

# Temporary Visa Holders and the Family Violence Provisions in Australia

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This information sheet provides an overview of the family violence provisions in the [Migration Regulations 1994 \(Cth\)](#). These provisions create a pathway for people on certain visas to apply for permanent residency in Australia, based on their experiences of family violence from a spouse or de facto partner, where that relationship has ended.

Permanent residency means the right to live in Australia permanently without needing to reapply for a visa. Having a [temporary migration status](#) can exacerbate and compound experiences of family violence. Permanent residency can offer more stability, security, and generally better access to government-provided financial supports, education and employment compared to a temporary visa.

Related factsheets are available from:

- [Women's Legal Service Victoria](#)
- [Refugee and Immigration Legal Service](#)
- [Immigration Advice and Rights Centre](#)

Also see the related CEVAW information sheet on [family violence and humanitarian protection](#).

This information sheet is **not legal advice** and is intended for research, policy, or media information. For up-to-date information, visit the *Department of Home Affairs* [website](#). If you are based in Australia, legal advice may be available through your [local community legal centre](#).

## Background

Australia has a two-step partner visa process for applicants applying for permanent residency based on a spousal or de facto relationship with a sponsor who is an Australian citizen or permanent resident. If the applicant proves they are in a genuine and continuing relationship, they are first granted a [temporary partner visa](#) and, after two years, they can then apply for a [permanent partner visa](#).

In exceptional and discretionary circumstances, when an applicant and sponsor have been in a '[long-term partner relationship](#)', the applicant may be granted both the temporary and permanent partner visas at the same time.

The family violence provisions are set out in [Division 1.5](#) of the *Migration Regulations*. These provisions offer an alternative way to gain permanent residency if someone experiences family violence from their sponsor while applying for a partner visa. These provisions also cover people who are secondary applicants on certain skilled visas. If the secondary applicant experiences family violence from their spouse or de facto partner, who is the primary applicant on the relevant skilled visa, they may be eligible to access the family violence provisions.

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## Background (continued)

The [Australian Law Reform Commission](#) provides an overview of the history of these provisions, although the provisions have undergone significant reform since this 2011 report. These provisions recognise situations in the partner visa pathway (or the skilled visa pathway) where someone might stay in an abusive relationship with their sponsor due to fears that they will be removed from Australia if they leave the relationship before getting permanent residency.

The family violence provisions use the definition of '[relevant family violence](#)' set out in the *Migration Regulations*: actual conduct, or the threat of such conduct, that is directed at the victim-survivor, the victim-survivor's family or the perpetrator's family, or the property of any of those people. The conduct must cause the victim-survivor 'to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety'. [Conduct](#) includes physical, sexual, emotional, psychological, immigration-related, and financial forms of [violence](#).

## Eligibility Requirements

To access the family violence provisions, applicants must meet strict eligibility requirements, specifically:

- holding a certain visa
- experiencing family violence from the sponsor or primary applicant during their relationship (or having a family member who has experienced it), and
- the relationship must have ended.

The following temporary partner visa holders are eligible to apply, applicants who:

- have applied for or hold a temporary partner visa
- have applied for (and entered Australia since lodging) or hold a provisional partner visa
- have held or currently hold a prospective marriage visa, are in Australia, and (if their visa has ceased) have applied for an onshore partner visa, or
- have applied for a dependent child visa and are the dependent of an applicant under the family violence provisions.

Secondary applicants on [certain skilled visas](#) are also eligible. In these cases, a secondary applicant may be granted permanent residency if the relationship has ended and either:

- the primary applicant has been granted their visa, but the secondary applicant is no longer part of the family unit due to separation, or
- the primary applicant's visa is refused '[for reasons which include family violence related conduct](#)'.

These strict eligibility requirements provide [limited pathways to safety](#) for victim-survivors of family violence in Australia on other temporary visas, including student or visitor visas.

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## Evidentiary Requirements

The family violence provisions have strict evidence requirements.

First, the applicant must prove that their relationship ([de facto](#) or [spousal](#)) with the sponsor or primary applicant remained genuine and continuing before it ended, using evidence in four categories:

- financial aspects
- nature of the household
- social elements of the relationship
- the nature of the commitment of both the applicant and sponsor to each other.

This requirement can create a reliance on the perpetrator and enhance [women's experiences](#) of gendered inequality and harm. Experiences of family violence may also impact victim-survivors' ability to collect and present this evidence.

As a second requirement, that the decision-maker will consider only once the genuineness of the relationship is established, the applicant must provide [documentary evidence of family violence](#), either:

- court-based evidence obtained from a judge or magistrate, or
- non-judicially determined evidence (a joint undertaking made to a court by the victim and perpetrator in relevant proceedings, or a statutory declaration from the applicant accompanied by at least two statements, in appropriate format, from appropriately qualified third parties, that meet the legislative requirements of being different types of evidence. These requirements are outlined in [this legislative instrument](#)).

For non-judicially determined family violence claims, if the evidentiary requirements are met, but the decision-maker is not satisfied that family violence occurred, they will seek an expert opinion from an [Independent Expert](#). If the expert confirms that family violence took place, the decision-maker must accept this finding.

This flow chart provides a simplified overview of the application process:

