



Submission to the Productivity Commission's Review of Australia's Migrant Intake June 2015

INTRODUCTION

This submission is from Oz Kiwi to the Productivity Commissions' (the Commission) review of Australia's intake of temporary and permanent entrants into Australia. Oz Kiwi thanks the Commonwealth Government for the opportunity to submit to this inquiry. The submission will focus on the visa status of New Zealand citizens residing long term in Australia, and consequences of the 26 February 2001 changes.

Oz Kiwi is the peak body representing New Zealanders in Australia, campaigning to provide a fair pathway to Australian citizenship and overturn the laws that have stripped post 26 February 2001 arrivals of their basic rights.

As the Commission's *Issues Paper* states, a considerable number of New Zealand citizens arrive in Australia each year, they make up the largest Net Overseas Migration (NOM) group coming to Australiaⁱ. It is difficult to gauge exactly how many New Zealanders are impacted by the February 2001 changes to the Special Category Visa (SCV)ⁱⁱ.

The SCV is temporary and cancelled each time the holder exits Australia, it is reinstated when they return to Australia to satisfy the TTTAⁱⁱⁱ requirements. The Department of Immigration & Border Protection (DIBP) figures at 30 September 2014 recorded 657,210 New Zealand SCV-holders were in Australia. These figures are arbitrary given that some arrivals are here on holiday or business and are not settling permanently.

The DIBP figures at October 2013 recorded there are about 640,000 New Zealanders in Australia. It is estimated that 60 percent of those have no pathway to a permanent visa. McMillan & Hamer (2013) suggest that DIBP's figure is an under-estimation with only 15,000 non-protected SCV-holders gaining a permanent visa, the remaining 185,000 (92 percent) non-protected SCV-holders having no fair pathway to citizenship.

BACKGROUND

The real disadvantage to those New Zealand citizens moving to Australia [since 26 February 2001] is they arrive on a 'temporary' albeit indefinite visa; one that allows them to reside in Australia indefinitely, but provides no pathway to Australian citizenship. The SCV is only allocated to New Zealand citizens and all new arrivals, being they holidaymakers, business travellers or permanent migrants are granted the same visa.



BENEFITS TO THE AUSTRALIAN ECONOMY

New Zealanders have always had a high workforce participation rate in Australia as the following data from DIPB (2013) illustrates:

New Zealanders in the labour market

New Zealand citizens have a high labour-force participation rate (78.2 per cent at July 2012) compared with those born in Australia (68.0 per cent). At July 2012, people born in New Zealand had an unemployment rate of 4.8 per cent, compared to 4.9 per cent for people born in Australia.

Moreover, the tax revenues from New Zealanders working in Australia more than compensates the Australian government for any payments made to New Zealanders as the following data from Peter Mares (2014) illustrates:

In Archives New Zealand in Wellington, I came across a 1989 file note in which the New Zealand High Commission guesstimated that for every \$1 in unemployment benefits paid to New Zealand citizens^v, the Australian government received more than \$10 in tax revenues from New Zealanders who were working. A\$1 billion in social security outlays for New Zealanders was counterbalanced by A\$2.5 billion in tax revenues.

Some Skilled Occupation List (SOL) roles, for example in the mining industry, have been removed as they are being filled by New Zealanders who do not need to be sponsored by an employer to work in Australia.

UNINTENDED CONSEQUENCES

The unintended consequences resulting from the 26 February 2001 changes have seen inter-generational disadvantage and financial hardship, given they cannot access social security support.

The 26 February 2001 changes can also impact on Australian citizens who are part of a 'blended' family, where one partner is a New Zealander and the other Australian. An Australian citizen married or in a de facto relationship with a non-protected^v SCV-holder is not eligible for a carer's pension to care for their New Zealand citizen partner should their partner suffer illness or disability. Often the Australian citizen must continue to work to support the family during an emotional and stressful time.

Australian citizen children can be left vulnerable after a relationship breakdown or due to family violence, if their non-protected SCV [Mother] is not eligible for financial support or able to access women's refuges. They are often unable to return to New Zealand, where they may be able to receive financial assistance and the support of their family. They cannot take their children out of country without the father's consent due to the Hague Convention.

National Disability Insurance Scheme (NDIS)

All New Zealanders working in Australia pay taxes along with the NDIS levy, however to claim any support from the NDIS you must be a permanent resident (as defined in Immigration legislation) or an Australian National Disability Insurance Scheme (NDIS) Act (2013). Examples include the above detailed sick or injured scenario partner, or where a child born disabled to two New Zealand citizens will not become a citizen until their tenth birthday [if at all given their health and/or disability issues] and is thus excluded from necessary NDIS support.

HECS-HELP student loans

New Zealanders have been denied access to the loan scheme for tertiary study since 2005 Under the *Higher Education Support Act (2003)* eligibility is limited for HECS-HELP loans to Australian citizens and permanent humanitarian visa holders (since 2005). Unlike holders of 'permanent' visas, SCV-holders are unable to apply for Australian citizenship to gain access to this loan programme.



New Zealanders barred from the Australian Defence Forces (ADF)

New Zealand citizens are denied entry to the Australian Defence Forces unless they are also an Australian citizen, even if they are/have been serving in the New Zealand military. This is in contrast to Australians who can enter the New Zealand Defence Force (NZDF) by virtue of their being granted automatic permanent residency of New Zealand upon entry into New Zealand on a valid Australian passport.

POLICY OPTIONS FOR CITIZENSHIP

Outlined below are two policy options for providing a fair pathway to citizenship for New Zealand SVC-holders.

Option 1 - Full reversal of the 2001 changes

The most satisfactory way to rectify the damaging and disadvantageous impact of said changes is to reverse the temporary and non-protected status of the SCV. Amend Regulation 5.15A of the Migration Regulations (Cth) to define the SCV as a 'permanent visa' and amend the Social Security Act (as per clause 2.7).

New Zealand citizens who migrate to Australia will:

- (a) *have access to social security after serving the NARWP; and*
- (b) *be eligible to apply for Australian citizenship after four (4) years of demonstrating that at the time of applying for Australian citizenship the applicant has:*
 - (i) *ordinarily been domiciled in Australia; and*
 - (ii) *has no criminal convictions in New Zealand or Australia.*

This policy change is simple and easy to implement, and will only require an amendment to Regulation 5.15A Migration Regulations 1994 and Section 7i of the Social Security Act 1991.

Option 2 - Simple residency process

As an alternative to full reversal of the February 2001 changes, enable New Zealanders who have resided in Australia for three (3) continuous years, immediately before applying, to be eligible to apply for a permanent visa^{vi} by:

- (a) paying a nominal application fee [see Entry Charge section on page 3]; and
- (b) demonstrating they intend to usually reside in Australia; and
- (c) providing evidence of substantial business, cultural, employment or personal ties of benefit to Australia; and
- (d) providing evidence they have no criminal convictions.

As with all other permanent residents, New Zealanders would still be required to serve a Newly Arrived Resident's Waiting Period (NARWP)^{vii} for access to social security. The NARWP could either commence upon arrival in Australia OR once granted permanent residency. Currently an estimated 200,000 New Zealanders are permanently excluded from any financial support.

Entry charge option

Oz Kiwi is opposed to any suggestion of an entry charge for migrants as the primary basis for the selection of migrants. Other considerations such as health, character and security, the right to work and having access to subsidised education, housing or healthcare are all supported.

By setting a nominal application fee of between \$350 and \$400 more New Zealanders would be likely to take up permanent residency as it is an affordable and simple process, similar to the Resident Return Visa that former permanent residents can apply for. If the cost was set too high, say between \$3,000 and \$4,000, far fewer individuals and families could afford the cost and many would see it as



unjustifiable given they are already able to remain living and working in Australia indefinitely on the SCV. Such a situation leaves them vulnerable to the unintended consequences outlined above.

Australian citizens arriving into New Zealand are exempted from needing a residency permit and are only required to pay a \$450 fee^{viii} to apply for citizenship.

Oz Kiwi would point out that since 2005 it takes five (5) years^{ix} to gain New Zealand citizenship and would take a similar period of time to then gain Australian citizenship. The *Issues Paper's* assertion that entering Australia having previously taken out New Zealand citizenship with the intention of moving to Australia constitutes a 'loophole' is disingenuous and disregards the modern global highly mobile workforce and the multitude of reasons a person may immigrate to New Zealand then subsequently decide to immigrate to Australia. These may include family connections, career advancement, or looking for new challenges or personal development.

Oz Kiwi would strongly advise not placing other nationalities or temporary visa holders on the same restrictions as the SCV given the detrimental and damaging outcomes it can cause.

RECOMMENDATIONS

Oz Kiwi fully endorses the recommendations of the joint Productivity Commissions of Australia and New Zealand^x (2012). As detailed in the section, Policy Options for Citizenship, developing alternative pathways to Australian permanent residency and/or citizenship would mitigate any possible hardship faced by a growing number of non-Protected SCV holders.

Oz Kiwi recommends amending sections 30 and 32 of the Migration Act 1958 to classify the SCV as a permanent visa. By changing the definition here, SCV holders would become 'residents'/permanent residents' under all other legislation and regulations, including the Migration Regulations 1994. There would then be no need to amend the regulations and other legislation other than for the purpose of tidying up by removing what would then be superfluous references to SCV holders or protected SCV holders.

The most effective way to rectify the damaging effects of the 2001 changes would be to remove the classification of the indefinite SCV as a 'temporary visa'. This could be achieved amending ss. 30 and 32 of the Migration Act 1958, so that the SCV would no longer be labelled a 'temporary visa' and would instead fall under the definition of 'permanent visa'.

This would have the effect of ensuring that SCV holders would be consistently captured under the definitions of 'permanent visa holder', 'permanent resident', 'Australian permanent resident', and 'resident' and a variety of similar terms used in Commonwealth and state legislation.

This simple reclassification would do away with any immediate need to amend multiple pieces of legislation that have been amended or passed in the years since 2001. In most cases, the only reason for pursuing amendments to these and other acts would be for the sake of tidying up by removing superfluous references to SCV holders in addition to references to permanent visa holders.



CONCLUSION

The unintended consequences resulting from the 26 February 2001 changes have seen inter-generational disadvantage and financial hardship. Among the penalties impacting New Zealanders arriving in Australia post 26 February 2001 include exclusion from:

- Accessing the National Disability Insurance Scheme (NDIS)
- Unable to obtain HECS-HELP student loans
- Barred from entry to the Australian Defence Forces (ADF)
- Cannot access Centrelink pensions and other social security support

Oz Kiwi makes the following recommendations:

- Amend Regulation 5.15A of the Migration Regulations (Cth) to define the SCV as a 'permanent visa' and amend the Social Security Act (as per clause 2.7).
- Enable New Zealanders who have resided in Australia for three (3) continuous years to be eligible to apply for a permanent visa by paying a nominal application fee.
- Amend sections 30 and 32 of the Migration Act 1958 to classify the SCV as a permanent visa.
- Remove the classification of the indefinite SCV as a 'temporary visa'.

The above recommendations would do away with any immediate need to amend multiple pieces of legislation that have been amended or passed in the years since 2001. In most cases, the only reason for pursuing amendments to these and other acts would be for the sake of tidying up by removing superfluous references to SCV holders in addition to references to permanent visa holders.



REFERENCES

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<http://www.productivity.govt.nz/sites/default/files/13-trans-tasman-supplementaryd.pdf>

EXPLANATORY NOTES

- ⁱ Table 5, *Migrant Intake into Australia* report (2015), Movements of New Zealand citizens are not counted as part of Australia's annual immigration program and account for most arrivals in the 'other movements' category.
- ⁱⁱ Special Category Visa (SCV) (subclass TY444) is only allocated to New Zealand citizens who arrive in Australia on a valid New Zealand passport. The SCV allows New Zealand citizens to live and work in Australia indefinitely however it has no pathway to permanent residence nor citizenship. It is temporary and lapses when the holder exits Australia. Upon re-entry the New Zealand citizen will be issued automatically with a new SCV.
- ⁱⁱⁱ Trans-Tasman Travel Arrangements (TTTA), established in 1973, allowing all Australian and New Zealand citizens and permanent residents to move freely across the Tasman to visit, work, study, and reside.
- ^{iv} It must be noted that since the 26 February 2001 changes most New Zealanders arriving in Australia will not be eligible for any social security support from Centrelink given the temporary status of the SCV. See Department of Immigration and Border Protection (2013). *Fact Sheet 17 – New Zealanders in Australia*, <http://www.immi.gov.au/media/fact-sheets/17nz.htm>
- ^v New Zealand citizens in Australia on or before 26 February 2001 were grandfathered, and remain entitled to access Social Security pursuant to Section 7 of the *Social Security Act (1991)*.



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- vi Such an application form would need to be drafted by the DIBP.
- vii The Newly Arrived Resident's Waiting Period (NARWP) refers to the usually 104 week stand down period that applies before a resident is eligible for any Centrelink payment.
<http://www.humanservices.gov.au/customer/enablers/newly-arrived-residents-waiting-period>
- viii The New Zealand Department of Internal Affairs Citizenship Fees and Charges
http://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Citizenship-Citizenship-Fees-and-Charges?OpenDocument
- ix DIBP estimated in 2011 that there were 100,000 to 144,000 post 26 February 2001 arrivals; in 2012 this number was estimated at 200,000. Due to the same TY444 visa being issued to holidaymakers and business travellers here for a short visit and those who permanently settle (remain) in Australia it is difficult to accurately gauge the number of affected post 26 February 2001 New Zealanders.
- x **Productivity Commissions of Australia and New Zealand**

In 2012, the Productivity Commissions of Australia and New Zealand completed their joint report, 'Strengthening economic relations between Australia and New Zealand'. They found that Australia's policies towards New Zealand citizens were unreasonable and unjustified and recommended that Australia change its policies in this regard.

The following quotations are taken from Supplementary Paper D of the report:

p 41-2 - "In summary, developing alternative pathways to Australian permanent residency and/or citizenship would provide one approach to remedying the potential for hardship faced by a growing number of non-Protected SCV holders. Moreover, an alternative pathway would provide the right to vote in Australia's electoral system for these 'indefinite temporary' residents.

p 43 - "Access of New Zealand citizens to Australian tertiary education and vocational education and training should be improved through the provision of student loans. Access should be subject to an appropriate waiting period and debt recovery arrangements."

p. 45 Equal treatment — subject to relevant waiting periods or other initial conditions, individuals should have the same rights and obligations as citizens or permanent residents

Despite frequently expressed Australian fears of 'backdoor migration' via New Zealand, the Productivity Commissions found these concerns to be largely unjustified. They suggested further harmonisation of migration policies was possible, however, concluded this was less important than resolving issues surrounding the treatment of New Zealand citizens by Australia, indicating it was a matter that could be considered in the medium term.

Significantly, the Productivity Commissions advised that Australia should implement their recommendations regarding the treatment of New Zealand citizens in the short term [author's emphasis]. Given the report was released three years ago, successive Governments' inaction means change is well overdue.