



Statutory declaration relating to family violence

(To be used when your visa application was lodged on or after 15 October 2007, and your first request to be considered under the family violence provisions was made prior to 24 November 2012)

Form
1040

What this statutory declaration is about

Important – Please read this information carefully before you complete your declaration. Once you have completed your declaration we strongly advise that you keep a copy for your records.

Family violence is a crime and is unacceptable in Australia. If you are in Australia and you have applied as a partner for certain permanent residence visas, you (and any member of your family unit included in your application) do not have to remain in an abusive relationship just to get permanent residence.

This statutory declaration relates to the family violence provisions of the *Migration Regulations 1994* (the Regulations). The family violence provisions allow you (or a member of the family unit), as a person who has been a victim of relevant family violence committed by your partner, to continue with your application to remain permanently in Australia even though the relationship with your partner has ended.

To access the provisions, you must:

- have applied in Australia to remain permanently as the partner of an Australian citizen, permanent resident or eligible New Zealand citizen; or
- have been granted overseas, a temporary Partner Class visa and have since travelled to Australia; or
- have been granted overseas, a Prospective Marriage (fiancé(e)) visa, have since travelled to Australia and, whilst that visa was valid, have married your sponsor; or
- be the partner of a person who has applied to remain permanently in Australia under certain Skilled or Business Skills or Distinguished Talent or Resolution of Status (subclass 851 only) visa classes.

If you or any member of your family unit have suffered family violence and you fear for your or their safety, and you decide to end your relationship with (or have already ended your relationship and left) your partner, you must decide whether or not you wish to return to your home country or remain in Australia.

If you decide to leave Australia, you must inform in writing the Department of Home Affairs (the Department) that you no longer wish to continue with your application for permanent residence. You must also advise the Department that your relationship with your partner has ended.

If you wish to remain in Australia, you must provide evidence to the Department that is acceptable under migration law that:

- you, or members of your family unit (which includes members of your partner's family unit), have suffered family violence; and
- the family violence took place while your relationship existed with your partner.

'Partner' means your spouse or de facto partner (including same-sex partners).

Family violence, as it relates to the family violence provisions, is defined on page 2 of this form.

What this statutory declaration does not do

This statutory declaration does not assist a person to obtain protection from family violence. For information on services and assistance on family violence, you should contact a family violence information service or a women's refuge in your state or territory.

Who should use this statutory declaration?

Only visa applicants who lodged their visa application on or after 15 October 2007 (and who made their first request to be considered under the family violence provisions prior to 24 November 2012) should use this statutory declaration.

On 15 October 2007 the Migration Regulations were amended to reflect amendments to the *Family Law Act 1975* and these amendments included updating the term and definition of 'domestic violence' to 'family violence'. Visa applicants who lodged their visa application before 15 October 2007 should use form 1040 *Statutory declaration relating to domestic violence*.

If you are making your first request to be considered under the family violence provisions on or after 24 November 2012, do not complete this form. You need to complete form 1410 *Statutory declaration for family violence claim* and also read *Family violence and your visa* available from the Department's website <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/partner-onshore/family-violence-and-your-visa>

If you, as the **visa applicant**, wish to remain in Australia, you must fill in this statutory declaration and provide evidence to the Department that you, or members of your family unit who were included in your application for permanent residence, have suffered family violence and you fear for your or their safety. Details about how to complete the statutory declaration and what is acceptable judicial and non-judicial evidence are described on pages 2 and 3 of this form.

A **competent person** should also use this statutory declaration to provide a professional opinion on whether or not you (or a member of your family unit) have experienced family violence. A competent person is a person in one of the professional groups defined on page 3 of this form.

Warning

Under the *Statutory Declarations Act 1959*, a person who intentionally makes a false statement in a statutory declaration can be liable for imprisonment for 4 years. In addition, the *Migration Act 1958* provides penalties for providing false or misleading statements of 12 months imprisonment or a fine of AUD12,000.

Do I have to meet any other visa requirements?

If you are assessed as meeting the family violence provisions, your application will continue to be processed. You and anyone included on your application as migrating with you must meet other legal requirements, including:

- character (for any members of your family unit aged 16 years or older); and
- health (including all members of your family unit, even those in Australia or overseas who are not migrating with you).

There may also be other issues to resolve, such as the custody of minor children. For details on partner visa processing, see

<https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/partner-onshore>

Can the Department help me?

The Department has a family violence contact officer in each of its offices in Australia. These officers are experienced in handling visa applications involving family violence and can provide you with information about the family violence provisions.

The family violence contact officers cannot provide family violence counselling services or assistance on family violence. However, they can provide you with a contact list for organisations in your state or territory that can help you, for example, a family violence information service or a women's refuge. It is your responsibility to find competent persons who, if required, can help you. For details of who are competent persons, see page 3.

If you do not want to go to a departmental office on your own, you can take a relative or friend with you for support, or ask for help from one of the organisations that support the victims of family violence.

Important information about privacy

The *Privacy Act 1988* contains 13 Australian Privacy Principles which regulate the way that the Department collects and handles personal information. Information about how the Department collects, uses and discloses personal information for its key functions can be found in form 1442i *Privacy notice*. More information about the Department's general information handling practices (including form 1442i) can be found in the Department's Privacy policy at <https://www.homeaffairs.gov.au/access-and-accountability/our-commitments/privacy>

Notes about family violence

What is family violence?

Family violence has a specific definition in the Regulations and this is the definition that must be referred to in relation to a claim that a visa applicant may be the victim of relevant family violence. For the purposes of the Regulations, the definition of relevant family violence means:

'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.'

Notes for visa applicants

Evidence you need to provide

In order to be assessed under the family violence provisions, you must submit to the Department evidence that is required under the Regulations that:

- you, or members of your family unit (including members of your partner's family unit), have suffered family violence; and
- the family violence took place while the relationship with your partner still existed.

This evidence can be either from a court (judicial evidence) or evidence from competent persons (non-judicial evidence).

You can provide any of the following judicial evidence:

- a court injunction under the *Family Law Act 1975* against your partner; or
- a court order against your partner made under a state or territory law; or
- evidence that a court has convicted your partner of assault against you or members of your family unit (or has recorded a finding of guilt against your partner); or
- evidence of a joint undertaking to a court made by you and your partner that relates to an allegation, which is before the court, that your partner has committed an act of violence against you or members of your family unit.

Alternatively, you can provide a statutory declaration on this form and 2 statutory declarations from competent persons (see list on page 3) from 2 different occupation groups. A police record of assault, allegedly committed by the alleged perpetrator on:

- the alleged victim; or
- a member of the family unit of the alleged victim; or
- a member of the family unit of the alleged perpetrator,

not including a witness statement of the alleged victim or by the person allegedly assaulted, is an alternative for one of the statutory declarations from a competent person.

Completing the statutory declaration

Under the Regulations, the statutory declaration must be made by the partner of the person alleged to have committed the family violence.

There are different requirements, depending on who is the alleged victim of family violence. These are described below.

(a) If you are the partner and you are also the alleged victim, you must include the following information in your statutory declaration:

- the allegation you are making, and if the conduct of the person alleged to have committed the relevant family violence was not towards you:
 - the name of the person whom the conduct of the alleged perpetrator was towards; and
 - identification of the relationship between you and the person whom the conduct was towards;
- the effect this has had on you; and
- the name of the person whom you allege has committed the family violence.

You need to complete Parts A and B of the statutory declaration and then sign at Part E in front of a witness as described on page 4 of this form.

(b) If someone else is the alleged victim, you (as the partner of the alleged perpetrator) must still make the statutory declaration on their behalf. Under the Regulations, you must give the following information:

- the name of the person who is alleged to have suffered family violence; and, if the conduct of the person alleged to have committed the relevant family violence was not towards the alleged victim:
 - the name of the person whom the conduct of the alleged perpetrator was towards; and
 - identification of the relationship between the alleged victim and the person whom the conduct was towards; and
 - identification of the relationship between you and the person whom the conduct was towards;
- your own name and your relationship to the person who has suffered family violence; and
- the name of the person who is alleged to have committed the family violence; and
- when the alleged family violence was committed; and
- the allegation you are making; and
- the evidence on which the allegation of family violence is based.

You must complete Parts A and C of the statutory declaration and then sign at Part E in front of a witness as described on page 4 of this form.

You should then send the completed statutory declaration to the departmental officer who is handling your application. Please ensure you have quoted your visa application reference number.

Notes for competent persons

Who is a competent person?

A 'competent person' is defined in the Regulations as:

- a person registered as a medical practitioner under a law of a state or territory providing for the registration of medical practitioners; or
- a person registered as a psychologist under a law of a state or territory providing for the registration of psychologists; or
- a person who is a registered nurse within the meaning of section 3 of the *Health Insurance Act 1973*; or
- a person who is a member of the Australian Association of Social Workers or is recognised by that Association as a person who is eligible to be a member of that Association; or
- a person who is a family consultant under the *Family Law Act 1975*; or
- a person who is a manager or coordinator of a women's refuge or crisis and counselling service that specialises in family violence or who has:
 - decision-making responsibility for a women's refuge, or a women's and/or men's crisis and counselling service, that specialises in family violence, that has a collective decision-making structure; and
 - responsibility for matters concerning family violence within the operations of that refuge or crisis service.

In the case of a report of family violence committed against a child, a competent person can also be an officer of the child welfare or child protection authorities of a state or territory.

In all of the above cases, the competent person must be currently performing the duties of the profession or position in Australia.

Responsibilities of competent persons

Under the Regulations, you must provide the following information in your statutory declaration:

- the basis of your claim to be a competent person for the purposes of assessing an allegation of family violence; and
- the name of the person who, in your opinion, has suffered family violence, and, if the conduct of the person alleged to have committed the relevant family violence was not towards the alleged victim:
 - the name of the person whom the conduct of the alleged perpetrator was towards; and
 - identification of the relationship between the alleged victim and the person whom the conduct was towards;
- the name of the person who, in your opinion, committed the family violence; and
- whether or not, in your opinion, family violence has been suffered by the person; and
- if family violence has been committed, when this took place.

Please refer to the definition of relevant family violence contained in the Regulations (see page 2 of this form), when assessing the evidence and stating your conclusions as to whether or not, for the purposes of the visa application, the person has been subjected to family violence.

If you are not experienced in family violence matters

The Department is aware that not all of the people in the competent persons list will have sufficient knowledge and experience of family violence issues to make a confident recommendation.

You are not obliged to complete the statutory declaration. You may wish to refer the visa applicant to another competent person.

Completing the statutory declaration

You should complete Parts A and D of the statutory declaration and then sign at Part E in front of a witness as described below.

You can then give the statutory declaration to the visa applicant to send to the departmental officer handling their application.

Who can witness the statutory declaration?

In Australia, statutory declarations must be witnessed by a person prescribed by the *Statutory Declarations Act 1959* and *Statutory Declarations Regulations 2018*. Any attachments to the Declaration must be certified by a prescribed person.

Prescribed persons include those who are a:

- Justice of the Peace;
- medical practitioner;
- legal practitioner;
- marriage celebrant or registered minister of religion;
- dentist;
- nurse;
- optometrist;
- pharmacist;
- migration agent registered under Division 3 of Part 3 of the *Migration Act 1958*;
- teacher employed on a permanent full-time or part-time basis at a school or tertiary education institution;
- bank officer with 5 or more continuous years of service;
- permanent employee of the Australian Postal Corporation with 5 or more continuous years of service;
- police officer; or
- public servant with 5 or more continuous years of service.

A full list of prescribed persons can be found in the *Statutory Declarations Regulations 2018*, which is available through the Attorney General's Department website

www.ag.gov.au/publications/pages/statutorydeclarations.aspx

A blank statutory declaration form is also available from the same website.

Home page www.homeaffairs.gov.au

General enquiry line Telephone **131 881** during business hours in Australia to speak to an operator (recorded information available outside these hours). If you are outside Australia, please contact your nearest Australian mission.

Please keep these information pages for your reference



Statutory declaration relating to family violence

(To be used when your visa application was lodged on or after 15 October 2007, and your first request to be considered under the family violence provisions was made prior to 24 November 2012)

Please open this form using Adobe Acrobat Reader.
Either type (in English) in the fields provided or print this form and complete it (in English) using a pen and BLOCK LETTERS.

Tick where applicable

Office use only

File number

Before completing this declaration

Please ensure that you have read the explanatory notes that accompany this statutory declaration.

Details of person making the statutory declaration

I, Family name

Given names

of Your residential address

Postcode

Occupation or qualification

Telephone numbers

Office hours (Area code)

After hours (Area code)

make the following declaration under the *Statutory Declarations Act 1959*.

Part A— Details

1 If you are:

- the partner of the person alleged to have committed the family violence and you are alleging:
 - family violence against yourself Complete **Questions 2 and 3** and **Part B** and then complete and sign the *Declaration* at **Part E**
 - family violence against another person Complete **Questions 2 and 3** and **Part C** and then complete and sign the *Declaration* at **Part E**
- a competent person Complete **Questions 2 and 3** and **Part D** and then complete and sign the *Declaration* at **Part E**

Note: The partner of the person alleged to have committed the family violence and competent persons must complete separate forms.

2 Give the following details about the person or people who claim to have suffered relevant family violence

Family name	Given names	Date of birth			Relationship to the visa applicant (eg. visa applicant, dependent child, family unit member)
		Day	Month	Year	

3 Give the full name of the person who is alleged to have committed the relevant family violence against the person(s) named in Question 2

Family name	Given names	Relationship to the visa applicant

Part C – To be completed where the partner of the person alleged to have committed the family violence is **alleging family violence against someone else**

6 Give the following details about yourself

Full name	Your relationship to the person alleged to have suffered relevant family violence

7 Describe the relevant family violence experienced, including individual incidents, and who experienced the family violence.

Where possible include:

- what happened, including details of physical violence and threats of violence, and, if the conduct of the person alleged to have committed the relevant family violence was not towards the alleged victim:
 - the name of the person whom the conduct of the alleged perpetrator was towards; and
 - identification of the relationship between the alleged victim and the person whom the conduct was towards;
- when the family violence commenced;
- how frequently the family violence occurred;
- dates on which the family violence occurred;
- when the most recent incident was.

*For information about what you are required by the Regulations to provide, please refer to the definition of relevant family violence and **Notes for visa applicants** on page 2 of the guidelines at the front of this form.*

If insufficient space, please attach additional details

8 Based on the allegation, what evidence is there that the person has suffered relevant family violence?

If insufficient space, please attach additional details

Please go to the end of the form to complete and sign the *Declaration* at Part E

