

A PLAIN ENGLISH GUIDE TO



>> SPONSORING FAMILY MEMBERS FOR MIGRATION TO AUSTRALIA

The Department of Immigration and Multicultural Affairs (DIAC) makes provision within the Family Migration Stream of the Australian Government's Migration Program, for Australian citizens and permanent residents to sponsor family members for migration to Australia. The most common family visas are those for sponsoring partners (spouse, defacto spouse and interdependent), children and parents. There are also provisions for sponsoring other family members and relations in specific circumstances.

This Plain English Guide answers some of the more commonly asked questions on family migration, but remember that this is a complex area of migration legislation and you should seek specific and detailed advice before proceeding.

>>What rights do Australian citizens and permanent residents have to bring relatives to live in Australia?

Australian citizens and permanent residents do not have an absolute right to bring any relative to live in Australia. Even legally married spouses and dependant children must meet all the requirements for migration before they can come to Australia. The intended visa applicant and all of his/her family members AND the sponsor must meet a range of legal requirements before a visa can be obtained.

Prior to commencing the process of sponsoring family members, it is important that you secure proper advice in order to ensure that the most appropriate and beneficial visa is applied for. This is particularly important where complex family relationships, previous marriages or previous sponsorships are an issue. Many of the problems that arise with Family Stream Visa applications can be avoided if proper advice is sought before

proceeding with an application. In some cases, such advice may need to include advice on family law issues as well as migration issues.

>> What options are available to sponsor my Partner?

Spouse Temporary and Permanent Visa

This visa allows a partner to enter or remain in Australia on the basis of a married or de-facto relationship. This involves a two stage process.

Initially, a temporary visa (valid for a period of approximately two (2) years from the date of application) is granted. After the two year period, a further assessment is made to confirm that the relationship is still continuing. If Immigration is satisfied that this is the case, the permanent visa is then granted.

Where the relationship is a long-standing one (5 years plus) or where there are children from the relationship, it is possible to proceed directly to the permanent visa.

Prospective Spouse Visa (Fiancee Visa)

This visa allows you to sponsor the entry to Australia of your intended spouse (fiancé(e)). The visa will be valid for a period of 9 months and your marriage must take place before the expiry of that period.

Important: If your fiancee is granted a Prospective Marriage visa and you get married, you will need to apply for a Spouse visa in Australia to remain permanently in Australia.

Interdependency Temporary and Permanent Visa

This type of visa is for people from overseas to enter and stay in Australia with their interdependent partner, who must be an Australian citizen, Australian permanent resident or eligible New Zealand citizen. This visa is generally for people in a same sex relationship.

This involves a two stage process. Initially, a temporary visa (valid for a period of approximately two (2) years from the date of application) is granted. After the two year period, a further assessment is made to confirm that the relationship is still continuing. If Immigration is satisfied that this is the case, the permanent visa is then granted.

>> How can I sponsor my elderly parents to live in Australia?

There are two types of visas available for Australian citizens or permanent residents who wish to sponsor their parents. These are Parent visas and Contributory Parent visas.

The essential difference between the two types is that Contributory Parent visas involve higher application fees and the lodgement of a substantial bond, but much shorter processing times. Processing time for a Contributory Parent visa is around 12 months, whereas processing time for a Parent visa can be several years.

The main eligibility criterion for all Parent visas is that the parents have at least half of their children permanently resident in Australia or have more children living permanently in Australia than any other country.

>> I have children from a previous marriage living overseas. Can I sponsor them to Australia?

In order to sponsor a child, the child must be your natural, adopted or step child and you must be an Australian citizen, the holder of an Australian permanent visa, or an eligible New Zealand citizen.

Step-children

A step-child can only be included in the Child visa category in one of the following situations:

- the sponsoring step-parent is the spouse of the child's natural or adoptive parent and the child's natural or adoptive parent is one of the following:
 - an Australian citizen
 - the holder of an Australian permanent visa
 - an eligible New Zealand citizen
- the step-child is under 18 years old and the sponsoring step-parent is no longer the spouse of the child's natural or adoptive parent but has legal responsibility to care for the child.

Adopted children

Adopted children applying outside Australia must have been adopted before their parent became an Australian citizen, the holder of a Australian permanent visa, or an eligible New Zealand citizen.

If the child was adopted after the sponsoring parent became an Australian citizen, the holder of an Australian permanent visa, or an eligible New Zealand citizen, they should apply in the 'Adoption' visa category.

Dependency

The child must be dependent on their sponsor. This means the child relies on their sponsor totally or to a great degree, for financial support in one of the two circumstances below:

- to meet their basic needs of food, shelter and clothing, and they must have relied on this support for a substantial period (usually 12 months)
- because of a disability that prevents them working to support themselves.

Note: Disability means that the child has total or partial loss of his or her bodily or mental functions, and they are unable to work because of it.

The child relies more on their sponsor than on any other person.

Age

The child must be under 25 years of age when the visa application is lodged. If the child has turned 18, they must also be a full-time student and financially dependent on their sponsoring parent.

To be considered a full-time student, the child must:

- be validly enrolled, and actively participating, in a full-time post-secondary course of study leading to a professional, trade or vocational qualification
- have been undertaking that course since turning 18, or have commenced studies within six (6) months or a reasonable period of completing secondary education
- not be in full-time employment.

Note: The only exception to this age limit, full time student requirement and financial dependency is where the child has a disability that stops them from working.

Marital status

The child must be single. They must not be:

- married
- in a de-facto relationship
- engaged to be married.

Note: If the child is aged 18 or over, the child must not only be single, but they must never have had a married or had a de-facto spouse.

>> What options are available to sponsor my relatives?

Aged dependent relatives, orphan relatives, remaining relatives and carers of Australian citizens, Australian permanent residents and eligible New Zealand citizens may be sponsored for visas to come to Australia permanently.

Relatives who might wish to migrate on the basis of their skills, but who are unable to meet the Points Test pass marks for Skilled Migration, may also be sponsored. They must:

- be under 45 years of age
- have good English skills
- be unable to meet the passmark as an Independent migrant
- have an eligible relative living in Australia who is willing and able to sponsor them
- have skills and qualifications that meet the Australian standard for an occupation on the Skilled Occupation List (SOL).

Eligibility for these various types of visas varies considerably, both in terms of the acceptable degree of relationship of the applicant to the sponsor and in terms of actual regulatory requirements. You should seek detailed advice as to whether you might be able to sponsor your relative under one of these categories.

>> What are my obligations as a sponsor?

If you want to sponsor your partner's visa application to migrate to Australia, you must sign a sponsorship undertaking. If you sign this sponsorship undertaking, the following obligations apply while your partner is in Australia on the initial 2 year temporary visa. You:

- are responsible for all financial obligations to the Australian Government that your partner might incur while they are in Australia.
- agree to provide adequate accommodation and financial assistance as required to meet your partner's reasonable living needs. This assistance would cover the two (2) years following the grant of their temporary partner visa.
- will provide financial and other support, such as childcare, that will enable your partner to attend any English classes they need.
- will provide information and advice to help your partner settle in Australia. This information and advice should include telling your partner about employment in Australia.

- immediately notify the department if your relationship with your partner breaks down, or if you withdraw your support for your spouse before their application is finalised.

Other obligations apply if, as a sponsor, you have agreed to provide an Assurance of Support (AoS) for your partner

>>What is an Assurance of Support?

An Assurance of Support is a legal commitment by a person (not necessarily the sponsor) to repay to the Australian Government certain welfare payments paid to migrants during their respective Assurance of Support period.

Respective Assurance of Support periods are:

- 10 years for Contributory Parent visa holders

or

- 2 years for all other visa types where an Assurance of Support is needed.

The Assurance of Support scheme enables welfare costs for these migrants to be met by an Australian permanent resident or citizen, rather than the Australian community.

>> How can Coleman and Greig help you?

Coleman and Greig's migration team, which comprises both experienced Solicitors and Registered Migration Agents, can:

- Advise you on the most appropriate visa option for sponsoring your family member or relative from overseas or for obtaining Permanent Resident status for them if they are already in Australia
- Prepare all documentation required by DIMA for both you and your family member or relative (whether in Australia or overseas)
- Assist you with making the required Sponsorship and Visa applications and in dealing with DIMA offices in Australia and overseas in relation to all aspects of application processing
- Assist you in obtaining advice in relation to Family Law matters which arise out of current or previous Family migration applications or sponsorships (Coleman and Greig has a team of Family Law specialists within the firm)

Printed May 2008

For further information: