

PARTNER VISA “UPDATE”

For the purposes of migration, the term 'partner' means the husband, wife or de facto partner (opposite or same-sex) of the Australian sponsor ('partner category' includes partner and prospective marriage visa classes).

The parties in a married or de facto relationship must have a mutual commitment to a shared life together, to the exclusion of all other persons. The relationship must be genuine and continuing and the parties must live, or intend to live together on a permanent basis.

Although applying for permanent residence through a partner visa is a two stage process, only one application is required. The one application includes an application for a temporary and a permanent visa. Applicants can apply in or outside Australia.

At both stages of the process, the Department of Immigration and Citizenship must be satisfied that the parties are in a genuine partner relationship.

De facto partners must have been in the relationship for at least 12 months immediately before lodging their application.

While it is not common for permanent visas to be granted less than two years from the date of application, in certain limited circumstances it is possible for a visa to be granted in this time. An example of when a visa may be granted within two years is when the relationship is long-term at the time of application (long-term is defined as three years, or two years if there is a dependent child (excluding step-child) of the relationship).

Dependent family members of the applicant, such as children or lone aged relatives, may be included in the application.

Fiancés overseas

A person overseas who intends to marry their Australian fiancé may apply for a Prospective Marriage visa.

It is a requirement of a Prospective Marriage visa that the parties have met as adults and be known to each other in person.

Fiancés who apply successfully for a Prospective Marriage visa receive a temporary visa which is valid for nine months from the date of the visa grant. They must travel to Australia and marry their intended spouse within that period. If fiancés want to remain permanently in Australia they should then apply for a permanent visa such as a partner visa.

If all legal requirements are met, partner visa applicants will be granted a temporary partner visa, followed by a permanent partner visa if the relationship is still continuing at the end of two years after lodgement of the partner visa application.

Fiancés in Australia

People already in Australia on temporary visas are unable to extend their stay in Australia by applying for a visa as a fiancé. There is no visa category available to cover this situation.

However, if the marriage takes place during the period of authorised stay in Australia, the person may be eligible to apply in Australia for a partner visa.

Sponsorship

All applicants for partner migration, whether they apply in or outside Australia, must be sponsored by their partner (or by a parent of their partner in certain circumstances).

The sponsor must be an Australian citizen, Australian permanent resident or eligible New Zealand citizen and be 18 years of age or older.

Limitations on sponsorship

There are limits on the number of partner visa category sponsorships a person may make and the time-frame in which they are made:

- A limit of two approved sponsorships or nominations can be made, with a minimum of five years apart.
- If the sponsor was sponsored or nominated to Australia as a partner, they must wait five years before sponsoring a partner or fiancé.
- Approved sponsorships or nominations are those which result in the applicant being granted a partner or Prospective Marriage visa.

The limitations may be waived in compelling circumstances, including:

- if the previous fiancé or partner has died or abandoned the relationship, leaving young children
- if a new relationship is formed that is long-standing or involves dependent children of the relationship.

Dependent children and sponsorship limitation

Dependent children are usually included in, and processed as part of, their parent's partner visa application. There are cases where a dependent child is not considered for the temporary (first stage) visa because they are not living with their parent.

Where a dependent child is outside Australia and their parent is in Australia and has been granted a temporary spouse, partner or interdependency visa, the child can apply for a temporary Dependent Child visa.

This visa will enable the child to travel to Australia and apply to be added to their parent's permanent visa application.

To be granted the visa, the child must be under 18 years of age or be financially dependent upon the parent in Australia. It is important to note that the child must apply for this visa before the parent's permanent visa application is decided.

Permission for dependent children under 18 years of age to migrate must be obtained from another parent or any other person with a legal responsibility for the child. Alternatively, evidence must be provided that the partner visa applicant or their sponsor has sole legal right to remove the child from the country.

Where the sponsor has a conviction or an outstanding charge for an offence against a child, if the application includes a dependent family member under 18 years of age, the sponsorship cannot be approved (except in very limited circumstances). There is also a requirement that there is no compelling reason to believe that the grant of the visa would not be in the best interests of that dependant.

In order to assess the sponsorship application and the best interests of the child requirement, sponsors of children under 18 years of age are required to submit an Australian Federal Police (AFP) National Police Check and/or foreign police certificate/s, depending on the sponsor's circumstances. If the sponsor has spent a total of 12 months or more in Australia since turning 16 years of age, the sponsor must provide an AFP National Police Check. The sponsor must also provide police certificates from each country in which they have spent a total of 12 months or more in the last 10 years since turning 16 years of age.

Assurance of Support

A person who is an applicant for a partner or Prospective Marriage visa may be required to obtain an Assurance of Support (AoS) if they are assessed by the department as at risk of becoming a charge on Australia's social welfare system. Assurances of Support are discretionary for such partner category visas and will not be sought by the department in all cases.

An AoS is a legal commitment by a person (the assurer) to repay to the Australian Government any benefits paid to those covered by the assurance. It is also a commitment to provide financial support to the person(s) applying to migrate.

For partner category visas, an AoS is for two years and comes into effect on the day the assuree (the migrant) arrives in Australia or, if in Australia, on the date the assuree is granted the relevant visa to remain in Australia.

After the department has determined that an AoS is required, Centrelink assumes responsibility for providing AoS advice and forms and undertakes AoS processing.

The dedicated and experienced migration law team at Nevet Ford Lawyers can assist you in relation to all Partner visa related matters.

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