



Citizenship Submission

Strengthening the Test for Australian Citizenship

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1. EXECUTIVE SUMMARY

- 1.1 Oz Kiwi is concerned about a number of Government proposals to alter citizenship requirements and, in particular, by proposed changes to the residence requirement. Given that New Zealanders can already reside indefinitely in Australia, there is no policy rationale in requiring them to spend additional time residing on a permanent visa before applying for citizenship. The Government should, instead, maintain or improve existing access to citizenship for New Zealanders. Such an approach would also avoid unintended consequences in terms of educational access for young New Zealanders in Australia.
- 1.2 Oz Kiwi has further concerns about the application of English language testing at the citizenship stage and advises that New Zealanders should be exempted from needing to sit language tests as they are in other immigration matters.

2. INTRODUCTION

- 2.1 For the best part of two centuries New Zealanders and Australians have been migrating, living, working, conducting business, and pursuing sporting and cultural activities between the two countries. Indeed, our countries share a largely common culture and Prime Minister Turnbull has described New Zealanders as being family, echoing statements made by his recent predecessors.
- 2.2 New Zealanders are in a unique position given they are able to live and work in Australia indefinitely without needing a permanent visa. This 'open door' policy has existed between the two countries since European settlement, and confirmed in the Trans-Tasman Travel Arrangement (TTTA) announced in 1973. The strengthening of the free movement of people was subsequently recognised as an objective of both parties in the preamble to the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) of 1983. Free movement of people across the Tasman is also essential to the current Single Economic Market (SEM) agenda.
- 2.3 New Zealanders arriving in Australia have been granted special category visas (SCV) since the introduction of the universal visa system in 1994. 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 It has been included in both the repealed Australian Citizenship Act 1948 and the current Australian Citizenship Act 2007 ('the Act') as a visa that can fulfil permanent residence requirements, subject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.
- 2.4 While applying for a permanent visa serves no immigration purpose for an SCV-holder, a substantial number have applied at significant expense in order to gain eligibility for citizenship. Generally these New Zealanders have already resided in Australia for a number of years as an SCV-holder before obtaining a permanent visa (and thus permanent resident status under citizenship law), either through a partner, skilled, or employer-sponsored streams or through the grant of a resident return visa (RRV). Given their right to stay indefinitely on the SCV, the proposal to extend residence requirements as a permanent resident under the Act serves no clear policy purpose, but adds unnecessary red tape and causes much harm, as we will detail below.
- 2.5 Oz Kiwi acknowledges the exemption to the increased residence requirement, announced on 28 May 2017 by Prime Minister Turnbull, for applicants in the new Skilled Independent 189 (New Zealand) stream available from 1 July 2017. This announcement, however, does not address the problems that the new residence requirement poses to those who had applied for permanent visas in good faith prior to the announcement of the policy change or to those New Zealanders who may seek to gain permanent visas through other streams in future.



- 2.6 Given the indefinite residency status of the SCV, and that many New Zealanders are already considered 'settled' by migration authorities, there is little policy logic in applying an additional waiting period on this group. At the very least, it would be reasonable to extend the same exemption to the proposed requirement to all SCV-holders who are or have been granted permanent visa and have already resided for four years. A cleaner and more comprehensive approach would be simply to restore the permanent resident status of all SCV-holders under the Act by means of a ministerial declaration. This would not only remove the red tape for trans-Tasman migrants, but also simplify the administration of citizenship law and remove a significant source of irritation from the Australia-New Zealand relationship.

3. INCREASING THE GENERAL RESIDENCE REQUIREMENT

- 3.1 The Government's stated objective in proposing to amend the general residence requirement to four years as a permanent resident under the Act is to 'enable greater examination of an aspiring citizens' integration with Australia.'
- 3.2 However, the Government has given no explanation of why holding one class of visa enables a better assessment of integration than holding another. Does four years of residence as a permanent visa-holder really give a better indication of integration than ten years on another class of visa? This comparison is particularly pertinent when the other class of visa in question (e.g. an SCV) also allows for indefinite residence.
- 3.3 While a comparison might be drawn with the requirement in New Zealand citizenship law for an individual to have lived in New Zealand as the holder of residence class visa for five years (and some similar criticisms made of the policy logic in this approach), there are substantial differences that limit the scope for comparison, both in relation to trans-Tasman migrants and migrants generally:
- Australian citizens who settle in New Zealand under the TTTA continue to be considered residents for citizenship purposes and thus begin fulfilling the residence requirement from their time of arrival in NZ.
 - Permanent residents, including Australian citizens, in New Zealand enjoy practically all the rights of New Zealand citizens, except in relation to standing for Parliament, applying for a New Zealand passport, or serving as a New Zealand diplomat.
- 3.4 Unlike in New Zealand, the denial of citizenship for an extended period for migrants has a very substantial effect on their rights and opportunities. Without citizenship, a migrant in Australia cannot vote, cannot join the public service, cannot serve in the Australian Defence Force, and has access to only limited support for tertiary education. These limitations are substantial and should not be extended without a very solid policy justification. No such justification is to be found in the Government's proposals.
- 3.5 Given New Zealanders are clearly not the intended target of the Government's proposals to strengthen assessment of integration, it is somewhat perverse that they will be disproportionately affected by the proposal to change the general residence requirement.
- 3.6 Indeed, almost no New Zealanders are granted permanent visas before moving to Australia, most applying only after having already settled in Australia. For SCV-holders the introduction of a four year wait as a permanent visa-holder before applying for citizenship imposes an unnecessarily long wait to obtain Australian citizenship. Numerous New Zealanders will have already resided in Australia for many years before being granted a permanent visa and already have demonstrated a substantial commitment to Australian life.



The proposal in the context of trans-Tasman free movement

- 3.7 Adding further barriers to citizenship for New Zealanders would run counter to recommendations made by the Australian and New Zealand Productivity Commissions in 2012¹ and work over recent years by both governments to improve access to citizenship for New Zealanders in Australia. While the confirmation by Prime Minister Turnbull that applicants under the Skilled Independent 189 (New Zealand) stream would be exempted from the new residence requirement is welcome, it is not sufficient. The apparent aim of the Government in announcing this new pathway to citizenship in early 2016 was to make it easier for New Zealanders to gain Australian citizenship. However, this is hardly accomplished by establishing one easier path, whilst making every other pathway more difficult.

Unintended consequences

- 3.8 There are several unintended consequences of the proposed introduction of a four year wait as a permanent resident under the Act, particularly for young people and their parents or guardians. Some New Zealand children have been sponsored for permanent visas by their parents or included as part of a family application in order to gain Australian citizenship and ultimately access the full range of tertiary education support. For those students presently in Year 11 or 12, the new four year residence requirement would likely delay their tertiary study plans or lead to them giving up on pursuing tertiary studies entirely.
- 3.9 Further complications are created in relation to the policy introduced in 2016 that allows young New Zealanders who arrived as dependent minors and have resided here for ten years or more to access HELP. This policy only extends to SCV-holders. Therefore, those young New Zealanders who are granted a permanent visa lose access to HELP even if they otherwise meet the ten year residence requirement. This has always been a problem with the policy and would be substantially worsened if New Zealanders were forced to hold a permanent visa for four years before applying for citizenship.
- 3.10 While the government's objective is to push migrants to demonstrate greater commitment to Australia, the interaction of education and citizenship policies in this case acts perversely to, in effect, punish those New Zealanders who demonstrate commitment by putting themselves on a pathway to citizenship.
- 3.11 The Federal Budget measure to charge both permanent visa-holders and SCV-holders full domestic fees will compound these problems further and will deter many from studying until they become Australian citizens and can access both Commonwealth Supported Places (CSP) and student loans. While we acknowledge the government plans to restore HELP access to all New Zealand citizens, this does little to remedy the problems caused by the substantial fees increases this group will face. CSP withdrawal has other negative education impacts, for example a full fee paying (FFP) medical student is not guaranteed an internship.
- 3.12 The result of the interaction of the proposed increased citizenship residence requirement and the tertiary education changes is particularly harsh for those young New Zealanders who have been granted permanent visas and would otherwise have qualified under the 2016 arrangements for access to both HELP and CSP.
- 3.13 The announcement of both citizenship and higher education policy changes in quick succession has caused substantial uncertainty and anxiety amongst young New Zealanders in Australia. Many have had their future plans upended. It is surely in no one's interest for people's

¹ Productivity Commissions of Australia and New Zealand (2012) joint report, *'Strengthening economic relations between Australia and New Zealand'*.



opportunities to be limited and for their potential to contribute to Australia's society and economy to be diminished.

Policy options

- 3.14 If the Government wishes to proceed with the introduction of the increased residence requirement, it would be entirely possible to prevent New Zealanders, who clearly are not the intended targets of this measure, from being forced to wait longer for citizenship eligibility. This could be achieved by means that are consistent with both the Government's stated intentions and the existing legislative framework.
- 3.15 The Government should restore permanent resident status under the Act to all SCV-holders by means of legislative instrument. The Minister could under s.5(2)(a) and s.5(2)(b) of the Act declare all SCV-holders to be permanent residents and all former SCV-holders to have been permanent residents during the period they held an SCV. This would mean that SCV-holders and former SCV-holders who had subsequently been granted a permanent visa would both be eligible for Australian citizenship after four years of residence.
- 3.16 Alternatively, if the Government wished to maintain the existing requirement for SCV-holders to be granted permanent visas before applying for citizenship, the Minister could make a declaration under s.5(2)(b) of the Act that former SCV-holders who subsequently held a permanent visa for a specified period would be considered permanent residents during the time they held an SCV. This is consistent with the Government's intentions for the new 189 (New Zealand) visa pathway to be introduced on 1 July 2017. Such an approach would ensure there was policy consistency for all SCV-holders, regardless of which pathway to citizenship they chose, and would avoid the need for specific exemptions to be made for the 189 (New Zealand) visa stream.

4. PROPOSED TESTS FOR CITIZENSHIP

Introducing an English language test

- 4.1 In a general sense, the addition of an English language test at the citizenship application stage would seem a largely redundant measure, as, for many classes of permanent visa, applicants are already required to demonstrate competence in the English language. Indeed, there seems little merit in subjecting individuals to an additional round of tests or barring individuals who have already been admitted permanently to the country from citizenship on the basis of their language skills.
- 4.2 New Zealand citizenship is regarded as sufficient evidence of English-language competence in immigration matters and there is no sound policy reason why New Zealanders, whether on an SCV or permanent visa, should be subject to English language testing when applying for Australian citizenship.

Strengthening the test for Australian citizenship

- 4.3 The proposal to modify the content of the Australian citizenship test is a matter of little concern. While the ability of the new test to weed out applications who do not share Australian values or who pose a risk of harm to the community may be dubious, the new test does not materially increase the burden of red tape on applicants.
- 4.4 Given New Zealanders and Australians share a common set of values, the changes to the test are unlikely to deter New Zealanders from applying for Australian citizenship.
- 4.5 While the number of New Zealanders failing the citizenship test multiple times is likely to be very low, it is not entirely clear what policy purpose is served by the proposal to bar those who fail the test three times from applying again for citizenship within the next two years.



Integration into the Australian community

- 4.6 The proposal to require applicants to demonstrate integration into the Australian community is of little concern, provided it is not applied in a manner that is overly onerous. Few New Zealanders in Australia are likely to have any trouble in demonstrating integration into the community.

Strengthening the Australian values statement

- 4.7 We have no objection to the proposed changes as they have no material effect on the difficulty of applying for citizenship. The values identified are largely uncontroversial and could just as easily have appeared on a list of 'New Zealand values'.

The pledge of commitment

- 4.8 The proposed change to the wording of the pledge of commitment has no material effect on the difficulty of applying for citizenship and is uncontroversial. We note that a pledge of 'allegiance' was part of the Australian citizenship oath until 1994 and remains part of the New Zealand citizenship oath. We have no objection to this proposal.
- 4.9 While the proposal to require a larger group of people to make the pledge before gaining citizenship will affect only a relatively small number of New Zealanders, and is hardly a burdensome requirement, we note the government has not provided a clear policy rationale for this change.

5. RECOMMENDATIONS

5.1 Oz Kiwi recommends that:

- New Zealanders be exempted from any increase in citizenship residence requirements as per applicants for the Skilled Independent 189 (New Zealand) stream visa. This could be achieved by either declaring:
 - SCV-holders to be permanent residents under the Act, allowing New Zealanders to apply for citizenship after four years residence; or
 - New Zealanders subsequently granted a permanent visa to be considered permanent residents for the time they resided in Australia on an SCV by means of a declaration under the Act; and
- New Zealanders be exempted from the proposed English language test to be included as part of citizenship applications; and
- The Government give further consideration to all of its other proposals and whether the intended policy objectives justify potential inconvenience to New Zealanders and other groups; and
- The Government give specific attention to the manner in which changes to citizenship law may affect New Zealanders' access to education, ensuring that individuals do not face diminished rights and entitlements on the pathway from SCV-holder to citizen.



6. CASE STUDIES

- 6.1 Oz Kiwi has collated a number of case studies from New Zealand families and individuals who have contacted the organisation regarding the impact of the proposed reforms referred to in the submission.

No	Case Study
1	<p>Mother granted RRV and sponsored son for PR in April 2017. Son in Y12 wants to join the Royal Australian Air Force (RAAF). His parents have not told him of the proposed citizenship changes as the four year wait as PR will delay his ambition of joining the AAF. He will not be able to meet the requirement of obtaining Australian citizenship within the first 12 months of enlisting.</p>
2	<p>A young New Zealander who has resided in Australia since 2013 as a non-protected SCV holder. Began studying part time while working in 2014. Wants to enrol in a post graduate medicine programme in 2018.</p> <p>They are eligible for a resident return visa, which under current rules would allow a citizenship application to be made next year.</p> <p>The proposed tertiary education change would mean, as a non-citizen, they would no longer be able to receive a CSP to begin a medicine programme at the beginning of next year. The proposed increase in the general residence requirement would mean that even if they received an RRV now, they would be ineligible for citizenship until 2021. The combined effect of these changes would be to deny this student a CSP for the duration of their studies, which would in turn raise further issues in relation to being able to pursue studies and establish a career.</p> <p>HELP life time cap</p> <p>The HELP scheme is currently capped at \$126,000 per applicant over their lifetime, meaning a substantial portion of the high full fees would need to be paid up-front. The annual full fees for medicine could range from \$33,000 per annum (course total \$132,000) to \$74,000 per annum (course total \$296,000) for the four year degree.</p> <p>No guarantee of an internship</p> <p>A further complication for full fee paying (FFP) students is they are not guaranteed an internship after graduation, something necessary for accreditation and therefore to get a job as a doctor. Potentially missing out on an intern position would mean the 4 years of training would be worthless.</p>
3	<p>Family arrived in Australia in 2007, children now in Yr10 and Yr12. Father would have been eligible for 189 (New Zealand) visa, however, he is now ineligible as he has already been granted a resident return visa. If he sponsors his children for permanent visas now they would cease to be eligible under the 2016 arrangements that allow some SCV holders to access both CSP and HELP. If they have to wait four years after the grant of a permanent visa for citizenship and the proposed tertiary education changes are enacted, they face paying domestic full fees to study.</p> <p>Given the uncertainty caused by the combined effects of the proposed tertiary education and citizenship changes, the family is considering relocating permanently to New Zealand.</p>
4	<p>Family migrated to Australia in 2006, parents are dual citizens and are sponsoring their Y12 son for PR. With the proposed citizenship changes they have cancelled his PR application so he can still access CSP and subsidized HELP via the January 2016 policy for SCVs. They must choose between his studies and securing his pathway to citizenship.</p>



No	Case Study
5	A New Zealander who has lived in Australia since 2007 was recently granted a permanent visa. He had applied at great expense, despite already being able to reside indefinitely on an SCV. The only reason he had applied was a desire to gain citizenship and be able to participate as a full member of Australia's democratic community. Under the proposed changes to the general residence requirement, he faces a further three years of disenfranchisement and exclusion from substantive engagement in the political process.