

Navigating the Australian Partner Visa (Subclass 309/100)

Introduction

The Australian Partner Visa (Subclass 309/100) offers a pathway for spouses and de facto partners of Australian citizens, permanent residents, or eligible New Zealand citizens to live permanently in Australia. As a migration lawyer, I have witnessed firsthand the complexities and emotional weight these applications carry. This article aims to demystify the process, highlight common pitfalls, and explain the legal implications of Section 56 and Section 57 requests under the Migration Act 1958, including Requests for Further Information (RFIs). Accuracy, transparency, and strategic preparation are paramount.

Understanding the Visa Structure

The Partner Visa (Subclass 309/100) is a two-stage offshore application:

- **Subclass 309 (Temporary):** Allows the applicant to enter and reside in Australia while awaiting permanent visa assessment.
- **Subclass 100 (Permanent):** Granted after further assessment, typically two years post-lodgement, provided the relationship remains genuine and ongoing.

Applicants must be outside Australia at the time of application and decision for the 309 visa. The application is lodged as a combined submission for both subclasses.

Core Eligibility Criteria

To qualify, applicants must demonstrate:

- A genuine and continuing relationship with their sponsor.
- Either a marriage recognized under Australian law or a de facto relationship of at least 12 months (unless registered or compelling and compassionate circumstances exist).
- Mutual commitment to a shared life, to the exclusion of all others.
- Cohabitation evidence, or compelling reasons for living apart.

- Compliance with health and character requirements.

Same-sex and LGBTQIA couples are equally eligible, and exemptions may apply in cases involving compelling and compassionate circumstances.

The Importance of Accuracy and Completeness

A meticulously prepared application is not just a procedural necessity—it is a legal safeguard. Incomplete or inconsistent submissions can trigger delays, RFIs, or even refusals. Key considerations include:

- Document integrity: All documents must be clear, legible, and translated by NAATI-accredited professionals if not in English.
 - Relationship evidence: Must address financial, social, household, and commitment aspects. Over-reliance on one category (e.g., photos) is insufficient.
 - Statutory declarations: Form 888s from friends and family should be detailed and consistent with the couple's narrative.
 - Sponsor obligations: Sponsors must provide police clearances and commit to supporting the applicant for two years.
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Section 56 Requests: Clarifying the Application

Under **Section 56 of the Migration Act 1958**, the Department of Home Affairs may issue a **Request for Further Information (RFI)** when an application lacks sufficient documentation or clarity. This is not a refusal but a procedural opportunity to strengthen the case.

Common Triggers for Section 56 RFIs:

- Missing police certificates or health assessments.
- Inadequate relationship evidence.
- Discrepancies in travel history or identity documents.
- Expired supporting documents.

Best Practices:

- Respond promptly—usually within 28 days.
- Address each item in the checklist with targeted evidence.

- Avoid overloading the response with irrelevant material.
- Include a cover letter explaining how each document satisfies the request.

Receiving a *Section 56 RFI* often indicates that a case officer is actively reviewing the file. A well-prepared response may expedite the decision.

Section 57 Requests: Natural Justice in Action

A **Section 57 request** is more serious. It is issued when the Department identifies **adverse information** that may lead to refusal. This is your opportunity to respond under the principles of **natural justice**.

Examples of Adverse Information:

- Allegations of a non-genuine relationship.
- Suspected false or misleading documents.
- Inconsistencies between the applicant's and sponsor's statements.
- Concerns raised during third-party checks.

Responding to Section 57:

- Treat it as a legal submission—not just a document upload.
- Address the concerns directly, with evidence and legal reasoning.
- Avoid emotional appeals without substantiating facts.
- Seek professional advice if the issues are complex or involve character concerns.

Failure to respond adequately may result in refusal, with limited options for review or appeal.

Strategic Considerations for Applicants

1. Relationship Registration

Registering a de facto relationship in eligible states can waive the 12-month cohabitation requirement. However, timing and consistency with the relationship timeline are critical.

2. Long-Term Relationships and Double Grants

Couples in long-term relationships may be eligible for simultaneous grant of both Subclass 309 and 100 depending on the time of application and the processing times. This requires robust evidence and strategic presentation.

3. Visitor Visas During Processing

Applicants may apply for visitor visas to spend time with their partner in Australia while awaiting the subclass 309 decision. However, these are discretionary and must be carefully managed to avoid perceived intent to remain unlawfully.

4. Change of Circumstances

Any material change—address, passport, relationship status—must be promptly reported via Form 1022 or Immi Account updates. Failure to do so can affect the outcome.

Common Pitfalls and How to Avoid Them

Pitfall	Possible Consequence	Mitigation Strategy
Incomplete evidence	RFI or refusal	Use a checklist and legal review
Inconsistent statements	Section 57 request	Align all declarations and timelines
Over-reliance on photos	Weak relationship case	Diversify evidence across all categories
Late responses to RFIs	Application finalised without input	Set calendar alerts and seek extensions if needed
Untranslated documents	Non-compliance	Use NAATI-accredited translations

Legal and Ethical Obligations

As Migration lawyers we adhere to the Australian Solicitors’ Conduct Rules, which outline the ethical and professional obligations, and ensure that:

- All information is truthful and not misleading.
- Clients understand the risks and obligations.

- Confidentiality is maintained.
- Advice is tailored to individual circumstances.

Applicants should be wary of unregisters/unqualified advisors or generic templates that fail to capture the nuances of their case.

Conclusion

The Partner Visa (Subclass 309/100) is more than a bureaucratic hurdle—it is a legal gateway to building a life in Australia with a loved one. The stakes are high, and the process is unforgiving of errors. By understanding the legal framework, responding strategically to Section 56 and 57 requests, and prioritizing accuracy from the outset, applicants can significantly improve their chances of success.

As migration lawyers, our role is not just to lodge applications but to advocate, educate, and protect the integrity of the process.