

VISA APPLICANTS

What is family violence?

‘Family violence’ is threats or conduct towards you, or your family or property, that make you good reason to fear for your wellbeing or safety.

It is not only physical violence. Other types of mental and emotional abuse can be family violence.

Can a sponsor deport their partner?

The Department of Home Affairs (DHA), not the partner, makes the decisions about visas. The Australian partner sponsor can withdraw their sponsorship at any time if they decide to end the relationship, but the partner can’t deport you. It is a decision of the DHA, not the sponsor. If you fit the rules for a visa then it will be granted.

If a visa sponsor uses threats to deport their partner as a way to control their partner it may be a form of family violence.

Once you already have permanent residence and your relationship breaks down, you do not lose permanent residence.

Can an applicant get a visa if they suffer domestic violence?

If you are sponsored for a partner visa and the relationship breaks down before you get your permanent visa, and there has been family violence, you might still be able to get a permanent resident visa.

You have to prove it was a genuine relationship, that there was family violence, and you fit the other rules for the visa.

These laws about family violence also apply to dependents on some other permanent skilled and family visa applications

However if you are on other temporary visas these family violence rules do not apply, but you can still get some government financial support if you need to leave the relationship for safety from violence.

However, if you are on a temporary visa there may be options for further visas, if you can prove you will suffer serious harm if you had to return to your home country because of family violence, This is very limited.

All this is complex law and you should get legal advice urgently.

DHA should be notified if relationship breaks down

If the relationship with your sponsor breaks down, the DHA should be notified. It is best to get legal advice first

If the sponsor notifies DHA of the breakdown, then DHA usually sends the visa applicant a 'Change of circumstances' letter giving 28 days to respond

See RAILS Fact Sheet (Family violence and visas) for more info.

If the sponsor controls the visa application

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

Know details of your application

It is important that the applicant:

- knows what information is in the application about them and their relationship,
- has access to the contact email/address that DHA has for the application
- knows their DHA file or client reference number
- Knows what visa they have

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' at www.rails.org.au/education.

Have DHA contact details if relationship ends before visa granted

If your partner contacts DHA and withdraws the sponsorship, 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, can access the contact email address that DHA has for your application. Get legal advice urgently.

Stay safe and get advice

If there is family violence the safety for you and your family is =most important. There are many support services and people in the community that can help. Call DV Connect 1800 811 811 or 1800 RESPECT on 1800 737 732, or 000 in an emergency.

Get urgent legal advice about your visa options. If you are not a citizen then you must have a visa, otherwise DHA can detain you.

Financial support for temporary visa holders family violence.

The 'Leaving Violence Program' supports people experiencing partner violence with financial assistance and support services. Contact 1800 2 LEAVE (1800 253 283). This is for people on temporary visas, as well as citizens and permanent residents.

VISA SPONSORS

What is family violence?

Family violence is more than physical violence - it also includes mental, emotional and economic abuse and threats. It can 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.

What might happen to your visa and citizenship if you do family violence?

If you do 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 you fail the 'character test'.

Citizenship applications can also be refused if you are found to be not of good character..

This applies whether or not there is a court order about because Department of Home Affairs (DHA) officers can look to other evidence of family violence.

What does DHA look at in the character test?

When deciding about character, DHA officers look at the conduct, how long ago it was, how serious it was. They look at whether the person genuinely accepts responsibility and understand the impact of their violence, and what they have done to change themselves. For example, if they went to behaviour change or alcohol programs.

Will family violence affect your sponsoring of a partner?

If you want to sponsor someone for a 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.

When will a partner sponsorship be refused because of violence?

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 it is reasonable not to refuse, DHA look at 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 someone to Police for domestic violence.

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

If 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.

But people can be a 'de facto' relationship (living together in a committed relationship without getting married), and that is recognised like a marriage by the law in Australia.

Where to get help

Lifeline 13 14 11 Mensline 1300 78 99 78 or DV Connect Mensline 1800 600 636