

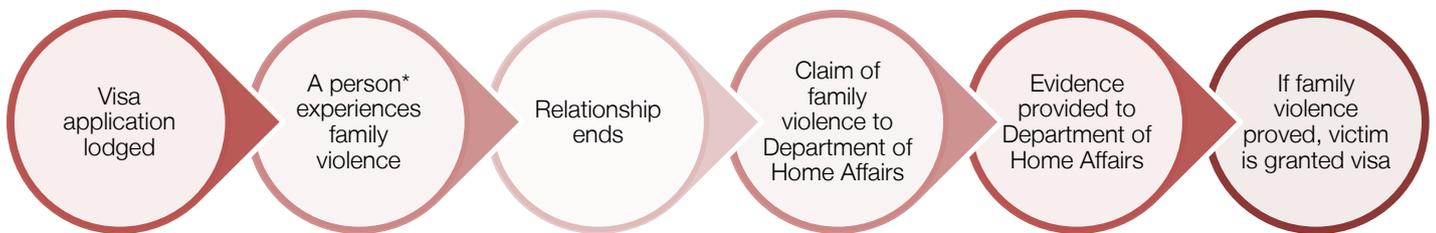
Family Violence & Immigration

This fact sheet provides information about the criteria for making claims of family violence under certain visa classes. This fact sheet applies to claims for family violence made on or after 24 November 2012, irrespective of the date(s) on which the violence occurred.

The Family Violence Provisions

The term 'Family Violence Provisions' refers to a Division of the *Migration Regulations 1994* (Cth) that allow certain persons, who have previously applied for a permanent visa, to make a claim with the Department of Home Affairs (the 'Department') to remain in Australia if they have been the subject of family violence.

How do the Family Violence Provisions operate?



The above diagram is a broad overview only. Further information regarding the process is contained below and applicants are encouraged to obtain legal advice about their personal circumstances if considering the Family Violence Provisions.

Who do the Provisions apply to?

The Family Violence Provisions may be relied upon by persons who have applied for a visa as either:

- (a) as the spouse or fiancé of an Australian citizen, Australian permanent resident, or eligible New Zealand citizen; or
- (b) the dependant (child, spouse or other family member) of another person, where that other person was the main applicant for a visa.

Which visas do the Provisions apply to?

The victim of family violence may be able to rely upon the Family Violence Provisions if the victim has *applied for* a visa application under one of the subclasses listed below:

- (a) Partner visa (subclass 100)
- (b) Partner visa (subclass 820)
- (c) Partner visa (subclass 801)
- (d) Dependent Child (in the Extended Eligibility visa class) (subclass 445)
- (e) Distinguished Talent (subclass 858)

This means the victim will be on another visa at the time the family violence occurred (e.g. a bridging visa, partner visa (subclass 309)). Please seek legal advice if you are unsure about your eligibility for a claim under the Family Violence Provisions.

Family Violence

What is 'relevant family violence'?

The definition of family violence within migration law means '*conduct, whether actual or threatened...that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety.*'

This conduct can be towards:

- (a) the alleged victim;
- (b) a member of the family unit of the alleged victim;
- (c) a member of the family unit of the alleged perpetrator;
- (d) the property of the alleged victim;
- (e) the property of a member of the family unit of the alleged victim; or
- (f) the property of a member of the family unit of the alleged perpetrator.

The above definition means that the person who was the actual victim of family violence may not necessarily be the visa applicant. However, the visa applicant will be the 'alleged victim' for the purposes of the Family Violence Provisions. For example, the actual victim may have been the child of the sponsoring father but the 'alleged victim' will be the visa applicant mother. The visa applicant mother will be the person who must satisfy the evidentiary criteria for the Family Violence Provisions. For this reason, the mother is termed the 'alleged victim'.

When is a person taken to have suffered family violence?

The family violence, or part of the family violence, *must* have occurred whilst the relationship existed. If the family violence occurred *after* the relationship ended, and no family violence occurred during the relationship, a claim under the Family Violence Provisions will fail.

The relationship must have ended in order to make a claim of family violence under the Family Violence Provisions.

Evidence of family violence

The alleged victim *must* provide documentary evidence of the family violence. This evidence falls into two categories:

Option 1: Evidence obtained from a judge or magistrate in a Court ('judicially determined'); or

Option 2: Evidence obtained from a source other than from a judge or magistrate in a Court ('non-judicially determined').

Option 1: Judicially-determined evidence

Option 1(a): Injunction under *Family Law Act 1975*

Where the alleged victim has made an application to a Court and been granted an injunction under sections 114(1)(a), (b), or (c) of the *Family Law Act 1975* (Cth) against the alleged perpetrator, this injunction may be used as evidence of family violence.

The violence that led to the granting of the injunction must have occurred whilst the relationship existed.

Option 1(b): Domestic Violence Order

Where the alleged victim is a protected person on a *finalised* Domestic Violence Order, this evidence can be used in support of a claim under the Family Violence Provisions, provided that the perpetrator was given the opportunity to be heard in respect of the Domestic Violence Order.

A Domestic Violence Order refers to an application made to the Court requesting that formal orders be made to protect the alleged victim from future violence or threats to safety.

A Domestic Violence Order may also be referred to as an 'Apprehended Domestic Violence Order' (NSW), an 'Intervention Order' (South Australia), a 'Family Violence Order' (Tasmania), a 'Family Violence Intervention Order' (Victoria), or a 'Violence Restraining Order' (Western Australia).

A Domestic Violence Order obtained interstate is recognised and enforceable across Australia.

Where an *interim* apprehended violence order has been issued, this cannot be relied upon for a claim under the Family Violence Provisions. However, the Department may accept this document as evidence that the matter is still on-going. This may result in the grant of additional time for the alleged victim to gather the required evidence.

The violence that led to the granting of the Domestic Violence Order must have occurred whilst the relationship existed. In some cases, the Department may also request the police statement of facts that was provided in support of the Domestic Violence Order to establish the genuineness of the relationship and whether or not it existed at the time the violence occurred.

Option 1(c): Criminal Conviction

If the alleged perpetrator has been convicted of an offence of violence against the alleged victim, or a finding of guilt has been recorded against the alleged perpetrator in respect of an offence of violence against the alleged victim, this may be used to support a claim under the Family Violence Provisions.

The violence that led to the conviction or recording of a finding of guilt must have occurred while the relationship existed.

Option 2: Non-judicially determined evidence

Option 2(a): Joint Undertaking

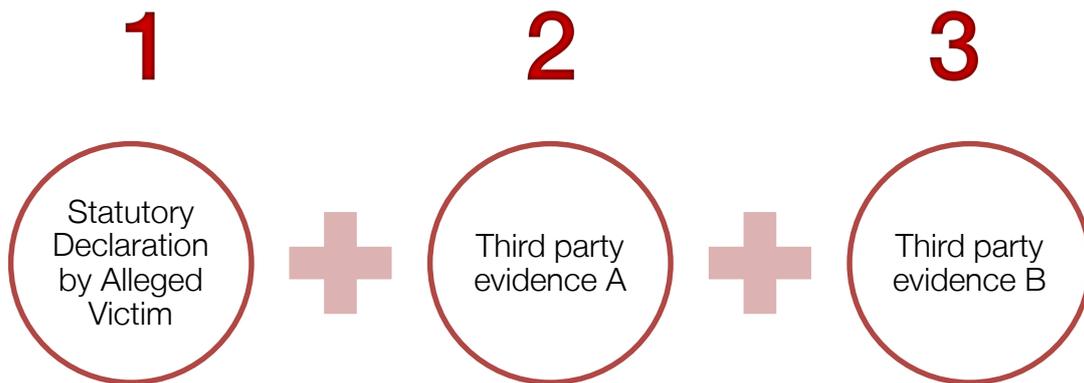
Where the alleged perpetrator and the alleged victim have made a joint undertaking to a Court in relation to proceedings where an allegation is before the Court that the alleged perpetrator has committed an act of violence against the alleged victim, this undertaking may be used in support of a claim for family violence.

The joint undertaking must be signed by both parties and the alleged act of violence must have occurred whilst the relationship existed.

Option 2(b): Third Party Evidence

If the alleged victim cannot satisfy any of the evidentiary requirements outlined above, three different pieces of evidence can be submitted to satisfy the requirements.

The act(s) of violence that are referred to in this evidence must have occurred whilst the relationship existed.



Statutory Declaration by Alleged Victim

The alleged victim must prepare a Commonwealth statutory declaration ('Form 1410') containing all of the following information:

- (a) the allegation of family violence;
- (b) the name of the person alleged to have committed the relevant family violence;
- (c) the evidence relied upon in making the allegation; and
- (d) if the conduct of the person alleged to have committed the relevant family violence was not towards the alleged victim the statutory declaration must also:
 - i. name the person whom the conduct of the alleged perpetrator was towards; and
 - ii. identify the relationship between the maker of the statutory declaration and the actual victim.

For example, the sponsoring father has not been violent towards the applicant mother, but has instead been violent towards a child of the applicant mother.

Third Party Evidence

Two additional pieces of third party evidence must be provided with the alleged victim's statutory declaration. The alleged victim may provide more than two additional pieces of third party evidence, but not more than one of each type of evidence. The table below identifies the types of evidence that can be provided, the information that must be contained in each piece of evidence, and any supporting documentation required.

Each piece of third party evidence must come from a different category from the table below.

Medical	
<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"> · registered as a medical practitioner and is performing the duties of a medical practitioner, or · 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. 	
<p>Must include the following information:</p> <ul style="list-style-type: none"> · Identifies the alleged victim, and · Details the physical injuries or treatment for mental health that is consistent with the claimed family violence. 	<p>Must attach the following documentation:</p> <ul style="list-style-type: none"> · Evidence of registration as a medical practitioner or nurse. · Evidence that the person is currently performing the duties of a medical practitioner or registered nurse, e.g. letter of reference.
Police	
<p>Either a report, record of assault, witness statement or statutory declaration that is made by:</p> <ul style="list-style-type: none"> · a police officer of a State or Territory · a police officer of the Australian Federal Police <p>OR</p> <ul style="list-style-type: none"> · 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>Must include the following information:</p> <ul style="list-style-type: none"> · Identifies the alleged victim, and · Identifies the alleged perpetrator, and · Details an incident/s of family violence. 	<p>Must attach the following documentation:</p> <ul style="list-style-type: none"> · If the documents are attested or issued by the police no additional documentation should be required.

Child Protection	
Report or statutory declaration made by an officer of: <ul style="list-style-type: none"> · a child welfare authority, or · a child protection authority of a State or Territory. 	
Must include the following information: <ul style="list-style-type: none"> · Details fears for the dependent child's safety due to family violence within the household, and · Identifies the alleged perpetrator. 	Must attach the following documentation: <ul style="list-style-type: none"> · If the documents are attested or issued by the child protection authority no additional documentation should be required.
Women's Refuge/Domestic Violence Crisis Centre	
Letter or assessment report made by: <ul style="list-style-type: none"> · a women's refuge, or · family/domestic violence crisis centre <p>on the organisation's letterhead.</p>	
Must include the following information: <ul style="list-style-type: none"> · States that the alleged victim has made a claim of family violence, and · States whether the alleged victim was subject to family violence, and · Identifies the alleged perpetrator, and details any evidence used to form the opinion. 	Must attach the following documentation: <ul style="list-style-type: none"> · If the documents are attested or issued by the child protection authority no additional documentation should be required.
Social Worker	
Statutory declaration made by: <ul style="list-style-type: none"> · a member of the Australian Association of Social Workers, or · a person who is eligible to be a member of that Association <p>who has provided counselling or assistance to the alleged victim while performing the duties of a social worker.</p>	
Must include the following information: <ul style="list-style-type: none"> · States in their opinion the alleged victim was subject to family violence · Details the reasons for the opinion · Identify the alleged perpetrator. 	Must attach the following documentation: <ul style="list-style-type: none"> · Evidence of membership of the Australian Association of Social Workers or eligibility for membership (e.g. qualifications). · Evidence that the person is currently performing the duties of a social worker, e.g. letter of reference.

Psychologist	
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>Must include the following information:</p> <ul style="list-style-type: none"> States in their opinion the alleged victim was subject to family violence Details the reasons for the opinion Identify the alleged perpetrator 	<p>Must attach the following documentation:</p> <ul style="list-style-type: none"> Evidence of registration as a psychologist Evidence that the person is currently performing the duties of a psychologist, e.g. letter of reference.
Family Consultant	
Statutory declaration made by a family consultant appointed under the Family Law Act 1975 or a family relationship counsellor who works at a Family Relationship Centre listed on the Australian Government Family Relationships website.	
<p>Must include the following information:</p> <ul style="list-style-type: none"> States that the alleged victim has been treated or counselled, by the family consultant or family relationship counsellor, and States that in their opinion the alleged victim was subject to family violence, and Details the reasons for the opinion, and Identifies the alleged perpetrator. 	<p>Must attach the following documentation:</p> <ul style="list-style-type: none"> Evidence that the person is currently performing the duties of a Family Consultant or family relationship counsellor, e.g. letter of reference.
School	
Statutory declaration or a letter on the school's letterhead made by a school counsellor or school principal in their professional capacity.	
<p>Must include the following information:</p> <ul style="list-style-type: none"> 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 Identifies the alleged perpetrator, and Provides details of those observations. 	<p>Must attach the following documentation:</p> <ul style="list-style-type: none"> If the letter is on school letterhead no additional documentation should be required.

Independent Expert

In circumstances where the alleged victim has provided evidence in support of non-judicially determined claims for family violence (Option E above), and the Department is not satisfied that the evidence proves that the alleged victim feared for their wellbeing or safety, the Department may refer the matter to an Independent Expert for consideration.

Currently, the Independent Expert is Centrelink. At the time that Centrelink receives the referral they are provided with all of the evidence relating to the claim for family violence. They undertake their own assessment of whether or not family violence has been proved, which may involve interviewing the alleged victim.

The information contained in this Fact Sheet is general guidance only, and its accuracy is not guaranteed by Salvos Legal/Salvos Legal Humanitarian. Legal advice should be obtained regarding individual circumstances.

The determination made by Centrelink is then binding on the Department of Home Affairs.

Other Factors

At the time that the family violence occurred, the Department must be satisfied that the couple was in a 'genuine and continuing relationship'. In circumstances where the Department is not satisfied that the relationship was genuine and continuing they may request additional evidence from the alleged victim to prove the genuineness of the relationship.

Contacting the Department of Home Affairs

If your relationship has ended due to family violence, it is highly recommended that you seek independent legal advice.

You may also wish to seek further information from the Department of Home Affairs through their website (www.homeaffairs.gov.au) or by calling 131 881.

Alternatively, you may wish to visit the Department locations in person, with some key locations below:

New South Wales

Ground Floor	9 Wentworth Street
26 Lee Street	PARRAMATTA NSW 2150
SYDNEY NSW 2000	

Queensland

Ground Floor	Level 2, GHD Building
299 Adelaide Street	85 Spence Street
BRISBANE QLD 4000	CAIRNS QLD 4870

Victoria

2 Lonsdale Street
MELBOURNE VIC 3000

Further locations listed on the Department of Home Affairs website:

www.homeaffairs.gov.au/about/contact/offices-locations/australia