



LGBTIQ Domestic & Family Violence and Immigration Law

This fact sheet is for lesbian, gay, bisexual, trans*, intersex and queer (LGBTIQ) people if they or a member of their family unit have experienced family violence by their Australian partner. It provides information on the effect of family violence on an application for a Partner visa.

The information in this fact sheet applies to applicants for partner visas [including prospective marriage category who are in Australia and married to their sponsor] and distinguished talent visas currently in Australia.

A permanent visa may also be granted if your relationship breaks down and you and your partner have custodial rights under the *Family Law Act 1975* for any children aged under 18 years that you and your partner may have.

If you are applying for a different visa and are suffering family violence you should seek legal and immigration advice.

WILL I HAVE TO STAY IN MY RELATIONSHIP TO GET A VISA?

You should not remain in an abusive relationship in order to obtain permanent residence in Australia. If you can show that your sponsor has acted or threatened to act in a way that made you or your family member fear for your wellbeing or safety, ending the relationship will not prevent you from obtaining a permanent visa. This will be the case even where it has not been two years since your temporary Partner visa application was granted.

WHAT IS FAMILY VIOLENCE ANYWAY?

Relevant family violence means *conduct, whether actual or threatened, towards:*

- *the alleged victim, or*
- *a member of the family unit of the alleged victim, or*
- *a member of the family unit of the alleged perpetrator, or*
- *the property of the alleged victim, or*
- *the property of a member of the family unit of the alleged victim, or*
- *the property of a member of the family unit of the alleged perpetrator,*

that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, their own wellbeing or safety.

Relevant family violence is not limited to physical harm and includes psychological and/or financial abuse consistent with the definition set out above.

INFORMING THE DEPARTMENT OF HOME AFFAIRS

You are required to notify the Department of Home Affairs, when your relationship with your sponsor ends, and for other change of circumstance, such as change in address.

When providing this information, you should also inform the Department that you experienced domestic or family violence while in the relationship. If you do not let the Department know about your experience, your sponsor may withdraw their sponsorship and your visa application may be refused.

After informing the Department, you will need to satisfy the Department that domestic or family violence did occur during your relationship. If you succeed, you will be granted a permanent resident visa, provided the other requirements for the visa are satisfied and the Department believed that the relationship was genuine until it ceased. This will require you to provide the Department with either 'judicial evidence' or 'non-judicial evidence'.

Judicial Evidence

If you provide the Department with judicial evidence of domestic or family violence, the Department must continue to process your visa, subject to the conditions listed below being met.

Judicial evidence may include a final Apprehended Domestic Violence Order (ADVO) or injunction made by a Court protecting you or a family member from your Australian partner, or evidence that your partner has been convicted of committing an act of violence against you, such as an assault conviction.

Non-Judicial Evidence

If you provide the Department with non-judicial evidence, a case officer from the Department will decide whether the evidence is sufficient to establish that family violence has occurred. Where family violence is found, the Department must continue to process your visa, provided the conditions below are met.



There are two types of non-judicial evidence:

- Joint undertakings filed in court proceedings where there was an allegation of violence; and
- A statutory declaration preferably in Form 1410 [see: <https://immi.homeaffairs.gov.au/form-listing/forms/1410.pdf>]

You will need at least two pieces of evidence from specified professionals or organisations.

A number of professionals can provide a statutory declaration to help satisfy the Department that you have experienced family violence. This includes doctors, police officers, employees at women's refuges and family/domestic violence crisis centres, social workers, and registered psychologists. Evidence may be in the form of a statutory declaration, medical report, police report, assessment report, etc. Witness statements made by other people to the police may also be used as evidence.

The professional person should prepare a statutory declaration and address the following issues:

- details of the alleged family violence;
- name of the person who is alleged to have committed family violence;
- name of the alleged victim;
- evidence or reasons the professional has formed the opinion or assessment they give;
- information regarding their professional qualifications, and any relationship with the alleged victim or their family members; and
- information about any treatment, support, or services offered in relation to the alleged family violence.

The Department may also refer the non-judicial evidence to an independent expert for assessment if it is having doubts that there is family violence.

WHAT ELSE WILL I NEED TO ESTABLISH?

Before the Department can continue to process your visa application, you will also need to provide evidence to establish that:

- Your sponsor was the perpetrator of the family violence;
- There was a genuine de facto relationship between you and your Australian sponsor which:
 - Existed when the family violence occurred, and
 - Has since ended; and
- The violence occurred after you entered Australia.

If you are still living with the perpetrator, it may be difficult (but not impossible) for you to show that your relationship has ended.

WHERE CAN I GET MORE HELP?

Immigration Advice and Rights Centre

IARC can provide legal advice on immigration issues.
www.iarc.org.au/:

(02) 9262 3833

The Safe Relationships Project (SRP) - Inner City Legal Centre

The SRP is a state-wide domestic and family violence court support and legal advice service for LGBTIQ people.

www.iclc.org.au/safe-relationships-project/

T: (02) 9332 1966 or 1800 244 481

E: iclc@iclc.org.au

If you need an interpreter to access these services you can contact the Translating and Interpreting service by calling 13 14 50.

This information is current to 17 August 2021 and reflects the law in New South Wales. It is general information and is no substitute for legal advice tailored to your particular circumstances. For assistance, contact the ICLC on (02) 9332 1966