

# Briefing Report

## Mixed Status Families

Addressing the problem of Mixed Status Families where a family has one or more parents with Bermudian Status or holds a Permanent Resident's Certificate but their son, daughter, or spouse does not have either Bermudian Status or hold a Permanent Resident's Certificate.



**Ministry of National Security**  
**Government of Bermuda**

**October 23, 2019**

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## Introduction

The Government of Bermuda's ("The Government") intention is to address the challenge of Mixed Status Families as part of its continuing commitment to deliver Comprehensive Immigration Reform for Bermuda.

This Briefing Report provides:

- The Guiding Principles shaping the proposed legislative changes to address Mixed Status Families;
- Historic background to the development of Mixed Status Families in Bermuda, and key definitions;
- The work conducted to date by stakeholder working groups;
- The challenges faced by Mixed Status Families; and
- The steps that the Government proposes to take to address this challenge.

### Definition: Mixed Status Family

A *Mixed Status Family* is a family where one or more parents has Bermudian Status or holds a Permanent Resident's Certificate but their son, daughter, or spouse does not have either Bermudian Status or hold a Permanent Resident's Certificate.

This Report draws primarily upon the work done on Mixed Status Families by the Consultative Immigration Reform Working ("CIRWG"), which completed its Principles and Recommendations Report, commonly referred to as the "Madeiros Report", in October 2017. In addition the prior work done by the Bipartisan Parliamentary Committee for Immigration Reform ("Bipartisan Committee"), and work conducted by previous Government administrations has also been used to draft this Report.

As part of the drafting of this Report input was sought in face to face meetings with former members of the CIRWG working group, and lawyers who represent Mixed Status Families.

Similar to the steps taken to reform the process by which adopted children can gain status, the Government intends to introduce amendments to the Bermuda Immigration and Protection Act 1956 ("the Act") to address the parts of the Act that have, over time, led to the development of Mixed Status Families.

While at this time the Government is advancing legislation to address challenges faced by Mixed Status Families, the Ministry of National Security is working with the Department of Immigration and key stakeholders, to consider other immigration challenges faced by the island.

Given the nature of the problem posed by Mixed Status Families, it can be addressed through amendments to the Act, recognizing that the amendments are one piece of broader Comprehensive Immigration Reform that we are collectively working towards.

## Guiding Principles for Mixed Status Families

Establishing Guiding Principles is an essential part of crafting effective policy. In looking at the challenge of Mixed Status Families the Government has defined the following Guiding Principles that will help reach decisions on specific policy and legislative questions:

1. **Immigration policy should not negatively impact existing Bermudian Status holders;**
2. **Immigration policy should be fair;**
3. **Immigration policy should address the problem of Mixed Status Families in a sustainable way;**
4. **Immigration policy should be in alignment with the Articles of The European Convention on Human Rights; and**
5. **Immigration policy should not lead to the separation of Mixed Status Families.**

In 1948, the United Nations General Assembly set out fundamental human rights to be protected in a document known as the “Universal Declaration of Human Rights”. In 1950, the Council of Europe, after considering this declaration, set out the “Convention for the Protection of Human Rights and Fundamental Freedoms” (“the European Convention”). Article 8 of the Convention enshrines “the right to respect for private and family life”. This is a qualified right, but is often engaged, when measures, intentional or unintended, are taken by a state to separate family members.

Although there are ongoing questions regarding Bermuda’s connection to the EU, the Government has chosen to include alignment with the European Convention as a guiding principle.

## Background

The key legislation and case law relating to Mixed Status Families is listed below. It is noted that there have been numerous legislative amendments and court decisions on immigration. However, for the purpose of this Report these are the key pieces of legislation and decisions which are referenced when discussing Mixed Status Families.

- Bermuda Immigration and Protection Act 1956 (“the Act”)
- Bermuda Immigration and Protection Amendment Act 1994 (“1994 Amendment to the Act”)
- Bermuda Immigration and Protection Amendment Act 2002 (“2002 Amendment to the Act”)

Prior to 1989, Bermudian Status was granted under the discretion of the Minister responsible for immigration. This discretionary provision was abolished in 1989.

**Addressing the challenge of Mixed Status Families is the next step in our journey towards delivering Comprehensive Immigration Reform for Bermuda. Future reports addressing other areas of immigration reform will be issued in order to provide the facts, inform debate, and deliver on the commitment to achieve Comprehensive Immigration Reform.**

## Background (contd.)

The 1994 Amendment to the Act provided an opportunity for children who were born in Bermuda prior to 1989, and those who arrived in Bermuda prior to 1989 and were under 6 years old at the time of arrival, to apply for status upon turning 18. The deadline for applications was August 1, 2008.

With the 2002 Amendment to the Act, the Government provided a new opportunity allowing for long-term residents to apply for Permanent Resident Certificates (“PRCs”) under section 31A of the Act. In order to be eligible the person must have been at least 40 years old, with over 20 years of continuous residence and have been ordinarily resident in Bermuda in 1989. The deadline for applications was August 1, 2010. A secondary group could apply for PRC under section 31B of the Act if the individual was a spouse, sibling or child of these long-term residents.

In 2014, the Carne and Correia ruling provided a mechanism for certain residents who were ordinarily resident in Bermuda prior to July 31, 1989 to apply for Bermudian Status.

## Prior work done by Stakeholder Groups

### Consultative Immigration Reform Working Group (“CIRWG”)

The CIRWG was formed and tasked with developing the principles that would assist in legislative reform on the issues of Bermudian Status, PRCs and Mixed Status Families. The CIRWG was chaired by Mr. William Madeiros and included a wide range of technical experts in the area of immigration.

The final report, referred to commonly as the “Madeiros Report”, was completed on October 31, 2017\*. The Madeiros Report is based on information and discussions held over the course of 18 months. For the purpose of this Briefing Report, the focus is on the Mixed Status Families section of the Madeiros Report, although one aspect of the Bermudian Status section is also addressed.

The Madeiros Report balanced the issues faced by Mixed Status Families, Bermudians’ interests, and the European Convention.

The predominant theme is that families who have lived, and continue to live here with siblings and children of Mixed Status Families caused by the Amendments to the Act in 1994 and 2002, should not remain in this position. The unintended consequences are adversely affecting Bermudian families who are contributing to society, but face the prospect of being unwillingly separated from their families.

Recommendations identified in the Madeiros report are outlined on pages 10 to 13, together with other potential options. These recommendations address those who were adversely affected by the Amendments to the Act which effectively cut-off certain family members due to their age and when they were born.

### Bipartisan Parliamentary Committee for Immigration Reform

The Bipartisan Committee for Immigration Reform was formed in 2017 and was originally chaired by the late Walton Brown, JP, MP. It is now chaired by the Minister of National Security Wayne M. Caines, JP, MP, and the Committee members are: Renee Ming JP, MP, Christopher Famous JP, MP, Leah Scott JP, MP and Benjamin Smith JP, MP.

The Bipartisan Committee continues to meet to discuss and consider immigration policy and legislative proposals and provides comments and recommendations to the Cabinet.

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\* Available at: <https://www.gov.bm/sites/default/files/CIRWG-Principles-and-Recommendations-31-OCT-2017.pdf>

**The Government acknowledges the long and difficult history of immigration policies and legislation in Bermuda. We accept that historic context forms part of any decision regarding immigration. We will ensure that as we move forward the harm caused by past legacies which promoted inequality are not repeated.**

## The Problem

In summary, given the time limits, age restrictions and differing rights attached to the various sections of the Act and its Amendments, over time this has led to the development of Mixed Status Families, with some members of the family qualifying for PRC or Bermudian Status while others do not.

The unfortunate and unfair variation in rights between family members causes inequity, uncertainty, and in some cases forces the difficult decision for Bermudians with Status or PRCs having to emigrate due to the lack of rights for certain family members. In extreme cases, families are at risk of being forced to separate.

In addition for succeeding generations certain children have no long term rights in Bermuda. This leads to the unjust situation of stateless children who have no right to their ancestral citizenship nor long term rights in the only country they have ever known.

This is a situation which we cannot allow to continue as it will simply grow and become more problematic over time.

We have included three examples to demonstrate the challenges faced by Mixed Status Families. These serve as illustrations and are not intended to cover all possible combinations of Mixed Status Families.

1

### Bermuda domicile requirement for parents of children born or adopted overseas

Michael Lambert is a Bermudian Status holder who worked for a fund administration company in Bermuda. In 2000 the company Michael worked for relocated to Canada. In order to keep his position at the company Michael agreed to be relocated to Canada.

While in Canada Michael married and had a child, Anthony.

Michael's family has strong historic connections to the island. However, under the current legislation there is a requirement that in order for Michael's son to gain Bermudian Status at birth, his Bermudian father must both possess Bermudian Status and be domiciled in Bermuda at the time of the birth.

Given Michael's employment with a Canadian company, residency in Canada, and marriage to a Canadian national, Michael's domicile was determined to be that of Canada at the time of Anthony's birth.

Therefore despite a long historic family connection to Bermuda, Michael's son Anthony does not possess permanent Bermudian Status at birth.

Anthony is "deemed" to possess Bermudian Status until he reaches 22. If Anthony reaches the age of 22 and has not resided in Bermuda for the 5 years immediately preceding his 22 birthday, he will lose his Bermudian Status.



**Michael Lambert (Father)**  
Bermudian Status Holder



**Anthony Lambert (Son)**  
**No permanent Bermudian Status or PRC**

Born overseas to non-domiciled Bermudian Status holder

Bermudian Status is available via Section 20, but subject to age and residency requirements, may be lost

2

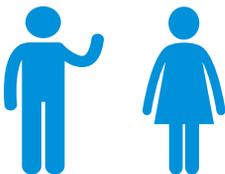
## Ineligible for Bermudian Status due to time restrictions

Bill and Melinda Smith came to Bermuda in 1982, when Bill accepted a job offer at a local bank. The couple were in their 20s when they arrived and in 1997, the Smiths had a daughter Jane. In 2000, the Smiths had a second daughter named Lucy. Both children were born in Bermuda. Bill and Melinda hold PRC, but are unable to pass their PRC to their children.

Jane and Lucy both grew up in Bermuda attending public school.

In 2014, when Jane was 17, and Lucy was 14, Bill and Melinda Smith were granted Bermudian Status. As a result Jane and Lucy both had/have deemed status until they are 22. However, due to age restrictions in the Act, Jane cannot qualify for Bermudian Status, while Lucy will satisfy the requirements and be able to apply for Bermudian Status.

Jane is now 22 and has lost her deemed status. The family is now mixed status. Jane will have no long term rights to remain in Bermuda, the only home she has known, despite both her parents and her sister having Bermudian Status.



**Bill and Melinda Smith**

**Permanent Resident Certificate (31B)**  
qualified for **Bermudian Status**



**Jane Smith**

**No Bermudian Status or PRC**

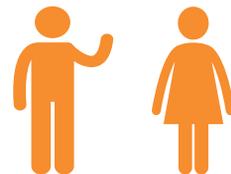
Born in Bermuda  
1997



**Lucy Smith**

**Able to apply for Bermudian Status at 18**

Born in Bermuda  
2000



**Wayne and Margaret Jones**

**Permanent Resident Certificate (31B)**



**Ted Jones**

**Bermudian Status Holder**

Born in Bermuda  
before 1989



**Tina Jones**

**No Bermudian Status or PRC**

Born in Bermuda  
after 1989

3

## Mixed status siblings

Wayne and Margaret Jones both arrived in Bermuda in 1987 to work at the hospital. In 1987 the Jones' had their first child Ted. In 1993 the Jones' had their second child, Tina. Both children were born in Bermuda and attended local school, however the Smiths did not qualify for a 31A PRC before the 2010 deadline, due to an extended absence from the island.

As Ted was born in Bermuda prior to 1989 and was resident in 1989 and 1994, he qualified for and was granted status under the 1994 Amendment to the Act.

Both Wayne and Margaret were able to qualify as permanent residents based upon their child Ted's Bermudian Status. Wayne and Margaret have the permanent right to live, work and buy property in Bermuda. Bermuda has been their home for 32 years.

As Tina was born in Bermuda after 1989 she did not qualify under the 1994 Amendment. In addition Wayne and Margaret are unable to pass down their permanent residency status.

The family has become mixed status, with Tina having no long-term rights to live in Bermuda while her brother and parents are able to permanently reside and work on the island.

4

## Inability to Pass on Permanent Residency

Brian and Elaine Perry arrived in Bermuda in 1980, with Brian working as an engineer. In 1990 the Perrys had a son, Patrick.

In 2009, Brian was granted permanent residency, and his son Patrick was subsequently granted permanent residency in 2010 on the basis of being Brian's son.

Patrick is now 29, married to a Permanent Resident certificate holder, and has a child Ian, who was born in Bermuda. However, under current legislation Patrick will not be able to pass on his permanent residency to his children, despite the child being born in Bermuda to a Permanent Resident.



**Brian and Elaine Perry**  
Permanent Resident Certificate Holders (31A)



**Patrick Perry and his spouse**  
Permanent Resident Certificate Holders (31B)



**Ian Perry**  
No Status of PRC  
Born in Bermuda

## Policy Options

The Government intends to amend the Act in line with certain recommendations put forward by the CIRWG.

The legislative changes are intended to address the following categories of Mixed Status Families:

- 1** Given the inherent uncertainties surrounding the definition of 'domicile' this can lead to Mixed Status families with children not being granted Bermudian Status despite one of their parents possessing Bermudian Status.
- 2** Mixed Status families where parents have been granted Bermudian Status or who qualified for Bermudian Status under section 20B(2)(b) of the Act, however their children were unable to apply due to their age.
- 3** Mixed Status families where certain siblings in a family did not qualify under the Amendment Act 1994 as they were too old or young at the time;
- 4** Mixed Status families that have arisen due to the inability of Permanent Resident Certificate holders to pass on Permanent Resident Certificates to children and spouses;

A number of policy options have been considered to address each of these 4 sources of Mixed Status families. These are considered along side the Guiding Principles on pages 10 to 13. The summary of recommended policy solutions is then presented on page 14.

Source of “Mixed Status” families	Policy Options	Application of Guiding Principles
<p style="text-align: center;"><b>1</b></p> <p>Person born overseas to a parent who possessed Bermudian status, but was deemed not to be domiciled in Bermuda.</p>	<p><b>Remove domicile requirement for the first generation born overseas to Bermudian status holders</b></p>	<p>Removing the domicile requirement for the first generation born overseas provides options to the children of Bermudian families who have been forced to move overseas for economic or health reasons. This policy is also consistent with immigration policy in other jurisdictions including the British Nationality Act.</p> <p>✓ This policy option would provide a sustainable and equitable solution which is in the best interest of existing Bermudian Status holders.</p> <p><b>This is the Government’s current proposed policy solution.</b></p>
	<p><b>Remove domicile requirement up to the third generation born overseas to Bermudian status holders</b></p>	<p>Removing the domicile requirement for the third generation born overseas provides further options to the children of Bermudian families who have been forced to move overseas for economic or health reasons. Clearing the domicile requirement for the third generation, would remove most of the uncertainty about the family’s long term intentions with regard to residency in Bermuda.</p> <p>✓ This policy option would provide a sustainable and equitable solution which is in the best interest of existing Bermudian Status holders.</p> <p><b>This recommendation was included in the Madeiros Report.</b></p>
	<p><b>Remove domicile requirement for all children born overseas to Bermudian status holders</b></p>	<p>This policy option would remove the domicile requirement altogether and provide perpetual access to Bermudian status for those children born overseas to Bermudian status holders. It is the view of the Government that removing the domicile requirement altogether would not be equitable. In this scenario future generations who may be several generations removed from the original Bermudian Status holder who emigrated from Bermuda, and have no other connection or link to the island, would have identical rights to long term residency as an individual who had lived worked and contributed to the island their entire lives.</p> <p>✗ This policy option is not equitable.</p>

Source of “Mixed Status” families	Policy Options	Application of Guiding Principles
<p style="text-align: center;"><b>2</b></p> <p>Families where at least one parent who qualified for PRC under the 2002 Act, and subsequently qualified for Bermudian Status under 20B(2)(b) of the Act. Children born after 1989 who would have been eligible to inherit status from these parents, but are no longer able to apply due to <b>being too old</b>.</p>	<p><b>Children of Bermudian Status holders eligible to apply for Permanent Residency Certificate</b></p>	<p>It is recognised that neither the public nor the Government were aware of the ability of people who were resident in 1989 to apply for status in this way. If this recognition had been made then the children of these individuals, under existing legislation, would have been able to apply for Bermudian Status. As such providing the ability to apply for permanent residency rather than Bermudian Status is not equitable with current legislation.</p> <p><b>X</b> This is not an equitable solution based on existing legislation.</p>
	<p><b>Children of Bermudian Status holders eligible to apply for Bermudian Status</b></p>	<p>This policy option is consistent with existing legislation and is equitable given that it provides the same rights to all individuals born in Bermuda to a parent with Bermudian Status, independent of their age.</p> <p><b>✓</b> This solution is equitable with the granting of status in existing legislation.</p> <p><b>This recommendation was included in the Madeiros Report, and is the Government’s proposed policy solution.</b></p>

Source of “Mixed Status” families	Policy Options	Application of Guiding Principles
<p style="text-align: center;"><b>3</b></p> <p>Families, with at least one child, that qualified for Status under the Amendment Act 1994, however siblings residing in Bermuda (including those in university overseas but Bermuda resident) do not qualify because they were <b>too old or too young</b>.</p>	<p><b>Resident sibling eligible to apply for Permanent Residency certificate.</b></p>	<p>Under the current system a Permanent Resident certificate holder is unable to pass on their permanent residency to their children. If this were to continue then, although this policy option would provide the sibling with long-term residency rights, such right would not pass on to the children of the sibling. Therefore this would lead to Mixed Status Families in the future.</p> <p>If it is assumed that changes to the legislation will allow for permanent residency certificates to be passed onto children, then this would provide for a sustainable solution.</p> <p>✓ This solution is sustainable on the assumption that other legislative changes are made to allow for permanent residency to be passed on to children.</p>
	<p><b>Resident sibling eligible to apply for Bermudian Status</b></p>	<p>When setting the criteria for eligibility to apply, care must be taken to ensure that the underlying policy is equitable with regard to residency requirements. For example a 10 year residency requirement immediately prior to application would not be equitable for an older sibling who only recently was forced to emigrate, in comparison to a younger sibling who was still in school. Residency requirements should form a part of the application, but we would recommend a 10 year aggregate residency requirement.</p> <p>✓ This solution is sustainable and equitable subject to appropriate eligibility requirements.</p> <p><b>The Madeiros Report recommended this option, but only for those siblings of Bermudian Status holders still residing in Bermuda.</b></p> <p><b>The Government’s proposed policy is to allow this option for siblings of Bermudian Status holders, who have resided in Bermuda for an aggregate period of 10 years prior to application.</b></p>
	<p><b>Resident sibling granted Bermudian Status automatically</b></p>	<p>The automatic granting of status to all siblings of status holders would be sustainable, but may not be equitable. This policy would grant status with no residency requirements which would not be equitable with the prior requirements for permanent residency certificates. In addition this would provide full Bermudian Status to siblings who may have spent little or no time in Bermuda.</p> <p>✗ This solution is not equitable with prior immigration policy.</p>

Source of “Mixed Status” families	Policy Options	Application of Guiding Principles
<p style="text-align: center;"><b>4</b></p> <p>Families with at least one member qualifying for permanent residency, and who have children resident in Bermuda, who are <b>not eligible for Bermudian Status or PRC.</b></p>	<p><b>Resident children of Permanent Residents eligible to apply for permanent residency certificate.</b></p>	<p>Under the current system a permanent resident certificate holder is unable to pass on their permanent residency to their children.</p> <p>The proposed changes to the legislation will allow for permanent residency certificates to be passed onto children, which would provide for a sustainable solution.</p> <p>✓ This solution is sustainable on the assumption that other legislative changes are made to allow for permanent residency to be passed on to children.</p> <p><b>This solution was proposed in the Madeiros Report, and is the Government’s proposed policy solution.</b></p>
	<p><b>Resident children of Permanent Residents eligible to apply for permanent residency, with succeeding generations eligible to apply for Bermudian Status</b></p>	<p>Allowing the third generation of Permanent Residency Certificate holders the eligibility to apply for Bermuda Status was also included as a recommendation in the Madeiros Report. This will be considered as part of future discussion on criteria for PRCs to apply for Bermudian Status. Residency and other requirements will form part of the criteria to be considered.</p>
	<p><b>Resident children of Permanent Residents granted status automatically</b></p>	<p>The automatic granting of status to all children of Permanent Resident Certificate holders may not be equitable. This policy would apply equally to those children who have spent little, or no, time on the island and those who have spent their entire lives in Bermuda.</p> <p>✗ This is not an equitable solution.</p>

Source of “Mixed Status” families	Policy Options	Application of Guiding Principles
<p style="text-align: center;"><b>4</b></p> <p>Spouses of Permanent Residents individuals who are <b>not eligible to apply for permanent residency</b></p>	<p><b>Spouses of Permanent Residents eligible to apply for permanent residency immediately</b></p>	<p>This is not equitable given the residency requirements for spouses of Bermudian Status holders who are only eligible to apply for status after 10 years of marriage and 7 years of residency.</p> <p><b>X</b> This is not an equitable solution</p>
	<p><b>Spouses of Permanent Residents eligible to apply for permanent residency after 10 years of marriage to a Permanent Resident and 7 years of residency</b></p>	<p>This policy solution is consistent with the requirements for spouses of Bermudian Status holders to apply for Bermudian Status. In addition once granted permanent residency, the children of these individuals will be able to apply for permanent residency with the third generation being eligible to apply for status, making this policy option sustainable.</p> <p><b>✓</b> This is an equitable and sustainable solution</p> <p><b>This solution was proposed in the Madeiros Report, and is the Government’s proposed policy solution.</b></p>

## Summary of Government Policy Solutions

Mixed Status – Problem Definition	Proposed Policy Solution
<p>1 Person born overseas to a parent who possessed Bermudian status, but was deemed not to be domiciled in Bermuda.</p>	<p>Domicile requirement removed for the first generation born overseas to a Bermudian Status holder</p>
<p>2 Families where at least one parent qualified for Bermudian Status under 20B(2)(b) of the Act.</p> <p>Children born after 1989 who would have been eligible to inherit status from these parents, but are no longer able to apply due to <b>being too old</b></p>	<p>Children of parents who have been granted Bermudian Status or qualify under section 20B(2)(b) able to apply for Bermudian Status once they reach 18, and subject to a 10 year aggregate residency requirement.</p>
<p>3 Families with at least one child who qualified for Bermudian Status under the Amendment Act 1994; however, siblings residing in Bermuda (including those in university overseas but Bermuda residents) do not qualify because they were <b>too old or too young</b>.</p>	<p>Siblings of individuals who qualified for status under the 1994 Amendment to the Act are able to apply for Bermudian Status once they reach 18, and subject to a 10 year aggregate residency requirement.</p>
<p>4 Families with at least one member qualifying for PRC under 31A and other members gaining PRC under 31B, where those PRC 31B individuals have children resident in Bermuda, who are not <b>eligible for Bermudian Status or PRC</b>.</p> <p>Spouses of PRC 31B individuals <b>who are not eligible to apply for PRC 31B</b></p>	<p>Children of permanent resident certificate holders are able to apply for a Permanent Resident Certificate upon reaching 18, and subject to a 10 year aggregate residency requirement.</p> <p>Spouses of permanent certificate holders are able to apply for a Permanent Resident Certificate, after 10 years of marriage and 7 years of residency.</p>

## Impact

The long-term impact of the legislative amendments will resolve current inequities in relation to Mixed Status Families.

The number of PRC holders and Bermudian Status holders will increase helping to address Bermuda's demographic challenges, aging population, and low birth rate. We need to ensure the younger generation of long-term residents continue to remain here.

It is also important that Bermuda remains in line with international standards in terms of law and policy,.

The potential for increased economic development in Bermuda is also a factor to consider. Providing the security of a long-term future for these families will remove any uncertainty which would have prevented further investment onto the island. Through their additional investment via real estate, renovating, investing in local companies and generally more aggregate expenditure, it will lead to the creation of more jobs and a stronger economy.

The skills and expertise from long-term residents who are already integrated in Bermuda would be retained.

The impact these long-term residents also have in helping to bring positive improvements to Bermudians through volunteer-work is also an important consideration.

Further economic contributions would be realized by the increase in the number of people paying health insurance, social insurance and private pensions. This will help the vulnerable residents relying on HIP and FutureCare benefits, and help to reduce the currently underfunded Contributory Pension Fund.

### **Registration of Mixed Status Families**

In June 2019, the Minister of National Security announced the Government's plans to invite persons who are members of a Mixed Status Family to register with the Department of Immigration. The purpose of the registration is to ensure that the Government fully understands the legal barriers which have resulted in the inequitable circumstances which the Government intends to address as part of its Comprehensive Immigration Reform agenda.

As of June 27, 2019, approximately 400 people have registered. The Government is familiar with the details of many, if not all, the various technical barriers which Mixed Status Families have encountered. In order to be thorough the Ministry has consulted with legal experts and families who have been affected to ensure that the amendments which will be tabled in the Parliament fully resolve this social injustice.

Registration closed on July 12, 2019.

# Next Steps

## Next Steps and Implementation

The current intention is that the recommendations presented on page 15 will form the basis for amendments which will be tabled in the House of Assembly and debated.

## How you can give feedback

The Ministry is seeking feedback from members of the public about the problem and potential solutions discussed in this document.

Consultation questions can be found on the next page.

To answer these questions and provide general feedback please register at [forum.gov.bm](http://forum.gov.bm), or send an email to [nationalsecurity@gov.bm](mailto:nationalsecurity@gov.bm)

# Consultation questions

Question number	Question
1	<p>The Government has outlined various guiding principles that have governed its approach to the issue of Mixed Status Families, including not negatively impacting persons who possess Bermudian Status, fairness, sustainability, being in line with international conventions and not separating families. Do you agree with these guiding principles, and if not, why not? Are there any other guiding principles that the Government should consider in formulating its approach to Mixed Status Families?</p>
2	<p>The Government believes that the issue of Mixed Status Families is important and should be addressed with immediacy because it is unfair, creates uncertainty among individuals and in extreme cases can force the separation of families. Do you agree that this is a problem that must be addressed with urgency?</p>
3	<p>Problem 1 describes the situation of a son or daughter born or adopted overseas by a parent possessing Bermudian Status and the removal of the requirement to prove domicile for that child born or adopted overseas. Similar to the practice under the British Nationality Act, do you agree with the Government's proposed solution of allowing that child to be possess Bermudian Status at birth with no further requirements to prove domicile or to meet residency requirements?</p>
4	<p>Problem 2 describes the situation of a son or daughter of a parent possessing Bermudian Status that has not qualified for Bermudian Status or a PRC due to their age, or the timing of the application. In line with the Madeiros Report, do you agree with the Government's proposed solution of allowing that child to be eligible for Bermudian Status?</p>
5	<p>Problem 3 in the Briefing Report describes the situation of a sibling, who was born in Bermuda, who has a brother or sister who possesses Bermudian Status, yet they themselves have neither Bermudian Status, or PRC. In line with the Madeiros Report, do you agree with the Government's proposed solution of the sibling being eligible for Bermudian Status?</p>
6	<p>Problem 4 describes the situation of a PRC holder being unable to pass on that PRC standing to their son or daughter. In line with the Madeiros Report, do you agree with the Government's proposed solution of the child being eligible for PRC?</p>
7	<p>Do you have any further comments on the issue of Mixed Status Families that you believe the Government should take into consideration as it addresses this problem?</p>

# **Annex 1**

## **Key Terms and Definitions**

## Key terms

Definitions	Description	Why is this important?
<b>Mixed Status Family</b>	A family where one or more parents has Bermudian Status or holds a Permanent Resident Certificate but their son, daughter, or spouse does not have either Bermudian Status or hold a Permanent Resident Certificate.	
<b>Bermuda Immigration and Protection Act 1956</b>	This is the primary piece of legislation that governs immigration in Bermuda	This is the legislation which will need to be amended to address the challenge of Mixed Status Families.
<b>Section 20A of the Amendment Act 1994</b>	<p>This Amendment granted status to those individuals who:</p> <ul style="list-style-type: none"> <li>• were born in Bermuda or arrived under the age of 6; and</li> <li>• were ordinary resident in 1989 and 1994; and</li> <li>• have been ordinarily resident in Bermuda for ten continuous years up to the date of the application; and</li> <li>• are of good conduct and character; and</li> <li>• filed an application on or before the deadline of July 31, 2008.</li> </ul>	Given the specific dates enshrined in the 1994 Amendment to the Act, certain siblings of those granted status were not eligible to apply, as they were too young (born after 1989) or too old (arrived in Bermuda over the age of 6). This is not equitable.

## Key terms (cont'd)

Definitions	Description	Why is this important?
<p><b>Permanent Residency Certificate (“PRC”)</b></p>	<p>This was introduced by the 2002 Amendment to the Act. A permanent resident certificate holder has the right to live, work and buy property in Bermuda. There are two categories 31A and 31B. 31Bs are derived from family relationships with 31As:</p> <p>Under section 31A, a PRC could have been applied for before August 1, 2010 if:</p> <ul style="list-style-type: none"> <li>• You were at least 40 years old; and</li> <li>• You were a resident in 1989; and</li> <li>• You were a resident for 20 years; and</li> <li>• You were a resident for the 2 years immediately preceding application.</li> </ul> <p>Under section 31B PRC can be applied for if:</p> <ul style="list-style-type: none"> <li>• You were a sibling or a parent of a Bermudian Status holder or PRC 31A holder and applied before the August 1, 2010 deadline;</li> <li>• You were the child or spouse of a PRC 31A holder (no deadline);</li> <li>• You were at least 18 years old; and</li> <li>• You were resident for 10 years immediately preceding application</li> </ul>	<p>Currently there is no mechanism for the children of PRC 31B holders to pass on their Permanent Residency Certificate to family members. This leaves children born in Bermuda, to a permanent resident, without long term rights to residency in the only home they have ever known. This is not sustainable.</p>
<p><b>Section 20B(2)(b)</b></p>	<p>This is the section of the Act which was interpreted by the Supreme Court to allow for the application of Bermudian Status to those individuals who:</p> <ul style="list-style-type: none"> <li>• Were resident in 1989;</li> <li>• Are at least 18 years old;</li> <li>• Is a British Overseas territories citizen through a certificate of naturalization; and</li> <li>• Have been resident for 10 years immediately prior to application.</li> </ul>	<p>Many of the children of individuals who qualify under this section, are unable to apply for Bermudian Status as they were too old when their parents received Bermudian Status. This results, in certain cases, where children of Bermudian Status holders have no long term rights to residency in Bermuda. This is not sustainable.</p>

# Annex 2

## The Madeiros Report

# CONSULTATIVE IMMIGRATION REFORM WORKING GROUP

## PRINCIPLES AND RECOMMENDATIONS MIXED STATUS FAMILIES PERMANENT RESIDENT'S CERTIFICATE BERMUDIAN STATUS

31 October 2017

### **Introduction**

The Consultative Immigration Reform Working Group (CIRWG) has deliberated extensively on the issues of Mixed Status Families, the Permanent Resident's Certificate (PRC) and the Grant of Bermudian Status as it pertains to the Bermuda Immigration and Protection Act 1956 ("the Act").

The current law creates Mixed Status Families through a series of factors principally related to effective dates of various sections of the Act, which lead to some members of a family qualifying for either PRC or Bermudian Status while others do not have an avenue to apply for neither the PRC nor Bermudian Status, leaving them subject to Immigration control.

The current law allows for PRC's to be granted under either the Incentives for Job Makers Act 2011 (as amended in 2013) or as a dependant of an individual holding a PRC under section 31A of the Act.

The current law allows for the grant of Bermudian Status through various family circumstances, and also allows persons who were resident prior to 31 July 1989, who meet other criteria, but does not contain any other qualifiers for new applicants moving forward.

We outline below our work process, the critical issues, and the consultative process and, finally, the recommendations we propose.

## **Work Process**

The CIRWG was constituted in April 2016 and initially met three times weekly to establish our Terms of Reference, the sequence of issues to be assessed and to develop legislative proposals therefrom. We have since met twice weekly to ensure we continue to enhance on both quality and quantity of time. The recommendations on Adoption were proposed in June 2016, which resulted in the enactment of the Bermuda Immigration and Protection Amendment (Adoption) Act 2016.

The proposed Bill entitled “Bermuda Immigration and Protection Amendment Act 2016” also referred to as “Pathways to Status” was not used as a departure point for the three remaining substantive issues. A blank slate approach was taken to identify any problems, perceived or real. Care was taken to identify potential impacts on stakeholders within the Bermuda community be they social, cultural, political or economic.

The CIRWG reviewed the Act, in addition to the Incentives for Job Makers Act 2011 (as amended in 2013), the British Nationality Act 1981 and the European Union Court of Human Rights Article 8.

## **Consultation**

An absolute commitment to consultation formed the foundation for our process. We have sought and received multiple submissions via email, hard copy submissions as well as orally. There were three public consultation meetings held on the topic of Mixed Status Families at Francis Patton School, Berkley Institute and Dalton E Tucker. Public consultation meetings were also held at Elliot Primary School on the topics of PRC and Bermudian Status. Our deliberations were also enriched by critical technical insights coming from civil servants in the Department of Immigration.

## **The Data Gap**

We have been unable to determine with any degree of certainty what numbers of people are affected by the issues examined. It is strongly suggested that the Government undertake to determine the statistical impact of any amendments. The short term effects of any amendments will be critical for the public to understand, but far more importantly the long-term levels be understood once a steady state is reached.

## **Historical Context**

Due to the long history of racialized immigration policies, historical context must form part of any decisions regarding immigration legislation and policies moving forward to ensure that the historical harm of that past and the current legacies do not continue. This will involve a constant and continued awareness to ensure any immigration legislation or policies do not place Black Bermudians in positions of inequality.

Lord Pitt's remarks in the Commission of Inquiry following the 1977 riots reverberate today, "The importance of substantially reducing immigration and assisting the promotion of Bermudians." Lord Pitt's recommendation was in direct response to the rapidly increasing expatriate population and an acknowledgement of the detrimental effects it was having on the African Bermudian population.

## **Cultural Identity**

Any immigration legislation or policy must keep in mind the need to balance the socio-political, environmental, racial, and cultural well-being of Bermudians. Bermudians must not be side-lined in their own community for opportunities forcing them overseas in the search for work to support their families.

## **Human Rights**

Human rights and international standards forms an integral part of the discussion on immigration. Every country has the right to set its own immigration standards.

Human rights can be considered binding on all countries even if they are not signatories to the relevant International Conventions. However, there is no universal international human rights standard that requires states to give citizenship rights, such as permanent status and the right to vote, to long-term guest workers.

A guiding principle must be in accordance with Article 8 European Court of Human Rights. However, even under this Article, there is a caveat; “The likelihood of the subsistence of the family in an alternate jurisdiction and the logistics of such are overriding factors.”

## **Sustainability**

Immigration policy must be tempered by sustainability, considering the size and limited space available on the island, and the priority of ensuring Bermudians have access to employment opportunities in their own country, so they no longer experience employment marginalization and discrimination.

The following United Nations General Assembly Resolutions (UNGAR) directly articulate the international standard for immigration policy for small jurisdictions (colonial territories):

- a) UNGAR 2621 to “adopt the necessary steps to prevent the systematic influx of foreign immigrants into colonial territories, which disrupts the integrity, political and cultural unity of the peoples under colonial domination.”

- b) UNGAR 35/118 goes on to “discourage or prevent the systematic influx of outside immigrants and settlers into Territories under colonial domination, which disrupts the demographic composition of those Territories and may constitute a major obstacle to the genuine exercise of the right to self-determination and independence by the people of those Territories.”
- c) UNGAR 55/146 request colonial powers “as a matter of priority to ensure that the exercise of self-determination is not affected by changes in the demographic composition due to immigration or displacement of populations in the Territories.”
- d) UNGAR 70/231 “requests the relevant administering powers to take all steps necessary to protect the property rights of the peoples of those territories.”

There is a persuasive argument that the impacts of allowing unsustainable numbers of guest workers to obtain citizenship and/or permanent residency would contravene the human rights of the host population.

Economic sustainability is important but must be balanced by prior discrimination history, the need to protect the socio-political and cultural identity of Bermudians, the creation of and access to employment opportunities and environmental impact.

Subject to further research, the international standards for immigration policy in colonial territories as articulated by the European Court, European Convention, UN Human Rights Committee and the UNGAR’s are aligned. For colonial territories, adequate care must be taken before granting Status and voting rights to people without family ties. Legislators should consider the historical and political factors peculiar to Bermuda, whilst focusing a high degree of scrutiny on data, models and standards regarding the potential impacts on social, cultural and political cohesion as well as on the rights of the local population to self-determination.

## Multi-Generational Solutions

It is clear from a review of the Bermuda Immigration & Protection Act 1956 that many of its amendments addressed short term goals. Immigration is a long-term, multi-generational issue and as such solutions are required to be equally as long-term in their philosophy. Immigration is a complex topic which is evidenced by the sheer number of amendments since 1956. Ill-considered solutions will assuredly have far reaching unintended consequences that Bermuda and its people cannot afford.

Uncertainty for families has been the result due more to critical cut-off dates established with successive changes to immigration laws, than to decisions made by families. This has resulted in Mixed Status Families where one or more immediate family members hold Bermudian Status, with one or more members holding PRC or neither. The unintended consequences have placed families in very different immigration status, and worse, at risk for splitting up.

Future immigration legislation/policies must provide solutions which ensure:

- a) the creation of Mixed Status Families does not arise through unintended consequences of immigration legislation/policy;
- b) problems faced currently by Mixed Status Families are resolved fairly;
- c) that 'right to family life' is not put in jeopardy by immigration policy/legislation;
- d) any 'deadlines' contained in legislation are closely looked at to ensure undue hardship is not placed on applicants;
- e) Bermudians are assured priority in policies developed and implementation thereof; and
- f) enforcement and compliance efforts should be stringent enough to ensure abuses are sufficiently discovered and dealt with.

## **MIXED STATUS FAMILIES**

### **Principle**

#### **Families should not be separated**

The European Union Human Rights Act Article 8 “right to family life” - the right to respect for one’s established family life. This is a qualified right. This includes close family ties, although there is no pre-determined model of a family or family life. It includes any stable relationship, be it married, engaged, or de facto; between parents and children; siblings; grandparents and grandchildren etc. This right is often engaged, for example, when measures are taken by the State to separate family members (by removing children into care, or deporting one member of a family group). The qualifier being the likelihood of the subsistence of the family in an alternate jurisdiction and the logistics of such are overriding factors.

Certain sections of the Act allowed for the grant of PRC and Bermudian Status, which resulted in creating families where some members of the family qualified and some did not. Uncertainty for families has been the result due more to critical cut-off dates established with successive changes to immigration laws, than to decisions made by families. This has resulted in the creation of Mixed Status Families.

Mixed Status Families are primarily a defined group of people who have been resident on the island since before July 1989 and/or 1969 with succeeding generations born in Bermuda. These families have contributed to the Bermuda community and been immersed in Bermudian culture; and many of these individuals already have become Bermudian and/or have the right to apply for Bermudian Status as per the Supreme Court’s decision of May 2014.

As this is a defined group of individuals under the current provisions of the Act, the CIRWG recommends the following:

## **Recommendations**

- A. Families where at least one child born between 1983 and 1989, qualified for Status under the 1994 Act (born in Bermuda or moved to Bermuda under age of six (6)):
- Siblings still residing in Bermuda (including those in University overseas but still Bermuda resident) but did not qualify because they were too old
    - **Eligible to apply for the grant of Bermudian Status**
  - Siblings still residing in Bermuda (including those in University overseas but still Bermuda resident) but did not qualify as they were too young
    - **Eligible to apply for the grant of Bermudian Status**
- B. Families where at least one parent qualified for PRC under the 2002 Act, and subsequently qualified for Bermudian Status under 20B(2)(b) of the Act. It is recognized that the public and government were not aware that they qualified for status under 20B(2)(b) as early as 2003, until that right was confirmed by the Courts in May 2014.
- Children born between 1989 and 1994 would have been eligible to inherit status from these parents, i.e. they were under the age of eighteen (18) at the time of their Parent's qualification under 20B(2)(b), and where they have not already acquired Bermudian Status
    - **Eligible to apply for the grant of Bermudian Status**
- C. Families with at least one member qualifying for PRC under 31A and others gaining PRC under 31B, where those PRC 31B individuals have children now resident in Bermuda:
- **Provide for a PRC – 31B individual to pass on 31B to their dependents as minors;**
  - **Once 3rd generation PRC individuals reach eighteen (18) they are eligible to apply for the grant of Bermudian Status should residency and other requirements be met**

- Non-Bermudian individuals as the spouse of a PRC 31B
  - **Eligible to apply for the PRC 31B following ten (10) years of marriage to PRC holder**
  
- D. Families with at least one parent who has been granted Bermudian Status or qualifies for such under 20B(2)(b):
  - Children of the family who would otherwise qualify for Bermudian Status other than their date of birth
    - **Eligible to apply for PRC 31A, then once meeting all criteria be**
    - **eligible to apply for the grant of Bermudian Status**
  - Children of those above who have siblings who have been granted Bermudian Status
    - **Eligible to apply for PRC 31A then once meeting all criteria be**
    - **eligible to apply for the grant of Bermudian Status**

## PERMANENT RESIDENT'S CERTIFICATE

### Principles

#### **Families should not be separated**

As mentioned previously The European Union Human Rights Act Article 8 “right to family life”

#### **A new mechanism that eliminates gender, racial, and financial bias should be implemented that gives security of tenure to long-term residents.**

The Group is mindful that Bermuda needs to attract foreign investment to our shores and that there are some job categories which have low Bermudian participation. With these factors in mind; consideration should be given to how we remain competitive on a global scale while balancing the needs, opportunities, economy, and security of our local workforce.

The CIRWG recommends the following:

Introduction of a new mechanism to grant security of tenure to long-term residents. This new mechanism should be drafted in a manner that alleviates implicit gender, racial and financial bias in the Incentives for Job Makers Act 2011. Lawmakers should reference the following clauses in the Act; 31A “Right of persons designated under section 5 of the Economic Development Act 1968 as exempt from Part V of this Act, to a permanent resident’s certificate and 31B “Right of certain other persons to the PRC”.

Factors including, but not limited to, which determines a person’s eligibility to apply;

- > A suitable time frame by which a person would be considered a long-term resident of Bermuda
- > The person occupies a position in an essential job category where there is low Bermudian participation
- > The person has made some form of investment in Bermuda
- > The person has immersed themselves in the Bermuda community and has made positive contributions towards the betterment of the community

## Considerations when drafting specific Legislation & Policy

- Criteria should be balanced through a points-based system. Instead of persons needing to have all requirements on the list of criteria; the list should be weighted by points to give equal opportunity to those that may not have a specific set of circumstances due to their race, finances, age or gender
- Ensure that legislation is intended to be multi-generational and not have expiry dates thereby resulting in unintended consequences
- Consideration should be given to the impact on Bermudian employment opportunity and upward mobility
- Consideration should be given to the economy and population in relation to Bermuda's infrastructure, health insurance, Government debt, unfunded pensions etc.
- Consideration should be given to the impact of attracting and retaining global talent, investment and economic stimulation
- Consideration should be given to external and global factors
- Consideration should be given to International standards and precedent

## BERMUDIAN STATUS

### Principles

**The Grant of Bermudian Status is a privilege** extended by the government. There should be a route for long-term residents to apply for the grant of Bermudian Status after meeting certain stringent criteria and based on population demographics offering equal opportunity for all qualified persons to apply, eliminating any bias and discrimination.

**Children of Bermudians should be Bermudian** – if at least one parent is Bermudian then you are Bermudian.

**Once acquired Bermudian Status is a right** – no matter how status is acquired, it cannot be taken away.

For avoidance of doubt, the laws governing British Nationality will continue to apply in relation to determining commonwealth citizenship as a precursor to Bermudian status.

### Recommendations

- Children of Bermudians should be Bermudian
  - Remove domicile requirement up to the 3<sup>rd</sup> generation born overseas
  - If required, ensure the test for domicile is applied fairly and without discrimination
- *Establish a mechanism to apply for the grant of Bermudian Status*
  - The Grant of Bermudian Status should be a privilege gained through a rigorous process
  - A points system should be introduced to allow balancing the criteria and numbers. This points system should be evaluated at relevant intervals of not less than ten (10) years to ensure we are meeting the current needs of Bermuda's population, infrastructure, growth rate, economic factors, and sustainability.

- A limit to the maximum number of grants of Bermudian Status per annum should be established
  
- The criteria for Bermudian Status should include but not limited to:
  - Length of residence
  - Family connection
  - Bermuda History/Culture/Society course and test
  - Possession of PRC
  - Contribution to Bermuda
  - Commitment to Bermuda
- Evaluation of Criteria should be designed to eliminate any form of bias.
- If there is an interview process then the interview committee must be diverse to reduce any form of bias.

## Considerations when drafting specific Legislation & Policy

- Consideration should be given to measuring and maintaining records of Bermudians emigrating from Bermuda
- Consideration should be given to the impact on Bermudian job seekers
- Consideration should be given to ensuring the criteria/points system is balanced to reduce the impact on racial bias, ethnic diversity and cultural change
- Care must be taken so as not to create a right for all long-term residents to Bermudian Status
- Consideration should be given to International standards
- Consideration should be given to the economic growth in relation to population growth needed to support Bermuda's infrastructure, health insurance, Government debt, unfunded pensions etc.
- Consideration should be given to the impact on attracting and retaining global talent
- Consideration should be given to attracting and retaining global investment and economic stimulation
- Consideration should be given to external and global factors
- Consideration should be given to ensuring Bermudians are given priority in policies and implementation
- Enforcement and compliance efforts should be stringent enough to ensure abuses are sufficiently dealt with

## **Conclusion**

This report is the culmination of over eighteen months of hard work, deliberation, collaboration, research, soul searching and most importantly, open consultation with the people of Bermuda. Throughout it all the CIRWG was singularly focused on generating a report that would work for the betterment of all Bermudians and all other constituents. That was a tall order. The people of Bermuda can take comfort in knowing that the contents of this report enjoys full consensus support of the CIRWG, without dissent. Every point has been the subject of detailed consideration and robust discussion.

The CIRWG wishes to thank the Government of Bermuda and all of Bermuda for entrusting this momentous task to us.

Finally, I wish to acknowledge and publicly thank my fellow group members who have been steadfast in discharging our duty:

Mr. Dennis Fagundo (Deputy Chairman)

Senator Ms. Crystal Caesar

Mrs. Malika Cartwright

Ms. Lynne Winfield

Mrs. Belinda Wright

Mr. Stephen Todd

Mr. Gordon (Rick) Woolridge

Mr. Marvin Hanna (Recording Secretary)

Sincerely

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