



BREAKDOWN OF RELATIONSHIP Partner visas (subclass 820/801, 309/100 and 300)

Reflects Australian immigration law as at 5 April 2023.

The Immigration Advice and Rights Centre (IARC) is an independent, not for profit, specialist community legal centre. We help people experiencing vulnerability navigate Australian migration and citizenship law. Our solicitors provide free legal services to financially disadvantaged people in New South Wales, remote areas and immigration detention.

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 partner visa if one of 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 you have not applied for a partner visa and you are on a temporary visa, you may need to see if you are eligible to apply for another visa to permit you to remain in Australia.

You should seek legal advice as soon as possible if your relationship has broken down.





How do I advise the Department of Home Affairs about the breakdown of my relationship?

If you have applied for a partner visa and your relationship with your partner has ended, you have an obligation to inform the Department of Home Affairs (“Department”) about the change in your circumstances. It is also important to advise the Department of your new address and contact details.

There are several 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 via your ImmiAccount; or
- by using the Department’s “Change in your situation” online contact form.

If you do not advise the Department of the change in your circumstances your partner visa application may be refused or later considered for cancellation.

1. The Family Violence Provisions

The ‘Family Violence Provisions’ of the *Migration Regulations* are intended to ensure that partner visa applicants do not feel compelled to remain in an abusive relationship to maintain their residence in Australia.

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you might still be able to continue with your application for a permanent partner visa even if your sponsor has withdrawn their support for your visa application.

Who do the family violence provisions apply to?

The Family Violence Provisions apply to you if:

- You have applied for a Partner (subclass 820/801) visa;
- You are in Australia as the holder of Partner (subclass 309) visa;
- You hold a Prospective Marriage (subclass 300) visa and have married your sponsor;
- You are in Australia, have applied for a Partner (subclass 309/100) offshore and certain COVID-19 concessions apply to you.

There are some differences as to 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 well-being or safety.

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

- 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
- damaging property (such as breaking your phone or other belongings)

For the purpose of the *Migration Regulations*, the family violence must be perpetrated by the visa sponsor.

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 have applied for a Partner (subclass 309/100) visa that has not been granted and certain COVID concessions apply, it can be:
 - you; or
 - your child or your sponsor’s child (depending on their age and circumstances).
- 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, it can be:
 - you; or
 - your child or your sponsor’s child (depending on their age and circumstances).



Can I reply on 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.” There is no legal requirement to have stopped living together. There are various other circumstances that may indicate that the spouse or de facto relationship has ended, which may include: withdrawal of sponsorship, notifying others that the relationship has ended; separating financial affairs, etc.

When must the family violence have occurred?

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

Generally, 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 (unless certain COVID concession apply).

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

First, you will need to advise the Department 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 might still require you to provide further evidence that your relationship was genuine and continuing before the relationship ended. Once the Department is satisfied that your relationship was genuine, they will 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 before it ended, they can refuse your application without assessing your claim of family violence.

How do I show the Department of Home Affairs 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.



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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., a Final 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 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 will then decide whether they are satisfied that you have experienced family violence. They are not required to accept the evidence.

How to prepare my statutory declaration (Form 1410)?

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

To satisfy the non-judicial evidence requirements, you must also provide at **least two items** of acceptable evidence from **two different types of professionals or organisations** from the non-judicial evidence list (see **Annexure 1**). For example, it is not acceptable to have only two medical reports, but it is possible to have a medical report and a letter from a family violence support service.

Different categories of non-judicial evidence will need to satisfy different requirements in relation to form and content. 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 Home Affairs is satisfied that family violence occurred

If the Department is satisfied that your relationship with your sponsor was before it ended and there was family violence, you will be granted a permanent visa (if 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 the Department of Home Affairs is not satisfied that family violence occurred

The Department is not required 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 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 Department must accept the independent expert's opinion on whether you have experienced family violence. If the independent expert determines that family violence has not occurred, then your visa application will likely be refused. You should seek legal advice as soon as possible if the independent expert has made an unfavourable assessment is made in your case.

2. Child of the relationship

If your relationship with your sponsor has broken down, you might still be eligible for a permanent partner 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. This applies in the following circumstances:

- If you are in Australia as the holder of a Temporary Partner (subclass 309) visa;
- applied for a Partner (subclass 309/100) and certain COVID concession apply; or
- if you have already applied for a Partner (subclass 820/801) visa

You can usually satisfy this requirement by providing the Department 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:

If you have applied for an onshore 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.

If you hold an offshore Temporary Partner (subclass 309) visa or have applied for a Partner (subclass 309/100) and certain COVID concessions apply

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.

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 are the COVID concessions?

Certain changes were made by the Australian Government to ensure that people who were in Australia during the COVID pandemic and had applied for a Partner (subclass 309) that had not yet been decided could rely on the family violence provisions.

These changes require people to:

- be in Australia when they rely on the family violence provisions;
- to have lodged a Partner (subclass 309/100) before the concession period ends (there is currently no end date); and
- be granted the Partner (subclass 309) after 26 February 2021.

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 strict time limits apply.



Annexure 1 (non-judicial evidence)

Type of evidence	Items of evidence	Information that must be included
<p>Medical</p>	<p>Any of the following made by a medical practitioner, registered nurse or midwife who is acting in their professional capacity:</p> <ul style="list-style-type: none"> (a) medical report; (b) hospital report; (c) discharge summary; (d) letter; (e) statutory declaration. 	<p>The item of evidence must:</p> <ul style="list-style-type: none"> (a) identify the alleged victim; and (b) detail the injuries or treatment of the alleged victim that may be consistent with family violence.
<p>Police</p> <p><i>(either a member or special member of the Australian Federal Police or a member of a police force of a State or Territory.)</i></p>	<p>Any of the following made by a police officer who is acting in their professional capacity:</p> <ul style="list-style-type: none"> (a) report; (b) record of assault or family violence; (c) risk assessment; (d) witness statement; (e) statutory declaration. <p>A witness statement made by a person, other than the alleged victim, to a police officer during the course of a police investigation.</p>	<p>The item of evidence must:</p> <ul style="list-style-type: none"> (a) identify the alleged victim; and (b) identify the alleged perpetrator or provide information from which the identity of the alleged perpetrator can reasonably be inferred; and (c) detail the incident(s) of family violence.
<p>Child welfare officer</p> <p><i>(an officer of a child welfare authority or a child protection authority of a State or Territory.)</i></p>	<p>Any of the following made by a child welfare officer who is acting in their professional capacity:</p> <ul style="list-style-type: none"> (a) report; (b) letter; (c) statutory declaration. 	<p>The item of evidence must:</p> <ul style="list-style-type: none"> (a) detail fears for the dependent child's safety due to family violence within the household; and (b) identify the alleged perpetrator or provide information from which the identity of the alleged perpetrator can reasonably be inferred.
<p>Family violence support service provider</p> <p><i>(women's refuge, or domestic and family violence crisis centre, or a community, multicultural or other crisis support service providing domestic and family violence assistance or support to the alleged victim.)</i></p>	<p>Any of the following made by a family violence support service provider who is acting in their professional capacity:</p> <ul style="list-style-type: none"> (a) report; (b) letter; (c) risk assessment; (d) statutory declaration. 	<p>The item of evidence must:</p> <ul style="list-style-type: none"> (a) state that the alleged victim has made a claim of family violence; and (b) state in their professional opinion whether the claims of the alleged victim are consistent with them having been subject to family violence; and (c) identify the alleged perpetrator or provide information from which the identity of the alleged perpetrator can reasonably be inferred.



<p>Social worker <i>(a member of the Australian Association of Social Workers, or a person who is eligible to be a member of that Association, and who has provided counselling or assistance to the alleged victim while performing the duties of a social worker.)</i></p>	<p>Any of the following made by a social worker who is acting in their professional capacity: (a) report; (b) letter; (c) statutory declaration.</p>	<p>The item of evidence must: (a) state that the alleged victim has made a claim of family violence; and (b) state in their professional opinion whether the claims of the alleged victim are consistent with them having been subject to family violence; and (c) identify the alleged perpetrator or provide information from which the identity of the alleged perpetrator can reasonably be inferred.</p>
<p>Psychologist <i>(a person registered under the Health Practitioner Regulation National Law Act 2009, as enacted and in force in each State and Territory, to practice in the psychology profession.)</i></p>	<p>Any of the following made by a psychologist who is acting in their professional capacity: (a) report; (b) letter; (c) statutory declaration.</p>	<p>The item of evidence must: (a) state that the alleged victim has made a claim of family violence; and (b) state in their professional opinion whether the claims of the alleged victim are consistent with them having been subject to family violence; and (c) identify the alleged perpetrator or provide information from which the identity of the alleged perpetrator can reasonably be inferred.</p>
<p>Family consultant / family relationship counsellor <i>(Family consultant has the meaning provided in section 11B of the Family Law Act 1975. Family relationship counsellor means a counsellor who provides services at a family relationship centre.)</i></p>	<p>Any of the following made by a family consultant or a family relationship counsellor who is acting in their professional capacity: (a) report; (b) letter; (c) statutory declaration.</p>	<p>The item of evidence must: (a) state that the alleged victim has been treated or counselled by the family consultant or family relationship counsellor; and (b) state in their professional opinion whether the claims of the alleged victim are consistent with them having been subject to family violence; and (c) identify the alleged perpetrator or provide information from which the identity of the alleged perpetrator can reasonably be inferred.</p>
<p>Education professional <i>(school counsellor, school principal or teacher who has taught or counselled the alleged victim.)</i></p>	<p>Any of the following made by an education professional who is acting in their professional capacity: (a) report; (b) letter; (c) statutory declaration.</p>	<p>The item of evidence must: (a) state that they have made, or been made aware of, observations that are consistent with the alleged victim's claims of being subject to family violence; and (b) provide details of those observations; and (c) identify the alleged perpetrator or provide information from which the identity of the perpetrator can reasonably be inferred.</p>

Note: All items of evidence must be in writing in English on the professionals/organisation's letterhead (unless providing a statutory declaration) and include the provider's: (a) full name; (b) occupation; (c) signature; (d) date; (e) address (professional or personal); and (f) contact phone number.

