



Australian Government
Department of Home Affairs

Official

Guidelines for prioritising partner visa applications on compassionate and compelling grounds.

Released by Department of Home Affairs
under the *Freedom of Information Act 1982*

Table of Contents

Guidelines for prioritising partner visa applications on compassionate and compelling grounds.	1
Table of Contents	2
Overview	3
Compassionate circumstances	4
Compelling reasons	5
Compelling and compassionate circumstances affecting groups of people (not individuals)	6
Circumstances which are neither compelling nor compassionate	7
Recording consideration of priority processing	7
Further advice	7
Appendix A - Compassionate/Compassionate assessment process	8
Appendix B – Temporary Processing Arrangements for offshore Partner/Prospective Marriage visa applications lodged by Afghans impacted by former Ministerial Direction 80	9

Version	Owner	Authorised by	TRIM ref	Date authorised
v1.0	Partner Program Management Section	Karin Maier - A/g FAS Immigration Program Division (ADD2023/3561835)	ADD2023/3626478	14 June 2023

Released by Department of Home Affairs under the Freedom of Information Act 1982

Overview

1. Ministerial Direction 102—*order for considering and disposing of Family visa applications* (the Direction) came into effect on 9 February 2023. The Direction relates to the order of considering and disposing of Family visa applications.
2. Subject to section 9, subsection 8(1)(b) of the Direction provides that for Family visa applications, applications on the basis of the primary applicant being a Partner¹ or a dependent child of a sponsor be given priority processing over applicants for any other Family visa².
3. Section 9 of the Direction requires delegates of the Minister³ to depart from the order of priority set out in section 8 if:
 - (a) the applicant satisfies the delegate that:
 - (i) the application involves special circumstances of a compassionate nature; and
 - (ii) there are compelling reasons to depart from the order of priority set out in section 8 of the Direction, having regard to the applicant's special circumstances (identified in section 9(a)(i) of the Direction) and to any other matters the delegate considers relevant.
4. Delegates may initiate priority processing themselves if they are satisfied there are grounds to do so, or may consider it in response to a request to do so, usually from the applicant, sponsor or their agent. Delegates may also initiate priority processing to comply with advice issued by Partner Program Management requiring certain applicants or cohorts to be prioritised, usually in response to a ministerial or government priority.
5. The guidelines below provide policy advice on the circumstances which may constitute (i) special circumstances of a compassionate nature, and (ii) compelling reasons for the purpose of departing from the order of priority set out in Direction 102 when deciding a Partner category visa.
6. Section 9 of the Direction is not enlivened unless subsections 9(a)(i) **and** 9(a)(ii) exist. That is, the application must involve special circumstances of a compassionate nature; **and** there must be compelling reasons to depart from the processing order.
7. The terms *compelling* and *compassionate* are not defined in either the *Migration Act 1958* (the Act) or the *Migration Regulations 1994* (the Regulations) and the ordinary meaning of the terms has been used for the purpose of these guidelines. The Macquarie dictionary defines 'compelling' as *convincing or demanding attention or interest*, and 'compassionate' as *having or showing compassion, where compassion has the meaning of sympathy or a feeling of sorrow or pity for the suffering or misfortunes of another*.
8. It is not the intention of this policy advice to give an exhaustive list of circumstances that may be considered compelling or compassionate, but rather to provide a framework for officers to work within to achieve a greater degree of consistency and fairness in decision making. If officers are presented with circumstances which

¹ Partner visa applicants include married, de facto and prospective marriage applicants.

² There is one exception to this: family visa applications where the Minister has exercised powers of intervention under sections 351 and 417 of the Act. Subsection 8(1)(a) of Direction 102 provides that these family visa applications receive highest priority.

³ Enlivening Section 9 of Direction 102 will usually be authorised by Family Visas Branch officers at or above the EL1 classification.

do not appear to fall within those set out in this policy framework, they should still consider whether these circumstances reasonably meet the general and ordinary meanings of 'compassionate' and 'compelling' as defined by the Macquarie dictionary.

Compassionate circumstances

9. Officers should, in the first instance, determine if the application involves circumstances of a compassionate nature.
10. Under policy and for the purpose of subsection 9(a)(i) of the Direction, a *long-term partner relationship* that existed at the time of application is to be considered a *compassionate circumstance*. Regulation 1.03 of the Regulations defines *long-term partner relationship* as one that has continued for at least three years or, if the couple has a child, two years. In addition, the Partner (subclass 100 and 801) Regulations exempt applicants who are in a long-term partner relationship from waiting a minimum of two years from the date of application in order to have their permanent visa granted. Noting this, it would be contrary to the intent of the Regulations to not recognise the unique nature of long-term partner relationships or not afford them the priority processing.
11. It should be noted that:
 - (a) the policy position above applies to circumstances where the applicant was in a *long-term partner relationship* at the time of application. It does not apply to instances where the applicant meets the definition of *long term partner relationship* after time of lodgement but before grant (for example, the couple has a child or the relationship reaches two years after the application is lodged); and
 - (b) notwithstanding the policy position to prioritise processing of the visa application, the delegate must still be satisfied that the applicant is the *spouse* or *de facto partner* of the sponsor and that all criteria for grant of the visa are met before the visa can be granted. In other words, a decision to prioritise processing of an application does not mean the visa will be granted, and it remains open to a delegate to refuse the application if a criterion is not met.
12. Other examples of compassionate circumstances include but are not limited to:
 - the sponsor requires assistance because they or a member of their family for whom they care has a terminal illness or a disability⁴;
 - complications in the applicant or sponsor's pregnancy;
 - same sex couples where one or both parties reside in a country that does not permit same sex relationships;
 - situations where unintended consequences of departmental processes would cause an unfair or unreasonable outcome for the applicant or sponsor. An example of this may be where incorrect information/advice was given by the Department;
 - the applicant resides in a country that is or has been subject to an international emergency response that Australia is/was party to (for example, evacuation due to war or civil unrest);
 - the applicant has claimed to be affected by family violence;
 - the sponsor has claimed to be affected by family violence perpetrated by the visa applicant;
 - the processing time has exceeded the 90th percentile under the global processing times;

⁴ The definition of disability derives from item (a) of the definition of disability in the *Disability Discrimination Act 1992*, under which disability in relation to a person means, "...total or partial loss of the person's bodily or mental functions".

- the applicant(s)' medicals will expire and cannot be extended;
 - possible separation of family where:
 - dependent applicant will exceed 23 year age limit to be granted a visa
 - the applicant holds a Humanitarian Stay (temporary) (subclass 449) visa which will likely expire before the Partner visa is decided.
13. **IMPORTANT:** Delegates should escalate matters involving claims of family violence to their immediate manager as soon as practicable as a first step.
14. In considering the above or other compassionate circumstances not covered in the above examples, delegates should be aware that, unlike the *long-term partner relationship*, the circumstances do not necessarily need to have existed at the time of application. Rather, the compassionate circumstances may have existed before, at or after the time of application.
15. **Where a delegate is satisfied the application involves special circumstances of a compassionate nature, the delegate must turn their mind to whether there are compelling reasons exist to depart from the order of priority set out in section 8 of the Direction.**

Compelling reasons

16. As stated above, an application cannot be prioritised unless the application involves special circumstances of a compassionate nature; **and** compelling reasons to depart from the processing order exist.
17. For the purpose of subsection 9(a)(ii) of the Direction, *compelling reasons* include but are not limited to ones which:
- give effect or assist in giving effect to Government priorities;
 - give effect or assist in giving effect to Charter letter and/or other commitments by the Department to Government; or
 - reduce processing times to be within the 50th percentile; or
 - lead to greater processing efficiencies; or
 - adversely affect the interests of the sponsor; or
 - affect the best interests of Australia.
18. Noting the above, policy supports priority processing of applications lodged by applicants who were in a *long-term partner relationship* when the application is lodged. As noted earlier, the Regulations exempt these applicants from waiting a minimum of two years to be granted the permanent visa. It follows that these applications should require less processing time and scrutiny as the applicant's capacity to demonstrate the genuineness of the relationship is greater. Prioritising this cohort would contribute directly to reducing visa backlogs and increasing processing efficiencies, both of which are generally a priority of the Government of the day.
19. Situations may arise where processing officers may be satisfied that expediting a visa process would be in Australia's best interest⁵. While these situations are expected to be rare and uncommon within the Partner and Prospective Marriage caseload, they may nonetheless exist, and policy allows for these cases to be given priority processing. This is because the general view is that the interests of the wider community or Australia as a whole override the interests of individuals such as other visa applicants.

⁵ For example, the sponsor/applicant have occupational skills in high demand (refer to the Medium and Long-term Strategic Skills List (MLTSSL) of the Skilled Occupation List)

20. Officers are not expected to go out of their way to find cases where priority processing of the visa application would be in Australia's best interest. However, where these cases are brought to their attention either by the sponsor, applicant or a third party; officers should consider these circumstances favourably. Where officers are satisfied that such circumstances exist, they should proceed to process the application as soon as practically possible.
21. Similarly, officers should not feel compelled to possess special skills or knowledge or spend a great deal of time researching information or facts to satisfy themselves that the priority processing of the visa application would be in Australia's best interest. Generally speaking, the onus is on the applicant, sponsor or third party requesting expedition of the process to provide as much information as possible. In some cases, publicly available information, common knowledge of Government initiatives and priorities may assist officers to make a decision. It is also open to officers, at their discretion, to request additional information from the party making the request or consult with other areas of the Department (e.g. Skilled Migration) to verify the information they have before them.
22. It should be noted that while a request to expedite these cases will generally be initiated by the applicant, sponsor or a third party, it is open to officers to decide to expedite the processing of a partner or prospective marriage visa application even where no formal request has been made, that is, where officers assess, based on the facts before them, that the expedited processing of the visa application would be in the best interest of Australia.
23. Examples of compelling reasons affecting the interest of Australia include but are not limited to cases where:
- the visa applicant has specialised skills that would assist Australia post crisis, emergency or pandemic recovery; or
 - the visa applicant has an offer of employment to fill a position which requires skills that are in short supply, for example, in remote regions of Australia; or
 - the applicant is an elite athlete or possesses a distinguished talent; and facilitating the grant of the visa would enable them to represent Australia in national or international events.

Compelling and compassionate circumstances affecting groups of people (not individuals)

24. Situations may arise where applications made by people with similar circumstances *all* fall within the scope of section 9 of the Direction, in that they all involve special circumstances of a compassionate nature; and there are compelling reasons to depart from the order of priority set out in section 8 of the Direction. Examples of such cases include but are not limited to:
- Partner visa applicants who, under the previous Ministerial Direction 80 were afforded lowest processing priority; and
 - Partner visa applicants impacted by circumstances affecting a group of people and not individuals; for example, war, civil unrest, natural disaster.
25. Where this is the case, delegates should process applications in order of the date on which the application was made, with older applications processed ahead of those lodged more recently, unless the applicant can demonstrate that the *special circumstances of a compassionate nature* and *the compelling reasons* affect them individually in a way that sets them apart from other applicants in the group. This will ensure applications are progressed in a fair, reasonable and equitable manner, and no applicant is given an unfair advantage over others without a valid reason.

26. Furthermore, the Department may be guided by the Government's position in relation to certain cohorts, for example, a commitment to prioritise applications by Ukrainian citizens or by Afghan nationals.
27. Where this may be the case, Partner Program Management will:
- provide advice about temporary processing arrangements that may be put in place to complement the advice in these guidelines;
 - include a copy of the temporary processing arrangements as an Appendix to these guidelines; and
 - update the temporary processing arrangements as required.

Circumstances which are neither compelling nor compassionate

28. While circumstances should be assessed on a case by case basis, under policy, the following circumstances alone would **not** be considered compelling or compassionate, unless other factors exist to support them:
- Financial hardship;
 - Intending to start a family;
 - Pregnancy;
 - Access to English language classes and/or Commonwealth funded study programs;
 - Pain and suffering of separation;
 - Employment;
 - Travel;
 - Pre-arranged wedding plans;
 - Passport due to expire.

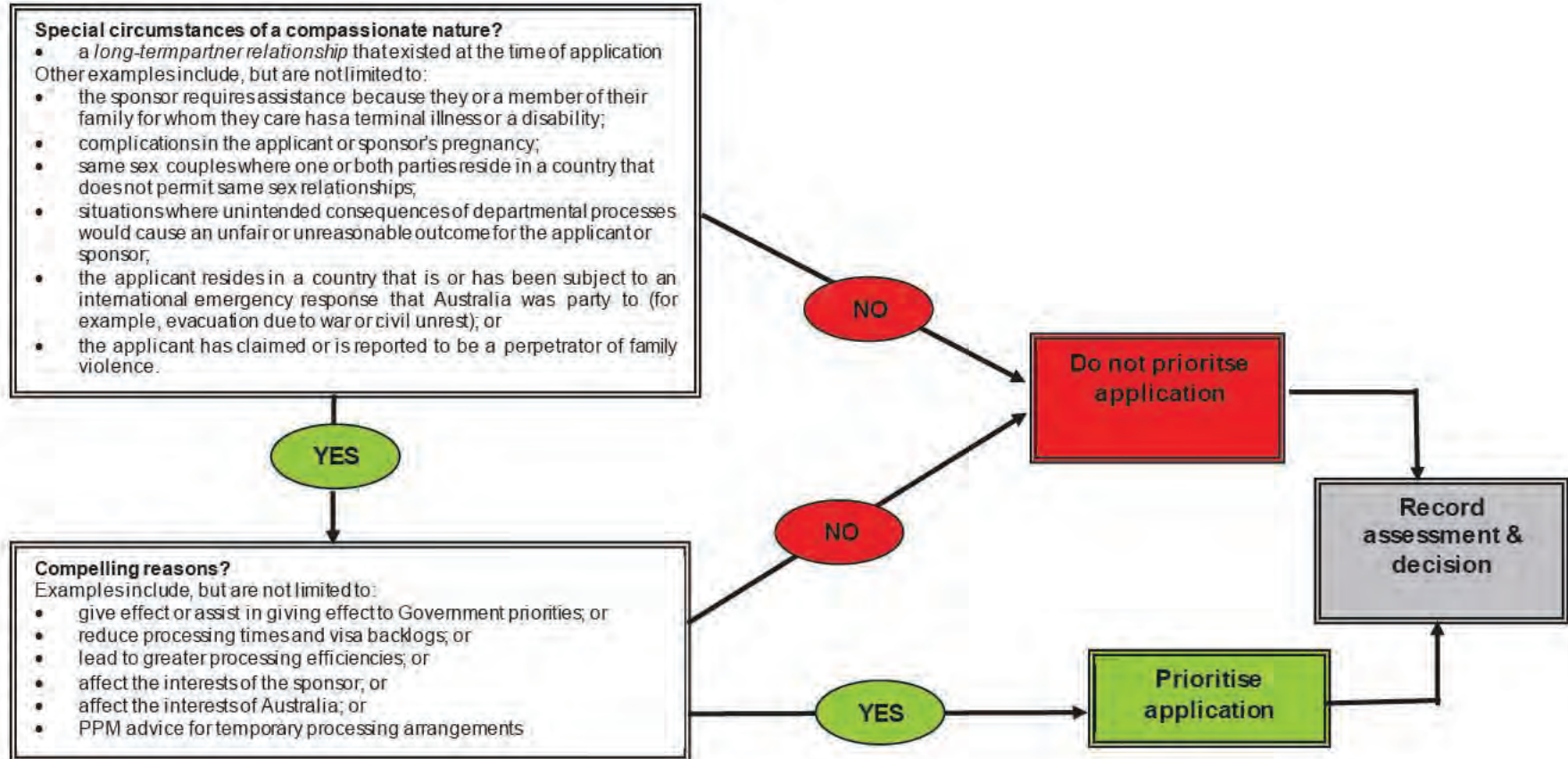
Recording consideration of priority processing

29. Delegates should record a brief case note about their assessment of priority processing and their decision to prioritise/not prioritise. A clear and concise record informs others that the matter has been considered and assists areas including program management, the parliamentary liaison network and the Global Feedback Unit in responding to enquiries and complaints received.

Further advice

30. Partner Program Management is responsible for updating and maintaining the currency of these guidelines.
31. For questions and/or additional advice on priority processing matters, including advice on circumstances not listed in these guidelines, please email partner.program.management@homeaffairs.gov.au

Appendix A - Compassionate/Compassionate assessment process



Appendix B – Temporary Processing Arrangements for offshore Partner/Prospective Marriage visa applications lodged by Afghans impacted by former Ministerial Direction 80

Note: These arrangements apply only to applications lodged pre 9 February 2023. Ministerial Direction 80 was revoked on 9 February 2023 and as such, applications lodged from that day onwards can be processed under normal processing arrangements.

Order of Priority	Cohort Description	Authority for prioritisation (MD102 = Ministerial Direction 102 & Guidelines = <i>Guidelines for prioritising partner visa applications on compassionate and compelling grounds</i>)
1	Compassionate/compelling grounds specific to their <i>individual</i> circumstances	<p>Section 9 of MD102 & paragraphs 9-23 of the Guidelines</p> <p>The date of lodgement is not relevant, meaning newer cases can be prioritised over older cases at any stage of the process.</p> <p>Considered on a case by case basis when a request is made.</p>
2	Residing in Afghanistan & completed health/ biometrics	Section 9 of MD102 & paragraphs 24-27 of the Guidelines
	Medicals/penal clearances expiring within 2 months & no further extension is possible	Section 9 of MD102 & paragraph 12 of the Guidelines
	Dependent(s) turned 22 years of age	Section 9 of MD102 & paragraph 12 of the Guidelines
3	Outside the 90 th percentile global processing timeframe	Section 9 of MD102 & paragraphs 12 & 17 of the Guidelines
4	Afghans who hold a Humanitarian Stay (temporary) (subclass 449) visa	Section 9 of MD102 & paragraph 12 of the Guidelines

Note: The above cohorts may include, but are not restricted to, cases that were impacted by Ministerial Direction 80.

PARTNER CATEGORY VISAS

HELPCARD 2 PARTNER VISAS (SUBCLASS 309/100) – SPOUSE & DE FACTO PARTNER

Couple <i>not</i> married at TOA	Can satisfy TOA criteria on the basis of <i>intent to marry</i> (309.211(3)), but must enter into a valid marriage before TOD to meet 309.224(a) otherwise assess against <i>de facto partner</i> provisions at TOD.
Place of domicile & validity of marriages under Australian law	<p>A marriage is valid under Australian law in the following circumstances: if 1 (or both) of the parties is 'domiciled' in Australia → both parties must be at least 18 years of age when the marriage took place; OR if 1 party is aged between 16 or 17 → Australian Judge or Magistrate needs to issue a court order authorising the marriage (applies whether the marriage takes place in or outside Australia), OR if neither of the parties is 'domiciled' in Australia → both parties must have attained the age of 16 (s5F & s12, Part VA of the Marriage Act 1961). if both parties are domiciled outside Australia & under 16 at time of marriage → the marriage is automatically recognised after the youngest party turns 16.</p> <p>Assess applicant against the <i>de facto partner</i> provisions in s5CB if the marriage isn't valid.</p>
Applicant and/or sponsor under 18	Can satisfy TOA criteria on <i>spouse</i> (309.211(2)) or <i>intent to marry</i> grounds (309.211(3)) but can't satisfy reg 2.03A(2) if lodged on <i>de facto partner</i> grounds. If the applicant's spouse/intended spouse is under 18 at TOA, their <i>parent</i> or <i>guardian</i> must sponsor (See Helpcard 1 – Sponsorship matters).
Couple in <u>long term relationship</u>	If, at TOA, a couple was in a <i>partner</i> relationship for at least 3 years or 2 if they have a child, the s/c100 visa <u>should</u> be assessed straight after grant of the s/c309 (100.221(5)). If this doesn't happen, assess the s/c100 visa as soon as you become aware of it (don't backdate to date of grant of s/c309).
Sponsor holds/held a <u>humanitarian visa</u>	Applicant may be granted the s/c100 immediately after grant of the s/c309 if the partner relationship between the couple existed & was declared to the department before the <u>permanent humanitarian visa</u> was granted (100.221(6)).
Certain marriages	<u>Proxy</u> → the marriage is valid if it is valid in the country in which it was solemnised. <u>Arranged</u> → the marriage is valid if, among other things, both parties have given real consent.
Assessing <u>spouse</u> & <u>de facto partner</u>	<p><u>Spouse (s5F)</u> → <i>must</i> consider the 4 matters prescribed in reg 1.15A. <u>De facto partner (s5C)</u> → <i>must</i> consider the 4 matters prescribed in reg 1.09A. If s5CB is met, <i>must</i> consider if requirements in reg 2.03A are met.</p> <p><u>Common spouse (s5F) & de facto partner (s5CB) criteria:</u></p> <ul style="list-style-type: none"> ➤ the couple has a mutual commitment to a shared life to the exclusion of all others; & ➤ the relationship between the couple is genuine & continuing; & ➤ the couple live together or do not live separately & apart on a permanent basis. <p><u>Specific criteria:</u></p> <ul style="list-style-type: none"> ➤ <u>spouse (s5F)</u>: the couple is married & the marriage is valid under Australian law ➤ <u>de facto partner (s5C)</u>: the couple is not validly married to each other & not related by family.
Couple not living together/ never lived together	Effect of case law (SZOXP v MIBP [2015] FCAFC 69) is that a delegate can't find applicant doesn't meet s5F(2)(d) or s5CB(2)(c) solely on the basis that the couple never lived together before the visa application was made or was not living together at TOA and/or TOD. However, evidence of parties living together & time spent living together can be taken into account in assessing the genuineness of the relationship (s5F(2)(c)).
Applicant and/or sponsor still married to someone else	<p>s5F(2)(a) can't be met as it requires the couple to be validly married to each other & a marriage is not valid if at least one of the parties was still validly married to another person. Assess the relationship against the <i>de facto partner</i> provisions in s5CB.</p> <p>s5CB(2) requires the parties to <i>not</i> be married to each other, meaning either party can be married to someone else. Evidence of divorce is not required but you must be satisfied the relationship with the person to whom they are married has ended.</p>

<p>Matters (4 pillars) in reg 1.15A or reg 1.09A to be considered, not met</p>	<p>The 4 matters prescribed in reg 1.15A & reg 1.09A are:</p> <ul style="list-style-type: none"> ➤ the financial aspects of the relationship; ➤ the nature of the household; ➤ the social aspects of the relationship; ➤ the nature of the couple's commitment to each other. <p>It would be an error of law to:</p> <ul style="list-style-type: none"> • not consider the 4 matters; or • imply that the 4 matters <i>must be met</i>; or • refuse an application because 1 or more of the 4 matters is not <i>met</i>; or • not consider other & all the circumstances relevant to the relationship (beyond the 4 matters).
<p>Couple hasn't met in person</p>	<p>Unlike the s/c300 (300.214), there's no requirement that the couple have met in person & are known to each other personally. This means a couple who has never met in person (eg met online) can in fact meet the definition of spouse or de facto partner.</p>
<p>Reg 2.03A (criteria applicable to de facto partners)</p>	<p>If s5CB is met, the applicant must be considered against reg 2.03A which requires:</p> <ul style="list-style-type: none"> ➤ the applicant & sponsor to be at least 18 at TOA; & ➤ the de facto relationship to have existed for at least 12 months ending immediately before the date of application, unless: <ul style="list-style-type: none"> ○ compelling & compassionate circumstances exist to waive the 12 months; or ○ the relationship is a registered relationship within the meaning of s2E of the Acts Interpretation Act 1901 (see below); or ○ the sponsor is or was the holder of a permanent humanitarian visa & was in a de facto relationship with the applicant before that visa was granted & had declared that relationship to the department.
<p>Relationship registered with relevant authority (NSW/ Vic/QLD/Tas/A.C.T)</p>	<p>Reg 2.03A(5) exempts de facto partner couples from having to meet the 12 month relationship requirement set out in reg. 2.03A(3)(b) if the de facto relationship is a registered relationship within the meaning of s2E of the Acts Interpretation Act 1901.</p> <p>Reg 2.03A(5) is silent on when the relationship must be registered. It follows that an applicant who registers a relationship <i>after</i> the application is made, but before it is decided, can satisfy reg. 2.03A(5).</p>
<p>Couple not in a relationship for 12+ months</p>	<p>The requirement to be in a de facto partner relationship for at least 12 months immediately before the application is made is in reg 2.03A, <i>not</i> in s5CB. As such it should <i>not</i> be considered when assessing s5CB, but rather after (and if) satisfied that s5CB is met. Note: this requirement does not apply to spouse applicants.</p>
<p>Couple marry before decision</p>	<p>s/c309 criteria require the applicant to be the spouse or de facto partner of the sponsor. This means:</p> <ul style="list-style-type: none"> • an applicant can meet de facto partner at TOA but meet spouse at TOD if they marry before the application is decided; • a de facto partner applicant whose relationship is less than 12 months at TOA & whose relationship is not registered by TOD (see above) is unlikely to meet the TOD criteria unless they marry before decision.
<p>Applicant in Australia at time of grant</p>	<p>309.412(1) can't be met (if the visa isn't one to which 309.412(2) (see below) applies). 309.412(2) will apply where (a) the visa is granted after 26/2/2021; & (b) the application was lodged before the end of the concession period described in reg. 1.15N(1); & (c) the applicant (i) was in Australia at any time during the concession period; & (ii) is in Australia, but not in immigration clearance, at time of grant.</p>
<p>Sponsor dies or relationship breaks down before decision</p>	<p>If 309.412(2) (see above) would apply if the visa is granted, 309.221(2) can be met if sponsor died or 309.221(3) if the relationship has ceased & the applicant and/or a MoFU has suffered FV committed by the sponsor. In all cases, the applicant needs to have continued to meet 309.221 except for the sponsoring partner death/the relationship ceasing. If 309.412(2) doesn't apply, the visa must be refused as the applicant no longer has an approved sponsorship that is still in force (309.221(1)). If, among other things, the death or r/ship breakdown & FV/child of relationship occurred after s/c 309 holder first entered A/a as the holder of the visa, 100.221 may be met.</p>

Released by Department of Home Affairs under the Freedom of Information Act 1982



PROTECTED

Subclass 309 Partner Provisional Assessment

Visa Processing Guide

TRIM record number	ADD2020/3155486
Document owner	Queensland Partner Processing Centre
Approval date	[insert date]
Document Contact	Queensland Temporary Partner Processing Centre s. 47E(d) [redacted]@homeaffairs.gov.au

Released by Department of Home Affairs
under the Freedom of Information Act 1982

PROTECTED

PROTECTED

Table of Contents

1. Purpose	3
2. Scope	3
3. Background Principles	3
3.0 <i>Adhere to the Global Case Management Model</i>	3
3.1 <i>Observe the Collective Case Management method</i>	3
3.2 <i>Manage case allocation</i>	4
3.3 <i>Record consistent assessments and case-noting</i>	4
3.4 <i>Focus on program integrity</i>	5
3.5 <i>Adhere to client service standards</i>	5
3.6 <i>Use primary sources of information</i>	6
4. Subclass 309 Visa Processing Guide	7
4.0 Application Assessment - Process Overview	7
4.1 Assessing application validity	7
4.2 Perform risk systems checks	8
4.3 Assessing sponsor eligibility	9
4.4 Assessing relationship criteria	13
4.5 Assessing Public Interest Criteria	16
4.6 Assessing Special Return Criteria	19
4.7 Other considerations	19
<i>Additional resources</i>	19
<i>Collection of biometrics</i>	20
5.0 Subclass 309 risk management model	20
5.1 Risk management model	20
5.2 Managing non-streamlined cases	20
5.3 Managing Streamlined cases	22
6.0 Version Control	22
Attachment A – Glossary	23
Attachment B – Assessment Checklist	26
1.1. CNG Assessment Checklist – Primary Applicant	26
1.2. CNG Assessment Checklist – Sponsor	27
1.3. CNG Assessment Checklist – Dependant Applicants	28
1.4. CNG Assessment Checklist – Non-Migrating Applicants	28
Attachment C – Phone Interview Guidance	29

Released by Department of Home Affairs
under the Freedom of Information Act 1982

PROTECTED

PROTECTED

1. Purpose

This Guide provides procedural guidance to decision makers when assessing the Class UF Subclass 309 (Partner Provisional) visa.

2. Scope

This Guide covers the processes and considerations relevant to the assessment of the subclass 309 (Partner Provisional) visa. It is intended to be used by Immigration and Border Protection workers whose duties include statutory decision making relevant to the assessment of subclass 309 visa applications.

This document should be read in conjunction with the *Migration Act 1958* ('the Act'), the *Migration Regulations 1994* ('the Regulations') and the Procedures Advice Manual ('PAM3'), available in [LEGEND](#). Decision Makers should also consult additional resources available on the Department's intranet page, as well as the [Partner Migration Sharepoint page](#). Access to the Partner Migration Sharepoint page can be requested through a line manager.

This Guide does not provide instructional guidance on the use of departmental systems. Decision makers are strongly encouraged to use the training resources available in the Visa and Citizenship Vocational Training Pathway (VCVTP) program. Decision makers who have completed, or enrolled in, the VCVTP course may access the systems user guides on the [VCVTP ICUE System User Guide wiki page](#). Decision makers may enrol in the VCVTP program in ourPeople.

3. Background Principles

3.0 Adhere to the Global Case Management Model

3.0.1 The subclass 309 visa product must be assessed in accordance with the [Visa and Citizenship Operating Model 2020](#). This model requires case management practices to adhere to Global Case Management (GCM) principals.

3.0.2 The core concept of Global Case Management (GCM) is to:

- progress applications as far as possible;
- finalise applications at the earliest opportunity; and
- avoid unnecessary steps (e.g. requesting unnecessary referrals or documents).

3.0.3 To support GCM, the allocation and management of the caseload must be undertaken using the Work Management (WMAN) System; consistent recording of assessments must be maintained with the use of Case Note Generator (CNG); quality assurance practices are to be recorded and reported using the Evidence of Quality in Performance (EQuIP) tool.

3.1 Observe the Collective Case Management method

3.1.1 The subclass 309 visa product is assessed under established Collective Case Management (CCM) methods. The CCM method, complementary to the GCM model, encourages efficiency in the progressing of applications while also ensuring the integrity of the caseload. In practice

Released by Department of Home Affairs under the Freedom of Information Act 1982

PROTECTED

PROTECTED

terms, the model achieves this by mandating that officers complete 'steps' in the application assessment, without taking carriage of the entirety of the application.

- 3.1.2 Generally, after the assessment of an allocated application and the dispatching of any further requests for information to the applicant and/or sponsor, decision makers must 'hibernate' and return an application to a central caseload pool. Once the statutory response timeframe has lapsed, the case may be re-allocated, using WMAN's functionality, to another officer at random.
- 3.1.3 Decision makers must, as an element of CCM, ensure that each application is progressed as far as possible before being placed in hibernation and returned to the central allocation pool. As an example, when requesting an applicant to provide a given piece of information/evidence, decision makers should ensure that *all* required information/evidence is requested in the same correspondence. This approach improves service delivery time and reduces client complaints by reducing the number of times a decision maker needs to revisit the application.
- 3.1.4 Complete applications (i.e. applications that include satisfactory evidence that the applicant[s] and sponsor meet all of the statutory requirements) should be decided upon first assessment as there is an operational efficiency in doing so.
- 3.1.5 Please see TRIM link ADD2020/3692719 for the exceptions to CCM (cases that may be partially or fully managed by one decision maker).
- 3.1.6 Sensitive cases, involving circumstances that may attract media or political interest, may also be more appropriately managed by a single decision maker. Such cases should be escalated to line managers, as appropriate, to ensure adequate oversight of the particular case.

3.2 **Manage case allocation**

- 3.2.1 As required under the GCM model, cases must be allocated, tracked and managed within WMAN.
- 3.2.2 Line managers will allocate individual cases in bulk and singular assessments in accordance with operational strategy. Decision makers, at all APS classifications, must not self-allocate applications (unless using the "Get Next" function in WMAN). This ensures transparency and integrity in the management of individual cases.
- 3.2.3 It is important to note that the number, complexity and general demographic of cases allocated to any decision maker at any time must be flexible to accommodate for organisational priorities as well as the individual capability of the officer. Performance expectations are set by line managers, outside of this document, as an existing element of the performance development framework.

3.3 **Record consistent assessments and case-noting**

- 3.3.1 To support the GCM model and CCM method, subclass 309 assessments must be formulated within the CNG. Assessment text, as generated by the CNG, is to be recorded in ICSE within the 'Assessment – Partner' event, using the qualified 'Preliminary', and utilising a 'note-case' entry.
- 3.3.2 A screen-shot of the CNG tool is located at [Attachment A](#).
- 3.3.3 The CNG can be accessed [here](#).
- 3.3.4 The CNG user guide is available in TRIM at ADD2019/1616760
- 3.3.5 Subsequent changes in client circumstances, including updates to information provided by a client/sponsor, must be recorded as 'note-case' entries, within the 'Assessment – Partner' ICSE event. This ensures a single-view record of the progress of the application.
- 3.3.6 A case note must:

Released by Department of Home Affairs
under the Freedom of Information Act 1982

PROTECTED

- highlight the current status of a case in one location, in simple and consistently used terms
- identify what a decision maker has turned their mind to, to inform the decision-making process
- provide a record of actions taken, and actions outstanding
- provide sufficient evidence for a decision maker to progress, or finalise, an application
- record the decision makers recommendations
- record the reason for a decision.

3.3.7 Note entries should be recorded using the appropriate title as per the below:

- Initial Assessment - Used at initial assessment to record the assessment of applicant's claims against *all relevant legislation* using the CNG.
- Outstanding - To record the outstanding documents/further information. To be recorded after the initial assessment and used at each resubmit stage
- Final Assessment - Used when a decision has been made on an application

3.3.8 To support efficiency, case notes should not duplicate any digital information that already exists in ICSE or related visa processing systems, such as client DOB, passport number etc.

3.3.9 Safeguards information must not be placed in case status notes, per *PAM3 Part 25: Visa systems, alerts and databases - Safeguards system*

3.4 Focus on program integrity

3.4.1 At all times, decision makers assessing the subclass 309 visa must maintain a curious mind about the applicant and their circumstances. The Partner visa program maintains a refusal rate of approximately 12% (more than one in ten applications) and so decision makers should be mindful of the risk posed by any given applicant on its own merits.

3.4.2 In particular, decision makers should be mindful of the potential vulnerability, within the program, for criminal syndicates and other individuals presenting contrived relationships to the Department in order to achieve another nefarious purpose (e.g. human trafficking, people smuggling, chain migration, legitimising illegal work and/or access to community services that would otherwise be unavailable to the non-citizen etc.).

3.4.3 Program Integrity, within the Partner Program, is managed by the Fraud and Risk Management team in the Victorian Regional Office. The FARM is available to assist officers with investigate checks. Decision makers can contact the farm by email [s. 47E\(d\)@omeaffairs.gov.au](mailto:s.47E(d)@omeaffairs.gov.au).

3.5 Adhere to client service standards

3.5.1 The Department's client service charter undertakes to deliver services to clients within agreed service standards. The subclass 309 visa application assessment process, including all the interactions that decision makers have with clients, is no different.

3.5.2 In keeping with the client service charter decision makers must, at all times:

- Undertake to finalise visa applications within the global visa and citizenship processing times, as published on the Department's website;
- work as a professional service to deliver client service while managing areas of risk;
- treat clients with courtesy and respect;

Released by Department of Home Affairs
under the Freedom of Information Act 1982

PROTECTED

- be fair open and reasonable in all that we do;
- give clients clear, accurate and timely information or help them to find it; and
- collect store use and disclose personal information in line with Australian privacy law.

3.6 Use primary sources of information

- 3.6.1 Despite anything in this document or any information sourced from colleagues or line managers, decision makers must ensure that their powers are exercised in accordance with the legislative and policy framework available in LEGEND, and should not be used as a substitute.

DRAFT

Released by Department of Home Affairs
under the Freedom of Information Act 1982

PROTECTED

4. Subclass 309 Visa Processing Guide

4.0 Application Assessment - Process Overview

4.0.1. The following table sets out an overview of the steps and responsibilities.

Step	Action	Person Responsible
1	Assess application validity	Decision Support Officer
2	Perform risk systems checks	Decision Maker
3	Assess sponsor eligibility	Decision Maker
4	Assess relationship criteria	Decision Maker
5	Assess Public Interest Criteria	Decision Maker
6	Assess Special Return Criteria	Decision Maker
7	Request information / provide opportunity to comment	Decision Maker
8	Decide application and notify applicant(s)	Decision Maker
9	Manage post-decision processes	Decision Maker / Line Manager

4.0.2. It is important to note that the actual process for assessing a subclass 309 application is not perfectly linear. Decision makers must be mindful that client circumstances may change over the course of the application and so it may be necessary to re-assess certain elements of the application multiple times. Also, for operational efficiency, it may be appropriate to decide (refuse) an application where it is immediately clear that the applicant/sponsor does not meet a particular requirement. This Standard Operating Procedure provides further guidance on additional matters that must be taken into account throughout the life of the visa application.

4.1 Assessing application validity

4.1.1 Decision makers must ensure that an application is valid before proceeding to assess whether an applicant(s) meets the eligibility requirement of the subclass 309 application.

E-lodgement is mandatory

4.1.2 As the subclass 309 visa must be applied for online, using the Form 47SP (Internet), departmental systems conduct validity checks upon lodgement. Certain e-lodged applications will be referred, via WMAN, for manual validity checking.

4.1.3 There are some circumstances in which subclass 309 visas may be lodged in paper. If lodging a paper applications, clients must apply for a Partner Manual Lodgement Authorisation via the department's website. If approved, individual cases are referred to the relevant business area by the partner.manual.lodgement@homeaffairs.gov.au mailbox.

4.1.4 Upon receipt of a paper application (emailed by the Partner Manual Lodgement team) or an e-lodged application which has been referred for validity checking, the application must be assessed for validity within two business days.

 Released by Department of Home Affairs
under the Freedom of Information Act 1982
PROTECTED

PROTECTED**Assessing paper lodgements for validity**

- 4.1.5 In assessing application validity, decision makers should refer to the requirements set out at Item 1220A to the Regulations. Importantly, decision makers should note that an application for a subclass 309 visa is also an application for a Class BC subclass 100 visa and so the validity requirements for both the subclass 309 and subclass 100 application must be met.
- 4.1.6 Ordinarily, application validity assessment processes should be undertaken by a Decision Support Officer (APS3) with the support of a Team Leader (APS5).
- 4.1.7 As a general rule, the following validity requirements must be met:
- the application must be lodged on the correct form;
 - the application must be accompanied with the correct fee (Visa Application Charge);
 - the applicant must be offshore at time of lodgement;
 - the applicant must provide their residential address (usually on the application form);
 - the applicant must not be barred from lodging the application (see, for example, s48 and s501E);

Consult *PAM3 GenGuideA – All Visas – Visa Application procedures* for further guidance on the assessment of application validity.

Deemed subclass 309 applications from subclass 300 applicants

- 4.1.8 Decision makers should, in particular, note that subclass 300 (Prospective Spouse) visa applicants who validly marry before their subclass 300 visa is granted are taken to have lodged a valid subclass 309 (and subclass 100) application on the day that the Department receives notice of the marriage. Refer to regulation 2.08E.

4.2 Perform risk systems checks

- 4.2.1 There are four core risk management systems utilised in the subclass 309 visa assessment process. These are the:

s. 37(2)(b)

- 4.2.2 Each of these risk systems, s. 47E(d), is complemented by other departmental systems, including WMAN and HAP.
- 4.2.3 As each of these systems shows a point-in-time risk of a client, it is essential that decision makers check all three systems at each of the following stages of the assessment process:
- lodgement;
 - preliminary assessment;
 - subsequent assessment(s) and
 - At time of decision

Client of Interest Notes

- 4.2.4 The COI functionality (within ICSE s. 37(2)(b))

Released by Department of Home Affairs
under the Freedom of Information Act 1982

PROTECTED

s. 37(2)(b)

Central Movement Alert List

4.2.6 The department's CMAL (MAL) database provides an alert capability for individuals (Personal Alert List) and travel documents (Document Alert List). S. 37(2)(b)

4.2.7 Generally, Australian Citizens will not have an adverse MAL narrative.

4.2.8 Refer to the CMAL Manual for instructions on the use of this system.

Safeguards

4.2.9 The safeguards systems utilises profiles to flag decision makers' attention towards individual risks that *may* be posed by a party involved with an application. S. 37(2)(b)

Security Referral Service

4.2.10 Decision makers should familiarise themselves with the Security Checking Handbook for further information about this risk system. See ADD2017/906024. For related enquiries, contact s. 47E(d)

4.3 Assessing sponsor eligibility

4.3.1 Applicants for a subclass 309 visa must be the spouse, intended spouse or de facto partner of an Australian citizen, Australian permanent resident or Eligible New Zealand Citizen (ENZC).

4.3.2 Although this is an eligibility requirement (i.e. an application will be valid, even if the applicant does not have a sponsor), the applicant must have a sponsor *at the time of lodgement* in order to be eligible for the grant of this visa.

4.3.3 Although it is a requirement for an applicant to have a sponsor at the time of lodgement, it is a requirement, *at time of decision*, that the sponsor be 'approved' (i.e. not prevented from sponsoring the application).

4.3.4 In order to assess sponsors' eligibility, it is policy that all sponsors submit a completed Form 40SP. The answers on Form 40SP generally assist officers to determine whether or not the sponsor is limited from sponsoring the application and so it is beneficial to request sponsors to submit a completed Form 40SP at the time of assessment if they have not done so at the time of lodgement.

4.3.5 All sponsors must submit relevant evidence of criminal history, which will vary depending on the sponsor's travel abroad. As a minimum, all sponsors must submit a *Complete Disclosure-All recorded offences released* Australian National Police Check (NPC). Consult the Penal Checking Handbook (along with the sponsor's answers on Form 40SP) for further guidance on which penal clearance records are required in each case.

Sponsorship requirements**PROTECTED**

PROTECTED

4.3.6 Unlike a number of skilled visa products, there is no statutory authority to decide whether to grant or approve 'sponsorship' within the subclass 309 statutory process. Accordingly, there is no statutory 'application' for sponsorship. As mentioned above, the sponsor application form – Form 40SP – is a policy requirement, not a legislative one. Instead, the decision maker must be satisfied – as a part of the subclass 309 eligibility assessment, that:

- the sponsor is an Australian citizen, Australian permanent resident or ENZC; and
- the Australian citizen, Australian permanent resident or ENZC is not limited from being a sponsor.

Sponsor's immigration status

4.3.7 Only an Australian citizen, Australian permanent resident or eligible New Zealand citizen may sponsor an applicant for a subclass 309 application.

4.3.8 Decision makers should note that e-lodged applications allow for a sponsor to declare their immigration status on the application, which creates a client profile in departmental systems using the *declared* status. Occasionally, multiple client profiles (Client IDs) may be recorded in ICSE for the same client.

4.3.9 Decision makers must always verify the identity and immigration status of the sponsor (an Australian Passport is the best form of identity for sponsors who claim to be Australian citizens).

4.3.10 Note: not all nationals of New Zealand will be eligible to sponsor an applicant for a subclass 309 visa. It is not irregular, within the Partner program, for non-ENZC's to purport to sponsor a foreign national under the Partner program and so it is important to verify New Zealander's status as an ENZC. An ENZC is a New Zealand citizen who is a *protected* Special Category Visa holder, within the meaning of section 7 of the *Social Security Act 1991*. For further guidance on assessing whether a New Zealand citizen is an ENZC, refer to *PAM3 Migration Regulations - Divisions > Reg 1.03 – Eligible New Zealand Citizen (ENZC)*

Sponsorship limitation – Women at Risk

4.3.11 Sponsor's will be limited from sponsoring where the applicant is a male and the sponsor is a female who was granted a subclass 204 (Woman at Risk) visa in the previous 5 years before lodgement and:

- the applicant was previously divorced or permanent separated from the sponsor; or
- the relationship was not declared to immigration (see clause 309.212(2) for further information).

Regulation 1.20J – Previous Sponsorships Limitation

4.3.12 This limitation prevents a sponsor from sponsoring more than two Partner applications (including classes UF, TO, TK and UK), total. If the sponsor has previously sponsored one (only) applicant – or has been the applicant in a Partner application – the sponsor may not sponsor again within a five year period. The five year period is calculated from the date that the last application was made to the date that the current application will be finalised. This limitation may be waived by the decision maker if satisfied that there are 'compelling circumstances affecting the sponsor'.

- Departmental policy is that the following circumstances, while not exhaustive, may be considered 'compelling circumstances' when assessing a waiver:
 - the applicant and their sponsor have a dependent child who is dependent on each of them or
 - the death of the previous partner or
 - the previous spouse abandoning the sponsor and there are children dependent on the sponsor requiring care and support or

Released by Department of Home Affairs under the Freedom of Information Act 1982

PROTECTED

- the new relationship is longstanding.

Refer to PAM3 [Div 1.4B] *Limitation on certain sponsorships under Division 1.4* for more information on this limitation.

Regulation 1.20KA – Contributory Parent Sponsor Limitation

- 4.3.13 This discretionary limitation prevents a sponsor from sponsoring a subclass 309 applicant within five years from the day the person was granted their permanent Contributory Parent (CA-143/and DG-864) visa if they were in a spouse or de facto partner relationship with the applicant on or before that visa was grant.
- 4.3.14 When assessing a sponsor, decision makers must check the Partner visa application to establish whether the sponsor has previously been granted a permanent Contributory Parent visa within the five years prior to lodgement.
- 4.3.15 Where a sponsor has been granted a Contributory Parent Visa within the five years immediately prior to lodgement, decision makers may waive the limitation where there are 'compelling circumstances'.

Decision makers should consult the PAM3 [Div 1.4B] *Limitation on certain sponsorships under Division 1.4* for more information on waiving this limitation.

Regulation 1.20KB – Registrable Offences Sponsor Limitation

- 4.3.16 This limitation absolutely prevents sponsors who have been convicted of a registrable offence(s) from sponsoring a partner application where minors are included in the application. This limitation is not discretionary.
- 4.3.17 In assessing a sponsor's eligibility under regulation 1.20KB, decision makers must consult the Penal Checking Handbook (along with the sponsor's answers on Form 40) for further guidance on which penal clearances are required in the given case.
- 4.3.18 Where a decision maker considers that the sponsor fails the requirement of 1.20KB, the case must be referred to the Visa Applicant Character Consideration Unit (VACCU), using the approved template, for consideration. Consult the [VACCU intranet page](#) to access the approved referral template.

Decision makers should consult the PAM3 [Div 1.4B] *Form 40 sponsorship – Protection of children – Sponsors of concern* for more information on this sponsorship limitation.

Regulation 1.20KC – Relevant Offences & Significant Criminal Record Sponsor Limitation

- 4.3.19 This discretionary limitation prevents a sponsor from sponsoring a subclass 309 applicant where the sponsor has a 'significant criminal record' in relation to a 'relevant offence'. The terms 'significant criminal record' and 'relevant offence' are both defined.
- 4.3.20 A relevant offence is defined to include the following crimes, which may be referred to using different terminology in different jurisdictions (both in Australia and overseas):
- violence against a person, including (without limitation) murder, assault, sexual assault and the threat of violence;
 - the harassment, molestation, intimidation or stalking of a person;
 - the breach of an apprehended violence order, or a similar order, issued under a law of a State, a Territory or a foreign country;
 - firearms or other dangerous weapons;
 - people smuggling;
 - human trafficking, slavery, or slavery-like practices (including forced marriage), kidnapping or unlawful confinement;

Released by Department of Home Affairs
under the Freedom of Information Act 1982

PROTECTED

- (g) attempting to commit an offence involving any of the matters mentioned in paragraphs (a) to (f), or paragraph (h);
- (h) aiding, abetting, counselling or procuring the commission of an offence involving any of the matters mentioned in paragraphs (a) to (g).

4.3.21 A sponsor will not be limited by regulation 1.20KC if convicted of one of the named offences, alone. The sponsor must also have a 'significant criminal record' in relation to the offence.

4.3.22 A significant criminal record is defined, at regulation 1.20KD of the Regulations, to be a court outcome in which the sponsor has been sentenced to:

- death;
- imprisonment for life;
- imprisonment for 12 months or more; or
- two or more terms of imprisonment where the total of those terms is 12 months or more.

4.3.23 Where a sponsor has a significant criminal record in relation to a relevant offence, decision makers must still consider whether it is appropriate to approve the sponsorship regardless of the record. In doing so, the decision maker must have regard to-

- (a) the length of time since the sponsor completed the sentence (or sentences) for the relevant offence or relevant offences;
- (b) the best interest of the following:
 - i) any children of the sponsor;
 - ii) any children of the applicant who is seeking to satisfy the primary criteria for the grant of the visa concerned;
- (c) the length of the relationship between the sponsor and the applicant who is seeking to satisfy the primary criteria for the grant of the visa concerned.

4.3.24 As a delegate *may* refuse to grant sponsorship where a sponsor has a significant criminal record in relation to relevant offence(s), the framework stipulates that the decision maker consider whether it is reasonable to waive the requirement. Among other things, it may be reasonable to waive this requirement where:

- a significant length of time has lapsed since the sponsor complete the sentence(s);
- it would not be in the best interests of any children of the sponsor or the applicant if the sponsorship (and therefore the application) is refused;
- the length of the relationship between the sponsor and the applicant.

4.3.25 As 1.20KC is a discretionary refusal provision, it may be necessary to seek further information from the applicant/sponsor. If seeking comment from the applicant, decision makers must first ensure that the sponsor has consented to the disclosure of the respective records to the applicant. If the sponsor has not consented to the department disclosing the records to the applicant, consideration may be given towards refusing the Partner visa application under clause 309.222(2) as it is a requirement of the visa criteria that the sponsor consent to the disclosure.

4.3.26 In addition to the necessity for sponsors to meet the criminal history requirement, subregulations 1.20KC(5)-(6) also empower decision makers to refuse to approve the sponsorship where the sponsor has been requested to provide a police check(s) – for the

PROTECTED

purposes of assessing 1.20KC - and the sponsor has not provided the police check within a reasonable time.

- 4.3.27 Note: sponsors are not to be referred to the VACCU for assessment under regulation 1.20KC. Decision makers must assess and decide this requirement as an element of the subclass 309 application. However, when assessing a sponsor under regulation 1.20KC, decision makers should also take into account the immigration status of the sponsor. If the sponsor is a visa holder (i.e. permanent resident or ENZC) and the sponsor has a significant criminal record, decision makers should consider referring the sponsor to the National Character Consideration Unit (NCCC) for assessment under s501 before continuing to assess the subclass 309 application.

For further guidance on the assessment of sponsors under regulation 1.20KC, refer to the PAM3 [Div1.4B/reg1.20KC and 1.20KD] Div1.4B – Reg1.20KC and 1.20KD – Sponsorship Assessment for Partner visas.

Minors purporting to sponsor

- 4.3.28 Decision makers must ensure, for spouse (and intended-spouse) relationships, that the applicant's spouse (or intended spouse) has turned 18 years of age. If the applicant's spouse (or intended spouse) is not 18 years of age, a parent or guardian of that person (who must have turned 18), is taken to be the sponsor. See the requirements at clause 309.213 of the Regulations for further information.

4.4 Assessing relationship criteria**Introduction**

- 4.4.1 Applicants for a subclass 309 visa must be the spouse, intended spouse or de facto partner of an Australian citizen, Australian permanent resident or Eligible New Zealand Citizen (ENZC) at the time of application.
- 4.4.2 At the time of decision, applicants must continue to be the spouse (and no longer the intended spouse) or de facto partner of their sponsor. If the sponsor is deceased at time of decision, or some other factor ends to the relationship between the sponsor and the applicant ceasing, the applicant will not meet the time of decision criteria for the grant of the subclass 309 (decision makers must note that, unlike the onshore subclass 820 visa product, family violence and child custody provisions – applicable to the onshore partner caseload – do not apply to the offshore partner caseload).
- 4.4.3 When assessing whether an applicant is in a de facto partnership, spouse or intended spouse relationship, that there is a risk management model applicable to assessing the evidence presented by the applicant. Refer to the Risk Management Model section of this guide for further information on assessing application evidence.

Spouse

- 4.4.4 The meaning of 'spouse', for the purposes of identifying the relationship between the applicant and the sponsor, is defined at section 5F of the Act and regulation 1.15A of the Regulations.
- 4.4.5 Section 5F of the Act defines a 'spouse' relationship to be one in which two people are in married relationship. A married relationship is not simply a relationship in which the parties can present a marriage certificate. Section 5F stipulates that two people are only in a married relationship, within the meaning of migration law, if:

- (a) they are married to each other under a marriage that is valid for the purposes of this Act; and
- (b) they have a mutual commitment to a shared life as a married couple to the exclusion of all others; and

PROTECTED

- (c) the relationship between them is genuine and continuing; and
- (d) they:
 - (i) live together; or
 - (ii) do not live separately and apart on a permanent basis.

4.4.6 In addition to the definition at s5F, reg 1.15A of the Regulations sets out 'the four pillars' for determining whether the conditions of s5F are met (these are discussed further below).

De facto partner

4.4.7 The meaning of 'de facto partner', for the purposes of identifying the relationship between the applicant and the sponsor, maintains a similar definition to that of a 'spouse' relationship (but for the requirement that the two people be married). The requirements are set out in section 5BC of the Act and regulation 1.09A of the Regulations.

4.4.8 Section 5BC of the Act defines a 'de facto partner' relationship to be one in which two people are not in a married relationship but:

- (a) they have a mutual commitment to a shared life to the exclusion of all others; and
- (b) the relationship between them is genuine and continuing; and
- (c) they:
 - (a) live together; or
 - (ii) do not live separately and apart on a permanent basis; and
- (d) they are not related by family.

4.4.9 Regulation 1.09A of the Regulations, when read with section 5BC of the Act, further requires decision makers to have regard to the 'four pillars' of the relationship (and these are consistent with the requirements for a 'spouse' relationship, and are discussed below).

4.4.10 reg 2.03A?

The 'four pillars'

4.4.11 Regulation 1.15A (relevant to determining whether a 'spouse' relationship exists, pursuant to s5F of the Act) and reg 1.09A (relevant to determining whether a 'de facto partner' relationship exists, pursuant to s5BC) are comparable. These provisions require decision makers to have regard to the following matters when determining whether either relationship exists:

- (b) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
- (c) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
- (d) the social aspects of the relationship, including:

Released by Department of Home Affairs
under the Freedom of Information Act 1982

PROTECTED

- (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
- (e) the nature of the persons' commitment to each other, including:
- (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.

4.4.12 These four expressed regulatory provisions are referred to as the 'four pillars' of a relationship:

- the financial aspects of the relationship
- the nature of the household
- the social aspects of the relationship
- nature of the persons' commitment to each other

4.4.13 The four pillars are not conclusive nor mandatory methods of determining whether either a spouse or de facto relationship exists. Decision makers may be satisfied that either relationship exists where only three (or two) of the pillars are made out in the application. Further, a decision maker may consider claims and evidence – unrelated to the four pillars – in determining that a spouse relationship exists. However, decision makers must – as a minimum – draw their mind to the four pillars when assessing whether either relationship exists.

The financial aspects of the relationship

4.4.14 When assessing the financial aspects of the relationship, it is the Department's policy that the following of items of evidence be considered:

- joint loan agreements for real estate, cars, major household appliances or any other agreements relating to finances or purchases (for example, property purchased by the parties as tenants in common)
- operation of joint bank accounts - evidence that the accounts have been operated with reasonable frequency and for a reasonable period of time would be given more weight than just opening such accounts
- pooling of financial resources, especially in relation to major financial commitments
- legally binding financial obligations that one party owes to the other, for example, as guarantor for a loan, existing power of attorney (these can be specified to cover various things, such as financial and medical)
- the basis of sharing day to day household expenses, for example, whether each party is responsible financially for their own expenses only and expenses are not pooled.

The nature of the household

4.4.15 When assessing the nature of the household, it is the Department's policy that the following of items of evidence be considered:

- joint ownership of residential property
- joint residential leases
- joint rental receipts

PROTECTED

- joint utilities accounts (electricity, gas, telephone)
- correspondence addressed to either or both parties at the same address
- shared responsibility for care and support of children
- shared responsibility for housework.

The social aspects of the relationship

4.4.16 When assessing the social aspects of the relationship, it is the Department's policy that the following of items of evidence be considered:

- evidence that the relationship has been declared to other government bodies and commercial/public institutions or authorities and acceptance of these declarations by these bodies
- statements of parents, family members, relatives, friends and other interested parties. Statements in the form of statutory declarations should be encouraged on the basis that, as a legal document, they carry more weight. (Note: The Department provides a specific form for this purpose - see form 888.)
- joint membership of organisations or groups, documentary evidence of joint participation in sporting, cultural, social or other activities
- joint travel and plans for the future
- whether the parties present themselves as a couple socially.

The nature of the persons' commitment to each other

4.4.17 When assessing the nature of the persons' commitment to each other, it is the Department's policy that the mutuality and the length of the relationship be considered.

4.4.18 When considering mutuality, decision makers should have regard to the following four factors

- the duration of the relationship
- the length of time the parties have lived together
- the degree of companionship and emotional support that the parties draw from each other
- whether the parties see the relationship as for the long term.

4.4.19 These (mutuality) factors may be satisfied with the following material:

- the partners' knowledge of each other's personal circumstances (this could include background and family situation and could be established at interview) and/or
- evidence of intentions that the relationship be long term (for example, by the extent to which the partners have combined their affairs, and the extent to which they have provided for each other, such as being beneficiary to each other's will and/or superannuation).

Cessation of relationships

4.4.20 FV and custody claims to not apply

4.5 Assessing Public Interest Criteria

4.5.1 Public Interest Criteria apply to the Primary Applicant, Dependent Applicant(s) (if any) and non-applicants who are Members of the (applicant's) Family Unit (MoFUs).

4.5.2 As a general rule, a non-applicant member of the family unit – within the subclass 309 visa product – is a child or step child of the applicant who:

PROTECTED

- has not turned 18 years of age; or
 - has turned 18, but has not turned 23, and is dependent on the applicant; or
 - has turned 23 and is dependent on the family head;
 - or is a dependent child of one of the above
- ...unless the person is engaged to be married or has a spouse or de facto partner.

For a comprehensive definition of the term 'member of the family unit' refer to regulation 1.12.

- 4.5.3 The primary applicant, dependent applicant(s) and non-applicant member(s) of the family unit must meet certain criteria, as indicated in table below:

PIC	4001	4002	4003	4004	4007	4009	4017	4018	4019	4020	4021
Primary	X	X	X	X	X	X			X	X	X
Dependent	X	X	X	X	X	X	X	X	X	X	X
Non-App:MoFU	X	X	X	X	X						

Public Interest Criteria 4001 – The Character Test

- 4.5.4 In general terms, PIC 4001 requires that the applicant pass the character test as set out in subs501(6) of the Act.
- 4.5.5 For the complete requirements of the character test, including the policy interpretation of the requirements, refer to s501 of the Act in [LEGEND](#).
- 4.5.6 Refer to the [Penal Checking Handbook](#) for further information on the required penal certificates for each applicant.
- 4.5.7 If the decision maker is concerned that the applicant may not pass the character test, the application must be referred to the Visa Applicant Character Consideration Unit (VACCU).
- 4.5.8 For further information about the VACCU, including access to the approved referral template, refer to the [VACCU page](#) on the Department's intranet.
- 4.5.9 Note: while decision makers should be mindful of all *applicants* character, visa-holding (Permanent Resident) sponsors are also subject to the character test. Where a sponsor fails the character test, consideration must be given towards referring the sponsor for assessment at the National Character Consideration Unit (NCCC) before proceeding to assess the remainder of the application.

Public Interest Criteria 4002 – Risks to Security

- 4.5.10 PIC 4002 provides a framework for assessing applicants' risk to security and is assessed with reference to information declared by applicants on Form 80. Decision makers will need to request this from in order to determine whether the applicant's circumstances warrant security checking.
- 4.5.11 Decision makers should familiarise themselves with the [s. 47E\(d\)](#) (ADD2017/906024) and only request applicants to complete Form 80 on an as-needs basis.

Released by Department of Home Affairs
under the Freedom of Information Act 1982

PROTECTED**Public Interest Criteria 4003 – Foreign Minister Determinations**

- 4.5.12 PIC 4003 provides a framework for assessing applicants' who presence in Australia is, or would be, contrary to Australia's foreign policy interests, or may be directly or indirectly associated with the proliferation of weapons of mass destruction.
- 4.5.13 Decision makers should familiarise themselves with the Proliferation of Weapons of Mass Destruction advice manual.

Public Interest Criteria 4004 – Debts to the Commonwealth

- 4.5.14 PIC 4004 requires that the applicant not have outstanding debts to the Commonwealth (unless appropriate arrangements have been made for payment).
- 4.5.15 See SharePoint no. 18 – RFI Evidence of payment – Debt to the Commonwealth if the applicant has a CMAL regarding a debt to the Commonwealth.

Public Interest Criteria 4007 – The Health Requirement

- 4.5.16 It is important for Australia and for the continuation of visa programmes that public health risks and health costs are not unduly increased by travellers and migrants, For this reason, applicants for visas to Australia are required to meet certain health requirements which are outlined in the Migration Regulations 1994 and policy framework.
- 4.5.17 For further information see Sch4/4005-4007 - The Health Requirement
- 4.5.18 Managing declared health conditions

Public Interest Criteria 4009 – Intention to Reside in Australia

- 4.5.19 PIC 4009 requires that the applicant have an intention to live permanently in Australia and satisfy that they could obtain support in Australia by their sponsor or MoFU.
- 4.5.20 For further information see Sch4/4009 - Settlement intention and family support

Public Interest Criteria 4017 – Custody Requirements

- 4.5.21 PIC 4017 prevents a visa being granted to a minor if there are any custody/residence issues.
- 4.5.22 For further information see Sch4/4015-4018 – Custody (parental responsibility) and best interests of minor children.

Public Interest Criteria 4018 – Best Interests of Children

- 4.5.23 PIC 4018 requires the s65 delegate to refuse to grant a visa if granting the visa would not be in the child's best interests (that is, a 'substantial risk' to the child is apparent).
- 4.5.24 For further information see Sch4/4015-4018 – Custody (parental responsibility) and best interests of minor children.

Public Interest Criteria 4019 – Australian Values Statement

- 4.5.25 The Australian Government believes that new residents should be encouraged to learn as much as they can about their new country, its heritage, language, customs, values and way of life and to apply for Australian citizenship when they become eligible.
- On 11 December 2006, the Government announced the intention to introduce an "Australian values statement" for permanent, provisional and selected temporary visa applicants.
- The Australian values statement is a requirement whereby most adult visa applicants are asked to sign, before being granted a visa, a statement that they will respect Australian values and will obey the laws of Australia.
- 4.5.26 If an applicant has not completed their Australian Values statement in their application form please request via ECS.

Public Interest Criteria 4020 – Fraud

- 4.5.27 Fraud within the Visa and Citizenship Programmes is a high risk for the Department. People may present bogus documents, conceal information or provide false or misleading information where they would otherwise fail to meet the criteria for a visa. They may commit fraud to facilitate people smuggling, human trafficking, drug trafficking or terrorist operations.

 Released by Department of Home Affairs
 under the Freedom of Information Act 1982

PROTECTED

In order to manage the risks, appropriate mitigation strategies must be in place.

- 4.5.28 For more information please see [Sch4/4020 Public Interest Criterion 4020 – The Integrity PIC](#)

Public Interest Criteria 4021 – Valid Passport

- 4.5.29 PIC 4021 was inserted into the Regulations on 24 November 2012, replacing (as a Schedule 2 public interest criterion) the Schedule 2 “passport requirement” criterion that applied to many visas.

If an applicant cannot satisfy PIC [4021](#), they cannot be granted the visa. However, unlike most other PICs, PIC 4021 is **not** a Schedule 2 “one fails, all fail” criterion.

Among other things, PIC 4021 requires that the visa applicant’s passport not be in a class of passports specified by legislative instrument for [4021\(a\)\(iii\)](#) purposes.

- 4.5.30 The supporting Policy is also set out in the [Travel Document Procedural Instruction](#)

4.6 Assessing Special Return Criteria**Special Return Criteria 5001**

- 4.6.1 SRC 5001 requires an applicant not to have left Australia as a subject of a deportation order under specific sections of the Act or have been cancelled under section 501 of the Act.

- 4.6.2 For further information please see [SCHEDULE 5 SPECIAL RETURN CRITERIA\5001](#)

Special Return Criteria 5002

- 4.6.3 SRC 5002 requires an applicant that has been removed from Australia under specific sections of the Act to have applied 12months after the removal, or that there are compelling circumstances that affect the interests of Australia; or compassionate or compelling circumstances that affect the interests of an Australian citizen, an [Australian permanent resident](#) or an [eligible New Zealand citizen](#); or that the minister can justify the granting of the visa with the 12months after the removal.

- 4.6.4 For further information please see [SCHEDULE 5 SPECIAL RETURN CRITERIA\5002](#)

4.7 Other considerations**Additional resources**CIRST

The Case Integrity Referral Support Tool (CIRST) provides country specific information, including relationship information and risk indicators, to support decision makers in the assessment of nationality-based risk factors.

Human Trafficking intranet page

The Human Trafficking, Slavery and Slavery-Like Practices intranet page includes a range of resources to assist decision makers to identify and combat people trafficking. This page includes further resources, including a link to an eLearning module which covers an Introduction to Human Trafficking.

Tableau

The Lodged and Finalised tableau dashboard provides information on the number of lodged, on-hand, granted and refused applications (including comparison data on the subclass 309 and subclass 820 visa products).

Released by Department of Home Affairs
under the Freedom of Information Act 1982

PROTECTED

Collection of biometrics

Applicants from the following countries are required to provide biometrics at an Australian Visa Application Centre (AVAC) or Australian Biometric Collection Centre (ABCC) as a part of their subclass 309 application:

Afghanistan	Albania	Algeria
Bahrain	Bhutan	Bosnia & Herz.
Cambodia	Colombia	Egypt
Ethiopia	Fiji	France
Ghana	Greece	Hong Kong
Iran	Jordan	Kazakhstan
Kenya	Kuwait	Lebanon
Malaysia	Mexico	Myanmar
Nepal	New Zealand	Nigeria
Omn	Pakistan	Peru
Qatar	Russian Fed.	Samoa
Saudi Arabia	Singapore	Somalia
South Africa	Sri Lanka	Thailand
Tonga	Turkey	Uganda
United Arab Em.	Vietnam	Yemen
Zimbabwe		

5.0 Subclass 309 risk management model

5.1 Risk management model

- 5.1.1 The subclass 309 risk management model deals exclusively with the risk of an application involving a contrived relationship. Other risks (health, character, identity) are managed through ordinary, global, channels.

S. 47E(d)

Released by Department of Home Affairs
under the Freedom of Information Act 1982

PROTECTED

PROTECTED

exhibit one or more of the characteristics that have been identified in previous cases that have been identified as involving an element of fraud.

5.2.2 Non-streamlined applications are will have one or more of the following 'baseline' risk indicators (safeguard profiles) associated to it:

- Offshore Partner Relationship Factors

s. 37(2)(b), s. 47E(d)

- Offshore Partner Citizenship of Concern

s. 37(2)(b), s. 47E(d)

- Offshore Partner Applicant Adverse Migration History

s. 37(2)(b), s. 47E(d)

- Offshore Partner Sponsor Adverse Migration History

Released by Department of Home Affairs
under the Freedom of Information Act 1982

PROTECTED

- o This profile seeks to identify sponsors with an "adverse" migration history and will be attached to applications where the sponsor has:

s. 37(2)(b), s. 47E(d)

s. 47E(d)

Released by Department of Home Affairs
under the Freedom of Information Act 1982

6.0 Version Control

Version number	Date of issue	Author(s)	Brief description of change
1	[insert]	s. 22(1)(a)(ii)	First publication

PROTECTED

Attachment A – Glossary

Term	Acronym	Definition
Australian Visa Application Centre	AVAC	A Service Delivery Partner, contracted by the Department to provide visa application and biometric collection services offshore.
Australian Biometric Collection Centres	ABCC	A Service Delivery Partner, contracted by the Department to provide biometric collection services offshore.
Biometric Match Indicators	BMI	Biometric Match Indicators (BMIs) show the results of systems checks against departmental, Australian law enforcement and in selected cases, international databases. There are four possible BMIs: <ul style="list-style-type: none"> • Amber – automatic biometric comparisons are underway • Green – no irregularities were found in the automatic biometric comparisons • Red – irregularities were found in the automatic biometric comparisons • Blank – the BMI calculation has not occurred.
Collective Case Management	CCM	Collective Case Management is a processing model in which accountability for individual cases is shared by a team, rather than by an individual decision maker.
Client Identifier	CID	An identifier used in departmental systems to identify an entity.
Central Movement Alert List	CMAL	Central Movement Alert List (CMAL) is the system used to store, maintain and access a central repository of MAL identities and documents of concern. In line with the purpose of MAL, CMAL facilitates a centralised high-quality check of all visa and citizenship applicants against MAL to: <ul style="list-style-type: none"> • streamline application processing • support the management of border and compliance risks • enhance border security.
Client of Interest	COI	A passive alert capability within ICSE. Client of Interest notes enable departmental officers to record and review significant narratives about a client's previous interactions with the Department and its stakeholders.
Case Note Generator	CNG	
Client Search Portal	CSP	A portal containing a centralised client view of interactions with the department and its various systems (including HAP, CMAL, Biometrics)
Decision Maker	DM	Departmental visa decision maker

 Released by Department of Home Affairs
 under the Freedom of Information Act 1982
PROTECTED

PROTECTED

Term	Acronym	Definition
Enterprise Correspondence System	ECS	The system used for generating email correspondence to client through ICSE and automatically saved into TRIM
Family Violence Unit	FVU	
Fraud and Risk Management Team	FARM	
Global Case Management	GCM	
Global Case Management	GCM	The mandated business processing model across all visa and citizenship programs
Health Assessment Portal	HAP	The portal containing information related to client health examinations
Integrated Client Service Environment	ICSE	A visa processing system used for managing e-lodged visa applications and other interactions with the department
Medical Officer of the Commonwealth	MOC	
National Character Consideration Unit	NCCC	
Penal Checking Handbook	PCH	
Partner Delivery Support	PDS	
Public Interest Criteria	PIC	
Request Identifier	RID	
Total Case Management	TCM	
HPE Record Manager/TRIM	TRIM	Online record keeping system
Visa and Citizenship Operating Model	VCOM2020	The long-term transformational reform to our visa and citizenship services, to manage the rapidly growing number of applications

 Released by Department of Home Affairs
 under the Freedom of Information Act 1982

PROTECTED

Term	Acronym	Definition
Visa Applicant Character Consideration Unit	VACCU	
Visa Lodgement Number	VLN	
Work Management	WMAN	The Department's mandated online system for managing e-lodged visa processing work allocation

DRAFT

Released by Department of Home Affairs
under the *Freedom of Information Act 1982*

PROTECTED

Attachment B – Assessment Checklist

1.1. CNG Assessment Checklist – Primary Applicant

Primary Applicant	Sponsor	Dependant Applicants	Non-Migrating Applicants
Primary Applicant			
Identity confirmation	<input type="radio"/> Met <input type="radio"/> Requested		
Travel Document or exception	<input type="radio"/> Met <input type="radio"/> Requested		
s48 Bar	<input type="radio"/> Yes <input type="radio"/> No		
Schedule 3 - Substantive visa not held at time of lodgement - exception	<input type="radio"/> Requested <input type="radio"/> Not applicable		
Client of Interest	<input type="radio"/> COI note exists and actioned <input type="radio"/> No COI note		
MAL check	<input type="radio"/> Clear <input type="radio"/> Not Clear		
(s5CB, Reg 1.09A and Reg 2.03A) The applicant is the defacto partner of the sponsoring partner	<input type="radio"/> Yes <input type="radio"/> No		
(s5F, Reg 1.15A and Reg 1.15A) The applicant is the spouse of the sponsoring partner	<input type="radio"/> Yes <input type="radio"/> No		
Evidence of Relationship			
Financial aspects	<input type="checkbox"/> Joint bank accounts	<input type="checkbox"/> Joint credit cards	<input type="checkbox"/> Joint loans
	<input type="checkbox"/> Joint assets	<input type="checkbox"/> Joint utilities	<input type="checkbox"/> Other
	<input type="checkbox"/> Requested		
Nature of the household	<input type="checkbox"/> Joint tenancy	<input type="checkbox"/> Mortgage	<input type="checkbox"/> Insurance policies
	<input type="checkbox"/> Other	<input type="checkbox"/> Requested	
Social aspects of relationship	<input type="checkbox"/> Photos		
	<input type="checkbox"/> Joint travel		
	<input type="checkbox"/> Form 888		
	<input type="checkbox"/> Evidence of relationship declared to govt depts/financial institutions		
	<input type="checkbox"/> Joint invitations/cards		
	<input type="checkbox"/> Other		
	<input type="checkbox"/> Requested		
Nature of commitment	<input type="checkbox"/> Birth certificate of child to the relationship	<input type="checkbox"/> Will	
	<input type="checkbox"/> Superannuation beneficiary	<input type="checkbox"/> Phone records	
	<input type="checkbox"/> Other	<input type="checkbox"/> Requested	
Long term relationship provisions	<input type="radio"/> Yes <input type="radio"/> No		

Released by Department of Home Affairs under the Freedom of Information Act 1982

PROTECTED

PROTECTED

Public Interest Criteria		
PIC 4001 Character	<input type="radio"/> Met <input type="radio"/> Not Met <input type="radio"/> Requested	<input type="text"/>
Country number	None	
Form 80	<input type="radio"/> Required <input type="radio"/> Not Required <input type="radio"/> Requested	<input type="text"/>
Military discharge certificate	<input type="radio"/> Yes <input type="radio"/> Not applicable <input type="radio"/> Requested	<input type="text"/>
PIC 4002 SRS	<input type="radio"/> Met <input type="radio"/> Referral Sent <input type="radio"/> Requested Form 80	<input type="text"/>
PIC 4003 WMD	<input type="radio"/> Met <input type="radio"/> Referral Sent <input type="radio"/> Requested Form 1399	<input type="text"/>
PIC 4004 Debt to Commonwealth	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Requested	<input type="text"/>
PIC4007 Health	<input type="radio"/> Met <input type="radio"/> Not Met <input type="radio"/> Requested <input type="radio"/> Waiver	<input type="text"/>
PIC 4009 Intention to reside	<input type="radio"/> Met <input type="radio"/> Not Met <input type="radio"/> Requested	<input type="text"/>
PIC 4020 Fraud	<input type="radio"/> Met <input type="radio"/> Not Met <input type="radio"/> Under investigation <input type="radio"/> Requested	<input type="text"/>

[Next](#) [Clear Tab](#)

Grant	<input type="checkbox"/> On the evidence provided I am satisfied the requirements for grant are met.	<input type="text"/>
Under Assessment	<input type="checkbox"/> Not yet satisfied. Additional documents/information/investigation is required	<input type="text"/>
Refusal	<input type="checkbox"/> On the evidence provided I am not satisfied the requirements for grant are met and the visa is to be refused.	<input type="text"/>

1.2. CNG Assessment Checklist – Sponsor

Eligible Sponsor	<input type="radio"/> Yes <input type="radio"/> Not Met <input type="radio"/> Requested	<input type="text"/>
Identification	<input type="radio"/> Met <input type="radio"/> Requested	<input type="text"/>
Completed Form 40SP	<input type="radio"/> Received <input type="radio"/> Requested	<input type="text"/>
Reg 1.20J Sponsor Limitation - 5yrs	<input type="radio"/> No <input type="radio"/> Yes <input type="radio"/> Waiver	<input type="text"/>
Previous relationship	<input type="radio"/> Yes <input type="radio"/> No	<input type="text"/>
Sponsor Character	<input type="radio"/> Met <input type="radio"/> Not Met <input type="radio"/> Requested	<input type="text"/>
Country Number	None	<input type="text"/>
Sponsor under 18	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Not Applicable	<input type="text"/>

[Previous](#) [Next](#) [Clear Tab](#)

Released by Department of Home Affairs under the Freedom of Information Act 1982

PROTECTED

PROTECTED**1.3. CNG Assessment Checklist – Dependant Applicants**

Primary Applicant	Sponsor	Dependant Applicants	Non-Migrating Applicants
Over 17 PIC Character - Country Number		None ▼	
Dependent Applicants			
No of dependent applicants		1 ▼	
Name	<input type="text"/>		
DOB	<input type="text"/>		
Country of Residence	<input type="text"/>		
Identity Confirmation	<input type="radio"/> Met <input type="radio"/> Not Met	<input type="text"/>	
Schedule 3 - Substantive visa not held at time of lodgement - exception	<input type="radio"/> Met <input type="radio"/> Not Met	<input type="text"/>	
Valid sponsor	<input type="radio"/> Met <input type="radio"/> Not Met	<input type="text"/>	
Evidence - member of family unit	<input type="radio"/> Met <input type="radio"/> Not Met <input type="radio"/> Requested	<input type="text"/>	
over 18 - Form 47A	<input type="radio"/> Met <input type="radio"/> Not Applicable <input type="radio"/> Not Met	<input type="text"/>	
Health	<input type="radio"/> Met <input type="radio"/> Not Met <input type="radio"/> Requested	<input type="text"/>	
Over 18 - Evidence of dependency	<input type="radio"/> Met <input type="radio"/> Not Met <input type="radio"/> Not Applicable <input type="radio"/> Requested	<input type="text"/>	
Under 18 - PIC custody	<input type="radio"/> Met <input type="radio"/> Not Met <input type="radio"/> Not Applicable <input type="radio"/> Requested	<input type="text"/>	
Previous		Next Clear Tab	

1.4. CNG Assessment Checklist – Non-Migrating Applicants

Primary Applicant	Sponsor	Dependant Applicants	Non-Migrating Applicants
Number of non-migrating dependent applicants		1 ▼	
Name	<input type="text"/>		
DOB	<input type="text"/>		
Country of Residence	<input type="text"/>		
Identity confirmation	<input type="radio"/> Met <input type="radio"/> Not Met	<input type="text"/>	
Evidence - member of family unit	<input type="radio"/> No <input type="radio"/> Requested <input type="radio"/> Yes	<input type="text"/>	
Health	<input type="radio"/> Not Applicable <input type="radio"/> Requested	<input type="text"/>	
Over 17 PIC Character - Country Number		None ▼	
Previous		Clear Tab	

 Released by Department of Home Affairs
 under the Freedom of Information Act 1982
PROTECTED

PROTECTED

Attachment C – Phone Interview Guidance

Sample Interview questions

This is a support tool for interview preparation - Don't be limited to only to these questions

- It is important to 'drill down' with follow up questions where the responses are vague, evasive, implausible, inconsistent with the facts, or with responses from the other party. It allows the final decision maker to more clearly establish instances where the interviewee understood the question and avoided responding, and more clearly establishes that an inconsistency is significant (not the result of having misunderstood the question).

For example: If the issue is important and you feel the interviewee has not directly answered your question, restate your question. Another strategy is to clarify their meaning by restating the answer provided by the interviewee in more direct terms and then ask them confirm this meaning.

Eg. *You're saying that you've never introduced your wife to your mother and she is not aware that you're married, is that correct?*

- Record your observation of incidents during the interview such as the sound of turning pages, whispering to third party. If interviewee pauses for a lengthy period after a question – you can include the pause by recording as follows:

[20 sec pause] Actually I have met my ex-partner a few times since our divorce

It is important that you are specific and neutral when making observation notes in the record of interview – any analysis or opinion about the possible *meaning* of their demeanour should be recorded in your assessment notes separately.

- The most effective questions are open, not leading questions. For example:
USE **'Did anyone help you prepare your visa application?'**
NOT 'who helped you with your application?'
NOT 'Jane helped you with the application didn't she?'

INTERVIEW – Initial statements

My name is. I am an immigration officer of the Department of Home Affairs

If applicable: *This is our interpreter for today. He/she is not part of the Department of Immigration, and does not have any role in deciding your application. Do you understand each other well?*

I am calling today regarding your spouse application do you have a few minutes to spare.

For identification purposes, could you please provide me you with your:

- *Name and date of birth?*
- *And an email address if you have one?*
- *Current address and your postal address?*
- *What is your sponsor's name and date of birth?*

I must advise you both that under section 245 of the migration act, it is an offence to make a false statement to an officer regarding whether or not persons have a genuine and continuing marital

Released by Department of Home Affairs
under the Freedom of Information Act 1982

PROTECTED

PROTECTED

relationship between them. The penalty for this offence is up to \$12,000 and/or 12 months imprisonment.

Do you have any questions before we begin?

s. 37(2)(b)

Released by Department of Home Affairs
under the Freedom of Information Act 1982

PROTECTED

PROTECTED

s. 37(2)(b)

Released by Department of Home Affairs
under the *Freedom of Information Act 1982*

PROTECTED

PROTECTED

s. 37(2)(b)

My understanding of your migration history is as follows:

<<select as appropriate>>

- You made an application for a (temporary visa) and made false statements in that application about work/family relationships/ travel purpose
- You made an application for a (temporary visa) and then travelled to Australia declaring that you would depart after a temporary stay, but did not depart within the validity of that visa.
- When last in Australia you have made repeated, unsuccessful attempts to permanently migrate.
- You have admitted to having worked in Australia, despite not having a visa with work rights.
- You did not depart after your visa ceased and remained in the Australian community unlawfully for ... years.

This history suggests that you have a strong intent to migrate to Australia that pre-exists your relationship with the sponsor. The information before me indicates you <<select as appropriate>> have a strong intent to migrate to Australia, a willingness to provide false information in visa applications, and willingness to repeatedly disregard Australian law. These circumstances relate to your current application as they may suggest that you are prepared to provide false information in the current application. Would you like to provide any comments on this information?

s. 37(2)(b)

Released by Department of Home Affairs
under the Freedom of Information Act 1982

PROTECTED

PROTECTED

s. 37(2)(b)

Released by Department of Home Affairs
under the *Freedom of Information Act 1982*

PROTECTED

PROTECTED

s. 37(2)(b)

DRAFT

Released by Department of Home Affairs
under the *Freedom of Information Act 1982*

PROTECTED

To assist with finding assessment/ decision ready cases you'll be doing a pre-assessment of sorts to look for the following documents/ information in the specified order:

[Labelling and analysis are crucial steps of triaging]

s. 37(2)(b), s. 47E(d)

Please add following note to cases you access:

Application accessed for identification of assessment ready cases



Australian Government
Department of Home Affairs

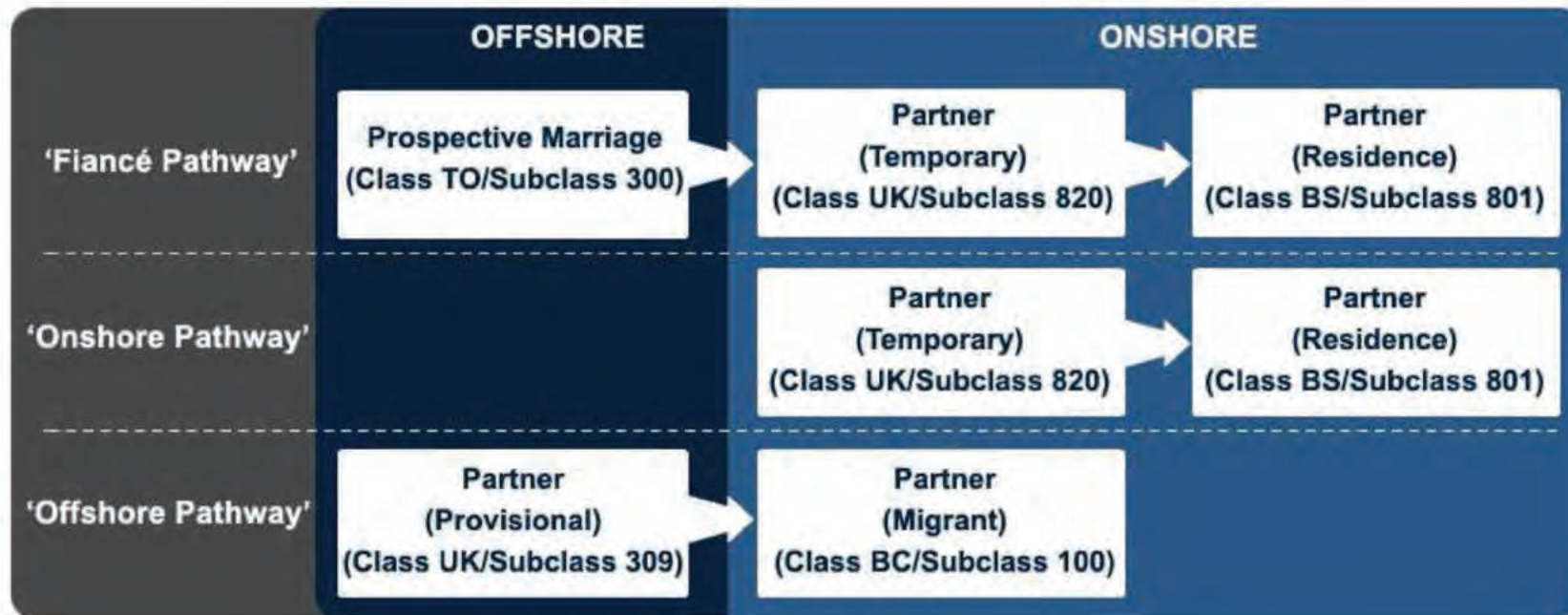
Offshore Partner Visa Training TO300 / UF309 / BC100

Developed June 2023

Welcome!

- Overview
- Schedule 1 – Validity requirements
- Sponsorship requirements
- Members of the Family Unit (MOFU)
- Public Interest Criteria (PICs)
- Biometrics
- Prospective Marriage (subclass 300) visa
- Partner (Provisional) (subclass 309) visa
- Partner (Migrant) (subclass 100) visa

Partner Pathways



Schedule 1 - Validity requirements

Generally, to make a valid application for a subclass 300 or combined subclass 309/100 visa, the applicant must:

- complete the **application form 47SP (Internet)**, or if authorised by the Department, **paper 47SP** *Application for migration to Australia by a partner*;
- provide their current **residential address** ([reg 2.07\(4\)](#) refers). Under legislation, a post office box address will not be accepted as the applicant's residential address;
- pay the required **Visa Application Charge**;
- lodge the application **online using ImmiAccount**, or, if authorised by the Department, lodged with directions from the Department by a date specified.
- A person who lodges a combined subclass 309 and 100 is taken to have applied for both at the same time. Applicants are not required to lodge a separate subclass 100 application.

Validity requirements for each subclass are set out in Schedule 1 of the regulations:

- Subclass 300 can be found in **Item 1215**
- Subclass 309 can be found in **Item 1220**
- Subclass 100 can be found in **Item 1129**

Sponsor Requirements

Australian Citizen	Australian Permanent Resident	Eligible New Zealand Citizen
Defined in Section 4 of the Australian Citizenship Act 2007.	A non-citizen who holds a permanent visa which permits them to remain in Australia indefinitely.	A New Zealand citizen who is a protected Special Category Visa (SCV) holder as per s.7 of the Social Security Act (subsections 2A – 2D). This includes circumstances where the New Zealand citizen:
Evidence: Australian passport or Australian citizenship certificate	Must be 'usually resident' in Australia in order to sponsor a partner visa applicant	Was in Australia on 26 February 2001 as the holder of a Special Category (subclass 444) visa; or
	Consult the PAM for assessing usual residence	Was in Australia as the holder of a subclass 444 visa for a cumulative period of not less than 1 year in the two years before 26 February 2001; or
		Has a certificate issued under the Social Security Act 1991, that states that the citizen was residing in Australia on a particular date.

Additional criteria for sponsors

- **Age**
 - For subclass 300 applicants: Must be over 18 years of age to be a sponsor.
 - For subclass 309/100 applicants: if the sponsor is under 18yrs old the applicant must be sponsored by an eligible parent who is over 18yrs of age.
- **Usually Resident**
 - If a Sponsor is an Australian permanent resident or eligible New Zealand citizen, they are required to be usually resident in Australia.
- **Undertakings**
 - Subclass 309 Sponsors must support the applicant financially and in relation to accommodation during the period of 2 years immediately following the grant of a provisional or temporary visa.

Sponsorship limitations

r.1.20J	r.1.20KA	r.1.20KB (commenced 27/03/10)	r.1.20KC (commenced 18/11/16)
A person cannot have more than 2 partner sponsorships approved in their lifetime.	Contributory Parent (s/c 143) holders and Contributory Aged Parent (s/c 864) visa holders must:	Applies if the application includes applicants under the age of 18 years	All sponsors to provide police checks. Refuse to approve sponsorship if the sponsor does not provide the police checks within a reasonable period of time
Has to wait five years after an approved sponsorship before they can sponsor again.	Wait at least 5 years from visa grant before sponsoring a partner; and	If the sponsor has been convicted of a ' registrable offence ', the sponsorship may only be approved in limited circumstances	Refuse to approve sponsorship if police checks reveal sponsor has been convicted of a ' relevant offence/s ' and has a 'significant criminal record' in relation to this offence <i>unless reasonable to approve after considering certain factors</i>
Has to wait at least five years after the lodgement of their own partner migration visa application before they can sponsor a partner.	The partner must be the partner they were married to or in a de facto relationship with at the time they were granted their Parent visa.	Registrable offences related to child abuse offences and are defined in subclause 13 of r.1.20KB.	Relevant offence/s defined at 1.20KC(2) – largely relate to violence against a person (murder, sexual assault, threat of violence), harassment/intimidation/stalking, breach of an AVO, firearms offences, human trafficking/slavery. Significant criminal record defined at 1.20KD(1) – essentially if sentenced to death, life imprisonment, > 12 months prison, 2 more or more prison terms totalling > 12 months
<i>May be waived if compelling circumstances exist.</i>	<i>May be waived if non-finance related compelling circumstances exist.</i>	<i>Only VACCU can consider waiver and refusal on this basis. All sponsors with registrable offences must be referred to VACCU.</i>	<i>May approve the sponsorship if considered reasonable to do so</i>

Members of the family unit (MOFU) – Reg 1.12

May be included as a secondary applicant for:

- Prospective Marriage (s/c 300) visa
- A combined Partner (s/c 309/100) visa
- Added to an application that has been lodged but not yet decided
- Cannot be added once the s/c 309 visa has been granted.
- Can still be considered for the grant of the s/c 100 visa if they apply for and are granted a Dependent Child visa (s/c 445)
 - Dependent Child visa may be lodged/granted offshore or onshore.
- MOFU can be either migrating or non-migrating – where they are considered **dependent** they will need to meet the relevant PICs.

Members of the family unit (MOFU) – Reg 1.12

For a person to be consider a member of the family unit, they must:

- be the applicants child or a stepchild from a current or a previous relationship (in certain circumstances);
- not be married, engaged to be married, or have a de facto partner; and must be:
 1. under 18 years of age; or
 2. over 18 years of age but not yet turned 23, and be dependent on the applicant or their partner; or
 3. over 23 years of age and be unable to earn a living to support themselves due to physical or cognitive limitations and be dependent the applicant or their partner (**Note:** The child will still need to meet Australia's health requirement); or
 4. a dependent child of a child who is eligible under 1, 2 or 3 above (ie grandchildren)

Assessing Dependency

	Under 18	18-23	23 and over
Not engaged, married or in de-facto relationship	√	√	√
Dependent (financially) on family head for basic needs	X	√	√
Incapacitated and unable to work	X	X	√

Overview of Public Interest Criteria (PIC)

PICs must be met by the primary applicant and each member of the family unit. Below is a list of the key PICs that must be met for the grant of a subclass 300 or 309 visa:

PIC 4001 – Character *mandatory for both migrating and non-migrating *dependants* who have turned 17 years of age and spent 12 months or more in one country.

PIC 4002 – Security

PIC 4003 – WMD

PIC 4004 – Debt to Commonwealth

PIC 4007 – Health *Mandatory for all migrating dependants. Current policy dictates that it is unreasonable to request health for non-migrating dependants UNLESS there is evidence to suggest that there is an intention for the NM dependant to join the applicant in the future OR they are already onshore.

PIC 4009 – Intention to reside

PIC 4019 – Australian Value Statement (if 18 years or over at the time of application)

PIC 4020 – Integrity

PIC 4021 – Valid passport

Additionally, - secondary applicants under 18 years

PIC 4015 – Custody

PIC 4016 – Best interest of child

One fails, all fails

- For both subclass 300 and 309 the main applicant cannot be granted a visa unless those **members of the family unit** who are visa applicants satisfy the relevant PIC criteria
- This also applies to **members of the family unit** who are **not** visa applicants.
- In practice:
 - health examinations are usually not requested of MOFU unless it's clear the person intends to migrate.
 - adult non-migrating MOFU are considered 'not dependent' and not required to satisfy PICs unless evidence to the contrary has been explicitly provided by the applicant.

Biometrics

- Partner visas are part of the biometrics program so applicants outside Australia will need to provide biometrics at an Australian Visa Application Centre (AVAC) or an Australian Biometrics Collection Centre (ABCC) if they are from a country that is part of our biometrics program. A list is available on our website at: [Biometrics \(homeaffairs.gov.au\)](https://www.homeaffairs.gov.au/biometrics)
- There is no facility to collect biometrics in Australia for partner visas so any questions relating to biometrics for someone in Australia will need to be escalated.

Prospective Marriage (subclass 300) visa

Schedule 2 – Time of application criteria – Primary Applicant

- Applicant *intends* to marry an Australian citizen, Australian permanent resident, or eligible NZ citizen: **Reg 300.211**
- The Applicant has turned 18: **Reg 300.212A**
- The Applicant is sponsored by the prospective spouse who has turned 18: **Reg 300.213**
- The Applicant and prospective spouse have met in person since each turned 18: **Reg 300.214**
- The Applicant and prospective spouse are known to each other personally: **Reg 300.215**
- The Applicant demonstrates that:
 - the parties genuinely intend to marry; and
 - the marriage is intended to take place within the visa validity period: **Reg 300.216**

Assessing Intention to Marry

- Marriage celebrant's letter:
 - Signed by marriage celebrant, dated, on letter-head
 - Marriage will occur in Australia after first entry
 - Provides date OR date range, and venue
 - In most cases, indicates that a NOIM (Notice of Intention to Marry) has been lodged with celebrant
- Marriage celebrant's letter is NOT a legislative requirement – sometimes, might be a reason for the applicant not to have one
- Under Australian law, persons who wish to marry in Australia must lodge a NOIM with the celebrant no less than 1 month and no more than 18 months before the proposed date of ceremony
- NOIM has to be lodged with Births, Deaths and Marriage Registry by celebrant within 14 days of marriage
- Valid for 18 months
- Don't need to request a copy of NOIM, just confirmation that NOIM has been lodged
- Care needed if visa will cease before proposed date of marriage
- NOIM is NOT evidence of 'no impediment to marriage'
- Look at the development of the couple's relationship

Married before decision

Regulation 2.08E provides that:

- if person applies for s/c 300 visa; AND
- marries their prospective spouse after lodgement but before decision; AND
- the marriage is valid for purposes of the Act

THEN

- the person is taken to have ALSO applied for sc309/100
- the person doesn't need to complete new form or pay another VAC

Still need to finalise the 300 application (withdrawal or refusal)

Note: this doesn't extend to secondary applicants who will have to apply for the subclass 309/100 and pay the VAC if they want to be included in the new application.

Schedule 2 – Time of decision criteria – Primary Applicant

- Applicant continues to satisfy 300.211, and 300.214 - 300.216: **Reg 300.221**
- There is no impediment to marriage in Australian law:
 - Both parties free to marry
Intended marriage must be able to be recognised under Australian law as valid: **Reg 300.221A**
- The sponsorship must have been approved and be in force: **Reg 300.222 (1)**
- If the sponsor has relevant offences, they have consented to the disclosure to each applicant: **Reg 300.222 (2)**
- The applicant meets PICS 4001, 4002, 4003, 4004, 4007, 4009, 4019, 4020 and 4021: **Reg 300.223**
- Schedule 3 does not apply to this visa but if the applicant has previously been in Australia, they must satisfy special return criteria 5001 and 5002: **Reg 300.224**
- If there are children under 18 included, public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant: **Reg 300.227**
- If there are family members added over 18, PIC 4019 (Values Statement) must be met.

Migrating and Non-Migrating family members

300.226

(1) Each member of the family unit of the applicant who is an applicant for a Subclass 300 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4020; and
- (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and
- (b) if the person has previously been in Australia, satisfies special return criteria 5001 and 5002.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 300 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

Partner (Provisional) (subclass 309) visa

Schedule 2 – Time of application criteria – Primary Applicant

- Applicants for a subclass 309 visa must be the spouse, intended spouse or de facto partner of an A/n Cit, Australian PR or ENZC: **Reg. 309.211(2)/ Reg. 309.211 (3)**
- If applying on the basis of an intended marriage, the intended marriage will, if it takes place, be a valid marriage for the purposes of section [12](#) of the Act: **Reg. 309.211(3)(b)**.
- Relationship is assessed the same way as the onshore partner visas:
 - Spouse – s5F of the Migration Act; De facto s5CB of the Migration Act.
 - Migration Regulations 1.15A and 1.09A (factors relevant to assessing relationship including four pillars)
- While not a legislative requirement, in order to assess sponsors' eligibility, it is policy that all sponsors submit a completed Form 40SP.

Schedule 2 – Time of application criteria – Not a prohibited sponsor - Reg. 309.212

- The spouse, de facto partner or intended spouse, of the applicant is not prohibited by subclause (2) from being a sponsor
 - Applies where the applicant is male and the sponsor (female) held a s/c 204 Woman at Risk visa; and within 5 years immediately preceding the date of lodgement, that applicant was the former spouse or former de facto of that sponsor having been divorced or permanently separated from that woman; or the relationship had not been declared to immigration.

Assessing Spouse (s 5F) and De Facto (s 5CB) relationships

Overarching Partner Legislation

Spouse (married)	De facto partner
Section 5F (<i>definition</i>)	Section 5CB (<i>definition</i>)
Regulation 1.15A (<i>circumstances to consider when assessing if the definition is met</i>)	Regulation 1.09A (<i>circumstances to consider when assessing if the definition is met</i>)
	Regulation 2.03A (<i>additional requirements for de facto partners – includes 12 month ‘rule’</i>)

s5F - Spouse criteria

Section 5F Spouse

- (1) For the purposes of this Act, a person is the spouse of another person (whether of the same sex or a different sex), if, under subsection (2), the 2 persons are in a married relationship.
- (2) For the purposes of subsection (1), persons are in a married relationship if:
 - a. they are married to each other under a marriage that is valid for the purposes of this Act; and
 - b. they have a mutual commitment to a shared life as a married couple to the exclusion of all others; and
 - c. the relationship between them is genuine and continuing; and
 - d. they:
 - i. live together; or
 - ii. do not live separately and apart on a permanent basis.
- (3) The regulations may make provision in relation to the determination of whether one or more of the conditions in paragraphs (2)(a), (b), (c) and (d) exist. The regulations may make different provision in relation to the determination for different purposes whether one or more of those conditions exist.

s5F(2)(a) – Valid Marriage

Valid Marriage for migration purposes	Not a valid marriage for migration purposes
Onshore marriages recognised as valid under the Marriage Act 1961	Polygamous marriages
Foreign marriages recognised as valid in the country in which it was solemnised.	Marriages between persons within a prohibited degree of relationship (Parent, Child, Sibling, Grandparent, Grandchild)
Arranged marriages (unless one of the parties has not provided 'real consent' to the marriage – consider a 'Forced Marriage' referral to the AFP)	Underage marriages (under 18) if one or both parties to the marriage were domiciled in Australia at the time of the (foreign) marriage
Proxy marriages where: <ul style="list-style-type: none"> the law of the country where the marriage was solemnized permits consent to be given by proxy; the marriage was solemnised in accordance with that law; both parties gave 'real consent' to the marriage. 	Proxy marriages where: <ul style="list-style-type: none"> the law of the country where the marriage was solemnized does not permit proxy marriages; or Either parties have not given 'real consent' to the marriage.
Same-sex marriages	
Marriages involving transsexual or intersex persons	

s 5F(2)(b) – Mutual commitment to a shared life as a married couple to the exclusion of all others

- May have been entered into with a view to material benefit or advancement, e.g. the hope to become eligible to reside in a particular country.
- Romantic 'love' does not need to exist for a relationship to be genuine and for the parties to have the relevant commitment, nor is the absence of 'love' determinative (e.g. arranged marriages).
- The level of commitment does not need to be of equal strength or quality between the parties, although a mutual commitment to each other, and to the exclusion of all others is required.
- There can only be one genuine partner relationship. If there are previous or concurrent relationships, it must be shown that these have ended (either by death or permanent separation).
- Bigamous or polygamous marriages may raise doubt concerning the validity of the second or later marriage. If the marriage is deemed not valid, the applicant can still be assessed under the de facto relationship provision of s 5CB and reg 1.09A

s 5F(2)(c) – Relationship is genuine and continuing

- ‘Genuine’ refers to a relationship which is neither a sham nor a false relationship.
- For a relationship to be ‘continuing’, parties need not show that their relationship will last into the long-term or endure for a period beyond that which is reasonably foreseeable.
- As it involves consideration of the subjective intentions of the parties, issues of credibility of the parties may assume particular importance.
- Assessment must be made in light of a consideration of all the circumstances of the relationship (including the four pillars).
- Not appropriate to treat any single matter as determinative. E.g. the four pillars must all be considered, but it would be wrong to impose any one of them as a standard for determining whether a partner relationship is genuine and continuing.

s 5F(2)(d) – Live together; or Do not live separately and apart on a permanent basis

- Both 'spouse' and 'de facto partner' require that the parties 'live together or do not live separately and apart on a permanent basis'.
- No requirement that the parties have previously lived together to meet this requirement. While cohabitation may satisfy the requirement that the parties live together, the fact the parties are not currently living together is not fatal because the alternative requirement is satisfied where the parties do not live separately and apart on a permanent basis. This is commonly the situation for offshore cases where an applicant is living overseas whilst the sponsor is living in Australia and the separation is seen as temporary.
- Consider cultural and/or religious background of the applicant and sponsor and the evidentiary proof that could be expected to be available, e.g. any laws or cultural norms which prohibit or discourage unmarried and/or same sex couples from living together.

s5CB - De facto partner criteria

Section 5CB De facto partner

De facto partners

(1) For the purposes of this Act, a person is the de facto partner of another person (whether of the same sex or a different sex) if, under subsection (2), the person is in a de facto relationship with the other person.

De facto relationship

(2) For the purposes of subsection (1), a person is in a de facto relationship with another person if they are not in a married relationship (for the purposes of section 5F) with each other but:

- (a) they have a mutual commitment to a shared life to the exclusion of all others; and
- (b) the relationship between them is genuine and continuing; and
- (c) they:
 - (i) live together; or
 - (ii) do not live separately and apart on a permanent basis; and
- (d) they are not related by family (see subsection (4)).

(3) The regulations may make provision in relation to the determination of whether one or more of the conditions in paragraphs (2)(a), (b), (c) and (d) exist. The regulations may make different provision in relation to the determination for different purposes whether one or more of those conditions exist.

Definition

(4) For the purposes of paragraph (2)(d), 2 persons are **related by family** if:

- (a) one is the child (including an adopted child) of the other; or
- (b) one is another descendant of the other (even if the relationship between them is traced through an adoptive parent); or
- (c) they have a parent in common (who may be an adoptive parent of either or both of them).

For this purpose, disregard whether an adoption is declared void or has ceased to have effect.

The Four Pillars – Reg. 1.09A and Reg. 1.15A:

- VPOs must 'must consider' all of the circumstances of the relationship, including the '4 pillars' prescribed in regulations 1.15A(3) (Spouse) and 1.09A(3) (De facto), i.e. the: (i) Financial aspects of the relationship, (ii) Nature of the household, (iii) Social aspects of the relationship, and (iv) Nature of the persons' commitment to each other.
- Failure to mention 1 of the 4 pillars in a decision record can lead to an inference that it wasn't taken into account, giving rise to jurisdictional error.
- When assessing the partner relationship, VPOs must
 - Consider each individual relationship against all of the 4 pillars;
 - Make findings upon each of the 4 pillars, even if the finding is that no conclusion can be reached upon it. Each of the 4 pillars poses a question for the VPO to answer, not merely think about;
 - Set out in the decision record findings concerning each prescribed matter, otherwise it may lead to an inference that the VPO made no such finding as part of their mental process when making the decision and so failed to comply with the obligation to 'consider' the circumstances; and
 - Remember to also consider any other relevant information provided by the applicant (or otherwise available to the VPO) assessing whether or not the requirements of s5F / s5CB are met and a spouse or de facto relationship exists.
- While the 4 pillars must be considered, they are not criteria that must be met for the visa to be granted.
 - Consider cultural and/or religious background of the applicant and sponsor and the evidentiary proof that could be expected to be available, e.g. any laws or cultural norms which prohibit or discourage unmarried and/or same sex couples from living together.

The Four Pillars – Reg. 1.09A and Reg. 1.15A:

FINANCIAL	HOUSEHOLD	NATURE OF COMMITMENT	SOCIAL
<ul style="list-style-type: none"> • joint mortgage or lease documents • joint loan documents for major assets • joint bank account statements • household bills in both names 	<ul style="list-style-type: none"> • household bills in joint names • mail addressed to PA/SP jointly or separately to same address • documents that show joint responsibility of children • documents that prove living arrangements 	<ul style="list-style-type: none"> • birth certificate for child of the relationship • documents that show the PA and SP have combined personal matters • wills or life insurance policies showing names of beneficiaries • evidence relationship has been declared to government agencies (for example, Services Australia, Australian Taxation Office (ATO)) • evidence of communication whilst apart 	<ul style="list-style-type: none"> • joint invitations to social events with friends or family • statutory declarations from supporting witnesses attesting to the relationship (Form 888) • photographs of the PA and SP with family and/or friends undertaking social activities • evidence of joint travel (for example, holidays, overseas trips)

Further criteria for De facto partners – Reg. 2.03A

Regulation 2.03A prescribes that at time of application:

- The parties must be 18 years of age or older;
- The de facto relationship must have existed for at least 12 months.

Unless:

- The de facto relationship is registered under a state/territory law prescribed in the Acts Interpretation (Registered Relationships) Regulations 2019; or
- There are compelling and compassionate circumstances to waive the 12 month requirement; or
- The sponsor holds or held a permanent humanitarian visa and was in a de facto relationship with the applicant before that visa was granted, and declared that relationship to the department.

Schedule 2 – Time of decision criteria – Primary Applicant

At the time of decision, applicants must:

- continue to be the spouse or de facto partner of their sponsor (**Reg 309.221(1)(a)**); OR
- if the applicant is in Australia; subclause 309.412(2) applies (COVID concession) and the applicant meets the requirements of either Reg 309.221(2) or (3) (**Reg 309.221(1)(b)**).

Relationship Cessation Provisions

Applicants who made an application before the end of the concession period, and were in Australia at any time during the concession period, and are located in Australia at time of decision, have access to the relationship cessation provisions:

- An applicant would meet **309.221(2)** if their partner has died and they would have continued to be the spouse or de facto of the sponsoring partner.
- An applicant would meet **309.221(3)** if the relationship has ceased and either the applicant or MOFU has suffered family violence committed by the sponsoring partner; OR the applicant has custody, joint custody or access to a child of the relationship.

Schedule 2 – Time of decision criteria – Primary Applicant

- The sponsorship must have been approved and be in force: **Reg 309.222 (1)**
- If the sponsor has relevant offences, they have consented to the disclosure to each applicant: **Reg 309.222 (2)**
- The applicant continues to be the spouse or de facto partner of their sponsor unless 309.221(1)(b) (relationship cessation provisions) apply: **Reg 309.223**
- If the applicant applied on basis of an intended marriage, the marriage must have taken place or alternatively if the spouse died Regulation 309.211(1)(b) applies (relationship cessation provisions): **Reg 309.224**
- The applicant meets PICS 4001, 4002, 4003, 4004, 4007, 4009, 4019, 4020 and 4021: **Reg 309.225**
- Schedule 3 does not apply to this visa but If the applicant has previously been in Australia, the applicant must satisfy special return criteria 5001 and 5002: **Reg 309.226**
- If there are children under 18 included, public interest criteria 4015 and 4016 are satisfied in relation to the additional applicant: **Reg 309.229**

Migrating and Non-Migrating family members

309.228

- (1) Each member of the family unit of the applicant who is an applicant for a Subclass 309 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4020; and
 - (aa) if the person had turned 18 at the time of application, satisfies public interest criterion 4019; and
 - (b) if the person has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 309 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

Circumstance applicable to grant – Reg. 309.4

- The applicant must be outside Australia when the visa is granted if the visa is not a visa to which subclause (2) applies.
- Subclause (2) applies to a visa if:
 - it is granted after 26 February 2021; and
 - the application was made before the end of the concession period; and
 - the applicant for the visa
 - was in Australia at any time during the concession period; and
 - is in Australia, but not in immigration clearance, when the visa is granted.

As at June 2023, no end date for the concession period has been announced.

Partner (Migrant) (subclass 100) visa

Overview of the subclass 100 visa

- The subclass 100 visa is for persons who were granted a subclass 309 visa.
- Applicants lodge a combined subclass 309/100 visa application and are not eligible to be granted the 100 visa (be it onshore or offshore) until two years after their application is made, unless the relationship breaks down and they meet one of the relationship cessation provisions; or long term relationship (LTR) provisions are met.
- It is a permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

Schedule 2 – Time of application criteria

Primary Applicant (PA). There is no criteria to be satisfied at time of application, as per regulation 100.21.

Secondary Applicant (otherwise referred to as, dependent applicant (DA)). As per regulation 100.311:

- the DA, is a member of the family unit (MOFU) of a person who has applied for a BC100 visa and, that visa has not been decided
- a dependent child or a dependant's dependent child can be a MOFU, as per reg 1.12
- the decision maker is not required to reassess whether the DA still meets reg 1.12 (for example, whether a dependent child over 18 years is still dependent on the PA, custody arrangements). Dependency is met at time of decision of the UF309 visa, and therefore is taken to be met at the time of BC100 processing (see reg 1.12(5))
- dependent children not included in the UF309 application, cannot be added to the application after the 309 visa has been granted unless they are granted a Dependent Child (TK445) visa.

Schedule 2 – Time of decision criteria

100.221(1) – must meet either (2), (2A), (3), (4), (4A), (4B) or (4C)

100.221(2) – Relationship is ongoing

- This is the ‘standard’ that will apply to most applicants
- Applicant must:
 - hold a subclass 309 visa; AND
 - at least 2 years have passed since 309 application lodged (unless an “exemption” applies)

Schedule 2 – Time of decision criteria

100.221(2A) – Ministerial intervention cases

- Relates to cases where the Minister has used ‘non-delegable’ powers under the Act to grant a 309 visa where person may never have applied for that visa.
- In such cases, the visa 309 holder does not have a valid visa 100 application lodged so must apply for a visa 100 and pay the appropriate VAC (as at the date of when the application is made - not the date of the visa 309 grant).
- Applicant must:
 - hold a 309 visa (if cancelled, wait for outcome of review); AND
 - still be sponsor’s partner; AND
 - 2 years have elapsed since Minister intervened to grant the 309 visa (unless an exception applies).

Relationship cessation

100.221(3) – Australian partner has died since 309 visa grant.

- Applicant:
 - must hold or have held a 309 visa; AND
 - must have first entered Australia on their 309 visa; AND
 - would meet requirements of 100.221(2) or (2A) except that, after entering Australia, sponsoring partner died; AND
 - would have continued to be spouse or de facto partner of sponsoring partner, had they not died.

Relationship cessation

100.221(4) – Relationship has ceased since 309 visa grant.

- Applicant :
 - must hold or have held a 309 visa; AND
 - must have first entered Australia on their 309 visa; AND
 - was in a partner relationship up until relationship ceased; AND
 - family violence alleged to have occurred (this doesn't have to be causal factor for cessation of relationship); OR
 - case involves access or custody rights in relation to at least *one* child.

Relationship cessation

100.221(4B) – Australian partner has died since 309 visa grant.

- Same as for 100.221(3) but applies to applicants who were granted their subclass 309 whilst in Australia as part of the COVID concessions (under Reg 309.412(2)).

100.221(4C) – Relationship has ceased since 309 visa grant.

- Same as for 100.221(4) but applies to applicants who were granted their subclass 309 whilst in Australia as part of the COVID concessions (under Reg 309.412(2)).

Waiving two-year waiting period

Under current two-stage partner processing, applicants apply at the same time on the one application form for a subclass 309 and subclass 100 visa.

In most cases, the applicant will not be eligible for a subclass 100 visa until two years after their application is made.

The only provisions to grant a subclass 100 visa within the 2 year period are prescribed at:

- **100.221(5)** - if the relationship was already long-term when the visa application was made;
- **100.221(6)** - if the visa 309 was granted on the basis of their being the partner of a permanent humanitarian visa holder, and that relationship existed and was declared to the Department before permanent visa grant;
- **100.221(7)** – nothing prevents granting 100 visa within two years to applicant who meets subclause (3), (4), (4B) or (4C) which relate to breakdown of relationship.

Waiving two-year waiting period

If either of the circumstances in subclause 100.221(5) or (6) exist AND the officer decides that the applicant is eligible to be granted a subclass 309 visa, then the officer will, immediately after deciding to grant the subclass 309 visa, grant the subclass 100 visa.

So, what this means is, while 2nd stage processing is usually done onshore, when you get a new partner visa application, always check to see if a long-term partner relationship exists and what visa the sponsor holds or held!

Long-term Partner Relationship

Regulation 1.03 defines 'long-term partner relationship' as a relationship between the applicant and another person, each as the spouse or de facto partner of the other, that has continued:

- (a) if there is a dependent child (other than a step-child) of both the applicant and the other person — **for not less than 2 years**; or
- (b) in any other case — **for not less than 3 years**.

Schedule 2 – Time of decision criteria

100.222 and 100.224: All relevant PICS are met for both primary applicants and MOFU (4001, 4002, 4003, 4004, 4007, 4009, 4019, 4020 and 4021)

100.225: Relates to custody PICs 4015 and 4015

100.226: provides that a primary applicant must be nominated by the sponsoring partner unless the primary applicant satisfied criteria in subclauses 100.221(2A), (3), (4), (4B) or (4C) relating to cessation of the relationship due to death of the sponsoring partner, domestic violence committed by the sponsoring partner or custody / access / residence of a child.

Schedule 2 – Time of decision criteria

Secondary Applicant (DA):

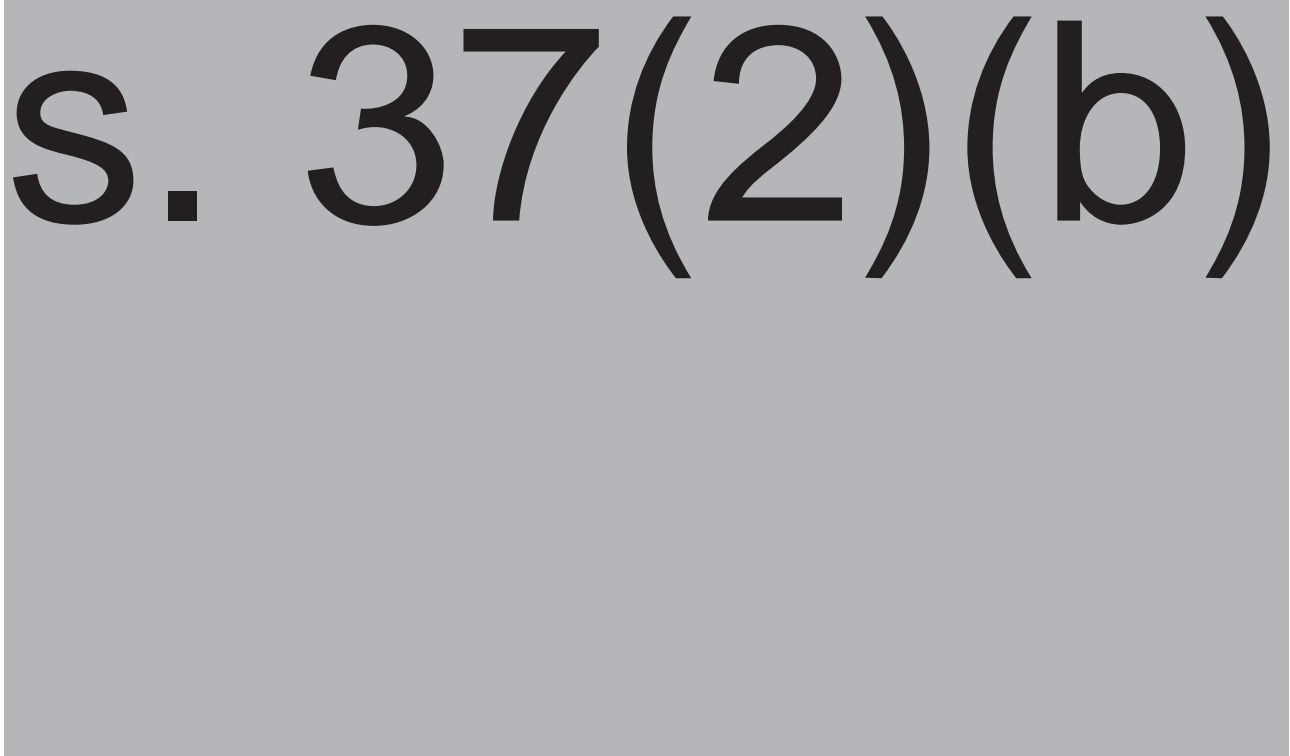
- the DA is the holder of a subclass 309 visa or a subclass 445 visa, that was granted on the basis of being a member of the family unit of the PA (who is the holder of a subclass 309 visa and has not yet been granted a subclass 100 visa).
- all relevant PICS are met including PICs 4017 and 4018 which relate to dependents under 18 years of age. These PICs are usually met for grant of the subclass 309 visa however, it is important that the decision maker checks there is no new information regarding custody (however, this is rare).

Questions?



Good afternoon colleagues

When processing any visa application in the Family Visa program, [1.20KB](#) is a consideration, and you are alerted to a [registrable offence](#) against the sponsor (or sponsor’s spouse), and a VACCU referral is created, the following should be followed:



STEP 3:	Once VACCU referral created for 1.20KB assessment, email the VACCU referral to CRIT Family s. 47E(d)@homeaffairs.gov.au who will collate reporting on sponsors of concern under 1.20KB.
----------------	--

Released by Department of Home Affairs
under the Freedom of Information Act 1982