

### **Background information about Partner visas**

- Prospective Marriage (Subclass 300) visa – 9 month visa granted to a fiancé of an Australian sponsor who is overseas. Enables the fiancé to travel to Australia, marry their Australian partner and apply for a Partner visa.
- Temporary Partner (Subclass 309/820) visa – two year visa granted to a de facto (including same sex de facto) or married partner of an Australian sponsor.
- Permanent Partner (Subclass 100/801) visa – permanent visa granted to temporary Partner visa holders if their relationship is ongoing after two years.

Dependent children are usually included as secondary applicants on their parent's visa application and have the same visa subclass as their parent. If they were added after the parent's temporary visa was granted, they may hold a temporary Dependent Child (Subclass 445) visa.



Usually when a relationship ends a temporary Partner visa holder and their dependent children's visas will be cancelled.

### **What are the family violence provisions (FVPs)?**

Provisions in Australian migration law enable some applicants for permanent Partner visas (and their dependent children) to continue with the application even though their relationship with their Australian partner has ended.

Policy purpose: ensure visa applicants are not compelled to stay in an abusive relationship in order to remain in Australia.

FVPs apply to the following visa-holders/dependents:

- **Prospective Marriage** (but only if after entry into Australia the applicant and sponsor have married);
- **Temporary Partner** (but only if the violence occurs in Australia, including after lodgement but before grant of temporary Partner visa);
- partners of certain skilled visa applicants.

***‘relevant family violence’ means***

conduct (including a threat of conduct) against:

- the alleged victim; or
- a member of the family unit of the alleged victim or alleged perpetrator; or
- the property of any of the above

which causes the alleged victim to reasonably fear for, or be reasonably apprehensive about, his or her wellbeing or safety.

**What is ‘relevant family violence’?**

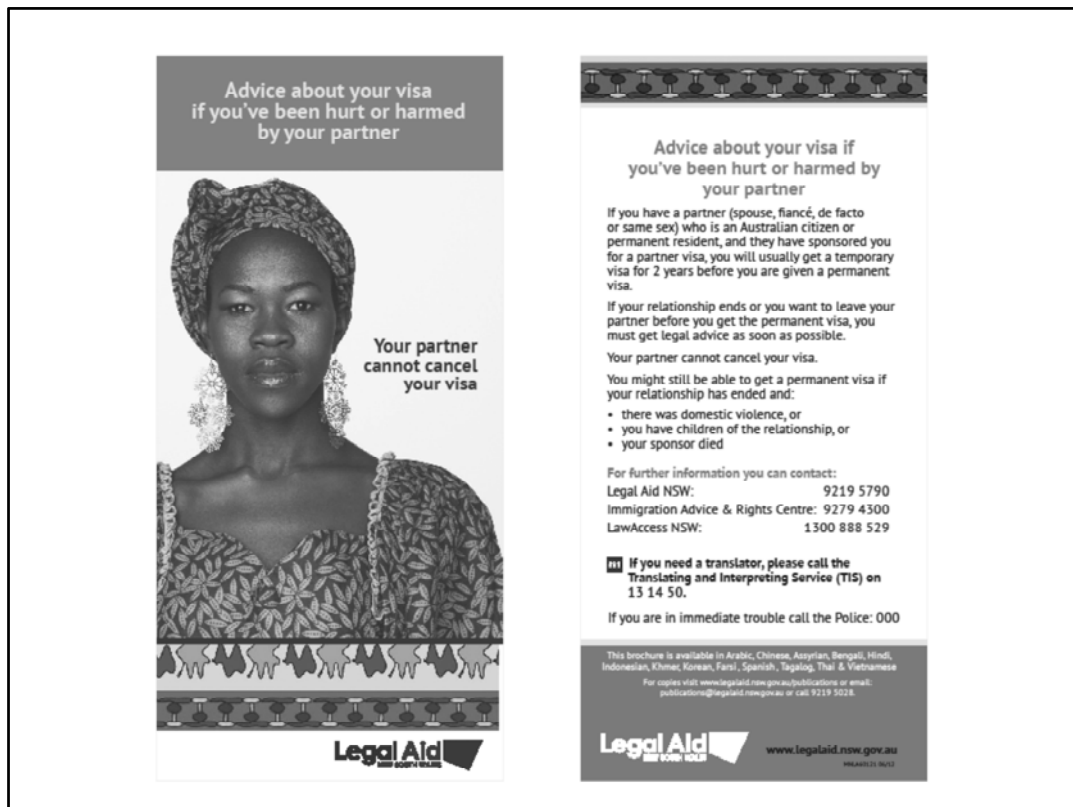
*‘relevant family violence’ means conduct, whether actual or threatened, towards:*

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

*that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety:* Migration Regulations 1994, reg. 1.21.

The definition focus’ on the adult primary visa applicant (the ‘alleged victim’) but includes violence against their children and against their partner’s (the visa sponsor’s) children.

Violence is not limited to physical harm – it includes other forms of abuse such as psychological and financial abuse.



## What happens when a relationship breaks down?

Refer the visa applicant for advice ASAP (only registered migration agent's or equivalent can give immigration advice).

The visa applicant is required to advise DIAC of the change in circumstances (relationship breakdown).

They should also update their contact details with DIAC.

They will be given 28 days to say why their visa should not be refused/cancelled. There are three relevant reasons:

- the sponsoring partner died;
- there is a child or children of the relationship;
- there was family violence.

After stating that family violence has occurred, the visa applicant will be given time to provide 'acceptable evidence'.



The evidentiary requirements for proving family violence changed on 24 November 2012.

There are two ways to prove family violence:

1. Judicial evidence, e.g. conviction for assault, confirmed AVO, consent orders. This has not changed.
2. Non-judicial evidence:
  - Statutory declaration made by the applicant (Form 1410); AND
  - Two pieces of 'acceptable evidence' from two different types of professional people (see Schedule 1 hand out).

If the technicalities are not met, the application may be refused.

## Schedule 1

Type of Evidence	includes the following detail
<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</li> </ul> <p>on the organisation's letterhead.</p>	<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</li> </ul> <p>who has provided counselling or assistance to the alleged victim while performing the duties of a social worker.</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 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>

# Issues

- Genuine spouse relationship?
- When did the violence occur?
- Referral to an independent expert

To rely on the family violence provisions:

- the relationship must have been a genuine spouse relationship when it ended; and
- the violence (or part of the violence) must have occurred during the partner relationship.

If DIAC is **not satisfied** with the evidence of family violence, they must refer the application to an 'independent expert' (Centrelink social worker) for an opinion on whether relevant family violence has occurred. The opinion of the independent expert is binding.

In our experience, there are sometimes problems with the independent expert failing to apply the correct legal definition of 'relevant family violence'.

# Decision and appeals

- Department of Immigration and Citizenship (DIAC) decision
- Merits review of DIAC decision – Migration Review Tribunal (MRT)
- Judicial review of MRT decision – Federal Magistrates Court

## DIAC decision

- If satisfied with the evidence provided, DIAC can grant a permanent Partner visa (permanent residence).
- If not satisfied, DIAC will refuse the visa application and give reasons for their refusal.
- Applicants who have had an application refused by DIAC need **urgent legal advice**.

## MRT

Applicants can seek review of DIAC refusal by the MRT:

- 21 days to lodge application for review – MRT has **no power** to accept applications lodged out of time.
- Merits review: applicant can provide new evidence; MRT 'stands in the shoes of the original decision maker' and has all the same powers as the DIAC decision maker, including referral to an independent expert.
- Applicants who have been refused by the MRT need legal advice.

## Federal Magistrates Court

Applicant MAY be able to appeal the MRT refusal to the FMC, but only on very limited points of law (judicial review).



# Child of the relationship



## **Remember: Is there a child or children of the relationship?**

The child/children will be an Australian citizen (or be eligible for Australian citizenship) and will not be included in the visa application.

Where:

- the relationship has ended; and
  - there is a child or children *of the relationship*; and
  - the visa applicant has obligations relating to the child/children;
- the visa applicant (and dependent non-citizen children) are entitled to permanent residence.

DIAC will accept the following evidence:

- birth certificate naming both parents; AND
- statutory declaration from the visa applicant stating that they have ongoing responsibilities for the child/children; OR
- court order or other formal agreement between the parents; OR
- evidence of a Child Support Agreement registered/administered by the Child Support Agency.

This may be easier to show than family violence.

## Free immigration advice

Legal Aid NSW lawyers can give you advice about:

- family visas
- refugee and humanitarian visas
- visitor visas
- visas for New Zealand citizens
- family violence and Partner visas
- Bridging visas
- visa cancellations
- if you don't have a visa
- review of Department of Immigration decisions
- Australian citizenship

We **cannot** give you advice about:

- student visas
- employment, business or skilled visas
- migration to countries other than Australia

**Time:** by appointment 2 – 5pm  
**Day:** Every Thursday  
**Location:** Bankstown Legal Aid Office  
 Level 8, Civic Tower,  
 66-72 Rickard Road, Bankstown

FREE

To make an appointment call  
9707 4555

**Legal Aid**  
NEW SOUTH WALES

**Legal Aid** NEW SOUTH WALES    **Application for legal aid**

Use this form to apply for legal aid in New South Wales or contact a legal aid or private solicitor to complete an online application on your behalf.

For help to fill out this form

- call LawAccess NSW on 1300 688 629 or 1300 688 629 TTY or
- make an appointment for advice at a Legal Aid NSW office (listed on the back of this form).

If you need an interpreter, call the Translating and Interpreting Service (TIS) on 13 14 60. They can arrange an interpreter to call LawAccess NSW or Legal Aid NSW.

Available:  
**Arabic:** 13 14 60 (TIS) or 1300 688 629 (LawAccess NSW) - Arabic speaking staff available  
**Chinese:** 13 14 60 (TIS) or 1300 688 629 (LawAccess NSW) - Chinese speaking staff available  
**Farsi:** 13 14 60 (TIS) or 1300 688 629 (LawAccess NSW) - Farsi speaking staff available  
**Korean:** 13 14 60 (TIS) or 1300 688 629 (LawAccess NSW) - Korean speaking staff available  
**Vietnamese:** 13 14 60 (TIS) or 1300 688 629 (LawAccess NSW) - Vietnamese speaking staff available

**Checklist**

- Tell us whether your matter is
 

☐ Criminal

☐ Civil

☐ Family

☐ Don't know
- Answer all the questions and sign the
 

☐ Centrelink consent on page 3 (if applicable) and

☐ applicant's declaration on page 10.
- Attach copies of the following documents for you and any financially associated person
 

☐ statements for the last three months for all accounts from your financial institution

☐ any other documents that will assist your application (e.g. court documents, medical reports)
- Attach the following documents for you and any financially associated person if you are
 

**Unemployed**  
☐ an Income Statement from Centrelink or Department of Veterans' Affairs

**Employed**  
☐ your last three pay slips or a letter from your employer showing your weekly income and tax paid

**Self-employed**  
☐ a copy of your last tax return and the financial statements of your business.

## Legal Aid NSW services:

- Advice to anyone;
- Representation at initial application (DIAC) stage or MRT review stage for people who are financially disadvantaged;
- In limited circumstances, may represent in judicial review proceedings.

## Where to get advice?

### Legal Aid NSW

Bankstown: 9707 4555

Fairfield: 9727 3777

Sydney: 9219 5000

Penrith: 4732 3077

Liverpool MRC: 9601 1200

### Anti-Slavery

Australia:

9514 9827

### Immigration Advice & Rights

Centre (IARC): 92623822

### Registered migration agents

[www.mara.gov.au](http://www.mara.gov.au)