



**Australian Government**  
**Department of Immigration  
and Border Protection**

# Child Migration

2

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## About this booklet

This booklet is designed to assist in understanding the steps for applying for **Child Migration to Australia**, and in how to complete the application form with minimal, if any, help.

This booklet is one of a series of booklets about migration to Australia. The booklets are:

- 1 Partner Migration
- 2 Child Migration
- 3 Parent Migration
- 4 Other Family Migration
- 5 Employer Sponsored Migration (Permanent)
- 6 Points Based Skilled Migration (subclasses 189, 190 and 489) visa
- 7 Business Skills Entry
- 9 Temporary Work (Skilled) (subclass 457) visa
- 10 Business Innovation and Investment
- 11 SkillSelect

For general information about migration to Australia, read information form 1126i *Migrating to Australia*, or visit the website [www.border.gov.au](http://www.border.gov.au)

## Using a migration agent

Using a migration agent is not necessary to lodge a visa application. However, if an applicant chooses to use an agent, the department recommends that a registered migration agent is used.

Under Australian law, anyone who uses knowledge of migration procedures to offer immigration assistance to a person wishing to obtain a visa to enter or remain in Australia must be registered or exempt from registration (see page 35).

All registered migration agents are bound by the Migration Agents Code of Conduct, which requires agents to act professionally in their clients' lawful best interests. A list of registered migration agents is available from the Office of the Migration Agents Registration Authority (Office of the MARA) website [www.mara.gov.au](http://www.mara.gov.au)

You can contact the Office of the MARA at:

Website: [www.mara.gov.au](http://www.mara.gov.au)

Email: [info@mara.gov.au](mailto:info@mara.gov.au)

Mail: PO Box Q1551  
QVB NSW 1230  
AUSTRALIA

In person: Level 10  
111 Elizabeth Street  
SYDNEY NSW  
AUSTRALIA

Office hours are 9am – 5pm Australian Eastern Standard Time (AEST)

Telephone: 1300 226 272 or +61 2 9078 3552

Fax: +61 2 9078 3591

The Office of the MARA investigates complaints against registered migration agents and may take disciplinary action against them. If you have a concern about a registered migration agent, you should contact the Office of the MARA. The Code of Conduct and complaint form are available from the Office of the MARA website.

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# Contents

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Terms you need to know	2
<b>Part 1 – General information</b>	<b>5</b>
Children born to an Australian citizen or a permanent resident	5
Basic requirements	5
Sponsorship	8
Assurance of Support	10
Costs and charges associated with the visa application	11
<b>Part 2 – Child category visas</b>	<b>13</b>
Child visas	13
Orphan Relative visas	17
Adoption visa	19
<b>Part 3 – Health</b>	<b>24</b>
<b>Part 4 – Character</b>	<b>25</b>
<b>Part 5 – Preparing the child’s application</b>	<b>26</b>
<b>Part 6 – Processing visa applications</b>	<b>31</b>

# Terms you need to know

<b>Adoption Convention</b>	The Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, which was signed at the Hague on 29 May 1993.
<b>Adoption compliance certificate</b>	A certificate issued by a competent authority in the country in which an adoption takes place stating that the adoption is made in accordance with the Adoption Convention (Hague).
<b>Applicant</b>	The applicant is the person (or persons) applying to migrate or remain permanently in Australia.
<b>Australian mission</b>	An Australian Embassy, High Commission, Consulate or Consulate General or Australian Trade Commission that is located outside Australia.
<b>Australian Permanent Resident</b>	A non-citizen, being usually resident in Australia, who is the holder of a permanent visa.
<b>Child category visa</b>	A visa that can be either a Child (subclass 101 or 802), Orphan Relative (subclass 117 or 837) or an Adoption (subclass 101) visa.
<b>De facto partner</b>	A person is the de facto partner of another person (whether of the same sex or a different sex) if the person is in a de facto relationship with the other person.
<b>De facto relationship</b>	<p>For the purposes of a child category visa application, a person is in a de facto relationship with another person if:</p> <ul style="list-style-type: none"><li>• they are not in a married relationship (for the purposes of the <i>Migration Act 1958</i>) with each other;</li><li>• they are not related by family;</li><li>• they have a mutual commitment to a shared life to the exclusion of all others;</li><li>• the relationship between them is genuine and continuing;</li><li>• they live together or do not live separately and apart on a permanent basis; and</li><li>• the relationship has continued for the period of 12 months immediately preceding the date of application.</li></ul> <p><b>Note:</b> The 12-month relationship requirement at time of application lodgement does not apply if the applicant can establish that:</p> <ul style="list-style-type: none"><li>• there are compelling and compassionate circumstances for the grant of the visa (eg. there are children of the relationship or cohabitation was not permissible under the law of the country where the applicant resided for the 12 months before lodging the application); or</li><li>• the applicant's partner is, or was, the holder of a permanent humanitarian visa and, before that permanent humanitarian visa was granted, they were in a relationship that satisfies the requirements of a de facto relationship according to the Migration Regulations 1994, and the department was informed of this before the permanent humanitarian visa was granted; or</li><li>• the de facto relationship was registered under a law of a state or territory prescribed in the Acts Interpretation (Registered Relationship) Regulations 2008 as a kind of relationship prescribed in those regulations.</li></ul>

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<b>Department</b>	The Department of Immigration and Border Protection.
<b>DNA</b>	DNA (Deoxyribonucleic acid) is the genetic material present in every cell of the body. For example, it is in blood, saliva, skin and hair. A comparison of genetic material from 2 or more people can show whether or not they are biologically related to each other.
<b>Eligible New Zealand citizen</b>	<p>An eligible New Zealand citizen is a New Zealand citizen (who is not the holder of an Australia permanent visa) and who, at the time of last entry to Australia, would have met health and character checks and:</p> <ul style="list-style-type: none"> <li>• held a Special Category Visa (SCV) on 26 February 2001; or</li> <li>• held an SCV for at least one year in the 2 years preceding that date; or</li> <li>• has a certificate issued under the <i>Social Security Act 1991</i> that states that the citizen was, for the purposes of that Act, residing in Australia on a particular date.</li> </ul>
<b>Married relationship</b>	<p>Persons are in a married relationship if:</p> <ul style="list-style-type: none"> <li>• they are married to each other under a marriage that is valid for the purposes of the <i>Migration Act 1958</i>;</li> <li>• they have a mutual commitment to a shared life as husband and wife to the exclusion of all others;</li> <li>• the relationship between them is genuine and continuing; and</li> <li>• they live together or do not live separately and apart on a permanent basis.</li> </ul>
<b>Migrate</b>	If applying from outside Australia, the child will be applying to migrate. If applying in Australia, the child will be applying for permanent residence. In this booklet the term 'migrate' will cover both.
<b>Office of the department</b>	A regional office of the Department of Immigration and Border Protection in Australia.
<b>Partner</b>	A spouse, de facto partner or fiancé(e).
<b>Permanent resident</b>	A non-citizen who is the holder of a permanent visa.
<b>Registrable offence</b>	<p>In relation to the sponsorship limitation for child category and partner category visas, registrable offence means any of the following:</p> <ul style="list-style-type: none"> <li>• an offence that is a registrable offence within the meaning of any of the following Acts: <ul style="list-style-type: none"> <li>– the <i>Child Protection (Offenders Registration) Act 2000</i> (NSW);</li> <li>– the <i>Sex Offenders Registration Act 2004</i> (Vic);</li> <li>– the <i>Child Sex Offenders Registration Act 2006</i> (SA);</li> <li>– the <i>Crimes (Child Sex Offenders) Act 2005</i> (ACT);</li> </ul> </li> <li>• an offence that would be a registrable offence under the above paragraph if it were committed in a jurisdiction mentioned in that paragraph;</li> </ul>

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- an offence that is a reportable offence within the meaning of any of the following Acts:
    - the *Child Protection (Offender Reporting) Act 2004* (Qld);
    - the *Community Protection (Offender Reporting) Act 2004* (WA);
    - the *Community Protection (Offender Reporting) Act 2005* (Tas);
    - the *Child Protection (Offender Reporting and Registration) Act* (NT);
  - an offence that would be a reportable offence under the above paragraph if it were committed in a jurisdiction mentioned in that paragraph.

**Settled**

To meet settled requirements, a person must have been lawfully resident in Australia for a reasonable period, usually 2 years.

**Sponsor**

The relative who undertakes sponsorship obligations. The sponsor must be an Australian citizen, Australian permanent resident or eligible New Zealand citizen. Generally, for the purposes of child migration, the sponsor is the parent of the applicant unless they are sponsoring an orphan relative.

**Spouse**

A person is the spouse of another person if they are in a married relationship.

**State/Territory central adoption authority**

An Australian state or territory government agency responsible for managing the arrangements for adopting children outside Australia, in accordance with Adoption Convention arrangements, including assessing and approving prospective adoptive parents.

## Children born to an Australian citizen or a permanent resident

Children born in Australia automatically acquire Australian citizenship if at least one parent is an Australian citizen or permanent resident at the time of the child's birth. More information about Australian citizenship is on page 7.

Children born outside Australia to parents who are not Australian citizens do not automatically acquire Australian citizenship and they are not eligible for citizenship by descent. Therefore, children born outside Australia to permanent resident parents will need to apply for and be granted a migration (ie. permanent resident) visa to be able to enter and remain in Australia with their parents.

Most children born overseas to permanent resident parents will need to apply for a Child (subclass 101) visa. More information on Child (subclass 101) visas is available below and on page 13.

## Basic requirements

All people who apply for a permanent visa, including children of Australian citizens or permanent residents, must pay the costs and charges associated with the visa application (see page 11) and meet all the required legislative criteria, which includes meeting the health requirement. In addition, parents (and step-parents) who sponsor a child for a child category visa (ie. a Child (subclasses 101 and 802), an Orphan Relative (subclasses 117 and 837) or an Adoption (subclass 102) visa) are also required to provide police checks and meet relevant sponsorship requirements relating to the protection of children.

**It is in the applicant's interest to provide all the documents requested with a valid application. Failure to do so may result in the processing of the application being delayed or a decision being made to refuse to grant the visa.**

**The department may refuse a child category visa if the applicant gives false or misleading information or a bogus document in relation to their visa application.**

The processing time for a child category visa may vary depending on individual circumstances, the complexity of each case and, given the differing circumstances of national and regional caseloads, the location. Current visa application processing times are available from the department's website [www.border.gov.au/about/access-accountability/service-standards/visitor-visa-processing-times](http://www.border.gov.au/about/access-accountability/service-standards/visitor-visa-processing-times)

For a person who is applying for a child category visa, the following basic requirements must be met.

**Note:** If the applicant is a child who is under 16 years of age, the child's parent, relative or guardian may complete and sign the form on the child's behalf (depending on the visa for which the child is applying).

## Child (subclasses 101 and 802) visas

The child must be sponsored by:

- an Australian citizen, permanent resident or eligible New Zealand citizen (the Australian parent); or
- if the Australian parent is under 18 years of age, the Australian parent's cohabiting partner if that partner is 18 years of age or over and an Australian citizen, permanent resident or eligible New Zealand citizen.

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The child must be:

- a natural (biological) child of the Australian parent; or
- an adopted child or a step-child of the Australian parent within the meaning of the *Migration Act 1958*; or
- a child conceived through an artificial conception procedure (ACP); or
- a child born under surrogacy arrangements, where parentage has been transferred by court order under a prescribed state or territory law.

In addition, the child may be adopted, but that adoption must have taken place **before** the parent became an Australian citizen or permanent resident or eligible New Zealand citizen and must have been an adoption within the meaning of the Migration Regulations 1994.

A child applying outside Australia, who was adopted **after** the parent became an Australian citizen or permanent resident or eligible New Zealand citizen, cannot apply for a Child (subclass 101) visa and should consider applying for an Adoption (subclass 102) visa.

The child must be under 25 years of age, but if 18 years of age or over must be a full-time student and dependent on their sponsoring parent. The only exception to the age limit and full-time student requirement is where the child has a disability that stops them from working.

A Child visa application can be made outside Australia (subclass 101) or in Australia (subclass 802).

Details about sponsorship are on pages 8–9.

If the child is in Australia and has had a visa refused or cancelled and does not hold a substantive visa, in order to make a valid application for a Child (subclass 802) visa they must be under 25 years of age (unless claiming to be incapacitated for work due to disability) and must provide a completed and signed form 40CH *Sponsorship for a child to migrate to Australia*.

More details about Child visas are on page 13.

## Orphan Relative (subclasses 117 and 837) visa

The child must be under 18 years of age and not married or in a de facto partner relationship.

The child must be a relative of an Australian citizen, Australian permanent resident or eligible New Zealand citizen, who is willing to sponsor the child and be able to look after the child because the child has no parent able to care for them

The relative must be either the child's brother or sister, grandparent, aunt or uncle, or niece or nephew (or step equivalents).

An Orphan Relative visa application can be made outside Australia (subclass 117) or in Australia (subclass 837).

More information about Orphan Relative visas is on page 17.

## Adoption (subclass 102) visa

The child must have been adopted or be in the process of being adopted by an Australian citizen, permanent resident or eligible New Zealand citizen and must be **sponsored** by that person.

The child must be under 18 years of age when the visa application is lodged with the department and also when the visa application is decided.

An Adoption (subclass 102) visa application can only be made **outside Australia**.

More information about Adoption visas is on page 19.



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## Dependent children of Partner visa applicants

A dependent child whose parent holds a temporary Partner visa, that is:

- a temporary Partner (subclass 820) visa; or
- a provisional Partner (subclass 309) visa; or
- a provisional spouse or interdependency visa,

should consider applying for a temporary Dependent Child (subclass 445) visa.

A subclass 445 visa relates only to partner category visas. If granted, this temporary visa allows the child to travel to, enter and/or remain in Australia until a decision is made on the parent's application for a permanent Partner (subclass 100 or 801) visa. Like the temporary Partner visa, the subclass 445 visa is a pre-requisite for a child who does not hold a temporary Partner visa to be granted a permanent Partner visa at the same time as their parent.

After the grant of a subclass 445 visa, the child should then immediately apply for the permanent Partner visa of the same class as their parent. It is essential that this application is lodged **before** a decision is made on the parent's permanent Partner visa application as the subclass 445 visa automatically ceases as soon as the parent's permanent Partner visa is granted. Failure to do this may result in the child becoming unlawful in Australia, or the child not having a permanent visa option.

Further information about applying for a subclass 445 visa, including forms and fees, can be found in booklet 1, *Partner Migration* (form 1127), which is available from the department's website [www.border.gov.au/allforms/](http://www.border.gov.au/allforms/)

## Australian Citizenship

Any child born outside Australia to a parent who is an Australian citizen at the time of the child's birth may be eligible for Australian citizen by descent. More information on citizenship is available from [www.border.gov.au/trav/citi](http://www.border.gov.au/trav/citi)

A child who has been adopted outside Australia by an Australian citizen must hold an **activated** permanent visa to be eligible to apply for citizenship by conferral. In other words, the child must have entered Australia on their Adoption (subclass 102) visa (or any other visa providing permanent residence) before they can apply for citizenship by conferral. Once their visa has been activated they can apply for citizenship either in or outside Australia.

A child adopted overseas by an Australian citizen under full Hague Adoption Convention arrangements may be eligible to become an Australian citizen if a valid adoption compliance certificate has been issued in accordance with Article 23 of that Convention. That child would also have the option of applying for an Adoption (subclass 102) visa. However, costs and visa application processing times are greater than for the citizenship application process.

More information on adoption of children from outside Australia is available from the department's website [www.border.gov.au/trav/life/adoption-of-children](http://www.border.gov.au/trav/life/adoption-of-children) If in Australia, contact the Citizenship Information Line on 131 880.

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# Sponsorship

## What is sponsorship?

The child must be **sponsored** by the parent, relative or guardian (as applicable for the visa subclass chosen). The sponsor gives a written undertaking to provide support for the child during their first 2 years in Australia, including accommodation and financial assistance as required to meet the child's reasonable living needs.

The sponsor must be 18 years of age or over and must be either an Australian citizen, a holder of a permanent visa or an eligible New Zealand citizen.

In addition, the sponsor for an Orphan Relative visa must be settled in Australia, that is, they have been lawfully resident in Australia for a reasonable period (usually 2 years).

**Note:** Eligible New Zealand citizen sponsors must meet health and character requirements. The visa application processing office will advise the sponsor if it is necessary for them to undertake health and/or character checks.

**Note: A step-child can only be included in the Child (subclass 101 or 802) visa application if:**

- **the step-child is under 18 years of age; and**
- **the sponsoring step-parent is no longer the spouse or de facto partner of the child's parent but has parental responsibility in relation to the child.**

## Protection of children

The Australian Government considers that the safety of children is paramount and this is reflected in policies about the sponsorship of minors for visas to enter Australia. The government wants to ensure that children seeking to enter Australia under partner and child category visas are protected from being sponsored by people with convictions for child sex offences or other serious offences indicating that they may pose a significant risk to a child in their care.

From 27 March 2010, a sponsorship limitation in the Migration Regulations 1994 prevents a sponsorship from being approved if one of the proposed applicants is under 18 years of age and the Minister is satisfied that the sponsor or the sponsor's spouse or de facto partner has a conviction or outstanding charge for a registrable offence. Sponsors (and their partners, if they have one) of child category visa applications lodged on or after 27 March 2010, where the child is under 18 years of age, are required to provide an Australian National Police Check and/or foreign police certificate(s) as part of the process of assessing the application. The results of the police certificate(s) are used by the department to assess the sponsorship application and whether or not the visa application satisfies public interest criteria relating to the best interests of the children.

A sponsorship that would otherwise be refused under this limitation may be approved at the discretion of the Minister or their delegate if 5 years have passed since completion of the sentence for the last relevant offence and there are compelling circumstances affecting the sponsor or the visa applicant.

In addition to the Australian National Police Check or other police certificate(s), sponsors (and their partners, if they have one) must disclose to the department any information relating to any conviction for child sex offences they have had or any charges currently awaiting legal action. It is also important that migration applicants, and any non-migrating person who can lawfully determine where a migrating minor child is to live, are informed when the sponsor and/or their partner has such convictions or outstanding charges.

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When the department is aware of any convictions or charges of this nature, through either:

- the Australian National Police Check or other police certificate(s) provided;
- the answers provided on form 40CH *Sponsorship for a child to migrate to Australia*; or
- liaison with relevant Commonwealth, state and territory agencies;

it may inform the migration applicant, and any non-migrating person who can lawfully determine where the applicant's migrating minor child may live, about the convictions or charges. Signing the sponsorship undertaking will be taken as your acknowledgement of this approach. If the sponsor has a partner, that partner must also sign an acknowledgement of this approach in form 40CH.

**Note:** Where the applicant is adopted and an Australian state or territory central adoption authority has approved the adoption, police certificates are obtained as part of the approval process and further police certificates are not required with the application.

## Sponsorship form

The sponsor must complete a sponsorship form. A copy of the appropriate form (form 40CH *Sponsorship for a child to migrate to Australia*) is available from the department's website [www.border.gov.au/allforms/](http://www.border.gov.au/allforms/)

The sponsor should include the following with the sponsorship form:

- evidence of their relationship with the child;
- evidence that they are an Australian citizen or permanent resident or eligible New Zealand citizen;
- if sponsoring an orphan relative, evidence that the sponsor is settled in Australia; and
- if sponsoring a child under 18 years of age, an Australian National Police Check or foreign police certificate(s) (see above).

The sponsorship form should be lodged with the child's application.

The sponsor must complete and sign the 'Sponsorship undertaking' part of the form. A sponsorship is valid for 2 years from the time it is signed by the sponsor. If there are any delays in processing the child's application, the sponsor may need to complete a new sponsorship form.

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# Assurance of Support

## What is an Assurance of Support?

An Assurance of Support is a commitment to provide financial support to the person applying to migrate so that the migrant will not have to rely on any government forms of support. The Assurance of Support scheme enables welfare costs for these migrants to be met by an Australian citizen, Australian permanent resident or eligible New Zealand citizen, rather than the Australian community.

It is also a legal commitment by a person to repay to the Government of Australia any recoverable social security payments made by the Department of Human Services to the person or persons covered by the assurance. The assurance is in force for 2 years, from the assuree's arrival in Australia, or for those applying within Australia, the date of grant of permanent residence.

Assurances cover the main applicant and any dependants included in the application.

**Note:** The Assurance of Support remains in place for the duration of the assurance period regardless of whether or not the migrant has obtained a different visa (except where that visa is a humanitarian visa) or has become an Australian citizen. Once the relevant visa has been granted, the Assurance of Support can only be cancelled in very limited circumstances and these circumstances are determined by the Department of Human Services (not by the department).

## When is an Assurance of Support required?

If the child is assessed as a risk of becoming a charge on the Australian social welfare budget an Assurance of Support may be requested. The request will be made by the department during the processing of the child's visa application.

## Who can give an Assurance of Support?

The sponsor and assurer do not have to be the same person.

The person giving an Assurance of Support must be:

- an adult (18 years of age or over) Australian citizen, Australian permanent resident or eligible New Zealand citizen;
- usually resident in Australia; and
- financially able to support the sponsored person or persons and repay certain social security payments should they be made to the person/s covered by the assurance.

It is unlikely that an assurer could provide an acceptable Assurance of Support if they have received the full rate of any pensions, benefits or allowances (other than family payments) from the Department of Human Services during the past year.

Sponsors will only be advised of whether or not an Assurance of Support is required after they have lodged an application for a child category visa, and a departmental decision maker has all the relevant information before them.

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## Giving an Assurance of Support

The Department of Human Services has responsibility for assessing all Assurance of Support applications. Where appropriate, this also includes managing bond lodgement. More information about the Assurance of Support scheme including application procedures, is available from the Department of Human Services website [www.humanservices.gov.au](http://www.humanservices.gov.au) or contact the Department of Human Services on **132 850**.

## Costs and charges associated with the visa application

Some of the costs and charges associated with lodging a visa application are outlined below.

### Visa Application Charge

The correct Visa Application Charge must be paid when the application is lodged. The charge will usually not be refunded if the application is unsuccessful. Until the charge is paid, the application is not legally made and therefore cannot be assessed.

Fees may be subject to adjustment at any time. Visa Application Charges may be subject to adjustment on 1 July each year. This may increase the cost of a visa.

To check the Visa Application Charge, refer to the department's website [www.border.gov.au/trav/visa/fees](http://www.border.gov.au/trav/visa/fees) or check with the nearest office of the department.

## Method of payment

### In Australia

To make a payment, please pay by credit card, bank cheque or money order made payable to the Department of Immigration and Border Protection. Credit card is the preferred method of payment.

### Outside Australia

Before making a payment outside Australia, please check with the Australian mission where you intend to lodge your application as to what methods of payment and currencies they can accept and to whom the payment should be made payable.

## Medical costs

The child (or their sponsor) will be required to pay any charges associated with medical and x-ray examinations. The cost of the examinations is set by the doctor.

## Character costs

A child 16 years of age or over may be required to obtain a police check. The charge for this varies from country to country. Where a police check is required, the applicant is personally responsible for all arrangements, including costs. The processing office may provide assistance, in terms of contact details and what needs to be provided. More information on penal clearances is available from the department's website [www.border.gov.au/trav/visa/char](http://www.border.gov.au/trav/visa/char)

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## Other costs

Be prepared to pay other costs associated with the application, such as the cost of certified translations of some documents or, if required, the cost of DNA testing.

## Certified copies and English translations

Except for police checks, do not supply original documents with the application unless asked to do so. If the department requires an original document at any stage, the department will ask for it.

**Note:** Police checks are the exception and the original document must be provided to the department.

'Certified copies' of original documents should be provided. 'Certified copies' are copies authorised, or stamped as being true copies of originals, by a person or agency recognised by the law of the person's home country. All overseas offices of the department have the facility to certify or witness documents if necessary (this service may attract a charge). Persons authorised to certify copies in Australia include:

- a magistrate;
- a Justice of the Peace;
- a Commissioner for Declarations;
- a Commissioner for Affidavits;
- a solicitor;
- a registered medical practitioner;
- a bank manager;
- a postal manager; and
- an Australian Postal Corporation officer with 5 years service.

Documents in languages other than English must be accompanied by an English translation. If the application is being made in Australia, the translator must be accredited by the National Accreditation Authority for Translators and Interpreters (NAATI).

# Part 2 – Child category visas

## Child visas

A Child visa application can be made outside Australia (subclass 101) or in Australia (subclass 802).

### Relationship

The child must be sponsored by:

- an Australian citizen, the holder of a permanent resident visa or eligible New Zealand citizen (the Australian parent); or
- if the Australian parent is under 18 years of age, the Australian parent's cohabiting partner if that partner is 18 years of age or over and an Australian citizen or permanent resident or eligible New Zealand citizen.

The child must be:

- a natural (biological) child of the Australian parent; or
- an adopted child or a step-child of the Australian parent within the meaning of the *Migration Act 1958*; or
- a child conceived through an artificial conception procedure (ACP) as provided for in the *Family Law Act 1975*; or
- a child born under surrogacy arrangements, where parentage has been transferred by court order under a prescribed state or territory law.

If an adopted child is **applying outside Australia** for a Child (subclass 101) visa, the child must have been adopted **before** the parent became an Australian citizen or permanent resident or eligible New Zealand citizen. If the child was adopted **after** the adoptive parent became an Australian citizen, or permanent resident or eligible New Zealand citizen, they should apply for an Adoption (subclass 102) visa. More information on an Adoption (subclass 102) visa is on page 19.

A child **applying in Australia** for a Child (subclass 802) visa, who was adopted **after** the adoptive parent became an Australian citizen, or permanent resident or eligible New Zealand citizen, may be eligible for this visa subject to meeting certain requirements. These include that the Australian adoptive parent who is sponsoring the child must have been outside Australia for at least 12 months prior to the adoption and that this residency was not contrived solely for the purposes of that adoption. In such situations, the adoptive parents should seek advice from their relevant state or territory central adoption authority and/or legal advice and also contact the department.

**Note: A step-child can only be included in the Child (subclass 101 or 802) visa application if:**

- **the step-child is under 18 years of age; and**
- **the sponsoring step-parent is no longer the spouse or de facto partner of the child's parent but has parental responsibility in relation to the child.**

In addition, if a child is onshore and has had a visa refused or cancelled since they entered Australia and does not hold a substantive visa, to make a valid application for a Child (subclass 802) visa they must:

- be under 25 years of age unless claiming to be incapacitated for work due to disability; and
- provide an approved form 40CH *Sponsorship for a child to migrate to Australia* that has been completed and signed by an Australian citizen, Australian permanent resident or eligible New Zealand citizen who claims to be the parent of the applicant.

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## Relationship status

The child must not be married, in a de facto partner relationship or engaged to be married. Additionally, if the child is 18 years of age or over, the child must have never before been married or in a de facto partner relationship.

## Age

Generally the child must be under 25 years of age, but if they are 18 years of age or over, they must be a full-time student and financially dependent on the sponsoring parent. The only exception to this requirement is where a child has a disability that stops them from working.

If a child turns 18 years of age after the application is lodged, the child will continue to be assessed as a child under 18 years of age. If the child turns 25 years of age after the application is lodged but before it is decided, they may still be eligible for a visa. However, they will need to show that they are still dependent on the parent and meet the other requirements for the visa.

Following are the different requirements for children under 18 years of age and those 18 years of age or over.

## Child under 18 years of age at time of lodging application

If under 18 years of age the child must be:

- a natural (biological) child of the Australian relative; or
- an adopted child or a step-child of the Australian relative within the meaning of the *Migration Act 1958*; or
- a child conceived through an artificial conception procedure (ACP) as provided for in the *Family Law Act 1975*; or
- a child born under surrogacy arrangements, where parentage has been transferred by court order under a prescribed state or territory law.

There is no further requirement to be met to satisfy the child's dependence.

## Parental responsibility (custody) requirement (for children under 18 years of age)

The parental responsibility (custody) requirement must be met for every child under 18 years of age. If another parent or any other person can legally determine where the child can live, permission for the child to migrate must be obtained from that person. This must be in the form of either a completed form 1229 *Consent to grant an Australian visa to a child under the age of 18 years* or a statutory declaration.

**Note:** A form 1229 or a statutory declaration needs to be accompanied by a certified copy of their identification (eg. passport or driver's licence).

Alternatively, the parental responsibility (custody) requirement will be satisfied if:

- the sponsor has a valid court order that permits them to permanently remove the child from the child's home country; OR
- the sponsor has a valid Australian child order issued by the Family Court of Australia and the grant of the visa would be consistent with that order.



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## Best interests of the child (for children under 18 years of age)

If an applicant is under 18 years of age, the sponsorship cannot be approved (except in very limited circumstances) if the sponsor or the sponsor's spouse or de facto partner (if they have one) has a conviction or an outstanding offence against a child. The applicant will also need to satisfy the requirement that there is no compelling reason to believe that the grant of the visa would not be in the best interests of the applicant.

In order to assess the sponsorship application and the best interests of the child criterion, sponsors of children under 18 years of age, and the sponsor's spouse or de facto partner, are required to submit an Australian National Police Check if that person has spent a total of 12 months or more in Australia since turning 16 years of age. They must also provide police certificates from each country in which they have spent a total of 12 months or more in the last 10 years since turning 16 years of age.

Sponsors who are required to submit an Australian National Police Check must complete the National Police Check application form which is available from the Australian Federal Police (AFP) website [www.afp.gov.au](http://www.afp.gov.au)

Sponsors should use Code 33 at Question 1 on the National Police Check application form and include details of any, and all, names they have been known by. If an AFP certificate is provided based on incorrect information, the department may request another certificate. Fingerprints are not required for National Police Checks.

A police certificate for any country may be considered valid if the sponsor has not spent a total of 12 months or more in the country of issue since the certificate was issued.

More information on police checks, including overseas police checks, is available from the department's website [www.border.gov.au/trav/visa/char](http://www.border.gov.au/trav/visa/char)

**Note:** When the applicant is adopted and an Australian state or territory central adoption authority has approved the adoption, police certificates are obtained as part of the approval process and further police certificates are not required with the application.

## Child 18 years of age or over at time of lodgement of application

If 18 years of age or over the child must be:

- a natural (biological) child of the Australian relative; or
- an adopted child or a step-child of the Australian relative within the meaning of the *Migration Act 1958*; or
- a child conceived through an artificial conception procedure (ACP) as provided for in the *Family Law Act 1975*; or
- a child born under surrogacy arrangements, where parentage has been transferred by court order under a prescribed state or territory law.

The above requirements are the same as those for a child under 18 years of age. However, because a child 18 years of age or over is considered to be an adult under Australian law, there are additional requirements. These are that the child must be:

- under 25 years of age (not yet turned 25);
- financially dependent on the sponsoring parent (see page 16);
- a full-time student (see page 16); and
- unmarried, not engaged to be married and not in a de facto partnership relationship.

Where the child has a disability that prevents them from working, the above requirements relating to age, financial dependency and study do not apply, but the child must not be in a relationship.

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## Dependent

The emotional family ties that may exist between children and parents are not regarded as an indicator of dependency.

To be considered dependent, the child must be in one of the following situations:

- be wholly or substantially reliant on the sponsoring parent for financial support to meet their basic needs of food, shelter and clothing and be able to show that they have relied on this support for a substantial period (usually 12 months); or
- be wholly or substantially reliant on the sponsoring parent for financial support because of a disability that prevents them working to support themselves. The child will still need to meet Australia's health requirements before being granted a visa (see page 24).

'Disability' means that the child has total or partial loss of his or her bodily or mental functions. Acceptable medical evidence must be provided to show that the child has such a disability and they are unable to financially support themselves because of it.

'Wholly or substantially' means totally or to a great degree. The child must show that their reliance on the sponsoring parent for financial support is greater than their reliance for financial support on any other person or source.

## Full-time student

To be considered a full-time student:

- at the time they apply for the visa, the child must be validly enrolled in, and actively participating in, a full-time post-secondary course of study leading to a professional, trade or vocational qualification;
- the child must have been undertaking that course since turning 18 years of age or have commenced studies within 6 months or a reasonable period of completing secondary education; and
- the child must not be in full-time employment.

Evidence of the child's full-time student status as described above must be provided, eg. certified copy of official academic record.

**Note:** If the child is 18 years of age or over and there has been a gap of over 6 months in study between finishing the final year of secondary school and commencing further studies, please provide a statement explaining this time frame.

The child does not have to be a full-time student if they are wholly or substantially reliant on the parent because of a disability that prevents them working to support themselves.

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## Orphan Relative visas

An Orphan Relative visa application can be made outside Australia (subclass 117) or in Australia (subclass 837).

### Relationship

The child must be sponsored by a relative who is an Australian citizen or Australian permanent resident or eligible New Zealand citizen.

The relative must be:

- either the child's brother or sister, grandparent, aunt or uncle, or niece or nephew (or step equivalents);
- 18 years of age or over (if the relative is under 18 years of age, their cohabiting spouse or de facto partner may act as sponsor if they are 18 years of age or over and are an Australian citizen or Australian permanent resident or eligible New Zealand citizen); and
- 'settled' in Australia – that is, usually resident in Australia and have been lawfully resident for a reasonable period (usually 2 years).

### Relationship status

The child must **not** be married or in a de facto partner relationship.

### Age

The child must be under 18 years of age.

### Orphan relative

The child may be considered an orphan relative if both parents cannot look after the child because they are dead, permanently incapacitated or of unknown whereabouts.

If one or both parents are **dead**, a death certificate or other official documentation must be provided to verify this.

If one parent's or both parents' **whereabouts are unknown**, evidence must be provided of how long they have been missing and what efforts have been made to contact or find them.

If one or both parents are **permanently incapacitated**, evidence must be provided to show why they are unable to care for the child. For example, if a parent has a physical or mental illness that stops them from being able to care for the child, a medical report to verify this must be provided. If a parent is in prison, evidence of the length of the sentence must be provided.

A parent cannot be considered permanently incapacitated because he or she is simply unwilling to look after the child. The inability of a parent to look after the child must be related to a physical or mental illness or some other factor that gives them no choice but to place the child in the care of a relative.

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## Parental responsibility (custody) requirement (for children under 18 years of age)

The parental responsibility (custody) requirement must be met for every child under 18 years of age. If another parent or any other person can legally determine where the child can live, permission for the child to migrate must be obtained from that person. This must be in the form of either a completed form 1229 *Consent to grant an Australian visa to a child under the age of 18 years* or a statutory declaration.

**Note:** A form 1229 or a statutory declaration needs to be accompanied by a certified copy of their identification (eg. passport or driver's licence).

Alternatively, the parental responsibility (custody) requirement will be satisfied if:

- the sponsor has a valid court order that permits them to permanently remove the child from the child's home country; OR
- the sponsor has a valid Australian child order issued by the Family Court of Australia and the grant of the visa would be consistent with that order.

## Best interests of the child (for children under 18 years of age)

If an applicant is under 18 years of age, the sponsorship cannot be approved (except in very limited circumstances) if the sponsor or the sponsor's spouse or de facto partner (if they have one) has a conviction or an outstanding offence against a child. The applicant will also need to satisfy the requirement that there is no compelling reason to believe that the grant of the visa would not be in the best interests of the applicant.

In order to assess the sponsorship application and the best interests of the child criterion, sponsors of children under 18 years of age, and the sponsor's spouse or de facto partner, are required to submit an Australian National Police Check if that person has spent a total of 12 months or more in Australia since turning 16 years of age. They must also provide police certificates from each country in which they have spent a total of 12 months or more in the last 10 years since turning 16 years of age.

Sponsors who are required to submit an Australian National Police Check must complete the National Police Check application form which is available from the Australian Federal Police (AFP) website [www.afp.gov.au](http://www.afp.gov.au)

Sponsors should use Code 33 at Question 1 on the National Police Check application form and include details of any, and all, names they have been known by. If an AFP certificate is provided based on incorrect information, the department may request another certificate. Fingerprints are not required for National Police Checks.

A police certificate for any country may be considered valid if the sponsor has not spent a total of 12 months or more in the country of issue since the certificate was issued.

More information on police checks, including overseas police checks, is available from the department's website [www.border.gov.au/trav/visa/char](http://www.border.gov.au/trav/visa/char)

**Note:** When the applicant is adopted and an Australian state or territory adoption authority has approved the adoption, police certificates are obtained as part of the approval process and further police certificates are not required with the application.

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## Adoption visa

**Note:** An Adoption (subclass 102) visa application can only be made **outside Australia**.

In Australia, the processing of intercountry adoptions is the responsibility of state and territory central adoption authorities such as departments of family services. These authorities manage arrangements for adopting children from overseas including assessing and approving prospective adoptive parents. The Australian Government, through the Attorney-General's Department, has the responsibility for managing existing programs and negotiating new programs with other countries.

The department cannot provide assistance to arrange adoptions. The department's role is to assess and decide applications for visas in accordance with the requirements of the Migration Regulations 1994.

To be eligible for an Adoption visa, the child must have been:

- adopted (or is to be adopted) with the involvement of an Australian state or territory central adoption authority (either under the Adoption Convention or another adoption agreement); or
- adopted privately by an expatriate Australian resident who has been living overseas for more than 12 months at the time of lodging the Adoption visa application (and the overseas residency must not have been contrived solely for the purposes of the child's adoption); or
- adopted under the Adoption Convention and the adoption was arranged between 2 Adoption Convention countries other than Australia.

## Relationship to sponsor

The child must have been adopted by an 'adoptive parent' or be in the process of being adopted by a 'prospective adoptive parent' and be sponsored by that person.

The 'adoptive parent' or 'prospective adoptive parent' must be an Australian citizen or permanent resident or eligible New Zealand citizen.

An **adoptive parent** includes a person who has adopted the child:

- under the laws of the child's home country (other than Australia) and who has been **living outside Australia for the 12 months** prior to lodging the Adoption visa application;
- in accordance with the Adoption Convention and the adoption was arranged through an Australian state or territory central adoption authority. The parent must possess an Article 23 adoption compliance certificate that certifies the child has been adopted in accordance with the Adoption Convention; or
- in accordance with the Adoption Convention and the adoption was arranged through the central adoption authorities of 2 countries other than Australia who have ratified the Adoption Convention. The parent must possess an adoption compliance certificate that certifies the child has been adopted in accordance with the Adoption Convention.

A **prospective adoptive parent** includes a person who:

- has been approved by an Australian state or territory central adoption authority as a suitable person to adopt the child and who intends to bring the child to Australia under the supervision of that authority – in such cases, the adoption will be completed in Australia; or
- has been allocated the child for adoption in accordance with the Adoption Convention.

Further information on the different types of adoption arrangements for this visa are provided on pages 22–23.

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If the child was adopted **before** the sponsor became an Australian citizen or permanent resident or eligible New Zealand citizen, they cannot apply for an Adoption (subclass 102) visa. Instead, they should apply for a Child (subclass 101 or 802) visa – see pages 13–16.

## Health requirement

The child must undergo a medical examination to ensure that they meet the health criteria for entry to Australia before a visa may be granted (see Part 3).

In the case of adoptions supported by a state or territory central adoption authority, the adoption cannot be finalised until the health criteria are met.

**Note:** If an adoption does not proceed for health reasons, the Visa Application Charge cannot be refunded or transferred to another child.

## Age

The child must be under 18 years of age.

If the child is under 18 years of age at time of application, but will turn 18 years of age before the application is decided, they will **not** be eligible for the grant of this visa.

## Parental responsibility (custody) requirement (for children under 18 years of age)

The parental responsibility (custody) requirement must be met for every child under 18 years of age. If another parent or any other person can legally determine where the child can live, permission for the child to migrate must be obtained from that person. This must be in the form of either a completed form 1229 *Consent to grant an Australian visa to a child under the age of 18 years* or a statutory declaration.

However, for an Adoption visa, there is no need for the sponsor of a child under 18 years of age who is the main applicant to provide evidence for meeting this provision. This is because, as a result of the adoption process, the sponsor must already have acquired full parental responsibility for that child in accordance with the law of the child's home country.

However, if the adopted child has a dependent child who is under 18 years of age, permission for that dependent child must be obtained from the person who can legally determine where that child can live. This must be in the form of either a completed form 1229 *Consent to grant an Australian visa to a child under the age of 18 years* or a statutory declaration.

**Note:** The form 1229 or a statutory declaration needs to be accompanied by a certified copy of their identification (eg. passport or driver's licence).

Alternatively, the parental responsibility (custody) requirement will be satisfied if:

- the sponsor has a valid court order that permits them to permanently remove the child from the child's home country; OR
- the sponsor has a valid Australian child order issued by the Family Court of Australia and the grant of the visa would be consistent with that order.

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## Best interests of the child (for children under 18 years of age)

If an applicant is under 18 years of age, the sponsorship cannot be approved (except in very limited circumstances) if the sponsor or the sponsor's spouse or de facto partner (if they have one) has a conviction or an outstanding offence against a child. The applicant will also need to satisfy the requirement that there is no compelling reason to believe that the grant of the visa would not be in the best interests of the applicant.

In order to assess the sponsorship application and the best interests of the child criterion, sponsors of children under 18 years of age, and the sponsor's spouse or de facto partner, are required to submit an Australian National Police Check if that person has spent a total of 12 months or more in Australia since turning 16 years of age. They must also provide police certificates from each country in which they have spent a total of 12 months or more in the last 10 years since turning 16 years of age.

Sponsors who are required to submit an Australian National Police Check must complete the National Police Check application form, which is available from the Australian Federal Police (AFP) website [www.afp.gov.au](http://www.afp.gov.au)

Sponsors should use Code 33 at Question 1 on the National Police Check application form and include details of any, and all, names they have been known by. If an AFP certificate is provided based on incorrect information, the department may request another certificate. Fingerprints are not required for National Police Checks.

A police certificate for any country may be considered valid if the sponsor and/or their partner have not spent a total of 12 months or more in the country of issue since the certificate was issued.

More information on police checks, including overseas police checks, is available from the department's website [www.border.gov.au/trav/visa/char](http://www.border.gov.au/trav/visa/char)

**Note:** When the applicant is adopted and an Australian state or territory central adoption authority has approved the adoption, police certificates are obtained as part of the approval process and further police certificates are not required with the application.

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## Adoptions involving an Australian state or territory central adoption authority

### Hague Convention

On 1 December 1998, Australia became a party to the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption (the Adoption Convention).

If the child has been allocated to a prospective adoptive parent for adoption under the Adoption Convention, a letter verifying this must be issued by the Australian state or territory central adoption authority that is supporting the adoption. This letter should be submitted together with the visa application.

Provided the child meets the health requirement, the adoption will take place and the relevant central adoption authority of the country from which the child is being adopted will issue an 'adoption compliance certificate', which certifies that the adoption meets all the requirements in accordance with Article 23 of the Adoption Convention. An Adoption (subclass 102) visa cannot be granted until this certificate has been issued and a certified copy has been provided to the department.

In some cases, the laws of the overseas country do not provide for full adoption and arrangements may be made for the adoption to be finalised in Australia. If this is the case, a letter from the relevant overseas authority stating that the child is allowed to travel to Australia in the care of the prospective adoptive parents for adoption in Australia must be provided to the department.

If the adoption took place between 2 other Adoption Convention countries and did not involve an Australian central adoption authority, a valid 'adoption compliance certificate' issued by the central adoption authority in the country in which the child was adopted must be provided to verify this. The child will still need to satisfy the health and other criteria for entry to Australia.

### Bilateral agreements

Australia has bilateral agreements with countries in South America, Asia, Europe, Africa and the Pacific. Specific information on these programs can be obtained from the relevant state and territory central adoption authorities.

These agreements are intended to ensure that children in overseas countries are protected from being bought or sold and to provide protection for families who wish to adopt a child from overseas (as they can be assured that the child is legally available for adoption).

For the child to be adopted under one of these agreements, the prospective adoptive parents must have been approved by an Australian state or territory central adoption authority as suitable persons to adopt the child. If this is the case, the child will have been allocated to them for adoption by the adoption authority or child institution in the child's home country. The prospective adoptive parents must produce a letter from the Australian state or territory central adoption authority to verify this when they lodge the visa application on behalf of the child.

The department must also be satisfied that the laws relating to adoption in the country in which the child usually lives have been complied with and that the relevant overseas central adoption authority has approved the child's departure for Australia.



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## Adoptions not involving an Australian state or territory central adoption authority

Sometimes Australian citizens, permanent residents or eligible New Zealand citizens living overseas adopt a child while they are overseas and the adoption did not involve an Australian state or territory central adoption authority. The child may have been adopted in the country in which they are living, or from another country. In either case, at least one of the Australian parents must meet the following requirements:

- they have been living overseas for more than 12 months at time of the visa application (if applying outside Australia) or for more than 12 months at time of adoption (if applying in Australia); and
- they did not deliberately live overseas in order to get around the entry requirements for adopting a child outside Australia; and
- they have lawfully acquired full and permanent parental rights by the adoption – this means that under the laws of the child’s country, the biological parents no longer have any legal responsibility for the child.

The department must also be satisfied that the laws relating to adoption in the country in which the child is normally resident have been complied with.

### A word of caution on adoptions

- An adoption visa cannot be granted to a child who has been adopted in circumstances other than those outlined above, even if the child has been adopted lawfully in another country.
- State and territory central adoption authorities will not generally support the adoption of a child who is a relative, or a specific child, where the adoption has not been arranged by that authority.
- ‘Full and permanent adoption’ does not exist in the laws of some countries. An adoption order that does not grant full parental rights to the adoptive parents is not acceptable for the grant of a visa.
- If you wish to proceed with an adoption that has not been arranged by your state or territory central adoption authority, it is strongly recommended that **before you adopt the child** you first seek legal advice both in Australia and the relevant country outside Australia to ensure that the adoption can be recognised, and that the child will be eligible to enter and remain in Australia.
- More information on adoption is available from the department’s website [www.border.gov.au/trav/life/adoption-of-children](http://www.border.gov.au/trav/life/adoption-of-children)

## Guardianship of children adopted outside Australia

Adoptions that are arranged outside Australia are not automatically recognised under Australian family law in all circumstances, even those that are facilitated by a state or territory central adoption authority. There are a number of different processes, depending on the country from which the child is adopted and the state or territory in which the adoptive family lives, for the adoption to be finalised and recognised under Australian family law.

In some instances, children, whose adoptions are yet to be finalised in Australia or are not recognised automatically under Australian family law, are officially under the guardianship of the Minister for Immigration and Citizenship when they enter Australia. The minister can delegate his powers and functions as guardian to certain officers in the relevant state or territory central adoption authority where the child resides. However, the minister cannot delegate the office of guardian itself. This arrangement is set out in the *Immigration (Guardianship of Children) Act 1946* (IGOC Act).

More information on the minister’s guardianship under the IGOC Act is available from the department’s website [www.border.gov.au/trav/life/adoption-of-children](http://www.border.gov.au/trav/life/adoption-of-children)

## Health

The child and any members of the child's family unit must meet health standards designed to protect Australia from high health risks and costs, and to prevent overuse of scarce health resources.

All child category visa applicants need to undergo permanent visa medical examinations even though they may have previously undertaken medical examinations for grant of a temporary visa.

Subject to age considerations, each person must undertake a medical examination, a chest x-ray and an HIV test. Additional tests may also be required if a person has a specific health condition.

Medical examinations can be a lengthy process and costs will be the responsibility of the child or child's parent or guardian.

General information about the health requirement is available in Fact sheet 22 *The Health Requirement* on the department's website at [www.border.gov.au/trav/visa/health/meeting-the-health-requirement](http://www.border.gov.au/trav/visa/health/meeting-the-health-requirement)

More detailed information, including how to arrange health examinations, is also available from the department's website at [www.border.gov.au/trav/visa/health/meeting-the-health-requirement](http://www.border.gov.au/trav/visa/health/meeting-the-health-requirement)

## Character

To enter Australia, applicants must be of good character.

In order for the Australian Government to determine whether or not applicants are of good character, applicants 16 years or over may be asked to provide police certificates for each country they have resided in for 12 months or more over the last 10 years (since turning 16 years of age).

In some instances, applicants may also be required to provide personal details to enable additional character checks to be undertaken.

Sponsors who are eligible New Zealand citizens also have to satisfy character requirements.

The original document of the police checks should be provided to the department. These will generally not be returned to the applicant, so copies should be taken for future reference.

More information on penal clearances is available from the department's website [www.border.gov.au/trav/visa/char](http://www.border.gov.au/trav/visa/char)

If applying outside Australia, seek advice from the Australian mission as to when police checks should be undertaken.

If applying in Australia, provide this information with the visa application. Where necessary, forms and instructions will be provided by the local office of the department.

# Part 5 – Preparing the child’s application

## Forms

Provide completed forms:

- form 47CH *Application for migration to Australia by a child*;
- form 40CH *Sponsorship for a child to migrate to Australia*;
- form 956 *Advice by a migration agent/exempt person of providing immigration assistance*, if applicable.
- form 956A *Appointment or withdrawal of an authorised recipient*, if applicable.

Forms are subject to change, ensure the forms used remain valid at time of application.

**Note:** Other forms may be required and will be provided by the department at the appropriate time.

## Application charge

- Charges are listed on the department’s website [www.border.gov.au/trav/visa/fees](http://www.border.gov.au/trav/visa/fees)

## Other documents

Other documents to be provided are listed on the following page.

**Note:** Applicants and sponsors are encouraged to use the local websites of Australian overseas missions to check for specific local documentation requirements before lodging the child’s visa application. Website addresses are located on the department’s website [www.border.gov.au](http://www.border.gov.au)

## Complete applications

A complete application is one that provides all information necessary for processing of the application. If the application is being made in Australia, health and character checks can be completed before lodgement of the application. If the application is being made outside Australia, please check the overseas mission’s website or contact them about when to do health and character checks.

If all the documents cannot be provided with the application, the department should be told which documents are missing and when they will be provided.

## Certified copies

Original documents should not be supplied with the application. If the department requires an original document at any stage, we will ask for it.

‘Certified copies’ of original documents should be provided. ‘Certified copies’ means copies authorised or stamped as being true copies of originals by a person or agency recognised by the law of the child’s home country. In Australia such authorised persons include a magistrate, justice of the peace, commissioner for declarations, commissioner for affidavits, a person before whom a statutory declaration may be made under the law of the state in which the declaration is made, a solicitor, registered medical practitioner, bank manager, postal manager, Australian postal corporation officer with 5 years service.

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## English translations

Documents in languages other than English must be accompanied by an English translation. If the child is applying in Australia, the translator must be accredited by the National Accreditation Authority for Translators and Interpreters (NAATI). If the child is applying outside Australia, please contact the nearest Australian mission for information about how to get the documents translated.

We suggest checking off each of the following documents as they are attached to the application to ensure that all necessary documents are included.

## DNA testing

DNA test results show whether 2 or more people are biologically related.

The department endorses the use of DNA testing as one possible means of providing evidence for claimed family relationships. DNA testing can be a useful option when documentary evidence of the claimed relationship is considered unreliable or is unavailable.

When a decision maker is not satisfied with available evidence of a relationship, he or she may suggest that an applicant undergo DNA testing as another means to establish a claimed relationship. The department will specify how the test is to be arranged. Any test obtained outside these requirements may not be accepted by the department.

Where a DNA test is requested, applicants for migrant visas must meet the full costs of DNA testing.

Further information on DNA testing can be found on form 1259i *Information about DNA testing for visa and citizenship applicants*, which is available from the department's website [www.border.gov.au/allforms/](http://www.border.gov.au/allforms/)

## The following documents must be provided as part of the visa application.

For **all** child category visas, please provide the following documents (see page 12 about certified copies of documents and English translations)

- If the child is applying in Australia, certified copies of the passport or travel document the child used to enter Australia and of any passports held since then.
- 2 recent passport sized photographs (45mm x 35mm) of the child (4 photos if health examinations have not been completed). These should be only of the head and shoulders and should show the child facing the camera and against a plain background. Print the name of the child on the back of each photograph.
- If the child is 16 years of age or over, a police good conduct/character certificate for each country outside Australia where the child has lived for more than 12 months over the past 10 years (since turning 16 years of age).
- Evidence that the child's sponsor is an Australian citizen, permanent resident or eligible New Zealand citizen, (certified copy of birth certificate, Australian passport or foreign passport containing evidence of permanent residence or Australian citizenship certificate).
- If the child is under 18 years of age, an Australian National Police Check and/or foreign police certificate(s) from the sponsor (unless the child has been adopted with the involvement of an Australian state or territory central adoption authority) (see pages 15, 18 and 21).
- If the child is under 18 years of age, an Australian National Police Check and/or foreign police certificate(s) from the sponsor's spouse or de facto partner (unless the child has been adopted with the involvement of an Australian state or territory central adoption authority) (see pages 15, 18 and 21).

For **Child** visa applications, please provide the following documents

- A certified copy of the child's birth registration showing both parents' names. If a birth certificate is not available, a certified copy of the identification pages of at least one of the following documents must be provided:
  - passport;
  - family book showing both parents' names;
  - identification document issued by the government; or
  - document issued by a court that verifies the child's identity.
- If the child is an adopted child, certified copies of the adoption papers.
- If the child is a step-child of the sponsor:
  - the step-child must be under 18 years of age;
  - provide evidence that the child's parent is the former partner of the sponsoring step-parent; and
  - provide evidence of the child's biological or adoptive parentage; and
  - provide evidence that the step-parent (sponsor) has parental responsibility in relation to the child.
- If the child is 18 years of age or over and is a full-time student, evidence of their current enrolment and active participation in a post-secondary course of study.

**Note:** If the child is 18 years of age or over and there has been a gap of over 6 months in study between finishing the final year of secondary school and commencing further studies, please provide a statement explaining this time frame.
- If the child is 18 years of age or over and is claiming to have a disability, evidence from a qualified medical practitioner that the child has total or partial loss of bodily or mental functions and this stops them from working.
- If the child is 18 years of age or over, evidence that they are financially dependent on their sponsor for their basic needs of food, shelter and clothing, and how long this support has been provided. Evidence may include bank statements, money transfers, rent receipts, etc.
- If the child is under 18 years of age, evidence that the sponsor has the legal right to determine where the child shall live:
  - either a completed form 1229 *Consent to grant an Australian visa to a child under the age of 18 years* OR a statutory declaration from any other person with a legal responsibility to the child (eg. a non-migrating parent) stating that they have no objection to the child's permanent migration; or
  - a valid court order issued to the sponsor which permits them to permanently remove the child from the child's home country; or
  - a valid Australian child order issued by the Family Court in Australia to the sponsor, and the grant of the visa would be consistent with that order.

**Note:** Form 1229 or the statutory declaration must be accompanied by a certified copy of the other parent/person's identification (eg. passport or driver's licence).
- If the child's name has been changed, a certified copy of evidence of the name change.
- If the child has served in the armed forces of any country, certified copies of military service record or discharge papers.

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For **Orphan Relative** visa applications, please provide the following documents.

- A certified copy of the child's birth registration showing both parents' names. If a birth certificate is not available, a certified copy of the identification pages of at least one of the following documents must be provided:
  - passport;
  - family book showing both parents' names;
  - identification document issued by the government; or
  - document issued by a court that verifies the child's identity.
- If the child's name has been changed, a certified copy of evidence of the name change.
- Documents to show the child's relationship to the sponsor, eg. birth certificate of child's natural/ adoptive parents and birth certificate of sponsor that indicate sibling relationship.
- If one or both parents are dead, a death certificate or other official documentation to verify this.
- If one or both parents' whereabouts are unknown, evidence of how long they have been missing and what efforts have been made to contact or find them.
- If one or both parents are permanently incapacitated, evidence showing why they are unable to care for the child. For example, if a parent has a physical or mental illness that stops them from being able to care for the child, provide a medical report to verify this.
- Evidence of the child's current care arrangements, including who is looking after the child, for how long and where.
- Evidence that the sponsor has the capacity to provide financial support and accommodation to the child until they turn 18 years of age – eg. telephone records and correspondence between the child and their sponsor, documents relating the sponsor's employment, income and housing.
- Evidence that the sponsor has the legal right to determine where the child shall live:
  - either a completed form 1229 *Consent to grant an Australian visa to a child under the age of 18 years* OR a statutory declaration from any other person with a legal responsibility to the child stating that they have no objection to the child's permanent migration; or
  - a valid court order issued to the sponsor which permits them to permanently remove the child from the child's home country; or
  - a valid Australian child order issued by the Family Court in Australia to the sponsor, and the grant of the visa would be consistent with that order.

**Note:** Form 1229 or the statutory declaration must be accompanied by a certified copy of the other parent/person's identification (eg. passport or driver's licence).

For **Adoption** visa applications, please provide the following documents.

- If the child has been allocated for adoption, a letter from the Australian state or territory central adoption authority supporting the adoption.
- If the child has been adopted, certified copies of the adoption papers or adoption compliance certificate, including evidence that the authority in the child's home country permits the child to migrate to Australia.
- If the child has been adopted by expatriate adoptive parents **without** the support of an Australian state or territory central adoption authority, provide a written statement outlining the length of time and reasons for the adoptive parent's residence overseas.

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## Lodging the application

### If applying outside Australia

Lodge the application at the nearest Australian mission in accordance with their advice.

### If applying in Australia

You cannot lodge your application in person if you are applying in Australia. You must post or courier your application to the Perth office in Western Australia.

You can **post** your application (with correct pre-paid postage) to:

Department of Immigration and Border Protection  
Child and Other Family Processing Centre  
Locked Bag 7  
NORTHBRIDGE WA 6865

### OR

You can have your application delivered by **courier** service to:

Department of Immigration and Border Protection  
Child and Other Family Processing Centre  
Wellington Central  
836 Wellington Street  
WEST PERTH WA 6005

### Any enquiries?

- Go to the department's website – [www.border.gov.au](http://www.border.gov.au) or
- **In Australia** – telephone **131 881** (for the cost of a local call); or
- **Outside Australia** – contact the nearest Australian mission.



# Part 5 – Processing visa applications

The Australian Government decides who should be granted a visa. The application will be decided on the basis of the information given and generally, the law at the time of application.

Applicants and sponsors should read all information and instructions, and provide the right information and documents. This will avoid delays in processing the application. Any visa charge paid will not be refunded if the application is unsuccessful.

Applicants and sponsors may be asked to complete a number of steps during the processing of the application. However, such requests do not mean the application will be successful. The applicant should not anticipate a successful outcome and sell a house or other property until they have been advised in writing that they have been granted a visa.

## Non-citizens must have a visa to travel to and stay in Australia

The following information explains how to make visa applications and how they are processed.

### It is important to read this information

It is important to read this information – it may affect whether or not a visa is granted or cancelled.

Applicants and sponsors should read all information and instructions about the type of visa applied for. Do not apply for a visa if it is likely that the applicant and/or sponsor cannot qualify, because any visa charge paid will not be refunded if the application is unsuccessful.

### Where to get information

In Australia, information about visas, visa charges and forms is available from offices of the department or you can go to [www.border.gov.au](http://www.border.gov.au) or call **131 881** (for the cost of a local call).

Outside Australia, go to [www.border.gov.au](http://www.border.gov.au) or contact the nearest Australian mission.

### How to apply for a visa

To make a valid application the applicant must:

- indicate the desired class of visa;
- use the correct form;
- provide the applicant's residential address;
- pay the required visa charge;
- satisfy any other requirements (for example, the applicant may have to be outside Australia to apply for the visa);
- send or deliver the application to the nearest office of the department or at the nearest Australian mission.

The applicant must also:

- complete the application in English;
- answer all questions truthfully – if incorrect information or documents are provided, a visa may not be granted;
- provide originals or certified copies of any required documents unless the department advises otherwise.

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## Including family members in your application

In your visa application you will be asked for information about each member of your family unit even if they do not intend to migrate with you. Information about which family members are considered to be a 'member of your family unit' for migration purposes is available by referring to form 1496i *Including family members in your application*. Form 1496i is available from the department's website [www.border.gov.au/allforms/](http://www.border.gov.au/allforms/) or offices of the department. You should ensure that you read and understand form 1496i before completing your application.

**Note:** Siblings who wish to migrate together must make separate applications and have separate sponsorships. Each sibling must also pay a separate visa charge.

## Communicating with the department

Communication with the department about the visa application should generally be in writing. Applicants should send communications to the office where they applied unless the department notifies them of another address.

## Withdrawal of applications

Applicants can withdraw their application by advising the department in writing at any time before a decision is made. Any visa charges that were paid at time of application are usually not refunded.

## Applicants must correctly identify themselves

When communicating with the department about the application, applicants must:

- include their name (as in their application);
- include their date of birth;
- include the department's client number if it has been given, or the department's file number, or the application receipt number;
- if the application is made outside Australia, include the name of the office where the application was lodged.

## Let the department know if an address is changed

If an applicant changes their residential address for more than 14 days while their application is being processed, they must tell the department their new address and how long they will be there. The department will send communication about the application to the latest address for correspondence that has been provided.

Communication about the application can be sent to another person who has been authorised, however the applicant will be taken to have received the communication that the department sends to that person. The department must be informed (in writing) of any address change for either the applicant or their authorised person.

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## Extra information about the application

Additional information can be provided (in writing) at any time, until a decision is made on the application. All relevant information is taken into account.

If invited to give additional information or comment on information, the applicant will be given a date by which to do so. After that date, the department can continue processing the application. Applicants cannot delay a decision by saying that they may or will give more information later.

## Interviews

If invited to attend an interview, the applicant must attend on the date and time agreed with the department. Otherwise, the department may process the application and make a decision on the basis of the information it already has.

## Invitation to comment

If another person gives the department information that could result in the applicant being refused a visa, the department will generally give the applicant an opportunity to comment on the information. The applicant will need to comment by a set date.

## Advise the department if circumstances change

If any of the applicants circumstances change, such that any answer in the application or information given to the department is no longer correct, the applicant must inform the department (in writing) as soon as practicable.

The applicant must continue to do this until a decision is made on their application (or, in the case of a visa granted outside Australia, until the applicant travels to Australia and is cleared by immigration). A visa may be cancelled if an applicant gives incorrect information or fails to advise the department that some information is no longer correct. However, if the department is advised of the correct information before a visa is granted (or in the case of a visa granted outside Australia, before the visa holder is immigration cleared), their visa cannot later be cancelled on the basis of that incorrect information.

## Visa decisions

Processing times vary between offices. Applicants will be notified by the department when a decision has been made on the application.

If a visa is refused, the applicant will be notified why they were refused and, if applicable, where they can apply for merits review of the decision. Unsuccessful applicants will be notified of the time to seek review or to depart Australia.

When the department advises an applicant, or a person they have authorised to act and receive communication on their behalf, of the decision on the visa application, the applicant will be taken to have received the notification:

- 7 working days after the date of the letter (if sent in Australia); or
- 21 days after the date of the letter (if sent outside Australia).

If the notification is handed to the applicant, they will be taken to have been notified at that moment.

If the notification is faxed or emailed to the applicant, they will be taken to have been notified at the end of that day.

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## Applicants must abide by all conditions on their visa

If a visa is granted subject to conditions (for example, restrictions on work or study) applicants must abide by those conditions or the visa may be cancelled. If applicants wish to change those conditions or stay longer than the visa allows, contact the department for information about how to do this.

## Leaving Australia while an application is being processed

Applicants should inform the department if they travel (either to or from Australia) during processing of an application. This is because the application may be refused if the applicant is in the 'wrong place' when a decision is made:

- for most visas applied for in Australia, the applicant must be in Australia when a decision is made; and
- for most visas applied for overseas, the applicant must be outside Australia when a decision is made.

In addition, if an applicant has applied for a visa in Australia they must ensure before they leave Australia that they have a visa to return. Otherwise they may not be able to return to Australia and, if their application is refused, they may not have a right of review.

## Bridging visas

If an applicant applies for a visa in Australia, they will usually be granted a bridging visa to keep them lawful, in case their previous visa ceases before a decision is made on their application. It will also keep them lawful if their visa is refused and they seek merits review of that decision.

However, if an applicant wished to travel overseas, they will need to apply for a specific bridging visa to allow them to return to Australia (unless they already have another visa which allows them to return to Australia).

## Important information about privacy

Your personal information is protected by law, including the *Privacy Act 1988*. Important information about the collection, use and disclosure (to other agencies and third parties, including overseas entities) of your personal information, including sensitive information, is contained in form 1442i *Privacy notice*. Form 1442i is available from the department's website [www.border.gov.au/allforms/](http://www.border.gov.au/allforms/) or offices of the department. You should ensure that you read and understand form 1442i before completing this form.

Where sponsorship applications present potential child protection issues, the department will ensure the applicant, or a person with parental responsibility (as defined in section 61B of the *Family Law Act 1975*) for the applicant, is made aware of the information collected which raises child protection concerns. The section titled Protection of children on page 8 of this booklet gives details of situations where the department may take such action.

## Options for receiving written communications

An applicant may authorise another person to receive all communications, both written and electronic, about this application with the department. The applicant will be taken to have received any documents sent to that other person as if they had been sent to the applicant.

To do this you will need to complete the section on the application form with the heading *Options for receiving written communications* and form 956 *Advice by a migration agent/exempt person of providing immigration assistance* if appointing a migration agent/exempt person to be the authorised recipient, or form 956A *Appointment or withdrawal of an authorised recipient* if appointing an authorised recipient that is not a migration agent/exempt person. For an explanation of what a migration agent or exempt person or authorised recipient can do please read the sections below.

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## Authorised recipient information

An authorised recipient is someone appointed to receive written communications about an application with the department.

All written communication about the application will be sent to the authorised recipient, unless the applicant indicates that they wish to have health and/or character information sent directly to themselves.

The department will communicate with the most recently appointed authorised recipient as only one authorised recipient may be appointed at any time for a particular application.

## Migration agent information

A migration agent is someone who can:

- advise on the visa that may best suit an applicant;
- inform an applicant on the documents needed to be submitted with the application;
- help an applicant fill in the application and submit it; and
- communicate with the department on the applicant's behalf.

If a migration agent is appointed, the department will assume that the migration agent will be the authorised recipient, unless the applicant indicates otherwise.

The migration agent will be the person with whom the department will discuss the application and from whom it will seek further information when required.

## Exempt person information

The following people do not have to be a registered migration agent in order to provide immigration assistance, but they must not charge a fee for their service:

- a close family member (spouse, de facto partner, child, parent, brother or sister);
- a sponsor or nominator for this visa application;
- a member of parliament or their staff;
- an official whose duties include providing immigration assistance (eg. a Legal Aid provider, an Australian state or territory government welfare authority);
- a member of a diplomatic mission, consular post or international organisation.

## Consent to communicate electronically

The department may use a range of means to communicate with an applicant. However, electronic means such as fax or email will only be used if the applicant agrees to receiving communication in this way. The department may also contact people by mail, telephone or in person. However, if an email address is provided, this may speed up communication.

To process an application the department may need to communicate with the applicant about sensitive information, for example, health, police checks, financial viability and personal relationships. Electronic communications, unless adequately encrypted, are not secure and may be viewed by others or interfered with. If the applicant agrees to the department communicating by electronic means, the details provided will only be used by the department for the purpose for which they have been provided, unless there is a legal obligation or necessity to use them for another purpose, or the applicant has consented to use for another purpose. They will not be added to any mailing list.

The Australian Government accepts no responsibility for the security or integrity of any information sent to the department over the internet or by other electronic means.

