

Family Violence and Humanitarian Protection in Australia

By Dr Samantha O'Donnell, Research Fellow, CEVAW Workstream 3.2: Legal Responses

This information sheet outlines the legal landscape in relation to humanitarian protection and family violence. It considers how family violence intersects with Protection Visa (subclass 866) applications. This visa allows the holder to stay permanently in Australia. It must be applied for within Australia ('onshore') and has restrictions based on how the applicant arrived in Australia. There are different refugee visas for applicants who are **not** currently in Australia ('offshore'), including a Woman at Risk Visa, which are not considered in this fact sheet.

Background

People seeking asylum can access a Protection Visa through two legal avenues:

- proving one's status as a refugee, or
- complementary protection.

No separate application is needed for complementary protection. It will be [considered in the alternative](#) if the applicant does not meet the criteria for refugee status. If successful in either category, and in meeting other specified requirements, the applicant will be granted a Protection Visa.

These requirements include security and [character checks](#), which all applicants must satisfy. Failure to do so may result in the denial or cancellation of the visa. Additional procedural steps, such as [health checks](#), must also be completed before a Protection Visa is granted.

Applicants are generally eligible for a permanent Protection Visa only if they entered Australia on a valid visa. The [harms](#) of this punitive and structurally violent approach are well-documented.

This information sheet is **not legal advice** and is intended for research, policy, or media information. For up-to-date information, visit the [Department of Home Affairs website](#). If you are based in Australia, legal advice may be available through your [local community legal centre](#).

Related fact sheets are available from:

- [Asylum Seeker Resource Centre \(ASRC\)](#)
- [Refugee Advice and Casework Service \(RACS\)](#)
- [Refugee and Immigration Legal Service \(RAILS\)](#)

Family Violence

Family violence is not a named ground for refugee or complementary protection in the *Migration Act 1958 (Cth)* (*Migration Act*). However, an applicant may seek protection based on experiences of family violence that occurred *outside Australia* in the applicant's country of origin. Success through this pathway can be challenging.

See the related CEVAW information sheet on [temporary visa holders and the family violence provisions](#), which are a pathway to permanent residency for certain temporary visa holders based on experiences of family violence *within Australia*.

Family Violence and Humanitarian Protection in Australia

Refugee Protection

Humanitarian protection for refugees is based on Australia's [obligations under international law](#), specifically the:

- [1948 Universal Declaration of Human Rights](#)
- [1951 Refugee Convention](#)
- [1967 Refugee Protocol](#)
- [International Covenant on Civil and Political Rights](#)
- [Convention on the Rights of the Child](#)
- [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#).

These international obligations are not automatically adopted but must be incorporated into domestic law, and certain obligations have been [enshrined in Australian law](#).

To be granted protection as a refugee, a person must be outside their country of origin (or home country for stateless persons) and prove they have a [well-founded fear of persecution](#) based on their:

1. race
2. religion
3. nationality
4. membership of a particular social group, or
5. political opinion.

The applicant must be '[unable or unwilling](#)' to obtain protection from their country of origin. This includes the concept of '[effective protection](#)' as defined in the law.

A well-founded fear of persecution means a 'real chance' of persecution based on one of these five reasons in all areas of the applicant's country of origin. At least one of these reasons must also be an 'essential and significant reason' for persecution, which must also 'involve serious harm' and 'systematic and discriminatory conduct'. The applicant must also be unable to take reasonable steps to modify their behaviour to avoid persecution. A qualification to this requirement, that may be of particular relevance to family violence claims, is that an applicant will not be required to 'enter into or remain in a marriage to which [they are] opposed, or accept the forced marriage of a child'.

There are also [exclusions](#) which specify that an applicant will not be granted refugee status if there are 'serious reasons for considering' the applicant has committed international crimes, serious non-political crimes, or acts contrary to United Nations purposes/principles.

A 2002 [Australian High Court Decision](#) made it possible for family violence to be recognised as a basis for obtaining refugee status in Australia. In this decision, a woman from Pakistan was granted protection as a refugee under the '[particular social group](#)' ground based on experiences of family violence and the failure of the state to provide effective protection. Gender-based persecution, including family violence, usually falls under the 'membership of a particular social group' ground.

Refugee claims based on family violence are [hard to prove](#) and rarely successful in Australia, but they are possible. The applicant must connect the family violence they experienced from non-state actors (e.g. a family member) to the state's failure to protect them. [In practice](#), they depend on the applicant proving that their country of origin (state) is not just unable to protect them from family violence, but is unwilling to do so.

Family Violence and Humanitarian Protection in Australia

Complementary Protection

Complementary protection has been a legal avenue for obtaining humanitarian protection since 2012, with [legislation](#) that affirmed Australia's [responsibility under international law](#) not to return people to a country where they would face serious harms.

A person can be granted [complementary protection](#) if they can prove a 'real risk' of 'significant harm' if they return to their country of origin. Significant harm includes: 'arbitrary deprivation of life', the 'death penalty', 'torture', 'cruel or inhuman treatment or punishment', and 'degrading treatment or punishment'. However, no real risk of significant harm will be found if:

- it is safe to relocate to another part of their country of origin
- the risk of harm is general to the population and not personal to them, or
- authorities in their country of origin can provide protection.

There are [exclusions](#) which specify that complementary protection will not be granted if there are 'serious reasons for considering' the applicant has committed international crimes, serious non-political crimes, acts contrary to United Nations purposes/principles, or there are 'reasonable grounds' for considering the applicant is a danger to Australia's security or the Australian community. These are similar but more extensive than the exclusions related to refugee status.

Limited research suggests that while women may be able to access complementary protection based on experiences of family violence, the [success rates are low](#).

Other Considerations

Applying for a Protection Visa, through either avenue, is complex. It often requires [specialist legal knowledge and lengthy research](#), including up-to-date country information. Applicants typically face [long wait times](#) for an outcome, although there has been a commitment to [shorter processing times](#).

Further research is needed on women's experiences of the Protection Visa process in Australia as victim-survivors of family violence. As [Vasefi and Dehm](#) make clear, we must examine how gendered harms are embedded within Australian immigration law and how these harms uphold a structurally violent system.

This flow chart provides a simplified overview of the application process:

