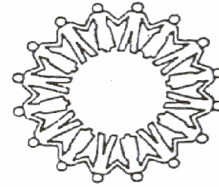


# RAILS INFORMATION SHEET



*This information sheet is not a substitute for legal advice. If you have questions about a specific case you should seek assistance from RAILS or another registered migration agent  
Information current at 20 October 2005*

## THE DOMESTIC VIOLENCE PROVISIONS

The domestic violence provisions were introduced to enable victims of domestic violence on temporary visas to leave abusive relationships without losing their entitlements to a permanent visa, thereby avoiding the risk of these visa holders remaining in dangerous relationships for the sake of their immigration status.

To obtain a permanent visa under the domestic violence provisions the applicant needs to prove:

- the **relationship** with the sponsoring partner has **ceased**;
- there has been **domestic violence**; and
- there was a **genuine and continuing relationship** with the sponsoring partner up until the time of separation.

Other requirements of the visa, including health and character requirements, must also be met.

### ELIGIBILITY – Who Can Access the DV Provisions?

#### **Family Stream:**

The domestic violence provisions can be used by the following people who have experienced domestic violence from their sponsoring partner against themselves or a dependent child or member of the family unit (depending on the visa type):

- ❖ Applicants who have been granted:
  - a prospective marriage (“fiancé”) visa (subclass 300) where the visa holder and sponsor have married (even where the applicant no longer holds the subclass 300 visa), whether or not a spouse visa application has been lodged;
  - a provisional spouse (subclass 820) or temporary spouse (subclass 309) visa and are in Australia (whether they applied onshore (820) or offshore (309) in Australia);
  - a provisional interdependency visa (subclass 826 or 310) and are in Australia (whether they applied onshore (826) or offshore (310));
- ❖ Applicants who have made an application onshore for a temporary spouse (subclass 820) or interdependency visa (subclass 826) and whose visa has not been granted.

Where these applicants have separated from their partner and provide evidence required by the Migration Regulations that they (or a dependant child or member of the family unit depending on the visa) have experienced domestic violence from their sponsoring partner, they can still be considered for permanent residence despite the end of the relationship.

### **Skilled Stream:**

The domestic violence provisions can also be used by spouses of the main applicants for the following permanent skilled or business visas where the spouse (or a dependent child of the spouse or main applicant or member of the family unit of the spouse who made a combined application) has experienced domestic violence from the main applicant:

- ❖ Employer Nomination Scheme visas (856);
- ❖ Regional Sponsored Migration Scheme visas (857);
- ❖ Labour Agreement visas (855);
- ❖ Established Business in Australia visas (845);
- ❖ State/Territory sponsored regional Established Business in Australia visas (846);
- ❖ Distinguished Talent Visas (subclass 858).

Where the relationship has broken down after the application for the business or skills visa has been lodged and there has been domestic violence, the spouse can still be considered for permanent residence despite the end of the relationship. The main applicant must be granted the permanent visa for the spouse to be granted a permanent visa under the domestic violence provisions.

### **Other**

Spouses of main applicants for a resolution of status (subclass 851) visa are also eligible to access the domestic violence provisions.

## **DOMESTIC VIOLENCE**

### **What is Domestic Violence?**

Domestic violence is defined in the *Migration Regulations* (for immigration law purposes) as violence or threats of violence against a person or his or her property which causes that person, or a member of the person's family, to fear for, or to be apprehensive about, the person's personal well being or safety.

Domestic violence for immigration law purposes includes physical violence, sexual violence, emotional/psychological abuse, social isolation, economic deprivation and threats of violence in a family context.

### **How Is Domestic Violence Proven?**

Under the domestic violence provisions of the *Migration Regulations* domestic violence can be proven by either judicial or non judicial evidence.

### **Judicial Evidence is any of the following:**

- certain court injunctions under the *Family Law Act* 1975;

- certain court orders against the spouse or partner made under an Australian state or territory law (including a final domestic violence order granted by the Queensland Magistrates Court);
- evidence that a court has convicted the spouse or partner of an offence involving violence against the visa applicant or in certain circumstances dependants or members of the family unit (or has recorded a finding of guilt against the spouse or partner).

**Non-Judicial Evidence is both of the following:**

- a **statutory declaration** completed by the visa applicant which sets out the domestic violence alleged and names the person alleged to have committed it (and if the violence is against a child or member of the family unit, identifies the applicant's relationship with that person and the evidence on which the claims are based); and
- two **statutory declarations** from **competent persons** of two different professions that:
  - state that in their opinion domestic violence has occurred and state the basis for the opinion;
  - name the alleged victim and the person alleged to have committed the domestic violence (this person must be the spouse/partner).

A police record of assault, not including a witness statement of the alleged victim, can be provided as an alternative to one of the competent person's statutory declarations.

A joint undertaking to a court regarding allegations that the sponsoring spouse or partner has committed an act of violence against the applicant is also adequate non-judicial evidence on its own.

**Statutory Declarations**

Applicants relying on non-judicial evidence (statutory declarations) can use the DIMIA Form 1040. This form is available from the DIMIA website at [http://www.immi.gov.au/forms\\_booklets/index.htm](http://www.immi.gov.au/forms_booklets/index.htm) or from DIMIA domestic violence contact officers. It provides additional details about the essential contents of the applicant's and the competent persons' statutory declarations.

**Competent Persons**

Competent persons are certain professional who are authorised to provide statutory declarations as forms of evidence of domestic violence. Applicants relying on non-judicial evidence (statutory declarations) must get two statutory declarations from competent persons from two different professions. For example, two statutory declarations from two different social workers will not be adequate but one statutory declaration from a social worker and one from a doctor will be adequate.

**Competent persons are:**

- doctors and psychologists who are registered in Australia;
- nurses who are registered in Australia and currently working as registered nurses;
- social workers (who are members, or eligible for member ship of, the Australian Association of Social Workers and currently working as social workers);
- court counsellors under the Family Law Act 1975;
- managers and coordinators of women's refuges;

- manages or coordinators of specialist domestic violence crisis and counselling services;
- people with decision-making responsibility for matters concerning domestic violence in a women's refuge or specialist domestic violence crisis and counselling service with a collective decision making structure;
- Australian state and territory government child welfare and protection authorities (if there is violence or abuse, including sexual abuse) of children.

### **Other Evidence**

If an applicant has a child with the person who committed the domestic violence and there are certain shared arrangements in relation to the child (including certain Family Court orders or formal maintenance arrangements regarding the child) this can be grounds for a grant of permanent residence and domestic violence does not need to be proven.

## **GENUINE AND CONTINUING RELATIONSHIP**

As well as proving domestic violence (or shared arrangements regarding a child), applicants must prove that their relationship was genuine and continuing until the time of separation from their partner.

### **How is genuineness proven?**

#### **Documentary Evidence**

If possible documentary evidence of a shared life together should be provided. Some examples of documentary evidence are:

- documentary evidence of shared accommodation, such as joint mortgage documents or joint rental agreements and receipts;
- evidence of joint income and financial assets and obligations, such as joint bank accounts, investments, loans, joint utility bills, official declarations of the relationship (eg for insurance purposes);
- evidence that your relationship has been declared to any relevant Government bodies such as the Department of Social Security (Centrelink), the Australian Taxation Office, Austudy etc;
- copies of wills, superannuation and/or life insurance policies showing both names at the same address and indicating the beneficiaries;
- evidence of joint participation in cultural, social, sporting or other activities eg photographs (with notation describing the date and event);
- evidence of dated correspondence to you and your spouse jointly or individually at your common address(es) over the period of your relationship;
- statutory declarations by relatives or friends about your relationship;
- full birth certificates (showing details of parents) of any children of the relationship;
- any other relevant items.

It is often difficult for women who have experienced domestic violence to provide much of the above documentation. Applicants should just try and provide as much evidence as they are able to.

### **Form 888**

Applicants should also try to provide two statutory declarations from people who are able to say they knew both partners whilst they were together and can confirm that they believed the relationship to be genuine. DIMIA's Form 888 should be used for the statutory declarations. The Form 888 can be obtained from the DIMIA website at [http://www.immi.gov.au/forms\\_booklets/index.htm](http://www.immi.gov.au/forms_booklets/index.htm) or from a DIMIA domestic violence contact officer.

### **Statutory Declarations**

The applicant should also set out the history of their relationship, the domestic violence experienced and the reasons why the relationship was genuine and continuing until the time of separation in a statutory declaration made by the applicant. If the applicant is relying on non-judicial evidence (statutory declarations) of domestic violence, he/she can include information about genuineness in his/her statutory declaration about the domestic violence.

Even if the applicant is relying on judicial evidence of domestic violence (such as a final protection order from the Magistrates Court) he/she should still provide a statutory declaration.

Applicants can use the DIMIA Form 1040 for their statutory declaration but will need to add extra pages to provide information about genuineness.

## **INDEPENDENT ASSESSMENT OF EVIDENCE OF DOMESTIC VIOLENCE BY AN INDEPENDENT EXPERT (CENTRELINK)**

From 1 July 2005, changes to the *Migration Regulations* enable case officers who are not satisfied that non-judicially determined evidence of domestic violence provided is sufficient to prove domestic violence, to refer the case to Centrelink for independent assessment. A Centrelink social worker then makes their own determination about whether domestic violence has occurred. The DIMIA case officer must take as correct the opinion of Centrelink. However, applicants who receive a negative decision on their application under the domestic violence provisions because of the Centrelink determination can still seek a review of the decision with the Migration Review Tribunal. This will not affect people relying on judicially determined evidence of domestic violence (such as a final protection order).

## **GETTING HELP**

### **Refugee and Immigration Legal Service (RAILS)**

Ph 07 38463189 OR [www.RAILS.org.au](http://www.RAILS.org.au)

RAILS can provide immigration legal advice by telephone from **anywhere in Queensland**. A RAILS case worker will provide preliminary advice over the telephone and in some circumstances may be able to take on the case and act as the person's Migration Agent. RAILS can also provide referrals to private registered Migration Agents.

### **The Migration Agents Registration Authority (MARA)**

Ph 02 02995446 or [www.themara.com.au](http://www.themara.com.au)

The MARA Register of Migration Agents provides contact details for all registered Migration Agents in Australia, if you are in a position to pay for private immigration advice and assistance.

### **Legal Aid**

Ph 1300 65 11 88 or [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

Legal Aid can provide advice and in some cases representation about family law or domestic violence matters. Legal Aid may also be able to provide women with referrals to domestic violence court assistance workers.

### **The Immigrant Women's Support Service (IWSS)**

[www.iwss.org.au](http://www.iwss.org.au)

Ph 38463490

RAILS works closely with IWSS, a community based organisation working with women and their children from non English speaking backgrounds who are or have been in domestic violence situations and/or have experienced rape and/or sexual assault.

### **DV Connect**

Ph 1800 811 811 (Womensline)

Ph 1800 600 636 (Mensline)

DV Connect Womensline provides 24 hour 7 day a week crisis intervention, support, information, advocacy, telephone counselling, referrals and state wide coordination of emergency refuge and shelter placement. DV connect can place women with a refuge and provide referrals to other women's support agencies, who may be able to work with RAILS to assist women on temporary visas, from wherever the women is in Queensland.