

## **HOW FAMILY VIOLENCE AFFECTS VISA SPONSORS AND APPLICANTS**

### **VISA SPONSORS**

#### **What could happen to your visa and citizenship if you commit family violence?**

If you commit family violence in Australia or another country it's treated very seriously by the government. It can lead to your visa being canceled or refused because of 'bad character'. Citizenship applications can also be refused.

This applies whether or not there is a court conviction or sentence because Department of Home Affairs (DHA) Officers can look to other 'independent and authoritative sources' for evidence of family violence.

When deciding about your character, DHA officers will look at the conduct and whether you accept responsibility and understand the impact of your violence, and what you have done to change yourself. For example, going to behaviour change or alcohol programs.

Forcing someone to marry can also lead to your visa being cancelled or your citizenship being refused. This applies whether it happened in Australia or another country.

#### **What is family violence?**

Family violence is more than physical violence - it includes physical, sexual, psychological and economic abuse and threats. The DHA guidelines say it also can, for example, include repeated verbal abuse and stopping someone connecting with their family, friends or culture. Domestic violence is often an ongoing pattern of control and intimidation.

#### **Will family violence affect your sponsoring of a partner?**

If you want to sponsor someone for a Prospective Marriage or Partner visa, you must give Australian and foreign police check certificates to DHA, plus written consent to disclose certain offences to the visa applicant.

DHA will refuse the visa application if you don't provide the checks as soon as you can, or don't give that consent to DHA. And they won't refund the visa application fees if they refuse the application.

DHA must refuse the visa if a sponsor:

- has any convictions in Australia or overseas for offences like violence, sexual assault or harassment, stalking, breach of Domestic Violence orders, forced marriage or weapons;
- and has a 'significant criminal record' (prison terms that together total more than 12 months)

unless DHA assess that it is 'reasonable' not to refuse.

When assessing whether to refuse DHA consider things like:

- how long since the sponsor completed their sentence
- the best interests of any child of the sponsor or visa applicant
- how long the sponsor and the applicant have been in a relationship

### **Can your partner report you for domestic violence?**

Anyone can report a visa holder to DHA for actual or alleged domestic violence. Your partner or someone else can report you to DHA for committing domestic violence.

If DHA do get reliable information that a visa holder has committed domestic violence you may face problems with possible visa cancellation or refusal for bad character as noted above.

When you apply to sponsor a partner or fiancée for a visa, DHA will check whether you have committed domestic violence.

### **Can you sponsor another partner if you split up?**

If you separate or divorce someone that you sponsored for a visa, and then apply to sponsor another partner or fiancée, DHA will look very closely at any second sponsorship,

An Australian citizen or permanent resident can only sponsor two partners in a lifetime and the sponsorships must be more than 5 years apart, unless there are special circumstances like children or a long-term relationship.

If you're married, whether overseas or in Australia, you must prove to DHA that you are legally divorced before you can marry again. A religious divorce is not accepted.

Even if not divorced, people can be a 'de facto' relationship (living together in a committed relationship) without getting married, and that can be recognised by the law.

## **VISA APPLICANTS**

### **Can an applicant get a visa if their sponsor is violent to them?**

If you are sponsored for a permanent partner visa and the relationship breaks down before you get your permanent visa, and you can prove there has been family violence during the relationship, and that the relationship was genuine, then you still may be able to get a permanent resident visa without relying on the sponsor.

This only applies to partner-type visas and also Global Talent (858) and Child (445) visas.

'Family violence' here is defined as threats or conduct towards you, or your family or property, that caused you to have good reason to fear for your wellbeing or safety. This is not only physical and sexual violence but also psychological, economic and social abuse and threats etc.

If the relationship with your sponsor ends, you have to advise DHA of the change in circumstances. You should get urgent legal advice, if possible, before advising DHA.

If the relationship with your sponsor ends and there is a child of the relationship, this might also be a pathway to permanent residence.

See [RAILS Fact Sheet \(Family violence and visas\)](http://www.rails.org.au/education) at [www.rails.org.au/education](http://www.rails.org.au/education) for more info. You should get legal advice urgently.

### **What if the sponsor partner controls the visa application?**

Sometimes a visa sponsor may keep control of all the application and the applicant has little knowledge of the details and process. This can sometimes, though not always, be a form of control and abuse by the sponsor and part of a pattern of family violence.

It is important that the applicant knows what information about them and their relationship is in the application, has access to the contact email/address that DHA has for their application, and knows their DHA visa or client reference number.

You may also be able to check your visa application details online through VEVO (the Visa Entitlement Verification Online system). You will need your passport or immi card details. See [RAILS Fact Sheet 'Finding Your Visa Details'](http://www.rails.org.au/education) at [www.rails.org.au/education](http://www.rails.org.au/education).

### **What if the sponsor partner threatens to deport the visa applicant?**

The Australian partner sponsor can withdraw their sponsorship at any time if they decide to end the relationship. However the sponsor partner can't deport you. It is a decision of the DHA, not the sponsor.

If your partner contacts DHA and withdraws the sponsorship then the DHA will write to the visa applicant at the address that DHA has been given and give 28 days for the applicant to respond. So it is important that you, the applicant, knows and has access to the contact

address that the DHA has for them for their application. You should get legal advice urgently or the DHA will refuse your visa.

If the sponsor does withdraw the application and there is family violence, or there are other visa options, then the visa applicant may still be able to stay in Australia without the sponsorship, but this is a complex area of law and urgent legal advice is needed.

If your visa is refused you have 21 days to seek review to the AAT (Administrative Appeals Tribunal) - if you are in Australia.

You can't appeal if you are outside Australia. If your temporary Partner visa is refused and you're outside Australia, you can't return on that visa. You could try to urgently obtain a visitor or some other visa to return to lodge your review application within 21 days. This would be very difficult and urgent advice is needed.

If you already have permanent residence and your relationship breaks down, your partner cannot get you deported.

### **What if there's family violence and you're not on a partner visa?**

If you're not a citizen or a permanent resident and not on a temporary partner or Global Talent or Child visas (or connected bridging visas), then your visa options are more limited if there's family violence. Get urgent legal advice and family violence support. Your visa options include these:

- the first most urgent priority is always safety for you and your family. There are support services and funds to help (see below)
- stay on your current visa and apply to extend it if you fit the conditions and you want to stay longer in Australia
- apply for some other skilled or family visa if you fit the criteria for those visas
- apply for a protection (refugee) visa if you fear return to your home country
- if you are a dependent on a visa and the main applicant is the one doing the domestic violence, then you should leave that relationship if it's unsafe and get urgent legal advice about your visa options
- If you have no further visa options you could get a visa to allow you time to stay lawfully while making arrangements to return to your home overseas, if that is possible. If you are not a citizen then you must have a visa otherwise DHA must detain you.

### **Financial support for temporary visa holders experiencing family violence.**

Red Cross will provide support and up to \$3000 government funds to help cover expenses for accommodation, food, and medical care for temporary visa holder experiencing family violence. [Application form link](#) 1800 RED CROSS (1800 733 276)

## **Key Support Services**

Emergency - 000

Lifeline - 13 11 14

DV Connect - 1800 811 811

Kids Helpline - 1800 55 1800

DV helpline - 1800 RESPECT (1800 737 732)

Immigrant Women's Support Service 07 3846 3490

Refugee and Immigration Legal Service - 07 3846 9300

The information in this document is legal information only, not legal advice. See an immigration lawyer or registered migration agent for specific legal advice