

16 April 2018

Committee Secretary
Senate Standing Committees on Community Affairs

By email: community.affairs.sen@aph.gov.au

Dear Committee Secretary,

NSSRN submission in relation to the Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2017

1. The National Social Security Rights Network (NSSRN) is a peak community organisation in the area of income support law, policy and administration. Our members are community legal centres across the country that provide free and independent legal assistance to people experiencing issues with social security and family assistance payments. The NSSRN draws on this front line experience in developing its submissions and policy positions.
2. The NSSRN welcomes the opportunity to comment on the Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2017 ("the Bill").
3. This Bill introduces several measures that were announced in the 2017-18 Mid-Year Economic and Fiscal Outlook. The key consequence of this Bill is that new migrants will have to wait three years until they are eligible for most social security and family assistance payments. In summary,
 - **Schedule 1:** "increases existing newly arrived resident's waiting periods from 104 weeks to 156 weeks for various social security payments and concession cards and introduces a 156 week newly arrived resident's waiting period for carer allowance, bereavement allowance, widow allowance and parenting payment".
 - **Schedule 2:** "increases the existing newly arrived resident's waiting period from 104 weeks to 156 weeks for farm household allowance."
 - **Schedule 3:** "introduces a newly arrived resident's waiting period of 156 weeks for family tax benefit."
 - **Schedule 4:** "introduces a newly arrived resident's waiting period of 156 weeks for parental leave payments and dad and partner pay."¹
4. The Government's rationale for the Bill is to reduce welfare expenditure and compel new migrants to "support themselves for longer when they first settle permanently in Australia."² The Government has estimated that these measures will result in approximately \$1.3 billion in savings from forward estimates across the whole of government.³
5. While some individuals will be exempt from the newly arrived resident's waiting period

1 Explanatory Memorandum, *Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2017* (Cth) p1

2 Commonwealth, *Parliamentary Debates, House of Representatives*, 15 February 2018, 9-12, (Dan Tehan), 10.

3 Explanatory Memorandum, *Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2017* (Cth) p2

(“NARWP”), due to their circumstances or vulnerability, the impact on the broader migrant communities will be significant. The measures will affect approximately 50,000 migrant families and 30,000 single people.⁴

6. The NSSRN opposes these measures which extend the existing NARWP, or introduce a new waiting period to other social security and family assistance payments, because they:
 - Are based on a flawed assumption that the reason migrants need income support is that they choose not to work.
 - Ignore the evidence that a lack of coordination between Australia’s migration system and employment policies has made it difficult for some migrants to secure ongoing well-paid employment, even where they have qualifications and experience to match skills shortages.
 - Further disadvantage migrants, increasing the inequality between them and the rest of the community and increasing their vulnerability to exploitation.
 - Do not adequately take into account the effect these measures will have on children, or those who require care and assistance to manage day-to-day living.
 - Disadvantage individuals who have already taken steps to migrate to Australia, or those who have indicated a willingness to provide an Assurance of Support.
 - Fail to recognise the lifetime contribution of migrants to Australia’s economy and community.
7. The anticipated savings resulting from the introduction of these measures constitute a false economy as they are likely to lead to increased poverty and social problems which result in greater costs in the provision of emergency relief (including food), housing, counseling, health care and other services by charitable and community organisations or other government-funded services.
8. We outline our most pressing concerns in detail below.

Evidence of employment barriers for migrants, including skilled migrants

9. The Government’s stated rationale supporting this Bill is that almost 69 per cent of new migrants are skilled migrants and are therefore “well placed to support themselves and their families... when they arrive [in Australia].”⁵ This implies that migrants are in a position to work to support themselves but choose not to. This assumption is not supported by research.
10. Recent research has shown that there is increasing frustration among skilled migrant groups who have been enticed to Australia to fill ‘skills shortages’, only to find that they are unable to gain work once in Australia.⁶ It has been reported that “up to 40% of recent migrants... have more qualifications than necessary” and this creates a barrier to gaining suitable employment. Researchers have concluded that Australia has many qualified migrants whose experience or education exceeds what is suitably required to fill skill shortages.⁷ This issue has been attributed

4 Avani Dias, ‘Warnings of further poverty, trauma for migrants forced to wait longer for welfare’, *ABC News (Online)*, 19 December 2017, <http://www.abc.net.au/news/2017-12-19/warnings-migrants-will-face-poverty-with-new-welfare-rules/9270088>

5 Commonwealth, Parliamentary Debates, House of Representatives, 15 February 2018, 9-12, (Dan Tehan), 9.

6 Bob Birrell, ‘Australia’s Skilled Migration Program: Scarce Skills Not Required’ (Research Report, The Australian Population Research Institute, March 2018),

<https://www.macrobusiness.com.au/wp-content/uploads/2018/03/Final-March-8-Australias-skilled-migration-program-1.pdf>

7 Massimiliano Tani, ‘Australia is not making the best use of skilled migrants’, *UNSW Sydney Newsroom*, 8 February 2018, <https://newsroom.unsw.edu.au/news/business-law/australia-not-making-best-use-skilled-migrants>

to a “lack of coordination between Australia’s migration system and employment policies.”⁸

11. The consequence of this lack of coordination means that many migrants arrive in Australia with a reasonable expectation of having good job prospects, but find themselves in an unexpected position of being unable to find work and needing financial assistance.

Evidence of the likely impact of measures on increasing inequality and poverty

12. The Government has estimated that Schedule 1 will save \$141.8 million from forward estimates.⁹ This figure demonstrates that many newly arrived migrants have been assessed as having a recognisable need for income support during their first few years in Australia, as the income support payments represented by this figure are not easy to obtain.
13. Schedule 1 deals with the core social security payments that provide income support for those who do not earn enough from paid employment to meet basic living costs. Claimants must satisfy strict income and asset tests to ensure that payments are directed to those most in need. Many payments also require participation in mutual obligation activities to increase the likelihood of gaining employment.
14. Schedule 1 of the Bill extends the existing NARWP of 104 weeks to 156 weeks for “newstart allowance, youth allowance, austudy, sickness allowance, carer payment, special benefit, mobility allowance, and pensioner education supplement”.¹⁰ It introduces a 156 week NARWP for bereavement allowance, widow allowance, parenting payment and carer allowance. It also extends the NARWP to 156 weeks for “health care card (low income) and Commonwealth Seniors Health Care Card.”¹¹
15. Although the Government claims that this increase to the NARWP will “encourage self-sufficiency” for newly arrived migrants, there is no evidence presented to suggest that removing income support leads to greater self-sufficiency.
16. On the contrary, migrants who receive these social security payments have already been assessed by the Department of Human Services as being in financial hardship and not being in a position to fully support themselves financially. The experience of our member centres and other research suggests that removing these payments during this period will merely push some individuals and families further into financial insecurity and shift the burden and cost of providing support onto community organisations, charity groups, and homelessness services.
17. Our member community legal centres have long identified the journey of some newly arrived skilled migrants. As summarised below by one of our member centres in the following extract from an article in the Alternative Law Journal, the journey often involves the following steps where these individuals:
 - *“believed that [their qualifications or work experience] would assist them to readily obtain employment in Australia, even if not in their field of expertise;*
 - *they had waited for a prolonged period, usually over two years, for their migration application to be approved;*
 - *their experience of the migration process had been that it was very expensive;*
 - *Australian officials and reliable, authorised information about Australia had been difficult*

8 Ibid

9 Explanatory Memorandum, *Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2017 (Cth)* p2

10 Ibid.

11 Ibid.

to access;

- *being part of the skilled migration program, they had no sponsor or close family or friends in Australia prior to arrival;*
- *they were unable to bring adequate sums of money from their country of origin to last for two years because of currency restrictions or poor exchange rates in comparison to Australia which meant it would take a lifetime to save such a large sum;*
- *subsequent to arrival in Australia they discovered they were unable to obtain employment within a reasonable period and also unable to receive social security assistance when their funds ran out. Some then suffered a deterioration in either mental health due to anxiety or depression or physical health due to malnourishment.”¹²*

18. Although this journey is not universal, it is supported by more recent studies showing that our newly arrived migrant communities experience homelessness and poverty at higher rates than that of the general population.
19. Recent data from the Australia Bureau of Statistics found that migrants were disproportionately affected by homelessness. The study found that “while 28.2% of Australians were born overseas, they comprise 46% of the homeless.”¹³ Furthermore, “people who were born overseas and arrived in Australia in the last 5 years accounted for 15%... of all persons who were homeless on Census night in 2016.”¹⁴ The ABS figures also found that “despite steady economic growth in Australia, homelessness increased by 14% between the 2011 and 2016 censuses.”¹⁵ Migrant communities are experiencing a significant brunt of this homelessness crisis.

20. Migrants are also disproportionately affected by poverty. Figures from 2014 found that:

“poverty is higher amongst adults born in countries where the main language is not English (18.8%) than amongst those born overseas in an English speaking country (11.4%), or in Australia (11.6%).”¹⁶

These statistics were attributed to several barriers to employment faced by new migrants, particularly those from non-English speaking countries. As stated above, many qualified skilled migrants cannot gain suitable work to match their qualifications. Many migrants face “language barriers, limited Australian-recognised skills, and discrimination.”¹⁷

21. Existing exploitation of migrant workers in Australia is well documented.¹⁸ Subjecting migrants to longer periods without income support when they are in financial hardship and cannot find paid employment, will only make them more vulnerable to exploitation. Research into exploitation of migrant workers also refutes the idea that they chose not to work:

12 Sandra Koller, ‘Waiting for a Fair Go..’, 23 Alternative L.J. 136 (1998), p136

13 Melissa Davey and Christopher Knaus, ‘Homelessness in Australia up 14% in five years, ABS says’, *The Guardian (online)*, 14 March 2018, <https://www.theguardian.com/australia-news/2018/mar/14/homelessness-in-australia-up-14-in-five-years-abs-says>

14 Australia Bureau of Statistics, ‘2049.0 - Census of Population and Housing: Estimating homelessness, 2016’, Published 14 March 2018, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/2049.0>

15 Ibid.

16 Australian Council of Social Service, *Poverty in Australia 2014* (Report)

https://www.acoss.org.au/images/uploads/ACOSS_Poverty_in_Australia_2014.pdf, p10.

17 Ibid p23.

18 Senate Education and Employment References Committee, ‘A National Disgrace: The Exploitation of Temporary Work Visa Holders’, 17 March 2016,

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Report

“There is also a strong desire to work. This means people accept substandard work and other conditions (such as accommodation) because their primary goal is earning money. If they complain, they will easily be replaced.”¹⁹

22. We strongly disagree with the Government’s assumption that extending the NARWP will increase “self-sufficiency with newly arrived skilled migrants”.²⁰ The measures are based on a flawed assumption that the reason that some migrants are on income support is because they currently choose not to work. The well-documented evidence suggests that the reason is more likely to be a problem with the coordination of Australia’s migration system and employment policies which makes it difficult for some new migrants to gain employment, no matter how qualified they are and despite how hard they try.

Adverse impact on children and families

23. Schedules 3 and 4 of the Bill have broad implications for families and children of newly arrived migrants. Schedule 3 “introduces a newly arrived resident’s waiting period of 156 weeks for family tax benefit.”²¹ Schedule 4 introduces a NARWP period of 156 weeks for “parental leave payments and dad and partner pay.”²²

Family tax benefit

24. The introduction of the NARWP for Family Tax Benefit (FTB) will significantly impact on families of new residents. We note that this schedule represents the greatest cost saving for the Government – totalling almost \$900 million in forward estimates.²³
25. FTB is paid to assist families with the cost of raising children. The introduction of the NARWP for FTB payments will therefore impact significantly on children of newly arrived migrants, with the greatest impact being on those who are unemployed, or in precarious or casual employment, and who cannot access income support payments.
26. We note that children are estimated to make up close to a quarter of Australian residents who live in poverty. Recent figures estimate that the average weekly expenditure on raising a child aged 0-2 years old is \$144/week, or \$14,976 over 2 years.²⁴ Without additional financial assistance, many migrant families will struggle to meet the increased living costs of having a family and place more children at risk of poverty.

Paid Parental Leave

27. The introduction of the NARWP for paid parental leave and partner leave will create separate classes of parents within Australia’s workforce. Many migrants will be forced to leave employment to raise their children without financial assistance. Others may return to work soon after the birth of a child to ensure that they can continue to afford to meet basic needs. Many partners of birth mothers will lose the opportunity to be present during the initial weeks of their newborn’s life.

19 Marie Segrave, ‘We need to hear the stories of exploited unlawful migrant workers, not just deport them’, The Conversation, 1 March 2017, <https://theconversation.com/we-need-to-hear-the-stories-of-exploited-unlawful-migrant-workers-not-just-deport-them-73348>

20 Commonwealth, Parliamentary Debates, House of Representatives, 15 February 2018, 9-12, (Dan Tehan), 12.

21 Explanatory Memorandum, *Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2017* (Cth) p1

22 Schedule 4 is estimated to produce saving of \$241.4 million over forward estimates. Explanatory Memorandum, *Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2017* (Cth) p2

23 Ibid.

24 Chris Brycki, ‘What’s the cost of raising a child?’ *SBS News*, 9 November 2015.

<<https://www.sbs.com.au/news/comment-what-s-the-cost-of-raising-a-kid>>

Adverse impact on those who receive care and assistance to manage day-to-day living

28. Schedule 1 of the Bill extends the NARWP to carers allowance, meaning that all entitlements available to carers will now be subject to the NARWP.²⁵ In the case where a newly arrived migrant's child or significant other becomes incapacitated, they will be precluded from receiving financial assistance to allow them to care for that person. We note that many people migrate to Australia to provide care for a family member, and that this Bill may limit their ability to provide this care.
29. Carers Australia, the national peak body for carers, have stated that this measure “could have real health consequences”²⁶ for people receiving care. These payments are provided to “help people stay in their own homes when they are aged, dying, chronically ill, or have a disability.”²⁷

The need to protect vulnerable people

30. The Government has outlined some exemptions to the NARWP. The NARWP will not apply to humanitarian entrants, people who become a lone parent after arriving in Australia, and migrants from New Zealand. Some temporary visa holders will be able to access family assistance payments, parental leave and special benefit.²⁸ They have described these exemptions as providing a “comprehensive safety net for migrants who are particularly vulnerable as well as those who are placed in hardship as a result of circumstances beyond their control.”²⁹ We agree that if the measures proceed, exemptions must exist for vulnerable people.
31. There is also an exception for those who experience financial hardship and who have a “substantial change in circumstances” beyond their control after arriving in Australia. These individuals may access Special Benefit payments which are typically subject to the NARWP.³⁰ If granted Special Benefit, the Bill provides for these people to also access family assistance payments if otherwise eligible.
32. In our experience, it is difficult for individuals to satisfy the criteria for “a substantial change in circumstances.”³¹ Our position is that the NARWP should not be applied to Special Benefit payments at all.
33. Special Benefit is deemed a payment of last resort. It is available to individuals who are experiencing financial hardship and who are not eligible for other payments. The maximum payment rate is equivalent to the rate of Newstart Allowance. However, Special Benefit is subject to stricter income tests that take into account in-kind support such as free board.³² This results in approximately 80% of recipients receiving a part payment only.³³ Despite this, Special Benefit provides an important safety net for approximately 5000-7000 recipients.³⁴ Although most of the recipients are not of working age³⁵, it has been noted that the proportion of working age

25 The Bill will also extend the existing NARWP for Carers Payment to three years.

26 Carers Australia, *New residents waiting periods* (Media release)

<<http://www.carersaustralia.com.au/media-centre/carers-national-news/article/?id=new-residents-waiting-periods-impact-on-carers>>

27 Ibid.

28 Explanatory Memorandum, *Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2017* (Cth).

29 Commonwealth, Parliamentary Debates, House of Representatives, 15 February 2018, 9-12, (Dan Tehan), 12.

30 Schedule 1 increases the existing NARWP for Special Benefit payment from 2 years to 3 years.

31 Sandra Koller, ‘Waiting for a Fair Go..’, 23 *Alternative L.J.* 136 (1998), p136

32 Department of Social Services, Annual Report 2016-2017, p29

33 Department of Social Services, Annual Report 2016-2017, p32

34 In 2016-17, there were 6966 recipients of Special Benefit, up from 5335 in 2015-16, and 5226 in 2014-15. See Department of Social Services, Annual Report 2016-2017, p41.

35 As at June 2015, 70% of Special Benefit recipients are aged 65 or over. See Department of Social Services, Annual Report 2015-16.

recipients is increasing.³⁶

34. As Special Benefit is a payment of last resort for those people in financial hardship, it should be available to all residents to prevent individuals or communities falling into poverty. The “substantial change in circumstances beyond a person’s control” test does not capture the experience of many newly arrived migrants, including skilled migrants who had a legitimate expectation of work but became unemployed, or those who were not fully aware of the cost of living in Australia and exhaust their savings whilst in precarious employment.³⁷

Impact on those who have taken steps to migrate

35. The earliest commencement date of the Bill is 1 July 2018. If the Bill is not passed and given Royal Assent until after this date, the commencement date will be “the first 1 January or 1 July to occur after receiving Royal Assent.”³⁸
36. Individuals who are granted their entry visa prior to commencement will not be affected by the new or extended waiting periods.³⁹ The Government has stated that this will avoid disadvantaging those people who have already taken steps to migrate to Australia.
37. However, as previously noted, many new migrants wait for extended periods for their migration applications to be approved. Many people, who have already applied for their visa and still awaiting the outcome, will be affected by these commencement rules.

Impact on those providing an Assurance of Support (AoS)

38. We understand that the Government also intends to extend the Assurance of Support (AoS) requirement from two years to three years, in line with the increases to NARWP.⁴⁰ Some new residents are required to produce an AoS to demonstrate that they will not require government financial assistance for a period of time, typically in line with the waiting period for payments.⁴¹ The person who provides this Assurance of Support for a new migrant agrees to be financially responsible for them. If something disrupts this arrangement, and the new migrant seeks social security assistance, the government will seek to recover the cost of this assistance from the person who provided the AoS.
39. The Guide to Social Security Law explains:
- “The primary objective of the AoS scheme is to protect social security outlays while allowing the migration of people who might otherwise not normally be permitted to come to Australia. Visa applicants (assurees) with a high likelihood of requiring income support, e.g. in the family reunion categories, are permitted to migrate to Australia on condition that an assurer, an Australian resident, assumes:*
- *financial responsibility for the new arrival's (the assuree's) support for the duration of*

36 Ibid.

37 For a case example, please see Secretary, Department of Social Security and Dalijit Singh [1998] AATA 123 (2 March 1998)

38 Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2017 (Cth) item 3

39 Explanatory Memorandum, *Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2017* (Cth) p3

40 Michael Klapdor, ‘New waiting periods for migrants to access social security and family assistance payments’, *APH Library*, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2017/December/Waiting_period_for_migrants

41 We note that there are a number of different arrangements for Assurances of Support, including those that must provide a security deposit. Department of Social Services, Guide to Social Security Law, 9.4.1.10 Introduction to the AoS Scheme, <http://guides.dss.gov.au/guide-social-security-law/9/4/1/10>

the new arrival's AoS period, and

- *responsibility for the repayment of any recoverable social security payments received by the assuree during the AoS period.*⁴²

40. The commencement date of the Bill has implications for those people who have indicated their preparedness to provide AoS for potential new migrants. The Government must ensure that they appropriately communicate the extension of time to potential assurers, as the longer period may increase the risk of debt to these people if they are not able to provide financial support over the extended period.
41. We also note an inconsistency with the NARWP and AoS periods that may impact some new migrants. We understand that when a new migrant first arrives in Australia both the NARWP and the AoS requirement period commence. However, if this person leaves Australia, the AoS period continues to run, whilst the NARWP is paused. This inconsistency will lead to situations where a person may return to Australia at a later date, after the expiration of their AoS, but cannot seek any social security or family assistance payments due to the continuation of the NARWP.

The lifetime contribution of migrants to Australian society

42. This Bill fails to adequately take into account the lifelong contribution of migrants to Australia, or indeed the very make up of Australian contemporary society. As at August 2016, almost half of Australian residents were either born overseas or had a parent born overseas.⁴³ Of our estimated resident population, 28.5% of people were born overseas.⁴⁴
43. Statistics reveal that migrants make a significant contribution to the economy and workforce. Australia's national average labour participation rate is 65%, however migrants who obtain Australian citizenship have a much higher labour participation rate of 77%. As some have noted,

*"Claims that migrants are a net pressure on welfare payments do not stack up. Migrants are likely to be working."*⁴⁵

44. Migration plays a significant role in shaping the character, identity and diversity of Australian society. Newly arrived migrants will ultimately make lifelong contributions to Australian society and thus there is no reason to deny support and financial assistance during the first few years of arriving in Australia.

Human Rights implications

45. The extension of the NARWP runs contrary to Australia's international human rights obligations. The measure undermines the rights of individuals to social security⁴⁶, an adequate standard of

42 Department of Social Services, Guide to Social Security Law, 9.4.1.10 Introduction to the AoS Scheme, <http://guides.dss.gov.au/guide-social-security-law/9/4/1/10>

43 Australian Bureau of Statistics, '2071.0 - Census of Population and Housing: Reflecting Australia - Stories from the Census, 2016 : Cultural Diversity in Australia', 28 June 2017,

<<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Cultural%20Diversity%20Data%20Summary~30>>

44 Australian Bureau of Statistics, '3412.0 - Migration, Australia, 2015-16', 30 March 2017, <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/3412.0>>

45 Patrick Carvalho, 'Why migrants may be our greatest economic asset', *ABC News (Online)*, 21 April 2015, <http://www.abc.net.au/news/2015-04-21/carvalho-why-migrants-may-be-our-greatest-economic-asset/6409042>

46 International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 9.

living, equality and non-discrimination. It also undermines the rights of family and children to special protection and assistance, by removing access to payments intended to assist with the cost of raising children.⁴⁷

46. Our human rights obligations require that all Australian residents, whether they are new residents or long-term residents or citizens, should be provided with an adequate standard of living, including access to adequate food, shelter and clothing. The social security system ensures that individuals have access to basic essentials, and assists to prevent those experiencing financial hardship from homelessness and destitution.

Conclusion

47. The NSSRN opposes this Bill. Rather than encouraging self-sufficiency and cost savings, the proposed measures will only exacerbate issues of poverty and homelessness experienced by many migrants and lead to greater costs in services they will need from charitable and community groups. Savings in this area are more likely to be achieved by better coordinating Australia's migration system with employment policies so that skilled migrants are only encouraged to come to Australia when they are likely to obtain jobs matching their skills. This would be a positive outcome for both government and migrants.

Contact for this submission

The NSSRN would welcome the opportunity to provide further feedback to the Committee on our submission.

Joni Gear,
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National Social Security Rights Network

⁴⁷ International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 10.