



# **Family and Community Services Legislation Amendment (New Zealand Citizens) Act 2001**

**No. 18, 2001**



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**An Act to amend the social security law and certain  
other laws in relation to residence requirements,  
and for related purposes**

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# **An Act to amend the social security law and certain other laws in relation to residence requirements, and for related purposes**

[Assented to 30 March 2001]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Family and Community Services Legislation Amendment (New Zealand Citizens) Act 2001*.

## **2 Commencement**

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) If this section commences before, or at the same time as, the commencement of the *Social Security Legislation Amendment (Concession Cards) Act 2001*, Part 2 of Schedule 1 and item 18 of Schedule 2 commence immediately after the commencement of that Act.
- (3) If this section commences at the same time as, or after, the commencement of the *Social Security Legislation Amendment (Concession Cards) Act 2001*, items 14, 15, 16, 17 and 18 of Schedule 1 and Part 2 of Schedule 2 do not commence.

## **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Social Security Act 1991**

### **Part 1—Amendments commencing on Royal Assent**

#### **1 Subsection 7(1)**

Insert:

*protected SCV holder* has the meaning given by subsections (2A), (2B), (2C) and (2D).

#### **2 Subparagraph 7(2)(b)(iii)**

Repeal the subparagraph, substitute:

(iii) a special category visa holder who is a protected SCV holder.

#### **3 After subsection 7(2)**

Insert:

(2A) A person is a *protected SCV holder* if:

- (a) the person was in Australia on 26 February 2001, and was a special category visa holder on that day; or
- (b) the person had been in Australia for a period of, or for periods totalling, 12 months during the period of 2 years immediately before 26 February 2001, and returned to Australia after that day.

(2B) A person is a *protected SCV holder* if the person:

- (a) was residing in Australia on 26 February 2001; and
- (b) was temporarily absent from Australia on 26 February 2001; and
- (c) was a special category visa holder immediately before the beginning of the temporary absence; and
- (d) was receiving a social security payment on 26 February 2001; and
- (e) returned to Australia before the later of the following:
  - (i) the end of the period of 26 weeks beginning on 26 February 2001;

- (ii) if the Secretary extended the person's portability period for the payment under section 1218C—the end of the extended period.
- (2C) A person who commenced, or recommenced, residing in Australia during the period of 3 months beginning on 26 February 2001 is a **protected SCV holder** at a particular time if:
  - (a) the time is during the period of 3 years beginning on 26 February 2001; or
  - (b) the time is after the end of that period, and either:
    - (i) a determination under subsection (2E) is in force in respect of the person; or
    - (ii) the person claimed a payment under the social security law during that period, and the claim was granted on the basis that the person was a protected SCV holder.
- (2D) A person who, on 26 February 2001:
  - (a) was residing in Australia; and
  - (b) was temporarily absent from Australia; and
  - (c) was not receiving a social security payment;is a **protected SCV holder** at a particular time if:
  - (d) the time is during the period of 12 months beginning on 26 February 2001; or
  - (e) the time is after the end of that period, and either:
    - (i) at that time, a determination under subsection (2E) is in force in respect of the person; or
    - (ii) the person claimed a payment under the social security law during that period, and the claim was granted on the basis that the person was a protected SCV holder.
- (2E) A person who is residing in Australia and is in Australia may apply to the Secretary for a determination under this subsection stating that:
  - (a) the person was residing in Australia on 26 February 2001, but was temporarily absent from Australia on that day; or
  - (b) the person commenced, or recommenced, residing in Australia during the period of 3 months beginning on 26 February 2001.



- (2F) If a person makes an application under subsection (2E), the Secretary must make the determination if:
- (a) the Secretary is satisfied that paragraph (2E)(a) or (2E)(b) applies to the person; and
  - (b) the application was made within whichever of the following periods is applicable:
    - (i) if paragraph (2E)(a) applies to the person—the period of 12 months beginning on 26 February 2001;
    - (ii) if paragraph (2E)(b) applies to the person—the period of 3 years beginning on 26 February 2001.

The Secretary must give a copy of the determination to the person.

- (2G) The Secretary must make a determination under this subsection in respect of a person if the person is a protected SCV holder because of subsection (2B). If the Secretary is required to make such a determination:
- (a) the determination must state that the person was residing in Australia on 26 February 2001, but was temporarily absent from Australia on that day; and
  - (b) the determination must be made within the period of 6 months of the person's return to Australia; and
  - (c) a copy of the determination must be given to the person.

#### **4 At the end of section 7**

Add:

- (7) For the purposes of paragraph 540(d), subparagraph 593(1)(g)(ii) and paragraph 666(1)(g), a person is ***exempt from the residence requirement*** in respect of a period if:
- (a) throughout the period, the person was the holder of a special category visa; and
  - (b) immediately before the period commenced, the person had been residing in Australia for a continuous period of at least 10 years, being a period commencing on or after 26 February 2001;

unless the person's exemption from the residence requirement in respect of the period would result in the person:

- (c) receiving newstart allowance, sickness allowance or youth allowance for a continuous period of more than 6 months because of this subsection; or
- (d) receiving newstart allowance, sickness allowance or youth allowance for more than one non-continuous period because of this subsection; or
- (e) receiving more than one of those allowances because of this subsection.

**5 Paragraph 540(d)**

Repeal the paragraph, substitute:

- (d) throughout the period, the person:
  - (i) is an Australian resident; or
  - (ii) is exempt from the residence requirement within the meaning of subsection 7(7).

**6 Subparagraph 593(1)(g)(ii)**

After “resident”, insert “or is exempt from the residence requirement within the meaning of subsection 7(7)”.

**7 Paragraph 623A(6)(b)**

Omit “the day this subsection commences”, substitute “1 February 2000”.

**8 Paragraph 660YCFA(5)(b)**

Omit “the day this subsection commences”, substitute “1 February 2000”.

**9 Paragraph 666(1)(g)**

Repeal the paragraph, substitute:

- (g) throughout the period, the person:
  - (i) is an Australian resident; or
  - (ii) is exempt from the residence requirement within the meaning of subsection 7(7).

**10 Paragraph 696B(6)(b)**

Omit “the day this subsection commences”, substitute “1 February 2000”.

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**11 Paragraph 771HNA(5)(b)**

Omit “the day this subsection commences”, substitute “1 February 2000”.

**12 Subparagraph 999(1)(d)(i)**

After “resident”, insert “or a special category visa holder residing in Australia”.

**13 Paragraph 1039AA(5)(b)**

Omit “the day this subsection commences”, substitute “1 February 2000”.

**14 Paragraph 1061ZA(1)(b)**

After “resident”, insert “or a special category visa holder residing in Australia”.

**15 Paragraph 1061ZA(2)(b)**

Repeal the paragraph, substitute:

- (b) has not been both:
    - (i) an Australian resident or a special category visa holder residing in Australia; and
    - (ii) in Australia;
- for a period of, or for periods totalling, 104 weeks;

**16 Paragraph 1061ZA(7)(b)**

Omit “the day this subsection commences”, substitute “1 February 2000”.

**17 Paragraph 1061ZAA(a)**

After “resident”, insert “or a special category visa holder residing in Australia”.

**18 Paragraph 1061ZAA(b)**

Repeal the paragraph, substitute:

- (b) ends when the person has been both:
  - (i) an Australian resident or a special category visa holder residing in Australia; and
  - (ii) in Australia;

for a period of, or for periods totalling, 104 weeks.

## **19 Schedule 1A**

Insert in the appropriate numerical position:

### **133 Meaning of *Australian resident***

For the purposes of determining whether a person was an Australian resident at a time, or throughout a period, occurring before the commencement of item 2 of Schedule 1 to the *Family and Community Services Legislation Amendment (New Zealand Citizens) Act 2001*:

- (a) the definition of ***Australian resident*** at that time, or throughout that period, applies; and
- (b) that definition, as amended by the *Family and Community Services Legislation Amendment (New Zealand Citizens) Act 2001*, does not apply.

## **Part 2—Other amendments**

### **20 Paragraph 1061ZG(1)(b)**

After “resident”, insert “or a special category visa holder residing in Australia”.

### **21 Paragraph 1061ZH(1)(b)**

Repeal the paragraph, substitute:

- (b) has not been both:
    - (i) an Australian resident or a special category visa holder residing in Australia; and
    - (ii) in Australia;
- for a period of, or for periods totalling, 104 weeks;

### **22 Paragraph 1061ZI(a)**

After “resident”, insert “or a special category visa holder residing in Australia”.

### **23 Paragraph 1061ZI(b)**

Repeal the paragraph, substitute:

- (b) ends when the person has been both:
    - (i) an Australian resident or a special category visa holder residing in Australia; and
    - (ii) in Australia;
- for a period of, or for periods totalling, 104 weeks.

### **24 Subparagraph 1061ZN(1)(a)(i)**

After “resident”, insert “or a special category visa holder residing in Australia”.

### **25 Subparagraph 1061ZO(2)(a)(i)**

After “resident”, insert “or a special category visa holder residing in Australia”.

### **26 Subparagraph 1061ZO(2)(a)(ii)**

After “resident”, insert “or with a special category visa holder residing in Australia”.

**27 Subparagraph 1061ZO(2)(b)(i)**

After “resident”, insert “or a special category visa holder residing in Australia”.

**28 Paragraph 1061ZO(3)(a)**

After “resident”, insert “or a special category visa holder residing in Australia”.

**29 Paragraph 1061ZO(4)(a)**

After “resident”, insert “or a special category visa holder residing in Australia”.

**30 Paragraph 1061ZO(5)(b)**

After “resident”, insert “or with a special category visa holder residing in Australia”.

**31 Paragraph 1061ZQ(2)(c)**

After “resident”, insert “, or a special category visa holder residing in Australia,”.

**32 Paragraph 1061ZR(a)**

After “resident”, insert “or a special category visa holder residing in Australia”.

**33 Paragraph 1061ZR(b)**

Repeal the paragraph, substitute:

- (b) ends when the person has been both:
    - (i) an Australian resident or a special category visa holder residing in Australia; and
    - (ii) in Australia;
- for a period of, or for periods totalling, 104 weeks.

## **Schedule 2—Amendment of other Acts**

### **Part 1—A New Tax System (Family Assistance) Act 1999**

#### **1 Subsection 3(1)**

Insert:

*holder*, in relation to a visa, has the same meaning as in the *Migration Act 1958*.

#### **2 Subsection 3(1)**

Insert:

*resides in Australia* has the same meaning as in the *Social Security Act 1991*.

#### **3 Subsection 3(1)**

Insert:

*special category visa* has the same meaning as in the *Migration Act 1958*.

#### **4 After subparagraph 21(1)(b)(i)**

Insert:

(ia) is a special category visa holder residing in Australia; or

#### **5 Paragraph 22(2)(d)**

After “resident”, insert “, is a special category visa holder residing in Australia”.

#### **6 Paragraph 22(3)(e)**

After “resident”, insert “, is a special category visa holder residing in Australia”.

#### **7 Paragraph 22(4)(d)**

After “resident”, insert “, is a special category visa holder residing in Australia”.

**8 Paragraph 22(5)(c)**

After “resident”, insert “, is a special category visa holder residing in Australia”.

**9 Paragraph 22(6)(c)**

After “resident”, insert “, is a special category visa holder residing in Australia”.

**10 After subparagraph 42(1)(b)(i)**

Insert:

(ia) is a special category visa holder residing in Australia; or

**11 After subparagraph 44(1)(d)(i)**

Insert:

(ia) is a special category visa holder residing in Australia; or

**12 After subparagraph 45(1)(f)(i)**

Insert:

(ia) is a special category visa holder residing in Australia; or



## **Part 2—Health Insurance Act 1973**

### **13 Paragraph 5BA(2)(c)**

Repeal the paragraph, substitute:

(c) has been both:

(i) an Australian resident or a special category visa holder  
residing in Australia; and

(ii) in Australia;

for a period of, or for periods totalling, 104 weeks; or

### **14 Paragraph 5BA(3)(a)**

After “resident”, insert “ or a special category visa holder residing in  
Australia”.

### **15 Paragraph 5BA(3)(b)**

Repeal the paragraph, substitute:

(b) ends when the person has been both:

(i) an Australian resident or a special category visa holder  
residing in Australia; and

(ii) in Australia;

for a period of, or for periods totalling, 104 weeks.

## **Part 3—Social Security (Administration) Act 1999**

### **16 Subsections 29(1) and (2)**

After “31”, insert “, 31A”.

### **17 After section 31**

Insert:

### **31A Exclusion of certain claims by special category visa holders from section 29 residence requirement**

Despite paragraph 29(1)(a), a person who is not an Australian resident may make a claim for a social security payment or a concession card if:

- (a) the person is a special category visa holder residing in Australia; and
- (b) in order to qualify for the payment or concession card concerned, the person is not required to be an Australian resident if the person is a special category visa holder residing in Australia.

### **18 After subparagraph 240B(4)(a)(i)**

Insert:

- (ia) is a special category visa holder residing in Australia; or

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*[Minister’s second reading speech made in—  
House of Representatives on 28 February 2001  
Senate on 7 March 2001]*

(9/01)

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