

45 When a person satisfies the *Australian residency test*

- (1) A person satisfies the *Australian residency test* on a day if, on that day, the person:
- (a) is an Australian resident; or
 - (b) is a special category visa holder residing in Australia; or
 - (c) satisfies subsection (2).

When a person satisfies this subsection

- (2) A person satisfies this subsection if:
- (a) the person is the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the Social Security Act; and
 - (b) either:
 - (i) the person is in Australia; or
 - (ii) the person is temporarily absent from Australia for not more than 6 weeks and the absence is an allowable absence in relation to special benefit within the meaning of Part 4.2 of that Act.

7 *Australian residence definitions*

- (1) In this Act, unless the contrary intention appears:

Australian resident has the meaning given by subsection (2).

former refugee means a person who was a refugee but does not include a person who ceased to be a refugee because his or her visa or entry permit (as the case may be) was cancelled.

holder, in relation to a visa, has the same meaning as in the *Migration Act 1958*.

new PRC (temporary) entry permit means an entry permit within class 437 of Division 2.6—Group 2.6 in Part 2 of Schedule 1 to the Migration (1993) Regulations as in force before 1 September 1994.

old PRC (temporary) entry permit means a PRC (temporary) entry permit within the meaning of the Migration (1989) Regulations as in force before 1 February 1993.

permanent visa, special category visa and *visa* have the same meaning as in the *Migration Act 1958*.

protected SCV holder has the meaning given by subsections (2A), (2B), (2C) and (2D).

qualifying Australian residence has the meaning given by subsection (5).

qualifying residence exemption has the meaning given in subsections (6) and (6AA).

- (2) An *Australian resident* is a person who:
- (a) resides in Australia; and

- (b) is one of the following:
 - (i) an Australian citizen;
 - (ii) the holder of a permanent visa;
 - (iii) a special category visa holder who is a protected SCV holder.

Note: For **holder** and **permanent visa** see subsection (1).

(2A) A person is a **protected SCV holder** if:

- (a) the person was in Australia on 26 February 2001, and was a special category visa holder on that day; or
- (b) the person had been in Australia for a period of, or for periods totalling, 12 months during the period of 2 years immediately before 26 February 2001, and returned to Australia after that day.

(2B) A person is a **protected SCV holder** if the person:

- (a) was residing in Australia on 26 February 2001; and
- (b) was temporarily absent from Australia on 26 February 2001; and
- (c) was a special category visa holder immediately before the beginning of the temporary absence; and
- (d) was receiving a social security payment on 26 February 2001; and
- (e) returned to Australia before the later of the following:
 - (i) the end of the period of 26 weeks beginning on 26 February 2001;
 - (ii) if the Secretary extended the person's portability period for the payment under section 1218C—the end of the extended period.