

# Chapter 1

## Introduction

### Purpose of the bill

1.1 The Social Services Legislation Amendment (Encouraging Self-Sufficiency for Newly Arrived Migrants) Bill 2018 (bill) seeks to increase the existing newly arrived resident's waiting period (NARWP) from 104 weeks to 156 weeks (two years to three years) for various social security payments, concession cards and farm household support allowances.<sup>1</sup>

1.2 In addition, the bill seeks to introduce a NARWP of 156 weeks for family tax benefit, paid parental leave, dad and partner pay, parenting payment, carer allowance, bereavement allowance and widow allowance.<sup>2</sup>

### Budget 2018-19 announcement

1.3 In the 2018-19 Budget, the Government announced its intention to further extend the NARWP from three years to four years from 1 July 2018.<sup>3</sup> The further extension to four years is expected to save an additional \$202.5 million over five years from 2017-18 to 2021-22.<sup>4</sup>

1.4 This report considers the provisions of the bill as they were at the time of the committee's inquiry, that is, to increase the NARWP from two years to three years.

### Background

1.5 A NARWP was first introduced for certain social security payments in 1993, with the current 104 week NARWP introduced in 1997.<sup>5</sup>

1.6 The NARWP aims to ensure that migrants make provision to support themselves and their families when they first settle in Australia.<sup>6</sup>

1.7 In most cases the NARWP applies to migrants settling permanently in Australia but may also apply to temporary visas holders in certain circumstances.<sup>7</sup>

---

1 Explanatory Memorandum (EM), Outline, p. 1.

2 EM, Outline, p. 1.

3 Commonwealth of Australia, *Budget Measures: Budget Paper No. 2 2018-19*, p. 172.

4 Ms Serena Wilson PSM, Deputy Secretary, Social Security, Department of Social Services, *Committee Hansard*, 31 May 2018, p. 18.

5 EM, Schedule 1, p. 2.

6 EM, Schedule 1, p. 2.

7 EM, Schedule 1, p. 2.

## Overview of the bill

### *Schedule 1*

1.8 Schedule 1 increases the existing NARWP from 104 weeks to 156 weeks for various social security payments and concession cards including:

- Newstart allowance;
- Youth allowance;
- Austudy;
- Sickness allowance;
- Carer payment;
- Special Benefit;
- Mobility allowance;
- Pensioner education supplement;
- Health care card (low income); and
- Commonwealth seniors health card.<sup>8</sup>

1.9 Schedule 1 also introduces a 156 week NARWP for bereavement allowance, widow allowance and parenting payment. Currently these payments are not subject to a NARWP but do require recipients to have served a 104 week qualifying residence period. The current 104 week qualifying residence period will continue and will be served concurrently with the 156 week NARWP introduced by the bill.<sup>9</sup>

1.10 In addition, a 156 week NARWP will be introduced for carer allowance. Currently both the carer and care receiver must be Australian residents but there is no qualifying residence period for carer allowance. The introduction of a NARWP for carer allowance will mirror the existing provisions for carer payment and other working-age social security payments.<sup>10</sup>

1.11 Existing exemptions from the NARWP will continue to apply and will also apply to the NAWRP for bereavement allowance, widow allowance, parenting payment and carer allowance. These include exemptions for refugees or former refugees at the time of the claim, or for people who are Australian citizens.<sup>11</sup>

1.12 The amendments proposed by the bill will not apply to protected special category visa (SCV) holders who were excluded from changes to access social security from 26 February 2001.<sup>12</sup>

---

8 EM, Schedule 1, p. 2.

9 EM, Schedule 1, p. 2.

10 EM, Schedule 1, p. 3.

11 EM, Schedule 1, p. 3.

12 EM, Schedule 1, p. 4.

1.13 Schedule 1 also amends an existing exemption from the NARWP for Special Benefit to align the legislation with established policy. The amendment clarifies that only people who have a change of circumstances during their waiting period, rather than any time after their arrival in Australia, should be exempt from the NARWP for Special Benefit.<sup>13</sup>

1.14 The measures contained in Schedule 1 will apply to those granted a visa on or after 1 July 2018, or the first 1 January or 1 July after Royal Assent.<sup>14</sup>

### ***Schedule 2***

1.15 Schedule 2 increases the existing NARWP from 104 weeks to 156 weeks for farm household allowance, consistent with the amendments in Schedule 1 to various social security payments.<sup>15</sup>

1.16 Existing exemptions to the NARWP will continue to apply, including exemptions for refugees or former refugees at the time of the claim, people who become a lone parent and people who are Australian citizens.<sup>16</sup>

1.17 This measure will apply to those granted a visa on or after 1 July 2018, or the first 1 January or 1 July after Royal Assent.<sup>17</sup>

### ***Schedule 3***

1.18 Schedule 3 introduces a 156 week NARWP for the family tax benefit. However, this change will not affect an individual's eligibility for child care related payments, stillborn baby payment or double orphan pension.<sup>18</sup>

1.19 Exemptions of a similar nature to those which apply to Special Benefit payments under the *Social Security Act 1991* (Cth) (Social Security Act) will apply to allow immediate access to Family Tax Benefit in particular circumstances, including for:

- people who are on visas issued for humanitarian reasons (including those who subsequently become permanent visa holders);
- refugees and former refugees; and
- family members of refugees.<sup>19</sup>

1.20 This measure will apply to those granted a visa on or after 1 July 2018, or the first 1 January or 1 July after Royal Assent.<sup>20</sup>

---

13 EM, Schedule 1, p. 4.

14 EM, Schedule 1, p. 3.

15 EM, Schedule 2, p. 12.

16 EM, Schedule 2, p. 12.

17 EM, Schedule 2, p. 12.

18 EM, Schedule 3, p. 14.

19 EM, Schedule 3, p. 14.

20 EM, Schedule 3, p. 16.

### **Schedule 4**

1.21 Schedule 4 introduces a 156 week NARWP for parental leave payment and dad and partner pay to align these payments with the NARWP for social security payments and the farm household allowance.<sup>21</sup>

1.22 Exemptions of a similar nature to those which apply to special benefit payments under the Social Security Act will apply to allow immediate access to parental leave payment and dad and partner pay in particular circumstances, including for:

- people who are on visas issued for humanitarian reasons (including those who subsequently become permanent visa holders);
- refugees and former refugees; and
- family members of refugees.<sup>22</sup>

1.23 This measure will apply to those granted a visa on or after 1 July 2018, or the first 1 January or 1 July after Royal Assent.<sup>23</sup> However, the measure will not apply to persons whose baby is born prior to, or during the first six months after, commencement of the Act.<sup>24</sup>

### **Financial implications**

1.24 The measures contained in this bill will save approximately \$1.3 billion over the forward estimates for the whole of government. The table below outlines the impact on the fiscal balance administered by the Department of Social Services for each schedule of the bill.

<b>Measure</b>	<b>Financial impact forward estimates (DSS)</b>
Schedule 1 – Social Security amendments	Savings of \$141.8 million
Schedule 2 – Farm household support amendments	No impact
Schedule 3 – Family assistance amendments	Savings of \$898.4 million
Schedule 4 – Paid parental leave amendments	Savings of \$241.1 million

Source: Explanatory Memorandum, Financial Impact Statement, p. 2.

21 EM, Schedule 4, p. 20.

22 EM, Schedule 4, p. 20.

23 EM, Schedule 4, p. 21.

24 EM, Schedule 4, p. 22.

---

## Consideration by other committees

### *Senate Standing Committee for the Scrutiny of Bills*

1.25 The Senate Standing Committee for the Scrutiny of Bills made no comment on this Bill.<sup>25</sup>

### *Parliamentary Joint Committee on Human Rights*

1.26 The Parliamentary Joint Committee on Human Rights (human rights committee) noted that the statement of compatibility acknowledges that the measures contained in the bill engage the right to social security, right to paid parental leave and the right to equality and non-discrimination.<sup>26</sup>

1.27 The human rights committee commented that extending the waiting period for newly arrived migrants may further restrict access to social security and therefore be considered a retrogressive measure.<sup>27</sup> The human rights committee noted that retrogressive measures are permissible under international law where 'they address a legitimate objective, are rationally connected to that objective and are a proportionate way to achieve that objective'.<sup>28</sup>

1.28 The human rights committee expressed concern about the compatibility of the bill with a number of rights including: social security; an adequate standard of living; health; maternity leave; and equality and non-discrimination.<sup>29</sup>

1.29 The human rights committee sought advice from the Minister for Social Services (minister) in relation to the rights engaged by the bill and in particular:

- whether there is reasoning or evidence that establishes that the stated objective addresses a pressing or substantial concern in the specific circumstances of the proposed legislation;
- how the measure is effective to achieve (that is, rationally connected to) that objective;
- whether the limitation is a reasonable and proportionate measure to achieve its stated objective; and
- whether alternatives to reducing access to the various social security payments have been fully considered.<sup>30</sup>

---

25 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 3 of 2018*, March 2018, p. 45.

26 Parliamentary Joint Committee on Human Rights, *Report 3 of 2018*, March 2018, pp. 71, 74, 77.

27 Parliamentary Joint Committee on Human Rights, *Report 3 of 2018*, March 2018, p. 71.

28 Parliamentary Joint Committee on Human Rights, *Report 3 of 2018*, March 2018, p. 71.

29 Parliamentary Joint Committee on Human Rights, *Report 3 of 2018*, March 2018, pp. 73–74, 76, 77–78.

30 Parliamentary Joint Committee on Human Rights, *Report 3 of 2018*, March 2018, pp. 73–74, 76, 77–78.

1.30 A response was received from the minister on 19 April 2018 and the human rights committee concluded its consideration of the bill in its *Report 4 of 2018*.<sup>31</sup>

1.31 In its consideration of the minister's response, the human rights committee noted that by improving the 'budget bottom line' the measures contained in the bill are likely to be rationally connected to the stated objective.<sup>32</sup> In addition, the committee observed that the range of exemptions to the NARWP and the availability of Special Benefit act as important safeguards to ensure that those in situations of financial hardship or whose circumstances change can afford the basic necessities to maintain an adequate standard of living.<sup>33</sup> The human rights committee concluded that the bill appears likely to be compatible with the right to social security.<sup>34</sup>

1.32 The human rights committee noted the minister's advice that the measures relating to parental leave payment and dad and partner pay will not apply to expectant parents and include a number of exemptions. However, the committee maintained their concerns about the impact of these measures on women.<sup>35</sup>

### **Conduct of the inquiry**

1.33 On 28 March 2018 the Senate referred the provisions of the bill to the Community Affairs Legislation Committee (committee) for inquiry and report by 4 May 2018.<sup>36</sup> The committee subsequently sought extensions of time to report to 28 November 2018.<sup>37</sup>

1.34 Details of the inquiry, including a link to the bill and associated documents, were placed on the committee's website.<sup>38</sup> The committee wrote to relevant individuals and organisations inviting submissions to the inquiry by 11 April 2018. Submissions continued to be accepted after that date.

1.35 The committee received 25 submissions to the inquiry and held one public hearing in Melbourne on 17 April 2018. Submitters and witnesses are listed at Appendices 1 and 2.

---

31 Parliamentary Joint Committee on Human Rights, *Report 4 of 2018*, May 2018, p. 145.

32 Parliamentary Joint Committee on Human Rights, *Report 4 of 2018*, May 2018, p. 150.

33 Parliamentary Joint Committee on Human Rights, *Report 4 of 2018*, May 2018, p. 152.

34 Parliamentary Joint Committee on Human Rights, *Report 4 of 2018*, May 2018, p. 153.

35 Parliamentary Joint Committee on Human Rights, *Report 4 of 2018*, May 2018, pp. 158–159.

36 *Journals of the Senate*, No. 94, 28 March 2018, p. 2979.

37 *Journals of the Senate*, No. 95, 8 May 2018, p. 3026; *Progress Report No. 1*, 4 May 2018; *Progress Report No. 2*, 18 May 2018; *Progress Report No. 3*, 25 May 2018; *Progress Report No. 4*, 15 June 2018; *Progress Report No. 5*, 22 June 2018; *Progress Report No. 6*, 29 June 2018; *Journals of the Senate*, No. 107, 14 August 2018, p. 3442; *Journals of the Senate*, No. 111, 21 August 2018, p. 3555; *Journals of the Senate*, No. 120, 19 September 2018, p. 3823; *Journals of the Senate*, No. 124, 17 October 2018, p. 3963.

38 See: Community Affairs Legislation Committee, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/self-sufficiencymigrants](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/self-sufficiencymigrants) (accessed 18 April 2018).

1.36 The committee thanks those individuals and organisations that made submissions to the inquiry and gave evidence at its public hearings.

**Note on references**

1.37 References to the committee *Hansard* is to the proof transcript. Page numbers may vary between the proof and official *Hansard* transcript

