

Spouse Migration Visas Subclass 820 and Subclass 801

This article contains a discussion of the application process to migrate to Australia when sponsored by a partner, in particular spouse temporary visas (subclass 820) and spouse permanent visas (subclass 801).

A. Partner Visas

Certain visas are available to partners of Australian citizens, Australian permanent residents and eligible New Zealand citizens. The type of visa which you may apply for depends firstly on whether the application is made in Australia and secondly the type of relationship between the applicant and the sponsor.

If you (the applicant) are in Australia, you can apply for a spouse temporary visa (subclass 820) and two years later a permanent visa (subclass 801). You could also apply for an interdependency temporary visa (subclass 826) and later a permanent visa (subclass 814). The latter visas are generally for people in a same sex relationship.

If you are outside Australia, there are several visas that you may apply for. These include:

- the spouse temporary visa (subclass 309) and permanent visa (subclass 100);
- a prospective marriage visa (subclass 300) for people from overseas to enter Australia and marry their fiancé, and
- the interdependency temporary visa (subclass 310) and permanent visa (subclass 110).

B. Spouse Visa: Onshore Temporary and Permanent (Subclasses 820 and 801)

An onshore spouse visa allows the applicant to remain in Australia on the basis of their married or de-facto relationship with their partner. The applicant's sponsor must be their partner. A temporary visa usually lasts for a waiting period of approximately two years from the date of the application. If the partner relationship still exists after the waiting period, then the applicant is eligible to apply for a permanent visa.

There are certain exceptions that may enable an applicant to be granted a permanent visa without going through the waiting period. Such exceptions include:

- when the applicant and sponsor have been in a spouse relationship for five or more years;
- when the applicant and sponsor have been in a spouse relationship for two or more years and there are dependent children of the relationship, and
- the sponsor was granted a Protection visa or a permanent visa under the humanitarian program, the applicant and sponsor were in the relationship before the visa was granted and this was declared to the department.

What the visa allows you to do in Australia

A spouse temporary visa allows the holder to:

- remain in Australia with their spouse until a decision regarding the permanent visa is made;
- work in Australia;
- study in Australia (without access to government funding for tertiary study), and
- enrol in Medicare.

A spouse permanent visa grants the holder the privileges of a spouse temporary visa with the following additions:

- the holder can remain permanently in Australia with their spouse;
- they have access to government funding for tertiary study;
- they are eligible for certain social security payments, and
- they could apply for Australian citizenship.

Eligibility

The applicant must be inside Australia if they apply for a subclass 820 visa or a subclass 801 visa and at the time the visa is granted.

In order to be an eligible sponsor, the person must be either:

- an Australian citizen; or
- an Australian permanent resident, or
- an eligible New Zealand citizen.

Additionally, the sponsor must be in a married or de-facto spouse relationship with the applicant. Generally they need to be aged 18 years or over. The sponsor must sign a sponsorship undertaking, which confirms that they will support the applicant while the applicant is in Australia on a spouse visa.

If the applicant and sponsor are married, the marriage must be legal under Australian law. If the marriage took place in another country, it is generally considered valid as long as the marriage is recognised in that country. There must also be evidence of a genuine and continuing relationship between the married applicant and sponsor.

An applicant can also apply for a spouse visa on the basis of a de-facto relationship. Usually the applicant and sponsor must have been in a de-facto spouse relationship for the entire 12 months immediately prior to lodging the application. The 12-month relationship requirement may be waived if compelling and compassionate circumstances can be demonstrated. The applicant and sponsor must be living together, and demonstrate the existence of a genuine and continuing relationship. They must show that there is a mutual commitment to a shared life as husband and wife in an exclusive relationship.

Dependent family members can be included within the applicant's visa application. This includes dependent children and other dependent relatives (including parents, siblings, grandparents, grandchildren, aunts, uncles, nieces and nephews of the applicant).

All visa applicants (including dependents) need to meet certain health and character requirements. If there is a high chance of reliance on social security, an Assurance of Support (AoS) from an Aus-

tralian citizen or Australian permanent resident may be required.

An applicant may not be eligible for the visa if they or their accompanying dependent family members:

- do not hold a substantive visa and have had a visa refused or cancelled since their last entry to Australia;
- do not hold a substantive visa and their previous visa has ceased;
- hold a visa with a No Further Stay condition;
- hold a Sponsored Visitor visa;
- hold a Criminal Justice Entry visa;
- since their last entry to Australia, hold or last held a Skilled-Independent Regional (Provisional) visa (subclass 495) and have not held or did not hold that visa for at least two years, or
- have a debt to the Australian Government and do not have satisfactory arrangements to repay the debt.

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Comasters can help clients with the preparation of a comprehensive application to the Immigration Department for all partner visas.

Important: This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

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