



# Migration Review

A migration system for Australia's future

December 2022

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## TABLE OF CONTENTS

1.	Introduction.....	2
2.	Background .....	2
3.	Temporary residents .....	3
4.	Eligibility for permanent residence .....	3
5.	189 visa permanent visa for New Zealanders.....	3
6.	Newly Arrived Residents Waiting Period.....	4
7.	Partner and Child Visa Fees .....	4
8.	Issues facing New Zealanders resident in Australia .....	4
9.	Recommendations .....	6
10.	Definitions and Interpretation .....	7



## 1. INTRODUCTION

- 1.1 Oz Kiwi thanks the Australian Government for this opportunity to submit on the review of Australia's migration system. Oz Kiwi is the peak advocacy body for the rights of New Zealanders in Australia and has worked to educate and advocate for a fair and affordable pathway to citizenship for New Zealanders who call Australia home.
- 1.2 This submission will focus on the impact for New Zealander long term residents of Australia of residing on the 'temporary' TY444 special category visa. New Zealanders are negatively impacted by their temporary visa status and are barred from certain industries such as academia, Australian Defence Force or Federal government work.
- 1.3 The TY444 Special Category Visa (SCV) that all New Zealanders are granted when they first enter Australia allows them to live and work here indefinitely. However, the SCV has no pathway to permanent residence (PR) or citizenship. An SCV holder must first apply for and be granted a permanent visa to gain citizenship.
- 1.4 Oz Kiwi acknowledges the review of the rights of New Zealanders in Australia, announced in July 2022, plus the positive statements on the subject from Prime Ministers Albanese and Ardern since the Australian Labor Party (ALP) came to office in May 2022. Our discussions with the current Government are very encouraging and we look forward to the findings of that review.
- 1.5 Oz Kiwi welcomes the new ALP Government provision of much-needed resourcing for additional processing staff to address the enormous backlog of visa and citizenship applications they inherited on gaining office. Additionally, the October Budget announcement of additional funding to process the 11,700 New Zealand Stream 189 Visa (NZ 189 Visa) applications currently on hand by ANZAC Day next year.
- 1.6 This submission will outline the key issues with the SCV, the detrimental impact the temporary nature of the visa has on New Zealander long-term residents of Australia and make recommendations to improve their status and pathway to Australian citizenship.

## 2. BACKGROUND

- 2.1 Since the introduction of the universal visa system in 1994 New Zealanders arriving in Australia have been granted a Special Category Visa (SCV). The SCV is a nationality-specific visa that allows New Zealand citizens to reside indefinitely in Australia. It has been included in both the repealed Australian Citizenship Act 1948 and the current Australian Citizenship Act 2007 ('the Act') as a visa that can fulfil permanent residence requirements, subject to ministerial declaration. However, since 2001 ministerial declarations have only extended 'permanent resident' status under citizenship law to certain SCV holders who were living in Australia by 26 February 2001.
- 2.2 The latest data from Department of Home Affairs recorded 675,027 New Zealand-born people in Australia. In the year to 31 August 2022 a net increase of 15,907 New Zealanders arrived in Australia. It is difficult to calculate the exact number of SCV holders residing long-term given all New Zealanders are granted the same visa regardless of whether they are travelling on holiday, here for business or taking up long term residence. There is a large cohort of SCV holders anywhere up to 350,000 who arrived post 26 February 2001 when the status of the SCV changed from permanent to temporary. This cohort is referred to as 'non-protected' SCVs as they have far fewer rights than the pre-26 February 2001 arrivals, referred to as 'protected' SCVs. While there is no difference in the visa they were granted, the latter group are considered PR while in Australia and eligible to apply for citizenship.



### **3. TEMPORARY RESIDENTS**

- 3.1 Oz Kiwi acknowledges the ALP's policy dating back to 2015 supporting a fair pathway to citizenship for all New Zealanders residing in Australia and ensuring that no migrant is permanently temporary. Since the Howard government changed the SCV in February 2001 to a temporary visa with no direct pathway to permanency there has been inequity between the rights of New Zealand citizens living in Australia compared to Australians living in New Zealand. The disadvantage and disenfranchisement created by the temporary SCV is inter-generational with the grandchildren of the original migrants now facing issues caused by their lack of a pathway to citizenship.
- 3.2 Peter Mares stated in his 2016 book on temporary workers in Australia 'Not quite Australian' that New Zealanders are the largest cohort of temporary residents in Australia. This group does not get included in any Department of Home Affairs statistics on temporary migration or residence. Of the total number of New Zealanders resident in Australia 17.4% had arrived between 2007 and 2011 and 14.4% had arrived between 2012 and 2016 [2016 Census]. Data from Census 2021 recorded 530,492 New Zealanders in Australia.
- 3.3 Both Australian Census data and Australian Productivity Commission research consistently show that New Zealanders as a cohort are highly skilled, qualified and have a higher workforce participation rate than even Australian-born workers. Each year thousands of Kiwis make the decision to move to Australia however many do not realise the limitations of the SCV they are granted automatically on arrival. That is, until they find themselves financially distressed or have a disabled child born in Australia.

### **4. ELIGIBILITY FOR PERMANENT RESIDENCE**

- 4.1 Prior to 1 September 1994 New Zealanders were granted a permanent visa and could simply apply for citizenship after the usual residency period if they met the health and character grounds. The fee for citizenship now sits at \$490 per adult applicant. Those arrivals between 1 September 1994 and 26 February 2001 are considered 'protected' SCV and to be PR while in Australia. This cohort can apply for citizenship if they meet the usual health and character grounds.
- 4.2 New Zealanders who resided in Australia prior to 1 September 1994 who then subsequently moved overseas can reinstate their former PR via the resident return visa (RRV) for the cost of \$425. Unlike other RRV's New Zealanders are granted a one-year travel capacity rather than the five-year capacity of other RRV holders unless they have already resided in Australia for two of the previous five years as PR. If a New Zealander travels outside of Australia beyond that 12-month travel capacity, without renewing their RRV, they will revert to the SCV and must reside for another 12 months as PR to be eligible for citizenship.

### **5. 189 VISA PERMANENT VISA FOR NEW ZEALANDERS**

- 5.1 Oz Kiwi acknowledges the Skilled Independent 189 (New Zealand) Stream has offered a pathway to permanent residency for New Zealanders since 1 July 2017. Figures obtained from Freedom of Information requests on Department of Home Affairs website report 11,017 NZ 189 visas granted between 01 July 2017 and 28 February 2022. There are also approximately 12,000 applications on hand. This is an extremely low take-up rate if approximately 350,000 of the 530,000 New Zealanders currently residing in Australia arrived post 26 February 2001.



- 5.2 The NZ 189 visa's cut-off date, income threshold and the high application fee leads to many New Zealanders being ineligible. The cost is particularly prohibitive for families. The fee for the primary applicant is \$4,240 plus \$2,020 for their partner and \$2,020 each dependent child aged 18 to 22 or \$1,060 each child aged under 18. Unlike other foreign nationals whose employer pays for visa applications, a New Zealander must cover the PR application cost for themselves and their family.
- 5.3 The NZ 189 visa's narrow eligibility criteria and high application fees have led to a low take-up rate. Oz Kiwi would welcome alternative PR pathways for New Zealanders resident in Australia or a review of the application fee which is a barrier for many would-be applicants. The fee should set at a cost recovery rate, like the Resident Return Visa (RRV) online fee of \$425 for adults or the Australian citizenship fee \$490 for an adult. Of course, it is important that 461 visa-holders, the foreign-national partner and children of an SCV, be included in any new visa or pathway to PR for New Zealanders in Australia.

**Recommendations:**

- Fees for a PR visa to be at cost recovery. For example, \$500 per adult applicant, \$300 per dependent child aged 18 to 23, and \$200 per dependent child under 18.
- Any new PR visa pathway should include 461 visa-holders.

**6. NEWLY ARRIVED RESIDENTS WAITING PERIOD**

- 6.1 Applicants for the NZ 189 visa must reside in Australia for five years prior to applying. In recognition of this, the time spent residing as an SCV should count towards New Arrived Residents Waiting Period (NARWP).

**Recommendation:** time spent residing as an SCV should count towards NARWP once granted the NZ 189 visa.

**7. PARTNER AND CHILD VISA FEES**

- 7.1 In recent years, the fees for permanent visas have increased exponentially; the partner sponsorship 801/820 visa in 2008 was set at \$1,390. Since then, it has grown to \$6,685 in 2015 and as of December 2022 the fee is \$8,085. This compares to \$4,900 for the partner sponsor visa in New Zealand.
- 7.2 New Zealanders who obtain PR via the RRV must then sponsor their partner and children if they are not eligible for the same visa. For a family this is a costly exercise with the partner fee \$8,085 and each child aged over 18 \$4,050 or child under 18 years costing \$2,025.

- 7.3 **Recommendation:** Fees for partner and child sponsorship should be at cost recovery.

**8. ISSUES FACING NEW ZEALANDERS RESIDENT IN AUSTRALIA**

- 8.1 The special circumstance of New Zealander SCV holders where they can reside in Australia indefinitely on a temporary visa must be taken into consideration when making policy reforms or legislative amendments regarding visa status or work rights. Because their visa is not time-limited, and they are not employer sponsored, New Zealanders are not impacted by their temporary visa status as might other temporary visa holders.
- 8.2 The Administration of the Immigration and Citizenship Programs Table 9 reveals New Zealanders are ranked seventh on the table for the number of people by nationality gaining Australian citizenship over the last five years, noting that New Zealanders were not counted toward the Migration Program outcome prior to 2017-18. Significantly, the introduction of the NZ 189 visa on 1 July 2017 created a pathway for a cohort previously locked out. In the proceeding



five years from 2017-18 to 2021-22 there were 5,295, 6,209, 4,997, 3,978 and most recently 4,421 citizenship grants to New Zealanders.

### **Employer sponsorship**

- 8.3 New Zealanders tend not to be sponsored for PR by an employer as they have the freedom of movement to travel between the two countries and can remain in Australia indefinitely. New Zealanders are often recruited into State Emergency Services (SES) sector or academia but are not offered a permanent [skilled] visa unlike other foreign nationals employed via the same path. Anecdotally, Oz Kiwi has learnt that New Zealanders working in universities are not having their contracts renewed as they are temporary workers and must be PR to apply or renew lecturer or research roles. For those migrants recruited to skilled professions and roles not having a direct pathway to PR or citizenship becomes a frustration the longer they and their family reside here. Australia risks losing highly qualified and skilled workers to other countries where they do have a pathway to PR.

**Recommendation:** revise the eligibility criteria for the New Zealand Stream 189 visa to provide a fair pathway to Australian citizenship for New Zealanders residing in Australia.

### **Children born to New Zealanders in Australia**

- 8.4 A child born in Australia to two non-protected SCV New Zealanders is not an Australian citizen or PR and must wait until they are ten years old to apply for citizenship of the country they were born in. As a non-citizen are they ineligible for the National Disability insurance Scheme (NDIS) meaning they are denied vital health care and early intervention therapy or support such as physiotherapy, speech therapy, teacher's aide.

**Recommendation:** grant citizenship at birth to children born in Australia to a New Zealand citizen parent.

### **Young New Zealanders**

- 8.5 For those young New Zealanders who arrive as dependent minors, who are educated in Australia and consider themselves in all but birthplace to be Australian it can be quite a shock to find that they are locked out of opportunities such as a scholarship to study, student loans entry to the ADF, or to represent the country they call home internationally in sport because they have no pathway to citizenship.

**Recommendation:** that young New Zealanders who arrive in Australia as a dependent minor be given exemptions or priority access to PR to allow them to take-up tertiary study, enter the ADF or participate in sporting opportunities.

### **Deportation of New Zealand citizens**

- 8.6 Oz Kiwi acknowledges that s501 deportations are not part of the migration review but would point out that one of the most corrosive and detrimental aspects of Australian immigration policy over the last decade has been the changes to section 501 of the Migration Amendment (Character and General Visa Cancellation) Act. We would recommend reverting the s501 policy back to a single 24-month sentence qualifying for deportation with the added protection that anyone who has resided for ten years or longer OR who arrived as a dependent minor will not be deported.

### **Recommendations:**

- Revert the s501 policy to a single 24-month sentence.
- Exempt any non-citizen from deportation if they arrived as a minor or if they have resided for 10 or more years.



## 9. RECOMMENDATIONS

- 9.1 Oz Kiwi would recommend that the following matters be considered for New Zealanders and their families who migrate to Australia:
- Fees for a PR visa to be at cost recovery. For example, \$500 per adult applicant, \$300 per dependent child aged 18 to 23, and \$200 per dependent child under 18.
  - Any new PR visa should include 461 visa-holders.
  - Time spent residing as an SCV should count towards NARWP once granted the NZ 189 visa.
  - Fees for partner and child sponsorship should be at cost recovery.
  - Revise the eligibility criteria for the New Zealand Stream 189 visa to provide a fair pathway to Australian citizenship for New Zealanders residing in Australia.
  - Grant citizenship at birth to children born in Australia to a New Zealand citizen parent.
  - Young New Zealanders who arrive in Australia as a dependent minor be given exemptions or priority access to PR to allow them to take-up tertiary study, enter the ADF or participate in sporting opportunities.
  - Revert s501 policy to a single 24-month sentence.
  - Exempt any non-citizen from deportation if they arrived as a minor or if they have resided in Australia for 10 or more years.





## 10. DEFINITIONS AND INTERPRETATION

In this Submission unless the context requires otherwise, the words and phrases have the meanings set out below:

<b>ADF</b>	Australian Defence Force
<b>ALP</b>	Australian Labor Party
<b>HELP</b>	Higher Education Loan Program
<b>NARWP</b>	Newly Arrived Residence Waiting Period
<b>NDIS</b>	National Disability Insurance Scheme
<b>NZ 189 visa</b>	Skilled Independent 189 (New Zealand) Stream
<b>PR</b>	Permanent Resident of Australia
<b>SCV</b>	Special Category Visa TY444
<b>S501</b>	Section 501 of the Migration Act 1958 relating to visa refusal and cancellation on character grounds
<b>TY444</b>	Special Category Visa
<b>461 visa</b>	New Zealand Citizen Family Relationship Visa