

LIN 23/026

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

I, Andrew Giles, Minister for Immigration, Citizenship and Multicultural Affairs, make this instrument under paragraph 1.24(b) of the *Migration Regulations 1994* (the ***Regulations***)*.*

Dated 30 March 2023

The Hon. Andrew Giles MP

Minister for Immigration, Citizenship and Multicultural Affairs

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Part 1 Preliminary

1 Name

 This instrument is the Migration (Specification of evidentiary requirements—family violence) Instrument (LIN 23/026) 2023.

2 Commencement

 This instrument commences the day after it is registered on the Federal Register of Legislation.

3 Definitions

 In this instrument:

***child welfare officer*** means an officer of a child welfare authority or a child protection authority of a State or Territory*.*

***education professional*** means a school counsellor, school principal or teacher who has taught or counselled the alleged victim.

***family consultant*** has the meaning provided in section 11B of the *Family Law Act 1975.*

***family relationship counsellor*** means a counsellor who provides services at a family relationship centre.

***family violence support service provider*** means a women’s refuge, or domestic and family violence crisis centre, or a community, multicultural or other crisis support service providing domestic and family violence assistance or support to the alleged victim.

***medical practitioner*** has the meaning provided in the *Health Insurance Act 1973*.

***psychologist*** means a person registered under the *Health Practitioner Regulation National Law Act 2009*, as enacted and in force in each State and Territory, to practice in the psychology profession.

***registered nurse*** has the meaning provided in the *Health Insurance Act 1973*.

***midwife*** has the meaning provided in the *Health Insurance Act 1973*.

***police officer*** means:

1. a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
2. a member, however described, of a police force of a State or Territory.

***social worker*** means a member of the Australian Association of Social Workers, or a person who is eligible to be a member of that Association, and who has provided counselling or assistance to the alleged victim while performing the duties of a social worker.

4 Types of evidence

1. For the purposes of paragraph 1.24(b) of the Regulations, the types of evidence mentioned in Schedule 1 are specified.
2. All items of evidence must be sufficiently detailed and include the required information as mentioned in Schedule 1.
3. All items of evidence provided by a person, officer or provider mentioned in Schedule 1, must be in writing in English on their professional letterhead or the professional letterhead of their organisation, and include the following details:

(a) full name;

(b) occupation;

(c) signature;

(d) date;

(e) address; and

(f) contact phone number.

5 Number of items of evidence

 For the purposes of paragraph 1.24(b) of the Regulations:

1. subject to paragraph (b), a minimum of two items of evidence mentioned in Schedule 1 are specified;
2. each item of evidence must be of a different type of evidence.

6 Repeal

 *Migration Regulations 1994—Evidentiary Requirements—IMMI 12/116* (F2012L02237) is repealed.

7 Savings and transitional

 Anything done under the *Migration Regulations 1994—Evidentiary Requirements—IMMI 12/116* (F2012L02237) continues to be in effect as if it had been done under this instrument.

Schedule 1 Evidence

 (s.4)

1 Table: Types of Evidence

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| Type of evidence | Items of evidence  | Information that must be included  |
| Medical  | Any of the following made by a medical practitioner, registered nurse or midwife who is acting in their professional capacity: 1. medical report;
2. hospital report;
3. discharge summary;
4. letter;
5. statutory declaration.
 | The item of evidence must:1. identify the alleged victim; and
2. detail the injuries or treatment of the alleged victim that may be consistent with family violence.
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| Police  | Any of the following made by a police officer who is acting in their professional capacity:1. report;
2. record of assault or family violence;
3. risk assessment;
4. witness statement;
5. statutory declaration.
 | The item of evidence must:1. identify the alleged victim; and
2. identify the alleged perpetrator or provide information from which the identity of the alleged perpetrator can reasonably be inferred; and
3. detail the incident(s) of family violence.
 |
| A witness statement made by a person, other than the alleged victim, to a police officer during the course of a police investigation.  |
| Child welfare officer | Any of the following made by a child welfare officer who is acting in their professional capacity:1. report;
2. letter;
3. statutory declaration.
 | The item of evidence must:1. detail fears for the dependent child’s safety due to family violence within the household; and
2. identify the alleged perpetrator or provide information from which the identity of the alleged perpetrator can reasonably be inferred.
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| Family violence support service provider | Any of the following made by a family violence support service provider who is acting in their professional capacity:1. report;
2. letter;
3. risk assessment;
4. statutory declaration.
 | The item of evidence must:1. state that the alleged victim has made a claim of family violence; and
2. state in their professional opinion whether the claims of the alleged victim are consistent with them having been subject to family violence; and
3. identify the alleged perpetrator or provide information from which the identity of the alleged perpetrator can reasonably be inferred.
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| Social worker | Any of the following made by a social worker who is acting in their professional capacity:1. report;
2. letter;
3. statutory declaration.
 | The item of evidence must: 1. state that the alleged victim has made a claim of family violence; and
2. state in their professional opinion whether the claims of the alleged victim are consistent with them having been subject to family violence; and
3. identify the alleged perpetrator or provide information from which the identity of the alleged perpetrator can reasonably be inferred.
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| Psychologist  | Any of the following made by a psychologist who is acting in their professional capacity:1. report;
2. letter;
3. statutory declaration.
 | The item of evidence must:1. state that the alleged victim has made a claim of family violence; and
2. state in their professional opinion whether the claims of the alleged victim are consistent with them having been subject to family violence; and
3. identify the alleged perpetrator or provide information from which the identity of the alleged perpetrator can reasonably be inferred.
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| Family consultant / family relationship counsellor  | Any of the following made by a family consultant or a family relationship counsellor who is acting in their professional capacity:1. report;
2. letter;
3. statutory declaration.
 | The item of evidence must:1. state that the alleged victim has been treated or counselled by the family consultant or family relationship counsellor; and
2. state in their professional opinion whether the claims of the alleged victim are consistent with them having been subject to family violence; and
3. identify the alleged perpetrator or provide information from which the identity of the alleged perpetrator can reasonably be inferred.
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| Education professional | Any of the following made by an education professional who is acting in their professional capacity:1. report;
2. letter;
3. statutory declaration.
 | The item of evidence must: 1. state that they have made, or been made aware of, observations that are consistent with the alleged victim’s claims of being subject to family violence; and
2. provide details of those observations; and
3. identify the alleged perpetrator or provide information from which the identity of the perpetrator can reasonably be inferred.
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