EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Multicultural Affairs

Migration Act 1958

Migration Amendment (Family Violence Provisions for Skilled Visa Applications) 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. Subsection 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 for Skilled Visa Applications) Regulations 2024* (the Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to insert family violence provisions into Schedule 2 criteria for certain Skilled visas. This allows for the grant of a visa to a secondary applicant (and members of their family unit) for certain Skilled 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 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 children.

Division 1.5 of the Migration Regulations provides existing arrangements for the consideration and assessment of whether a person has experienced family violence. Previously, the family violence provisions in Schedule 2 existed only in relation to the Partner (Subclasses 820/801 and 309/100) and Global Talent (Subclass 858) visas.

Without the inclusion of the family violence provisions, generally a secondary applicant is required to be a member of the family unit in order to be granted a Skilled 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 provision is intended to provide protection for 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.

The Regulations amend the existing family violence provision in the Global Talent visa, and expand family violence provisions to the following visas:

- Employer Nomination Scheme (Subclass 186);
- Regional Sponsored Migration Scheme (Subclass 187);
- Skilled – Independent (Subclass 189);
- Skilled – Nominated (Subclass 190);
- Permanent Residence – Skilled Regional (Subclass 191); and
- Skilled Regional (Subclass 887).

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 secondary applicants to pay a second VAC instalment where they cannot demonstrate having functional English, if they meet the family violence provisions. As part of the Schedule 1 requirements for the six Skilled 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 beneficial amendments to merits review. Ordinarily, a secondary applicant can be included in a primary applicant's merits review application for no additional fee. In circumstances involving relationship breakdown and family violence, a primary applicant seeking review of a visa refusal may not include their former partner or former stepchildren in the application for review. The Regulations allow a secondary applicant whose family violence claim has been accepted by the Department, but who has their visa refused because the primary applicant's visa was refused, to seek review of that decision and not pay a fee for the application for review. If the secondary applicant's application has been refused for any reason other than due to the refusal of the primary applicant, a fee is still payable to apply for merits review.

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 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 for Skilled Visa Applications) 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 Skilled 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 relationship with the sponsoring partner or primary applicant has ended, and the applicant has experienced family violence committed by the primary applicant.

The intention of family violence provisions is to help ensure that visa applicants do not feel compelled to remain in a violent relationship in order to achieve a permanent visa outcome. Prior to these regulations coming into effect, family violence provisions only existed in the Partner visa program and the Global Talent (subclass 858) visa, however, the provisions in the Global Talent program contained a drafting error rendering them inoperable.

The *Migration Amendment (Family Violence Provisions for Skilled Visa Applications) Regulations 2024* (the Amendment Regulations) amend the Migration Regulations to enable access to family violence provisions for secondary applicants in seven permanent Skilled visa subclasses, including by amending the existing family violence provision in the Global Talent visa criteria. The visa subclasses affected by the Amendment Regulations are:

- Employer Nomination Scheme (subclass 186)
- Regional Sponsored Migration Scheme (subclass 187)
- Skilled — Independent (subclass 189)
- Skilled — Nominated (subclass 190)
- Permanent Residence (Skilled Regional) (subclass 191)
- Global Talent (subclass 858)
- Skilled – Regional (subclass 887)

The Amendment Regulations insert family violence provisions into these visa subclasses. These provisions will mean that a secondary applicant can be granted their visa, even if their relationship with the primary applicant has ceased, if:

- The secondary applicant, a member of their family unit, or a dependent child of either or both applicants has experienced family violence committed by the primary applicant; and
- The primary applicant is granted their visa, or is refused their visa on grounds relating to family violence.

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 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 while also making appropriate adjustments to ensure that secondary applicants who are victim-survivors are not disadvantaged. 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 continue to apply. 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 be included in the primary applicant's employer nomination and to pay an additional charge if they do not have functional English. Amendments are made to ensure that secondary applicants who have experienced family violence can be eligible for the grant a visa if the primary applicant succeeds at merits review, without needing to pay a fee to apply for merits review.

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 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 Amendment Regulations allow secondary applicants for the seven affected visa subclasses to access family violence provisions for the grant of their visa. These provisions mean that a secondary applicant can be granted their visa even if they are no longer in a relationship with the primary applicant, if they have experienced family violence committed by the primary applicant and meet the other requirements.

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 family violence provisions which enable parents to remain in Australia with their children, where they had all applied together for one of the seven Skilled permanent visas, even if the partner relationship between the parents has ceased.

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 (2017) 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 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 address the risk of family violence and therefore promote the right to freedom from discrimination, by ensuring that applicants for the affected Skilled 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 Tony Burke MP

Minister for Immigration and Multicultural Affairs

ATTACHMENT B

Details of the *Migration Amendment (Family Violence Provisions for Skilled Visa Applications) Regulations 2024*

Section 1 – Name of Regulations

This section provides that the title of the instrument is the *Migration Amendment (Family Violence Provisions for Skilled Visa Applications) 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 the day after registration.

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

Item [1] After subregulation 4.13(2)

This item inserts a new subregulation (2A) to allow a nil fee on an application for merits review to the Tribunal by a person who was included in a visa application as a secondary applicant and:

- their visa application was refused for not meeting at least one of the secondary criteria;
- that secondary criterion was not met because the primary applicant's visa was refused;
- the Department has accepted that secondary applicant's claims of having experienced family violence committed by the primary applicant.

This ensures secondary applicants can themselves seek review of a decision without paying a fee, in circumstances where their application was refused because the primary applicant was refused, noting that in many circumstances a primary applicant seeking review of a visa refusal may not include their former partner or former stepchildren in that application. It means that in circumstances where a primary applicant may have a successful outcome at merits review and their application is remitted for decision that their former partner does not lose their pathway to permanent residency.

Item [2] Paragraph 1113(2)(b) of Schedule 1 (at the end of the cell at table item 1, column headed "Applicant")

Item [3] Paragraph 1113(2)(b) of Schedule 1 (after table item 1)

Item [4] 1114B(2)(b) of Schedule 1 (at the end of the cell at table item 3, column headed "Applicant")

Item [5] Paragraph 1114C(2)(b) of Schedule 1 (at the end of the cell at table item 3, column headed "Applicant")

Item [6] Paragraph 1136(2)(b) of Schedule 1 (at the end of the cell at table item 1, column headed "Applicant")

Item [7] Paragraph 1136(2)(b) of Schedule 1 (after table item 1)

Item [8] Subitem 1137(4) of Schedule 1 (at the end of the cell at table item 1, column headed "Applicant")

Item [9] Subitem 1137(4) of Schedule 1 (after table item 1)

Item [10] Subitem 1137(4K) of Schedule 1 (at the end of the cell at table item 1, column headed "Applicant")

Item [11] Subitem 1137(4K) of Schedule 1 (after table item 1)

Item [12] Paragraph 1138(2)(b) of Schedule 1 (at the end of the cell at table item 1, column headed "Applicant")

Item [13] Paragraph 1138(2)(b) of Schedule 1 (after table item 1)

Item [14] Paragraph 1139(2)(b) of Schedule 1 (at the end of the cell at table item 1, column headed "Applicant")

Item [15] Paragraph 1139(2)(b) of Schedule 1 (after table item 1)

These items amend Schedule 1 of each of the relevant Skilled visas, 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 [16] Clause 186.213 of Schedule 2

This item makes amendments to the primary criteria for a Subclass 186 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 a visa grant.

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 are required 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.

Subclauses (1) and (2) specify which public interest criteria must be met by the primary applicant (being public interest criteria 4001, 4002, 4003, 4003B, 4004, 4010, 4019, 4020 and 4021).

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, 4003B, 4004, 4010 and 4020).

Subclause (4) refers to secondary applicants who – at time of decision on the application – are members of the family unit of the primary applicant.

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 186 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 their children (or grandchildren).

Subclause (7) requires that public interest criterion 4019 must be met by a secondary applicant who is an applicant for a Subclass 186 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) requires that public interest criteria 4015 and 4016 must be satisfied in relation to a person who is an applicant for a subclass 186 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).

Subclause (9) specifies which public interest criteria must be met by a person who is a member of the family unit of the primary applicant and who is not an applicant for a subclass 186 visa (being 4001, 4002, 4003, 4003B, 4004, 4010 and 4020).

Subclause (10) operates similarly to (9) above in specifying which public interest criteria (being 4001, 4002, 4003, 4003B, 4004, 4010 and 4020) must be met by a person who is not an applicant for a subclass 186 visa and:

- was a member of the family unit of the primary applicant at the time of application; and
- is a member of the family unit of an applicant of a person covered by subclause (5) or (6).

Accordingly, subclauses (1) and (2) specify which public interest criteria must be met by the primary applicant themselves. Subclauses (3), (7), (8) and (9) specify which public interest criteria must be met by members of the family unit of the primary applicant (regardless of whether they are included in the application) for the primary applicant to be granted their visa.

Subclauses (7), (8) and (10) specify what public interest criteria must be met by secondary applicants (or members of their family unit who are not included in the visa application) in order for all applicants to be granted their visas in circumstances where there has been family violence.

Item [17] Subclause 186.214(2) of Schedule 2
Item [18] Subclause 186.224(2) of Schedule 2
Item [20] Subclause 186.235(2) of Schedule 2
Item [21] Subclause 186.244(2) of Schedule 2

These items make identical amendments to their respective clauses or subclauses and omit the references to "Each member of the family unit of the applicant who is an applicant for a Subclass 186 visa" and substitutes these with "Each person covered by subclause 186.213(4), (5) or (6)". Accordingly these refer back to the amendments made by item 16 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*.

These amendments operate to require that all secondary applicants must continue to satisfy the relevant public interest and special return criteria even if they are no longer a member of the family unit of the primary applicant due to family violence.

In Subclause 186.214(2) this requires all applicants satisfy special return criteria 5001, 5002 and 5010 (item 17).

In Subclause 186.224(2) all applicants must satisfy public interest criterion 4007 (item 18**).**

In Subclauses 186.235(2) and 186.244(2) all applicants must satisfy public interest criterion 4005 (items 20 and 21

Item [19] At the end of clause 186.224 of Schedule 2
Item [21] At the end of clause 186.235 of Schedule 2
Item [23] At the end of clause 186.244 of Schedule 2

These items insert new subclauses in relation to persons who are not included in a visa application and:

- at the time the visa application was made were a member of the family unit of the primary applicant; and
- at the time a decision is made on the visa application, are a member of the family unit of a person covered by subclause 186.213(5) or (6) (inserted by item 16 above) and not the primary applicant.

For ease, these persons are referred to as 'non-applicant member of the family unit.'

These new subclauses impose a requirement for each person who is not an applicant for a visa, but is a member of the family unit of the secondary applicant (who is otherwise no longer a member of the family unit of the primary applicant), to satisfy certain public interest criteria in relation to meeting health requirements. This maintains the existing operation of the 'one fails, all fail' criteria (described in detail at item 16 above).

New subclause 186.224(4) requires the non-applicant member of the family unit to satisfy public interest criterion 4007, unless the Minister is satisfied it would be unreasonable to require the person to undergo assessment in relation to that criterion (item 19).

New subclauses 186.235(4) and 186.244(4) requires the non-applicant member of the family unit to satisfy public interest criterion 4005, unless the Minister is satisfied it would be unreasonable to require the person to undergo assessment in relation to that criterion (items 21 and 23).

These clauses form part of the broader 'one fails, all fail' criteria. These amendments ensure that each member of the family unit of the primary or secondary applicant is still required to meet the public interest criteria for all applicants to be granted a visa.

Item [24] Clauses 186.311 and 186.312 of Schedule 2

This item repeals the existing clauses and substitutes them with new clauses to include the family violence provisions for secondary applicants.

Previously, clause 186.311 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. The family violence provisions 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.

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 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) 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 lodged, the secondary applicant must have been the spouse or de facto partner of the primary applicant;
- the primary applicant must have 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 was either in Australia at the time application was made, or has subsequently entered Australia since that time.

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 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 a permanent visa holder, who reside outside Australia and have not entered Australia since lodging their visa application.

New subclause (4) allows for the grant of a visa to a secondary applicant where family violence has occurred, and the primary applicant was refused a visa for reasons including family violence. To satisfy subclause (4):

- at the time the application was lodged, the secondary applicant must have been 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 relating to family violence (whether or not the family violence was against a person mentioned in paragraph 186.311(4)(c)).

Subclause (4) mirrors much of what is required in subclause (3) with the key difference being that the primary applicant has been refused a visa for reasons which include family violence related conduct. This is the only circumstance in which a secondary applicant can be granted a visa while the primary applicant is refused. 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. This family violence 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 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. These processes may consider different acts and different types of evidence, including non-judicially determined or judicially determined circumstances, and may use different thresholds for determining outcomes.

Subclause (5) relates to a secondary applicant who is a member of the family unit (e.g. a child, or grandchild) of the former partner of the primary applicant (or visa holder as the case may be). To satisfy subclause (5):

- the applicant must be 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 must have 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 repeals and replaces clause 186.312. Previously this clause required that the nomination in respect to the primary applicant (noting that a Subclass 186 application is an employer sponsored visa and requires the employer to lodge a nomination which identifies the position the primary applicant will fill, as well as the primary applicant themselves) also includes secondary applicants. The new clause now requires that any nomination only includes applicants who satisfy subclause 186.311(2) (being those who are still a member of the family unit at time of decision). Secondary applicants who are seeking finalisation of their visa based on the family violence provisions are not required to be included in the nomination, just as they are no longer required to be a member of the family unit of the primary applicant.

Item [25] Division 186.3 of Schedule 2 (note to the heading)
Item [35] Division 187.3 of Schedule 2 (note to the heading)
Item [45] Division 189.3 of Schedule 2 (note to the heading)
Item [52] Division 190.3 of Schedule 2 (note to the heading)
Item [57] Division 191.3 of Schedule 2 (note to the heading)
Item [63] Division 858.3 of Schedule 2 (note 1 to the heading)
Item [77] Division 887.3 of Schedule 2 (note to the heading)

These item repeal the ‘note’ that sits above the secondary criteria. Previously it 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. The requirement that the criteria must be met at time of decision on the application remains the same.

Item [26] Subclause 186.313(4) of Schedule 2

This item amends subclause 186.313(4) which relates to the requirement for secondary applicants to meet public interest criterion 4007 (the health criterion). This subclause previously applied only to secondary applicants where the primary applicant had already been granted a Subclass 186 visa in the Temporary Residence Transition stream.

Subclause (4) now refers to circumstances where the primary applicant meets or sought to meet the criteria for the grant of a Subclass 186 visa in the Temporary Residence Transition stream. This amendment is necessary as it ensures that in circumstances where the primary applicant's visa has been refused on grounds including family violence related conduct, secondary applicants who are no longer members of the family unit, but seek to be granted a visa on the basis of the family violence provisions are still required to meet the health criterion for their visa to be granted. All secondary applicants (regardless of whether they are still a member of the family unit or meet the family violence provisions) will be required to meet public interest criterion 4007.

Item [27] At the end of Division 186.3 of Schedule 2

This item inserts new clause 186.315 into the secondary criteria and applies to secondary applicants who meet the requirements of subclause 186.311(4) (being the family violence provision that relates to circumstances where the primary applicant's visa has been refused). This item operates to require each member of the family unit of the secondary applicant 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. These requirements are part of the 'one fails, all fail' criteria and ensure that if any applicant (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 16 above. The insertion of clause 186.315 ensures that the same 'one fails, all fail' requirements apply to the family unit, whether or not the primary applicant is granted a visa.

Subclauses (2) to (5) apply to secondary applicants across all streams of the Subclass 186 visa.

Subclause (2) refers to public interest criteria 4001, 4002, 4003, 4003B, 4004, 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, 4003B and 4004.

Subclause (6) refers to the Temporary Residence Transition stream, (7) to the Direct Entry stream and (8) to the Labour Agreement stream. All three subclauses require members of the family unit to meet the relevant public interest criteria relating to undergoing health examinations (noting that different health requirements must be met depending on what stream the primary applicant's application was made under).

Item [28] Clause 187.213 of Schedule 2

This item makes amendments to the primary criteria for a Subclass 187 visa which required members of the applicant's family unit to meet certain requirements for the primary applicant's visa to be granted. This amendment operates in an identical way to that explained in detail in item 16 above and 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. 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.

As noted previously, if any person to whom this clause applies fails to satisfy the relevant public interest criteria, no applicant can be granted the visa.

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

Subclause (3) specifies which public interest criteria must be met by a person who is covered by subclause (4), (5) or (6).

Subclauses (7), (8) and (9) specify which public interest criteria must be met by members of the family unit of the primary applicant (regardless of whether they are included in the application) for the primary applicant to be granted their visa.

Subclauses (7), (8) and (10) specify what public interest criteria must be met by secondary applicants (or members of their family unit who are not included in the visa application) in order for the primary applicant to be granted the visas.

Item [29] Subclause 187.214(2) of Schedule 2
Item [30] Subclause 187.224(2) of Schedule 2
Item [32] Subclause 187.235(2) of Schedule 2

These items make identical amendments to their respective clauses and omits the references to "Each member of the family unit of the applicant who is an applicant for a Subclass 187 visa" and substitutes these with "Each person covered by subclause 187.213(4), (5) or (6)". These amendments operate to require that all applicants must continue to satisfy the relevant public interest and special return criteria (the 'one fails, all fail' criteria) even if they are no longer a member of the family unit of the primary applicant due to family violence.

In Subclause 187.214(2) this requires all applicants to satisfy special return criteria 5001, 5002 and 5010 (item 29).

In Subclause 187.224(2) all applicants must satisfy public interest criterion 4007 (item 30).

In Subclauses 187.235(2) all applicants must satisfy public interest criterion 4005 (item 32).

Item [31] At the end of clause 187.224 of Schedule 2
Item [33] At the end of clause 187.235 of Schedule 2

Similar to the amendments made by items 19, 21 and 23 above, these items insert new subclauses in relation to persons who are not included in a visa application and:

- at the time the visa application was made was a member of the family unit of the primary applicant; and
- at the time a decision is made on the visa application, are a member of the family unit of a person covered by subclause 187.213(5) or (6) (inserted by item 28 above) and not the primary applicant.

They impose a requirement for each person who is not an applicant for a visa, but is a member of the family unit of the secondary applicant (who has satisfied one of the family violence provisions), to satisfy certain public interest criteria. This maintains the existing operation of the 'one fails, all fail' criteria.

New subclause 187.224(4) requires the non-applicant member of the family unit to satisfy public interest criterion 4007, unless it would be unreasonable to require the person to undergo assessment in relation to that criterion (item 31).

New subclause 187.235(4) requires the non-applicant member of the family unit to satisfy public interest criterion 4005, unless it would be unreasonable to require the person to undergo assessment in relation to that criterion (item 33).

Item [34] Clauses 187.311 and 187.312 of Schedule 2

These amendments operate to repeal existing clauses and to insert the family violence provisions into Schedule 2 of the Subclass 187 visa and operates in an identical way to that described at item 24.

Previously, clause 187.311 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. 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 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) refers to a secondary applicant who:
    - at the time the application was lodged, 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) operates in a similar way to subclause (3) except that the primary applicant has been refused the visa for reasons including that the primary applicant had engaged in conduct involving family violence.
- subclause (5) refers to a secondary applicant who is a member of the family unit of a person who satisfies subclauses (3) or (4).

This item also repeals and replaces clause 187.312 with new wording which has the effect of retaining the requirement for secondary applicants who are members of the family unit to be included in the employer nomination, while excluding this requirement for secondary applicants who meet the family violence provisions. Secondary applicants who are seeking finalisation of their visa based on the family violence provisions are not required to be included in the employer nomination, as they are no longer required to be members of the family unit of the primary applicant.

Item [36] Subclause 187.313(4) of Schedule 2

This item amends subclause 187.313(4) which relates to the requirement for secondary applicants to meet public interest criterion 4007 (the health criterion). This subclause previously applied only to secondary applicants where the primary applicant had been granted a Subclass 187 visa in the Temporary Residence Transition stream. However with the inclusion of the family violence provisions which enable a secondary applicant to be granted a visa where the primary applicant has been refused, this clause has been amended to reflect these circumstances while still requiring secondary applicants to satisfy public interest criterion 4007.

Item [37] At the end of Division 187.3 of Schedule 2

This item inserts new clause 187.315 and applies to secondary applicants who meet the requirements of subclause 187.311(4) (being the family violence provision that relates to circumstances where the primary applicant's visa has been refused). This item operates in a similar way to that in item 25 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.

Subclauses (2) to (5) apply to secondary applicants across all streams of the Subclass 186 visa.

Subclause (2) refers to public interest criteria 4001, 4002, 4003, 4003B, 4004, 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, 4003B and 4004.

Subclause (6) refers to the Temporary Residence Transition stream, (7) to the Direct Entry stream and (8) to the Labour Agreement stream and the health requirements that must be met in each stream.

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 [38] Clause 189.211 of Schedule 2

This item makes amendments to the primary criteria for a Subclass 189 visa which required members of the applicant's family unit to meet certain requirements for the primary applicant's visa to be granted. This amendment operates in an identical way to that explained in detail in item 16 above and 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. 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.

As noted previously, if any person to whom this clause applies fails to satisfy the relevant public interest criteria, no applicant can be granted the visa.

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

Subclause (3) specifies which public interest criteria must be met by a person who is covered by subclause (4), (5) or (6).

Subclauses (7), (8) and (9) specify which public interest criteria must be met by members of the family unit of the primary applicant (regardless of whether they are included in the application) for the primary applicant to be granted their visa.

Subclauses (7), (8) and (10) specify what public interest criteria must be met by secondary applicants (or members of their family unit who are not included in the visa application) in order for the primary applicant to be granted the visas.

Item [39] Clause 189.212(2) of Schedule 2
Item [40] Clause 189.225(2) of Schedule 2
Item [42] Subclause 189.226(2) of Schedule 2
Item [43] Subclause 189.243(2) of Schedule 2

These items make identical amendments to their respective clauses and omit the references to "Each member of the family unit of the applicant who is an applicant for a Subclass 189 visa" and substitutes them with "Each person covered by subclause 189.211(4), (5) or (6)". These amendments operate to require that all applicants must continue to satisfy the relevant public interest and special return criteria even if they are no longer a member of the family unit of the primary applicant due to family violence.

In Subclause 189.212(2) this requires all applicants to satisfy special return criteria 5001 and 5002 (item 39).

In Subclause 189.225(2) all applicants must satisfy public interest criteria 4005 and 4010 unless it would be unreasonable to require a non-applicant member of the family unit to undergo assessment in relation to criterion 4005 (item 40)**.**

In Subclause 189.226(2) all applicants must satisfy special return criterion 5010 (item 42).

In Subclause 189.243(2) all applicants must satisfy public interest criterion 4007 unless it would be unreasonable to require a non-applicant member of the family unit to undergo assessment in relation to the criterion (item 43).

Item [41] At the end of clause 189.225 of Schedule 2
Item [44] At the end of clause 189.243 of Schedule 2

Similar to the amendments made by items 19, 21 and 23 above, these items insert new subclauses in relation to persons who are not included in a visa application and:

- at the time the visa application was made was a member of the family unit of the primary applicant; and
- at the time a decision is made on the visa application, are a member of the family unit of a person covered by subclause 189.211(5) or (6) (inserted by item 38 above) and not the primary applicant.

They impose a requirement for each person who is not an applicant for a visa, but is a member of the family unit of the secondary applicant (who has satisfied one of the family

violence provisions), to satisfy certain public interest criteria. This maintains the existing operation of the 'one fails, all fail' criteria.

New subclause 189.225(4) requires the non-applicant member of the family unit to satisfy public interest criterion 4005, unless it would be unreasonable to require the person to undergo assessment in relation to that criterion (item 41).

New subclause 189.243(4) requires the non-applicant member of the family unit to satisfy public interest criterion 4005, unless it would be unreasonable to require the person to undergo assessment in relation to that criterion (item 44).

Item [46] Clause 189.311 of Schedule 2

This item repeals the existing clause and substitutes it with a new versions of that clause to include the new family violence provisions for secondary applicants applying for a Subclass 189 visa. This amendment is similar to the one above described in detail in item 24.

Previously, clause 189.311 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 the grant of a visa and who made a combined application with the primary applicant. The family violence provisions are intended 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, has experienced family violence committed by the primary applicant.

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 had satisfied the primary criteria for the grant of a 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 a secondary applicant who:
    - at the time the application was lodged, 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

        - 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) operates in a similar way to subclause (3) except that the primary applicant has been refused the visa for reasons including that the primary applicant had engaged in conduct involving family violence.
- subclause (5) refers to a secondary applicant who is a member of the family unit of a person who satisfies subclauses (3) or (4).

Item [47] Subclauses 189.312(4) and (5) of Schedule 2

This item amends subclauses 189.312(4) and (5) which relate to the requirement for secondary applicants to meet public interest criteria 4005, 4010 and 4007. These subclauses previously applied only to secondary applicants where the primary applicant had already been granted a Subclass 189 visa in the Points-tested stream or Hong Kong stream.

Subclause (4) now refers to circumstances where the primary applicant holds or was seeking to meet the criteria for the grant of a Subclass 189 visa in the Points-tested stream. Similarly, subclause (5) now refers to circumstances where the primary applicant holds or was seeking to meet the criteria for the grant of a Subclass 189 visa in the Hong Kong stream. These amendments ensure all secondary applicants meet the relevant public interest criteria, regardless of whether the primary applicant was granted or the visa or – in circumstances where there has been family violence – was refused the visa.

Item [48] Clause 189.313 of Schedule 2

This item repeals and replaces clause 189.313 which relates to the requirement for secondary applicants to meet special return criteria 5001, 5002 and 5010. These subclauses previously applied only to secondary applicants where the primary applicant had already been granted a Subclass 189 visa.

The amendments now refer to circumstances where the primary applicant holds or was seeking to meet the criteria for the grant of a Subclass 189 visa in the Points-tested stream, Hong Kong stream or New Zealand stream. These amendments ensure all secondary applicants meet the relevant special return criteria, regardless of whether the primary applicant was granted the visa or – in circumstances where there has been family violence – was refused the visa.

Item [49] At the end of Division 189.3 of Schedule 2

This item inserts new clause 189.314 which applies to secondary applicants who satisfy the requirements of subclause 189.311(4) (being the family violence provision that relates to circumstances where the primary applicant's visa has been refused). This item operates to require each member of the family unit of the secondary applicant to satisfy certain public interest criteria and special return criteria. This applies to members of the family unit included in the application as well as members of the family unit who are not included in the

application. These requirements are ‘one fails, all fail’ criteria and ensure that if any person fails to meet one of these criteria, then all applicants must be refused the visa. The effect of this amendment is explained in more detail at item 27 above.

Subclauses (2) to (5) applies to secondary applicants across all streams of the Subclass 189 visa.

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

Subclause (6) refers to the *Points Tested stream* and requires members of the family unit included in the application to satisfy public interest criteria 4005 and 4010 and special return criterion 5010. Non-applicant members of the family unit are required to satisfy public interest criterion 4007 unless it would be unreasonable to require the person to undergo assessment in relation to the criterion.

Subclause (7) refers to the *Hong Kong stream* where each member of the family unit included in the application to satisfy public interest criteria 4007; while non-applicant members of the family unit are required to satisfy public interest criterion 4007 unless it would be unreasonable to require the person to undergo assessment in relation to the criterion.

Item [50] Clause 190.216 of Schedule 2

This item makes amendments to the primary criteria for a Subclass 190 visa which required members of the applicant’s family unit to meet certain requirements for the primary applicant’s visa to be granted. This amendment operates in an identical way to that explained in detail in item 16 above and 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. 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.

As noted previously, if any person to whom this clause applies fails to satisfy the relevant public interest criteria, no applicant can be granted the visa.

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

Subclause (3) specifies which public interest criteria must be met by a person who is covered by subclause (4), (5) or (6) (being a secondary applicant who is the member of the family unit of the primary applicant; is a *relevant person*; or is the member of the family unit of a *relevant person*).

Subclauses (7), (8) and (9) specify which public interest criteria must be met by members of the family unit of the primary applicant (regardless of whether they are included in the application) for the primary applicant to be granted their visa.

Subclauses (7), (8) and (10) specify what public interest criteria must be met by secondary applicants (or members of their family unit who are not included in the visa application) in order for the primary applicant to be granted the visas.

Item [51] Subclause 190.217(2) of Schedule 2

This item amends subclause 190.217(2) which relates to the requirement for secondary applicants to satisfy special return criteria 5001, 5002 and 5010 in order for the primary applicant to be granted a visa. This subclause previously referred only 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, this clause has been amended to require all secondary applicants to satisfy the special return criteria, regardless of whether they are still a member of the family unit of the primary applicant. This amendment achieves this by omitting the phrase “Each member of the family unit of the applicant who is an applicant for a Subclass 190 visa” and substituting it with “Each person covered by subclause 190.216(4), (5) or (6)” (inserted by item 50 above).

Item [53] Clause 190.311 of Schedule 2

This amendment operates to insert the family violence provisions into Schedule 2 of the Subclass 190 visa.

Previously, clause 190.311 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 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, in circumstances where they, or a member of their family unit, has experienced family violence committed by the primary applicant. The effect of this amendment is explained in more detail at item 24 above.

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 satisfied the primary criteria for the grant of a visa and made a combined application with the primary applicant.

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

- subclause (3) refers to a secondary applicant who:
    - at the time the application was lodged, 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
        - 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) operates in a similar way to subclause (3) except that the primary applicant has been refused the visa for reasons including that the primary applicant had engaged in conduct involving family violence.
- subclause (5) refers to a secondary applicant who is a member of the family unit of a person who satisfies subclauses (3) or (4).

Item [54] At the end of Division 190.3 of Schedule 2

This item inserts new clause 190.314 and applies to secondary applicants who meet the requirements of subclause 190.311(4) (being the family violence provision that relates to circumstances where the primary applicant's visa has been refused). This item operates to require each member of the family unit of the secondary applicant to satisfy certain public interest criteria and special return criteria. This applies to members of the family unit included in the application as well as members of the family unit who are not included in the application. These requirements are 'one fails, all fail' criteria and ensure that if any person fails to meet one of these criteria, then all applicants must be refused the visa. The effect of this amendment is explained in more detail at item 27 above.

Subclause (2) requires all members of the family unit who are included in the application to satisfy refer to public interest criteria 4001, 4002, 4003, , 4004, 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, as well as 4005 unless it would be unreasonable to require the member to undergo assessment in relation to that criterion.

Item [55] Clause 191.211 of Schedule 2

This item makes amendments to the primary criteria for a Subclass 191 visa which required members of the applicant's family unit to meet certain requirements for the primary applicant's visa to be granted. This amendment operates in an identical way to that explained in detail in item 16 above and 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. 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.

As noted previously, if any person to whom this clause applies fails to satisfy the relevant public interest criteria, no applicant can be granted the visa.

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

Subclause (3) specifies which public interest criteria must be met by a person who is covered by subclause (4), (5) or (6).

Subclauses (7), (8) and (9) specify which public interest criteria must be met by members of the family unit of the primary applicant (regardless of whether they are included in the application) for the primary applicant to be granted their visa.

Subclauses (7), (8) and (10) specify what public interest criteria must be met by secondary applicants (or members of their family unit who are not included in the visa application) in order for the primary applicant to be granted the visas.

Item [56] Subclause 191.212(2) of Schedule 2

This item amends subclause 191.212(2) which relates to the requirement for secondary applicants to satisfy special return criteria 5001, 5002 and 5010. This subclause previously referred only to members of the family unit of the primary applicant. However with the inclusion of the family violence provisions, this subclause has been amended to ensure all secondary applicants continue to satisfy the special return criteria, regardless of whether they are still a member of the family unit of the primary applicant at time of decision on the visa application.

Item [58] Clause 191.311 of Schedule 2

This amendment operates to insert the family violence provisions into Schedule 2 of the Subclass 191 visa.

Previously, clause 191.311 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 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, in circumstances where they, or a member of their family unit, has experienced family violence committed by the primary applicant. The effect of this amendment is explained in more detail at item 24 above.

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 satisfied the primary criteria for the grant of a visa and made a combined application with the primary applicant.

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

- subclause (3) refers to a secondary applicant who:
    - at the time the application was lodged, 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
        - 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) operates in a similar way to subclause (3) except that the primary applicant has been refused the visa for reasons including that the primary applicant had engaged in conduct involving family violence.
- subclause (5) refers to a secondary applicant who is a member of the family unit of a person who satisfies subclauses (3) or (4).

Item [59] At the end of Division 191.3 of Schedule 2

This item inserts new clause 191.315 and applies to secondary applicants who meet the requirements of subclause 191.311(4) (being the family violence provision that relates to circumstances where the primary applicant's visa has been refused). This item operates to require each member of the family unit of the secondary applicant 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. These requirements are known as the 'one fails, all fail' criteria and ensure that if any person fails to meet one of the criteria, then all applicants must be refused the visa, thereby ensuring family members do not receive different visa outcomes. These amendments are required to support the family violence provisions which facilitate the grant of a visa to secondary applicants who are no longer members of the family unit of the primary applicant.

Subclause (2) requires each member of the family unit who are included in the application 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 16 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, 4003B and 4004, as well as 4007 unless it would be unreasonable to require the member to undergo assessment in relation to that criterion.

Item [60] Clauses 858.223 and 858.224 of Schedule 2

This item makes amendments to the primary criteria for a Subclass 858 visa which required 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 not included in the visa application, must satisfy certain public interest criteria before a visa can be granted. This amendment operates in a similar way to that explained in detail in item 16 above and 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.

As noted previously, if any person to whom this clause applies fails to satisfy the relevant public interest criteria, no applicant can be granted the visa.

Subclause (1) specifies which public interest criteria must be met by a person covered by subclause (2), (3) or (4).

Subclause (2) refers to secondary applicants who are a member of the family unit of the primary applicant and who are included in the visa application.

Subclause (3) 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 858 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).

Subclause (5) requires all secondary applicants included in the application who were at least 18 years of age at the time of application to satisfy public interest criterion 4019.

Subclause (6) and (7) requires all members of the family unit (of both primary and secondary applicants) who are not included in the visa application to meet certain public interest criteria.

This item also repeals clause 858.224 and replaces it with a requirement that public interest criteria 4015 and 4016 must be satisfied by all secondary applicants who are under 18 years of age. Previously this clause only referred to members of the family unit of the primary applicant.

Item [61] Paragraph 858.227(b) of Schedule 2
This item repeals the existing paragraph and substitutes it to require that each person covered by subclause 858.223(2), (3) or (4) (inserted by item 60 above) meet public interest criterion 4020. Previously it only referred to members of the family unit of the primary applicant.

Item [62] Subclause 858.228(2) of Schedule 2

This item amends subclause 858.228(2) which relates to the requirement for members of the family unit to satisfy special return criteria 5001, 5002 and 5010 before a visa can be granted to the primary applicant. This subclause previously referred only to members of the family unit of the primary applicant and now refers to persons covered by subclause 858.223(2), (3) or (4) (inserted by item 60 above) and covers all secondary applicants. This amendment aligns with the family violence provisions to ensure all secondary applicants continue to satisfy the special return criteria, regardless of whether they are still a member of the family unit of the primary applicant at the time a decision is made on the visa.

Item [64] Subclause 858.321(1) of Schedule 2

This item makes a consequential amendment to subclause 858.321(1) to include a reference to subclause (3A), which inserts an additional family violence provision into the Subclass 858 visa (at item 71 below). This makes it possible for a secondary applicant to be granted a visa if they satisfy the family violence provision in subclause 858.321(3A).

Item [65] Subclause 858.321(2) of Schedule 2

This item omits the phrase '(the ***non-dependent holder***) who, having satisfied the primary criteria, is the holder of a Subclass 858 visa' and substitutes it with '(the ***primary applicant)*** who holds a Subclass 858 visa granted on the basis of satisfying the primary criteria for the grant of the visa'.

The term *non-dependent holder* only appeared in the context of the Global Talent (Subclass 858) visa. This amendment is made to ensure consistency across all visas with regards to how reference is made to a person who holds or has applied for a visa.

Item [66] Paragraph 858.321(3)(a) of Schedule 2

This item repeals the previous paragraph (a) and substitutes it with a requirement that at the time of application, the secondary applicant was the spouse or de facto partner of a person (the primary applicant) who sought to satisfy the primary criteria for the grant of a visa, and has since been granted that visa.

Subclause 858.321(3) contains the family violence provision, allowing a secondary applicant to still be granted a Subclass 858 visa where the primary applicant has been granted a visa and there has been family violence committed by the primary applicant. However it contained minor drafting errors, which meant that visas could not be granted under the provisions. This amendment addresses these errors.

Paragraph 858.321(3)(a) is a time of decision criterion that refers to the relationship between the primary applicant and their secondary applicant spouse or de facto partner. Previously, this paragraph required the applicant to still be the spouse or de facto partner of the *non-dependent holder*, in contradiction with paragraph (b), which required that the relationship had ended. As such, an applicant could not still be the primary applicant's spouse or de facto partner if the relationship had ended and this requirement could not be met by any applicant.

A secondary applicant seeking to meet the family violence provisions is now required to demonstrate that they were the spouse or de facto partner at the time of application, which aligns with the requirement in paragraph (b) that the relationship between the primary and secondary applicants had ceased at the time of decision.

Item [67] Paragraphs 858.321(3)(b) of Schedule 2
Item [69] Paragraph 858.321(3)(c) of Schedule 2
Item [72] Clause 858.326 of Schedule 2

This item omits the phrase 'non-dependent holder' from these paragraphs or clauses (as it occurs on multiple occasions) and replaces it with 'primary applicant', ensuring consistency with the wording used across the visas.

Item [68] Subparagraph 858.321(3)(c)(ii) of Schedule 2

This item inserts the phrase 'the applicant or with' in paragraph (c)(ii) which has the effect of clarifying the person who has experienced family violence is a member of the family unit of the secondary applicant who has made a combined application with the secondary applicant or with the primary applicant.

Item [70] Paragraph 858.321(3)(d) of Schedule 2

This item repeals paragraph 858.321(3)(d) and replaces it with new wording.

Previously, this paragraph required a secondary applicant to have been in Australia at the time of application in order to access the family violence provision contained within subclause 858.321(3). The new wording of this paragraph expands upon this to state that a secondary applicant must have been in Australia when the application was made, or

otherwise entered Australia after making an application, in order to access the family violence provision.

An applicant who has never entered Australia since lodging 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 due to family violence.

Item [71] After subclause 858.321(3) of Schedule 2

This item inserts a new subclause (3A) into clause 858.321. Subclause (3) allows for the grant of a visa to a secondary applicant who has experienced family violence where the primary applicant has also been granted a visa. New subclause (3A) allows for the grant of a visa to a secondary applicant who has experienced family violence, where the primary applicant has been refused a visa on the basis of conduct related to family violence.

To satisfy subclause (3A):

- the secondary applicant must have been the spouse or de facto partner of the person who was seeking to satisfy the primary criteria (the primary applicant);
- the relationship between the primary applicant and the 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;
- the secondary applicant was either in Australia at the time application was made, or has otherwise subsequently entered Australia since that time; and
- the primary applicant has been refused the visa for reasons including that the primary applicant had engaged in conduct involving family violence.

This new subclause (3A) mirrors much of what is required in subclause (3) with the key difference being that the primary applicant has been refused a visa for reasons including family violence related conduct.

Item [72] Subclause 858.321(4) of Schedule 2

This item amends subclause 858.321(4) to allow for the grant of a visa to a member of the family unit of a person who satisfies the family violence provisions in subclauses (3) or (3A).

This subclause continues to operate in similar terms, however it no longer makes reference to the primary applicant being a visa holder. As the family violence provisions facilitate secondary applicants being granted a visa where the primary applicant has been refused a visa for reasons including family violence related conduct, the subclause no longer stipulates this as a requirement. Instead, in order to meet the requirements of subclause 858.321(4):

- the applicant must be a member of the family unit of a secondary applicant who satisfies subclauses (3) or (3A);

- the applicant must have 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 must have been granted a visa.

This subclause relates to secondary applicants who are a member of the family unit of the primary applicant's former spouse or de facto partner.

Item [74] At the end of Division 858.3 of Schedule 2

This item inserts new clause 858.328 and applies to secondary applicants who meet the requirements of subclause 858.321(3A) (being the family violence provision that relates to circumstances where the primary applicant's visa has been refused). This item operates to require each member of the family unit of the secondary applicant to satisfy certain public interest criteria and special return criteria. This applies to members of the family unit included in the application as well as members of the family unit who are not included in the application. These requirements are known as the 'one fails, all fail' criteria and ensure that if any person fails to meet one of the criteria, then all applicants must be refused the visa. This ensures family members do not receive different visa outcomes. These amendments are required to support the family violence provisions which facilitate the grant of a visa to secondary applicants who are no longer members of the family unit of the primary applicant.

Subclause (2) requires all members of the family unit to satisfy public interest criterion 4020.

Subclause (3) requires each member of the family unit who are included in the application to satisfy public interest criteria 4001, 4002, 4003, 4003B, 4004, 4007, 4009 and 4010 and 4020 and special return criteria 5001, 5002 and 5010.

Subclause (4) requires all secondary applicants aged over 18 to satisfy public interest criterion 4019.

Subclause (5) requires that public interest criteria 4015 and 4016 are satisfied in relation a secondary applicant aged under 18.

Subclause (6) requires non-applicant members of the family unit to satisfy public interest criteria 4001, 4002, 4003, 4003B and 4004, as well as 4007 unless it would be unreasonable to require the member to undergo assessment in relation to that criterion.

Item [75] Clauses 887.225 and 887.226 of Schedule 2

This item repeals clauses 887.225 and 887.226 and replaces them with new versions of these clauses.

Previously, clause 887.225 applied only to members of the family unit of the primary applicant who were also applicants for a Subclass 887 visa and specified which public interest and special return criteria had to be satisfied by those members of the family unit for a visa to be granted to the primary applicant. Clause 887.226 applied only to members of the

family unit of the primary applicant who were not applicants for the visa and specified which public interest criteria had to be met by those persons. With the inclusion of the family violence provisions which facilitate the grant of a visa to an applicant who is no longer a member of the family unit, amendments to each of these clauses ensure the public interest and special return criteria continue to operate as they previously did. The effect of this is that if any person to which this clause applies fails to satisfy the relevant public interest or special return criteria, no applicant can be granted the visa.

Subclause 887.225(1) specifies that certain public interest and special return criteria must be met by persons covered by subclause (2), (3) or (4).

Subclause (2) covers persons who are a member of the family unit of the primary applicant and who are included in the visa application.

Subclause (3) 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 186 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 person is a member of the family unit of a person covered by subclause (3).

The newly drafted clause 858.226 refers to persons who are members of the family unit but who are not included in the visa application and specifies what public interest criteria they must satisfy for applicants to be granted a visa.

Subclause (1) refers to members of the family unit of the primary applicant, and subclause (2) refers to members of the family unit of the secondary applicants. The effect is that all members of the family unit must meet public interest criteria 4001, 4002, 4003 and 4004, as well as 4007 (unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.)

Item [76] Paragraph 887.227(a) of Schedule 2

This item omits the reference in paragraph 887.227(a) to a 'member of the family unit of the applicant' and substitutes it with a 'person covered by subclause 887.225(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. This ensures that if any applicants fail to meet one of these criteria, then all applicants must be refused the visa.

Item [78] Clause 887.321 of Schedule 2

This amendment repeals the previous version of clause 887.321 and inserts the family violence provisions into Schedule 2 of the Subclass 887 visa. The effect of this amendment is explained in more detail at item 22 above.

Previously, clause 887.321 referred 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.

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

Subclause (2) retains existing arrangements to enable a visa to be granted to secondary applicants who are a member of the family unit of a person who had satisfied the primary criteria for grant.

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

- subclause (3) refers to a secondary applicant who is the former spouse or de facto partner of the primary applicant where:
    - at the time of application, they were 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; and
    - 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 has made a combined application with the secondary applicant or with the primary 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 the application was made, or subsequently entered Australia since that time;
- subclause (4) mirrors the circumstances in subclause (3) except that instead of requiring the primary applicant to have been granted the visa, allows for circumstances where the primary applicant has been refused their visa for reasons including family violence conduct; and
- subclause (5) refers to a member of the family unit of a person who satisfies subclauses (3) or (4).

Item [79] At the end of Division 887.3 of Schedule 2

This item inserts new clause 887.325 to require each member of the family unit of the secondary applicant to satisfy certain public interest criteria and special return criteria. This applies to members of the family unit included in the application (subclauses (2), (3) and (4)) as well as members of the family unit who are not included in the application (subclause (5)). These requirements are known as the ‘one fails, all fail’ criteria and ensure that if any member of the family unit fails to meet one of the criteria, then all applicants must be refused the visa, thereby ensuring family members do not receive different visa outcomes.

Item [80] In the appropriate position in Schedule 13

This item inserts new Part 141 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 for Skilled Visa Applications) Regulations 2024.* Schedule 13 is the location of application and transitional provisions for amendments to the Migration Regulations.

This item inserts new clause 14101 and provides that the amendments made by 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.