



Statutory declaration for family violence claim

(for family violence claims first made on or after
24 November 2012)

Form
1410

What this statutory declaration is about

Important – Please carefully read this information together with Fact sheet 38 *Family Violence Provisions* before you complete your declaration.

Fact sheet 38 is available from the Department of Immigration and Border Protection's (the department) website www.border.gov.au/about/corporate/information/fact-sheets/38domestic

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 dependent family member 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 dependent family member) to continue with your application to remain permanently in Australia even though the relationship with your partner has ended, if you or a dependent family member have been a victim of relevant family violence committed by your partner.

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 outside Australia, a temporary Partner Class visa and have since travelled to Australia; or
- have been granted outside Australia, a Prospective Marriage (fiance) 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, Distinguished Talent or Resolution of Status (subclass 851 only – whose application was lodged before 9 August 2008) visa classes.

If you or a dependent family member 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 the department in writing 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:

- your relationship has broken down and you and your partner have custodial rights under the *Family Law Act 1975* for any children aged under 18 years that you and your partner may have (if you are a Partner visa applicant and this applies, you may not need to complete this form);

OR

- you, or your dependent family members (which may include your partner's family members), 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 include physical, psychological and financial abuse and is defined below.

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:

- 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; or*
- the property of the alleged victim; or*
- the property of a member of the family unit of the alleged victim; or*
- 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.'

Who should use this statutory declaration?

Only visa applicants who lodged their first written family claim on or after 24 November 2012 should use this statutory declaration. On 24 November 2012 the Migration Regulations were amended to streamline the evidentiary requirements for making a non-judicial claim of family violence.

Visa applicants who made their first written claim of family violence prior to 24 November 2012 should use the relevant version of form 1040 which is available from the department's website www.border.gov.au

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 dependant 16 years or older); and
- health (including all dependants in Australia or outside Australia 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 booklet 1, *Partner Migration*, which is available from the department's website www.border.gov.au/allforms/ or from any office of the department.

Important information about privacy

Your personal information is protected by law, including the *Privacy Act 1988*. Important information about the collection, use and disclosure (to other agencies and third parties, including overseas entities) of your personal information, including sensitive information, is contained in form 1442i *Privacy notice*. Form 1442i is available from the department's website www.border.gov.au/allforms/ or offices of the department. You should ensure that you read and understand form 1442i before completing this form.

The information is given and received on the understanding that it will be treated in confidence.

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 your dependent family members (including your partner's family members), 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 non-judicial evidence.

You can provide any of the following judicial evidence:

- a court injunction under the *Family Law Act 1975* against your partner;
- 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 your dependant(s) (or has recorded a finding of guilt against your partner).

You can also provide non-judicial evidence of a joint undertaking to a court made by you and your partner that relates to an allegation of family violence your partner has committed against you or your dependant(s).

If you have any of the above evidence, generally you do not need to complete this form. However, your case officer may request you to complete this form, if necessary.

Alternatively, you can provide your statutory declaration on this form and a minimum two pieces of evidence from the list of documents outlined in the legislative instrument. A link to the legislative instrument is available on Fact sheet 38 *Family Violence Provisions* which is available from the department's website

www.border.gov.au/about/corporate/information/fact-sheets/38domestic

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:

- set out the allegation;
- name the person alleged to have committed the relevant family violence; and
- describe the effect this has had on you.

You need to complete Sections 1, 2, 3 and Part A of the statutory declaration and then sign at Part C in front of a witness as described below.

(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 provide the following information:

- name the alleged victim;
- set out the allegation of family violence;
- identify the relationship between you (as the maker of the statutory declaration) and the alleged victim;
- name the alleged perpetrator; and
- set out the evidence on which the allegation is based.

You need to complete Sections 1, 2, 3 and Part B of the statutory declaration and then sign at Part C in front of a witness as described below.

Where to send this form?

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

Who can witness the statutory declaration?

In Australia, statutory declarations must be witnessed by a person prescribed by the *Statutory Declarations Act 1959* and Regulations. 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;
- civil marriage celebrant or registered minister of religion;
- dentist;
- nurse;
- optometrist;
- pharmacist;
- physiotherapist;
- full-time teacher;
- bank manager or bank officer with 5 or more continuous years of service;
- postal manager or permanent employee of the Australian Postal Commission 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 1993, 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.border.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
for family violence claim
 (for family violence claims first made on or after
 24 November 2012)

Please use a pen, and write neatly in English using 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.

1 Details of the person making the statutory declaration

I, Family name

Given names

of Your current residential address

POSTCODE

Occupation or qualification

Telephone numbers

Office hours

After hours

Make the following declaration under the *Statutory Declaration Act 1959*.

2 Give the following details about the person or people you allege have suffered relevant family violence

This can be yourself or another family member

Family name	Given names	Date of birth			Relationship to you <i>(eg. you, your dependent family member)</i>
		DAY	MONTH	YEAR	
		/	/		
		/	/		
		/	/		
		/	/		
		/	/		

3 Give the name of the person who you allege has committed the relevant family violence against the person(s) named above

Family name	Given names	Relationship to the visa applicant

Part C – Declaration

WARNING: Under section 11 of the *Statutory Declaration Act 1959*, a person who intentionally makes a false statement in a statutory declaration can be liable for imprisonment for 4 years. Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* – see section 5A of the *Statutory Declarations Act 1959*.

In addition, section 245 of the *Migration Act 1958* provides penalties for providing false or misleading statement of 12 months imprisonment or a fine of AUD12,000.

- 12** *I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.*

I declare that:

- *I have read the information contained in form 1442i Privacy notice.*
- *I understand the department may collect, use and disclose my personal information (including biometric information and other sensitive information) as outlined in form 1442i Privacy notice.*

Signature of person making the declaration

Declared at (place)

On (date)

DAY	MONTH	YEAR
/	/	

Before me,
(Signature of prescribed person)

Date

DAY	MONTH	YEAR
/	/	

Details of prescribed person

Family name

Given names

Preferred title

Mr Mrs Miss Ms

Other

Contact address

Occupation or qualification

Telephone number

Office hours

(AREA CODE)

We strongly advise that you keep a copy of your application and all attachments for your records.