

Successful business persons can apply for Australian permanent residence. This article will discuss the Business Innovation and Investment (Provisional) visa (subclass 188), which is the first step to take to eventually become an Australian. The relatively new Entrepreneur stream is also discussed.



## **A. VISAS AND VISA STREAMS**

The Business Innovation and Investment (Provisional) visa (subclass 188) is a part of the Business Innovation and Investment Program. Holding this provisional (temporary) visa is generally necessary for applicants to be eligible to qualify for the Business Innovation and Investment (Permanent) visa (subclass 888).

Applicants can apply for the Business Innovation and Investment visa under one of the following five streams:

- **Business Innovation stream:** for people with business skills who want to establish, develop, and manage a new or existing business in Australia.
- **Investor stream:** for people who want to make a designated investment of at least \$1.5 million in an Australian state or territory and maintain business and investment activity in Australia.
- **Significant Investor Stream:** for people who are willing to invest at least \$5 million into complying significant investments in Australia and who want to maintain business and investment activity in Australia.
- **Premium Investor Stream:** for people who are willing to invest at least \$15 million into complying premium investments in Australia and who want to maintain business and investment activity in Australia.
- **Entrepreneur Stream:** for people who want to engage and carry out entrepreneurial activity in Australia.

## **B. NOMINATIONS AND INVITATION TO APPLY**

### **B.1. BUSINESS INNOVATION, INVESTOR, SIGNIFICANT INVESTOR AND ENTREPRENEUR STREAMS**

Intending applicants need to first submit an expression of interest (EOI) via [SkillSelect](#). After getting an invitation to apply, the applicant is to approach the Australian state government for a nomination. When nominated, the applicant then applies for the visa from the Department of Home Affairs. An EOI is not an application for a visa. An application for the visa can only be lodged within 60 days after an invitation to apply has been received. The visa application will be rejected if the nominating government agency (the state government) withdraws their nomination after the applicant applies.

An invitation would be received at any time in the two years following submission of the EOI. If the potential applicant does not receive an invitation after two years of submitting their EOI, they will need to submit a new EOI if they still want to apply (as the former EOI would expire).

### **B.2. PREMIUM INVESTOR STREAM**

The Premium Investor Stream was introduced for the purpose of attracting a small number of highly talented and entrepreneurial individuals who can translate those skills and talents into areas which deliver a long-term economic benefit in Australia. Accordingly, this stream is only available to those who submit an EOI and receive a nomination from Austrade (and not any other government agency). If Austrade withdraws their nomination, the visa will not be granted.

## **C. VISA REQUIREMENTS AND OBLIGATIONS**

All applicants (along with their families) must meet the health and character requirements under the visa. There are also additional requirements for each visa stream which must be met by the applicants.

### **C.1. BUSINESS INNOVATION STREAM**

The applicant must:

- Be under 55 years of age, although a state or territory can waive this requirement if the proposed business will be of exceptional economic benefit to the nominating state or territory.
- Score at least 65 on the points test at the time of invitation to apply (see page 4).
- Have business ownership:
  - ⇒ For two out of the four fiscal years immediately before receiving the invitation to apply, have had an ownership interest in an established business or businesses that had at least \$500,000.00 turnover in each of those years.
  - ⇒ Of the business/es with ownership stake, own at least:
    - \* 51%, if the business has a turnover of less than \$400,000 per year;
    - \* 30%, if the business has a turnover of \$400,000 or more per year; or
    - \* 10%, if the business is a publicly listed company.
  - ⇒ If the nominated main business provides professional, technical or trade services, the applicant must have spent no more than half the time providing those services, as opposed to general management of the business.
- Have a total net business and personal assets of at least \$800,000.00. These assets must be lawfully acquired and available for legal transfer to Australia within two years of the visa being granted.
- Have an overall successful business career.
- Have a substantial ownership stake in a business in Australia (while being the holder of the visa) and take part in its day-to-day management.
- Have a genuine desire to continuously own and maintain a management role in a business in Australia.

### C.2. INVESTOR STREAM

The applicant must:

- Be under 55 years of age, although a state or territory can waive this requirement if the proposed investment will be of exceptional economic benefit to the nominating state or territory.
- Score at least 65 on the points test at the time of invitation to apply (see page 4).
- For at least one of the five fiscal years immediately before the invitation to apply have directly managed either a qualifying business with at least 10% ownership interest or owned at least \$1.5 million in eligible investments.
- During the two fiscal years immediately before the invitation to apply, have legally acquired net business and personal assets of at least \$2.25 million that are available for legal transfer to Australia within two years of the visa being granted.
- Make a designated investment of at least \$1.5 million in a state or territory government of the nominating government agency using unencumbered funds accumulated from qualifying businesses or eligible investments
- Be prepared to hold the designated investment for at least four years from date of issue in the nominating state or territory.
- Have a high level of management skill in relation to the eligible investment or qualifying business activity.
- Have at least three years' experience of direct involvement in managing one or more qualifying businesses or eligible investments.

- Have an overall successful record of eligible investment or qualifying business activity.
- Have a genuine and realistic commitment to continuing the business and investment activity in Australia after the original investment has matured.
- Have a genuine intention to live in the state or territory in which the designated investment is made for at least two years.

### C.3. SIGNIFICANT INVESTOR STREAM

The applicant must:

- Must make a complying significant investment of at least \$5 million over four years, which must be invested in the following manner:
  - ⇒ At least \$500,000.00 in eligible Australian venture capital or growth private equity (VCPE) fund(s) investing in start-up and small private companies;
  - ⇒ At least \$1.5 million in an approved managed funds that invest in emerging companies listed on the Australian Stock Exchange (ASX); and
  - ⇒ A 'balancing investment' of at least \$3 million in managed funds that may be invested in a combination of assets that include ASX-listed companies, Australian corporate bonds or notes, annuities and commercial real estate.
- Maintain and hold their complying significant investment for the duration of the provisional visa. The visa holder can switch between complying investments or between complying significant investments provided that:
  - ⇒ Funds withdrawn from an investment are reinvested into other applicable complying investments within 30 days.
  - ⇒ The sum withdrawn corresponds with the sum reinvested (irrespective of any gains and losses due to market exposures).
- Have a genuine and realistic commitment to:
  - ⇒ Reside in the state or territory of the nominating agency.
  - ⇒ Continue business and investment activity in Australia after the end of the provisional visa.
- Live in Australia for at least 40 days per year (calculated cumulatively) for the duration of the provisional visa, or the applicant's partner to live in Australia for at least 180 days per year (calculated cumulatively) for the duration of the provisional visa.

### C.4. PREMIUM INVESTOR STREAM

The applicant must:

- Have net assets of at least \$15 million that are legally acquired, unencumbered, and available to be used to make a complying premium investment in any of the following options:
  - ⇒ Australian securities exchange listed assets;
  - ⇒ Australian government or semi-government bonds or notes;
  - ⇒ Corporate bonds or notes issued by an Australian exchange listed entity (or wholly owned subsidiary of the Australian listed entity), investment grade rated Australian corporate bonds or notes rated by an AFS licenced debt rating agency;
  - ⇒ Australian proprietary limited companies;

- ⇒ Real property in Australia (excluding residential property);
- ⇒ Deferred annuities issued by Australian registered life companies; and/or
- ⇒ State or territory government approved philanthropic contribution.
- Have a genuine and realistic commitment to continue the business and investment activity in Australia.
- Maintain and hold their \$15 million investment for at least 12 months.

### C.5. ENTREPRENEUR STREAM

The applicant must:

- Be under 55 years of age, although a state or territory can waive this requirement if the proposed investment will be of exceptional economic benefit to the nominating state or territory.
- Be undertaking (or proposing to undertake) a complying entrepreneur activity in Australia. The complying entrepreneur activity must be an innovative idea that will either lead to the:
  - ⇒ Commercialisation of a product / service in Australia; or
  - ⇒ Development of an enterprise or business in Australia.
- Have one or more legally binding agreements to receive funding of at least \$200,000.00 from one of the following:
  - ⇒ Federal government agency
  - ⇒ State or territory government agency
  - ⇒ Publicly funded research or innovation organisation
  - ⇒ Recognised higher education provider
  - ⇒ Investor registered as an Australian Venture Capital Limited Partnership or Early Stage Venture Capital Limited Partnership
- Receive 10% of the funding for the entrepreneurial activity within 12 months of beginning the activity in Australia.
- Have a business plan for the entrepreneurial activity, showing how the innovative idea will lead to either the:
  - ⇒ Commercialisation of a product / service in Australia; or
  - ⇒ Development of an enterprise or business in Australia.
- Have held a minimum 30% interest in the entrepreneurial activity when the agreement/s for funding were entered into.

### D. VISA DURATION AND FAMILY MEMBERS

The provisional visa is valid for four years and three months from the date it is granted (with extensions available subject to certain conditions). If the visa expires and an extension is not granted, then a new visa needs to be applied for.

Under this visa, applicants can include members of the 'family unit' in their application. Eligible family members include:

- The spouse or de-facto partner of the applicant
- A child of the applicant or their partner, who is not married, engaged or in a de-facto relationship and who is:
  - ⇒ Under 18 years of age;
  - ⇒ Aged between 18 to 23 and dependent on the applicant or the applicant's partner; or
  - ⇒ Aged 23 years or older and dependant on the applicant or the applicant's partner because due to a physical or mental disability.
- A dependent child of the applicant or the applicant's partners child.

Family members wishing to be included into the application must meet the health and character requirements.

### E. PERMANENT VISA UNDER SUBCLASS 888

The holder of the provisional visa may be eligible to be granted a Business Innovation and Investment (Permanent) visa (subclass 888). Holders of the provisional visa can apply once they:

- Have been in Australia for at least one year in the two years under the Business Innovation stream
- Have been in Australia for at least two years in the four years under the Investor stream.
- Have been in Australia for a minimum of 40 days per year and for the applicant's partner a minimum of 180 days per year under the Significant Investor stream.
- Have held the provisional visa for a minimum of one year under the Premium Investor stream.
- Have been in Australia for at two years in the four years under the Entrepreneur stream.

The visa holder must also have met all the obligations of the provisional visa (subclass 188) and all the requirements of the permanent visa (subclass 888) to successfully be granted this visa.

More information about the requirements and obligations of the provisional and permanent visas can be found on the [Department of Home Affairs website](#).

## CONTACT US



**Points Test under the Business Innovation Stream and Investor Stream**

Factor	Description	Points
<b>Age</b>	18-24 years	20
	25-32 years	30
	33-39 years	25
	40-44 years	20
	45-54 years	15
	55 and older	0
<b>English language ability</b>	Vocational English	5
	Proficient English	10
<b>Qualifications</b>	Australian trade certificate, diploma or bachelor degree by an Australian education institute; or  a bachelor qualification recognised by an education institution of a recognised standard	5
	Bachelor degree in business, science or technology by an Australian institution; or a bachelor qualification by an education institution of a recognised standard	10
<b>Special endorsement</b>	The nominating state or territory government agency could decide that your proposed business is of unique and important benefit to the state or territory where the nominating government agency is located	10
<b>Financial assets</b>  Net business and personal assets of you, your partner or you and your partner combined in each of the preceding two years of at least:	\$800,000	5
	\$1.3 million	15
	\$1.8 million	25
	\$2.25 million	35
<b>Business turnover</b>  Annual turnover in your main business during a period of at least two years of the preceding four fiscal years of at least:	\$500,000	5
	\$1 million	15
	\$1.5 million	25
	\$2 million	35
<b>Business experience (Business Innovation Stream only)</b>  You have held one or more businesses before you	Not less than four years within the preceding five years	10
	Not less than seven years within the preceding eight years	15
<b>Investor experience (Investor stream only)</b>  Eligible investment of at least \$100,000 held for:	At least four years before the time of invitation to apply for the visa	10
	At least seven years before the time of invitation to apply for the visa	15
<b>Business innovation qualifications</b>  At the time of invitation to apply for the visa	Evidence of registered patents or registered designs	15
	Evidence of registered trademarks	10
	Evidence of formal joint venture agreements	5
	Evidence of export trade	15
	Evidence of ownership interest in a gazelle business	10
	Evidence of receipt of grants or venture capital funding	10
<b>State or territory nomination</b>	Special endorsement	10