



31 July 2014

Ms Lyn Beverley  
Committee Secretary  
Senate Finance and Public Administration Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [fpa.sen@aph.gov.au](mailto:fpa.sen@aph.gov.au)

Dear Ms Beverley

**Re: Inquiry into the prevalence and impact of domestic violence in Australia**

Please find attached a submission from Oz Kiwi to the Senate Finance and Public Administration Committees inquiry on family violence in Australia. Oz Kiwi thanks the Commonwealth Government for the opportunity to submit to this inquiry.

Oz Kiwi is the peak body representing New Zealanders in Australia in the campaign to provide them with a fair pathway to becoming Australian citizens and overturn the laws that have stripped post 26<sup>th</sup> February 2001 arrivals of their basic rights. The submission focuses on the impact of family violence on New Zealand women and their children residing in Australia and the specific difficulties they face:

- Ineligibility for social services and Centrelink support
- Not being eligible for public housing or refuge housing
- Having no fair pathway to permanent residency or citizenship to rectify the situation.

Oz Kiwi calls on the Inquiry to recommend changing the discriminatory policy and legislation that post 26<sup>th</sup> February 2001 arrival New Zealanders in Australia face, particularly given most are excluded from the financial, housing and other social security support provided to other long term residents.

Yours sincerely

Ms Joanne Cox  
Oz Kiwi Whanau (family) Support Coordinator

Robin Turner  
Oz Kiwi Secretary

Timothy Gassin  
Oz Kiwi Vice Chairman



**Oz Kiwi submission to the Federal Finance and Public Administration References Committee inquiry on the prevalence and impact of domestic violence in Australia**

## **Oz Kiwi Background**

This submission has been written by Oz Kiwi, a campaign that aims for a fair pathway to Citizenship for New Zealanders living permanently in Australia. It aims to pressure the Australian Government to make changes that will enable New Zealanders residing in Australia to naturalise within a designated time period.

The campaign seeks to overturn the 2001 changes to Social Security law and subsequent discriminatory and unjustified law changes which have withdrawn New Zealanders' access to a variety of services. It aims to restore equality in the Trans-Tasman Travel Arrangement (TTTA) with people being treated fairly on both sides of the Tasman. The TTTA is the bi-lateral travel agreement by which New Zealanders and Australians can each reside and work in the other country (Productivity Commissions of Australia and New Zealand, 2012a).

## **New Zealanders' visa status in Australia**

The visa classification for New Zealanders residing in Australia is complex; there are three key periods:

### **1. Arrivals prior to 1<sup>st</sup> September 1994**

New Zealanders moving to Australia before 1<sup>st</sup> September 1994 are '**exempt non citizens**' and considered a 'permanent resident' (PR) when in Australia. These arrivals are entitled to the same social security benefits and government support as Australian citizens. The New Zealand government still recognises Australians residing in New Zealand as 'permanent residents' (PR) automatically upon arrival; they can vote after one year, claim most social security benefits and student loans after two years, and apply for citizenship after five years (New Zealand Department of Internal Affairs, 2014a).

### **2. Arrivals between 1<sup>st</sup> September 1994 and 26<sup>th</sup> February 2001**

Since 1<sup>st</sup> September 1994 all Australian arrivals must have a visa, thus New Zealanders were granted the TY444 Special Category Visa (SCV). Issued automatically on arrival the SCV is simply the date stamp in their passport. Until 26<sup>th</sup> February 2001 this was referred to as a 'protected' SCV and the

holder remained entitled to the same social security benefits and government support as pre-September 1994 arrivals (Department of Immigration and Border Protection (2014a)).

### **3. Arrivals post 26<sup>th</sup> February 2001**

Subsequent to 26<sup>th</sup> February 2001 the SCV is regarded as ‘unprotected’ – even though there is no difference between the pre and post 26<sup>th</sup> February 2001 SCV the latter does not entitle the person to claim Australian social security pensions or Australian government support<sup>1</sup>. Even though it is the same TY444 (SCV) visa, legislation is applied differently depending on whether they are pre or post 26<sup>th</sup> February 2001 arrivals for example under the *Social Security Act 1991* (Department of Immigration and Border Protection, 2014a). The TY444 (SCV) is granted to all New Zealand citizens arriving in Australia, subject to clearing health and good character tests. While allowing New Zealand citizens to work and reside here indefinitely the SCV is not a permanent visa nor does it provide a pathway to Australian citizenship (Department of Immigration and Border Protection, 2014a). The inequity of this situation will be borne out in subsequent sections.

### **Introduction**

The broader focus of the Finance and Public Administration References Committee’s inquiry into family violence recognises the particular impact on disabled and Aboriginal and Torres Strait Islander communities however it does not consider immigrant groups. Migrants to Australia can have a particular set of issues, given they may lack community support systems and be denied access to social services.

This submission will look at the issues pertaining to New Zealand citizens residing permanently in Australia who are living with a violent partner, or have recently left a relationship because of family violence, and the particular difficulties they face. Oz Kiwi’s submission will focus on parts A, D and E of the inquiry, and their relevance and impact on New Zealanders living permanently in Australia, rather than the broader factors that lead to family violence (FV). Nor will it address the wider impact FV has on women and children (such as mental health issues) as that is not the organisation’s area of expertise.

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<sup>1</sup> Excepting after ten years of continuous residence, an ‘unprotected’ SCV holder may claim Newstart, a youth allowance, or sickness pension for a maximum six month period.

## Definition of family violence

The *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011* defines family violence as:

*Violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the **family member**), or causes the family member to be fearful.*

Examples of family violence may include assault (including sexual assault), repeated derogatory taunts, stalking, intentionally damaging or destroying property or causing death or injury to an animal, unreasonably denying a family member necessary financial support, depriving any member of the family his or her liberty.

For the purposes of the Act, a child is **exposed** to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence, for example comforting or providing assistance to a family member who has been assaulted or being present when police or emergency services staff are attending to an injured family member (Family Law Legislation Amendment (Family Violence and Other Measures) Bill, 2011).

## Situation for New Zealand citizens resident in Australia

Accurate figures on the number of New Zealand long term residents in Australia is difficult to gauge given that the same visa is issued to holidaymakers, business travellers and migrants from New Zealand; it is estimated that up to 300,000 of the 650,000 are 'non-protected' SCV New Zealand citizens (Hamer & McMillan, 2013; Mares, 2014; Peter, 2013). Those who moved to Australia post February 2001 have no clear pathway to citizenship and thus are permanently disenfranchised. Many of those arrivals are not eligible for a 'permanent' visa and those who might be eligible rarely apply as high fees and the complicated application process are widely considered unjustifiable for someone already possessing work and residence rights. For example the partner subclass 820/801 visa costs \$4,575 with children costing an additional \$1,145 each (Department of Immigration and Border Protection, 2014b). For low income families finding several hundred dollars can be fraught, let alone finding the many thousands of dollars to cover applying for PR for the whole family. In contrast an Australian citizen would be granted New Zealand residency on arrival (at no cost) and after five years of residency may apply for citizenship for approximately \$AUD450.00 (New Zealand Department of Internal Affairs, 2014b).

The post February 2001 arrival New Zealanders living in Australia today enjoy fewer rights than all other permanent residents. These 'lost Kiwis' have a right to live and work in Australia, but many are ineligible for Australian citizenship and unable to access many government services. They pay the same taxes as everyone else, but are permanently disenfranchised and receive no assistance if they

fall upon hard times. Every year they are stripped of more rights, most recently being denied disability services under the National Disability Insurance Scheme (NDIS) despite having to pay the levy that funds it (Productivity Commissions of Australia and New Zealand, 2012b). The Commonwealth Government's Parliamentary Joint Committee on Human Rights raised concerns over this matter being discriminatory however the Government deemed not to amend the decision. An SCV New Zealander who is permanently disabled by her violent partner whilst living in Australia would be denied social and or financial services as she is not an Australian citizen.

SCV New Zealand citizens are only entitled to a one-off Centrelink payment after residing in Australia for ten consecutive years [refer Footnote 1 on page 2] (Department of Social Services, 2014). As they are not an Australian PR or Australian citizens New Zealand citizens are ineligible for most Centrelink payments however some may be able to obtain a health care card, subject to a two year waiting period (Productivity Commissions of Australia and New Zealand, 2012b). Many New Zealand women are not eligible for refuge accommodation, public housing, or support from agencies and charities. From Oz Kiwi's interaction with Government departments, plus anecdotal evidence of New Zealanders' reported experiences, there is much confusion around eligibility for New Zealand long term residents of Australia, with conflicting information being provided by various Government departments and agencies. For more details on the status of New Zealanders residing in Australia and their entitlements see the *Social Security payments for New Zealand citizens* (National Welfare Rights Network NWRN, 2013) <https://www.welfarerights.org.au/factsheets/2010/6/18/social-security-payments-for-new-zealand-citizens-living-australia>.

### **Impact of family violence on New Zealanders living in Australia**

Family violence is one of the leading causes of homelessness for women and their children in Australia (Commonwealth of Australia, 2008). The situation is compounded for New Zealand women residing in Australia on a TY444 (SCV) visa, particularly mothers with young children, whose relationships end, because many are not eligible for assistance by Centrelink. Consequently they are also turned away from women's shelters, as these often require residents to be in receipt of specified Centrelink payments. This is even the case when the children are Australian citizens from birth though their Australian father. For children born in Australia to two New Zealand parents there is a ten year waiting period for Australian citizenship; the child must reside in Australia from birth to acquire Australian citizenship on their tenth birthday (Department of Immigration and Border Protection, 2013). Without having social services support available to them, New Zealand citizens may be forced to remain in a violent relationship thus exposing themselves and their children to further violence.

Oz Kiwi is regularly contacted by community agencies, social workers, and outreach services looking for pathways to support SCV New Zealanders. There generally is no answer to their queries as post 26<sup>th</sup> February 2001 arrivals do not qualify for Centrelink pensions or other financial assistance<sup>i</sup> [excepting for the three pensions after the previously mentioned ten year stand down], or

accommodation services such as public housing. Agencies in receipt of government funding also generally require clients to be citizens or at least permanent residents.

**Examples of the difficulties New Zealand women face when leaving a relationship:**

- A woman who has lived in Australia since 2002 (her family moved here when she was a child) and has two Australian citizen children (aged 1 and 3) with her Australian ex-partner. She is only entitled to Family Tax Benefit (FTB) of \$130 per week. Forced to live with ex partner's parents as she cannot afford her own accommodation; she is currently looking for part time work.
- A family with three children aged 4 to 10 moved to Australia five years ago, the marriage ended and the husband put children on Australian Federal Police (AFP) watch list so they could not return to New Zealand. He refuses to pay child support and minimised his income declarations to reduce the amount. The family were force to sleep in a friend's living room and live off \$200/week FTB while waiting for a family court hearing regarding custody. The mother wanted to return to New Zealand to have the support of the children's grandmother (her mother).
- A woman in a violent relationship in New Zealand for 17 years, New Zealand Police assisted her to relocate to Australia after the ex-husband went to jail for his abuse towards family. After raising her children and running her own small business, ill health saw her lose that. She now cannot return to New Zealand as police advised her that her ex-husband would attempt to kill her since he was recently released from jail. The family have mental health issues resulting from the abuse, as the children witnessed parents fighting etcetera. The family are SCV holders so not entitled to any financial assistance and relying on the grandmother and aunt for support.
- Mother of two Australian born children aged 2 and 5 (their father is Australian). The relationship broke up after continued family violence; mother is not entitled to a pension, even to support two Australian citizen children. She literally walked away from everything and is now at a point where she is struggling to live week to week. She is scared she will have to hand her children over to their father and move back to New Zealand without them as he has refused them getting passports to leave the country.
- Mother of one teenaged son, left her family home due to abuse by her father, she found very little emergency accommodation because of her 14 year son. There is even less available for non-PR/Australian citizens. Fortunately the Salvation Army housed them for six weeks, then a family violence not for profit agency in Ballarat, Victoria. She is SCV so not eligible for public housing, a pension or other assistance.

As some of these cases illustrate women are often unable to return to New Zealand where they may be able to receive financial assistance and family support, as they cannot take their children out of

country without the father's consent. Some fathers place their children on the Australian Federal Police (AFP) watch list to prevent the mother returning to New Zealand. Under The Hague Convention (1980) children taken out of Australia without [the father's] permission are likely to be forcibly returned.

The result of these policies is that many women are forced to choose between a series of unappealing options: to remain in an abusive relationship, to remain in Australia destitute and possibly homeless, or to return to New Zealand leaving their children with an abusive former partner or in state care. Those with injuries or health problems resulting from abusive relationships are unable to receive financial assistance and are often forced to return to work before they are physically or mentally fit; this can result in their health problems being exacerbated.

### **How to improve support for New Zealanders living in Australia**

#### **Recommendations:**

Oz Kiwi supports the Joint Productivity Commissions' report recommendation that New Zealand citizens residing in Australia under the terms of the TTTA receive treatment equal to that afforded to citizens and other permanent residents after serving reasonable waiting periods, for example five years (Productivity Commissions of Australia and New Zealand, 2012c). This could be achieved by:

- repealing legislative changes enacted since 2001 that have reduced the rights of SCV holders; or
- signing a treaty with New Zealand to guarantee a minimum standard of treatment is afforded to all who migrate under the TTTA; or
- replacing the SCV with a visa classified as 'permanent' for New Zealand citizens.

To illustrate practical ways that such changes could be applied, a New Zealand citizen might become eligible after a two residency in Australia to access services such as social security or public housing. This would bring SCV New Zealanders in line with other Australian permanent residents. Furthermore after a five year residency New Zealanders could become eligible for citizenship, just as other permanent residents do. Such moves would mean that women fleeing violent relationships, and their children, could be entitled to financial assistance through pensions together with accommodation services such as emergency housing and accommodation grants. These steps would support women and their families to find safe and secure housing when they become homeless after leaving a violent relationship. Further, allowing women and their families to access social services and outreach supports would mean they can be facilitated to manage their health and mental health care needs. The current situation sees New Zealand citizens, including children born in Australia, suffering the unintended consequences resulting from government policy.

Oz Kiwi would like to thank the Committee for the opportunity to submit on the impact of domestic violence on New Zealand long term residents in Australia and would welcome the opportunity to discuss the content of this submission further.

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<sup>i</sup> **Australian social security for New Zealanders:** New Zealanders living in Australia are able to receive certain social security pensions in the reciprocal social security agreement between Australia and New Zealand - Age Pension, Disability Support Pension and Carers Payment – and the New Zealand Government contributes to these.

Furthermore, New Zealand citizens living in Australia are able to claim a variety of social payments and supports and medical benefits. For example, they have immediate access to child-related social security payments (such as Family Tax Benefit, Baby Bonus, Child Care Benefit and Parental Leave Pay), as well as publicly funded health care under Medicare. Access to the Commonwealth Seniors Health Card and the Health Care Card is subject to a 2 year waiting period (Productivity Commissions of Australia and New Zealand, 2012b).