



New limitations on approval of sponsorships for Partner and Prospective Marriage visa applications

What will change from 18 November 2016?

Sponsors of Partner and Prospective Marriage visa applicants who lodge a visa application on or after 18 November 2016 will be required to:

- provide Australian and/or foreign police checks to the department when requested; and
- consent to the department disclosing their convictions for *relevant offences* to the visa applicant(s).

What are relevant offences?

Migration legislation defines a *relevant offence* as an offence against a law of the Commonwealth, a State, a Territory or a foreign country, involving any of the following matters:

- (a) violence against a person, including (without limitation) murder, assault, sexual assault and the threat of violence;
- (b) the harassment, molestation, intimidation or stalking of a person;
- (c) the breach of an apprehended violence order, or a similar order, issued under a law of a State, a Territory or a foreign country;
- (d) firearms or other dangerous weapons;
- (e) people smuggling;
- (f) human trafficking, slavery or slavery-like practices (including forced marriage), kidnapping or unlawful confinement;
- (g) attempting to commit an offence involving any of the matters mentioned above or below;
- (h) aiding, abetting, counselling or procuring the commission of an offence involving any of the matters mentioned above.

What about visa applications lodged before 18 November 2016?

The changes do not affect visa applications lodged before 18 November 2016, even if the sponsor submits their sponsorship form after 18 November 2016. The changes only apply where the visa application is made on or after 18 November 2016.

Do the changes affect applicants for a subclass 801 or 100 visa who already hold a subclass 820 or 309 visa?

No. Applicants who already hold a subclass 309 or 820 visa and are waiting for a decision on their subclass 100 or 801 visa are not affected. This is because they lodged their visa application before 18 November 2016.

What happens if a sponsor does not provide the police checks within a reasonable time?

The visa application may be refused.

What happens if a sponsor does not consent to the department disclosing their convictions for relevant offences?

The visa must be refused.

Will a visa application be refused if a sponsor has convictions?

If a sponsor has convictions for a relevant offence but no significant criminal record, a visa cannot be refused on that basis. In those cases, the department will still disclose the convictions to the visa applicant(s) to allow them to make an informed decision about continuing with their application.

If a sponsor has convictions for a relevant offence and a significant criminal record, the visa *must* be refused, unless it is considered reasonable not to refuse. All the circumstances of the case will be taken into account when considering if it is reasonable not to refuse, including but not limited to:

- the length of time since the sponsor completed the sentence(s) for the relevant offence(s);
- the best interest of any children of the sponsor or primary visa applicant; and
- the length of the relationship between the sponsor and primary visa applicant.

What is a significant criminal record?

A sponsor has a significant criminal record in relation to a relevant offence if, for the offence(s), the sponsor has been sentenced to:

- death;
- imprisonment for life;
- a term of imprisonment of 12 months or more;
- 2 or more terms of imprisonment, where the total of those terms is 12 months or more.

What if a sponsor's conviction for a relevant offence has been quashed or otherwise nullified?

A sponsor is not required to consent to the department disclosing these convictions. Even if the sponsor has consented, the department will not disclose convictions for relevant offences that have been quashed or otherwise nullified.

What if a sponsor has been pardoned in relation to a conviction?

If the effect of the pardon is that a sponsor is taken never to have been convicted of the offence(s), the sponsor's consent to the disclosure of conviction(s) is not required. The department will not disclose those offences to the visa applicant(s) even if the sponsor has consented.

Can the visa application charge be refunded if an application is refused because of the new changes?

No. The visa application charge cannot be refunded in those circumstances.

Applicants and sponsored are urged to consider carefully what effect, if any, these changes may have on the prospect of having a visa application granted before they make an application.

How can a sponsor apply for an Australian Federal Police (AFP) National Police Check (NPC)?

Sponsors can apply for an AFP NPC through the AFP website at <https://www.afp.gov.au/what-we-do/services/criminal-records/national-police-checks>