



# Pathways to Status

Ministry of Home Affairs  
Wednesday, 17 February 2016  
Cathedral Hall

# Introduction

- Sen. the Hon. Michael Fahy, JP – Minister of Home Affairs
- Sylvan Richards, JP, MP – Junior Minister of Home Affairs
- Hon. Trevor Moniz, JP, MP – Attorney-General and Minister of Legal Affairs

Pathways to Status | 17 February 2016



Thank you for coming out this evening and for your interest in Government's proposal to provide new pathways to permanent residency and Bermuda status.

I hope you walk away with a fuller understanding of Government's proposals and of the reasons why, we say, we need to act in the manner proposed.

In addition, we will look at the existing issues with our legislation and why we need to act. We will also discuss the social and economic benefits for Bermudians in doing so.

# History

- 1989 – abolition of discretionary grant of status
- 1994 – new ‘Pathway to status’ for young children
- 1997 – Working Resident’s Certificate
- 2001 – limited ‘Pathways to status’ and Permanent Residents Certificate
- 2014 - Carne and Correia

Pathways to Status | 17 February 2016



First, let me give a brief history on recent immigration law in Bermuda.

Prior to 1989, Bermuda status was granted under the discretion of the Minister. These were limited to a set number per year. Often, a committee would vet potential applications. Previously, an English test was administered before Status was granted.

In 1989, that pathway was abolished living nothing in its place.

The absence of any pathways led to much concern in the community. The AG can speak directly to this from his experience. Partly through his advocacy at the time, a new pathway for young children was introduced in 1994. Those who were born in Bermuda or who arrived here before their 6<sup>th</sup> birthday before 31 July 1989, were entitled to apply for Bermudian status.

In 1997, the UBP Government introduced the Working Resident’s Certificate. This was a semi-permanent residency for long-term residents (20 years or more) arriving in Bermuda on or before 31 July 1989. It was conditional upon the WRC holder keeping his or her job.

In 2001, the PLP Government enacted legislation giving new pathways to status in limited circumstance and new pathways to Permanent residency. Two classes were created:

A 31A PRC would be granted to those long term residents who–  
came to Bermuda on or before 31 July 1989,  
lived in Bermuda for 20 years or more,  
were at least 40 years old.

A 31B PRC would be granted to a parent, sibling, spouse or child of a 31A PRC who lived in Bermuda for 10 years.

Many applications had to be made before 1 August 2010.

In 2014, the Chief Justice discovered a new pathway to status following the case of Carne and Correia. Any PRC who was in Bermuda on or before 31 July 1989 can apply for Status.

# **Current state of Bermuda's Immigration law**

Pathways to Status | 17 February 2016



Let's now consider the current state of Bermuda's Immigration law, starting first with an overview of the current pathways, then the issues which remain and finally the implications of current policy.

## Summary of current Pathways (1)

- 7 year Pathway to status – Bermudian spouses
- 5 year Pathway to status – deemed Bermudians
- 10 year Pathway to status – qualifying Bermudian connection

Pathways to Status | 17 February 2016



Persons married to a Bermudian for 10 years and who have lived in Bermuda for 7 years or more can apply for status.

There is a 5 year pathway for the under 22 children, step children and adopted children of Bermudians who do not otherwise qualify for Status.

There is also a pathway for those with a qualifying Bermudian connection. This is a residual category for persons who have effectively lived as a Bermudian for 10 years or more

## Summary of current Pathways (2)

- 31 July 1989 Pathway to Bermuda status for PRCs
  - *Carne and Correia (2014)*
- Spouses and Children of 31A PRCs (but NOT 31B PRCs)
- Job Makers Act 2011

Pathways to Status | 17 February 2016



I mentioned briefly Carne and Correia. This newly discovered Pathway is effectively open only to PRCs in Bermuda for 27 years or more.

Let me emphasize here that 1,455 persons were eligible under this pathway. Only about 760 have applied and just over 300 been successful so far.

In terms of pathways to PRC, very few remain.

The children and spouses of 31A PRCs can apply for permanent residency; Certain executives who have been free of work permit requirements for 10 years or more can apply for permanent residency under the Incentives for Job Makers Act 2011.

## Gaps in current Pathways

- Persons arriving after 31 July 1989
- Spouses and Children of 31B PRCs
- Adult children of new Bermudians resulting from *Carne and Correia*
- Adopted Children of Bermudians

Pathways to Status | 17 February 2016



Generally, persons who arrive in Bermuda after 31 July 1989 cannot obtain Bermudian status. We are one of the few places in the world where this is the case.

While the spouses and children of a 31A PRC can obtain permanent residency, the spouses and children of a 31B PRC cannot.

The young children of PRCs now eligible for status post-Carne and Correia lose out on the opportunity for status themselves; after the age of 16, they cannot meet the 5 year pathway for 'deemed Bermudians'.

For years, the past and current Government failed to appreciate this pathway until recently. Furthermore, much time has elapsed since we began to process these status applications. The children of these applicants have long since turned 17 and have lost out on the opportunity for status themselves.

The adopted children of Bermudians must also rely on the 5 year pathway for 'deemed Bermudians'. Unfortunately, if something happens to the Bermudian parent or the child relocates overseas, that child's ability to become Bermudian is at risk.

## Implications of current Pathways

- De facto and de jure stateless second generation children
- Divided and mixed-status families
- Uncertainty for persons born in Bermuda and other long-term residents
- Unfortunate distinctions

Pathways to Status | 17 February 2016



These gaps in turn have implications.

PRCs are growing up, having children of their own. **These children have no long term rights in Bermuda.** They may have no right to their ancestral citizenship, and if they do, they cannot return to their parents' country because of cultural and linguistic barriers; their life is in Bermuda.

Whatever we might say about the choices that parents make, the absence of any pathway is unfair for children born and raised in Bermuda through no fault of their own.

Persons who commit to Bermuda for a **long period of time**, should be able to obtain some security of tenure. These persons had their work permits renewed by the UBP, PLP and OBA Governments. There is a multi-party consensus that these persons are valuable to Bermuda's economy.



Dr. Janie Brown came to Bermuda on vacation from New York in 1992 to celebrate finishing dental school. While on vacation, she met her Bermudian husband and they married a year later. The couple, now divorced, have two Bermudian children, aged 14 and 17. And, despite having a Permanent Residence Certificate, she is not able to obtain full Bermudian status which, she says, continues to present concerns for her.

"I am constantly asking myself, 'Should I stay or should I go?'" she says. "Economically I won't be able to stay in Bermuda once I retire. And, after 13 years of renting, I'd like to be able to purchase a home, have some security, and build my life. My children are here - and for me to have to leave would tear our family apart."

"Me being able to obtain Bermudian Status would mean no longer feeling like a second class citizen. The reality is, this is home for me, but I always feel like an expat."

Janie is the owner of Par-la-Ville Dental, which employs several Bermudians and provides training opportunities for young people looking to study in the field of dentistry.

**These are the faces of our neighbors, friends and coworkers.**  
They each made a commitment to Bermuda years ago;  
let us make a commitment to them now.  
**It's the right thing to do.**

 GOVERNMENT OF BERMUDA  
Ministry of Home Affairs

This slide shares the story of Dr Janie Brown, a dental practitioner with two Bermudian children. While she has PRC, she missed out on Status following her divorce.

21-year-old Nicole Fubler was born in Bermuda to a Bermudian father and a Jamaican mother. Tragically, her father died when she was only five months old. Despite having lived here all her life, and having a Bermudian brother, she is neither Bermudian or a Permanent Resident Certificate holder. She is also unable to work, which she says puts a strain on her mother as the sole bread-winner of the household.

"I want to be able to work, to get a car and buy a house," she says. "I hate having to ask my mom for things - I feel like a burden."

In fact, she has no passport at all, making her unable to leave Bermuda. "I feel like a prisoner in my own country," the Cedarbridge graduate says. "When I see all my friends going away to College, I want to go too. I want to have that experience; it's depressing. There are so many places I want to go. People can't believe I have never seen snow!"

When she was younger, Nicole frequently assisted her mother providing care to the elderly in the community.

Under the proposed Pathways Legislation, Nicole would be granted Bermudian status and finally be able to travel, study abroad and work in Bermuda.

Nicole says if given status the first thing she would do would be to apply for school overseas to study as an IT analyst.



These are the faces of our neighbors, friends and coworkers.

They each made a commitment to Bermuda years ago;  
let us make a commitment to them now.

**It's the right thing to do.**

GOVERNMENT OF BERMUDA  
Ministry of Home Affairs

Here we have Nicole Fubler who has been left in limbo since her Bermudian father tragically passed away when she was just 5 months old. She has neither a PRC nor Status.



Renato Carlit came to Bermuda from the Philippines in 1994 when he was hired as a Chef at Tom Moore's Tavern. After two years, his wife Mhely joined him and found a job as Housekeeper.

Today, Renato is the Sous Chef at The Beach House where he has been for the past 15 years and Mhely is a nanny and caregiver.

Mhely has done regular volunteer work for Meals on Wheels and is a very active volunteer in Stella Maris Church in St George's, as is their 11 year old son Mark. Mhely's brother and sister also live here in Bermuda.

"We consider Bermuda as our new home away from home," she says. "We love and cherish this place so much that we can't see ourselves going anywhere else in the world. Our local friends here have welcomed us as if we are one of them."

She says one of the challenges they face with not having Bermudian Status or a PRC is securing a job, because of work permit policy.

"Having Status or PRC would be like giving us a security blanket," she says. "We wouldn't need to worry every time our work permit is up for renewal."

**These are the faces of our neighbors, friends and coworkers.**  
 They each made a commitment to Bermuda years ago;  
 let us make a commitment to them now.  
**It's the right thing to do.**


  
GOVERNMENT OF BERMUDA  
Ministry of Home Affairs

Next, the story of the Carlits who have been in Bermuda for 20 years+. Their children have been here all their lives. They do not have PRC or Status.

Father-of-three Stuart Brash has lived in Bermuda since 1993.

And yet, he still isn't fully accepted in Bermudian society because the law currently offers him no pathway to status, despite the fact that two of his three daughters are Bermudian. Consequently, he lives in limbo each year hoping his wife's work permit is approved, as she is not a PRC holder. If it is not approved, Stuart says he would no longer be able to pay for his daughters' education abroad.

Stuart came to Bermuda from the United Kingdom after seeing a job advertised in the local papers over 23 years ago.

Currently, he works as the Vice President of Business Development for Keytech and says his favorite hobby on the island is playing golf.

He says that if he was granted Bermuda status, he would invest in property on the island and have a greater sense of security regarding his daughters' education.





**PATHWAY  
TO  
STATUS**

These are the faces of **our neighbors, friends and coworkers**.  
 They each made a commitment to Bermuda years ago;  
 let us make a commitment to them now.  
**It's the right thing to do.**



GOVERNMENT OF BERMUDA  
**Ministry of Home Affairs**

Here, we have Stuart Brash. He has lived here for 23 years. All 3 of his daughters are Bermudian. He is PRC, but his wife is neither. His family is in limbo each year when his wife's permit comes up for renewal.



Elvira Yusi came to Bermuda from the Philippines to work as a nanny in 1991. During those 25 years, she has provided much-needed care and assistance to the families she has worked with who, she says, have become like her own family members to her.

Prior to coming to Bermuda, Elvira worked as a expert seamstress at a US Air Force base in the Philippines - a skill she regularly passes on to Bermuda's youth by volunteering with the Girl Guides of Bermuda. She has also spent many years volunteering with the Pink Ladies at KEMH on Sundays, which has typically been her only day off.

"Mostly, I'm helping others during my time," she says. "That's who I am."

But Elvira has always been on a work permit; she has no PRC and no Bermuda status and can be asked to leave if, one year, her work permit is not renewed.

She has sisters here, a niece and a son-in-law whom she would be "very sad" to leave behind.

**These are the faces of our neighbors, friends and coworkers.**  
They each made a commitment to Bermuda years ago;  
let us make a commitment to them now.  
**It's the right thing to do.**

 GOVERNMENT OF BERMUDA  
Ministry of Home Affairs

And this slide shares the story of Elvira Yusi who has lived in Bermuda for 25 years. She volunteers extensively for organizations such as Girl Guides and Pink Ladies. She neither has a PRC nor Bermudian status.

Jamaica-born Janice Mullings-George arrived in Bermuda in 1991 at the age of seven. On January 27th of this year she celebrated her 25th year in Bermuda. Janice works as a Registered Nurse at the hospital and says people are often surprised to hear that, not only is she not Bermudian, she doesn't even have Permanent Residency here. "I love my nursing career," she says. "I really feel I have the opportunity to give back to the community as a nurse. If I am out in town and someone falls or faints in the street, I will go over and help, telling them I am a nurse. So many of them will say, 'It's so nice to see a Bermudian nurse.' So then I have to tell them, 'I'm actually not Bermudian!'" Janice says that getting status would mean not having to say farewell to the many friends she has made here, including her church family, work colleagues and mentors. "Not getting status means uprooting my entire family and taking them somewhere else to start over again," she says. "It would mean me taking those skills and services that I have honed while living here and sharing them with another country." "Emotionally, it would be extremely sad - this community of people has become my family. I'd love to have a permanent home here instead of living like a nomad, not knowing what's going to happen moment to moment."

Janice began volunteering in Bermuda at the age of seven, when she accompanied her parents to a community feeding program. As she grew older, she volunteered as a Candy Striper at the hospital during school holidays because, not being Bermudian, she was not permitted to work.

More recently, she launched a medical organization called Vitals which is an information-sharing platform for those working across the spectrum of the medical profession.



**These are the faces of our neighbors, friends and coworkers.**  
They each made a commitment to Bermuda years ago;  
let us make a commitment to them now.  
**It's the right thing to do.**



Finally, we have Janice Mullings-George who has lived in Bermuda for 25 years after coming at the age of 7. She has been on a work permit since she began working.

# Implications of current Pathways

- De facto and de jure stateless second generation children
- Divided and mixed-status families
- Uncertainty for persons born in Bermuda and other long-term residents
- Unfortunate distinctions

Pathways to Status | 17 February 2016



Current policy has led to **divided families** with a mix of Bermudians, PRCs and persons with no long-term rights. We just saw a number of faces but we know of many other stories:

*There is one young man whose daughter obtained Bermuda status years ago and whose father obtained Bermuda status post-Carne and Correia. He was born after 31 July 1989, so he cannot obtain Bermuda status from either his Bermudian sister or his Bermudian father.*

*There is one lady who arrived in Bermuda before 31 July 1989. She was able to obtain a 31B PRC. She has 2 children born in Bermuda, and although she has long-term security, her children do not. If she were just one year older, she would have qualified under 31A and her children would have obtained a 31B PRC each.*

*There a couple who arrived in Bermuda in August 1989 – mere weeks after the moratorium deadline. They had two daughters born in Bermuda and both of whom continue to live in Bermuda. The older one was married to a Bermudian and had a Bermudian daughter. That marriage broke down for a variety of reasons. For other reasons relating to the Bermudian granddaughter's welfare, the long-term resident grandparents obtained guardianship of their Bermudian granddaughter. So she lives with her grandparents as a family unit.*

*Finally, there's another lady who came to Bermuda and married a Bermudian. Her Bermudian husband adopted her daughter, and the daughter obtained Bermudian status. However, she later divorced the Bermudian and the family is estranged from him. She can stay in Bermuda until her daughter turns 25. After that, she has to leave Bermuda, leaving the Bermudian daughter with no family in Bermuda through no fault of her own.*

*There are countless other stories of Bermuda-born family members of Bermudians and PRCs with no long-term rights to Bermuda.*

Recurring themes of our policy involve **unfortunate and unfair distinctions** depending on –

- Whether someone arrived or was born in Bermuda before or after 31 July 1989;
- Whether someone was over or under the age of 40 in 2010;
- Whether someone's parents obtained their PRC through sections 31A or 31B of the Bermuda Immigration and Protection Act; and
- Whether someone was born in or out of wedlock to a non-Bermudian mother before 2002.

The Government's policies would move away from these distinctions and adopt the best indicator of a person's commitment to Bermuda – their length of residence.

# **Government's proposed 'Pathways' to permanent residency and status**

Pathways to Status | 17 February 2016



I will now give brief details on the Government's proposals, and the reasons for these changes.

# Summary of proposed Pathways (1)

- 15 year Pathway to permanent residency
- 10 year Pathway to permanent residency – young person
- 10 year Pathway to permanent residency – close family members
- 20 year Pathway to Bermuda status
- Adoption Pathway to Bermuda status

Pathways to Status | 17 February 2016



First any person who is ordinarily resident in Bermuda for 15 years will be eligible to apply for permanent residency.

Second, any person who was born in Bermuda, or who arrived before his or her 16<sup>th</sup> birthday, will be eligible for permanent residency after ten years of ordinary residency in Bermuda upon reaching their 18<sup>th</sup> birthday.

Third, any person who has a ‘Bermuda immediate family connection’ will be eligible for permanent residency after ten years of ordinary residency in Bermuda upon reaching their 18<sup>th</sup> birthday.

Fourth, any permanent resident who is ordinarily resident in Bermuda for 20 years will be eligible to apply for Bermudian status.

Persons in Bermuda for 20 years at the time of commencement will have special transitional provision made for them.

Finally, adoptive children of Bermudians in Bermuda can automatically obtain Bermudian status if they meet certain conditions.

## Summary of proposed Pathways (2)

- Commonwealth citizenship for Bermuda Status
- Applications may be denied for bad character and offences
- Clarify circumstances where PRC or Bermuda status may be revoked

Pathways to Status | 17 February 2016



Those applying for Bermuda status will have to be a **Commonwealth Citizen**, as has always been the case. PRCs can also be naturalized as a British Overseas Territories Citizen after one year being free of immigration control.

The Minister will be able to refuse any application for permanent residency or status where individuals show **bad character** or are convicted of offences of '**moral turpitude**', that is, offences which show disregard for community standards of justice, honesty or good morals.

Finally, the legislation will clarify that the Minister's **power to strip** anyone of Bermudian Status or permanent residency following any application which was obtained by means of fraud, false representation or the concealment of any material fact.

## Why?

- Individuals have been left in limbo
- Demographic challenges
- Economic and Social Benefits
- International baseline standards
- Bermudians support ‘Pathways’
- It’s the right thing to do

Pathways to Status | 17 February 2016



The reasons for enacting Pathways are simple and straightforward:

- As is clear from my remarks so far, many individuals have been left in limbo from current immigration law and policy;
- We face demographic challenges; our population is shrinking and growing older and we need long term residents to stay put;
- There are a number of economic and social benefits arising from ‘Pathways’;
- We want to bring our law and policy in line with international baseline standards;
- Bermudians by and large support our policy aims;
- But at the end of the day, these abstract arguments mean very little next to the very real human stories of people affected. It is just the right thing to do.

Now to Junior Minister for Home Affairs, MP Sylan Richards.

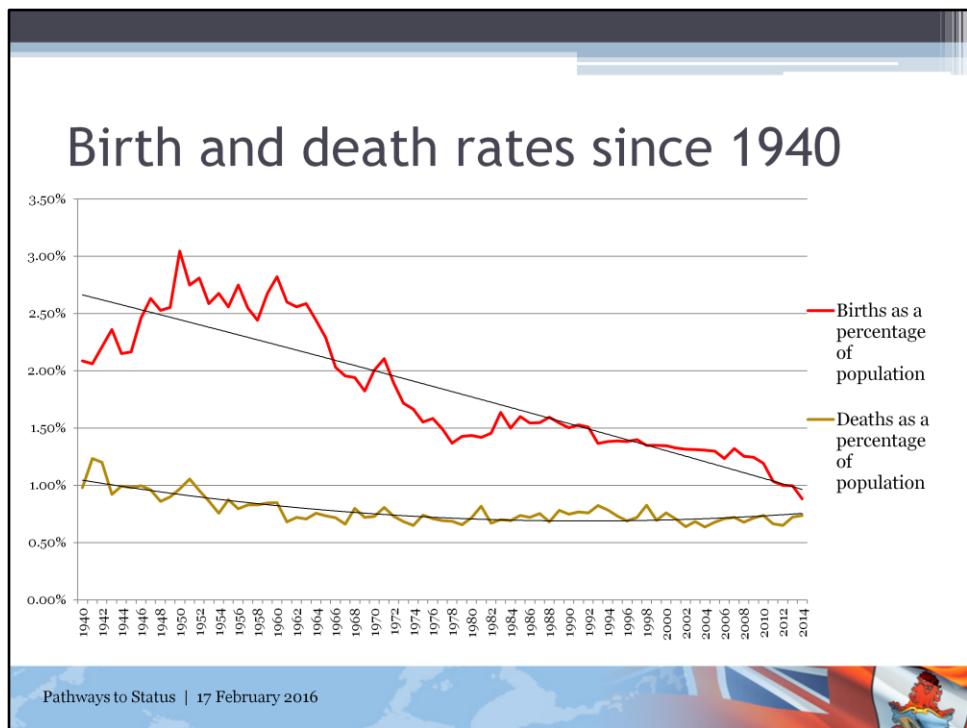
# **Some relevant statistics**

Pathways to Status | 17 February 2016



Thank you.

The Minister has touched upon the demographic challenges we face. For the next few slides, we consider some data which is relevant to 'Pathways'.



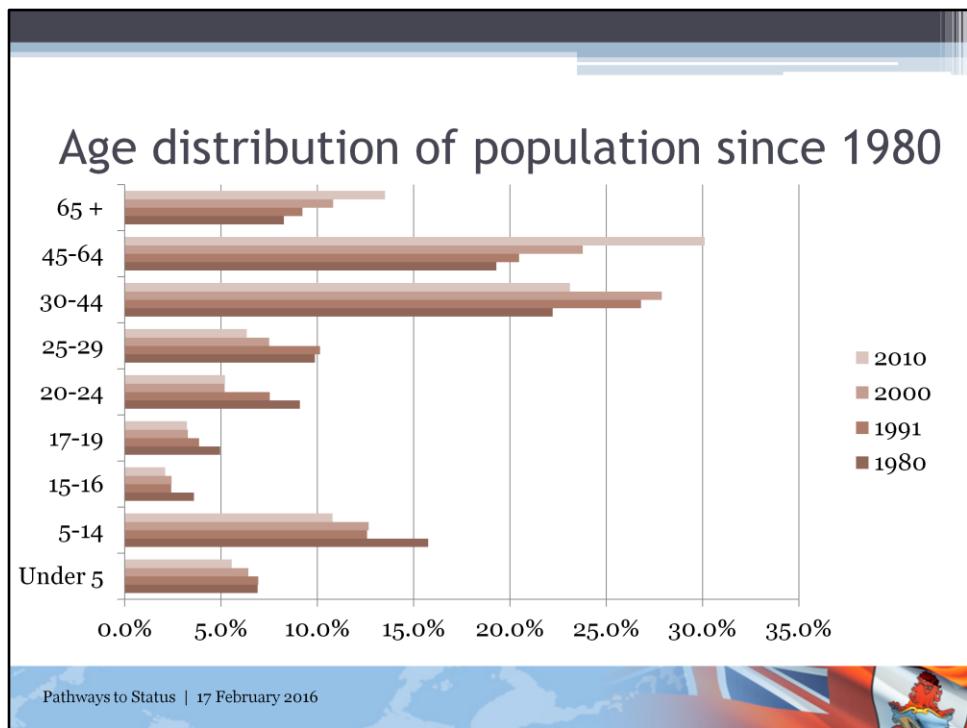
This graph shows data on births and deaths in Bermuda since 1940. The top red line shows the number of registered live births in Bermuda as a percentage of total population. The bottom yellow line shows the number of registered deaths also as a percentage.

For birth rates, we went from a high in 1950 of 3.04% of our population to a low in 2014 of 0.88%. There has been a clear downward trend since 1940. Our birth rate has fallen to less than 1/3 what it used to be.

For death rates, we had a high in 1941 of 1.23% to a low in 1974 of 0.65%. In 2014 it was 0.74%. There was a slight downward trend during the 1940s to 1970s. Since then, it has been constant.

In terms of raw numbers, Bermuda's baby boom years of 1950 to 1966 averaged 1,120 births a year. 2014 was our lowest year on record – we registered 574 births. Deaths have remained constant in the 350 to 450 range each year since 1940.

The medium- to long-term implications are clear: continuing down our current path, Bermuda's population will grow stagnant and then decline, while our population will grow significantly older.



This graph shows the age distribution of Bermuda's population from 1980, 1991, 2000 and 2010 census data.

The categories of older populations have increased in size since 1980 while our younger populations have fallen.

The size of our senior population is expected to double in the coming years. Fewer younger residents will be able to financially support our seniors.

## Fertility rates

- Replacement fertility rate = 2.1
- 1950 fertility rate = 3.53
- 2010 fertility rate = 1.75
- 2020 fertility rate = 1.54 (projected)

Pathways to Status | 17 February 2016



A woman on average should have 2.1 children to maintain current population levels.

In 1950, women had a fertility rate of 3.53. Today, it's 1.75, and is expected to fall to 1.54 in 2020.

Bermuda has had below-replacement fertility since the early 1970s.

# Demographic challenges

- Department of Statistics
- Public commentators such as Larry Burchall
- SAGE Commission
- Fiscal Responsibility Panel

Pathways to Status | 17 February 2016



The demographic challenges are clear. There is no way that we can simply ignore the fact that our residential population is shrinking quickly and at a very quick rate.

This is not just the OBA Government saying this-

Different reports from the Department of Statistics have issued warnings about this coming crisis.

Prominent commentators such as Larry Burchall have been a voice of clarity on this issue for several years now.

The SAGE Commission warned of the danger of our shrinking population, especially as it relates to falling Government revenue and increasing Government expenditure.

Most recently, the Minister of Finance commissioned the services of an independent, international Fiscal Responsibility Panel. In their 2015 Annual Assessment for Bermuda, the panel warned of Bermuda's projected rapid population decline. In addition, they warned that Bermuda's population decline would be "very rapid by international standards". They specifically recommended a more liberal immigration policy.

I would encourage every Bermudian to read that report.

## Economic Benefits of ‘pathways’

- Broaden tax base
- Protect HIP and FutureCare
- Improve Social Insurance and private pensions
- More spending and investment → growth → jobs  
→ Government revenue
- Maintain human capital

Pathways to Status | 17 February 2016



The Minister has touched on this but let me speak more about the economic benefits of ‘pathways to status’.

Our new immigration policy will do the following:

1. broaden Bermuda’s tax base - this keeps our taxes low and keeps the level of public services that we enjoy now.
2. Increase the number of persons paying health insurance in Bermuda. Policy holders subsidize Government insurance. This will protect HIP and FutureCare benefits, which our vulnerable residents rely on.
3. broaden the number of people paying into Social Insurance and private pensions. The Contributory Pension Fund is underfunded by \$2.07 billion. Without reversing our population trends, we will need to retire at a later age, pay more or receive less from our pensions.
4. make long-term residents spend their life savings in Bermuda by purchasing real estate, renovating their homes, investing in local companies, spending on local goods and services – all of which improves the economy, creates more jobs and increases Government revenue; and
5. prevent Bermuda from losing out on the valuable skills, experience and expertise of long-term residents who have been fully integrated into our economy.

## Social Benefits of ‘pathways’

- Maintain social fabric
- Maintain social networks
- Philanthropic, sporting, leisure organizations
- Charities

Pathways to Status | 17 February 2016



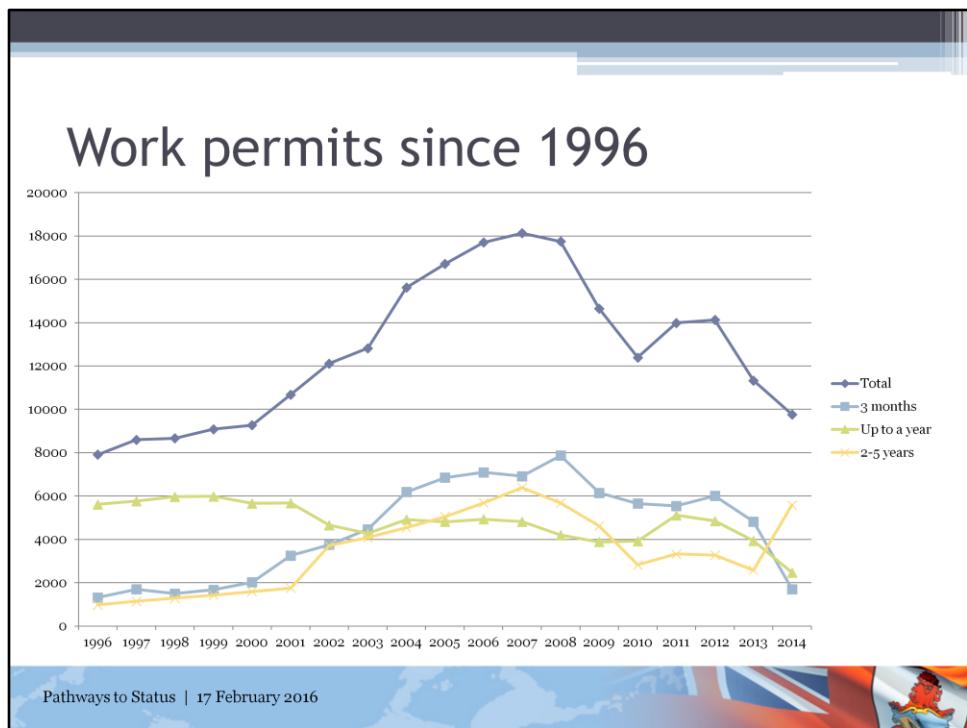
There are a number of social benefits to ‘pathways to status’.

We are dealing in many cases with mixed status families (some have Bermuda status, some have PRC, some are on work permits). ‘Pathways’ will ensure that we maintain the social fabric of a number of families and communities.

Many of these long-term residents are also our friends, family members and work colleagues. We will protect the social networks that we and our children have in place.

Many long-term residents are heavily involved in philanthropic, sporting & leisure organizations, which in turn, contribute to positive improvements in the lives of many Bermudians.

Charities have seen a drastic fall in valuable donor dollars; many more charities are competing for fewer resources. Since non-Bermudians can work on a volunteer basis, charities depend on non-Bermudian spouses and children. These individuals are vital to the charitable sector’s future.



Turning now to work permit statistics –

Between 1996 and 2000, the number of work permits issued grew slightly.

From 2000 to 2007, the number of work permits issued grew dramatically.

What drove this significant uptake in work permits being issued?

As Bermuda's economy heated up, more work permits were issued; when the great recession began, there were fewer permits.

The important point is this – following the introduction of term limits by the former Government, many of these individuals were kept on for a decade or longer. A person qualifying for Bermudian status this year under pathways would have been:

1. granted a work permit under the former UBP Government,
2. kept in Bermuda during the 14 years of the PLP Government, and
3. kept in Bermuda during 3 years of the OBA Government.

Many non-Bermudians have left since 2008. However, others have remained. There is therefore a multi-party consensus that, of all non-Bermudians out there, these long term residents are the ones we should try and keep.

All of this underscores the importance of our work permit policies. As the Minister emphasized in his press comments announcing the policy, this Government has done more than any other to ensure that Bermudians come first when they are qualified for job openings:

- We introduced civil penalties of up to \$10,000 against companies and individuals alike;
- We doubled criminal penalties for work permit related offences;
- Employers must now advertise all available positions on the Bermuda Job Board before applying for a work permit;
- The Bermuda Job Board now says when work permits expire, Bermudians can prepare themselves for potential jobs by ensuring their skills are relevant to the required skills needed; and
- We are ensuring that Bermudians are retooling and retraining for the jobs of today and tomorrow.

Strong measures like these will ensure the effectiveness of 'Pathways to status'; the work permit renewal process will lead to modest and manageable numbers of persons benefiting from these Pathways in the long-term.

## Jurisdictional comparisons

Small islands, larger islands and larger countries

Pathways to Status | 17 February 2016



We now turn to consider where Bermuda stands in the broader scheme of things when it comes to permanent residency and status. We had to consider what other countries are doing to arrive at an appropriate balance.

## Jurisdictional Comparison (1)

- The naturalization laws of 25 countries found the required period of residence for immigrants prior to naturalization varied from as little as three years to as many as ten years.

*Patrick Weil, Access to citizenship: A comparison of twenty-five nationality laws, in T. A. Aleinikoff and D. Klusmeyer, eds., *Citizenship Today: Global Perspectives and Practices*, Washington, D. C. : Carnegie Endowment for International Peace, 2001.*

Pathways to Status | 17 February 2016

A 2001 study of the laws of 25 countries found the required period of residence for naturalization varied from as little as three years to as many as ten years.

This trend is consistent with the Ministry's own internal and more recent research.

Government's proposed pathway of 20 years to status is far outside this representative range of 3 to 10 years for naturalization.

## Jurisdictional Comparison (2)

Jurisdiction	Permanent Residency	Citizenship, Status, Belonger Status	Population
Anguilla	7 years	15 years	15,095
British Virgin Islands	20 years	21 years (1 year as PR)	28,054
Cayman	8 years OR As a person of Independent Means	15 years	58,434
Turks and Caicos	5 years OR Commercial Immigration	10 years (5 years as PR) OR 5 years if PRC through Commercial Immigration	33,098
Falklands		7 years	2,932
Gibraltar		25 years	30,001
Montserrat	Discretion of Govt OR Commercial immigration	6 years (1 year as PR)	4,900
Pitcairn Islands	Discretion of Governor	5 years (1 year as PR)	56
Jersey	5 years	6 years (1 year as PR)	99,500
Guernsey	5 years	6 years (1 year as PR)	65,849
Isle of Man	5 years	6 years (1 year as PR)	85,888

Pathways to Status | 17 February 2016

On this slide, we see our most relevant small island competitors: British Overseas Territories (or BOTs) and Crown Dependencies.

Bermuda is the largest BOT. Guernsey is the same size as Bermuda, while Jersey and Isle of Man are a bit larger.

Tiny Anguilla, with 15,000 residents, has the most liberal pathway: 7 years to permanent residency and 15 years to 'belonger' status.

The British Virgin Islands, with 28,000 residents, has quite strict pathways: 20 years to permanent residency, and as little as 21 years for BVI status.

Turks and Caicos, with 33,000 residents, has a very generous pathway to permanent residency at 5 years or based on commercial immigration. TCI lifted its moratorium on granting PRCs in 2012. Belonger status follows after 5 years as a PRC.

Gibraltar, with 30,000 residents, has the strictest pathway to status at 25 years. However, this is an outlier when you consider that Gibraltar is a part of the EU.

Note the Crown Dependencies have populations ranging from 65,000 to 99,000. Each has a general pathway to permanent residency of 5 years, and a further pathway to status of 5 years.

## Jurisdictional Comparison (3)

Jurisdiction	Permanent Residency or analogous concept	Status, citizenship or analogous concept
Antigua & Barbuda	None	6 years total = 1 year immediately pre-application and 5 of 7 years before that
Bahamas	20 years (NB fewer years exist for occupations in demand)	10 years as permanent resident
Jamaica	3 years	5 years
Dominican Republic	5 years	2 years as permanent resident
Barbados	5 years	6 years total = 1 year immediately pre-application and 5 of 7 years before that
Trinidad & Tobago	5 years	8 years as permanent resident
Belize	1 year	5 years as permanent resident

Pathways to Status | 17 February 2016



On this slide, we have data pertaining to larger island jurisdictions in the Caribbean.

All have Pathways to permanent residency in the 1 to 5 year range. They have Pathways to citizenship in the 2 to 10 year range.

The outlier is the Bahamas. Their standard pathway to permanent residency is 20 years plus a further 10 years to citizenship, for a total of 30 years in most cases.

## Jurisdictional Comparison (4)

Jurisdiction	Permanent Residency or analogous concept	Status, citizenship or analogous concept
UK	5 years in most cases 10 years in other cases where in UK legally 14 years where in UK unlawfully	5 years - 1 year of which with indefinite leave to remain in the UK, if non-EEA; or - 1 year of which as permanent resident, if EEA
Republic of Ireland	5 years for non-EEA citizens	5 years total = 1 year immediately pre-application and 4 of 8 years before that (for EEA and non-EEA citizens)
Canada	NB various categories exist: Skilled migration , Employer sponsored, Family migration, Provincial nominee programme, Canadian uni students	4 years and must be a permanent resident
South Africa	5 years	4 years as permanent resident

Pathways to Status | 17 February 2016

The next two slides consider some larger, industrialized countries we would all be familiar with. They have pathways to permanent residency and citizenship consistent with the larger island jurisdictions considered in the previous slide and in the 2001 Weill study.

## Jurisdictional Comparison (5)

Jurisdiction	Permanent Residency or analogous concept	Status, citizenship or analogous concept
Botswana	10 years	10 years
Tanzania	None	10 years
Singapore	NB various categories exist: Aged parent, Investors, skilled employment	2 years as a permanent resident
Australia	NB various categories exist: Skilled migration, Employer sponsored, Family migration	4 years, 1 year of which as a permanent resident
New Zealand	2 years	5 years and must be a permanent resident
USA	NB various categories exist: Skilled migration, Employer sponsored, Family migration	5 years as a permanent resident

Pathways to Status | 17 February 2016

We recognize that these larger jurisdictions are able to take more residents than a small island jurisdiction such as Bermuda.

Therefore, it is more appropriate to compare our policies to jurisdictions closer in size to Bermuda and with whom we compete.

## Jurisdictional Comparison (6)

- Conclusions

- “Pathways” = liberalization of the status quo but not a liberal immigration scheme
- Tends towards the upper end of lengths of time required

Pathways to Status | 17 February 2016



Providing new pathways is a liberalization of current practice, but the legislation would still be a ‘liberal’ immigration scheme.

The periods of time provided for in ‘Pathways’ are stricter than in virtually any other jurisdiction.

Compared to smaller island jurisdictions our proposed policy would still place Bermuda towards the strict end of the scale:

Like Bermuda, TCI offers no pathway to status; BUT it lifted its moratorium on permanent residency in 2012 and has a very generous length of stay at 5 years  
Gibraltar offers no pathway to permanent residency, unless you are an EU citizen, and offers Gibraltar Status after 25 years.

BVI, as a small island jurisdiction, offers a good comparison: 20 years for permanent residency and 21 years for ‘belonger’ status.

15 years for permanent residency and 20 years for status represent an appropriate balance between protecting the interests of Bermudians and addressing the aspirations of long term residents in Bermuda.

Now – I wish to turn over to my colleague, the Attorney General.

# **European Convention on Human Rights (ECHR)**

Council of Europe

Pathways to Status | 17 February 2016



Thank you Junior Minister.

For the next few slides, we will consider the international legal obligations that pertain to Bermuda and which are helping to drive the Government's proposals.

Bermuda has been subject to the European Convention on Human Rights since 1953, and it is mentioned in the preamble to our own Human Rights Act.

Our legal understanding is guided by caselaw coming out of the Immigration Appeal Tribunal, the Supreme Court and the international courts. We also considered advice from a London Queens Counsel and information shared with us by the UK Foreign and Commonwealth Office and Home Office.

# International Human Rights (1)

- ARTICLE 8, ECHR

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Pathways to Status | 17 February 2016



Article 8 of the Convention protects the right to respect for private and family life. This right is applicable to all residents of a Convention territory. No distinction is made between Bermuda status and citizenship. We all share the same rights.

What does this mean in practice? It means that blanket bans on obtaining any form of secure residency is contrary to the Convention. This ban is stronger when family life might be threatened.

## International Human Rights (2)

- ARTICLE 3, Protocol 1 to ECHR

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.



Article 3 of Protocol 1 to the Convention sets out the democratic rights of residents of Member States.

This Article precludes a member state from allowing a large group of residents to remain and live in its territory to not have a voice in how the Government runs their affairs.

Member states are given wide latitude to design immigration policy. The Convention does not say how this right is achieved. It does not set how many years. That's for the member state to decide. At a minimum, there be a route to civic and political rights, however that route may be defined.

It is for this reason that our proposal sets the length for Bermudian status at a longer period of 20 years.

# **Public support for ‘Pathways’**

Pathways to Status | 17 February 2016



Turning now to public support for Pathways ...

Concern has been loudly expressed from some about Government’s proposals. We do not believe that these ‘loud voices’ necessarily reflect the breadth of feeling on this subject. They are certainly out of step with the mainstream view in Bermuda.

## Support for Pathways (1)

- Polling data in 2000
  - 50.6 % supported long term residents getting status
  - 42.9 % were opposed
  - 6.5 % were unsure

Research Innovations. Source:

<http://www.longtermresidents.com/Press%20Releases/Dated/Islanders%20Splt.htm>

Pathways to Status | 17 February 2016



A poll in 2000 showed that 50.6 % supported long term residents getting status, 42.9 % were opposed and 6.5 % were unsure. That poll was based on 403 respondents.

Interestingly, it was conducted by MP Walton Brown's polling firm. He stated in 2000 that the poll was strongly reflective of Bermudians' opinion and that its size was a great number in Bermuda to work with and predict trends. We agree.

## Support for Pathways (2)

- Polling data in 2014
  - 57 % supported long term residents getting status
  - 33 % were opposed
  - 9 % were unsure

Global Research & Strategy Group Ltd. Source:  
<http://www.royalgazette.com/article/20140724/NEWS/140729843>

Pathways to Status | 17 February 2016



The Government has always believed that Bermudians largely support the granting of permanent residency and Bermudian status to long-term residents.

Fast forward to the post-*Carne and Correia* world we live in right now.

This position was confirmed by a poll in 2014 showing that 57% supported granting permanent residents Bermudian Status, 33% were opposed, while 9% were undecided. 404 people participated in that poll.

## Support for Pathways (3)

- Polling data in 2015
  - 69.5 % supported 25 year+ long term residents getting status
  - 24.8% were opposed
  - 5.7 % were unsure

Profiles of Bermuda. Source:

<http://www.profilesofbermuda.bm/files/2015/05/Same-Sex-PRC-Press-Release-20MAY15.pdf>

Pathways to Status | 17 February 2016

Another poll in 2015 showed a significant majority of 69.5% in favour of granting Bermudian status to long term residents who have been in Bermuda for 25 years or more. 24.8% were opposed and 5.7% were unsure.

As a side note here, Government settled on 20 years feeling that anything longer would have been a lifetime for many and would place Bermuda completely out of the mainstream for small island jurisdictions granting pathways.

## Support for Pathways (4)



Based on 1696 individuals (as at 1pm on 17 Feb 2016)

Source: Bernews

Pathways to Status | 17 February 2016

We should also recognize a couple of 'unscientific' polls which nonetheless confirm the trend shown in the 'scientific' ones.

First, Bernews ran an online poll with 1,696 respondents. 74% were in support of Government's proposals while 26% were opposed.

## Support for Pathways (5)

### Take Our Poll

Is the Minister of Home Affairs on the right "path" with his immigration initiative?

Yes

**71%**

No

**26%**

Don't know

**3%**

Total Votes: **8029**

[Poll Archive](#)

Based on 8,029 individuals (as at 24Feb 2016)

Source: Royal Gazette

Pathways to Status | 17 February 2016

The Royal Gazette is also running a poll on the question, this time based on 8,029 respondents.

71% were in support of Government's proposals, 26% were opposed while 3% did not know.

## Support for Pathways (6)

- 2000 –vs– 2014
  - Support for pathways has trended upwards by 6.4%
  - Opposition to pathways has trended downwards by 9.9%

Pathways to Status | 17 February 2016



These polls show that support for ‘pathways’ has trended upwards over time, while opposition has trended downwards.

This can be for a variety of reasons – we are marrying more non-Bermudians, we travel the world more broadly, we have UK passports now. I’m sure many Bermudians know stories of persons who call Bermuda their home and whose status here really should be regularized.

The Government supports these policies because it is the right thing to do and because of the economic benefits in doing so.

It is also gratifying that Bermudians are largely in support. This should not surprise anyone - Bermudians have always been a compassionate group of people; however, sometimes it is easy to forget that the loudest and most strident voices do not necessarily represent the most widely-shared views.

Interestingly enough, no political party has ever polled as high as ‘Pathways’ in recent memory!

## Support for Pathways (7)

- Hon Paula Cox, JP, MP (13 July 2001)

“From the outset, this Government has maintained that any wholesale grant of Bermudian status is more properly within the domain of any further and future changes in Bermuda's ultimate constitutional status.”

Pathways to Status | 17 February 2016



Perhaps the biggest indication of the shift in public opinion can be seen in the evolution of the Progressive Labour Party's position on immigration reform.

In 2001, then Minister of Home Affairs, the Hon Paula Cox, made very clear that fundamental immigration reform involving a pathway to Bermuda status would only occur in the context of “any further and future changes in Bermuda's ultimate constitutional status”, that is to say, when Bermuda goes independent.

## Support for Pathways (8)

- Hon Marc Bean, JP, MP (14 Nov 2014)

“We need to undertake fundamental immigration reform and the starting point is the Bermuda Immigration and Protection Act 1956. This reform process will have as an essential component an extensive public consultation component. It will address the issue of Bermuda status grants--how they are to be granted going forward and what criteria need to be met; what number of PRCs should be issued on an annual basis; and it will create a policy of equal political status for individuals in a family rather than the current circumstance where one sibling could hold Bermuda status and the other have no rights at all to permanent residence.”

Pathways to Status | 17 February 2016

The Opposition Leader, the Hon Marc Bean, made the PLP’s position quite clear in November of 2014. To his credit, his party concedes the need for immigration reform, and implicitly, the need for pathways to permanent residency and status.

There is some difference between the two main political parties on the question of Pathways. This is natural, and healthy differences form the cornerstone of democracy.

But at the end of the day, the OBA was elected to govern Bermuda. It is the Government’s prerogative to propose laws, and it will be the Legislature’s prerogative to consider and scrutinize those laws.

We have begun the process of public education and consultation on ‘pathways’ and there is perhaps still some scope for revision to the policy. However, ‘Pathways’ represents the culmination of much work and research aimed at getting the balance right.

We believe we have achieved that balance.

I would now call on Minister Fahy to conclude this presentation.

# **Comprehensive Immigration Reform?**

Pathways to Status | 17 February 2016



Thanks AG.

Let's take a few minutes to address the idea of 'comprehensive immigration reform'. This buzz word has been put out there often, especially by the Opposition.

However, we still do not know what this means. Nor have we received any definitive answers to very important questions such as:

- Are they opposed to our new pathway for adopted children of Bermudians?
- Are they opposed to granting any kind of security to persons born and raised in Bermuda through no fault of their own?
- Are they opposed to our revival of the PLP's family unity pathway, designed to keep families together?
- Do they want a revival of the failed policy of term limits which even PLP Ministers at the time recognized was killing jobs?
- Are they instead in favour of a skilled migrant class of immigration where guest workers get a PRC from day one? These are common in other advanced democracies.

I will briefly outline some alternative policy proposals and our reasons for not adopting them.

## Alternatives: Quotas?

- Can lead to inconsistent results, unfairness, and are open to Ministerial abuse.
- Seldom used for status, citizenship, 'belonger' status, etc.
- Not widely used for permanent residency
- Possibility for judicial review

Pathways to Status | 17 February 2016



First - Quotas. This has attracted a lot of attention recently.

The Government does not agree with the idea of quotas. The right to respect for private and family life is enjoyed by all residents of Bermuda. Quotas can lead to inconsistent results, unfairness and are open to abuse by Ministers.

Any assertion that all or most countries have quotas in place for permanent residency and citizenship they grant is simply not correct. The reality is that quotas tend to be paired with liberal immigration policies, which 'Pathways' is not. Furthermore, quotas would take us out of the mainstream of small island jurisdictions with whom we compete.

Our research indicates the following –

There are very few countries that have a quota in place for the grant of status or citizenship. Provided a person meets the legislative requirements for naturalization, he or she qualifies.

Some countries use quotas for skilled migration programmes, such as the US Green Card or the UK Tier-1 and Tier-2 visas. The use of quotas in this category shows a mixed bag; some countries use them, many do not.

Where countries do have quotas, they rarely apply to sponsored applicants in close family immigration categories. For example, the US Green Card programme imposes no limit on the spouses, children and parents of US citizens.

Where quotas are used, they are controversial.

The US maintains a country-based quota system. So an engineer from, say, St Lucia, has a much better chance of getting permanent residency than a similarly qualified person from India.

In addition, when a skilled residency quota was introduced in the UK back in 2011, this was criticized as being bad for business and job creation.

In other cases, a lottery may be used for persons who meet the minimum requirement, making no distinction between persons in a country for 5 years or 15.

Discussions of quotas have been revived broadly in recent years in the context of the refugee crisis in Europe.

Because of the risk of unfairness and inconsistency, quotas would leave the Government open to judicial review in respect of decisions that I or any future immigration Minister may make. We also think, especially if we consider the idea of country-based quotas, we may run into problems with our Constitution and Human Rights Act.

In summary, we looked at the idea of quotas. However, a better approach is to have in place very lengthy periods of time for pathways. This is consistent with past practice in Bermuda and with practice in many other comparable and competing jurisdictions.

## Alternatives: Points-based systems?

- Used in some countries that have liberal immigration policies, such as Canada, Australia, the UK and Caymans.
- Caymans combines points with a 8 year permanent residency pathway
- Complex systems – difficult to administer
- Favours a certain demographic profile

Pathways to Status | 17 February 2016



Like with quotas, points-based systems tend to be paired with liberal immigration schemes. I emphasize again: while ‘Pathways’ is a liberalization of the status quo, it is by no means a liberal immigration programme. It uses lengthy periods of stay in Bermuda which, Government feels, strike the appropriate balance between protecting the job prospects of Bermudians and addressing the humanitarian situations of long term residents and mixed-status families.

Cayman uses a points-based system but it is out of the mainstream of smaller island jurisdictions.

But the biggest problem with points-based systems is that they tend to favour well-heeled, educated, upper-income executives at the expense of more working and middle class West Indian and Azorean folks. This is not what Government is trying to do.

Of course, this class of individuals already has a pathway – namely the ‘Incentive for Job Makers’ provisions introduced by the PLP administration in 2011. They would only have to wait 10 years.

We need to design our immigration policy to represent the broader spectrum of Bermudian society.

## Alternatives: Commercial immigration?

- Economic benefits?
- Deal with long-term residents first

Pathways to Status | 17 February 2016



Quite a lot of work and research has been done on the question of commercial immigration to try and ascertain what economic benefits, if any, commercial immigration would bring to Bermuda.

As previously stated, we are not yet convinced of the economic benefits of commercial immigration. I was also never interested in just giving people a passport. There had to be a real prospect for job creation, and this is why we have placed commercial immigration on the back burner.

In addition, the Government took a view that before we consider commercial immigration, we had to address the humanitarian side of our immigration policy, hence 'pathways to status'.

We also felt that there was more economic benefit with fully integrating those who are here already compared to trying to attract newcomers to these shores.

# Conclusions

Pathways to Status | 17 February 2016



For the reasons that I've expressed, we have not chosen to implement these policy alternatives.

Thank you very much for your attention during this presentation.

We recognize that Immigration can be a technical subject and at times an emotive one. However, I trust that everyone will fully appreciate the need to act, and that you walk away with a better appreciation of Government's proposals in respect of 'Pathways'.

We look forward to hearing your questions.

# Fact Sheet

## Pathways to Status

### What?

- The Government of Bermuda seeks to provide pathways to Permanent Residency and Bermuda Status for some of our long-term residents.

### Why?

- It's the right thing to do.
- Blanket bans currently applying to long-term residents are not consistent with the foreigner policy of the Government of Bermuda.
- A foreigner policy that reflects a particular group of long-term residents who have been here for many years, and also fails to meet international baseline standards.

### How?

- We will amend the Bermuda Immigration and Protection Act 1990 to:
- Any person who is ordinarily resident in Bermuda for 15 years will be eligible to apply for permanent residency.
  - Any permanent resident who is ordinarily resident in Bermuda for 20 years will be eligible to apply for Bermudian status.

- Adoptive children of Bermudians in Bermuda can automatically obtain Bermudian status if they meet

- Any person who was born in Bermuda, or who arrived before his or her 18<sup>th</sup> birthday, will be eligible for permanent residency after ten years of ordinary residency in Bermuda upon reaching their 18<sup>th</sup> birthday.
- Any person who has a "Bermuda immediate family member" who is a Bermudian citizen or permanent resident in Bermuda, and who has been granted permission by the Minister to treat them as a family member, will be eligible for permanent residency after ten years of ordinary residency in Bermuda upon reaching their 18<sup>th</sup> birthday.

### Benefits to Bermuda

- Bring Bermudians in compliance with international legal standards and keep from being out of step with competing jurisdictions.
- Increase the size of Bermuda's working population in the face of declining birth rates and a shrinking Bermuda population. We want to encourage long-term residents to stay and pay into our social safety net.
- People who would be eligible are our friends, neighbours and work colleagues. They are part of the community we live in. We want these individuals as we would want to be treated. We all stand to benefit as a community when they are given the security of knowing Bermuda as their own.

GOVERNMENT OF BERMUDA

Pathways to Status | 17 February 2016



## Ground rules for discussion

- Please go to the microphone if you wish to make a comment or ask a question.
- Open and honest communication with respect.
- One person to speak at a time.
- A person can only speak once.
- Speak without being offensive.
- Listen without being defensive.
- Accept the speaker's comments, even if you don't agree.
- Leave time for others to speak.
- Let's have healthy dialogues.
- Introduce a car park.



# **Thank you!**

