



Immigration Advice and Rights Centre Inc.

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DE FACTO PARTNER VISA APPLICATIONS OUTSIDE AUSTRALIA*

(Reflects law as at 9 November 2009)

This visa is for de facto couples (whether same sex or opposite sex couples) in a genuine, continuing and exclusive relationship. From 1 July 2009 same sex couples no longer apply for an Interdependency visa but instead are assessed as a de facto couple. Subclasses 309 and 100 are two visas which allow an Australian citizen, permanent resident and some eligible New Zealand citizens to sponsor their de facto partner. Subclass 309 is a two year temporary visa. At the end of the two years, to get the permanent resident visa (subclass 100), the couple will need to show the Department of Immigration that they are still in a genuine relationship. If you have been in a relationship for five years or for two years if you have a child(ren) with your partner you may be eligible for permanent residence immediately.

The visa applicant and sponsor must have lived together for the 12 months immediately before making the application or not have been living apart on a permanent basis unless there are “compelling and compassionate circumstances” or their relationship is registered under the relevant law in Victoria, Tasmania or the ACT.

If your sponsor has previously sponsored/nominated a partner or was sponsored/nominated themselves as a partner there may be limitations on this visa application. In addition there may be limitations on your sponsor if they hold a Subclass 204 Woman at Risk visa or a Subclass 143 Contributory Parent visa or a Subclass 864 Contributory Aged Parent visa. If this applies to you, please talk to a registered migration agent about this.

MAKING AN APPLICATION

You can download a Partner Migration Booklet free of charge from the Department of Immigration’s website (www.immi.gov.au) or buy it from a Department of Immigration office for \$10 (see below for addresses) or ask for the specific forms listed below, provided without charge.

- Form 47SP or 47SP (Internet) - the application form to be completed by the applicant.
- Form 40SP or 40SP (Internet) - the sponsorship form to be completed by the Australian partner.
- Form 888 Statutory Declaration forms (you will need at least two). It is possible to use other statutory declaration forms available in news agencies.
- Form 80 character check.
- Police clearance from any country where the applicant has lived for more than 12 months in the past 10 years. See the form *Character Requirements Penal Clearance Certificates (formerly form 47P)* for details for

* IARC does not guarantee the accuracy of any information contained in this information sheet. It contains general information and should not be used as a substitute for obtaining legal advice.

countries other than Australia, see *the National Police Check Application Form* (available at www.immi.gov.au) for Australia.

- 4 passport sized photographs of all applicants with the name of each person written on the back of the passport.
- Visa application charge of \$1,705.

EVIDENCE

You should provide evidence that your relationship is “genuine and continuing” and is similar to a husband and wife relationship. The evidence should be detailed and go into the past as far as possible.

Evidence includes the following things:

- At least 2 statutory declarations from friends and relatives explaining how they know the applicant and their partner, what they know about the relationship and why they believe it is genuine and continuing.
- A statutory declaration from the applicant stating:
 - when/where/how they met their partner;
 - where and for how long they have lived together;
 - how they share their domestic arrangements (for example who does the cooking, cleaning, shopping, child care);
 - how they share their finances and bills (for example do they have a joint bank account, are gas/water electricity accounts in both names, do they jointly own a house, car or other major asset?);
 - whether they go out/socialise/entertain people as a couple;
 - what their plans are for the future such as where they plan to work, where they plan to live, whether they are planning to have children; and
 - whether they give each other emotional support and companionship.
- A statutory declaration from the sponsoring partner covering the same things, but in her/his own words.
- Copies of joint bills or bills in separate names but at the same address, copies of joint bank account statements, leases, wills, powers of attorney, correspondence sent to them jointly or in separate names but showing the same address (the envelopes are particularly useful), joint membership of clubs and societies.
- Evidence of ongoing contact during times spent apart such as letters (with envelopes) written to each other, copies of telephone bills showing the itemised calls to each other, evidence of any money sent to each other.
- Certified copies of the applicant’s passport and birth certificate and the birth certificates of any children.
- Certified copy of partner’s Australian passport, birth certificate, Australian citizenship certificate or permanent residence visa.

What if I have been married before?

You can still be in a de facto relationship even if you are still or were legally married to another person. In those circumstances you need to show:

- You are legally divorced or permanently separated from that other person; and
- You are in a genuine, continuing and exclusive relationship with your new spouse.

Certified Copies, Statutory Declarations and Translations

Any photocopies of documents to be included with the application must be certified by a solicitor/Justice of the Peace/bank manager etc (ie they state it is a true copy of an original document they have seen)

People who make a statutory declaration for you must attach a certified copy of the front page of their passport, birth certificate, Australian citizenship certificate or permanent resident’s visa. The statutory declaration must be signed in front of a solicitor, Justice of the Peace or bank manager. If the person making the statutory declaration

is outside Australia then the statutory declaration should be in form prescribed for the country where the declaration is being made.

Any documents which are not in English should be translated by an accredited translator. Both the translation and a certified copy of the untranslated original should be submitted with the application. For accredited translators call either the Community Affairs Commission on 1300 651 500 or the Translating and Interpreting Service on 131 450.

HEALTH AND CHARACTER

In order to be granted a spouse visa the applicant will need to satisfy relevant health and character criteria. This will involve undergoing appropriate medical examinations, providing appropriate criminal record checks and passing general character requirements. Detailed discussion of these criteria and how to satisfy them is set out in IARC's *Health* and *Character* information sheets.

Applicants should be aware that all members of their family unit (ie spouse, dependent children and some dependent relatives) will also need to satisfy the health criteria **even if they are not applying to migrate to Australia**. If any member of the family unit fails the health test the spouse application may be refused. In some circumstances the health criteria may be waived (at the Minister's discretion). For more detail about this please refer to IARC's *Health* information sheet.

OFFENCES

You must ensure that you are honest with the Department of Immigration. Under the *Migration Act 1958* it is an offence to:

- arrange a de facto relationship for the purposes of obtaining permanent residence
- make false, misleading or unsupported statements in relation to whether or not other persons live together on a genuine domestic basis as spouses without being married to each other.

ASSURANCE OF SUPPORT

The Minister may request an assurance of support ('AOS') before making a decision. An AOS is a legal commitment by a person or entity ('Assurer') to repay to the government the amount of any welfare payments made to the applicant within the first two years after the applicant enters Australia/is granted their visa. The Assurer does not have to be the sponsor.

An AOS does not need to be provided at the time of application. It should only be provided if requested later by the Minister. The Minister may require an AOS where the Minister believes that the applicant is likely to claim welfare allowances from the Australian government.

The factors which are relevant to whether an AOS is requested are:

- the applicant's age
- the applicant's employment prospects (including skills and qualifications)
- the applicant's eligibility for social security, and
- the sponsor's ability to provide assistance beyond that to be provided as part of the sponsorship undertaking.

The Assurer must have sufficient income to ensure that they can meet any debts if they arise. Income, assets, liabilities and spouse's income may all be relevant to the assessment of the Assurer financial status. Generally an AOS will not be accepted from an Assurer if they have received social security benefits in the last 12 months or if their income is low enough to qualify for a Health Care Card.

If the Minister requires that an AOS is provided then the Department will direct the applicant to Centrelink. Centrelink is responsible for the processing of all AOSs. For further details in relation to an AOS please refer to IARC's *Assurance of Support* information sheet.

Where an AOS has been requested and cannot be provided, a decision may be made refusing the visa.

VISA APPLICATION PROCESS

- Step 1** Applicant should complete form 47SP or 47SP (Internet).
- Step 2** The sponsor should fill out and sign form 40SP or 40SP (Internet). This should be sent to the applicant to lodge with the form 47SP or 47SP (Internet).
- Step 3** Attach the evidence mentioned above.
- Step 4** Attach a cover letter to the application form with:
- your name;
 - current address;
 - reasons for applications; and
 - list of documents attached to application. If you are waiting for any information to be included with the application note that it will be provided to the Department as soon as it is received.

Also offer to provide any further information required by the Department of Immigration.

- Step 5** Photocopy all the documents to be submitted to the Department of Immigration.
- Step 6** Lodge these forms with the application fee at the appropriate overseas post of the Department of Immigration. These are usually in an Australian Embassy or Consulate. A complete list of overseas posts and the countries or regions they service can be found on the Department of Immigration's website: www.immi.gov.au

Remember to keep your receipt as it is proof that you lodged the application.

If you have not done the following during processing you will be asked to:

- Step 7** Complete a form 80 and attach it to the application.
- Step 8** When you are asked to have a medical examination complete forms, the Embassy will provide you with the appropriate forms, take these to the doctor identified by the Embassy and have your medical examination and X-Ray taken. The forms will be completed by the doctor. They will then be sent directly to the Embassy to be included in your application. If the forms are handed back to you, they should be sealed. **DO NOT OPEN THE ENVELOPE**, send it directly to the Embassy.
- Step 9** If the visa is approved you will be granted the subclass 309 visa which will allow you to travel to Australia. Your relationship will be assessed again by the Department of Immigration before you are granted the permanent visa, subclass 100.

Remember to tell the Department of any change in your circumstances, for example if the relationship ends or you change your address.

CONTACT INFORMATION

DEPARTMENT OF IMMIGRATION AND CITIZENSHIP (DIAC)

Counter service all NSW offices

9am–4pm Monday to Friday

Sydney CBD 26 Lee Street, Sydney 2000
GPO Box 9984, Sydney, NSW 2001

Parramatta 9 Wentworth Street
Parramatta NSW 2150
GPO Box 9984, Sydney, NSW 2001

National Telephone Inquiry Line: 131 881

Website: www.immi.gov.au

IMMIGRATION ADVICE AND RIGHTS CENTRE INC (IARC)

Administration line: (02) 9279 4300 (between 9am and 5pm)

Website: www.iarc.asn.au

IARC Telephone Advice	IARC Face-to-Face Advice (by appointment only)
(02) 9262 3833 Tuesday and Thursday 2.00pm–4.00pm	Contact us to make an appointment at: Immigration Advice and Rights Centre Inc. Level 5, 362 Kent Street Sydney NSW 2000 Ph: +61 2 9279 4300 (Admin Line, 9-5pm)