



LIN 23/024

Australian Citizenship (Permanent Resident) Amendment Determination (LIN 23/024) 2023

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 31 May 2023

The Hon. Andrew Giles MP

Minister for Immigration, Citizenship and Multicultural Affairs

1 Name

This instrument is the *Australian Citizenship (Permanent Resident) Amendment Determination (LIN 23/024) 2023*.

2 Commencement

This instrument commences on **1 July 2023**.

3 Amendment

Schedule 1 amends *Australian Citizenship (Permanent Resident) Determination (LIN 22/103) 2022*.

Schedule 1 Amendment

(s.3)

[1] Section 3, definition of *protected SCV holder*

omit

[2] Sections 4 and 5

substitute

4 Persons who hold a special category visa

- (1) For subsection 5(2) of the Act, this section applies to a person who:
 - (a) is a New Zealand citizen; and
 - (b) holds a special category visa; or
 - (c) both:
 - (i) held a special category visa on or after 1 July 2023; and
 - (ii) holds a permanent visa which was granted to the person on or after 1 July 2023.
- (2) The person is taken to have become a permanent resident on 1 July 2022 if the person was granted a special category visa before 1 July 2022.
- (3) The person is taken to have become a permanent resident on the day between 1 July 2022 and 30 June 2023 when the person was granted a special category visa for the first time.
- (4) The person is a permanent resident if the person is granted a special category visa on or after 1 July 2023.
- (5) However, this section 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.

5 Persons who have held a special category visa

- (1) For subsection 5(2) of the Act, this section applies to a person who:
 - (a) is a New Zealand citizen; and
 - (b) is outside of Australia but not because the person was removed or deported from Australia under the *Migration Act 1958*; and
 - (c) 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.
- (2) The person is taken to have become a permanent resident on 1 July 2022 if the person was granted a special category visa before 1 July 2022.
- (3) The person is taken to have become a permanent resident on the day the person was granted a special category visa for the first time if the person was granted a special category visa between 1 July 2022 and 30 June 2023.

- (4) The person is a permanent resident if subsection (1) applies to the person on or after 1 July 2023.
 - (5) However, this section 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) A reference in this section to a person who has been removed or deported from Australia under the *Migration Act 1958* does not include a person covered by subregulation 5.15A(3) of the *Migration Regulations 1994*.
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EXPLANATORY STATEMENT

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

Australian Citizenship Act 2007

Australian Citizenship (Permanent Resident) Amendment Determination (LIN 23/024) 2023

- 1 The instrument, Departmental reference LIN 23/024, is made under subsection 5(2) of the *Australian Citizenship Act 2007* (the Act).
- 2 The instrument amends *Australian Citizenship (Permanent Resident) Determination (LIN 22/103) 2022* (LIN 22/103) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection 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 July 2023, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The purpose of the instrument is to determine New Zealand citizens who hold or have held a special category visa (SCV) and have satisfied specific requirements to be permanent residents for the purposes of the Act. **The instrument removes the requirement for an SCV holder to also be a 'protected SCV holder' within the meaning of the *Social Security Act 1991*.**
- 5 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 the time.
- 6 Subsection 5(2) of the Act provides that the Minister may, by legislative instrument, determine that:
 - persons who hold an SCV or a special purpose visa; or
 - persons who have held an SCV; 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.
- 7 Most applicants for citizenship by conferral (with certain exceptions) must satisfy the general residence requirement set out in section 22 of the Act, which includes a requirement (at paragraph 22(1)(c)) for the person to have been present in Australia as a permanent resident for the period of 12 months immediately before the day the person made the application.
- 8 As an SCV is a temporary visa, a New Zealand citizen who holds an SCV will only be able to satisfy this requirement if they are determined to be a permanent resident by an instrument made under subsection 5(2) of the Act, enabling the person to meet the general 12 month residence requirement

under paragraph 22(1)(c) of the Act. The purpose of this measure is to provide a pathway to Australian citizenship for New Zealand citizens who hold an SCV.

Consultation

- 9 The Australian Government consulted with the New Zealand Government at the ministerial and official level and with a peak community group representing New Zealand citizens in Australia on the issue of Australian citizenship pathway for New Zealand citizens, but not specifically in relation to the proposed solution.
- 10 The Office of Impact Analysis was consulted and considered that the instrument dealt with matters of a minor nature and therefore an Impact Analysis is not required. The OBPR reference number is OBPR22-03310.

Details of the instrument

- 11 Section 1 sets out the name of the instrument.
- 12 Section 2 provides for commencement of the instrument on **1 July 2023**.
- 13 Section 3 provides that Schedule 1 **amends LIN 22/103**.
- 14 Item 1 of Schedule 1 repeals the definition of protected SCV holder, reflecting that the permanent resident status of an SCV holder will no longer be tied to whether or not the SCV holder is a 'protected SCV holder' within the meaning of the *Social Security Act 1991*.
- 15 Item 2 of Schedule 1 substitutes section 4 of LIN 22/103.
 - Amended subsection 4(1) provides that subsection 5(2) of the Act applies to **a New Zealand citizen who currently holds an SCV**, or has held an SCV on or after 1 July 2023 and holds a permanent visa which was granted to the person on or after 1 July 2023. The intention of paragraph 4(1)(c) is to ensure that SCV holders who are granted permanent visas after 1 July 2023 are not disadvantaged in relation to the backdating of their permanent residence.
 - Subsection 4(2) provides that a person who satisfies subsection 4(1) is taken to have become a permanent resident on 1 July 2022 if their SCV was granted before 1 July 2022. This will backdate permanent resident status by 1 year for those SCV holders who were granted an SCV before 1 July 2022.
 - Subsection 4(3) provides that a person who satisfies subsection 4(1) is taken to have become a permanent resident on the day the person was first granted an SCV, if the grant was between 1 July 2022 and 30 June 2023. This will backdate permanent resident status by up to 1 year for those SCV holders who were first granted an SCV between these dates.
 - As subsections 4(2) and 4(3) will retrospectively determine that certain SCV holders are permanent residents, they will also have the effect that certain children born in Australia during the relevant period to a parent or parents who hold SCVs will be taken to have become Australian citizens at birth in accordance with paragraph 12(1)(a) of the *Australian Citizenship Act 2007*.

- Subsection 4(4) provides that a person is a permanent resident if the person is granted an SCV on or after 1 July 2023. This means that a person who is granted an SCV for the first time on or after 1 July 2023 will immediately be determined to be a permanent resident for the purposes of the Act.
- Subsection 4(5) provides that section 4 does not apply to a person who is in Australia as a diplomatic or consular representative of New Zealand or is the spouse or dependent child of a diplomatic or consular representative of New Zealand.
- The purpose of this amendment is to extend permanent resident status to all New Zealand citizens who hold an SCV, and to backdate permanent resident status for existing SCV holders.

16 Item 2 of Schedule 1 also substitutes section 5 of LIN 22/103.

- Subsection 5(1) provides that subsection 5(2) of the Act applies to **a New Zealand citizen who is currently outside of Australia and immediately before leaving Australia was the holder of an SCV** or a special purpose visa granted to the person on the basis of the person's status as an airline crew member or an airline positioning crew member. However, section 5 does not apply to a New Zealand citizen who is outside of Australia because they were removed or deported from Australia under the *Migration Act 1958* (Migration Act).
- Subsections 5(2) and 5(3) provide that a person who satisfies subsection 5(1) is taken to have become a permanent resident on 1 July 2022 if the person was granted an SCV before 1 July 2022, or on the day of their SCV grant if the person was first granted an SCV between 1 July 2022 and 30 June 2023. This will backdate permanent resident status for New Zealand citizens to whom subsections 4(2) or 4(3) would otherwise apply, but who are outside Australia at the time the instrument commences. It will also ensure that New Zealand citizens to whom subsections 4(2) or 4(3) apply will retain permanent resident status if they travel outside of Australia after 1 July 2023.
- Subsection 5(4) provides that a person is a permanent resident if subsection 5(1) applies to them on or after 1 July 2023. **This effectively means that New Zealand citizens to whom subsection 4(4) applies will retain their permanent resident status if they travel outside of Australia.**
- Subsection 5(5) provides that section 5 does not apply to a person who, when the person was last in Australia, was in Australia as a diplomatic or consular representative of New Zealand or was the spouse or dependent child of a diplomatic or consular representative of New Zealand.
- Subsection 5(6) provides that a reference in section 5 to a person who has been removed or deported from Australia under the Migration Act does not include those persons covered by subregulation 5.15A(3) of the *Migration Regulations 1994* (Migration Regulations). Paragraph 32(2)(c) of the Migration Act provides that a criterion for grant of an SCV is that the Minister is satisfied the applicant is a person of a class of persons declared by the regulations to be persons for whom a visa of another class would be inappropriate. Subregulation 5.15A(1) of the Migration Regulations provides that the class of persons includes a person who holds and has presented to an officer a New Zealand passport that is in force; is not a health concern non-citizen (within the meaning of the Migration Act); and is covered by subregulations 5.15A(2) or (3). Relevantly, subregulation 5.15A(3) covers a person if the Minister has cancelled a visa held

by the person under subsection 501(3A) of the Migration Act; the person has made representations to the Minister in accordance with subsection 501CA(3) of the Migration Act; the Minister has revoked the decision to cancel the visa under subsection 501CA(4) of the Migration Act; and no new grounds have since arisen for the person to fall within the definition of behaviour concern non-citizen (within the meaning of the Migration Act) other than the ground of the person's removal or deportation from Australia because of the Minister's decision to cancel the person's visa. The intention of subsection 5(6) is to ensure that those persons who have been removed from Australia as a result of a mandatory cancellation decision which was subsequently revoked should not be considered to have been removed or deported from Australia for the purpose of paragraph 5(1)(b) of the instrument.

- The purpose of this amendment to section 5 is to extend permanent resident status to all New Zealand citizens outside Australia who held an SCV immediately before last leaving Australia, as well as certain special purpose visa holders granted to airline crew members and airline positioning crew members, provided that the person was not removed or deported from Australia. It will backdate permanent resident status for former SCV holders who were granted their first SCV prior to 1 July 2023, although most affected persons will still be required to satisfy the general residence requirement under section 22 of the Act if they wish to apply for citizenship by conferral.
- An SCV is a visa that allows the visa holder to remain in but not re-enter Australia, which means that it ceases when the holder leaves Australia in accordance with subsection 82(8) of the Migration Act. The amendments to section 5 will ensure that a New Zealand citizen who holds an SCV and who travels outside Australia will not be disadvantaged in relation to their permanent resident status by reason only of the cessation of the SCV the person last held, except in circumstances in which the person has been removed or deported from Australia.

Parliamentary scrutiny etc.

- 17 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*.
- 18 The instrument was made by the Minister for Immigration, Citizenship and Multicultural Affairs, in accordance with the subsection 5(2) of the Act.



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>

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.