

#### **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.