

FACTSHEET: What to do as a visa holder if you have experienced family violence

The decision to leave an abusive relationship is highly complicated to begin with, and many migrants believe that they cannot leave their partner when their immigration status in Australia feels like it is dependent on that relationship.

Regardless of your visa situation, please contact the police and safeguard your wellbeing as a first priority. We can then assist you in exploring your independent visa options.

If your Australian visa has been sponsored by an abusive partner, then this Factsheet outlines how you can apply to remain in Australia permanently and without being tied to your partner's sponsorship.

A. RELEVANT VISAS

Partner Visas provide a pathway for those married to, or in de facto relationships with Australian citizens, permanent residents, and particular New Zealand citizens (the **sponsors**) to settle in Australia permanently.

If your relationship with your sponsor ends while you hold a Temporary Partner Visa, or in some circumstances, after you have simply applied for a Temporary Partner Visa, you may still be eligible for a Permanent Partner Visa. Similar concessions exist for Prospective Marriage Visa holders where you have married your sponsor, domestic violence has occurred, and your relationship has since ended.

The Australian Government does not tolerate domestic violence in any form, and there are safeguards in place to allow you the freedom to escape a dangerous relationship without the fear of having your visa cancelled. These safeguards are known as the Family Violence Provisions.

When can Partner Visa holders/applicants access the Family Violence Provisions?

1. Enter Australia as the holder of a Partner visa (subclass 309).
2. Relationship breaks down; and
3. You and/or a member of your family (who was also granted a 309 visa) is the victim of family violence committed by your sponsoring partner.

**Temporary concessions have been introduced which may allow you to access these provisions if you have simply just applied for a subclass 309 Visa and are now in Australia.*

OR

1. You were granted a temporary Partner visa (subclass 820) in Australia;
2. Relationship breaks down; and
3. You and/or a dependent child of you or your partner are the victim of family violence committed by your sponsoring partner.



B. ELIGIBILITY CRITERIA

The Family Violence Provisions apply when the relationship between you, the visa applicant, and your sponsor has ended. To be eligible, you must be able to prove that there was a genuine relationship to begin with.

When determining if you are in a genuine relationship, the Department will assess all circumstances of the relationship: the financial and social aspects, the nature of your household, and the nature of your commitment to each other.

The law requires that the visa applicant has suffered family violence committed by the sponsor before the relationship ended.

The term 'family violence' means:

...conduct, whether actual or threatened, towards...the alleged victim or the property of the alleged victim...that causes the alleged victim to reasonably fear for, or to be reasonable apprehensive about, his or her own wellbeing or safety.'

Family violence can include both physical and non-physical forms of abuse, threatened violence, financial control and psychological harm. All forms of family violence are unacceptable and will allow you to access the Family Violence Provisions.

If your relationship has ended, then you should inform the Department of Home Affairs regarding the change in your circumstances. You will then be provided the opportunity to comment on that information, and to provide evidence that domestic violence has occurred.

Please refer to the **Annexure** to this Factsheet which outlines the accepted evidence.

C. SEEK HELP

The Australian Government does not tolerate domestic or family violence under any circumstances and the Family Violence Provisions are a mechanism for temporary migrants to continue their Australian migration journey without fear of a partner jeopardising their visa.

It is crucial that you do not risk your safety or well-being and that you are advised of your options to remain in Australia independently.

Although the Family Violence Provisions were introduced to specifically protect those who have applied for a Partner or Prospective Marriage Visa, it is important to note that there are also options for those who have applied for or are holding other temporary visas. For example, if you are a dependent partner or child on a visa where your partner is the primary applicant or visa holder, you may have options to move off that visa if you are experiencing domestic violence. You should not jeopardise your safety and you should seek professional advice to strategise about how to pursue a separate visa.

Domestic violence is unfortunately still prevalent in our society, and it is recognised that temporary migrants, those with limited English capabilities, and those with uncertain visa statuses, are amongst those most 'at risk' in this space. As such, the Family Violence Provisions, and the ability to detach oneself from an abusive partner's visa, are tools that should be utilised to ensure the safety of all Australian visa holders.

If you are experiencing family violence on a temporary visa, please do not hesitate to reach out to our team of migration experts so we may guide you through this complex process.



ANNEXURE: ACCEPTABLE FORMS OF FAMILY VIOLENCE EVIDENCE

The Department of Home Affairs will consider either one of the following forms of evidence to determine whether you have suffered or committed family violence:

Judicially Determined Claim	Non-judicially Determined Claim
<p>A person must present evidence which includes:</p> <ol style="list-style-type: none">1. A court injunction under the <i>Family Law Act 1975</i>; or2. An Australian court order; or3. A conviction or finding of guilt against the perpetrator in respect of the victim. <p>You are taken to have suffered domestic violence if a court has made an order under a State or Territory law to protect you, after the court had given the perpetrator an opportunity to be heard in court.</p> <p>The name of the victim/s and the perpetrator must be the same as those on the Partner Visa application.</p> <p>In Queensland, the only court orders acceptable are 'Protection Orders' as evidence of family violence. This is because these orders are made after the court has had the opportunity to investigate the merit of the victim's claims.</p> <p>Interim court orders are acceptable if the perpetrator has had an opportunity by the court to respond to the claims of family violence. Conversely, interim court orders issued without the perpetrator having been given such an opportunity are not acceptable evidence of family violence.</p> <p>It is important that you seek professional advice to ensure that the evidence you are providing is sufficient to meet the criteria for a Judicially Determined claim of Family Violence.</p>	<p>For a claim of non-judicially determined family violence, a statutory declaration by the visa applicant should be provided.</p> <p>A statutory declaration made by the applicant must:</p> <ol style="list-style-type: none">1. set out the allegation of family violence; and2. name the person they allege has committed the family violence. <p>You must also provide a minimum of two different types of the following evidence:</p> <ol style="list-style-type: none">1. a medical report, hospital reports, discharge summary, letter or statutory declaration made by a registered medical practitioner, registered nurse or midwife;2. a report, witness statement, record of assault or family violence, risk assessment, or statutory declaration made by a police officer;3. a witness statement made to a police officer during the course of a police investigation;4. a report, letter or statutory declaration by a child welfare authority officer or a child protection authority officer;5. a letter, statutory declaration, report, or risk assessment from a family violence support service provider;6. a report, letter or statutory declaration made by a member, or person eligible to be a member of the Australian Association of Social Workers;7. a report, letter or statutory declaration made by the victim's treating registered psychologist;8. a report, letter or statutory declaration made by a family consultant or family relationship counsellor; or9. a report, letter or statutory declaration or letter made by a school counsellor or principal. <p>Requirements for wording, specificity, and identification apply to non-judicial evidence, and it is recommended you seek professional advice to ensure a valid claim is made.</p>



CONTACT DETAILS

Should you have any questions in relation to this factsheet, please contact our dedicated team of migration professionals below.



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Corina is a Partner within our Business Services Group and she practises exclusively in Australian immigration law. As an immigration lawyer, Corina assists clients with a full range of migration advisory and visa application services. With an exceptional record in securing temporary and permanent visas for private clients, Corina is also experienced in assisting corporate clients with their inbound mobility requirements, including for secondments and new hires, and handling high-volume transactions for both local and multinational businesses on short notice.



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