

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship and Multicultural Affairs

Australian Citizenship Act 2007

Australian Citizenship (Permanent Resident) Determination (LIN 22/103) 2022

- 1 The instrument, Departmental reference LIN 22/103, is made under subsection 5(2) of the *Australian Citizenship Act 2007* (the Act).
- 2 The instrument repeals *Australian Citizenship (Permanent Resident Status) Determination* (IMMI 17/108) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, which provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences on 1 January 2023, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The purpose of the instrument is to determine certain persons to be permanent residents for the purposes of the Act. Paragraph 5(1)(c) of the Act provides that a person is a permanent resident at a particular time if the person is covered by a determination in force under subsection 5(2) at that time.
- 5 Subsection 5(2) of the Act provides that the Minister may, by legislative instrument, determine that:
 - persons who hold a special category visa or special purpose visa; or
 - persons who have held a special category visa; or
 - persons who are present in Norfolk Island or the Territory of Cocos (Keeling) Islands; and who satisfy specified requirements are, or are during a specified period, persons to whom subsection 5(2) applies.
- 6 The instrument operates to determine that certain New Zealand citizens are permanent residents, including those New Zealand citizens who hold or have held a special category visa and who satisfy specified requirements; those who hold a special purpose visa granted on the basis of being an airline crew member or airline positioning crew member who is ordinarily resident in Australia; and those who have held a special category visa and who satisfy specified requirements in relation to the visa they currently hold.
- 7 The instrument also operates to determine that certain persons present in Norfolk Island or the Territory of Cocos (Keeling) Islands who satisfy specified requirements are permanent residents.
- 8 The instrument replaces IMMI 17/108 and substantially maintains the arrangements in that instrument. The instrument also determines that a New Zealand citizen who holds a Subclass 189 (Skilled – Independent) visa in the New Zealand stream granted after 31 December 2021 and before 1 July 2023 is taken to have become a permanent resident on 1 January 2022, as is a member of the person's family

unit who satisfied the secondary criteria for grant of a Subclass 189 visa. This change will enable affected New Zealand citizens to satisfy the general residence requirement set out in subsection 22(1) of the Act at an earlier point than they otherwise would. In some cases, a New Zealand citizen may be eligible to apply for Australian citizenship by conferral immediately after being granted a Subclass 189 visa in the New Zealand stream.

Consultation

- 9 The Australian Government has consulted with the New Zealand Government at the ministerial and official level and with a community group representing New Zealand citizens in Australia in relation to a pathway to Australian citizenship for New Zealand citizens, but not specifically in relation to the proposed solution.
- 10 The Office of Best Practice Regulation (OBPR) was consulted and considered that the instrument dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is OBPR22-03601

Details of the instrument

- 11 Section 1 sets out the name of the instrument.
- 12 Section 2 provides for the commencement of the instrument on 1 January 2023.
- 13 Section 3 sets out definitions of terms used in this instrument.
- 14 Subsection 4(1) provides that a person who holds a special category visa or a special purpose visa and satisfies the specified requirements is a permanent resident for the purposes of the Act. The provision refers to a New Zealand citizen who is a ‘protected SCV holder’ within the meaning of the *Social Security Act 1991* and who either holds a special category visa or who is taken to hold a special purpose visa on the basis of the person’s status as an airline crew member or an airline positioning crew member. In the case of a special purpose visa holder, the person must also be ordinarily resident in Australia.
- 15 Subsection 4(2) provides that a person to whom subsection 4(1) applies is not a permanent resident if the person is in Australia as a diplomatic or consular representative of New Zealand, or the person is the spouse or dependent child of a diplomatic or consular representative of New Zealand, or the person is taken to hold a special purpose visa for a reason other than their status as an airline crew member or airline positioning crew member.
- 16 Subsection 5(1) provides that a New Zealand citizen outside of Australia who is a protected SCV holder and who is ordinarily resident in Australia is a permanent resident if, immediately before the person last left Australia, the person held a special category visa or a special purpose visa taken to have been granted to the person on the basis of their status as an airline crew member or an airline positioning crew member.
- 17 Subsection 5(2) provides that a person to whom subsection 5(1) applies is not a permanent resident if the person was last in Australia as a diplomatic or consular representative of New Zealand, or the person was last in Australia as the spouse or dependent child of a diplomatic or consular representative of New Zealand.

- 18 Subsection 6(1) provides that a New Zealand citizen who has previously held a special category visa and is the holder of a Subclass 189 (Skilled – Independent) visa in the New Zealand stream granted after 31 December 2021 and before 1 July 2023 is taken to have become a permanent resident on 1 January 2022. The provision also applies to a New Zealand citizen who has previously held a special category visa and is the holder of a Subclass 189 visa who is a member of the family unit of the primary visa holder and who satisfied the secondary criteria for grant of a Subclass 189 visa. When the instrument commences on 1 January 2023, a person to whom this provision applies will be taken to have become a permanent resident at least 1 year previously.
- 19 Subsection 6(1) does not apply to a person who was granted a Subclass 189 visa on or before 31 December 2021, on the basis that such a person would in any case already have been a permanent resident for the purposes of the Act for more than 1 year by the time the instrument commences.
- 20 Subsection 6(2) provides that a person to whom subsection 6(1) applies is not a permanent resident if the person is in Australia as a diplomatic or consular representative of New Zealand, or the person is the spouse or dependent child of a diplomatic or consular representative of New Zealand.
- 21 Subsection 7(1) provides that a person is a permanent resident if the person is in Norfolk Island or the Territory of Cocos (Keeling) Islands, is not an Australian citizen, and meets the requirements specified by either subsection 7(2) or subsection 7(3).
- 22 Subsection 7(2) will apply to the person if the person's presence in either Norfolk Island or the Territory of Cocos (Keeling) Islands before 1 October 2017 was not in contravention of a law of the relevant territory, and either was not subject to any limitation of time imposed by law or was subject to such a limitation where the person would have been a permanent resident if they had been present in Australia (other than in that territory) during that period.
- 23 Subsection 7(3) will apply to the person if the person, when they were not present in Australia prior to 1 October 2017, held either a visa of a class mentioned in Schedule 1 to the instrument, a return endorsement, or a document conferring equivalent rights under the law of either of the two territories.
- 24 Section 8 repeals IMMI 17/108.
- 25 Schedule 1 mentions several classes of visa for the purposes of paragraph 7(3)(a).

Parliamentary scrutiny etc.

- 26 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because a determination made under subsection 5(2) of the Act is prescribed by item 4 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 27 The instrument was made by the Minister for Immigration, Citizenship and Multicultural Affairs in accordance with subsection 5(2) of the Act.

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