

CHANGES TO EMPLOYER NOMINATED PERMANENT RESIDENCE

WEBINAR - 6 November 2023

3PM AEDT

AJURIA

LAWYERS

Welcome to Country

We acknowledge the Gadigal people of the Eora Nation, the traditional custodians of the land on which we work, and pay our respects to their elders past, present and emerging

What we will cover today

- 01 What is changing?
- 02 Pros and Cons of Permanent Residence
- 03 What is not changing?
- 04 What is the new landscape?
- 05 What to consider?
- 06 Costs
- 07 Questions

What is changing?

From **25 November 2023**, employers will be able to nominate a TSS visa holder for permanent residence under the Employer Nomination Scheme (subclass 186) Temporary Residence Transition Stream (TRT) if the employee:

New Rule

1. Holds a TSS visa approved in any stream (Short-term two-year, Medium-term four-year or Labour Agreement)
2. Has held that visa for at least **two years in the three years** before the nomination with the same employer
3. Is sponsored and working in an occupation that is listed in ANZSCO that is the same as their TSS visa
4. Is under 45 years, or if they are 45 and over, earns more than the Fair Work High-Income Threshold (currently \$167,500)
5. TSS visa holders in two-year occupations will be able to renew onshore

Old Rules

1. Only those on the Medium to Long Term list could apply for PR under TRT
2. Had to wait 3 years for PR under TRT
3. People 45 years and over had to wait 3 years to apply for PR
4. Those on 2 year list occupations had to leave Australia for their third visa unless COVID concession applied

Pros and Cons of Permanent Residency

Pros for the employer

- No sponsorship obligations
- Flexibility with changes of roles
- Employees generally want an employer that supports PR
- Costs (except for training levy) do not need to be covered by employer
- Can have a claw-back arrangement for costs if employee leaves (except for levy)

Cons for the employer

- Employee has greater employment flexibility as not 'tied' to employer but in reality TSS is generally easy to transfer
- FBT liability

Pros for the employee

- Not tied to an employer - can change roles/employers
- Pathway to Citizenship (when eligible)
- Medicare - usually from lodgement but note there is a Medicare Levy
- Public school/University fees
- Child Care Rebate
- No limit on property purchase and lower Stamp Duty
- Longer-term certainty specially if moving overseas for extended periods

Cons for the employee

- Costs for the employee can be high
- Possible tax implications

What is not changing?

Those over the age of 45 and not earning the FWHIT will not be eligible for employer nominated PR unless there is a labour agreement approved otherwise.

TSS Visas

Occupations not currently on the TSS short-term or medium-term lists will still need a labour agreement before the position can be sponsored for a TSS visa. If LA has been approved for an occupation not in ANZSCO then it will require the LA to approve that occupation to have a pathway to PR.

The Temporary Skilled Migration Income Threshold (TSMIT) remains at \$70,000 ex super.

Regional visas (Subclass 494)

No changes announced for the regional program - those on 494 visas will still need to complete 3 years in a regional postcode on that visa to qualify for PR.

Direct Entry stream of the Employer Nomination Scheme (subclass 186)

Those who want to apply for PR without waiting 2 years on a TSS visa will still need a skills assessment and have their occupation on the list for this pathway.

So what is the new landscape?

General Skilled Migration (Independent pathways) - reduction in numbers - meaning less State control, more employer control

Regional - how will they attract people?

COVID visa applications (subclass 408) will end on 1 February 2024 - those who held these may be able to go for PR

COVID concessions - have largely ended across different visa programs (e.g. student visas and WHV restrictions reinstated)

Market rate - TSS minimum salary 70k

Unions - need more consideration of potential union involvement and other industrial relations issues

What to consider

- Reviewing visa population and preparing communications to employees and ensuring sponsorship policy is clear
- Allowing all occupations in your TSS visa worker population to apply for Permanent Residence
- Aligning or accounting for any differences between Direct Entry and Temporary Residence Transition streams (if Direct Entry was offered in your policy)
- Planning payment of levy costs across your TSS visa holder workforce (especially if many are going to be eligible at the same time)
- How long you want to sponsor for TSS visas? Also bearing in mind it is not clear if there will be flexibility on the 24 months required for TRT

Government Fees

	What the employer must pay and cannot pass onto the employee	What the employee can pay
Nomination Fee		\$540
Training Levy	Turnover under 10M - \$3,000 Turnover 10M and over - \$5,000	
Primary Application		\$4,640
Secondary Applicant 18+		\$2,320 pp
Secondary Applicant under 18		\$1,160pp

Typical costs are in AUD excluding GST and are subject to change. They are meant as a guide only and each case may vary.

Questions?

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