



Immigration Advice  
and Rights Centre

Reflects Australian  
Immigration law as  
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## Breakdown of relationship – Partner visas (subclass 820/801, 309/100 and 300)

This information sheet may be relevant to you if your relationship with your sponsor for a partner visa has broken down.

You may continue to be eligible for a permanent visa if one the following circumstances applies to you:

1. If you have experienced family violence from your sponsor during your relationship; or
2. If you have a child of the relationship; or
3. If your sponsor has died.

If the above circumstances do not apply to you it may be possible to apply for another visa which may allow you to remain in Australia. You should seek legal advice as soon as possible if your relationship has broken down.

## How do I advise Immigration about the breakdown of my relationship?

If your relationship with your partner has ended you have an obligation to inform the Department of Immigration about the change in your circumstances. It is also important to advise the Department of Immigration of your new address and contact details.

There are a few ways you can tell the Department about the change in your circumstances:

- by email (you can use form 1022 – “change of circumstance form”); or
- by submitting a change of circumstance form 1022 via your ImmiAccount; or
- you can use the online contact form (<https://immi.homeaffairs.gov.au/change-in-situation/relationship-ended>).

If you don't advise the Department of Immigration about the change in your circumstances your application may be refused without you having the opportunity to explain what has happened.

### 1. The Family Violence Provisions

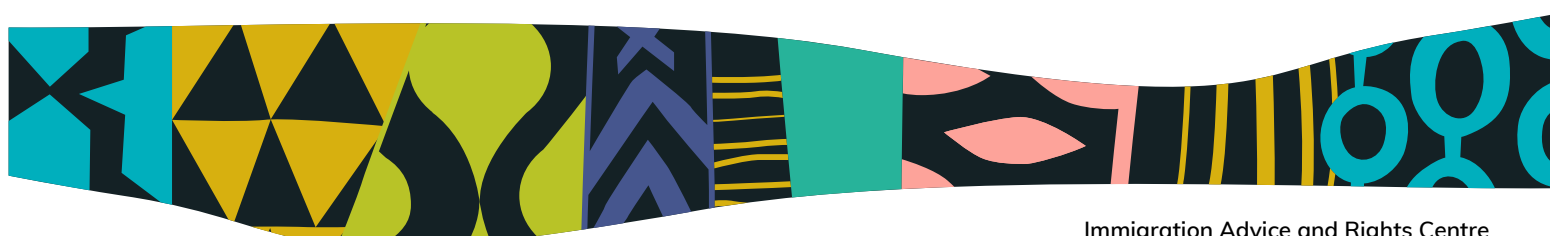
The “family violence provisions” of the *Migration Regulations* are designed to ensure that visa applicants do not feel compelled to remain in an abusive relationship in order to maintain their residence in Australia.

If you have experienced family violence in your relationship you may still be able to apply for a permanent visa even if your sponsor has withdrawn their support for your visa application.

#### Who can apply?

The family violence provisions apply to you if:

- You have applied for a Partner (subclass 820/801) visa or are in Australia as the holder of Partner (subclass 309) visa; or
- You hold a Prospective Marriage (subclass 300) visa and have married your sponsor.



There are some differences between how the provisions apply to each visa – this is discussed further below. The provisions also apply to the Dependent Child (subclass 445) visa and the Distinguished Talent (subclass 858) visa – these visas are not discussed in this information sheet.

## What is family violence?

Family violence is any conduct, whether actual or threatened, that causes the victim to be fearful or apprehensive about their own wellbeing or safety.

Family violence is not limited to physical violence. It can include a wide range of behaviour such as:

- sexual abuse or mistreatment;
- psychological and emotional abuse;
- financial abuse (such as controlling access to money);
- controlling and manipulative behaviour (such as preventing you from leaving the house or preventing you from working, studying or learning English);
- stalking you;
- threatening to hurt members of your family or your pets; and/or
- damaging property.

## Who can be the victim of the family violence?

Under the *Migration Regulations*, the “alleged victim” can only be one of the following people:

- If you hold a temporary Partner (subclass 309) visa and your relationship has broken down before you are granted a permanent Partner (subclass 100) visa it can be:
  - you; or
  - your child or your sponsor’s child (depending on their age and circumstances).
- If you held a Prospective Marriage (subclass 300) visa, have married your sponsor but your relationship has broken down before you lodged your application for a Partner (subclass 820/801) visa it can be:
  - You; or

- Your child who has been included in your visa application; or
  - Your child or your sponsor's child (depending on their age and circumstances).
- If you were sponsored for a Partner (subclass 820) visa but your relationship broke down before a decision has been made on your permanent Partner (subclass 801) visa:
    - You; or
    - Your child or your sponsor's child (depending on their age and circumstances).

## Can I apply under the family violence provisions if I am still living with my partner?

The family violence provisions are only engaged “when the relationship between the applicant and the sponsoring partner has ceased”. If you continue to live together you will need to demonstrate that you are no longer in a spousal or de-facto relationship.

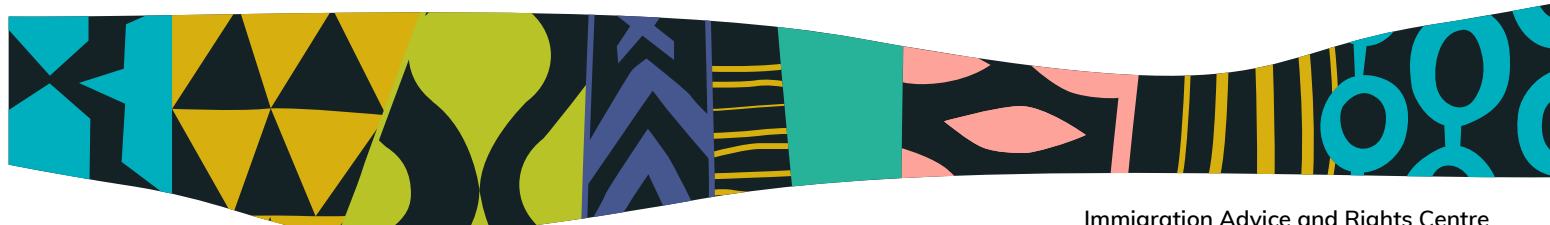
## When must the family violence have occurred?

The family violence, or part of the family violence, must have occurred while the relationship existed.

If you are a holder of a temporary Partner (subclass 309) visa, the relevant family violence must have occurred **after** you arrived in Australia as the holder of your visa.

## What should I do if the relationship has ended and there has been family violence?

First, you will need to advise the Department of Immigration that your relationship has ended and that you have experienced family violence. In many cases where an applicant makes a claim of family violence, the Department may still require you to provide further evidence that your relationship was genuine and continuing before the breakdown. Once the Department is satisfied that your relationship was genuine they will then assess your claim of family violence. There is no requirement for you to show that your relationship ended because of the family violence.



You should be aware that if the Department is not satisfied that your relationship was genuine and continuing prior to the breakdown they will refuse your application without making an assessment of your claim of family violence.

## How do I show the Department of Immigration that I have experienced family violence during my relationship?

You can show that you have experienced family violence using either 'judicial evidence' or 'non-judicial evidence'. You do not need both.

### What is judicial evidence?

Judicial evidence includes any one of the following:

- an injunction made against the perpetrator under the *Family Law Act 1975*; or
- a restraining order or protection order issued by a court against the sponsor (e.g. an Apprehended Violence Order ("AVO")). This must be a court order, made after both parties have been heard or given an opportunity to be heard; or
- a conviction or finding of guilt against the sponsor in respect of the "alleged victim".

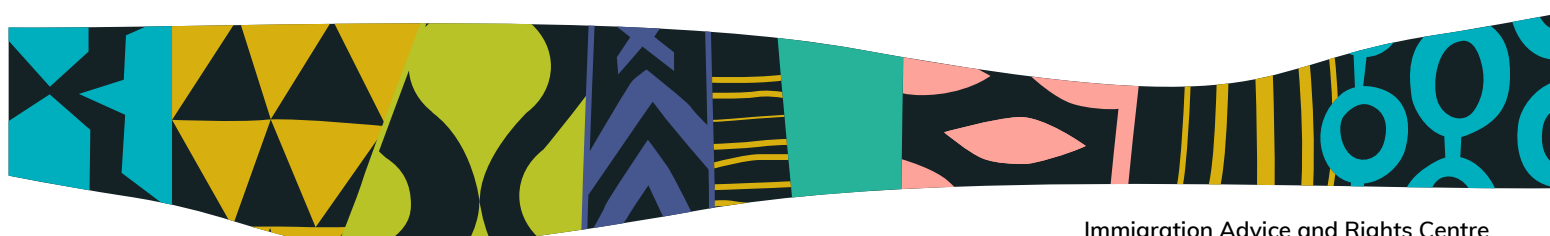
If you are able to provide judicial evidence the Department of Immigration will accept that you have suffered family violence.

### What is non-judicial evidence?

non-judicial evidence includes any of the following:

- a joint undertaking to a court in relation to proceedings where there was an allegation of violence; OR
- a statutory declaration from you and at least two items from a list of acceptable evidence (see **Annexure 1** at the end of this information sheet).

If you provide non-judicial evidence the Department of Immigration will have to decide whether they are satisfied that you have experienced family violence. They do not have to accept the evidence.



## How to prepare my statutory declaration

You can use form 1410 to prepare your statutory declaration. While it is not mandatory to use this form it will help you address all the legal requirements.

This statutory declaration must be made by the main visa applicant. The requirements for the statutory declaration vary depending on who is identified as the “alleged victim” of family violence.

If you are the victim of family violence the statutory declaration must:

- identify the name of the person who committed the family violence (your sponsor)
- describe the family violence that you have experienced, including dates of individual incidents and the frequency of violence, and the impact the violence has had on you;
- explain how the violence caused you to be fearful or apprehensive about your safety or well-being; and
- provide any evidence you have that the family violence took place.

If you are providing a statutory declaration on behalf of another person who is the alleged victim (for example, your dependent child), the statutory declaration must:

- identify the name of the person who committed the family violence (your sponsor)
- identify the relationship between the perpetrator and the victim;
- describe the family violence that they experienced, including dates of individual incidents and the frequency of violence, and the impact the violence has had on you and the other person;
- explain how the violence caused you and the other person to be fearful or apprehensive about your safety and/or well-being; and
- provide any evidence you have that the family violence took place.

## Non-judicial evidence by a professional or organisation

In order to satisfy the non-judicial evidence requirements, you must also provide at least two items of acceptable evidence from two separate professionals or organisations from the non-judicial evidence list (see Annexure 1). For example, it is not acceptable to only have two medical reports but it is possible to have a medical report and a letter from a women’s refuge.

Different categories of non-judicial evidence will need to satisfy different requirements in relation to form and content. For example, some professionals or organisations will need to complete a statutory declaration while others can provide a report. The list of the people or organisations that can provide evidence and the detail that needs to be provided is set out in the table that is attached to this fact sheet (see **Annexure 1**).

## If the Department of Immigration is satisfied that family violence occurred

If the Department is satisfied that your relationship with your sponsor was genuine prior to the breakdown, you will be granted a permanent visa (as long as other requirements like health and character are also met). Partner visa applicants will be granted a permanent visa even if two years have not passed since the partner visa application was made.

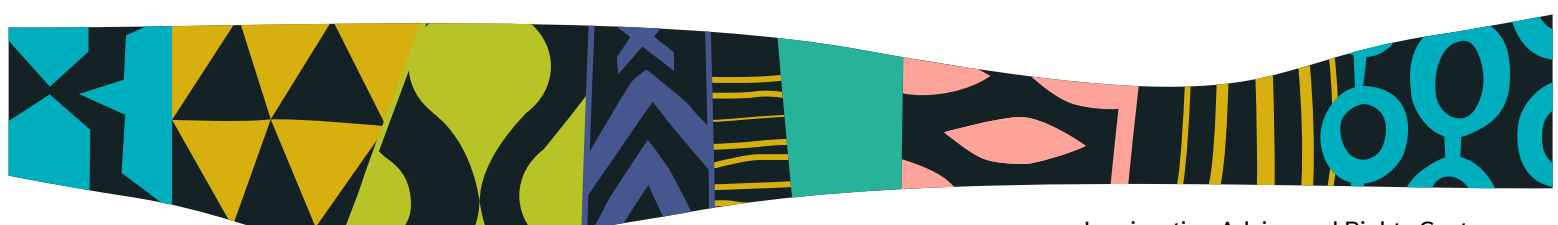
## When Immigration is not satisfied that family violence occurred

The Department of Immigration does not have to accept your non-judicial evidence as proof that you have experienced family violence. If they are not satisfied that the evidence provided adequately demonstrates that you experienced family violence they will refer your case for a further assessment by an 'independent expert'.

### What happens if my case is referred to an independent expert?

You will be notified if your claim of family violence is referred to an independent expert. All relevant information which you have provided to the Department of Immigration will be passed on to the independent expert to assist them in their assessment of your case. The Independent expert will then contact you to make arrangements for an interview.

The assessment of the independent expert about whether or not you have experienced family violence will be accepted by the Department of Immigration. If the independent expert determines that family violence has not occurred then your visa application will likely be refused. You should seek legal advice if an unfavourable assessment is made in your case.



## 2. Child of the relationship

If you are in Australia as the holder of a temporary Partner (subclass 309) visa or if you have already applied for a Partner (subclass 820/801) visa and your relationship with your sponsor has broken down you may still be eligible for a permanent visa if you and your sponsor have joint custody or joint access in relation to a child or if your sponsor has formal maintenance obligations towards your child.

You can usually satisfy this requirement by providing the Department of Immigration with your child's birth certificate which shows your name and your sponsor's name.

## 3. Sponsor has died

If your sponsor has died you may still be eligible for a permanent visa if one of the following circumstances applies to you:

### 1. If you have applied for an on-shore Partner (subclass 820/801) visa

You may continue to be eligible for the permanent partner visa if you can show that:

- you would have continued your spousal or de facto relationship with your sponsor had they not died; and
- you have developed close business, cultural or personal ties with Australia.

### 2. If you hold an offshore temporary Partner (subclass 309) visa

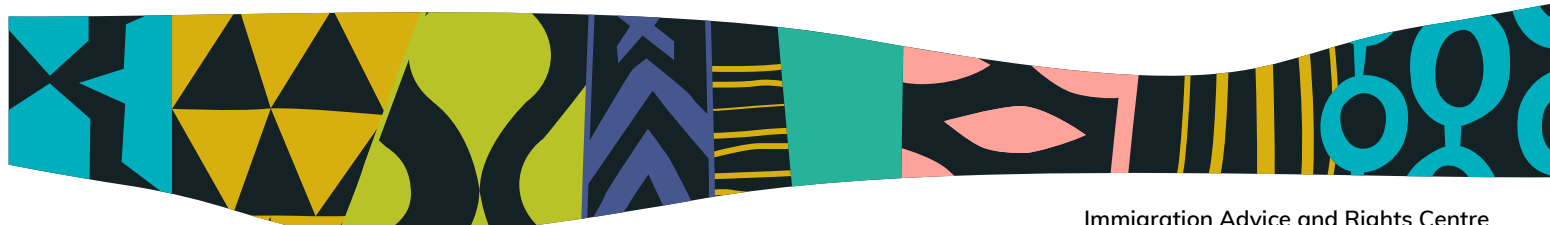
You may continue to be eligible for the permanent partner visa if you can show that:

- you would have continued your spousal or de facto relationship with your sponsor had they not died.

### 3. If you hold a Prospective Marriage (subclass 300) visa

You may continue to be eligible for the permanent partner visa if you can show that:

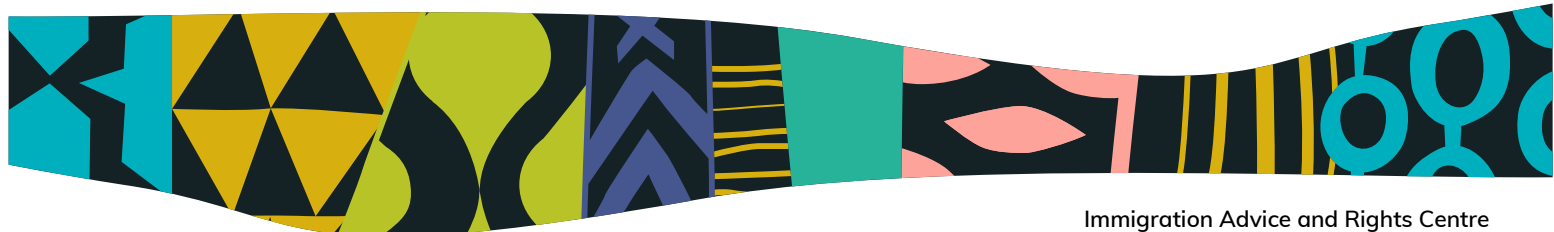
- you have married your sponsor prior to their death; and
- you would have continued your spousal or de facto relationship with your sponsor had they not died; and
- you have developed close business, cultural or personal ties with Australia.





## What happens if your application is refused

If your application is refused you may be able to seek review of that decision at the Administrative Appeals Tribunal. You should seek legal advice as soon as possible as very strict time limits apply.



## Annexure 1 (non-judicial evidence)

Type of Evidence	The evidence needs to include the following detail
<p><i>(you will need at least two different types of evidence from the categories below – for example one medical report and one letter from a women’s refuge – you cannot just have two medical reports)</i></p>	
<p>Medical report, hospital report, discharge summary or statutory declaration that is made by either a person who is:</p> <ul style="list-style-type: none"> <li>• registered as a medical practitioner and is performing the duties of a medical practitioner, or</li> <li>• registered as a nurse within the meaning of section 3 of the <i>Health Insurance Act 1973</i> and is performing the duties of a registered nurse.</li> </ul>	<ul style="list-style-type: none"> <li>• Identifies the alleged victim, and</li> <li>• Details the physical injuries or treatment for mental health that is consistent with the claimed family violence.</li> </ul>
<p>Either a report, record of assault, witness statement or statutory declaration that is made by:</p> <ul style="list-style-type: none"> <li>• a police officer of a State or Territory</li> <li>• a police officer of the Australian Federal Police</li> </ul> <p>OR</p> <p>A witness statement that is made by someone other than the alleged victim to a police officer during the course of a police investigation.</p>	<ul style="list-style-type: none"> <li>• Identifies the alleged victim, and</li> <li>• Identifies the alleged perpetrator, and</li> <li>• Details an incident/s of family violence.</li> </ul>
<p>Report or statutory declaration made by an officer of:</p> <ul style="list-style-type: none"> <li>• a child welfare authority, or</li> <li>• a child protection authority of a State or Territory.</li> </ul>	<ul style="list-style-type: none"> <li>• Details fears for the dependent child’s safety due to family violence within the household, and</li> <li>• Identifies the alleged perpetrator.</li> </ul>
<p>Letter or assessment report made by:</p> <ul style="list-style-type: none"> <li>• a women’s refuge, or</li> <li>• family/domestic violence crisis centre on the organisation’s letterhead.</li> </ul>	<ul style="list-style-type: none"> <li>• States that the alleged victim has made a claim of family violence, and</li> <li>• States whether the alleged victim was subject to family violence, and</li> <li>• Identifies the alleged perpetrator, and details any evidence used to form the opinion.</li> </ul>
<p>Statutory declaration made by:</p> <ul style="list-style-type: none"> <li>• a member of the Australian Association of Social Workers, or</li> <li>• a person who is eligible to be a member of that Association who has provided counselling or assistance to the alleged victim while performing the duties of a social worker.</li> </ul>	<ul style="list-style-type: none"> <li>• States in their opinion the alleged victim was subject to family violence, and</li> <li>• Details the reasons for the opinion, and</li> <li>• Identifies the alleged perpetrator.</li> </ul>
<p>Statutory declaration made by a registered psychologist in a State or Territory who has treated the alleged victim while performing the duties of a psychologist.</p>	<ul style="list-style-type: none"> <li>• States in their opinion the alleged victim was subject to family violence, and</li> <li>• Details the reasons for the opinion, and</li> <li>• Identifies the alleged perpetrator.</li> </ul>
<p>Statutory declaration made by a family consultant appointed under the <i>Family Law Act 1975</i> or a family relationship counsellor who works at a Family Relationship Centre listed on the Australian Government Family Relationships website.</p>	<ul style="list-style-type: none"> <li>• States that the alleged victim has been treated or counselled, by the family consultant or family relationship counsellor, and</li> <li>• States that in their opinion the alleged victim was subject to family violence, and</li> <li>• Details the reasons for the opinion, and</li> <li>• Identifies the alleged perpetrator.</li> </ul>
<p>Statutory declaration or a letter on the school’s letterhead made by a school counsellor or school principal in their professional capacity.</p>	<ul style="list-style-type: none"> <li>• States that they have made, or been made aware of, observations that are consistent with the alleged victim’s claims that they were subject to family violence, and</li> <li>• Identifies the alleged perpetrator, and</li> <li>• Provides details of those observations.</li> </ul>

