



## **Are you a child of a same sex partner?**

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On 1 July 2009, the Department of Immigration and Citizenship (DIAC) changed certain definitions in the *Migration Act 1958 Cth (Migration Act)*. As a result of the changes, if a person is a child of one of the partners (married or unmarried same sex or opposite sex partner) in certain visa applications, the child may be included in the visa application under certain conditions.

### **‘Child of a person’**

In determining who is a child of a person, the married or de facto relationship (if any) between the parents is irrelevant, except in cases where the child was born as a result of an artificial conception procedure.

A ‘child of a person’ now includes those within the meaning of the *Family law Act 1975 (FLA)*, but excludes ‘adopted child’. However, note that ‘adopted child’ is included in the definition of “child” under the *Migration Act 1958*. Under the *FLA*, the definition of ‘child of the de facto relationship’ includes a child of same sex relationships. The definition refers to a *familial relationship*, that is, the relationship between a child and a parent, regardless of the age of the child. Thus, a child may be the child of persons who are not, and have never been, in a spouse or de facto partner relationship. A child whose parents are not, and have not been, in a partner relationship, is still the child of each of those parents for most *FLA* purposes and, it follows, for the purposes of migration law.

### **‘Spouse’**

The new definition of spouse covers only a married relationship between opposite sex partners and now excludes the de facto partner. The definition of ‘de facto partner’ and associated regulatory provisions have been moved to a new section of the *Migration Act*.

### **‘De Facto partner’**

The new section now defines ‘de facto partner’ to cover both opposite-sex and same-sex relationships. Before the changes, the de facto partner provisions in the Migration Regulations covered only opposite-sex relationships and were part of the then ‘spouse’ definition. The term ‘interdependent partner’ and its associated regulatory provisions are no longer needed and have been deleted from the Migration Regulations.

These amendments apply only to visa applications made on or after 1 July 2009.

*This information is of a general nature and should not be taken as authoritative legal advice for specific cases. Australia has a scheme that requires persons who give immigration assistance to be registered as migration agent. The writer, Atty. Imelda Argel is a practising migration solicitor and a registered migration agent in Sydney, Australia. She is a Solicitor of the Supreme Court of New South Wales, the High Court of Australia, an Attorney at law in the Philippines and in the State of New York, USA. Her Registered Migration Agent no. is 9682957.*

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