

Financial institutions
Energy
Infrastructure, mining and commodities
Transport
Technology and innovation
Life sciences and healthcare



New Zealand citizens in Australia

Mira Yannicos
Special Counsel
Migration Agent Registration No. 0532134
Accredited Immigration Law Specialist

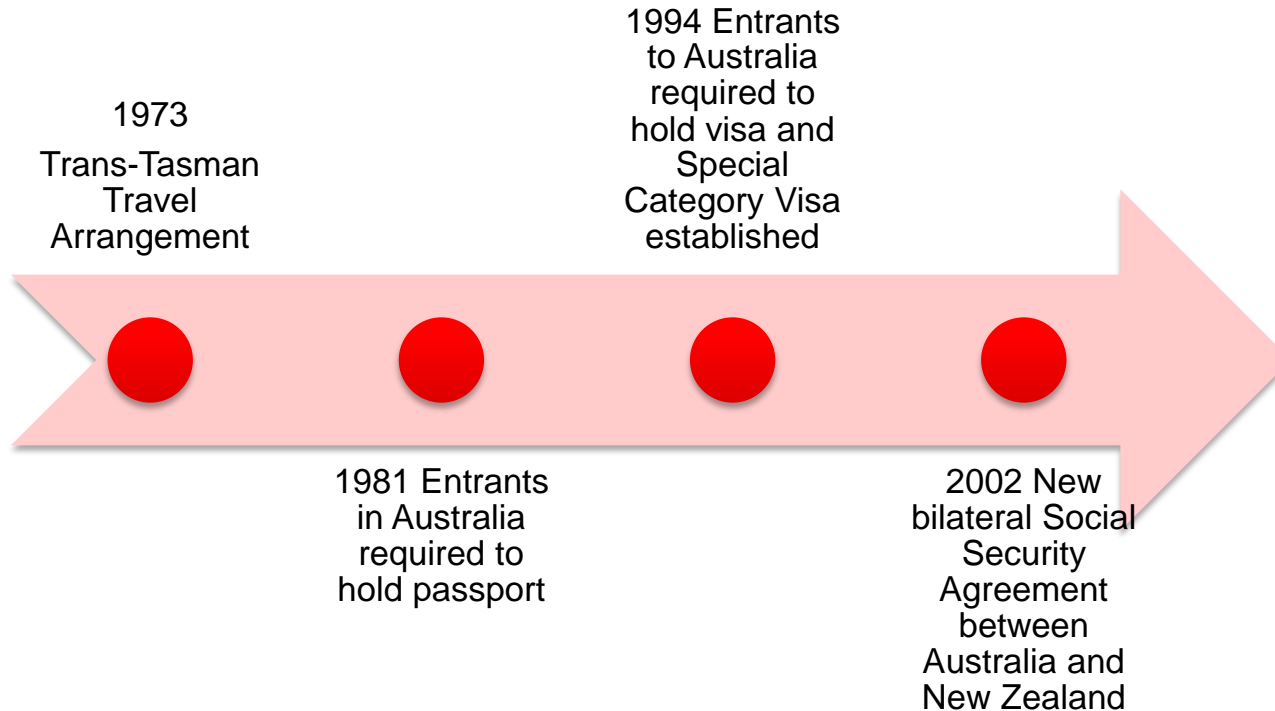
15 June 2017

Overview

1. Background and timeline
2. Visa categories – Special Category visa: Protected and Non-Protected – rights and benefits
3. Family members and implications
4. New Pathway to Permanent Residence in effect from 1 July 2017
5. Australian citizenship proposed changes with effect from December 2017?

Background

Timeline



Visa Categories

Special Category Visa (SCV) – subclass 444

- Applies to:
 - New Zealand citizens;
 - Who present a passport and incoming passenger card to immigration on arrival; and
 - Are not a behaviour or health concern

Rights of SCV 444 Holders

Entry and re-entry into Australia

CAN DO:

- Enter by producing NZ passport and incoming passenger card
- SCV visa ceases every time the visa holder leaves Australia (even for short durations)
- Must apply for new SCV at every entry/re-entry into Australia

CANNOT DO:

- Enter if 'of concern' - behaviour or health – visa cancellation

Working in Australia

CAN DO:

- Full work rights indefinitely
- In order to work must demonstrate NZ citizenship at the time of employment ie NZ passport or Certificate of Status for NZ citizens in Australia+ photo id
- Protection by same employment laws and basic rights as Australian citizens ie min wage, unfair dismissal, discrimination in the workplace
- May be employed in State government jobs

CANNOT DO:

- Be employed in federal government jobs unless discretion by the Head of Federal Agency – *Public Service Act 1991*
- Join the Australian Defence Force

Living in Australia

CAN DO:

- Live in Australia indefinitely as long as health and character criteria continues to be satisfied
- Covered under the definition of 'Australian resident' included in the *Health Insurance Act 1973*
- Purchase property

CANNOT DO:

- Vote in local, State or Federal elections

Studying in Australia

CAN DO:

- Access to education, free public schooling across Australia - 'local students'
- School education: access to Australian government per student recurrent funding for both government and non-government schools
- Tertiary education: access to Cth supported places and eligibility for Postgraduate Award scholarships as 'domestic students'
- Higher Education: from 1 January 2016, eligible for Higher Education Loan Program (HELP) subject to conditions: must hold the SCV, first entered Australia as a dependent minor under 18 and have been physically present in Australia for 8/10 months and for 18 months/2 years at time of application

CANNOT DO:

- Access HELP if not on SCV ie permanent skilled, family visa

Protected and Non-Protected Visa Categories

(under *Social Security Agreement 2001*)

Who is a Protected SCV holder?

Under *Social Security Act 1991*, ss7(1) – 7(2A), a protected SCV holder:

- Must have arrived prior to 26 February 2001; or
- Was in Australia as an SCV holder for a period of or period totalling 12 months during 2 years immediately before 26 February 2001; or
- Commenced or recommenced residing in Australia within 3 months from 26 February 2001; or
- Was residing in Australia on 26 February 2001 but was temporarily absent.

Who is a Non-Protected SCV holder?

- NZ citizens who arrived in Australia **after 26 February 2001** – not considered ‘Australian residents’ under *Social Security Act 1991* and not covered by the *Social Security Agreement 2001* – not entitled to age pension, disability support pension and carer pension
- In order to access social security benefits, they must apply and be granted a permanent visa ie Skilled Migration visa

Note: Department of Human Services states to the contrary – **may** claim subject to special conditions !

Special Category Visa (SCV) – subclass 444

Payments that can be claimed by Protected and Non-Protected SCV holders subject to meeting eligibility requirements:

- ✓ Family Tax Benefit
- ✓ Newborn Supplement and Newborn Upfront Payment
- ✓ Single Income Family Supplement
- ✓ Child Care Benefit
- ✓ Double Orphan Pension
- ✓ Health Care Card
- ✓ Low Income Health Care Card
- ✓ Foster Child Health Care Card
- ✓ Parental Leave Pay
- ✓ Dad and Partner Pay
- ✓ Assistance for Isolated Children
- ✓ Employment services through JobActive

Under the **Social Security Agreement between Australia and New Zealand** the following may be claimed :

- ✓ Age Pension
- ✓ Disability Support Pension (for severe disablement)
- ✓ Carer payment for partners of Disability Support Pensioners

Medicare

- ✓ Rent Assistance, if renting privately and receiving fringe Benefits Tax

As a **protected SCV** holder what benefits am I entitled to?

- Qualify as *Australian residents* under *Social Security Act 1991* provided they are currently living in Australia and have been for the past 2 years
- Entitled to same wide range Centrelink benefits as Australian citizens – **refer slide 9**
- Once SCV holders depart Australia, the SCV visa ceases and must re-apply
- Only permanent resident visa holders and Australian citizens who reside in Australia are able to access the full range of social security payments
- The NZ-Australia Agreement **does not cover** workforce age payments such as Parenting Payment (single or partnered), Newstart Allowance, Sickness Allowance or Special Benefit; people moving from NZ to Australia who wish to obtain these payments must be:
 - an Australian citizen;
 - the holder of a permanent visa; or
 - a protected SCV holder (generally this applies to SCV holders who were in Australia on 26 February 2001. Some other exceptions also apply).

Protected SCV holder leaving Australia

- Protected SCV holders are considered Australian residents for the purposes of the Social Security Act whilst they are in Australia only
- Once they depart Australia, the SCV visa ceases and must re-apply
- NZ SCV holders who arrived in Australia before 1994 might be eligible for a Resident Return visa (155 or 157)
- NZ citizens who are permanent residents in Australia must maintain their Resident Return visa to enable them to travel internationally for up to 5 years in order to return as permanent residents
- Must demonstrate substantial ties to Australia - business, cultural or personal ties
- If outside Australia for more than 5 continuous years, must show 'compelling' reasons for the absence

As a **non-protected** SCV holder what benefits am I entitled to?

- ✓ Full range of Social Security Payments - **refer slide 9**
- ✓ Once only allowance payments for up to 6 consecutive months:
 - ✓ Newstart Allowance
 - ✓ Sickness Allowance
 - ✓ Youth Allowance

if the SCV holder has lived continuously in Australia for 10 years + since 26 February 2001

- ✓ Access to permanent residence sponsorship rights
- ✓ Access to Australian Citizenship

Note: Potentially access to age pension, disability support pension and carer pension based on department of Human Services website

Family Members

Protected SCV holders

Considered 'eligible New Zealand citizens' under the *Migration Act* 1958

Therefore, their family members may be eligible for the following permanent visas:

1. Spouse, finance or de facto partner visas

- Subclass 820/801
- Subclass 390/100
- Subclass 300

2. Relative visas

- Need to be sponsored by protected SCV holder (or their partner); and
- Be over 18 years old; and
- Related to the SCV holder

3. Carer visa

Non-protected SCV holders

- Cannot obtain a SCV for being a member of SCV holder's family alone
- However, there are other ways for family members to live in Australia with SCV holder
 1. New Zealand Citizen Family Relationship visa (subclass 461) (up to 5 years)
 - In order to be eligible, must be:
 - Their partner
 - Their (or their partner's) dependent child;
 - The dependent child of the SCV holder's (or their partner's) dependent child; or
 - A relative other than partner of child who is otherwise dependent on the SCV holder.
 - If granted the visa, the family member is eligible to live, work and study in Australia
 2. Independent visa (eg. skilled, employer nominated, regional employer sponsored or temporary work visas)

Children Born in Australia

- Under the *Australian Citizenship Act 2007*, will be considered Australian citizens by birth if:
 - they were born **between 1 September 1994 and 26 February 2001** to a NZ citizen parent who held a permanent visa or a SCV; or
 - they were born **after 26 February 2001** to a NZ citizen parent who held a permanent visa or a protected-SCV under the transitional arrangements; or
 - the child has **lived in Australia for 10 years since birth**, regardless of their parents' immigration or citizenship status.
- If the child was born **after 26 February 2001** to NZ citizen parents who hold a non-protected SCV and has not lived in Australia for 10 years, the child will only be eligible for a SCV.

Parents of Australian citizen children

If a permanent resident or hold an SCV, the children might already be Australian citizens if they were:

- born in Australia **on or after 27 February 2001** and you held an Australian permanent resident visa or were present in Australia on **26 February 2001** as the holder of a SCV, or
- born in Australia between **1 September 1994 and 26 February 2001** and you held a permanent visa or a SCV, or
- born in Australia between **26 January 1949 and 19 August 1986** unless you or your spouse were entitled to diplomatic privileges, or
- born in Australia and reached 10 years of age having lived in Australia most of their life.

Payments for children

Under Family Assistance Act

- ✓ Family Tax Benefit parts A and B
- ✓ Health Care Card
- ✓ Child Care Benefit
- ✓ Child Care Rebate If getting max rate FTB A If getting max rate FTB A
- ✓ Rent Assistance
- ✓ Single income Family Supplement
- ✓ Child Care Benefit
- ✓ ChilNewborn Supplement
- ✓ JET Childcare Fee Assistance
- ✓ Double Orphan pension

Additional payments apply to NZ citizen parents who care for an Australian citizen child (born in Australia or who have acquired citizenship due to an Australian citizen parent) ie Special Benefit/ income support payment (accurate as at June 2015)

New Pathway to Permanent Residence as of 1 July 2017

Additional Streamlined Pathway to Permanent Residence from 1 July 2017

- On 19 February 2016, the Australian government announced a new streamlined pathway to permanent residence to take effect on 1 July 2017 for New Zealand citizens including some unprotected SCV holders
- This will be a **new stream within the Skilled Independent (subclass 189 visa) for SCV 444 visa holders** who
 - were usually resident (physical presence and intention to reside) in Australia on or before 19 February 2016 ; and
 - at the time of lodging the application, have resided in Australia for at least 5 years; and
 - can demonstrate taxable income (through income tax returns) at or above the Temporary Skilled Migration Income Threshold (currently \$53,900) in each of the 5 years residence in Australia (unless claiming an exemption ie primary carers of children who are unable to return to NZ due to custody/access issues) ; and
 - satisfy mandatory health, character and security checks
- Family members holding any visa may be included in the application ie partner, child/step child or partner's child/step child
- If granted this visa, they will be eligible for citizenship after a period of 12 months (in addition to the 5 years as an eligible SCV holder)
- 189 visa will consist of 2 streams:
 - Points Tested stream
 - New Zealand stream
- The points test, age restrictions of 49, English language testing, skill assessment (if relevant), process of invitation through SkillSelect will continue
- Fees
 - Primary applicant \$3,670 ; Adult dependent \$1,835; Child Dependent \$920
- 189 program issues: quotas, competition for an invitation, etc

Australian Citizenship – Proposed Changes

Protected SCV Holders

- Whether a non-citizen is eligible for Australian citizenship is determined by the *Australian Citizenship Act 2007*
- Protected SCV holders are **considered ‘permanent residents’** for the purposes of citizenship
- They have a direct pathway to citizenship providing they meet the character requirements set out in s 21(2) of the Citizenship Act

Non - Protected SCV Holders

- Non-protected SCV holders are **NOT considered** 'permanent residents' under the *Australian Citizenship Act 2007*
- They must acquire permanent residence before they are eligible for citizenship
- Children of non-protected SCV holders cannot obtain citizenship by birth unless they reside continuously in Australia until their 10th birthday
- NZ citizens who arrived in Australia **prior to 26 February 2016**, may already be considered permanent residents for the purposes of Australian citizenship

How can I become an Australian citizen?

Current Steps:

1. Apply for Permanent Residence visa
2. If granted, permanent residence must live in Australia for min 1 year
3. Apply for citizenship after living in Australia for a total of 4 years on a valid visa including 1 year as a permanent resident

Proposed changes to the Australian Citizenship Test

- The Australian Government has announced tightening of the citizenship rules with a focus on national security effective from 20 April 2017
- The changes will require:
 - The applicant must be a permanent resident of Australia for four years (up from one year)
 - An enhanced English competency test
 - An Australian values test, and
 - A requirement that the applicant demonstrate integration into Australian society ie paying taxes, a willingness to work and educate themselves and contribute to the community
- The new regime also appears set to introduce a new 'good character' test for minors in a bid to crack down on young migrant criminals

NOTE:

No exemptions for New Zealanders were mentioned

The Bill is scheduled to be introduced in Parliament this week/today with effect from December 2017

- Interesting to note that the government held open a period for submissions on the changes until 1 June, but have decided to keep the submissions confidential which is against common practice
- It appears that the changes are to apply retrospectively from applications made from 20 April 2017 onwards
- It is believed that all applications made since 20 April 2017 have been halted and will not be processed until the new bill is passed

Disclaimer: due to lack of adequate information from the Department of Immigration on the forthcoming changes this information is based on media releases containing commentary on the changes

Thank you



Mira Yannicos | Special Counsel
Migration Agent Registration No. 0532134
Accredited Immigration Law Specialist
Norton Rose Fulbright Australia
Level 15, RACV Tower, 485 Bourke Street, Melbourne, Australia
Tel +61 3 8686 6524 | Mob +61 423 668 777 | Fax +61 3 8686 6505
mira.yannicos@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

Law around the world
nortonrosefulbright.com

The logo consists of a stylized, upward-pointing chevron or mountain shape in a gold color, positioned to the left of the text.

NORTON ROSE FULBRIGHT

Disclaimer

Norton Rose Fulbright US LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright Canada LLP and Norton Rose Fulbright South Africa Inc are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients.

References to 'Norton Rose Fulbright', 'the law firm' and 'legal practice' are to one or more of the Norton Rose Fulbright members or to one of their respective affiliates (together 'Norton Rose Fulbright entity/entities'). No individual who is a member, partner, shareholder, director, employee or consultant of, in or to any Norton Rose Fulbright entity (whether or not such individual is described as a 'partner') accepts or assumes responsibility, or has any liability, to any person in respect of this communication. Any reference to a partner or director is to a member, employee or consultant with equivalent standing and qualifications of the relevant Norton Rose Fulbright entity.

The purpose of this communication is to provide general information of a legal nature. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.