



TSS 482 Visa: Addressing the new immigration challenges

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Background

- The Temporary Skill Shortage (TSS) - subclass 482 scheme replaced the 457 scheme on 18 March 2018.
- The presentation will focus on certain challenges that arise under the new scheme.
- The presentation contains a number of suggested solutions to scenarios arising within the TSS 482 context. Before relying on any solutions contained herein, it is essential to:
 - Assess an applicant's individual circumstances; and
 - Seek immigration and legal assistance from a registered agent or lawyer (as applicable), to determine an appropriate visa strategy.

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Background (Cont'd)

- The broad TSS 482 requirements are similar to the previous scheme, however there are significant changes in the areas of:
 - Application costs
 - The impending Skilling Australians Fund (%SAF+) levy
 - Labour Market Testing (%LMT+)
 - Fractional appointments
 - Visa grant period
 - Applying for subsequent temporary work visas

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Background (Cont'd)

- The changes will, in many cases, lead to:
 - Restricting the pool of overseas talent you can hire from
 - Increases in costs
 - Delays in preparing and processing applications
 - A need to review relocation policies, allowances and packages
 - Having to negotiate with candidates on matters relating to immigration
 - Candidates concerned about their ability to remain in Australia

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Question 1

The TSS 482 pathway involves strict requirements and is expensive. Are there alternative pathways?

Answer 1

- “ 408 research activity visa
 - Available to:
 - Research academic with record of achievement and the primary purpose of their visit is to observe or participate in an Australian research project; or
 - Overseas (current or recent) student whose primary purpose is to undertake research closely related to their overseas studies
 - Allows for secondary activities such as teaching if disclosed in the application
 - Allows for payment of a salary if disclosed in the application
 - Visa may be granted for up to 2 years (dependent on the duration of the research)
 - Further 408 visas might be possible (depending on duration of the existing/new research)
 - No LMT and application charge is \$285 per adult

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Question 1

The TSS 482 pathway involves strict requirements and is expensive. Are there alternative pathways?

Answer 1 (Cont'd)

- “ 1 year TSS 482 visa combined with a 186/187 DES permanent visa
- Will suit ongoing or long term (in excess of 3 years) academic appointments
 - Sponsor the candidate for a 1 year TSS 482 visa and arrange for the academic to apply for permanent residency during this term
 - SAF levy will be \$1,800 for the TSS 482 - rather than \$7,200 for a 4 year TSS 482 SAF
 - SAF levy of \$5,000 will also be payable for a 186/187 visa
 - However, the combined SAF levy for a 1 year TSS 482 and 186/187 will cost \$6,800 - rather than \$12,200 for a 4 year TSS 482 plus 186/187 visa

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Question 1

The TSS 482 pathway involves strict requirements and is expensive. Are there alternative pathways?

Answer 1 (Cont'd)

- “ 417/462 working holiday/work and holiday visa combined with a 186/187 DES
- Similar to the combined 1 year TSS 482 and 186/187 DES scenario .
however:
 - No SAF levy would be payable for the 417/462
 - It will be necessary to submit the 186/187 visa within 6 months from date of commencement of role
 - Permission to continue working beyond the 6 month period must be sought from the Department . permission should be granted under policy
 - Available to eligible passport holders who are less than 31 years of age
 - For a 417 applicant, they must hold a passport from one of the following countries <http://www.border.gov.au/Trav/Visa-1/417->
 - For a 462 applicant, they must hold a passport from one of the following countries <http://www.border.gov.au/Trav/Visa-1/462->
 - No LMT and application charge is \$440
 - No sponsorship obligations apply

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Question 1

The TSS 482 pathway involves strict requirements and is expensive. Are there alternative pathways?

Answer 1 (Cont'd)

- “ 485 post study work stream visa
 - Available to:
 - Candidate who has recently completed an Australian Bachelor, Masters or PhD degree after at least 2 years of study in Australia
 - Candidate must have applied for their first ever Australian student visa on or after 5 November 2011
 - Provides holder with unrestricted work rights
 - Visa will be in effect for the following periods:
 - 2 years . if candidate completed an Australian Bachelor or Masters by coursework
 - 3 years . if candidate completed an Australian Masters by research
 - 4 years . if candidate completed an Australian PhD
 - No LMT and application charge is \$1500
 - No sponsorship obligations apply

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Question 1

The TSS 482 pathway involves strict requirements and is expensive. Are there alternative pathways?

Answer 1 (Cont'd)

- “ Possible permanent residency avenues not requiring sponsorship/nomination by the University
- This requires an assessment of the candidate's personal circumstances
 - Candidate might be eligible for points tested skilled migration eg 189 or 190 or combined 489/887 visa
 - Candidate might be eligible for a spouse visa (820/801 or 309/100), if they are in a relationship with an Australian citizen or permanent resident or eligible New Zealand citizen
 - Candidate might need to secure a short term visa (eg a 1 year TSS 482 or 408) to allow for transition to commence role in Australia in the short term

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Question 2

There is a need for a candidate who is not LMT exempt to commence their role urgently. LMT has not been commenced for TSS 482 purposes. How can the candidate commence their role without delay?

Answer 2

- “ If the candidate can perform their duties while outside Australia, then they may commence their role while LMT is being undertaken
- “ If the candidate is required to commence work in Australia without delay, then consider a 400 Temporary Work Short Term Specialist visa at the outset. This will require the following:
 - Suspending/setting aside the employment agreement until LMT is undertaken
 - Issuing an invitation letter to the candidate for a short term highly skilled role
 - Candidate applies for the 400 visa and expedition is sought
 - Candidate is granted a 400 visa and commences the short term role in Australia
 - LMT is undertaken in the meantime
 - If after LMT the candidate remains the suitably qualified and experienced candidate, then renew/reinstate the offer of employment . once accepted, commence the TSS 482 process while the candidate holds a 400 visa

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Question 2

There is a need for a candidate who is not LMT exempt to commence their role urgently. LMT has not been commenced for TSS 482 purposes. How can the candidate commence their role without delay?

Answer 2 (Cont'd)

“ If the candidate is eligible for a 417/462 (working holiday scheme) visa, then:

- Candidate enters Australia with a 417/462 visa
- LMT is undertaken in the meantime
- If after LMT the candidate remains the suitably qualified and experienced candidate, then renew/reinstate the offer of employment . once accepted, commence the TSS 482 process within 6 months of candidate arriving in Australia and while they hold a 417/462 visa

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Question 3

A candidate has accepted a long term position in Australia and requires a TSS 482 visa. LMT is mandatory, but has not commenced. Are you legally entitled to suspend/set aside the performance of the contract of employment until LMT is completed?

Answer 3

- “ The contract of employment would have a condition (express or implied) that requires the candidate to secure an appropriate work visa
- “ If the only appropriate visa is the TSS 482, then the contract of employment cannot be performed, without the completion of LMT
- “ After LMT is completed and assuming the candidate remains the suitably qualified and experienced candidate, then the employment agreement can be reinstated/reissued and freshly executed and dated by the parties
- “ Care should be taken to examine whether the candidate is able to fulfil their role with another visa that does not require LMT (eg 408 research activity visa or 186/187 permanent residency visa, or a 189/190/489 skilled migration visa)

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Question 4

During the course of LMT, sponsors might receive applications from Australians who appear to be eligible for the nominated position. How should sponsors approach the question of whether there are any 'suitably qualified and experienced' Australian applicants for the advertised position?

Answer 4

- “ The Department must be satisfied that after having undertaken LMT, that there are no Australians who are suitably qualified and experienced and readily available to fill the position
- “ There can be many reasons why an Australian candidate may not meet this requirement. For example:
 - The candidate may not have the required level of qualifications, skills and experience to properly carry out all duties of the position
 - The candidate may have qualifications/skills and work experience relevant to the position of University Lecturer, however this may not be relevant to the specific position at the University
 - The candidate may have qualifications/skills and work experience. However, the candidate's work experience may be limited to conducting research only and the candidate may have little or no work experience in teaching, lecturing or any clinical components of the nominated position

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Question 4

During the course of LMT, sponsors might receive applications from Australians who appear to be eligible for the nominated position. How should sponsors approach the question of whether there are any 'suitably qualified and experienced' Australian applicants for the advertised position?

Answer 4 (Cont'd)

- The candidate may have qualifications/skills and work experience. However, the sponsor may be of the view that the candidate does not have the required level of interpersonal skills or emotional intelligence required for a particular position . and hence are not ~~suitably qualified~~
 - Suitably qualified~~s~~ should not be limited to university qualifications, but rather the qualities, characteristics, skills and other factors relevant to the person~~s~~ ability to successfully carry out the nominated position.

- “ Assuming a sponsor finds an Australian who is both suitably qualified and experienced for the position, the next question is whether that person is readily available to fill the position?
- “ For example, a candidate may indicate that if an offer is made, they may not be able to commence until after a certain date and the sponsor requires the position to be filled urgently. In such circumstances, the sponsor may offer the position to a non-Australian

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Question 4

During the course of LMT, sponsors might receive applications from Australians who appear to be eligible for the nominated position. How should sponsors approach the question of whether there are any 'suitably qualified and experienced' Australian applicants for the advertised position?

Answer 4 (Cont'd)

“ Under immigration policy, in the absence of contrary evidence, the Department is likely to deem that there is no suitably qualified and experienced and readily available Australian, if the evidence of LMT provided demonstrates that the advertising undertaken had sufficient coverage and duration to sufficiently test the local labour market.

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Question 5

***You wish to hire a candidate on a part time basis.
Does the TSS 482 scheme permit this kind of employment?
If not, are there other visa options?***

Answer 5

- “ TSS 482 visa allows for fractional appointments if:
 - The position will be full time while the candidate is working in Australia
 - The candidate will be on approved leave without pay while outside Australia
- “ TSS 482 visa does not allow part time roles if candidate is located in Australia
- “ 400 Temporary Work Short Term Specialist visa . provided position is highly skilled, not ongoing, and for less than 6 months in any 12 month period
- “ 408 research activity visa
 - Available to:
 - Research academic with record of achievement and the primary purpose of their visit is to observe or participate in an Australian research project
 - Overseas (current or recent) student whose primary purpose is to undertake research closely related to their overseas studies
 - Allows for secondary activities such as teaching
- “ Candidate may be eligible for a points tested (eg 189/190/489) or a spouse visa

The sector should lobby the government for a specific exemption for fractional long term academic appointments under the TSS 482 pathway

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Question 6

You wish to sponsor a candidate who holds an existing 457 or TSS 482 visa.

Does the candidate need to apply for a new 482 visa?

Answer 6

- “ Where a candidate holds a primary 457 visa, and they wish to change employer or occupation, a new TSS 482 nomination application will need to be lodged by the sponsor. The person cannot commence working for their new sponsor or in their new position until this new nomination has been approved
- “ Where a person holds a primary TSS 482 visa and wishes to change employer (not nominated occupation), a new TSS nomination application will need to be lodged. The person cannot commence working for their new employer until this new nomination has been approved
- “ Where a person holds a TSS 482 visa and wishes to change occupation (whether with the same sponsor or new sponsor), then a new TSS 482 nomination and visa application will need to be lodged. The person cannot commence working for their new sponsor or in their new occupation until a new nomination application and visa application have been approved
- “ In all of the above cases, the sponsor in question will need to meet nomination criteria (including any LMT) and pay the SAF levy relevant to the term of the appointment

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Question 7

***A TSS 482 visa commences the day it is approved.
The TSS 482 visa will be approved for the term that is consistent with the term of the contract of employment. Eg a 2 year employment term, will result in the grant of a 2 year TSS 482 visa.
Aside from applying for a further TSS 482, what are the options if the employee cannot commence their role on the day their visa is approved and the performance of their contract cannot be fulfilled by the time their TSS 482 visa expires?***

Answer 7

- “ Consider whether the employee can fulfil the remainder of their role outside Australia
- “ If the remainder of the role involves academic research, consider a 408 visa for the employee . any Bridging A Visa the candidate is granted will allow them to continue to perform their role during the processing of the 408 application
- “ If the remainder of the role is less than 6 months and highly skilled, then a 400 visa might be appropriate . it will be necessary for the employee to depart Australia to lodge the 400 and remain outside Australia until the 400 is approved

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Question 8

You are seeking to attract experienced candidates for professional positions which are on the Short Term Skilled Occupation List (“STSOL”) but not occupations on the Medium and Long Term Strategic Skills List (“MLTSSL”). For example, Education Manager ANZSCO Code 134499.

Filling the positions with suitably skilled and experienced Australians has proven to be impossible. While you have received interest from suitable overseas candidates, they are not prepared to accept the positions, as:

- “ The TSS 482 visa would be granted for a period of 2 years (with a possible 2 year extension); and***
- “ As their occupation is not on the MLTSSL, they cannot transition from a TSS 482 to a 186 (permanent residency) visa.***

What can be done?

Answer 8

- “ Every 6 months, the Department of Jobs and Small Business engages in a consultation process examining skills shortages in various sectors***
- “ Information from these consultations will be used in the development of future skilled occupation lists, including which occupations should be included on the MLTSSL***
- “ The sector should lobby the government to include relevant and specific occupations on the MLTSSL***

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Question 9

Which occupations are most appropriate for advancement roles?

Answer 9

- “ This depends on the position and duties involved.
- “ While there are occupations on the MLTSSL and the STSOL that might be appropriate for Advancement roles, it's important to be mindful of restrictions that may apply.
- “ For instance:
 - if the role is to primarily *plan, organise, direct, control and review the day-to-day operations and major functions of the Advancement Unit through departmental managers and subordinate executives*, then the occupation of CORPORATE GENERAL MANAGER ANZSCO 111211 would be suitable.
 - However, the position must have nominated annual earnings (excluding superannuation) of at least \$180,001.

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Question 9

Which occupations are most appropriate for advancement roles?

Answer 9 (Cont'd)

“ if the primary focus of the role is to *plan, organise, direct, control and coordinate the sales and marketing activities* of the Advancement Unit, then the occupation of SALES AND MARKETING MANAGER - ANZSCO 131112 would be suitable.

However:

- the position must have nominated annual earnings (excluding superannuation) of at least \$65,000; and
- the position must not predominantly involve direct client transactional interaction on a regular basis.

“ if the role is marketing in nature, then Marketing Specialist - ANZSCO 225113 might be appropriate. However:

- the position must have nominated annual earnings (excluding superannuation) of at least \$65,000; and
- the position must not predominantly involve direct client transactional interaction on a regular basis.

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Question 9

Which occupations are most appropriate for advancement roles?

Answer 9 (Cont'd)

- “ If the primary role is to *manage and coordinate projects* within the Advancement Unit, then the occupations of Project Coordinator - ANZSCO 511112 or Specialist Manager - ANZSCO 139999, might be suitable
 - However, each of these may require the applicant to successfully complete a skills assessment (costing up to \$1800) in order for the TSS 482 visa to be approved
- “ In addition to the above *burdles*, many of the Advancement positions do not fit squarely within any occupation on the MLTSSL or the STSOL.
- “ Given the importance of these positions in attracting funding to Universities, the sector should lobby the government to secure the following:
 - clear guidance on which occupations are suitable for Advancement positions
 - include all (or many) of these occupations on the MLTSSL . as suitably skilled and experienced overseas candidates are unlikely to accept these positions unless they can transition from a TSS 482 to permanent residency (186/187 visa).

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