



Stronger Measures for the Protection of Children

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General Questions and Answers

The Australian Government is strengthening policies around the sponsorship of minors for visas to enter Australia because it considers that the safety of children is paramount. The Government wants to ensure that children seeking to enter Australia under partner and child 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.

This approach is similar to restrictions on sponsorship that apply in Canada and New Zealand, countries that also receive large numbers of partner and dependent child visa applications.

A similar requirement to provide police certificates also already applies to Australians who wish to adopt a child or to undertake many forms of employment relating to children.

What measures have been in place since September 2009?

The measures implemented with effect from 16 September 2009 are:

- Sponsors of child visa applications and partner or prospective marriage visa applications which include a minor applicant are required to provide either an Australian Federal Police (AFP) National Police Check or foreign police certificate/s, depending on the sponsor's circumstances, as part of the process of assessing the application.
- The results of the AFP National Police Check or foreign police certificate/s are used by the Department of Immigration and Citizenship to assess whether or not the visa application satisfies public interest criteria relating to the best interests of children.

What are the new measures from March 2010?

From 27 March 2010, the Migration Regulations are amended by inserting a new sponsorship limitation for child, partner and prospective marriage visas. This amendment further strengthens the measures for the protection of children by providing for mandatory refusal of sponsorships when a child is included in the visa application and the sponsor has a conviction or an outstanding charge for a registrable offence. Further, for child visa classes, the sponsor's spouse or de facto partner (partner) must not have a conviction or outstanding charge for a registrable offence.

The Migration Regulations also provide that the Minister for Immigration and Citizenship may request the sponsor or their partner to provide a police check to demonstrate that there is no relevant conviction or charge, and refuse the sponsorship if the police check is not provided.

What is a registrable offence?

In relation to the sponsorship limitation for child and partner visas, "registrable offence" means any of the following:

- an offence that is a registrable offence within the meaning of any of the following Acts:
 - the *Child Protection (Offenders Registration) Act 2000* (NSW);
 - the *Sex Offenders Registration Act 2004* (Vic);
 - the *Child Sex Offenders Registration Act 2006* (SA);
 - the *Crimes (Child Sex Offenders) Act 2005* (ACT);
- an offence that would be a registrable offence under the above paragraph if it were committed in a jurisdiction mentioned in that paragraph;
- 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.

What police checks are required?

The requirement for sponsors to provide police certificates came into effect on **16 September 2009** and applies to existing applications that had not been decided on this date as well as to any new applications. While the police checks will result in a delay in grant of their visa for some existing applicants, the Government believes that it is important for the requirement to apply to all cases because it increases the level of protection for children migrating to Australia. Only a short delay is expected to occur for the majority of cases where the sponsor's police check does not indicate any significant convictions.

For applications made before **9 November 2009**, all sponsors of child visa applications and partner or prospective marriage visa applications which include a minor applicant are required to provide an AFP National Police Check, regardless of the length of time that they have spent in Australia.

For applications made on or after **9 November 2009** but before **27 March 2010**, if the sponsor has spent a total of 12 months or more in Australia since turning 16 years of age, the sponsor must provide an AFP National Police Check. If the sponsor has not spent a total of 12 months or more in Australia since turning 16 years of age, the sponsor must 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.

For applications made on or after **27 March 2010**, sponsors of all child visa applications and partner or prospective marriage applications which include a minor applicant may be required to provide both an AFP National Police Check **and** foreign police certificates. If the sponsor has spent a total of 12 months or more in Australia since turning 16 years of age, the sponsor must provide an AFP National Police Check. Sponsors 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 with a spouse or de facto partner

For child visa applications made on or after **27 March 2010** where the applicant is under 18 years of age, the sponsor's partner must provide an AFP National Police Check if that partner has spent a total of 12 months or more in Australia since turning 16 years of age. That partner 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.

Which sponsors have to provide a police certificate?

The sponsor for applications in the following visa classes is to provide a police certificate if the application includes an applicant under the age of 18:

- Partner visa subclasses 820/801, 100/309, 310/110 and 826/814
- Prospective Marriage visa subclass 300.

The sponsor for applications in the following visa classes, and from 27 March 2010 their spouse or de facto partner (if they have one), are to provide a police certificate if the application includes an applicant under the age of 18:

- Child visa subclasses 802, 837, 101, 445, 102 and 117

However, this requirement may be considered already met if the application being considered is for a:

- combined temporary and permanent Partner visa and the sponsor provided a police certificate in relation to a Prospective Marriage visa application
- permanent Partner visa and the sponsor provided a police certificate in relation to the associated temporary Partner visa application
- Child class visa and the child was adopted by the sponsor with the approval of an Australian state or territory adoption authority. In these cases a police check will already have been done as part of the adoption process.

What gives the department the authority to require a sponsor to provide a police certificate?

From 27 March 2010, regulation 1.20KB of the *Migration Regulations 1994* gives the minister the authority to request police certificates from a sponsor and their partner. This regulation also provides that sponsorship may be refused if the requested police certificate/s are not provided within a reasonable time.

Section 56 of the *Migration Act 1956* contains a general power for the department to collect information relevant to a visa application.

Public Interest Criteria (PIC) 4016 and 4018 in the *Migration Regulations 1994* provide for refusal of the visa when there is a compelling reason to believe that the grant of the visa would not be in the best interests of the minor applicant. The department has the authority to request sponsors to provide information, such as police certificates, for the purposes of enabling it to assess whether or not these criteria are met.

This is the same basis on which sponsors have been required to self-disclose any offences relating to children since July 2007.

The minor I'm sponsoring is my biological child – why is the check needed in this situation?

The purpose of the requirement for police checks is to protect the safety of children. Applying the requirement to sponsorships of natural children is consistent with Australian child protection and family laws, under which the most important issue is always the best interests of a child. If a check indicates that a parent has an extremely serious criminal conviction, such as for a child sex offence, it is possible that it may not be in the child's best interests to be sponsored for a visa by that parent.

Will these checks lead to processing delays?

The requirement for sponsors to obtain a police certificate may lead to some delays in finalising existing visa applications. These are expected to be relatively short for the majority of cases where the result of the check does not indicate any significant convictions. Only those sponsors whose police certificates disclose significant convictions suggesting that they may pose a risk to the safety of a child are likely to face more extended delays. For new applications, it will be open to the sponsor to obtain the AFP National Police Check or foreign police certificate/s prior to making the visa application if they wish to do so to speed up processing of the visa application.

How do I obtain an AFP National Police Check?

An AFP National Police Check may be obtained from the Australian Federal Police (AFP). Information on obtaining the check is available from the AFP website. The department requires that sponsors and sponsor's partners disclose all convictions, as provided for under section 85ZZH of the *Crimes Act 1914*. Sponsors (or partners) required to submit a National Police Check must complete the National Police Check application form which is available from the AFP website. Sponsors (or partners) should use Code 33 at Question 1 on the form and include details of 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 AFP National Police Checks.

See: <http://www.afp.gov.au/what-we-do/police-checks/national-police-checks.aspx>

How do I obtain a foreign police certificate?

Information on obtaining foreign police certificates is available on the department's website.

See: <http://www.immi.gov.au/allforms/character-requirements/character-penal.pdf>

How long are police certificates valid for?

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

Applicant's Questions and Answers

I am applying for a Partner visa and including a dependant who is a minor: will my sponsor have to provide a police certificate?

Yes, unless you are being considered for the permanent Partner visa and your sponsor provided a police certificate in relation to the associated temporary Partner visa application.

I hold a temporary Partner visa. Will my sponsor have to provide a police certificate before I can be granted a permanent Partner visa?

Your sponsor will be required to provide a police certificate if the following apply:

- one was not provided in relation to your temporary Partner visa application; and
- a dependant aged under 18 is included in your permanent visa application.

I am applying for a Prospective Marriage visa and including a dependant who is a minor: will my sponsor have to provide a police certificate?

Yes.

I already hold a Prospective Marriage visa. Will my sponsor have to provide a police certificate?

If you apply for a Partner visa and include a dependant aged under 18 in the application, your sponsor will have to provide a police certificate if they did not provide one for your Prospective Marriage visa application.

I am applying for a Child visa: will my sponsor have to provide a police certificate?

Yes, unless you were adopted by your sponsor and the adoption was approved by a state or territory adoption authority or you are aged over 18.

In addition, if you apply on or after 27 March 2010, your sponsor's spouse or de facto partner will also have to provide a police certificate (unless you were adopted by your sponsor and the adoption was approved by a state or territory adoption authority or you are aged over 18).

Will I have access to my sponsor's police certificate/s?

The department will not provide you with or allow you to see your sponsor's police certificate/s.

If the police certificate/s shows that your sponsor has convictions or outstanding charges for offences against children, the department will inform any migrating and non-migrating person who can lawfully determine where a migrating minor child is to live.

If the police certificate/s shows a registrable offence that will result in the refusal of the sponsorship and therefore the visa application, or any serious offences that raise concerns about the safety and welfare of a child included in the visa application and may therefore result in a refusal of the visa application, you will be advised of this and given a chance to provide further information or evidence before a final decision is made.

Will my visa application be refused if my sponsor has a criminal record?

If you applied on or after 27 March 2010, the sponsorship will not be approved if your sponsor (or their partner, if applicable) has a conviction or an outstanding charge for a registrable offence. There is a discretion to waive the sponsorship limitation if more than 5 years have passed since the completion of the sentence for the last relevant offence and there are compelling circumstances affecting the sponsor or the visa applicant. Refusal of the sponsorship will result in all applicants included in the associated visa application being refused the visa.

If you applied before 27 March 2010, or your sponsor's criminal record does not relate to registrable offences, your visa will not be automatically refused if your sponsor has a criminal record. However, public interest criteria allow the minister to refuse to grant a visa to a visa applicant if that applicant is under the age of 18 and there is compelling reason to believe that the grant of the visa would not be in the best interests of the applicant.

The minister may also refuse to grant a visa to the adult applicant who seeks to meet the primary criteria if there is compelling reason to believe that the grant of the visa would not be in the best interests of a person under the age of 18 who is included in the application.

It is expected that a visa will only be refused under these criteria where a sponsor has very serious criminal convictions raising significant concerns that grant of the visa would create a risk to the safety and welfare of a minor applicant.

If the department considers that your application may be subject to refusal under the public interest criteria you will be advised of the reasons for this and given a chance to provide further information or evidence before a final decision is made.

What rights of appeal or review do I have?

If your application is refused, you will receive a letter advising the reasons for the refusal decision, your review rights (including whether it is you or your sponsor who can apply for review) and, if you made your application within Australia, the date by which you must leave Australia if you do not apply for review.

If neither you nor your sponsor apply for review and you do not leave Australia by the required date, you will become unlawful and be liable for detention and removal from Australia.

My application is being reviewed by the Migration Review Tribunal (MRT): will my sponsor have to obtain a police certificate?

If your application is remitted back to the department your sponsor will be required to provide a police certificate unless:

- your original application was made before 27 March 2010, and the MRT finds that the relevant 'best interests of the child' public interest criterion is met; or
- your application falls under one of the exceptions listed under *Which sponsors have to provide a police certificate?*

Sponsor's Questions and Answers

I am sponsoring my partner for a Partner visa: will I have to provide a police certificate?

Yes, if there is a minor applicant included in your partner's visa application, unless your partner is being considered for the permanent Partner visa and you provided a police certificate in relation to the associated temporary Partner visa application in which the minor applicant was included.

My partner has a temporary Partner visa. Will I have to provide a police certificate before he/she can be granted a permanent Partner visa?

You will be required to provide a police certificate if:

- one was not provided in relation to your partner's temporary Partner visa application; and
- a minor applicant is included in the permanent visa application.

I am sponsoring my fiancé for a Prospective Marriage visa and a minor is included in the application: will I have to provide a police certificate?

Yes.

I am sponsoring my child/step-child/orphan relative for a Child visa: will I have to provide a police certificate?

Yes, unless you adopted the child and the adoption was approved by an Australian state or territory adoption authority or the child is over 18.

I am sponsoring my child/step-child/orphan relative for a Child visa and I have a spouse/de facto partner. Will they have to provide a police certificate?

Yes, unless you and your partner adopted the child and the adoption was approved by an Australian state or territory adoption authority or the child is over 18.

My child is adopted. Do I need to provide a police certificate?

You do not need to provide a police certificate if the adoption was approved by an Australian state or territory adoption authority. Where an adoption has been approved by a state or territory adoption authority, a police check is required by the adoption authority and a further check by the department is therefore not necessary. If the adoption was not facilitated

through an Australian state or territory adoption authority, for example you have been living overseas where you adopted your child, you (and your spouse or de facto partner, if applicable) will still need to provide an AFP National Police Check and/or foreign police certificate/s, depending on your circumstances.

Will my partner/fiancé have access to my police certificate/s?

No, the applicant will not be given a copy of or provided with access to your police certificate/s. However, if the police certificate/s shows that you have convictions or outstanding charges for offences against children, the department will inform any migrating and non-migrating person who can lawfully determine where a migrating minor child is to live.

If the police certificate/s show a registrable offence that will result in the refusal of the sponsorship and therefore the visa application, or any serious offences that raise concerns about the safety and welfare of a child included in the visa application and may therefore result in a refusal of the visa application, the applicant will be advised of this and given a chance to provide further information or evidence before a final decision is made.

Will my sponsorship be refused if I have a criminal record?

If the visa application was made on or after 27 March 2010, your sponsorship will be refused if you (or your partner, if applicable) have a conviction or an outstanding charge for a registrable offence. There is a discretion to waive the sponsorship limitation if more than 5 years have passed since the completion of the sentence for the last relevant offence and there are compelling circumstances affecting the sponsor or the visa applicant.

If the visa application was made before 27 March 2010, or your criminal record does not relate to registrable offences, your sponsorship will not be refused but it is possible that the associated visa application may be refused. Public interest criteria allow the minister to refuse to grant a visa to a visa applicant if that applicant is under the age of 18 and there is compelling reason to believe that the grant of the visa would not be in the best interests of the applicant. The minister may also refuse to grant a visa to the adult applicant who seeks to meet the primary criteria if there is compelling reason to believe that the grant of the visa would not be in the best interests of a person under the age of 18 who is included in the application.

It is expected that a visa would only be refused under these criteria where a sponsor has very serious criminal convictions raising significant concerns that grant of the visa would create a risk to the safety and welfare of a minor applicant.

If the department considers that an application may be subject to refusal under the public interest criteria the applicant will be advised of the reasons for this and given a chance to provide further information or evidence before a final decision is made.

My employment requires me to be cleared to work with children, do I still need to provide a police certificate?

Yes, you will still need to provide an AFP National Police Check or foreign police certificate/s, depending on your circumstances.

If you already have an AFP National Police Check that was obtained for a purpose other than immigration, you can provide this rather than doing a new check as long as it is still valid, it includes all offences and it states 'Complete Disclosure – All recorded offences released'.

Where can I get further information?

Information and updates about partner and child visas are available on the department's website.

See: [Department of Immigration and Citizenship](#)

For enquiries please contact the department.

If you are in Australia

Telephone: 131 881

If you are outside Australia Contact your nearest departmental office

See: [Immigration Offices outside Australia](#)