



Stronger Measures for the Protection of Children

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 a Australian National Police Check also already applies to Australians who wish to adopt a child or to undertake many forms of employment relating to children.

What are these measures?

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 will be required to provide an Australian National Police Check as part of the process of assessing the application.
- The results of the Australian National Police Check will be 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.

When will this happen?

The measures come into effect on 16 September 2009. They will apply to existing applications that have not been decided on this date as well as to any new applications.

Why does the requirement to provide an Australian National Police Check apply to existing 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.

Which sponsors have to provide an Australian National Police Check?

The sponsor for applications in the following visa classes is to provide an Australian National Police Check if the application includes an applicant under the age of 18:

- Child visa subclasses 802, 837, 101, 445, 102 and 117
- Partner visa subclasses 820/801, 100/309, 310/110 and 826/814
- Prospective Marriage visa subclass 300.

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 an Australian National Police Check in relation to a Prospective Marriage visa application
- permanent Partner visa and the sponsor provided an Australian National Police Check 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 an Australian National Police Check?

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 checks, 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.

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

The purpose of the requirement for Australian National 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 an Australian National Police Check 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 checks 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 Australian National Police Check 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 Australian National Police Check?

An Australian National Police Check may be obtained from the Australian Federal Police. Information on obtaining the check is available from the AFP website.

See: www.afp.gov.au/business/national_police_checks

Applicant's Questions and Answers

I am applying for a Partner visa and including a dependent who is a minor: will my sponsor have to provide an Australian National Police Check?

Yes, unless you are being considered for the permanent Partner visa and your sponsor provided an Australian National Police Check in relation to the associated temporary Partner visa application.

I hold a temporary Partner visa. Will my sponsor have to provide an Australian National Police Check before I can be granted a permanent Partner visa?

Your sponsor will be required to provide an Australian National Police Check if the following apply:

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

I am applying for a Prospective Marriage visa and including a dependent who is a minor: will my sponsor have to provide an Australian National Police Check?

Yes.

I already hold a Prospective Marriage visa. Will my sponsor have to provide an Australian National Police Check?

If you apply for a Partner visa and include a dependent aged under 18 in the application, your sponsor will have to provide an Australian National Police Check 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 an Australian National Police Check?

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.

Will I have access to my sponsor's Australian National Police Check?

The department will not provide you with or allow you to see your sponsor's Australian National Police Check.

If the Australian National Police Check 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 Australian National Police Check shows 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?

Your visa will not be automatically refused if your sponsor has a criminal record. However, public interest criteria allow the Minister for Immigration and Citizenship 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 an Australian National Police Check?

If your application is remitted back to the department your sponsor will be required to provide an Australian National Police Check unless:

- 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 an Australian National Police Check?*

Sponsor's Questions and Answers

I am sponsoring my partner for a Partner visa: will I have to provide an Australian National Police Check?

Yes, unless your partner is being considered for the permanent Partner visa and you provided an Australian National Police Check 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 an Australian National Police Check before he/she can be granted a permanent Partner visa?

You will be required to provide an Australian National Police Check 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 an Australian National Police Check?

Yes.

I am sponsoring my child/step-child/orphan relative for a Child visa: will I have to provide an Australian National Police Check?

Yes, unless you adopted the child and the adoption was approved by a state or territory adoption authority.

My child is adopted. Do I need to provide an Australian National Police Check?

You do not need to provide an Australian National Police Check 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.

Will my partner/fiancé have access to my Australian National Police Check?

No, the applicant will not be given a copy of or provided with access to your police check. However, if the Australian National Police Check 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 Australian National Police Check shows 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?

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.

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](#)