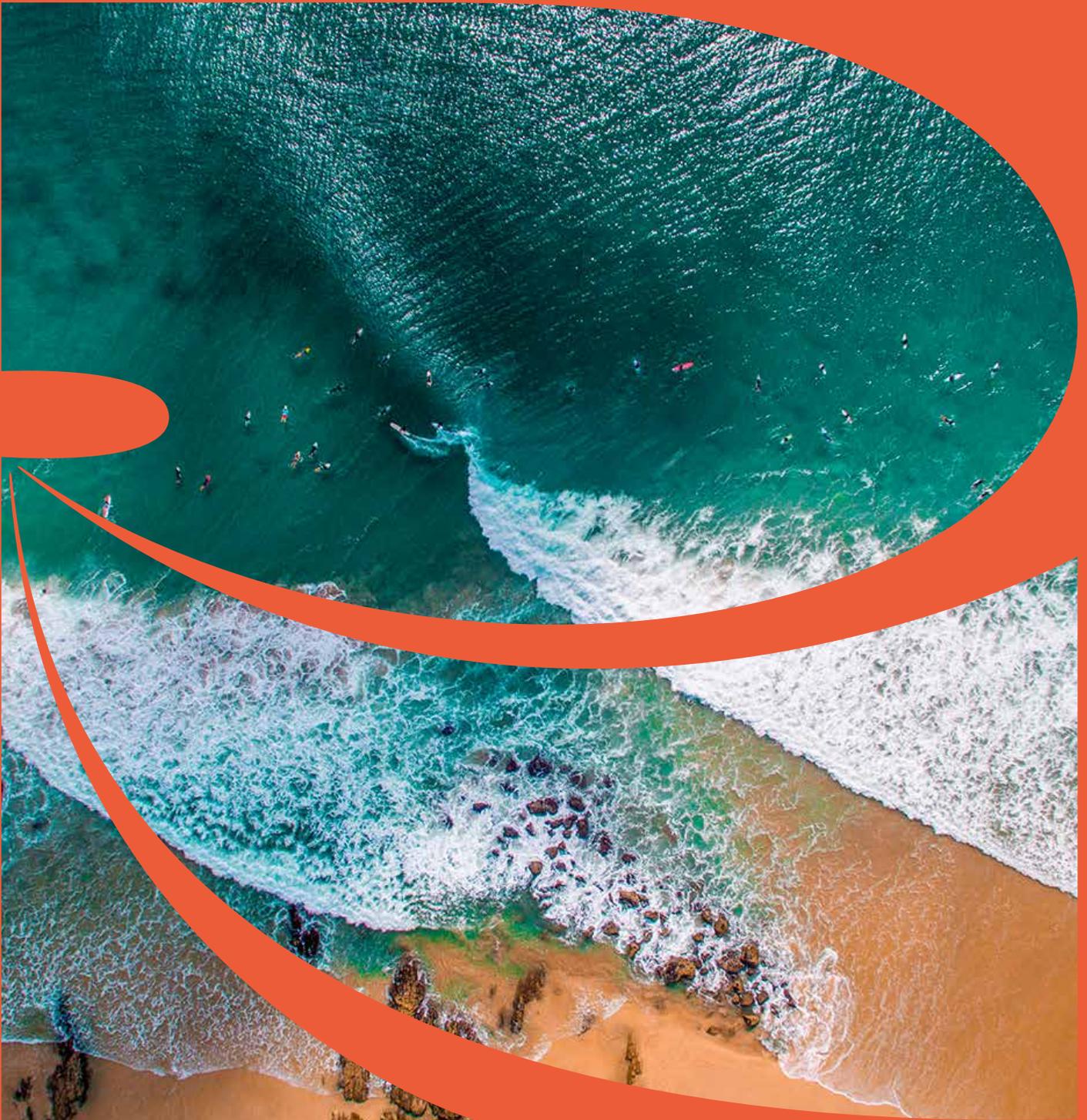


Visa Infosheet

Employer Nomination Scheme (ENS) Visa Subclass 186



The 186 ENS is a permanent residence visa for skilled workers through nomination by an employer in Australia.



Nomination & Visa

The 186 ENS visa is an employer sponsored visa providing permanent residency in Australia.

The process is comprised of two (2) steps:

1. the 186 ENS Nomination, which relates to the skilled position to be filled by the visa holder; and
2. the 186 ENS Visa, which relates to the prospective employee who will fill the skilled position.

The ENS (186) is split into three (3) streams:

- 1. Temporary Residence Transition Stream:** For persons holding a Temporary Skills Shortage (Subclass 457/482) visa who have worked for their employer for at least 3 years in the same nominated occupation and who are now seeking a permanent residency through nomination by the same Australian employer.
- 2. Direct Entry Stream:** For persons, either in Australia or overseas, who are seeking permanent residency through nomination by an Australian employer.

- 3. Agreement Stream:** For persons, either in Australia or overseas who are seeking permanent residency through nomination by an Australian employer under a labour agreement.

Step 1. Nomination

The Nomination relates to the position to be filled by the visa applicant and must meet certain minimum requirements, including the following:

- Occupation Lists: Nominate an occupation under the 'Medium and Long-term Strategic Skilled Occupation List'(MLTSSL)
Note: some transitional arrangements exist for applicants who previously applied for a 457 or who have held a 482 visa in a STSOL occupation for at least 3 years as per the new legislative instrument to commence from 1 Jul 2022
- Employer must be actively and lawfully operating a business in Australia
- No adverse information & good record of compliance with Australia's immigration and industrial relation laws for the nominator

- Business caveats applying – Some eligible occupations are marked with an asterisk*, which means that the sponsoring business needs to demonstrate that the additional caveat requirements are also satisfied.
- Financial viability of business sponsor
- Market Rates: The proposed remuneration must meet 'market rates' (i.e. rate which is or would be paid to an Australian performing the same work)
- Above the salary floor: Proposed remuneration must be higher than the Temporary Skilled Migration Income Threshold (TSMIT) of \$53,900 + superannuation; and
- Genuine: The position must be genuine and offered for full time for 2 years - it must be what it purports to be and consistent with the business's activities and have a genuine need for a paid employee.
- Employers must meet all costs associated with the Nomination. These cannot be transferred to the visa applicant.

Training levy system

Sponsors must pay a charge for the Nomination & Visa based on the business turnover. This is called the 'Skilling Australians Fund Levy' and is payable in full at the time of lodging the Nomination. The levy amount is calculated as follows:

	Turnover <\$10M	Turnover >\$10M
Levy surcharge	\$3,000 per year	\$5,000 per year

The SAF levy must be paid by the employer. Transfer of the payment to any 3rd party or the visa applicant is illegal and penalties include significant fines or criminal charges..

Step 2. 186 ENS Visa

The 186 ENS visa application relates to the visa applicant and any family members included in the application.

This visa allows the applicant to remain permanently in Australia. However, the travel facility on the visa is valid for 5 years only. After this, the applicant will need to either apply for a

Resident Return Visa or Australian Citizenship to continue travelling to and from Australia.

To qualify for the visa under the different streams:

Direct Entry

Must be under 45 years of age (limited exemptions available), demonstrate they have the minimum qualifications and/or experience for the occupation, and have a minimum of 3 years relevant full-time employment in the nominated occupation. Must hold a positive skills assessment.

Temporary Residence Transition

Must be under 45 years of age (limited exemptions available and/or under transitional arrangements from 1 July 2022 to include Short-term TSS occupation), demonstrate they have the minimum qualifications and/or experience for the occupation, and have worked for the same employer on TSS Visa for at least 3 out of the 4 years prior to nomination.

Labour agreement:

Must be under 45 years of age (unless specifically exempted by conditions in the labour agreement), demonstrate they have qualifications, experience and other attributes suitable to the nominated occupation, and have worked for the employer under a labour agreement.

In addition, the visa applicant must be qualified for any mandatory licensing, registration or membership requirements for the nominated occupation in Australia, demonstrate appropriate English skills, obtain police clearances and be eligible to obtain local licensing if required for the position.

Family members including partner and children up to the age of 23 can be included. Children between 18 and 23 must be dependent on the parents.

All family members must meet health and character requirements.

Application process

Preparation

We will provide you with a list of relevant documents to prepare for each stage of the process. Once we receive these documents, we will review and advise if they satisfy eligibility criteria and further information is needed.

Post lodgement

Applications can generally be lodged concurrently to save time.

The processing time can vary significantly based on a number of factors (DHA staffing levels, applicant and industry risk profiles, occupation, salary levels, etc.). DHA provides a summary of processing times based on current statistics.

Requests for the DHA for additional information in support of an application can result delays. Our lawyers work hard to mitigate requests for further information by supplying as much information as possible in support of your application up front, however the discretion lies with the Departmental delegate assessing the application.

Where applications present a risk of refusal, we may recommend lodging applications separately to minimise risk and loss of charges.

Costs

By law, employers must meet the cost of the SAF Levy only. Costs for the 186 ENS visa can be met by either the employer or the employee.

Payment for visa laws

Since December 2015 it has been unlawful to offer or request sponsorship in exchange for a benefit. Benefit is defined widely and can include a favour, a service, payment, or a gift. The benefit does not have to be provided in order for the conduct to be unlawful.

Significant penalties apply to employers, prospective employers, and the company office holders of these organisations, visa applicants, or prospective visa applicants for this conduct. Penalties include fines or jail terms for more serious conduct.

Should you have any concerns about these laws, contact us for further information.

Contact Us

Contact Roam Migration Law for a full summary of costs associated with the visa application process on +61 1300 950 771 or by email at j.taylor@roammigrationlaw.com.

The information in this document is a summary and should not be treated as a definitive statement of the law. You should seek personalised immigration advice before acting.



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