

Mobility: Immigration alert

March 2022



Australia

Pathway to permanent residence restored for certain skilled temporary migrants

Executive summary

EY welcomes the legislation creating additional pathways to permanent residence that will be available to many temporary skilled migrants from 1 July 2022.

These pathways have been created in recognition of the contribution of temporary skilled migrants to Australia during the pandemic and to retain much needed skills in Australia beyond the pandemic.

The 1 July 2022 changes will restore access to a subclass 186 visa under the Temporary Residence Transition Stream for certain temporary workers whose occupation is on the Short-term Skilled Occupation List (STSOL).

This pathway was closed following the reshaping of Australia's employer sponsored visa program in 2017 with the introduction of various occupation lists, principally:

- ▶ STSOL with no access to permanent residence and a restricted number of short-term Temporary Skill Shortage (TSS) visas
- ▶ Medium and Long-term Strategic Skills List (MLTSSL) with permanent residence pathway and an unlimited number of TSS visas.

However, EY considers that a more enduring solution to Australia's skill shortage is required. We will continue to lobby government to reimplement a single skilled occupation list, which will secure a pathway to permanent residence for all sponsored skilled temporary migrants.

Transitional subclass 457 visa provisions extended

The transitional provisions, which apply to employees who on 18 April 2017 held, or had applied for a subclass 457 visa that was granted, were to end on 18 March 2022. The provisions are now extended indefinitely and provide the following benefits:

- ▶ shorter qualifying work period, two rather than three years in the position in Australia
- ▶ higher age threshold of under 50 rather than 45.

New pandemic provisions for other temporary migrants

From 1 July 2022, employers will be able to nominate holders of non-transitional subclass 457 visas and TSS visas whose occupation is on the STSOL for permanent residence if they:

- ▶ were in Australia for at least 12 months between 1 February 2020 and 14 December 2021
- ▶ are employed by an Australian business, and
- ▶ meet the standard three-year qualifying work period in addition to other standard requirements.

The requirement to have been in Australia during the pandemic is general and does not specify:

- ▶ the visa held
- ▶ the activity undertaken such as skilled work.

At present as there is no date by which an application must be lodged under the new pandemic provisions.

Pathways to subclass 186 employer nominated permanent residence
Comparison of key eligibility provisions
Common requirements such as English language, health and character are not addressed in this table

Stream	Temporary Residence Transition Stream				Direct Entry Stream
Provisions	Transitional subclass 457 visa provisions extended	New pandemic provisions from 1 July 2022 Pathway for STSOL occupations		Standard provisions	Standard provisions
Cohort	<i>Transitional subclass 457 visa cohort</i>	<i>Non-transitional pandemic subclass 457 visa cohort</i>	<i>Pandemic TSS short-term stream visa cohort</i>	<i>TSS medium-term stream visa cohort</i>	<i>Open to any visa holder and candidates overseas</i>
Date pathway open	Now	1 July 2022	1 July 2022	Now	Now
Critical dates	On 18 April 2017, held or had applied for a subclass 457 visa that was granted	<ul style="list-style-type: none"> ▶ After 18 April 2017 applied for a subclass 457 visa that was granted ▶ Between 1 February 2020 and 14 December 2021, in Australia for at least 12 months 	Between 1 February 2020 and 14 December 2021, in Australia for at least 12 months	None	None
Occupation	Any	Any	Any	MLTSSL	MLTSSL
Qualifying work period*	Two of the last three years	Three of the last four years	Three of the last four years	Three of the last four years	<i>Alternative criteria:</i> <ul style="list-style-type: none"> ▶ <i>Favourable skills assessment</i> ▶ <i>Three years' experience in occupation</i>
Age	Less than 50**	Less than 45**	Less than 45**	Less than 45**	Less than 45

*Full-time work in Australia in position on primary subclass 457 or TSS visa. Some concessions if stood down, worked part-time, or took unpaid leave due to pandemic.

** Unless high salary exemption: employed in the position on a TSS or subclass 457 visa for past 3 years and earned at least the fair work high income threshold for each year with some concessions if earnings disrupted due to pandemic.

Additional exemptions to various criteria apply to certain New Zealanders and their immediate family as well as to certain academics, scientists, and regional medical practitioners.

TSS short-term visa holders and further temporary stay

The duration of a TSS short-term visa is limited to two years and the number of TSS visas an individual may be granted in Australia is restricted. There is therefore a cohort of TSS short-term stream visa holders who meet the pandemic provisions and the qualifying work period whose TSS visa will cease before 1 July 2022. In many cases, these individuals are restricted from applying for a further TSS short-term visa while they remain in Australia. EY understood that the subclass 408 visa was proposed as an interim work visa. However, contrary to expectations the new legislation does not establish a mechanism for a subclass 408 visa holder to apply for permanent residence under the Temporary Residence Transition Stream.

In addition, another cohort of TSS short-term visa holders who meet the pandemic provisions will need a further TSS short-term visa to meet the qualifying work period with the same employer.

Further legislative amendments are expected and EY will make representations that this should be finalised as soon as possible to provide assurance to employees and employers.

Next steps

Employers should now:

- ▶ review their temporary migrant workforce to identify those with occupations on the STSOL
- ▶ be prepared to respond to inquiries and requests for support for permanent residence from these cohorts
- ▶ review and adapt mobility policies as necessary
- ▶ assess these individuals' eligibility for permanent residence
- ▶ consider preparing permanent residence applications in preparation for 1 July 2022 lodgement
- ▶ ensure employees are aware of the Australian tax implications of applying for permanent residence
- ▶ seek advice where a new TSS short-term visa is required
- ▶ continue to consider a MLTSSL occupation as the preference for first TSS visa applications
- ▶ be aware that Government immigration application charges are also likely to increase on 1 July 2022.

EY will continue to represent the interests of Australian business and keep you informed about developments in skilled migration. Contact your EY advisor to discuss any of the issues raised in this alert.

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EYG no. 002594-22Gbl

2101-3682263
ED None

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