



IMMIGRATION FACTSHEET

WEAR IT WITH PRIDE

In 2008 the Federal Government changed 85 laws to give same-sex couples in a de facto or registered relationship the same legal rights and protections as different-sex de facto couples.

As a result of the same-sex law reforms a range of new rights and responsibilities have been introduced for same-sex couples and their families when applying for visas or citizenship.

Same-sex de facto partners and their children are now entitled to apply for the same types of visas as straight de facto partners and their children. This means that if you are in a relationship classified as “de facto”, and you apply for a visa, your partner and any children you parent will be recognised as family members. For more information about whether your relationship is seen as de facto or not, please see the relationships fact sheet.

Actions you can take

- Collect evidence supporting your visa application as a de facto partner, or register your relationship if you live somewhere where this is possible – see [relationships fact sheet](#) for more information.
- If you are not the biological parent of your child, you may be able to apply to the Federal Family Court for a parentage order – see parenting factsheet for more information

Please note: This factsheet provides general information only. It does not constitute legal advice and may not be applicable to your individual circumstances. If you need specific legal advice contact your local Community Legal Centre.

Last updated: January 2010

Things you should know

- Before 1 July 2009, same-sex couples could apply for an ‘interdependent’ visa. These visas were more complicated, time consuming and costly than the new ‘de facto partner’ visas available.
- From 1 July 2009 same-sex couples and their families may apply for de facto partner visas, as long as you meet all the relevant eligibility requirements.
- If you want to make an application for entry into Australia or residency on the basis of being a de facto partner or an eligible family member, you will need to advise the Department of Immigration and Citizenship of your de facto relationship and/or family status. Privacy law in Australia means that this information will be kept strictly confidential.
- The Minister for Immigration and Citizenship might assess your relationship to see if it fulfils all the relevant requirements. If you are in a de facto relationship, this includes a requirement that you have lived together for 12 months. If you are in a registered relationship under state or territory law, you may not have to prove that you have been living together for 12 months when you apply for a visa.
- If you are in Australia, but are not an Australian citizen, you may apply for a partner temporary visa so you can stay with your partner in Australia (if they are an Australian citizen or resident).
- If you are outside Australia, and are not an Australian citizen, and you want to be with your partner who is an Australian citizen, permanent resident or eligible New Zealand citizen, you can apply for a temporary partner visa and permanent partner visa on the same form.
- If you have been with your de facto partner in Australia for at least two years you may apply for a permanent visa.
- Some visa applications require that you spend a certain amount of time in Australia. It is possible to apply to the Minister to treat some time spent overseas as time spent in Australia. One example of this might be if a non-Australian travels with their Australian (resident) partner overseas for work.

Need more information?

Gay and Lesbian Immigration Task
Force (GLITF)
NSW
South Australia
Victoria
Queensland

Department of Immigration and
Citizenship
Information on visas and migration
131 881
Information on citizenship
131 880

Immigration Advice and Rights
Centre (NSW)
(02) 9262 3833

Refugee applications (IARC)

Refugee Advice and Casework
Service Australia Inc (RACS)

Australian Federation of AIDS
Organisations
(02) 9557 9399

Gay and Lesbian Counselling and
Community Services of Australia
1800 18 45 27

- If a same-sex couple is refused a visa, you can now ask for a written reason explaining why the application has been refused, if you fulfil the same criteria as different-sex couples.
- Now it is more likely the relationship between same-sex parents and their children will be recognised in immigration and citizenship matters. Same-sex de facto partners and their children are recognised as family members when one partner is the primary visa applicant.
- Children adopted under Australian or overseas law may be recognised as the children of a same-sex couple when they apply for an Australian visa.
- If a same-sex de facto couple have a child through a legal surrogacy arrangement overseas, they may need to apply for a court order in the country where the surrogacy arrangement was made to legally transfer parentage of the child from the surrogate to themselves.
- If your child was born overseas via surrogacy and one of the biological parents is Australian, once the child has lawfully remained in Australia for at least 2 years, the child may be registered as an Australian citizen by descent.
- If you have migrated with your non-biologically related child, that child may now be recognised as your child. This means migrant children of same-sex couples may be entitled to the provision of English courses and tuition due to the fact that they have a parent who holds a permanent visa or entry permit.

Frequently asked Questions

▼ **I married my same-sex partner overseas. Are we legally married in Australia?**

No. However, your same-sex marriage in another country may be used to help prove that you and your partner are in a de facto relationship. Remember that if you register your relationship (which you can do in the ACT, Victoria and Tasmania), this will also help prove your relationship and you might be able to receive a visa without waiting the usual twelve months.

▼ **My same-sex partner is applying for a migrant visa to Australia. Which visas am I entitled to apply for so that I can join my partner in Australia?**

If you are in a same-sex de facto relationship with your partner you can now apply for a partner temporary visa. After 2 continuous years in Australia in a de facto relationship with your partner, you may be eligible to apply for a permanent visa.

▼ **My same-sex partner is currently on an interdependency visa. Do we need to do anything now that the law has changed?**

No. If you lodged an interdependency visa application or received an interdependency visa before 1 July 2009, your interdependency visa application will be processed under the old rules and if approved you will be provided an interdependency visa at both the temporary and permanent stages.

If you lodged your application after 1 July 2009 your application will be processed under the new "partner" visa application process. If you lodged after 1 July using the old interdependency visa you do not need to lodge a new application, they will be automatically processed as a partner visa.

▼ **I am in a same-sex relationship but want to apply for residency independently. Do I need to inform the Department of Immigration and Citizenship of my de facto relationship and/or family status?**

If you are not seeking a partner visa, you must still answer all questions on your application form honestly, including questions about your relationship status if there is one. The information you provide to the Department will be treated as confidential. If you are concerned about the privacy of your relationship, you could consider speaking to your local Gay & Lesbian Immigration Taskforce.

▼ **I am not biologically related to my child. What do I do about their passport visa?**

Children of same-sex couples are now recognised more broadly than they used to be. If your child was born via an artificial conception procedure or through a surrogacy arrangement, they may be considered to be your child. If your partner has a child, you may be recognised as that child's step-parent for immigration purposes.

If you are legally considered to be the parent of your child then you follow standard application processes. If you are not legally recognised as the parent of your child you may apply for a parenting order from the federal family courts. For more

information please see the Parenting and Families factsheet.

The Immigration laws that have changed

- #80** National Health Act 1953
- #81** Administrative Decisions (Judicial Review) Act 1977
- #82** Australian Citizenship Act 2007
- #83** Immigration (Education) Act 1971
- #84** Migration Act 1958
- #85** Immigration (Guardianship of Children) Act 1946

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