



Citizenship changes for same-sex de facto partners – Questions and Answers

How are same-sex partners currently recognised for citizenship purposes?

Same-sex de facto partners are currently recognised under the Australian Citizenship Act 2007 (the Citizenship Act) as 'interdependent partners' for the purposes of claiming a residence discretion. This means that a person who is in an interdependent relationship with an Australian citizen, may be able to count a period of up to one year spent outside Australia as time spent in Australia for the purposes of meeting the requirements for citizenship by conferral. It is a requirement that the person was granted a permanent visa on the basis of that interdependent relationship.

What are the key changes to citizenship legislation that will affect same-sex partners?

A new term de facto partner will be inserted into the Citizenship Act

The term de facto partner will have the same meaning as in the Acts Interpretation Act 1901. It will apply to both same-sex de facto partners and opposite-sex de facto partners who have a relationship as a couple living together on a genuine domestic basis.

The same-sex de facto partner of an Australian citizen will be treated the same as the opposite-sex de facto partner or the spouse of an Australian citizen

Changes to the Citizenship Act will allow the same-sex de facto partner of an Australian citizen to access the same residence discretion as an opposite-sex de facto partner or spouse of an Australian citizen. This means that the same-sex de facto partner of an Australian citizen may be able to count a period of up to four years spent outside Australia as time spent in Australia for the purposes of meeting the requirements for citizenship by conferral. They will not need to have been granted a permanent visa on the basis of their relationship with an Australian citizen.

Certain parent-child relationships will now be recognised under the Citizenship Act

- Children born as a result of artificial conception procedures:

If a married or de facto couple (whether same-sex or opposite-sex) have a child through artificial conception procedures, then they will be recognised as the parents of that child. Any donor who is not a member of the couple will not be recognised as the parent of that child.

- Children born through surrogacy arrangements under a prescribed Australian state or territory law:

Where a child is born under a surrogacy agreement, opposite-sex married or de facto couples and female and male same-sex couples will be recognised as the parents of a child if there is a State or Territory court order transferring parentage to them. Where there is such a court order, the surrogate mother and her partner (if she has one) will not be recognised as the parents of that child for the purposes of Australian citizenship. Please contact your local state or territory government for information concerning local surrogacy laws.

- Children born through surrogacy arrangements occurring overseas:

The current policy in relation to recognising children who are born overseas through surrogacy arrangements will continue to apply after these amendments come into effect. For more information, please refer to the Australian Citizenship Instructions, available on the citizenship website <http://www.citizenship.gov.au>.

The Australian Government urges anyone considering entering into a surrogacy arrangement outside Australia to exercise extreme caution. They should ensure they are well informed about the Australian requirements for registering such a child as an Australian citizen, and should fully explore the legal status of surrogacy in the country in which the arrangement is to occur.

How will the changes affect my current citizenship application?

All applications lodged and decided prior to 15 March 2009 will be processed under the current legislation. Any applications lodged prior to 15 March 2009 but which have not yet been decided, and those lodged on or after 15 March 2009 will be processed under the new legislation.

More information

More information on citizenship is available at www.immi.gov.au or by phoning 131 880.