



Immigration Advice
and Rights Centre

Reflects Australian
Immigration law as
at 1 September
2018

OFFICE

Suite 3, Level 8,
377-383 Sussex Street,
Sydney NSW 2000

POSTAL

PO Box Q1283,
QVB NSW 1230

INFORMATION LINE

(02) 8234 0700

EMAIL

iarcadmin@iarc.asn.au

FAX

(02) 9299 8467

ABN

45 808 320 822

www.iarc.asn.au

@IARCAustralia

PARTNER VISA APPLICATIONS IN AUSTRALIA (subclass 820/801)

Who can apply for this visa?

You may be eligible for this visa if you are the spouse or de-facto partner of an Australian citizen, Australian permanent resident or eligible New Zealand citizen. You must be in Australia to apply for this visa.

The application process involves two stages. The first stage for the grant of a temporary partner visa (**subclass 820**) involves an assessment of your relationship. If you are successful, you will hold this visa until a further assessment of your relationship is made for the grant of a permanent visa (**subclass 801**). This second stage assessment usually occurs more than two years after the date of your application.

You may be able to obtain a permanent visa without having to wait for two years to pass if at the time of making the application you were in the relationship for three years or for two years if you also have a dependent child with your partner.

If your relationship ends before your visa is granted or if you are experiencing family violence in your relationship you should obtain legal advice as soon as possible (see IARC's information sheet on '[Breakdown of relationship – Partner visas \(subclass 820/801, 309/100 and 300\)](#)' for more information).

There are a number of factors that may impact on your ability to apply for and be granted this visa in Australia – they include:

Have you had a visa refused or cancelled?

You cannot apply for this visa if you do not hold a substantive visa and have been refused another partner visa since last entering Australia.

Note: a substantive visa is any visa other than a bridging visa, a criminal justice visa or an enforcement visa.

If you do not hold a substantive visa and have had a visa (other than a partner visa) refused or cancelled you may still be able to apply for this visa but you will need to include additional documents with your application.

The application process is discussed further below.

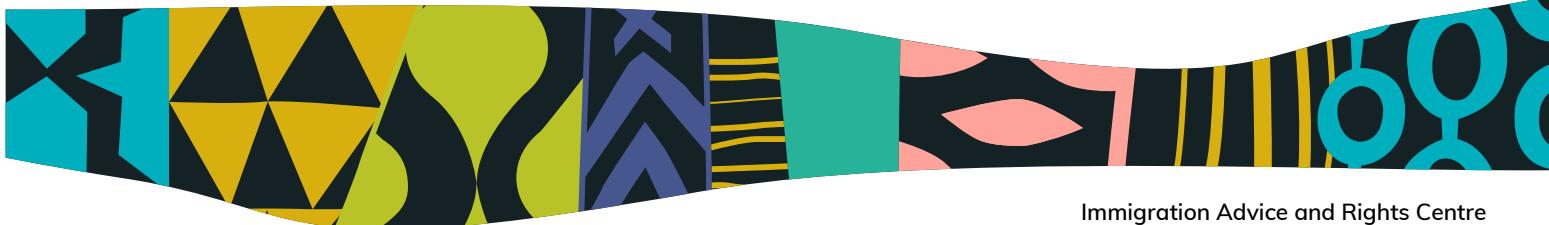
Condition 8503

If since last entering Australia you have held a visa that has a “no further stay” condition you are not able to make an application for this visa in Australia. Condition 8503 can be waived in some circumstances – please see our information sheet on '[Condition 8503](#)' for more information. If this applies to you it is important that you obtain legal advice.

Do you hold a substantive visa?

You may be refused this visa if you do not make a valid application within 28 days after your substantive visa ceases. If you do not hold a substantive visa you may also be asked to show that:

- it is because of factors that were beyond your control; and
- there are compelling reasons for granting you the visa; and
- you have substantially complied with the conditions of your previous visas.



If you do not meet the above requirements it is still possible to be granted this visa if you can show that there are 'compelling reasons' for not applying them.

The Department's policy states that compelling circumstances may exist if the reason you are not holding a visa is because of factors that were beyond your control – such as severe illness. However, there is no specific list of what can be a 'compelling reason' for waiving the requirements. Other examples that you may be able to argue are compelling include:

- where there are Australian citizen children from your relationship;
- where there are maternity issues and departure from Australia could complicate matters for you;
- where your departure could have a significant impact on your sponsor's health or welfare;
- where there is war or violence in your country which makes it unsafe for you to return and apply from there.

It is for the Department to decide whether your circumstances meet the requirement for a waiver. The Department can take into account all of your circumstances up until the time they make a decision in your case. If your application is refused this may have an impact on your ability to apply for other visas. **It is important that you seek legal advice before you make the application.**

Who can be a sponsor for this visa?

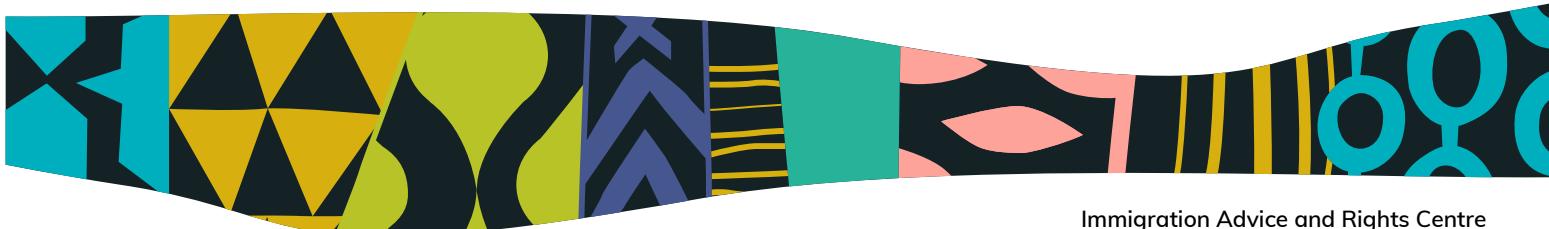
You may be eligible to be a sponsor if you are the spouse or de-facto partner of the applicant and you are:

- an Australian citizen; or
- living in Australia as the holder of a permanent visa; or
- an eligible New Zealand citizen.

If you are under the age of 18 your parent or guardian may be able to be the sponsor.

Sponsorship limitations

If you have previously sponsored someone or have previously been sponsored yourself as a partner there may be limitations on your ability to be a sponsor. There may also be limitations on your ability to sponsor if you hold a Woman at Risk visa, a Contributory Parent visa or if you have committed certain offences.



These limitations can be waived in certain circumstances. You should obtain legal advice if this applies to you.

Spousal or de-facto relationship

A requirement for being granted this visa is that you are in a spousal or de-facto relationship at the time of your application.

Are you in a spousal relationship?

You will be considered to be in a spousal relationship if you are in a married relationship that is recognised under Australian law – this can include foreign marriages. You will also need to show that:

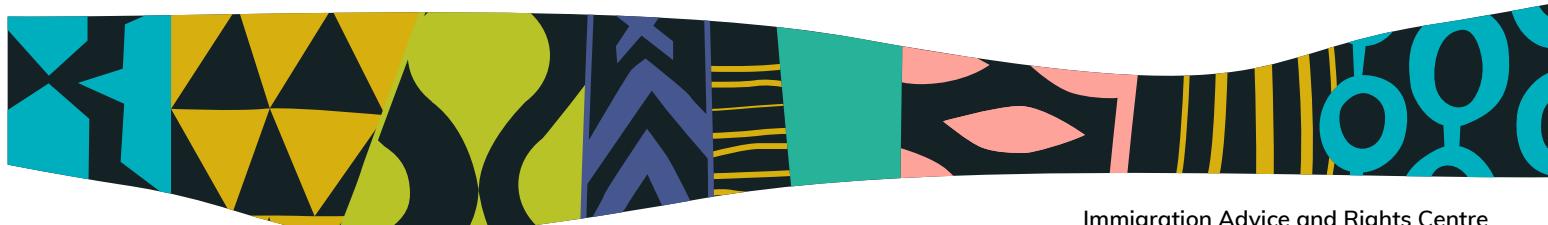
- you have a mutual commitment to a shared life as a married couple to the exclusion of all others; and
- your relationship is genuine and continuing; and
- you live together or do not live separately and apart on a permanent basis.

Are you in a de-facto relationship?

You will be considered to be in a de-facto relationship if:

- you are not in a married relationship with your partner; **and**
- you have a mutual commitment to a shared life to the exclusion of all others; **and**
- your relationship is genuine and continuing; **and**
- you live together or do not live separately and apart on a permanent basis; **and**
- you are not related by family.

You will also need to show that at the date of your visa application:

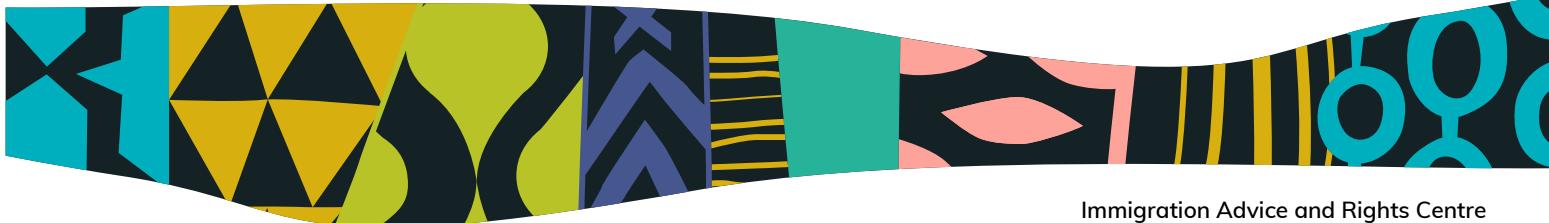


- you were in a de-facto relationship for a period of at least 12 months; or
- your relationship has been registered under a law of a State or Territory (currently available in Victoria, Tasmania, NSW, ACT and QLD); or
- you were in a de-facto relationship with the holder of a permanent humanitarian visa and your relationship was declared to the Department of Immigration.

The assessment of your relationship

In deciding whether you are in a genuine and continuing spousal or de-facto relationship the Department should consider all aspects of your relationship including the following four factors:

- The financial aspects of your relationship. This can include evidence of:
 - any joint ownership of property or assets (such as a house, car, major appliances or shares in a company);
 - any joint liabilities (such as a credit card, copies of leases, mortgages, or debts in both your names);
 - any shared financial resources (such as joint bank accounts showing regular transactions) or shared financial commitments (such as joint utility bills in both your names or separate names but at the same address)
 - any legal obligations in respect of each other (such as a copy of a will or power of attorney); and
 - how you share your day-to-day expenses (this can be through credit card statements or invoices).
- The nature of the household. This can include evidence of:
 - any joint responsibility for the care and support of children (such as school or child care application forms in both your names);
 - your living arrangements (you can provide letters addresses to either or both of you at the same address or a copy of your lease)



- how you share the housework responsibilities (in your statements you can explain how you split up the housework responsibilities. For example, who does the cooking, cleaning and gardening? It would be useful to mention the household tasks that you perform together).
- The social aspects of the relationship. This can include evidence of:
 - whether you represent yourselves to other people as being in a spouse or de facto relationship;
 - what your family and friends think about the nature of your relationship (if they are an Australian citizen or permanent resident they can use form 888 - otherwise they can just write a letter explaining how they know you, whether you present yourselves to them as a couple, and why they believe you are in a genuine and continuing relationship);and
 - any social activities that you undertake together (this can include evidence of any holidays, memberships of clubs or a gym, or photographs of you together at social events).
- The nature of your commitment to each other. This can include evidence of:
 - the length of your relationship and how long you have lived together;
 - the degree of companionship and emotional support that you offer each other;
 - whether you see the relationship as long term.

It is important that you provide as much evidence about your relationship as you can. The evidence should be detailed and go into the past as far as possible. Both you and your sponsor should prepare a statement in your own words that covers:

- when/where/how you met;
- where and for how long you have lived together;
- how you share your domestic duties (for example who does the cooking, cleaning, gardening, shopping, child care);

- how you share your finances and bills (for example, do you have a joint bank account, are gas/electricity/water accounts in both names, do you jointly own a house or car, or are you jointly named on a lease)
- whether you go out/socialise/entertain people as a couple. Give examples and provide evidence if you can.
- what are your plans for the future? This can include plans to buy property or a business together, whether you are planning to have/adopt children or buy a pet.
- whether you give each other emotional support and companionship – you can give examples.

Can I include my children in the application?

You can include your child (or step-child) in the application if they are not married, engaged to be married or in a de-facto relationship and meet the following requirements:

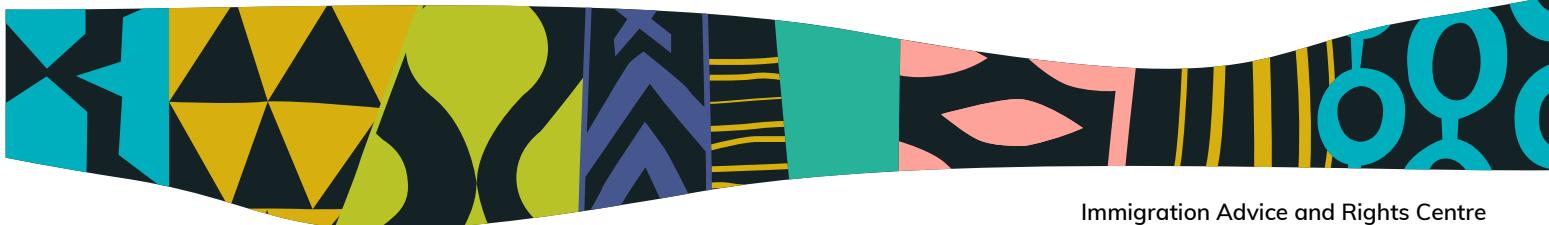
- they have not turned 18; **or**
- if they have turned 18:
 - they are and have been for at least 12 months wholly or substantially reliant on you for financial support to meet their basic needs for food, clothing and shelter **and** their reliance on you is greater than their reliance on any other source of support;

OR

- they are incapacitated for work due to the total or partial loss of their bodily or mental functions.

Your child needs to continue to be dependent on you when the Department makes their decision on your visa application.

If you hold, or have held, a prospective marriage visa it may be possible to include a child who is dependent on you or your partner. You should seek advice if this applies to you.

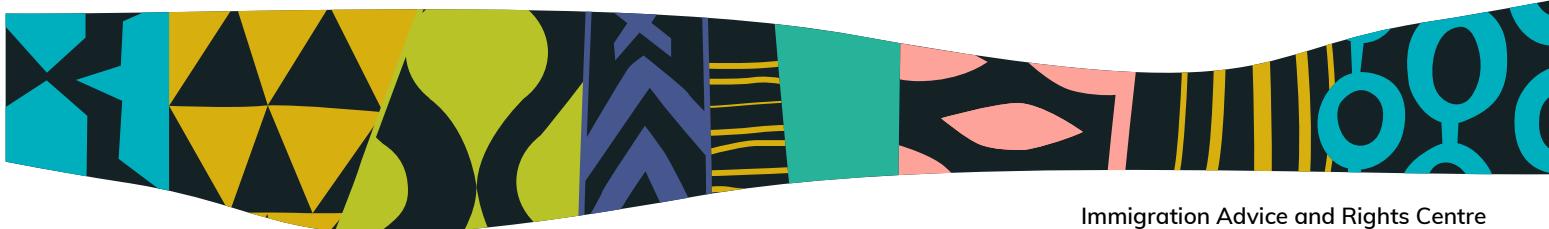


How to make an application

Applications must now be made electronically unless the Department gives you permission in writing to make a paper application. To make an electronic application you will need to:

- go onto the Department's website (www.homeaffairs.gov.au/trav/visa/immi) and create an 'ImmiAccount';
- under the 'My applications' tab, click 'new application' and then click on the 'family' tab. You will then need to click on "Stage 1 – Partner or Prospective Marriage visa (300, 309/100, 820/801)";
- when you have answered all the questions you will need to pay the visa application charge – there is an additional charge if you include a child (to find the cost of this visa you can go to www.homeaffairs.gov.au/trav/visa/fees);
- you will need to scan and upload:
 - at least two statutory declarations from family and friends explaining how they know the both of you and why they believe your relationship is genuine and continuing (you can use form 888).
 - if you have had a visa refused or cancelled and you do not hold a substantive visa the two statutory declarations (you need to use form 888) need to have been signed and witnessed within 6 weeks of the day you lodge the application and must be included with your application;
 - certified copies of your passport and birth certificate;
 - certified copies of your sponsor's birth certificate and evidence that they are an Australian citizen or permanent resident;
 - certified copies of the birth certificate of any children included in your application together with a form 1229 completed by any person who can lawfully determine where the child can live;
 - evidence that your relationship is genuine and continuing (see above);
 - form 80.

Before you can be granted a partner visa you will also need to satisfy health and character requirements. This will involve undergoing a medical examination, providing relevant criminal record checks and passing general character requirements. It is possible to provide further evidence in support of your application up until the time the Department makes a decision.



What happens if your application is refused?

If your application is refused you may be able to seek review of that decision at the Administrative Appeals Tribunal. You should seek legal advice as soon as possible as very strict time limits apply.

