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**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**SOCIAL SERVICES LEGISLATION AMENDMENT  
(ENCOURAGING SELF-SUFFICIENCY FOR NEWLY ARRIVED MIGRANTS) BILL  
2018**

**EXPLANATORY MEMORANDUM**

**(Circulated by the authority of the  
Minister for Social Services, the Hon Dan Tehan MP)**

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**SOCIAL SERVICES LEGISLATION AMENDMENT  
(ENCOURAGING SELF-SUFFICIENCY FOR NEWLY ARRIVED MIGRANTS) BILL  
2018**

**OUTLINE**

The Bill introduces the following measures:

- 1. *Increase existing newly arrived resident's waiting periods and introduce a newly arrived resident's waiting period for carer allowance, bereavement allowance, widow allowance and parenting payment***
- 2. *Increase existing newly arrived resident's waiting periods for farm household allowance***
- 3. *Introduce a newly arrived resident's waiting period for family tax benefit***
- 4. *Introduce a newly arrived resident's waiting period for parental leave pay and dad and partner pay***

***Schedule 1 – Social security amendments***

This Schedule 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 – Farm household support amendments***

This Schedule increases the existing newly arrived resident's waiting period from 104 weeks to 156 weeks for farm household allowance.

***Schedule 3 – Family assistance amendments***

This Schedule introduces a newly arrived resident's waiting period of 156 weeks for family tax benefit.

***Schedule 4 – Paid parental leave amendments***

This Schedule introduces a newly arrived resident's waiting period of 156 weeks for parental leave payments and dad and partner pay.

## FINANCIAL IMPACT STATEMENT

The measures in this Bill have an estimated impact on the fiscal balance over the forward estimates of approximately \$1.3 billion in savings (whole of government). The impact on the fiscal balance for each schedule is as follows (DSS administered impacts only):

<b>MEASURE</b>	<b>FINANCIAL IMPACT OVER THE FORWARD ESTIMATES (DSS administered)</b>
<b><i>Schedule 1 – Social security amendments</i></b>	Savings of \$141.8 million
<b><i>Schedule 2 – Farm household support amendments</i></b>	No impact
<b><i>Schedule 3 – Family assistance amendments</i></b>	Savings of \$898.4 million
<b><i>Schedule 4 – Paid parental leave amendments</i></b>	Savings of \$241.4 million

## STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS

The Statements of Compatibility with Human Rights appears at the end of this explanatory memorandum.

**SOCIAL SERVICES LEGISLATION AMENDMENT  
(ENCOURAGING SELF-SUFFICIENCY FOR NEWLY ARRIVED MIGRANTS) BILL  
2018**

**NOTES ON CLAUSES**

**Abbreviations used in this explanatory memorandum**

- **Social Security Act** means the *Social Security Act 1991*;
- **Family Assistance Act** means the *A New Tax System (Family Assistance) Act 1999*;
- **Paid Parental Leave Act** means the *Paid Parental Leave Act 2010*;
- **Farm Household Support Act** means the *Farm Household Support Act 2014*;
- **NARWP** means newly arrived resident's waiting period.

**Clause 1** sets out how the new Act is to be cited – that is, as the *Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Act 2018*.

**Clause 2** provides a table setting out the commencement dates of the various sections in, and Schedules to, the new Act.

**Clause 3** provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

## **Schedule 1 – Social security amendments**

### **Summary**

This Schedule will increase the existing newly arrived resident's waiting period (NARWP) from 104 weeks to 156 weeks for various social security payments and concession cards and introduce a 156 week NARWP for bereavement allowance, widow allowance, parenting payment and carer allowance.

### **Background**

Waiting periods for newly arrived migrants are a long standing feature of the social security system. A NARWP was first introduced for certain payments in 1993, with the current 104 week NARWP introduced in 1997. The NARWP aims to ensure new migrants make provisions to be self-sufficient when they first settle in Australia.

The 104 week NARWP applies to 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 care card.

In most cases, the NARWP applies to people settling permanently in Australia. This is because eligibility for these social security payments and concession cards is generally restricted to people who are Australian residents (that is, a person who resides in Australia and is an Australian citizen, the holder of a permanent visa or a Special Category Visa (SCV) holder who is a protected SCV holder). However, in some cases, a person may qualify for special benefit or certain concession cards if they are the holder of a temporary visa. These temporary visa holders may also be subject to a NARWP.

This Schedule will increase the current NARWP from 104 weeks to 156 weeks. In the context of current social security system and migrant program settings, three years is considered a reasonable period to expect migrants to support themselves and their families when they first settle in Australia.

A 156 week NARWP will also be introduced for bereavement allowance, widow allowance, and parenting payment, to align these payments with other working-age social security payments. These payments are not currently subject to a NARWP, although they do have qualifying residence requirements, including a 104 week qualifying residence period (unless other conditions are satisfied). The new NARWP provisions for these payments mirror the existing provisions for social security payments already subject to a NARWP.

The current 104 week qualifying residence period for bereavement allowance, widow allowance and parenting payment will continue to be a factor for qualification, and will run concurrently with the 156 week NARWP, to be consistent with other working-age social security payments. The other existing qualification requirements will be retained in the relevant provisions so that the qualification requirements are not

## Schedule 1 – Social security amendments

broadened by these amendments. The new NARWP will be applied in addition to the existing qualification requirements, to affect payability rather than qualification.

A 156 week NARWP will also be introduced for carer allowance. Currently, there is no waiting period or qualifying residence period for carer allowance, there is only a requirement that both the carer and carer receiver must be Australian residents. The new NARWP provisions for carer allowance mirror the existing NARWP provisions for carer payment. The introduction of the NARWP will align carer allowance with other working age social security payments, including carer payment.

Introducing a NARWP to additional social security payments will ensure consistency throughout the social security system and enhance the self-sufficiency expectation for newly arrived migrants.

Under the amendments in this Schedule, a person will be required to serve a 156 week NARWP before a relevant social security payment is payable, or before a person will qualify to receive a seniors health card or relevant health care card.

Existing exemption provisions from the NARWP will continue to apply to the payments currently subject to a NARWP and will also apply to the NARWP for bereavement allowance, widow allowance, parenting payment and carer allowance. This includes for people who have a qualifying residence exemption, people who are a refugee or former refugee at the time of claim and people who are an Australian citizen at the time of claim. Certain additional exemptions will also continue to apply for particular payments. For example, people who experience a substantial change in circumstances may be exempt from the NARWP for special benefit and people who have become a lone parent may be exempt from the NARWP for parenting payment, newstart allowance and youth allowance.

The amendments made by the Schedule will apply for all newly arrived residents who first become the holder of a permanent visa (or in some cases, the holder of certain temporary visas) on or after 1 July 2018 (or the first 1 January or 1 July to occur after Royal Assent).

The application provisions mean that a person who became the holder of a permanent visa (or temporary visa if applicable) prior to the commencement date will continue to be subject to the current rules. For example, a person granted a permanent visa in June 2018 would be subject to the existing 104 week NARWP for social security payments that are currently subject to a NARWP, such as newstart allowance, and would be subject to no NARWP for payments that are not currently subject to a NARWP, such as carer allowance.

Applying this measure only to those granted a relevant visa on or after 1 July 2018 is intended to ensure that individuals and families seeking to migrate to Australia are aware of the new rules before they are granted the visa so that they can make informed decisions, including making arrangements to support themselves during the waiting period.

The amendments made by this Schedule will not apply to those people who are protected special category visa (SCV) holders. Protected SCV holders are generally

those who were the holder of a SCV on or prior to 26 February 2001 and who were excluded from changes to access to social security payments that occurred from 26 February 2001. This cohort of people will be subject to the current NARWP rules, as in place prior to these amendments being introduced. Maintaining existing rules for protected SCV holders is consistent with the principle that people granted a relevant visa before 1 July 2018 should not be affected by this measure. The exclusion of protected SCV holders from the amendments in this Schedule reflects the existing legislative intent for these SCV holders.

This Schedule also makes a minor technical amendment to an existing exemption from the NARWP for special benefit to better align the legislation with established policy. The policy intent is that only people who have a change of circumstances during their waiting period should be exempt from the NARWP for special benefit. However, the legislation is broad and allows for any change of circumstances that occurs after they first arrived in Australia. This could mean that a person who first entered Australia 10 years before taking up residency in Australia could experience a substantial change of circumstances before returning to Australia and utilise the event to meet the exemption from the NARWP for special benefit. This is not the policy intent. This amendment will ensure better alignment between the legislation and the established policy.

### **Explanation of the changes**

#### ***Part 1 – Extending existing newly arrived resident's waiting periods***

##### **Social Security Act**

**Items 1 to 16** amend various provisions of the Social Security Act to extend the existing NARWPs of 104 weeks to 156 weeks for the following payments:

- carer payment
- youth allowance
- austudy payment
- newstart allowance
- sickness allowance
- special benefit
- mobility allowance
- pensioner education supplement.

**Items 17 to 20** amend various provisions of the Social Security Act, to extend the existing NARWPs of 104 weeks to 156 weeks for the seniors health card and the health care card.

**Item 21** provides the application provisions for the amendments in Part 1.



## Schedule 1 – Social security amendments

Sub-item 21(1) provides that the amendments made by items 1 to 10 and 13 to 16 apply in relation to a person who becomes the holder of a permanent visa on or after the commencement of these items. This provision covers the payments listed above, except for special benefit (see separate sub-items below for special benefit). Temporary visa holders are generally not qualified for these payments and are therefore not affected by these amendments regardless of this application provision. The exception are protected special category visa holders which are covered by a separate application provision.

Sub-items 21(2) and 21(3) provide that the amendments made by item 11 for special benefit apply in relation to a person who applies for a visa covered by paragraph 739A(3)(b) or who becomes the holder of a visa covered by paragraph 739(4)(b) of the Social Security Act, on or after the commencement of this item. This provision covers people who become the holder of a relevant temporary visa for special benefit. Certain temporary visa holders are qualified for special benefit by virtue of a determination under paragraph 729(2)(f)(v). For holders of temporary visa types also covered by a determination under paragraph 739A(3)(b) or 739A(4)(b), the NARWP starts from the date on which the person applied for that visa. The current determination for the purposes of paragraph 739A(3)(b) covers temporary partner and partner (provisional) visas. There is no current determination under paragraph 739A(4)(b).

Sub-item 21(4) provides that the amendments made by item 12 for special benefit applies in relation to a person who becomes the holder of a permanent visa on or after the commencement of this item.

Sub-item 21(5) provides that the amendments made by items 17 to 20 apply in relation to a person who becomes the holder of a permanent visa or a special category visa on or after the commencement of these items. These provisions cover the seniors health care and health care card (low income). These concession cards can be issued to permanent visa holders and special category visa holders. Holders of other temporary visas are not qualified for these cards.

Sub-item 21(6) provides that the amendments made by this Part do not apply in relation to a special category visa (SCV) holder who is a protected SCV holder. It is possible that a person was in Australia on an SCV on 26 February 2001 and therefore was a protected SCV holder, but subsequently left Australia before completing a 104 week NARWP. If that person were to subsequently return to Australia after 1 July 2018, they will be subject to the current rules (a 104 week NARWP) rather than the new rules (a 156 week NARWP). These amendments reflect the principle that people granted a relevant visa prior to commencement should not be subject to this measure.

### ***Part 2 – New newly arrived resident's waiting periods***

This Part makes amendments to various provisions of the Social Security Act to create new NARWPs for bereavement allowance, widow allowance, parenting payment and carer allowance.

## Social Security Act

**Item 22** makes a consequential amendment to the Australian residence definitions in subsection 7(6AA) to include carer allowance as a payment to which the qualifying residence exemption will apply, where the person holds or was the former holder of a visa that is in a class of visas determined by legislative instrument by the Minister. This will have the effect that such persons will not be subjected to a NARWP. This is consistent with existing exemptions for people with a qualifying residence exemption for other payments.

**Items 23 and 24** make consequential amendments to the definition of newly arrived resident's waiting period to include the following payments:

- bereavement allowance
- widow allowance
- parenting payment
- carer allowance

**Items 25 to 27** make consequential amendments to the definition of waiting period to include the following payments:

- bereavement allowance
- widow allowance
- parenting payment
- carer allowance

**Item 28** introduces a NARWP for bereavement allowance by inserting new section 322. New subsection 322(1) provides that a person who has entered Australia and has not been an Australian resident and in Australia for a period of (or periods totalling) 156 weeks is subject to a NARWP. The effect of this provision is that a person will be required to be an Australian resident and in Australia for 156 weeks before bereavement allowance will be payable to that person.

New subsections 322(2) and (3) provide exemptions from the NARWP. These exemptions mirror long standing exemptions that currently apply in relation to payments subject to an existing NARWP.

New subsection 322(2) provides that the NARWP will not apply to a person where the person has a qualifying residence exemption for bereavement allowance. Qualifying residence exemption in relation to bereavement allowance is defined in subsection 7(6) to include a person who resides in Australia and is either a refugee or a former refugee.

New subsection 322(3) provides that the NARWP will not apply to a person if the person is a refugee or a former refugee at the time the person claimed bereavement allowance. The NARWP will similarly not apply to a person who was the family member of a refugee when they became a refugee and:

- the person is still a family member of the refugee when they claim bereavement allowance, or
- where the refugee has died, the person was a family member of the refugee immediately before their death.

The NARWP will not apply to a person who is an Australian citizen at the time they claim bereavement allowance.

New subsection 322(4) defines the terms ‘family member’, ‘former refugee’ and ‘refugee’ by reference to the relevant definitions in section 7.

New section 323 provides for the start day and duration of the NARWP. New subsection 323(1) provides that if a person is subject to a NARWP, the period starts on the day the person first became an Australian resident. New subsection 323(2) provides that the duration of the NARWP is 156 weeks, and that the NARWP ends when the person has been in Australia and an Australian resident for a period of, or periods totalling, 156 weeks after that day. The start day and duration of the NARWP mirror the provisions that currently apply in relation to payments subject to an existing NARWP.

**Item 29** introduces a NARWP for widow allowance by inserting new section 408CGA. New subsection 408CGA(1) provides that a person who has entered Australia and has not been an Australian resident and in Australia for a period of (or periods totalling) 156 weeks is subject to a NARWP. The effect of this provision is that a person will be required to be an Australian resident and in Australia for 156 weeks before widow allowance will be payable to that person.

New subsections 408CGA(2) and (3) provide exemptions from the NARWP. These exemptions mirror long standing exemptions that currently apply in relation to payments subject to an existing NARWP.

New subsection 408CGA(2) provides that the NARWP will not apply to a person where the person has a qualifying residence exemption for widow allowance. Qualifying residence exemption in relation to widow allowance is defined in subsections 7(6) and 7(6AA) to include a person who resides in Australia and is either a refugee or a former refugee, or was a family member of a refugee or former refugee at the time the refugee or former refugee arrived in Australia, or the person holds or was the former holder of a visa that is in a class of visas determined by the Minister.

New subsection 408CGA(3) provides that the NARWP will not apply to a person if the person is a refugee or a former refugee at the time the person claimed widow allowance. The NARWP will similarly not apply to a person who was the family member of a refugee when they became a refugee and:

- the person is still a family member of the refugee when they claim widow allowance, or

- where the refugee has died, the person was a family member of the refugee immediately before their death.

The NARWP will not apply to a person who is an Australian citizen at the time they claim widow allowance.

New subsection 408CGA (4) defines the terms ‘family member’, ‘former refugee’ and ‘refugee’ by reference to the relevant definitions in section 7.

New section 408CGB provides for the start day and duration of the NARWP. New subsection 408CGB(1) provides that if a person is subject to a NARWP, the period starts on the day the person first became an Australian resident. New subsection 408CGB(2) provides that the duration of the NARWP is 156 weeks, and that the NARWP ends when the person has been in Australia and an Australian resident for a period of, or periods totalling, 156 weeks after that day. The start day and duration of the NARWP mirror the provisions that currently applying in relation to payments subject to an existing NARWP.

**Item 30** introduces a NARWP for parenting payment by inserting new section 500X. New subsection 500X(1) provides that a person who has entered Australia and has not been an Australian resident and in Australia for a period of (or periods totalling) 156 weeks is subject to a NARWP. The effect of this provision is that a person will be required to be an Australian resident and in Australia for 156 weeks before parenting payment will be payable to that person.

New subsections 500X(2), (3) and (4) provide exemptions from the NARWP. The exemptions at subsection 500X(2) and (4) mirror long standing exemptions that currently apply in relation to payments subject to an existing NARWP.

New subsection 500X(2) provides that the NARWP will not apply to a person where the person has a qualifying residence exemption for parenting payment. Qualifying residence exemption in relation to parenting payment is defined in subsection 7(6) and paragraph 7(6AA)(f) to include a person who resides in Australia and is either a refugee or a former refugee, or where the person holds or was the former holder of a visa that is in a class of visas determined by the Minister.

New subsection 500X(3) provides that the NARWP will not apply to a person where the person is the principal carer of one or more children and since becoming an Australian resident, they have become a lone parent. This exemption mirrors an existing qualifying residence requirement for parenting payment and ensures that a person who becomes a lone parent since becoming an Australian resident is both immediately qualified and payable for parenting payment (subject to meeting other qualification and payability requirements). This exemption also mirrors the existing exemption from the NARWP for the other main payments paid to people who are the principal carer of one or more children, that is, newstart allowance and youth allowance.

New subsection 500X(4) provides that the NARWP will not apply to a person if the person is a refugee or a former refugee at the time the person claimed parenting payment. The NARWP will similarly not apply to a person who was the family member of a refugee when they became a refugee and:

## Schedule 1 – Social security amendments

- the person is still a family member of the refugee when they claim parenting payment, or
- where the refugee has died, the person was a family member of the refugee immediately before their death.

The NARWP will not apply to a person who is an Australian citizen at the time they claim parenting payment.

New subsection 500X(5) defines the terms 'family member', 'former refugee' and 'refugee' by reference to the relevant definitions in section 7.

New section 500Y provides for the start day and duration of the NARWP. New subsection 500Y(1) provides that if a person is subject to a NARWP, the period starts on the day the person first became an Australian resident. New subsection 500Y(2) provides that the duration of the NARWP is 156 weeks, and that the NARWP ends when the person has been in Australia and an Australian resident for a period of, or periods totalling, 156 weeks after that day. The start day and duration of the NARWP mirror the provisions that currently applying in relation to payments subject to an existing NARWP.

**Item 31** introduces a NARWP for carer allowance by inserting new section 966. New subsection 966(1) provides that a person who has entered Australia and has not been an Australian resident and in Australia for a period of (or periods totalling) 156 weeks is subject to a NARWP. The effect of this provision is that a person will be required to be an Australian resident and in Australia for 156 weeks before carer allowance will be payable to that person.

New subsections 966(2), (3), (4) and (5) provide exemptions from the NARWP. The exemptions at subsection 966(2), (3) and (5) mirror long standing exemptions that currently apply in relation to payments subject to an existing NARWP.

New subsection 966(2) provides that the NARWP will not apply to a person where the person has a qualifying residence exemption for carer allowance. Qualifying residence exemption in relation to carer allowance is defined in paragraph 7(6AA)(f) to include a person who holds or was the former holder of a visa that is in a class of visas determined by the Minister.

New subsection 966(3) provides that the NARWP will not apply to a person where the person holds a visa that is in a class of visas determined by the Minister for the purposes of subsection 201AA(5). Subsection 201AA(5) refers to subsection 201AA(5B), which is an instrument making power, whereby the Minister may, by legislative instrument, determine a class of visas for the purposes of new subsection 201AA(5). The class must not be a class covered by paragraph 7(6AA)(f). The exemption in 966(3) mirrors the existing exemption from the NARWP for carer payment. This will ensure that exemptions apply consistently across the main payments for people with caring responsibilities for a person with disability.

New subsection 966(4) provides that the NARWP will not apply to a person if the person is receiving a social security benefit or pension, or a farm household allowance under the Farm Household Support Act; or if paid parental leave pay or dad and partner pay under the Paid Parental Leave Act is payable to that person.

The rationale for this exemption is that if a new migrant is receiving one of the payments referred to in the provision, they are receiving that payment because they are exempt from the NARWP (or other qualifying residence) requirements for that payment. This exemption ensures that these people can also access carer allowance if they have caring responsibilities for a person with disability (provided all other carer allowance requirements are met).

New subsection 966(5) provides that the NARWP will not apply to a person if the person is a refugee or a former refugee at the time the person claimed carer allowance. The NARWP will similarly not apply to a person who was the family member of a refugee when they became a refugee and:

- the person is still a family member of the refugee when they claim carer allowance, or
- where the refugee has died, the person was a family member of the refugee immediately before their death.

The NARWP will not apply to a person who is an Australian citizen at the time they claim carer allowance.

New subsection 966(6) defines the terms ‘family member’, ‘former refugee’ and ‘refugee’ by reference to the relevant definitions in section 7.

New section 967 provides for the start day and duration of the NARWP. New section 967 provides that if a person is subject to a NARWP, the period starts on the day the person first became an Australian resident and that the NARWP ends when the person has been in Australia and an Australian resident for a period of, or periods totalling, 156 weeks. The start day and duration of the NARWP mirror the provisions that currently applying in relation to payments subject to an existing NARWP.

**Item 32** provides the application provisions for the amendments in Part 2.

Sub-item 32(1) provides that the amendments made by items 28 to 31 apply in relation to a person who becomes the holder of a permanent visa on or after the commencement of these items. Temporary visa holders are generally not qualified for these payments and are therefore not affected by these amendments regardless of this application provision. The exception is protected special category visa holders which are covered by a separate application provision.

Sub-item 33(2) provides that the amendments do not apply in relation to a special category visa (SCV) holder who is a protected SCV holder. It is possible that a person was in Australia on an SCV on 26 February 2001 and therefore was a protected SCV holder, but subsequently left Australia without spending a total of 156 weeks physically present in Australia. If that person were to subsequently return to Australia after 1 July 2018, they will not be subject to a new NARWP. These amendments reflect the principle that people granted a relevant visa prior to commencement should not be subject to this measure.

### **Part 3 – Other amendments**

This Part makes a technical amendment to tidy up an existing issue in relation to the 'substantial change of circumstances' exemption from the NARWP for special benefit.

#### Social Security Act

**Item 33** repeals subsection 739A(7) and substitutes a new subsection. Currently the provision refers to a substantial change in circumstances beyond the person's control after the person first enters Australia. This could mean that a person who first entered Australia 10 years before taking up residency in Australia could experience a substantial change in circumstances before returning to Australia and utilise the event to meet the exemption in subsection 739A(7).

New subsection 739A(7) provides that, in relation to special benefit, a person would be exempt from a NARWP where they have suffered a substantial change in circumstances beyond their control that occurred after:

- if the person is a holder of a temporary partner visa and applied for the visa while the person was outside Australia, the start of the day the person first entered Australia after having applied for the visa; or
- if the person is a holder of a temporary partner visa and applied for the visa while the person was inside Australia, the start of the day the person applied for the visa; or
- if the person holds a permanent visa, the later of the day the person first entered Australia or the day the person first became a holder of that visa.

This ensures the substantial change in circumstance event would need to occur after the commencement of a person's NARWP, or what would have been the commencement of that person's NARWP, but for the application of subsection 739A(7), consistent with the policy intent of the exemption.

Item 34 is the application provision for the amendment in Part 3, and provides that the amendment applies in relation claims for a special benefit made on or after the commencement of this item.

## **Schedule 2 – Farm household support amendments**

### **Summary**

This Schedule will increase the existing newly arrived resident's waiting period (NARWP) from 104 weeks to 156 weeks for farm household allowance.

### **Background**

The farm household allowance is currently subject to a 104 week NARWP. The NARWP for farm household allowance mirrors the NARWP that applies to social security payments. This reflects the policy intent, as set out in the Explanatory Memorandum to the Farm Household Support Bill 2014 which introduced the farm household allowance, that the farm household allowance is aligned where possible with social security payments, particularly newstart allowance and youth allowance.

This Schedule will increase the current NARWP for farm household allowance from 104 weeks to 156 weeks, consistent with the amendments to the NARWP for social security payments as outlined in Schedule 1. This approach maintains the alignment between the farm household allowance and social security payments, such as newstart allowance, and ensures consistency across payments.

A person will therefore be required to serve a 156 week NARWP before a farm household allowance is payable.

Existing exemption provisions from the NARWP will continue to apply, including for people who become a lone parent, people who are a refugee or former refugee at the time of claim and people who are a citizen at the time of claim. These exemptions mirror the exemptions applicable to newstart allowance.

The amendments in this Schedule will apply to people who first become a permanent resident on or after 1 July 2018 (or the first 1 January or 1 July to occur after Royal Assent).

The application provisions mean that a person who is the holder of a permanent visa prior to the commencement date will continue to be subject to the current NARWP rules.

Applying this measure only to those granted a relevant visa on or after 1 July 2018 is intended to ensure that individuals and families seeking to migrate to Australia are aware of the new rules before they are granted a permanent visa so that they can make informed decisions, including making arrangements to support themselves during the waiting period.



### **Explanation of the changes**

This Schedule will increase the existing NARWP from 104 weeks to 156 weeks for farm household allowance.

#### **Farm Household Support Act**

**Items 1 and 2** amend subsection 42(1) and paragraph 43(b) of the Farm Household Support Act, to extend the existing NARWP of 104 weeks to 156 weeks for the farm household allowance.

**Item 3** provides the application provisions for the amendments in Schedule 2.

Sub-item 3(1) provides that the amendments made by items 1 and 2 apply in relation to a person who becomes the holder of a permanent visa on or after the commencement of these items. Temporary visa holders are generally not qualified for farm household allowance and are therefore not affected by these amendments regardless of this application provision. The exception are protected special category visa holders which are covered by a separate application provision.

Sub-item 3(2) provides that the amendments do not apply in relation to a special category visa (SCV) holder who is a protected SCV holder. It is possible that a person was in Australia on an SCV on 26 February 2001 and therefore was a protected SCV holder, but subsequently left Australia before completing a 104 week NARWP. If that person were to subsequently return to Australia after 1 July 2018, they will be subject to the current rules (a 104 week NARWP) rather than the new rules (a 156 week NARWP). These amendments reflect the principle that people granted a relevant visa prior to commencement should not be subject to this measure.

## **Schedule 3 – Family assistance amendments**

### **Summary**

This Schedule introduces a newly arrived resident's waiting period (NARWP) for family tax benefit (FTB). The change does not affect child care related payments, double orphan pension or stillborn baby payment.

### **Background**

Currently, there is no waiting period for family assistance payments for newly arrived migrants, there is only a requirement that the person is an Australian resident (that is, a person who resides in Australia and is an Australian citizen, the holder of a permanent visa or a Special Category Visa (SCV) holder who is a protected SCV holder), an SCV holder or the holder of a visa that is qualified for special benefit under the Social Security Act.

This is inconsistent with social security payments and the farm household allowance which are currently subject to a 104 week NARWP. The NARWP aims to ensure migrants settling in this country make provisions to be self-sufficient when they first settle here. Under the amendments in Schedules 1 and 2, the NARWP for social security payments and the farm household allowance will be extended to 156 weeks.

This Schedule will introduce a NARWP of 156 week's duration for FTB and related payments. This will apply consistent rules and expectations across the welfare system that new migrants settling in Australia should be in a position to support themselves and their families during their initial settlement period. The amendments generally reflect the NARWP provisions contained in the Social Security Act for special benefit. This is because FTB can be paid to holders of certain temporary visas that are eligible for special benefit. This will help to ensure alignment of the NARWP across multiple payments where applicable.

Under the amendments in this Schedule, individuals who become the holder of a permanent visa, or a temporary visa which would provide qualification for special benefit, will be required to wait until they have been in Australia for a period of, or periods totalling 156 weeks before they can be paid FTB or related payments.

The NARWP for FTB will not prevent an individual being eligible for stillborn baby payment or double orphan pension. This will ensure that migrants who have experienced a stillbirth, or are caring for a child who has lost both their parents, will still have access to financial support to help them meet the unexpected associated costs.

Currently, families that are receiving FTB fortnightly and have income below the low income free area are automatically eligible for a health care card. Health care cards provide access to a range of concessional health benefits under the Medicare Benefits Scheme and Pharmaceutical Benefits Scheme. Families serving a NARWP for FTB will not be eligible for this card. However, to ensure that access to

concessional health benefits are not impacted, families with an FTB eligible child will be exempt from the NARWP for the low income health care card. This will enable these families to receive the low income health care card, provided all other card qualification requirements are met, including the income limits.

Exemptions of a similar nature to those applying to special benefit under the Social Security Act will apply to allow immediate access to FTB in particular circumstances. Holders of visa types that are exempt from the NARWP for special benefit will be exempt from the NARWP for FTB. These are generally temporary visas issued for humanitarian reasons. Holders of one of these visas who subsequently become the holder of a permanent visa will continue to be exempt from the NARWP for FTB, ensuring access for this group is maintained. Similarly, refugees (or former refugees) and family members of refugees will not be required to serve the NARWP for FTB. These exemptions are designed to ensure that potentially vulnerable families, who may not be in a position to arrange for their own support prior to coming to Australia, can continue to access FTB immediately, provided they meet all other eligibility requirements.

If the individual is receiving a social security pension or benefit or the farm household allowance, they will also be exempt from the NARWP for FTB. The rationale for this exemption is that if a new migrant is receiving one of the payments referred to in the provision, they are receiving that payment because they are exempt from the NARWP (or other qualifying residence) requirements for that payment. This exemption ensures that these people can also access FTB if they have an eligible child (provided all other FTB requirements are met). For example, if a person is receiving parenting payment as the result of becoming a lone parent since the start of their current period as an Australian resident, that decision will exempt them from the FTB NARWP also. Similarly, if the individual is receiving special benefit because the Secretary is satisfied the individual has suffered a substantial change of circumstances beyond the individual's control since the start of their waiting period, the decision will operate to exempt the person from the FTB NARWP. These exemptions will ensure consistent access to relevant social security payments and FTB for families who experience a change in circumstances and who may no longer be able to support themselves as originally planned.

People who are a citizen at the time of claiming FTB will be exempt from the NARWP for FTB. This ensures that people who are eligible for and are granted citizenship after coming to Australia as a permanent resident but before the end of the NARWP, can be exempt from the remainder of the NARWP. This ensures they are treated the same as other Australian citizens who are not required to serve a NARWP.

The NARWP will not apply to individuals who are the holder of an SCV. SCVs are issued to New Zealand citizens when they enter Australia. The visa allows these New Zealanders to live and work in Australia indefinitely. While SCV holders are generally ineligible for social security payments, they currently have immediate access to FTB, provided they meet all other qualification requirements. Not applying the NARWP for FTB to SCV holders is designed to ensure this group retain this access to FTB. This reflects the unique arrangements in place between Australia and New Zealand under the Trans-Tasman Travel Arrangement. In addition, SCV

holders who subsequently become the holder of a permanent visa after the commencement date will continue to be exempt from the NARWP for FTB, again ensuring access for this group is maintained.

The amendments made by this Schedule will apply to individuals who first become the holder of a permanent visa (or in some cases, the holder of certain temporary visas) on or after 1 July 2018 (or the first 1 January or 1 July to occur after Royal Assent).

Application provisions mean that an individual who became the holder of a permanent visa (or temporary visa if applicable) prior to the commencement date will continue to be subject to the current rules. For example, an individual granted a permanent visa in June 2018 would not be subject to a NARWP for FTB.

Applying the measure only to individuals granted a relevant visa on or after 1 July 2018 is intended to ensure that families seeking to migrate to Australia are aware of the new rules before they are granted a permanent visa so that they can make informed decisions, including making arrangements to support themselves and their children during the waiting period.

### **Explanation of the changes**

**Item 1** Inserts a definition of ***permanent visa*** into subsection 3(1), to support the substantive change in item 2.

**Item 2** introduces a newly arrived resident's waiting period, by inserting **new section 30** into the Family Assistance Act. Subsection 30(1) provides that an individual is not eligible for family tax benefit in respect of a day that occurs in a newly arrived resident's waiting period for the individual.

Subsection 30(2), subject to the remaining subsections, provides the circumstances in which an individual is subject to a NARWP.

Subsection 30(2) deals with individuals who, on or after commencement of the subsection:

- become the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the Social Security Act, or
- become the holder of a permanent visa.

Subsections 30(3), (4) and (5) provide for the length of the waiting period.

Subsection 30(3) applies (unless subsection 30(4) applies) where an individual is subject to a NARWP and they hold a visa that is in a class of visas determined by the Minister for the purposes of paragraph 739A(3)(b) of the Social Security Act (dealing with the NARWP for special benefit). The current determination for the purposes of paragraph 739A(3)(b) covers temporary visa subclass 820 (partner) and subclass 309 (partner (provisional)). A person may apply for these visas prior to entering Australia. For such persons, the waiting period starts on the day on which the individual applied for that visa. The waiting period then ends when the individual has been in Australia for a period of, or periods totalling, 156 weeks after that day.

Subsection 30(4) applies where an individual is subject to a NARWP and, prior to their current visa, they held one or more visas in a class of visas determined by the Minister for the purposes of paragraph 739A(4)(b) of the Social Security Act (dealing with the NARWP for special benefit). For such persons, the waiting period starts on the day on which the individual applied for the last of those visas. This allows time in Australia under an earlier visa to apply to accruing time in Australia for the purposes of the NARWP. For example, where a person held a temporary visa specified under paragraph 739A(4)(b) and then subsequently moved to a permanent visa, the NARWP would start from the date they applied for the temporary visa, ensuring they are not required to serve a second NARWP in respect of the permanent visa. The waiting period then ends when the individual has been in Australia for a period of, or periods totalling, 156 weeks after that day. There is currently no determination in force under paragraph 739A(4)(b); however, new subsection 30(4) ensures that if such a determination is made in the future, the NARWP for FTB and special benefit will operate consistently for the relevant visa holders.

Subsection 30(5) applies in all remaining circumstances in which a person is subject to a NARWP. For such persons, the waiting period starts on the day on which the individual first entered Australia, or became the holder of a permanent visa, whichever occurred last. For persons who hold a temporary visa in circumstances not covered by subsection 30(3) and (4) above, this will start the waiting period when the person first entered Australia. The waiting period then ends when the individual has been in Australia for a period of, or periods totalling, 156 weeks after that day.

Subsections 30(6), (7) and (8) provide exemptions from the NARWP.

Subsection 30(6) provides that the FTB NARWP will not apply to an individual if the individual holds, or was the former holder of, a visa in a class of visas determined by the Minister for the purposes of subsection 739A(6) of the Social Security Act, applying to special benefit. This means that ministerial determinations made exempting various visa holders from the NARWP for special benefit will also apply to exempt the person from the NARWP for FTB. The current determination under subsection 739A(6) includes the following visa types: subclass 060 (Bridging F), subclass 070 (Bridging (Removal Pending)), subclass 449 (Humanitarian Stay (Temporary)), subclass 785 (Temporary Protection), subclass 786 (Temporary (Humanitarian Concern)), subclass 790 (Safe Haven Enterprise) and if certain circumstances are met, a criminal justice stay visa.

Subsection 30(7) provides that the FTB NARWP does not apply if the individual is receiving a range of other payments. These payments are a social security pension or a social security benefit, farm household allowance under the Farm Household Support Act or parental leave pay, or dad and partner pay under the Paid Parental Leave Act. The rationale for this exemption is that if a new migrant is receiving one of the payments referred to in the provision, they are receiving that payment because they are exempt from the NARWP (or other qualifying residence) requirements for that payment. This exemption ensures that these people can also access FTB if they have an eligible child (provided all other FTB requirements are met).

Subsection 30(8) provides that the NARWP will not apply to an individual if the individual is a refugee or a former refugee at the time the individual claimed FTB. The NARWP will similarly not apply to an individual who was the family member of a refugee when they became a refugee and:

- the person is still a family member of the refugee when they claim FTB, or
- where the refugee has died, the person was a family member of the refugee immediately before their death.

The NARWP will not apply to a person who is an Australian citizen at the time they claim FTB. These are existing exemptions that currently apply to the NARWP for social security payments, including special benefit.

Additionally under subsection 30(8), the FTB NARWP will not apply to individuals who were formerly an SCV holder and are residing in Australia at the time they claim FTB. Current SCV holders will not be subject to a NARWP as subsection 30(2), covering the circumstances in which an individual is subject to a NARWP, is not applicable to an SCV holder. This is because an SCV holder is neither the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the Social Security Act, or the holder of a permanent visa. The exemption of former SCV holders ensures that these individuals are not then subject to a NARWP if later granted a permanent visa.

Subsection 30(9) defines the terms ‘family member’, ‘former refugee’ and ‘refugee’ by reference to the relevant definitions in the Social Security Act.

**Items 3 to 4** maintain an individual’s eligibility for stillborn baby payment despite the individual otherwise being subject to a NARWP for FTB. **Item 3** amends section 36, which provides for eligibility for stillborn baby payment. Stillborn baby payment eligibility relies upon the fact the child would have been an FTB child of the individual at birth, and the individual would have been the primary carer of the child, but for the fact the child is a stillborn child. Subsection 36(1) requires that the individual would have been eligible for FTB in respect of the child at any time within the period of 26 weeks starting on the day of the child’s delivery, assuming the child had not been a stillborn child, despite the fact the rate of FTB may be nil. Item 3 inserts new subsection 36(1A) which provides that in working out whether an individual is eligible for a stillborn baby payment in respect of a child, disregard section 30. The NARWP for FTB can then be disregarded in deciding whether a person would have been eligible for FTB in respect of the stillborn child.

**Item 4** provides for the application of the amendment effected by item 3. Item 4 provides that the amendments applies in relation to working out whether an individual is eligible for a stillborn baby payment in respect of a child in relation to days on or after the commencement of this item.

**Items 5 to 7** make consequential amendments to the Social Security Act to maintain the qualification for double orphan pension for persons who become subject to a NARWP for FTB. Various persons who would be eligible for FTB, but are not as the result of particular circumstances, are qualified for double orphan pension, in section 999. **Item 5** inserts new subsection (1A) into section 999 to provide that in working out whether a person is qualified for a double orphan pension for a young person, disregard new section 30 inserted by item 2 above.

### Schedule 3 – Family assistance amendments

**Item 6** makes a consequential amendment to the Social Security Act to provide an additional exemption from the NARWP for the low-income health care card imposed by section 1061ZQ by adding new paragraph 1061ZQ(2)(b) covering a person who has an FTB child. This will allow persons who will no longer qualify for an automatically issued health care card as the result being subject to an FTB NARWP to claim a low income health care card where they meet all other requirements for this card.

**Item 7** provides for the application of the amendments of section 999 and 1061ZQ. Item 7 provides that the amendments apply to working out if a person is qualified for a double orphan pension, or for a health care card for days on or after the commencement of the relevant items.

## **Schedule 4 – Paid parental leave amendments**

### **Summary**

This Schedule introduces a newly arrived resident's waiting period (NARWP) for parental leave pay (PLP) or Dad and Partner pay (DaPP).

### **Background**

Currently, there is no waiting period for PLP or DaPP for newly arrived migrants. There is only a requirement that the person is an Australian resident (that is, a person who resides in Australia and is an Australian citizen, the holder of a permanent visa or a Special Category Visa (SCV) holder who is a protected SCV holder), an SCV holder or the holder of a visa that is qualified for special benefit under the Social Security Act.

This is inconsistent with social security payments and the farm household allowance which are currently subject to a 104 week NARWP. The NARWP aims to ensure migrants settling in this country make provisions to be self-sufficient when they first settle here. Under the amendments in Schedules 1 and 2, the NARWP for social security payments and the farm household allowance will be extended to 156 weeks.

This Schedule will introduce a NARWP of 156 weeks' duration for PLP and DaPP. This will apply consistent rules and expectations across payments that new migrants settling in Australia should be in a position to support themselves and their families during their initial settlement period. The amendments generally reflect the NARWP provisions contained in the Social Security Act for special benefit. This is because PLP and DaPP can be paid to holders of certain temporary visas that are eligible for special benefit. This will help to ensure alignment of the NARWP across multiple payments where applicable.

Under the amendments in this Schedule, individuals who become the holder of a permanent visa, or a temporary visa which would provide qualification for special benefit, will be required to wait until they have been in Australia for a period of, or periods totalling 156 weeks before the birth of their child in order to be paid PLP or DaPP.

Exemptions of a similar nature to those applying to special benefit under the Social Security Act will apply to allow immediate access to PLP or DaPP in particular circumstances. Holders of visa types that are exempt from the NARWP for special benefit will be exempt from the NARWP for PLP and DaPP. These are generally temporary visas issued for humanitarian reasons. Holders of one of these visas who subsequently become the holder of a permanent visa will continue to be exempt from the NARWP for PLP and DaPP, ensuring access for this group is maintained. Similarly, refugees (or former refugees) and family members of refugees will not be required to serve the NARWP for PLP or DaPP. These exemptions are designed to ensure that potentially vulnerable families, who may not be in a position to arrange



for their own support prior to coming to Australia, can continue to access PLP and DaPP immediately, provided they meet all other eligibility requirements.

If the individual has qualified for and commenced receiving a social security pension or benefit, or farm household allowance, they will be exempt from the NARWP for PLP and DaPP. The rationale for this exemption is that if a new migrant is receiving one of the payments referred to in the provision, they are receiving that payment because they are exempt from the NARWP (or other qualifying residence) requirements for that payment. This exemption ensures that these people can access PLP or DaPP if they have an eligible child while receiving one of these payments (provided all other PLP or DaPP requirements are met). For example, if a person is receiving parenting payment as the result of becoming a lone parent since the start of their current period as an Australian resident, that decision will exempt them from the PLP and DaPP NARWP also. This will allow them to move from parenting payment to PLP if they have a new baby. Similarly, if the individual receiving special benefit because the Secretary is satisfied the individual has suffered a substantial change of circumstances beyond the individual's control since the start of their waiting period, the decision will operate to exempt the person from the PLP and DaPP NARWP. These exemptions will ensure consistent access to relevant social security payments and PLP or DaPP for families who experience a change in circumstances and who may no longer be able to support themselves as originally planned.

People who are a citizen at the time of claiming PLP or DaPP will be exempt from the NARWP for these payments. This ensures that people who are eligible for and are granted citizenship after coming to Australia as a permanent resident but before the end of the NARWP, can be exempt from the remainder of the NARWP. This ensures they are treated the same as other Australian citizens who are not required to serve a NARWP.

The NARWP will not apply to individuals who are the holder of an SCV, or the former holder of an SCV. SCVs are issued to New Zealand citizens when they enter Australia. The visa allows these New Zealanders to live and work in Australia indefinitely. While SCV holders are generally ineligible for social security payments, they currently have immediate access to FTB and PLP and DaPP, provided they meet all other qualification requirements. Not applying the NARWP to SCV holders for PLP and DaPP is designed to maintain this access for this group. This reflects the unique arrangements in place between Australia and New Zealand under the Trans-Tasman Travel Arrangement.

The amendments made by this Schedule will apply to individuals who first become the holder of a permanent visa (or in some cases, the holder of certain temporary visas) on or after 1 July 2018 (or the first 1 January or 1 July to occur after Royal Assent).

An individual who became the holder of a permanent visa (or temporary visa if applicable) prior to the commencement date will continue to be subject to the current rules. For example, a person granted a permanent visa in June 2018 would not be subject to a NARWP for PLP or DaPP.

Applying the measure only to individuals granted a relevant visa on or after 1 July 2018 is intended to ensure that families seeking to migrate to Australia are aware of the new rules before they are granted a permanent visa so that they can make informed decisions, including making arrangements to support themselves and their children during the waiting period.

In addition, the measure will not apply to persons whose baby is born prior to commencement, or during the first 6 months after commencement. This is designed to ensure that people who may have already made leave plans prior to the changes commencing are not disadvantaged and can still access PLP or DaPP.

### **Explanation of the changes**

#### **Parental leave pay**

**Item 1** Inserts a definition of *permanent visa* into section 6, to support the substantive change in item 2.

**Item 2** removes eligibility for PLP for newly arrived residents, by adding new subsection 31(6) to the Paid Parental Leave Act. New subsection 31(6) provides that a person is not eligible for PLP in respect of a day in a newly arrived resident's waiting period for the person.

**Item 3** inserts new section 31A, providing for the NARWP.

Subsection 31A(1), subject to the remaining subsections, provides the circumstances in which an individual is subject to a NARWP.

Subsection 31A(1) deals with persons who, on or after commencement of the subsection:

- become the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the Social Security Act, or
- become the holder of a permanent visa.

Such persons are subject to a NARWP.

Subsections 31A(2), (3) and (4) provide for the length of the waiting period.

Subsection 31A(2) applies (unless subsection 31A(3) applies) where a person is subject to a NARWP and they hold a visa that is in a class of visas determined by the Minister for the purposes of paragraph 739A(3)(b) of the Social Security Act (dealing with the NARWP for special benefit). The current determination for the purposes of paragraph 739A(3)(b) covers temporary visa subclass 820 (partner) and subclass 309 (partner (provisional)). A person may apply for these visas prior to entering Australia. For such persons, the waiting period starts on the day on which the individual applied for the visa they currently hold. The waiting period then ends when the individual has been in Australia for a period of, or periods totalling, 156 weeks after that day.

Subsection 31A(3) applies where a person is subject to a NARWP and, prior to their current visa, they held one or more visas in a class of visas determined by the Minister for the purposes of paragraph 739A(4)(b) of the Social Security Act (dealing with the NARWP for special benefit). For such persons, the waiting period starts on the day on which the individual applied for the last of those visas. This allows time in Australia under an earlier visa to apply to accruing time in Australia for the purposes of the NARWP. For example, where a person held a temporary visa specified under paragraph 739A(4)(b) and then subsequently moved to a permanent visa, the NARWP would start from the date they applied for the temporary visa, ensuring they are not required to serve a second NARWP in respect of the permanent visa. The waiting period then ends when the individual has been in Australia for a period of, or periods totalling, 156 weeks after that day. There is currently no determination in force under paragraph 739A(4)(b); however, new subsection 31A(3) ensures that if such a determination is made in the future, the NARWP for PLP and special benefit will operate consistently for the relevant visa holders.

Subsection 31A(4) applies in all remaining circumstances in which a person is subject to a NARWP. For such persons, the waiting period starts on the day on which the individual first entered Australia, or became the holder of a permanent visa, whichever occurred last. For persons who hold a temporary visa in circumstances not covered by subsection 31A(2) and (3) above, this will start the waiting period when the person first entered Australia. The waiting period then ends when the individual has been in Australia for a period of, or periods totalling, 156 weeks after that day.

Subsections 31A(5), (6) and (7), provide exemptions from the NARWP.

Subsection 31A(5) provides that the PLP NARWP will not apply to an individual if the individual holds, or was the former holder of, a visa in a class of visas determined by the Minister for the purposes of subsection 739A(6) of the Social Security Act, applying to special benefit. This means that ministerial determinations made exempting various visa holders from the NARWP for special benefit will also apply for the purposes of creating exemptions from the NARWP for PLP. The current determination under subsection 739A(6) includes the following visa types: subclass 060 (Bridging F), subclass 070 (Bridging (Removal Pending)), subclass 449 (Humanitarian Stay (Temporary)), subclass 785 (Temporary Protection), subclass 786 (Temporary (Humanitarian Concern)), subclass 790 (Safe Haven Enterprise) and if certain circumstances are met, a criminal justice stay visa.

Subsection 31A(6) provides that the PLP NARWP does not apply if the individual is receiving a range of other payments immediately before the day that would be the start of the person's PPL period if a payability determination were made. These payments are a social security pension or a social security benefit, farm household allowance under the Farm Household Support Act. In general, these payments will stop while PLP is being paid during the person's PPL period, but the person's circumstances are tested at the day prior to the day that would be the person's PPL period. The rationale for this exemption is that if a new migrant is receiving one of the payments referred to in the provision, they are receiving that payment because they are exempt from the NARWP (or other qualifying residence) requirements for

that payment. This exemption ensures that these people can move to PLP if they have an eligible child (provided all other PLP requirements are met).

Subsection 31A(7) provides that the NARWP will not apply to an individual if the individual is a refugee or a former refugee at the time the individual claimed FTB. The NARWP will similarly not apply to an individual who was the family member of a refugee when they became a refugee and:

- the person is still a family member of the refugee when they claim FTB, or
- where the refugee has died, the person was a family member of the refugee immediately before their death.

The NARWP will not apply to a person who is an Australian citizen at the time they claim FTB. These are existing exemptions that currently apply to the NARWP for social security payments, including special benefit.

Additionally under subsection 31A(7), the PLP NARWP will not apply to individuals who were formerly an SCV holder and are residing in Australia at the time they claim FTB. Current SCV holders will not be subject to a NARWP as subsection 31A(1), covering the circumstances in which an individual is subject to a NARWP, is not applicable to an SCV holder. This is because an SCV holder is neither the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the Social Security Act, or the holder of a permanent visa. The exemption of former SCV holders ensures that these individuals are not then subject to a NARWP if later granted a permanent visa.

Subsection 31A(8) defines the terms ‘family member’, ‘former refugee’ and ‘refugee’ by reference to the relevant definitions in the Social Security Act.

### Dad and Partner Pay

**Item 4** removes eligibility for DaPP for newly arrived residents, by adding new subsection 115CB(9) to the Paid Parental Leave Act. New subsection 115CB(9) provides that a person is not eligible for DaPP in respect of a day in a newly arrived resident’s waiting period for the person.

**Item 5** inserts new section 115CBA, providing for the NARWP.

Subsection 115CBA(1), subject to the remaining subsections, provides the circumstances in which an individual is subject to a NARWP.

Subsection 115CBA(1) deals with persons who, on or after commencement of the subsection:

- become the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the Social Security Act, or
- become the holder of a permanent visa.

Such persons are subject to a NARWP. Persons who would be subject to a NARWP for special benefit, are also subject to a NARWP for DaPP.

Subsections 115CBA(2), (3) and (4) provide for the length of the waiting period.

Subsection 115CBA(2) applies (unless subsection 115CBA(3) applies) where a person is subject to a NARWP and holds a visa that is in a class of visas determined by the Minister for the purposes of paragraph 739A(3)(b) of the Social Security Act (dealing with the NARWP for special benefit). The current determination for the purposes of paragraph 739A(3)(b) covers temporary visa subclass 820 (partner) and subclass 309 (partner (provisional)). A person may apply for these visas prior to entering Australia. For such persons, the waiting period starts on the day on which the individual applied for the visa they currently hold. In general, a person will apply for the visas covered by paragraph 739A(3)(b) prior to entering Australia. The waiting period then ends when the individual has been in Australia for a period of, or periods totalling, 156 weeks after that day.

Subsection 115CBA(3) applies where a person is subject to a NARWP and, prior to their current visa, they held one or more visas in a class of visas determined by the Minister for the purposes of paragraph 739A(4)(b) of the Social Security Act (dealing with the NARWP for special benefit). For such persons, the waiting period starts on the day on which the individual applied for the last of those visas. This allows time in Australia under an earlier visa to apply to accruing time in Australia for the purposes of the NARWP. For example, where a person held a temporary visa specified under paragraph 739A(4)(b) and then subsequently moved to a permanent visa, the NARWP would start from the date they applied for the temporary visa, ensuring they are not required to serve a second NARWP in respect of the permanent visa. The waiting period then ends when the individual has been in Australia for a period of, or periods totalling, 156 weeks after that day. There is currently no determination in force under paragraph 739A(4)(b); however, new subsection 115CBA(3) ensures that if such a determination is made in the future, the NARWP for DaPP and special benefit will operate consistently for the relevant visa holders.

Subsection 115CBA(4) applies in all remaining circumstances in which a person is subject to a NARWP. For such persons, the waiting period starts on the day on which the individual first entered Australia, or became the holder of a permanent visa, whichever occurred last. For persons who hold a temporary visa in circumstances not covered by subsection 115CBA(2) and (3) above, this will start the waiting period when the person first entered Australia. The waiting period then ends when the individual has been in Australia for a period of, or periods totalling, 156 weeks after that day.

Subsections 115CBA(5), (6) and (7), provide exemptions from the NARWP.

Subsection 115CBA(5) provides that the DaPP NARWP will not apply to an individual if the individual holds, or was the former holder of, a visa in a class of visas determined by the Minister for the purposes of subsection 739A(6) of the Social Security Act, applying to special benefit. Ministerial determinations made exempting various visa holders from the NARWP for special benefit will apply for the purposes of creating exemptions from the NARWP for DaPP. The current determination under subsection 739A(6) includes the following visa types: subclass 060 (Bridging F), subclass 070 (Bridging (Removal Pending)), subclass 449 (Humanitarian Stay (Temporary)), subclass 785 (Temporary Protection), subclass 786 (Temporary (Humanitarian Concern)), subclass 790 (Safe Haven Enterprise) and if certain circumstances are met, a criminal justice stay visa.

Subsection 115CBA(6) provides that the DaPP NARWP does not apply if the individual is receiving a range of other payments immediately before the day that would be the start of the person's DaPP period if a payability determination were made. These payments are a social security pension or a social security benefit, farm household allowance under the Farm Household Support Act. In general, these payments will stop while DaPP is being paid during the person's DaPP period, but the person's circumstances are tested at the day prior to the day that would be the person's DaPP period. The rationale for this exemption is that if a new migrant is receiving one of the payments referred to in the provision, they are receiving that payment because they are exempt from the NARWP (or other qualifying residence) requirements for that payment. This exemption ensures that these people can also access DaPP if they have an eligible child (provided all other DaPP requirements are met).

Subsection 115CBA(7) provides that the NARWP will not apply to an individual if the individual is a refugee or a former refugee at the time the individual claimed FTB. The NARWP will similarly not apply to an individual who was the family member of a refugee when they became a refugee and:

- the person is still a family member of the refugee when they claim FTB, or
- where the refugee has died, the person was a family member of the refugee immediately before their death.

The NARWP will not apply to a person who is an Australian citizen at the time they claim FTB. These are existing exemptions that currently apply to the NARWP for social security payments, including special benefit.

Additionally under subsection 115CBA(7), the DaPP NARWP will not apply to individuals who were formerly an SCV holder and are residing in Australia at the time they claim DaPP. Current SCV holders will not be subject to a NARWP as subsection 115CBA(1), covering the circumstances in which an individual is subject to a NARWP, is not applicable to an SCV holder. This is because an SCV holder is neither the holder of a visa determined by the Minister for the purposes of subparagraph 729(2)(f)(v) of the Social Security Act, or the holder of a permanent visa. The exemption of former SCV holders ensures that these individuals are not then subject to a NARWP if later granted a permanent visa.

Subsection 115CBA(8) defines the terms 'family member', 'former refugee' and 'refugee' by reference to the relevant definitions in the Social Security Act.

**Item 6** provides that the measure will not apply where the child is born (or entrusted to the person's care) during the first 6 months after commencement. This is designed to ensure that people who may have already made leave plans prior to the changes commencing are not disadvantaged and can still access PLP or DaPP.

# STATEMENTS OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the  
Human Rights (Parliamentary Scrutiny) Act 2011*

## **Social Services Legislation Amendment (Encouraging Self-sufficiency for Newly Arrived Migrants) Bill 2018**

### **Schedule 1 – Social security amendments**

### **Schedule 2 – Farm household support amendments**

### **Schedule 3 – Family assistance amendments**

### **Schedule 4 – Paid parental leave amendments**

These Schedules are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The following instruments are considered to be impacted by the Schedules:

- the International Covenant on Civil and Political Rights (ICCPR);
- the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- the Convention on the Rights of the Child (CRC); and
- the Convention on the Rights of Persons with Disabilities (CRPD).

### **Overview of the Schedules**

The Schedules implement the *Encouraging Self Sufficiency for Newly Arrived Migrants* measure (the measure) announced in the 2017-18 Mid-Year Economic and Fiscal Outlook (MYEFO).

As outlined in the MYEFO papers, Budget repair and a return to surplus remain a key priority for the Australian Government to ensure continued economic growth in Australia. In this context, it is important that Australia's welfare payments system provides the best possible encouragement for people to support themselves where they are able so that the system remains sustainable into the future. This includes migrants settling permanently in this country.

Waiting periods for newly arrived migrants already exist for a number of welfare payments. These waiting periods aim to ensure that new permanent migrants take steps to provide for their own financial support during their initial settlement period in Australia.

The measure will reinforce the Government's position that newly arrived migrants be financially self-sufficient or rely on family members for support and should not expect to be immediately supported by Australian taxpayers.

This will enhance the residence-based nature of Australia's welfare payments system, ensuring that it remains fair, is targeted to those most in need of support and is sustainable in the long term so that assistance remains available to future generations.

This measure will apply consistent rules across the welfare payments system, and strikes a balance between promoting self-reliance for newly arrived migrants and providing appropriate safeguards for those in vulnerable circumstances.

These Schedules will:

- increase the existing newly arrived resident's waiting period (NARWP) for certain working age social security payments and concession cards from 104 weeks to 156 weeks (Schedule 1);
- apply a consistent 156 week NARWP to other working age payments that currently have a 104 week qualifying residence period (Schedule 1);
- introduce a new NARWP of 156 weeks for Carer Allowance (Schedule 1);
- increase existing NARWP for farm household allowance from 104 weeks to 156 weeks (Schedule 2);
- introduce a NARWP of 156 weeks for family tax benefit (FTB) (Schedule 3); and
- introduce a NARWP of 156 weeks for parental leave pay (PLP) and dad and partner pay (DaPP).

The effect of these Schedules will be that people granted a permanent residency visa (or in some cases, certain temporary visas) on or after commencement (intended to be 1 July 2018) will not be able to receive the affected payments and concession cards until they have served any applicable NARWP.

There will be a range of exemptions from the NARWP, including for individuals and families in particularly vulnerable circumstances. Those exempt will have access to the relevant payments or concession cards straightaway.

### **Human rights implications**

These Schedules have considered the human rights implications particularly with reference to:

- the right to social security as contained within article 9 under the ICESCR;
- the right to maternity leave as contained within article 10(2) of the ICESCR and article 11(2)(b) of the CEDAW;
- the right to an adequate standard of living, including food, water and housing as contained within article 11 of the ICESCR;
- the right to health as contained in article 12(1) of the ICESCR;
- the right to equality and non-discrimination as contained in articles 2, 16 and 26 of the ICCPR;



- the right to freedom of movement as contained in articles 12 and 13 of the ICCPR;
- the right to protection against exploitation, violence and abuse as contained in article 20(2) of the ICCPR, and article 19(1) of the CRC and article 16(1) of the CRPD;
- the right to respect for the family as contained in articles 23 and 17(1) of the ICCPR;
- the rights of parents and children as contained in article 3 of the CRC and article 24(1) of the ICCPR; and
- the right to work and rights at work as contained in articles 6(1), 7 and 8(1)(a) of the ICESCR.

These Schedules are compatible with these human rights. To the extent that a human rights obligation is engaged or limited, the impact is reasonable and proportionate in achieving the objectives of the measure and the welfare payments system more broadly.

### ***Right to Social Security***

The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to cover essential living costs.

The CRC requires countries to recognise the right of the child to benefit from social security. Benefits should take into account the resources and circumstances of the child and persons having responsibility for the maintenance of the child.

The Australian welfare payments system – encompassing social security payments, family assistance payments and paid parental leave payments – is based on the key concepts of residency and need. For this reason, payments are already subject to residency qualification requirements designed to ensure payments are made to people who are residing in Australia and who have an established and ongoing connection to Australia, that is, Australian citizens, holders of permanent visas and, in some limited circumstances, holders of certain temporary visas.

Waiting periods already exist for a number of welfare payments for newly arrived migrants as part of the residency requirements that apply to these payments. These waiting periods reflect the expectation that new permanent residents should be able to support themselves when they first settle here. The current waiting period of 104 weeks was introduced for these payments in 1997 and has not changed since then.

Given the current fiscal environment, and the Government's priorities as outlined above, three years is a reasonable period to expect new permanent migrants to support themselves and their families when they first settle in Australia. This will reduce the burden placed on Australia's welfare payments system and improve its long-term sustainability.

The Schedules in this Bill do not affect eligibility for social security pensions or benefits, rather they affect the rules governing when those eligible for certain people can start receiving their entitlements. The amendments focus on promoting self-support by requiring claimants to meet their own living costs during their initial settlement period.

The vast majority of people impacted by the changes are people who will come to Australia on skilled visas to work in a specific field. By the nature of their migration pathway they are well placed to support themselves and their families once they have moved here. In relation to migrants arriving on family related visas, these are people who have the support of family members and are making the decision to move here to be with them.

The measure is not retrospective and will apply to people granted a permanent visa (or in some cases, certain temporary visas) on or after commencement, intended to be 1 July 2018. This timing is designed to provide individuals and families seeking to migrate to Australia time to be aware of the new rules when applying for permanent residency and to make informed decisions, including making arrangements to support themselves during the waiting period. Migrants already granted permanent residency (or a relevant temporary visa) before 1 July 2018 will not be affected. This means that no one who is already eligible for or receiving payments will have those entitlements taken away.

Humanitarian migrants and their family members will continue to be exempt from the existing waiting periods for all social security payments and will also be exempt from the new waiting periods for FTB, PLP and DaPP.

New Zealand citizens on a Special Category Visa and holders of certain other temporary visas – including Temporary Protection Visas and Safe Haven Enterprise Visas – will also be exempt from the new waiting periods for FTB, PLP and DaPP, and will continue to have immediate access to these payments, where eligible. These visa holders are generally not eligible for most social security payments under existing rules.

There will also be exemptions for people whose circumstances change after becoming a permanent resident and who may no longer be able to support themselves as they planned.

Migrants who become a lone parent after becoming an Australian resident will continue to be exempt from the waiting period for parenting payment, newstart allowance and youth allowance. Those who receive an exemption from the waiting period for one of these payments will also be exempt from the waiting period for FTB. Those who subsequently have a new child will also be able to transfer to PLP or DaPP if they are otherwise qualified. This ensures that parents who lose the support – financial and otherwise – of a partner have access to support for themselves and their children.

In addition, migrants who experience a substantial change in circumstances after the start of their waiting period, and are in financial hardship, will continue to be exempt

from the waiting period for special benefit. Special benefit is a payment of last resort that provides a safety net for people in hardship who are not otherwise eligible for other payments. Those who receive this exemption and have dependent children will also be exempt from the waiting period for FTB. Consistent with established policy (contained in the Guide to Social Security Law) this may include migrants:

- who are the victim of domestic or family violence;
- who experience a prolonged injury or illness and are unable to work, or whose partner or sponsor does;
- whose dependent child develops a severe medical condition, disability or injury; or
- whose sponsor or partner dies, becomes a missing person or is imprisoned leaving the migrant with no other means of support.

These exemptions ensure that there continues to be a safety net available for potentially vulnerable individuals and families who are unable to support themselves despite their best plans.

In addition to these exemptions, the NARWP applied for FTB will not affect a person's entitlement to double orphan pension or stillborn baby payment. This ensures that migrants who have a stillborn child or are caring for a child who has lost both its parents still have access to financial support to ensure they can meet any costs associated with these circumstances.

As noted above, the amendments in these Schedules focus on encouraging people making the decision to settle permanently in Australia to take steps to provide for their own financial support during their initial settlement period. In this way, the amendments help to ensure that access to payments is targeted to those most in need, with appropriate safeguards and exemptions for those unable to support themselves as planned.

### ***Right to maternity leave***

The right to maternity leave includes an entitlement for working mothers to paid leave or social security benefits during a reasonable period before and after childbirth. It also requires countries, as a measure of prevention of discrimination against women, to provide maternity leave with pay or with comparable social benefits without loss of former employment or seniority. The right to maternity leave is contained in article 10(2) of the ICESCR and article 11(2)(b) of the CEDAW.

While it is acknowledged that the upbringing of children requires a sharing of responsibility between men and women and society as a whole, it is reasonable to expect that migrants who make the decision to have a child during their initial settlement period should also allow for the costs of supporting themselves and their children during the waiting period.

The Australian welfare system is targeted so that those who most need help receive it. In order to sustain this, those who can support their children are expected to do so.

The duration of the waiting period is set at three years, and once the waiting period has been served, and migrants have had an opportunity to contribute economically and socially to the nation, they will be subject to the same eligibility requirements as any other citizens for social welfare and family payments.

While the measure introduces a new waiting period for PLP and DaPP, migrants who have a baby born between 1 July 2018 and 1 January 2019, and would otherwise be eligible for payment, will still be able to access these payments for that baby. This will ensure that prospective parents who may already be pregnant prior to commencement and already have made leave plans based on the current rules are not disadvantaged.

Many employers, including the Australian, state and territory governments also provide paid parental leave entitlements which are unaffected by the measure. In addition, the *Fair Work Act 2009* also provides for an entitlement of up to 12 months of unpaid parental leave under the National Employment Standards.

Access to a range of other government funded payments and services, including childcare subsidies, health care and education have also been retained for newly arrived migrants.

### ***Right to an adequate standard of living, including food, water and housing***

This measure engages the right to an adequate standard of living, including food, water and housing, contained in Article 11 of the ICESCR. The right to an adequate standard of living, including food, water and housing provides that everyone is entitled to adequate food, clothing and housing and to the continuous improvement of living conditions.

The amendments contained in this measure are an extension of the Government's existing policy on waiting periods and strengthen the expectation that new permanent residents should be able to support themselves upon arrival. To the extent that the measure impacts on a person's right to an adequate standard of living, including food, water and housing, by virtue of this measure, the impact is limited.

Australia's migration system is focused on skilled-migration to attract people with the skills and talent to help build Australia's economy, increase productivity and create jobs. That means the majority of new permanent skilled migrants are coming here to work and will be well placed to support not only themselves, but also their families.

The potential limitations on this right are considered proportionate to the policy objective of encouraging self-support in order to keep the system sustainable while providing exemptions for eligible people whose circumstances change and no longer have the capacity to support themselves. These exemptions ensure a safety net remains available through access to payments such as special benefit (and, where the person has children, FTB) to those people left without other means of support for reasons beyond their control are supported to meet their basic living costs.

### ***Right to health***

The right to health is the right to the enjoyment of the highest attainable standard of physical and mental health. The right to health is contained in article 12(1) of the ICESCR.

The Schedules engage the right to health through the extension of the waiting period for the low income health care card (HCC) and commonwealth seniors health card from two to three years. The Schedules also engage the right to health where entitlement to an automatically issued HCC is delayed because the payment to which is linked is subject to a waiting period.

Delayed access to a HCC will not affect entitlement to benefits under the Medicare Benefits Scheme (MBS) and the Pharmaceutical Benefits Scheme (PBS). MBS benefits include a Medicare card, free treatment for public patients and public holidays and rebates on MBS listed health services. PBS benefits include access to subsidised medicines through a 'co-payment', with further subsidies applying once a person has reached the relevant PBS safety-net threshold. All permanent visa holders, including those subject to a waiting period for welfare payments, will continue to have access to the MBS and PBS benefits (these benefits are also available to certain temporary visa holders).

It will, however, affect entitlement to the additional concessional benefits available to concession card holders. This includes access to bulk billing incentives, a lower Extended Medicare Safety Net, a lower PBS co-payment amount and a lower PBS safety-net threshold.

However, the vast majority of people impacted by this measure are people migrating to Australia under the skilled migration program to work in a specific field. By the nature of their migration pathway they are well placed to support themselves and their families once they have moved here.

There are a range of exemptions that ensure potentially vulnerable migrants who have limited means and may face difficulty meeting health costs without concessional assistance can continue to access a concession card.

Humanitarian entrants and their family members will be exempt from all waiting periods for social security payments and concession cards and will therefore retain access to the associated additional concessional health benefits.

New Zealand citizens and holders of other certain other temporary visas (Temporary Protection Visas and Safe Haven Enterprise Visas) will be exempt from the waiting period for FTB if they have children. Those on low incomes will also retain access to a HCC as part of their FTB entitlement.

Families who have an FTB eligible child but are serving a waiting period for FTB will be exempt from the waiting period for the low income HCC. This will ensure that low-income families are able to claim this card immediately and access the associated concessional health benefits.

Individuals and families who experience a change of circumstances and find themselves in hardship will be exempt from the waiting period for payments such as special benefit or parenting payment (depending on the change of circumstances) and will also have access to a concession card as part of their payment.

With regards to protections against infectious diseases, the Government has a clear position that immunisation is the safest way to protect children from vaccine-preventable diseases.

To give children the best protection against diseases such as whooping cough and measles, the Government is aiming towards an interim immunisation coverage target of 95 per cent for childhood vaccination rates. This target provides sufficient herd immunity to prevent the transmission of vaccine-preventable diseases and the No Jab, No Pay policy that applies to FTB is helping to achieve this.

Through awareness raising initiatives, the Government is encouraging all parents to immunise their children. The No Jab, No Pay provides financial incentives for parents to ensure their children are appropriately immunised by making access to certain payments, such as FTB end-of-year supplements and child care subsidies, contingent on meeting immunisation requirements. Families not in receipt of FTB (because they are serving a waiting period) will not be impacted by the financial incentives of immunising their children that the No Jab, No Pay policy provides. However, they may be covered when enrolling children in childcare and/or school through state and territory initiatives. This ensures that there are still incentives for migrant families to ensure that their children are appropriately immunised. In addition, catch-up schedules are available to migrant families to ensure that their children are fully immunised.

### ***Right to freedom of movement***

The right to freedom of movement includes the right to move freely within a country for those who are lawfully within the country, the right to leave any country and the right to enter a country of which you are a citizen. The right to freedom of movement is contained in articles 12 and 13 of the ICCPR.

While the measure builds on existing waiting periods required before a migrant can access social security, it does not impose restrictions or conditions on an individual's right to enter or leave Australia, or move freely within Australia.

The Schedules may place increased pressure on migrants to remain in the location of their employment, subsequently restricting their freedom of movement. However, any limitations are considered reasonable and proportionate and would be of a temporary nature, limited to the duration of the waiting period.

The measure is designed to ensure the sustainability of Australia's welfare system, and to encourage those seeking to settle permanently in Australia ensure they have the capacity to support themselves. It is not intended to reduce the numbers of migrants coming to Australia, and no variation in migration patterns is predicted as a result of the amendments.

In addition, individuals and families take into account a number of different factors when deciding to migrate permanently to another country. This includes economic and demographic, social, political, cultural and environmental factors as well as the characteristics of the destination country. These amendments impact on only part of a much bigger consideration for potential migrants.

### ***Right to equality and non-discrimination***

This measure engages the rights of equality and non-discrimination contained in articles 2, 16 and 26 of the ICCPR. Equality affirms that all human beings are born free and equal. Equality presupposes that all individuals have the same rights and deserve the same level of respect. All people have the right to be treated equally.

Non-discrimination is an integral part of the principle of equality. It ensures that no one is denied their rights because of factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth. In addition to those grounds, discrimination on certain other grounds may also be prohibited. These grounds include age, nationality, marital status, disability, place of residence within a country and sexual orientation.

These Schedules engage the right to equality and non-discrimination in that they will result in both direct and indirect differential treatment on the basis of national origin, visa class and sex.

Under existing rules, humanitarian migrants and their families are exempt from the waiting periods for all social security payments, and will continue to be exempt under the measure. They will also be exempt from the new waiting periods for FTB, PLP and DaPP.

These exemptions acknowledge that welfare payments are key to the successful long term settlement of humanitarian entrants in particular as they are particularly vulnerable, generally have no other means of support and are not usually in a position to make plans for their own support prior to applying for a humanitarian visa.

The differentiation of treatment conferred to humanitarian migrants is considered legitimate for the purpose of addressing the interests of a particularly disadvantaged community group.

Under the Trans-Tasman Travel Arrangement (TTTA) introduced in 1973, Australian and New Zealand citizens are able to enter each other's country to visit, live and work indefinitely, without the need to apply for prior authority. New Zealand is the only country in the world that has such an arrangement with Australia.

In recognition of the unique arrangements between Australia and New Zealand under the long-standing TTTA, New Zealand citizens in Australia on a Special Category Visa will be exempt from the waiting period for FTB, PLP and DaPP. These exemptions ensure that New Zealand Special Category Visa holders retain access to the same entitlements they can currently access.

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To the extent that differentiation of treatment on the basis of national origin is applied to this cohort, it is considered reasonable and proportionate and reaffirms the positive and important role that freedom of trans-Tasman movement plays in strengthening the bilateral relationship between Australia and New Zealand.

By the nature of the payments, the introduction of a waiting period for FTB, PLP and DaPP will only affect those migrants with dependent children or those migrants who are planning to have children.

Introducing a waiting period for these payments ensures consistent expectations for migrants across welfare payments, and creates a clear and easy to understand system. The changes are reasonable and proportionate to ensuring ongoing sustainability of Australia's social security system.

Consideration was also given to whether these changes, in particular, disproportionately affect women who often bear the burden of most family care responsibilities, and are more likely to experience family and domestic violence. While the measure does not directly target women or families, to address the above mentioned concerns the measure contains a number of key safeguards to ensure appropriate protections for this cohort.

Migrants who become a lone parent after becoming an Australian resident will continue to be exempt from the waiting period for parenting payment, newstart allowance and youth allowance. Migrants who experience another substantial change of circumstances after the start of their waiting period, and are in financial hardship, will also continue to be exempt from the waiting period for special benefit. Those who receive one of these exemptions and who have dependent children will also be exempt from the waiting period for FTB.

Also, migrants who have a baby born between 1 July 2018 and 1 January 2019, and would otherwise be eligible for PLP or DaPP, will still be able to access these payments for that baby.

As the majority of newly arrived migrants are from culturally and linguistically diverse (CALD) backgrounds, these Schedules will more significantly impact this cohort. While it is acknowledged that, generally, people from CALD backgrounds can face additional barriers to finding work, the vast majority of people impacted by this measure are people migrating to Australia under the skilled migration program to work in a specific field. By the nature of their migration pathway they are well placed to support themselves and their families once they have moved here.

To the extent that the differential treatment of certain groups under this measure constitutes a limitation on the right to equality and non-discrimination, this limitation is considered to be reasonable and proportionate to achieving the legitimate objective of ensuring that newly arrived migrants meet their own living costs for a reasonable period before receiving Government assistance, in order to keep the system sustainable into the future.



### ***Protection against exploitation, violence and abuse***

Numerous provisions in human rights treaties require countries to take measures to protect persons from exploitation, violence and abuse. The right to protection against exploitation, violence and abuse is contained in article 20(2) of the ICCPR, and article 19(1) of the CRC and article 16(1) of the CRPD.

The UN Committee on the Elimination of all Forms of Discrimination against Women has stated that gender-based violence, including domestic violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.

The Schedules provide exemptions to the waiting periods for special benefit and FTB (where relevant) for those migrants who experience a substantial change in circumstances, and are in financial hardship, following their arrival. This critical safety net is intended to cater for circumstances such as those who experience domestic violence, and their children.

### ***Right to respect for the family***

The right to respect for the family and freedom from interference with the family is contained in articles 23 and 17(1) of the ICCPR.

While the measure builds on existing waiting periods required before a migrant can access social security, it does not designed to impose restrictions or conditions which will impact on a dependent child's welfare.

The vast majority of people impacted by the changes are people who will come to Australia on skilled visas to work in a specific field. By the nature of their migration pathway they are well placed to support themselves and their families once they have moved here. In relation to migrants arriving on family related visas, these are people who have the support of family members and are making the decision to move here to be with them.

Safeguards have been included to ensure that parents are able to access financial support should their family experience a substantial change in circumstances resulting in financial hardship. The measure provides exemptions to the waiting periods for special benefit and FTB (where relevant) for those migrants who experience a substantial change in circumstances, and are in financial hardship, following their arrival. This critical safety net is intended to cater for circumstances such as those who experience domestic violence, and their children.

### ***Rights of parents and children***

In addition to the rights enjoyed by all persons under human rights treaties, parents and children enjoy special rights, particular to their status. The rights are contained in article 3 of the CRC and article 24(1) of the ICCPR.

This measure has particular impacts on:

- best interests of the child;

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- responsibilities, rights and duties of parents; and
- refugee children.

Many permanent skilled and family visa types also allow applicants to include dependent children in their visa applications. In relation to the measure's impact on the best interests of the child, it is reasonable to expect that permanent migrants choosing to bring their family with them to Australia should be in a position to support their family as well as themselves during their initial period of settlement.

The measure provides exemptions to the waiting periods for special benefit and FTB (where relevant) for those migrants who experience a substantial change in circumstances, and are in financial hardship, following their arrival.

In addition, the NARWP applied for FTB will not affect a person's entitlement to double orphan pension or stillborn baby payment. This ensures that migrants who have a stillborn child or are caring for a child who has lost both its parents still have access to financial support to ensure they can meet any costs associated with these circumstances.

In relation to the responsibilities, rights and duties of parents, the CRC recognises the principle that both parents have common responsibilities for the upbringing and development of the child. It also provides that there should be appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities, in particular to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Access to childcare subsidies will be retained for newly arrived migrants to help families to participate in work, study, training or other recognised activities. In addition there is a range of government funded payments and services which are made available to support participation, social cohesion, integration and wellbeing, such as health care and education, which contribute to safeguarding these rights.

Also, migrants who have a baby born between 1 July 2018 and 1 January 2019, and would otherwise be eligible for PLP or DaPP, will still be able to access these payments for that baby.

The rights relating to refugee children (including their families) are addressed through the continuation of existing exemptions from waiting periods for all social security payments and additional exemptions from the new waiting periods for FTB, PLP and DaPP.

The limitations on access to social security are considered reasonable and proportionate to achieving the objective of enhancing the residence-based nature of Australia's social security system, ensuring that it remains fair, is targeted to those most in need of income support and is sustainable in the long term so that social security remains available to future generations of Australians.

### ***Right to work and rights at work***

The right to work includes the right of everyone to the opportunity to gain his or her living by work which he or she freely chooses or accepts. Rights in work include the enjoyment of just and favourable conditions of work and to form and join trade unions. The right to work and rights in work is contained in articles 6(1), 7 and 8(1)(a) of the ICESCR.

Permanent visa holders under the skilled and family migration program, including those subject to a waiting period for welfare payments, will continue to have the right to work in Australia and will continue to be covered by the workplace protections provided by federal legislation, such as the *Fair Work Act 2009*, as well as state and territory based legislation.

Most newly arrived migrants are not currently entitled to job seeker payments, such as Newstart Allowance for two years after becoming an Australian resident. Under the measure, this will be extended to three years. However, these migrants will still be able to volunteer for jobactive services for up to six months to help them find a job.

Migrants will also be able to access the child care subsidy to help families to participate in work, study, training or other recognised activities.

These arrangements ensure that affected migrants will continue to be eligible for assistance to find and maintain work, as well as reasonable conditions and protections in workplace.

### **Conclusion**

These Schedules are compatible with human rights. To the extent that a human rights obligation is engaged or limited, the impact is for a legitimate objective, and is reasonable, necessary and proportionate as outlined above.

Australia is a prosperous country with strong social and economic foundations. To maintain this, it is important that Australia's welfare payments system remains sustainable into the future and provides the best possible encouragement for people to support themselves where they are able.

While the Australian welfare system is already highly targeted, prudent and reasonable changes, such as those contained in this measure, are required to maintain the stability and sustainability of the system in the longer term.

These Schedules support the Government's commitment to a sustainable, equitable and needs-based social security system. Introducing these changes to waiting periods will encourage new migrants to ensure they have arrangements in place to support themselves during their initial settlement period. This will, in turn, support the stability and sustainability of Australia's social security system.

It is reasonable to expect that people choosing to become permanent residents of Australia should be able to support themselves and their families through their

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existing resources, through work or through support from family members already in Australia.

The amendments in these Schedules will promote this by strengthening existing waiting periods for some Australian welfare payments and introducing consistent waiting periods for several others.

Importantly, a number of exemptions and protections have been incorporated into the Schedules to ensure that potentially vulnerable groups continue to be appropriately supported through the welfare payments system.

**[Circulated by the authority of the Minister for Social Services,  
the Hon Dan Tehan MP]**