



## NEW ZEALAND CITIZENS IN AUSTRALIA & SOCIAL SECURITY

*This factsheet explains the Australian social security rules that apply to people from New Zealand. These rules are very complex and it is always best to obtain legal advice if you're not happy with Centrelink's decision.*

### VISA TYPE

Whether you are entitled to receive a social security payment, the type of payment, and whether you need to serve a waiting period will in part depend on the type of visa you have.

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### SPECIAL CATEGORY VISA HOLDERS

If you are a New Zealand citizen and entered Australia on a New Zealand passport you will generally have been issued a "**Special Category Visa**". If you entered Australia on a New Zealand passport, you may not be aware that you hold a Special Category Visa because these visas are granted automatically on entry into Australia. There will be no stamp in your passport indicating that you were issued with the visa.

If you have been granted a Special Category Visa you can work and live in Australia indefinitely however, technically, it is not a permanent visa. If you are a New Zealand citizen you can apply to the Australian Department of Immigration and Citizenship for a permanent visa and if successful, you will become a permanent resident of Australia. Prior to the granting of permanent residence, you can only receive the full range of social security payments as a New Zealand citizen if you are a "protected" Special Category Visa holder. A "protected" Special Category Visa holder is different to a Special Category Visa holder.

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### PROTECTED SPECIAL CATEGORY VISA HOLDERS

The criteria that Centrelink must look at to decide whether you are a "protected" Special Category Visa holder are complex. Whether you are a "protected" Special Category Visa holder will depend on the date you arrived in Australia. It may also depend on the date you started living here (rather than just visiting) and whether you made an application (either for a social security payment or for a determination that you were "residing in Australia") to Centrelink within a specified time.

The basic criteria for establishing whether a person is a "protected" Special Category Visa holder are outlined below. The rules are very confusing. You can phone Centrelink International Services on 13 16 73 for information about these rules. If in doubt or you need assistance appealing, contact your local Welfare Rights Centre/Advocate.

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### AM I A PROTECTED SPECIAL CATEGORY VISA HOLDER?

If you hold a Special Category Visa and you can answer yes to any of the following questions, you may be a "protected" Special Category Visa holder, and potentially eligible for the full range of Australian social security payments:

- Were you in Australia on 26 February 2001 and did you enter Australia on a New Zealand passport?
- Were you in Australia for periods totalling 12 months at any time between 26 February 1999 and 26 February 2001 while holding a Special Category Visa?
- Did you receive an Australian social security payment between 26 February 2001 and 26 February 2004 while holding a Special Category Visa?
- Were you residing in Australia on 26 February 2001 but temporarily overseas? If so, were you receiving an Australian social security payment while you were overseas? If so, did you return to Australia during



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the period your Australian social security payment remained payable?

- Did you commence or recommence residing in Australia after 26 February 2001 but before 26 May 2001? If so, did you apply to Centrelink before 26 February 2004 for a determination that you were "residing in Australia"? See below for further information regarding "determinations".
- Were you residing in Australia on 26 February 2001 but temporarily overseas on that day, and not receiving an Australian social security payment? If so, did you return to Australia by 26 February 2002? If so, did you apply to Centrelink before 26 February 2002 for a determination that you were "residing in Australia"? See below for information about "determinations".
- If you were in Australia on 26 February 2001 and held a Special Category Visa at that time, you (and your children) may have automatically acquired Australian citizenship. Enquire with the Department of Immigration and Citizenship.

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### WHAT IS A DETERMINATION?

If you applied to Centrelink for a determination that you are living in Australia, or were living here at a particular time, you should have received a letter from Centrelink confirming your residence. Such a letter is a "Certificate of Australian Residence". If you are a Special Category Visa holder who claimed and was residentially qualified for a payment at a particular time you can be deemed to have a "determination".

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### OTHER VISA HOLDERS

The general rules outlined below will only apply to you if you are currently living in Australia on a Special Category Visa. If you now hold a **permanent visa** or a **temporary spouse visa** issued by the Australian Department of Immigration and Citizenship, these rules do not apply to you. You should refer to the factsheet, **Newly Arrived Residents and social security** for further information about your entitlement to social security payments.

### INTERNATIONAL AGREEMENT BETWEEN AUSTRALIA & NEW ZEALAND

If you are a Special Category Visa holder living in Australia you may qualify for a social security payment under the International Social Security Agreement between Australia and New Zealand, whatever date you entered Australia. This means that even though you are not a "protected" Special Category Visa holder, you may still be eligible for payments under the Agreement. See below for further information about entitlements under the Agreement.

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### PAYMENTS COVERED BY THE INTERNATIONAL AGREEMENT

Under the International Social Security Agreement between Australia and New Zealand that came into force on 1 July 2002, payment of Age Pension, Disability Support Pension (only if "severely disabled") and Carer Payment (only if caring for a partner who is on Disability Support Pension) can be made to New Zealand citizens who hold a Special Category Visa and are living in Australia. Eligibility for these payments under the Agreement is subject to special requirements - see below for the requirements for each payment.

Any Special Category Visa holder living in Australia may claim a payment under this Agreement, whatever date they entered Australia. This means to be eligible for these three payments listed above you do not have to be a "protected" Special Category Visa holder.

**Note:** The Agreement in force prior to 1 July 2002 was different. Anyone on an Australian pension under the previous Agreement will continue to be paid under the previous Agreement unless they return to New Zealand permanently or cease to be eligible for some other reason.



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### AGE PENSION

In order for Age Pension to be paid under the Agreement you must be 65 years or over and have resided in Australia and New Zealand for a total of 10 years. For periods of residence in New Zealand, only periods between the age of 20 and 64 can count towards the 10 years. For periods of residence in Australia, residence at any age can generally count towards the 10 years. Periods of residence in Australia and New Zealand between the required ages can be added together to make up the ten years.

For example, a person who lived in New Zealand for four years before turning 65, may be eligible for Australian Age Pension under the Agreement if they entered Australia on a New Zealand passport and they have lived in Australia for six years or more.

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### DISABILITY SUPPORT PENSION

In order for Disability Support Pension to be paid under the Agreement, you must be assessed to be "severely disabled". Claimants must have a total of at least ten years residence in Australia and/or New Zealand and have become "severely disabled" while living in Australia or New Zealand and have resided in New Zealand for at least one year before the date you became severely disabled.

The term "severely disabled" is defined as a physical, psychiatric, or intellectual impairment that makes a person unable to work more than eight hours per week or benefit from a rehabilitation program, for the next two years.

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### CARER PAYMENT

Carer Payment is a pension. To be eligible for Carer Payment under the Agreement, you must be caring for a partner who receives Disability Support Pension. You must also have lived in Australia and/or New Zealand for at least two years to be eligible.

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### CLAIMING UNDER THE INTERNATIONAL AGREEMENT

If you wish to claim Age Pension, Disability Support Pension or Carer Payment under the International Social Security Agreement, you can get a claim form at any Centrelink office. You should clearly explain that you are claiming under the International Social Security Agreement between Australia and New Zealand.

If you have problems with Centrelink accepting a claim form or if payment is refused, contact your local Welfare Rights Centre/Advocate. You can also phone Centrelink International Services on 13 16 73.

### SIX MONTHS' PAYMENT OF AN ALLOWANCE

From 26 February 2011, Special Category Visa holders who have resided in Australia for a continuous period of at least 10 years may qualify for Youth Allowance, Newstart Allowance and Sickness Allowance, for a period of **up to six months**. This is a one-off payment. If you start receiving the payment and then stop after 2 months, for example, you are not entitled to receive the remaining four months.

### OTHER ENTITLEMENTS FOR NEW ZEALAND CITIZENS IN AUSTRALIA

New Zealand citizens living in Australia without a permanent visa may qualify for the following payments, whatever their date of arrival:



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Family tax benefit	Newborn upfront payment & newborn supplement	Single income family supplement
Child care benefit	Double orphan pension	Health care card*
Low income health care card*	Foster child health care card*	Commonwealth seniors health card*
Parental leave pay	Dad and partner pay	Assistance for isolated children

\*A 104 week newly arrived resident's waiting period generally applies to applicants for the Low Income Health Care Card and Seniors Health Care Card. See the factsheet, **Newly arrived residents and social security**.

### DO YOU HAVE A CHILD IN YOUR CARE WHO IS AN AUSTRALIAN CITIZEN?

If you are a New Zealand citizen with a child in your care who is an Australian citizen, the child may be eligible for Special Benefit. There are complex rules regarding the issuing of Australian citizenship to children born in Australia. If you are unsure whether your child is an Australian citizen you should lodge a Centrelink claim and contact the Australian Department of Immigration and Citizenship for advice. Your child may be an Australian citizen if they were born in Australia and have a parent who is an Australian citizen, permanent resident or a New Zealand citizen who is a protected special category visa holder.

There are no age limits for Special Benefit, so a newborn baby may qualify. If your child is an Australian citizen or permanent resident of Australia, and you are in hardship because you are not residentially eligible for an Australian allowance or pension, you should claim Special Benefit on the child's behalf. Write the child's name and date of birth in the claimant boxes on the Special Benefit claim form. Even if you are getting Family Tax Benefit for the child you should claim Special Benefit on the child's behalf as Special Benefit may be paid at a higher rate than your Family Tax Benefit.

Many Centrelink counter staff are not familiar with accepting claims lodged by or on behalf of children, so you may need to ask for a Centrelink Social Worker to help you claim. If the claim is refused, contact your local Welfare Rights Centre.

### APPEAL RIGHTS

If you disagree with a Centrelink decision you have the right to appeal against it. Appealing is easy and free. For more information on appealing see the Factsheet **Appeals: how to appeal against a Centrelink decision**. You can contact your local Welfare Rights Centre for advice.

**THIS FACTSHEET CONTAINS GENERAL INFORMATION ONLY. IT DOES NOT CONSTITUTE LEGAL ADVICE. IF YOU NEED LEGAL ADVICE PLEASE CONTACT YOUR LOCAL WELFARE RIGHTS CENTRE. YOU CAN FIND YOUR LOCAL WELFARE RIGHTS CENTRE AT [WWW.WELFARERIGHTS.ORG.AU](http://WWW.WELFARERIGHTS.ORG.AU). WELFARE RIGHTS CENTRES ARE COMMUNITY LEGAL CENTRES, WHICH SPECIALISE IN SOCIAL SECURITY LAW, ADMINISTRATION AND POLICY. THEY ARE INDEPENDENT OF CENTRELINK. ALL ASSISTANCE IS FREE.**

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