



Partner Visas – Spouse/De Facto/Prospective Spouse

This visa type is suitable for the wife, husband or de-facto partner of an Australian sponsor. There are several requirements that applicants must meet in order to be considered for a Spouse Visa:

If married - marriage must be recognised under Australian Law:

- Marriage must be legal in Australia or in country of marriage;
- Marriages NOT recognised include:
 - Arranged or proxy marriages (husband and wife must have physically met before marriage, and live together after marriage);
 - Polygamous marriage;
 - Marriages within prohibited degrees of relationship (generally meaning close family members);
 - Same sex marriage (may be considered for De Facto Visa);
 - Marriage of convenience;
 - Marriage that is only recognised by custom.

Must be of marriageable age:

- If either partner currently resides in Australia, both must have turned 18;
- If neither partner resides in Australia, both must have turned 16;

Provisions exist for persons between the ages of 16 and 18 to marry under court order.

If unmarried – must be in a de facto relationship:

- Live together (or do not live apart on a permanent basis);
- Commitment to a shared life as husband and wife to exclusion of all others;
- Must have lived together for a period of at least 12 months prior to lodging visa application.

Where to apply for this visa

This visa can be applied for from within, or outside of Australia.

General Information:

All relationships will be assessed on a number of factors to determine that the relationship is "genuine and continuing".

Applicants should be able to:

- Provide evidence detailing mutual commitment – which includes the length of the relationship and time spent living together;
- Provide financial evidence supporting their mutual commitment to their partner;
- Provide evidence demonstrating the social aspects of the relationship, including pictures and the opinions of family and friends about the relationship

Same-sex couples:

The Australian Government has introduced changes to remove discrimination against same-sex couples and their children from Commonwealth law.

These changes extend the department's recognition of same-sex couples and their children for migration and citizenship purposes, resulting in same-sex de facto partners having the same rights and responsibilities as opposite-sex de facto partners.

Prospective Spouse (Fiancé)

This visa type is suitable for the fiancé of an Australian sponsor. There are several requirements that applicants must meet in order to be considered for a Prospective Spouse Visa:

- Applicants must be intending to come to Australia to marry an Australian citizen or Permanent Resident;
- Applicants must have met their Australian sponsor personally, and **MUST NOT** marry prior to entering Australia;
- There can be no impediment to marrying under Australian Law;
- The plans of the couple to marry should be known by family and friends;
- Applicants must agree to marry within 9 months of entering Australia and will be granted a 9 month Temporary Visa for this purpose.

If the marriage does not eventuate in this time, the visa will **NOT** be extended and the applicant will be required to leave Australia.

Where to apply for this visa

The Prospective Spouse (Fiancé) Visa application must be lodged outside of Australia.

Recent changes to the law regarding spouse visa applications

Up until recently certain non-citizens of Australia who had been refused a visa whilst they were in Australia were unable to apply for a spouse visa onshore (i.e. from within Australia). In the past applicants in this situation would have to go offshore and make application for a spouse visa and wait offshore until the application had been approved before being able to re-enter Australia.

On 14 September 2009 changes to the *Migration Act* 1958 mean that certain non-citizens in Australia may now apply for a spouse visa onshore (if they meet the legal criteria for a spouse visa). There are some exceptions so we suggest that you seek legal advice if you think that this change to the law relates to you. For example, some of the exceptions stopping an applicant from making application for a spouse visa onshore include applicants who have been refused a visa or cancelled on 'character grounds' or an applicant who has already had a spouse visa already refused.

Please feel free to contact David Stratton, Ryan Curtis-Griffiths or Helen Zheng, Lawyers in our Migration Law Work Group, if you require further information in relation to this issue, or if you require legal advice regarding any other migration law matter.

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