

Practice tips for supporting
clients accessing the family
violence provisions in the
Migration Regulations 1994

Domestic Violence Workers and the Family Violence Provisions

Disclaimer

This is a practice resource designed to inform domestic violence workers of their role in the legal process when working with clients using the family violence provisions in immigration law.

The information contained in this resource should not replace advice and assistance from a registered migration agent. It is illegal in Australia for a service provider/professional to provide immigration advice or assistance unless the provider is a registered migration agent.

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Immigration and the family violence provisions: Practice tips for supporting your client through the legal process

Practice tip 1: How do I access a migration agent or welfare rights advice?

- Referral and further information about migration agents and welfare rights can be found at <http://noviolence.com.au/supportservices.html>
- The Human Services (Centrelink) website has a search tool to find what payments your client is eligible for: <http://www.humanservices.gov.au/customer/themes/migrants-refugees-and-visitors>.

Practice tip 2: When is a migration agent referral urgent?

- Your client must advise DIAC about any change in circumstances, including separation. If possible, it is best for your client to obtain legal advice before advising DIAC.
- The advice is also urgent if:
 - ✓ Current visa expires within 7 days;
 - ✓ Client must respond to DIAC within 7 days;
 - ✓ Client has a notice of cancellation;
 - ✓ Client wants to apply for review by the Migration or Refugee Review Tribunal (MRT/RRT); or
 - ✓ Client is restricted by partner and can't easily leave the home to get legal advice.

Practice tip 3: What information is relevant for the migration agent?

- Client's and alleged perpetrator's full names, dates of birth, client's contact details; country of citizenship; date of separation; and names and dates of birth of any children of the relationship.
- A copy of the client's and children's passports (all pages with written information); any relevant DIAC documents; and any domestic violence order, family law court injunction, joint undertaking to court or police record.
- Information about where your client is up to in any legal process or court proceedings which could result in **acceptable judicially determined evidence**.

Practice tip 4: What do I need to know about preparing a letter, assessment report or statutory declaration to provide evidence about the family violence?

- Consult with the migration agent and check the requirements at <http://www.comlaw.gov.au/Series/F2012L02237>.
- When detailing the nature of the violence, consider the definition of '**relevant family violence**' and any physical (including sexual), financial, emotional, and psychological violence (e.g. stalking, repeated derogatory/racial taunts; or isolating someone from their friends, family or culture).
- You will need to state your opinion about whether the family violence *caused the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety*.
- If the violence was not directed towards your client, there may be other specific issues you should cover. Discuss this with the migration agent.

Immigration and the family violence provisions: Relevant terms explained

Acceptable judicially determined evidence: Generally, this includes final DVOs, injunctions under s114 *Family Law Act 1975* and criminal convictions (or a recorded finding of guilt) for violence against the client or a member of the family unit.

Acceptable non-judicially determined evidence: This includes the client's own statutory declaration and a minimum of two of the documents listed at <http://www.comlaw.gov.au/Series/F2012L02237>; or a joint undertaking, by your client and the alleged perpetrator, to a court.

Child of the relationship: In basic terms, if there is a child of the relationship, the application for permanent residency will be streamlined where there is: a partner visa (except if the relationship is same-sex); and specific requirements for living/contact arrangements or child maintenance are met.

Genuine relationship: Your client must provide evidence that they had a genuine and continuing relationship with the alleged perpetrator up until the point the relationship ended. All circumstances of the relationship will be considered, including: financial and household arrangements (such as child care and chores); social aspects of the relationship, including undertaking joint activities; and the nature of their commitment to each other.

Independent expert: The independent expert is: for cases referred to the expert before 3 April 2013, the Department of Human Services (Centrelink); and, for cases referred on or after 3 April 2013, LSC Psychology <http://lscpsych.com.au/>. If the case is referred to an expert, your client will generally be interviewed and may need to provide new evidence to support the claim.

Migrant Review Tribunal (MRT): The MRT can review visa-related decisions made by DIAC. When considering a matter under the family violence provisions, the MRT will reconsider all of the criteria that the visa applicant must satisfy, including whether there has been relevant family violence. If necessary, the MRT will require the client to give new evidence and obtain an opinion from an independent expert. The MRT must accept the opinion of the independent expert.

Relevant family violence: In general terms, under the *Migration Regulations 1994* this means: conduct either **actual or threatened**, towards: the victim (the client); a child who is a dependent of the client and/or the alleged perpetrator; certain members of the family unit; or damage to property of the victim/family member **that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety**.

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