Disclaimer: this guide is intended for informational purposes only. The information contained in this guide does not in any way create a lawyer-client relationship and does not constitute legal advice.

Please consult the relevant profession for advice appropriate to your situation before proceeding with anything.

Use of this guide does not guarantee success or positive visa grant. Use at your own discretion.

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Fiona Chan 2014

First edition
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How to use this guide

First, read the Partner Migration Booklet for a bit of background information and context. This is the most basic of information that is issued by the Department but it explains in simple terms the outline of your application. It however does not tell you about the intricacies and complexities in documenting your relationship and providing the correct types of evidence that they will accept. This is where this guide comes in. This guide will strengthen your visa application by telling you what works and what doesn’t work as evidence of your relationship as prescribed by the law.

You may think that if you are married and you have a marriage certificate then it’s very significant evidence that you are partners. However a marriage certificate means nothing if you got married yesterday and you met only 2 weeks ago. Therefore people who have marriage certificates can still strengthen their application by the tips and hints in this guide - particularly in regards to evidencing their relationship up to their marriage.

If you are applying for a Prospective Marriage visa (subclass 300) this guide will also be helpful in establishing your relationship up until the point of application. In many ways the information in this guide is most useful to fiancée’s of Australian partners because this category of visa requires an extra step before applying for a Partner visa.

Role of the migration agent

Nothing can really substitute the migration agent's experience and skill in representing visa cases but this guide imparts knowledge, tips and hints to help you give it a try.

It should be noted that a migration agent does not simply fill in forms. We write submissions that tie together every piece of evidence and present it to the case officer as a complete package. Migration agents are regulated by the Office of Migration Agents Registration and Authority and adhere to a strict Code of Conduct.

You should always seek immigration advice from registered migration agents and/or immigration legal professionals.
Warning – invasion of privacy ahead

You are about to embark on a journey where you will be inviting a government agency into your life to examine every detail of your relationship. They have the right and power to interview everyone in your life, call you in for interviews, random house inspections etc in order to further their investigation into whether your relationship is a genuine one.

You will be asked to reveal intimate details of your relationship and share it with the case officer.

You may also inadvertently share intimate details of your relationship with your friends and family.

You will most definitely have to talk about each other in very intimate and emotional terms and this may be difficult for people from cultures who have a different attitude to the level of intimacy between a couple.

Be absolutely prepared to talk and write about your love, home life, work life, social life and every aspect of your life that you share with your partner.

If you are not truthful or open enough in these areas, there is a greater chance that you will not receive a positive outcome due to lack of evidence.

If the love is there, it would be a shame to have it fail because you cannot express it in a form that is acceptable to the government and the case officers.

So you have been warned and you must be prepared for this openness or you will have wasted your time and money in applying for a partner visa.

....And a final warning

The words written in this guide are simply there to demonstrate to you the intent of the section and what needs to be achieved. It is not to be copied word for word because the words will not guarantee you success. They are merely demonstration of what the message should convey.
Introduction

You've fallen in love and you have made plans to be with your special someone for the rest of your life. Everything is right in the world except for one thing: the Australian government is now asking you to prove it. Prove it or your partner doesn't get to come to/stay in Australia.

So how do you prove such a subjective concept as love with objective facts?

How do you pinpoint the exact time and date that you ‘fell in love' and that you became 'more than girlfriend/boyfriend'?

You can't can you. Isn't it crazy that someone is now demanding that of you and holding your loved one to ransom.

Well this guide will help you to document your relationship with your loved one and prove to the Department that you are genuinely in love and in an ongoing exclusive relationship.

This guide will prepare you to submit the best possible application you can so that you both can one day call Australia home.
How do I apply for the visa?

Application stages

Applying from outside Australia

Subclass 300 – Prospective Marriage (temporary)

You plan to marry your Australian fiance(s).

See page 30.

Subclass 820 – Partner (temporary)

You:

• travel to Australia;
• then marry your Australian partner while the subclass 300 visa is valid; and
• then make an application (in Australia) to stay in Australia.

See page 34.

Subclass 801 – Partner (residence)

You are still in the relationship with your Australian partner 2 years after first applying for the subclass 820 visa.

See page 34.

OR

Subclass 309 – Partner (provisional)

You and your Australian partner:

• are legally married; or
• intend to legally marry in the near future and prior to migration; or
• have been in a de facto relationship for at least the entire 12 months prior to the date of application.

See page 34.

Applying from inside Australia

Subclass 820 – Partner (temporary)

You and your Australian partner:

• are legally married; or
• have been in a de facto relationship for at least the entire 12 months prior to the date of application.

See page 34.

Subclass 801 – Partner (residence)

You are still in the relationship with your Australian partner 2 years after first applying for the subclass 820 visa.

See page 34.
What are the legislation and regulations?

The Migration Act is the overarching legislation and the Regulations are the ones that describe and define the criteria.

Migration Act -

Migration Regulations -

Migration Regulations Schedule 2 -

Please also refer to Comlaw for the most up to date version of the Act and Regulations


The relevant sections of the Migration Act and Regulations have been reproduced in Appendices for your benefit.
What are the criteria for the applicant?

The applicant is the foreign partner that wishes to come and live in Australia. The location of the applicant is extremely important and you should decide this before you apply.

If you apply outside of Australia then you must stay outside of Australian until the decision is made – either granted or refused.

If you are inside of Australia then you must stay inside of Australian until the decision is made – either granted or refused. Each situation has its advantages and disadvantages. For instances, if you are outside of Australia and you apply for the partner visa outside of Australia then you cannot enter Australia until a decision has been made. This obviously keeps you away from your loved one for what could be upwards of 12 months. However it can mean that you can stay in your home country and continue to work and continue life till you are granted your visa. This would give you more time to pack up your life and organise your affairs.

Another example would be if you were in Australia and you applied within Australia, depending on the visa that you entered Australia on and the visa that you hold when you apply for the partner visa, you may not have work rights. If you are not allowed to work then your Australian partner will need to be able to financially support you during that time, which could be a very long time. Of course there are circumstances that you can apply for work rights and request waivers but these are not the scope of this guide.

If you are outside of Australia you should apply for the Partner (Provisional) visa (subclass 309) and Partner (Migrant) visa (subclass 100)

If you are outside of Australia and want to come to Australia to marry your Australian partner then you should apply for a Prospective Marriage visa (subclass 300) also known as a Fiancée Visa.

Partner visas (subclass 820 and 801) can only be applied for inside of Australia.
Things to watch out for

These are areas of concern and are common speed bumps in partner visa applications.

What we've highlighted here are the things that the Department will be looking at with scrutiny.

Genuineness of the relationship

The principle concern of the Department of Immigration and Border Protection is the 'genuineness of the relationship'. The main suspicious trigger point for further investigation is the length of time that you have been together. It is arbitrarily decided that a 'partner' or 'defacto partner' is someone that you have spent at least 12 months living together with. In order to claim defacto partner status you must be able to prove this 12 month period and it is not negotiable or hobbled together with patches of time spent together and away.

For further information see the 12 month rule.
Evidence to show that you share finances - mixing of funds

Joint bank account
If you do not have a joint account then open one now.

A joint account will show a mixing of funds, particularly if you have money going in and out of it regularly. I would recommend that the rent comes out of the joint account or household expenses are also drawn from the joint account. That will show ongoing transactions in the account for the purposes of your lives together.

Whilst you can still have separate accounts, you will need to show how you deal with finances for the household. There needs to be a way to document that the $400 you paid from your personal account was for the upkeep and maintenance of the household. Or the $300 that he paid for petrol was for the benefit of you both.
Health examination

This is another one that you can pre-load i.e include in your application at time of lodgement, or you can wait till the case officer requests it.

This one is a little trickier because the case officer may request additional examinations if the country that you are from is subject to health alert even though you have not been in that country for a long period of time.

For instances, you are from an African state but you submitted your application 11 months ago.

Your application has just made its way to a case officer and they are now looking over it.

Normally you will only need the standard health examination required of permanent visas. However currently there is an additional health alert that the government has issued in regards to all nationals of a particular African state.

You may have to undergo this additional health check even though you had submitted your health check with the application 11 months ago.

Furthermore if you have a long standing illness that requires care then a case officer may request that you undergo an examination to see if that would be a burden to Australia and its social and healthcare system.

Once again the choice is yours whether you undergo the health check to submit with the application or wait for the case officer's directions. At the very least be aware of the conditions and how to obtain a health check either in your country or in Australia. Refer to Appendix B on the procedure to obtain your health check in Australia.
Commonwealth of Australia
STATUTORY DECLARATION
Statutory Declarations Act 1959

I, [Insert your full name, Current address, date of birth and occupation]

make the following declaration under the Statutory Declarations Act 1959:

2 BASIC INFORMATION
At a minimum you need to include:
1. How you know the person
2. How long you have known the person

AIM
The aim is to make it as easy to follow as possible for whoever is reading it.

PARAGRAPHS
write in succinct paragraphs what you want to convey. Try to introduce one concept per paragraph.

HEADINGS
Headings and subheadings are also encouraged if it is a Statutory Declaration that addresses few points.

ABBREVIATIONS
Try not to use too many abbreviations and if you must use abbreviations you should introduce the full name before using the abbreviation. 
Eg "According to the Department of Immigration and Border Protection (’DIBP’)...."
Subsequent reference: when I went to the DIBP....

FORMAT
Write like a narrator, like you are telling a story. Otherwise use numbered paragraphs.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

3 Signature of person making the declaration

4 Place
5 Day
6 Month and year

Declared at [ ] on [ ] of [ ]

Before me,

7 Signature of person before whom the declaration is made (in block letters)

8 Full name, qualification and address of person before whom the declaration is made (in block letters)

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the Statutory Declarations Act 1959.
Note 2 Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959 — see section 5A of the Statutory Declarations Act 1959.
Examples

Bad Statutory Declaration

Commonwealth of Australia
STATUTORY DECLARATION
Statutory Declarations Act 1959

I, Sally Jones of 123 Sesame Street, Hogwarts

make the following declaration under the Statutory Declarations Act 1959:

1. I met John in 2013 at a party in a club somewhere, can’t remember because I was travelling and he was travelling. He bought me a drink and then we started talking and it was the best night ever in my life. The next morning we both had to leave to go home but we decided to keep in touch.

2. I sent John SMS’s everyday and he would call at least once a week.

After about 2 months John surprised me by coming back to Australia. He had been travelling New Zealand for a while. In, he said he was going home but he came to Australia instead because he wanted to leave me behind without seeing where things would go. The first month together was bliss and we partied all the time and spent nearly every day together. We’ve been together ever since.

3. I think I really love him, he is the most handsome man I’ve ever met. I love him because he’s really nice to me and he’s super sweet. All my friends love him and my mum and dad love him too. I want to spend the rest of my life with him.

We currently live together in a 4 bedroom house with 3 other roommates. He’s not on the lease right now because he doesn’t have a job but we have plans to move to a bigger house once the visa is done.

4. We go to parties together and once a month John takes me out to a dinner. We can only do this once a month because John doesn’t have much money left in his savings. He’s looking for a job right now but no one wants to hire a foreigner with no work rights. Because he doesn’t work he can’t really help out with bills and expenses so I try to do my best.

5. He does clean around the house and work in the garden. He often cooks good meals for me.
After you have applied

It is extremely important to keep the Department up to date if your circumstances change.

2 pieces of information that is important: address changes, personal information and end in the relationship

If you do not provide an up to date address then the Department will be unable to contact you when your 2 years is up. As you have applied for a permanent visa at the same time as the temporary, the Department will automatically send a request for information to the address they have on file, 2 years after the date of the grant of visa. Therefore if you do not let the Department know that you have changed your address, you will never receive the mail - unless you put in a mail redirect at the Post Office but since it's a legal obligation to update the Department, this point is moot.

Circumstances that you must notify the Department of:

- new residential address
- a new passport
- a pregnancy
- birth
- divorce
- separation
- marriage
- de facto relationship
- death in your family.

Changing addresses form
Report changes in your circumstances

'Form 929 Change of address and/or passport details (86 kB pdf)'

Changing circumstances form
"Form 1022 Notification of changes in circumstances (77 kB pdf) — if there are other changes in your circumstances

Correcting mistakes
APPENDICES

Appendix A - MIGRATION ACT 1958 - SECT 5CB

De facto partner

(1) For the purposes of this Act, a person is the *de facto partner* of another person (whether of the same sex or a different sex) if, under subsection (2), the person is in a de facto relationship with the other person.

De facto relationship

(2) For the purposes of subsection (1), a person is in a *de facto relationship* with another person if they are not in a married relationship (for the purposes of section 5F) with each other but:

   (a) they have a mutual commitment to a shared life to the exclusion of all others; and
   (b) the relationship between them is genuine and continuing; and
   (c) they:
       (i) live together; or
       (ii) do not live separately and apart on a permanent basis; and
   (d) they are not related by family (see subsection (4)).

(3) The regulations may make provision in relation to the determination of whether one or more of the conditions in paragraphs (2)(a), (b), (c) and (d) exist. The regulations may make different provision in relation to the determination for different purposes whether one or more of those conditions exist.

Definition

(4) For the purposes of paragraph (2)(d), 2 persons are *related by family* if:

   (a) one is the *child* (including an adopted *child*) of the other; or