

EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Act 1958

Migration Amendment (Family Violence Provisions for Partner Visa Applicants) 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, section 40 of the Migration Act provides that the regulations may prescribe that visas may only be granted in specified circumstances and the circumstances may include that the person is either in Australia or outside Australia when the visa is granted. 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.

Subsection 338(9) of the Migration Act provides that a prescribed decision is a Part 5-reviewable decision, for merits review purposes. The proposed amendments (the Amendment Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to:

- improve and expand access to the provisions which allow application and grant of a Partner (Subclass 820/801) visa in certain circumstances where the relationship between a visa applicant and sponsor has ceased, including for holders (or certain former holders) of a Prospective Marriage (Subclass 300) visa;
- better align the criteria for these provisions and location at time of decision requirements between onshore and offshore visa subclasses in the Partner visa program; and
- amend definitions and modernise terminology relating to experiencing family violence.

The Partner visa program

The Prospective Marriage (Subclass 300) visa is a temporary visa, granted to applicants who demonstrate an intention to marry an Australian citizen, permanent resident or eligible New Zealand citizen sponsor (their sponsoring partner). Visa holders are expected to marry their prospective spouse and apply for a Partner (Subclass 820/801) visa before the Prospective Marriage (Subclass 300) visa expires.

The Partner (Subclass 309) visa, which is applied for when the applicant is outside Australia, and the Partner (Subclass 820) visa, which is applied for when the applicant is in Australia, are temporary visas granted to applicants who are married to or in a de facto relationship with an Australian citizen, permanent resident or eligible New Zealand citizen sponsor (referred to as their sponsoring partner). Each has an associated permanent visa (being the Subclass 100 and 801, respectively). An application for the permanent visa is made simultaneously when the temporary visa application is made. In most circumstances, an applicant is eligible for consideration of the grant of the permanent visa after two years from lodgement of the original visa application. Applicants are still required to be in a married or de facto relationship with their sponsor for the permanent visa to be granted, unless their circumstances meet one of the ‘relationship cessation provisions.’

The ‘relationship cessation provisions’ for Partner (Subclass 820/801) and Partner (Subclass 309/100) visas allow an application to be made and/or a visa to be granted, when the relationship between the visa applicant and their former sponsoring partner has ended. The relationship cessation provisions include:

- *death of sponsor provision* where the sponsoring partner has died;
- *child of relationship provision* where the visa applicant has custody or joint custody of, or access to; or a residence order or contact order made under the *Family Law Act 1975* relating to, at least 1 child in respect of whom the sponsoring partner:
 - o has been granted joint custody or access by a court; or
 - o has a residence order or contact order made under the *Family Law Act 1975*; or
 - o has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation;
- *family violence provision* where the visa applicant (or a member of their or their sponsoring partner’s family unit) has experienced family violence perpetrated by the sponsoring partner.

Improved and expanded access to relationship cessation provisions

The Amendment Regulations provide current and certain former Prospective Marriage (Subclass 300) visa holders access to the *child of relationship provision*, and allow them to apply for a Partner (Subclass 820/801) visa under the relationship cessation provisions, even where they have not married the sponsor. Previously, Prospective Marriage (Subclass 300) visa holders must have married their sponsoring partner to apply for a Partner (Subclass 820/801) visa under the relationship cessation provisions, and did not have access to the *child of relationship provision*.

The Amendment Regulations also remove the requirement to be in Australia at the time of decision for a Partner (Subclass 309) visa where the visa is granted under the relationship cessation provisions. However, in order to access the *family violence provision*, an applicant must have entered Australia at any point after the visa application was lodged.

Alignment of visa provisions across the Partner visa program

The Amendment Regulations also make minor changes to improve alignment between visas in the Partner visa program and simplify criteria for the visas, making them easier to access. Some of these include:

- removing the requirement for an applicant for a Partner (Subclass 309) visa to be sponsored, if they meet the criteria to be granted the visa under the relationship cessation provisions. This brings the visa requirements in line with existing provisions for the Partner (Subclass 820/801) visa;
- removing the requirement for an applicant for the Partner (Subclass 820/801) visa under the *death of sponsor provision* to prove that they have developed ties to Australia, consistent with existing provisions for the Partner (Subclass 309/100) visa.
- Removing the requirement for an applicant for a Prospective Marriage (Subclass 300) visa to be in Australia at the time of decision, consistent with settings for other visas in the Partner visa program. The ability for an applicant to seek merits review when granted a visa while onshore has been retained.

Other minor changes

The Amendment Regulations amend language throughout the Migration Regulations relating to family violence, to bring the legislative language in line with modern terminology. Amendments are also made to the definition of family violence to specify that it may occur between prospective spouses. Previously it only referred to family violence occurring within a married or de facto relationship. This expansion allows Prospective Marriage (Subclass 300) visa applicants to access the *family violence provision* contained within the Partner (Subclass 820/801) visa.

The Amending Regulations consist of amendments in three substantive Parts:

Part 1—Amendments relating to partner relationships

The amendments under this Part:

- remove the requirement for a Prospective Marriage (Subclass 309) visa applicant to continue to be sponsored at time of decision, where the relationship has ended in one of the relationship cessation provision circumstances. The amendment is necessary because it would not be appropriate to require ongoing sponsorship where the relationship has ended. This also rectifies an inconsistency in the legislation, as the Partner (Subclass 820) visa does not the same requirement;
- allow for the grant of a Partner (Subclass 309) visa on the basis of the *death of sponsor provision* or *child of relationship provision* where the applicant has not entered Australia at any time since lodgement of the visa application. Applicants were previously required to have been in Australia at time of decision in order to be granted a visa on this basis. Consequential amendments are also made to allow grant of the Partner (Subclass 100) visa (the associated permanent visa) in similar circumstances;

- allow for the grant of a Partner (Subclass 309) visa on the basis of the *family violence provision*, without requiring the applicant to be in Australia at time of decision. Applicants who have entered Australia at any time since lodgement of their visa application and who may be outside Australia at time of decision will be eligible to be granted a visa under the *family violence provision*. Consequential amendments are also made to allow grant of the Partner (Subclass 100) visa (the associated permanent visa) on the basis of the *family violence provision*; and
- remove requirements for all Partner (Subclass 820/801) applicants to demonstrate ‘ties’ to Australia where their sponsor has died. This requirement was considered outdated and unrelated to other criteria that considered the nature of the relationship between the visa applicant and their sponsoring partner. This also rectifies an inconsistency in the legislation, as the *death of sponsor provision* in the Partner (Subclass 309/100) visa do not include any such requirement.

Part 2—Amendments relating to prospective partners

The amendments under this Part relate to holders (or former holders) of Prospective Marriage (Subclass 300) visas. They:

- allow Prospective Marriage (Subclass 300) visa holders and certain former holders to apply for and be granted a Partner (Subclass 820/801) visa under the relationship cessation provisions, where they did not marry their former sponsoring partner. The Migration Regulations did not previously allow for a Prospective Marriage (Subclass 300) visa holder to apply for a Partner (Subclass 820/801) visa where they had not married their sponsor;
 - The *death of sponsor provision* will continue to be accessible to Prospective Marriage (Subclass 300) visa holders, while the *family violence provision* will continue to be accessible to both holders and certain former holders of a Prospective Marriage (Subclass 300) visa, in line with the existing provisions.
- allow Subclass 300 holders and certain former holders to apply for and be granted a Partner (Subclass 820/801) visa under the *child of relationship provision*. The Migration Regulations did not previously provide a *child of relationship provision* for Prospective Marriage (Subclass 300) visa holders;
- allow Prospective Marriage (Subclass 300) visa applicants to be granted this visa while inside Australia. Applicants were previously required to be outside Australia at time of decision, unless they were in Australia during the COVID-19 ‘concession period.’ To address the adverse impacts of COVID-19 related travel restrictions, the Prospective Marriage (Subclass 300) visa was amended in 2021 to allow applicants who were in Australia at any time during a ‘concession period’ prescribed under subregulation 1.15N(1) to be granted a visa in Australia. The Amendment Regulations now allow for grant of the Prospective Marriage (Subclass 300) visa in Australia beyond the ‘concession period’, and bring this in line with the temporary Partner visas (Subclass 820 and Subclass 309) that do not have a requirement for an applicant to be in a particular location at time of decision. Applicants are still

required to be outside Australia at the time of application for a Prospective Marriage (Subclass 300) visa; and

- make consequential amendments to ensure that access to merits review is retained for refusal of a Prospective Marriage (Subclass 300) visa. This is a consequential change, as the removal of the requirement to be outside Australia for a visa grant would otherwise result in Prospective Marriage (Subclass 300) visa refusals not being merits reviewable.

Part 2 also updates Division 1.5 *Special provisions relating to family violence* of the Migration Regulations to expand the requirement that the relevant family violence, or part of the violence, must have occurred while the relationship existed between the alleged perpetrator and the prospective spouse of the alleged perpetrator, by including intended spouse relationships. The Migration Regulations previously only referred to violence occurring during the married relationship or de facto relationship between the alleged perpetrator (the former sponsoring partner, in the context of the Partner visas,) and their spouse or de facto partner (being the visa applicant, who is making the claim of family violence). Retaining this wording would have precluded Prospective Marriage (Subclass 300) visa holders and certain former holders who did not marry their former sponsoring partner from applying for a Partner (Subclass 820/801) visa under the *family violence provision*.

Part 3—Amendments to update language relating to family violence

This Part amends all references in the Migration Regulations from “suffered” family violence to “experienced” family violence in line with current accepted terminology.

The Amendment 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 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 via their Partner visa application.

The matters dealt with in the Amendment 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

Amendment 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 Amendment Regulations, and advised that an impact analysis was not required. The OIA reference numbers are OIA23-05547 and OBPR22-02902.

In July 2023, external consultations were undertaken with 35 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* which requires that appropriate and reasonably practicable consultation be undertaken.

The Migration Regulations are exempt from sunseting 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 sunseting 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 Migration Act specifies no conditions that need to be satisfied before the power to make the Amendment Regulations may be exercised.

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

The amendments commence on 1 July 2024.

Further details of the Amendment Regulations are set out in [Attachment B](#).

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 for Partner Visa Applicants)
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 Partner visa program allows spouses, de facto partners and prospective spouses to apply for a visa to enter and/or remain in Australia to be with their Australian citizen, permanent resident or eligible New Zealand citizen sponsoring partner.

The Prospective Marriage (Subclass 300) visa is a temporary visa, granted to applicants who demonstrate an intention to marry an Australian citizen, permanent resident or eligible New Zealand citizen sponsor (their sponsoring partner). Visa holders are expected to marry their prospective spouse and apply for a Partner (Subclass 820/801) visa before the Prospective Marriage (Subclass 300) visa expires.

The Partner (Subclass 309) visa, which is applied for when the applicant is outside Australia (offshore), and the Partner (Subclass 820) visa, which is applied for when the applicant is inside Australia (onshore), are temporary visas granted to applicants who are married to or in a de facto relationship with an Australian citizen, permanent resident or eligible New Zealand citizen sponsor (also referred to as their sponsoring partner). Each have an associated permanent visa (being the Subclass 100 and 801, respectively). An application for the permanent visa is made simultaneously when the temporary visa application is made. In most circumstances, an applicant is eligible for consideration of the grant of the permanent visa after two years from lodgement of the original visa application. Applicants are still required to be in a married or de facto relationship with their sponsor for the permanent visa to be granted, unless their circumstances meet one of the 'relationship cessation provisions' described below.

The relationship cessation provisions for Partner visas (Subclasses 820/801 and 309/100) allow a visa application to be made and/or a visa to be granted, even when the relationship between the visa applicant and their former sponsor has ended. Relationship cessation provisions include:

- *Death of sponsor provision* where the sponsoring partner has died;

- *Child of relationship provision* where the visa applicant has custody or joint custody of, or access to; or a residence order or contact order made under the *Family Law Act 1975* relating to at least 1 child in respect of whom the sponsoring partner:
 - o has been granted joint custody or access by a court; or
 - o has a residence order or contact order made under the *Family Law Act 1975*; or
 - o has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation;
- *Family violence provision* where the visa applicant (or a member of their or their sponsoring partner's family unit) experienced family violence perpetrated by the sponsoring partner.

The *Migration Amendment (Family Violence Provisions for Partner Visa Applicants) Regulations 2024* (the Amendment Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to:

- improve and expand access to the relationship cessation provisions in the Partner visa program, including for holders (or former holders) of a Prospective Marriage (Subclass 300) visa,
- better align both the relationship cessation provisions and location at time of grant requirements between onshore and offshore visa subclasses in the Partner visa program
- amend definitions and modernise terminology relating to family violence.

These amendments are described in more detail below.

Improved and expanded access to relationship cessation provisions

The Amendment Regulations amend the Migration Regulations to provide current and certain former Prospective Marriage (Subclass 300) visa holders access to the *child of relationship provision*, and allow them to apply for a Partner (Subclass 820/801) visa under the relationship cessation provisions even where they have not married the sponsor. Previously, Prospective Marriage (Subclass 300) visa holders must have married their sponsor to apply for a Partner (Subclass 820/801) visa, under the relationship cessation provisions, and did not have access to the *child of relationship provision*.

The Amendment Regulations also remove the requirement to be in Australia at the time of decision for Partner (Subclass 309) visa applicant to be able to access the relationship cessation provisions. However, in order to access the *family violence provisions*, the applicant must have entered Australia at some point after the visa application was lodged.

Alignment of visa provisions across the Partner visa program

The Amendment Regulations also make the following minor changes to improve alignment between visas in the Partner visa program and simplify the criteria, making them easier to access:

- the Partner (Subclass 309) visa is amended to remove the requirement for applicants to be sponsored, if they are being granted the visa under the relationship cessation provisions. This brings the requirements into line with existing provisions for the Partner (Subclass 820/801) visa;
- the Partner (Subclass 820/801) visas are amended to remove the requirement for applicants under the *death of sponsor provision* to prove that they have developed ties to Australia, consistent with current provisions for the Partner (Subclass 309/100) visa; and
- the Prospective Marriage (Subclass 300) visa is amended to remove the requirement for an applicant to be in Australia at the time of decision, consistent with settings for other Partner visas. The amendments also ensure that access to merits review is retained for refusal of a Prospective Marriage (Subclass 300) visa. This is a consequential change, as the removal of the requirement to be outside Australia at time of decision would otherwise result in Prospective Marriage (Subclass 300) visa refusals not being merits reviewable.

Other minor changes

The Amendment Regulations amend language throughout the Migration Regulations relating to family violence, to bring the legislative language in line with modern terminology and ensure it covers Prospective Marriage (Subclass 300) visa applicants who are eligible to access relationship cessation provisions as follows:

- all references in the Migration Regulations to “suffered” family violence will be amended to “experienced” family violence in line with current accepted terminology; and
- amendments to the definition of family violence to specify that it may occur between prospective spouses. Previously the definition only contemplated family violence occurring within a married or de facto relationship. This expansion allows Prospective Marriage (Subclass 300) visa applicants to access the *family violence provision* contained within the Partner (Subclass 820/801) visa.

Human rights implications

This Disallowable Legislative Instrument positively 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 of the *International Covenant on Civil and Political Rights* (ICCPR) and equivalent rights in

the CRC and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)).

- Non-discrimination (the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) and Article 26 of the ICCPR).

Rights relating to protection against exploitation, violence and abuse

Article 19(1) of the CRC provides that States shall take measures to protect children from all forms of physical or mental violence, injury, 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 amendments made by the Amendment Regulations expand the access of Prospective Marriage (Subclass 300) visa holders to the *family violence provision*. This allows them to apply for the Partner (Subclass 820/801) visa under these provisions even where they have not married the sponsor. The amendments also expand the circumstances in which Subclass 309/100 visa applicants can be granted their visa under the family violence provisions, by altering the location requirements for applicants to be eligible for these provisions.

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 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.

Article 17(1) of the ICCPR provides that no one shall be subjected to arbitrary interference with their family.

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

In addition, the amendments that remove requirements relating to where the applicant has to be at the time of grant of the visa broadly support rights relating to respect for the family as they mean those visa applicants will no longer have to leave Australia in order to be granted their visa.

Non-discrimination

Article 26 of the ICCPR states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion,

political or other opinion, national or social origin, property, birth or other status.

In addition, in its General recommendation 35 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 [of the CEDAW] and therefore engages all obligations under the [CEDAW]’ and noted that ‘Article 2 (e) of the [CEDAW] explicitly provides that States parties are to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.’

That Committee has also stated in its General recommendation 23 that gender-based violence, including domestic violence, is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.

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 via their Partner visa application.

The Amendment Regulations therefore support the right to freedom from discrimination, including gender-based violence, by ensuring that applicants for Partner visa program visas do not feel compelled to remain in a violent relationship in order to maintain a pathway to permanent residence in Australia.

Conclusion

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

The Hon Andrew Giles MP
Minister for Immigration, Citizenship and Multicultural Affairs

ATTACHMENT B

Details of the Migration Amendment (Family Violence Provisions for Partner Visa Applicants) Regulations 2024

Section 1 – Name of Regulations

This section provides that the title of the instrument is the *Migration Amendment (Family Violence Provisions for Partner Visa Applicants) 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 on 1 July 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.

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

Part 1 - Amendments relating to existing or intended partners

Item [1] Clause 100.111 of Schedule 2 (paragraph (a) of the definition of *sponsoring partner*)

This item is a technical amendment to the definition of ‘sponsoring partner’ in relation to an application for a Subclass 100 visa. Specifically, this item omits references to paragraph 100.221(4B)(a) or (4C)(a) from the definition of ‘sponsoring partner’, because subclauses 100.221(4B) and (4C) have been repealed and a new subclause 100.221(4AA) has been inserted.

As amended, the definition of ‘sponsoring partner’ now refers to paragraphs 100.221(2)(a), (2A)(a), (3)(a), (4)(a), (4AA)(a) or (4A)(a).

Item 3 inserts new subclause 100.221(4AA). Item 4 below repeals subclauses 100.221(4B) and (4C).

Item [2] Subclause 100.221(1) of Schedule 2

This item amends subclause 100.221(1) to remove references to subclauses (4B) and (4C), as these subclauses have been repealed by item 4.

Applicants were previously required to meet the requirements of subclause 100.221(2), (2A), (3), (4), (4A), (4B) or (4C). With the repeal of (4B) and (4C) and the insertion of (4AA) they are required to meet the requirements of subclause 100.221(2), (2A), (3), (4), (4AA) or (4A).

Item [3] Subclauses 100.221(3) and (4) of Schedule 2

This item repeals subclauses 100.221 (3) and (4) and replaces them with new versions of those subclauses. It also inserts a new subclause 100.221(4AA). These subclauses relate to grant of a Partner (Subclass 100) visa on the basis of the ‘relationship cessation provisions.’ Relationship cessation provisions include:

- *Death of sponsor provision* where the sponsoring partner has died;
- *Child of relationship provision* where the visa applicant has custody or joint custody of, or access to; or a residence order or contact order made under the *Family Law Act 1975* relating to, at least 1 child in respect of whom the sponsoring partner:
 - has been granted joint custody or access by a court; or
 - has a residence order or contact order made under the *Family Law Act 1975*; or
 - has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation;
- *Family violence provision* where the visa applicant (or a member of the family unit of the applicant, the sponsoring partner or both of them) has experienced family violence perpetrated by the sponsoring partner.

Subclause 100.221(3) previously allowed for grant of a Partner (Subclass 100) visa on the basis of the *death of sponsor provision*. To meet this subclause, an applicant needed to meet the following requirements:

- They had first entered Australia as the holder of a Partner (Subclass 309) visa and continued to hold that visa at the time of decision on the Partner (Subclass 100) visa;
- They would have continued to meet subclauses (2) or (2A) (both of which require the applicant to still be the spouse or de facto partner of the sponsoring partner) except that after they had entered Australia as the holder of the Subclass 309 visa, their sponsoring partner had died; and
- They satisfied the Minister they would have continued to be the spouse or de facto partner of the sponsoring partner, if the sponsoring partner had not died.

The substituted subclause 100.221(3) requires that:

- the applicant holds a Partner (Subclass 309) visa,
- the sponsoring partner has died, and
- they satisfy the Minister that they would have continued to be the spouse or de facto partner of the sponsoring partner, if the sponsoring partner had not died.

The key points of difference between the previous subclause 100.221(3) and the new subclause 100.221(3) are that it does not require an applicant to have entered Australia in order to access the *death of sponsor provision*, nor does it require the sponsoring partner to have died after grant of the Partner (Subclass 309) visa. The sponsoring partner could have died at any time after the original lodgement of the visa application. This means that the new subclause covers:

- applicants who were granted the Partner (Subclass 309) visa under the *death of sponsor provision*, because their sponsoring partner died after they lodged their visa application; or
- Applicants whose sponsoring partner died after the Partner (Subclass 309) visa grant.

Subclause 100.221(4) previously allowed for grant of a Partner (Subclass 100) visa where the relationship between the applicant and sponsoring partner had ceased and the applicant sought to meet either the *family violence provision* or the *child of relationship provision*. To satisfy the requirements of Subclause 100.221(4), an applicant needed to meet the following:

- They had first entered Australia as the holder of a Partner (Subclass 309) visa and continued to hold that visa at the time of decision on the Partner (Subclass 100) visa;
- They would have continued to meet subclauses (2) or (2A) (both of which require the applicant to still be the spouse or de facto partner of the sponsoring partner) except that after they had entered Australia as the holder of the Partner (Subclass 309) visa, either or both of the following circumstances applied:

- either the visa applicant, or a member of the family unit of the sponsoring partner or the applicant or both of them have experienced family violence, perpetrated by the sponsoring partner; or
- The applicant and sponsoring partner had a shared child.

The substituted subclause 100.221(4) requires that:

- the applicant holds a Partner (Subclass 309) visa;
- the relationship between the applicant and sponsoring partner has ceased;
- the applicant has entered Australia after making the visa application;
- either the visa applicant, or a member of the family unit of the sponsoring partner or the applicant or both of them have experienced family violence, perpetrated by the sponsoring partner.

This means that an applicant who may have entered Australia at any time after lodgement of their visa application can access the *family violence provision*. They are no longer required to be in Australia at the time a decision is being made on their visa. An applicant who has never 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 sponsoring partner ceasing. *The family violence provision* is 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 an Australian citizen or permanent resident, reside outside Australia and have not entered Australia, and experienced family violence solely outside Australia.

Item 3 also inserts a new subclause 100.221(4AA) which contains the *child of relationship provision*. The new clause (4AA) requires that:

- the applicant holds a Partner (Subclass 309) visa;
- the relationship between the applicant and sponsoring partner has ceased; and
- the applicant has custody or joint custody of, or access to; or a residence order or contact order made under the *Family Law Act 1975* relating to, at least 1 child in respect of whom the sponsoring partner:
 - has been granted joint custody or access by a court; or
 - has a residence order or contact order made under the *Family Law Act 1975*; or
 - has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation.

An applicant is no longer required to have entered Australia in order to have their visa granted on this basis, as subclause 100.221(4) previously required.

Item [4] Subclauses 100.221(4B) and (4C) of Schedule 2

This item repeals subclauses 100.221(4B) and (4C). This is consequential to amendments made by item 3, which simplify and expand upon access to the relationship cessation provisions by an applicant who holds a Partner (Subclass 309) visa.

Subclause 100.221(4B) facilitated grant of the Partner (Subclass 100) visa to a Partner (Subclass 309) visa holder where that applicant:

- was in Australia at the time of grant of the Partner (Subclass 309) visa; and
- the sponsoring partner had died prior to grant of that visa; and
- the visa was granted on that basis.

Subclause 100.221(4C) facilitated grant of the Partner (Subclass 100) visa to a Partner (Subclass 309) visa holder where that applicant was in Australia when that Partner (Subclass 309) visa was granted; and

- was granted their Partner (Subclass 309) visa on the basis of the *family violence provision*, or *child of relationship provision*; or
- the relationship had ceased since the Partner (Subclass 309) visa was granted and they were seeking grant of the Partner (Subclass 100) visa on the basis of the *family violence provision*, or *child of relationship provision*.

The culmination of the amendments made by items 3 and 4 mean a Partner (Subclass 100) can be granted on the relationship cessation provisions contained within the following subclauses:

- *death of sponsor provision* is now contained in subclause 100.221(3);
- *family violence provision* is contained in subclause 100.211(4); and
- *child of the relationship provision* is contained within subclause 100.211(4AA).

Item [5] Paragraph 100.221(7)(b) of Schedule 2

This item omits references to subclauses 100.221(4), (4B) or (4C), and substitutes with references to subclauses (4) or (4AA). This is consequential to item 3, which inserts (4AA) into the Regulations, and item 4, which repeals subclauses (4B) and (4C).

Subclause 100.211(7) confirms that nothing prevents the Minister, less than two years after the application is made, from making a decision on certain Partner (Subclass 100) visa applications. This means that an applicant seeking to have their Partner (Subclass 100) visa granted on the basis of one of the relationship cessation provisions is not otherwise required to wait 2 years from the time their application is lodged for this to occur.

Item [6] Paragraph 100.226(b) of Schedule 2

This item omits references to subclauses 100.226(4), (4B) or (4C) in paragraph 100.226(b) and substitutes with references to subclauses (4) or (4AA). This is consequential to item 3

which inserts (4AA) into the Regulations, and item 4, which repeals subclauses (4B) and (4C).

Subclause 100.226 requires that if at least two years have passed since the application was made, the applicant must be nominated for the grant of the Partner (Subclass 100) visa by the sponsoring partner, unless the applicant otherwise meets the requirements of subclause 100.221(2A), (3), (4) or (4AA). This amendment confirms that an applicant seeking to meet one of the relationship cessation provisions contained in (3), (4) or (4AA) is not required to still be sponsored, as this would be inappropriate and unnecessary given that either the sponsoring partner has died, or the relationship has otherwise ceased.

Item [7] Paragraph 309.221(1)(b) of Schedule 2

This item removes the phrase 'if the applicant is in Australia' from paragraph 309.221(1)(b).

Subclause 309.221(1) previously required that the applicant had to be in Australia at time of decision to seek grant of their Partner (Subclass 309) visa on the basis of meeting either subclauses (2) or (3) which contain the relationship cessation provisions.

This amendment means that an applicant is no longer required to be in Australia for their Partner (Subclass 309) visa to be granted where they meet the *death of sponsor provision* contained in subclause 309.221(2).

This amendment also means that an applicant is not required to be in Australia at any time to have their Partner (Subclass 309) granted on the basis of the *child of relationship provision* contained in 309.221(3)(b)(ii).

Item 8 below, makes amendments to the *family violence provision* contained within Partner (Subclass 309), confirming that while a person is not required to be in Australia at time of decision to have a visa granted on this basis, they are still required to have entered Australia since lodgement of the visa application.

Item [8] Subparagraph 309.221(3)(b)(i) of Schedule 2

This item repeals the previous subparagraph 309.221(3)(b)(i) and substitutes it with a new subparagraph that confirms that in order to seek grant of a Partner (Subclass 309) visa on the basis of the *family violence provision*, an applicant must have entered Australia after making the application. The relevant family violence must have been experienced by either:

- the applicant; or
- a member of the family unit (which may be a child, stepchild, or the dependent child of that child) of the sponsoring partner; or
- a member of the family unit of the applicant; or
- a member of the family unit of both of them.

The family violence must have been committed by the sponsoring partner.

The amendment means that an applicant is not required to be inside Australia at time of decision on their Partner (Subclass 309) visa (similar to the amendments made by item 7 in

relation to the *death of sponsor provision* and *child of relationship provision*). They are only required to have entered Australia at some point after making the application. This improves access to the *family violence provision* and eliminates the need for applicants to travel to Australia solely for the purpose of having their visa granted on this basis.

Item [9] At the end of clause 309.222 of Schedule 2

This item inserts a new subclause 309.222(4) into clause 309.222, which relates to the time of decision criteria regarding the sponsorship by the sponsoring partner. Clause 309.222 requires the sponsorship to still be in force and requires consent to the disclosure of certain relevant offences of which the sponsoring partner has been convicted.

Subclause 309.222(4) confirms that clause 309.222 does not apply to an applicant who meets the relationship cessation provisions. As the relationship with the sponsoring partner has ceased, it is not appropriate to require any further criteria to be met relating to the relevant sponsorship.

Item [10] Clause 309.322 of Schedule 2

This item inserts a (1) before the existing clause in order to create a subclause. Clause 309.322 referred to the approval of sponsorship of the approved sponsor in clause 309.213 and required that it is still in force at time of decision.

At time of application, an applicant must be sponsored by their sponsoring partner. Clause 309.312 requires that the sponsorship also includes sponsorship of any secondary applicants (being members of the family unit of the primary applicant) included in that application. This means that ordinarily, at time of application and time of decision, both the primary applicant and any secondary applicants must be sponsored by the sponsoring partner.

This amendment enables the addition of a new subclause that confirms that ongoing sponsorship is not required for either primary applicants or a member of the family where one of the relationship cessation provisions applies.

Item [11] At the end of clause 309.322 of Schedule 2

This amends clause 309.322 to add a subclause 309.322(2) to provide an exception from the requirement for ongoing sponsorship referred to in clause 309.213 to still be in force if the applicant meets the relationship cessation provisions. As outlined above at item 10, generally at time of application and time of decision, an applicant is required to be sponsored by their spouse or de facto partner. Clause 309.322 extends this sponsorship to secondary applicants (members of the family unit of the primary applicant) who are included in an application.

The cumulative effect of items 9, 10 and 11 would be that where a primary applicant is seeking grant of their Partner (Subclass 309) visa on the basis of the relationship cessation provisions, neither they nor any secondary applicants would require ongoing sponsorship at time of decision.

Part 2 – Amendments relating to prospective partners

Regulation 1.23 When is a person taken to have suffered or committed family violence?

Item [12] Subregulation 1.23(1) (note)

This item amends the Note after subregulation (1) to insert a reference to a person being ‘the prospective spouse.’ This relates to the broader amendments contained in this Part that allow a Prospective Marriage (Subclass 300) visa holder (or certain former holders) to apply for and be granted a Partner (Subclass 820/801) visa in circumstances where they did not marry their former sponsoring partner and they are seeking grant of the Partner (Subclass 820/801) visa on the basis of the *family violence provision*.

Division 1.5 *When is a person taken to have suffered or committed family violence?* outlines circumstances in which a person is considered to have experienced family violence and what evidence is required to substantiate a claim made for the purposes of accessing the relevant *family violence provision*.

Division 1.5 previously referred to family violence that arose in the context of a relationship between spouses, or between de facto partners. The current wording would preclude Prospective Marriage (Subclass 300) visa holders (or certain former holders) from accessing the *family violence provision* because the relevant family violence took place when the applicant was not yet the spouse of the alleged perpetrator. In these circumstances, the applicant is referred to as the ‘prospective spouse’ of the alleged perpetrator which references the fact that they hold (or held) a Prospective Marriage (Subclass 300) visa granted on the basis that they intended to marry the person who was their sponsoring partner.

Item [13] Subregulation 1.23(5)

Item [14] Subregulation 1.23(7)

Item [19] Subregulation 1.23(12)

Item [20] Subregulation 1.23(14)

These items amend subregulations 1.23(5), (7), (12) and (14) to expand the period when the family violence must have occurred, to cover circumstances where a claim of family violence is being made by a Prospective Marriage (Subclass 300) visa holder (or certain former holder). Previously, these subregulations stated the violence, or part of the violence, must have occurred while the married relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator. The subregulations are expanded to include that the violence, or part of the violence, must have occurred while the relationship existed between the alleged perpetrator and the prospective spouse of the alleged perpetrator, being in the period in which the alleged perpetrator and the prospective spouse intended to marry.

Item [15] Subparagraph 1.23(9)(b)(i)

Item [16] Sub-subparagraph 1.23(9)(b)(ii)(B)

Items 15 and 16 amend paragraph 1.23(9)(b) to add in references to a ‘prospective spouse.’ This subparagraph refers to who is the alleged victim of the relevant family violence.

Subparagraph 1.23(9)(b)(i) previously referred to the alleged victim being the spouse or de facto partner of the alleged perpetrator; this amendment expands on this to state that the alleged victim may be the ‘prospective spouse’ of the alleged perpetrator.

Sub-subparagraph 1.23(9)(b)(ii)(B) previously referred to an alleged victim who was a dependent child of:

- the alleged perpetrator; or
- the spouse or de facto partner of the alleged perpetrator, or
- both of them.

This item expands on this to state that in addition to the above, the alleged victim may also be the dependent child of the ‘prospective spouse’ of the alleged perpetrator.

Item [17] Sub-subparagraph 1.23(9)(b)(ii)(C)

This item further amends subparagraph 1.12(9)(b) to include a reference to a ‘prospective spouse.’

Sub-subparagraph 1.23(9)(b)(ii)(C) previously referred to an alleged victim of family violence being a dependent child of the alleged perpetrator and his or her spouse or de facto partner. This item omits the reference to “his or her spouse or de facto partner” and replaces it with a reference to “the spouse or de facto partner of, or the prospective spouse of, the alleged perpetrator”. This amendment also results in wording that eliminates references to gender to update drafting.

Item [18] Subparagraph 1.23(9)(b)(iii)

Item 18 repeals subparagraph 1.23(9)(b)(iii) and replaces it with an expanded version that includes a reference to a ‘prospective spouse.’ Previously, the relevant alleged victim of the family violence could be a member of the family unit of the spouse or de facto partner of the alleged perpetrator, and must have made a combined visa application with that spouse or de facto partner. That wording precluded the alleged victim of the family violence from being a member of the family unit of a Subclass 300 visa holder (or former holder) because the family violence did not occur within a spouse or de facto relationship.

The amended wording now states that the alleged victim may be the member of a family unit of a spouse, de facto partner, or prospective spouse of the alleged perpetrator, who has made a combined application with that person.

Item [21] Subregulation 1.25(1)

This item amends subregulation 1.25(1) to include a reference to a ‘prospective spouse’ being Prospective Spouse (Subclass 300) holders or former holders.

Regulation 1.25 relates to the provision of a statutory declaration, setting out the relevant claim of family violence. This subregulation previously referred only to a statutory declaration being made by the spouse or de facto partner of the alleged perpetrator. It now states that the statutory declaration may be provided by a ‘prospective spouse’ of the alleged perpetrator.

Item [22] Subregulations 1.25(2) and (3)

This item is a technical correction. Subregulations (2) and (3) incorrectly referred to ‘subregulation 1.25(1)’ where it should have stated ‘subregulation (1).’ This is not a substantive change and does not change the operation of the regulation.

Item [23] Paragraph 4.02(4)(s)

This item repeals paragraph 4.02(4)(s) and substitutes it with a new paragraph 4.02(4)(s). Regulation 4.02 prescribes certain decisions as Part 5-reviewable decisions for the purposes of subsection 338(9) of the Migration Act, which are decisions subject to merits review by the Administrative Appeals Tribunal (AAT).

Previously, paragraph 4.02(4)(s) prescribed a decision to refuse to grant a Prospective Spouse (Subclass 300) visa as a reviewable decision under subsection 338(9) of the Migration Act, only if the application for the visa was made before the end of the COVID-19 ‘concession period’ described in subregulation 1.15N(1) of the Migration Regulations. The right to review a Prospective Spouse (Subclass 300) visa refusal decision is otherwise contained in subsection 338(5) of the Migration Act, relating to a visa that could only be granted when the applicant is outside Australia.

New paragraph 4.02(4)(s) prescribes the decision to refuse to grant a Prospective Spouse (Subclass 300) visa as a reviewable decision under subsection 338(9) of the Migration Act, and removes all references to the COVID-19 ‘concession period.’ Item 27 amends the requirements in relation to an applicant’s location at time of decision (clause 300.412), and allows Prospective Spouse (Subclass 300) visas to be granted onshore. As such, the amendment in item 23 is necessary to ensure Prospective Spouse (Subclass 300) applicants have access to merits review, where – if not prescribed for subsection 338(9), a refusal decision would not otherwise be covered by subsections 338(2)-(8) of the Act. Relevantly, the application provision inserted by item 60 as new subclause 13701(2) of Schedule 13 provides that the amendments in relation to regulation 4.02 apply in relation to a decision to refuse to grant a Subclass 300 made before, on or after the commencement of the amendments.

Item [24] After subparagraph 1124B(2)(a)(vi) of Schedule 1

This item inserts a visa application charge in relation to Prospective Marriage (Subclass 300) visa holders who are applying for a Partner (subclass 820/801) visa on the basis of one of the three relationship cessation provisions.

For an applicant covered by subitem (2A) (inserted by item 26 below) the relevant visa application charges are:

- Base application charge - \$1515
- Additional applicant charge for an applicant who is at least 18 - \$760
- Additional applicant charge for an applicant who is less than 18 - \$380

These visa application charges for holders of Prospective Spouse (Subclass 300) visas are identical to those already prescribed in relation to holders of Prospective Spouse (Subclass

300) visa holders who married their sponsor, and are applying for the Partner (subclass 820/801) visa on that basis.

Item [25] After subitem 1124B(2) of Schedule 1

This item inserts a visa application charge in relation to former Prospective Marriage (Subclass 300 visa) holders who do not hold a substantive visa and who are applying for a Partner (subclass 820/801) visa and on the basis of the *family violence provision* or *child of the relationship provision*.

For an applicant covered by subitem (2B) (inserted by Item 26 below) the relevant visa application charges are:

- Base application charge - \$1920
- Additional applicant charge for an applicant who is at least 18 - \$960
- Additional applicant charge for an applicant who is less than 18 - \$485

These visa application charges for former holders of Prospective Spouse (Subclass 300) visas are identical to those already prescribed in relation to former holders of Prospective Spouse (Subclass 300) visa holders who married their sponsor, and are applying for the Partner (Subclass 820/801) visa on that basis.

Item [26] After subitem 1124B(2) of Schedule 1

This item inserts two new subitems, necessary in relation to the visa application charge prescribed at Items 23 and 24 above.

New subitem (2A) relates to applicants who:

- Hold a Prospective Spouse (Subclass 300) visa; and
- Seek to satisfy the primary criteria set out in 801.221(6AA) of Schedule 2.

Subclause 801.221(6AA) is inserted by item 32 below and refers to an applicant who was granted their Partner (Subclass 820/801) visa on the basis of meeting one of the relationship cessation provisions.

Subitem (2B) relates to applicants who:

- Do not hold a substantive visa; and
- Entered Australia as the holder of a Prospective Marriage subclass 300 visa; and
- Seek to satisfy the primary criteria set out in subclause 801.221(6AB) of Schedule 2.

Subclause 801.221(6AB) is inserted by item below and refers to an applicant for who was granted their Partner (Subclass 820/801) visa on the basis of the *family violence provision*, or *child of relationship provision*.

Former holders of Prospective Spouse (Subclass 300) visas – regardless of whether they married their sponsoring partner - will not have access to the *death of sponsor provision*. The

death of sponsor provision is intended to allow a Prospective Spouse (Subclass 300) holder to continue on an existing pathway to permanent residence at the time of their sponsoring partner's death, not to provide an avenue for former holders who did not apply for the Partner (Subclass 820/801) visa at the time of their sponsoring partner's death to seek permanent residence many years later.

Item [27] Clause 300.412 of Schedule 2

This item repeals current clause 300.412 and replaces it with a new clause 300.412.

Clause 300.412 specifies where an applicant must be at time of decision on their Prospective Spouse (Subclass 300) visa application (ie. the circumstances applicable to grant). Previously this clause required that an applicant must be outside Australia at time of decision, unless they applied for their visa within the COVID-19 'concession period', in which case they could be inside Australia at time of decision. The clause now provides that a person may be inside or outside Australia at time of decision, but not in immigration clearance. The effect of this amendment is to allow for flexible arrangements at the time of decision in recognition of the mobility of modern travellers, rather than requiring an applicant whose application is otherwise 'decision-ready' to depart Australia to be granted the visa.

Item [28] Subclause 801.221(1) of Schedule 2

This item inserts references into subclause 820.211(1) to refer to subclauses (6AA) and (6AB), which have been inserted by item 32.

Item [29] Paragraph 801.221(5)(c) of Schedule 2

This item is consequential to item 30 below and makes an amendment to paragraph 801.221(5)(c) to omit "died; and" substitute it with "died". This is necessary as item 30 repeals the following paragraph 801.221(5)(d) and as such, paragraph 801.221(5)(c) is the final paragraph in subclause 802.221(5) as amended.

Item [30] Paragraph 801.221(5)(d) of Schedule 2

This item repeals paragraph 801.221(5)(d) from subclause 801.221(5).

Paragraph 801.221(5)(c) relates to circumstances where the sponsoring partner has died after grant of the applicant's Subclass 820 visa. Previously it required the applicant to:

- hold a Partner (Subclass 820/801) visa;
- satisfy the Minister that they would have continued to be the spouse or de facto partner of the sponsoring partner if the sponsoring partner had not died; and
- have developed close business, cultural or personal ties in Australia.

The requirement to have developed close business, cultural or personal ties in Australia has been removed. This amendment aligns the requirements for the Partner (Subclass 820/801) visa with those of the Partner (Subclass 100) visa (the permanent offshore Partner visa), which does not have a requirement in relation to an applicant having 'ties' in Australia. This requirement was considered outdated and unrelated to the other criteria, which otherwise

focus on the nature of the relationship between the visa applicant and their sponsoring partner.

Item [31] Subparagraph 801.221(6)(c)(i) of Schedule 2

This item amends Subparagraph 801.221(6)(c)(i) to amend the wording of an applicant having “suffered” family violence to having “experienced” family violence.

This amendment is in line with broader amendments to update the language used throughout the Migration Regulations and bring it in line with current accepted terminology.

Item [32] After subclause 801.221(6) of Schedule 2

This item inserts two new subclauses into clause 801.221, which relate to criteria at time of decision on a Partner (Subclass 801) visa. Subclause 801.221(6AA) refers to an applicant who is the holder of a Partner (Subclass 820) visa, granted on the basis that they continued to meet the requirements of subclause 820.211(7) or (8). These two subclauses relate to Prospective Spouse (Subclass 300) visa holders, who applied for their Partner (Subclass 820/801) visa on the basis of one of the three relationship cessation provisions.

Subclause 801.221(6AB) refers to an applicant who is the holder of a Partner (Subclass 820) visa, granted on the basis that they continued to meet the requirements of subclause 820.211(9). This subclause refers to former Prospective Spouse (Subclass 300) visa holders, who applied for their Partner (Subclass 820/801) visa on the basis of the *family violence provision* or the *child of relationship provision*.

Item [33] Paragraph 820.211(7)(b) of Schedule 2

This item repeals paragraph 820.211(7)(b) in its entirety. Subclause 820.211(7) relates to the *death of sponsor provision*, for married holders of Prospective Spouse (Subclass 300) visas. Paragraph 820.211(7)(b) previously referred to the holder of a Prospective Spouse (Subclass 300) visa who had lawfully married their sponsoring partner.

The repeal of paragraph 820.211(7)(b) means that subclause 820.211(7) now facilitates access to the *death of sponsor provision* for all Prospective Spouse (Subclass 300) visa holders, regardless of whether they married their sponsor. This amendment is closely related to the amendments made by item 34, described below.

Item [34] – Paragraphs 820.211(7)(d) and (e) of Schedule 2

This item repeals paragraphs 820.211(7)(d) and (e) and substitutes with a new paragraph 820.211(7)(d). These paragraphs previously required an applicant to:

- satisfy the Minister that they would have continued to be the spouse of the sponsoring partner if the sponsoring partner had not died; and
- develop close business, cultural or personal ties in Australia.

As amended, subclause 820.211(7) provides that an applicant meets the requirements of the subclause if they meet the requirements in paragraphs 820.211(7)(a)-(c) and new paragraph 820.211(7)(d). New paragraph 820.211(7)(d) provides that the applicant is to satisfy the Minister that the applicant would have continued to be the spouse or prospective spouse of

the sponsoring partner if the sponsoring partner had not died. The only difference between this and the previous version of paragraph 820.211(7)(d) is the inclusion of a reference to a ‘prospective spouse’, which refers to Prospective Spouse (Subclass 300) visa holders.

As outlined above at item 30, the need for ties in Australia is now considered irrelevant and is removed by the repeal of paragraph 820.211(7)(e).

The culmination of the amendments facilitated by items 33 and 34 means that an applicant meets Subclause 820.211(7) where:

- they are the holder of a Prospective Spouse (Subclass 300) visa;
- the sponsor has died; and
- they satisfy the Minister that they would have continued to be the spouse or prospective spouse of the sponsoring partner if the sponsoring partner had not died.

Item [35] Paragraph 820.211(8)(b) of Schedule 2

This item repeals paragraph 820.211(8)(b). Subclause 820.211(8) relates to access to the *family violence provisions* by holders of a Prospective Spouse (Subclass 300) visa. Previously, paragraph 820.211(8)(b) required the Prospective Spouse (Subclass 300) visa holder to have married their sponsor. The repeal of paragraph 820.211(8)(b) means they are not required to have married their sponsor to access the *family violence provision*.

Item [36] Paragraph 820.211(8)(d) of Schedule 2

Item 36 makes further amendments to subclause 820.211(8), expanding it from containing only the *family violence provision* to now include including the *child of relationship provision*.

This item repeals paragraph 820.211(8)(d) (which referred only to the *family violence provision*) and substitutes it with the following:

- the applicant, a member of their family unit, or a dependent child has experienced family violence committed by the sponsoring partner; or
- the applicant has custody or joint custody of, or access to; or a residence order or contact order made under the *Family Law Act 1975* relating to, at least 1 child in respect of whom the sponsoring partner:
 - has been granted joint custody or access by a court; or
 - has a residence order or contact order made under the *Family Law Act 1975*; or
 - has an obligation under a child maintenance order made under the *Family Law Act 1975*,
 - or any other formal maintenance obligation.

This means that a Prospective Spouse (Subclass 300) visa holder – regardless of whether they married their sponsoring partner – can apply for and be granted a Partner (Subclass 820) visa on the basis of the *family violence provision* and *child of relationship provision*.

Item [37] Paragraph 820.211(9)(c) of Schedule 2

This item repeals paragraph 820.211(9)(c), which previously required an applicant who was not the current holder of a substantive visa but was previously the holder of a Prospective Spouse (Subclass 300) visa, to have married their sponsoring partner under a marriage that is recognised as valid for the purposes of the Act, while their Prospective Spouse (Subclass 300) visa was valid.

The repeal of paragraph 820.211(9)(c) means former Prospective Spouse (Subclass 300) visa holders are not required to have married their sponsor for the purposes of meeting subclause 820.211(9), which contains the *family violence provision* and *child of relationship provision*

Item [38] Paragraph 820.211(9)(e) of Schedule 2

This item makes further amendments to subclause 820.211(9) in relation to applicants who are not the holder of a substantive visa and were previously the holder of a Prospective Spouse (Subclass 300) visa. It repeals paragraph 820.211(9)(e) and replaces it with a new paragraph 820.211(9)(e).

Previously this paragraph stated that an applicant who is not the holder of a substantive visa and was previously the holder of a Prospective Spouse (Subclass 300) visa could meet the *family violence provision* contained within subclause 820.211(9).

This item repeals paragraph 820.211(9)(e), which referred only to the *family violence provision*, and substitutes it with the following:

- the applicant, a member of their family unit, or a dependent child has experienced family violence committed by the sponsoring partner; or
- the applicant has custody or joint custody of, or access to; or a residence order or contact order made under the *Family Law Act 1975* relating to, at least 1 child in respect of whom the sponsoring partner:
 - o has been granted joint custody or access by a court; or
 - o has a residence order or contact order made under the *Family Law Act 1975*; or has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation.

This means that a former Prospective Spouse (Subclass 300) visa holder – regardless of whether they married their sponsoring partner – can access the *family violence provision* and *child of relationship provision*.

Item [39] Paragraph 820.221(2)(b) of Schedule 2

This item is consequential to item 40 below and makes an amendment to paragraph 820.221(2)(b) to omit “died; and” and substitute it with “died”. This is necessary as item 40

repeals the following paragraph 820.221(2)(c), leaving paragraph 820.221(2)(b) as the last paragraph in subclause 820.211(2).

Subclause 820.211(2) relates to an applicant seeking access to the *death of sponsor provision* at time of decision on their Partner (Subclass 820/801) visa.

Item [40] Paragraph 820.221(2)(c) of Schedule 2

This item repeals paragraph 820.221(2)(c). As noted above in item 39, Subclause 820.211(2) relates to an applicant seeking access to the *death of sponsor provision* at time of decision on their Partner (Subclass 820/801) visa.

Paragraph 820.221(2)(c) previously required an applicant to demonstrate they had developed close business, cultural or personal ties in Australia. This requirement has been repealed. Accordingly an applicant will meet the requirements of subclause 820.211(2) where the sponsoring partner has died, and they satisfy the Minister they would have continued to be the spouse or de facto partner of their sponsoring partner if the sponsoring partner had not died.

Item [41] Subparagraph 820.221(3)(b)(i) of Schedule 2

This item amends Subparagraph 820.221(3)(b)(i) to amend the wording of an applicant having “suffered” family violence to having “experienced” family violence.

This amendment is in line with broader amendments to update the language used throughout the Migration Regulations and bring it in line with current accepted terminology.

Part 3 – Amendments to update language relating to family violence

Items [42]-[59]

These items amend any references throughout the Migration Regulations (wherever occurring) to persons having “suffered” family violence to “experienced” family violence. These amendments ensure that there is consistency across the Migration Regulations in relation to expressions referring to persons having experienced family violence, aligning existing provisions with the amendments made by other items in Schedule 1.

Part 4 – Application and transitional provisions

Item [60] In the appropriate position in Schedule 13

This item inserts new Part 137 into Schedule 13 to the Migration Regulations to provide operation provisions in relation to regulations 1.23, 1.25 and Schedule 2 to these Regulations. Schedule 13 is the location of application and transitional provisions for amendments to the Migration Regulations.

Subclause 13701(1) provides that the amendments made by Schedule 1 of these amending regulations in relation to regulations 1.23, 1.25 and Schedule 2 of the Migration 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.

Subclause 13701(2) provides that the amendments made by the amending Schedule in relation to regulation 4.02 of these Regulations apply in relation to a decision to refuse to grant a Subclass 300 made before, on or after the commencement of the amendments.