

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Regulations 1994

Migration (Specification of evidentiary requirements—family violence) Instrument 2023 (LIN 23/026)

- 1 The instrument, Departmental reference LIN 23/026, is made under paragraph 1.24(b) of the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument repeals *Migration Regulations 1994—Evidentiary Requirements—IMMI 12/116* in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences on the day after it is registered and is a legislative instrument for the *Legislation Act 2003* (Legislation Act).

Purpose

- 4 The Migration Regulations provide special provisions relating to family violence (Division 1.5 in Part 1 of the Migration Regulations), including when an application for a visa is taken to include a non-judicially determined claim of family violence (see subregulation 1.23(9) of the Migration Regulations). For an application for a visa to be taken to include a non-judicially determined claim of family violence, various requirements must be met including (all mentioned provisions are of the Migration Regulations):
 - the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence (paragraph 1.23(9)(a)); and
 - the alleged victim is a person described in paragraph 1.23(9)(b); and
 - the alleged victim, or another person on the alleged victim's behalf, has presented evidence in accordance with regulation 1.24.
- 5 Regulation 1.24 of the Migration Regulations provides that the evidence mentioned in paragraph 1.23(9)(c) is a statutory declaration (paragraph 1.24(a)) and the type and number of items of evidence specified by the Minister in a written instrument (paragraph 1.24(b)).
- 6 The purpose of this instrument is to specify the type and number of items of evidence, for the purposes of paragraph 1.24(b) of the Migration Regulations.
- 7 The instrument specifies the following types of evidence:
 - Medical – written documentation provided by a medical practitioner, registered nurse or midwife;
 - Police – written documentation provided by a police officer, or by a witness to a police officer;

- Child welfare officer – written documentation provided by an officer of a child welfare authority or a child protection authority of a State or Territory;
- Family violence support service provider – written documentation provided by an organisation that provides domestic and family violence assistance or support;
- Social worker – written documentation provided by a social worker;
- Psychologist – written documentation provided by a psychologist;
- Family consultant / family relationship counsellor – written documentation provided by a family consultant or a family relationship counsellor;
- Education professional – written documentation provided by a school counsellor, school principal or teacher.

8 For each of these types, the instrument describes the items of evidence that can be provided. For example, a statutory declaration, a report, a letter, or other forms of documentation such as risk assessments, records or hospital discharge summaries.

9 The instrument also specifies that a minimum of two items of evidence are required and these must each be of a different type.

10 The instrument maintains and expands on the arrangements previously in place under *Migration Regulations 1994—Evidentiary Requirements—IMMI 12/116* which is repealed by the instrument. The new measures include:

- adding midwives to the medical professionals that can provide documentary evidence of family violence;
- adding risk assessments and reports as items of evidence that may be provided in place of a statutory declaration;
- adding community, multicultural or other crisis services providing domestic and family violence assistance and support to the list of family violence support service providers that can provide documentary evidence (previously limited to women’s refuges and domestic and family violence crisis centres);
- clarifying that the documentary evidence is to be provided by persons acting in their professional capacity;
- removing the requirement to provide a statutory declaration for some professionals.

11 In response to stakeholder feedback and consistent with the Government’s commitment to better support victims of family violence, these new measures improve accessibility to the family violence provisions in the Migration Regulations by increasing flexibility around the evidence that applicants must provide in order to make a non-judicial claim of family violence.

Consultation

- 12 Significant consultation was undertaken on the measures in this instrument, with approximately 40 external stakeholders across the family violence support and legal sectors.
- 13 The Office of Impact Analysis was consulted and considered that the measures are unlikely to have more than a minor regulatory impact and therefore an Impact Analysis is not required.
 - The OIA reference number is OBPR23-04117

Details of the instrument

- 14 Section 1 provides the name of the instrument.
- 15 Section 2 provides that the instrument commences on the day after registration.
- 16 Section 3 provides definitions for terms used in the instrument.
- 17 Subsection 4(1) provides that the types of evidence mentioned in Schedule 1, are specified for the purposes of paragraph 1.24(b) of the Migration Regulations. Subsections 4(2) and 4(3) provide the requirements all items of evidence meet.
- 18 Section 5 provides, subject to paragraph 5(b) of the instrument, that a minimum of two items of evidence mentioned in Schedule 1 is specified for paragraph 1.24(b) of the Migration Regulations. Paragraph 5(b) of the instrument provides that each item of this evidence must be of a different type of evidence.
- 19 Section 6 repeals the previous instrument *Migration Regulations 1994—Evidentiary Requirements—IMMI 12/116* (F2012L02237).
- 20 Section 7 provides that anything done under the previous instrument IMMI 12/116 continues to be in effect as if it had been done under this instrument.
- 21 Schedule 1 to the instrument specifies types and items of evidence and the information that must be included within the item of evidence.

Parliamentary scrutiny etc.

- 22 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because the instrument is made under Part 1 of the Migration Regulations, which is prescribed under section 10, item 20(b), of the *Legislation (Exemptions and Other Matters) Regulation 2015* as an instrument not subject to disallowance.
- 23 As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 24 The instrument was made by the Minister for Immigration, Citizenship and Multicultural Affairs, in accordance with paragraph 1.24(b) of the Migration Regulations.