



Australian Government

Department of Immigration and Citizenship

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Dear Chairman and Chair

**Strengthening Economic Relations between Australia and New Zealand: A Joint Study**

I write in response to the Australian and New Zealand Productivity Commissions' Discussion Draft on Strengthening Trans-Tasman Economic Relations released on 18 September 2012.

The Department of Immigration and Citizenship is both a policy development and service delivery agency and is responsible for the well-managed movement and settlement of non-citizens in Australia.

Largely as a result of the parallel histories of the two countries, the migration arrangements of Australia and New Zealand have evolved in a similar manner over time. That said, Attachment D (Cross border movement of people) of the Productivity Commission paper correctly identifies a notable difference in the migration requirements between Australia and New Zealand. The universal visa requirement has been a legislative cornerstone of Australian migration arrangements since it was introduced in September 1994.

The key impact of this change is that in Australia all non-citizens must hold a visa to maintain their lawful status. As a result of the universal visa requirement, all visitors, temporary residents and permanent migrants to Australia must apply for a visa or a visa equivalent, with conditions appropriate to their stay. A New Zealand citizen who arrives at the border, without an existing visa and seeking entry to Australia, is considered to have applied for a visa and, subject to health and character considerations, will be granted a Special Category Visa. New Zealand has different arrangements which effectively exempt some people, including Australian citizens and permanent residents, from requiring a visa.

One claim sometimes made by New Zealand citizens is that the 1994 changes effectively resulted in the “removal of official permanent resident status” from New Zealand citizens resident in Australia. An important aspect that this claim misses is that New Zealand citizens in Australia on that day were granted a Special Category Visa only if they did not hold another visa. This is often overlooked when the claim is made, as there were numerous transitional regulations introduced on 1 September 1994, which resulted in non-citizens being granted a range of temporary or permanent visas, depending on their circumstances.

It is possible that many New Zealand citizens resident in Australia on 1 September 1994 were in fact granted a permanent visa, however this can only be determined by an examination of their individual circumstances. New Zealand citizens who were ordinarily resident in Australia prior to this date and continue to live in Australia are generally treated as permanent residents for the purposes of relevant Commonwealth legislation.

Importantly, it has been a key principle of the Australian Government for over two decades that conferral of Australian citizenship is via permanent residence. Concessions were made to this arrangement in September 1994, allowing New Zealand citizens to continue to be considered as permanent residents for the purposes of the *Australian Citizenship Act 1948*. This arrangement for New Zealand citizens was exceptional, when compared with the residence criteria that applied to citizens of other countries, and was removed in February 2001 in conjunction with Social Security amendments. The 2001 changes did not impact on those who were ordinarily resident in Australia at the time, as the changes only affected those New Zealand citizens who arrived in Australia after that date.

Since 1 September 1994, every New Zealand citizen who has arrived in Australia without an existing visa has been, subject to health and character consideration, granted a Special Category Visa, which has always been a temporary visa. While it is a temporary visa, it is unique in that it allows its holder to live and work in Australia indefinitely. No changes have been made to the operation of this visa since it was introduced in 1994. Reference is often made to New Zealand citizens who arrived after 26 February 2001 being granted a ‘non-protected Special Category Visa’. This reference is erroneous, as it is actually a term defined under the *Social Security Act 1991* and does not relate to migration legislation.

The Trans-Tasman Travel Arrangement agreed between Australia and New Zealand in 1973 has allowed for flexible travel arrangements for citizens of the two countries since, with domestic-like travel the result. The New Zealand government continues to use its sovereign right to extend the travel arrangement to Australian permanent residents. The arrangement allows for citizens of both countries to travel to, remain and work in the other country. It does not extend to the broader rights and entitlements of permanent residents and citizens, some of which are covered under separate bi-lateral agreements, such as in respect of social security access.

The combination of the flexible travel arrangements between Australia and New Zealand, the 1994 and 2001 legislative changes, and other factors have led to a large and growing group of New Zealand citizens residing indefinitely in Australia as temporary residents. The “other

factors” include what the Department considers to be a low rate of application by New Zealand citizens in Australia for a permanent visa. An important point here is that the same permanent visa options that apply to all nationalities are available to New Zealand citizens. Where appropriate these options also provide concessional arrangements for applicants who are able to live in Australia long-term, for example on subclass 457 or Special Category visas.

Based on passenger card data, the Department estimates that historically, between 40 and 60 per cent of adult New Zealand citizen permanent and long-term arrivals would be eligible to apply for a permanent visa. Despite this, even assuming that only 40 per cent would be eligible, permanent visa application rates from New Zealand citizens have been very low, as the following table shows.

<b>Financial Year</b>	<b>Permanent &amp; Long-Term Arrivals</b>	<b>Permanent Visa Applications</b>	<b>%</b>
2011 / 12	60293	3284	5.4%
2010 / 11	49203	3066	6.2%
2009 / 10	36519	2832	7.8%

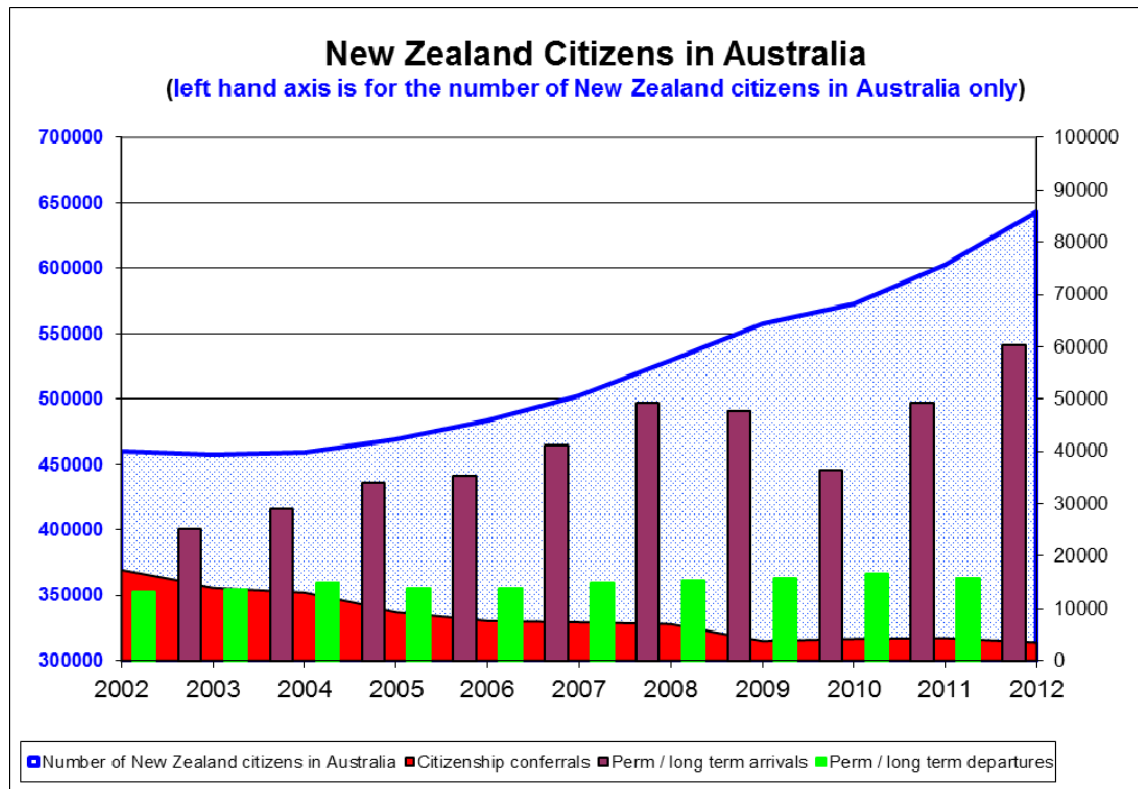
From correspondence with the Department, there appear to be a number of reasons for the extremely low application rate for a permanent visa, despite being eligible, including:

- The domestic like travel arrangement gives New Zealand citizens a distinct advantage over other nationalities when moving to Australia, as they do not need to arrange for a visa before travel. If New Zealand citizens decide to move to another country instead (e.g. the United Kingdom or the United States) they would generally arrange for their visa before they leave.
- Some New Zealand citizens question the cost of applying for a permanent visa, when they can live in Australia indefinitely on a Special Category Visa without any associated visa cost.
- Others raise the issue of their employers not sponsoring New Zealand citizens for a permanent visa due the fact they can live and work in Australia indefinitely.
- Travel arrangements for New Zealand citizens are generally more flexible than for Australian permanent residents, as while permanent visas allow the holder to remain in Australia indefinitely, the international travel facility on these visa lapses. Permanent residents need to apply for a new visa if they continue to travel overseas and wish to return to Australia as permanent residents.

Another point of contention sometimes raised by New Zealand citizens is that Australia should reciprocate with New Zealand and consider them as permanent residents from arrival. Such a viewpoint misconstrues the purpose of the travel arrangement, which is primarily

about ease of travel that recognises our joint historical origin and economic aims. Australia has a universal visa system that is based on all applicants for a permanent visa meeting the legally prescribed requirements for the visa. These requirements do not discriminate based on nationality.

The following graph shows the growth in the number of New Zealand citizens in Australia since the 2001 changes were introduced.

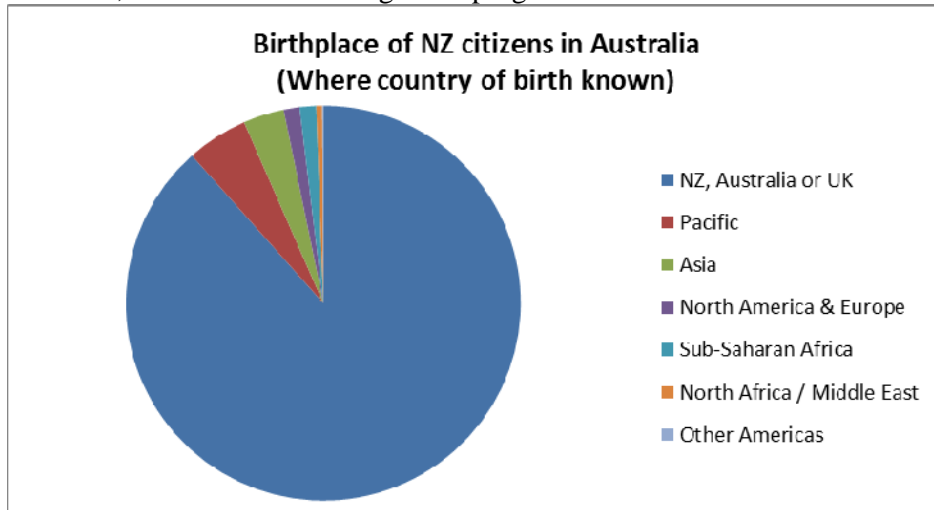


Since the changes introduced in 2001, this number has grown by over 40 per cent. As at 30 June 2012 an estimated 647 863 New Zealand citizens were present in Australia, and over 500 000 of these are estimated by the Department to be ordinarily resident here.

A number of factors were considered in the lead up to the 2001 changes, primarily the fiscal impact on Australia due to the uneven population flows between the two countries, with a disproportionate number of New Zealand citizens migrating to Australia. Only one of the factors related specifically to the operations of this Department, which was the risk of “backdoor” migration, via New Zealand to Australia. At the time there were more relaxed arrangements for permanent entry into New Zealand from a number of countries and subsequent acquisition of citizenship. The Department notes that this has changed substantially over the past decade, to the point that in some areas New Zealand now has

tighter arrangements than Australia, a good example being the waiting period for New Zealand citizenship.

For the estimated 647 863 New Zealand citizens in Australia on 30 June 2012, the Department has country of birth information on around 67 per cent. The result is summarised below and provided in more detail in Attachment A but is broadly reflective of a nation, like Australia, that has an active migration program.



As can be seen by the above chart and the attached data, almost 90 per cent of New Zealand citizens in Australia on 30 June 2012 were born in New Zealand, Australia, or the United Kingdom.

I appreciate the opportunity to provide background information for the joint study to consider relating to migration arrangements for New Zealand citizens living in Australia.

Yours sincerely

Kruno Kukoc  
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Migration and Visa Policy Division

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## ATTACHMENT A

<b>NZ citizens in Australia, 30 June 2012 (Where country of birth known)</b>		
<b>Country Birth - major group</b>	<b>Country Birth - minor group</b>	<b>Total</b>
Oceania & Antarctica	Australia	18719
	New Zealand	353727
	Melanesia	311
	Micronesia	48
	Polynesia (excludes Hawaii)	21602
<b>Oceania &amp; Antarctica Total</b>		<b>394407</b>
Europe	United Kingdom	15365
	Ireland	94
	Western Europe	1706
	Northern Europe	130
	Southern Europe	186
	South Eastern Europe	1145
	Eastern Europe	998
<b>Europe Total</b>		<b>19624</b>
North Africa & the Middle East	North Africa	301
	Middle East	1857
<b>North Africa &amp; the Middle East Total</b>		<b>2158</b>
South East Asia	South-East Asia	5485
<b>South East Asia Total</b>		<b>5485</b>
North East Asia	North-East Asia	5258
<b>North East Asia Total</b>		<b>5258</b>
Southern Asia	Southern Asia	3843
<b>Southern Asia Total</b>		<b>3843</b>
Central Asia	Central Asia	109
<b>Central Asia Total</b>		<b>109</b>
Northern America	Northern America	1564
<b>Northern America Total</b>		<b>1564</b>
South America, Central America & the Caribbean	South America	267
	Central America	42
	Caribbean	63
<b>South America, Central America &amp; the Caribbean Total</b>		<b>372</b>
Sub - Saharan Africa	Central and West Africa	210
	Southern and East Africa	5672
<b>Sub - Saharan Africa Total</b>		<b>5882</b>
<b>Grand Total</b>		<b>438702</b>