

QUESTION TAKEN ON NOTICE

ADDITIONAL ESTIMATES HEARING: 13 FEBRUARY 2012

IMMIGRATION AND CITIZENSHIP PORTFOLIO

(AE12/0157) Program 1.1: Visa and Migration

Senator Cash (L&CA 31) asked:

With regards to partner visas for same-sex couples; what are the requirements from a Commonwealth level; other than just the state registration; that would acknowledge that a relationship exists?

Answer:

Under Regulation 2.03A of the Migration Regulations 1994, couples who register their de facto relationship are not required to satisfy the twelve month relationship requirement that applies to other de facto relationships. The provision to allow de facto couples to register their relationship was introduced on 1 July 2009 as part of a package of measures to remove discrimination against same sex couples and their children.

This provision does not undermine the integrity of the Partner visa program because visa applicants must still be assessed as being in a genuine relationship against the definition of de facto as per Section 5CB of the Migration Act 1958.

Section 5CB sets out that a person is in a de facto relationship with another person if they are not in a married relationship with each other but:

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

Reg 1.09A sets out the matters for consideration in determining whether the relationship is genuine and continuing:

1. the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
- (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and

- (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being in a de facto relationship with each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
- (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.

Although couples who register their de facto relationship are not required to satisfy the twelve month relationship requirement that applies to other de facto relationships, they are still required to satisfy that they are in a genuine and continuing de facto relationship. Decision makers will assess each relationship in the same manner, regardless of whether the relationship has been registered under a relevant law of a State or Territory.