



FAMILY VIOLENCE AND TEMPORARY VISAS

If you are sponsored for a partner visa and the relationship breaks down before you get permanent residence, and there has been family violence, you may still be able to get a permanent resident visa. This fact sheet explains the basic rules that apply.

If you already have permanent residence and your relationship breaks down, your abusive partner cannot get your visa cancelled. If you are in this situation, please [refer to our fact sheet titled “Permanent Residents and Family Violence”](#).

Which visa do you have now?

These rules apply mostly to visa applicants who have lodged valid partner visa applications. This means visa applicants who are:

- on a **temporary partner visa subclass 309 obtained offshore or an 820 onshore**; or
- on a bridging visa granted when you lodged a partner application onshore; or
- on another temporary visa but you must have lodged a valid application for an onshore partner visa.

The rules also apply to dependents on a Global Talent visa (subclass 858) and dependent child (445) visas.

Special rules if relationship ends due to family violence

If your relationship ends before you receive permanent residence and there has been family violence, you may still be able to be granted a permanent visa. You will need to meet these extra requirements:

- You are still in Australia; and
- You or a member of your family unit experienced family violence during the relationship; or
- You and at least one child of the relationship have a residence order, child maintenance order, joint custody or access under the *Family Law Act 1974* (Cth).
- If you hold a prospective marriage visa, the family violence must have occurred while you and your partner intended to marry (i.e. while you were engaged)

To get permanent residence based on family violence, you must satisfy Home Affairs that:

- You and your former partner had a **genuine and continuing married or de facto relationship** committed to a shared life together to the exclusion of all others, before it broke down; and
- You or a member of your family unit **experienced family violence during the relationship**.

You must also pass health and character checks before the visa is finally granted.

What is the process for people on a temporary partner visa?

It is important to get legal advice before taking any of these steps. This is what you can expect to happen.

1. Your lawyer will help you to tell Home Affairs what has happened.
2. The Relationship Cessation team at Home Affairs will send an email to you, telling you that your application has been removed from your ImmiAccount for privacy reasons.
3. The team will then ask you to confirm a new, safe ImmiAccount.
4. Once a safe ImmiAccount has been confirmed, you can either:
 - a. Complete a 'Stage 2 – Permanent Partner Visa Assessment' Form in your ImmiAccount to upload evidence and track the progress of the application **OR**
 - b. Email evidence directly to partner.visa@homeaffairs.gov.au **OR**
 - c. wait until Home Affairs sends a change of circumstances (s 56) letter to you, giving you 28 days to respond with evidence.
5. Home Affairs will then check the genuineness of your former relationship.
6. If satisfied with genuineness they will look at your evidence that family violence occurred in the relationship.
7. If they are not satisfied that family violence occurred, they will refer it to an 'Independent Expert'.
8. The Independent Expert will speak with you and make a finding.

Proving a genuine relationship

To decide whether your relationship with your former partner was a genuine one, Home Affairs must consider all the circumstances of your relationship including financial and social aspects, nature of your household, and your commitment to each other.

This means getting evidence of things like rent, power bills, bank accounts, any joint purchases or loans, declaring relationship to Tax Office and Centrelink, marriage or children's birth certificates, social media profile, evidence of attending social events together, joint travel, phone and email records, statutory declarations, or statements from family and friends.

Proving family violence

To prove family violence, you should get migration legal advice as this can be complex.

Family violence in migration law is actual or threatened conduct towards you or your family member or property that causes you to have good reason to fear for your wellbeing or safety.

Family violence can be proved by 'judicial evidence' - a Domestic Violence Protection Order (where papers have been served) or a criminal violence conviction.

It can also be proved by 'non-judicial evidence' - either two reports from family violence professionals plus a statutory declaration from the applicant; or a joint court undertaking by the applicant and sponsor about an allegation of violence against the sponsor. There is no requirement that the relationship broke down because of family violence.

Family Violence Workers' Role

Family violence workers have an important role in the visa legal process. They can help provide evidence of family violence and ensure good communication with legal advisors.

Clients often have limited evidence as their partner may control access to documents and because of social isolation and lack of legal advice. Often the sponsoring partner has lodged the application and evidence to DHA.

There are tight timelines when someone is escaping an abusive relationship. Once notified, DHA will send a 28 day letter to respond. Another 28 days may be obtained, but further extensions may be hard to get.

Workers must be careful not to advise about migration law. It is a crime to give *immigration assistance* if you are not a registered migration agent. They are allowed to pass on information about the visa process but not give substantial explanation or advice about it.

Good collaboration with legal and family violence workers is vital.

Which professionals can give evidence of family violence?

If '*judicial evidence*' such as a court Domestic Violence Protection Order cannot be obtained then '*non-judicial evidence*' may be needed.

'*Non-Judicial evidence*' under the Migration Regulations requires at least two reports or statutory declarations from people from different professions:

- medical, police or child welfare reports or statutory declarations
- social worker, psychologist or counsellor statutory declarations
- women's refuge or family violence crisis centre report on the agency's letterhead.

Professionals 'non-judicial' family violence assessment

Family violence in migration law requires actual or threatened conduct towards the visa applicant or family member or property, which causes the victim to have good reason to fear for their wellbeing or safety.

Courts have suggested that a 'therapeutic relationship' with the applicant, rather than for example what could be formed from just one session, is needed before being able to form an assessment of family violence.

When doing an assessment it would be not enough to restate the victim’s account of violence. Practitioners must be very specific about their observations, the evidence, and their opinion.

There must be a link to the Migration Act definition of family violence, that is, that *the violence must have caused the victim to fear for or be apprehensive about their personal safety*. This needs to be stated.

To satisfy the law they should be confident in saying ‘In my opinion family violence has occurred’.

The alleged perpetrator must be the sponsor.

If the professional doesn’t think there is the required family violence then they should say so.

There is no requirement that the relationship broke down because of family violence. But usually this is the case.

The two reports are usually about the applicant but they can relate to different victims (for example, one could be about the partner of the alleged perpetrator and another about their dependent child).

The statutory declaration and any attachments must be signed and witnessed by a person authorised to witness statutory declarations.

Legal advisors should check the declarations to ensure they satisfy the regulations if there is family violence.

A legal representative should develop the applicant’s statutory declaration to give a detailed account of the nature and genuineness of the relationship and the violence.

Support Services

If you have experienced domestic and family violence, there is support available.

Legal services:

Legal Service	Contact Details
Refugee and Immigration Legal Service	<ul style="list-style-type: none">• Phone: (07) 3846 9300• Email: admin@rails.org.au• Website: https://www.rails.org.au/
Women’s Legal Service Queensland	<ul style="list-style-type: none">• Phone: 1800 957 957 (9:00am – 4:30pm, Monday to Friday)

	<ul style="list-style-type: none"> • Website: https://wlsq.org.au/
Legal Aid Queensland	<ul style="list-style-type: none"> • Phone: 1300 65 11 88 • Website: https://www.legalaid.qld.gov.au/Home

Support and Emergency Services:

Support and Emergency Services	Contact Details
Queensland Police Service	<ul style="list-style-type: none"> • Phone: 000 (EMERGENCIES) • Phone: 131 444 (non-emergencies) • Website: https://www.police.qld.gov.au/domestic-violence
Queensland Ambulance Service	<ul style="list-style-type: none"> • Phone: 000 (EMERGENCIES)
1800 RESPECT National family violence and sexual assault counselling service and helpline.	<ul style="list-style-type: none"> • Website: www.1800respect.org.au • Phone: 1800 737 732 (24 hours per day, every day)
DV Connect Womensline (Domestic Violence Helpline)	<ul style="list-style-type: none"> • Phone: 1800 811 811 (24 hours per day, every day) • Website: https://www.dvconnect.org/
Immigrant Women's Support Service	<ul style="list-style-type: none"> • Website: https://iwss.org.au/ • Phone: (07) 3846 3490 (open Monday to Friday, 9am – 4pm)