

Chapter 2

Key issues

Introduction

2.1 This chapter focuses on the key issues raised throughout the Community Affairs Legislation Committee (committee) inquiry into the Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2018 (bill).

2.2 The key issues raised by submitters and witnesses included:

- impact of the bill on vulnerable migrants;
- exemptions to the newly arrived resident's waiting period (NARWP);
- ability of newly arrived migrants to apply for Special Benefit payment; and
- barriers and challenges migrants experience once they have settled in Australia.

Impact on migrants

2.3 Submitters and witnesses raised concerns that the proposed amendments to the NARWP would have a disproportionate impact on vulnerable migrants, including young people, single parents, victims of domestic and family violence and migrants with refugee-like experiences.¹

2.4 The Ethnic Communities Council of Victoria (ECCV) submitted that newly arrived migrants are just as vulnerable, if not more vulnerable, to changes of circumstances such as family breakdown, loss of employment and housing insecurity. ECCV expressed concern that any change to the NARWP would lead to hardship for individuals who experience an unexpected change in circumstances.² For example:

The ECCV is especially concerned about the impact on single parents and their children, women who have experienced domestic violence and new residents who lose their jobs, given the exploitation of a lot of workers from non-English-speaking backgrounds. [...]

There are children whose parents are waiting for carer allowance or family tax benefits and new residents who develop health conditions. Sometimes we don't know; these things happen from time to time. They may require

1 See, for example: Multicultural Youth Affairs Network NSW (MYAN NSW), *Submission 3*; Federation of Ethnic Communities' Councils of Australia (FECCA), *Submission 4*; Ethnic Communities Council of Victoria (ECCV), *Submission 6*; Ethnic Communities Council of New South Wales (ECCNSW), *Submission 7*; Youth Action, *Submission 9*; Migration Council of Australia, *Submission 10*; Tasmanian Council of Social Service, *Submission 18*, Settlement Services International, *Submission 20*; National Council for Single Mothers and their Children, *Submission 22*; Financial Counselling Australia, *Submission 24*.

2 ECCV, *Submission 6*, p. 1.

ongoing medical support or medication. That creates quite an impost on the family situation.³

2.5 Similarly, the Settlement Council of Australia submitted that given the significance of relocation to Australia as a life-changing event, newly arrived migrants are vulnerable to hardship and that the extension of the NARWP may lead to a number of vulnerable migrants unable to access assistance.⁴

2.6 Multicultural Youth Advocacy Network Australia (MYAN Australia) expressed particular concern for young people arriving in Australia on subclass 115 (Remaining Relative) and subclass 117 (Orphan Relative) visas, noting that this cohort of migrants are particularly vulnerable due to their experience before arriving in Australia:

These children and young people have commonly faced pre-arrival trauma, lived for long periods in very unsafe circumstances, without family or, necessarily, community supports. They've experienced disrupted education and limited access to health care. Indeed their circumstances are very similar, if not identical, to those young people who arrive as refugees through our humanitarian program.⁵

2.7 However, as these young people arrive in Australia through the family migration stream, and not the humanitarian program, they are subject to the NARWP.⁶ MYAN Australia submitted that some young people already face challenges under the current waiting period, particularly in cases where a breakdown in family relations occurs after their arrival in Australia, often due to increased pressure on housing and lack of financial capabilities of their carer families.⁷

2.8 The Harmony Alliance questioned the reason for introducing a NARWP for particular crisis payments, such as the widow allowance, bereavement allowance and carer allowance, noting that these payments are more likely to be accessed by women, as women provide a disproportionate amount of care to family members and are more likely to be reliant on a partner's income.⁸

2.9 A number of submitters and witnesses expressed the view that the NARWP could create a two-class system where Australian citizens are immediately eligible for certain social security payments, but newly arrived migrants will be ineligible for

3 Mr Eddie Micallef, Immediate past chair, ECCV, *Committee Hansard*, 17 April 2018, p. 31.

4 Settlement Council of Australia, *Submission 8*, p. 2.

5 Ms Nadine Liddy, National Coordinator, Multicultural Youth Advocacy Network Australia (MYAN Australia), *Committee Hansard*, 17 April 2018, p. 3.

6 MYAN Australia, *Submission 12*, p. 7.

7 MYAN Australia, *Submission 12*, p. 7. See also MYAN NSW, *Submission 3*, p. 2.

8 Harmony Alliance, *Submission 19*, p. 2; Ms Iona Roy, Manager, Secretariat, Harmony Alliance: Migrant and Refugee Women for Change, *Committee Hansard*, 17 April 2018, p. 20. See also Migration Council of Australia, *Submission 10*, p. 4.

three years under the NARWP.⁹ For example, Federation of Ethnic Communities' Councils of Australia (FECCA) explained:

Under the amendment, you could possibly have the situation where two children are born in the same hospital on the same day but their families and therefore those children will be treated in vastly different ways because of the residency of their parents. The family of the Australian-born child of Australian citizens will be eligible for those payments, which will ultimately be used for the care and upkeep of that child. But the parents of the Australian child who was born in the same hospital on the same day will not receive those payments because of their particular visa category, and therefore that child is being born into a situation where they will be economically disadvantaged through no fault of their own and they are an Australian citizen by being born in Australia.¹⁰

2.10 The Law Council of Australia expressed concern that the changes proposed by the bill would target migrants without clear guidance as to how the measures contained in the bill address a substantial policy concern, or evidence to suggest that there is an over-reliance on social security by newly arrived migrants.¹¹

2.11 Several submitters and witnesses recognised that the majority of migrants impacted by the bill are able to support themselves following their arrival in Australia.¹²

2.12 When introducing the bill, the Minister for Social Services, the Hon. Dan Tehan MP, noted that waiting periods for newly arrived migrants are designed to ensure that people who decide to apply for a permanent visa in Australia take steps to ensure that they can provide their own financial support during their initial settlement period.¹³

2.13 The Department of Social Services (department) submitted that the eligibility criteria for permanent residency under the skilled and family streams of the migration program targets people who are more likely to be able to support themselves and their families when they first arrive in Australia, such as through work, existing resources, or family support.¹⁴

9 See, for example: MYAN NSW, *Submission 3*; FECCA, *Submission 4*; Brotherhood of St Laurence, *Submission 13*; National Social Security Rights Network, *Submission 15*, Settlement Services International, *Submission 20*.

10 Dr Alia Imtoul, Director of Policy, FECCA, *Committee Hansard*, 17 April 2018, p. 32.

11 Law Council of Australia, *Submission 16*, p. 6. See also Anglicare Australia, *Submission 1*, p. 1; St Vincent de Paul Society National Council (SVDP), *Submission 21*, p. 5.

12 See, for example: Settlement Council of Australia, *Submission 8*; Migration Council of Australia, *Submission 10*; Dr Imtoul, FECCA, *Committee Hansard*, 17 April 2018, p. 34; Ms Esta Paschalidis-Chilas, Manager of Government and Member Relations, Settlement Services International, *Committee Hansard*, 17 April 2018, p. 38.

13 The Hon. Dan Tehan MP, Minister for Social Services, *House of Representatives Hansard*, 15 February 2018, p. 1605.

14 Department of Social Services, *Submission 5*, p. 3.

2.14 Notably, the Productivity Commission¹⁵ found that permanent non-humanitarian migrants who arrived between 2000 and 2011 (and would have been subject to a two year waiting period unless exempt) had lower take-up rates of income support in 2011 than the general population.¹⁶ The Productivity Commission noted that only three per cent of permanent skilled migrants and 13 per cent of family migrants who arrived between 2000 and 2011 were receiving any form of income support in 2011, compared to 17 per cent for the general population.¹⁷

2.15 The Minister for Social Services also explained that the full range of existing exemptions from the NARWP, which provide important protections for potentially vulnerable migrants, will be retained under the bill.¹⁸

Exemption provisions

2.16 A number of submitters and witnesses acknowledged and supported the retention of the current exemption provisions, particularly for refugees and their families.¹⁹ However, as outlined above, other cohorts of newly arrived migrants were identified as potentially vulnerable, with submitters and witnesses raising concerns that support may not be available when migrants are unable to support themselves.

2.17 The department explained to the committee the range of exemptions to the NARWP which are available to migrants in need. As noted by the Minister for Social Services, these exemption provisions are currently in place and will be retained under the proposed bill.²⁰

Refugee and humanitarian exemptions

2.18 The department submitted that refugees, former refugees and family members of refugees will continue to be exempt from the NARWP for all payments and concession cards.²¹

2.19 However, the Refugee Advice and Casework Service queried whether the exemption also extended to Safe Haven Enterprise Visa (SHEV) holders who may also be considered refugees.²²

15 Productivity Commission, *Migrant Intake into Australia*, 12 September 2016, <https://www.pc.gov.au/inquiries/completed/migrant-intake/report> (accessed 26 April 2018).

16 Department of Social Services, *Submission 5*, p. 4.

17 Department of Social Services, *Submission 5*, p. 4.

18 The Hon. Dan Tehan MP, Minister for Social Services, *House of Representatives Hansard*, 15 February 2018, p. 1606.

19 See, for example: Mr Micallef, ECCV, *Committee Hansard*, 17 April 2018, p. 31; Asylum Seeker Resource Centre, *Submission 11*; Settlement Council of Australia, *Submission 8*; Australian Council of Social Service (ACOSS), *Submission 14*; National Social Security Rights Network, *Submission 15*; Law Council of Australia, *Submission 16*; SVDP, *Submission 21*.

20 Department of Social Services, *Submission 5*, pp. 7–9.

21 Department of Social Services, *Submission 5*, p. 7.

2.20 The department clarified that temporary humanitarian-type visa holders, including SHEV and Temporary Protection Visa holders, will continue to be exempt from the NARWP for Special Benefit, low income health care card, family tax benefit, parental leave payment and dad and partner pay, noting that these visa holders are generally not eligible for other payments.²³ The department added that where a SHEV holder moves to a permanent visa, they will remain exempt from the NARWP for these payments and will continue to have access to these payments where eligible, and while serving the NARWP for other payments.²⁴

2.21 The department noted that the exemption to the NARWP for refugees and temporary humanitarian-type visa holders recognises the inherent vulnerability of these visa holders, who generally have no other means of support following their arrival in Australia and are usually not able to plan to support themselves prior to applying for a humanitarian visa.²⁵

Change of circumstance exemptions

2.22 Schedule 1 to the bill makes a minor technical amendment to an existing exemption for the NARWP for Special Benefit payment to align the legislation with the existing intent of the policy.²⁶ The department explained that:

It's clarifying and making more explicit what the policy intent is and it's closing a potential loophole where people might, for example, have arrived in Australia on a tourist visa, which they might be able to argue was their first arrival in Australia. They leave, come back to Australia, gain permanent residency and argue that their change of circumstances happened after they arrived in Australia on a tourist visa when the change of circumstances was always intended to apply for a change that happened after they were granted a permanent visa. It's not changing any of the policy intent. It's making absolutely clear that that intent is intended to apply only to people who are granted a permanent visa.²⁷

2.23 Under the bill, people will remain exempt from the NARWP for Special Benefit if they have experienced a substantial change in circumstances since the start of their waiting period. The exemption is designed to ensure a safety net for people who find themselves in hardship and have no other means of support for reasons

22 Refugee Advice and Casework Service, *Submission 17*, p. 2. See also: Ms Jana Favero, Director, Advocacy and Campaigns, Asylum Seeker Resource Centre, *Committee Hansard*, 17 April 2018, p. 44.

23 Department of Social Services, *Submission 5*, p. 7.

24 Department of Social Services, answers to questions on notice, 17 April 2018 (received 24 April 2018), [p. 1].

25 Department of Social Services, *Submission 5*, p. 7.

26 Explanatory memorandum (EM), Schedule 1, p. 4.

27 Ms Anita Davis, Branch Manager, International Policy and Payment Support, Payments Policy Group, Department of Social Services, *Committee Hansard*, 17 April 2018, p. 49.

which are beyond their control.²⁸ The reasons are outlined in the *Guide to Social Security Law*²⁹ and include:

- victims of domestic and family violence;
- people who experience prolonged injury or illness and are unable to work;
- where a dependent child develops a severe medical condition, disability or injury; and
- when a sponsor or partner dies, becomes a missing person or becomes a long term prisoner.³⁰

2.24 While some submitters and witnesses criticised the amount and accessibility of Special Benefit,³¹ the department noted that the payment is intended as a last resort that provides support to people who are experiencing financial hardship and are unable to earn a sufficient livelihood and not eligible for any other income support payment.³²

2.25 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.³³

2.26 In addition, recipients of Special Benefit may also be eligible for a range of supplementary payments including Rent Assistance, Energy Supplement and Education Entry Payment. Special Benefit recipients are also automatically issued a Health Care Card or a Pensioner Concession Card which entitles the holder to cheaper prescription medicines under the Pharmaceutical Benefits Scheme, bulk-billed doctor's visits (subject to the doctor's discretion) and a bigger refund for medical costs through the Medicare Safety Net.³⁴

2.27 Of the 183 608 permanent skilled and family visas granted in 2016–17, just 915 people received Special Benefit payment as a result of an exemption from the NARWP, representing just 0.5 per cent of permanent visas granted that year.³⁵

28 Department of Social Services, *Submission 5*, p. 8.

29 Department of Social Services, *Guide to Social Security Law*, 3 April 2018, <http://guides.dss.gov.au/guide-social-security-law> (accessed 26 April 2018).

30 Department of Social Services, *Submission 5*, p. 3; Department of Social Services, answers to questions on notice, 17 April 2018 (received 24 April 2018), [pp. 9–10].

31 See, for example: Professor Shelley Mallett, General Manager, Research and Policy Centre, Brotherhood of St Laurence, *Committee Hansard*, 17 April 2018, p. 7; Carers Australia, *Submission 2*, pp. 4–5; ACOSS, *Submission 14*, pp. 2–3; National Social Security Rights Network, *Submission 15*, [p. 6].

32 Department of Social Services, *Submission 5*, p. 8.

33 Department of Social Services, *Supplementary Submission 5*, p. 4.

34 Department of Social Services, *Supplementary Submission 5*, pp. 4–5.

35 Mr Shane Bennett, Group Manager, Payments Policy, Department of Social Services, *Committee Hansard*, 17 April 2018, pp. 46, 50.

2.28 The department acknowledged that while some stakeholders may view the amendment regarding a change in circumstances as narrowing the eligibility, the amendment reflects how the policy is currently implemented.³⁶

Victims of domestic and family violence

2.29 A number of submitters and witnesses raised particular concern about the impact of the bill on newly arrived migrants who were victims of domestic and family violence, particularly regarding the timing of a change in circumstances to access special benefit and the timeliness of processing claims.³⁷

2.30 The department observed that an episode of domestic and family violence may not be isolated to one particular event and that the effects are often felt over a period of time, including instances of abuse, leaving the perpetrator and ongoing trauma as a result.³⁸

2.31 The department explained that, the timing of a substantial change in circumstances for the purpose of seeking an exemption to the NARWP for Special Benefit is not necessarily the day on which the abuse occurred or the day that the victim left the perpetrator.³⁹ 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.⁴⁰

2.32 In addition, the Department of Human Services has established processes in place to refer people claiming Special Benefit due to domestic violence to a social worker for support and assessment. The Family Violence Unit within the Department of Home Affairs also assesses family violence claims made by visa applicants and provides referral advice to support services.⁴¹

2.33 The Department of Human Services has processes in place to prioritise Special Benefit applications for vulnerable applicants, such as victims of domestic violence and family violence.⁴²

36 Ms Anita Davis, Branch Manager, International Policy and Payment Support, Payments Policy Group, Department of Social Services, *Committee Hansard*, 17 April 2018, pp. 49–50.

37 See, for example: FECCA, *Submission 4*; ECCNSW, *Submission 7*; Migration Council of Australia, *Submission 10*; Harmony Alliance, *Submission 19*; SVDP, *Submission 21*.

38 Department of Social Services, *Supplementary Submission 5*, p. 3.

39 Department of Social Services, *Supplementary Submission 5*, p. 3.

40 Department of Social Services, *Supplementary Submission 5*, p. 3.

41 Department of Social Services, *Submission 5*, p. 9.

42 Department of Social Services, *Submission 5*, p. 3; Department of Social Services, answers to questions on notice, 17 April 2018 (received 24 April 2018), [p. 4].

Barriers experienced by migrants

2.34 Several submitters noted that migrants can face barriers to finding meaningful employment in Australia which subsequently affects their ability to support themselves and their family after settling in Australia.⁴³

2.35 FECCA cited a number of findings from The Characteristics of Recent Migrants Survey published by the Australian Bureau of Statistics in November 2016.⁴⁴ The survey found that 31 per cent of recent migrants who had been employed in Australia reported experiencing some difficulty finding their first job, most commonly due to a lack of Australian work experience or references, a lack of local networks and language difficulties.⁴⁵

2.36 In addition, FECCA identified that culturally and linguistically diverse (CALD) young people also face challenges finding employment in Australia including:

- English language proficiency and employer discrimination due to accent;
- lack of Australian qualifications or limited recognition of overseas qualifications;
- limited familiarity with the Australian workforce, employment systems and culture; and
- experiencing torture or trauma prior to migration to Australia.⁴⁶

2.37 Similarly, the Harmony Alliance submitted that women in Australia from CALD backgrounds have an 11.9 per cent workforce participation gap compared to Australian women, increasing to 23.1 per cent when compared to all Australian men.⁴⁷

2.38 Overall recent migrants and temporary residents experience a high workforce participation of 70 per cent, compared to only 66 per cent of people born in Australia.⁴⁸ However, FECCA observed that 7.4 per cent of recent migrants and temporary residents of Australia are unemployed, two per cent higher than people born in Australia.⁴⁹

2.39 The Settlement Council of Australia and the Migration Council of Australia commented that some migrants may find the settlement process, including finding

43 See, for example: MYAN NSW, *Submission 3*; FECCA, *Submission 4*, Migration Council of Australia, *Submission 10*; Asylum Seeker Resource Centre, *Submission 11*, Brotherhood of St Laurence, *Submission 13*, National Social Security Rights Network, *Submission 15*; SVDP, *Submission 21*.

44 See: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6250.0> (accessed 24 April 2018).

45 FECCA, *Submission 4*, p. 2.

46 FECCA, *Submission 4*, p. 2.

47 Harmony Alliance, *Submission 19*, p. 4.

48 FECCA, *Submission 4*, p. 2.

49 FECCA, *Submission 4*, p. 2.

employment, more difficult than others and that the lack of any kind of support in the first few years of settlement can exacerbate any trouble they experience.⁵⁰ In addition, they noted that the potential for this to occur is far greater in certain cohorts of migrants, including women, young people and those who have vulnerable family members.⁵¹

2.40 The Brotherhood of St Laurence suggested that intensive services should be introduced in order to assist newly arrived migrants to find employment in Australia, noting that they often lack awareness of how to get a job in Australia:

...people come to Australia with rose-coloured glasses about how to get a job in Australia. We need to provide intensive services—and these are few and far between—to get people to understand how to get a job in Australia in their field, how to ensure that people present themselves adequately within that process and then be able to get that job.⁵²

2.41 The department submitted that research has indicated that, since the introduction of the two year NARWP, the majority of migrants who settled in Australia on a permanent skilled or family visa have been able to support themselves, without relying on social security, both during and after the waiting period.⁵³

2.42 In addition, of the 183 608 permanent skilled or family visas granted in 2016–17, 123 567 visas were granted under the skilled stream, indicating that the majority of permanent migrants had skills which were in demand in Australia and would therefore be able to support themselves and their families through work.⁵⁴

2.43 Newly arrived migrants will also remain eligible to volunteer for jobactive services for up to six months which may assist migrants to find work in Australia.⁵⁵

Committee view

2.44 The committee supports the extension of the existing NARWP from two years to three years to encourage newly arrived migrants to support themselves for longer, and contribute socially and economically to Australia before accessing Australia's welfare system.

2.45 The committee supports the intention of the bill to ensure that Australia's welfare system remains fair and sustainable for the future. The NARWP has not

50 Settlement Council of Australia and Migration Council of Australia, answers to questions on notice, 17 April 2018, (received 24 April 2018) p. 1.

51 Settlement Council of Australia and Migration Council of Australia, answers to questions on notice, 17 April 2018, (received 24 April 2018) p. 2.

52 Ms Hutch Hussein, Senior Manager, Refugees, Immigration and Multiculturalism, Brotherhood of St Laurence, *Committee Hansard*, 17 April 2018, p. 6.

53 Department of Social Services, *Submission 5*, p. 4.

54 Department of Social Services, *Submission 5*, p. 3; Department of Social Services, answers to questions on notice, 17 April 2018 (received 24 April 2018), [p. 13].

55 EM, Statement of compatibility, p. 39.

increased in over 20 years while welfare expenditure has grown significantly during this time.

2.46 The committee notes that the introduction of the NARWP for parenting payment, widow allowance, bereavement allowance and carer allowance is consistent with the waiting period for other working age payments.

2.47 The committee also notes that the introduction of a NARWP for parental leave pay and dad and partner pay is consistent with the expectation that migrants who choose to become permanent residents should be able to support themselves and their families for a reasonable period of time after arriving in Australia.

2.48 The committee acknowledges the concerns raised by submitters that the bill may impact migrants who are vulnerable or unable to support themselves. The committee supports the retention of existing exemptions for humanitarian entrants and their families and exemptions for people who experience a substantial change in circumstances after becoming an Australian resident. The committee notes that these exemptions maintain a safety net for migrants who find themselves in need and are supported by departmental processes to refer people to appropriate support services and prioritise applications where necessary.

Recommendation 1

2.49 The committee recommends that the bill be passed.

Senator Lucy Gichuhi

Chair