



# LORD HOWE ISLAND BOARD

## PLAIN LANGUAGE GUIDE TO THE LORD HOWE ISLAND ACT

### INFORMATION SHEET 4

## Who Is A Lord Howe Islander?

The Lord Howe Island Act 1953 (the Act) defines a group of people as Lord Howe Islanders and gives them certain legal privileges. For example, Islanders have the first option to lease land on the Island and only Islanders may be elected as members of the Board that administers the affairs of the Island.

### How do you become a Lord Howe Islander under the Act?

Generally speaking, to be an Islander under the Act a person must have either -

- resided on the Island continuously for the previous 10 years (referred to below as a “10 year” Islander) **or**
- resided on the Island immediately before 1 January 1982 and held, or have been closely related to someone who held, a permissive occupancy before 22 April 1954 (referred to below as a “1981” Islander).

### What does “closely related” mean ?

Although not defined in the Act, closely related in this context means that the person must be the spouse or lineal descendant of the “pre 22 April 1954” permissive occupancy holder, or the spouse of such a lineal descendant. A lineal descendant of a person is their child, grandchild, great grandchild and so on.

### Can you be granted Islander status ?

In special circumstances and on the recommendation of the Board, the Minister has the power to make someone an Islander, including someone who has lost Islander status as mentioned below. A person wishing to obtain or reinstate Islander status on this basis would need to make a detailed submission to the Board, justifying their claim.

### What is meant by residing on the Island and what about absences from the Island ?

The Act defines what is meant by residing on the Island at a particular time. Broadly, it means that the Island is the person’s usual home, continually, and in good faith, at that time, with no other habitual residence.

There are 2 exceptions where absence from the Island will not affect residency on the Island. A person will be regarded as having continued to reside on the Island if the person is only absent from their usual home on the Island -

- to attend an educational institution off the Island; or
- to gain employment experience off the Island where the periods of absence for this purpose do not total more than 10 years.

These absences are referred to below as permitted absences.

**Can Islander status be lost?**

The answer depends on how Islander status was acquired under the Act. As noted above there are 2 ways that Islander status could have been acquired.

Yes, "10 year" Islanders can lose that status if they cease to reside on the Island for reasons other than the permitted absences referred to above.

In contrast, "1981" Islanders cannot lose their Islander status and do not have to continue to reside on the Island to retain it.

However, if the Islander holds a perpetual lease, ceasing to reside on the Island (because of a non-permitted absence) may trigger a requirement to transfer or sublease the perpetual lease in accordance with the Act.

This is because the Islander will no longer be able to comply with the on-going residential requirement applying to perpetual leases.

The Board may suspend this residential requirement but only if the Islander can demonstrate that he or she is prevented from living on the Island because of family illness or other adverse circumstances.

**Other legal fact sheets forming part of this series include the following titles -**

- Sheet 1 – History of the Lord Howe Island Act 1953
- Sheet 2 – NSW & Commonwealth Laws and Lord Howe Island
- Sheet 3 – Holding, Transferring & Inheriting Land on Lord Howe Island
- Sheet 5 - Perpetual leases on Lord Howe Island
- Sheet 6 - Special leases on Lord Howe Island
- Sheet 7 - Permissive occupancies on Lord Howe Island