



POLICY OPTIONS PAPER

Oz Kiwi Association policy options for New Zealand
citizens permanently residing in Australia

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1. INTRODUCTION

- 1.1 This Policy Paper updates the previous policy proposal [June 2015] and broadly details six (6) policy options that, if adopted, would provide a fairer pathway to Australian citizenship for New Zealand citizens permanently residing in Australia, and resolve the consequences that have arisen from the:
- a) implementation of the Special Category Visa (SCV) for New Zealand citizens under the Migration Regulations (Cth); and
 - b) exclusion of New Zealand citizens from Social Security; and
 - c) exclusion of New Zealand citizens from the NDIS, HELP, Defence Force entry, and various Insurance policies.
- 1.2 The consequences arising out of paragraphs 1.1 (a) – (c) are particularised in the Oz Kiwi Briefing Paper, which can be found on the Oz Kiwi websiteⁱⁱ.
- 1.3 The options discussed in this Policy Paper include:
- a) full reversal of the 2001 changes; and
 - b) a simple residency process, grant New Zealanders an SCV upon arrival, after residing for five (5) continuous years (Option 1), or three (3) continuous years (Option 2), they can apply for permanent residence, and after a further one-year period are eligible for citizenship.
- 1.4 A further issue that would be addressed with such policy change is the distinction created under the Social Security Act between protected and non-protected SCV-holders.
- 1.5 Protected SCV-holders are those New Zealand citizens who were in Australia on 26 February 2001, or for 12 months in the two years prior to that date. Non-protected SCV-holders are those New Zealand citizens who don't meet that criteria. Many migrated to Australia post 26 February 2001, being the date in which the amendment to the Social Security Act came into effectⁱⁱⁱ.
- 1.6 It is important to note that the terms 'protected' SCV and 'non-protected' SCV are not terms as defined under the Migration Act 1958 or Migration Regulations 1994, but terms defined under the Social Security Act 1991.
- 1.7 The Skilled Independent 189 (New Zealand) Stream visa^{iv}, announced on 19th February 2016 by the Coalition Government, will allow New Zealanders who arrived between 27th February 2001 and 19th February 2016, who meet certain eligibility criteria, a pathway to permanent residence then citizenship. This is a good start, however, it excludes new arrivals post 19th February 2016 and those who do not meet the eligibility criteria, thus a new sub class of non-eligible New Zealanders has been created.
- 1.8 All the permanent visa does is create an additional class of New Zealander. To summarise:
- a) protected SCV (eligible for citizenship and benefits); and
 - b) non-protected SCV (eligible for RRV, and then citizenship, if came to Australia pre September 1994, restricted number given the date); and
 - c) non-protected SCVs (eligible under Skilled Independent 189 (New Zealand) Stream visa^{iv} - restricted number due to eligibility criteria); and
 - d) non-protected SCV (ineligible for citizenship - no reasonable pathway).
- 1.9 No other nationality is the subject of classes within their nationality. This is discriminatory and creates unnecessary complexities, and therefore costs. Many Department of Immigration & Border Protection and Centrelink staff struggle to understand the variances. A simple, streamlined approach will be cheaper, fairer (having regard to the TTTA) and would address the current inequities.



2. FULL REVERSAL OF THE 2001 CHANGES

- 2.1 Under the policy and regulatory changes implemented by the Australian Government at 26 February 2001 New Zealanders arriving into Australia are granted a Special Category Visa (SCV) that allows them to reside indefinitely, albeit not permanently. The SCV is a temporary visa that has no fair pathway to citizenship regardless of the length of time a New Zealander may reside in Australia.
- 2.2 The Department of Immigration's figures at 30 September 2014 recorded 657,210 New Zealand SCV (subclass TY444) visa holders were in Australia. It is difficult to gauge exactly how many New Zealanders are long term residents as the same visa is issued to holidaymakers, business travellers and short term residents. It is estimated that some 250,000 to 350,000 are 'non-protected' SCV-holders.
- 2.3 The Skilled Independent 189 (New Zealand) Stream visa^{iv} announced on 19th February 2016 will provide some New Zealanders an avenue to Australian citizenship. The concern is for those who do not meet the eligibility criteria, and the retrospective application of the new visa. Those who arrive after 19th February 2016 will be locked out as will those who do not earn sufficient to qualify. Instead, there should be no income threshold or health checks; nor should it be retrospective; the new permanent visa must be open to those who arrive post 19th February 2016.

Implications of the current policy

- 2.4 The unintended consequences resulting from the 26 February 2001 changes have seen inter-generational disadvantage and financial hardship. Examples of these will be illustrated throughout the policy paper [see NDIS, HELP, ADF and insurances sections].

Policy recommendations

- 2.5 The most satisfactory way to rectify the damaging and disadvantageous impact of said 2001 changes is to reverse the temporary and unprotected status of the SCV.
- 2.6 Amend Regulation 5.15A^v of the Migration Regulations (Cth) to define the SCV as a 'permanent visa' and amend the Social Security Act (as per clause 2.7).
- 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 five (5) 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.
- 2.8 This policy 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.
- 2.9 In addition, a five (5) year residence requirement before applying for citizenship would align with New Zealand's residence requirement, introduced in 2005^{vi}. This provides a greater safeguard against any concerns Australian policy makers, and/or the Australian public may have in respect to 'third country migrants' than was the case pre 2001 when the SCV changes were effected.

Benefits of this policy recommendation

- 2.10 This policy would solve most issues affecting New Zealand citizens in Australia, more particularly non-protected SCV-holders and the negative impacts on their Australian citizen spouses or de facto partners and Australian citizen children. This would also be consistent with New Zealand's treatment of Australian citizens migrating to New Zealand.



3. SIMPLE RESIDENCY PROCESS

- 3.1 Outlined below are two suggested alternatives to full reversal of the February 2001 changes. Both options would involve continuing to issue the Special Category Visa to New Zealanders upon arrival.
- 3.2 As with all other permanent residents, New Zealanders would still be required to serve a NARWP for access to social security. The NARWP should commence upon arrival in Australia, this aligns with other permanent residents, and reciprocates the rights of Australians living in New Zealand. Currently an estimated 250,000 to 350,000^{vii} New Zealanders are permanently excluded from any financial support.
- 3.3 New Zealanders would be able to access all services offered under the NDIS as they are required to pay the NDIS levy.
- 3.4 Option 1:**
- 3.5 Proposed amendments to the Coalition Government's Skilled Independent 189 (New Zealand) Stream visa^{iv}:
- a) after five (5) years continuous residency in Australia the applicant can apply for a permanent visa; and
 - b) no income threshold parameter to be applied; and
 - c) no cut-off date for eligibility - any New Zealander who migrates to Australia can apply for permanent residence after 5 years, provided they meet the character and security tests; and
 - d) no health check requirements as New Zealanders are entitled to Medicare under the reciprocal agreement.

3.6 Option 2:

- 3.7 Enable New Zealanders to be eligible to apply for a permanent visa^{viii} by:
- a) residing for three (3) continuous years in Australia immediately before applying; and
 - b) paying a nominal application fee; and
 - c) demonstrating they intend to usually reside in Australia; and
 - d) providing evidence of substantial business, cultural, employment or personal ties of benefit to Australia as per the Resident Return Visa; and
 - e) providing evidence they have meet the mandatory character and security checks.

Implications of the current policy

- 3.8 The unintended consequences resulting from the 26 February 2001 changes have seen inter-generational disadvantage and financial hardship. Examples of these will be illustrated throughout the policy paper [see NDIS, HELP, ADF and insurances sections].

Policy recommendations

- 3.9 Another way to rectify the damaging and disadvantageous impact of said changes is to mitigate the limitations of the same. Continue to issue the SCV to New Zealand citizens on arrival in Australia^{ix}. However, New Zealand citizens who intend to settle permanently in Australia, rather than for a holiday or for a short term visit, could apply for a permanent visa.
- 3.10 By removing the income threshold, health checks, and the retrospective date restrictions from the Skilled Independent 189 (New Zealand) Stream visa^{iv}, more New Zealanders would be able to take up citizenship. If half of those resident in Australia are able to take out citizenship, another large group



are further disenfranchised by not being eligible. The arbitrary 19th February 2016 date replicates the 26th February 2001, which excluded the same group this latest amendment seeks to help.

- 3.11 The income threshold excludes many people who have substantial ties, for example, stay-at-home mothers of Australian children, business owners employing Australian's and are reinvesting in their business, the semi-retired and students (including some PhD and MBA students).
- 3.12 The Skilled Independent 189 (New Zealand) Stream visa^{iv} does not take into account the many reasons New Zealanders migrate to Australia. Besides work opportunities reasons include job transfers or promotion with an Australasian company, and family ties from the long shared history between the two countries. Some move or return to Australia to care for elderly parents or grandchildren, others to reconnect with family.
- 3.13 In addition, New Zealand introduced a five (5) year residence requirement in 2005^{vi} before migrants can apply for citizenship. This provides a greater safeguard against any concerns Australian policy makers, and/or the Australian public may have in respect to 'third country migrants' than was the case pre 2001 when the SCV changes were effected.

Benefits of this policy recommendation

- 3.14 This policy:
 - a) would allow almost all New Zealand citizens in Australia to rectify their current situation if they wished to do so, and at a reasonable cost; and
 - b) provides fairness for New Zealand citizens in respect of the CER and TTTA, as they would be less likely to fall through the cracks on basis of technicalities, than under some other proposals; and
 - c) would offer greater protection to the federal budget than full reversal of 2001 changes, as most people would take some years to go through any residency application process.



4. NATIONAL DISABILITY INSURANCE SCHEME (NDIS)

- 4.1 All New Zealanders working in Australia are residents as defined in the Income Taxation Assessment Act and pay taxes along with the Medicare levy and NDIS levy. However, to claim any support from the NDIS a person must be a permanent resident (as defined in the Migration Act and Migration Regulations) or an Australian citizen.
- 4.2 According Australian Bureau of Statistics analysis the NDIS will allow increased workforce participation for individuals with a disability^x. Further support for this comes from comments the former Labor Minister for Disability Reform Jenny Macklin (2011-2013) in a Sydney Morning Herald article^x.
- 4.3 The NDIS's February 2016 eNewsletter reports that; "timely support for a child with developmental delay before the age of six can significantly change that child's developmental trajectory and overall quality of life"^{xi}.

Implications of the current policy

- 4.4 This policy:
 - a) sees non-protected SCV-holder New Zealand citizens required to pay the NDIS levy without being eligible for the NDIS because they are not a permanent resident; and
 - b) a child born in Australia to [two] non-protected SCV-holder New Zealand citizen parents is not granted Australian citizenship at birth. They must obtain New Zealand citizenship by descent, and thus become an SCV-holder. They would be denied any care required under the NDIS (until they reach the age of ten when they will be eligible for Australian citizenship, provided they have usually resided in Australia).

Policy recommendations

- 4.5 Amendment to s23^{xiii} of the National Disability Insurance Scheme (NDIS) Act to allow all New Zealand citizens to access the scheme. Ideally this would include the following:
 - a) provide New Zealand citizens who are resident in Australia access to the scheme upon arrival in Australia; and
 - b) provide children born in Australia to two New Zealand citizen non-protected SCV-holder parents access to the scheme from birth.

Benefits of this policy recommendation

- 4.6 It would be both fair and advantageous for New Zealand citizens to be eligible to access NDIS services since they are required to pay the NDIS levy. Early intervention and support for children with a disability would also help to facilitate the best outcomes for them. These suggested changes would mitigate the concerns raised by the Parliamentary Joint Committee on Human Rights in its report of 5 June 2013, regarding the exclusion of 'non-protected' SCV-holders from the NDIS:

'Eligibility to participate in the National Disability Scheme'

1.53 *The committee considers that the exclusion of New Zealand citizens who are long-term residents in Australia and who are not protected SCV holders, permanent residents or Australian citizens, from access to the NDIS, raises issues of compatibility with the enjoyment of the right to social security and the right to non-discrimination in the enjoyment of that right, in particular as that exclusion affects New Zealand citizens who have been long-term residents of Australia.*

1.55 *The committee considers that it is not apparent from the NDIS Act and accompanying explanatory materials why the exclusion of certain categories of New Zealand residents is a justified limitation on the enjoyment of the right to social security.*



5. HIGHER EDUCATION LOAN PROGRAM (HELP)

- 5.1 The Higher Education Support Act (2003) limited eligibility to HELP loans to Australian citizens and permanent humanitarian visa holders from 2005. Unlike holders of 'permanent' visas, 'non-protected' SCV-holders are less able to apply for Australian citizenship to gain access to this loan programme.
- 5.2 Children who have completed most of their schooling in Australia are often unable to attend university as they are ineligible for HELP and Youth Allowance – currently they are half as likely to attend university as Australian citizen children.

Implications of the current policy

- 5.3 The lack of opportunities for tertiary education means many New Zealand citizens raised in Australia take low skill and low paying jobs. Over time, this will not only affect the prospects of these individuals, but also Australian tax revenues.
- 5.4 It is not uncommon for New Zealand citizens resident in Australia to send their children back to New Zealand to attend university where they can take out student loans and receive financial assistance whilst studying. This is a hypocrisy given the children have completed their schooling in Australia, may have resided here for more than a decade, and their parents have worked and paid taxes for that duration.
- 5.5 The lack of educational opportunities and a social safety net mean some young people, particularly those from disadvantaged backgrounds, are much more likely to turn to crime as a means of surviving. This can only be considered to have detrimental effects on Australian society.
- 5.6 Then Australian Prime Minister Tony Abbott and New Zealand Prime Minister John Key agreed in February 2014 that New Zealanders would be given access to the HELP scheme^{xiv} commencing in January 2015.
- 5.7 Eventually, the Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015 was passed by both Houses of Parliament in November 2015. This legislation enables New Zealanders to access HELP loans, providing they meet all the long-term residency requirements, that is they:
 - a) first entered Australia as a dependent child aged under 18 years of age; and
 - b) have been ordinarily resident in Australia for the previous 10 years (that is, they have been physically present in Australia for at least eight out of the past 10 years) and for 18 months out of the last two years at the time of application for the loan.
- 5.8 The government estimates that 2,500 students currently meet the eligibility criteria.

Policy recommendation

- 5.9 To allow all New Zealand citizens eligibility to access HELP loans after residing in Australia for three years. This would be in line with Australians residing in New Zealand who are eligible for student loans after a three year stand down period.

Benefits of this policy recommendation

- 5.10 It would be advantageous for Australia to allow New Zealand citizens access to HELP so that they may further their education and become productive contributing members of society. Individuals earning a higher income, as university graduates are likely to, would pay more taxes than lower income workers while their education and skills are of benefit to Australia.



6. AUSTRALIAN DEFENCE FORCE (ADF) ELIGIBILITY

- 6.1 New Zealand citizens cannot join the ADF 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.
- 6.2 The Defence Act (Cth) in fact allows anyone up to the age of 21 to take up an ADF cadetship, but should those cadets be desirous of joining the ADF, they must be an Australian citizen or permanent resident and eligible to become an Australian citizen before they can gain entry into the ADF.

Implications of the current policy

- 6.3 This policy is particularly unfair on New Zealand citizen youth who migrated to Australia as young children and who have undertaken their primary and secondary schooling in Australia, and otherwise identify as Australian. If they are desirous of joining the defence force, they will be forced to join the defence force of a country (namely New Zealand) with which they do not identify.
- 6.4 This is in contrast with the fact that New Zealand citizens, despite not being eligible to enlist in the ADF, are liable to be called upon to serve in time of war, after residing for at least six months in Australia^{xv}.

Policy recommendations

- 6.5 This policy would ensure:
- a) that current or former NZDF personnel be allowed to enlist in the ADF; and
 - b) those New Zealand citizens who wish to enlist in the ADF be allowed to do so once they have met the usual ADF entry criteria excepting only requiring to hold an SCV visa rather than being an Australian citizen.

Benefits of this policy recommendation

- 6.6 By allowing New Zealand citizens who are or have been in the New Zealand Defence Force entry into the ADF Australia would gain qualified and experienced [New Zealand trained] military personnel. Similarly by allowing Australian [educated] school students who complete an ADF cadetship to continue on and enlist in the ADF they can also further their military career. The on-going training and experience of these groups will then become of benefit to Australia.

ADF Proposal

- 6.7 A copy of the proposal prepared by Oz Kiwi to allow New Zealanders entry into Australian Defence Force can be found on page 12.



7. INSURANCE CONTRACTS ACT

7.1 Some New Zealanders have been told when they make an insurance claim that they are not covered by the policy as they are not a 'permanent resident' for insurance purposes. It appears that the terms 'resident' and or 'permanent resident' are not always defined in the Product Disclosure Statement (PDS). In some instances, the New Zealander has had their policy premiums refunded [as they should] since they are ineligible for cover. One recent instance saw the claimant refunded ten years' worth of premiums totalling \$30,000.

Implications of the current policy

7.2 There is confusion by both insurers and New Zealanders as to their status i.e. the mis-assumption that New Zealanders are 'permanent residents' by virtue of the fact they may reside in Australia indefinitely. Some insurance providers will accept SCV-holders however many do not^{xvi}. Those insurers who do accept SCV-holders are mostly not willing to provide an assurance in writing that the SCV-holder is 'covered' under the insurance obtained. In other words, that their insurance will not be subsequently cancelled because they are an SCV-holder.

7.3 Unless the PDS specifically states that New Zealanders are covered there remains ambiguity over New Zealanders eligibility for insurance cover. If the SCV is the parent of Australian [born] children and/or in a relationship with an Australian partner the current situation then has a detrimental impact on Australian citizens if they are declined a claim on the basis of [the parent] being an SCV New Zealander.

Policy recommendations

7.4 Amend the Insurance Contracts Act (Cth) to expressly prohibit providers of insurance, more particularly income protection insurance, from excluding SCV-holders^{xvii}. Some insurance providers will accept SCV-holders however many do not^{xviii}.

7.5 Whether a person is an SCV-holder or New Zealand citizen ought not to preclude them from obtaining insurance if they demonstrate that they:

- a) usually reside in Australia, and
- b) are, in relation to income protection insurance, in full time or part time employment.

Benefits of this policy recommendation

7.6 This policy would remove the confusion for both insurers and New Zealanders by clarifying that SCV-holders are entitled to insurance cover, meaning there should be no ambiguity as to eligibility.



8. THE BENEFITS OF POLICY CHANGE TO AUSTRALIA

- 8.1 More than fifteen years on from the 2001 changes, there are numerous negative consequences from the decision to amend the Social Security Act. Given the negative impact the consequences have had, and continue to have, one can only conclude that these consequences were unintended.
- 8.2 Those individuals who lose their jobs through no fault of their own are unable to receive any financial assistance. They are also unable to access their own superannuation [under the severe financial hardship rule] and some job seeking services, as to do either of these things they must be in receipt of a Centrelink payment. The lack of support can contribute to mental health issues and homelessness.
- 8.3 Likewise, the impact of family violence on New Zealand women and their children residing in Australia, and the specific difficulties they face including ineligibility for social services and Centrelink support, not being eligible for public housing or refuge housing, and being unable to leave Australia – and return to New Zealand – due to The Hague Convention.
- 8.4 Australia has been built on the combined contributions of its Indigenous people and those who came later from all over the world. Australia celebrates this diversity and at the same time, strives for a unified and harmonious nation.
- 8.5 Below we highlight some of the consequences, and how policy change will benefit Australia.

Australian Citizens

- 8.6 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 SCV-holder is not eligible for a carer's pension to care for their partner should their New Zealand citizen partner suffer illness or disability. Often the Australian citizen must continue to work to support the family during an emotional and stressful time.
- 8.7 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, as they cannot take their children out of the country without the father's consent due to The Hague Convention.

Education

- 8.8 The majority of children have who migrated to Australia with their New Zealand citizen parents, having spent their primary and/or secondary schooling in Australia, are unable to access HELP. The strict eligibility criteria of needing to reside in Australia for eight of the previous 10 years, and 18 months out of the last two years at the time of application for the loan, will exclude many young people. Such criteria also discounts [young] adults from accessing HELP to further their education and increase their productivity and value to Australian society.
- 8.9 Youth (although not born in Australia) who identify as being Australian, are being marginalised in a country that they are legally entitled to live in, and for which their parents pay tax as residents. Gifted students are falling through the cracks, unable to attend university because their parents simply cannot afford to pay the tuition upfront.
- 8.10 It is the Australian public, not individuals, who profit most from higher education. Generally speaking, those who are tertiary educated will pay proportionality more tax than those who are not. Purely from a revenue raising point of view, it is in Australia's interest to ensure all youth in Australia are either vocationally or tertiary qualified.



9. CONCLUSION

- 9.1 The recommendations in this policy paper seek to address the quagmire of visa statuses and eligibility criteria that currently sees New Zealand citizen's resident in Australia treated differently dependent on their date of first arrival in Australia. The consequence of these varied statuses – the so-called 'protected' and 'non-protected' SCV-holders – causes confusion for both Government agencies and the visa holders themselves.
- 9.2 The Skilled Independent 189 (New Zealand) Stream visa, announced on 19th February 2016, creates a new sub class of non-protected SCV holders who are long term residents of Australia but have no pathway to citizenship. The Coalition Government estimates only half of the 140,000 post 26th February 2001 arrivals will be able to take up this citizenship pathway^{xix}.
- 9.3 The SCV has led to numerous unintended consequences, as outlined in the sections above. This policy paper sets out options to rectify or improve the rights of New Zealanders permanently residing in Australia across five areas: a fairer pathway to Australian citizenship, ADF membership, access to Social Security, NDIS, and HELP.
- 9.4 If the above listed policy recommendations were enacted:
- a) Australia as a whole would be the beneficiary through a greater number of highly skilled workers; and
 - b) earlier intervention for physical health issues or disability, resulting in cost savings for the Federal Budget and with the individual being provided with a better quality of life; and
 - c) the improved social cohesion resulting from a currently disenfranchised group being given a safety net and pathway to a better future.
- 9.5 Oz Kiwi advocates that the recommendations outlined in this policy paper be given due consideration and ultimately be endorsed. The policy recommendations are to:
- a) amend Regulation 5.15A of the Migration Regulations (Cth) to define the SCV as a 'permanent visa'; OR
 - b) continue to issue the SCV to New Zealand citizens on arrival in Australia and allow those who have resided for three (3) or five (5) continuous years to apply for a permanent visa, and ultimately citizenship; and
 - c) provide New Zealand citizens who are resident in Australia automatic access to the National Disability Insurance Scheme; and
 - d) allow New Zealand citizens to be eligible to access HELP loans after residing in Australia for three (3) years; and
 - e) enable those New Zealand citizens who wish to enlist in the ADF be allowed to do so once they have met the usual ADF entry criteria excepting only requiring to hold a SCV rather than being an Australian citizen; and
 - f) amend the Insurance Contracts Act (Cth) to expressly prohibit providers of insurance, more particularly income protection insurance, from excluding SCV-holders.



10. DEFINITIONS AND INTERPRETATION

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

'ADF'	means Australian Defence Force;
'ADFA'	means the Australian Defence Force Academy;
'CER'	means the Australia – New Zealand Closer Economic Relations Trade Agreement (known as ANZCERTA or the CER Agreement);
'DIPB'	means the Department of Immigration & Border Protection and subsequent name change from time to time;
'HELP'	means Higher Education Loan Program;
'NARWP'	means Newly Arrived Residence Waiting Period, being 24 months, for the purpose of social security eligibility;
'Non-protected'	means in relation to the SCV, an SCV holder who arrived after 26 th February 2001 and was not normally resident in Australia for 12 months in the two years prior to 26 th February 2001;
'NZDF'	New Zealand Defence Force;
'PR'	means Permanent Resident of Australia;
'SCV'	means Special Category Visa (TY444);
'Policy Paper'	means this Policy Options Paper;
'Protected SCV'	means a New Zealand citizen who was in Australia on 26 February 2001, or was normally resident in Australia for 12 months of the two years prior to that date;
'TTTA'	means the Trans-Tasman Travel Arrangement.



Proposal to allow New Zealanders entry into Australian Defence Force

BACKGROUND

Status Quo

1. Currently to obtain entry into the ADF, an applicant must be an Australian citizen, or the holder of a permanent visa eligible to apply for citizenship (restrictions for permanent visa holders).
2. It appears that this is not a requirement in the Defence Act 1903 (Cth) or the Defence Force Regulations 1952 (Cth), but a policy decision made by the ADF and/or the Minister of Defence (at that time).
3. The ADF may waive citizenship requirements for those who hold a permanent visa if the position for which a permanent visa holder is applying, cannot be filled by an applicant who is an Australian citizen, and only in exceptional circumstances.
4. The ADF website references New Zealand citizens but the only New Zealand citizens that meet the permanent resident's requirements are Protected SCV holders, therefore excludes non-protected SCV holders.

Status of Children

5. Children born in Australia to at least one parent who is a permanent resident (this includes a Protected SCV holder) or Australian citizen will be granted citizenship at birth.
6. Children born in Australia to two non-protected SCV holders will not be granted Australian citizenship until the age of 10, for which they must apply.
7. Children who were brought to Australia after 26 February 2001, (unless they have at least one Australian citizen or PR parent and can apply citizenship by decent) have no reasonable pathway to citizenship, and are therefore precluded from joining the ADF. Despite these children growing up in Australia, having attended primary and/or secondary schooling in Australia, and cadets.

PROPOSAL

8. The proposal is to amend the Defence (Personnel) Regulations 2002 to expressly allow New Zealand citizens entry into the ADF, subject to meeting the usual ADF entry requirements.
9. The proposal will require amendments to:
 - a) Defence (Personnel) Regulations 2002 (Cth);
 - b) Citizenship Act 2007 (Cth); and
 - c) Citizenship Regulations 2007 (Cth).

Defence Force Regulations

10. The starting point is to amend the Defence (Personnel) Regulations to expressly allow entry by New Zealand citizens, more particularly non-protected SCV's into the ADF.
11. Eligibility by a non-protected SCV for citizenship after a period of service in the ADF will also require an amendment to the Citizenship Act and Citizenship Regulations set out below.

Citizenship Regulations 2007

12. Amend section 6A – Defence Service Requirements Prescribed Visa, so that an SCV is a class of visa contemplated by section 23 (2) (a) of the Citizenship Act 2007 (Cth).



Citizenship Act

13. Amend the Citizenship Act to specify that the holder of an SCV who has gained entry into the ADF will after four (4) years full time service be eligible for citizenship (with the NARWP waiting period commencing from the date of entry into the ADF).
14. The application for eligibility for citizenship is set out in section 21 of the Citizenship Act. Section 22 of the Citizenship Act deals with the General Residence Requirement, and section 23 deals with Defence Service Requirements.
15. Eligibility to apply for citizenship under section 23 of the Citizenship Act requires the applicant to satisfy the 'relevant defence service' requirement in section 23 (1).

"relevant defence service" means

a person has completed relevant defence service if:

- a) the person has undertaken a total of at least 90 days service in one or more of the Permanent Forces (whether or not that service was continuous); or
 - b) the person has undertaken a total of at least 90 days service on which he or she was required for, and attended and was entitled to be paid for, duty in one or more of the Reserves (whether or not that service was continuous); or
 - c) the person:
 - i was discharged from service undertaken in one of the Permanent Forces or the Reserves as medically unfit for that service; and
 - ii became so unfit because of service undertaken in any of the Permanent Forces or the Reserves.
16. As an SCV is not a permanent visa, the definition of 'relevant defence service' will need to be amended to include the 'relevant defence service' for a non-protected SCV holder, and per the proposal in paragraph 13, would be four (4) years.

Family Member

17. A 'Member of the Family Unit' as defined in R1.12AA of the Migration Regulations will be eligible for citizenship along with their ADF serving family member.

Reservists

18. It is also worth considering that an SCV holder who wishes to enter the ADF as reservists are also eligible, with a longer service requirement before being eligible for permanent residency, and therefore citizenship.

Australian Defence Force Academy

19. Entry of a non-protected SCV into the ADF should also apply to a non-protected SCV who wishes to apply to ADFA particularly for non-protected SCV youth who attended primary and/or secondary in Australia, and in most circumstances cadets.



SUMMARY

20. In order for a non-protected SCV holder to be eligible for citizenship:
- a) The non-protected SCV holder must serve in the ADF for no less than four (4) years, and after four (4) years from the date of entry into the ADF be eligible to apply for citizenship (and perhaps a requirement that they must do so within 6 months of being eligible);
 - b) In the event of permanent disablement, which precludes future service, the non-protected SCV holder will still be eligible to apply for citizenship within four (4) years from date of entry into the ADF; and
 - c) In the event of the death, the Member of the Family Unit will still be eligible for to apply for citizenship four (4) years from the date of entry into the ADF by the deceased non-protected SCV.



Explanatory notes

- i 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)*.
- ii A copy of the Oz Kiwi Briefing Paper can be obtained from the Oz Kiwi website:
<http://www.ozkiwi2001.org/2015/11/21/oz-kiwi-policy-options-for-new-zealanders-living-in-australia/>
- iii The Department of Immigration's Fact Sheet 17 explains further eligibility criteria:
Under transitional arrangements, these changes did not affect New Zealand citizens who:
- were in Australia on 26 February 2001 as SCV-holders
 - were outside Australia on 26 February 2001, but were in Australia as an SCV-holder for a total of 12 months in the two years prior to that date, and subsequently returned to Australia
 - have a certificate issued under the Social Security Act 1991 stating that they were residing in Australia on a particular date. These certificates are no longer issued.
- iv To be eligible for the **Skilled Independent 189 (New Zealand) Stream visa**, announced by the Coalition government on 19th February 2016, non-protected SCVs must:
- have arrived in Australia after 26th February 2001, but on or before 19th February 2016; and
 - have been resident in Australia for the five years immediately prior to applying; and
 - have earned a taxable income of at least \$53,900 in each of the last five years; and
 - meet the mandatory health, character and security checks.

The new permanent visa for New Zealanders is available from 1 July 2017.

v **MIGRATION REGULATIONS 1994 - REG 5.15A**

Certain New Zealand citizens

For purposes of paragraph 32(2)(c) of the Act, it is declared that the class of persons each of whom:

- a) is a New Zealand citizen who holds, and has presented to an officer, a New Zealand passport that is in force; and
- b) is not a health concern non-citizen; and
- c) is a behaviour concern non-citizen only because of having been excluded from a country other than Australia in circumstances that, in the opinion of the Minister, do not warrant the exclusion of the person from Australia;

is a class of persons for whom a visa of a class other than Special Category (Temporary) (Class TY) would be inappropriate.

vi **New Zealand Department of Internal Affairs - Citizenship Amendment Act (2005)**

Frequently Asked Questions - New Zealand Citizenship by grant:

The requirements referred to in subsection (1)(d) are as follows:

- a) that the applicant is entitled in terms of the Immigration Act 2009 to be in New Zealand indefinitely;
- b) that the applicant was present in New Zealand—
 - i) for a minimum of 1 350 days during the 5 years immediately preceding the date of the application; and
 - ii) for at least 240 days in each of those 5 years,—



- vii 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.
- viii Such an application form would need to be drafted by the DIBP.
- ix This would continue to grant indefinite residence and work rights to New Zealand citizens in Australia, but only limited access to government services and no direct pathway to citizenship.
- x NDIS is expected to support increased workforce participation for those living with a disability and the scheme will pay for itself:
<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/E82EBA276AB693E5CA257C21000E5013?opendocument>
- xi Jenny Macklin's comments in a Sydney Morning Herald article support the Australian Bureau of Statistics analysis that the NDIS will pay for itself:
<http://www.smh.com.au/nsw/ndis-will-pay-for-itself-new-analysis-forecasts-huge-jobs-growth-20160210-gmr3ra.html>
- xii "The National Disability Insurance Agency (NDIA) has worked with some of Australia's leading early childhood intervention practitioners and researchers to design a best-practice approach that is family-centred and importantly, supports children to achieve good outcomes on a case-by-case basis.

Early intervention is an important part of the NDIS. Evidence shows that timely support for a child with developmental delay before the age of six can significantly change that child's developmental trajectory and overall quality of life."
<http://www.ndis.gov.au/february-2016-newsletter#ecei>
- xiii Under the **definitions Section (of the Act)** a **permanent visa** has the same meaning as in the Migration Act 1958.

23 NDIS Residence requirements

- (1) A person **meets the residence requirements** if the person:
- a) resides in Australia; and
 - b) is one of the following:
 - i) an Australian citizen;
 - ii) the holder of a permanent visa;
 - iii) a special category visa holder who is a **protected SCV-holder [author's emphasis added]**; and
 - c) satisfies the other requirements in relation to residence that are prescribed by the National Disability Insurance Scheme rules.



^{xiv} **Joint Statement by Prime Minister Abbott and Prime Minister Key (dated 7 February 2014)**

The Prime Ministers welcomed progress on work to set up a mechanism to share data to assist New Zealand to recoup unpaid student loans in Australia, with the option of New Zealand providing reciprocal assistance should Australia adopt an overseas-based borrower regime in the future. Prime Minister Key welcomed Prime Minister Abbott's confirmation that Australia would extend access to student loans under the Higher Education Loan Program to long-term New Zealand residents in Australia under terms announced last year.

http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/3229176/upload_binary/3229176.pdf;fileType=application%2Fpdf#search=%22media/pressrel/3229176%22

^{xv} **s59 of the Defence Act (1903):**

Persons liable to serve in Defence Force in time of war

All persons (except those who are exempt from service under this Part or to whom this Part does not apply) who:

- a) have resided in Australia for not less than 6 months; and
- b) have attained the age of 18 years but have not attained the age of 60 years;
- c) are liable, when called upon under section 60, to serve in the Defence Force.

^{xvi} **Faulkner v ACE Insurance (Equal Opportunities Division of the NSW Tribunal) (2011):**
<https://www.caselaw.nsw.gov.au/decision/54a6344a3004de94513d8378>

^{xvii} Currently there is no prohibition on insurance providers excluding SCV-holders from obtaining income protection insurance. Many insurance providers require customers to be 'residents' or 'citizens' SCV not being a permanent visa.

^{xviii} **Faulkner v ACE Insurance (Equal Opportunities Division of the NSW Tribunal)**

^{xix} From the Department of Immigration and Border Protection's website 'Approximately 60,000 – 70,000 of the 140,000 post 2001 SCV holders who have been in Australia for at least five years are expected to be eligible', <https://www.homeaffairs.gov.au/Visasupport/Pages/an-additional-pathway.aspx>