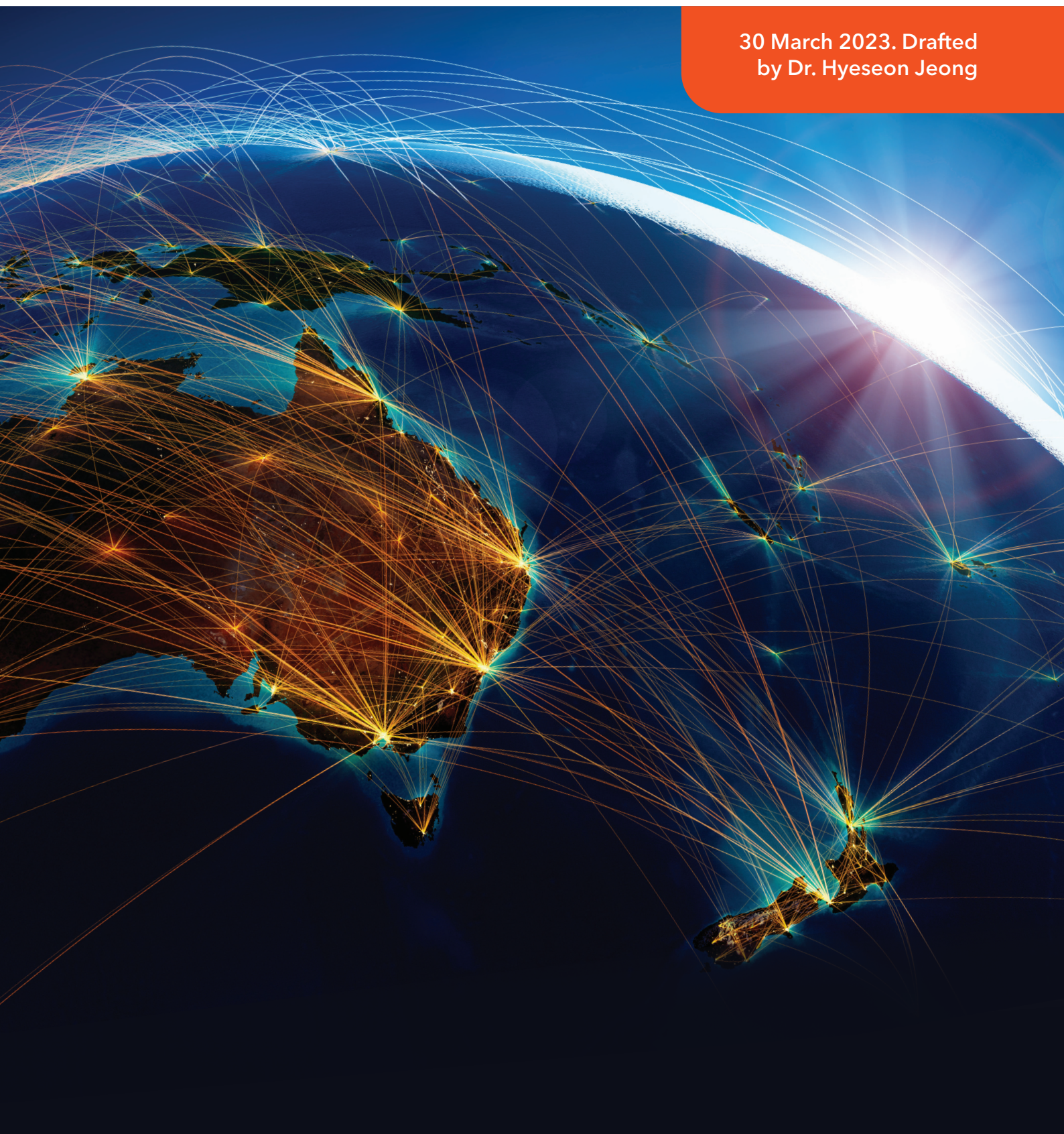


MIGRATION MATTERS

REPORT INTO NEW ZEALANDERS
AND THEIR FAMILY MEMBERS IN
AUSTRALIA



30 March 2023. Drafted
by Dr. Hyeseon Jeong



INTRODUCTION

New Zealanders have always been an integral part of Australian society. The two countries have a shared colonial history, and people from Australia have always been able to freely live and work in New Zealand, and people from New Zealand in Australia. In the last couple of decades, however, New Zealanders in Australia have been facing an increasing challenge to settlement as the Australian Government strengthened its border control measures and complicated migrant workers' access to permanent residency and citizenship.

This policy brief reviews the residency options left available to New Zealanders and their family members in Australia, discusses their impact, and proposes reforms.

SPECIAL CATEGORY VISA (444)

In the past, people in Australia and New Zealand didn't need a visa or a passport to travel across the Tasman Sea. On 1 September 1994, the Australian Government made it compulsory for every non-citizen to have a visa to remain in the country lawfully. This policy led to the introduction of a Special Category visa (subclass 444) for New Zealand citizens. As of December 2022, there are 666,169 people on a 444 visa in Australia.¹

The 444 visa is a temporary one but still allows New Zealand citizens to remain indefinitely and live, work or study in Australia. It is valid as long as the holder maintains New Zealand citizenship. The visa does not require an application. When New Zealand citizens approach the Australian border, they are considered to have already applied for the visa and are granted one, unless they have negative health or character considerations.² New Zealand citizens who originally entered Australia with another visa on a passport issued by a third country can apply for the 444 visa onshore by making an application with their New Zealand passport.

Most employers in Australia treat New Zealanders on a 444 visa in the same way as Australian citizens or permanent residents. Job application forms often group New Zealand citizenship and Australian citizenship together and do not ask New Zealanders for any visa-related information. Most New Zealanders say they have a relatively easy access to the Australian job market compared to other migrant workers.

¹ DHA. 25 January 2023. Temporary visa holders in Australia.

² Those who declare to have tuberculosis or criminal conviction records may not be granted a visa. Incorrect declarations can be a ground for the cancelation of the visa.

FIGURE 1

A sample recruitment form on the internet

Are you an Australian or New Zealand citizen?:* ☐ Yes ☐ No

Do you identify as?: ☐ Aboriginal ☐ Maori ☐ Torres Strait Islander

What was your first language?: ▼

Do you have a disability?:* ☐ Yes ☐ No ☐ Choose not to provide

The MWC's research shows a correlation between temporary visas, insecure jobs, and labour exploitation.³ Workers on temporary visas are often pushed toward casualised jobs or exploitative working conditions because employers are reluctant to engage workers on temporary visas. Some New Zealand citizens argue they are not an exception to this phenomenon and experience challenges to getting a secure job because of their temporary migration status.⁴

They also complain about being treated unequally at work because of their cultural identity or accent. For example, in a recent court case, an employer was accused of discrimination because he would call a New Zealander employee by "Kiwi" instead of her name in a derogatory way as in "Go and do the dishes, Kiwi" or "Wipe the table, Kiwi".⁵

NEW ZEALAND CITIZEN FAMILY RELATIONSHIP VISA (461)

The 444 visa is issued only to New Zealand citizens, and they cannot include their non-New Zealander family members to the visa. Alternatively, the family members can apply for a New Zealand Citizen Family Relationship visa (subclass 461). As of January 2023, there are 6,613 people on a 461 visa in Australia.⁶

The 461 visa allows the visa holder to live, work and study in Australia in the same way as the 444 visa, but unlike the latter, the former is valid for five years only. As a result, migrant workers on the 461 visa experience significant barriers to the job market. While the visa is renewable unlimited times, it is a temporary visa conditional on the family relationship.⁷ Indeed, migrant workers on the 461 visa who participated in our research projects or sought help from the Migrant Workers Centre complained about experiencing job insecurity and discrimination at work because of their temporary migration status.

People on the 461 visa are long-term residents of Australia together with their New Zealander family members, but they have to repeatedly renew their visa to continue with their life in Australia. One might wonder why they don't acquire New Zealand

³ MWC. 2021. Lives in Limbo; MWC. 2023. Insecure by Design.

⁴ Sydney Morning Herald. 15 Apr 2013. Down and out across the ditch.

⁵ NZ Herald. 9 December 2018. 'It's ruined my life': New Zealand woman on being called Kiwi by Australian boss.

⁶ DHA. 25 January 2023. Temporary visa holders in Australia.

⁷ People on the 461 visa can renew the visa even when they are no longer a family member to the New Zealander partner who originally sponsored their visa as long as the former has not formed a new family membership.

citizenship through their families so that they can stay in Australia on a 444 visa instead of a 461 visa. As a matter of fact, acquiring New Zealand citizenship is not an option for many people on the 461 visa. In many cases, they have met their New Zealander partner in Australia and have never been to New Zealand at all. They cannot meet the requirement for New Zealand citizenship without having lived in New Zealand for years and intending to keep living there.

People on the 461 visa can lose their residency rights when they fail to meet the visa conditions or renew the visa in time. Many appeal cases related to the 461 visa put before the Administrative Appeal Tribunal concern missed renewal deadlines. Many other cases at the Tribunal involve visa cancellations due to failure to take out a private health insurance policy. Unlike their New Zealander family members on the 444 visa, people on the 461 visa are not eligible for Medicare and must meet Condition 8501 (maintain adequate health insurance).

BARRIERS TO AUSTRALIAN PERMANENT RESIDENCY AND CITIZENSHIP

In the past, New Zealand citizens in Australia could apply for Australian citizenship without first acquiring permanent residency. Since 26 February 2001, New Zealand citizens who arrived in Australia after the date must first acquire permanent residency in order to become eligible for citizenship. One exception applies to New Zealand citizens who had visited or lived in Australia before 1 September 1994. They can apply for a permanent Resident Return visa instead of the 444 visa, which enables them to apply for Australian citizenship by conferral.

New Zealand citizens on the 444 visa and their partners on the 461 visa can apply for a permanent visa in the skilled migration program and subsequently acquire Australian citizenship the same way other migrant workers do. However, not many people can succeed in reality because the requirements for a skilled visa application are ever more demanding. First of all, the skilled migration program is open only to people with certain occupations. Secondly, New Zealanders who have been living in Australia for long often cannot meet the age requirements of any other visas because of their advanced age.

Children born in Australia must also apply for their own 444 visa if their New Zealander parents hold the 444 visa. In the past, people born in Australia acquired Australian citizenship by birth regardless of their parents' migration status. Following some amendments to the Nationality and Citizenship Act 1948 in 1986, people born in Australia to non-Australian parents on or after 20 August 1986 must continue living in Australia for 10 years before they can acquire Australian citizenship. One exception to the rule applies to people born in Australia to a parent who was a permanent resident or a New Zealand citizen on or after 20 August 1986 and before 1 September 1994. This small group can acquire Australian citizenship by birth.

From 1 July 2017, New Zealand citizens who were already in Australia have a relatively easier way to gain a permanent visa via the New Zealand stream of the Skilled Independent visa (subclass 189). This visa stream is called the "fast track" because an applicant does not need to be invited to make an application unlike other streams of the migration program.

Those acquiring permanent residency through this stream are not counted toward Australia's annual migration program. However, there have been a limited number of places allocated to the stream, and many applicants need to wait for years on a Bridging visa during the process.⁸ Besides, those who arrived after 19 February 2016 when the stream was first announced are not eligible. Consequently, only a few thousands have acquired permanent residency through the fast track (Table 1), and hundreds of thousands are still on the 444 visa (Table 2).

TABLE 1 New Zealand citizens acquiring permanent residency

FY	Skill stream	Family stream	All others
2018-19	5,944	124	146
2019-20	4,776	122	99
2020-21	3,457	327	194
2021-22	4,005	266	150

Source: DHA. n.d. Country profile – New Zealand (last updated 7 March 2023).

TABLE 2 New Zealand citizens on temporary visas

Visa type	Number on 31 December 2022
444	666,169
Temporary Work	51
Temporary Skills Shortage	34
Visitor	27
Bridging	24
All others	11
Total	666,316

Source: DHA. 25 January 2023. Temporary visa holders in Australia.

More importantly, the fast track has many requirements to meet, although they are in general more lenient than those of other skilled streams. An applicant should (a) have been resident in Australia for the five years immediately prior to their visa application, (b) demonstrate taxable income at or above the Temporary Skilled Migration Income Threshold (TSMIT) through income tax returns for a significant period of their residence, and (c) satisfy mandatory health, character and security checks.

The TSMIT is a requirement for many visa options and functions as a barrier to settlement for many migrant workers. Those working in insecure jobs find it hard to meet the requirement not necessarily because the threshold is too high but because they cannot expect to have a steady income above the threshold. The following case study is a classic example of a New Zealander getting denied permanent residency based on the TSMIT.

⁸ If their 189 visa application is refused, New Zealand citizens in Australia are not required to leave the country and are automatically issued another 444 visa to remain lawful.

CASE STUDY: CASUAL WORKER'S PR DREAM

I came to Australia in 2011, looking for better employment opportunities. As a New Zealand citizen, I had no issue coming here and got a Special Category Temporary (subclass 444) visa upon arrival. We need to pay no visa fees. We get to stay as long as we are of good character.

I have been working for the ACT Education Directorate as a casual 2e Science teacher since January 2012. Once becoming a casual employee, workers are restricted to an endless cycle of casual positions with fewer rights and benefits. I do exactly the same work and get paid less than permanent employees.

In Australia, there is a lot of everyday, informal, unconscious discrimination on top of the institutionalised discrimination against migrant workers. Migrants are expected to "blend in Aussie ways". For example, every time you meet an Aussie, they ask you about your "accent" and imply that they don't consider you as someone belonging here. Despite being a white person with European ancestry, I was disadvantaged at work with no career development opportunities and biased evaluations by Australian colleagues.

New Zealand citizens are privileged in Australia, compared to other migrant workers, but we are also negatively affected by the visa system. In the past we could move to a permanent visa almost automatically, but now it is costly and takes a long time. For many of us, it's a Catch-22 situation. I have no access to social benefits in Australia as a holder of a temporary visa. When I return to New Zealand, I have to stay for five years jobless to become eligible for social benefits because I am a returning citizen who's been overseas for too long.

Thanks to the NZ stream, I could apply for a subclass 189 Skilled Independent permanent visa even though I was older than most migrant workers. My application was refused because I failed to provide evidence of the required annual income of \$53,500 in the last four years. True, I earned below the threshold in 2020 and 2021 because I had fewer casual shifts due to pandemic lockdowns. I had mentioned this in my application and provided the Government with evidence of additional sources of income. They refused to give me the visa nonetheless and put me back to a 444 visa.

STRUGGLES OF LONG-TERM RESIDENT NEW ZEALANDERS

Due to the barriers to permanent residency and subsequently citizenship, New Zealanders in Australia cannot fully become part of Australia even after having lived in the country for over a decade.⁹ In addition, a change to social security rights introduced in 2001 made them feel further cast out of Australian society.

On 26 February 2001, a new bilateral social security arrangement between Australia and New Zealand was announced. Prior to the announcement, New Zealanders in Australia could access social security payments the same way Australian permanent residents and citizens can without acquiring Australian permanent residency or citizenship. The 2001 agreement made only some payments available to New Zealanders on the 444 visa if they arrived in Australia after 26 February 2001. The change didn't affect New Zealanders holding a 444 visa onshore on 26 February 2001 and who were offshore on the day but had been in Australia on a 444 visa for a total of 12 months in the preceding two years.

In other words, the 2001 agreement divided New Zealanders in Australia into two groups: those who have been in Australia prior to the 2001 agreement and can access the full range of social security payments and those who arrived afterwards and need to apply for and be granted a permanent visa in order to access all social security payments. The former are called "protected" 444 visa holders, whereas the latter are called "unprotected" 444 visa holders.

New Zealanders on an "unprotected" 444 visa are entitled to Medicare, age pension, and disability support pension for severe disabilities. However, they are excluded from workforce age payments such as parenting payments, unemployment benefits, youth allowance, NDIS access, and sickness allowance.¹⁰ In other words, they cannot afford to lose jobs or fall sick.

Behind Australia's decision to restrict New Zealanders' social security rights was the increase of trans-Tasman migration to a yearly five-digit number since the late 1970s. They include not only New Zealand nationals but also migrants to New Zealand who recently acquired New Zealand citizenship. As Australian permanent residency became more and more difficult to acquire, it became relatively easier to first migrate to New Zealand, become a New Zealand citizen, and move to Australia with a 444 visa than to migrate directly from one's homeland to Australia. In Australia, anti-migration voices expressed worries about New Zealand becoming a "back door" to Australia.¹¹

The impact of the 2001 agreement was negligible in terms of discouraging the trans-Tasman migration flows. A survey conducted in 2013 reported that more than one in three would still migrate to Australia if they could, and the figure included 53 per cent of people younger than 40.¹²

Its damage to social security nets, however, was detrimental to New Zealanders in Australia. They cannot speak up in exploitative work environments for fear of losing jobs because they cannot access unemployment benefits.¹³ Homelessness is fast growing among New Zealanders in dire situation, especially because they are ineligible for public housing in Queensland, Western Australia and New South Wales. Some speculate more than half of homeless people in Sydney are New Zealand citizens.¹⁴

Another growing concern is the forced deportation of long-term resident New Zealanders. In 2014, the Migration Act 1958 was amended to strengthen the character test on the migrant population. Criminal convictions amounting to 12 months or more of incarceration now lead to cancellation of a visa. Australia has a policy of mandatory detention for people without a visa. As a result, those affected by the 12-month conviction rule are automatically put into detention and eventually deported to their home countries. The largest group affected by the rule is by far New Zealanders: Over 1,600 New Zealand citizens have been deported in the first five years.¹⁵

⁹ Peter Mares. 2016. Not Quite Australian: How Temporary Migration Is Changing the Nation. Text Publishing.

¹⁰ DSS. n.d. Social Security Agreement between Australia and New Zealand - Frequently Asked Questions (last updated 29 July 2019).

¹¹ The Christian Science Monitor. 20 December 2000. Australia set to close Kiwi 'back door' to migrants.

¹² NZ Herald. 15 Jan 2013. "Oz exodus: Flying Kiwis unfazed by lack of welfare across the Ditch".

¹³ Sydney Morning Herald. 15 Apr 2013. Down and out across the ditch.

¹⁴ Newshub NZ. 27 June 2022. Hopes Australia's new government will help homeless New Zealanders after right to welfare taken away.

¹⁵ Australian Institute of International Affairs. 1 August 2019. Deporting New Zealand Citizens to the "Home" They've Never Known

TABLE 3 People in immigration detention by nationality

Nationality	Number on 31 December 2022	Family stream
New Zealand	147	13%
Iran	98	9%
Vietnam	79	7%
India	61	6%
Sudan	54	5%
Iraq	46	4%
Tonga	41	4%
United Kingdom	38	3%
Afghanistan	37	3%
Stateless	35	3%
All others	453	42%
Total	1,089	100%

Source: DHA. 10 February 2023. *Immigration Detention and Community Statistics Summary*.

Some of them had spent most of their lives in Australia and had no connection to New Zealand other than their passports. In 2019, New Zealand Prime Minister Jacinda Ardern requested that Australia make changes to the policy of mandatory deportation of New Zealand citizens resident in Australia who had been sentenced to 12 months in prison and expand the path to citizenship for New Zealanders resident in Australia. Contrary to the call, Australia recently amended the Migration Act 1958 to reconfirm its position that not only a sentence of 12 months or more but also an aggregate sentence of the same length can be relied upon for the purposes of considering if a person has a substantial criminal record for a visa cancellation.¹⁶

⁸ DHA. 17 Feb 2023. Statement on Aggregate Sentences Act 2023.

CONCLUSION

Policies should work toward better protecting the members of society. Migrant workers are part of Australia. Migration policy should ensure that the livelihood of both migrant and native members of society is protected, regardless of their nationality and type of visa. The current migration policy fails to do the job for migrant workers on temporary visas. New Zealanders and their family members in Australia are the largest group of people who have been let down throughout the last two decades.

Australia and New Zealand are not only inseparable culturally but also economically, diplomatically, and environmentally. This is why trans-Tasman travel and residency have always been made easy under various arrangements. In the spirit of the Trans-Tasman Travel Arrangement 1973, which acknowledged the extant right of citizens of the two countries to live, work, and study in either country, we need improvements to the migration policy regarding New Zealanders and their family members. We make the following policy recommendations:

1. A pathway to permanent residency should be open to all New Zealanders in Australia, unlike the existing fast track that only serves New Zealand citizens who came to Australia on or before 19 February 2016.
2. The New Zealand pathway program should be made available to people of all occupations, income levels, and health conditions.
3. The validity of the 461 visa should be based on the family relationship instead of the arbitrary five year period. Condition 8501 should be removed from the 461 visa, and Medicare should be offered to the family members of New Zealanders.
4. New Zealanders' visa cancelation should be conservatively determined in proportion to the time they have spent in Australia.

Migrant Workers Centre Inc.

Migrant Workers Centre Inc. is a not-for-profit organisation open to any workers in Victoria who were born overseas. We connect migrant workers with one another and empower them to understand and enforce their rights. Migrant Workers Centre Inc. assists workers from emerging communities to address problems they encounter in workplaces and collaborates with unions and community partners to seek long-term solutions to the exploitation of migrant workers. We organise workshops, train community leaders, conduct research, develop policy recommendations, and bridge language barriers that limit workers' access to information. Our ultimate goal is to fix the system of labour exploitation in this country.

Acknowledgement of Country

Migrant Workers Centre Inc. respectfully acknowledges the Wurundjeri people of the Kulin Nations, the traditional owners and custodians of this land on which we stand. We pay our respects to their elders past and present and acknowledge that sovereignty was never ceded.

