

## **Resident Return Visas - change in policy position of former Australian permanent residents who have not held a permanent visa since 1 September 1994 - FAQs**

### Background

The Resident Return visa (RRV) is a visa for current or former Australian permanent residents and former Australian citizens. This visa allows clients to maintain or regain their status as an Australian permanent resident.

The eligibility requirements for an RRV include applications made by *former Australian permanent residents* whose last permanent visa was not cancelled.

There are some policy changes in relation to interpreting the rules for who can be considered to be a former Australian permanent resident, particularly in regard to applicants who have not been granted a permanent visa on or after 1 September 1994.

### Existing policy interpretation of the rules on who is considered a former Australian permanent resident

Note that the rules for clients who have been granted a permanent visa on or after 1 September 1994 or are a former Australian citizen have not changed. This means that if a person:

- was first granted a permanent visa on or after 1 September 1994, or
- became the holder of a Class BF transitional (permanent) visa on 1 September 1994 under the *Migration Reform (Transitional Provisions) Regulations*, or
- was an Australian citizen at any time (before renouncing or otherwise losing Australian citizenship)

the person meets the prerequisite legal requirements for the RRV. That is, they are an Australian permanent resident (if they have a permanent visa in effect), a former Australian permanent resident (if their most recent permanent visa has ceased) or a former Australian citizen (if they were an Australian citizen more recently than a permanent resident).

### Expansion of policy interpretation of the rules on who is considered a former Australian permanent resident

Policy interpretation of the rule of who can be considered to be a former Australian permanent resident have now expanded. The policy guidance for applicants who had not been granted a permanent visa on or after 1 September 1994 is that, they can be considered a former Australian permanent resident if they:

- can demonstrate that they had the right to remain in Australia indefinitely *prior to 1 September 1994* under the legislation in effect at the time, as long as their right to remain in Australia indefinitely was not cancelled under legislation in effect at the time.

This includes people defined as permanent residents, exempt non-citizens, permanent settlers etc prior to 1 September 1994.

**Please note that the information below applies only to clients who lost their permanent residence (or equivalent) before 1 September 1994.**

How are former Australian permanent residents who have not held a permanent visa since 1 September 1994 assessed for the purposes of a RRV?

The following should be taken into account in considering the circumstances of a former Australian permanent resident who has not held a permanent visa since 1 September 1994, for the purposes of an RRV:

- As the person has not held a permanent visa since 1 September 1994 they cannot meet the residence requirement as they have not have spent 2 of the last 5 years in Australia as an Australian permanent resident. As such, they must meet one of the other provisions.
- The person may be a member of the family unit (MOFU) of an RRV holder - if this is the case, subject to the person meeting other criteria, the person can be granted an RRV with a multiple travel facility validity of up to 12 months.
- If the person does not meet the residence requirement or the member of the family unit (MOFU) of an RRV holder requirement, the person will need to meet the substantial ties of benefit to Australia criteria (and under current legislation can only be granted an RRV with a maximum 12 month travel facility).

What if the former Australian permanent resident is applying for the RRV is overseas/offshore?

The only option for these applicants is to satisfy the substantial ties of benefit criteria and provide compelling reasons for any continuous absence of 5 years or more where they last departed Australia as a permanent resident or Australian citizen.

The reason this is the only option for a person who is overseas and has not held a permanent visa on or after 1 September 1994, is that the Migration Regulations require:

- that the person last left Australia as the holder of a permanent visa, an Australian permanent resident or and Australian citizen - as this person was last a permanent resident prior to 1 September 1994, s/he must have last left Australia before 1 September 1994. This means that these applicants will always have been absent from Australia for a continuous period of more than 5 years and therefore must provide compelling reasons for this absence.

**Note:** for clients in this pre-1 September 1994 cohort who *did not* last depart Australia as a permanent resident or Australian citizen (ie; those who last departed on a temporary or bridging visa) cannot meet the legal requirements for an offshore RRV application. This is because they could never have been a permanent resident or Australian citizen within the 10 years before an application made either today or in the future (the period since 1 September 1994 being now approximately 18 years ago).

What if the former Australian permanent resident is applying for an RRV in Australia/onshore?

To meet the Migration Regulations, these applicants must satisfy the substantial ties of benefit criteria and either:

- have been in Australia at least once every 5 years (even as a temporary resident or unlawful) since the date they were last granted a permanent visa (or equivalent), or
- have a compelling reason for any absence that was for a continuous period of more than 5 years since the date of grant of their most recent permanent visa (or equivalent). 'Most recent permanent visa' includes the grant of permission to enter and / or remain indefinitely given in visas, permits, documents and notations issued prior to 1 September 1994 (but, if issued after 1 September 1994, is limited only to permission given by way of a visa only).