



# Temporary Visa Holders Experiencing Violence Program

Rates of domestic and family violence are higher for female temporary visa holders in Australia when compared to the whole population.<sup>1</sup> This resource sets out information to help temporary visa holders who are experiencing domestic and family violence and seeking to become permanent residents. Service providers working with female temporary visa holders should use this information to educate women on their legal options and refer them to legal services.

## What is the “Temporary Visa Holders Experiencing Violence Program?”

Through the Temporary Visa Holders Experiencing Violence Program (TVP) Women’s Legal Service Queensland (WLSQ) provides eligible women with free family law and immigration legal advice. TVP is funded by the Australian Federal Government.

## Eligibility criteria

A client is eligible for assistance through WLSQ’s TVP team if she:

- identifies as a woman;
- is in Australia on a temporary visa; and
- has intersecting family law (including domestic violence) and immigration legal issues.

Please note meeting the eligibility criteria does not guarantee that a woman will receive legal advice from WLSQ’s TVP team.

If the legal assistance required by a woman on a temporary visa is limited to family law or domestic and family violence law only, she may be eligible for assistance from WLSQ outside the TVP team.

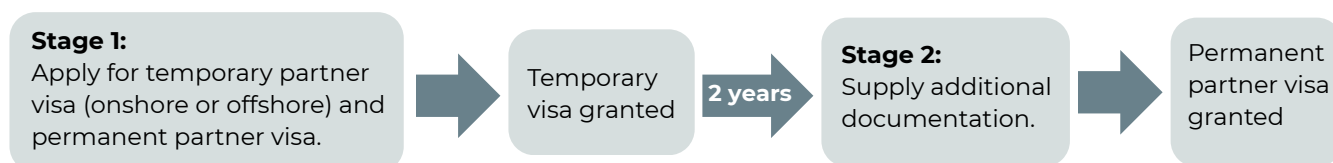
Alternatively, if a woman on a temporary visa requires legal assistance with immigration issues only, WLSQ may be able to assist with a referral for specialist migration assistance from the Refugee and Immigration Legal Service (RAILS).

## What is a temporary visa?

Temporary visas allow people to stay in Australia on a temporary basis, generally for a particular reason. For example, to study, work and/or live.

## What is a temporary partner visa?

A temporary partner visa allows the holder to live, work and study in Australia, on a temporary basis. The two stage (in green) application process is:



If the relationship ends after applying for the temporary partner visa (stage 1) but before a permanent visa is granted (stage 2), there are three potential pathways to permanent residency being granted:

- Death of their sponsor (not discussed in this resource)
- Family violence provisions (limited visa subclasses)
- Child of the relationship provisions (limited visa subclasses)

Visa holders should immediately seek legal advice if they believe any of these provisions apply to their circumstances.

## Family violence provisions

Through the Temporary Visa Holders Experiencing Violence Program (TVP) Women's Legal Service Queensland (WLSQ) provides eligible women with free family law and immigration legal advice. TVP is funded by the Australian Federal Government.

## Who can access the family violence provisions?

Visa holders who:

1. Have applied for a **partner visa** (or holder of **subclass 445** or dependent applicant of **subclass 858**) or other eligible permanent family or skilled visa; and
2. Prove that the relationship was genuine and continuing prior to separation; and
3. Provide evidence that they experienced domestic or **family violence during** the relationship. This can be demonstrated by providing:
  - a. A final domestic violence protection order, or evidence their sponsor has been convicted of or found guilty of a family violence related crime; or
  - b. A statutory declaration from the visa holder and two letters/ reports/ statutory declarations from professionals such as doctors, psychologists, social workers, domestic violence support workers.

## Is it domestic and/or family violence?

The legal meaning of “family violence” is slightly different in different jurisdictions around Australia.

For the purposes of the Migration Regulations, family violence includes:

- actual conduct or threatened conduct;
- towards a person, their family, their partner/ex-partner’s family; or
- towards their property;
- that causes them to fear or feel reasonably worried about their wellbeing or safety.

*The Migration Regulations* stipulate that for the purposes of the family violence provisions, the conduct must have been perpetrated by the sponsoring partner of a partner visa application, or the primary applicant of a skilled or other family visa application.

In Queensland, domestic and family violence includes behaviour from a partner, ex-partner or family member that can include:

- **Physical abuse**– hitting, pushing or striking them or someone else
- **Sexual abuse** – forcing or coercing them to engage in sexual acts (or trying to)
- **Emotional or psychological abuse** – repeated contact, name calling, taunting, verbal abuse, restricting or preventing someone from making or maintaining connections or contacting other people
- **Threats**– to harm them or their property, someone they care about, or to self-harm
- **Economic and financial abuse** – to control how they get, use or keep money or economic resources such as interfering with their opportunities to find work or keep a job
- **Coercive Control** – using a pattern of behaviour over a period of time to try and control their life, to make someone do or not do something, or to threaten, abuse or make them feel fearful
- Any other way controls or dominates them or makes them feel fearful for their own safety or the safety of someone else, for example, their child/ren

## How can women access the family violence provisions?

If you are supporting a woman who may be eligible to apply for permanent residency under the family violence provisions, it is important that she receives legal advice. There are timeframes that apply.

## What if the temporary visa holder is the respondent on a DVO?

Being named as a respondent on a DVO may lead to a character cancellation or refusal of a visa application. If you are supporting a woman on a temporary visa, who is a respondent to a DVO application, or a DVO, it is important that she receives legal advice.

## Child of the relationship provisions

---

### Who can access the child of the relationship provisions?

These provisions apply to visa subclasses 309 or 820 holders, and to people who have applied for an 820 visa or applied for 309 visa and are onshore.

Eligibility criteria:

- a. one parent (the sponsor), is an Australian citizen or permanent resident; AND
- b. there is a child or children from the relationship\*; AND
- c. there are joint arrangements in place for the care of the child/ren; OR
- d. the sponsor has child support obligations.

\*The child/ren do not need to be the biological children of the sponsor or the visa holder.

### How can women access the child of the relationship provisions?

If you are supporting a woman who may be eligible to apply for permanent residency under the child of the relationship pathway, it is important that she receives legal advice. There are timeframes that apply.

## What if the family violence or child of the relationship provisions don't apply?

---

If a woman on a temporary visa has experienced domestic or family violence, or had a child with her sponsoring ex-partner, but her visa subclass does not fall within the scope of the provisions, these pathways to permanent residency are not available to her.

There **may** be other pathways available for her to stay in Australia. This will depend on her circumstances. She may be able to apply for:

- **A protection visa**
  - If she is seeking safety in Australia because of a fear of persecution for a reason set out in the 1951 Refugee Convention or because she is at risk of significant harm such as torture, cruel, inhumane or degrading treatment or punishment or the death penalty.
- **A parent or contributory parent visa**
  - For parents of children who are an Australian citizen or Australian Permanent resident or eligible New Zealand citizen
  - Application process time is 12+ years
- **Work or skilled visas**
  - For people with eligible skills or occupations.
- **Ministerial intervention**

It is important that you support clients to urgently seek legal advice.

## Case studies

---

### Linda\*

In 20XX, Linda came to Australia on a temporary student visa.

While living in Australia she met and started dating Steve\* who is an Australian citizen. Linda applied for a partner visa, sponsored by Steve.

Linda and Steve had a child together in 20XX.

In 20XX Linda wanted to separate from Steve because she feared for her safety and the safety of their child. This was because Steve:

- wouldn't allow her to make friends, or speak with her family overseas,
- didn't allow her to work and controlled all the family's finances,
- threatened to physically hurt her on numerous occasions, and
- Threatened to lock her in the house during the day while he went to work.

When Linda told Steve she wanted to separate, he took her passport and told her he would have her deported and make sure she never saw her child again if she left him.

The neighbours overheard this argument and called the police.

The police put Linda in contact with her local DV service. The DV service arranged an interpreter and helped her to make a **safety plan**. A safety plan can be about putting a plan in place to stay safe in a relationship, or to stay safe when leaving a relationship. The DV service referred Linda to the TVP for legal advice.

Steve commenced proceedings in the Federal Circuit and Family Court of Australia ("FCFCOA") seeking parenting orders.

The TVP team provided support to Linda with both her family and migration law needs, including:

1. Notifying the Department of Home Affairs (DHA) that the relationship had ended.
2. Providing evidence to the DHA of the genuineness of the relationship and that Linda and Steve had a child together.
3. Applying for a domestic violence protection order and providing evidence of the family violence Linda experienced to the DHA to support arguments that permanent residency should be granted quickly; and
4. Obtain parenting orders from the FCFCOA that set out the parenting arrangements for their child which included how much time and when the child was to spend time with Steve.

## Sarah\*

Sarah moved to Australia in 2019 on a student visa. Whilst studying in Australia, Sarah met James\* and they started a relationship. They did not apply for a partner visa for Sarah because, at the time, James had not finalised his divorce with his previous partner so was not eligible to be a sponsor.

In February 2021, Sarah and James had a child together.

In January 2023, Sarah applied for and was granted a Temporary Activity Visa (subclass 408). This visa allowed her to remain in Australia until its expiry (1 year from the date when the visa was granted).

During their relationship, Sarah experienced family violence perpetrated by James. In May 2023, the police attended an incident at Sarah and James' house and issued a police protection notice naming Sarah as the aggrieved and James as the respondent. Following this incident, Sarah and James separated and a magistrate granted a protection order to help protect Sarah.

Sarah's visa subclass (408) does not entitle her to rely on the family violence provisions, or the child of the relationship provisions. **Sarah's options are limited. She can:**

- **Apply for a parent visa:**
  - The granting of parent visas is capped annually.
  - Applications are assessed in the order that they are lodged.
  - Processing and approval of parent visas can take 12+ years (often more than 30 years) from the date of lodgment.
  - There is no bridging visa associated with this application. Sarah would need to apply for a temporary visa to stay in Australia lawfully while the parent visa application is processed.
- **Apply for a student visa to continue her studies in Australia:**
  - Her ability to work to provide for herself and her child would be limited.
  - This does not provide a permanent solution.
- **Apply for a skilled visa (if she has eligible skills or occupations).**
- **Return to her home country:**
  - With the child: Tensions with Australian family law.
  - Without the child: Risk of alienation from her child.

*\*Names and identifying information changed to maintain client privacy and confidentiality.*

## Support from TVP

---

Eligible women who receive legal advice from TVP will receive holistic support from WLSQ with:

- Immigration advice – including applying for permanent residence.
- Family law issues – including separation, divorce, parenting arrangements, property disputes.
- Domestic and family violence – including applying for a protection order.
- In some circumstances, ongoing casework and representation, including court, tribunal or Department of Home Affairs representation.
- Information and referrals to support services.

## How are referrals made to WLSQ's TVP team for legal advice?

1. Women can self-refer by contacting the WLSQ Helpline on 1800 957 957, Monday to Friday, 9:00am to 4:30pm. We can arrange an interpreter on the call.
2. Services can refer women to TVP by completing the [referral form](#) and emailing it to [tempvisa@wlsq.org.au](mailto:tempvisa@wlsq.org.au).
3. Internal referrals can be made by WLSQ team members.

If the matter is urgent, please ask the client to contact the WLSQ Helpline.

## Other support services

---

If you or someone else you know are in immediate danger, call 000.

### Social support

DV Connect – 1800 811 811

Red Cross – <https://www.redcross.org.au/migration/family-and-domestic-violence-financial-assistance-program/>

Immigrant Women's Support Services – (07) 3846 3490

### Legal

WLSQ Temporary Visa Program – 1800 957 957

Refugee and Immigration Legal Services (RAILS) – (07) 3846 9300

Community Legal Centres Queensland – (07) 3392 0092

Legal Aid Queensland – 1300 65 11 88