP applicants to maintain the viability of the agencies.

26. Evidence, pp. 558-9.

27. Evidence, p. 291.

28. Evidence, p. 167.

6.36 In evidence to the Committee, DILGEA stated that:

... sub-agents are a group of persons who are not Australian citizens or nationals generally, who operate in a third country and are probably outside our control. They independently assist people in their applications for migration to Australia. We certainly have concerns that an accredited migration agent should accept from a sub-agent or a non-accredited agent an application package and do no more than accredit it and lodge it with an Australian diplomatic mission overseas.²⁹

6.37 In reply to a question from the Committee concerning controls preventing a sub-agent preparing an application for signature by an accredited agent, DILGEA stated:

We now have controls in terms of statements from the accredited agents in terms of what they did, what their authorised personnel did and what other persons did in respect of the application. That is in respect of who examined the books and documentation and whether they or another person inspected the business personally ... If it reported that it seems that the accredited agent had minimal input into a case, that case would be fully examined by the Australian diplomatic mission overseas.³⁰

6.38 The Committee notes, however, that these checks can only apply to accredited agents, and sub-agents remain outside the effective control of DILGEA. The Committee notes evidence which stated:

Mr SOMLYAY - If a sub-agent provides false documentation to an accredited agent, what is available in law against the sub-agent?

Mr Gillespie - Nothing. He just loses his contact with the principal.³¹

29. Evidence, p. 27.

30. Evidence, p. 27.

31. Evidence, p. 357.

6.39 In relation to the second area of concern, the Committee considers that while sub-agents remain the initial point of contact between potential business migrants and accredited agents, sub-agents are in a position of economic control over accredited agents. In view of the marginal profitability of accredited agents, the Committee considers that this can place the sub-agent in a powerful position in relation to the accredited agent. The Committee heard in evidence:

Going back to the financing of these, you have a number of smaller people out there who are quite desperate to get some fees to keep their cash flow going, because they are going out backwards. That is where the pressure point applies on accredited agents.³²

6.40 The Committee heard evidence to indicate that sub-agents use this position to their own advantage:

As long as you have got the accredited agent scheme, you will find there will always be an undercutting process whereby the subagents will be playing off one Accredited agent against the other, saying 'I have got access to the clients; if you are not willing to work with me, tough turkey, I will find someone else who will and who will do it cheaper.'³³

6.41 From this it is clear that one of the goals of the AAS, that of giving DILGEA greater control over migrant consultants than it had previously, has not been met. This point was, in fact, made by an accredited agent who stated:

The whole idea of accreditation was to get rid of the crooked sub-agents and what happened? The sub-agents were still controlling the situation in many instances ... the difficulty we had, particularly in the Taiwan market, is that too many of the sub-agents and not the accredited agent, are still holding control.³⁴

32. Evidence, p. 358.

33. Evidence, p. 175.

34. Evidence, pp. 299, 301.

6.42 The Committee concludes that the economic position of the accredited agencies places them in a vulnerable position in relation to sub-agencies. It finds this to be a situation that is all the more serious because the sub-agents are outside the control of DILGEA.

Sanctions Against Accredited Agents

6.43 The ultimate sanction used by DILGEA against accredited agents is the termination of the accreditation contract. Paragraph 6.11 outlines the conditions under which the contract can be terminated, the most serious of which is the finding of any malpractice with the BMP.³⁵

6.44 In evidence to the Committee, DILGEA stated that if this sanction were to be applied it would take the form of refusing reaccreditation to an agent, rather than terminating the contract mid term:

... when we talk about losing the accreditation, we mean that when their contracts come up for renewal once a year we look at a whole range of matters relating to how they have gone throughout the year ... (where problems arise with an accredited agent) ... we might do one of two things. We might ask them to show cause why they should be offered another accreditation contract; if we are satisfied with the answer, we may offer them another contract but nevertheless warn them that they need to lift their game in some way. To date there have been five cases where we felt we were not satisfied with the performance of the agents, and they have not been offered another contract.³⁶

6.45 However, the Committee notes that the termination of the accreditation contract does not prevent the agent from continuing to operate as a migration consultant, albeit without recognised status.

35. Evidence, p. 25.

36. Evidence, p. 28-9.

Allegations of Malpractice

6.46 Allegations concerning the abuse of the BMP have been associated with the program since its inception and have increased since the introduction of the AAS. Various submissions from accredited agents freely acknowledged that there were problems with the AAS, with other accredited agents seeking to exploit the system.³⁷

6.47 The Committee heard detailed evidence from Mr Nigel Page concerning the abuse of the BMP by accredited agents and sub-agents, including the use of false and forged documentation to support applications made under the BMP,³⁸ the preparation of BMP applications by sub-agents³⁹ and the 'recycling' of rejected BMP applicants through other accredited agents by sub-agents.⁴⁰

6.48 In making these allegations to the Committee, Mr Page stated in a document tendered to the Committee:

The majority of accredited agents are earnestly trying to recruit applicants who comply with government requirements, and are rejecting those cases which obviously do not comply. Equally there exist firms to whom government requirements are merely an annoying obstacle to be avoided if possible. These firms are prepared to take on any case, regardless of quality, in the hope that their status as accredited agent and the volume of cases they are processing will provide sufficient grounds to push their cases through.⁴¹

6.49 The Committee also heard evidence from Mr Page that he had in fact made DILGEA aware of these allegations but, in his opinion, little action had been taken to rectify the situation. Mr Page referred specifically to a meeting with senior DILGEA officers in which these allegations were discussed:

CHAIRMAN - What you are saying is that neither DILGEA nor the Australian consulate in Hong Kong, for instance, are

37. See for example p. S791.

38. Evidence, pp. 169, 974-5.

39. Evidence, p. 165.

40. Evidence, p. 165.

41. Evidence, p. 194.

imposing any sorts of sanctions when things are found out to be wrong.

Mr Page - I make a statement here. Mr Hughes and Mr Metcalfe were in my office shortly after Mr Joc O'Connell left Taiwan. I pointed out to them, maybe it was about May ... I said to them 'What about these forgeries? what has been done to try and control and restrain the activities of these sub-agents, and so on, particularly when we have identified who these people are and what they are doing, what type of documents they are falsifying and how they are doing it?' Mr Hughes came back 'If you submit to us an actual example we will do something about it'. I said 'What about the November instance where we submitted actual hard core evidence of that submission?'⁴²

6.50 In response to the allegations of abuses, DILGEA stated in evidence:

We examine allegations as they come to us. We commit a lot of resources in examining allegations against the Business Migration Program ... allegations, as they come to our notice, are reasonably general. Sometimes they are specific, but they are reasonably general. We pursue further information on the allegation individually with people who make allegations which come to our notice ... if it is a case, we review it right through, through our investigation and compliance area, and, if action is to be taken, be that against an accredited agent, against an applicant or against a staff member in terms of some allegations, it is taken.⁴³

6.51 DILGEA further stated in evidence given to the Committee on 19 October 1990 that, as a result of Departmental investigations, a number of visas had been refused prior to the migrants arriving in the country. However, there had been no cases of business migrants being deported from Australia as a result of material misrepresentations in their applications.⁴⁴

42. Evidence, p. 169.

43. Evidence, p. 32.

44. Evidence, pp. 32-3.

6.52 In response to the specific allegations of abuse made by Mr Page, DILGEA stated in evidence given to the Committee on 17 May 1991:

We were certainly interested in what he had to say and for that reason an appointment was arranged by us at our initiative, [the May meeting referred to by Mr Page] not at Mr Page's initiative. At the meeting, which lasted a couple of hours, it largely consisted of Mr Page very aggressively marketing his services to us. He also made, in the course of the conversation, a number of generalised allegations and a few specific ones.

We made it very clear to him ... that we would take careful note of his allegations and follow them up and we particularly asked him for any supporting evidence ... We do not say to someone who says 'so and so did this', that we will immediately go and reject their visa or cancel their licence or whatever. We go away and examine them and all we can do at the time that someone makes an allegation is give an undertaking to do that.⁴⁵

6.53 As a result of this meeting and the subsequent Departmental investigations, an applicant decided to withdraw the application for migration and the accredited agent dealing with the application was refused reaccreditation.⁴⁶

6.54 The Committee notes that, as a result of these and other investigations, DILGEA has significantly increased the level of administrative scrutiny applying to BMP applications processed through the Hong Kong Consulate-General.

6.55 In his opening address to the Committee at its public hearing held on 17 May 1991, the Secretary of DILGEA, Mr Chris Conybeare, stated:

...the Department took a series of actions through 1990 aimed, largely or exclusively, at ensuring the integrity of business migration from Taiwan as follows:

we have increased the level of resources available to the Australian Consulate-General in Hong Kong to deal

45. Evidence, p. 979.

46. Evidence, p. 979.

with the Taiwanese migration case load;

we have assisted in boosting the visa facilitation resources of the Australian commerce and industry office in Taiwan to assist the Australian Consulate-General in assessing and investigating applications and to provide an alternative to local emigration consultants as a reliable source of information on Australian migration requirements;

we have increased the level of detailed scrutiny of business migration applications from Taiwan through interviews, site visits, and other checks by migration officers with a view to weeding out any bogus cases and accredited agents whose activities are not consistent with the objectives of the program;

we have tightened the provisions of the accreditation contract to place clear responsibility on the accredited agents for the activities of any local consultants that they employ and to re-enforce the procedures relating to certification;

we have formally warned accredited agents to be extremely cautious in their dealings with the local consultants and in the verification of documents; and

an exhaustive investigation of the claims that BMP applications have been fabricated in Taiwan is being conducted, involving officers experienced in document fraud.⁴⁷

6.56 In relation to this last point, DILGEA indicated that cases emanating from certain accredited agents required review to determine if there was any common element or concern about them.⁴⁸ At the time of this public hearing, 175 cases from Taiwan, and a further dozen cases from Hong Kong were under review.⁴⁹

6.57 The Committee welcomes the action taken by DILGEA to address the allegations raised before the Committee, but considers that DILGEA was slow to react to the allegations of abuses, and expresses its concern that the detailed

47. Evidence, pp. 936-7.

48. Evidence, p. 982.

49. Evidence, p. 1024.

measures adopted by DILGEA in conducting a thorough investigation of the allegations were not implemented much earlier, as the allegations came to light.

Conclusions

6.58 In examining the AAS, the Committee considers that there were four critical factors which, when taken together, made the BMP vulnerable to abuse. The Committee also considers that DILGEA has been slow to recognise and react to this vulnerability.

6.59 First, there is a basic conceptual flaw in the AAS. Under the AAS, the Commonwealth has delegated its authority to assess immigration applications to the private sector. The private sector agents owe their allegiance primarily to their clients, the applicants, and not to the Commonwealth.

6.60 Second, the speed with which the AAS was introduced, combined with the adoption of a broad set of criteria for accreditation, brought a large number of accredited agents, with varying degrees of experience, into the migration consultancy arena. This resulted in DILGEA's control over the administration of both the AAS and, through it, the BMP being reduced.

6.61 The third critical factor in the introduction of the AAS was the number of accredited agents and the size of the available client base. This resulted in accredited agents being under pressure to process cases put to them in order to survive financially and had the effect of accredited agents chasing marginal cases.

6.62 The fourth critical factor in the AAS was the role of foreign based sub-agents who were in a position to exploit the financial vulnerability of accredited agents by acting as first point of contact between potential applicants and the accredited agents.

6.63 The Committee concludes that the combination of these factors, together with the lack of any effective monitoring scheme of business migrants made the BMP vulnerable to abuse. This vulnerability was exploited in two ways:

first, by the use of illicit means such as false and forged documentation to obtain a BMP visa; and

second, by the agents' focus on selling the BMP to applicants rather than concentrating on assessing the applicants' backgrounds and suitability for migration under the BMP.

6.64 The Committee believes that some of the conditions that led to this situation still exist. While DILGEA has gained experience in administering the AAS, the problems presented by sub-agents and the large number of accredited agents remain.

6.65 The evidence given to the Committee concerning the review of 187 cases of business migrants already in Australia indicates a tacit acceptance on the part of DILGEA that the security of the BMP has been breached and may have been breached in a large number of cases.

6.66 The Committee further considers that the administrative measures taken to increase and improve the scrutiny applied to cases processed by accredited agents amount to a virtual replication by the Australian Consul-General in Hong Kong of the assessment done by the accredited agents. This affectively negates the need for accredited agents to be involved in processing applications.

6.67 The Committee considers that the adoption of the AAS administrative arrangement has lent 'favoured status' to business migrants which, in turn, has led to heightened expectations concerning the beneficial outcomes of the BMP. This has manifested itself in evidence to the Committee as the expectation that virtually all of the migrants entering Australia under the BMP should, within a relatively short period of time, be managing successful businesses in this country. The administrative arrangements while providing incentives to business migrants to migrate to Australia have failed to provide adequate scrutiny of the BMP to determine the extent to which any beneficial outcomes are being achieved.

6.68 The Committee concludes that the total responsibility for the assessment of applications and issue of visas under the BMP should lie clearly with DILGEA.

6.69 Notwithstanding this, the Committee recognises that there is an ongoing role for the private sector to assist applicants for migration to Australia. However, this should remain a private arrangement between the applicant and the agent, with no Commonwealth involvement.

6.70 The Committee considers that the control mechanisms placed on accredited agents to ensure that the relatively open ended goals of the BMP were achieved were overwhelmed by the market forces encountered by accredited agents, and the AAS itself made the BMP vulnerable to exploitation.

6.71 The Committee therefore recommends that:

the Accredited Agent Scheme be abolished.

CHAPTER 7

CRIMINAL INVOLVEMENT IN THE BUSINESS MIGRATION PROGRAM

7.1 Since the inception of the Business Migration Program (BMP), allegations have circulated linking the BMP with criminal activity.

7.2 These allegations have concerned the possible movement of financial and personal assets derived from criminal sources into Australia via the BMP and the use of the BMP for money laundering operations. During the Inquiry, allegations were also made that abuse of provisions for the withholding tax could be connected to the BMP.

Organised Crime and the Business Migration Program

7.3 In light of the allegations made about the possible involvement of organised crime in the BMP, the Committee was concerned to examine two aspects of the problem. One was the extent to which the procedures used by the Department of Immigration, Local Government and Ethnic Affairs (DILGEA) to screen intending migrants are adequate to reveal any links between the business migrant applicants and organised crime. The second aspect considered was whether there is any evidence of an association between organised crime and the BMP.

7.4 The Committee found that in conducting security checks on prospective migrants DILGEA is dependent on the goodwill and cooperation of foreign governments and security agencies. Consequently, there are some circumstances in which, despite the security measures adopted by DILGEA, information which might influence the decision of DILGEA does not come to light.

7.5 The Committee is of the view that the procedures used by DILGEA to conduct security checks on applicants for migration under the BMP are probably as extensive as is practicable, given the size of the overall migration program, and that DILGEA is dependent upon the goodwill of law enforcement agencies in the applicants' countries of origin.

7.6 However, from the information provided to it, the Committee further considers that there have been a limited number of instances where criminal figures have entered Australia under the BMP. The Committee is concerned that these

instances have occurred and believes that they should be investigated by DILGEA to identify any rectifiable deficiencies in the screening procedures used to conduct police and security checks on migrants entering Australia.

7.7 In assessing the allegations concerning the possible penetration of the BMP by organised criminal groups, the Committee was concerned at the submission presented by the New South Wales Police Service (NSWPS) which identified the BMP as a possible vehicle for the investment of monies on behalf of international criminal syndicates.¹ However, further information presented to the Committee suggested that this had not happened to any great extent.

7.8 During the examination of the NSWPS regarding this allegation, Detective Sergeant Robert Clark from the State Intelligence Group, responded to questions from the Committee:

Mrs CROSIO - Then the Business Migration Program cannot be used to bring in organised crime figures, because you still believe there is a very stringent test on those people. Or could it still be used to bring in an organised crime figure to Australia if that person has not had an offence in a country from which they have come?

Det. Sgt. Clark - The answers to that series of questions would be yes, yes and no.²

7.9 In further evidence given to the Committee by the Australian Federal Police (AFP), Commander Andrew Wells of the Fraud and General Crime Division stated:

Cmdr Wells - If I were to say anything about the information that has come to me in the last couple of months in a very limited degree, I would say that I do not see the BMP being affected as such... Obviously, there are areas of concern, but what I am saying is that I do not see where there is any evidence or any suggestion of large scale criminal attacks on the program ...

Mr ALDRED - As distinct from separate matters currently under investigation in relation to document falsification and

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1. Evidence, p. 393
 2. Evidence, p. 411.

money and so forth, which are not in your domain anyway?

Cmdr Wells - From what I have heard and seen of the information, it does reflect individual instances of offences taking place, the sorts of offences one would expect in any program where people are trying to get benefits. What I do not see ... is the indication that there is a concerted, planned, organised attack against it by organised crime groups ...³

7.10 The Committee concludes that:

- . the BMP has not been the subject of large scale assault by organised criminal groups; and
- . there is only a limited number of instances of penetration of the BMP by identified criminal figures.

7.11 However, the information provided to the Committee indicates that the AFP, the NSWPS and Victoria Police are concerned that the potential for exploitation of the BMP by criminal groups exists. From this information, the Committee further concludes that:

- . the potential exists for criminal abuse of the BMP.

7.12 The Committee recommends that:

- . **as a matter of priority the Department Immigration, Local Government and Ethnic Affairs investigate the circumstances surrounding the limited number of instances of individuals with criminal links entering Australia under the Business Migration Program with a view to remedying any deficiencies in its screening procedures identified during these investigations.**

7.13 The Committee considers that an essential element in ensuring the security of the migration program against infiltration by individuals or organisations which may harm the national interest is the maintenance of communication links between law enforcement agencies and DILGEA. The Committee notes that in its

3. Evidence, p. 1055.

submission, the AFP outlined some problems associated with the exchange of information between the AFP and DILGEA.⁴ The Committee does not take this to indicate a major communication problem between the two bodies, but is of the opinion that the opening of an 'information gap' between the two bodies could have serious consequences for the migration program. It therefore welcomes the initiatives that are being taken to improve liaison between DILGEA, the AFP and other law enforcement bodies.

7.14 The National Crime Authority (NCA) outlined in its submission to the Committee its role in co-ordinating the efforts of relevant organisations:

At its March 1990 meeting, ... the Inter-Governmental Committee on the National Crime Authority asked the NCA to co-ordinate further discussions between State and Federal law enforcement agencies, the relevant Commonwealth Departments, and others to ensure that there is a continuing channel of communication on law enforcement requirements in relation to immigration and passport matters.

The NCA convened the first meeting of relevant officials in May 1990 ... the meeting resolved ... to establish liaison groups in each jurisdiction with members of the agencies involved in immigration and passport matters to develop appropriate notification procedures and agreed that the groups would have a responsibility to make recommendations for legislative reform where appropriate ... The Authority is confident that the establishment of these "working groups" is an important step in the co-ordination of law enforcement concerns and expertise in relation to immigration and passport matters.⁵

7.15 The Committee shares the concerns of the AFP in relation to the issue of information exchange between the AFP and DILGEA, but considers that the establishment of the liaison groups between law enforcement agencies and DILGEA and the Department of Foreign Affairs and Trade will provide an effective forum for these concerns to be resolved.

4. Evidence, p. S475.

5. Evidence, p. S436.

7.16 **The Committee recommends that:**

the concerns expressed by the Australian Federal Police concerning the exchange of information between itself and the Department of Immigration, Local Government and Ethnic Affairs be examined by the liaison groups established following the meeting of law enforcement officials and officials from the Department of Immigration, Local Government and Ethnic Affairs and the Department of Foreign Affairs and Trade in May 1990.

Withholding Tax

7.17 The Committee received evidence from Ms Barbara Smith, a lecturer at Phillip Institute of Technology's School of Business, and the NSWPS concerning the possible abuse of withholding tax provisions by migrants entering Australia under the BMP.

7.18 The NSWPS advised that it was in possession of information which indicated that the withholding tax can be or is being used for money laundering purposes.⁶ From her research into the withholding tax, Ms Smith concluded that business migrants, '... are an ignorant population and have not been paying withholding tax where they should be'.⁷ In other words, they may be failing to meet their withholding tax liabilities through ignorance rather than criminal design.

7.19 While the evidence indicates that there may be a window of opportunity for exploitation of the withholding tax by business migrants, this opportunity is not restricted solely to business migrants. The Committee considers that in this matter, business migrants should be considered in the context of the wider business community.

7.20 The Committee is aware that Ms Smith's allegations concerning the withholding tax have been in the public arena for some time and have been considered extensively by the House of Representatives Standing Committee on Finance and Public Administration (HRSCFPA). In evidence to the Joint Committee on Public Accounts, Ms Smith stated that she had appeared twice before the

6. Evidence, p. 391.

7. Evidence, pp. 773-4.

HRSCFPA and had made five submissions to it.⁸ The Committee considered that the matters raised by Ms Smith in connection with the withholding tax have been dealt adequately by the HRSCFPA, and has not pursued them further.

7.21 The HRSCFPA tabled its report Follow the Yellow Brick Road: The Final Report on an Efficiency Audit of the Australian Taxation Office: International Profit Shifting in March 1991. The Joint Committee of Public Accounts will review the Government's response to this report in the light of its concerns about the possible involvement of BMP migrants in abuse of the withholding tax.

7.22 The Committee concludes that:

- . the evidence presented to the Committee by the NSWPS and Ms Barbara Smith identified the possibility of abuse of the withholding tax provisions by migrants to Australia;
- . the allegations made by Ms Smith apply to a much wider section of the community than migrants entering under the BMP; and
- . BMP migrants may be part of a population involved in withholding tax abuse.

7.23 The Committee recommends that:

- . **The Australian Taxation Office investigate the possibility for abuse of the withholding tax provisions by migrants, and review the adequacy of information provided to business migrants about their obligations in respect of all tax matters.**

Money Recycling

7.24 Allegations concerning money recycling have been associated with the BMP since its inception. The term money recycling describes a situation in which capital is transferred to Australia for the purposes of qualifying for a visa under the BMP and is then transferred back to the migrant's country of origin.

8. Evidence, p. 778.

7.25 Prior to 1989, DILGEA had no formal monitoring scheme to ensure that monies transferred to Australia for the purposes of the BMP remained in the country and relied on aggregate information provided by banks to give an overview of the patterns of cash transfers by business migrants.⁹

7.26 In November 1989, DILGEA introduced the BMP Declaration, a document which intending migrants must sign. It states that the funds transferred to Australia are personally owned by the applicant and are unencumbered and authorises the recipient bank to disclose to DILGEA details of the transactions of the accounts containing the funds for a period of three years.¹⁰

7.27 Under this system, DILGEA examines bank accounts in response to any allegations of funds recycling and regularly monitors the accounts of 5% of all business migrants who enter Australia. The banks also continue to provide DILGEA with an aggregate overview of the movement of BMP money.¹¹

7.28 Due to the lack of a system for monitoring the transfer of funds by business migrants before November 1989, the extent of the practice of recycling funds by BMP migrants cannot be determined. However, based on information presented to the Inquiry, the Committee is of the opinion that recycling of funds out of Australia has occurred. In evidence to the Committee, the Hon John Hodges of Hodges Harding and Associates stated:

About 18 months ago at a seminar in Brisbane attended by two senior migration officers, I raised the question of what I termed was aeroplane money. I was told that the Department knew all about it and not to worry about it. Six to twelve months later, some changes were made. There is no doubt that a lot of money has come into the country and gone back out of the country.¹²

7.29 DILGEA reported that the monitoring of individual bank accounts introduced in 1989 had identified some business migrants who had transferred their money offshore. These individuals have been or are being investigated. Three have

9. Evidence, p. 61.

10. Evidence, p. S366.

11. Evidence, pp. 969-70.

12. Evidence, p. 648.

been declared illegal entrants on the basis of having materially misrepresented their intentions in entering Australia and two who were overseas at the time have had their visas cancelled.¹³

7.30 The Committee considers that the introduction of the declaration form and random audit has provided an effective mechanism to both monitor the flow of funds transferred by business migrants and act as a deterrent to potential abuse.

7.31 Nevertheless, the Committee does wish to express its concern at the length of time taken by DILGEA in responding to, and taking effective action against, the clearly obvious possibility for money recycling within the BMP.

7.32 The Committee concludes that:

- . money recycling has occurred. However, in the absence of any systematic monitoring of the transfer of funds offshore by business migrants, the full extent of this recycling cannot be determined; and
- . the system adopted by DILGEA for the purposes of monitoring the flow of funds into, and out of, Australia by migrants under the BMP and the actions taken when recycling has been detected should have acted as an effective deterrent against further funds recycling.

13. Evidence, p. 971.

CHAPTER 8

BUSINESS SKILLS BASED MIGRATION

8.1 This chapter presents the Committee's views on the need to retain within the migration program a category of entry for independent migrants with business skills.

Business Skills and the Migration Program

8.2 The Commonwealth's migration program has provided a category of entry for migrants with business skills since the introduction of the Entrepreneurial Category in 1976. This category was revised and upgraded to become the BMP in 1981, and actively promoted as an avenue for entry to Australia.

8.3 The Committee notes that there has been community debate concerning the economic focus for the Government's immigration policy, and that the conclusions of the Report of the Committee to Advise on Australia's Immigration Policy called for a sharper economic focus for Australia's migration program.¹ The Committee notes that these conclusions were endorsed by the Government in its response to that report which was tabled in the Parliament in December 1988.

8.4 The Committee, in conducting an Inquiry into the Business Migration Program, did so against this background of the Government's acceptance of the need to maintain an economic focus within the migration program.

8.5 In the course of receiving evidence as part of this Inquiry, the Committee heard across the board support for the concepts of both economic migration and the entry of migrants with business and entrepreneurial skills.

8.6 In examining the BMP, the Committee was not examining the need for a category of migration that facilitated the entry of migrants with business skills, but rather the efficiency of a Program with certain goals and objectives designed to benefit the Australian economy through the encouragement and utilisation of migrants with business and entrepreneurial skills.

1. Committee to Advise on Australia's Immigration Policy. Immigration A Commitment to Australia, AGPS, Canberra, May 1988, p. 39.

8.7 The Committee therefore wishes to place on record its support for the entry into Australia of migrants with business and entrepreneurial skills, and seeks, through the findings of this report, to better utilise these skills for the benefit of the migrants and the Australian economy.

8.8 **The Committee recommends that:**

- *the migration program continue to have a category of entry which recognises business and entrepreneurial skills as eligible criteria for entry into Australia;*
- *the primary purpose of this entry category be the establishment of businesses in Australia; and*
- *attention be given to the clear articulation of the goals and operational objectives of this category of entry, such that their achievements can be readily monitored and evaluated.*

Points Based Business Skills Category of Migration

8.9 In making its recommendation in Chapter 6 to abolish the AAS, the Committee recognised that, in administrative terms, the adoption of this recommendation would effectively terminate the BMP.

8.10 However, it must be stressed that the Committee does not wish this recommendation to be interpreted as a desire to terminate business skills based immigration into Australia. Rather, a category of entry based on the assessment of the business skills of applicants should be developed to replace the BMP. The Committee believes that the objective of this category of migration should be that each business migrant establish a business in Australia.

8.11 The Committee considers that the assessment of business skills should be carried out in an administrative manner similar to the assessment of independent entrants, that is, under a points test.

8.12 *The adoption of a points test base for the entry of migrants with business skills would be in line with the administration of the other categories of migration and would provide clear guidelines for potential migrants.*

8.13 On this matter, the Committee notes comments made by the Secretary of DILGEA, Mr Chris Conybeare:

I do not think it would be impossible to devise a points test (for business migrants) ... and the work that I would like to think the Department will be in a position to do to better organise decision making in this area would be to develop a basis on which 'objective' tests might be able to be developed that could be quantified in the same way as numbers are allocated for various attributes under the current points test categories ... It is starting now in the light of the Government's decision to review all aspects of the program.²

8.14 The Committee considers that the business skills category of migration should have its own identity within the independent category of migration, existing as a sub-category within the independent entry category.

8.15 **The Committee recommends that:**

- **a category of entry that recognises business skills as a criterion for entry to Australia be created;**
- **a category of entry based on the assessment of business skills be developed to replace the Business Migration Program;**
- **the establishment of a business in Australia be incorporated into the objectives of this category of migration; and**
- **selection under this category of migration be based on a points system.**

2. Evidence, p. 947.

Business Skills and the Points Test

8.16 The Committee considers that the points test for migrants with business skills should consist of prescribed qualifications in three areas:

- . business skills;
- . age; and
- . language skills.

Business Skills Qualifications

8.17 The Committee considers that the determining factor in developing a points test for business skills should be the demonstration of a successful business background by the applicant and that the components of this criterion should be the ownership and operation of a successful business in the applicant's country of origin.

8.18 The Committee is aware that the determination of such a criterion for the purposes of developing a points test is a difficult task, but considers that it is necessary to clarify, for both immigration officers and intending migrants, those skills and attributes which will be considered in assessing an application. As part of the application process, a statement of intent by migrants should be prepared which outlines the intentions of the migrants in relation to the establishment of a business in Australia.

8.19 The Committee recognises that, in assessing some individual cases against the criterion of a successful business background, DILGEA may wish to seek the views of the private sector or State industry development departments to assist it in making a determination on the suitability of the applicant for entry and the intended area of enterprise. The Committee therefore is of the opinion that, while not seeking to give any formal recognition to the role of private consultants or State industry development departments in the application assessment process, DILGEA should seek advice from the private sector, as it sees necessary.

8.20 The Committee also considers that when such assessments are required they must be carried out at DILGEA's request, rather than at the request of the intending migrant. Under these circumstances, the relationship between

DILGEA and the agency making the assessment ensures that the agency is clearly working in DILGEA's best interests, and not primarily for the applicant as is the case when accredited agents are used.

8.21 Furthermore, the cost of any assessments carried out by agencies for DILGEA should be recovered from the intending migrant.

8.22 **The Committee recommends that:**

- the determining factor in developing a points test for business skills should be demonstration of a successful business background by the applicant;
- the components of this criterion should be the ownership and operation of a successful, bona fide business in the applicant's country of origin; and
- in developing assessment systems for applicants in this category of migration, Department of Immigration, Local Government and Ethnic Affairs allow immigration officers the option of drawing on the expertise of the private sector to assist in their determination of the suitability of applicants.

Age Qualification

8.23 The Committee considers, that in determining points based on age for entry of persons with business skills, allowance must be made for the fact that the possession of business skills increases with age, at least over the first 20 to 30 years of a business person's career. The age points system that is used for the independent class of migration is thus unsuitable for assessing migrants with business skills because it awards most points to the youngest adults and least to the oldest. In constructing the age points system for migrants with business skills, consideration should be given to preventing the category of entry from being used as a de facto retirement scheme.

8.24 **The Committee recommends that:**

a separate points test for the age qualification be developed for business migrants.

Language Skills Qualification

8.25 The Committee considers that English language skills are critical for migrants arriving in Australia, and in particular for business migrants if they are to do business in Australia. The English language skills qualification already exists for the independent entry category and should be included in the points test for business skills entry in Australia.

8.26 **The Committee therefore recommends:**

the language skill qualification set out in the existing points system be applied to the points test for business skills entry.

Transfer of Capital

8.27 The Committee considers that the transfer of capital to Australia by business migrants provides two benefits. Firstly, it provides a source of start-up capital for the migrants and secondly, it adds to the capital base of the Australian economy.

8.28 The Committee strongly supports the transfer of capital to Australia as part of the business skills entry program, but is cautious in recommending that points be awarded on the basis of the amount of capital transferred. The Committee does not propose that the transfer of capital be seen as a means of generating enough points to gain entry to Australia.

8.29 The Committee believes that the points system should give recognition to a business migrant where substantial capital funds are transferred to Australia. However, the Committee believes that the points allocated to capital transfer should not be sufficient to make this the predominant factor in the assessment of an application.

8.30 **The Committee recommends that:**

- **the transfer of capital be recognised as a criterion for granting points under the business skills entry category; and**

- **the scheme currently used to monitor the transfer of funds under the Business Migration Program be used to monitor the transfer of funds under the business skills category of migration for a period of two years after the migrant's arrival in Australia.**

8.31 In making this recommendation, the Committee is aware that the transfer of capital component of the BMP was subject to abuse until the implementation of a monitoring program. The Committee therefore considers that a monitoring system on capital transfer *should be used to ensure that capital transferred to Australia for business purposes is, in fact, used for these purposes.*

8.32 The declaration form currently used to monitor the transfer of funds by applicants under the BMP has proved to be an effective mechanism of scrutiny, and acts as a deterrent for abuse. The Committee considers that such a system *should be adopted to monitor the transfer of capital for a period of two years after the migrant's arrival in Australia.*

8.33 **The Committee therefore recommends that:**

- **the points allocated to capital transfer should not be sufficient to make this the predominant factor in the assessment of an application.**

Future Program Monitoring

8.34 As stated previously, the Committee considers the lack of an adequate monitoring system for business migrants has been a critical factor in DILGEA's failure to evaluate the effectiveness of the BMP to achieve its goals.

8.35 The Committee notes, however, that the adoption of the monitoring program implemented on 1 July 1988 established the basis for an effective monitoring scheme for the BMP.

8.36 The Committee considers that such a monitoring scheme should be adopted for the business skills entry category recommended above. The monitoring scheme should be designed to assess the extent to which the program's objectives are being achieved and to ascertain the nature of any difficulties the migrants are facing. This information would form the basis for planning effective services to assist the migrants.

8.37 The Committee considers that compliance with the monitoring scheme be mandatory. As the achievement of the objectives of the category of entry lies in the establishment of a business in Australia, compliance with a monitoring scheme will have to involve all business migrants to ensure that this objective is being met. In the opinion of the Committee, the returns achieved by the voluntary compliance monitoring scheme currently used in the BMP do not generate enough data to determine that the outcomes of the BMP are in line with its objectives.

8.38 The Committee considers that a financial penalty, similar to that contained in s.14 and s.15 of the Census and Statistics Act 1905, should be imposed on those who do not comply with the survey requirement.

8.39 The Committee recommends that:

- a monitoring scheme be implemented for migrants arriving in Australia under the business skills category of entry;

- the monitoring scheme should explore the extent to which the program's goals have been met by each migrant and identify any obstacles to the establishment of migrants in the Australian business environment;

- this scheme be composed of:

- the issue of two survey forms to migrants at the time of granting them their visas, and

- the return of these survey forms after 12 and again after 24 months following the migrants' arrival in Australia;
- compliance with the scheme's survey be mandatory; and
- a financial penalty, similar to the penalties contained in s.14 and s.15 of the Census and Statistics Act 1905, be imposed on migrants who do not comply with the survey.

Post Settlement Services

8.40 As stated previously, the Committee considers that the lack of post settlement support services has hampered the efficiency of the BMP by delaying the entry of business migrants into businesses after their arrival in Australia.

8.41 The Committee is aware that a large network of publicly funded advisory services exists, but concludes that these services are not being efficiently marketed to business migrants.

8.42 The Committee therefore considers that an information and awareness campaign should be implemented, aimed at informing business migrants of the availability of these services.

8.43 The Committee considers that the campaign should be aimed at potential business migrants in their countries of origin and at ethnic business associations in Australia to reach the business migrants who are already here.

8.44 The Committee further considers that these information campaigns should be ongoing, and linked to the results of the monitoring program, in order to ensure that the provision of information to business migrants is relevant to their information needs.

8.45 The Committee considers that State and Federal industry development departments and the Australian Taxation Office should be consulted in the development of this information awareness campaign.

8.46

The Committee therefore recommends that:

- . **an ongoing information and awareness campaign be developed to inform business migrants of the availability of publicly funded business advisory services;**
- . **this campaign be targeted at both the source countries of business migrants and ethnic business associations in Australia; and**
- . **the Minister for Immigration, Local Government and Ethnic Affairs request the Minister for Small Business and Customs to place on the agenda of the meeting of Federal/State Ministers for Small Business the development of methods to improve access to business advisory services by business migrants.**

Group Visas

8.47 In the course of its public hearings, the Committee heard a suggestion that the BMP be expanded to allow for the entry of whole businesses into Australia.

8.48 The argument behind the concept is that successful business people, who may be the principal applicants under any business migration criteria, are generally in business with other people. Typically, a *successful business led by an individual entrepreneur* is also staffed by key executives. These executives may not be eligible individually for migration to Australia but are key figures and instrumental in the running of the business.

8.49 Such a 'whole business' concept would allow the migration of the entrepreneur and key executives, facilitating the transfer of 'whole businesses' to Australia.

8.50 In examining this concept, the Committee noted two points:

- . the incorporation of such a scheme into the migration program *must not compromise the integrity of the immigration intake, based as it is on individual applicants and their families; and*
- . the use of group visas could possibly maximise the post-arrival business success of the individual entrepreneur. It would also

encourage the entrepreneur to focus on his or her business and capital investment in Australia rather than on continuing to run the existing business in the country of origin as is commonly the case with business migrants to date.

8.51 The Committee has not fully examined this concept but considers it worthy of further attention.

8.52 The Committee recommends that:

the Government consider:

- the concept of encouraging the transfer of whole businesses to Australia; and
- the means by which this might be achieved, including the feasibility of issuing group visas to the chief executive and other key personnel of a business.

Conditional Visas

8.53 In the course of the Inquiry, the Committee has canvassed a variety of opinions concerning the issue of conditional visas and their application to business migrants. It has also examined the use of conditional visas in the Canadian Business Immigration Program.

8.54 The Committee noted comments made to it that the imposition of conditional visas would act as a disincentive to business migrants who were considering establishing a business in Australia.

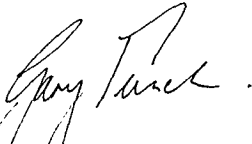
8.55 The Committee considers that the imposition of a conditional visa on a business migrant should only be considered as a last resort, only after it has been demonstrated that positive incentives and assistance have failed to attract business migrants to establish businesses. The Committee considers that this has not been demonstrated. Furthermore, a number of positive incentives and ways of assisting migrants have yet to be implemented and their effectiveness tested.

8.56 The Committee also considers the imposition of a conditional visa would place an onerous administrative burden on DILGEA. This has been the experience in the Canadian Business Immigration Program.³

8.57 The Committee further considers that, as no other category of migration carries with it a conditional status, the imposition of a conditional visa on one particular class of visa would act as a disincentive to migrants with business skills to apply for entry under that category, and would thus defeat the purpose of this category of entry.

8.58 The Committee therefore recommends that:

conditional visas not be applied to migrants entering under the business skills category of migration.



Hon G F Funch, MP
Chairman
19 June 1991

3. Private meeting of the Committee on 12 November 1990 with Mr M Burstein, Director, Strategic Policy, Canada Employment and Immigration Commission, and Mr T Ryan, Consul (Immigration), Canadian Consulate General.



APPENDICES

APPENDIX 1

SUBMISSIONS AND OTHER DOCUMENTATION TO THE INQUIRY

Listed below are organisations and individuals that provided the Committee with submissions and other documents relating to the Inquiry. Some organisations made more than one submission to the Inquiry.

Organisations

A D Morrison & Associates
Abitare Migration Service
Arnold Bloch Leibler
Australian Customs Service
Australian Migrants Consultants Association
Australian International Development Assistant Bureau
Black Stag Deer Park
Business and Consumer Affairs
Business & Consumer Affairs
Canberra Development Board
Cannan and Peterson
Commissioner of Taxation
Department of Accounting and Business Computing, Phillip Institute of Technology
Department of Foreign Affairs and Trade
Department of Immigration, Local Government and Ethnic Affairs
Department of Industry, Technology and Commerce
Department of State Development and Technology
Elicos Association Limited
Enterprise Consulting Services
Export & Commercial Research Services Pty Ltd
FBR Pty Ltd
Gilton Business Consultants
Goldsmith Solicitors
Hodges Harding and Association
Hon Wayne Goss MLA Premier of Queensland
Hugh Ramsay Consulting
Human Rights Australia
National Crime Authority
Northstate Partners
Office of Youth, Sport, Recreation & Ethnic Affairs
Office of the Commissioner of Police, Australian Federal Police
Overseas Business Ventures Australia Pty Ltd
Overseas Business Ventures Australia Pty
Small Business Development Corporation
South Australia Police Department
Sri Lankan Organisation for National Harmony

State Drug Crime Commission of New South Wales
State Intelligence Group, New South Wales Police Service
Tasmania Police
The Australian Chamber of Commerce
The Returned Services League of Australia

Individuals

Dr Robert Birrell
Dr Roger Newman
Mr Gary Tucek
Mrs Corazan P Kuhle

In addition, confidential submissions have been considered by the Committee.

PUBLIC HEARINGS AND WITNESSES TO THE INQUIRY

Date of Hearing

19 October 1990

Witnesses:

**Australian International
Development Assistance Bureau**

Mr R N Kelloway, Director, Equity
and Merit Schoolship Scheme

Mr C E T Terrell, Deputy Director
General, Country Programs
Division

Mr L Watters, Director, Overseas
Student Services Section

Canberra Development Board

Mr P Cheng, Board Member

Mr J F Muir, Chairman

Mr S P Saunders, Director,
Secretariat

**Department of Immigration, Local
Government and Ethnic Affairs**

Mr L K Bugden, Assistant
Secretary, Compliance Branch

Mr C Conybeare, Secretary

Mr P Hughes, Assistant Secretary,
Central Operations Branch

Mr D J Moorhouse, Director, Entry
Control Section

Mr R K Muir, Director, Visa
Systems
Mr M A Sullivan, First Assistant
Secretary, Operations Management
Division

**Export & Commercial Research
Services Pty Ltd**

Mr G Binkowski, Accredited
Migration Agent

Mr G Savas, Accredited Migration
Agent

Observers:

Australian National Audit Office

Mr D S Lennie

Department of Finance

Mr A K Rizvi

9 November 1990

Witness:

FBR Pty Ltd

Mr N Page, Chief Executive Officer

Observers:

Australian National Audit Office

Mr G Koehne

Department of Finance

Mr A K Rizvi

29 November 1990

Witnesses:

**Australian Migration Consultants
Association**

Miss P Mathewson, National
President

Gilton Business Consultant

Mr J M Gillespie, Principal

Hugh Ramsay Consulting Pty Ltd

Mr R H Ramsay, Director

**State Intelligence Group, New
South Wales Police Service**

Detective Sergeant R C Clark,
Officer

Chief Superintendent B W
Johnston, Commander

**Overseas Business Ventures
Australia Pty Ltd**

Ms M D Kovac, Business Migration
Manager,

Dr W P Osborne, Managing
Director

Observers:

Australian National Audit Office

Mr D S Lennie

Department of Finance

Mr A K Rizvi

30 November 1990

Witnesses:

Dr R Birrell, Senior Lecturer in
Sociology, Monash University

Mr G M Tucek

Observers:

Australian National Audit Office

Mr D S Lennie

Department of Finance

Mr A K Rizvi

18 February 1991

Witnesses:

**New South Wales Business and
Consumer Affairs**

Mr R A Benedet, Manager,
International Business Development

Mr M J Drenth, Chief Development
Officer

Mr B Hanks, Senior Consultant,

Observers:

Australian National Audit Office

Mr D S Lennie

Department of Finance

Mr A K Rizvi

28 February 1991

Witnesses:

Cannon and Peterson

Hon M J Ahern, Consultant

Mr D R Boyd, Managing Partner

**Department of the Premier,
Economic and Trade Development**

Mr R McAlary, Director, Trade and
Investment Development

Mr J Reinders, Business Migration

Hodges Harding and Associates

Hon J C Hodges

**Queensland Small Business
Corporation**

Mr D J Kelleher, Deputy General
Manager and Manager of Corporate
Services

Mrs S Miller, Researcher

Mr C M Thomson, Manager,
Business Services

Observers:

Australian National Audit Office

Mr D S Lennie

Department of Finance

Mr A K Warren

22 March 1991

Witness:

Ms B M Smith, Lecturer, School of
Business, Phillip Institute of
Technology

24 April 1991

Observers:

Australian National Audit Office

Mr D S Lennie

Department of Finance

Mr G Breene

Witnesses:

Australian Taxation Office

Mr G J Doughty, Acting First
Assistant Commissioner, Taxpayer
Assistance Group

Mr H Hepburn, Senior Officer
Grade C, Audit Group

Mr V T Mitchell, First Assistant
Commissioner (Taxpayer Audit),

Australian Federal Police

Commander A C Wells

**Department of Foreign Affairs and
Trade**

Mr J C Blount, Director, Refugees,
Immigration and Asylum Section

Mr I K Forsyth, Acting Principal
Adviser, Economic and Trade
Development Division

**Department of Industry,
Technology and Commerce**

Mr J R Austen, Director,
Investment Promotion section,
International Division

Mr M H Farrow, First Assistant
Secretary, International Division

Ms D M Wicks, Assistant Director,
Investment Promotion Section,
International Division

Observers:

Australian National Audit Office

Mr D S Lennie

Department of Finance

Mr R De Ferranti

17 May 1991

Witnesses:

**Department of Immigration, Local
Government and Ethnic Affairs**

Mr L K Bugden, Assistant
Secretary, Compliance Branch

Mr C Conybeare, Secretary

Mr C Doepel, Assistant Secretary,
Legislation and Review Branch

Mr P G Hughes, Assistant
Secretary, Migrant Entry and
Citizenship Branch

Mr M A Sullivan, First Assistant
Secretary, Temporary Entry
Compliance and Systems Division

Mr D G When, First Assistant
Secretary, Migration Division

Observers:

Australian National Audit Office

Mr D S Lennie

Department of Finance

Mr A K Rizvi

4 June 1991

Witnesses:

Australian Federal Police

Mr M B McGreevey, The Chief
Analyst, Intelligence Division

Commander A C Wells, Officer-in-
Charge, Fraud and General Crime
Division

Observers:

Australian National Audit Office

Mr D S Lennie

Department of Finance

Mr A K Rizvi

APPENDIX 3



Department of Immigration, Local Government
and Ethnic Affairs

Benjamin Offices
Chan St Belconnen, ACT 2617



88/32536 (BMP:JRT)

Mr J Talberg
Secretary
Joint Parliamentary Committee of
Public Accounts
Parliament House
CANBERRA ACT 2600

Dear Mr Talberg

BUSINESS MIGRATION: AUDITOR GENERAL'S
SEPTEMBER 1988 REPORT

In response to the Joint Parliamentary Committee's request of 18 November 1988, I have enclosed a submission addressing business migration matters raised in Section 10.1 of the Audit Office report.

The submission includes a summary, by way of an attachment, itemising the Audit Office concerns and the Department's response. In addition, a list of documents relevant to the Program's administration is attached to the submission.

Yours sincerely

MARK SULLIVAN
Acting Deputy Secretary

21 DEC 1988



JOINT PARLIAMENTARY COMMITTEE OF PUBLIC ACCOUNTS
Examination of the Auditor-General's Report of September
1988 - Submission by the Department of Immigration, Local
Government and Ethnic Affairs on the Business Migration
Program

Introduction

1. The objective of the Business Migration Program is to attract successful business people to settle permanently and contribute their expertise, skills and capital to commercial enterprises of benefit to Australia through either:
 - the creation of jobs or the retention of jobs that otherwise would be lost; or
 - the introduction of new or improved technology; or
 - the stimulation of export trade; or
 - the replacement of imports.
2. The administration of the Program is governed by policy and operational guidelines contained in the Migrant Entry Handbook, Policy Control Instructions and Administrative Circulars, and guidelines for accreditation and re-accreditation (attachment 2 refers).
3. Business migrants are selected primarily on the basis of their business skills and must provide evidence of a successful business background. They are required to transfer to Australia equity to the value of \$A500 000 for the business. This equity may be in the form of either cash, or cash, capital and other assets. Additional funds for settlement are also required.
4. The Business Migration Program is not a foreign investment program but part of the overall migration program. Although it is one of the programs by which the Government has sharpened the economic focus of the migration program, it should always be viewed in the context that it is primarily a people program.
5. The Business Migration Program was introduced in November 1981. Program numbers remained small until promotional funds were allocated to the program in 1985. The effect of this was a doubling of program numbers between 1985/1986 and 1986/87. This trend continued into 1987/88 with the program again doubling, and becoming a significant part of the overall migration program, about 5% of the total migrant intake. In 1988/89 the program is expected to continue increasing, but at a slower rate. The expected program intake is 12 000 people (3 000 cases), totalling about 8.5% of this financial year's migration program. Business migration does not have any ceiling on numbers and the estimated program outcome is based on expected demand for the program under the current policy.

2.

6. With the rapid growth in the program a number of initiatives were introduced on 1 January 1988 to help streamline the processing of business migration applications. The major development was the introduction of the Accredited Business Migration Agency scheme which harnessed the resources of leading accounting, legal and consultancy firms as well as other specialist consultancy firms.

7. Accredited Business Migration Agencies are contracted to the Department to act on behalf of an applicant in processing applications under the Business Migration Program. They are required to undertake all processing steps possible up to final approval. Security clearances and final approval remain the Department's responsibility.

8. Agencies are only accredited if they meet criteria regarding integrity and professional competence. Accredited agents involved in any malpractice or otherwise failing to perform will have their accreditation cancelled.

9. The monitoring of the program was also adjusted on 1 January 1988 to take advantage of the relationship that exists between accredited agents and the applicants. Under these arrangements accredited agents were required to submit annual reports of the business ventures of business migrants in addition to those submitted by the State or Territory Government agencies.

10. With the continued rapid growth of the program and the increasing involvement of accredited agents it was clear the existing monitoring and evaluation arrangements should be reviewed. The department undertook a major review and the result was the formulation of a comprehensive monitoring and evaluation package announced by the then Minister, the Hon Clyde Holding on the 30 June 1988. The package consisted of three inter-related elements :

- i BHP Outcomes against Government objectives, using
 - a. joint Commonwealth/State research study
 - b. objective aggregate evaluation of business migrants' financial ventures which some major banks have indicated they could provide
 - c. data from questionnaires issued to business migrants applying for citizenship or resident return visas
 - d. data from questionnaires issued at visa issue to be returned after the first and second year in Australia
 - e. data extracted from finalised case files;
- ii Accredited Agents, using
 - a. data from annual reports submitted by agents when seeking re-accreditation
 - b. unique accreditation identifying number to facilitate computer analysis
 - c. compliance audit of a sample of 1:15 applications;

3.

iii BMP Promotion, using

- a. "trace" codes to permit cost/benefits analyses to be undertaken on each form of promotion
- b. State Governments and accredited agents encouraged to do the same.

11. The aim of the revised monitoring package is to strike a balance between program control and the civil rights (especially privacy) of business migrants. To achieve this the package involves data collection from all sectors of the Business Migration Program industry. It is designed to be a constructive tool in program development rather than an attempt to impose sanctions. Nevertheless business migrants will be the most scrutinised group in the migration program.

The Auditor-General's Report

12. The Auditor-General's report addresses two broad sets of issues, the program itself and the accredited agency arrangements. The response we have prepared looks at the specific issues raised under these headings.

13. For convenience, a summary of the submission addressing matters raised in the report is presented in matrix form as attachment 1.

The Program

14. In regard to the program, the Auditor-General stated that the Department has not established an ongoing mechanism to evaluate systematically the achievement of the program objectives and that with the rapid growth of the program in recent years a more comprehensive monitoring and evaluation system was needed. The report did acknowledge the survey carried out in 1984 and 1985, and the introduction of the new monitoring and evaluation package.

15. The Department considers that the monitoring and evaluation system introduced in June 1988 addresses the concerns raised by the report. This package involves obtaining data from a number of sources on the activities of business migrants after their arrival in Australia:

- The Department of Immigration, Local Government and Ethnic Affairs;
- State and Territory Government authorities;
- Accredited Agencies;
- Banks; and
- the business migrants themselves.

The package includes elements aimed at business migrants already in Australia as well as an ongoing program for monitoring and evaluating future arrivals. It addresses the

4.

issue of program objectives being met. The package is supplemented by a joint Commonwealth/State research project on the business migrants who arrived in Australia between 1984 and 1987.

16. The Auditor-General's report mentions that the Department did not follow a recommendation by the Department's Internal Audit section in 1987 to redefine the objectives of the program to allow a more accurate assessment of the objectives. Incorporated in the policy change of 1 January 1988 was the introduction of a new objective "the replacement of imports" in favour of the former objective "expansion of business activity". This change was incorporated due to the difficulties of measuring the expansion of business activity, but still maintained the economic focus the program is designed to have in the migration program as a whole. The Department believes the business migration program objectives reflect desired outcomes of Australia's economic strategies.

17. Since the Audit Office audit on the program, the Committee to Advise on Australia's Immigration Policies (CAIIP) has submitted its report. The CAIIP Report supported the entry into Australia of migrants with entrepreneurial skills and capital with adequate monitoring to ensure that the program is meeting its stated objectives.

Accredited Agency Scheme

18. In regard to the accredited agency scheme, the Audit Office considered there to be a lack of review of assessed cases for accreditation prior to consideration by the accreditation committee, no formal Departmental instructions or guidelines on accreditation committee operations and there were instances in earlier cases where pre-accreditation checks were not finalised prior to approval and signing of contracts.

19. All requests for accreditation are assessed at three levels in the Department before the Secretary makes the final decision. Accreditation requests are initially assessed by an officer of the Business Migration Program Section of the Department, who then makes a recommendation on the application. The recommendation is then reviewed by the Director of the Business Migration Program Section and passed on to the Accreditation Committee for their assessment. The accreditation committee, comprising of the Assistant Secretary of the Central Operations Branch, the Director of the Malpractice Intelligence Section and the Director of the Accounts Section, makes the final recommendation to the Secretary for a decision.

20. The accreditation committees are convened as required by the level of demand. Assessments and recommendations are

5.

made based upon the guidelines given to agencies requesting accreditation. Character and Corporate Affairs checks are carried out before requests for accreditation go to the Secretary.

21. The Auditor-General's report recommended that attendance at Training courses for accredited agents be made mandatory. The accreditation guidelines make it clear that "... it is expected that at least one officer from each agency who will process BHP applications will attend training courses". These courses are supervised by the Department."

22. The report noted that there is no rationale for the method of sampling of cases adopted by the Department for auditing cases submitted by accredited agents at the overseas posts and no procedures to see if these instructions are carried out. Decision-making at overseas posts on all migration categories, including the Business Migration Program, is subject to the Department's routine internal audit processes. In addition, an extra level of internal audit is provided for by a requirement for the examination of case files returned to Australia from the overseas posts.

23. Overseas posts have been instructed to carry out a random audit to ensure quality and standard of applicants maintained, that claims being presented are correct, and that accredited agencies are fully carrying out the job they have been contracted to do. A 1 in 15 sample is recommended in the instruction. In addition posts are required to quickly evaluate all cases to ensure requirements are met. Selected posts have been asked to ensure that all agencies lodging applications have work audited and to adjust the level of scrutiny based on experience with each agent. New instructions confirming these procedures for all posts are currently being prepared.

24. The report stated that no system or procedures have been established to capture information related to the performance of accredited agents on the number and nature of applications processed by accredited agencies since 1 January 1988. All accredited agencies have been issued with a unique number called the Business Migration Agent number. This number is recorded on applications for migration submitted through accredited agents and is retained in the Department's central computer for analysis. It gives the Department a centralised computer record of all cases lodged worldwide by each agent. In addition, as part of the re-accreditation process, agents must inform the Department of all cases handled and overseas posts will report on the performance of each accredited agent.

6.

Cost and Implementation

25. The Department had already begun implementation of the new monitoring and evaluation system when the Audit Office report was completed. The Commonwealth/State survey was not especially a response to the report, but part of the monitoring strategy. Consultant's fees for this survey will amount to \$66,861.

26. The cost of implementing the measures referred to in this submission is absorbed into the regular administrative costs of the Department's operations.

Department of Immigration, Local Government
and Ethnic Affairs
CANBERRA
December 1988

BUSINESS MIGRATION PROGRAM (BMP)

THE AUDITOR-GENERAL'S REPORT OF SEPT 1988

DEPARTMENTAL RESPONSE

A. THE PROGRAM

1 Evaluation of the Program

- (i) no established ongoing mechanism to evaluate systematically the achievement of the program objectives

Existing monitoring and evaluation arrangements were reviewed and were followed by implementation of a new monitoring and evaluation package announced by the then Minister on 30 June 1988

- (ii) with the rapid growth of the program in recent years a more comprehensive monitoring and evaluation system was needed

- . Commonwealth/State research study
- . requirement of business migrants to submit questionnaires on their business activities in Australia after 1 and 2 years residence or when applying for citizenship or a resident return visa (DILGEA State BMP offices to chase up questionnaires not submitted)
- . banks to be asked to supply aggregated data on business migrant activities
- . case files to be returned to Australia from overseas posts for additional audit checks.

2 Department's development and implementation of policy

- (i) internal audit recommendation to redefine program objectives
- (ii) Committee to Advise on Australia's Immigration Policies (CAAIP)

- adjustments to the definition of the objectives in January 1988
- objectives set to meet economic focus of program
- CAAIP supportive of entry of people with entrepreneurial skills and capital. It recognised the need for monitoring and evaluation.

B. ACCREDITED AGENT SCHEME

1 Accreditation processing

- (i) lack of review of assessed cases for accreditation prior to consideration by the accreditation committee

- 3 tiered system for making a recommendation to the Secretary
- . officer of BMP Section initial recommendation

At a more general level, I think it is fair to say that the Australian visa and entry system is regarded by immigration authorities in other countries as the most advanced and the most successful in the world. The machine readable format of the Australian visa has been followed for example by Canada, the FRG, and Sweden. More recently decisions have been made by the United States to follow a similar format.

If you should require any further clarification I would be pleased to assist. Could I suggest that if you have any further queries you might contact Mr Wayne Gibbons, First Assistant Secretary, Development and Systems Division, telephone 642525.

Yours sincerely



RON BROWN

accreditation assessment.

4 Monitoring of Overseas Posts' performance

- (i) no systematic mechanism to evaluate the effectiveness of decision-making process at overseas posts to ensure that EMP objectives are achieved and all migration requirements have been met.
- all migration categories including EMP are subject to the Department's routine internal audit processes

- (ii) no instructions on accreditation committee operations
 - . director of BMP section reviews recommendation
 - . accreditation committee make final recommendation after review
 - . Secretary makes final decision
- (iii) early cases, pre-accreditation checks not complete prior to signing contract
 - recommendation follows guidelines issued to applicants
 - all checks are now completed before recommendation made
- 2 Training of Accredited Agents
 - (i) attendance at training courses for accredited agents be made mandatory
 - guidelines state it is expected that one officer from each agency will attend a training course
- 3 Monitoring Accredited Agents Performance
 - (i) no rationale for the method of sampling of cases adopted by the Department of auditing cases submitted by accredited agents
 - 1:15 random audit
 - at selected posts scrutiny of work submitted by all agents
 - all cases checked to ensure requirements are met
 - (ii) no procedures to see if it is carried out
 - all migration categories including BMP are subject to internal audit
 - (iii) no system or procedures have been established to capture information related to the performance of accredited agents on the number and nature of applications processed by accredited agents
 - additional level of audit provided through examination of case files returned to Australia from overseas posts
 - introduction of BMP number (unique identifying number) to allow this information to be obtained from the Department's data base.
 - overseas posts supplying information on accredited agency activities for the period 1.1.88 - 16.9.88 to cover period before BMP number introduced.
 - as part of re-accreditation assessment, agents are required to inform the Department of all cases handled
 - Overseas Posts report on the performance of all accredited agents in the context of re-