

You are a “competent person”

...Under the Migration Regulations

A MESSAGE TO DOCTORS AND NURSES

Under the Migration Regulations you can support a woman, on certain visa classes and who is a victim of domestic violence, in her application to stay in Australia.

Background

Under the Migration Regulations, partners of Australian citizens/residents applying for Permanent residence on “Partner grounds” receive a Temporary 2 year visa, which then becomes Permanent if after 2 years the relationship is found to be still ongoing and genuine.

To protect victims of domestic violence, who found themselves in the vulnerable position of having to choose between returning to their country or remaining in a violent relationship until the 2 years were over, the government introduced the Domestic Violence Provision in 1991.

Why is it important you support the woman experiencing domestic violence?

Migration is a difficult and stressful process. Women leave their families, jobs and culture in order to marry and begin life in a new country. The uprooting and readjustment that women make when marrying and migrating to Australia cannot be underestimated.

When a marriage breaks down because of abuse by the partner, the stress experienced by the woman is two- fold. She has to cope with being a single woman, making employment and other life decisions and caring for other members of the family, in addition to dealing with the abuse and trauma caused by the partner. The process of healing from abuse is long and difficult. In such a situation, the last thing a woman needs is to have her visa cancelled and be forced to return to her native country.

Her home country may not welcome her back due to traditional views on family break-up and divorce. They may view divorce with extreme disapprobation. It is possible that the woman will continue to be abused – this time not by her partner but by her own community. The woman may also face discrimination in employment, and the entire family could be subjected to direct or indirect hostility.

The process of reverse migration would add to the stresses faced by the woman. However, she may be eligible to apply for Permanent Residence under the Domestic Violence Provision and you may be able to support her in this process. This may enable her to rebuild her future in Australia.

What is the Domestic Violence Provision (DVP)?

“The Domestic Violence Provision of Australia’s Migration Program, allows certain people applying for permanent residence in Australia to continue with their application after the breakdown of their spouse or partner relationship if they, or a member of their family unit, have experienced domestic violence committed by their spouse or partner”.

(DIMIA website <http://www.immi.gov.au/facts/38domestic.htm>)

The DVP allows applicants on *certain* Partner visas, who have experienced domestic violence after arriving in Australia and whose relationship with the sponsoring partner has broken down because of domestic violence, to remain eligible for Permanent Residence if they can demonstrate that the relationship with their sponsoring partner was genuine and broke down because of domestic violence. As such it is an essential safeguard for women who would otherwise be locked in an abusive and violent relationship.

How is the Domestic Violence Provision accessed?

For the purpose of making an application under the Domestic Violence Provision, domestic violence is defined in the Migration Regulations to be:

“Violence against the alleged victim or his or her property that causes the alleged victim, or a member of the alleged victim’s family to fear for, or to be apprehensive about the alleged victim’s personal wellbeing or safety. Violence includes the threat of violence.”
(DIMIA website <http://www.immi.gov.au/facts/38domestic.htm>)

To access the DVP the victim of domestic violence needs to establish

1. That the relationship was genuine and ongoing (which is done by the Department of Immigration and Multicultural and Indigenous Affairs - DIMIA)
2. That domestic violence occurred in Australia

How can you help?

One of the ways to establish that domestic violence occurred in Australia is for the woman to provide DIMIA with a Statutory Declaration by a “Competent Person”.

Who is a “Competent Person”?

Competent People include the following:

Registered Medical Practitioners and Psychologists, Registered Nurses, Social Workers and Managers of Domestic Violence Services.

As a GP or registered nurse you may be approached by a woman asking you to provide a statutory declaration.

How to make your declaration most effective

- Identify yourself, establish your qualifications and expertise and the basis on which you are a competent person
- Include the name of the person who has experienced the violence and the name of the perpetrator
- Include a statement that in your opinion domestic violence has occurred
- Detail the facts on which you base that opinion

It is very important that your declaration is based on your professional expertise and on factual observation, and to ensure that it is not just the retelling of the victim’s story.

For example you may want to include:

- Specific incidents with dates
- Observations on the victim’s physical state and health history, such as injuries, bruises, lacerations, delay in seeking medical attention and a pattern or history of repeated injuries
- Observations on the victim’s psychological state and history such as: stress, depression, anxiety, drug or alcohol abuse, use of tranquillizers and anti-depressants, chronic headaches and other pains, sleeping and eating disorders, suicide attempts
- Observations on other possible symptoms such as: abdominal pain, complaints of sexual dysfunctions, joint and muscle pains, miscarriages etc
- Your opinion on the impact of the violence on her personal wellbeing and safety

If in your opinion these symptoms are consistent with domestic violence and the woman’s story, you should state this in the statutory declaration

If the woman is a regular patient you can check her record for a history of symptoms consistent with domestic violence.

ESSENTIAL: ALWAYS REFER THE PATIENT TO A DOMESTIC VIOLENCE SERVICE

Domestic Violence Line

1800 656463

Immigrant Women’s Speakout Association of NSW Inc.

(02) 96358022



NSW STRATEGY TO REDUCE
VIOLENCE AGAINST WOMEN

This info-sheet was produced by the NESB DV Network with financial support from the NSW Strategy to Reduce Violence Against Women, Sydney, August 2004. It provides basic information only and is not a substitute for legal advice. If you have a migration issue, consult a registered migration agent. Additional copies can be downloaded from Immigrant Women’s Speakout website at www.speakout.org.au. ISBN :- 0 7347 2842 5