



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:

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- (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>

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