



LIN 22/103

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

I, Andrew Giles, Minister for Immigration, Citizenship and Multicultural Affairs, make this instrument under subsection 5(2) of the *Australian Citizenship Act 2007* (the *Act*).

Dated 7 December 2022

The Hon. Andrew Giles MP

Minister for Immigration, Citizenship and Multicultural Affairs

1 Name

This instrument is the *Australian Citizenship (Permanent Resident) Determination (LIN 22/103) 2022*.

2 Commencement

This instrument commences on 1 January 2023.

3 Definitions

In this instrument:

airline crew member has the meaning given by regulation 1.03 of the *Migration Regulations 1994*.

airline positioning crew member has the meaning given by regulation 1.03 of the *Migration Regulations 1994*.

dependent child has the meaning given by regulation 1.03 of the *Migration Regulations 1994*.

diplomatic or consular representative has the meaning given by subsection 5(1) of the *Migration Act 1958*.

protected SCV holder has the meaning given by subsection 7(1) of the *Social Security Act 1991*.

return endorsement means a return endorsement issued under section 11A of the *Migration Act 1958* before the day when the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1987* received the Royal Assent, other than a return endorsement that has expired or been cancelled, including a document or notation mentioned in subsection 9(3) of the *Migration Amendment Act 1979*.

spouse has the meaning given by regulation 1.03 of the *Migration Regulations 1994*.

Subclass 189 visa means the Subclass 189 (Skilled—Independent) visa prescribed by the *Migration Regulations 1994*.

Note Some terms have the same meaning as in the Act, including *ordinarily resident, special category visa* and *special purpose visa*.

4 Persons who hold special category visa or special purpose visa

- (1) For subsection 5(2) of the Act, a person is a permanent resident if the person:
 - (a) is a New Zealand citizen; and
 - (b) holds a special category visa or a special purpose visa; and
 - (c) is a protected SCV holder and either:
 - (i) holds a special category visa; or
 - (ii) is ordinarily resident in Australia and is in Australia as the holder of a special purpose visa taken to have been granted on the basis of the person's status as an airline crew member or an airline positioning crew member.
- (2) However, subsection (1) does not apply to a person who:
 - (a) is in Australia as a diplomatic or consular representative of New Zealand; or
 - (b) is the spouse or dependent child of a diplomatic or consular representative of New Zealand; or
 - (c) is taken to hold a special purpose visa in circumstances other than those mentioned in subparagraph (1)(c)(ii).

5 Persons who have held special category visa—protected SCV holders

- (1) For subsection 5(2) of the Act, a person is a permanent resident if the person:
 - (a) is a New Zealand citizen; and
 - (b) is a protected SCV holder; and
 - (c) is ordinarily resident in Australia; and
 - (d) is outside of Australia; and
 - (e) immediately before last leaving Australia, was the holder of:
 - (i) a special category visa; or
 - (ii) a special purpose visa taken to have been granted on the basis of the person's status as an airline crew member or an airline positioning crew member; and
 - (f) is not outside Australia because the person was removed or deported from Australia under the *Migration Act 1958*.
- (2) However, subsection (1) does not apply to a person who, when the person was last in Australia, was in Australia as:
 - (a) a diplomatic or consular representative of New Zealand; or
 - (b) the spouse or dependent child of a diplomatic or consular representative of New Zealand.

6 Persons who have held special category visa—Subclass 189 visa holders

- (1) For subsection 5(2) of the Act, a person is taken to have become a permanent resident on 1 January 2022 if the person:
 - (a) is a New Zealand citizen; and
 - (b) has held a special category visa; and
 - (c) either:
 - (i) is the holder of a Subclass 189 visa in the New Zealand stream which was granted to the person after 31 December 2021 and before 1 July 2023 (*the primary visa holder*); or
 - (ii) is the holder of a Subclass 189 visa who satisfied the secondary criteria and is a member of the family unit of the primary visa holder.
- (2) However, subsection (1) does not apply to a person who:
 - (a) is in Australia as a diplomatic or consular representative of New Zealand; or
 - (b) is the spouse or dependent child of a diplomatic or consular representative of New Zealand.

7 Persons in Norfolk Island or Territory of Cocos (Keeling) Islands

- (1) For subsection 5(2) of the Act, a person is a permanent resident if the person:
 - (a) is present in Norfolk Island or the Territory of Cocos (Keeling) Islands; and
 - (b) is not an Australian citizen; and
 - (c) subsection (2) or (3) applies.
- (2) For a period when the person was present in Norfolk Island or the Territory of Cocos (Keeling) Islands before 1 October 2017, the person's presence:
 - (a) was not in contravention of a law of Norfolk Island or the Territory of Cocos (Keeling) Islands; and
 - (b) either:

- (i) was not, during the period when the person was present, subject to any limitation of time imposed by law; or
- (ii) was subject to a limitation of time imposed by law, if the person would have been a permanent resident if the person:
 - (A) had been present in Australia (other than in Norfolk Island or the Territory of Cocos (Keeling) Islands) in that period; or
 - (B) had been present on another of the islands of Norfolk Island or the Territory of Cocos (Keeling) Islands in that period.

(3) For a period when the person was not present in Australia before 1 October 2017, the person was the holder of, or was taken to have been the holder of:

- (a) a visa of a class mentioned in Schedule 1; or
- (b) a return endorsement; or
- (c) a document or endorsement in force under a law of Norfolk Island or the Territory of Cocos (Keeling) Islands entitling the holder to rights equivalent to those associated with a visa of a class mentioned in Schedule 1 or a return endorsement.

8 Repeal

Australian Citizenship (Permanent Resident Status) Determination (IMMI 17/108) is repealed.

Schedule 1 Classes of visas

(paragraph 7(3)(a))

Item	Class of visa
1	Document or notation permitting residents to return to Australia, issued before 1 November 1979
2	Resident return visa, within the meaning of regulation 29AC of the <i>Migration (1959) Regulations</i>
3	Return visa, within the meaning of regulation 2 of the <i>Migration (1989) Regulations</i>
4	Group 1.4 (resident return (permanent entry)) visa, within the meaning of the <i>Migration (1993) Regulations</i>
5	Document or notation mentioned in item 1, or visas mentioned in item 2, 3 or 4 that continued in force after 31 August 1994 as transitional (permanent) visa by the <i>Migration Reform (Transitional Provisions) Regulations</i>
6	Return (Residence) (Class BB) visa, within the meaning of the <i>Migration Regulations 1994</i>

Unless otherwise indicated in this document, it is Copyright of the Commonwealth of Australia and the following applies:

Copyright Commonwealth of Australia.

This material does not purport to be the official or authorised version. Reproduction and use of this material is subject to a [Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Australia License](#).

You should make independent inquiries and obtain appropriate advice before relying on the information in any important matter.

This document has been distributed by LexisNexis Australia. All queries regarding the content should be directed to the author of this document.