

Bills Digest
No. 102 2000–01

Family and Community Services Legislation
Amendment (New Zealand Citizens) Bill 2001

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 102 2000–01

Family and Community Services Legislation Amendment
(New Zealand Citizens) Bill 2001

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6 March 2001

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Family and Community Services Legislation Amendment (New Zealand Citizens) Bill 2001

Date Introduced: 28 February 2001

House: House of Representatives

Portfolio: Family and Community Services

Commencement: Royal Assent. However provisions relating to concession cards commence following the commencement of measures proposed in the Social Security Legislation Amendment (Concession Cards) Bill 2000.

Purpose

To give effect to the revised *Australia–New Zealand Social Security Agreement*.

Background

Old Agreement with New Zealand

Under various agreements there has been essentially a free flow of persons between Australia and New Zealand since the 1920s. The *Australia–New Zealand Social Security Agreement* was first signed in 1943 and has had regular re-negotiated up-dates since then. The first agreement of 1943 was first updated in 1949, followed by a more comprehensive agreement in 1989, with the current agreement starting from 1 January 1995.¹ More recently have been exchanges of notes between the two countries,² largely arising from the proposed extension of the two-year 'newly arrived resident waiting period' for social security payments to 'reciprocal agreement' countries.³ New Zealand has already signalled it will introduce a like requirement, to restrict access to social security payments for two-years, for persons moving permanently from Australia to New Zealand.

The *Australia–New Zealand Social Security Agreement* (the *Agreement*) is contained in Schedule 3 of the *Social Security (International Agreements) Act 1999*. It is a 'host country agreement' as is the *Australia–United Kingdom Agreement*. 'Host country agreements' place the emphasis on support being provided by the country of residence. All other Australian social security agreements are 'shared responsibility agreements'. 'Shared responsibility agreements' place the emphasis on apportioning payments between countries based on residence and/or contributions to the relevant social security system or working life in that country. There are nine such agreements with other countries (Italy, Canada, Spain, Malta, The Netherlands, Ireland, Portugal, Austria and Cyprus).

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In May 1998, the Minister for Family and Community Services announced that steps would be taken to extend the 'newly arrived resident's waiting period' to migrants from all countries including countries covered by an International Agreement. The Minister specifically forecast changes to the waiting periods attached to New Zealanders.⁴

Costs

General

As of 1997, of the total Australian resident population of 18 532 200 there were 325 500 persons born in New Zealand, or 1.8 percent. The two main direct costs incurred by government in providing payments are:

- *Program outlays*: the cost of the actual dollars paid to the recipients
- *Running costs*: the cost incurred in delivering payments, eg. staff salaries, computers, forms, offices etc

The table in Appendix 1 illustrates the program outlays in relation to income support⁵ and income supplement.⁶ The overall level of social security assistance to New Zealand citizens resident in Australia was \$720.6m or 1.8 percent of total outlays in 1998.

The other main direct cost to government is the provision of fringe benefits, for example concession cards, which are automatically issued to all pension and allowance income support recipients. These costs have not been factored in as they are very difficult to accurately measure. When last costed by FACS, the potential assistance available to an individual was put at around \$1 100 a year. Not only does use of fringe benefits vary between individuals, assistance available varies between States and localities.

Reimbursement of Payments

Under the *Agreement*, there are reimbursement arrangements for some payments made to persons moving between countries. In very general terms, subject to portability (see below) each country is reimbursed by the other country for payments of social security assistance made during periods the person would otherwise have had to serve a residence-qualifying period, if they had come from another country. The reimbursements apply only if the person would have otherwise qualified for the like payment in the previous country of residence (ie. New Zealand or Australia). The reimbursement arrangements mainly apply to pension payments and most allowance payments are not included.

Given the net influx of immigrants into Australia from New Zealand (and the United Kingdom), it follows that, under host country agreements, the net cost in providing for the welfare needs of newly resident migrants has largely fallen upon Australia. In this context it is perhaps not surprising that there have been moves to review the terms of the agreements with a view to making them consistent with the terms of the more common and, in practice, more favourable reciprocal agreements. As indicated, moves to review the *Australia–New Zealand Social Security Agreement* were announced as early as 1998.

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Similarly, moves to *terminate* the *Australia–United Kingdom Agreement* were announced as early as 1999.⁷ The latter agreement was due to terminate on 1 March 2001.⁸

New Agreement with New Zealand

On 26 February 2001, the Government signed an agreement with New Zealand regarding cooperation on social security matters. The new agreement takes effect from June 2002. Under the *Agreement*, New Zealand residents moving to Australia after 26 February 2001 will have restricted access to Australian social security assistance. Broadly, residents will need to obtain a permanent visa before they can access most social security payments. Residents who moved to Australia before 26 February 2001 are largely unaffected.

Information produced by the Department of Family and Community Services (FACS) suggests that New Zealand residents will be able to claim certain benefits and allowances⁹ and concession cards¹⁰ 'no matter when they arrive' subject to any waiting periods.¹¹

The reasons for the new agreement are varied. However, broadly, they would appear to be:

Australia:

- To provide more equity of access to social security assistance for newly arrived residents from all countries
- To remove the access to social security assistance to NZ citizens newly arrived in Australia who have made no or very little contribution to government revenues, prior to receiving assistance
- To provide savings in terms of social security outlays.

New Zealand:

- To remove some of the incentive for and to curtail the number of NZ residents departing to reside in Australia
- To place some cap on the amount of reparation payments NZ was liable to pay to Australia, under the pre-existing agreement, for NZ residents paid social security payments within the Australian social security residence qualifying periods.

Residence Requirements and Newly Arrived Residents Waiting Period

Most of the payments under the *Social Security Act 1991* have residence requirements. Section 7 contains definitions of 'Australian resident'. (In so doing, it relies on definitions under the *Migration Act 1958* and the *Migration Regulations 1994* relating to such issues as entry permits and visas.) Subsection 7(2) defines 'Australian resident' as a person who *resides* in Australia¹² *and* is an Australian citizen *or* is the holder of a permanent visa or the holder of a special category visa 'who is likely to remain permanently in Australia'. A criterion for a 'special category visa' is that the applicant is a New Zealand citizen¹³ who holds a current New Zealand passport and does not pose a behaviour¹⁴ or health¹⁵ risk.

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Otherwise, a person may have to meet specific residence requirements. For example, applicants for age pension¹⁶ and disability support pension¹⁷ must have 10 years 'qualifying Australian residence'¹⁸ unless they are subject to a 'qualifying residence exemption'.¹⁹ More generally, applicants for special benefit and carer payment, or for newstart, youth sickness, partner, widow, mature age and mobility allowance are subject to a 'newly arrived residents waiting period', unless they are protected by an international agreement or a 'qualifying residence exemption'. The waiting period provisions were inserted in 1997 ostensibly as a means to deter would be migrants from entering Australia without their own income support.²⁰ The waiting periods for newstart, mature age, sickness, partner and mobility allowance were subject to an exemption in favour of New Zealand citizens who were resident in Australia when the new provisions commenced.

Similar residence requirements apply in relation to concession cards. For example, claimants for the Commonwealth Seniors Health Card are subject to a 'newly arrived residents waiting period'.²¹ However, there is no waiting period for new arrivals from New Zealand who were Australian residents when the waiting period provisions commenced.²²

Portability

Many of the pensions and allowances (and pension rate calculators) in the *Social Security Act 1991* contain a requirement that the claimant or recipient must be 'in Australia'.²³ However, some pensions and allowances allow temporary absences. Thus, a person may be overseas for a limited period whilst still being considered to be 'in Australia' and may therefore continue to qualify (subject to other requirements such as the 'activity test').²⁴ The remaining payments are largely subject to 'international portability' rules that allow a recipient to be paid or a claimant to qualify while s/he is overseas. Some payments are made 'portable' by the operation of the *Social Security (International Agreements) Act 1999* ('agreement pensions and allowances').²⁵ Others are made 'portable' by specific provisions in the *Social Security Act 1991* ('non-agreement pensions and allowances').

Generally, the *Social Security (International Agreements) Act 1999* provides that pensions and allowances are not portable unless provided for in an International Agreement.²⁶ In a like manner, the *Agreement* provides that in general, social security payments payable by both countries are not portable. However, a person who receives an 'invalid's benefit', a 'widow's benefit' or a 'domestic purposes benefit' under the New Zealand legislation may continue to receive that benefit for a period of 4 weeks while they are in Australia.²⁷

Main Provisions

Schedule 1

Schedule 1 amends the *Social Security Act 1991*.

Items 1–3 introduce 'protected SCV holder', a new sub-category of 'special category visas' (see Appendix 2). In order to be protected from residence requirements and newly arrived

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resident's waiting periods, special category visa holders must demonstrate that they held, were or would have been eligible to hold a 'special category visa' on 26 February 2001. There is also a 3 month window of opportunity for persons who commence residence by 26 May 2001 and there is scope for discretionary declarations for applicants who, although fitting within the criteria, did not make an application within the relevant period.

Items 4–18 extend to ordinary special category visa holders residing in Australia:

- a two-year newly arrived residents waiting period in relation to various payments, and
- a residence exemption in some circumstances

Items 7, 8, 10, 11, 13, 14 and **16** apply the two-year newly arrived residents waiting period to holders of special category visas residing in Australia. These provisions pick up the existing exemptions applying to New Zealanders and preserve them only in relation to New Zealanders who were Australian residents on 1 February 2001. Those who become residents after this date and apply for newstart, mature age, sickness and mobility allowance or a Commonwealth Seniors Health Card are subject to the waiting period.

Items 4, 5, 6 and **9** provide an exemption from *any* residence requirement in relation to youth, newstart and sickness allowance for New Zealanders who have held a special category visa *and* have resided in Australia for a continuous period of 10 years commencing on 26 February 2001. However, an applicant may not receive a payment for more than 6 months or for more than a single period or for more than one allowance.

Item 12 extends eligibility for double orphan pension to holders of a special category visa who reside in Australia.

Items 20–33 essentially extend the proposed waiting period provisions to new measures relating to Pensioner Concession Cards and Health Care Cards proposed in the Social Security Legislation Amendment (Concession Cards) Bill 2000. A more complete overview of this Bill is provided in [Bills Digest No. 97 2000-2001](#).

Schedule 2

Items 1–12 essentially extend eligibility for family tax benefit (FTB) and child care benefit to holders of special category visas who reside in Australia. They include this definition in relation to the conditions for FTB eligibility and the definition of 'FTB child'.

Items 13–15 extends to holders of special category visas residing in Australia the two-year 'newly arrived disadvantaged low income resident's waiting period' under the *Health Insurance Act 1973*.

Items 16–18 amend the machinery provisions in the *Social Security (Administration) Act 1999* to permit claims to be made in the circumstances (regarding residence and waiting periods, etc) covered by the above amendments to the *Social Security Act 1991*.

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Appendix 1

Statistics on social security assistance for New Zealanders residing in Australia (1998)²⁸

<i>Program</i>	<i>Total national population (June 1998)</i>	<i>Number of NZ born (June 1998) (% of total program population NZ born)²⁹</i>	<i>Average national payment rate \$ per person per year</i>	<i>Total national program outlays 1997/98 \$m</i>	<i>Program outlays for NZ born \$m (% of total program outlays for NZ born)³⁰</i>
<i>Income support³¹</i>					
Age pension	1 679 053	15 296 0.9%	7 213	13 117	110.3 0.08%
Wife pension ³²	116 469	1 050 0.9%	8 048	253	8.5 3.3%
Disability support pension ³³	551 695	6 961 1.3%	8 785	4 695	6.1 0.1%
Carer pension	33 770	405 1.2%	8 800	258	3.6 1.4%
Sickness allowance	15 509	391 2.5%	9 155	94	3.6 3.8%
Newstart allowance ³⁴	834 060	20 550 2.5%	6 915	5 739	142.1 2.5%
Mature age allowance	50 781	666 1.3%	7 779	447	5.2 1.2%
Mature age partner allowance	4 561	57 1.2%	7 774	Not available in Budget papers	0.5
Partner allowance	81 053	1 059 1.3%	6 903	537	7.3 1.4%
Youth training allowance	32 841	658 2.0%	4 982	158	3.3 2.1%
Parenting allowance	645 030	13 089 2.0%	3 334	3 034	43.6 1.4%
Sole parent pension	371 411	11 173 3.0%	8 377	2 219	93.6 4.2%
Special benefit	10 256	104 1.0%	8 999	584	0.9 0.2%
Widow allowance and Widow pension	38 288	583 1.5%	7 867	301 ³⁵	4.6 1.5%
Sub-total	4 419 067	72 042 1.6%		31 436	433.2 1.4%

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<i>Program</i>	<i>Total national population (June 1998)</i>	<i>Number of NZ born (June 1998) (% of total program population NZ born)</i>	<i>Average national payment rate \$ per person per year</i>	<i>Total national program outlays 1997/98 \$m</i>	<i>Program outlays for NZ born \$m (% of total program outlays for NZ born)</i>
<i>Income supplement</i> ³⁶					
Mobility allowance	28 249	305 1.0%	1 433	42	0.4 0.9%
Child disability allowance	92 013	1 596 1.7%	2 440	247	3.9 1.6%
Family allowance	1 796 277	37 398 2.1%	3 468	6 385	129.7 2.0%
Family tax payment	943 054	22 768 2.4%	3 893	560	88.6 15.8%
Rent assistance ³⁷	973 255	30 088 3.1%	2 155	835	64.8 7.8%
Sub –total	3 832 848	92 155 2.4%		8 262	287.4 3.5%
Total (Where appropriate)	Total not appropriate – some in receipt of both income support and supplement payment - so some would be double counted	Total not appropriate – some in receipt of both income support and supplement payment - so some would be double counted	The above are average rates for whole program population. Average rates for NZ born may be different	39 698	720.6 1.8% ³⁸

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Appendix 2

Protected SCV Holder: Proposed Section 7

<i>Provision</i>	<i>Criteria</i>	<i>Duration of protected SCV holder status</i>
7(2A)(a)	A 'special category visa' holder who, <i>on 26/02/01</i> , was in Australia	Indefinite
7(2A)(b)	A person in Australia who, <i>immediately before 26/02/01</i> , was in Australia for periods totalling 12 months out of the past 2 years	Indefinite
7(2B)	A 'special category visa' holder who, at any time, was: <ul style="list-style-type: none"> • resident in Australia but temporarily absent, • receiving a social security payment, and • returned to Australia <ul style="list-style-type: none"> – within the portability period, or – <i>within 26 weeks from 26/02/01</i> 	Indefinite
7(2C)	A person who, <i>within 3 months of 26/02/01</i> , commences residence in Australia.	3 years, unless: <ul style="list-style-type: none"> • a 7(2E) determination is in force, or • the person claims a social security payment and it is granted within that period
7(2D)	A person who, <i>on 26/02/01</i> , was: <ul style="list-style-type: none"> • resident in Australia but temporarily absent, and • not receiving a social security payment 	12 months unless: <ul style="list-style-type: none"> • a 7(2E) determination is in force, or • the person claims a social security payment and it is granted within that period
7(2E)	A person who, <i>at a later time</i> , is in Australia and residing in Australia and <i>can show</i> : <ul style="list-style-type: none"> • they were resident in Australia but temporarily absent <i>on 26/02/01</i> • they commenced or recommenced residence in Australia <i>within 3 months of 26/02/01</i> 	12 months 3 years

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Endnotes

- 1 *Agreement between the Government of Australia and the Government of New Zealand providing for reciprocity in matters relating to social security* signed at Wellington on 19 July 1994.
- 2 Notes were exchanged on 7 September 1995 (adding Parts B and C to the *Agreement*) and 2 July 1998 (adding Part D).
- 3 The 'newly arrived resident waiting period' was introduced in March 1997.
- 4 Senator Jocelyn Newman, 'Migrants Newly Resident's Waiting Period', *Media Release*, 12 May 1998.
- 5 *Income support* refers to government payments provided to persons unable to provide for their own support by way of employment, eg. sickness allowance, age pension.
- 6 *Income supplement* refers to payments that are to supplement the other main income source, be that employment earnings or a government income support payment. For some income supplement payments (eg. mobility allowance, child disability allowance), it is not always necessary to be otherwise receiving any other social security payment.
- 7 Senator Jocelyn Newman, 'Australia to Terminate UK Social Security Agreement', *Media Release*, 13 July 1999.
- 8 Department of Family and Community Services, 'Termination of the Social Security Arrangement with the United Kingdom', at <http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/international/uktermhm.htm> [5/3/01].
- 9 Family Tax Benefit A and B (family allowance) and rent assistance, Double Orphan Pension Maternity Allowance, Child Care Benefit, Maternity Immunisation Allowance.
- 10 Health Care Card and Seniors Health Card
- 11 '[Australia-New Zealand Social Security Arrangements: Restricted access to Social Security payments for some New Zealand citizens](http://152.91.11.189/internet/nz-oz/nz-oz.nsf/content/changes-restrictedaccess.htm)' at <http://152.91.11.189/internet/nz-oz/nz-oz.nsf/content/changes-restrictedaccess.htm> [28/02/01].
- 12 The criteria for determining whether a person 'resides' in Australia are contained in subsection 7(3). Essentially, 'a person's domestic, financial and familial ties to Australia are taken into account, as well as the frequency and duration of any absences from Australia' (see the [Guide to Social Security Law](#) on the FACS website at <http://www.facs.gov.au>). No guidance is given in the *Social Security Act 1991* as to what constitutes 'likely to remain permanently in Australia'.
- 13 Special category visas are also available to prescribed non-citizens or classes of non-citizen for whom other visas are 'inappropriate'. But despite their potential width, these visas are synonymous with New Zealand citizens.
- 14 Essentially the criteria for 'behaviour concern' are matters going to character and relate to crimes, convictions and sentences and/or deportations: definition of 'behaviour concern non-citizen', *Migration Act 1958*, section 5.

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- 15 The criteria for 'health concern' are that the person is suffering from a 'prescribed disease or a prescribed physical or mental condition': definition of 'health concern non-citizen', *Migration Act 1958*, section 5.
- 16 Section 43.
- 17 Sections 94 and 95.
- 18 That is, they must have resided in Australia either for a continuous period of 10 years or for broken periods of 10 years, one of which was a continuous period of 5 years.
- 19 Essentially, the applicant must be a refugee.
- 20 *Social Security Legislation Amendment (Newly Arrived Residents Waiting Periods and Other Measures) Act 1997*. See [Bills Digest No. 102 1995-96](#).
- 21 Section 1061ZA(2).
- 22 Subsection 1061ZA(7).
- 23 For example, section 14(3) (remote area allowance), sections 198(4), 198AC(1), 198AC(2) and 198AC(2)(c) (carer payment), section 408BA(2)(e)(ii) (widow allowance), section 500(1)(c) (parenting payment), section 540(d) (youth allowance), section 568(c) (austudy), sections 593(1A), 593(1B)(b)(iii), 593(2)(g)(iii) (newstart allowance), section 660XBA(1)(f) (mature age allowance), section 660XBI(1)(c) (mature age partner allowance), section 660YBA(8) (mature age allowance – post 30 June 1986), sections 666(1)(h) and 667(f)(d) (sickness allowance), section 729(2)(fa) (special benefit), section 771HA(1)(D) (partner allowance), section 953(1)(e), 953(2)(e), 954(1)(e), 957(1), 957(2)(c), 957(2) (carer allowance), sections 1035(1)(a)(iv), 1035(1)(b)(iv), 1035(1)(ba)(v), 1035(1)(c)(iii), 1035(1)(ca)(iii), 1035(1)(d)(iii) (mobility allowance), section 1061G(1) (advance pharmaceutical allowance) and 1061R(a) (telephone allowance).
- 24 For example, absences for **3 months**: s408BA(4) (widow allowance), section 513(1B) (jobsearch, *subject to the activity test*), section 593(1A) (newstart, *subject to the activity test*), section 674 (sickness allowance), section 660YBA(9) (mature age allowance – post 30 June 1986); **13 weeks**: section 729(5) (special benefit, *in exceptional circumstances*); **26 weeks**: sections 660XBA(3) (mature age allowance), 660XBI(2) (mature age partner allowance) and section 500(1)(c) (parenting payment). In addition, while a family allowance recipient is not required to be in Australia if s/he or his or her dependent child is away from Australia for more than **3 years**, the allowance ceases to be payable: sections 836 & 840. The same rules apply to the double orphan pension (paragrph 999(1)(a)) and similar rules apply to the family tax payment (section 900AC).
- 25 International Agreements were originally given legislative effect by being included in a Schedule to the Social Security Act. *The Social Security (International Agreements) Act 1999* consolidated existing social security international agreements into a separate Act: see Bills Digest No. 2 1999-2000 at <http://www.aph.gov.au/library/pubs/bd/1999-2000/2000Bd002.htm> [2/03/01].
- 26 Section 11.
- 27 Article 8A.

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- 28 1998-99 Budget Papers-Portfolio Budget Statement, Social Security portfolio.
- 29 Some born in NZ may have moved to Australia shortly after birth and spent all of life in Australia.
- 30 National average payment rates used, but this may be at variance with the average rates for New Zealand social security recipients.
- 31 *Income support* refers to government payments provided to persons unable to provide for their own support by way of employment, eg. sickness allowance, age pension.
- 32 Female partners of Age & DSP pensioners.
- 33 Commonly known as the invalid pension.
- 34 Commonly known as the unemployment benefit.
- 35 1998/99 Budget papers did not separately itemise program outlays for widow allowance and widow pension. The 1997/98 figures are not available – this figure is a guesstimate.
- 36 *Income supplement* refers to payments that are to supplement the other main income source, be that employment earnings or a government income support payment. For some income supplement payments (eg. mobility allowance, child disability allowance), it is not always necessary to be otherwise receiving any other social security payment.
- 37 For low income earners paying private rent.
- 38 Proportion of NZ born resident in Australian population is about 1.8% - proportion of social security program outlays is also about 1.8%.

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