

Domestic / Family Violence and Australian Immigration Law



A guide to the law

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Cartoon on cover by Greg Gaul

IMPORTANT!

The information contained in this booklet is current as at 9 November 2009, and is intended to provide a guide about how to deal with the immigration law implications of domestic/ family violence. This book should be used as a guide only, and should not be used as a substitute for professional advice by a competent registered migration agent. Many readers of this booklet may find parts difficult to understand. We encourage these readers who are resident in New South Wales to contact the Immigration Advice and Rights Centre Inc. on (02) 9279 4300 if they need further advice/ assistance. Readers in other states who require immigration assistance should contact their local legal aid commission, or the National Association of Community Legal Centres on (02) 9264 9595 to find their nearest community legal centre.



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Domestic / Family Violence (DV/FV¹) and Australian Immigration Law

Statistics/Snapshot

According to the 2008-9 Department of Immigration and Citizenship ('Department') Annual Report, the statistics in relation to DV/FV claims for that year show that:

- 708 claims of DV/FV were made nationally (in an immigration context).
- At 30 June 2009 there were 98 referrals to Centrelink (for independent assessment of DV/FV claims) by DIAC, representing a rate of less than 15 per cent of the total number of DV/FV claims made.
- Of the 82 referrals finalised by Centrelink up to 30 June 2009, there were 45 findings that DV/FV had occurred, and 37 findings that DV/FV had not occurred.
- Of the further 30 referrals to Centrelink by the Migration Review Tribunal, there were 15 findings that DV/FV had taken place, and 9 findings that DV/FV had not occurred.

In the context of Australia's overall migration program, the number of DV/FV claims made is extremely small. While this may be viewed positively as evidence of minimal abuse of the provisions, it also raises concerns that the most vulnerable participants in Australia's migration program may not be aware that the DV/FV provisions exist. This resource is intended to raise awareness of the DV/FV provisions in immigration law, and to provide some guidance as to how those provisions work.

1. What are the DV/FV provisions in Australian Immigration Law?

Found in Division 1.5 (regs 1.21 -1.27) of the *Migration Regulations*, the DV/ FV provisions are essentially deeming provisions (see Chapter 9) which determine whether, under Australian immigration law, DV/FV is taken to have occurred. If it has and the visa applied for/ held is one where the DV/FV provisions apply (see Chapters 2 and 3), the visa applicant/ holder may be able to obtain permanent residency even if the relationship on which visa grant is ordinarily based has ceased.

The DV/FV provisions are intended to facilitate a pathway to permanent residence for victims of FV/DV who are also applicants for prescribed visas so that they do not have to rely on an abusive partner or remain in an abusive relationship in order to gain permanent residence.

A finding that DV/FV has occurred under the *Migration Regulations* does not result in nor necessarily require a criminal finding or conviction against the alleged perpetrator.

¹ For visa applications lodged on or after 15 October 2007, the newer terminology and definition of 'Family Violence' is applied. For visa applications lodged prior to 15 October 2007, the older terminology and definition of 'domestic violence' applies. These concepts are discussed further at 9.3.

2. Which visas do the DV/FV provisions apply to?

Currently, the DV/FV provisions apply only to application for the following visa subclasses:

Visa Subclass ('sc') Number	Visa Subclass Name
100	Partner (permanent offshore)
110	Interdependency (permanent offshore- generally same-sex relationships)
445	Dependent Child
801	Partner (permanent onshore)
814	Interdependency (permanent onshore - generally same-sex relationships) – this visa is now obsolete
820	Partner (temp onshore)
826	Interdependency (temp onshore - generally same-sex relationships) – this visa is now obsolete
845	Established Business in Australia
846	State/Territory-Sponsored Regional Established Business in Australia
855	Labour Agreement
856	Employer Nomination Scheme
857	Regional Sponsored Migration Scheme
858	Distinguished Talent

There is some variation in how the DV/FV provisions apply to each type of visa. This publication focuses primarily on how the DV/FV provisions operate in the context of partner visas – the most common visas under which DV/FV claims are made in Australian immigration law.

3. The Context in which the DV/FV provisions apply

Under Australian migration law, partner visas are generally granted in 2 or 3 stages (see 3.1 below). Generally, grant of a permanent visa is the final stage of the visa process. If the relationship on which eligibility for the visa is based ends before grant of the permanent visa, generally, a permanent visa can only be granted if (a), (b) or (c) below applies. Note that where FV/DV has occurred but (b) or (c) also applies, it may be easier to prove (b) or (c) rather than trying to rely on the DV/FV provisions. It is only necessary to prove that one of (a), (b) or (c) has occurred.

(a) The relationship ceases and there is DV or FV.

OR

(b) The relationship ceases and the sponsoring partner has died - In order to be granted a permanent visa on the basis that the sponsoring partner has died, the decision-maker must be satisfied that the relationship between the applicant and sponsor would have continued but for the death of the sponsoring partner. If there is evidence that the relationship broke down before the sponsoring partner's death, this criterion will not be satisfied.

The applicant must normally also show that they have developed, ie 'formed or strengthened' close business, cultural or personal ties in Australia. Departmental policy provides the following guidance:

- **Business ties** may be in the form of ownership of property or having a business with Australian partners. Relevant to the assessment of whether the tie is 'close' is the likely impact of a refusal decision on the business tie.
- **Cultural ties** include but are not limited to arts, music and literature, and the nature and extent of the applicant's participation in such cultural activities.
- **Personal ties** relate to close family and friends, and the nature and extent of the applicant's social network in Australia.

OR

(c) The relationship ceases and there are children involved - If the relationship ends before permanent residence is granted and there are children involved, the visa holder/applicant may remain eligible for grant of the permanent visa. The following types of evidence must be provided to the Department regarding arrangements pertaining to children:

- a statutory declaration from each parent, stating that they have made an informal agreement and stating the nature of that agreement in terms of their parental responsibilities; and/or
- a consent order that formalises the agreement between the parents,
 - which has the same legal force as if made by a judge; or
 - a parenting order made under section 64B(1) of the *Family Law Act 1975*.

Note, however, that the above policy regarding children may be too restrictive an approach in light of the Federal Court case of *Srouf v MIMA* [2006] FCA 1228 which effectively found that a parent has relevant parental responsibilities towards a child by operation of law unless evidence can be shown that such responsibilities have been overturned by, for example, a court order.

3.1 The stages of partner visa processing

Partner visa processing generally occurs in 2 or 3 stages (ie, there are 2 or 3 stages involved in obtaining permanent residency). In limited circumstances the permanent visa can be granted in one stage².

The 3 Stage Process



* **Note:** 'sc' = Subclass

² The circumstances in which a permanent visa can be granted in one stage, ie, without the visa applicant having to hold a temporary partner visa for 2 years, include:

- The temporary visa was granted on the basis that the applicant is the partner of a humanitarian visa holder and that sponsor declared that relationship to the Department before the humanitarian visa was granted. This exemption applies only to subclass 309/100 visa applicants, not subclass 820/801 applicants.
- The relationship is long term, ie the couple's relationship has continued for at least five years, or two years if they have any dependent children from their relationship (step-children are not included). This requirement must be met at the time the visa application is lodged.

For the 3 stage process:

1. A Fiancé visa is generally granted for 9 months. In that 9 months the visa holder is required to enter Australia and marry the sponsor.
2. Once the couple marry, the Fiancé visa holder lodges an onshore partner application (subclass 820/801). The application is for both the permanent and temporary partner visa. If successful, a temporary partner visa is generally granted for a duration of two years. If the relationship ends before the temporary visa is granted (or lodged), the visa may only be granted if one of the exceptions listed under Chapter 3 above applies (ie, death of the sponsor, existence of a child, or DV/FV has occurred).
3. After the visa holder has held the temporary partner visa for around two years, the Department again assesses the relationship on which the visa was based, and if it remains ongoing, generally grants the permanent partner visa (subject to health, character and other Public Interest Criteria being met). If the relationship has ended, the permanent visa can only be granted if one of the exceptions listed at under Chapter 3 above applies (ie, death of the sponsor, existence of a child, or DV/FV has occurred).

The 2 Stage Process

Temporary Partner Visa	➔	Permanent Partner Visa
(partner onshore)		
sc 820	➔	sc801
(partner offshore)		
sc309	➔	sc100
(interdependency onshore)		
sc826	➔	sc814
(interdependency offshore)		
sc310	➔	sc110

For the 2 stage process:

1. The partner application may be lodged by a visa applicant who is either inside (onshore) or outside (offshore) Australia. The application is for both a permanent and temporary partner visa. If successful, a temporary partner visa is generally granted for a duration of two years. If the relationship ends after the application is lodged but before the visa is granted and the application is an onshore one, a visa can only be granted if one of the exceptions listed at under Chapter 3 above applies (ie, death of the sponsor, existence of a child, or DV/FV has occurred), in which case the visa granted is a permanent one.
2. After holding the temporary partner visa for around two years, the Department again assesses the relationship, and if it remains ongoing, should grant the permanent partner visa (subject to health, character and other Public Interest criteria being met). If the relationship ends before grant of the permanent visa, the permanent visa can only be granted if one of the exceptions listed at under Chapter 3 above applies (ie, death of the sponsor, existence of a child, or DV/FV has occurred).

3.2 Applying the DV/FV provisions

The way in which the DV/FV provisions apply varies across visa subclasses. It is important to note that in all cases, there must have been a genuine spouse/de facto/interdependent relationship (as applicable) at some point in the application process in order for the DV/FV provisions to apply and that relationship had to be continuing at the time of the DV/FV. The table below summarises the way in which the DV/FV provisions are applied across the visa subclasses.

	Visa Subclass (sc)	When are the DV/FV provisions assessed	Who do the DV/FV provisions apply to	Who must have suffered DV/FV
1	820 Partner	Time of visa application	Applicants for a sc820 visa who hold or held a sc300 visa and have married the sponsoring partner. If successful, a visa applicant will be granted a permanent sc801 visa.	<ul style="list-style-type: none"> the applicant; and/or a member of the family unit of the applicant who has made a combined application with the applicant; and/or a dependent child of the sponsoring partner or of the applicant or of both of them; <p>must have suffered family violence committed by the sponsoring partner.</p> <p>(cl 820.211 (8) & (9) (d) of the Mig Regs)</p>
2	820 Partner (onshore temp)	Time of visa decision	All sc820/801 visa applicants falling outside category 1 of this table. If successful a permanent partner sc801 visa will be granted.	<ul style="list-style-type: none"> the applicant; and/or a dependent child of the sponsoring partner or of the applicant or of both of them, <p>must have suffered family violence committed by the sponsoring partner.</p> <p>(cl 820.221(3)(b)(i))</p>
3	801 Partner (onshore perm)	Time of visa decision	All applicants for a sc801 visa. The visa applicant must hold a subclass 820 temporary partner visa	<ul style="list-style-type: none"> the applicant; and/or a dependent child of the sponsoring partner or of the applicant or both of them <p>must have suffered family violence committed by the sponsoring partner.</p> <p>(cl 801.221(6)(c)(i))</p>
4	100 Partner (offshore perm)	Time of visa Decision	All applicants for a sc100 visa, however, the DV/FV must have occurred after the applicant first entered Australia as the holder of a sc309 visa. Generally they must continue to hold that visa at the time the application is being assessed against the DV/FV provisions.	<ul style="list-style-type: none"> the applicant; and/or a member of the family unit of the sponsoring partner or of the applicant or both of them; <p>must have suffered family violence committed by the sponsoring partner.</p> <p>(cl 100.221(4)(c)(i))</p>

5	826 Interdependency (onshore temp)	Time of visa Decision	All sc826 visa applicants. If successful, a visa applicant will be granted a permanent visa.	<ul style="list-style-type: none"> the applicant; and/or a dependent child of the sponsor or of the applicant; <p>has suffered family violence committed by the sponsor.</p> <p>(cl 826.221(4)(b))</p>
6	814 Interdependency (onshore perm)	Time of visa decision	sc814 visa applicants who already hold a sc826 temporary interdependency visa	<ul style="list-style-type: none"> the applicant; and/or a dependent child of the sponsor or of the applicant <p>must have suffered family violence committed by the sponsor.</p> <p>(cl 814.221 (8)(c))</p>
7	110 Interdependency (offshore perm)	Time of visa decision	All applicants for a sc110 visa, however, the DV/FV must have occurred after the applicant first entered Australia as the holder of a sc310 visa. Generally they must continue to hold that visa at the time the application is being assessed against the family violence provisions.	<ul style="list-style-type: none"> the applicant; and/or a member of the family unit of the sponsor or of the applicant <p>must have suffered family violence committed by the sponsor.</p> <p>(cl 110.221(4)(c))</p>
8	445 Dependent Child	Time of visa decision	A sc 445 visa applicant can rely on the DV/FV provisions if the relationship between the visa holding parent and that parent's sponsor has ceased and the visa holding parent has requested consideration for a sc 100, 110, 814 or 801 visa under the DV/FV provisions.	
9	845 / 846 / 855 / 856 / 857 / 858	Time of visa decision	<p>The secondary applicant for the visa can rely on the DV/FV if the</p> <ul style="list-style-type: none"> secondary applicant is the partner of the primary applicant; and relationship between the secondary applicant and the primary applicant has ceased 	<ul style="list-style-type: none"> the secondary applicant; and/or a member of the family unit of the secondary applicant who has made a combined application with the primary applicant; and/or a dependent child of the applicant or of the primary applicant <p>must have suffered family violence committed by the primary applicant</p>

Important Note! In categories 1-8 listed in the above table, the alleged perpetrator must be the sponsoring partner. In category 9, the alleged perpetrator must be the primary applicant.

4. Genuine Relationship

For all partner visa applications in which the DV/FV provisions are relevant, there must have been a genuine spouse/ de facto/interdependency (as applicable) relationship at some point in the visa application process (normally time of application) in order for the DV/FV provisions to be triggered. In addition that relationship must have been in existence at the time the DV/FV occurred. If it is found that there was no genuine relationship at the prescribed time in the visa application process, the decision-maker has no obligation to consider whether or not DV/FV has occurred.

5. Who can be the ‘alleged victim’?

The ‘alleged victim’ can only be one of the following people for DV/FV claims based on non-judicial evidence (reg 1.23(9)):

- the spouse or de facto partner of the alleged perpetrator; or
- a dependent child of:
 - ⇒ the alleged perpetrator; or
 - ⇒ the spouse or de facto partner of the alleged perpetrator; or
 - ⇒ both the alleged perpetrator and the spouse or de facto partner; or
 - ⇒ a person in an interdependent relationship with the alleged perpetrator; or
- a member of the family unit of the spouse or de facto partner of the alleged perpetrator (who has made a combined application for a visa with the spouse or de facto partner).

In addition to this, each visa subclass identifies who must have ‘suffered’ DV/FV (see table at 3.2 above).

6. Who can be the ‘alleged perpetrator’?

In partner visa cases, the DV/FV must have been committed ‘by the sponsoring partner’. Therefore, the sponsoring partner must be the alleged perpetrator. This means that any evidence submitted to prove DV/FV must identify the sponsoring partner as the alleged perpetrator. Evidence which, for example, identifies the sponsoring partner’s brother as the perpetrator of the violence will not satisfy the DV/FV provisions.

Readers should be aware that the ‘alleged perpetrator’ is not necessarily defined in the same way across all visa subclasses to which the DV/FV provisions apply. For example, where a person is claiming DV/FV as a secondary applicant for an Employer Nomination Scheme subclass 856 visa, the alleged perpetrator must be the primary applicant, not the sponsor.

7. If the applicant is still living with the sponsor/ alleged perpetrator

The DV/FV provisions only come into effect when the relationship between the applicant and the partner has ceased. If the applicant and partner continue living together it may be difficult (but not impossible) to prove that the relationship has ceased.

8. Obligations of the applicant when the relationship ends

Under s104 of the *Migration Act* visa applicants have an obligation to inform the Department of a change in circumstances, including that the relationship has ended. The applicant must also inform the Department if they change address for 14 days or more (under s52(3B) of the Act).

Applicants who have experienced DV/FV should inform the Department as soon as possible so that the processing of the application can be suspended until evidence of DV/FV can be obtained. The applicant should notify the Department in writing of the breakdown of the relationship, the existence of DV/FV, and any change of address.

If the applicant does not contact the Department and the Department is unaware that DV/FV has occurred, the visa application may be refused, leading to a range of legal complications. Alternatively, if

neither the sponsor nor the applicant notifies the Department and the visa is granted on the basis that the relationship is ongoing it may later be subject to cancellation.

9. Proving DV/FV – The deeming provisions

Under reg 1.23 of the *Migration Regulations*, DV/FV is ‘deemed’ or taken to have occurred (ie, an ‘alleged victim’ is taken to have suffered DV/FV, and an ‘alleged perpetrator’ is taken to have committed DV/FV) if:

(a) there is judicial evidence that DV/FV has occurred, ie:

- the alleged victim has applied for and obtained a court injunction under paragraph 114(1)(a), (b) or (c) of the *Family Law Act 1975* against the alleged perpetrator; or
 - a court has made an order under a law of a State or Territory against the alleged perpetrator for the protection of the alleged victim from violence and that order was made after the court had given the alleged perpetrator an opportunity to be heard, or otherwise to make submissions to the court, in relation to the matter; or
 - a court has convicted the alleged perpetrator of, or has recorded a finding of guilt against the alleged perpetrator in respect of, an offence of violence against the alleged victim;
- or

(b) the decision-maker is satisfied that the non-judicial evidence (see 9.2) proves that ‘relevant DV’ or ‘relevant FV’ (see 9.3) has occurred;

or

(c) the decision maker must take as correct the opinion of a prescribed independent expert (currently Centrelink) that the alleged victim has suffered ‘relevant DV’ or ‘relevant FV’ (see 12 below).

9.1 Judicial Evidence

Given the extensive range of laws and procedures under which judicial evidence can be obtained, it is impossible to accurately summarise such procedures in this publication. Instead, readers are encouraged to obtain further information and assistance on this point from appropriately qualified entities listed in Chapter 13, for example a generalist community legal centre or the Legal Aid Commission.

9.2 Non- Judicial Evidence

Non-judicial evidence may be submitted to the immigration delegate in the form of A, B or C below.

- (A) A **joint undertaking** by the ‘alleged victim’ and ‘alleged perpetrator’ filed in court proceedings where there was an allegation of violence. Departmental policy states that:

Joint undertakings do not involve a ‘finding’ on family violence by a magistrate or judge based on contested evidence. They are merely court-sanctioned agreements by parties to act in certain ways. Officers have the discretion to refer a person who provides joint undertakings in the above circumstance to an independent expert for assessment... For joint undertakings ... it is envisaged that in most cases where a properly made joint undertaking has been submitted, there would be no reason to doubt the version of events described in it. There would need to be clear reason why a decision-maker would doubt a legal document in which the alleged perpetrator acknowledges that they have behaved violently towards the alleged victim (It is possible, however, that this could happen in non-genuine claims of family violence where, for example, the sponsor was coerced into entering into the undertaking or was complicit in a non-genuine claim).

or

- (B) 1 statutory declaration from the visa applicant plus 2 statutory declarations from 'competent people' (see 9.4) attesting that 'relevant DV' or 'relevant FV' has taken place;

or

- (C) 1 statutory declaration from the visa applicant plus 1 statutory declaration from a 'competent person' plus 1 police record of an assault allegedly committed by the 'alleged perpetrator' on the 'alleged victim'.

What form to use - While there is no legally prescribed form to use, other than an Australian Commonwealth statutory declaration, it is recommended that statutory declarations in DV/FV cases are made using the Department of Immigration *Form 1040*, as this form contains useful instructions intended to ensure that all relevant considerations are addressed by the maker of the statutory declaration.

9.3 'Relevant Domestic Violence'/ 'Relevant Family violence'

The definition of 'relevant domestic violence'/ 'relevant family violence' is set out in reg 1.21(1) of the *Migration Regulations* and **is relevant only where the DV/FV claim is being evidenced by non-judicial evidence** (see 9.2 above).

(Note: Judicially determined claims rely on court decisions which are made under different legislation, eg, the *Family Law Act 1975*, *NSW Crimes (Domestic and Personal Violence) Act*.)

For all visa applications lodged on or after 15 October 2007, the definition to apply is 'relevant FV'. Visa applications lodged before 15 October 2007 continue to be assessed against the definition of 'relevant DV'.

Relevant Family Violence (reg 1.21(1))	Relevant Domestic Violence (reg. 1.23(2) (b))
a reference to relevant family violence is a reference to conduct, whether actual or threatened, towards: (i) the alleged victim; or (ii) a member of the family unit of the alleged victim; or (iii) a member of the family unit of the alleged perpetrator; or (iv) the property of the alleged victim; or (v) the property of a member of the family unit of the alleged victim; or (vi) 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.	a reference to relevant domestic violence is a reference to violence against the alleged victim or his or her property that causes the alleged victim, or a member of the alleged victim's family, to fear for, or to be apprehensive about, the alleged victim's personal well-being or safety.

* ie if a reasonable person in the same circumstances would fear for or be apprehensive about his/her personal wellbeing or safety.

The main differences between the new definition (ie relevant FV) and the old (ie relevant DV) include:

- who the alleged perpetrator's actions can be towards
- who is fearful or apprehensive as a result of the alleged perpetrator's action
- whose personal wellbeing and safety there is an apprehension or fear for
- the new requirement that the apprehension or fear for personal wellbeing and safety must be reasonable; and
- the term "violence" is not actually used in the "family violence" definition.

Importantly:

- reg 1.21(1) makes it clear that 'violence' includes a threat of violence;
- the conduct does not have to be directed towards the 'alleged victim', but it must cause the alleged victim to have a reasonable fear or apprehension regarding their own safety and wellbeing;
- 'violence' does not necessarily have to involve physical force, and can extend to psychological and emotional abuse: *Sok v MIMIA [2005] FCAFC 56*.

9.4 Who is a 'competent person'?

A 'competent person' must be from one or more of the following professions/ categories:

- doctor;
- registered psychologist;
- registered nurse;
- social worker (who is a member of the Australian Association of Social Workers or is recognised as being eligible to be a member);
- 'family consultant' under the *Family Law Act 1975*;
- child protection worker (for violence against children); or
- manager or co-ordinator of a women's refuge or DV/FV crisis or counselling service. A competent person may also be a worker within one of these types of services provided:
 - ⇒ the worker has decision making responsibilities for the refuge/ crisis or counselling service; and
 - ⇒ that service has a 'collective decision making structure'; and
 - ⇒ the worker's position has responsibility for matters concerning DV/FV violence within that service.

Important Note! This category was recently considered in the Federal Court of Australia in the case of *MIAC v Pham [2008] FCA 320*, where the court stated:

...the words 'manager or coordinator of' a women's refuge or a prescribed crisis and counselling service [requires] that the 'competent person' must hold a management position in respect of the general operations or direction of the women's refuge or the crisis and counselling service as an institution.

9.5 What statutory declarations should contain

9.5.1 Statutory declaration made by the visa applicant

This statutory declaration must be made by the visa applicant who is the partner of the alleged perpetrator (whether or not they are the person identified as the 'alleged victim'). The requirements for the statutory declaration made by the visa applicant vary, depending on who is identified as the 'alleged victim' of DV/FV.

- **If the partner is the 'alleged victim' of DV/FV**, the statutory declaration must:
 - ⇒ set out the allegation of relevant DV/ FV (including the effect that it had on the 'alleged victim'); and
 - ⇒ name the person alleged to have committed the relevant DV/FV; and
 - ⇒ if the conduct was not directed towards the 'alleged victim' (the maker of the statutory declaration, in this case), also name the person to whom the conduct was directed, and identify the relationship between the maker of the statutory declaration and the person to whom the conduct was directed.

- **If the partner is not the 'alleged victim'**, the partner must still complete a statutory declaration which must:
 - ⇒ name the person to whom the conduct was directed (eg if:
 - Maria is the visa holding partner; and
 - Bob is her 10 year old child from a previous relationship; and
 - the conduct was directed by Maria's sponsoring partner towards Bob, Bob must be named;
 - ⇒ identify the relationship between the 'alleged victim' and the person to whom the conduct was directed (eg using the above scenario, Maria's statutory declaration would state words to the effect 'Bob is my biological son from a previous relationship, and is the alleged victim');
 - ⇒ identify the relationship between the maker of the statutory declaration (ie the partner) and the person to whom the conduct was directed (eg, using the above scenario, Maria's statutory declaration would state 'words to the effect 'Bob is my biological son from a previous relationship'; and
 - ⇒ set out the evidence on which the allegation of relevant DV/FV is based.

9.5.2 Statutory declaration made by a 'competent person'

If an applicant is providing two statutory declarations from 'competent people', each statutory declaration must come from a different type of competent person. For example, it is not acceptable for two refuge workers to provide the two statutory declarations, but it is possible to have one refuge worker and one nurse.

A statutory declaration from a 'competent person' must contain:

- the opinion of the 'competent person' that the 'alleged victim' has experienced Relevant DV/FV; and
- the basis for that opinion (eg the competent person could set out examples of instances of DV/FV which the victim has described to them; the psychological, physical or emotional state of the victim and whether this is consistent with the reaction of victims of DV/FV; the experience of the competent person with other victims of Relevant DV/FV); and
- the name of the victim; and
- the name of the perpetrator; and
- if the conduct of the alleged perpetrator was not specifically directed towards the 'alleged victim' (eg it was directed towards a member of the family unit):
 - ⇒ name the person to whom the perpetrator's conduct was directed; and
 - ⇒ state the relationship between the 'alleged victim' and the person to whom the conduct was directed.

The competent person must also give the basis on which they are competent to make the statutory declaration. It is good practice for the competent person to attach a certified copy of their qualification as evidence of their competency.

9.6 Statutory Declaration Form (*Form 1040*)

Form 1040 is a Department form available at <www.immi.gov.au> which the applicant and the competent person may use for making their statutory declarations. This form is not prescribed in the legislation, and does not have to be used. It is helpful, however, to use the form as it directs the person making the declaration through the relevant matters to be addressed.

9.7 Police record of assault

If an assault has been reported to the police, the police record can be substituted for one of the statutory declarations. A victim's statement to the police cannot be used as a police record for the purposes of the DV/FV provisions.

10. If DV/ FV is proven

If the Department is satisfied that DV/FV has occurred, and the applicant meets requirements including health, character and other public interest criteria, the applicant will be granted a permanent visa.

11. If DV/ FV is not proven

While the Minister must accept 'judicially determined' evidence of DV/FV as being satisfactory proof that DV/FV has occurred, the Minister does not have to accept 'non-judicially determined' evidence (eg statutory declarations, joint undertaking or police records) as conclusive proof that DV/FV has occurred.

If the Minister is not satisfied that the evidence provided adequately demonstrates that Relevant DV/FV has occurred, the matter must be referred for independent assessment – this is currently undertaken by Centrelink.

Doubtful cases

In assessing whether or not Relevant DV/FV has occurred and whether or not the allegations are doubtful, the Department will consider the following:

- whether information in the statutory declarations is vague or ambiguous;
- whether there is any conflicting evidence, such as:
 - ⇒ dismissed or lost court cases;
 - ⇒ conflicting statements within or between the statutory declarations;
 - ⇒ conflicting information provided previously or by third parties;
- the length of time that the parties had been in the relationship;
- the length of time after the alleged violence that the applicant lodges their claim of DV/FV;
- whether the information in the statements is sufficiently detailed or appears to lack detail;
- whether the sponsor has court orders against the applicant for DV/FV.

Departmental policy indicates that the Department considers it reasonable to refer for independent assessment a non-judicially determined claim of Relevant DV/FV made by a male, unless there is 'strong evidence' that the claim is genuine.

To counteract any doubts the decision-maker may have, it may be useful to provide additional evidence which supports the claims, including medical or psychological reports.

12. Independent assessment of 'relevant DV/FV'

Under reg 1.23(10)(c) of the Migration Regulations, if the Minister is not satisfied that relevant DV/FV has occurred, the question must be referred to a suitably qualified 'independent expert' (currently Centrelink).

If a case is referred to Centrelink the applicant will be notified. All relevant information which has been provided to the Department will be passed on to Centrelink to assist them to make an assessment. Any further information required by Centrelink will be arranged between Centrelink and the visa applicant directly.

The assessment made by Centrelink is only in relation to the question of whether or not Relevant DV/FV has/has not occurred. Centrelink's finding is final and binding. Therefore if Centrelink determines that Relevant DV/FV has not occurred the case officer must accept this decision.

13. Where to get help?

IMPORTANT

Victims of DV/FV who are not permanent residents should contact the Department as soon as practicable to disclose their changed circumstances (including the relationship ceasing, change of address and the existence of DV/FV, children etc). The next step is to seek immigration advice and general legal advice. At all times, safety is paramount. The contact details below are intended to identify the most critical services for DV/FV situations with immigration implications. Many (but not all) of the services listed below service NSW only. For legal services outside NSW, contact the National Association of Community Legal Centres on (02) 9264 9595, or your nearest Legal Aid Commission.

13.1 Safety / refuges /language assistance

Emergency Services

Police, Ambulance, Fire

Phone: 000

Shelter and Refuge

Phone the **Domestic Violence line** on **1800 656 463**. They will be able to put you in contact with the most appropriate refuge for your situation which has a vacancy or outreach workers that will give you advice and support.

Language Assistance

Translating and Interpreting Service

13 14 50 - If you do not speak English well and you wish to talk with a counsellor, call the Translating and Interpreting Service and ask them to contact the relevant service for you.

13.2 Free immigration law assistance on DV/FV

Immigration Advice and Rights Centre Inc.

Level 5, 362 Kent Street, Sydney

Phone: **02 9262 3833** (advice line – Tues and Thurs 2-4pm)

02 9279 4300 (admin line)

Website: www.iarc.asn.au

Advice and assistance regarding a broad range of Australian Immigration, Citizenship and Refugee law matters, including DV/FV. Provides free telephone advice and may provide representation in some cases.

Legal Aid NSW

Head Office, Ground Floor
323 Castlereagh Street
SYDNEY NSW 2000
Tel: (02) **9219 5000** (as for the immigration law section)
Fax: (02) **9219 5935**
TTY: (02) **9219 5126**

Provides free legal advice and representation.

Immigrant Women's Speakout

Telephone: **02 9635 8022**

Provides advice and assistance to migrant women seeking to invoke the DV/FV provisions in Australian immigration law.

13.3 Generalist legal assistance (ie non-immigration law issues)

Domestic Violence Advocacy Service

Sydney Advice Line: (02) **8745 6999**
Rural Free Call Line: **1800 810 784**
TTY for deaf and hearing impaired women: **1800 626 267**

Advice Lines are open
9.30am - 12.30pm and
1.30pm - 4.30pm Monday, Tuesday, Thursday and Friday.

Women needing an interpreter can contact the Telephone Interpreter Service on 131 450 and ask the interpreter to contact the service on (02) 9749 7700. They will connect you to a solicitor for legal advice.

Generalist Community Legal Centres

To find your nearest community legal centre, call the National Association of Community Legal Centres on (02) **9264 9595**, or view the Community Legal Centres directory online at www.nacclc.org.au

LawAccess NSW

Call the legal help line on **1300 888 529**

Legal Aid NSW

See 13.2 above

13.4 National Help Lines

Mensline Australia

Phone: 1300 78 99 78 - Mensline Australia supports men who are dealing with family and relationship difficulties, including men who want to address behaviours that impact negatively upon their relationships. Mensline Australia offers anonymous telephone support, information and referral for men and those concerned for the well being of the men in their life nationally, 24 hours a day, seven days a week, for the cost of a local call.

National Domestic Violence and Sexual Assault Helpline

1800 200 526 - This free hotline is available 24hrs and guarantees a confidential discussion with an experienced counsellor for anyone experiencing violence

LifeLine

13 11 14
www.lifeline.org.au

Kids Help Line

1800 551 800 - For young people, the 24 hour free Kids Help Line may be a preferred choice.
www.kidshelp.com.au

Relationships Australia

1300 364 277 - Relationships Australia has been providing counselling, mediation and other services across Australia for over 50 years. They are a non-aligned, not-for-profit, community-based organisation.

13.5 Government Departments

Department of Immigration and Citizenship - visa applicants should contact the case officer listed on their last correspondence from the Department. Alternatively, call **131 881**, or visit your nearest Department office (addresses are listed on the Department website: www.immi.gov.au)

Centrelink – (Crisis payment inquiry line, phone: **131 021**)

Department of Families, Housing, Community Services and Indigenous Affairs - (Free Helpline: **1800 200 526**)