

**EXPLANATORY STATEMENT**

*Migration Regulations 1994*

**EVIDENTIARY REQUIREMENTS**

(Paragraph 1.24(b))

1. This Instrument is made under paragraph 1.24(b) of the Migration Regulations 1994 ('the Regulations').
2. Regulation 1.24 of the Regulations relates to paragraph 1.23(9)(c) of the Regulations.
3. Subregulation 1.23(9) of the Regulations provides for when an application for a visa is taken to include a non-judicially determined claim of family violence. Various requirements must be met, including that:
  - (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence (see paragraph 1.23(9)(a)); and
  - (b) the alleged victim is a person specified in paragraph (b) (see paragraph 1.23(9)(b)) ; and
  - (c) the alleged victim or another person on the alleged victim's behalf has presented evidence in accordance with regulation 1.24 that:
    - the alleged victim has suffered relevant family violence; and
    - the alleged perpetrator committed that relevant family violence (see paragraph 1.23(9)(c)).
4. Regulation 1.24 specifies that the evidence mentioned in paragraph 1.23(9)(c) must be:
  - (a) a statutory declaration under regulation 1.25 (which deals with statutory declarations by or on behalf of alleged victims) (see paragraph 1.24(a)); and
  - (b) the type and number of items of evidence specified by the Minister by instrument in writing for paragraph (b) (see paragraph 1.24(b)).

5. This instrument therefore specifies the type and number of items of evidence for paragraph 1.24(b).
6. The purpose of the Instrument is to form a part of a preliminary response to the Australian Law Reform Commission's report titled *Family Violence and Commonwealth Laws - Improving Legal Frameworks*, which was released on 8 February 2012.
7. The instrument is one of several measures operating to improve the accessibility of the family violence provisions by streamlining the evidence that applicants must provide in order to make a non-judicial claim of family violence. People who have suffered family violence may already have been in contact with a range of support services or state agencies, and records of this contact may already exist. The new evidentiary requirements seek to enable people who are in possession of those documents to enliven a claim of family violence under the Regulations.
8. Consultation was undertaken before the instrument was made with over 60 relevant stakeholders including:
  - Women's refuge centres;
  - Immigration legal service providers;
  - Settlement service providers;
  - Family violence support organisations;
  - Migration agents; and
  - State and Territory Government Departments
9. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Reference 14089).
10. Under section 44 of the *Legislative Instruments Act 2003* the Instrument is exempt from disallowance and therefore a Human Rights Statement of Compatibility is not required.
11. This instrument, IMMI 12/116, commences on 24 November 2012, immediately after the commencement of *Migration Legislation Amendment Regulation 2012 (No.5)*.