Domestic and Family Violence Migration Regulations: Relevance for Health Workers

**Summary** Providing advice on the legal framework to assist NSW Health professional experts supporting victims of domestic and family violence on temporary visas.

**Document type** Information Bulletin

**Document number** IB2018_017

**Publication date** 24 May 2018

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**Replaces** IB2005_004

**Review date** 24 May 2023

**Policy manual** Not applicable

**File number** H18/16169

**Status** Active

**Functional group** Clinical/Patient Services - Clinical/Patient Services, Aged Care, Aids and Appliances, Anaesthetics, Baby and Child, Critical Care, Dental/Oral, Drug and Alcohol, Ethical Behaviour, Governance and Service Delivery, Human Tissue, Imaging - diagnostic and interventional, Incident Management, Infectious Diseases, Information and Data, Maternity, Medical Treatment, Mental Health, Non-English speaking, Nursing and Midwifery, Nursing homes, Pathology, Pharmaceutical, Records, Research, Statewide and selected specialty services, Surgical, Transport

**Applies to** Affiliated Health Organisations, Board Governed Statutory Health Corporations, Cancer Institute, Chief Executive Governed Statutory Health Corporations, Community Health Centres, Government Medical Officers, Local Health Districts, Ministry of Health, Private Hospitals and day Procedure Centres, Public Health Units, Public Hospitals, Specialty Network Governed Statutory Health Corporations

**Distributed to** Divisions of General Practice, Government Medical Officers, Health Associations Unions, Ministry of Health, Private Hospitals and Day Procedure Centres, Public Health System, Tertiary Education Institutes

**Audience** Registered medical practitioners, Nurses, Psychologists, Members or eligible members of the Australian Association of Social Workers
DOMESTIC AND FAMILY VIOLENCE MIGRATION REGULATIONS: RELEVANCE FOR HEALTH WORKERS

PURPOSE
This Information Bulletin outlines the special provisions relating to domestic and family violence (DFV) contained in the Migration Regulations 1994 (the provisions) of the Migration Act 1958. It also describes support which can be offered to victims of DFV, in addition to clinical services, by certain professional experts within NSW Health.

This Information Bulletin expands on issues raised in the NSW Health Policy and Procedures for Identifying and Responding to Domestic Violence 2006, regarding clients from culturally and linguistically diverse backgrounds affected by DFV, who hold certain temporary visas.

KEY INFORMATION
The provisions ensure that persons in Australia on certain temporary visas do not feel compelled to remain in abusive relationships in order to stay in Australia.

The provisions are usually invoked by persons on temporary partner visas or prospective marriage visas, who are in the process of applying for a permanent partner visa. The provisions allow these persons to remain in Australia and apply for permanent residence, even though, as a result of DFV and a relationship breakdown, they do not meet the ordinary requirements to obtain a permanent partner visa.

The provisions can also be invoked by persons on certain skilled stream visas in some circumstances.

Victims of DFV seeking to invoke the provisions must substantiate their claims by proving their relationship was genuine until it ended and that DFV took place during the relationship in Australia.

If the victim’s claim of DFV has not been heard by a court, that person can provide the following as evidence that DFV took place during their relationship:

- a statutory declaration (form number 1410 for DFV claims first made on or after 24 November 2012, or form number 1040 for claims made on or after 15 October 2007); and
- two items of evidence from professional experts.

The Migration Regulations 1994 - Specification of Evidentiary Requirements - IMMI 12/116 (IMMI 12/116) provides information on acceptable items of evidence from professional experts. Victims of DFV must present at least two of the types of evidence listed in IMMI 12/116 in support of their claim. They cannot present two items of evidence of the same type.

NSW Health workers categorised as professional experts include registered medical practitioners, nurses or psychologists and members or eligible members of the Australian Association of Social Workers. Professional experts within NSW Health may provide a statement in a statutory declaration or an official letter with relevant supporting documents.
in their professional capacity, including a medical report, hospital report or a discharge summary. Their evidence must include:

- details of the violence, identifying all individuals involved;
- evidence or reasons for any opinion or assessment;
- details about their professional relationship with the victim; and
- information regarding services and support offered or provided to the victim.

Professional experts within NSW Health should proactively follow up by asking about the safety of the victim - if they are safe to go home, if they need assistance to go home or a safe place as per the NSW Health policy on *Identifying and Responding to Domestic Violence* PD2006_084.

Professional experts within NSW Health should also identify if children are involved in the violence by asking victims directly. If so, questions should be asked about this - if children have been hurt or witnessed violence, where and who are the children with, and if victims are worried about the children’s safety.

Professional experts within NSW Health are also required to follow mandatory reporting protocols if they suspect that a child is at risk of significant harm.

The NSW Mandatory Reporting Guide should be used as part of this assessment and reports to the Child Protection Helpline should be made where indicated.

REFERENCES


