

# Verification of entitlement to reside in New Zealand indefinitely

**Introduction** This policy outlines the relevant legislation and policy relating to the 'entitlement to reside in New Zealand indefinitely' requirement of the Citizenship Act 1977.

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## Legislation

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**Citizenship Act 1977 Section 8(2)(a)**

Section 8(2)(a) of the Citizenship Act 1977 requires the applicant to satisfy the Minister that they are:

‘entitled, in terms of the Immigration Act 1987, to be in New Zealand indefinitely’.

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**Citizenship (Western Samoa) Act 1982**

Applicants applying under the Citizenship (Western Samoan) Act 1982 Section 7(1)(b)(ii) are also required to be entitled to reside in New Zealand indefinitely.

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## Definition of New Zealand

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**Definition of New Zealand Citizenship Act 1977**

The Citizenship Act 1977 section 2 defines New Zealand as all of the following:

- Cook Islands
- Niue
- Tokelau
- Ross Dependency.

**Note:**

The definition of New Zealand in the Immigration Act 1987 does not include the Cook Islands, Niue or Tokelau.

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## Requirements on permits

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### Permits

Under new section 8(3) of the Citizenship Act 1977, a person is not entitled to reside in New Zealand indefinitely if:

- requirements have been imposed under the Immigration Act 1987 on the person's entitlement to reside in New Zealand indefinitely, and
  - those requirements have not been met in full or cancelled at the time of the person's application for citizenship
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### Section 18a of the Immigration Act 1987

Section 18a of the Immigration Act 1987 provides for the Minister of Immigration, or an immigration officer, to grant a residence permit with special requirements imposed upon the holder. For example, under (current) immigration residence policy, if a migrant receives a residence permit under the Investor Category, the permit is conditional upon an investment of at least \$1,000,000 remaining in New Zealand for a specified period. After the investment period, and provided that the requirements have been met, the permit becomes unconditional.

Any requirements are shown on the residence permit and in the Applicant Management System (AMS). In a small number of cases, requirements are imposed on residence permits issued under other categories. Those requirements are also recorded on the permit and in the AMS permit history.

If an applicant has obtained a residence permit with requirements, the case officer must confirm that these requirements have been met. An 'indefinite returning residence visa', issued by the Department of Labour, is proof that the applicant has met the permit requirements. If the applicant does not have an 'indefinite returning residence visa', the applicant must obtain a letter from the Department of Labour confirming that the requirements have been met.

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## Entitlement to reside for schedule purposes

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### Schedule

An applicant may fulfil the 'entitlement to reside indefinitely' requirement for schedule purposes in the following ways:

<b>Residence Permit</b>	Applicant holds a valid New Zealand residence permit.
<b>Returning Residence Visa</b>	Applicant holds a valid New Zealand returning residence visa.
<b>New Zealand Citizen by Descent</b>	Applicant is a New Zealand citizen by descent. Under section 3 of the Immigration Act 1987, an applicant who is a New Zealand citizen by descent is automatically entitled to reside in New Zealand indefinitely. A citizenship certificate, or a confirmation of New Zealand citizenship by descent issued by the Determinations team, is evidence of New Zealand citizenship by descent.
<b>Exempt</b>	The Immigration Act 1987 enables the Minister of Immigration to exempt certain groups of people from the requirement to hold a permit to be in New Zealand. Australian citizens are exempt from the requirement to hold a permit to be in New Zealand indefinitely. An Australian passport or citizenship certificate is evidence of Australian citizenship. Note: Australian permanent residents are automatically granted a New Zealand residence permit on arrival in New Zealand, i.e. they should have a New Zealand resident permit in their passport or on AMS.

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## Entitlement to reside for schedule purposes, Continued

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### **Determining that the requirement is met**

To be included on a schedule, the applicant must demonstrate that they are clearly able to meet the requirement.

Citizenship confirms that an applicant is able to meet the 'entitlement to reside indefinitely' requirement for schedule purposes by:

- sighting the relevant permit or visa in the applicant's passport, and/or
  - confirming this information on the Immigration New Zealand (INZ) AMS database.
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### **Doubt**

If there is some doubt about an applicant's ability to meet the 'entitlement to reside indefinitely' requirement, contact INZ in writing to confirm the applicant's status.

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## Date of entitlement to reside

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**Date of entitlement**

Once it has been determined that the applicant is entitled to reside in New Zealand indefinitely, Citizenship must note the date when the applicant obtained that entitlement or applied for that entitlement. This date determines whether the applicant is to be assessed against the 'ordinary residence' requirement or the 'presence' requirement (3 or 5 year grant).

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**Three year ordinary residence requirement**

An applicant must be assessed against the ordinary residence requirement if they applied for the grant of citizenship between 21 April 2005 and 20 April 2010 (both dates inclusive), and before 21 April 2005:

- were entitled in terms of the Immigration Act 1987 to be in New Zealand indefinitely, or
  - were entitled to reside indefinitely in the Cook Islands, Niue or Tokelau, or
  - had applied to the Department of Labour for a residence permit, or had applied for residence in the Cook Islands, Niue or Tokelau, and that application was subsequently successful.
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**Five year physical presence requirement**

An applicant must be assessed against the presence requirement if they lodged an application on or after 21 April 2005, and became entitled to reside in New Zealand under the Immigration Act, or the Cook Islands, Niue or Tokelau, as the result of a residence application that was made after 21 April 2005.

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**Date of application for permanent residence**

In cases where the applicant became entitled to reside in New Zealand indefinitely after 21 April 2005, it will not be immediately obvious whether the applicant fits under a 3 or 5 year grant.

What must be determined is when Immigration New Zealand (INZ) accepted the application for a residence permit (an entitlement to reside in New Zealand indefinitely, i.e. application for residence). Full permit histories are held and maintained by the Department of Labour on its AMS database. AMS records show when the application for residence was lodged and when it was granted. The permit label in the passport is not sufficient for this purpose, because it does not record when the residence application was lodged.

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## Date of entitlement to reside, Continued

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### Doubt

- If there is doubt about when an applicant lodged the residence application, contact INZ in writing to confirm the applicant's details.
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### Applications for refugee status

Note that under the Immigration Act 1987, there is a legal distinction between the date a person applies for refugee status and the date the person applies for a residence permit. This means that a person who applies for refugee status before 21 April 2005, but did not apply for a residence permit by that date, falls under a 5 year grant.

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### Australian citizens and permanent residents

Australian citizens are exempt from the requirement to hold a permit to be in New Zealand. However, they can be refused entry to the country by the Department of Labour if there is reason to believe that they are not of good character. If the applicant entered New Zealand before 21 April 2005, they fall under a 3 year grant. If the applicant entered New Zealand on or after 21 April 2005, they fall under a 5 year grant.

On arrival in New Zealand, an Australian permanent resident is granted a New Zealand residence permit at the border, provided they have a valid Australian Resident Returning Visa. For Australian permanent residents, the date of application for a residence permit, is the date of arrival in New Zealand. This means that an Australian permanent resident who applies for a grant of New Zealand citizenship falls under a 3 year grant if they arrived in New Zealand before 21 April 2005. An applicant who is an Australian permanent resident who arrived on or after 21 April 2005 falls under a 5 year grant.

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# Waivers

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**Background** The Minister may waive the 'entitlement to reside indefinitely' requirement of the Citizenship Act 1977, if satisfied that certain legislative criteria are met.

The Minister may only exercise the discretion to waive the requirement under one of the following sections.

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**Waiver of section 8(2)(a)** Under section 8(4)(a), the Minister may, after consultation with the Minister of Immigration, waive the requirement in section 8(2)(a), if satisfied that the applicant is entitled to reside indefinitely in Niue, Tokelau or the Cook Islands.

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**Applicants that meet criteria for waiver** Applicants must be referred to the Minister as a submission if Citizenship considers that an applicant is able to fulfil the requirements for a waiver, or if the applicant requests a waiver.

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**Applicants that do not meet criteria for waiver** An applicant must be referred to the Minister as a submission if the applicant:

- does not hold a valid New Zealand residence permit, or
- does not hold a valid New Zealand returning resident's visa, or
- is not a New Zealand citizen by descent, or
- is not exempt from the requirement to hold a permit to reside in New Zealand indefinitely, or
- is in the process of having their residence permit revoked by the Department of Labour, or
- may be eligible for a waiver of the requirement to reside in New Zealand indefinitely.

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## Unable to prove date of arrival in New Zealand

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### General

There are British and Australian applicants who came to New Zealand at a time when they were not required to hold permits, and have never again travelled.

These applicants have no travel documents and cannot prove when they arrived, or that they are here legally, i.e. Immigration New Zealand (INZ) may have no records for these applicants.

The majority of these applicants are British citizens who arrived in New Zealand before 1974, and are automatically entitled to reside in New Zealand indefinitely.

In all cases, applicants must obtain written confirmation from INZ to show they are currently entitled to remain in New Zealand indefinitely, and have not been unlawfully resident during the ordinary residence period.

Confirmation will either be a letter or Certificate of Identity (COI) with a Permanent Resident stamp, or a Returning Resident's Visa.

An Applicant Management System (AMS) report is created for the applicant. This report will have no travel recorded, however, Citizenship will accept that the applicant had permanent residence, and has been in New Zealand all the time.

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## Legislation links

[Citizenship Act 1977](#)

[Citizenship \(Western Samoa\) Act 1982](#)

[Immigration Act 1987](#)