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When community behaviour presents as a corruption risk factor – CALD business migrant bribery

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What is the problem?

The ICAC is concerned about the level of bribery by CALD business migrants. Of the 34 investigation reports produced since 2006, 19 can be considered to have a migrant dimension including bribery, exploitation and collusion.

Five of these turned into public inquiries and involved the bribery of a public official for the purpose of influencing decisions. These public inquiries also involved recently arrived business migrants.

New South Wales welcomes business migrants who plan to set up a business or invest in NSW.

Most business migrants enter NSW initially on a Provisional (Temporary Residence) visa for two to four years and then apply for a Permanent Resident visa.

Business migrants who meet the selection criteria can also apply to the State & Regional Development and Tourism division of the NSW Department of Trade and Investment for State sponsorship of their visa application.

Applicants must then apply to the Commonwealth Department of Immigration and Citizenship (DIAC) for visa approval.

Under the STATE/TERRITORY SPONSORED BUSINESS OWNER (PROVISIONAL) VISA SUB CLASS 163ⁱ individuals need to meet the following Department of Immigration and Citizen criteriaⁱⁱ

1. For at least 2 of the 4 fiscal years immediately before the application is made, you had an ownership interest in a main business, or main businesses that had an annual turnover of at least \$A300,000.
2. Your (or you and your spouse's combined) business and personal assets have a net value of at least \$A250,000 which are available for the conduct or establishment of a business in Australia and are lawfully acquired and available for transfer to Australia within 2 years of the grant of a State/Territory
3. Sponsored Business Owner (Provisional) visa.
4. You have not engaged in a business where provision of professional, technical or trade services took up more than 50% of your time.
5. You have a realistic commitment to establish or participate in a qualifying business in Australia and maintain a substantial ownership and direct and continuous involvement in management of that business.
6. You have demonstrated that there is a need to be temporarily in Australia to conduct or establish the proposed business activity.
7. Neither you nor your spouse have a history of involvement in business or investment activities that are of a nature that is not generally acceptable in Australia.

NSW Criteria

1. You must demonstrate that you meet the Commonwealth Department of Immigration and Citizenship (DIAC) criteria for the business skills visa sub class for which you are applying by providing sufficient documentary evidence to prove eligibility.
2. You are aged less than 55 years at time of application.
3. You must provide a full resume of your business career and responsibilities demonstrating a successful business career. If your spouse will be the primary applicant for a NSW Sponsored Business Owner (Residence) visa sub class 892 then he/she must also submit a full resume demonstrating a successful business career.
4. You must provide a business commitment for a profitable business in NSW consistent with your business skills and experience demonstrating research of the Australian market by yourself during one or more visits to NSW for this purpose within the last 12 months.
5. You must attend an interview with NSW officials to outline your business career and experience, your business commitment and personal migration plan.
6. You must provide evidence of the availability of funds for settling and living expenses for not less than 1 year.
7. If DIAC have previously refused to grant you a business skills or business employment visa, or has cancelled your business skills or business employment visa, NSW may not sponsor you for a provisional visa unless you can show extraordinary mitigating circumstances.

The business skills visa provides a two stage process whereby migrants arrive initially on a provisional (temporary) visa generally valid for four years.

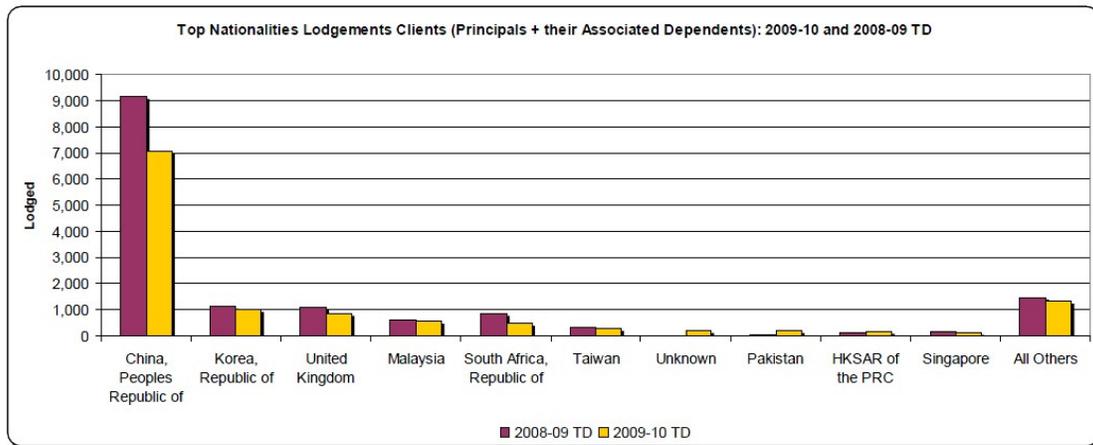
Criteria for state- or territory-sponsored provisional visa holders are lower than for the independent visa options, for example:

- **No English language skill is required.** If you are not being sponsored then you would apply under visa 160 where you must have a vocational level of English. To show this you must have one the following: have evidence you are a native English speaker or undertake the International English Language Testing System (IELTS). You need to take the general training test, and must achieve a band score of at least five from a maximum of nine, for all four components of the test; speaking, reading, listening and writing. (Your IELTS test results may not be more than 12 months old when you apply)
- **Additional payment:** If the sponsored applicant does not have vocational English then they are required to pay \$7,165
- **Higher age-limit.** Max 55 years old as opposed to max 45 years old if applying under the non-sponsored visa
- **Less annual turnover of mail business** - \$300,000 as opposed to \$500 000 under the non-sponsored visa.
- **Less total net value of assets:** \$250 000 as opposed to \$800 000 under the non-sponsored visa

The criteria for a sponsored business visa are much easier with the only draw-back being the additional \$7k if you don't have English proficiency.

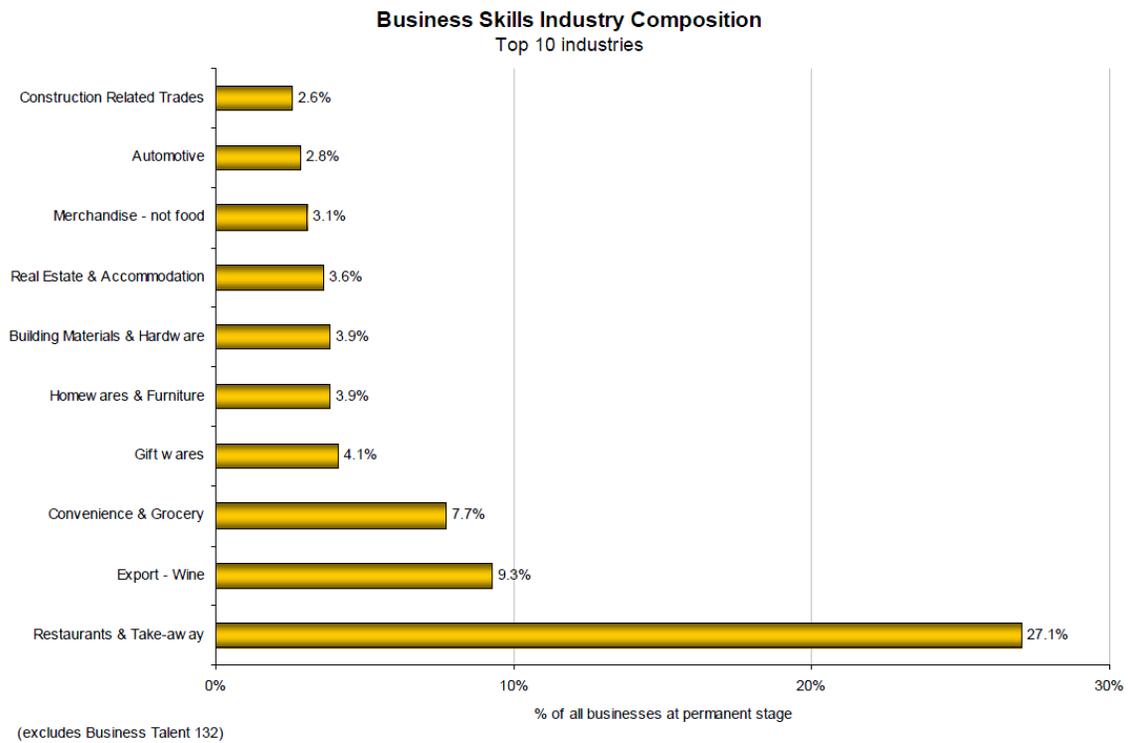
The largest population of Business Migrants in the last few years have come from China.

Figure 1. The chart below illustrates the lodgements of the top ten source countries for Business Skills visa in the 2008-09 and 2009-10 program yearsⁱⁱⁱ



The figure below indicates the business skills industries composition between July 2009 and October 2010. ^{iv}

Figure 2

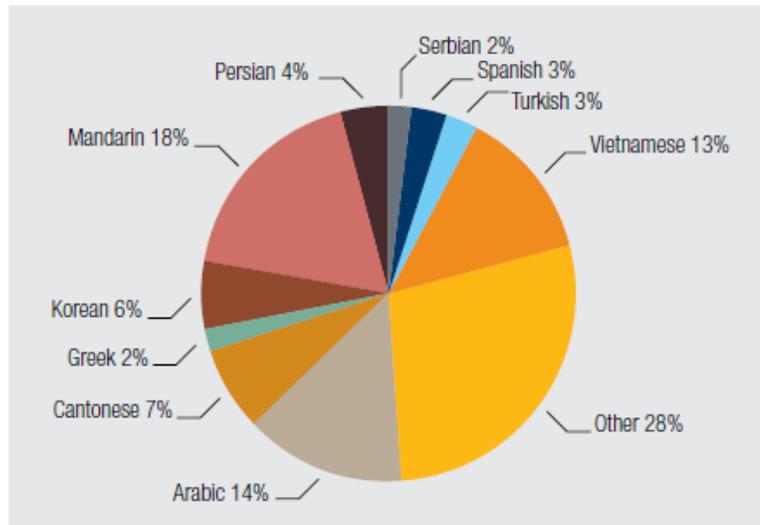


One of the characteristic of Chinese settlers into Australia is that this population has a low proficiency in English compared to some other population groups.

During the periods 1/1/06-1/1/09 there were 67, 439 settlers from the China Peoples Republic. Of this amount 12,630 were listed as poor English proficiency, 8961 as nil and another 32714 as not recorded^v.



Fig. 7-5: Main languages used by interpreters (on site and phone) as a percentage, 2008–09



Source data: TIS National statistics

POPULATION FLOWS—IMMIGRATION ASPECTS, P117 POPULATION FLOWS: IMMIGRATION ASPECTS 2008-09 EDITION

TIS National received a record number of more than one million calls to its contact centre in 2008–09. It also provided 716 784 telephone interpreting services, 16 per cent more than in 2007–08. The main languages used by interpreters in 2008–09 generally reflected those used in 2007–08

Once a provisional visa holder is able to demonstrate satisfactory evidence of a specified level of business or investment activity, they may apply for permanent residence.

Pressure to achieve the business or investment activity level needed to attain permanent residency provides motivation to explore more expeditious (and possibly corrupt) processes particularly when slow government processes are encountered.

Whether people come as sponsored or not, there are certain pressures to establish a business quickly. Migrants are attracted to franchising as a way of qualifying for an Australian business visa. People enter franchising to benefit from the support systems in place and a strong brand, which would not be available in an independent operation.

Either way, any business will require certain communications, transactions and regulatory intervention with a public authority.

Poor English proficiency impairs the ability to become informed about the processes involved in gaining the services of government. In the absence of information about how to deal with government officials, decisions are more likely to be based on country of origin experience.

In summary:

Recent business visa arrivals:

- Have low proficiency in English
- Have both motivation and means to engage in bribery
- Have little awareness of likelihood of detection
- Have little awareness of the seriousness with which it will be treated
- Have little awareness of the potential consequences
- Have arrived from countries ranked further down in Transparency International's 2010 Corruption Perception Index
- Have business experience acquired from country of origin

ICAC research has indicates that for recent migrant arrivals, country of origin experience and English language proficiency are the two factors most frequently associated with likelihood to engage in corrupt conduct.

Case study 1: Strathfield Council

- A Korean businessman was in negotiation with council for a licence agreement
- Negotiations were protracted
- Businessman provided the General Manager with a Christmas card containing \$2,000
- The General Manager reported the gift to the ICAC
- ICAC investigated and made finding of corrupt conduct against the businessman

Case study 2: Warringah Council

- Two business owners were waiting for the Council to issue a building inspection approval of the Dee Why butchery business premises so that they could commence trading.
- Offered cash payments to two Warringah Council employees to facilitate the approval
- Council staff rejected the offer and reported the matter immediately.

Case study 3: Ku-ring-gai Council

- A Wahroonga property subdivision and development was being considered by council
- An employee of the property developer gave the Council officer heading the Engineering Assessment Team a pearl pendant and \$1,000
- The gifts were to induce the council officer to exercise her official functions favourably in respect of applications relating to the Wahroonga development
- The council officer reported the matter

Case study 4: Willoughby Council

- A Council building surveyor corruptly exercised his official functions
- Targeted various business owners in the Chatswood area in return for benefits, such as cash, gifts, free meals and free massages and sexual services.
- High concentration of a business community from Chinese and Korean backgrounds seeking building approvals and other information such as liquor licences.
- Business people felt obligated as the public official went out of his way to help.
- Public official had limited supervision and had end to end control of the fast track process.

The Commission's view of this matter was that there was a lack of information about the Council's approval processes to the end user. This provided an opportunity for someone like Mr Karkowski, the building inspector who was not adequately supervised, who was a lone operator, to solicit gifts, benefits and hospitality, particularly among non-English speaking business operators in the Chatswood CBD who were recent migrants to Australia.

These migrant business operators would, in the absence of independent information, have been reliant on Mr Karkowski to explain and interpret the Council's approval processes and what they needed to do to operate their businesses. Mr Karkowski was aware of this and he used his power as a Council officer and his offer of additional services to secure gifts, benefits and hospitality. Mr Karkowski's success in this regard was assisted by his knowledge that migrant business owners in the Chatswood CBD were more susceptible to giving gifts to public officials.

What is being done about it?

- Councils have been asked to provide information in multiple languages in business contexts
- Information has been inserted in arrival material
- Submission was made to the review of the business visa
- Partnership with NSW Community Relations Commission to inform arrivals

As educators or professionals whose role it is to prevent corrupt conduct from occurring in the workplace, we need to understand the problem in all its elements in order to design, develop and implement effective strategies to reduce corrupt conduct in a high risk community group.

When analysing the make-up of a particular community such as the Business Migrant, we get a more informed understanding of the risks of corrupt conduct occurring. We are also able to identify new partners who can provide strategic inroads towards the education process for those at risk.

For this population group:

- NSW Trade and Investment – responsible for the sponsoring program
- Department of Immigration and Citizenship – incorporating messages in their *Life in Australia* publication
- Migration Institute of Australia - the peak representative body for the Australian migration advice profession.
- Office of the Migration Agents Registration Authority – registration agency for migrant agents and is also responsible for the Code of Conduct for Migration Agents
- Providers of the Graduate Certificate in Australian Migration Law and Practice – course which enables individuals to practice as a migration agent

In this paper I have provided you with the ICAC’s experience of how community behaviour can present itself as a corruption risk factor. In doing so, the ICAC has been able to undertake new approaches in the communication of corruption prevention messages through non-traditional means. This includes linking to the communication channels of other services providers who may have better access to a particular community.

REFERENCES

ⁱ *This is a summary of DIAC's Business Owner criteria. Full details are available from in booklet 7 "Business Skills Entry" (publication number 1132) published by DIAC.*

ⁱⁱ http://www.business.nsw.gov.au/_data/assets/pdf_file/0017/6281/163_criteria_20110829.pdf

ⁱⁱⁱ Department of Immigration and Citizenship: Discussion Paper: Review of the Business Skills Visa Program, Australia Government, p6, 2010

^{iv} Department of Immigration and Citizenship: Discussion Paper: Review of the Business Skills Visa Program, Australia Government, p7, 2010

^v See: Australian Govt DIC – Settlers by Country of Birth (settlement) by English proficiency – Period 1/1/06-1/1/09 – People our business