

EXPLANATORY STATEMENT

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

Australian Citizenship Act 2007

Australian Citizenship (special residence requirement) Instrument (LIN 21/069) 2021

- 1 The instrument, Departmental reference LIN 21/069, is made under section 22C of the *Australian Citizenship Act 2007* (the Act).
- 2 The instrument repeals *Australian Citizenship Act 2007 - Specification under section 22C - Special Residence Requirement - June 2013 (IMMI 13/056)* (F2013L01123) (IMMI 13/056) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. 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 the day after registration, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The purpose of the instrument is to specify: activities for subparagraph 22A(1)(a)(i) of the Act, organisations for paragraph 22A(1)(b) of the Act, and kinds of work for paragraph 22B(1)(a) of the Act. A person applying for Australian citizenship by conferral (the applicant) must satisfy the eligibility criteria under section 21 of the Act, including a residence requirement. The residence requirement can be satisfied under either the general residence requirement (see section 22), the special residence requirement (see sections 22A and 22B) or the defence service requirement (see section 23).
- 5 To meet the special residence requirement in section 22A of the Act an applicant must, amongst other requirements, seek to engage in a specified activity of benefit to Australia, and are required to become an Australian citizen in order to do so (see subparagraphs 22A(1)(a)(i), (ii) and (iii)). The head of, or senior member of a specified organisation must give the Minister written notice stating that the applicant has a reasonable prospect of being engaged in that activity. Subsections 22C(1) and (2) of the Act enable the Minister to specify the activities and organisations in a legislative instrument.
- 6 To meet the special residence requirement in section 22B of the Act the applicant must, amongst other requirements, be engaged in a specified kind of work. The applicant must be engaged in that work at the time of application and must be required to regularly travel outside Australia because of that work. Subsection 22C(3) of the Act enables the Minister to specify the kind of work in a legislative instrument.
- 7 The instrument is made under subsections 22C(1), (2) and (3) of the Act to specify activities, organisations and kinds of work. The instrument broadens the special residence requirement from IMMI 13/056 by specifying additional activities, organisations and kinds of work. In particular, the instrument:
 - adds participation in the Commonwealth Games as a specified activity for section 22A of the Act;

- adds Commonwealth Games Australia as a specified organisation for section 22A of the Act; and
- updates the specified kinds of work for section 22B of the Act, by specifying additional kinds of work done by a primary holder of a relevant talent visa, related to the area of internationally recognised record of outstanding and exceptional achievement for which the visa was granted. Specified work now includes the arts (expanded from writing, visual or performing arts in IMMI 13/056), academia and research, a profession and sport. Relevant talent visa is defined in section 3 of the instrument.

8 The instrument also updates and clarifies the drafting of IMMI 13/056. The schedules have been removed for simpler presentation of information. Definitions are added to the instrument to clarify the terms used to describe the activities and kinds of work that would meet special residence requirements. This includes ‘participation in an Australian team’, ‘scientist’ and ‘relevant talent visa.’

Consultation

- 9 Consultation on the instrument external to the Department did not occur. This is because the change is minor in nature. The instruments broadens the scope of the activities and work for the purpose of satisfying the special residence requirement.
- 10 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OBPR reference number is 44593.

Details of the instrument

- 11 Details of the instrument are set out in **Attachment A**.

Parliamentary scrutiny etc.

- 12 The instrument is subject to disallowance under section 42 of the Legislation Act. A Statement of Compatibility with Human Rights has been prepared in relation to the instrument, and provides that the instrument does not engage any of the applicable human rights or freedoms. The Statement is included at **Attachment B** to this explanatory statement.
- 13 The instrument was made by Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, in accordance with section 22C of the Act.

Details of the *Australian Citizenship (special residence requirement) Instrument (LIN 21/069) 2021*

Section 1 Name

This section provides that the name of the instrument is the *Australian Citizenship (special residence requirement) Instrument (LIN 21/069) 2021*.

Section 2 Commencement

This section provides that the instrument commences on the day after registration on the Federal Register of Legislation.

Section 3 Definitions

Under this section:

- ***participation in an Australian team*** means participation by a person who is an athlete in an Australian sports team. This definition is intended to capture athletes and players who compete in the specified Australian sports team. It does not capture ancillary staff, such as coaches or trainers.
- ***scientist*** means someone with an expert knowledge of science, especially someone professionally qualified in one or more of the branches of science. Note 1 clarifies the branches of science (natural science, social science and formal science) captured by the definition.
- ***S&P/ASX All Australia 200 listed company*** means one of the 200 Australian Securities Exchange listed companies in the S&P/ASX 200 share market index. Note 2 states that the list of companies can be found at <https://www.spglobal.com/spdji/en/indices/equity/sp-asx-200/#data>. As the index is periodically rebalanced, the listed companies may change from time to time.
- ***relevant talent visa*** means one of the following visas, excluding a visa that was granted to a person who received an invitation from the Department to apply:
 - (a) a Distinguished Talent (Migrant) (Class AL) visa, within the meaning given by the *Migration Regulations 1994* (Migration Regulations), in respect of which an application was made before 14 November 2020;
 - (b) a Distinguished Talent (Residence) (Class BX) visa, within the meaning given by the Migration Regulations, in respect of which an application was made before 27 February 2021; or
 - (c) a Global Talent (Class BX) visa, within the meaning given by the Migration Regulations, in respect of which an application was made on or after 27 February 2021.

This definition sets parameters for the primary visa holders who do a kind of work specified in subsection 6(3) and may be eligible to meet the special residence requirement for Australian

citizenship. In accordance with the definition, a person granted a visa via the ‘Distinguished Talent pathway’¹ may be eligible to meet the special residence requirement.

Section 4 Repeal

Australian Citizenship Act 2007 - Specification under section 22C - Special Residence Requirement - June 2013 (IMMI 13/056) (F2013L01123), signed on 29 May 2013, is repealed under this section. This is because it is being replaced by operative provisions of this instrument.

Section 5 Specified activities and organisations

Paragraph 5(a) sets out, for subparagraph 22A(1)(a)(i) of the Act, that the activities mentioned in an item in the table are specified. Amongst other criteria, the applicant’s engagement in that activity would be of benefit to Australia and the applicant needs to be an Australian citizen in order to engage in that activity (see subparagraph 22(1)(a)(ii)). For example, this means participation in the Australian team in the Commonwealth Games, including qualifying events, is a specified activity for subparagraph 22A(1)(a)(i) of the Act.

Paragraph 5(b) sets out, for paragraph 22A(1)(b) of the Act, that the organisations mentioned in an item in the table are specified for the activity mentioned for the item. This makes clear the link between the organisation and activity, as the senior representative of an organisation who writes to the Minister about the specified activity must be relevant to that organisation. Expanding on the example above, the head of Commonwealth Games Australia, specified as in organisation in item 5, would write to the Minister stating an applicant would have a reasonable prospect of engaging in the Commonwealth Games.

Section 6 Specified kinds of work

Section 6 sets out for paragraph 22B(1)(a) of the Act the specified kinds of work an applicant would have to engage in to satisfy the special residence requirement. Under subparagraphs 22B(1)(b)(i) and (ii) of the Act, in order to meet the special residence requirement, the kind of work must be engaged in by the applicant for at least 2 out of the 4 years in Australia and required the applicant to regularly travel outside Australia during that 4 year period.

Paragraph 6(2)(a) specifies work that is done on duty by a crew member of a ship or aircraft as a kind of work. This captures work done by members of the crew who are on duty working on the ship or aircraft, and excludes work done by supporting staff that do not form part of the crew.

Paragraph 6(2)(b) specifies work that is done on duty on a resources installation or a sea installation as a kind of work. For clarity, the work needs to be done by an applicant who is physically on the premises of the resources installation or sea installation.

Subparagraphs 6(2)(c)(i) and (ii) specify work done in the course of duty by an chief executive officer or executive manager employed in an S&P/ASX All Australian 200 listed company (listed company) as a kind of work. The list of companies in the S&P/ASX All Australian 200 index can be found with reference to

¹ A visa may be granted, or may have been granted, via the Distinguished Talent pathway to a person who did not receive an invitation from the Department to apply for a Distinguished Talent or Global Talent visa. If a person is, or was, granted a Distinguished Talent or Global Talent visa after receiving an invitation to apply, their visa is granted, or was granted via the Global Talent pathway. Candidates under the Global Talent pathway must submit an expression of interest to the Department to be considered for an invitation. For this instrument, a Distinguished Talent visa granted before 1 July 2019 was also granted via the Distinguished Talent pathway.

<https://www.spglobal.com/spdji/en/indices/equity/sp-asx-200/#data>. The listed companies change over time as the index is periodically rebalanced.

Paragraph 6(2)(d) specifies research and development that is of benefit to Australia done by a scientist who has a Doctor of Philosophy in their field of speciality and is currently employed by an Australian university as a kind of work. An applicant must have the qualifications and employment requirements mentioned in this paragraph, in relation to the specified kind of work. Scientists can engage in research and development in a field in any of the branch of science mentioned in note 1 in section 3 for the purposes of meeting special residence requirements under paragraphs 6(2)(d) and (e).

Subparagraphs 6(2)(e)(i) and (ii) specify work done in the course of duty as a scientist employed by the Commonwealth Scientific and Industrial Research Organisation or medical research institute that is a member of the Association of Australian Medical Research Institutes.

Subparagraphs 6(2)(f)(i) and (ii) specify work done in the course of duty as a medical specialist who has an internationally recognised record of exceptional and outstanding achievement in their field of speciality, is a fellow of an organisation mentioned in an item in the table in clause 1 in Schedule 1 to the *Health Insurance Regulations 2018* (Health Insurance Regulations) and holds a qualification relevant to the organisation. This instrument removes reference to the repealed *Health Insurance Regulations 1975* in IMMI 13/056 and refers to the provision of the Health Insurance Regulations currently in force.

Subsection 6(3) specifies work that is academia and research, the arts, a profession or a sport, done by a person who is, or has been, a primary holder of a relevant talent visa. That work must have been done by the applicant in the same area that the relevant talent visa was granted, based on an internationally recognised record of exceptional and outstanding achievement. For example, if a person was granted a Global Talent visa on the basis of their internationally recognised record of exceptional and outstanding achievement in basketball, they will only meet the special residence requirement if they demonstrate for their Australian citizenship application that they are working in basketball.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Citizenship (special residence requirement) Instrument (LIN21/069) 2021

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The purpose of the instrument is to specify: activities for subparagraph 22A(1)(a)(i) of the Act, organisations for paragraph 22A(1)(b) of the Act, and kinds of work for paragraph 22B(1)(a) of the *Australian Citizenship Act 2007* (the Citizenship Act). A person applying for Australian citizenship by conferral (the applicant) must satisfy the eligibility criteria under section 21 of the Citizenship Act, including a residence requirement; either the general residence requirement, the special residence requirement or the defence service requirement.

To meet the special residence requirement in section 22A of the Citizenship Act an applicant must, amongst other requirements, seek to engage in a specified activity of benefit to Australia and are required to become an Australian citizen in order to do so (see subparagraphs 22A(1)(a)(i), (ii) and (iii)). Additionally, the head of or senior member of a specified organisation must give the Minister written notice stating that the applicant has a reasonable prospect of being engaged in that specified activity. Subsections 22C(1) and (2) of the Citizenship Act enable the Minister to specify the activities and organisations in a legislative instrument.

To meet the special residence requirement in section 22B of the Citizenship Act the applicant must, amongst other requirements, be engaged in a specified kind of work. The applicant must be engaged in that work at the time of application and must be required to regularly travel outside Australia because of that work. Subsection 22C(3) of the Citizenship Act enables the Minister to specify the kind of work in a legislative instrument.

The instrument is made under subsections 22C(1), (2) and (3) of the Citizenship Act to specify these matters and repeals IMMI 13/056. The instrument also broadens the special residence requirement by specifying additional activities, organisations and kinds of work. In particular, the instrument:

- adds participation in the Commonwealth Games as a specified activity for section 22A of the Citizenship Act;
- adds Commonwealth Games Australia as a specified organisation for section 22A of the Citizenship Act; and
- updates the specified kinds of work for section 22B of the Citizenship Act, by specifying additional kinds of work done by a primary holder of a relevant talent visa, related to the area of internationally recognised record of outstanding and exceptional achievement for which the visa was granted. These areas now include the arts more generally (expanding it beyond writing, visual or performing arts in IMMI 13/056), as well as academia and research, a profession and sport.

These changes mean other Distinguished Talent visa holders or Global talent visa holders granted under the Distinguished Talent pathway, who may also regularly travel outside of Australia due to their profile and status in their fields, and whose work is relevant to the achievements for which the

visa was originally granted, will be eligible for consideration under the special residence requirements in section 22B of the Citizenship Act.

The changes will also mean that athletes seeking to represent Australia in the Commonwealth Games and who have a letter of support from Commonwealth Games Australia will have access to the special residence requirements in section 22A of the Citizenship Act.

The instrument also updates and clarifies the drafting of IMMI 13/056. The schedules have been removed for simpler presentation of information. Additionally, new definitions are inserted in the instrument to clarify the terms used to describe the activities and kinds of work that would meet special residence requirements. This includes defining ‘participation in an Australian team’, ‘scientist’ and ‘relevant talent visa’.

Human rights implications

The legislative instrument has been assessed against the seven core international human rights treaties and does not engage any of the applicable rights or freedoms.

The instrument broadens the category of people who are eligible for consideration under the ‘special residence requirement’ as specified in sections 22A and 22B of the Citizenship Act.

The changes recognise the unique work and travel demands of people who are recognised as leaders in their field.

The changes do not limit or remove any other rights or entitlements provided under the Citizenship Act.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Alex Hawke MP