



9 August 2021

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## Submission to the Senate Community Affairs Legislation Committee

### About SSRV

Social Security Rights Victoria (SSRV)<sup>1</sup> is a Victorian state-wide community legal centre that specialises in social security related law, policy and administration. Our vision is for a fair and just society in which all people are able to receive a guaranteed adequate income in order to enjoy a decent standard of living. SSRV's contribution to this vision is the provision of legal and related services to vulnerable and disadvantaged Victorians and those who support them, which assists them to secure and protect their rights to equitable social security entitlements.

SSRV has been operating for almost 35 years, with funding from Commonwealth and Victorian governments, philanthropy and other sources. SSRV's services are directed primarily to people who are experiencing financial disadvantage and other forms of vulnerability such as those related to disability or mental illness, age, family violence, family breakdown, Aboriginal and Torres Strait Islander background, cultural and linguistic diversity, location, pandemics, and disasters. SSRV also provides assistance to other professionals, such as lawyers, financial counsellors, disability advocates, social workers, family violence workers and health workers, who are helping their clients with Centrelink matters. SSRV provides legal information, advice, casework and representation services; designs and delivers community legal education and professional development resources and workshops; and contributes to policy

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<sup>1</sup> Our website is [ssrv.org.au](http://ssrv.org.au).

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development and systemic advocacy. SSRV undertakes specialist projects, currently including the Integrated Services Project in partnership with Financial Counselling Victoria and the Disability Support Pension Help Project.<sup>2</sup>

SSRV is a member of Economic Justice Australia (**EJA**), the peak organisation for community legal centres providing specialist legal assistance to people on their social security issues and rights.

### **Our submission**

We welcome the opportunity to share our experience and expertise with the Senate Community Affairs Legislation Committee (**the Committee**) in relation to the Social Services Legislation Amendment (Consistent Waiting Periods for New Migrants) Bill 2021 (**the Bill**).

We support the submission of EJA. We particularly echo the comments of EJA in relation to the effects that the Bill would have if passed upon those who are experiencing family and domestic violence and those with caring responsibilities.

SSRV has provided legal assistance to hundreds of migrant Victorians seeking to navigate the social security system. A common issue affecting those migrant Victorians is their inability to access the social security system despite their status as Australian residents, permanent or temporary.

The Bill proposes a consistently applied four-year Newly Arrived Resident's Waiting Period (**NARWP**) for all payments and concession cards where such a NARWP does not currently apply.

### **Our position in summary**

SSRV does not support the passage of the Bill.

On the NARWP generally:

- the NARWP is contrary to Australia's international obligations;
- we are concerned about the NAWRP causing financial hardship, homelessness and poverty among migrant communities, including placing migrant children at a greater risk of poverty; and

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<sup>2</sup> The DSP Help Project website is [dsphelp.org.au](http://dsphelp.org.au).

- the NARWP provisions are inconsistent with the Government’s obligations under the *Racial Discrimination Act 1975 (Cth)* (**the Racial Discrimination Act**).

On the Bill:

- while the NARWP has existed for some payments since 1993, the Bill ignores that some payments have not been the subject of a NAWRP for that long;
- the Bill ignores the past justifications for imposing a shorter NAWRP on particular payment types;
- the exemptions available to the NARWP are difficult to access in practice, insufficient and place vulnerable people at risk;
- the aim of a consistent NARWP could equally be achieved by reducing longer NARWPs; and
- the Bill will disproportionately affect the most vulnerable migrant Australians, including people experiencing family violence, people at risk of family violence and children.

### Appropriateness of the NARWP

Our position is that the NARWP, in general, is inappropriate and contrary to Australia’s human rights obligations.

### International obligations

Australia was involved in the drafting of Universal Declaration of Human Rights<sup>3</sup> (UDHR) and through voting in support of the UDHR committed, internationally, to recognition that social security is a human right.

Australia is bound to its international obligations relating to the right to social security. By Article 9 of the *International Covenant on Economic, Social and Cultural Rights*,<sup>4</sup> Australia recognises ‘the right of **everyone** to social security’.<sup>5</sup> By Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*,<sup>6</sup> Australia has undertaken to ‘prohibit and eliminate racial discrimination ...

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<sup>3</sup> GA Res 217A (III), UN GAOR, UN Doc A/810 (10 December 1948).

<sup>4</sup> Opened for signature 16 December 1966, 993 UNT 3 (entered into force 3 January 1976).

<sup>5</sup> Emphasis added.

<sup>6</sup> Opened for signature 21 December 1965, 660 UNTS 196 (entered into force 4 January 1969).

**without distinction as to ... national or ethnic origin ... [t]he right to public health, medical care, social security and social services’.**<sup>7</sup>

In the recent Universal Periodic Review, Australia committed<sup>8</sup> to a number of recommendations made by the Working Group that relate to Australia implementing a social security system consistent with its human rights obligations as set out above.<sup>9</sup>

Australia committed to:

- ending discrimination;<sup>10</sup>
- addressing inequalities faced by minorities;<sup>11</sup> and
- addressing the human rights of migrants;<sup>12</sup>

Extending the NARWP is inconsistent with Australia’s obligations to recognise social security as a human right and to prohibit and eliminate racial discrimination. The NARWP affects migrants discriminatorily because of their nationality.

The Statement of Compatibility with Human Rights at the end of the Explanatory Memorandum to the Bill says that ‘[t]he Australian welfare payment system is based on the key concepts of residency and need.’ Those migrants affected by the NARWP are residents of Australia. They have been found by Australia’s immigration system to be appropriate for residency, and should therefore have access to the rights of that residency, without discrimination due to their national origin, as contemplated by Australia’s human rights obligations as set out above.

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<sup>7</sup> Article 5(e)(iv). Emphasis added.

<sup>8</sup> Human Rights Council, Review of the Working Group on the Universal Periodic Review: Australia — Addendum: Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review, UN Doc A/HRC/47/8/Add.1 (2 June 2021).

<sup>9</sup> Human Rights Council, Review of the Working Group on the Universal Periodic Review: Australia, UN Doc A/HRC/47/8 (24 March 2021).

<sup>10</sup> Ibid recommendations 62–5, 69–70, 72–9, 81–2, 86, 91–3, 94–6, 258.

<sup>11</sup> Recommendations 92, 96, 258.

<sup>12</sup> Recommendations 69, 299, 301, 330.

### *The Racial Discrimination Act*

The *Racial Discrimination Act* implements, in part, Australia's international obligations arising from the CERD. Section 10 relevantly provides as follows:

#### **10 Rights to equality before the law**

- (1) If, by reason of, or of a provision of, a law of the Commonwealth ..., persons of a particular ... national or ethnic origin do not enjoy a right that is enjoyed by persons of another ... national or ethnic origin, or enjoy a right to a more limited extent than persons of ... national or ethnic origin, then, notwithstanding anything in that law, persons of the first-mentioned ... national or ethnic origin shall, by force of this section, enjoy that right to the same extent as persons of that other ... national or ethnic origin.

The provisions of the Act that establish NAWRPs mean that persons of particular national origins (i.e. any national origin other than Australian) enjoy the right to social security<sup>13</sup> to a more limited extent to people who are of Australian origin.

Unlike the provisions in CERD,<sup>14</sup> section 10 of the *Racial Discrimination Act* as it applies to NARWP contains no exception that would empower the Government to discriminate against social security applicants from national origins other than Australia in relation to their right to social security.<sup>15</sup>

A 1997 Act that introduced a NARWP for carer payment, amongst other payments,<sup>16</sup> provided that the provisions of that Act were not authorising conduct inconsistent with the *Racial Discrimination Act*.<sup>17</sup> Other acts introducing and amending NARWPs have not contained such provisions, but any NARWP is inconsistent with the clear language in section 10 of the *Racial Discrimination Act*. This inconsistency is difficult to reconcile.

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<sup>13</sup> A relevant right, per s 10(2).

<sup>14</sup> Art 4.

<sup>15</sup> The limited exceptions in s 8 of the *Racial Discrimination Act* are not engaged.

<sup>16</sup> Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997 (Cth).

<sup>17</sup> Section 4(2).

It is our position that the provisions that create the NARWPs put the Government, acting through the Secretary and the Chief Executive Centrelink,<sup>18</sup> in an impossible position in relation to complying with the *Racial Discrimination Act*.

The General Division of the Administrative Appeals Tribunal recently considered the applicability of section 10 of the *Racial Discrimination Act* to the definition of ‘income’ in the *Social Security Act*, as that was the live issue before the Tribunal.<sup>19</sup> Senior Member Puplick dismissed this argument in relation to ‘income’, but correctly, in our view, identified the applicability of the *Racial Discrimination Act* as follows:

... an action, law or policy amounts to (racial) discrimination only when it applies to a person on the grounds of their nationality, ethnicity, immigrant status (or any other specified characteristic) in a way which does not apply to people who do not have those characteristics.<sup>20</sup>

Our position is that the provisions creating the NARWP run afoul of section 10 of the *Racial Discrimination Act* in precisely this manner.

### **Conclusions on the appropriateness of the NARWP**

The NARWP as it relates to any social security payment precludes the Australian Government from being able to meet its international, and domestically implemented, human rights obligations. It is not an appropriate measure to be part of the social security system. The tabling of this Bill is an opportunity to consider the appropriateness of the NARWP more broadly and we encourage the Committee to do so.

### **Problems with the Bill**

We maintain that the NARWP is not appropriate even in its current form, but now address the Bill directly. Our position is that the Bill should not be passed. We do not

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<sup>18</sup> Social Security (Administration) Act 1999 (Cth) s 7; A New Tax System (Family Assistance) (Administration) Act 1999 (Cth) s 220; Administrative Arrangements Order, 18 March 2021, pt 12; Human Services (Centrelink) Act 1997 (Cth) s 8A.

<sup>19</sup> *Imielski v Secretary, Department of Social Services (Social Services Second Review)* [2021] AATA 208 (12 February 2021) at [88]–[94].

<sup>20</sup> At [90].

agree that the following justifications, identified in the Explanatory Memorandum and in the Second Reading Speech, adequately justify the Bill:

- that the change is supported by the NARWP being a ‘a long-standing feature of the social security system [that] reflect[s] the expectation that new migrants make provision to be self-sufficient when they first settle permanently in Australia.’<sup>21</sup> Our position is that this ignores the reason for differentiated NARWPs for different payments;
- that there is ‘an extensive range of exemptions and safeguards in place for those who may need immediate access to certain payments’.<sup>22</sup> Our position is that the exemptions in place do not do enough to enable people who are vulnerable to access social security;
- that the Bill will ‘simplify the welfare payment system’<sup>23</sup> and make it ‘easier for new migrants to understand’.<sup>24</sup> Our position is that these same goals could be achieved by consistently reducing the NARWP.

### Differential NARWPs

The NARWP is described in the Explanatory Memorandum to the Bill and in the Second Reading Speech<sup>25</sup> as a ‘long-standing feature’ of the social security system. The first NARWP was introduced in 1993, but that NARWP was limited to Job Search Allowance, Newstart Allowance and Sickness Allowance,<sup>26</sup> and not to the payments that would be affected by the Bill. They were introduced in 1997 (for Carer Payment<sup>27</sup>)

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<sup>21</sup> Explanatory Memorandum, Social Services Legislation Amendment (Consistent Waiting Periods for New Migrants) Bill 2021 at 1 (**Explanatory Memorandum**). See also Commonwealth, *Parliamentary Debates*, House of Representatives, 24 June 2021 at 7 (Alan Tudge, Minister for Education and Youth, on behalf of Stuart Robert, Minister for Employment, Workforce, Skills, Small and Family Business) (**Second Reading Speech**).

<sup>22</sup> Explanatory Memorandum at 2. See also Second Reading Speech at 8.

<sup>23</sup> Explanatory Memorandum at 2.

<sup>24</sup> Explanatory Memorandum at 3.

<sup>25</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 24 June 2021, 7 (Alan Tudge, Minister for Education and Youth, on behalf of Stuart Robert, Minister for Employment, Workforce, Skills, Small and Family Business).

<sup>26</sup> Social Security Legislation Amendment Act (No. 3) 1992 (Cth) pt 2 div 15.

<sup>27</sup> Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997 (Cth) sch 1 div 2.

and 2018 (for Carer Allowance,<sup>28</sup> Family Tax Benefit A<sup>29</sup> and Parental Leave Pay and Dad and Partner Pay<sup>30</sup>). Family Tax Benefit B is not yet subject to a NARWP.

The Social Services and Other Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2018<sup>31</sup> proposed 3-year waiting periods for the payments proposed to be affected by the current Bill. This proposal was amended. Of those amendments, the then-Minister for Families and Social Services said in Parliament:

The government has circulated amendments to retain the existing waiting period for the carer payment and reduce the length of the new waiting period for carer allowance, family tax benefit, parental leave pay, and dad and partner pay. These changes respond to concerns raised during the Senate committee inquiry process into the bill and reflect that these payments support particular needs and costs for eligible individuals and families. The new arrangements provide a more proportionate increase for payments which will have a waiting period introduced for the first time.

Importantly, under the government amendments, family tax benefit part B will not be subject to a waiting period. This means that single-parent migrant families, or those who have one main income earner, will continue to be supported to balance work and caring responsibilities, particularly when their children are younger.<sup>32</sup>

It is clear from the Former Minister's statement to Parliament that the Government recognised, at the time, that there was good reason for differentiated NARWPs for different payment types. The Bill would ignore that in favour of cost-saving.<sup>33</sup> Our position is that this is inconsistent with the statement in the Explanatory Memorandum that '[t]he welfare payment system is designed to target payments to

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<sup>28</sup> Social Services and Other Legislation Amendment (Promoting Sustainable Welfare) Act 2018 (Cth) sch 1 part 2.

<sup>29</sup> Ibid sch 3.

<sup>30</sup> Ibid sch 4.

<sup>31</sup> Later the Social Services and Other Legislation Amendment (Promoting Sustainable Welfare) Act 2018 (Cth).

<sup>32</sup> Commonwealth, *Parliamentary Debates*, House of Representatives, 28 November 2018 at 11806 (Paul Fletcher, Minister for Families and Social Services).

<sup>33</sup> Treasury, *Budget Paper No. 2* at 37, 44.



those most in need and encourage those who are able to support themselves to do so.'

Each of Carer Payment, Carer Allowance, Family Tax Benefit, Parental Leave Pay and Dad and Partner Pay support those who are supporting others through provision of care, including the care of children, the elderly and people with disabilities/serious medical conditions including terminal illness. Recipients of those payments do not need 'encourage[ment]... to support themselves'. They need access to the safety net provided to other Australian residents so that they can support themselves while caring for others. Our position is that the Bill would undermine the ability of the social security system to support those supporting others.

### Exemptions

Our experience has been that the people most negatively affected by the NARWP are those who find themselves in severe financial hardship due to circumstances outside their control and include those experiencing family violence and mental illness. More recently our casework has borne out a number of people who lost work because of the coronavirus pandemic unable to access ongoing support.

The availability of limited exemptions to the NARWP does little to allow those people to escape a cycle of poverty or allow future-planning that may lead to not relying on social security. Apart from refugee and humanitarian visa holders, most residents who are affected by the NARWP are only able to be exempt if:

- they become a single parent (for Parenting Payment, Youth Allowance or Jobseeker Payment); or
- they experience a substantial change in circumstances (for Special Benefit). This exemption allows residents who are except from the Special Benefit NARWP to become eligible for other payments.

We consider that the substantial change in circumstances exemption in particular is problematic. The *Social Security Act* provides only the following:

- (7) Neither subsection (1) nor (2) [the provisions creating the NARWP] apply to a person if the person, in the Secretary's opinion, has suffered

a substantial change in circumstances beyond the person's control after the person first entered Australia.<sup>34</sup>

The exemption is further scaffolded by the Social Security Guide (**the Guide**).

### *Additional requirement in the Guide*

The Guide creates a requirement that is not in the Social Security Act:

#### **Timing of the substantial change in circumstances**

A change of circumstances is only relevant for the purposes of the [Social Security Act] if that change of circumstances occurs after the person has arrived in Australia.

**In the case of visas granted onshore, the substantial change in circumstances should also occur after the NARWP has commenced.** For a temporary holder, this means after the person has applied for the temporary visa and for a permanent visa holder, after the person has become an Australia resident.

...

**Exception:** For visas granted onshore, if the delegate is of the view that there are exceptional circumstances leading to the claimant being in financial hardship that occurred before the commencement of the NARWP, then the delegate may decide that the claimant has suffered a substantial change in circumstances and waive the NARWP. For example, the claimant is the victim of domestic violence.<sup>35</sup>

(emphasis added)

The requirement that a substantial change in circumstances 'also occur after the NARWP has commenced' is not in the Social Security Act. The NARWP does not commence until a person has a permanent visa.<sup>36</sup> That may be a different time to their first entry into Australia.

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<sup>34</sup> Social Security Act 1991 (Cth) s 739A(7).

<sup>35</sup> Social Security Guide at [3.7.2.30]: Substantial change in circumstances for SpB (1 July 2021) <<https://guides.dss.gov.au/guide-social-security-law/3/7/2/20>>.

<sup>36</sup> Social Security Act 1991 (Cth) s 739A(1)(b). In certain circumstances, it may be even later: see Social Security Act 1991 (Cth) s 739A(3)–(4).

It is not difficult to envisage a situation where a new migrant comes to Australia, experiences a substantial change in circumstances, and later becomes a permanent resident. The Guide plainly contemplates a social security applicant being a victim of family or domestic violence as a possible situation. It is problematic that being able to access the social security system in such a circumstance is an exception within an exemption.

### *Poor guidance in the Guide*

The Guide contains a table that provides a list of 11 examples of circumstances that would be considered substantial enough for the exemption to apply. These create their own difficulties that have the potential to exclude vulnerable people from accessing Special Benefit.

The second example in the list is the following:

Change in circumstance	and...
Sponsor or partner loses job through no fault of their own	the job was organised or commenced after arrival of the SpB claimant.

It is difficult to see why the job lost by the sponsor of an applicant for Special Benefit must be ‘organised or commenced’ after the applicant’s arrival in Australia. The relevant change in circumstance is that the employment was lost.

### *Proving family violence*

The fifth and tenth examples are:

Change in circumstance	and...
Partner and SpB claimant separate	the SpB claimant was the victim of domestic/family violence.

...

SpB claimant is the victim of substantiated domestic violence	has no other means of support.
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These appear to interact. There is no guidance about the meaning of ‘substantiated’ family or domestic violence. Further, it is unavoidable that to access Special Benefit because of family or domestic violence, the victim-survivor is forced to disclose that to Centrelink, and potentially (as a means of ‘substantiating’ that violence) to other services. This forced disclosure runs contrary to what is known about how disclosure of family violence works.

In its Final Report, the Victorian Royal Commission into Family Violence noted this:

The Commission heard that a woman will disclose her experience of violence or end the relationship only if 'she is confident that the system will keep her safe'...<sup>37</sup>

The Royal Commission also noted:

The Commission notes that people from CALD backgrounds are generally less likely than members of other groups to speak out about family violence.

...

Economic dependence was cited as another reason for failing to speak out: 'If we separate from our husbands, how will we survive financially? We don't have any choice but to stay in silence'.<sup>38</sup>

The NARWP only affects migrants. The cut-through of NARWP-affected migrants and people from culturally and linguistically diverse backgrounds is high. Accessing the exemption for Special Benefit on the basis of family or domestic violence requires a lot of individual social security applicants. The applicant must be:

- ready to disclose the family or domestic violence they are experiencing;
- able to disclose the family or domestic violence, in the sense that they are safe to contact Centrelink without an abusive partner or family member knowing; and
- able to receive the payment, in the sense that they are able to have a bank account separate from that of an abusive partner or family member.

The Guide also provides example of circumstances that 'would NOT be considered a substantial change in circumstances for the purpose of qualification for [Special Benefit] where no other extenuating circumstances are involved'. These include:

- Claimant and partner are separated but living under one roof.
- Partner and the visa holder separate due to breakdown of the relationship and there is no domestic violence involved.

...

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<sup>37</sup> Royal Commission into Family Violence: Report and Recommendations (Report, March 2016) vol 2 at 9.

<sup>38</sup> Ibid vol 5 at 106–7.

- Partner leaves work to study or train, engages in an unprofitable business, resorts to excessive gambling or makes another lifestyle choice that impacts on the couple financially....

In the context of family or domestic violence, each of these are cause for concern. A person experiencing family or domestic violence may choose or need to leave accommodation they share with the perpetrator/s of the violence as a first step to fleeing the violence. For the reasons outlined above, a social security applicant may have difficulty disclosing family or domestic violence. The third point extracted above does not indicate an appropriate understanding of family or domestic violence. The described 'lifestyle choice that impacts on the couple financially' may well be one of financial abuse. The House Standing Committee on Social Policy and Legal Affairs described financial abuse as follows:

Financial abuse is a form of coercive control where a perpetrator takes control of a victim-survivor's financial affairs, such as personal expenditure and the management of bank accounts, investments, superannuation and assets such as the family home, in order to restrict the victim-survivor's access to economic resources, to hinder their financial independence and/or to inflict economic harm.<sup>39</sup>

The Guide says these will not be appropriate circumstances for the exemption to apply without 'other extenuating circumstances'. These raise the concern that Centrelink and Tribunal decision makers may not appropriately identify, understand or address family or domestic violence without appropriate training.

### *Carer exemptions*

Presently, there is an exemption to the NARWP for Carer Payment and Carer Allowance for holders of Subclass 116 and 836 Carer visas.<sup>40</sup> That exemption is only in place so long as there is a Determination by the Minister that there is an exemption.

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<sup>39</sup> House Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Inquiry into Family, Domestic and Sexual Violence* (Report, March 2021) <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/Familyviolence/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Familyviolence/Report)>.

<sup>40</sup> Social Security Act 1991 (Cth) s 201AA(5); Social Security (Class of Visas – Newly Arrived Resident's Waiting Period for Carer Payment) Determination 2018 (Cth) cl 4.

The current exemption is self-repealing and will be repealed on 1 October 2021.<sup>41</sup> The Minister may make another determination at that time, but this demonstrates a problem with the exemption regime. We note that Subclass 104 Preferential Family and Subclass 806 Family visas are excepted from the NARWP by the Act.<sup>42</sup> A situation where people's eligibility to access the social safety net on the basis of Ministerial Determinations for some and legislation for others is unsatisfactory and inconsistent.

### Simplifying the social security system

We do not agree with the comment in the Explanatory Memorandum that the Bill would 'simplify the welfare payment system'<sup>43</sup> and make it 'easier for new migrants to understand'.<sup>44</sup> The goal of the social security system is not achieved by limiting people's access to the system. The social security system could be simplified by removing the NARWP altogether, or reducing it consistently to the shortest period for any payments currently, which is currently one year.

### Vulnerable migrant Australians

Australia is heavily reliant on migrants. The Interim Report of the Inquiry into Australia's Skilled Migration Program<sup>45</sup> noted:

Australia lost over 500,000 people on temporary migration visas in the last 12 months. Many of those people were workers who were vital to Australian businesses. Many of the jobs these migrants do create jobs for Australians...<sup>46</sup>

Our position is that the Bill undervalues the migrants who are so important to Australian society and withdraws, from the most vulnerable, access to the social safety net to which they contribute through their taxes.

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<sup>41</sup> Social Security (Class of Visas – Newly Arrived Resident's Waiting Period for Carer Payment) Determination 2018 (Cth) cl 5.

<sup>42</sup> Social Security Act 1991 (Cth) s 201AA(3)–(4).

<sup>43</sup> Explanatory Memorandum at 2.

<sup>44</sup> Explanatory Memorandum at 3.

<sup>45</sup> Joint Standing Committee on Migration, Parliament of Australia, *Interim Report of the Inquiry into Australia's Skilled Migration Program* (Interim Report, March 2021) <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Migration/SkilledMigrationProgram/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/SkilledMigrationProgram/Report)>.

<sup>46</sup> *Ibid* at 34–5 [2.68].

### *Caregiving requirements have no NARWP*

Our position as outlined above is that payments to migrants that are available under the current NARWP regime sooner than after four years are so for good reason. We are concerned in particular about the increase of the NARWP for Family Tax Benefit B from zero years to four years. Our position is that this ignores the situation that households in receipt of Family Tax Benefit B are households that have reduced income-earning capacity. The Bill would prevent families from being able to support their children.

### *The coronavirus pandemic*

In 2020, Victoria experienced a notably long and arduous lockdown that affected all Victorian residents, migrants and Australian-born alike. We continue to experience lockdowns. Increased access to the social security system was a lifeline for many Victorians during these periods and this will undoubtedly continue.

From 25 March 2020 to 31 March 2021, the NARWP was removed for a number of payments due to the coronavirus pandemic and the Coronavirus Supplement was introduced. This indicated the Government is able to meet Australia's international obligations, and support those whose circumstances leave them in a position where they need to rely on their right to social security. At 31 March 2021, the NARWP resumed for those social security recipients whose NARWP had not fully elapsed and they lost access to the payments they had been receiving. Another type of waiting period, the liquid assets waiting period, was waived for the period 25 March 2020 to 24 September 2020 and when it was reinstated those social security recipients who had the benefit of the waiver were not required to resume the waiting period.

We have seen in our casework a number of people who needed the support of the social security system and were able to access it during the period that the NARWP was removed, who since are experiencing financial hardship due to the reinstatement of the NARWP. Below are two examples.

## Case studies

### Case Study 1: Josh and Danielle

Josh\* came to Australia in early 2020 as a dependant of his father. Josh has disabilities that requires either he lives in supported accommodation or receives care by his mother, Danielle\*. When the NARWP was waived last year Josh was able to live in supported accommodation paid for with his JobSeeker payments. As a result of the NARWP being reinstated, Josh no longer receives JobSeeker and must move back in with his parents. Danielle must now care for Josh but cannot receive Carer Payment while doing so because of the NARWP.

\* Names changed

### Case Study 2: Juliana

Juliana\* became a permanent resident in July 2020. Juliana has tertiary qualifications but her US qualifications were not able to be recognised in her field. Juliana had been working but her position was discontinued due to the coronavirus pandemic. After experiencing family violence, Juliana left the home she had lived in with her partner and signed a new lease. In January 2021 Juliana found herself in financial hardship and was paid Special Benefit. In February she was moved onto another payment. When the NARWP was reinstated in March, Juliana didn't know how she was going to pay the rent. Juliana told us that she wondered if the state was trying to force her back to an unsafe domestic situation.

\* Name changed



## Conclusion and recommendation to the Committee

The Bill would introduce harsh measures that would disproportionately affect vulnerable people, and ignore the fact recognised by the current NARWP regime that those who care for others are often not in a position to support themselves. The exemptions that are available to the NARWP should not be sufficient to convince the Committee that vulnerable people would be able to access the social security system.

Consideration of the Bill provides the Committee an opportunity to consider whether the NARWP is an appropriate feature to include in the social security system at all. Our position is that it is not.

### Recommendation

That the Social Services Legislation Amendment (Consistent Waiting Periods for New Migrants) Bill 2021 not be passed.

### Contacts for this submission

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We acknowledge the Wurundjeri People of the Kulin Nation as the traditional owners of the land upon which we work. We pay our sincere respects to their Elders past and present and acknowledge their continuing connection to the land.