EXPLANATORY STATEMENT

Issued by the Assistant Minister for Citizenship and Multicultural Affairs

Migration Act 1958

Migration Amendment (Family Violence Provisions and Other Measures) Regulations 2024

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

In addition, subsection 31(3) of the Migration Act provides that the regulations may prescribe criteria for visas. Paragraph 46(1)(b) of the Migration Act provides that a visa application is valid only if it satisfies the criteria and requirements prescribed in the regulations. Paragraph 46(3) of the Migration Act provides that the regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application. Section 45B of the Migration Act provides that the regulations may prescribe the amount of the visa application charge (VAC), not exceeding the visa application charge limit, in relation to an application.

The *Migration Amendment (Family Violence Provisions and Other Measures) Regulations 2024* (the Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to insert family violence provisions into Schedule 2 criteria for certain permanent visas and amends the Schedule 1 criteria for a primary applicant for a Subclass 804 visa, Subclass 864 visa and Subclass 884 visa to be an aged parent (as defined in regulation 1.03 of the Migration Regulations).

The Regulations will provide for the grant of a visa to a secondary applicant (and members of their family unit) for certain permanent visas where the secondary applicant's spouse or de facto relationship with a primary applicant has ended, and there was family violence committed by the primary applicant. The secondary applicant in these circumstances can only be granted a visa if the primary applicant has their visa granted, or if the primary applicant's visa is refused for reasons which include family violence related conduct. This conduct does not necessarily have to be family violence committed against one of the members of the family unit, and could include family violence committed against another person who was not included in the visa application. In general terms, in a visa application the primary applicant is the person seeking to satisfy the primary criteria for grant of the visa, while secondary applicants are members of their family unit such as their spouse or de facto partner and/or dependent children.

Division 1.5 of the Migration Regulations provides existing arrangements for the consideration and assessment of whether a person has experienced family violence under migration law.

Without the inclusion of the family violence provisions, a secondary applicant is required to be a member of the family unit of the person seeking to satisfy the primary criteria in order to be granted a permanent visa. 'Member of the family unit' is defined in regulation 1.12 and generally refers to a person who is:

- a spouse or de facto partner of the primary applicant; or
- a child or step-child of the primary applicant or of their spouse or de facto partner (other than a child or step-child who is engaged to be married or has a spouse or de facto partner) and:
    - has not turned 18; or
    - has turned 18, but has not turned 23, and is dependent on the family head or on the spouse or de facto partner of the family head; or
    - has turned 23 and is under paragraph 1.05A(1)(b) dependent on the family head or on the spouse or de facto partner of the family head; or
- is the dependent child of the primary applicant's child or step-child.

In general circumstances, where the relationship ends between the primary applicant and their spouse or de facto partner, this means that the former partner is no longer a member of the family unit and is not eligible for the grant of the visa. (For ease of reference, from this point forward, both spouse and de facto partner are referred to generally as 'partner'.)

In situations where there has been family violence committed by the primary applicant against either their former partner or another member of the family unit (such as a child), the former partner may feel compelled to remain in a violent relationship for fear of losing their visa pathway. These Regulations allow for a former partner (secondary applicant) to make a claim of family violence and, if the partner or a member of the family unit are found to have experienced family violence committed by the primary applicant, they may be eligible to be granted the visa. In order for the secondary applicant to be granted their visa, the primary applicant must either be granted their visa, or have had their visa refused for reasons which include family violence related conduct. The intention is that a secondary applicant should not feel compelled to stay in a violent relationship for a visa outcome.

The family violence provisions are intended to provide a safeguard to visa applicants with ties to Australia, rather than to provide permanent residence to persons who are not in a relationship with a permanent visa holder, who reside outside Australia and have not entered Australia since lodging their visa application. Accordingly an applicant who has not entered Australia since lodgement of their visa application will not have access to the family violence provisions.

These Regulations expand the family violence provisions to the following visas:

- Parent (Subclass 103);

- Remaining Relative (Subclass 115);
- Carer (Subclass 116);
- Business Talent (Subclass 132);
- Contributory Parent (Subclass 143);
- Pacific Engagement (Subclass 192);
- Aged Parent (Subclass 804);
- Remaining Relative (Subclass 835)
- Carer (Subclass 836);
- Contributory Aged Parent (Subclass 864); and
- Business Innovation and Investment (Subclass 888).

A secondary applicant who meets the family violence criteria can be granted a visa in the following circumstances:

- for applicants in subclasses 103, 115, 116, 143,192, 804, 835, 864 and 836:
    - the primary applicant is granted a visa; or
    - the primary applicant's application is refused on grounds including to family violence;
- for applicants in subclasses 132 and 888:
    - the primary applicant is granted a visa; or
    - the primary applicant's application is refused on grounds including family violence; or
    - the primary applicant's application is refused because the primary applicant does not meet a requirement for the visa only because their relationship with the spouse had broken down.

The family violence provisions inserted into the Business Innovation and Investment (Subclass 888) and Business Talent (Subclass 132) visas allow grant to a secondary applicant who has experienced family violence in a third circumstance. These visas include certain primary criteria in relation to personal and/or business assets, business activity, investment or residence that can be met by the primary applicant alone, jointly by the primary applicant and their spouse/partner or by the spouse alone. As such, it is possible for a primary applicant's visa to be refused because they no longer meet one of these requirements, if they were relying on the secondary applicant to meet the requirement (jointly or solely), where there was family violence and the relationship has ended. The Regulations provide that a secondary applicant can be granted a visa under the family violence provisions in circumstances where the primary applicant would have met one of these criteria, but for the breakdown of the relationship. This is intended to ensure that a victim-survivor can leave a violent relationship without adverse impact on their own pathway to a permanent visa.

The Business Talent (Subclass 132 visa) was closed to new applications in 2021, however, there are still a number of applications yet to be finalised with the potential that some secondary applicants in this cohort may need access to these family violence provisions.

Consequential amendments are also made to the 'one fails, all fail' criteria. The 'one fails, all fail' criteria are provisions which require all other members of the family unit (whether included in a visa application or not) to meet certain public interest and special return criteria before the primary and secondary applicants can be granted their visas. Amendments to Schedule 2 confirm that all applicants for a visa (as well as members of their family unit who are not included in the visa application) must still meet the relevant public interest and special return criteria regardless of whether they are a still a member of the family unit of the primary applicant at the time a decision is made on the visa. These amendments preserve the intended operation of the 'one fails, all fail' principle.

The Regulations also waive the requirement for certain secondary applicants to pay a second VAC instalment where they cannot demonstrate having functional English, if they satisfy the family violence provisions. As part of the Schedule 1 requirements for the Business Talent (Subclass 132) and Business Innovation and Investment (Subclass 888) visas, applicants aged over 18 years of age must be able to demonstrate that they have functional English, or pay a second VAC instalment prior to grant of the visa. This change recognises that victim-survivors of family violence may already be experiencing financial hardship, which could be further compounded by requiring them to pay an additional charge in order to be granted their visa.

The Regulations also make minor amendments to the criteria for the Global Talent (Subclass 858) visa, exempting the family members of secondary applicants from meeting certain public interest criteria, where the main applicant has provided specialised security assistance to the Australian Government. The Regulations also make a minor change to the requirements for making a valid application for Aged Parent visas (Subclasses 804, 864 and 884). The amendment has the effect that an application for these visas will be invalid if the primary applicant is not an 'aged parent', that is, a parent who is old enough to be granted an age pension under the *Social Security Act 1991*. It is already a requirement for the grant of these Parents visa that the primary applicant must have been an 'aged parent' at the time they made their application. Adding this requirement to the criteria for making a valid application ensures that applications where this requirement is not met can be dealt with efficiently by processing officers, and that applicants in these circumstances can have their Visa Application Charge refunded if the age requirement is not met.

The Regulations are consistent with the Government's commitment to help end family, domestic and sexual violence as articulated in the *National Plan to End Violence Against Women and Children 2022-2032*. The Regulations reinforce the commitment to:

- end violence against women and children;
- ensure migrants (including their children) are safe and free from violence; and

- ensure that victim-survivors of family violence do not feel compelled to remain in a violent relationship for fear of losing access to permanent residence via their visa application.

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. It has been the consistent practice of the Government of the day to provide for detailed visa criteria and conditions in the Migration Regulations rather than in the Migration Act itself. The Migration Act expressly provides for these matters to be prescribed in regulations, as can be seen in the authorising provisions. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to effectively manage the operation of Australia's visa program and respond quickly to emerging needs.

A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of this Statement is at Attachment A.

The Office of Impact Analysis was consulted prior to making the Regulations, and advised that an impact analysis was not required. The OIA reference numbers are OBPR22-02902, OIA23-05547 and OIA23-06271.

In July 2023, external consultations were undertaken with legal services providers and domestic and family violence support stakeholders to discuss policy settings for the expansion of the family violence provisions, as well as other changes to the migration framework to further support visa holders who experience domestic and family violence. This accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act) which requires that appropriate and reasonably practicable consultation be undertaken.

The Migration Regulations are exempt from sunsetting pursuant to item 38A of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

The Migration Regulations are exempt from sunsetting on the basis that the repeal and remaking of the Migration Regulations:

- is unnecessary as the Migration Regulations are regularly amended numerous times each year to update policy settings for immigration programs;

- would require complex and difficult to administer transitional provisions to ensure, amongst other things, the position of the many people who hold Australian visas, and similarly, there would likely be a significant impact on undecided visa and sponsorship applications; and

- would demand complicated and costly systems, training and operational changes that would impose significant strain on Government resources and the Australian public for insignificant gain, while not advancing the aims of the Legislation Act.

The Amendment Regulations will be repealed by operation of Division 1 of Part 3 of Chapter 3 of the Legislation Act. Specifically, that Division (under section 48A) operates to automatically repeal a legislative instrument that has the sole purpose of amending or

repealing another instrument. As the Amendment Regulations will automatically repeal, they do not engage the sunsetting framework under Part 4 of the Legislation Act.

The Migration Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

The amendments commence on the day after registration.

Further details of the Regulations are set out in Attachment B.

ATTACHMENT A

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Migration Amendment (Family Violence Provisions and Other Measures) Regulations 2024

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

Australia's permanent migration program allows certain family members of a 'primary' applicant to apply for a visa to enter and/or remain in Australia as a 'secondary applicant.' The spouse, de facto partner or child of a primary applicant can be granted a visa as a secondary applicant, if the primary applicant is granted a visa and the secondary applicant is a member of the family unit of the primary applicant. In general circumstances, where the relationship ends between the primary applicant and their spouse or de facto partner, this means that the former spouse/de facto partner is no longer a member of the family unit and is not eligible for grant of the visa as a secondary applicant.

The 'family violence provisions' in the *Migration Regulations 1994* (the Migration Regulations) allow certain visa applicants to be eligible for the grant of a permanent visa even if their spouse/de facto relationship with the sponsoring partner or primary applicant has ended, and the applicant has experienced family violence perpetrated by the primary applicant.

The intention of the family violence provisions is to help ensure visa applicants do not feel compelled to remain in a violent relationship for the purposes of obtaining a permanent visa.

Family violence provisions exist in a number of permanent visa subclasses, including onshore and offshore Partner visa subclasses, and certain Skilled visas in which family violence provisions were inserted by the *Migration Amendment (Family Violence Provisions for Skilled Visa Applications) Regulations 2024*.

The *Migration Amendment (Family Violence Provisions and Other Measures) Regulations 2024* (the Amendment Regulations) amend the Migration Regulations to enable access to family violence provisions for secondary applicants in eleven visa subclasses.

These amendments form part of a wider project to expand family violence provisions across a number of visa subclasses. The Amendment Regulations insert family violence provisions into the secondary criteria for the following eleven visa subclasses:

- Parent (subclass 103);
- Remaining Relative (subclass 115);
- Carer (subclass 116);
- Business Talent (subclass 132);
- Contributory Parent (subclass 143);

- Pacific Engagement (subclass 192);
- Aged Parent (subclass 804);
- Remaining Relative (subclass 835);
- Carer (subclass 836);
- Contributory Aged Parent (subclass 864);
- Business Innovation and Investment (subclass 888).

These provisions allow a former partner (secondary applicant) who made a combined application with the primary applicant to make a claim of family violence and, if they or a member of their family unit are found to have experienced family violence committed by the primary applicant, they may be eligible to be granted the visa. A secondary applicant who meets the family violence criteria can be granted a visa in the following circumstances:

- For applicants in subclasses 103, 115, 116, 143, 192, 804, 835, 836 and 864:
    - the primary applicant is granted a visa; or
    - the primary applicant's application is refused on grounds relating to family violence;
- For applicants in subclasses 132 and 888:
    - the primary applicant is granted a visa; or
    - the primary applicant's application is refused on grounds relating to family violence; or
    - the primary applicant's application is refused because the primary applicant does not meet a requirement for the visa only because their relationship with the spouse/de facto partner had broken down.

The addition of these family violence provisions will ensure that a victim-survivor can leave a violent relationship without adverse impact on their own pathway to a permanent visa under these subclasses.

The effect of these amendments is that a secondary applicant who experiences family violence and leaves a relationship, but who otherwise would have been granted a visa, can be granted a visa under the new family violence provisions. A secondary applicant who would not otherwise have been granted their visa – for example, because they were never in a relationship with the primary applicant, or because the primary applicant does not meet the criteria for the visa – will not be granted a visa under the new family violence provisions.

The Amendment Regulations make changes to ensure that a visa can also be granted to members of the family unit of a person who is granted a visa under the family violence provisions (for example, a dependent child), even when they are not a member of the family unit of the primary applicant. This is achieved through amendment to the secondary visa criteria for each of the eleven affected visas.

The Amendment Regulations also make a number of consequential changes which aim to preserve visa outcomes as if the family violence had not occurred or the relationship ended. Certain criteria for primary visa applicants, which provide that a primary applicant can only

be granted their visa if all members of their family unit meet certain requirements, are amended so that in circumstances involving family violence and breakdown of relationship, these requirements must still be met by all other members of the family unit (whether included in a visa application or not) as if the relationship had continued.

Secondary applicants who have experienced family violence are exempted from certain criteria which, in circumstances involving family violence, it would not be appropriate to require them to meet, including requirements to have the same family sponsor as the primary applicant and to pay an additional charge if they do not have functional English.

The Amendment Regulations also make minor amendments to the criteria for the Global Talent (subclass 858), exempting the family members of visa applicants from meeting certain public interest criteria, where the main applicant has provided specialised security assistance to the Australian Government. These amendments correct a drafting omission from previous family violence-related regulations.

The Amendment Regulations also make a minor change to the requirements for making a valid application for Aged Parent visas (subclasses 804, 864 and 884). The amendment has the effect that an application for these visas will be invalid if the primary applicant is not an 'aged parent', that is, a parent who is old enough to be granted an age pension under the *Social Security Act 1991*. It is already a requirement for the grant of an Aged Parent visa that the primary applicant must have been an 'aged parent' at the time they made their application. Adding this requirement to the criteria for making a valid application ensures that applications where this requirement is not met can be dealt with efficiently by processing officers, and that applicants in these circumstances can have their Visa Application Charge refunded if the age requirement is not met.

The amendments operate retrospectively on all applications made, but not finally determined, before the date the Amendment Regulations commence.

Human rights implications

This Disallowable Legislative Instrument engages the following rights:

- The right to protection against exploitation, violence and abuse (Article 19(1) of the *Convention on the Rights of the Child* (CRC)).
- Rights relating to respect for the family (Article 17(1) and Article 23(1) of the *International Covenant on Civil and Political Rights* (ICCPR) and equivalent rights in the CRC).
- Non-discrimination (the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW)).

<u>Rights relating to protection against exploitation, violence and abuse</u>

Article 19(1) of the CRC provides that:

> *States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*

The Amendment Regulations allow secondary applicants for the eleven affected visa subclasses to access family violence provisions for the grant of their visa. These provisions

mean that these secondary applicants can be granted their visa even if they are no longer in a relationship with the primary applicant, if they have experienced family violence perpetrated by the primary applicant and meet the other requirements for the visa.

These changes are aimed at ensuring that visa applicants will not feel compelled to remain in a violent relationship in order to be granted a permanent visa. This in turn may support the applicant to remove themselves and their children from a violent or abusive situation while being able to remain in Australia and therefore supports the rights of children to protection against exploitation, violence and abuse.

Rights relating to respect for the family

Article 17(1) of the ICCPR relevantly provides that:

> *No one shall be subjected to arbitrary or unlawful interference with his… family.*

Article 23(1) of the ICCPR provides that:

> *The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

The amendments made by the Amendment Regulations promote the right to respect for the family, by improving and expanding access to the family violence provisions which enable parents to remain in Australia with their children, even if the partner relationship between the parents has ceased.

Non-discrimination

Article 1 of the CEDAW states:

> *For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civic or any other field.*

In its General recommendation No. 35 (2017) on gender-based violence against women, the UN Committee on the Elimination of All Forms of Discrimination against Women stated that:

> *Gender-based violence against women constitutes discrimination against women under article 1 and therefore engages all obligations under the Convention. Article 2 provides that the overarching obligation of States parties is to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, including gender-based violence against women.*

The measures implemented by the Amendment Regulations are consistent with the Government's commitment to end family, domestic and sexual violence as articulated in the *National Plan to End Violence Against Women and Children 2022-2032*. The Amendment Regulations reinforce the commitment to:

- end violence against women and children;
- ensure migrants (including their children) are safe and free from violence; and
- ensure that victim-survivors of family violence do not feel compelled to remain in a violent relationship for fear of losing access to permanent residence as a secondary visa applicant.

Family and domestic violence disproportionately affects women, and the commitment to end family violence therefore promotes the elimination of discrimination against women. The Amendment Regulations seek to address the risk of family violence faced by visa applicants, and therefore promotes the right to freedom from discrimination, by ensuring that applicants for the affected Permanent visas in the Amendment Regulations do not feel compelled to remain in a violent relationship in order to maintain a pathway to permanent residency in Australia.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it promotes the protection of human rights.

The Hon Julian Hill MP

Assistant Minister for Citizenship and Multicultural Affairs

ATTACHMENT B

Details of the *Migration Amendment (Family Violence Provisions and Other Measures) Regulations 2024*

Section 1 – Name of Regulations

This section provides that the title of the instrument is the *Migration Amendment (Family Violence Provisions and Other Measures) Regulations 2024.*

Section 2 – Commencement

This section provides for the commencement of the instrument. Subsection 2(1) provides that each provision of this instrument specified in column 1 of the table commences or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 1 has effect according to its terms.

Item 1 of the table in subsection 2(1) provides that the whole of the instrument commences 17 December 2024.

A note under the table in subsection 2(1) provides that this table relates only to the provisions of this instrument as originally made and will not be amended to deal with any later amendments of this instrument.

Subsection 2(2) provides that any information in column 3 of the table will not be part of this instrument. It states that information may be inserted in this column, or information in it may be edited, in any published version of this instrument. Column 3 only confirms the date of commencement as the day after registration.

Section 3 – Authority

This section provides that the instrument is made under the *Migration Act 1958* (the Migration Act).

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1—Amendments

Migration Regulations 1994

Part 1—Amendments

Item [1] Paragraph 1104BA(2)(b) of Schedule 1 (at the end of the cell at table item 1, column headed "Applicant")

Item [2] Paragraph 1104BA(2)(b) of Schedule 1 (after table item 1)

These items amend Schedule 1 of the Business Skills (Permanent) (Class EC) visa, clarifying who is liable to pay a second instalment of the visa application charge, which is generally required when an applicant aged over 18 years is assessed as not having functional English at the time of decision on their visa application.

Previously all secondary applicants aged 18 years or older were required to pay a second visa application charge for their visa to be granted when they were unable to demonstrate having functional English. These amendments ensure that secondary applicants who meet the family violence provisions contained in Schedule 2 of the respective visas and who are not able to demonstrate functional English are not required to pay this additional cost. The intention is to avoid placing this cohort of people into financial hardship, or further compounding hardship they may already be in due to the family violence they have experienced.

Item [3] After paragraph 1124A(3)(bb) of Schedule 1

Item [4] After paragraph 1130A(3)(ca) of Schedule 1

Item [5] After paragraph 1221A(3)(ca) of Schedule 1

These items insert new paragraphs into the Schedule 1 requirements for a Subclass 804 visa, Subclass 864 visa and Subclass 884 visa.

These amendments would insert a requirement that an applicant seeking to meet the primary criteria must be an aged parent at the time of application. An aged parent is defined in regulation 1.03 Migration Regulations and means a parent who is old enough to be granted an age pension under the *Social Security Act 1991*. The requirement that the primary applicant is an aged parent is already present in the Schedule 2 time of application criteria, and any application made by a primary applicant who does not meet the age requirement must be refused. Adding this requirement to the Schedule 1 criteria for making a valid application ensures that applications where this requirement is not met can be dealt with efficiently by processing officers, where the application would be invalid and applicants in these circumstances can have their Visa Application Charge refunded if the age requirement is not met.

Item [6] Clause 103.227 of Schedule 2

This item makes amendments to the primary criteria for a Subclass 103 visa which require members of the applicant's family unit to meet certain requirements for the primary applicant's visa to be granted. All applicants (including the primary and secondary applicants), as well as members of the family unit who are not included in a visa application, must satisfy certain public interest criteria and special return criteria before a visa can be

granted. These clauses are referred to as the 'one fails, all fail' criteria, meaning that if any member of the family unit fails to satisfy these criteria:

- the primary applicant cannot satisfy primary criteria for the visa grant; and consequently
- no member of the family unit who is an applicant can satisfy the secondary criteria for the grant of the visa.

Previously, the 'one fails, all fail' criteria only applied to members of the family unit of the primary applicant. However, as these Regulations facilitate the grant of a visa to a person who is no longer a member of the family unit in circumstances where there has been family violence, consequential amendments have been made to ensure the 'one fails, all fail' criteria continue to operate as intended. All applicants (primary and secondary, even if the secondary applicants are not a member of the family unit at the time of the decision because of family violence) must satisfy the public interest and special return criteria. All members of the family unit of both primary and secondary applicants who are not included in the visa application must satisfy certain public interest criteria. A failure of one person to meet one of the criteria means the visa will be refused for all applicants.

Subclause (1) provides that each person who is covered by subclause (2), (3) or (4) must satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009, 4010 and 4020. If the person is over 18 years of age they must satisfy public interest criteria 4019. Any person who has previously been in Australia must satisfy special return criteria 5001, 5002 and 5010.

Subclause (2) covers persons who are members of the family unit of the primary applicant and who have made a combined application for a Subclass 103 visa.

Subclause (3) covers a person who is a *relevant person,* being a secondary applicant who:

- at the time the application was made, was a member of the family unit of the primary applicant;
- is an applicant for a Subclass 103 visa; and
- the Minister is satisfied that:
    - the *relevant person*;
    - a member of the family unit of that *relevant person* who made a combined application with either the primary applicant or the *relevant person*; or
    - a dependent child of either the *relevant person* or the primary applicant;
    - has experienced family violence committed by the primary applicant.

Subclause (4) covers a person, who at the time the primary applicant's application was a member of the family unit but is no longer a member of the family unit, is an applicant for a Subclass 103 visa and they are a member of the family unit of a person covered by subclause (3).

Generally, a *relevant person* referred to in subclause (3) would be the former spouse or de facto partner who made the claim of family violence, while (4) would refer to members of their family unit.

This item also inserts new clause 103.227A into the Migration Regulations which specifies which public interest criteria must be satisfied by persons who are a member of the family unit of:

- the primary applicant; or
- the applicant referred to in subclause 103.227(3) or (4); and

who are not included in the visa application. These persons must satisfy public interest criteria 4001, 4002, 4003 and 4004, and public interest criterion 4005 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

Item [7] Paragraph 103.228(a) of Schedule 2

This item omits the references to a "member of the family unit of the applicant" and substitutes this with "person covered by subclause 103.227(2), (3) or (4)". This would refer to applicants:

- who are member of the family unit of the primary applicant;
- are a *relevant person* (being the primary applicant's former spouse or de facto partner);
- are members of the family unit of a *relevant person*.

This amendment operates to ensure public interest criteria (PIC) 4015 and 4016 (being part of the 'one fails, all fail' criteria) are satisfied in relation to secondary applicants aged under 18 years of age before the primary applicant can be granted a visa, regardless of whether the applicant is still a member of the primary applicant's family unit at time of decision. This ensures that if any applicants fail to meet either PIC 4015 or 4016, then all applicants must be refused the visa.

Item [8] Division 103.3 of Schedule 2 (note to heading)

Item [16] Division 115.3 of Schedule 2 (note to heading)

Item [22] Division 116.3 of Schedule 2 (note to heading)

Item [43] Division 192.3 of Schedule 2 (note to heading)

Item [48] Division 804.3 of Schedule 2 (note to heading)

Item [57] Division 835.3 of Schedule 2 (note to heading)

Item [63] Division 836.3 of Schedule 2 (note to heading)

Item [83] Division 888.3 of Schedule 2 (note to heading)

These items repeal the 'note' to the heading for the secondary criteria. Prior to these amendments, the 'note' stated these criteria were for applicants who are members of the family unit of a person who satisfied the primary criteria. The note now states these criteria are for applicants seeking to satisfy the secondary criteria; this amendment is necessary noting that there may be circumstances where a secondary applicant may not be the member of the family unit of the primary applicant at time of decision.

Item [9] Subclause 103.311(1) of Schedule 2

This item substitutes clause 103.311.

Prior to these amendments, clause 103.311 required that a secondary applicant be a member of the family unit of, and made a combined application with, a person who is seeking to satisfy the primary criteria in Subdivision 103.21.

The amendment allows a person to satisfy time of application criteria on the basis that they are a member of the family unit of a person seeking to satisfy the primary criteria, or are a member of the family unit of a person covered by subclause (1A). New subclause (1A) covers a person (*relevant person)* if*:*

- at the time of application they were the spouse or de facto partner of the primary applicant;
- made a combined application with the primary applicant;
- the relationship between the relevant person and the primary applicant has ended;
- there has been family violence committed by the primary applicant towards:
    - the relevant person;
    - a member of the family unit of the relevant person or the primary applicant;
    - a dependent child of the relevant person or primary applicant.

These amendments would operate so that a relevant person (that is, a secondary applicant seeking to satisfy the family violence provisions), could seek to include additional members of the family unit in the application for the visa. This criterion would allow additional members of the family unit to satisfy certain time of application criteria.

Item [10] Subclause 103.312(2) of Schedule 2

This item amends subclause 103.312(2).

Prior to this amendment, this clause required that a sponsorship of the kind mentioned in clause 103.212 included sponsorship of the secondary applicant (unless the applicant met the requirements of subclause 103.313(2). This subclause has been expanded to clarify this requirement does not need to be met by a person to whom paragraph 103.311(1)(b) applies (being the member of the family unit of the *relevant person*).

The member of the family unit of the *relevant person* will need to satisfy the relevant time of decision criteria relating to sponsorship, per item 12 below.

Item [11] Clause 103.321 of Schedule 2

This item inserts the family violence provisions to allow the grant of a visa to a person who is no longer a member of the family unit, where they, or a member of their family unit or a dependent child, has experienced family violence committed by the primary applicant.

Prior to these amendments, clause 103.321 referred only to secondary applicants who, at the time of decision, were a member of the family unit of a person who had satisfied the primary criteria for a visa grant and who made a combined application with the primary applicant.

New subclause (1) requires that a secondary applicant must meet the requirements of subclause (2), (3), (4) or (5).

Subclause (2) retains existing arrangements to enable secondary applicants to be eligible for the grant of the visa if they:

- are a member of the family unit of a person who holds a Subclass 103 visa granted on the basis they satisfied the primary criteria for the grant of the visa; and
- made a combined application with the primary applicant.

Subclauses (3), (4) and (5) insert the new family violence provisions.

Subclause (3) refers to the secondary applicant who is the former spouse or de facto partner of the primary applicant. To satisfy subclause (3):

- at the time the application was made, the secondary applicant was the spouse or de facto partner of the primary applicant;
- the primary applicant has been granted the visa;
- the relationship between the primary applicant and secondary applicant has ceased;
- there has been family violence committed by the primary applicant against:
    - the secondary applicant;
    - a member of the family unit of that secondary applicant (who made a combined application with either the primary or secondary applicant); or
    - against a dependent child of either the primary applicant or the secondary applicant; and

- the secondary applicant has entered Australia since making the application.

An applicant who has not entered Australia since lodgement of their visa application will not have access to the family violence provisions. This limitation ensures that only those with recent ties to Australia will have access to a permanent visa despite their relationship with their former spouse or de facto partner ceasing. The family violence provisions are intended to provide protection for visa applicants with ties to Australia, not to provide permanent residence to persons who are not in a relationship with a permanent visa holder, who reside outside Australia and have not entered Australia since lodging their visa application.

New subclause (4) provides the criteria that a secondary applicant would be required to meet if the primary applicant has been refused a visa for reasons that include family violence. To satisfy subclause (4):

- at the time the application was made, the secondary applicant was the spouse or de facto partner of the person who was seeking to meet the primary criteria (the primary applicant);
- the relationship between the primary applicant and secondary applicant has ceased;
- there has been family violence committed by the primary applicant against:
    - the secondary applicant;
    - a member of the family unit of that secondary applicant (who made a combined application with either the primary or secondary applicant); or
    - against a dependent child of either the primary applicant or the secondary applicant;
- the secondary applicant was either in Australia at the time application was made, or has subsequently entered Australia since that time; and
- the primary applicant has been refused the visa for reasons including to family violence (whether or not the family violence was against a person mentioned in paragraph 103.321(4)(c)).

Subclause (4) is substantially the same as subclause (3) with the key difference being that the primary applicant has been refused a visa for reasons which include engaging in family violence related conduct. This is the only circumstance in which a secondary applicant can be granted a visa and the primary applicant is refused the grant of a visa. The intention of this subclause is to ensure that secondary applicants can report family violence to authorities, without fear that this will lead to their own visa being refused if the report results in the primary applicant's visa being refused. The family violence related conduct which formed the basis for the refusal does not need to have occurred in relation to one of the secondary applicants but may include family violence committed against another person.

While there is no specific ground within either the Migration Act or the Migration Regulations that refers to a refusal on family violence related conduct, a visa may be refused under a number of criteria that relate to general conduct, including where a person does not meet character requirements because of family violence they have committed. This includes section 501 of the Migration Act and other criteria which provide an applicant must satisfy public interest criterion 4001 of the Migration Regulations which relate to the character test,

or public interest criterion 4020 which relates to the provision of false or misleading information in a visa application (for example, the failure to disclose a conviction for family violence).

Consideration of a primary applicant for refusal on grounds related to family violence is a separate process from the assessment under Division 1.5 of the Migration Regulations, as to whether the secondary applicant has experienced family violence.

Subclause (5) provides the criteria that a member of the family unit of the secondary applicant (who was the former spouse or partner of the primary applicant) is required to satisfy. To satisfy subclause (5):

- the applicant is a member of the family unit of a secondary applicant who satisfies subclauses (3) or (4) (being a person who has made the relevant claim of family violence);
- the applicant made a combined application with either the primary applicant or the secondary applicant who has made the relevant claim of family violence; and
- the secondary applicant has been granted a visa.

Item [12] Subclause 103.322(1) of Schedule 2

This item repeals and substitutes subclause 103.322(1) and inserts new subclause (1A).

New subclause 103.322(1) provides that secondary applicants are required to be sponsored, either by the sponsorship mentioned in clause 103.212 which is approved by the Minister and in force (whether or not the sponsor was the sponsor at the time of application) or in accordance with new subclause (1A).

In new subclause (1A) a secondary applicant can be sponsored by:

- a child of the primary applicant who has turned 18 and is a settled Australian citizen, permanent resident or eligible New Zealand citizen;
- the child's cohabiting spouse or de facto partner, who has turned 18 years of age, is a settled Australian citizen, permanent resident or eligible New Zealand citizen who cohabits with that child; or
- where neither the child nor their spouse or de facto partner have turned 18 years of age, a relative or guardian or either of them who is over 18 years of age and is a settled Australian citizen, permanent resident or eligible New Zealand citizen; or
- if the child has not turned 18 – by a community organisation.

A sponsorship of the kind outlined in (1A) must be approved by the Minister and in force and the sponsor may be a different person to the one who offered sponsorship at the time of application.

Item [13] At the end of Subdivision 103.32 of Schedule 2

This item inserts new clause 103.328 into the secondary criteria and applies to secondary applicants who meet the requirements of subclauses 103.321(3) or (4).

This item operates to require each member of the family unit of the secondary applicant who meets the family violence provisions to satisfy certain public interest criteria and special return criteria. This includes members of the family unit included in the application as well as members of the family unit who are not included in the application (non-applicant members of the family unit). These requirements are part of the 'one fails, all fail' criteria and ensure that if any member of the family unit (including non-applicant members of the family unit) fail to meet one of the criteria, then all applicants must be refused the visa, thereby ensuring family members do not receive different visa outcomes. The operation of the 'one fails, all fail' criteria is described in greater detail at item 6 above. The insertion of clause 103.328 ensures that the same 'one fails, all fail' requirements apply to all members of the family unit, important particularly in circumstances where the primary applicant is not granted a visa and secondary applicant and non-applicant members of the family unit are not otherwise assessed against the public interest and special return criteria.

Subclause (2) requires all members of the family unit included in the visa application to satisfy to public interest criteria 4001, 4002, 4003, 4004, 4005, 4009, 4010 and 4020 and special return criteria 5001, 5002, and 5010.

Subclause (3) requires all secondary applicants aged over 18 to satisfy public interest criterion 4019.

Subclause (4) requires that public interest criteria 4015 and 4016 are satisfied in relation a secondary applicant aged under 18.

Subclause (5) requires non-applicant members of the family unit to satisfy public interest criteria 4001, 4002, 4003, and 4004, and public interest criterion 4005 unless the Minister is satisfied that it would be unreasonable to require the member to undergo assessment in relation to that criterion.

Item [14] Clause 115.226 of Schedule 2

This item makes amendments to the primary criteria in Sub-Division 115.2 of Schedule 2 to the Migration Regulations for the grant of a Subclass 115 visa.

Currently, the primary criteria only needs to be satisfied by at least one member of the family unit. The other members of the family unit are only required to satisfy the secondary criteria in Sub-Division 115.3.

This amendment is consistent with the amendment described in item 6 above and ensures that all applicant are assessed against the 'one fails, all fail' criteria. This ensures that the one 'fails, all fails criteria' continues to operate as intended, noting that a visa may now be granted to a secondary applicant who is no longer a member of the family unit of the primary applicant due to family violence. All applicants (including the primary and secondary applicants), as well as members of the family unit not included in the visa application, must satisfy certain public interest criteria before a visa can be granted.

Subclause (1) specifies that a person who is covered by subclause (2), (3) or (4) must satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009, 4010 and 4020. Any persons over 18 years of age must satisfy public interest criteria 4019. Any person who has previously been in Australia must satisfy special return criteria 5001 and 5002.

Subclause (2) covers a persons who are members of the family unit of the primary applicant and who have made a combined application for a Subclass 115 visa.

Subclause (3) covers a *relevant person* being a secondary applicant who:

- at the time the application was made, was a member of the family unit of the primary applicant;
- is an applicant for a Subclass 115 visa; and
- the Minister is satisfied that:
    - the *relevant person*;
    - a member of the family unit of that *relevant person* who made a combined application with either the primary applicant or the *relevant person*; or
    - a dependent child of either the *relevant person* or the primary applicant;
- has experienced family violence committed by the primary applicant.

This item also inserts a note under subclause (3) which clarifies that special provisions relating to family violence are in Division 1.5.

Subclause (4) covers a secondary applicant who is a member of the family unit of a person covered by subclause (3).

Generally, a *relevant person* referred to in subclause (3) would be the former spouse or de facto partner who made the claim of family violence, while (4) would refer to members of their family unit.

This item also inserts new clause 115.226A into Schedule 2 to the Migration Regulations which specifies which public interest criteria must be satisfied by each person who is a member of the family unit of:

- the primary applicant; or
- the applicant referred to in subclause 115.226(3) or (4); and

who are not included in the visa application. Each person must satisfy public interest criteria 4001, 4002, 4003 and 4004, and public interest criterion 4005 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

Item [15] Paragraph 115.227(a) of Schedule 2

This item omits the references to a "member of the family unit of the applicant" and substitutes this with "person covered by subclause 115.226(2), (3) or (4)". This is consistent with the amendments made by item 7 above which cover applicants who:

- are member of the family unit of the primary applicant;
- is a *relevant person* (being the primary applicant's former spouse or de facto partner);

- are members of the family unit of a *relevant person*.

This amendment operates to ensure public interest criteria 4015 and 4016 (being part of the 'one fails, all fail' criteria) are satisfied in relation to secondary applicants aged under 18 years of age before the primary applicant can be granted a visa, regardless of whether the applicant is still a member of the primary applicant's family unit at time of decision. This ensures that if any applicants fail to meet one of these criteria, then all applicants must be refused the visa.

Item [17] Clauses 115.311 and 115.312 of Schedule 2

This item substitutes clauses 115.311 and 115.312.

Prior to this amendment, clause 115.311 required that a secondary applicant be a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 115.21.

The amendment allows for a person to satisfy time of application criteria on the basis that they are a member of the family unit of a person seeking to satisfy the primary criteria, or are a member of the family unit of a person covered by subclause (2). New subclause (2) refers to a *relevant person:*

- who was the spouse or de facto partner of the primary applicant;
- made a combined application with the primary applicant;
- the relationship has ended;
- there has been family violence committed by the primary applicant towards:
    - the relevant person;
    - a member of the family unit of the relevant person or the primary applicant;
    - a dependent child of the relevant person or primary applicant.

As such the *relevant person* would be the applicant seeking to meet the family violence provisions. This will allow for a new spouse or de facto partner or child of that person to be included in the application.

This item also substitutes clause 115.312. Prior to this amendment, this clause required that a sponsorship of the kind mentioned in clause 115.212 included sponsorship of the secondary applicant. A subclause has been added to this clause to clarify 115.312 does not need to be met by a person to whom paragraph 115.311(1)(b) applies (being the member of the family unit of the *relevant person*). This applicant is required to be sponsored at the time a decision is made on their application, per item 18 below.

Item [18] Clauses 115.321 and 115.322 of Schedule 2

This item substitutes clauses 115.321 and 115.322.

Prior to these amendments, clause 115.321 referred only to secondary applicants who, at the time of decision, were a member of the family unit of a person who had satisfied the primary criteria for a visa grant and who made a combined application with the primary applicant. This item inserts family violence provisions to allow the grant of a visa to a person who is

no longer a member of the family unit, where they, or a member of their family unit or a dependent child, have experienced family violence committed by the primary applicant.

New subclause (1) provides that a secondary applicant must meet the requirements of subclause (2), (3), (4) or (5).

Subclause (2) retains existing arrangements to enable secondary applicants to be eligible for the grant of the visa if they:

- are a member of the family unit of a person who holds a Subclass 115 visa which was granted on the basis that they satisfied the primary criteria for the grant of the visa; and
- made a combined application with the primary applicant.

Subclauses (3), (4) and (5) insert the new family violence provisions.

Subclause (3) provides the criteria that a secondary applicant would be required to meet if they are the former spouse or de facto partner of the primary applicant. To satisfy subclause (3):

- at the time the application was made, the secondary applicant was the spouse or de facto partner of the primary applicant;
- the primary applicant has been granted the visa;
- the relationship between the primary applicant and secondary applicant has ceased;
- there has been family violence committed by the primary applicant against:
    - the secondary applicant;
    - a member of the family unit of that secondary applicant (who made a combined application with either the primary or secondary applicant); or
    - against a dependent child of either the primary applicant or the secondary applicant; and
- the secondary applicant has entered Australia since making the application.

New subclause (4) provides the criteria that a secondary applicant would be required to meet if the primary applicant has been refused a visa for reasons that include family violence. To satisfy subclause (4):

- at the time the application was made, the secondary applicant was the spouse or de facto partner of the person who was seeking to meet the primary criteria (the primary applicant);
- the relationship between the primary applicant and secondary applicant has ceased;
- there has been family violence committed by the primary applicant against one or more of the following:
    - the secondary applicant;

    - a member of the family unit of that secondary applicant (who made a combined application with either the primary or secondary applicant); or
    - against a dependent child of either the primary applicant or the secondary applicant;
- the secondary applicant was either in Australia at the time application was made, or has subsequently entered Australia since that time; and
- the primary applicant has been refused the visa for reasons including family violence (whether or not the family violence was against a person mentioned in paragraph 115.321(4)(c)).

Subclause (4) is substantially the same as subclause (3) with the key difference being that the primary applicant has been refused a visa for reasons which include engaging in family violence related conduct.

Subclause (5) provides the criteria that a member of the family unit of the secondary applicant (who was the former spouse or partner of the primary applicant) is required to satisfy. To satisfy subclause (5):

- the applicant is a member of the family unit of a secondary applicant who satisfies subclauses (3) or (4) (being a person who has made the relevant claim of family violence);
- the applicant made a combined application with either the primary applicant or the secondary applicant who has made the relevant claim of family violence; and
- the secondary applicant has been granted a visa.

This item also operates to repeal and substitute clause 115.322.

New clause 115.322 retains the requirement for secondary applicants to be sponsored, by:

- an Australian relative for the person seeking to meet the family violence provisions;
- an Australian relative for the primary applicant; or
- the spouse or de facto partner of such a person, who has turned 18 years of age, is a settled Australian citizen, permanent resident or eligible New Zealand citizen, and who cohabits with that relative.

Subclause 115.322 provides the sponsorship must be approved by the Minister and inforce.

Item [19] At the end of Subdivision 115.32 of Schedule 2

This item inserts new clause 115.327 into the secondary criteria and applies to secondary applicants who meet the requirements of subclauses 115.321(3) or (4).

This item operates to require each member of the family unit of the secondary applicant who meets the family violence provisions to satisfy certain public interest criteria and special return criteria. This includes members of the family unit included in the application as well as members of the family unit who are not included in the application (non-applicant members of the family unit). These requirements are part of the ‘one fails, all fail’ criteria

and ensure that if any member of the family unit (including non-applicant members of the family unit) fail to meet one of the criteria, then all applicants must be refused the visa, thereby ensuring family members do not receive different visa outcomes. The operation of the 'one fails, all fail' criteria is described in greater detail at item 6 above. The insertion of clause 115.327 ensures that the same 'one fails, all fail' requirements apply to all members of the family unit, particularly in circumstances where the primary applicant is not granted a visa and secondary applicant and non-applicant members of the family unit are not otherwise assessed against the public interest and special return criteria.

Subclause (2) requires all members of the family unit included in the visa application to satisfy to public interest criteria 4001, 4002, 4003, 4004, 4009, 4010 and 4020 and special return criteria 5001, 5002.

Subclause (3) requires all secondary applicants aged over 18 to satisfy public interest criterion 4019.

Subclause (4) requires that public interest criteria 4015 and 4016 are satisfied in relation a secondary applicant aged under 18. Subclause (5) requires non-applicant members of the family unit to satisfy public interest criteria 4001, 4002, 4003, and 4004, and public interest criterion 4005 unless the Minister is satisfied that it would be unreasonable to require the member to undergo assessment in relation to that criterion.

Item [20] Clause 116.226 of Schedule 2

This item makes amendments to the primary criteria in Sub-Division 116.2 of Schedule 2 to the Migration Regulations for the grant of a Subclass 116 visa.

Currently, the primary criteria only needs to be satisfied by at least one member of the family unit. The other members of the family unit were only required to satisfy the secondary criteria in Sub-Division 116.3. This amendment is consistent with the amendment described in item 6 above. This ensures that the one 'fails, all fails criteria' continues to operate as intended, noting that a visa may now be granted to a secondary applicant who is no longer a member of the family unit of the primary applicant due to family violence. All applicants (including the primary and secondary applicants), as well as members of the family unit not included in the visa application, must satisfy certain public interest criteria before a visa can be granted.

Subclause (1) provides that persons covered by subclause (2), (3) or (4) must satisfy:

- public interest criteria 4001, 4002, 4003, 4004, 4005, 4009, 4010 and 4020;
- public interest criteria 4019 by applicants who had turned 18 at the time of application; and
- special return criteria 5001.

Subclause (2) covers a person who is a member of the family unit of the primary applicant and who is also an applicant for a Subclass 116 visa.

Subclause (3) cover a person who is a *relevant person* (being a secondary applicant) who:

- at the time the application was made, was a member of the family unit of the primary applicant;

- is an applicant for a Subclass 116 visa; and
- the Minister is satisfied that one or more of the following:
    - the *relevant person*;
    - a member of the family unit of that *relevant person* who made a combined application with either the primary applicant or the *relevant person*; or
    - a dependent child of either the *relevant person* or the primary applicant

  has experienced family violence committed by the primary applicant.

Subclause (4) covers a secondary applicant who is a member of the family unit of a person covered by subclause (3) and who is an applicant for a subclass 116 visa.

This item also inserts new subclause 116.226A. It requires that each non-applicant member of the family unit of:

- the primary applicant;
- the *relevant person* (being the primary applicant's former spouse or de facto partner); or
- the members of the family unit of a *relevant person*

must satisfy 4001, 4002, 4003 and 4004, and satisfies public interest criterion 4005 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

Item [21] Paragraph 116.227(a) of Schedule 2

This amendment is similar to item 7 and substitutes the phrase "member of the family unit of the applicant" with "person covered by subclause 116.226(2), (3) or (4)".

This amendment operates to ensure public interest criteria 4015 and 4016 (being part of the 'one fails, all fail' criteria) are satisfied in relation to secondary applicants aged under 18 years of age before the primary applicant can be granted a visa, regardless of whether the applicant is still a member of the primary applicant's family unit at time of decision on the visa. This ensures that if any applicants fail to meet one of these criteria, then all applicants must be refused the visa.

Item [23] Clauses 116.311 and 116.312 of Schedule 2

This item substitutes clauses 116.311 and 116.312.

Prior to these amendments, clause 116.311 could only be met by a secondary applicant who was a member of the family unit of the primary applicant. The amendment provides for a person to satisfy time of application criteria on the basis that they are a member of the family unit of a person seeking to satisfy the primary criteria, or are a member of the family unit of a person covered by subclause (2). This new subclause (2) refers to a *relevant person:*

- who was the spouse or de facto partner of the primary applicant;
- made a combined application with the primary applicant;

- the relationship has ended;
- there has been family violence committed by the primary applicant towards:
    - the relevant person;
    - a member of the family unit of the relevant person or the primary applicant;

a dependent child of the relevant person or primary applicant. As such the *relevant person* would be the applicant seeking to meet the family violence provisions. This will allow for a new spouse or de facto partner or child of that person to be included in the application.

The amendment to clause 116.312 means such a person is not required to be covered by the sponsorship referred to in clause 116.212. A new subclause has been added to this clause to confirm this requirement does not include a person to whom paragraph 116.311(1)(b) applies. This applicant is required to be sponsored at the time a decision is made on their application, per item 24 below.

Item [24] Clauses 116.321 and 116.322 of Schedule 2

This item repeals and substitutes clauses 116.321 and 116.322.

Previously, clause 116.321 referred only to secondary applicants who, at time of decision, were a member of the family unit of a person who had satisfied the primary criteria for the grant of a visa and who made a combined application with the primary applicant. The family violence provisions allow the grant of a visa to a person who is no longer a member of the family unit, but they or a member of their family unit, have experienced family violence committed by the primary applicant.

New subclause (1) requires that a secondary applicant must meet the requirements of subclause (2), (3), (4) or (5).

Subclause (2) retains existing arrangements to enable secondary applicants to be eligible for the grant of the visa if they:

- are members of the family unit of a person who has satisfied the primary criteria for the grant of the visa; and
- made a combined application with the primary applicant.

Subclauses (3), (4) and (5) insert the new family violence provisions:

- subclause (3) provides the criteria that a secondary applicant would be required to meet if they are the former spouse or de facto partner of the primary applicant. An applicant meets the requirements of this subclause if:
    - at the time the application was made, was the spouse or de facto partner of the primary applicant;
    - the primary applicant has been granted the visa;
    - the relationship between the primary applicant and secondary applicant has ceased;
    - there has been family violence committed by the primary applicant against:

        - that secondary applicant;
        - a member of the family unit of that secondary applicant (who made a combined application with either the primary or secondary applicant); or
        - a dependent child of either the primary applicant or the secondary applicant; and
    - the secondary applicant has entered Australia since making the application;
- subclause (4) operates in a similar way to subclause (3) except that the primary applicant has been refused the grant of the visa for reasons including that the primary applicant had engaged in conduct involving family violence;
- subclause (5) provides the criteria that a member of the family unit of the secondary applicant (who was the former spouse or partner of the primary applicant) is required to satisfy.

This item also repeals and replaces clause 116.322 with new wording which has the effect of retaining the requirement for secondary applicants to be sponsored, whether this is by:

- an Australian relative for the person seeking to meet the family violence provisions; an Australian relative for the primary applicant; or
- the spouse or de facto partner of such a person, who has turned 18 years of age, is a settled Australian citizen, permanent resident or eligible New Zealand citizen, and who cohabits with that relative.

Accordingly at the time a decision is made on the visa, the sponsor may be different to the person who provided the sponsorship at the time the application was made.

Item [25] At the end of Subdivision 116.32 of Schedule 2

This item inserts new clause 116.327 and applies to secondary applicants who meet the requirements of subclause 116.321(3) and (4) (being the family violence provisions). This item operates in a similar way to that in item 8 above to require each member of the family unit of the secondary applicant (being the primary applicant's former spouse or de facto partner who made the family violence claim) to satisfy certain public interest criteria and special return criteria.

Subclauses (2) to (4) apply to members of the family unit who are applicants for a Subclass 116 visa.

Subclause (2) refers to public interest criteria 4001, 4002, 4003, 4004, 4009, 4010 and 4020 and special return criteria 5001.

Subclause (3) requires all secondary applicants aged over 18 to satisfy public interest criterion 4019.

Subclause (4) requires that public interest criteria 4015 and 4016 are satisfied in relation a secondary applicant aged under 18.

Subclause (5) requires non-applicant members of the family unit to satisfy public interest criteria 4001, 4002, 4003, and 4004, and public interest criterion 4005 unless the Minister is satisfied that it would be unreasonable to require the member to undergo assessment in relation to that criterion.

The amendment ensures that the same 'one fails, all fail' requirements apply to all members of the family unit of a secondary applicant, particularly in circumstances where the primary applicant has been refused the visa or there are new members of the family unit of the secondary applicant.

Item [26] Subclause 143.225A(1) of Schedule 2

This item repeals subclause (1) and inserts three new subclauses to clarify which secondary applicants are required to satisfy public interest criterion 4020 (one of the 'one fails, all fail' requirements) for the primary applicant's visa to be granted. Previously this clause only referred to members of the family unit of the primary applicant and now includes all applicants for the visa who are:

- members of the family unit of the primary applicant (subclause (2));
- the *relevant person* (being the primary applicant's former spouse or de facto partner) (subclause (3)); or
- the members of the family unit of a *relevant person*, if they were members of the family unit of the primary applicant at the time of application (subclause (4)).

Item [27] Subclause 143.225B of Schedule 2

This amendment substitutes the phrase "member of the family unit of the applicant" with "person covered by subclause 143.225A(2), (3) or (4)".

This amendment operates to ensure public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4020 as well as special return criteria 5001, 5002 and 5010 (being part of the 'one fails, all fail' criteria) are satisfied in relation to each secondary applicant before a primary applicant who satisfies the requirements of subclause 143.214(2) can be granted a visa.

This is regardless of whether the applicant is still a member of the primary applicant's family unit at time of decision on the visa. This ensures that if any applicants fail to meet one of these criteria, then all applicants must be refused the visa.

Item [28] Clauses 143.229 and 143.230 of Schedule 2

This items repeals and substitutes clauses 143.229 and 143.230.

This amendment operates to clarify which public interest criteria must be met by all applicants for the primary applicant to be granted their visa (the 'one fails, all fail' criteria described in detail by item 6 above). In clause 143.229 this refers to persons included in the visa application. Clause 143.230 applies to non-applicant members of the family unit of either the primary applicant or the *relevant person.*

In clause 143.229:

- table item 1 refers to circumstances where the primary applicant was not the holder of a substituted Subclass 600 visa at time of application. The relevant public interest criteria are:
    - 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
    - 4019 if the person had turned 18 at the time of application;
    - If the person had previously been in Australia they must satisfy special return criteria 5001, 5002, and 5010;
- table item 2 refers to circumstances where the primary applicant was the holder of a substituted Subclass 600 visa at time of application. The relevant public interest criteria are:
    - 4001, 4002, 4003, 4009, 4010 and either:
        - 4007; or
        - other health checks as the Minister considers appropriate if the person previously held a Subclass 173 visa;
    - 4019 if the person had turned 18 at the time of application;
    - if the person had previously been in Australia they must satisfy special return criteria 5001, 5002, and 5010.

These criteria must be satisfied by secondary applicants who are included in the application and are:

- members of the family unit of the primary applicant;
- the *relevant person* (being the primary applicant's former spouse or de facto partner); or
- the members of the family unit of a *relevant person* if they were members of the family unit of the primary applicant at the time of application.

Clause 143.230, as amended operates in a similar way to the above, in relation to non-applicant members of the family unit of:

- the primary applicant;
- a person covered by subclause 143.229(4) or (5) (being the *relevant person* or a member of their family unit).

In circumstances where the primary applicant was not the holder of a substituted Subclass 600 visa at time of application, the relevant public interest criteria are 4001, 4002, 4003, 4004, and 4005 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

Where the primary applicant was the holder of a substituted Subclass 600 visa at time of application, the relevant public interest criteria are 4001, 4002, 4003 and 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

Item [29] Paragraph 143.231(a) of Schedule 2

This item substitutes the phrase "member of the family unit of the applicant" and replaces it with "person covered by subclause 143.229(3), (4) or (5)".

This amendment operates to ensure public interest criteria 4015 and 4016 (being part of the 'one fails, all fail' criteria) are satisfied in relation to secondary applicants aged under 18 years of age before the primary applicant can be granted a visa, regardless of whether the applicant is still a member of the primary applicant's family unit at time of decision on the visa. This ensures that if any applicants fail to meet one of these criteria, then all applicants must be refused the visa.

Item [30] Subclause 143.311(1) of Schedule 2

This item makes a minor technical change which is consequential to the substantive amendments made in items 31 to 34 below.

Item [31] Paragraph 143.311(1)(a) of Schedule 2

This item makes a minor technical amendment to add the phrase "(the primary applicant)". This amendment is consequential to the substantive amendments made in items 33 to 34 below.

Item [32] Paragraph 143.311(1)(a) of Schedule 2

This item omits the word 'or' from this paragraph.

Item [33] After paragraph 143.311(1)(a) of Schedule 2

This item inserts a new paragraph (aa) which refers to an applicant being a member of the family unit of a person covered by subclause (3) which is inserted by item 34 directly below.

Item [34] At the end of clause 143.311 of Schedule 2

This item adds subclause (3) to clause 143.311 and makes reference to a *relevant person* being the person who:

- at the time the application was made, was the spouse or de facto partner of the person who was seeking to meet the primary criteria (the primary applicant);
- who made a combined application with the primary applicant;
- ceased to be in a relationship with the primary applicant;
- there has been family violence committed by the primary applicant against one or more of the following:
    - the secondary applicant;
    - a member of the family unit of that secondary applicant (who made a combined application with either the primary or secondary applicant); or
    - against a dependent child of either the primary applicant or the secondary applicant.

Items 30 to 34 in relation to clause 143.311 operate to provide that at the time a secondary applicant made their application, they were a member of the family unit of:

- the primary applicant; or
- the *relevant person* (in circumstances where there has been family violence).

Prior to these amendments, clause 143.311 could only be met by a secondary applicant who was a member of the family unit of the primary applicant. These amendments would provide that a member of the family unit of the primary applicant's former spouse or de facto partner may satisfy this criterion.

Item [35] Subclause 143.312(2) of Schedule 2

This item amends subclause 143.312(2). Prior to this amendment, this clause required that a sponsorship of the kind mentioned in clause 143.212 included sponsorship of the secondary applicant (unless the applicant met the requirements of subclause 143.313(2)). This subclause has been expanded to clarify clause 143.312(1) does not need to be met by a person to whom paragraph 143.311(1)(aa) applies (being the member of the family unit of the *relevant person*) or the applicant meets the requirements in subclause 143.313(2) (see item 37, below).This applicant is required to be sponsored at the time a decision is made on their application (see item 37 below)

Item [36] Clause 143.321 of Schedule 2

These amendments operate to repeal the existing clause and to insert the family violence provisions into Schedule 2 of the Subclass 143 visa.

Previously, clause 143.321 referred only to secondary applicants who, at time of decision, were a member of the family unit of a person who had satisfied the primary criteria for the grant of a visa and who made a combined application with the primary applicant. The family violence provisions allow the grant of a visa to a person who is no longer a member of the family unit, but they or a member of their family unit, have experienced family violence committed by the primary applicant. The secondary applicant would be required to meet the other relevant criteria for the grant of the visa.

New subclause (1) requires that a secondary applicant must meet the requirements of subclause (2), (3), (4) or (5).

Subclause (2) retains existing arrangements to enable secondary applicants to be eligible for the grant of the visa if they:

- are members of the family unit of a person who has satisfied the primary criteria for the grant of the visa; and
- made a combined application with the primary applicant.

Subclauses (3), (4) and (5) insert the new family violence provisions:

- subclause (3) provides the criteria that a secondary applicant would be required to meet if they are the former spouse or de facto partner of the primary applicant. An applicant meets the requirements of this subclause if:

- at the time the application was made, was the spouse or de facto partner of the primary applicant;
- the primary applicant has been granted the visa;
- the relationship between the primary applicant and secondary applicant has ceased;
- there has been family violence committed by the primary applicant against:
  - that secondary applicant;
  - a member of the family unit of that secondary applicant (who made a combined application with either the primary or secondary applicant); or
  - a dependent child of either the primary applicant or the secondary applicant; and
- the secondary applicant has entered Australia since making the application.

- subclause (4) provides the criteria that a secondary applicant would be required to meet if the primary applicant has been refused a visa for reasons that include family violence.
- subclause (5) provides the criteria that a member of the family unit of the secondary applicant (who was the former spouse or partner of the primary applicant) is required to satisfy, including subclauses (3) or (4). This subclause also provides that the secondary applicant has since been granted a Subclass 143 visa.

Item [37] Subclause 143.322(1) of Schedule 2

This item adds a new paragraph (aa) which allows for a secondary applicant to be sponsored in accordance with new subclause (1A) inserted by item 38 below, and the sponsorship has been approved by the Minister and is in force. The sponsor may be a different person to the one who offered sponsorship at the time of application.

Item [38] After subclause 143.322(1) of Schedule 2

This item inserts subclause (1A) and provides that secondary applicants can be sponsored by:

- a child of the primary applicant who has turned 18 and is a settled Australian citizen, permanent resident or eligible New Zealand citizen;
- the child's cohabiting spouse or de facto partner, who has turned 18 years of age, is a settled Australian citizen, permanent resident or eligible New Zealand citizen and who cohabits with that child; or
- where neither the child nor their spouse or de facto partner have turned 18 years of age, a relative or guardian or either of them who is over 18 years of age and is a settled Australian citizen, permanent resident or eligible New Zealand citizen; or

- if the child has not turned 18 – by a community organisation.

Item [39] Subclause 143.324(1) of Schedule 2 (table, heading to column headed "If the applicant is a member of the family unit of a person who is mentioned in clause 143.321, and the person was …")

This item amends the heading contained in column 2 of the table which relates to the public interest and special return criteria.

The wording of "If the applicant is a member of the family unit of a person who is mentioned in clause 143.321" and substitutes it with "If the applicant is a person covered by subclause 143.321(2), (3), (4) or (5), and the person was…".

Item [40] At the end of Subdivision 143.32 of Schedule 2

This item inserts clause 143.330 which applies to secondary applicants who meet the requirements of subclause 143.321(3) and (4) (being the family violence provisions).

This item operates to require each member of the family unit of the secondary applicant (being the primary applicant's former spouse or de facto partner who made the family violence claim) to satisfy certain public interest criteria and special return criteria.

Subclauses (2) and (3) apply to members of the family unit who are applicants for a Subclass 143 visa.

Subclause (2) provides that each member of the family unit of the secondary applicant who is an applicant for a Subclass 143 visa must satisfy the public interest criteria mentioned in the table that relates to them and if they have previously been in Australia – must satisfy the special return criteria that relates to the applicant.

Subclause (3) requires each member of the family unit of the secondary applicant who is an applicant for a Subclass 143 visa and what has not turned 18 at the time of decision to satisfy public interest criteria 4015 and 4016.

Subclause (4) provides that each member of the family unit of the secondary applicant who is not an applicant for a Subclass 143 visa must satisfy the public interest criteria mentioned in the table that relates to them and if they have previously been in Australia – must satisfy the special return criteria that relates to the applicant.

The amendment ensures that the same 'one fails, all fail' requirements apply to all members of the family unit of a secondary applicant, particularly in circumstances where the primary applicant has been refused the visa or there are new members of the family unit of the secondary applicant.

Item [41] Clause 192.215 of Schedule 2

This item repeals and substitutes clause 192.215.

This item clarifies which public interest criteria must be met by all applicants for the primary applicant to be granted their visa.

Subclause (1) provides which public interest criteria must be met by the primary applicant (being public interest criteria 4001, 4002, 4003, 4003B, 4004, 4007, 4010, 4019, 4020 and 4021).

Subclause (2) provides that a person who is covered by subclause (3), (4) or (5) must meet certain public interest criteria (being 4001, 4002, 4003, 4003B, 4004, 4007, 4010, 4020 and 4021).

Subclause (3) covers secondary applicants who – at time of decision on the application – are members of the family unit of the primary applicant.

Subclause (4) covers a person who is a *relevant person* (being a secondary applicant) who:

- at the time the application was made, was a member of the family unit of the primary applicant;
- is an applicant for a Subclass 192 visa; and
- the Minister is satisfied that:
    - the *relevant person*;
    - a member of the family unit of that *relevant person* who made a combined application with either the primary applicant or the *relevant person*; or
    - a dependent child of either the *relevant person* or the primary applicant
- has experienced family violence committed by the primary applicant.

Subclause (5) covers a secondary applicant who is a member of the family unit of a person covered by subclause (4).

Generally, a *relevant person* referred to in subclause (4) would be the former spouse or de facto partner who made the claim of family violence, while (5) would cover members of their family unit.

Subclause (6) provides that public interest criterion 4019 must be met by each secondary applicant who is an applicant for a Subclass 192 visa and is:

- a member of the family unit of the primary applicant; or
- is covered by either subclauses (4) or (5) (being either a *relevant person*, or a member of the family unit of such a person); and
- has turned 18 years at the time of application.

Subclause (7) provides that public interest criteria 4015 and 4016 must be satisfied in relation to a person who is an applicant for a subclass 192 visa and is:

- a member of the family unit of the primary applicant, or
- a member of the family unit of a person covered by subclauses (4) or (5).

This item also inserts a new clause 192.215A. It requires that non-applicant members of the family unit of:

- the primary applicant;
- the *relevant person* (being the primary applicant's former spouse or de facto partner); or
- the members of the family unit of a *relevant person.*

must satisfy 4001, 4002, 4003, 4003B and 4004, and satisfies public interest criterion 4007 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

Item [42] Subclause 192.216(2) of Schedule 2

This item omits the phrase "Each member of the family unit of the applicant who is an applicant for a Subclass 192 visa" and substitutes it with "Each person covered by subclause 192.215(3), (4) or (5)". This amendment clarifies that where a secondary applicant has experienced family violence perpetrated by the primary applicant, all persons who are an applicant for a Subclass 192 visa satisfy special return criteria 5001, 5002 and 5010.

Item [44] Clause 192.311 of Schedule 2

This item substitutes clause 192.311. The amendments made in this item are consistent with the amendments described in item 11.

Prior to these amendments, clause 192.311 referred only to secondary applicants who, at time of decision, were a member of the family unit of a person who had satisfied the primary criteria for the grant of a visa and who made a combined application with the primary applicant. These amendments insert family violence provisions to allow the grant of a visa to a person who is no longer a member of the family unit, but they or a member of their family unit, have experienced family violence committed by the primary applicant.

New subclause (1) requires that a secondary applicant must meet the requirements of subclause (2), (3), (4) or (5).

Subclause (2) retains existing arrangements to enable secondary applicants to be eligible for the grant of the visa if they:

- are members of the family unit of a person who holds a Subclass 192 visa granted on the basis they satisfied the primary criteria for the grant of the visa; and
- made a combined application with the primary applicant.

Subclauses (3), (4) and (5) insert the new family violence provisions:

- subclause (3) provides the criteria that a secondary applicant would be required to meet if they are the former spouse or de facto partner of the primary applicant. To satisfy the criteria they would need to be an applicant who:
    - at the time the application was made, was the spouse or de facto partner of the primary applicant;
    - the primary applicant has been granted the visa;

- the relationship between the primary applicant and secondary applicant has ceased;
- there has been family violence committed by the primary applicant against:
  - that secondary applicant;
  - a member of the family unit of that secondary applicant (who made a combined application with either the primary or secondary applicant); or
  - a dependent child of either the primary applicant or the secondary applicant; and
- the secondary applicant was either in Australia at the time application was made, or has subsequently entered Australia since that time.

- subclause (4) provides the criteria that a secondary applicant would be required to meet if the primary applicant has been refused a visa for reasons that include family violence.
- subclause (5) provides the criteria that a member of the family unit of the secondary applicant (who was the former spouse or partner of the primary applicant) is required to satisfy.

Item [45] At the end of Subdivision 192.31 of Schedule 2

This item inserts new clause 192.315 which applies to secondary applicants who meet the requirements of subclauses 192.311(3) or (4) (being the family violence provisions). This item operates in a similar way to that in item 8 above to require each member of the family unit of the secondary applicant (being the primary applicant's former spouse or de facto partner) to satisfy certain public interest criteria and special return criteria.

Subclause (2) requires each member of the family unit who is an applicant for a Subclass 192 visa to satisfy:

- public interest criteria 4001, 4002, 4003, 4003B, 4004, 4007, 4010, 4020 and 4021; and
- special return criteria 5001, 5002 and 5010.

Subclause (3) requires all secondary applicants aged over 18 to satisfy public interest criterion 4019.

Subclause (4) requires that public interest criteria 4015 and 4016 are satisfied in relation a secondary applicant aged under 18.

Subclause (5) requires non-applicant members of the family unit to satisfy public interest criteria 4001, 4002, 4003, and 4004, and public interest criterion 4005 unless the Minister is satisfied that it would be unreasonable to require the member to undergo assessment in relation to that criterion.

The amendment ensures that the same 'one fails, all fail' requirements apply to all members of the family unit of a secondary applicant, in circumstances where the primary applicant

has been refused the visa or where there are new members of the family unit of the secondary applicant.

Item [46] Clause 804.226 of Schedule 2

This item substitutes clause 804.226 which relates to the public interest criteria that must be met by secondary applicants for the primary applicant to be granted their visa (the 'one fails, all fail' criteria described in detail by item 6 above).

These criteria must be met by an applicant who satisfies subclause (2), (3) or (4) being applicants who are members of the family unit of:

- the primary applicant;
- the *relevant person* (being the primary applicant's former spouse or de facto partner who has made the family violence claim);
- a member of the family unit of the *relevant person*.

Where the primary applicant was *not* the holder of a substituted Subclass 600 visa at time of application, the relevant public interest criteria are:

- 4001, 4002, 4003, 4004, 4005, 4009, 4010 and 4020; and
- 4019 if the person had turned 18 at the time of application.

Table item 2 refers to circumstances where the primary applicant *was* the holder of a substituted Subclass 600 visa at time of application. The relevant public interest criteria are:

- 4001, 4002, 4003, 4007, 4009, 4010 and 4020; and
- 4019 if the person had turned 18 at the time of application.

This item also inserts clause 804.226A which applies to non-applicant members of the family unit of:

- the primary applicant;
- a person covered by subclause 804.226(3) or (4) (being the *relevant person* or a member of their family unit).

In circumstances where the primary applicant was *not* the holder of a substituted Subclass 600 visa at time of application, the relevant public interest criteria are 4001, 4002, 4003, 4004, and 4005 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

In circumstances where the primary applicant was the holder of a substituted Subclass 600 visa at time of application, the relevant public interest criteria are 4001, 4002, 4003 and 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

Item [47] Paragraph 804.227(a) of Schedule 2

This item omits the references to a "member of the family unit of the applicant" and substitutes this with "person covered by subclause 804.226(2), (3) or (4)". This is consistent with the amendments made by item 7 above which cover applicants who:

- are member of the family unit of the primary applicant;
- is a *relevant person* (being the primary applicant's former spouse or de facto partner);
- are members of the family unit of a *relevant person*.

This amendment operates to ensure public interest criteria 4015 and 4016 (being part of the 'one fails, all fail' criteria) are satisfied in relation to each secondary applicants aged under 18 years of age before the primary applicant can be granted a visa, regardless of whether the applicant is still a member of the primary applicant's family unit at time of decision on the visa. This ensures that if any applicants fail to meet one of these criteria, then all applicants must be refused the grant of the visa.

Item [49] Clause 804.311 of Schedule 2

This item substitutes clause 804.311.

Prior to these amendments, clause 804.311 could only be met by a secondary applicant who was a member of the family unit of the primary applicant. The amendment allows for a person to satisfy time of application criteria on the basis that they are a member of the family unit of a person seeking to satisfy the primary criteria, or are a member of the family unit of a person covered by subclause (2). This new subclause (2) refers to a *relevant person:*

- who was the spouse or de facto partner of the primary applicant;
- made a combined application with the primary applicant;
- the relationship has ended;
- there has been family violence committed by the primary applicant towards:
    - the relevant person;
    - a member of the family unit of the relevant person or the primary applicant;
    - a dependent child of the relevant person or primary applicant.

These amendments allow a relevant person (that is, a person who is seeking to satisfy the family violence provisions) can seek to include additional members of the family unit to the application for the visa.

Item [50] Clause 804.312 of Schedule 2

This item makes a technical consequential amendment to insert (1) before "A sponsorship" in clause 804.312.

Item [51] At the end of clause 804.312 of Schedule 2

These items make amendments to clause 804.312 which provides that a secondary applicant must be sponsored at the time a decision is on made on their application.

Prior to this amendment, this clause required that a sponsorship of the kind mentioned in clause 804.212 included sponsorship of the secondary applicant. This subclause has been expanded to confirm this requirement does not need to be met by a person to whom paragraph 804.311(1)(b) applies (being the member of the family unit of the *relevant person*). This applicant is required to be sponsored at the time a decision is made on their application, per item 52 below.

Item [52] Clause 804.321 of Schedule 2

This item substitutes clause 804.321.

Prior to these amendments, clause 804.321 referred only to secondary applicants who, at time of decision, were a member of the family unit of a person who had satisfied the primary criteria for the grant of a visa and who made a combined application with the primary applicant. These amendments insert the family violence provisions to allow the grant of a visa to a person who is no longer a member of the family unit, but they or a member of their family unit, have experienced family violence committed by the primary applicant.

New subclause (1) requires that a secondary applicant must meet the requirements of subclause (2), (3), (4) or (5).

Subclause (2) retains existing arrangements to enable secondary applicants to be eligible for the grant of the visa if they:

- are members of the family unit of a person who holds a Subclass 804 visa granted on the basis of satisfying the primary criteria for the grant of the visa; and
- made a combined application with the primary applicant.

Subclauses (3), (4) and (5) insert the new family violence provisions:

- subclause (3) provides the criteria that a secondary applicant would be required to meet if they are the former spouse or de facto partner of the primary applicant. To satisfy the criteria they would need to be an applicant who:
    - at the time the application was made, was the spouse or de facto partner of the primary applicant;
    - the primary applicant has been granted the visa;
    - the relationship between the primary applicant and secondary applicant has ceased;
    - there has been family violence committed by the primary applicant against:
        - that secondary applicant;

        - a member of the family unit of that secondary applicant (who made a combined application with either the primary or secondary applicant); or
        - a dependent child of either the primary applicant or the secondary applicant; and
    - the secondary applicant was either in Australia at the time application was made, or has subsequently entered Australia since that time;

- subclause (4) provides the criteria that a secondary applicant would be required to meet if the primary applicant has been refused the grant of a visa for reasons that include family violence;
- subclause (5) provides the criteria that a member of the family unit of the secondary applicant (who was the former spouse or partner of the primary applicant) is required to satisfy.

Item [53] Clause 804.325 of Schedule 2

This item amends clause 804.325 which relates to ongoing sponsorship requirements. Previously secondary applicants were required to be sponsored in accordance with clause 804.212.

A secondary applicant can now satisfy this clause where:

- a sponsorship of the kind mentioned in clause 804.212, approved by the Minister, is in force and includes sponsorship of the applicant, whether or not the sponsor was the sponsor at the time of application; or
- the applicant is sponsored in accordance with subclause (2) and the sponsorship has been approved by the Minister and is in force (whether or not the sponsor was the sponsor at the time of application).

Under new subclause (2), sponsorship can be provided by:

- a child of the primary applicant who has turned 18 and is a settled Australian citizen, permanent resident or eligible New Zealand citizen;
- the child's cohabiting spouse or de facto partner, who has turned 18 years of age, is a settled Australian citizen, permanent resident or eligible New Zealand citizen and who cohabits with that child; or
- where neither the child nor their spouse or de facto partner have turned 18 years of age, a relative or guardian or either of them who is over 18 years of age and is a settled Australian citizen, permanent resident or eligible New Zealand citizen; or
- if the child has not turned 18 – by a community organisation.

Item [54] At the end of Subdivision 804.32 of Schedule 2

This item inserts new clause 804.327 which applies to secondary applicants who meet the requirements of subclause 804.321(3) and (4) (being the family violence provisions). This

ensures that the one 'fails, all fails criteria' continues to operate as intended, noting that a visa may now be granted to a secondary applicant who is no longer a member of the family unit of the primary applicant due to family violence. All applicants (including the primary and secondary applicants), as well as members of the family unit not included in the visa application, must satisfy certain public interest criteria before a visa can be granted.

In subclause (2), table item 1 refers to circumstances where the secondary applicant who made the family violence was *not* the holder of a substituted Subclass 600 visa at time of application. The relevant public interest criteria are:

- 4001, 4002, 4003, 4004, 4005, 4009, 4010 and 4020; and
- 4019 if the person had turned 18 at the time of application.

Table item 2 refers to circumstances where the secondary applicant who made the family violence *was* the holder of a substituted Subclass 600 visa at time of application. The relevant public interest criteria are:

- 4001, 4002, 4003, 4007, 4009, 4010 and 4020;
- 4019 if the person had turned 18 at the time of application.

Subclause (3) requires that public interest criteria 4015 and 4016 are satisfied in relation a secondary applicant aged under 18.

Subclause (4) refers to non-applicant members of the family unit of the secondary applicant who made the family violence claim. Table item 1 refers to circumstances where the secondary applicant who made the family violence was *not* the holder of a substituted Subclass 600 visa at time of application. The relevant public interest criteria are:

- 4001, 4002, 4003 and 4004; and
- 4005 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criteria.

Table item 2 refers to circumstances where the secondary applicant who made the family violence *was* the holder of a substituted Subclass 600 visa at time of application. The relevant public interest criteria are:

- 4001, 4002, and 4003; and
- 4007 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

Item [55] Clause 835.224 of Schedule 2

This item substitutes clause 835.224 and also inserts new clause 835.224A.

This item makes amendments to the primary criteria for a Subclass 858 visa which previously required members of the applicant's family unit to meet certain requirements for the primary applicant's visa to be granted.

This amendment ensures that the 'one fails, all fail' criteria continue to operate as intended, noting that a visa may now be granted to a secondary applicant who is no longer a member

of the family unit of the primary applicant due to family violence. Where the secondary applicant meets the family violence criteria, all applicants (including the primary and secondary applicants), as well as members of the family unit not included in the visa application, must satisfy certain public interest criteria before a visa can be granted.

Subclause (1) provides that persons covered by subclause (2), (3) or (4) must satisfy:

- public interest criteria 4001, 4002, 4003, 4004, 4005, 4009, 4010 and 4020; and
- public interest criteria 4019 by applicants who had turned 18 at the time of application.

Subclause (2) covers a person who is a member of the family unit of the primary applicant and who is included in an application for a Subclass 835 visa.

Subclause (3) covers a *relevant person* (being a secondary applicant) who:

- at the time the application was made, was a member of the family unit of the primary applicant;
- is an applicant for a Subclass 835 visa; and
- the Minister is satisfied that:
    - the *relevant person*;
    - a member of the family unit of that *relevant person* who made a combined application with either the primary applicant or the *relevant person*; or
    - a dependent child of either the *relevant person* or the primary applicant;
- has experienced family violence committed by the primary applicant.

Subclause (4) covers a secondary applicant who is a member of the family unit of a person covered by subclause (3) and who is an applicant for a subclass 835 visa.

This item also inserts new clause 835.224A. It requires that non-applicant members of the family unit of:

- the primary applicant;
- the *relevant person* (being the primary applicant's former spouse or de facto partner); or
- the members of the family unit of a *relevant person.*

must satisfy 4001, 4002, 4003 and 4004, and satisfies public interest criterion 4005 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

Item [56] Paragraph 835.225(a) of Schedule 2

This item omits the references to a "member of the family unit of the applicant" and substitutes this with "person covered by subclause 835.224(2), (3) or (4)". This applies to each person who:

- is member of the family unit of the primary applicant;
- is a *relevant person* (being the primary applicant's former spouse or de facto partner);
- is a member of the family unit of a *relevant person*.

This amendment operates to ensure public interest criteria 4015 and 4016 (being part of the 'one fails, all fail' criteria) are satisfied in relation to secondary applicants aged under 18 years of age before the primary applicant can be granted a visa, regardless of whether the applicant is still a member of the primary applicant's family unit at time of decision on the visa. This ensures that if any applicants fail to meet one of these criteria, then all applicants must be refused the visa.

Item [58] Clauses 835.311 and 835.312 of Schedule 2

This item substitutes clause 836.311. Prior to these amendments, clause 835.311 could only be met by a secondary applicant who was a member of the family unit of and made a combined application with, the primary applicant. The amendment allows for a person to satisfy time of application criteria on the basis that they are a member of the family unit of a person seeking to satisfy the primary criteria, or are a member of the family unit of a person covered by subclause (2). This new subclause (2) refers to a *relevant person:*

- who was the spouse or de facto partner of the primary applicant;
- made a combined application with the primary applicant;
- the relationship has ended;
- there has been family violence committed by the primary applicant towards:
    - the relevant person;
    - a member of the family unit of the relevant person or the primary applicant;
    - a dependent child of the relevant person or primary applicant.

These amendments would operate so that a relevant person (that is, a secondary applicant seeking to satisfy the family violence provisions), could seek to include additional members of the family unit to the application for the visa

The amendment to clause 835.312 provides a person is not required to be covered by the sponsorship referred to in clause 835.213. A new subclause has been added to this clause to confirm this requirement does not need to be met by a person to whom paragraph 835.311(1)(b) applies. This applicant still needs to be sponsored at the time of decision, as per item 58 below.

Item [59] Clause 835.321 of Schedule 2

This item substitutes clause 835.321.

Prior to these amendments, clause 835.321 referred only to secondary applicants who, at time of decision, were a member of the family unit of a person who had satisfied the primary criteria for the grant of a visa and who made a combined application with the primary applicant. These amendments insert the family violence provisions to allow the grant of a

visa to a person who is no longer a member of the family unit, but they or a member of their family unit, have experienced family violence committed by the primary applicant.

New subclause (1) requires that a secondary applicant must meet the requirements of subclause (2), (3), (4) or (5).

Subclause (2) retains existing arrangements to enable secondary applicants to be eligible for the grant of the visa if they:

- are members of the family unit of a person who had satisfied the primary criteria for the grant of the visa; and
- made a combined application with the primary applicant.

Subclauses (3), (4) and (5) insert the new family violence provisions:

- subclause (3) provides the criteria that a secondary applicant would be required to meet if they are the former spouse or de facto partner of the primary applicant. An applicant meets the requirements of this subclause if:
    - at the time the application was made, was the spouse or de facto partner of the primary applicant;
    - the primary applicant has been granted the visa;
    - the relationship between the primary applicant and secondary applicant has ceased;
    - there has been family violence committed by the primary applicant against:
        - that secondary applicant;
        - a member of the family unit of that secondary applicant (who made a combined application with either the primary or secondary applicant); or
        - a dependent child of either the primary applicant or the secondary applicant; and
    - the secondary applicant was either in Australia at the time application was made, or has subsequently entered Australia since that time;
- subclause (4) provides the criteria that a secondary applicant would be required to meet if the primary applicant has been refused a visa for reasons that include family violence;
- subclause (5) provides the criteria that a member of the family unit of the secondary applicant (who was the former spouse or partner of the primary applicant) is required to satisfy.

Item [60] Clause 835.325 of Schedule 2

This item substitutes clause 835.325.

Prior to these amendments, this clause required that a sponsorship in respect to the primary applicant also includes secondary applicants. New clause 835.325, as amended, has the effect of retaining the requirement for secondary applicants to be sponsored by:

- an Australian relative for the person seeking to meet the family violence provisions;
- an Australian relative for the primary applicant; or
- The spouse or de facto partner of such a person, who has turned 18 years of age, is a settled Australian citizen, permanent resident or eligible New Zealand citizen, is usually resident in Australia and who cohabits with that relative.

Accordingly at the time a decision is made on the visa, the sponsor may be different to the person who provided the sponsorship at the time the application was made.

This item also inserts new clause 835.326 which applies to secondary applicants who meet the requirements of subclauses 835.321(3) and (4) (being the family violence provisions). This item operates in a similar way to that in item 13 above to require each member of the family unit of the secondary applicant (being the primary applicant's former spouse or de facto partner) to satisfy certain public interest criteria and special return criteria.

Subclause (2) requires each member of the family unit who is an applicant for a Subclass 835 visa to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4010 and 4020.

Subclause (3) requires all secondary applicants aged over 18 to satisfy public interest criterion 4019.

Subclause (4) requires that public interest criteria 4015 and 4016 are satisfied in relation a secondary applicant aged under 18.

Subclause (5) requires non-applicant members of the family unit to satisfy public interest criteria 4001, 4002, 4003, and 4004, and public interest criterion 4005 unless the Minister is satisfied that it would be unreasonable to require the member to undergo assessment in relation to that criterion.

The amendment ensures that the same 'one fails, all fail' requirements apply to all members of the family unit of a secondary applicant, particularly in circumstances where the primary applicant has been refused the visa or where there are new members of the family unit of the secondary applicant.

Item [61] Clause 836.224 of Schedule 2

This item substitutes clause 836.244 and inserts new clause 836.224A.

Clause 836.224 clarifies which public interest criteria must be met by all applicants for the primary applicant to be granted their visa (the 'one fails, all fail' criteria described in detail by item 6 above).

Subclause (1) specifies that a person who is covered by subclause (2), (3) or (4) must meet certain public interest criteria (being 4001, 4002, 4003, 4004, 4005, 4010 and 4020). Any person who had turned 18 at time of application must satisfy 4019.

Subclause (2) covers a person who is a member of the family unit of the primary applicant and an applicant for a Subclass 836 visa.

Subclause (3) covers a *relevant person* (being a secondary applicant) who:

- at the time the application was made, was a member of the family unit of the primary applicant;
- is an applicant for a Subclass 836 visa; and
- the Minister is satisfied that:
    - the *relevant person*;
    - a member of the family unit of that *relevant person* who made a combined application with either the primary applicant or the *relevant person*; or
    - a dependent child of either the *relevant person* or the primary applicant
- has experienced family violence committed by the primary applicant.

Subclause (4) refers to a secondary applicant who is a member of the family unit of a person covered by subclause (3).

New clause 836.224A will operate to require that non-applicant members of the family unit of:

- the primary applicant;
- the *relevant person* (being the primary applicant's former spouse or de facto partner); or
- a member of the family unit of a *relevant person.*

must satisfy 4001, 4002, 4003, 4003B and 4004, and satisfies public interest criterion 4005 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

Item [62] Paragraph 836.225(a) of Schedule 2

This item omits the references to a "member of the family unit of the applicant" and substitutes this with "person covered by subclause 836.224(2), (3) or (4)". This is consistent with the amendments made by item 7 above which cover applicants who:

- are member of the family unit of the primary applicant;
- are a *relevant person* (being the primary applicant's former spouse or de facto partner);
- are members of the family unit of a *relevant person*.

This amendment operates to ensure public interest criteria 4015 and 4016 (being part of the 'one fails, all fail' criteria) are satisfied in relation to secondary applicants aged under 18 years of age before the primary applicant can be granted a visa, regardless of whether the applicant is still a member of the primary applicant's family unit at time of decision on the

visa. This ensures that if any applicants fail to meet one of these criteria, then all applicants must be refused the visa.

Item [64] Clauses 836.311 and 836.312 of Schedule 2

This item substitutes clause 836.311 Prior to these amendments, clause 836.311 could only be met by a secondary applicant who was a member of the family unit of and made a combined application with, the primary applicant. The amendment allows for a person to satisfy time of application criteria on the basis that they are a member of the family unit of a person seeking to satisfy the primary criteria, or are a member of the family unit of a person covered by subclause (2). This new subclause (2) refers to a *relevant person:*

- who was the spouse or de facto partner of the primary applicant;
- made a combined application with the primary applicant;
- the relationship has ended;
- there has been family violence committed by the primary applicant towards:
    - the relevant person;
    - a member of the family unit of the relevant person or the primary applicant;
    - a dependent child of the relevant person or primary applicant.

These amendments would operate so that a relevant person (that is, a secondary applicant seeking to satisfy the family violence provisions), could seek to include additional members of the family unit in the application for the visa. This criterion would allow additional members of the family unit to satisfy certain time of application criteria. The amendment to clause 836.312 means such a person is not required to be covered by the sponsorship referred to in clause 836.213. A new subclause has been added to this clause to clarify this requirement does not include a person to whom paragraph 836.311(1)(b) applies (being the member of the family unit of the *relevant person*).

Item [65] Clause 836.321 of Schedule 2

These amendments operate to repeal the existing clause and to insert the family violence provisions into Schedule 2 of the Subclass 836 visa and is similar to the amendments described at item 11.

Previously, clause 836.321 referred only to secondary applicants who, at time of decision, were a member of the family unit of a person who had satisfied the primary criteria for the grant of a visa and who made a combined application with the primary applicant. These amendments to insert the family violence provisions will allow the grant of a visa to a person who is no longer a member of the family unit, but they or a member of their family unit, have experienced family violence committed by the primary applicant. The secondary applicant would still be required to meet the other relevant criteria for the grant of the visa.

New subclause (1) requires that a secondary applicant must meet the requirements of subclause (2), (3), (4) or (5).

Subclause (2) retains existing arrangements to enable secondary applicants to be eligible for the grant of the visa if they:

- are members of the family unit of a person who holds a Subclass 836 visa granted on the basis they satisfy the primary criteria for the grant of the visa; and
- made a combined application with the primary applicant.

Subclauses (3), (4) and (5) insert the new family violence provisions:

- subclause (3) provides the criteria that a secondary applicant would be required to meet if they are the former spouse or de facto partner of the primary applicant. An applicant meets the requirements of the subclause if:
    - at the time the application was made, was the spouse or de facto partner of the primary applicant;
    - the primary applicant has been granted the visa;
    - the relationship between the primary applicant and secondary applicant has ceased;
    - there has been family violence committed by the primary applicant against:
        - that secondary applicant;
        - a member of the family unit of that secondary applicant (who made a combined application with either the primary or secondary applicant); or
        - a dependent child of either the primary applicant or the secondary applicant; and
    - the secondary applicant was either in Australia at the time application was made, or has subsequently entered Australia since that time;
- subclause (4) provides the criteria that a secondary applicant would be required to meet if the primary applicant has been refused a visa for reasons that include family violence;
- subclause (5) provides the criteria that a member of the family unit of the secondary applicant (who was the former spouse or partner of the primary applicant) is required to satisfy.

Item [66] Clause 836.325 of Schedule 2

This item substitutes clause 836.325.

This item repeals the clause referring to the need for ongoing sponsorship and replaces it with revised wording. Prior to this amendment, clause 836.325 required that a sponsorship in respect to the primary applicant also includes secondary applicants. New clause 836.325 has the effect of retaining the requirement for secondary applicants to be sponsored, whether this is by:

- an Australian relative for the person seeking to meet the family violence provisions;
- an Australian relative for the primary applicant; or

- the spouse or de facto partner of such a person, who has turned 18 years of age, is a settled Australian citizen, permanent resident or eligible New Zealand citizen, is usually resident in Australia and who cohabits with that relative.

Accordingly at the time a decision is made on the visa, the sponsor may be different to the person who provided the sponsorship at the time the application was made.

This item also inserts new clause 836.326 which applies to secondary applicants who meet the requirements of subclauses 836.321(3) and (4) (being the family violence provisions). This item is consistent with item 13 above, which requires each member of the family unit of the secondary applicant (being the primary applicant's former spouse or de facto partner) to satisfy certain public interest criteria and special return criteria.

Subclause (2) requires each member of the family unit who is an applicant for a Subclass 835 visa to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009, 4010 and 4020.

Subclause (3) requires all secondary applicants aged over 18 to satisfy public interest criterion 4019.

Subclause (4) requires that public interest criteria 4015 and 4016 are satisfied in relation a secondary applicant aged under 18.

Subclause (5) requires non-applicant members of the family unit to satisfy public interest criteria 4001, 4002, 4003, and 4004, and public interest criterion 4005 unless the Minister is satisfied that it would be unreasonable to require the member to undergo assessment in relation to that criterion.

The amendment ensures that the same 'one fails, all fail' requirements apply to all members of the family unit of a secondary applicant, in circumstances where the primary applicant has been refused the visa.

Item [67] Clause 864.224A of Schedule 2

This item repeals subclause (1) and inserts three new subclauses to clarify which secondary applicants are required to satisfy public interest criterion 4020 (one of the 'one fails, all fail' requirements) for the primary applicant's visa to be granted. Previously this clause only referred to members of the family unit of the primary applicant and now includes all applicants for the visa who are:

- members of the family unit of the primary applicant (subclause 2);
- the *relevant person* (being the primary applicant's former spouse or de facto partner) (subclause (3)); or
- the members of the family unit of a *relevant person* who were members of the family unit of the primary applicant at the time of application (subclause (4)).

Item [68] Clauses 864.227 and 864.228 of Schedule 2

This item repeals clauses 864.227 and 864.228 to clarify which public interest criteria must be met by all applicants for a the primary applicant was not the holder of a Subclass 884 at the time of application to be granted their visa (the 'one fails, all fail' criteria).

In clause 864.227:

- table item 1 refers to circumstances where the primary applicant was *not* the holder of a substituted Subclass 600 visa at time of application. The relevant public interest criteria are:
    - 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
    - 4019 if the person had turned 18 at the time of application.
    - If the person had previously been in Australia they must satisfy special return criteria 5001, 5002, and 5010.
- table item 2 refers to circumstances where the primary applicant *was* the holder of a substituted Subclass 600 visa at time of application. The relevant public interest criteria are:
    - 4001, 4002, 4003, 4009, 4010 and either:
        - 4007, or
        - if the person has previously held a Subclass 884 visa, such health checks as the Minister considers appropriate; and
    - 4019 if the person had turned 18 at the time of application.
    - If the person had previously been in Australia they must satisfy special return criteria 5001, 5002, and 5010.

These criteria must be satisfied by secondary applicants who are included in the application and are:

- members of the family unit of the primary applicant;
- the *relevant person* (being the primary applicant's former spouse or de facto partner); or
- the members of the family unit of a *relevant person* who were members of the family unit of the primary applicant at the time of application.

Clause 864.228, as amended, applies to a non-applicant members of the family unit of:

- the primary applicant;
- a person covered by subclause 864.227(3) or (4) (being the *relevant person* or a member of their family unit).

Where the primary applicant was *not* the holder of a substituted Subclass 600 visa at time of application, the relevant public interest criteria are 4001, 4002, 4003, 4004, and 4005 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

Where the primary applicant *was* the holder of a substituted Subclass 600 visa at time of application, the relevant public interest criteria are 4001, 4002, 4003 and 4007, unless the

Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

Item [69] Paragraph 864.229(a) of Schedule 2

This item omits the references to a "member of the family unit of the applicant" and substitutes this with "person covered by subclause 864.227(2), (3) or (4)". This is consistent with the amendments made by item 7 above which cover applicants who:

- are member of the family unit of the primary applicant;
- is a *relevant person* (being the primary applicant's former spouse or de facto partner)
- are members of the family unit of a *relevant person*.

This amendment operates to ensure public interest criteria 4015 and 4016 (being part of the 'one fails, all fail' criteria) are satisfied in relation to secondary applicants aged under 18 years of age before the primary applicant can be granted a visa, regardless of whether the applicant is still a member of the primary applicant's family unit at time of decision on the visa. This ensures that if any applicants fail to meet one of these criteria, then all applicants must be refused the visa.

Item [70] Clause 864.311 of Schedule 2

This item substitutes clause 864.311.

Prior to these amendments, clause 864.311 could only be met by a secondary applicant who was a member of the family unit of and made a combined application with, the primary applicant. The amendment allows for a person to satisfy time of application criteria on the basis that they are a member of the family unit of a person seeking to satisfy the primary criteria, or are a member of the family unit of a person covered by subclause (2). This new subclause (2) refers to a *relevant person:*

- who was the spouse or de facto partner of the primary applicant;
- made a combined application with the primary applicant;
- the relationship has ended;
- there has been family violence committed by the primary applicant towards:
    - the relevant person;
    - a member of the family unit of the relevant person or the primary applicant;
    - a dependent child of the relevant person or primary applicant.

These amendments would operate so that a relevant person (that is, a secondary applicant seeking to satisfy the family violence provisions), could seek to include additional members of the family unit in the application for the visa. This criterion would allow additional members of the family unit to satisfy certain time of application criteria.

Item [71] Clause 864.312 of Schedule 2

This item makes a technical consequential amendment to insert (1) before "One of the following" in clause 864.312.

Item [72] At the end of clause 864.312 of Schedule 2

This item makes amendments to clause 864.312 which contains the requirement that a secondary applicant must be sponsored at the time the application is made.

Prior to this amendment, this clause required that a sponsorship of the kind mentioned in clause 864.212 included sponsorship of the secondary applicant. This subclause has been expanded to clarify this requirement does not need to be met by a person to whom paragraph 864.311(1)(c) applies (being the member of the family unit of the *relevant person*). This applicant is required to be sponsored at the time a decision is made on their application, per item 71 below.

Item [73] Clause 864.321 of Schedule 2

This item substitutes clause 864.321.

Prior to these amendments, clause 864.321 referred only to secondary applicants who, at time of decision, were a member of the family unit of a person who had satisfied the primary criteria for the grant of a visa and who made a combined application with the primary applicant. These amendments insert the family violence provisions to allow the grant of a visa to a person who is no longer a member of the family unit, but they or a member of their family unit, have experienced family violence committed by the primary applicant.

New subclause (1) requires that a secondary applicant must meet the requirements of subclause (2), (3), (4) or (5).

Subclause (2) retains existing arrangements to enable secondary applicants to be eligible for the grant of the visa if they:

- are members of the family unit of a person who had satisfied the primary criteria for the grant of the visa; and
- made a combined application with the primary applicant.

Subclauses (3), (4) and (5) insert the new family violence provisions:

- subclause (3) provides the criteria that a secondary applicant would be required to meet if they are the former spouse or de facto partner of the primary applicant. An applicant meets the requirements of this subclause if:
    - at the time the application was made, was the spouse or de facto partner of the primary applicant;
    - the primary applicant has been granted the visa;
    - the relationship between the primary applicant and secondary applicant has ceased;
    - there has been family violence committed by the primary applicant against:
        - that secondary applicant;

        - a member of the family unit of that secondary applicant (who made a combined application with either the primary or secondary applicant); or
        - a dependent child of either the primary applicant or the secondary applicant; and
    - the secondary applicant was either in Australia at the time application was made, or has subsequently entered Australia since that time.
- subclause (4) provides the criteria that a secondary applicant would be required to meet if the primary applicant has been refused a visa for reasons that include family violence
- subclause (5) provides the criteria that a member of the family unit of the secondary applicant (who was the former spouse or partner of the primary applicant) is required to satisfy

Item [74] Clause 864.322 of Schedule 2

Consequential to the amendment made below in item 77 this item inserts a (1) in front of the existing wording.

Item [75] After paragraph 864.322(a) of Schedule 2

This item inserts a new paragraph which states that applicant is sponsored in accordance with subclause (2) and the sponsorship has been approved by the Minister and is in force, whether or not the sponsor was the sponsor at the time of application.

Item [76] Paragraph 864.322(c) of Schedule 2

This item makes a small amendment to omit the reference to paragraph 864.312(c) and replace it with a reference to 864.312(1)(c).

Item [77] At the end of clause 864.322 of Schedule 2

This item inserts subclause (2) and provides that secondary applicants can be sponsored by:

- a child of the primary applicant who has turned 18 and is a settled Australian citizen, permanent resident or eligible New Zealand citizen;
- the child's cohabiting spouse or de facto partner, who has turned 18 years of age, is a settled Australian citizen, permanent resident or eligible New Zealand citizen and who cohabits with that child; or
- where neither the child nor their spouse or de facto partner have turned 18 years of age, a relative or guardian or either of them who is over 18 years of age and is a settled Australian citizen, permanent resident or eligible New Zealand citizen; or
- if the child has not turned 18 – by a community organisation.

Item [78] Clause 864.324 of Schedule 2 (table, heading to column headed "If the applicant is a member of the family unit of a person who is mentioned in clause 864.321, and the person was …")

This item amends the heading contained in column 2 of the table which relates to the public interest and special return criteria (the 'one fails, all fail' requirements).

It repeals the heading and substitutes it with the wording 'If the applicant is a person covered by subclause 864.321(2), (3), (4) or (5), and the person was …'

Item [79] At the end of Subdivision 864.32 of Schedule 2

This item inserts new clause 864.330 which applies to secondary applicants who meet the requirements of subclause 864.321(3) and (4) (being the family violence provisions). This item operates to require each member of the family unit of the secondary applicant (being the primary applicant's former spouse or de facto partner who made the family violence claim) to satisfy certain public interest criteria and special return criteria.

In subclause (2), table item 1 refers to circumstances where the secondary applicant who made the family violence claim was *not* the holder of a substituted Subclass 600 visa at time of application. The relevant public interest criteria are:

- 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- 4019 if the person had turned 18 at the time of application;
- If a member of their family unit has previously been in Australia they must satisfy special return criteria 5001, 5002 and 5010.

Table item 2 refers to circumstances where the secondary applicant who made the family violence *was* the holder of a substituted Subclass 600 visa at time of application. The relevant public interest criteria are:

- 4001, 4002, 4003, 4007, 4009, 4010, and either:
    - 4007, or
    - if the member of the family unit has previously held a Subclass 173 visa—such health checks as the Minister considers appropriate; and
- 4019 if the person had turned 18 at the time of application;
- if a member of their family unit has previously been in Australia they must satisfy special return criteria 5001, 5002 and 5010.

Subclause (3) requires that public interest criteria 4015 and 4016 are satisfied in relation a secondary applicant aged under 18.

Subclause (4) refers to non-applicant members of the family unit of the secondary applicant who made the family violence claim. Table item 1 refers to circumstances where the secondary applicant who made the family violence was *not* the holder of a substituted Subclass 600 visa at time of application. The relevant public interest criteria are:

- 4001, 4002, 4003 and 4004; and

- 4005 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

Table item 2 refers to circumstances where the secondary applicant who made the family violence *was* the holder of a substituted Subclass 600 visa at time of application. The relevant public interest criteria are:

- 4001, 4002 and 4003; and
- 4007 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

Item [80] Clause 888.211 of Schedule 2

This item substitutes clause 888.211. Previously, clause 888.211 required that neither the primary applicant nor their spouse or de facto partner have a history of involvement in business or investment activities that are of a nature that is not generally acceptable in Australia. This requirement has been extended to the former spouse or de facto partner of the primary applicant in circumstances where the relationship has ended and there has been family violence. These amendments are consequential to amendments in item 78 below that insert the family violence provisions and allow for a former spouse or de facto partner to still be granted a visa in circumstances where the relationship has ended. Accordingly, the amended clauses now require that:

- the primary applicant;
- their current spouse or de facto partner; or
- their former spouse or de facto partner;

do not have a history of involvement in business or investment activities that are of a nature that is not generally acceptable in Australia.

Item [81] Clauses 888.214 and 888.215 of Schedule 2

This item substitutes clauses 888.214 and 888.215 and inserts new clause 888.215A.

Previously clause 888.214 required that the primary applicant and their spouse or de facto partner have a satisfactory record of compliance with the laws of the Commonwealth or the State or Territory in which the relevant business operates. This has been extended to the former spouse or de facto partner of the primary applicant in circumstances where the relationship has ended and there has been family violence. These amendments are consequential to those made in item 78 below that allow for a former spouse or de facto partner to still be granted a visa in circumstances where there has been family violence. Accordingly, the clauses, as amended, now require that:

- the primary applicant;
- their current spouse or de facto partner; or
- their former spouse or de facto partner;

have a satisfactory record of compliance with the laws of the Commonwealth or the State or Territory in which the relevant business operates.

This item also substitutes clause 888.215 which operates to clarify which public interest criteria must be met by all applicants for the primary applicant to be granted their visa (the 'one fails, all fail' criteria described in detail by item 6 above).

Subclause (1) specifies which public interest criteria must be met by the primary applicant (being public interest criteria 4001, 4002, 4003, 4004, 4007, 4010, 4020 and 4021).

Subclause (2) specifies that a person who had turned 18 at the time of application must satisfy 4019.

Subclause (3) specifies that a person who is covered by subclause (4), (5) or (6) must meet certain public interest criteria (being 4001, 4002, 4003, 4004, 4007, 4010 and 4020).

Subclause (4) covers a secondary applicant who – at time of decision on the application – is a member of the family unit of the primary applicant.

Subclause (5) covers a *relevant person* (being a secondary applicant) who:

- at the time the application was made, was a member of the family unit of the primary applicant;
- is an applicant for a Subclass 888 visa; and
- the Minister is satisfied that:
    - the *relevant person*;
    - a member of the family unit of that *relevant person* who made a combined application with either the primary applicant or the *relevant person*; or
    - a dependent child of either the *relevant person* or the primary applicant
- has experienced family violence committed by the primary applicant.

Subclause (6) covers a secondary applicant who is a member of the family unit of a person covered by subclause (5).

Generally, a *relevant person* referred to in subclause (5) would be the former spouse or de facto partner who made the claim of family violence, while (6) would refer to members of their family unit.

Subclause (7) provides that public interest criterion 4019 must be met by a secondary applicant who is an applicant for a Subclass 888 visa and is:

- a member of the family unit of the primary applicant; or
- is covered by either subclauses (5) or (6) (being either a *relevant person*, or a member of the family unit of such a person); and
- has turned 18 years at the time of application.

Subclause (8) provides that public interest criteria 4015 and 4016 must be satisfied in relation to a person who is an applicant for a subclass 888 visa and is:

- a member of the family unit of the primary applicant, or
- a member of the family unit of a person covered by subclauses (5) or (6).

This item also inserts clause 888.215A. This requires that non-applicant members of the family unit of:

- the primary applicant;
- the relevant person (being the primary applicant's former spouse or de facto partner); or
- the members of the family unit of a *relevant person.*

must satisfy 4001, 4002, 4003, 4003B and 4004, and satisfies public interest criterion 4007 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

Item [82] Subclause 888.216(2) of Schedule 2

This item omits the phrase "Each member of the family unit of the applicant who is an applicant for a Subclass 888 visa" and substitutes it with "Each person covered by subclause 888.215(4), (5) or (6)". This amendment provides that each person who is an applicant for a Subclass 888 visa must satisfy special return criteria 5001, 5002 and 5010.

Item [84] Clause 888.311 of Schedule 2

This item substitutes clause 888.311.

Prior to these amendments, clause 888.311 referred only to secondary applicants who, at time of decision, were a member of the family unit of a person who had satisfied the primary criteria for the grant of a visa and who made a combined application with the primary applicant. These amendments insert the family violence provisions to allow the grant of a visa to a person who is no longer a member of the family unit, but they or a member of their family unit, have experienced family violence committed by the primary applicant.

New subclause (1) provides that a secondary applicant must meet the requirements of subclause (2), (3), (4), (5) or (6).

Subclause (2) retains existing arrangements to enable secondary applicants to be eligible for the grant of the visa if they:

- are members of the family unit of a person who holds a Subclass 888 visa and was granted the visa on the basis they had satisfied the primary criteria for the grant of the visa; and
- made a combined application with the primary applicant.

Subclauses (3), (4) and (5) insert the new family violence provisions:

- subclause (3) provides the criteria that a secondary applicant would be required to meet if they are the former spouse or de facto partner of the primary applicant. An applicant meets the requirements of this subclause if:
    - at the time the application was made, was the spouse or de facto partner of the primary applicant;
    - the primary applicant has been granted the visa;
    - the relationship between the primary applicant and secondary applicant has ceased;
    - there has been family violence committed by the primary applicant against:
        - that secondary applicant;
        - a member of the family unit of that secondary applicant (who made a combined application with either the primary or secondary applicant); or
        - a dependent child of either the primary applicant or the secondary applicant; and
    - the secondary applicant was either in Australia at the time application was made, or has subsequently entered Australia since that time;
- subclause (4) provides the criteria that a secondary applicant would be required to meet if the primary applicant has been refused a visa for reasons that include family violence;
- subclause (5) operates in a similar way to subclause (4) except that the primary applicant has been refused the visa because they failed to meet the requirements of clause 888.225, 888.232 or 888.242, and they otherwise would have, if the relationship between the primary applicant and their former spouse or de facto partner had not ended. These identified clauses contain requirements that can be met either by the primary applicant solely, by their spouse or de facto partner solely, or by them jointly. This allows a secondary applicant to leave a relationship in which there has been family violence without risking the outcome of their visa application;
- subclause (6) provides the criteria that a member of the family unit of the secondary applicant (who was the former spouse or partner of the primary applicant) is required to satisfy.

Item [85] At the end of Division 888.3 of Schedule 2

This item inserts new clause 888.314 which applies to secondary applicants who meet the requirements of subclauses 888.311(4), (5) or (6) (being the family violence provisions). This item operates to require each member of the family unit of the secondary applicant (being the primary applicant's former spouse or de facto partner) to satisfy certain public interest criteria and special return criteria.

Subclause (2) requires each member of the family unit who is an applicant for a Subclass 888 visa to satisfy public interest criteria 4001, 4002, 4003, 4004, 4007, 4010 and 4020 as well as special return criteria 5001, 5002 and 5010.

Subclause (3) requires all secondary applicants aged over 18 to satisfy public interest criterion 4019.

Subclause (4) requires that public interest criteria 4015 and 4016 are satisfied in relation a secondary applicant aged under 18.

Subclause (5) requires non-applicant members of the family unit to satisfy public interest criteria 4001, 4002, 4003, and 4004, and public interest criterion 4007 unless the Minister is satisfied that it would be unreasonable to require the member to undergo assessment in relation to that criterion.

The amendment ensures that the same 'one fails, all fail' requirements apply to all members of the family unit of a secondary applicant, in circumstances where the primary applicant has been refused the visa or where there are new members of the family unit of the secondary applicant.

Part 2 — Other amendments

Item [86] Subclause 858.328(2) of Schedule 2

This item makes a minor technical amendment to the Global Talent (Subclass 858) visa.

Clause 858.328 relates to the need for each member of the family unit of the secondary applicant to satisfy certain public interest criteria and special return criteria. The amendment to subclause 858.328(2) to remove the word 'each' and replace it with the wording 'Unless the secondary applicant was, at the time of application, the spouse or de facto partner of a primary applicant that met the requirements of subclause 858.212(4), each".

The amendment ensures that in circumstances where the primary applicant provided specialised assistance to the Australian Government in matters of security, secondary applicants are not required to satisfy public interest criterion 4020. This amendment is consistent with clause 858.326.

Item [87] Subclause 858.328(5) of Schedule 2

This item omits the phrase 'time of application' and substitutes it with 'time of decision.' This corrects minor drafting error in the clause.

Part 3—Application of amendments and family violence provisions to repealed Subclass 132

Item [88] In the appropriate position in Schedule 13

This item inserts new Part 147 into Schedule 13 to the Migration Regulations to provide for the operation of the amendments made by these Regulations in relation Schedule 1 of the *Migration Amendment (Family Violence Provisions and Other Measures) Regulations 2024.* Schedule 13 is the location of application and transitional provisions for amendments to the Migration Regulations.

This item inserts new clause 14701 which provides that the amendments made by Parts 1 and 2 of Schedule 1 of these Regulations apply in relation to a visa:

- made, but not finally determined, before the commencement of the amending Schedule; or
- made on or after that commencement.

This item also inserts new clause 14702 and in relation to application to an application for a Subclass 132 (Business Talent) visa made but not finally determined before the commencement of these Regulations. Amendments made to the Subclass 132 visa will apply to all applications made prior to 1 July 2021 when this visa closed. As such all applications must be assessed against the clauses outlined in this Part as though they were the requirements as of 1 July 2021. The nature of the amendments is as follows:

Paragraph 1104AA(2)(b) of Schedule 1

This amendment is consistent with the amendments described in items 1 and 2 above. Prior to these amendments, all secondary applicants aged 18 years or older were required to pay a second visa application charge for their visa to be granted when they were unable to demonstrate having functional English. These amendments ensure that secondary applicants who meet the family violence provisions contained in Schedule 2 of the respective visas and who are not able to demonstrate functional English are not required to pay this additional cost. The intention is to avoid placing this cohort of people into financial hardship, or further compounding hardship they may already be in due to the family violence they have experienced.

Clause 132.211

This amendment is consistent with the amendments described in item 80 in relation to applicants (both primary and secondary) not having history of involvement in business or investment activities that are of a nature that is not generally acceptable in Australia. The wording has been expanded to confirm that scope of this clause covers:

- the primary applicant,
- their current spouse or de facto partner, or
- their former spouse or de facto partner who has made a family violence claim.

Clause 132.213

This amendment applies to the primary and secondary applicants and members of their respective family units satisfying public interest criteria.

Subclauses (1) and (2) specify which public interest criteria must be met by the primary applicant.

Subclause (3) specifies that a person who is covered by subclause (4), (5) or (6) must satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4010 and 4020. Any persons over 18 years of age must satisfy public interest criteria 4019.

Subclause (4) refers to persons who are members of the family unit of the primary applicant and who are included in an application for a Subclass 132 visa.

Subclause (5) refers to a *relevant person* being a secondary applicant who:

- at the time the application was made, was a member of the family unit of the primary applicant;
- is an applicant for a Subclass 132 visa; and
- the Minister is satisfied that:
    - the *relevant person*;
    - a member of the family unit of that *relevant person* who made a combined application with either the primary applicant or the *relevant person*; or
    - a dependent child of either the *relevant person* or the primary applicant;
- has experienced family violence committed by the primary applicant.

Subclause (6) refers to a secondary applicant who is a member of the family unit of a person covered by subclause (5).

Generally, a *relevant person* referred to in subclause (5) would be the former spouse or de facto partner who made the claim of family violence, while (6) would refer to members of their family unit.

Subclause (7) refers to applicants who are 18 at time of application satisfying public interest criterion 4019.

Subclause (8) requires that public interest criteria 4015 and 4016 must be satisfied in relation to a secondary applicant aged under 18 years.

Subclauses (9) and (10) refer to members of the family unit (either of the primary or of the *relevant person* who are not included in the application must satisfy public interest criteria 4001, 4002, 4003 and 4004, and public interest criterion 4005 unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

Clause 132.214

This clause provides that primary and secondary applicants are required to satisfy the special return criteria.

Clause 132.311

The amendments to this clause insert the family violence provisions. Prior to these amendments, clause 132.311 referred only to secondary applicants who, at time of decision, were a member of the family unit of a person who had satisfied the primary criteria for the grant of a visa and who made a combined application with the primary applicant. These amendments insert family violence provisions to allow the grant of a visa to a person who is no longer a member of the family unit, but they or a member of their family unit, have experienced family violence committed by the primary applicant. The secondary applicant would be required to meet the other relevant criteria for the grant of the visa.

New subclause (1) requires that a secondary applicant must meet the requirements of subclause (2), (3), (4), (5) or (6).

Subclause (2) retains existing arrangements to enable secondary applicants to be eligible for the grant of the visa if they:

- are members of the family unit of a person who holds a Subclass 132 visa granted on the basis of satisfying the primary criteria for the grant of the visa; and
- made a combined application with the primary applicant.

Subclauses (3), (4), (5) and (6) insert the new family violence provisions:

- subclause (3) provides the criteria that a secondary applicant would be required to meet if they are the former spouse or de facto partner of the primary applicant. An applicant meets the requirements of this subclause if:
    - at the time the application was made, was the spouse or de facto partner of the primary applicant;
    - the primary applicant has been granted the visa;
    - the relationship between the primary applicant and secondary applicant has ceased;
    - there has been family violence committed by the primary applicant against:
        - that secondary applicant;
        - a member of the family unit of that secondary applicant (who made a combined application with either the primary or secondary applicant); or
        - a dependent child of either the primary applicant or the secondary applicant; and
    - the secondary applicant was either in Australia at the time application was made, or has subsequently entered Australia since that time;
- subclause (4) provides the criteria that a secondary applicant would be required to meet if the primary applicant has been refused a visa for reasons that include family violence;
- subclause (5) operates in a similar way to subclause (4) except that the primary applicant has been refused the visa for failing to meet the requirements of clause 132.224 or 132.226 and would have met the requirements of the clause had the relationship between the primary applicant and the applicant not ceased. These identified clauses contain requirements that can be met either by the primary applicant solely, by their spouse or de facto partner solely, or by them jointly. This allows a secondary applicant to leave a relationship in which there has been family violence without risking the outcome of their visa application;
- subclause (6) provides the criteria that a member of the family unit of the secondary applicant (who was the former spouse or partner of the primary applicant) is required to satisfy.

Clauses 132.312 and 132.313

No amendments are made to these clauses relating to public interest and special return criteria.

Clause 132.314

This item inserts clause 132.314. It specifies which public interest and special return criteria must be met by a member of the family unit of a secondary applicant who meets the family violence provision contained in subclauses 132.311(3) and (4).

Subclauses (2) to (5) apply to secondary applicants for a Subclass 132 visa and refer to public interest criteria 4001, 4002, 4003, 4004, 4009, 4005, 4010 and 4020 and special return criteria 5001, 5002 and 5010.

Subclause (3) requires all secondary applicants aged over 18 to satisfy public interest criterion 4019.

Subclause (4) requires that public interest criteria 4015 and 4016 are satisfied in relation a secondary applicant aged under 18.

Subclause (5) requires non-applicant members of the family unit to satisfy public interest criteria 4001, 4002, 4003, and 4004, and public interest criterion 4005 unless the Minister is satisfied that it would be unreasonable to require the member to undergo assessment in relation to that criterion.

The amendment ensures that the same ‘one fails, all fail’ requirements apply to all members of the family unit of a secondary applicant who meets the family violence provisions.