



# RAILS INFORMATION SHEET

*This information is not a substitute for legal advice. If you have questions about a specific case you should seek assistance from RAILS or another registered migration agent.*

Information Current at 19 June' 05

## FAMILY MIGRATION PROGRAM

The Family Migration program allows Australian citizens, permanent residents and some New Zealand citizens to sponsor overseas relatives to join them in Australia permanently.

Children, parents and other family members may apply to join their Australian citizen or permanent resident family members in Australia. To succeed, the relative and the sponsor must meet all the requirements of one of the visa categories in the Family Migration program.

Relatives can also be sponsored under the Skilled Migration Program.

Family stream migrants are selected on the basis of their family relationship with their sponsor in Australia. There is no test for skills or language ability as there is for skilled stream migrants.

### Who can migrate under the Family Migration Program?

- **Partners** (husbands, wives, de facto partners, interdependent partners and fiancés)
- **Children** (dependent, adopted or orphaned)
- **Parents**
- **Other Family Members** (orphaned relatives, dependent aged relatives, last remaining relatives of the family and carers)

## PARTNER VISAS

### Spouses

This is a visa for husbands, wives or de facto partners of Australian sponsors. People applying in or outside Australia for permanent residence as a spouse go through a two-stage process, although only one application is necessary. Both the application for a temporary visa and that for a permanent visa are made together on the same form.

At both stages of the process, the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) must be satisfied that the parties are in a genuine spouse relationship.

De facto spouses must have been in the relationship for at least 12 months immediately before lodging their application. Usually the permanent visa cannot be granted less than two years from the date of application. There are exceptions to this two year rule where the

relationship has ended prior to the grant of the permanent visa and either there has been domestic violence, there are certain shared arrangements regarding a child or the sponsoring spouse has died.

There are other certain limited circumstances where it is possible for a permanent visa to be granted in less than two years, for example, where the relationship is long-term at the time of application. Long-term is defined as five years, or two years if there are children (excluding step-children) of the relationship.

For Spouse visa applications lodged after 1 April 2006, partners will not become eligible for the permanent visa until two years after their temporary visa has been granted, and the couple must have lived together for at least a year since the temporary visa was granted.

More information is provided in **DIMIA Fact Sheet 30: Family stream Migration - Partner**. This can be accessed via the internet at [www.immi.gov.au/facts/](http://www.immi.gov.au/facts/) or from a DIMIA office. **Booklet 1 - Partner Migration** which includes more detailed information and application forms for all Partner visas can be downloaded from the DIMIA website at [www.immi.gov.au/allforms/booklets/1127.pdf](http://www.immi.gov.au/allforms/booklets/1127.pdf) for free or purchased from a DIMIA office.

### **Fiancés**

People engaged to be married to an Australian citizen, permanent resident or eligible New Zealand citizen and wishing to marry that person **in Australia**, need to obtain a Prospective Marriage visa. It is a requirement of a Prospective Marriage visa that the parties have met each other in person and that the proposal for marriage is genuine.

Fiancés who apply successfully for a Prospective Marriage visa receive a temporary visa which is valid for nine months from the date of the visa grant. They must travel to Australia and marry their sponsor within that period and, if they wish to, then apply for a Spouse visa.

If all legal requirements are met, applicants will then be granted a temporary Spouse visa. This will be followed by a permanent Spouse visa if the relationship is still continuing at the end of two years after lodging the Spouse visa application. Again, there are exceptions to this two year rule where the relationship has ended prior to the grant of the permanent visa and either there has been domestic violence, there are certain shared arrangements regarding a child or the sponsoring spouse has died. The domestic violence and death of spouse exceptions also apply to people who hold or have held fiancé visas and have married their sponsoring spouse, even if they have not yet applied for a spouse visa.

For Spouse visa applications lodged after 1 April 2006, the permanent visa can only be granted two years after the temporary visa has been granted, and the couple must have lived together for at least a year since the temporary visa was granted. The above exceptions regarding domestic violence, death or spouse and shared arrangements regarding a child still apply.

People already in Australia on temporary visas are unable to extend their stay in Australia by applying for a visa as a fiancé(e). There is no visa category available to cover this situation.

More information is provided in **DIMIA Fact Sheet 30: Family stream Migration - Partner**. This can be accessed via the internet at [www.immi.gov.au/facts/](http://www.immi.gov.au/facts/) or from a DIMIA office. **Booklet 1 - Partner Migration** which includes more detailed information and application forms for all Partner visas can be downloaded from the DIMIA website at [www.immi.gov.au/allforms/booklets/1127.pdf](http://www.immi.gov.au/allforms/booklets/1127.pdf) for free or purchased from a DIMIA office.

### **Interdependent Partners**

Interdependency visas are for people who have an interdependent relationship (usually same sex) with an Australian citizen, Australian permanent resident or eligible New Zealand citizen.

The relationship must be genuine and continuing and involve a mutual commitment to a shared life together. The people must also be living together and must not have a spouse or other interdependent partner. Interdependency applicants must have been in the relationship for at least 12 months immediately before lodging their application.

People applying in or outside Australia for permanent residence on interdependency grounds go through a similar two-stage process to spouses (see above) and are also covered by one application. In certain limited circumstances, provisions exist for the permanent visa to be granted in less than two years. One example is where the relationship is long-term at the time of application. This is defined as five years. There are also similar exceptions to the two year rule in circumstances of domestic violence and death of the sponsoring partner as for Spouse visas.

More information is provided in **DIMIA Fact Sheet 30: Family stream Migration - Partner**. This can be accessed via the internet at [www.immi.gov.au/facts/](http://www.immi.gov.au/facts/) or from a DIMIA office. **Booklet 1 - Partner Migration** which includes more detailed information and application forms for all Partner visas can be downloaded from the DIMIA website at [www.immi.gov.au/allforms/booklets/1127.pdf](http://www.immi.gov.au/allforms/booklets/1127.pdf) for free or purchased from a DIMIA office.

## **CHILD VISAS**

### **Dependent Children**

This visa is available for the natural, adopted or stepchild of the Australian sponsor. Generally, a Dependent Child applicant must be under 18, but may be under 25 if a full-time student and dependent on the parents. There is no age limitation for dependent children with a disability which stops them from working. Applications may be made inside or outside Australia.

More information is provided in **DIMIA Fact Sheet 33: Family stream Migration - Child**. This can be accessed via the internet at [www.immi.gov.au/facts/](http://www.immi.gov.au/facts/) or from a DIMIA office. **Booklet 2 - Child Migration** which includes more detailed information and application forms for all Child visas can be downloaded free from the DIMIA website at [www.immi.gov.au/allforms/booklets/1128.pdf](http://www.immi.gov.au/allforms/booklets/1128.pdf) or purchased from a DIMIA office.

### **Adopted Children**

This visa is available for children who have been, or will be, adopted overseas. In most cases, for the visa to be granted, the adoption must be approved by the welfare authorities in the overseas country and in Australia and must be in accordance with the Adoption Convention or a bilateral agreement between Australia and the child's country. There are some circumstances where an Adopted Child visa can be granted to a child adopted in a country not party to the Adoption Convention and without the authority of the Australian welfare authorities. However the adoptive parents must have been living overseas for more than 12 months at the time of the visa application; not have been living overseas to bypass requirements regarding entry of adopted children into Australia; have lawfully obtained full and permanent parental rights over the child and authority from the authorities in the child's country for the child to go to Australia.

More information is provided in **DIMIA Fact Sheets 33: Family Stream Migration - Child** and **Fact Sheet 36: Adopting Children from Overseas**. These can be accessed via the internet at [www.immi.gov.au/facts/](http://www.immi.gov.au/facts/) or from a DIMIA office. **Booklet 2 - Child Migration** which includes more detailed information and application forms for all Child visas can be downloaded free from the DIMIA website at [www.immi.gov.au/allforms/booklets/1128.pdf](http://www.immi.gov.au/allforms/booklets/1128.pdf) or purchased from a DIMIA office.

### **Orphan relative**

This visa is available for children under 18 who are unable to be cared for by their parents because the parents are dead, permanently incapacitated or of unknown whereabouts. The sponsor must be either the child's brother or sister, grandparent, aunt or uncle, or niece or nephew (or step equivalents).

More information is provided in **DIMIA Fact Sheet 33: Family stream Migration - Child**. This can be accessed via the internet at [www.immi.gov.au/facts/](http://www.immi.gov.au/facts/) or from a DIMIA office. **Booklet 2 - Child Migration** which includes more detailed information and application forms for all Child visas can be downloaded free from the DIMIA website at [www.immi.gov.au/allforms/booklets/1128.pdf](http://www.immi.gov.au/allforms/booklets/1128.pdf) or purchased from a DIMIA office.

## **PARENT VISAS**

There are two visa categories for parents wishing to migrate to Australia, the Parent visa category and the Contributory Parent visa category. Parents must be sponsored, generally by their child, who must be an Australian citizen, Australian permanent resident or eligible New Zealand citizen.

All parent applicants must meet the balance of family test. To pass this test at least half of the parent's children must live in Australia or more children must live in Australia than any other single country.

### **Parent Category**

The parent category comprises the Parent visa and the Aged Parent visa. Aged parent visa applicants must be old enough to be granted an Australian age pension. For aged parent visa applications, the parent must be in Australia at the time of application and time of grant of visa. A parent who is not old enough to be granted an Australian age pension can only apply for a Parent visa. For parent visa applications, the applicant can be inside or outside Australia at the time of lodgment of the application in Australia, but must be outside Australia at the time the visa is granted.

At present there are long waiting lists for Parent and Aged Parent visas and it may take many years for a visa to be granted. These visas require a mandatory assurance of support to be provided by an Australian citizen, permanent resident or eligible New Zealand citizen who meets the minimum income requirements (and need not necessarily be the sponsor) along with payment of a bond.

More information is provided in **DIMIA Fact Sheet 31 - Family Stream Migration - Parent category**. This can be accessed via the internet at [www.immi.gov.au/facts/](http://www.immi.gov.au/facts/) or from a DIMIA office. **Booklet 3 - Parent Migration** which includes more detailed information and application forms for all Parent visas can be downloaded free from the DIMIA website at [www.immi.gov.au/allforms/booklets/1129.pdf](http://www.immi.gov.au/allforms/booklets/1129.pdf) or purchased from a DIMIA office.

### **Contributory Parent Category**

This category was introduced in mid-2003 to allow the expansion of the Parent Migration program on the basis that applicants pay a higher visa application charge and a larger Assurance of Support bond.

It has more visa places available each migration program year and visa applications in the contributory parent category are accorded a higher priority than applications in the parent category. Applicants for Contributory Parent Visas must meet the same eligibility criteria as applicants for non-Contributory Parent Category visas.

More information is provided in **DIMIA Fact Sheet 39 - Family Stream Migration - Contributory Parent Category**. This can be accessed via the internet at [www.immi.gov.au/facts/](http://www.immi.gov.au/facts/) or from a DIMIA office. **Booklet 3 - Parent Migration** which includes more detailed information and application forms for all Parent visas can be downloaded free from the DIMIA website at [www.immi.gov.au/allforms/booklets/1129.pdf](http://www.immi.gov.au/allforms/booklets/1129.pdf) or purchased from a DIMIA office.

### **AGED DEPENDENT RELATIVE VISA**

This is a visa for a single, widowed, divorced or formally separated person who is financially dependent on an Australian relative (child, adopted child, parent, brother, sister,

grandchild, uncle, aunt, niece or nephew). Applicants must be old enough to be granted an Australian age pension.

Applicants must be sponsored by their relative in Australia, who must be an Australian citizen, Australian permanent resident or eligible New Zealand citizen.

More information is provided in DIMIA **Fact Sheet – Aged Dependent Relative**. This can be accessed via the internet at [www.immi.gov.au/facts/](http://www.immi.gov.au/facts/) or from a DIMIA office. **Booklet 4 – Other Family Migration** which includes more detailed information and application forms for the Aged Dependent Relative visa can be downloaded free from the DIMIA website at [www.immi.gov.au/allforms/booklets/1130.pdf](http://www.immi.gov.au/allforms/booklets/1130.pdf) or purchased from a DIMIA office.

### **REMAINING RELATIVE VISA**

This visa is for a person who is the last remaining relative outside Australia. This means they must have no overseas near relatives (parent, brother, sister, non dependent children and step equivalents) and if the applicant is married or in a de facto relationship then their spouse must also have no other overseas near relatives. Alternatively the applicant and their spouse must have no more than three overseas near relatives, not normally reside in the same country as those near relatives and have had no contact with those relatives for a reasonable period.

Applicants must be sponsored by their brother, sister, parent or step equivalent. The sponsor must be. From 1 November 2005 applicants and their spouses must have no other relatives outside Australia to qualify for this type of visa.

More information is available in **DIMIA Fact Sheet – Remaining Relative Category**. This can be accessed via the internet at [www.immi.gov.au/facts/](http://www.immi.gov.au/facts/) or from a DIMIA office. **Booklet 4 – Other Family Migration** which includes more detailed information and application forms for the Remaining Relative visa can be downloaded free from the DIMIA website at [www.immi.gov.au/allforms/booklets/1130.pdf](http://www.immi.gov.au/allforms/booklets/1130.pdf) or purchased from a DIMIA office.

### **CARER VISA**

This visa is available for a person willing and able to give substantial, continuing assistance to an Australian relative (child, adopted child, parent, brother, sister, grandchild, uncle, aunt, niece or nephew) or member of their family unit who has a medical condition that causes them to need help with the practical aspects of daily life. To be valid the application must include evidence that an assessment of the Australian relative's need for care has been sought from Health Services Australia.

The applicant must be sponsored by the relative in Australia, who must be an Australian citizen, Australian permanent resident or eligible New Zealand citizen.

More information is available in the **DIMIA Fact Sheet - Carer Category**. This can be accessed via the internet at **www.immi.gov.au/facts/** or from a DIMIA office. **Booklet 4 – Other Family Migration** which includes more detailed information and application forms for the Carer visa can be downloaded free from the DIMIA website at **www.immi.gov.au/allforms/booklets/1130.pdf** or purchased from a DIMIA office.