



Australian Government

Department of Social Services

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Senator Dean Smith
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Senate Community Affairs Legislation Committee
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Dear Senator Smith

**ADDENDUM TO THE SUBMISSION TO THE SENATE COMMUNITY AFFAIRS
LEGISLATION COMMITTEE**

Further to the information provided at the hearings on 17 April 2018 for the Inquiry into the Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2018, please find attached additional information on the change of circumstances exemption for Special Benefit, including the timing of the change of circumstances, particularly in relation to family or domestic violence.

I trust that the Committee will find this additional information helpful.

Yours sincerely

Shane Bennett

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Additional Information on Special Benefit

Change of circumstances exemption

The Newly Arrived Resident's Waiting Period (NARWP) for Special Benefit applies to people who hold a permanent visa or a temporary Partner or Partner (Provisional) visa.¹ Holders of these visas may be exempt from the NARWP if they have experienced a substantial change of circumstance and are in financial hardship.

The substantial change of circumstance must be beyond the person's control and have occurred after arrival in Australia and since the start of their waiting period. Specific circumstances are not detailed in the legislation and are at the discretion of the decision-maker. However, policy guidance for decision-makers in the Guide to Social Security Law includes examples of what may be classified as a substantial change of circumstances:

- Person or their sponsor/partner has a prolonged illness or injury and is unable to work and/or there are significant medical costs being incurred
- Person loses their job through no fault of their own and the job was organised or commenced prior to grant of the visa or arrival in Australia
- Sponsor or partner loses job through no fault of their own and the job was organised or commenced after the Special Benefit claimant's arrival
- Separation from a partner and the person was the victim of domestic/family violence
- A child is born or family becomes responsible for a dependent child and the child has (or develops) a severe medical condition or a severe disability that incurs significant additional costs to the person or partner
- Sponsor or partner dies and the person has no means of support
- Sponsor or partner becomes a long-term prisoner or is confined long-term to a hospital, psychiatric institution or nursing home and the person has no means of support
- Sponsor or partner has been notified as a missing person or has abandoned the person has no other means of support
- The person is the victim of substantiated domestic violence and has no other means of support.

Cameos of common scenarios in which a person may receive Special Benefit due to a substantial change of circumstance are included in the Department's initial submission to the Inquiry.

Timing of the substantial change in circumstances

The policy intent is that the change in circumstances exemption is available to people who have suffered a substantial change in circumstances beyond their control after arrival in

¹ Temporary Partner and Partner (Provisional) visas are issued to people applying for a permanent partner visa and allows them to come to or remain in Australia while their permanent visa application is being processed.

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Australia and after their NARWP would otherwise have commenced. This reflects the broader intent of the NARWP.

The NARWP is designed to ensure that people seeking to settle permanently in Australia are self-reliant for a period when they first settle. The change in circumstances exemption is intended to provide a safety net for migrants whose circumstances change while they are serving the waiting period and who are no longer able to support themselves as planned for the rest of that period.

People who have a change in circumstances prior to coming to Australia or prior to being granted a permanent visa and commencing the NARWP are expected to factor their new circumstances into their plans for how they will support themselves during their waiting period.

The following table outlines the policy intent for the timing of a substantial change in circumstances for permanent and temporary holders.

Visa type	When the substantial change in circumstances must occur
Person holds a permanent visa granted in Australia	After the person became the holder of the visa
Person holds a permanent visa granted outside of Australia	After the person first entered Australia on the visa
Person holds a subclass 820 (Partner) visa (a person applies for this visa in Australia)	After the person applied for the visa
Person holds a subclass 309 (Partner (Provisional)) visa (a person applies for this visa outside of Australia)	After the person first entered Australia after having applied for the visa

Example 1: A person migrates to Australia on a skilled permanent visa to take up an employment opportunity. After arriving in Australia on the permanent visa, the person suffers a serious long-term illness which prevents them from working. They are forced to leave their job and are no longer able to support themselves as they had originally planned. The illness is deemed severe enough to be considered a substantial change in circumstances and the person may receive Special Benefit, provided all other requirements are met.

Example 2: A person is granted a permanent skilled visa outside of Australia and has been offered employment in Australia to commence upon arrival. Before arriving in Australia, the offer of employment is withdrawn. This is not considered a substantial change of circumstances for the purposes of the exemption as the change in circumstances occurred before the person entered Australia. In this case, the person is expected to make alternative plans for how they will support themselves before they come to Australia.

Example 3: A person is working in Australia on a temporary work visa. They decide to settle permanently in Australia and apply for a permanent skilled visa. Before the visa is granted, the person's employer becomes bankrupt. This is not considered a substantial change of circumstances for the purposes of the exemption as the change in circumstances occurred

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before the person was granted a permanent resident visa. In this case, the person is expected to make alternative plans for how they will continue support themselves before accepting the permanent visa.

Timing of substantial change in circumstances due to domestic or family violence

An episode of domestic and family violence may not be isolated to one particular event. Victims often suffer an episode of domestic and family violence over a period of time that may include incidences of abuse, leaving the perpetrator, and in many cases, a period of trauma. Domestic and family violence can have significant impacts on a person's ability to support themselves.

Where a person claims Special Benefit and has experienced domestic or family violence, they are referred to a Department of Human Services social worker for assessment and referral to other services or supports where necessary.

The timing of a substantial change in circumstances for a Special Benefit claimant who is the victim of family or domestic violence is not necessarily the day on which the abuse occurred or the day that the victim left the perpetrator. Where these events occurred prior to the commencement of the person's NARWP, consideration must be given as to whether the person is still being impacted by the domestic and family violence. For example, if a Special Benefit claimant is unable to seek work or take up employment because of trauma or intimidation, they may be considered to be currently experiencing the effects of family and domestic violence. In this situation, the person would be regarded as having suffered domestic or family violence both before and after the commencement of the NARWP and the person may receive Special Benefit, provided all other requirements are met.

Example 4: A person is working in Australia on a working holiday visa. The person applies for a permanent skilled visa to remain in Australia. During this time they begin a relationship with an Australian resident. However, before the permanent visa is granted, the person experiences domestic violence and leaves the relationship. The permanent visa is later granted but the person is suffering ongoing trauma associated with the experience and is unable to continue working. The person is considered to have suffered domestic violence since the start of the NARWP which constitutes a substantial change in circumstances. The person may receive Special Benefit, provided all other requirements are met.

Amendments to align the legislation with policy intent

Under the Bill, the change in circumstances exemption provision is being clarified to better reflect existing policy intent.

As noted above, the change in circumstances exemption is intended to provide a safety net for migrants whose circumstances change while they are serving the waiting period and who are no longer able to support themselves as planned for the rest of that period.

However, the current legislation allows for any change of circumstances that occurs after they first arrived in Australia.

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This means, for example, that if a person initially comes to Australia temporarily on a tourist visa before they later migrate permanently, a change of circumstances that occurs after their holiday in Australia and before they migrate permanently could potentially be used to claim a change of circumstances exemption.

This is not the policy intent – people who migrate permanently should plan for how they will support themselves during the waiting period based on their circumstances at the time (including any previous change in circumstances).

The amendments being made will better align the legislation with this policy intent by clarifying that the change of circumstances must have occurred after arrival in Australia and after their NARWP would otherwise have commenced.

Payment of Special Benefit and supplementary benefits

If a person serving the NARWP meets the requirements for the exemption (as described above), they may be granted Special Benefit, provided they meet all the other eligibility requirements for this payment, including income and assets test.

The rate of Special Benefit paid is usually equal to Newstart Allowance (or Youth Allowance if the person is aged under 22 years).

Supplementary payments may also be paid to Special Benefit recipients where eligible, including:

- Rent Assistance (up to \$134.80 per fortnight)
- Energy Supplement (up to \$14.10 per fortnight)
- Pharmaceutical Allowance (up to \$6.20 per fortnight)
- Pension Supplement (up to \$67.30 per fortnight for people over Age Pension age)
- Remote area allowance (up to \$18.20 per fortnight plus \$7.30 per fortnight for each child)
- Telephone allowance (up to \$42.80 per quarter)
- Education Entry Payment (\$208 for single parents only)
- Pensioner Education Supplement (up to \$62.40 for single parents only)
- Approved program of work supplement (\$20.80 per fortnight for nominated visa holders only).

In addition, where a person is receiving Special Benefit, they will also be exempt from the NARWP for Carer Allowance, Family Tax Benefit, Parental Leave Pay and Dad and Partner Pay (noting eligibility requirements still apply). This means that people who are receiving Special Benefit under the substantial change in circumstances exemption, and have children and/or caring responsibilities for a person or child with disability, will also be able to access these additional payments where eligible.

Special Benefit recipients are also automatically issued a Health Care Card or a Pensioner Concession Card if they are over the age of 60 with nine continuous months on payment.

The Health Care Card or Pensioner Concession Card entitles the holder to cheaper prescription medicines under the Pharmaceutical Benefits Scheme (PBS), bulk-billed

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doctor's visits at the doctor's discretion and a bigger refund for medical costs through the Medicare Safety Net. Pensioner Concession Card holders are also entitled to support with hearing services.

Some state and territory governments and local councils offer additional concessions to Health Care Card and Pensioner Concession Card holders including for energy bills, healthcare, public transport and rates. These concessions are at the provider's discretion.