Dear subscribers,

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Today we cover the possible dilemma newly granted permanent residents face when they are sponsored by a state/territory government but they are unable to move to live and work in that region.

Do I have to live in my sponsoring region?

When you are considering to apply for the state/territory sponsored 190 Permanent Residency visa there is an expected obligation by the Australian government that you intend to reside in the state/territory that has sponsored you.

Today we will cover the issue that is regularly asked to our office, "what if I don't move to the state/territory that sponsored me?"

The first mention I need to clarify here is that this article does not cover the state/territory sponsored 489 (and old 487) temporary residency visas. We will write a separate article regarding the conditions imposed on those visa subclasses.

This article simply examines what laws exist in the Migration Act 1958 and the Migration Regulations 1994. We always encourage readers that they should do the right thing when they are visitors to this country and that includes being honest in their application forms to government authorities.

However when people ask complicated questions regarding their 190 or 886 state/territory sponsored visas then we are obligated to spell out the information as the law stipulates. We do not tell people what the DIBP and the state/territory governments want them to do or what we think they morally should do. It is simply an explanation of what the law states.

Do I need to live in the area that sponsored me?

There is no doubt about the overall intention of the 190 visa program and the state/territory governments that offer the sponsorship. Successful visa recipients are meant to honour their agreements and live in the state/territories that sponsored them for the two year period.
Both the sponsoring government and the DIBP have plenty of information which informs applicants of their obligations to reside for two years in state/territory that sponsors you.

Let's take the ACT for an example. In the information they publish it states:

"As part of your nomination obligations you agree to live and work in Canberra for a minimum period of two years from permanent arrival in Australia. After your ACT nominated visa has been granted, you are required to:

- Provide a copy of your visa grant notice.
- Contact us to confirm your expected date of arrival in Canberra and whether you would like to take advantage of the Settlement Service.
- Complete settlement surveys at 6, 12, 18 and 24 months after arrival.
- Tell us about any change to your contact details in Canberra for two years after arrival in order to receive the settlement surveys."

Most state/territories have a similar content. You must remember that this is an agreement between you and the sponsoring government. It is a civil matter and has nothing to do with the DIBP. All the DIBP is interested in the end, is the successful nomination notification from these governments so they can conclude the processing of your 190 visa application.

**What if my circumstances have changed after my visa was granted and I could not move to my sponsoring state/territory?**

You may notice on the granted 190 visa and on the old 886 visa, there are no conditions placed upon the visa. This means you have no obligations to meet any particular requirements.

There is no requirement that you need to report to the DIBP or any other government body. There is no requirement by the DIBP that you need to move the sponsoring state/territory within a specified time frame. For those of you offshore when the visa is granted you may take over 4 years to move permanently to Australia (but before 5 year expiry date).

If the DIBP wished to impose the condition that you must live, work and reside in your sponsoring state/territory for a period of two years then they could impose such a condition. However no such condition exists.

There are also no specific cancellation powers in relation to the 190 or 886 visa which can be used to cancel a 190 (or 886) permanent visa.

This is unlike the RSMS 187 visa where Section 137Q of the Migration Act is specifically designed to potentially cancel the permanent visa if the visa holders do not stay employed with their sponsoring employers for 2 years. We covered this cancellation power in [Volume 259](#).

**No such cancellation powers have been designed to cancel visas of state/territory sponsored visa holders simply because they do not move and live in the sponsoring regions.**

If the DIBP wanted to cancel a 190 or 886 visa they would have to use the general cancellation power in Section 109 on the grounds of breaching Sections 101 to 105 of the Migration Act.

In invoking this power the DIBP would be required to prove incorrect information or a bogus document was supplied in your original application. If you were honest in your application for the permanent

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**OPINION**

We realise that some people will send complaining emails that we shouldn't be giving information to international students such as this.

Anyone who knows anything about our newsletters is that we don't bow and scrape to anyone. We simply call it as we see it.

In this case, the law is very clear. It favours our new permanent residents the freedom of movement despite the fact that they may have been sponsored by a particular state/territory government.

I have heard that some states/territory governments are telling new residents that they must be "released" from their commitments before they can move away from the region.

We regard such advise as oppressive and inaccurate.
visa then the DIBP would have a very difficult time to cancel your visa. Without specific evidence to the contrary, it is likely that they would not even try.

It all boils down to our intention at the time you applied, right up to the time your visa was granted.

Of course the state/territories may inform the DIBP that you may have not responded to their questionnaires but we do not believe this would be sufficient to get the DIBP involved.

In reality peoples life circumstances change for many reasons. The law accepts that this is a real possibility. The key here is that the genuine intention must have always existed that you were planning to move to that area up until the visa was granted.

For example;

Jane is Specialist Nurse in one state. She applies and receives sponsorship approval from another state and is then subsequently granted her permanent residency 190 visa.

Jane then starts looking and applying for nursing positions within the sponsoring states hospital system. Jane is demoralized because none of her applications have been successful. She cannot leave her current employment in her existing area for she cannot afford to move to another state without having a job arranged.

Jane sees she is forced to stay in her existing state for she cannot afford to move. She thinks one day in the future she will perhaps move to that area when the demand for occupation increases.

Can Jane stay where she is without fear of trouble from the DIBP?

A: Jane clearly can demonstrate she had the best intention to move to her sponsoring region for she has the job applications to prove it. She would be able to prove that her intention in the application process was honourable and that no incorrect information supplied in her application.

The DIBP has no power to force Jane to move and neither does the state/territory which sponsored her for the grant of the visa. Jane did sign a civil agreement regarding her intentions to her sponsoring state/territory. There was no mention of any penalty provisions in that agreement if Jane does not arrive to live in that region.

If the sponsoring state/territory were to become aware that Jane did not meet her commitment to their region then this would be a civil matter between Jane and the sponsoring state/territory. Technically it would have nothing to do with the DIBP. The DIBP would only get involved if they believed Jane was not genuine in her original PR application and they had reason to believe that Jane gave incorrect information during the application process. Again by simply not communicating with the State/territory which sponsored her there would be no evidence that Jane had done the wrong thing in her original PR application.

Summary

When you lodge any application for a visa to remain in Australia, whether it be for temporary or permanent residency, there are two (and more) fundamental requirements that need to be met before the visa is granted;
1) You inform the DIBP any changes of your circumstances, particularly those that may affect the grant of the visa
2) The information provided is correct

When you signed the state/territory sponsorship application form you have agreed to live in that region for a period of two years. That signed
form is still part of the application process and must continue to be correct until the visa is granted.

If you for some reason have decided that you no longer wish to live in the state/territory that is sponsoring you then you are obligated to tell the DIBP before the decision is made on your visa application.

If you fail to tell them and the DIBP discovers that you changed your intention before the grant of the visa then they may mount a valid argument that the information provided in your application was not correct. They may then decide to use the general cancellation powers available to them to cancel your visa.

If however you decided that you cannot move to the area which sponsored you after the visa is granted then there is no powers in the Migration Act that would support a realistic effort to cancel your visa.