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# Immigration Systems in Transition

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**LESSONS FOR U.S. IMMIGRATION REFORM  
FROM AUSTRALIA AND CANADA**

By Cristobal Ramón and Angelina Downs

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## **DISCLAIMER**

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# Introduction

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Over the last two decades, part of the immigration reform debate in the United States has focused on developing proposals for selecting immigrants—especially employment-based ones—modeled on the points-based systems<sup>A</sup> in Australia and Canada. These systems credit prospective immigrants who have specific characteristics that are found desirable, including education, specialized skill sets, employment experience, language proficiency, and age.<sup>1</sup> These countries have used these points-based systems for several decades, with Canada adopting theirs in 1967 and Australia following suit in 1979. Although these immigration systems have evolved since their introduction and faced challenges, their success in selecting migrants in response to labor market needs has prompted similar proposals for changing the employment-based U.S. immigration system.

While many U.S. proposals aim to replicate the Australian and Canadian framework, they largely overlook how these countries transitioned to these systems. Immigration systems, like other government institutions, emerge from distinct historical, political, economic, and social contexts that enable their implementation and maintenance. For instance, the Australian and Canadian political structures, which are based on the Westminster parliamentary system, allow their governments to make rapid and dramatic changes to their administrative systems, including immigration. Rather than being a footnote to analyzing the strengths and weaknesses of points-based systems, the history of their evolution is essential for understanding whether other countries like the United States could implement such a system in their current form.

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A This report will utilize the term points-based system to refer to the immigration programs in Australia, Canada, and New Zealand. Although the U.S. debate occasionally refers to these immigration programs as “merit-based immigration systems,” the two terms are not interchangeable. Merit-based immigration systems encompass a broad range of migrant selection mechanisms for assessing an individual’s qualifications. Points-based systems are a subset of this category, allocating points based on an individual’s background to determine whether they can migrate to a country. See Stephen Yale Loehr and Mackenzie Eason, “Recruiting for the Future: A Realistic Road to a Points-Tested Visa Program in the United States,” Cornell Law School Immigration Law and Policy Program, July 2020. Available at: <https://www.lawschool.cornell.edu/information-technology/upload/Immigration-Points.pdf>.

This report examines the history and the conditions that contributed to the Australian and Canadian governments' successful implementation and maintenance of these immigration systems. The first section examines how Australia and Canada transitioned from race-based predecessor systems to the points-based programs they have today, especially the manner that political decisions and migrant flows played in pursuing and altering these programs over time. The second section analyzes the political institutions, political strategies, and data gathering measures that allowed these countries to successfully implement changes to the systems.<sup>B</sup> The last section takes the lessons from this history and lists considerations for policymakers when thinking about implementing a new immigration system in the United States.

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<sup>B</sup> These sections also feature observations about the evolution of the immigration systems in New Zealand and Japan, which have implemented their own variations of points-based systems.

## **PART 1**

# **The Historic Transitions of the Australian and Canadian Immigration Systems**

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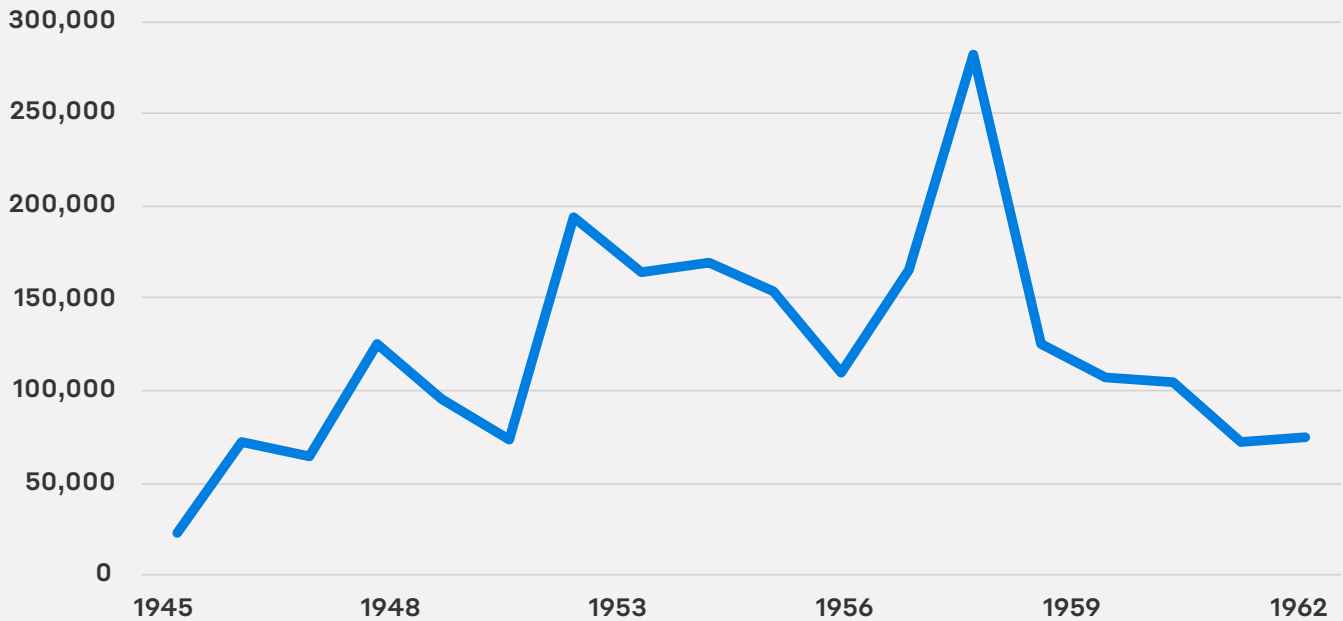
Although the conceptions of the Australian and Canadian systems in the U.S. immigration debate appear as static structures that have existed in their present form, these systems emerged from a set of race-based policies into transitional programs and to the first iterations of their points-based systems. Furthermore, these points-based systems continued evolving after implementation, especially as they began expanding temporary work visas that operated alongside the permanent points systems. Throughout this process, administrative bureaucracies have played a central role in implementing and maintaining these systems, particularly during the initial transitions.

### **The Dominance of Race-Based Models in Canada and Australia (1900 to 1962)**

Much like the United States' own immigration history (see pullout box), Canada and Australia relied on race-based immigration policies from the beginning of the 20th century until their transitions to points-based systems, with Canada taking this step the 1960s and Australia following in the 1970s. Their prior policies promoted the immigration of Europeans, particularly British<sup>2</sup> immigration, as a tool to expand their populations rather than a way to attract a high skilled labor force. After World War II, both countries experienced a significant uptick in migration from Europe as Europeans sought out new economic opportunities abroad. The earlier immigration schemes leaned on Australian and Canadian embassy staff to meet with potential applicants to see who would be eligible to migrate to these countries.

In Canada's case, the Canadian government began ramping up immigration and accepted large numbers of European migrants after World War II.<sup>3</sup> As Figure 1 shows, immigration to Canada increased significantly in the post-war era, growing from just 22,700 in 1945 to a peak of 282,200 in 1957.

**Figure 1: Number of Individuals Landed in Canada (1945-1962)**



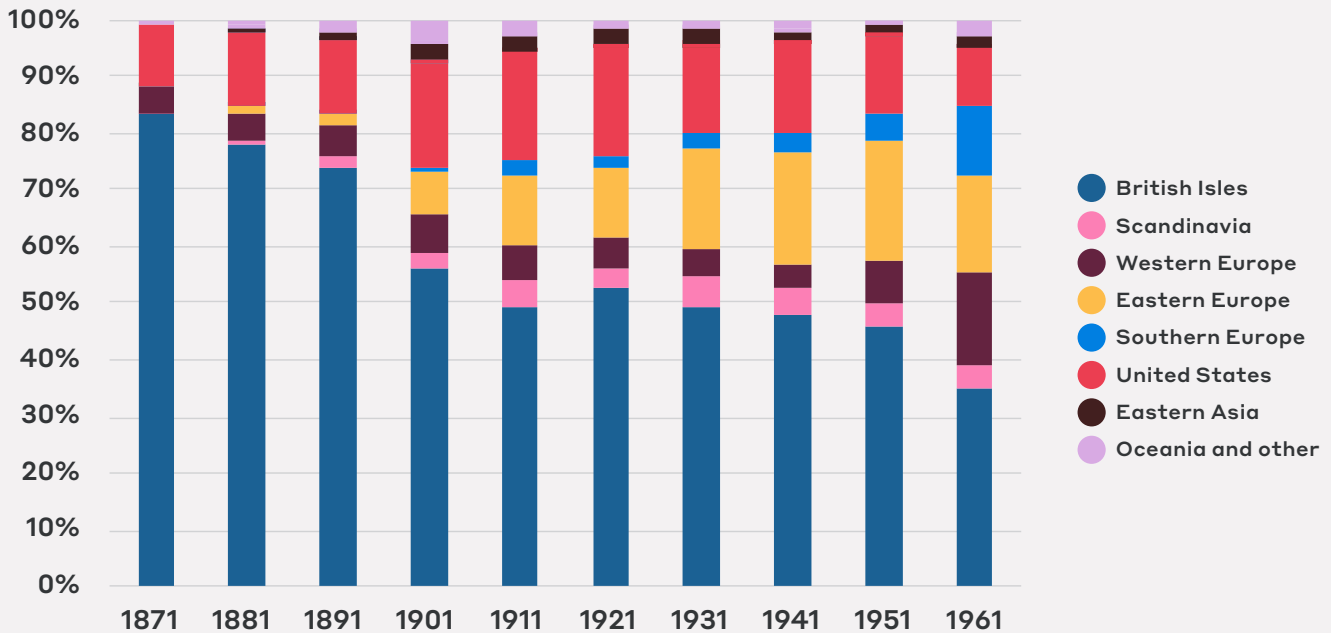
Source: Statistics Canada<sup>4</sup>

Rather than having firm quotas for migrant reception rates after World War II, Canada based its migration levels on “absorptive capacity,” a term coined by Prime Minister Mackenzie King in 1947 that allowed the country to have variable levels of migration based on economic conditions.<sup>5</sup> “In 1929, Canada and the US similarly brought immigration basically to zero during the Great Depression,” said Arthur Sweetman, Professor of Economics at McMaster University in Ontario. “The real deviation is after World War II. There’s this famous speech in 1947 given by our then Prime Minister and he says that we’re going to increase immigration according to the ‘absorptive capacity’ of the economy. This really sets the tone, the cultural tone for immigration in Canada until the 1960s and on the economic front beyond that.”<sup>6</sup>

Although officials opened up the Canadian immigration system after World War II, it still used a system of preference lists for countries that would send white migrants. “There was literally a preferred list of countries and a non-preferred list of countries,” said Daniel Hiebert, Professor of Geography at the University of British Columbia, Vancouver, “And the preferred list of countries reflected a racialized ideal of a white immigrant.”<sup>7</sup> As a part of this system, embassy officials overseas would interview potential candidates and used their discretionary power to determine which individuals could migrate to Canada.<sup>8</sup>

The administration of this policy had significant impact on the composition of migration to Canada in the years after World War II. As Figure 2 shows, the decades leading up to the 1960s saw a majority of migrants to Canada arriving from the British Isles, all major regions of Europe, and the United States.

**Figure 2: Percent of Foreign Born in Canada by Select Regions (1871 – 1961)**



Source: Statistics Canada<sup>9</sup>

However, the Canadian government sought to square this policy against the reality that the country was a member of the British Commonwealth, which included countries in Asia and Africa. “There was a little bit of to-and-fro around this idealized expectation of the European immigrant with the positive view towards the Commonwealth,” Hiebert said. “A few countries, like South Africa for example, were on the preferred list, but mainly it was white South Africans that were coming.”<sup>10</sup>

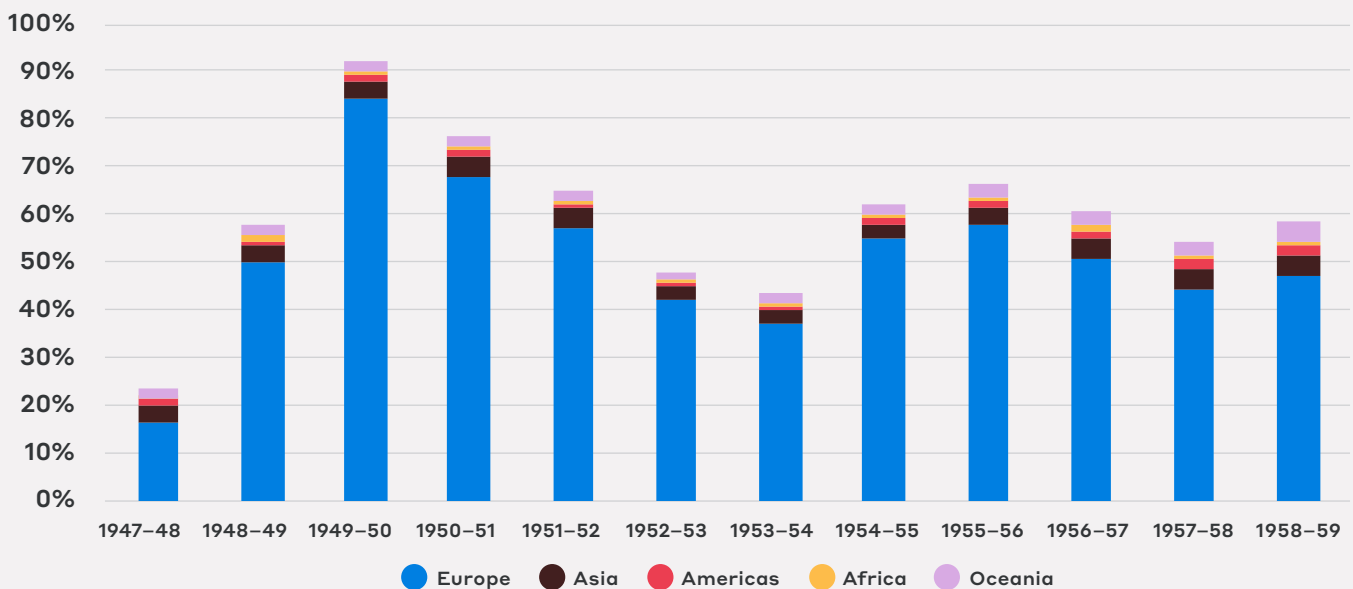
The Australian system followed a similar trajectory to Canada. Australia’s race-based policy formally began with the passage of the Immigration Restriction Act of 1901 that initiated the “White Australia” policy.<sup>11</sup> Under this law, the Australian government encouraged migration from Great Britain and Western Europe in order to maintain a majority white population to ensure cultural homogeneity while pushing population growth. Anna Boucher, Associate Professor with the Department of Government and International Relations at the University of Sydney, explained, “The ideal migrant ... was a British migrant. They got subsidized travel to Australia. Their boat trip was paid for and jobs were readily



available for male migrants.”<sup>12</sup> However, the Australian government limited migration from southern Europe and almost completely shutoff migration from other non-European countries.

In the aftermath of World War II, the mass exodus of displaced Europeans was sufficient enough to fuel Australia’s “Populate or Perish” policy—a term coined by Labor Immigration Minister Arthur Caldwell<sup>13</sup> in response to Australia’s need for outside supplementation to their stagnant native population growth. As Figure 3 shows, Australia experienced significantly expanded migration in the post-war period with most migrants arriving from Europe.

**Figure 3: Permanent and Long-Term Arrivals to Australia (1947/1948 – 1958/1959)**



Source: Australian Department of Home Affairs<sup>14</sup>

Although the policy initially targeted Western Europeans, economic recovery in countries like Great Britain forced the Australian government to seek migrants from other parts of the continent such as Southern Europe in the 1950s.<sup>15</sup> As a result, the “White Australia” and “Populate or Perish” policies coexisted until the 1970s, albeit in an uneasy arrangement where both policies pulled in opposite directions.

During this period, a network of Australian officials based in embassies around the world recruited migrants rather than allowing potential newcomers to secure a sponsor or self-petition. Under the White Australia policy, these officials had significant power over the ability to migrate to Australia, including requiring them to take literacy tests where they had to write something—in

any chosen language by the official—as the embassy staff dictated a phrase. Boucher said these kinds of tests allowed the officials to control migration:

**If they couldn't write in the language that the immigration official had asked for, they would just deport them. So that was a way that [the government] controlled migration. So that put a lot of power in the hands of people working in visa processing units and in ports.<sup>16</sup>**

Although the country did not administer wealth tests to prospective migrants, some immigrants who couldn't pay the entirety of the immigration fee were required to work on Australian building projects for two years. Nevertheless, European migrants made the journey to Australia with little wealth in the post-war period, a process that would dramatically change in both Australia and Canada in the 1960s and 1970s.

## **The Emergence of the Modern U.S. Immigration System During the Civil Rights Era**

The evolution of the U.S. immigration system followed a similar trajectory to the ones in Australia and Canada, by replacing a race-based model with a more race-neutral system. In 1924 Congress passed the Immigration Act of 1924, which replaced a more open system of immigration and sought to restrict growing migration from Southern and Eastern Europe and Asian countries to only citizens from Northern Europe. The law established a national origin quota system that allocated a total of 165,000 visas to each country based on the number of citizens present in the 1890 U.S. census.<sup>c</sup> The 1924 law also created a geographic “Asiatic Barred Zone” that limited immigration from most Asian countries.<sup>d</sup> In 1927 Congress limited the number of visas to 127,000, restricting immigration even further.<sup>17</sup>

The rise of the Cold War and lobbying from Asian-American groups initiated the United States' slow move away from this race-based model in the 1950s. In 1952, Congress codified the disparate immigration statutes into one body of

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C Despite these restrictions, the United States maintained an open system of migration in the Western Hemisphere until 1965 when the INA established the per-country caps for countries in this hemisphere. See: U.S. Department of State Office of the Historian, “The Immigration Act of 1924.” Available at: <https://history.state.gov/milestones/1921-1936/immigration-act>.

D The zone had exceptions for Japanese and Filipino citizens. The Japanese government voluntarily limited immigration of its citizens to the United States in 1907, leading to their exclusion from the zone. Filipino citizens could travel freely to the United States since the country's status as a U.S. colony granted them U.S. citizenship. While the zone did not include China, Chinese citizens could not immigrate to the United States under the 1882 Chinese Exclusion Act. See: U.S. Department of State Office of the Historian, “The Immigration Act of 1924.” Available at: <https://history.state.gov/milestones/1921-1936/immigration-act>.

law, the Immigration and Nationality Act, or INA. Although the law maintained and reinforced the quota system, it eliminated provisions that prohibited individuals of Asian descent from becoming U.S. citizens. It also created a cap of 2,000 visas for individuals from the Asiatic Barred Zone, allowing for some immigration from the region.<sup>18</sup> These developments built upon the repeal of the Chinese Exclusion Act in 1943, which set aside a limited number of visas for Chinese nationals due to the U.S.-Chinese alliance during World War II.<sup>19</sup>

After concerns about domestic and international perceptions about the United States' commitment to civil rights in the 1960s,<sup>20</sup> Congress decided to completely replace the quota system with the Immigration and Nationality Act of 1965. The new law distributed a limited number of green cards using a priority-based system for certain classes of non-citizens migrating through employment-based or family-based channels. More importantly, the law prohibited discrimination against migrants based on race or nationality and established a universal per-country cap on green cards to eliminate the bias towards specific nationalities and regions that existed in the quota system. The 1965 system has subsequently served as the foundation for all legal immigration reforms since then.<sup>21</sup>

## **The (Gradual) Rise of Points-Based Systems in Canada and Australia (1962-1979)**

In the period between the late 1950s and the early 1970s, Australia and Canada began to shed racist policies as concerns about civil rights began percolating throughout the world. However, neither country made an immediate jump to a points-based system. Instead, they spent several years in interregnum periods where they sought to find a system—and policy objectives—that aligned with their needs. This process had similar parallels to the evolution of the U.S. immigration system, which began moving away from the 1924 race-based national origins quota system in the 1950s and completely eliminated them with the 1965 Immigration and Nationality Act (see pullout box).

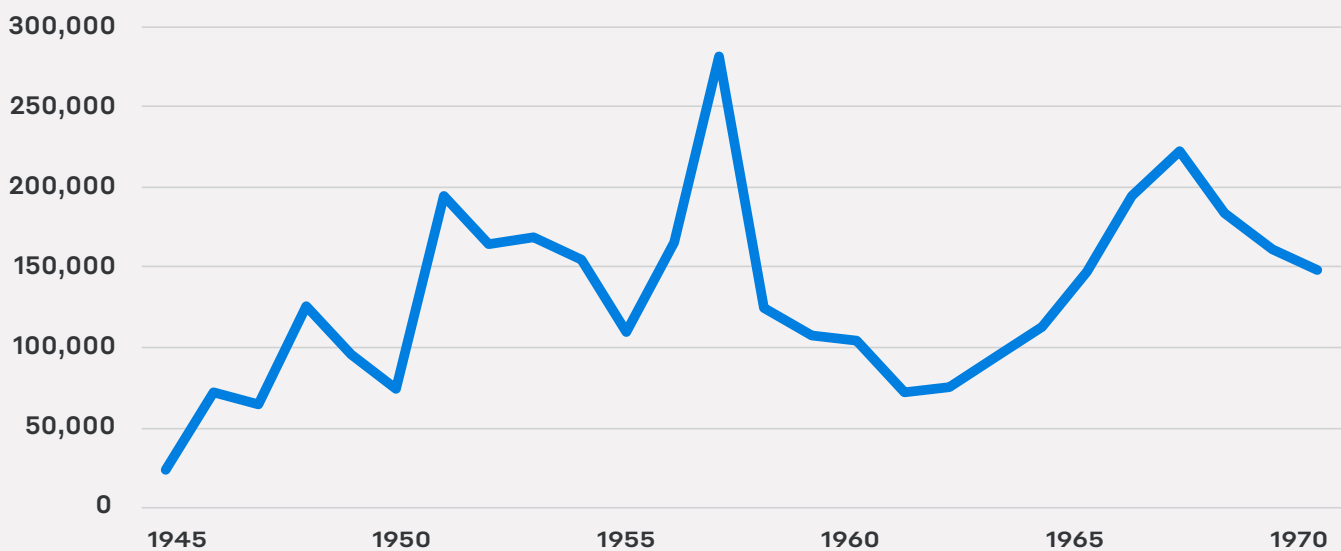
### **The Canadian Transition: “A Very Chaotic” Five Years**

The Canadian government made the decision to move away from a race-based system in the early 1960s, leading to a five-year interregnum period where the country sought a new path. In 1962, the Canadian government under Prime Minister John George Diefenbaker of the Progressive Conservative Party used its executive authority<sup>22</sup> to officially end its “preferred countries” list to address the slowing flow from Europe, which had almost completely recovered after World War II, and growing accusations of racism against the Canadian government. Rather than switching to a new system, however, the country ambled through a period where it had an amorphous system. Hiebert noted:

Basically, what happened was the Canadian government decided to tear up the preferred and nonpreferred list in 1962, but they had nothing as formal as that to replace it with. So, it was a very chaotic five years between 1962 and 1967 when the points system was invented. And I would say it took some time to implement the new ideal of the points system as well. That's a pretty long period of policy churn. There was actually a fairly robust level of immigration to Canada when the rules were in transition, from 1962 to 1967.<sup>23</sup>

As Figure 4 shows, the number of immigrants arriving to Canada increased from 74,600 in 1962 to 222,900 in 1967—the second highest peak<sup>E</sup> in arrivals since 1945.

**Figure 4:** Number of Individuals Who Landed in Canada (1945-1970)



Source: Statistics Canada<sup>24</sup>

E The largest peak in migration between 1945 and 1970 occurred in 1957 when the Canadian government began expanding the countries eligible to migrate to Canada and received refugees from countries in the Soviet Bloc, including Hungarian nationals fleeing the Soviet crackdown of the Hungarian uprising of 1956. It also saw significant numbers of migrants arriving from Britain, Germany, and the Netherlands. See: Mariia Burtseva, "The Specifics of Post-War Canadian Immigration Policy (1945–1957)," *Historia i Polityka*, 22(29): 69–86, 2017. Available at: <https://pdfs.semanticscholar.org/6903/9fe304adc18c198c81ebac8ae5b706366284.pdf>. Patrick Cain, "Graphic Monday: 55 years of immigration to Canada," *Global News*, October 16, 2013. Available at: <https://globalnews.ca/news/556893/graphic-monday-55-years-of-immigration-to-canada/>.

Between 1962 and 1967, the Canadian government under Liberal<sup>F</sup> Prime Minister Lester Pearson maintained a proto-points system, albeit one that did not carry this title. As Robert Vineberg, an independent researcher and Former Regional Director General of Citizenship and Immigration Canada, recalled:

**Behind the scenes, Canada's first female cabinet minister Ellen Fairclough had been pushing to eliminate the discriminatory provisions in immigration since her appointment as Minister of Citizenship and Immigration in 1958.<sup>25</sup> She succeeded with the approval of the new Immigration Regulations in 1962. Basically, without talking about a points system, immigrants intending to work were questioned whether they had the education, skills, occupation, and whether they had a job arranged and then assessed on their likelihood of settling in Canada. These were the same kinds of items that were included in a formal point system five years later.<sup>26</sup>**

Despite the chaos, this five-year period gave Prime Minister Pearson's government the space to determine which streams they wanted to incorporate into a future system. As 1967 arrived, this exploratory process yielded ideas for the country's primary channels for permanent residence: economic, family, and humanitarian. Hiebert said:

**It was in that five-year interval where policymakers in Canada figured out: "Okay, we're going to have three distinct pattern pathways or streams of immigration to Canada." And these had never been categorized and classified prior to that. The three types were: economic, family, and humanitarian ... in '67 they had to figure out: "Okay, what do you mean by family, what do we mean by economic, what do you mean by humanitarian." So, then each of these things had to be codified, classified, and they all had to be implemented.<sup>27</sup>**

This move toward developing new streams of migration culminated later that year when the Canadian government used its executive authority to implement a formal points-based system to attract skilled foreign workers.<sup>28</sup> The Canadian government decided that a points-based system was the most "rational" system

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<sup>F</sup> Although this report discusses the Liberal Party in Australia and Canada and their respective prime ministers, these parties do not come from the same side of the ideological spectrum even though they use a name synonymous with center-left political positions in the United States. The Liberal Party in Australia is a center-right party akin to the Republican Party in the United States. The Liberal Party in Canada is a center-left party akin to the Democratic Party in the United States.

for selecting economic class migrants and would mark a complete break from the race-based policies of the past. Sweetman recalled:

**Having been accused of racism, the government in the 1960s wanted something that was objective, not subjective. They wanted something where you could say: “Here’s some clear criteria. This is objective. We’re not discriminating against people; people meet the criteria or they don’t meet the criteria.” This resulted in the points system for economic class immigrants that also satisfied economic motivations for immigration.<sup>29</sup>**

The initial version of the points-based system was rudimentary, granting points based on nine criteria based on an individual’s skills, ability to gain immediate employment, and personal circumstances such as having family in Canada.<sup>30</sup> This transition required revisions of existing occupational definitions and classifications and creating new tools to determine existing labor market demand to implement the new assessments of candidates. As Vineberg noted:

**While the Canadian government did have occupational definitions, they weren’t really good for assessing skill levels. So, a new dictionary and classification of occupations was developed specifically for the selection of immigrants abroad and also a national job demand guide had to be developed based on both on unemployment information and Statistics Canada data on job vacancies across the country ... Those two tools were necessary before the points system could be effectively implemented.<sup>31</sup>**

In addition to the new points-based system, the Canadian government also introduced other migration programs for family-based and humanitarian migration as part of this overhaul. These three channels became the foundation of the country’s new immigration system, which would grow and expand in subsequent decades.

Although the system was rudimentary compared to its successors, it dramatically changed the way the Canadian government managed immigration. Rather than relying on overseas embassy staff, who each personally held the power to decide which individuals could migrate to Canada, it allocated this power within the domestic Canadian bureaucracy that oversaw immigration and could make decisions across wide swaths of the population.<sup>32</sup> This development set the stage

for the immigration program to expand in the following decades as subsequent governments tasked these officials with implementing modifications and policy goals that prime ministers and their immigration ministers set for the country.

### **The Australian Transition: “A Short Decade of Family Sponsorship”**

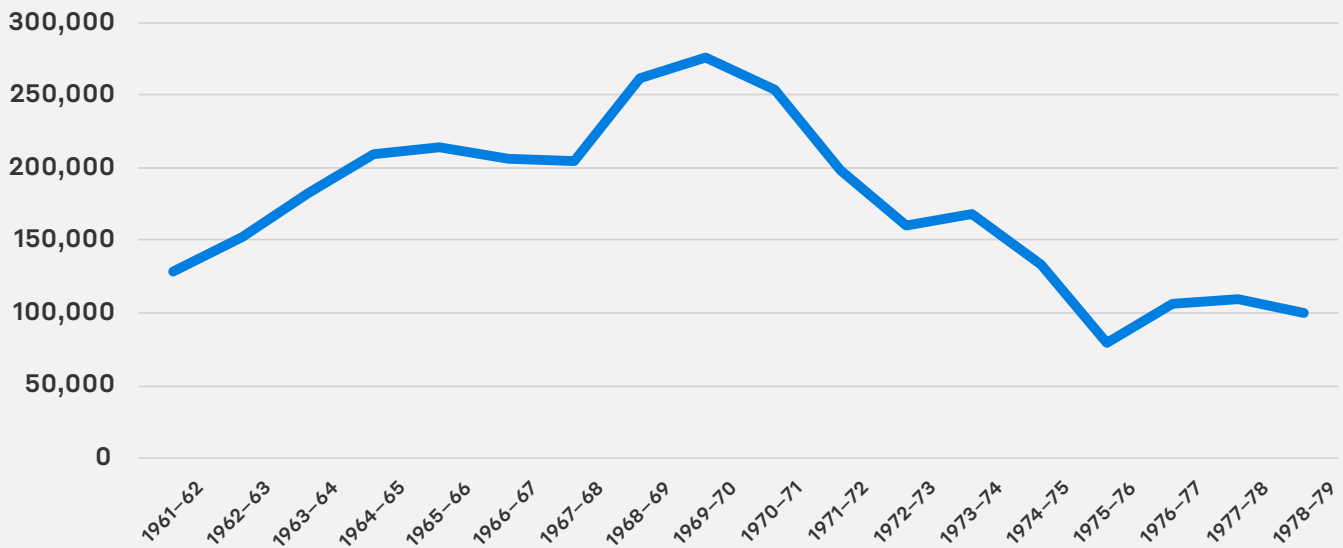
Australia followed a similar trajectory in the middle of the 20th century when it began moving away from the “White Australia” policy. In 1958, the Australian government under Liberal Prime Minister Sir Robert Menzies passed the Migration Act, which abolished the dictation tests and provided some safeguards for the rights of individuals.<sup>33</sup> The Migration Act of 1966, passed under Liberal Prime Minister Harold Holt, took this step further—making all potential migrants subject to the same rules and restrictions with regard to acquiring visas.<sup>34</sup> The law also stated: “[M]igrants to Australia were to be selected for their skills and ability to contribute to Australian society, rather than their race or national affiliation.”<sup>35</sup>

1973 marked the culmination of this process when the ongoing global struggle for civil rights and the economic downturn stemming from the 1970s oil crisis led the Australian government under Labor Prime Minister Gough Whitlam to simultaneously end the “White Australia” and “Populate or Perish” policies.<sup>36</sup> The University of Sydney’s Boucher explained that the political circumstances and election of a left-wing Labor government that prioritized ending “White Australia” led to the measure’s demise in the 1970s:

**There was a rumbling, [in] both parties actually, that they had to do something about the race-based selection policy. And I think globally, the anti-apartheid movement and the civil rights movement in the U.S. meant people were more aware of issues of race and inequality. This left-wing government was selected, and they had their first immigration minister who was actually a migrant [from Italy] ... and he pushed for the end of the White Australia policy. He said, “It is dead. Give me a shovel and I will bury it.”<sup>37</sup>**

The economic downturn also spelled the end of “Populate or Perish,” as the Australian government reduced migration during this period, especially for low-skilled workers who could immigrate under that policy to fuel the country’s postwar economic expansion efforts.<sup>38</sup> As Figure 5 shows, migration declined from 185,099 in the 1969-1970 Australian financial year to 52,752 in the 1975-1976 financial year:

**Figure 5: Permanent Arrivals to Australia (1961/1962 – 1978/1979)**



Source: Australian Department of Home Affairs<sup>39</sup>

Rather than pivoting to a new immigration system, the Australian government under Prime Minister Whitlam and his Liberal successor Malcolm Fraser kept measures that promoted family-based migration for non-citizens with family in Australia. Henry Sherrell, an independent researcher on Australian immigration policy, noted:

**You get to this point in the mid-70s where you don't have "Populate or Perish" and you don't have an overt discriminatory system. So, you ask: "How are we going to select how are we going to figure this out?" We went from 185,000 immigrants in 1969 to 1970 to 80,000 in 1974 to 1975, which [is over a] 60% reduction in five years. In that short term they slashed unskilled labor migrants and they promoted the preference for spouses, dependent children, and parents.**

Sherrell added that this new system could not effectively select migrants for the country's labor market. "In the mid-70s, this wasn't a strong point of emphasis," he said.

As the recession eased in 1979, Prime Minister Fraser's government began to transition to a points-based system initially called the Numerical Multifactor Assessment System, or NUMAS. The new system focused on economic



migration rather than family-based migration. Sherrell noted that the existence of the Canadian system meant Australia didn't have to do the theoretical legwork, allowing the country's vast bureaucracy to develop its own version of a points-based system. However, this step marked a dramatic shift from the policies that existed between 1973 and 1979. Sherrell explained:

**We had a short decade of family sponsorship playing an increasing role at this point when the test was introduced to assess candidates against employment outcomes and family connection. It was a sharp break with prior policy because you're prioritizing the economics rather than the cultural elements of it.**

Like Canada, the initial version of the points-based system lacked the sophistication of its modern counterpart. "It was quite rudimentary," said Boucher, "It was 'okay, well we have to have migrants and we're not selecting them on the basis of their ethnicity anymore so let's come up with this system where we try to measure skill.'"<sup>40</sup>

The transition to NUMAS made the immigration bureaucracy in Canberra—not overseas embassy staff—responsible for the immigration system. Although this process did mark a major transition in the government bodies responsible for selecting migrants, it did not require expanding the immigration bureaucracy because it required fewer people to administer the screenings from Canberra. Sherrell said:

**The previous system relied on officials with a wider role in the world for selecting migrants ... you're talking of hundreds of embassies and high commissions around the world. This move scaled back that need for that network, but you are still assessing people against a criterion. This bureaucratic, non-human resource screening process made life much easier for the immigration department because it was less resource intensive**

Although the Australian bureaucracy deftly managed the new system's implementation, Fraser's government made changes to NUMAS in 1980 to mollify criticisms from immigrant diaspora communities. These groups, which included migrants from Italy, Greece, and Germany argued that new system prioritized an applicant's professional qualifications over their family ties in the country that mattered to these diasporas. As Sherrell said:

**[The Australian government] increased that relevance and importance of family connection to satisfy the political angst of the community. They were trying to create this economically centered program. But at**

**the same time, this was messy politically and it upset people who used their connections to allow others to come [to Australia].<sup>41</sup>**

Nevertheless, the new immigration system continued to shift from family-based migrants toward high-skilled ones as it attracted more migrants,<sup>42</sup> setting the stage for major changes future Australian governments would make that would maintain this course into the new millennium.

### **Early Congressional Efforts to Introduce a Points-Based System in the United States**

Although the comprehensive immigration reform bills in the 2000s and 2010s mark the highest profile efforts to reform the legal immigration system in the United States, these efforts have a deeper history. The Select Commission on Immigration and Refugee Policy, which Congress created in 1978 to present reforms for the immigration system, rejected the idea of adopting a points-based system in its final 1981 recommendations.<sup>43</sup> The commissioners opposed the idea because it would likely benefit migrants from English-speaking countries and face logistical challenges such as comparing professional and academic qualifications from different countries.<sup>44</sup>

Congress reconsidered a points system as it began putting together the Immigration Act of 1990. In the late 1980s, the Immigration and Naturalization Service proposed that 100,000 visas should be available for immigrants based on a 150-point system. Immigrants with the most points based on their assessment would receive priority over those with lower points levels. The proposal would award points for: a job offer in an in-demand occupation, English fluency, age, education background, and experience or training for an in-demand occupation.<sup>45</sup>

The Senate version of the bill that eventually became the Immigration Act of 1990 took inspiration from this idea. It allocated 55,000 visas for a points-based system based on an applicant's age, education, English language ability, occupational demand, occupational training, and work experience. The version approved by the Senate reduced these visas to 54,000, setting aside 20% for "selected immigrant" category for applicants with the highest points and distributing the rest to individuals who passed a 60-points threshold.<sup>46</sup>

After the House passed a version that did not include this system, the conference committee removed this points-based system and introduced the current system of distributing employment-based green cards based on preference categories.<sup>47</sup> In 1995, the U.S. Commission on Immigration Reform recommended that immigrants be chosen on the basis of the skills they contribute to the economy, but did not mention whether the country should use a points-based system.<sup>48</sup>

## Transitions as a Continual Process for the Australian and Canadian Immigration Systems (1979-2015)

Points system updates have been an important component of Australia and Canada's immigration policies, especially since the mid-1990s as the countries sought to refine their ability to recruit individuals that met labor market needs and reduce the backlogs of waiting applicants that had accumulated over time. In particular, both countries adopted an expression of interest system pioneered by New Zealand (see pullout box) that required potential migration candidates to first fill out a preliminary assessment. Individuals who meet an initial points threshold may then receive an invitation to apply for permanent residency.<sup>49</sup> Canada and Australia also introduced temporary migration programs in the early 2010s that began serving as an alternative to the points-based programs to enable migrants to work in these countries.

### New Zealand: From Follower to Innovator in Points-Based Systems

The evolution of New Zealand's immigration program is a story of a small country that developed an important innovation—the “expression of interest” system—that changed the Australian and Canadian immigration systems after the nation of 5 million people followed in these countries' footsteps for several years.

Like Australia and Canada, New Zealand's immigration system transitioned from a race-based model to a points-based one. However, the country did not make this transition until the 1980s due to government efforts to address the rights of the Māori people. “We have a large indigenous population that's equivalent to 15% of the total population of New Zealand,” said Paul Spoonley, Distinguished Professor in the College of Humanities and Social Sciences at Massey University, “In the late 1960s they began to agitate for indigenous rights. And through the 1970s and the 1980's, the debate was about biculturalism and about indigenous rights.”<sup>50</sup> The New Zealand government's implementation of a formal bicultural policy gave it the space to pivot towards eliminating the race-based model in 1986. “That was the reason for the delay,” said Spoonley.<sup>51</sup>

Although the country adopted a similar points-based model in 1987, the initial version attracted a significant number of Asian immigrants that generated a populist backlash in the 1990s. “There was an initial surge of migrants from Hong Kong, Taiwan, and South Korea and the numbers were very significant through the late 1990s,” said Spoonley.<sup>52</sup> In response, a political party called “New Zealand First” emerged as the country's major anti-immigrant party<sup>G</sup>

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<sup>G</sup> The party's current platform notes: “Whilst this country, with such a small population, will continue to require an infusion of overseas skills and expertise, immigration will cease to be used as an excuse for our failure to train, skill and employ our own people.” New Zealand First, “About.” Available at: [https://www.nzfirst.nz/our\\_story](https://www.nzfirst.nz/our_story).

and entered into a short-lived government in the 1990s, helping to introduce several more hardline policies such as requiring English competency for permanent residency.<sup>53</sup> “1996 was the low point in which there was, it must be admitted, a lot of anxiety amongst New Zealanders with the sudden arrival of very large numbers of migrants from Asia,” said Spoonley.<sup>54</sup>

A progressive Labour government reversed this course in 2000, introducing the expression of interest system for its points-based channel as a broader push to expand skilled immigration and improve its management.<sup>55</sup> The expression of interest system's key innovation was breaking the points-based assessment into two parts. The first part followed the same process as all other points-based systems at the time: an individual received a given number of points based on their qualifications. Rather than allowing all individuals who passed a points threshold to receive permanent status, the new system placed them in a pool where officials could rank them against each other. Individuals who receive the highest ranking receive an invitation to apply for permanent residence. Candidates have the ability to monitor their applications throughout this process. The government currently refreshes the pool every six months, meaning that individuals need to reapply if they do not receive an invitation to apply for immigration.<sup>56</sup>

The system's success in reducing its backlog, promoting transparency, and improving its selection of skilled migrants<sup>57</sup> led Australia and Canada to incorporate similar processes into their own migration programs. “Canada was the first country to introduce a points-based system and Australia and New Zealand were quick to adopt the new system,” said Vineberg. “But the New Zealanders were the first to have the idea of a prequalified pool that you can draw from, so they were able to implement control over volumes earlier than we did.”<sup>58</sup> However, Spoonley noted that changing attitudes towards immigrants since the 1990s contributed to the success of efforts to expand and improve migration through programs like expression of interest. “What really became apparent to the New Zealand population was that a lot of our skills, a lot of our diversity, and a lot of our vitality as a country comes from migrants,” he said. “The New Zealand public has increasingly seen migration as a part of the nation building project and as a positive.”<sup>59</sup>

## **Australia: The Rise of SkillSelect and Temporary Visas as a Gatekeeper for Permanent Status**

In the last decade, the Australian government has adopted new mechanisms for selecting permanent economic migrants to tackle backlogs that emerged under the existing points-based system. Prior to 1979, Australia did not have a visa backlog because immigration was based on lists held by each immigration agent at embassies around the world that determined whether individuals could get an interview. Furthermore, individuals could not file applications until they successfully completed an interview, which included language tests until 1958. “The role of the official doing the screening was so central to the task,” said Sherrell, “There were long waiting lists, which were a quasi-backlog, but no application had been lodged until you [had] seen that person and gone through with them. In that sense it limits the ability for a backlog.”<sup>60</sup>

Although the transition to the Australian points-based system eliminated this process, backlogs did not become a major issue until 2008 as the increase in applicants and lenient standards for selecting candidates for permanent residence created a long queue for immigration benefits. Sherrell said, “You might be an international student, you might be a temporary worker, and we said ‘we’ll make the points system work for you if you want to stay ... but we’re going to process the visas first come, first serve.’ You develop this backlog [and] by 2008 and 2009 there’s more 140,000 people in the queue.”<sup>61</sup>

The existence of this queue prompted the Labor Prime Minister Kevin Rudd’s government to use expansive executive powers granted under the Australia Migration Act of 1958 to adopt the SkillSelect expression of interest system in 2012, which changed the selection process for migrants. In addition to determining whether an applicant’s background meets a specific points threshold, SkillSelect ranks individuals who meet this threshold against each other and invites the top ranked candidates to apply for permanent migration.<sup>62</sup> Sherrell said that this system, which Australia copied from New Zealand, allowed the Australian government to cut through much of the existing backlog:

**The Migration Act is very executive friendly, so the executive has unparalleled power to decide whatever they’re going to do. They kept the points system but introduced ranking of points so you don’t lodge your visa right away ... the government said, “You scored 80 points and you’re in the 10% of applicants and made the cut but [if] someone has 75 points from three years ago, they miss out.” That means you eliminate the queues because there are no applications until you’re invited to apply.**<sup>63</sup>

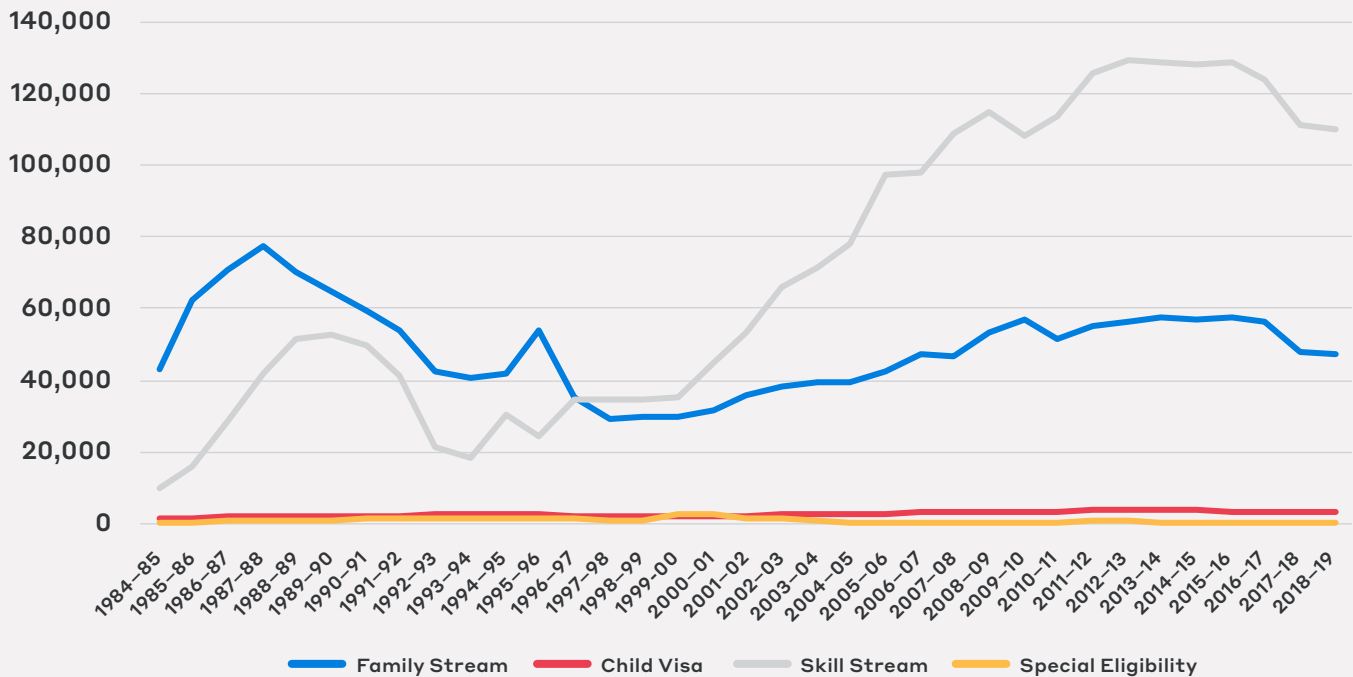
The adoption of the new system marked a cultural shift in the manner that the Australian bureaucracy viewed the processing of immigration benefits. Rather than trying to expand the size of the workforce, the new system sought

to mitigate the negative externalities from the system such as backlogs. Regina Jefferies, a Scientia PhD Scholar at the University of New South Wales and an affiliate of the Kaldor Centre for International Refugee Law, explained:

**At the time a skilled migration system was being put into place, there was a huge emphasis on nation building. The Department of Immigration was building a country with the best and brightest and even refugees and asylum seekers, we were taking them in ... but that has radically shifted since 2014 and it's become more about risk management. The Department of Home Affairs doesn't see itself as a building agency, but one of risk mitigating.<sup>64</sup>**

Despite the Australian government's efforts to reduce employment-based backlogs, individuals seeking to migrate to Australia—especially spouses of Australian citizens—experienced major backlogs because Liberal Prime Minister John Howard placed caps on this channel as his government expanded skilled migration beginning in 1996. As Figure 6 shows, the number of migrants who arrived through the Family Stream decreased significantly as the Skilled Stream expanded significantly after 1996.

**Figure 6: Arrivals Through Permanent Migration Streams in Australia's Immigration Program (1984/1985 – 2018/2019)**



Source: Australian Department of Home Affairs<sup>65</sup>

Boucher noted the backlog of family-based visas to process had increased because successive governments prioritized skill migration over family-based. “There are a quarter of a million people on bridging visas<sup>H</sup>, many of whom are spouses,” she said, “[But] the way they’re reducing family migration right now is slowing down the rate of processing. So, when you get to the end of the year, it looks like: ‘Oh, we had more skilled migration.’”<sup>66</sup> In August 2020, Labor members of the Australian parliament initiated motions to debate Liberal Prime Minister Scott Morrison’s use of these practices<sup>67</sup>—including whether they are illegal under Australian immigration law, which prohibits capping partner and child visas.<sup>68</sup>

The Australian government has also begun adopting more temporary programs with varying degrees of integration into SkillSelect. In 1996, the Howard government introduced the 457 visa, which allowed employers to sponsor migrants to work in the country for a maximum of four years for approved employers on a shortage list and a maximum of two years for approved employers on a non-shortage list.<sup>69</sup> In addition to allowing the beneficiary to bring family members, the visa also allowed migrants a path to permanent residency after two years with the same employer.<sup>70</sup> Although reports noted that 55% of individuals with the 457 visa converted to permanent status,<sup>71</sup> the program faced controversy about the program’s oversight. For instance, government reports found problems with 40% of visa holders or their employers, including beneficiaries who were no longer working for their employers or did not receive their stated wages.<sup>72</sup>

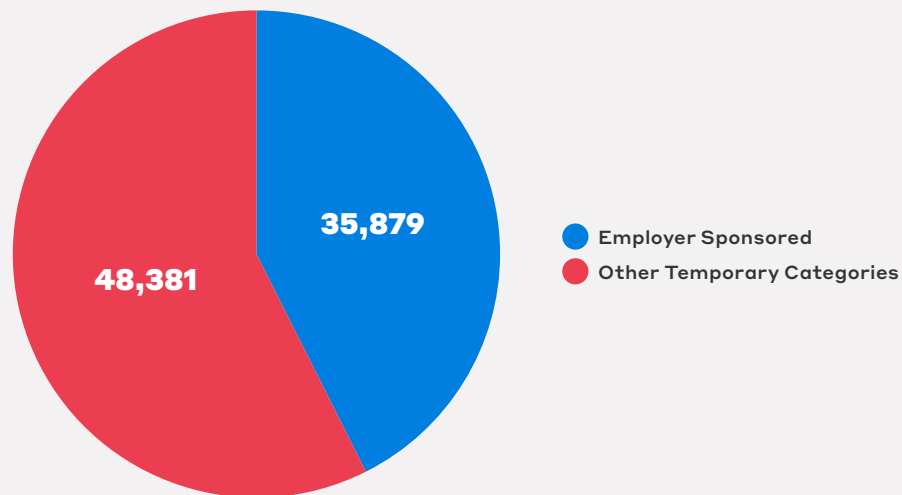
In response to these issues, the Australian government under Liberal Prime Minister Scott Morrison replaced the 457 visa with the Temporary Skill Shortage Visa (subclass 482) in 2018 to cover temporary shortages in skilled occupation shortage lists or labor agreements between employers and the government.<sup>73</sup> Unlike the 457 visa, the TSS visa has both a temporary visa and one with a path to permanent residency. The temporary-to-permanent version of the program has emerged as one of the top three temporary streams to permanent residence in Australia, along with temporary visas for international students and individuals on working holiday visas.<sup>74</sup> In contrast to the 457 visa, the beneficiary must receive approval from their employer to access permanent residency and must wait three years to pursue this path.<sup>75</sup>

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<sup>H</sup> Bridging visas are a category of short-term temporary visas that allows non-Australian citizens to remain in the country as the immigration bureaucracy adjudicates applications for new immigration benefits after the prior temporary visa expired. In short, these visas “bridge” the gap between an expired visa and new ones in the adjudication process. Visa Australia, “Australian Bridging Visas.” Available at: <https://visaaustralia.com.au/australian-visas/bridging-visas/>. Partners of Australian citizens can apply for a similar type of visa known as the temporary Partner Visa (Subclass 820) that allows them to live in Australia temporarily as the Australian government adjudicates their request for a permanent Partner visa (Subclass 801) to live in the country permanently. Australian Department of Home Affairs, “Partner Visa,” July 9, 2020. Available at: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/partner-onshore>.

Australian government data indicates that a large percentage of individuals that transition from temporary to permanent status in Australia came through the 457 and TSS visas in recent years. As Figure 7 shows, 35,879 individuals with employer-sponsored temporary visas, which include applicants with 457 and TSS visas, accessed permanent status between the 2017/2018 and 2018/2019 Australian Financial Years, accounting for 42% of all transitions during this time.

**Figure 7: Outcomes of Onshore Temporary Program Applications for Permanent Status (2017/2018 – 2018/2019)**



Source: Australian Department of Home Affairs<sup>76</sup>

The experts explained that these temporary-to-permanent channels served as a mechanism to delay the entry of migrants into the points-based system and reduce backlogs. In particular, the TSS visa’s employer consent requirement to seek permanent residence allows the Australian government to passively regulate the size of the backlog into SkillSelect and other permanent programs. “There’s been hundreds of thousands of applications on hand in the last 15 to 20 years as demand for permanent visas has increased,” Sherrell said, “So we’re going to force you on temporary visa. But because the employer has a veto, you can’t lodge an application unless your employer says, ‘yes.’ It makes it murky to assess the queue because there’s no formal application sitting there.”<sup>77</sup>

More broadly, the Australian government used these programs to limit the asymmetrical geographic distribution of migrants around the country and limit welfare use. First, the Australian government over time realized that the permanent migration stream failed to boost the labor force in rural areas because most immigrants moved to Sydney and Melbourne to find a job or join family members. Boucher said programs like the 457 and TSS visas sought



to counter these problems by making it more difficult to access permanent residence.<sup>1</sup> She said:

They started bringing in programs where you could move from one of these temporary visas onto a permanent visa. You could be sponsored by somebody for two years in a temporary visa and move to a permanent visa with open work rights. Now they've moved that to make it three years and in some cases four years ... because what they found is that when they had just a pure points-based system, people don't necessarily go where the government or the employer wants them to go. Migrants often want to go to big cities where there are already social networks and capital for them. Also, big cities are often more exciting places, more culturally diverse, and there is less racism. That doesn't suit the government's agenda necessarily for building up labor in areas of low scale supply or unpopular areas for Australians.<sup>78</sup>

Sherrell had similar observations, noting the emergence of more temporary migration programs allows the Australian government to use its permanent and temporary channels for different ends. “You can have multiple things coexist at the same time, with each program is serving a specific purpose,” he said, “Australia is a good case study for that.”<sup>79</sup>

### **Canada: The Rise of Express Entry and Temporary Pathways as a Viable Route to Permanent Residency**

Canada followed a similar trajectory to Australia. Although the country experienced intermittent backlogs across its immigration system since 1967,<sup>80</sup> this situation changed after 2002 when the number of applicants who met the points threshold exceeded the number of permanent residency slots available. In response, the country adopted its own version of an expression of interest system—known as Express Entry—in 2015 to tackle these large backlogs. As Hiebert explained:

Express Entry was an attempt to deal with one particular institutional failing in the immigration system, which was: If you have a points system and a threshold in that points system and you set it at a reasonable level, what happens if more people than you expect apply? You end up with a backlog. And eventually a backlog of approximately a million people developed.<sup>81</sup>

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<sup>1</sup> An Australian Productivity Commission report found that migrants must receive 3.3 visas to transition from temporary to permanent status. Henry Sherrell, “Migration-Permanent and Temporary Visa Trends,” Parliament of Australia, July 2019. Available at: [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BriefingBook46p/Migration](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook46p/Migration).

The path to Express Entry began with the passage of the Immigration and Refugee Act of 2001 under Liberal Prime Minister Jean Chrétien, which sought to improve the country's ability to select and retain high-skilled immigrants to boost its economic competitiveness.<sup>82</sup> In particular, the law increased the points needed for permanent residency from 70 to 75 to meet these goals. The Canadian government applied this threshold to new *and* existing applications, which would have led to the rejection of applications in the queue that did not meet the new threshold.<sup>83</sup> A group of existing applicants filed a lawsuit against this decision, claiming that the government could not retroactively apply the new threshold to old applications. The country's Supreme Court agreed in 2003, ordering the Canadian government to review these applications under the old threshold. The court also prohibited the government from rejecting applications filed before 2002 until it developed a mechanism to implement its mandated changes.<sup>84</sup>

The Canadian government's response to the political blowback from the court's decision created the conditions for the backlog's expansion. Denis Coderre, Prime Minister Chrétien's immigration minister, lowered the points threshold from 75 to 67 for new applications to mollify criticisms about the 2002 law's points increase, expanding the number of new applicants eligible for permanent residency.<sup>85</sup> However, the country's long-time practice of issuing visas on a first-come, first-served basis increased the existing backlog because the number of individuals eligible for permanent residency exceeded target levels.<sup>86</sup> Sweetman said:

**In the early- to mid-2000s, what Canada would have was roughly 450,000 to 500,000 applicants a year— out of which the government would rule out 100,000 as not meeting the criteria. And they would admit, say, 250,000. But that would mean that there was 100,000 to 150,000 excess who met the criteria but were in excess of the target immigration levels and they would go into a backlog. So, the problem was that giant, giant queues would build up.<sup>87</sup>**

The Canadian government historically tackled its backlogs by pausing the reception of applications in one stream and then working through that backlog. For example, the government would pause processing certain categories of family-based migrants to work through the backlog in the rest of the family reunification stream.<sup>88</sup> Sweetman continued:

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J In contrast to the United States, which has immigration caps set in legislation, the Canadian government has the power to set annual admission targets for the number of individuals who can migrate permanently to the country. The government bases these annual admission targets on a range of factors, including the economic conditions of the labor market and the need for immigrant workers to boost economic growth. See for instance: Immigration, Refugees and Citizenship Canada, "Immigration, Refugees and Citizenship Canada Departmental Plan 2019-2020," May 14, 2019. Available at: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/departmental-plan-2019-2020/departmental-plan.html>.

**In the mid- to late-2000s, if Citizenship and Immigration Canada knew that a reform was coming, they would pause receiving applications in the old [system] in advance of switching to the new one. ... Now they didn't pause all immigration applications, they did it stream by stream, immigration class by immigration class. So, there were a series of pauses for different immigration classes at different times.<sup>89</sup>**

High-skilled channels were one of the first classes to go through this process. Jason Kenney, the immigration minister under Prime Minister Stephen Harper's conservative government, announced a pause for the Skilled Worker Program and an indefinite freeze in the Immigrant Investor Program in 2013 to clear through the backlogs in these programs.<sup>90</sup>

Prime Minister Harper's government adopted Express Entry to decisively eliminate the backlog in the points-based program. Like SkillSelect, applicants for permanent residency in Canada continue to go through a points-based assessment of their personal and professional background.<sup>91</sup> If an individual meets a specific points threshold, the Canadian government places them in a pool of candidates and ranks their scores through a process called the Comprehensive Ranking System. Individuals with the highest rankings in the pool subsequently receive an invitation to apply for permanent residence.<sup>92</sup> The Canadian government clears the pool of potential applicants who do not meet the cut every year,<sup>93</sup> which automatically eliminates the backlog and reduces wait times for adjudications.<sup>94</sup>

The Canadian government under Liberal Prime Minister Justin Trudeau made subsequent changes to Express Entry in late 2016 to address new policy and economic priorities. The Canadian system historically maintained a "human capital" model that sought to attract individuals with strong skill sets to work in the country but who did not necessarily have pre-arranged employment or other ties to the country. Express Entry marked a departure from this model because it implemented an "employment model" that promoted employer connections.<sup>95</sup> Hiebert explained that Express Entry began attracting migrants that did not fill important job shortages:

**When the original point grid for Express Entry was established back in 2015, instead of 100 points in the past, 1,200 points were defined for the comprehensive ranking system. But 600 of them were allocated to whether you had a job offer or not. So, it basically put employers right in the driver's seat. And what did they find? Well, employers wanted lots of, say, restaurant cooks. They wanted lots of truck drivers. And back in 2015 these things were not considered essential services.<sup>96</sup>**

Express Entry's unexpected outcomes prompted Trudeau's government to utilize its broad powers to change the model's points allocation and award more points to individuals with higher skill sets, marking a return to the human capital model. Hiebert continued:

**Very shortly thereafter the Canadian government came to the decision that “this is too much on the employment side and not enough on the human capital side”—and they downgraded the number of points [for having a job offer] in the comprehensive ranking system from 600 to a maximum of 200. So now the balance has shifted back to mostly a human capital system. This all happened internally. It's based on feedback: The data on outcomes comes in, people review it; they're making decisions quickly. The Express Entry system is amazing in how adjustable it is and how much real time feedback has been built into the system.<sup>97</sup>**

Vineberg echoed this observation, noting that the initial version of Express Entry also awarded points to other factors that showed greater integration into Canada before pivoting back to focusing on a candidate's background:

**It was modified in 2016 in terms of employment changes. In 2017 there were more points for speaking a second Canadian language. There was recognition that relatives helped you settle, so you had more points if you had a sibling in Canada. However, the selection system gradually shifted back from an overemphasis on arranged employment towards rewarding individuals with strong skill sets to balance the composition of professional capacities within the pool of candidates for permanent residency.<sup>98</sup>**

Despite these challenges, Express Entry's introduction allowed Canada to eliminate its backlog, albeit with some complications. The Comprehensive Ranking System allowed the government to eliminate backlogs from the system with ease. “Overall, what the government seems to like about it is that it creates a competitive system,” said Vineberg. “Instead of first come, first served, backlogs are eliminated by applications dropping out.”<sup>99</sup>

During the transition to Express Entry, the Canadian government attempted to erase the existing backlog in the system all at once. However, a lawsuit against this policy required the government to continue processing applications for various economic categories alongside the applications that came through Express Entry. Vineberg continued:

**For a couple years you had a parallel system where people applied through the old system, unless they asked to go through Express Entry. So, the Express Entry numbers were relatively low. The immigration levels were going in large measure to deal with people applying through the old system. Once that backlog was cleared, then—except for people applying directly through provincial programs—all federal economic immigrants were going through Express Entry.<sup>100</sup>**

While the Canadian government had 600,000 pre-Express Entry applications at various stages of adjudication at the end of 2014, Immigration, Refugees, and Citizenship Canada began processing more Express Entry applications than ones from this prior system by 2017.<sup>101</sup>

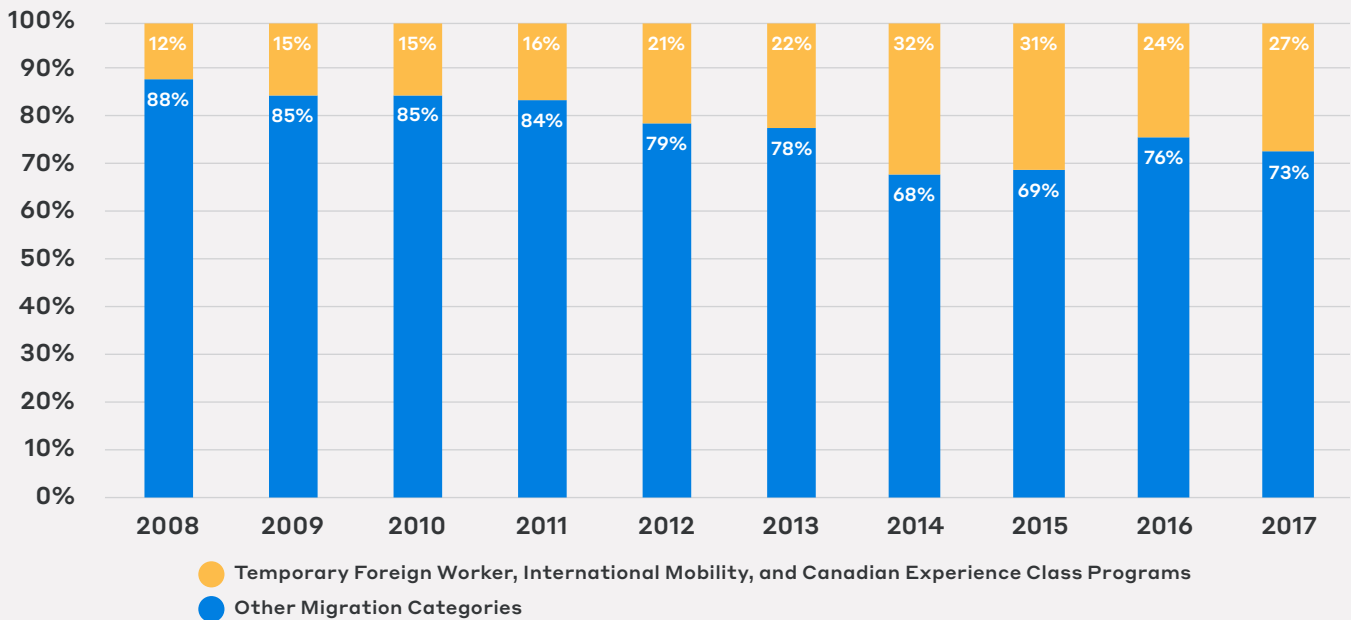
Although the Canadian government has also expanded its temporary visa programs like Australia, it has integrated more of these channels into its permanent system over time rather than trying to limit them. For example, the Temporary Foreign Worker program—introduced in 1973 and modified over time—allowed migrants to work in Canada for four years but required them to leave the country for four years before applying for permanent residence. Hiebert recalled that these kinds of requirements reflected Canada’s efforts to maintain two distinct channels for non-Canadian workers:

**Until 2008, the Canadian government had this idea that you had to keep permanent and temporary systems completely separate. If a person came into Canada on a temporary visa and they wanted to apply for permanent residence, they actually had to leave the country. They even had a name for this. We called it the “Buffalo Shuffle,” where people would go from Toronto to, say, Buffalo and then fill out a new application, spend a little bit of time in Buffalo, and then come back again.<sup>102</sup>**

Canada gradually began reversing this approach in recent years. In 2008, Stephen Harper’s government introduced the Canadian Experience Class program, which sought to retain high-skilled temporary migrants by allowing them to skip immediately to the Candidate Ranking Process if they met certain requirements such as working in a high-skilled position in Canada for one year and having English or French fluency.<sup>103</sup> In 2016, Trudeau’s government allowed workers in the Temporary Foreign Worker program to remain in the country for their work contract’s duration and access the permanent migration streams without leaving the country.<sup>104</sup>

Canadian government data indicate more immigrants over the years have transitioned to permanent status from the Temporary Foreign Worker, International Mobility, and Canadian Experience Class Programs. As Figure 8 shows, temporary workers from these three programs accounted for at least 21% of permanent admissions since 2012. Although recent numbers have decreased from a peak of 32% in 2015, they still represent a significant number of permanent admissions.

**Figure 8: Percent of Permanent Admissions to Canada for Principal Applicants From Temporary Worker Programs (2008-2017)**



Source: Government of Canada<sup>105</sup>

This data shows Canada’s immigration system has gradually built viable pathways that allow migrants in temporary programs to access permanent residence. “We used to have a purely separate system,” said Hiebert. “Now we have a more coordinated system, where an increasing ratio of permanent immigration is stepwise.”<sup>106</sup>

## **PART 2**

# **The Factors That Supported the Rise and Revision of the Australian and Canadian Points-Based Systems**

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The path of transition from race-based to points-based immigration models in Canada and Australia depended on the political institutions in these countries and the political decisions of their leaders. First, the governments in these countries developed messaging at various points in time to get public support for new policy goals for their immigration systems, especially in the 1980s and 1990s. The existence of Westminster parliamentary government systems, immigration laws that expanded executive authority, and executive instruments to adopt non-legislative changes allowed Canada and Australia to make rapid and dramatic changes to their immigration systems and meet their political goals, largely without additional legislation. Finally, the governments of both countries gathered data to assess the outcomes of their points-based systems to determine if the systems met the new political and economic goals and if additional adjustments needed to be made. In short, these three factors create a reinforcing cycle where the Australian and Canadian governments have the tools to adjust their systems based on desired policy outcomes and public opinion.

### **Developing the Narrative to Secure Public Support for Immigration**

A major part of the successful maintenance of these immigration systems revolves around the efforts of these countries to promote narratives about the system's goals. Australia and Canada did not seek public support during the initial transitions since most of these changes occurred within the bureaucracy with little public oversight. However, the countries adopted narratives at various points in the evolution of their systems to gain public support for expanding economic immigration. Although the messages had subtle differences in each country, heavy emphasis was placed on maintaining a well-managed immigration system to meet the country's economic needs. That said, existing public attitudes about immigrants, immigration, and the immigration system can impact the effectiveness of these narratives, suggesting context matters as much as policy and political decisions in making the case for immigration.

## **Canada: A Government-Wide Effort to Secure Public Support with Expanding Migration**

Although the Canadian government did not make major efforts to secure public support during the initial transition to its points-based system in 1967, this calculus changed in the 1980s when the Canadian government realized it needed to counter the significant decline in its native birthrate through migration. Hiebert said, “They realized that [declining birthrates] would lead to negative natural increase and this would lead to a rapid demographic aging of the population and labor shortages.”<sup>107</sup> This prospect subsequently led the Canadian government to make the decision to rapidly expand the size of the migration program in the 1980s to successfully counter this demographic decline.<sup>108</sup> “It went from about 100,000 to about 250,000 immigrants per year,” said Hiebert, “And remember the scale of Canada, it’s one-ninth the population of the United States. So that’d be the equivalent of millions of people coming to the U.S. per year.”<sup>109</sup>

The Canadian government adopted a simple message to sell the public on this expansion: Canada would attract immigrants that served the country’s economic interest through a well-managed migration system. Hiebert explained:

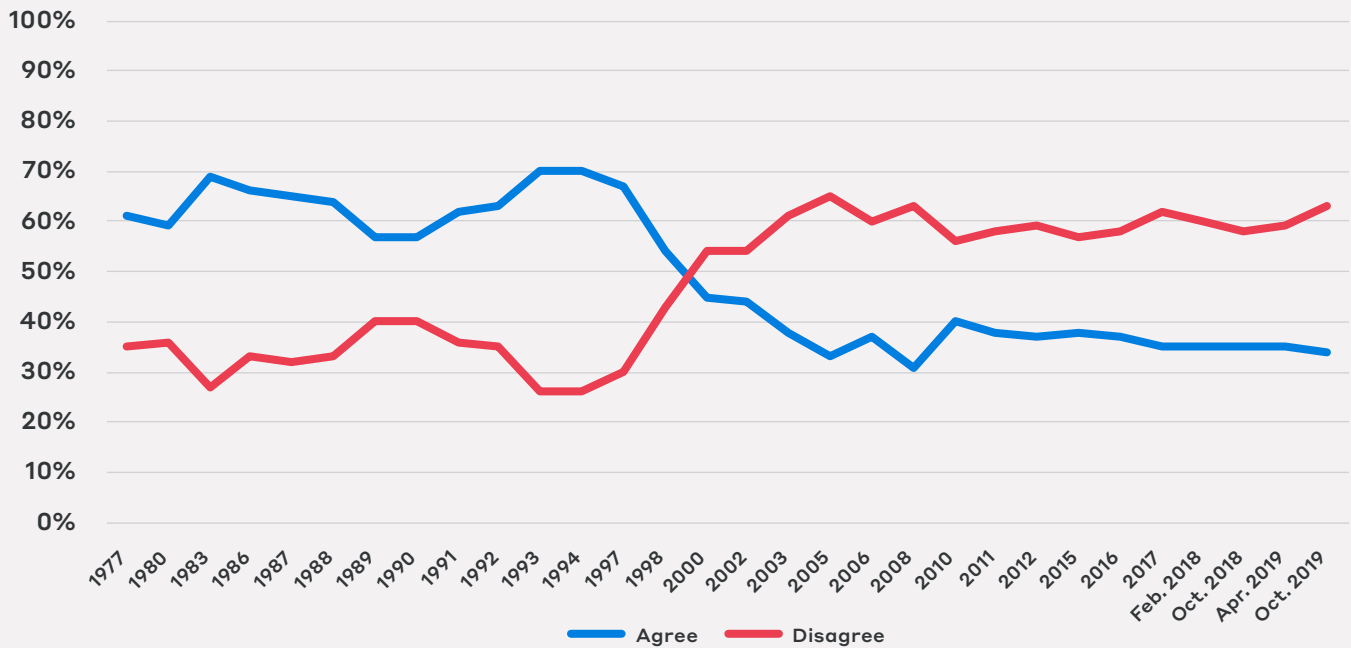
**This was accompanied by a very consistent narrative on the part of the government that A) We now know how to choose immigrants, we have decades of experience with a points system, we know what we’re doing here; so, we’re going to bring in people who are economically productive. B) If we don’t do this, we’re going to start having a declining and aging population, and you’re all going to have to pay more in taxes and get fewer services and it’s just the way the world is.<sup>110</sup>**

This messaging persisted through the 1990s. A 1998 white paper published by Jean Chrétien’s government that outlined new immigration policy and legislative priorities stated these measures should provide “the tools that allow immigration to maintain its positive role in the social and economic development of the country.”<sup>111</sup> Lucienne Robillard, then Chrétien’s immigration minister, also wrote in the report’s introduction: “Immigration goes to the core of our values and aspirations. It has shaped our country. It speaks to who we are as Canadians and what sort of a society our children will inherit. Immigration is an issue in which all Canadians have a stake.”<sup>112</sup>

A review of polling data shows these efforts correlated with an increasing number of Canadians holding positive views about immigration, suggesting these narratives aligned with—and potentially reinforced—positive views about immigration over time in Canada. First, surveys find that Canadians overwhelmingly view immigrants as positive for the economy, a trend that began accelerating in the mid-1990s.



**Figure 9: Response to “Overall, There is Too Much Immigration in Canada” (1977-2019)**

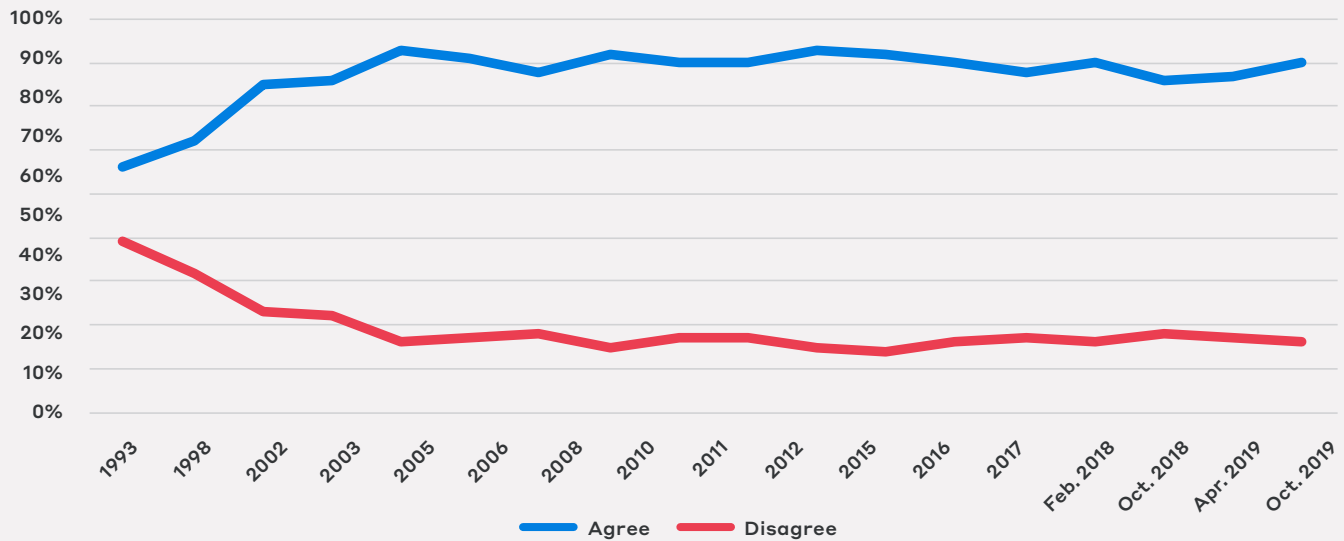


Source: Environics Institute<sup>113</sup>

Keith Neuman, Senior Associate with the Environics Institute for Survey Research, explained that this trendline also reflects positive views Canadians have about economic migration. “I think Canadians have long sort of accepted or realized that immigrants coming in are important for the economy and important for jobs,” Neuman said, “And it’s not just because they know all the details of the immigration system. For most, this hasn’t been viewed as a threat.”<sup>114</sup>

However, the polls also suggest this messaging did not assuage concerns about migration levels until the late 1990s. As Figure 10 shows, Canadians remained wary of immigration levels until the late 1990s when the number of respondents who disagreed with the notion that immigration levels were too high exceeded those that agreed. This consensus has remained in place since this period, albeit with fluctuations between 2008 and 2019.

**Figure 10: Response to “Overall, Immigration Has a Positive Impact on the Economy of Canada” (1993-2019)**



Source: Environics Institute<sup>15</sup>

Neuman explained that this change in attitudes reflected the influence of multiple factors rather than one major political or policy event. “There was a tipping point or critical mass of changes taking place in terms of the number in the population who were immigrants, the economy was doing well, and Canadians becoming more confident in their sense of the country. All [of] these different things were happening that led to a significant change in perspective about immigration and once this happened, it has held remarkably steady even through economic downturns and political battles.”<sup>16</sup>

The experts interviewed for this report said this messaging partially succeeded because the country’s elites supported it, making it easier to sell to the broader public. In particular, every major Canadian political party across the political spectrum and the country’s media establishment supported this narrative in the 1980s, save for a sliver on fringe media voices. Hiebert said this elite consensus filtered through the public consciousness:

**I think it would be fair to characterize [this development] as an elite consensus, but it has percolated through the population. So, we have actually a very supportive population. It’s not 100%, but generally speaking we have a population that really is highly supportive of immigration as long as it is economically beneficial. That’s part of the narrative. We’re going to make it economically beneficial, and we’re going to make it therefore useful, and you can trust us because we know how to do this stuff.<sup>17</sup>**

Neuman believes the absence of this elite consensus could have undermined this process, especially if center-right parties had chosen to challenge the expansion of immigration. “I think that would have made a big difference because historically people grew up supporting one party or another,” said Neuman, “So, people’s natural inclinations back in those days was to do that. If your party said, ‘This is a bad thing,’ you would be listening to that to some extent.”<sup>118</sup>

However, the interviewed experts pointed out that political, cultural, and geographic factors in Canadian society and government have made Canadians more favorable to immigration, which established the conditions for the success of this narrative. These factors include:

1. Canada can manage its borders more easily because it shares only one land border with the United States, minimizing the occurrences of uncontrolled crossings.
2. The country’s history of accommodation between the English and French communities that formed its initial European settlements, established an openness to similar treatments of newcomers.
3. The combination of high levels of urbanization and a large, diverse population of first and second generation of immigrants makes newcomers a visible and normal part of Canadian society.
4. The adoption of a formal multiculturalism policy that advocated for immigrant integration made funding immigrant settlement a government priority.
5. A large non-profit sector composed of local organizations dedicated to integrating immigrants that uses government funding for these efforts exists.
6. The absence of problems and controversies about immigrants related to issues such as crime, gives Canadians little reason to doubt the immigration system is working for them despite not knowing its details.
7. The absence of a strong national identity makes immigrants feel less pressure to assimilate.
8. The absence of far-right anti-immigrant parties that might mobilize political opposition to immigration.<sup>119</sup>

The combination of these factors made Canadians significantly more open to immigration since the 1980s. “We are in a situation now where people from all kinds of different countries and cultures are so much part of the fabric of Canada, particularly in the large cities,” said Neuman. “People have gotten comfortable with it, and there’s no real concern about the country changing as in the U.S.”<sup>120</sup> However, concerns about the arrival of Muslim immigrants has emerged among Canadians, especially in Quebec where authorities banned certain government employees from wearing religious symbols in June 2019.<sup>121</sup>

“That issue is where the primary discomfort is,” Neuman said, “But it has been holding steady or moderating a bit over the past few years. It is not getting worse.”<sup>122</sup>

Other experts interviewed for this report made similar observations about the way these factors allowed government efforts to generate significant support for immigration among Canadians. Hiebert pointed out that Canadians have always viewed immigration as a largely positive part of the country’s history, making it easier to sell this plan to the Canadian public:

**In Canada, we’ve been really fortunate in the reception of the narrative in the sense that the Canadian public—I think, in many ways, like the U.S. public—has kind of grown up with the idea that this country has been built through immigration. And that immigration has actually solved a number of really fundamental problems in the past.**<sup>123</sup>

Hiebert also said government support for promoting immigrant integration initiatives fostered this narrative since it helped create new jobs for Canadians to work on these programs and volunteer opportunities for Canadian citizens. In contrast to the United States, which does not have a formal federal integration program, the Canadian government sets aside federal funding for partner non-government organizations to provide migrants with free settlement services such as language training and orientation assistance.<sup>124</sup> He cited Vancouver as a city where this federal funding helps employ significant numbers of people in the city’s non-governmental organization sector:

**In British Columbia we have 70 resettlement nonprofits. But the biggest ones—there’s like four really big ones—collectively, they have about 2,000 employees and about 10,000 volunteers. You want to talk about stakeholders? You want to talk about buy-in? That’s how you build buy-in. You get 2,000 people employed that are paid out of funding from the national government, and you get 10,000 people volunteering to help them out in those kinds of tasks in conversation circles, youth clubs, and things like that.**<sup>125</sup>

Although support for integration partially comes from the national and government support for immigration, these initiatives also stem from the country’s multiculturalism policy the Canadian government adopted in 1971 to promote a more diverse and inclusive society. This policy helped support the expansion of integration programs by advocating for the inclusion of immigrants into civic life while protecting their unique identity.<sup>126</sup> “Multiculturalism, just like immigration, had to be implemented,” said Hiebert, “How was it implemented? It was implemented in a variety of ways, which

included federal government, financial, and logistical support for immigrant settlement and integration.”

The Canadian Immigration System’s Provincial Nominee Program, which allows the Canadian Provinces to nominate certain classes of migrants who meet their labor market needs, has also contributed to public support for immigration.<sup>127</sup> Vineberg said this program allows the provinces and Canadian public to feel that migration targets their specific needs:

**In Manitoba where I am, the labor market needed a lot of blue-collar workers. And the immigration system—the federal system—wasn’t delivering them. The year before the provincial nominee program started in 1998, Manitoba received 3,000 immigrants, and it has a population of 1.4 million, so it’s small. This year it was 17,000 immigrants, which was primarily due to the Provincial Nominee Program. ... It’s been a factor in reducing regional disparity in Canada and makes it harder for provinces to be really critical of the immigration program.<sup>128</sup>**

Finally, the rationality behind the points-based system helped the public gain confidence in this effort. “The one thing that a points-based system does is it gives the public confidence, that the immigration system is being well-managed, that the government is in charge, that they’re doing a good job,” said Sweetman. “There’s the sense that a rules-based selection policy gives people confidence in the system.”<sup>129</sup> However, he also pointed out that emphasizing the points-based system can lead members of the public to assume that all migrants enter through this stream whereas there are other parallel streams like family-based migration.<sup>130</sup>

### **Australia: The Legacy of John Howard’s Premiership on Immigration**

In contrast to Canada, Australia did not make efforts to promote public support for the points-based system until 1996 when John Howard’s government adopted a “tough but fair” narrative to address perceived weaknesses in the immigration system and promote skilled migration. The origins of these perceptions were in the 1980s when the Australian government introduced a succession of programs for different categories of migrants such as students, small business owners, and refugees that reportedly lacked rigorous standards for assessing the legitimate qualifications of the applicants. The decisions of successive immigration ministers in the 1980s to use their discretionary powers to grant permanent status to non-citizens living in Australia whose applications were rejected by the Australian immigration ministry was also seen as creating a pathway to permanent status without oversight.<sup>131</sup>

During this period, the effort to determine the balance between migration in the family and economic streams was a politically contentious topic. In the 1980s, the Australian government under prime ministers such as the Liberal party's Malcolm Fraser sought to pivot toward employment-based immigration at the expense of family-based streams through the new system. However, certain immigrant diaspora communities that relied on family-based migration streams—and had significant political power—pushed back against these changes. Sherrell said:

**There was a politically empowered ethnic lobby, and it was able to shape some of these dynamics. We had large numbers of people from relatively few countries—the Italians, the Greeks, the Eastern Europeans, the Dutch, the Germans. It was relatively easy for those communities to organize and that was important over time and there was immediate backtracking on economic emphasis in 1979 and a softer one in 1980.<sup>132</sup>**

Family stream migration was contentious in Australia at the time due to the reported high use of welfare among migrants that came through this channel. Controversy around the arrival of asylum seekers by boat to Australia also emerged as a major political issue in the 2001 election, marking a break from prior elections where economic policy were the primary issues.<sup>133</sup> These developments created a political crisis in which the Australian public believed the Australian migration program lacked control over immigration and did not serve the country.<sup>134</sup>

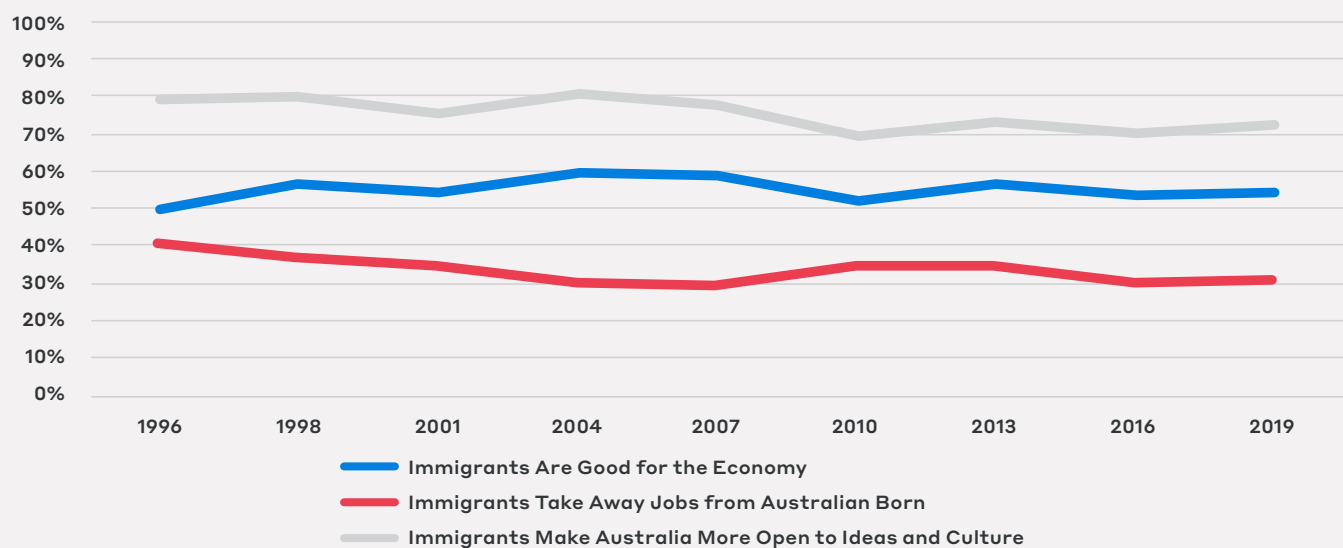
These conditions allowed Liberal Prime Minister Howard to adopt a specific immigration policy message in the late 1990s to strengthen his political standing. His message supported increasing employment-based immigration, limiting family migration, and clamping down on irregular immigration, including arrivals of asylum seekers from boats. In 2001, he famously declared, “We will decide who comes to this country and the circumstances in which they will come.”<sup>135</sup> Boucher explained this message highlighted a “tough and fair” policy:

**The way that the conservative government framed it was: “We’re tough on migration. If people overstay their visas, we deport them. We are not going to let in those refugees; they can go to Manus Island or Christmas Island or various other islands ... and we’ve got an economic focus. We have a strong, fair migration program.” That was basically the message. It was very popular and there was a lot of trust in the migration program by the Australian public.<sup>136</sup>**

Howard’s message broke an existing political consensus that Australian political parties would not make immigration a political issue to protect the stability of the country’s political system, explained Ian McAllister, Distinguished Professor of Political Science at The Australian National University. He also noted that business and media elites also traditionally supported immigration, reinforcing this consensus.<sup>137</sup> However, controversies such as those around asylum-seekers in 2001 provided Howard with the opening to advance this message to strengthen his political prospects and change migration policy.<sup>138</sup>

Polling data about Australian voter attitudes towards immigration suggests Howard’s messaging aligned with—and reinforced—some public perceptions about immigration, especially around the value of promoting managed economic migration. As Figure 11 shows, over 50% of Australian voters have seen immigration as good for the economy since 1996. Furthermore, the percentage of Australian voters who believe that immigrants take jobs away from the Australian-born has decreased since 1996:

**Figure 11: The Australian Election Study Questions About the Consequences of Immigration (1996-2019)**

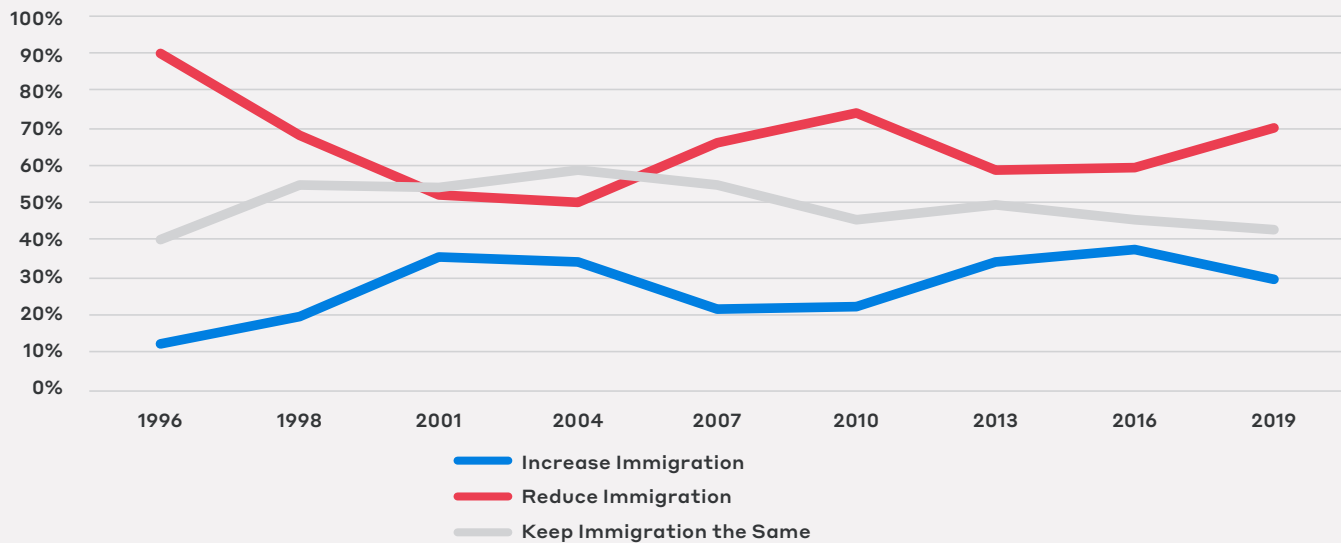


Source: Australian Election Study<sup>139</sup>

McAllister, who was also part of the 2019 Australian Election Study team, explained the stability of these trendlines revolves around public perception that immigrants contribute to Australia’s economy. Like Canada, he said the country’s implementation of a formal multiculturalism policy in the 1970s<sup>140</sup> also helped change public attitudes towards immigrants and view them as positive contributors to the country’s social and cultural fabric.<sup>141</sup>

Voter views about immigration levels in Australia suggest that other factors aside from Howard’s message have also impacted public views about immigration in the country. As Figure 12 shows, the percentage of voters who believed migration levels should decrease declined significantly during Howard’s tenure as the percentage that believed levels should remain the same or increase grew. This suggests that his messaging aligned with public sentiment open to more immigration, albeit through more tightly controlled channels.

**Figure 12: The Australian Election Study Questions About Attitudes Towards the Level of Immigration Into Australia**



Source: Australian Election Study<sup>142</sup>

However, McAllister explained that the fluctuation of these trendlines also reflects the condition of the labor market, especially in instances where economic downturns led to lower support for immigration due to concerns about jobs and employment.<sup>143</sup> Controversies around the arrival of asylum seekers have also impacted views about immigration because they distorted the public’s view about actual migration levels.<sup>K</sup> Boucher said:

K In addition to departing from Canadian views about immigration levels, these trends also divert from U.S. views about immigration where the public support for maintaining migration levels has remained steady as support for more migration has grown in recent years. See for instance: Gallup, “Immigration.” Available at: <https://news.gallup.com/poll/1660/immigration.aspx>.



**We have these debates in the public arena where people think that most of our high immigration is caused by refugee flows, when most of our offshore refugee flows are a fraction of the overall intake. Until COVID-19, we had net overseas migration getting up to 300,000. Refugee flows [were] probably 20,000, if that. They are very small; most people don't understand that.<sup>144</sup>**

Finally, the experts also said generational attitudes can also impact views about immigration in these surveys. “[Views about immigration] are quite disconnected from policy and the status of the labor market. I’ve assumed that’s common the world over,” Sherrell said, “So a lot of economic concerns appear in there, but we have this century-long tradition of deep discrimination from the first 70 years of the country that has a legacy among older people.”<sup>145</sup>

Despite some of the successes of Howard’s approach, experts said subsequent efforts to sell the benefits of the points-based immigration system focused more on the system’s outcomes than the deep technocratic components for selecting migrants. Sherrell pointed out:

**We try to sell Australia’s approach: We’re diverse, it’s good for the economy and society, these people are not taking welfare; these people are getting jobs and they’re helping you get jobs. Instead of the emphasis on the technical part of this immigration, such as: Why are we increasing point tests? Why are we increasing validity of family or English fluency? They don’t explain that at all, so it becomes a much more meta conversation of an immigration approach and that’s where you get the buy in.<sup>146</sup>**

However, the onset of Australia’s first recession in 29 years due to the COVID-19 pandemic may change public opinion about immigration that successive governments have relied on to expand the labor force and boost economic growth.<sup>147</sup> “From a political perspective,” an economist at J.P. Morgan Securities Australia Ltd. told *The Wall Street Journal*, “It’s not hard to see how the combination of a weaker labor market, tighter border control, and a push toward greater economic sovereignty may force a rethink of Australia’s approach to migration policy in the coming decade.”<sup>148</sup> Sherrell was more direct: “I think we’re in for a rude shock in the next couple of years and what it’s going to look like.”<sup>149</sup>

## How Changing Narratives Around Skills Supported the Expansion of Migration in Japan

Although Japan began expanding its efforts to attract high-skilled immigrants with its points-based system in 2012,<sup>L</sup> changes in discourse around skills has created the political space for the Japanese government to expand unskilled and semi-skilled migration in recent years. In 2018, for instance, the Japanese government introduced the Specified Skilled Workers No. 1 visa (SSW) to attract 345,150 migrants without tertiary education to work in unskilled and semi-skilled sectors such as agriculture, elder care, and construction. The program will have permanent residency and family reunification available for those who demonstrate their advanced skill levels through their industry's skill tests after five years.<sup>150</sup>

Nana Oishi, Associate Professor in Japanese Studies at the Asia Institute at the University of Melbourne, explained that the road towards the program's creation began when three events forced the country to recognize that immigration could offset its demographic decline.

- The Japanese IT industry's expansion in the early 2000s made businesses realize they were competing in the global market for talent.
- Japan's total population began to decrease in 2005, which alarmed policymakers because it cast a shadow over the country's long-term economic prospects.
- The publication of a 2014 government report stating almost 900 municipalities would disappear by 2040 due to population loss, prompted grave concerns over the potential loss of Japan's regional economies and cultures.<sup>151</sup>

Oishi explained that these developments expanded the base of stakeholders that viewed immigration as a solution to these problems beyond traditional proponents of expanding immigration in Japan such as corporations and smaller businesses such as small shops, retail, and restaurants. "All kinds of sectors in the labor market began to really feel the impact of the demographic crisis," Oishi said, "We simply don't have enough people who can work for those small businesses. It's a struggle to hire people. Some companies do go bankrupt because of labor shortages." The potential loss of revenue for the country's welfare system reinforced these trends.<sup>152</sup>

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L Although Japan has a points-based system for granting permanent residency, it is not a mechanism for selecting high-skilled migrants. Instead, it is a migrant retention mechanism that provides incentives for highly skilled immigrants working on a temporary visa to stay in Japan on a permanent basis. Under this system, the Japanese government allocates points to temporary migrants based on criteria such as salary levels, academic backgrounds, and management experience. Individuals who meet this threshold get fast-track access to permanent residency and access rights like bringing family members with them to live in Japan. Nana Oishi, "Redefining the 'Highly Skilled': The Points-Based System for Highly Skilled Foreign Professionals in Japan," *Asian and Pacific Migration Journal*, 23(4): 421-450, 2014.

In response to this growing crisis, Oishi's work found a series of intersecting narratives about the need for immigrants with different sets of skills gradually emerged in Japan over the last five years without major government intervention. These narratives include a "globalist" narrative that made securing top IT professionals and other high-skilled immigrants a national priority; a "nationalist" narrative that prioritized attracting—and retaining—migrants to offset the country's economic decline; and a "regionalist" narrative that made recruitment of semi-skilled and unskilled immigrants to assist with filling labor shortages in declining municipalities a priority.<sup>153</sup>

These narratives began changing how people perceived migration. "People said, 'Well you know we really need to change our mindset. We really need to be a lot more open than we were before.'" Oishi said. "We were already open. But people said, 'We need to be a lot more open not just to skilled migrants, but also to a diverse range of migrants as well.'" <sup>154</sup> These changes began appearing in public polling around immigration. "The percentage in the polls who support more migration has been increasing steadily for the last five years," she said, "The majority of Japanese people now support more migration, which was really not there before."<sup>155</sup>

In contrast to Canada and Australia, the Japanese government played only a limited role in developing these narratives. Instead, Oishi noted that corporate groups and regional governors promulgated these narratives by pushing the agenda of tackling labor force shortages through immigration.<sup>156</sup> However, Oishi noted Shinzō Abe, Japan's current conservative prime minister, adopted more open immigration policies because he accumulated significant power through the executive to navigate the pro-immigrant business and anti-immigrant right-wing nationalist wings of his party. "Because of this political leverage that Abe had, he could actually push forward this SSW scheme because he realized that this is what we really need for the country," Oishi said.<sup>157</sup>

## The Role of Parliamentary Political Systems in Assisting with Transitions and Public Narratives

The Australian and Canadian governments successfully adopted and maintained their points-based models because their Westminster parliamentary governments enabled them to enact major changes to their immigration systems without legislation. Governments in these systems emerge from parliamentary majorities or ruling coalitions that vote purely on party lines, eliminating the inter-branch and intra-party conflicts that have stifled the adoption of comprehensive immigration reform efforts in the United States. If a prime minister wants to make widespread changes to the immigration system, they generally have the power to task their immigration ministers to implement it.<sup>158</sup> If legislation is required, a government based on a ruling majority or coalition in the parliament makes these changes easily accomplished. Canada and Australia have also adopted immigration laws that expanded the power to adjust the system without legislation. Finally, these governments have utilized the power of their cabinets to issue policy changes to the non-political immigration bureaucracy that are carried out.

### The Westminster Political System

The Westminster parliamentary system is a democratic parliamentary system of government based on the United Kingdom's form of government that places significant power in the country's parliament and executive branch. In these systems, voters directly elect members of different political parties; the parties with the largest majority form a government. Governments can also emerge from coalitions of different political parties, often from the same ideological branch. Once a government forms, senior leaders from the ruling party or coalition parties form a cabinet that includes a prime minister, who is the head of government, and ministers that oversee different areas of policies. In addition to deriving significant executive powers from constitutional and theoretical legal authorities to make non-legislative changes, the cabinet can pass legislation since parliamentary majorities or coalitions generally require their members to vote along partisan lines. Although these systems have heads of state such as the United Kingdom's Queen Elizabeth II, these roles are largely ceremonial in nature.<sup>159</sup>

## **Australia: The Legacy of the Migration Act of 1958 and Unitary Government**

In Australia, the combination of broad powers of ruling governments and immigration legislation that expands them has allowed successive governments to change the immigration system without primary legislation. First, the Australian government has changed its immigration system through power that it derives from the Migration Act of 1958. Specifically, the act provides the immigration minister with the powers of ministerial discretion to rapidly alter the criteria for selecting migrants by changing existing immigration regulations or other legislative instruments without changing the act itself.<sup>160</sup> Sherrell explained:

**The Migration Act is very executive friendly, so the executive has unparalleled power. The minister has this unrivaled power to decide whatever they're going to do, which allows governments to easily change regulations. ... In any analysis of migration in Australia, [the Migration Act] is fundamental. It doesn't matter if you're talking about economic migration, family migration, or asylum—executive power is at the heart of policy and explains transitions and breaks from the past.<sup>161</sup>**

In addition to the Migration Act of 1958, the Australian parliament has passed other legislation that expanded this authority. For instance, Parliament passed legislation under John Howard's premiership that allowed the immigration minister to cap all parts of the migration program or place annual levels on numbers admitted through various categories.<sup>162</sup> "The government basically cut the family migration program," said Boucher, "But that can be done in Australia relatively easily because it's done through the bureaucracy or through minor changes to legislation."<sup>163</sup>

The structure of Australia's parliamentary system, which uses the British Westminster model, grants the executive additional power to make non-legislative changes since it directly emerges from parliamentary majorities or ruling coalitions elected by voters. This structure eliminates the friction that can exist in presidential systems like the United States where the heads of government and the legislative branch can come from two separate parties. Jefferies observed:

**The rapid change is more of a function of an executive and legislative branch with a lot of overlap. If you have a legislature that is majority Liberal or Labor and it's the same as the prime minister, they're able to make massive changes without much friction—and they do it frequently. When there was a Labor government, they were able to make big changes too.<sup>164</sup>**

The Australian bureaucracy's ability to make changes to the immigration system below the radar of the public politics of immigration has reinforced the executive's authority to make non-legislative changes. Sherrell pointed out the immigration bureaucracy has maintained and changed the country's points-based system largely out of view as debates over immigration wax and wane over time:

**The size of the immigration bureaucracy and centralization of the work in it goes on regardless of the politics at the time. While there are stakeholders like immigration groups, it's not a big public conversation in the background. It gave more [room] for those leaders to shape policy so that happened. So since then, every three, four, [or] five years the Australian government changes the points allocation and resets the way things are done using the different points.<sup>165</sup>**

These powers have allowed successive governments to rapidly change the system in response to new public campaigns pushing for changes to migration to Australia. In the case of changes to the points-based system, Sherrell noted the executive made repeated changes to the allocation of points to refine the selection criteria as the country shifted from family-based migration to skilled migration under John Howard's premiership:

**Since the early '80s there was a shift to skilled migration. In the mid-'90s, it became much more important to facilitate that channel, so there's constant iterations. ... Now we're running a large immigration program and the point system has been quite central for allowing us to do that since you don't need that sponsorship element; it's much easier to speed up the points system to allocate visas.<sup>166</sup>**

Jefferies had similar views, adding that these changes are not possible in the United States, which struggles to enact comprehensive immigration reform on a regular basis. “They’ll make huge overhauls to the Migration Act almost every year which seems unthinkable in Congress,” she said. “It seems like it happens more frequently here than it could happen in the United States right now.”

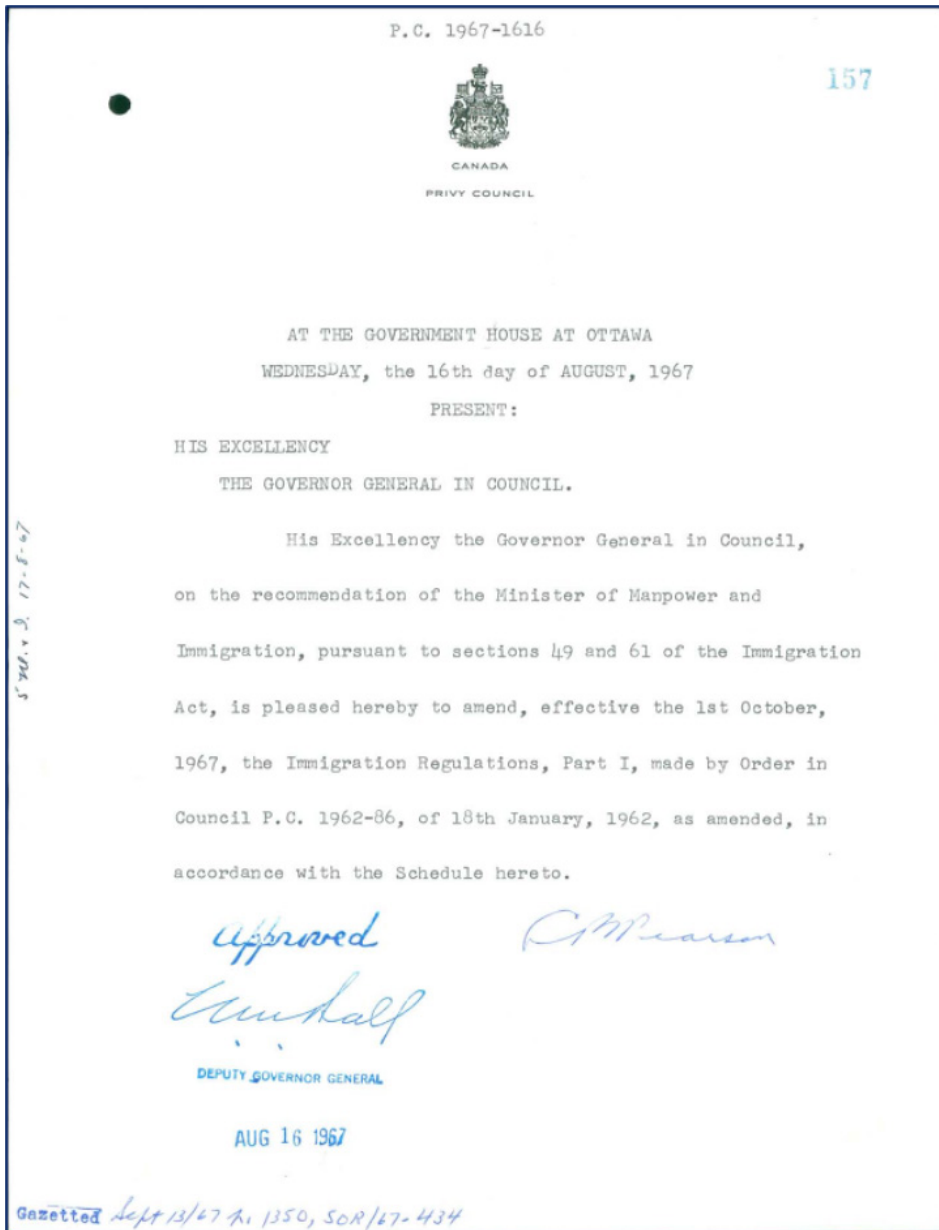
### **Canada: The Power of Orders-In-Council and Ministerial Instructions**

Although the existence of a Westminster parliamentary government model has granted the Canadian executive power over the immigration system, Canadian governments have relied on other specific executive authorities to change the immigration system without legislation. First, Canadian governments have changed the immigration system through Orders-in-Council, which are cabinet-approved policy changes that these ministers send to the Canadian bureaucracy for implementation without parliamentary debate.<sup>167</sup> Orders-in-Council, which the Immigration Act of 1952 introduced, allowed the Canadian government to end its race-based system in 1962<sup>168</sup> and implement its three-part successor in 1967,<sup>169</sup> including determining the specifics of the points-based system. Hiebert said:

**The immigration minister just instructed the deputy minister to make this happen. “We will shift to a system of three pathways, each of them to find, each of them carefully codified. It’s your job to do that codification. I am ultimately in charge, subject to Cabinet approval, so please advise me on the best mechanism to make this work.” So, it was largely a bureaucratic process that structured decisions such as: “Do we assign three points for language, versus five points, versus 10 points for language? How much priority do we place on education? What should the overall passing threshold be?” Those were bureaucratic decisions. But with political oversight of the minister in the cabinet.<sup>170</sup>**

He also noted that the Canadian government used the same instrument to implement Express Entry. “Express Entry was brought in in 2015 and there was no parliamentary debate. It was just a decision that was made at the political and bureaucratic level and implemented.”<sup>171</sup> Although the Canadian government has passed immigration legislation in the years since 1967, Hiebert said these laws largely assemble all of the past changes and package them.<sup>172</sup>

**Figure 13:** Page One of Order-In Council PC 1967-1616, 1967  
Creating the Canadian Points-Based Immigration System



Source: Canadian Museum of Immigration at Pier 21<sup>173</sup>



The Canadian government has accumulated more executive power in subsequent decades to implement immigration changes without legislation. In particular, the Immigration and Refugee Protection Act of 2008 allowed the immigration ministers to issue Ministerial Instructions. In contrast to Orders-in-Council, which require executive approval to generate wide-spread permanent changes, Ministerial Instructions allow immigration ministers to issue short-term changes to immigration officers.<sup>174</sup> Sweetman noted that these powers are similar to the ones the heads of executive agencies in the United States have over issuing regulations. “Starting in the mid-2000s, [immigration ministers] can issue a regulation—a Ministerial Instruction—on his own authority or her own authority without needing to go back to Cabinet. So that was an innovation,” Sweetman said, “And it moved us towards the U.S.”<sup>175</sup>

The experts interviewed for this report said the Canadian government’s ability to make widespread changes to the immigration system without legislation has strengths and weaknesses. Vineberg pointed out Prime Minister Diefenbaker’s government used these powers to circumvent potential political pitfalls when eliminating the race-based model in 1962. “The government was concerned if they tried to introduce new legislation, it would get bogged down in parliament for a long time,” he said.<sup>176</sup> However, Hiebert said the non-public nature of these changes can leave the Canadian public in the dark, which can create the conditions for public blowback:

**You don't have a chance to have those kinds of meaty debates on what should happen because so much of it happens behind the scenes with Orders-in-Council. You can lose a population by not debating stuff publicly. The number of points in the Comprehensive Ranking System can be altered quickly and quietly, and most people are unaware that this is happening. That's the minus side. The plus side, though, is tremendous fluidity; you can relatively quickly know what's going on.**<sup>177</sup>

Hiebert cited Express Entry’s implementation of an example of this process. “Express Entry was a purely behind the scenes thing. If I went into a bus in Vancouver and said, ‘Who here has heard of Express Entry?’” he said, “No one would raise their hand. It was just done sort of behind the scenes, internally within government, with very little public debate.”<sup>178</sup>

## Gathering Data to Assess Outcomes of Modifications to the Points-Based Systems

The interviews also showed that gathering data about the outcomes of the immigration systems in Australia and Canada and public views about immigration has supported the maintenance of these systems. The interviews with experts revealed the initial transitions to points-based systems did not involve a large data-gathering operation since most of the files were paper-based. However, the rise of personal computing allowed Australia and Canada to begin gathering more data about the individuals migrating to these countries. Both countries have used this data to assess the outcomes of these systems—especially with the long-term trajectory of economic migrants—and support the narratives that their governments used to secure the public’s support on immigration.

### Canada: The Longitudinal Immigration Database’s Role in Monitoring Migration

In Canada’s case, the country’s immigration bureaucracy used paper forms in the years leading up to and following the implementation of the points system in 1967. “There was very, very little data gathering in the early days,” said Sweetman. “It was mostly about talking to people and broad impressions. There was nothing akin to what we would think of today as data gathering.”<sup>179</sup> Vineberg also said the arrival of personal computing in the 1980s allowed the Canadian government to begin gathering more information that appeared in paper-based forms—a process that became completely online in the 1990s.<sup>180</sup>

The power of personal computing gave the Canadian government the ability to create the Longitudinal Immigration Database in 1980 to track the outcomes of immigrants admitted to Canada since 1952 and non-permanent resident visas issued since 1980.<sup>181</sup> The database’s creation, which took 15 years, required the digitization of immigration landing records from 1952 onward and connecting migrants’ landing records to their profile in the Canadian census and tax records. Hiebert said the Canadian government had to get clearance from the Office of the Privacy Commissioner of Canada<sup>M</sup> to link these forms of data together:

**It was a challenge to get the Privacy Commission to approve of the linkage of all these files together, and there are procedures that had to be set in motion for this to happen. But once the computational capacity improved and the Privacy Commission got on board, then everything was brought together.<sup>182</sup>**

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<sup>M</sup> This office, which reports to the Canadian Parliament, aims to protect and promote the privacy rights of individuals. In addition to investigating privacy complaints, conducting audits, and pursuing litigation for violations of the country’s privacy laws, the office also produces research and public reports about the handling of personal information by public and private sector entities. Office of the Privacy Commissioner of Canada, “About the OPC,” June 26, 2019. Available at: <https://www.priv.gc.ca/en/about-the-opc/>.

Once the Canadian government received this clearance, the country's immigration, labor, statistics, and taxation ministries worked together to develop the database. Since the database's creation, it has continued to expand its scope, incorporating information from new processes like Express Entry and modules on immigrant integration such as the outcomes of child migrants and the types of settlement services migrants accessed over time.<sup>183</sup>

The database has allowed the Canadian government to assess and fine-tune the selection criteria for its points-based system as it tracked the outcomes of nearly all immigrants that arrive and live in Canada over successive years. Hiebert explained:

**You can ask questions like: “Who took language training, and did it help? If a person came in with a mechanical engineering degree versus a chemical engineering degree, who is more likely to get a job? Who's more likely to get better pay under those circumstances? If a person who comes in who is 32 versus 46, what difference does that make?” You have incredible ability to monitor what the outcomes of the points system are. We can disentangle every element of the points system, and we can ask what difference it makes in the economic outcomes of people coming to Canada.**<sup>184</sup>

Vineberg noted the database allowed the Canadian government to learn that introducing specific language benchmarks for English or French fluency for different categories of skilled migrants improved integration outcomes. “That's the kind of example of analysis that can result in changes to the selection system,” he said, “Unless you have an objective system to start with, there's no way to assess performance against selection criteria.”<sup>185</sup>

### **Australia: The Recent Arrival of the Continuous Survey of Australia's Migrants**

The Australian government has relied on similar surveys over the last two decades to track the outcomes of the migration system. In 2009, the Department of Homeland Affairs began conducting the Continuous Survey of Australia's Migrants, or CSAM. The survey is given to migrants at the six-month, 18-month, and 30-month marks in order to track labor market outcomes.<sup>186</sup> For instance, the surveys track:

- Employment data such as unemployment rates, labor market participation rates, and hours worked
- Occupational outcomes, including the occupations and industries migrants work in and their salaries
- Changes in employment outcomes from the initial and follow up surveys
- Demographic information such as age, gender, languages spoken, and English proficiency
- Migration trajectory such as arrival year and migration stream for entering the country<sup>187</sup>

Although the longitudinal reports mark a step forward in reviewing the system, some experts believe the Australian government collects data that supports a narrow interpretation of success for the economic outcomes of migrants. Rather than assessing the totality of an immigrant's circumstances—including their integration into Australian society—it only focuses on economic outcomes that support official narratives about immigration. “You need to take a long-term look at what success is,” said Boucher. “The foreign-born are better educated, they earn more money, they actually have more success than the Australian-born. And yet they have less property and less wealth. So, is that success or not?”<sup>188</sup>

## PART 3

# Questions for the U.S. Immigration Debate

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The transitions in the Canadian and Australian immigration system raise several questions that policymakers and organizations need to answer when thinking about the implementation of new immigration systems like points-based ones in the United States. These questions fall into three areas: defining policy goals and securing public support for specific changes, the new system's interaction with the U.S. political and legal systems, and implementing and maintaining any new system.

### Defining Policy Goals and Securing Public Support

The histories of the points-based immigration systems in Canada and Australia demonstrates that the governments made efforts to delineate clear political goals for the immigration systems and develop messaging to secure the public's support for these objectives. Although many U.S. proposals for new immigration systems identify some policy goals, they do not identify a comprehensive strategy for getting the public's support for these goals and the proposals that implement them. Vineberg noted:

**The messaging needs to be clear. You need to develop communication points and stick with them. And you need to be willing to adjust as necessary, saying: "We're going to do this, we're going to run it for a certain period of time, and adjust it as necessary."<sup>189</sup>**

The efforts to adopt a new system should also assess how prioritizing one type of migration over another may create imbalances in the system. For instance, Jefferies noted that Australia's efforts to expand its economic-based system at the expense of its family-based system after the mid-1990s serves as a warning when developing a new legal immigration system:

**There was less of an emphasis on family reunification and more so on skills. So, the family-based backlogs were huge relative to Australia. If you implement system in the [United] States, where you deemphasize family and don't do something about the number of visas, you'll have a similar result.<sup>190</sup>**

Given that Bipartisan Policy Center polling shows that Americans have an appetite for a major immigration overhaul,<sup>191</sup> policymakers and organizations need to address questions about the way they can convert this desire into support for a new model. These questions include:

- What should be the new system's priorities for selecting migrants?
  - How should the government balance employment, family, and humanitarian-based immigration in the new system?
  - How often should the government shift these priorities?
- How can the United States secure public support for these specific goals?
- How will the government maintain this support over time?

### **The New System's Interaction with the U.S. Political and Legal System**

The history of the Australian and Canadian points-based systems demonstrates that parliamentary systems were absolutely essential for their rise. However, the United States' government has established a system of checks and balances between the executive branch and Congress that makes it difficult to make rapid, dramatic overhauls of the U.S. immigration system. Vineberg observed:

**In the Canadian system you can't arbitrarily take away the right to apply by changing the system. Inevitably you'll get a transitional period where you're operating parallel systems. You do have to think in terms of what tools are going to be necessary to assess people and get those tools in place. So, it will be one thing to get legislation through Congress—and this will be a challenge since, essentially, there's been no major changes since 1965. Hopefully that will change. But even if Congress approves changes, it will likely take a year or two to implement them. The American system is certainly in need of more flexibility.<sup>192</sup>**

The differences in governmental structures creating and overseeing immigration in Australia, Canada, and the United States lead to important governance questions relating to a new immigration system in the United States. These questions include:

- What level of flexibility should the system have?
  - Should the United States have an immigration system that exists mostly in statute or in regulation that can be changed more frequently?
  - Should the United States have an immigration system that allows for significant changes by the executive branch and Congress? How could such a system remain flexible to changes over time?

- What is the proper balance of power between the executive branch and Congress to enact changes?
  - Should a new system implement new independent actors and agencies to balance these competing interests?

## Implementing and Maintaining the New System

The history of the Australian and Canadian immigration systems shows that these countries ambled through a period where their governments had to identify a system that would meet their economic needs, political goals, and civil aspirations. The transitions to these new systems also reveal that these governments did not have to dramatically change the size and operations of their bureaucracies. However, the governments eventually did place a premium on gathering data to assess the outcomes of these systems. As Hiebert said:

**What's happened more in Canada than the United States, at least to my knowledge—the Canadian government has produced amazing data. Really high-quality, interlinked data that gives us real time feedback on what's working and what's not working.<sup>193</sup>**

The other countries also eventually had to contend with immigration backlogs as more migrants sought to migrate after the mid-1990s. These experiences raise questions about the way the United States should invest in the agencies that oversee the immigration system and address backlogs and other residual components of the past system during the transition process. These questions include:

- How do you develop a transition plan for the new system?
  - What is a credible timeline for its implementation?
  - Should the old system continue to run until all backlogs are eliminated?
- How much will the United States have to change its agencies to support the implementation and maintenance of this system?
  - Will the United States have to create new offices for managing the immigration system?
  - What investments will the United States have to make in data gathering operations?
    - What data is needed and for what purpose? What data is needed to understand outcomes of the new system and make adjustments? What data is needed to provide or address public perception of the system? How are privacy concerns addressed when hacking of personal data is commonplace?

- Will the United States have to retrain staff and expand the bureaucracy?
- How much will these investments cost the United States?
- How will the United States deal with residual parts of the old system like the visa backlog?
  - How will the United States manage the evolution of the immigration system, especially if new migration programs like temporary visas begin altering permanent migration?
  - Is there benefit to a pilot program? Or is better to make a wholesale change?



# Conclusion

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As this report shows, the implementation and revision of immigration systems matters as much, if not more, than the actual criteria for selecting migrants. In Australia, Canada, and New Zealand, governments have made historic transitions and critical revisions to their points-based systems since the late 1960s, relying on extensive executive powers that avoid the legislative process and an empowered bureaucracy to implement these changes. Furthermore, Australia, Canada, and Japan show that official government and elite narratives and discourses around skills are critical for securing public support for immigration, especially when it comes to supporting the expansion of economic migration. Finally, gathering data to assess the outcomes of migration systems has allowed Australia and Canada to make revisions based on this information to meet new government priorities. In short, the effective selection of migrants and management of migration revolves around institutions that allow governments to make dramatic changes to their migration programs with public support based on actionable data.

This conclusion may be sobering for U.S. policymakers. Over the course of the Obama and Trump administrations, the issues around executive authority remained contentious. In the eyes of the political right, President Obama's creation of the Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) programs marked an overstep of executive authority. In contrast, the political left has relentlessly criticized President Trump's use of executive authority<sup>N</sup> to issue travel bans, restrict legal immigration, and restrict asylum access at the U.S.-Mexico border.<sup>194</sup> The suggestion that the United States adopt an immigration system that grants even more authority to the executive branch would likely receive significant criticism from these sources, as well as members of Congress who serve as an important counterbalance to the executive branch over immigration matters.<sup>O</sup>

The prospects for a national public campaign to secure support for future immigration reform and making immigration data actionable do not seem better.

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N Many of these actions revolve around INA Section 212(f) which allows a president to “to suspend the entry of all aliens or any class of aliens” whose entry he “finds ... would be detrimental to the interests of the United States.” See: Congressional Research Service, Presidential Actions to Exclude Aliens Under INA Section 212(f), May 4, 2020. Available at: <https://crsreports.congress.gov/product/pdf/LSB/LSB10458>.

O For instance, Democrats in the 116th Congress introduced the NO BAN Act in April 2019 to restrict 212(f) authority and prohibit presidents from using this authority to discriminate against religious minorities. See: H.R. 2214. Available at: <https://www.congress.gov/bills/116/congress/house-bill/2214?q=%7B%22search%22%3A%5B%22National+Origin-Based+Antidiscrimination+for+Nonimmigrants%22%5D%7D&s=1&r=1>.

Although the U.S. government maintains a robust collection of immigration data, it does not track the longitudinal outcomes of migrants to provide actionable information to shape immigration policy.<sup>P</sup> Additionally, the issue of immigration is deeply divisive, with multiple political actors, media outlets, and non-governmental organizations vying to posit immigration as an absolute benefit or threat to the United States. Although BPC polling has found a common consensus around a core of immigration policies,<sup>195</sup> a campaign to promote support for a system built around it would require immigration stakeholders across the political spectrum to coalesce around one vision for a new system. The tenor of the current debate makes the outlook for that seem dim.

Nevertheless, the existence of this consensus should serve as an inspiration for future U.S. immigration reforms. Rather than abandon this project, the stories of the immigration systems in Australia, Canada, New Zealand, and Japan reveal that each of these countries made deliberate decisions to change their immigration systems within their institutions based on a core vision. Although the United States may not have these foundations fully in place today, policymakers, researchers, and stakeholders can develop a dynamic immigration program based on this consensus that works within the framework of the United States political institutions.

The questions at the end of this report offer a roadmap for thinking through the details behind implementing and revising the system over time. It is up to all stakeholders in the immigration debate to explore, debate, and discuss them to find a response for forming a better immigration system. Given the stakes—30 years living with an ossified legal immigration system—we must open these doors to create an immigration system that represents the best elements of the U.S. political system and the country’s immigration heritage.

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<sup>P</sup> This work has largely fallen on immigration researchers in the United States to produce. See for instance: National Academies of Sciences, Engineering, and Medicine, *The Economic and Fiscal Consequences of Immigration*, 2017. Available at: <https://www.nap.edu/catalog/23550/the-economic-and-fiscal-consequences-of-immigration>.



# Appendix A:

## Report Methodology

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### Report Methodology

This study uses three sources of data for its analysis. The first is a collection of academic and research articles and books that touched on various components of how the countries implemented and changed their systems over time. The authors also used primary sources such as government speeches from Canadian officials and Canadian Orders-in-Councils, as well as Australian and Canadian migration data for additional information.

In order to add to these sources and gaps in the historical record, the authors conducted ten interviews with leading academic researchers, former government officials, and public polling experts who have extensive knowledge about the history of the immigration systems in Australia, Canada, Japan, and New Zealand. The experts include:

#### **Australia**

Professor Anna Boucher, Associate Professor of Government and International Relations at the University of Sydney, is an expert on skilled migration policies and global immigration regimes. Her works include *Gender Migration and the Global Race for Talent* (Manchester University Press) and *Crossroads: Immigration Regimes in an Age of Demographic Change* (Cambridge University Press, New York).<sup>196</sup>

Regina Jefferies, Esquire, is a Scientia PhD Scholar at the University of New South Wales, Affiliate of the Kaldor Centre for International Refugee Law at the University of New South Wales, and a Visiting Scholar at the UCLA Center for the Study of International Migration. She has written about Australian refugee law and served as a U.S. immigration lawyer for 10 years.<sup>197</sup>

Ian McAllister, Distinguished Professor of Political Science at The Australian National University, is a member of the 2019 Australian Election Study team. Professor McAllister is also a Fellow of the Academy of Social Sciences in Australia and a corresponding member of the Royal Society of Edinburgh and has researched comparative political behavior and Australian politics.<sup>198</sup>

Henry Sherrell is an independent researcher on Australian immigration policy who has worked for the Australian Department of Immigration and Citizenship, a member of The Australian Parliament, the Federal Parliamentary Library, the Development Policy Centre at the Australian National University, and the Migration Council Australia.<sup>199</sup>

## **Canada**

Professor Daniel Hiebert, Professor of Geography at the University of British Columbia, Vancouver, is an expert on immigration and cultural diversity in Canada as well as the relationship between cultural diversity, human rights, and national security. In addition to published peer-reviewed articles, Professor Hiebert has written reports for the Migration Policy Institute.<sup>200</sup>

Keith Neuman, PhD, Senior Associate at the Environics Institute for Survey Research, is a survey research expert who has conducted studies on public opinion in Canada over the past three decades on a range of topics, including environment and climate change, natural resources, health care, social policy, immigration, ethnic diversity and Indigenous issues.<sup>201</sup>

Professor Arthur Sweetman, Professor of Economics at McMaster University in Ontario, is an expert on labor economics who has written about the economic outcomes of migrants in Canada and other countries. Professor Sweetman is also the Co-Editor of Canadian Journal of Economics.<sup>202</sup>

Robert Vineberg, an independent researcher on immigration issues, has extensive experience as a civil servant with Immigration Canada. Vineberg began his career as a part of the Immigration Foreign Service in 1973, eventually becoming Immigration Canada's Director of Federal-Provincial Relations in 1982. Vineberg served as Regional Director General, Citizenship and Immigration Canada between 1996 and 2008.<sup>203</sup>

## **Japan**

Professor Nana Oishi, Associate Professor in Japanese Studies at the University of Melbourne, is an expert on skilled immigration in Japan and Australia. Professor Oishi has also served as Professor of Sociology at Sophia University in Tokyo, Policy Analyst for the International Labour Organization, a member of the United Nations Expert Meeting on Migration, Development and Social Protection, and member of various national advisory boards on immigration in Japan.<sup>204</sup>

## **New Zealand**

Professor Paul Spoonley, Distinguished Professor of the College of Humanities and Social Sciences at Massey University, is an expert on migration and demographics in New Zealand. In addition to publishing and editing 25 books, Professor Spoonley has led externally funded research projects on demographic change and immigrant integration in New Zealand. Professor Spoonley received the Royal Society of New Zealand Science and Technology medal in 2009.<sup>205</sup>

These experts were selected after reviewing profiles in political science, law international affairs, and social sciences at major Australian, Canadian, Japanese, and New Zealand universities for migration specialists. Of 30 profiles reviewed, the authors selected the final six academic experts for interview based on their prominence and specific work related to the topic of this paper.

The authors also solicited referrals from experts at the Migration Policy Institute, Canada Visa, and the academic interviewees themselves to identify additional experts and reviewed the works of authors referenced in peer-reviewed and think tank articles whose work aligned with BPC's research interest. Finally, the authors contacted experts at the Environics Institute and the Australian Election Study to discuss how public polling reflects the effectiveness of government strategies to secure public support for immigration systems.

The authors contacted 17 individuals identified through these channels and interviewed 10 experts who responded to interview requests. These interviews, which lasted between 30 to 90 minutes, covered each of the subtopics in sections one and two. The authors used quotes from those interviews that reflected the interviewees' areas of expertise. However, the observations and opinions expressed by the interviewees do not necessarily reflect those of the Bipartisan Policy Center, its Board, funders, or staff.



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