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Dear Chairman and Chair,

I wish to provide comment on the submission made by Kruno Kukoc, First Assistant Secretary, Migration and Visa Policy Division of the Australian Department of Immigration and Citizenship (DIAC) dated November 2012, as I am concerned that certain statements are incomplete and/or incorrect and may tend to mislead.

I therefore wish to provide the following corrections/clarifications:

1. Although it is *possible* that many New Zealand citizens resident in Australia on 1 September 1994 were granted a permanent visa, this is unlikely. Any New Zealand citizen who availed him or herself of the Trans-Tasman Travel Arrangement (TTTA) between 2nd April 1984 and 25th February 2001 would instead hold a Special Category Visa (SCV), and therefore would have lost their status as an 'Australian permanent resident' under the Migration Regulations.

2. DIAC neglects to mention that there were other nationalities permanently residing in Australia without a visa prior to 1 September 1994, and that these people were generally automatically granted a permanent visa. New Zealanders were the only nationality of official permanent resident to generally lose this status. The unique ability to re-enter Australia without prior permission was used to discriminate between New Zealanders and other permanently-resident non-nationals who did not hold a visa.

   It is worth noting that, prior to 1 September 1994, there was virtually no reason for a New Zealand national to hold an Australian visa – just as there was no reason to hold a permanent visa prior to 2001.

3. It is also not mentioned that New Zealand nationals were generally prohibited from applying for onshore permanent visas prior to 2001. In any case, prior to 2001, a permanent visa held by a New Zealand national would cease to be in effect upon the automatic issue of an SCV via the presentation of a valid New Zealand passport to an Australian migration officer.

4. DIAC also neglects to mention that there are some New Zealand citizens who were ordinarily resident in Australia prior to 1 September 1994 but who are no longer treated as permanent residents under migration, citizenship, and social security law. For example, TVNZ1 News reported that actor Russell Crowe was rejected for Australian citizenship despite arriving in Australia in 1968 at the age of 4[1]. Mr. Crowe was at the BAFTA Awards in London on the 26th of February 2001.

5. DIAC describes New Zealand citizens residing indefinitely in Australia as temporary residents. However, it is entirely misleading to describe such people as 'temporary residents' given the right to reside indefinitely. There is no legal definition of the term 'temporary resident' in the Migration Act so there appears to be no actual basis for such a deceptive description. The legal classification of the SCV as a 'temporary visa' is due to the single condition that the holder must remain a New Zealand citizen. There is no time limit imposed by this so-called 'temporary' visa.

   Furthermore, this incorrect labelling of SCV holders as 'temporary residents' tends to incite further

[1] See http://tvnz.co.nz/national-news/kiwi-expats-take-australian-govt-un-3706722/video

human rights violations against this group. It is pure nonsense to describe any group of people as *"residing indefinitely in Australia as temporary residents"*.

6. It is not mentioned that other groups of non-citizens who do not hold permanent visas are recognised as permanent residents for citizenship purposes if they are not subject to any limitation as to time by law (see the citizenship legislative instrument dealing with residents of Norfolk and Cocos Islands). In fact, New Zealanders are the only group who are not subject to any limitation as to time by law but who are excluded from the definition of 'permanent resident' in the Citizenship Act.

Finally, I wish to draw attention to the graph provided by DIAC, as it shows the number of citizenship grants to New Zealanders tailing off at the same time that the population is rising.

The first correction/clarification is further detailed below:

The 1994 changes effectively resulted in the "removal of official permanent resident status" from New Zealand citizens resident in Australia.

DIAC states on p. 2 that:

> *"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."*

The fact of the matter is that, prior to 1 September 1994, a range of non-nationals from British Commonwealth countries were permitted to reside indefinitely in Australia without a visa, and as such, were considered to be permanent residents in terms of Australian citizenship law. This group included certain white citizens of the Commonwealth who arrived prior to 1973 (including white NZ citizens) as well as white and non-white New Zealand citizens who entered post-1973 via the Trans-Tasman Travel Arrangement (TTTA). Such people were classed as 'exempt non-citizens' under the Migration Act.

The 1st of September1994 saw Australia introduce the compulsory visa system and mandatory detention for non-citizens who do not hold a valid visa. As a result, a unique visa known as the 'Special Category Visa' (SCV) was introduced for New Zealand nationals[2]. Other nationalities of permanent resident who were exempt non-citizens (i.e.: British subjects who had not left the country since 1973) were automatically granted an Absorbed Person Visa[3], and thereby retained their status as an 'Australian permanent resident' under the Migration Regulations - whereas most resident New Zealand nationals were instead automatically granted an SCV.

The conversion of most resident New Zealand nationals into SCV holders was achieved via the combined operation of s. 34(a-b) of the Migration Act and *Regulation 17 (New Zealand citizens and certain children of New Zealand citizens)* of the *Migration Reform (Transitional Provisions) Regulations*[4]. Subsections 34(a) & (b) of the Migration Act stipulate that a person must have been continuously present in Australia between the 2nd of April 1984 and the 1st of September 1994 in order to receive the automatic grant of an Absorbed Person Visa. However, the TTTA allowed New Zealand

[2] See s. 32 of the Migration Act 1958 and ss. 444 of the Migration Regulations 1994.
[3] See s. 34 of the Migration Act 1958
[4] See Addendum 4

citizens to enter Australia and take up or resume permanent residency as an exempt non-citizen during this time period. Consequently, any resident New Zealander that availed him or herself of the freedom of movement afforded by the TTTA during this time period was granted an SCV instead of an Absorbed Person Visa. In other words, an agreement that was meant to advantage us was instead used as a means to discriminate

New Zealand nationals who were automatically granted an SCV lost their status as an 'Australian permanent resident' under the amended Migration Regulations because the SCV is technically classed as a 'temporary visa'[5] despite the fact that it affords the right of indefinite residence. The reason for such a classification is that the validity of the SCV is subject to a single condition – namely, retention of New Zealand citizenship - which therefore categorises the SCV as a 'temporary visa' under s. 30(2)(c) of the Migration Act as it is only valid whilst the holder has a specified status (i.e.: holds New Zealand nationality).

Those few New Zealand nationals who had not left the country since the 2nd of April 1984 were unaffected by the 1994 changes, as these people would instead have been automatically granted an Absorbed Person Visa. However, prior to 2001, such a permanent visa would cease to be in effect due to the automatic issue of an SCV upon presentation of a valid New Zealand passport to an immigration officer[6]. In other words, a New Zealand national could unknowingly automatically lose their official permanent resident status by simply exercising their right under the TTTA to freely leave and re-enter Australia.

In addition, prior to 2001 New Zealand nationals were generally prohibited from applying for onshore permanent visas. The vast majority of New Zealand citizens in Australia therefore had SCV holder status enforced upon them.

I first arrived in Australia in 1970 and have resided here for some 40 years. However, as a result of the unilateral changes made in 1994 and 2001 that only applied to New Zealand nationals, I am no longer eligible for citizenship, social security, and a raft of other government services. No other nationality has been placed in such a precarious position.

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Date: 13 November 2012

[5] See s. 30(2)(c) of the Migration Act 1958
[6] See the operation of s. 82 of the Migration Act