Social Services Legislation Amendment (Payment Integrity) Bill 2019

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House: House of Representatives
Portfolio: Social Services
Commencement: Various dates set out in clause 2 of the Bill.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at October 2019.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
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The Bills Digest at a glance

The Social Services Legislation Amendment (Payment Integrity) Bill 2019 includes three measures:

- amending the residency requirements for Age Pension and Disability Support Pension (DSP) so that, in order to qualify for these payments, a new claimant must have:
  - ten years continuous residency in Australia including at least five years during the person’s working life (age 16 to age pension age) or
  - ten years continuous residency in Australia and the person must not have been in receipt of an allowance or student income support payment for a period or combined periods exceeding five years when they were aged at least sixteen years (whether or not these periods in receipt of income support occur during the ten year qualifying residency period) or
  - 15 years continuous residency in Australia
- stopping payment of the pension supplement after six weeks of a temporary overseas absence, or immediately for permanent departures and
- increasing the maximum liquid assets waiting period (LAWP) for Newstart Allowance, Youth Allowance, Austudy and Sickness Allowance from 13 weeks to 26 weeks.

A similar Bill with the same name was introduced to the House of Representatives on 21 June 2017 but was not debated and lapsed at the dissolution of the Parliament on 11 April 2019. The pension supplement measure was also previously included in the Social Services Legislation Amendment (Omnibus Savings and Child Care Reform) Bill 2017. This Bill was discharged from the Notice Paper in the Senate on 23 March 2017.

The changes to the pension residency requirements will affect a relatively small number of older migrants. Despite only affecting a small number of people, the proposed changes indicate a significant shift in the principles underlying Australia’s social security system. By setting a lower residency requirement for those with residence in Australia during their working life and those without long periods of income support receipt compared to those who do not fit these criteria, the measure adds, for the first time, an explicit link between working and paying income tax and qualification for a pension payment.

The proposal to stop payment of the pension supplement for those overseas permanently or who take trips of six weeks or longer will effectively reduce support for pensioners who take long trips or live overseas. The Government has previously provided estimates that around 175,000 pensioners will be affected by the measure in the first year and an additional 80,000 recipients each year afterwards.

The changes to the LAWP would raise the maximum number of weeks those with significant readily realisable assets (such as cash and savings) have to wait before they can access income support from 13 weeks to 26 weeks. The new maximum LAWP would apply to those single people without dependent children with more than $18,000 in liquid assets; and to partnered people or single people with dependent children with more than $36,000 in liquid assets.

The attempt to legislate these measures in 2017 attracted significant criticism from community groups and both Australian Labor Party and Australian Greens senators recommended the previous Bill not be passed by the Senate.

The measures are expected to save the Department of Social Services $291.5 million over the forward estimates and the Government has argued the Bill makes sensible changes to safeguard the long-term sustainability of the welfare payments system.
Purpose of the Bill

The purpose of the Social Services Legislation Amendment (Payment Integrity) Bill 2019 (the Bill) is to amend the Social Security Act 1991 (SS Act), the Veterans’ Entitlements Act 1986 (VE Act) and the New Skilled Visas (Consequential Amendments) Act 2019 to:

- amend the residency requirements for Age Pension and Disability Support Pension (DSP) so that, in order to qualify for these payments, a new claimant must have:
  - ten years continuous residency in Australia including at least five years during the person’s working life (age 16 to age pension age) or
  - ten years continuous residency in Australia and the person must not have been in receipt of an allowance or student income support payment for a period or combined periods exceeding five years when they were aged at least sixteen years (whether or not these periods in receipt of income support occur during the ten year qualifying residency period) or
  - 15 years continuous residency in Australia.
- stop payment of the pension supplement after six weeks of a temporary overseas absence, or immediately for permanent departures and
- increase the maximum liquid assets waiting period for Newstart Allowance, Youth Allowance, Austudy and Sickness Allowance from 13 weeks to 26 weeks.

The pension supplement measure was announced in the 2016–17 Mid-Year Economic and Fiscal Outlook (MYEFO).

The two other measures were announced in the 2017–18 Budget.

The main amendments in the Bill will commence on 1 January 2020, or, if Royal Assent does not occur on or before 1 December 2019, the first 1 January or 1 July to occur at least one month after Royal Assent.

History of the Bill

A similar Bill with the same name, the Social Services Amendment (Payment Integrity) Bill 2017 (the 2017 Bill), was introduced to the House of Representatives on 21 June 2017. The 2017 Bill was not debated and lapsed at the dissolution of the Parliament on 11 April 2019.

The key differences between the 2017 Bill and the 2019 Bill are revised commencement dates and the removal of Schedule 3 to the 2017 Bill.

Schedule 3 of the 2017 Bill proposed changes to the Family Tax Benefit Part A income test. The same amendments were included in Schedule 5 of the Social Services and Other Legislation Amendment (Promoting Sustainable Welfare) Bill 2018 (via Government amendments made in the House of Representatives).

The Promoting Sustainable Welfare Bill passed both Houses on 3 December 2018.

The only other changes between the 2017 Bill and the 2019 Bill relate to the changes proposed in the New Skilled Regional Visas (Consequential Amendments) Bill 2019 to amend various social

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1. At the time of writing, the Bill for this Act was still before the Parliament. Parliament of Australia, ‘New Skilled Regional Visas (Consequential Amendments) Bill 2019 homepage’, Australian Parliament website.
2. S Morrison (Treasurer) and M Cormann (Minister for Finance), Mid-year economic and fiscal outlook 2016–17, p. 194.
services Acts to treat holders of the proposed Provisional Skilled Regional Visas as permanent residents for social security and other purposes.\(^6\) The 2019 Bill contains some amendments contingent on the New Skilled Regional Visas (Consequential Amendments) Bill 2019 passing.

The measure proposed in Schedule 2 of the Bill relating to pension supplement was also previously included in the Social Services Legislation Amendment (Omnibus Savings and Child Care Reform) Bill 2017.\(^7\) This Bill was discharged from the Notice Paper in the Senate on 23 March 2017.\(^8\)

This Bills Digest replicates much of the relevant material from the Bills Digest for the 2017 Bill.\(^9\)

**Structure of the Bill and the Bills Digest**

The Bill contains three schedules. As the measures proposed in each schedule are distinct and unrelated, this Bills Digest will provide background and analysis to each schedule in separate sections.

**Committee consideration**

**Senate Selection of Bills Committee**

In its fifth and sixth reports of 2019, the Senate Selection of Bills Committee deferred consideration of the Bill.\(^10\)

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

The Senate Standing Committee for the Scrutiny of Bills considered the 2017 Bill. Considering the 2019 Bill, the Committee reiterated its previous comments.\(^11\)

In regards to the 2017 Bill, the Senate Standing Committee for the Scrutiny of Bills raised a concern as to the retrospective effect of Schedule 1 (changes to pension residency requirements). The Committee noted that, while their commencement was prospective, the effect of the amendments was that ‘a person who may have made arrangements based on an understanding of the existing law may have to wait a further five years to satisfy the residency requirements for the Age Pension or DSP’.\(^12\)

The Committee noted that it has ‘a long-standing scrutiny concern about provisions that, while not technically retrospective, may raise questions as to the fairness of applying a change in the law to individuals who have arranged their long-standing affairs on the basis of the existing law’.\(^13\)

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13. Ibid.
The Committee sought the Minister for Social Service’s advice as to why it is considered necessary to apply the amended requirements to those who may have arranged their affairs on the basis of the existing law, and the numbers likely to be adversely affected.\(^\text{14}\)

The Minister provided advice to the Committee on 28 August 2017. The Minister stated:

\textit{If grandfathering arrangements were to be applied to this measure, they would be required to operate for a significant period. Operating parallel residency systems for the Age Pension and DSP would also be complex from a policy and administrative perspective.}\(^\text{15}\)

The Committee stated in response to this advice: ‘The committee does not consider that administrative complexity, of itself, is sufficient justification for applying a change in the law to individuals who may have arranged their long-standing affairs on the basis of the existing law’.\(^\text{16}\)

The Committee requested that information provided by the Minister in his response be included in the Explanatory Memorandum to the Bill and drew its scrutiny concerns with the Bill to the attention of senators.\(^\text{17}\)

The Explanatory Memorandum for the 2017 Bill was not revised to include the information provided by the Minister. None of this information has been included in the Explanatory Memorandum for the 2019 Bill either.

\textit{Senate Standing Committee for Community Affairs}

The 2017 Bill was referred to the Senate Community Affairs Legislation Committee and the Committee’s report was tabled on 7 September 2017.\(^\text{18}\) The Committee recommended the Bill be passed but also recommended the information provided by the Minister for Social Services’ to the Senate Scrutiny of Bills Committee be included in the Explanatory Memorandum. As noted in the previous section, the Explanatory Memorandum for the 2017 Bill was not revised to include the information provided by the Minister nor has this information been included in the Explanatory Memorandum for the 2019 Bill.

Both the Australian Labor Party and the Australian Greens issued Dissenting Reports. These are discussed in the ‘Policy position of non-government parties/independents’ section of this digest.

\textit{Financial implications}

Table 1 sets out the financial implications of each schedule as stated in the Explanatory Memorandum to the Bill. Note that the Explanatory Memorandum only reported on Department of Social Services savings and not the total fiscal impact of the measures.\(^\text{19}\)

\begin{itemize}
\item [14.] Ibid.
\item [17.] Ibid., p. 79.
\item [18.] Senate Community Affairs Legislation Committee, \textit{Social Services Legislation Amendment (Payment Integrity) Bill 2017 (Provisions)}, The Senate, Canberra, September 2017.
\item [19.] For example, there may be some costs for the Department of Human Services to implement the measures.
\end{itemize}
Table 1: Financial impact of proposed measures over the forward estimates period

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¹. Department of Social Services savings only.
Source: Explanatory Memorandum, Social Services Legislation Amendment (Payment Integrity) Bill 2019, [p. 2].

The estimated savings for the measures in Schedule 1 to the 2019 Bill are significantly less than those estimated for the 2017 Bill: $119.1 million over the forward estimates.²⁰ No information has been provided to explain the reduction in estimated savings.

**Statement of Compatibility with Human Rights**

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.²¹

The Parliamentary Joint Committee on Human Rights raised a number of issues with the Statement of Compatibility with Human Rights for the 2017 Bill (see next section). The Statement for the 2019 Bill has not added any additional material in response to the Committee’s comments.

**Parliamentary Joint Committee on Human Rights**

In considering the Bill, the Parliamentary Joint Committee on Human Rights reiterated its views in regards to the 2017 Bill.²²

Regarding the 2017 Bill, the Parliamentary Joint Committee on Human Rights raised a number of concerns relating to the Statement of Compatibility as it applied to Schedule 1 (changes to pension residency requirements). The Committee had noted that the ‘short statement of compatibility provides no substantive assessment of whether the measure constitutes a justifiable limitation on the right to social security and the right to an adequate standard of living for the purposes of international human rights law’.²³ The Committee also found that Schedule 1 could have a disproportionate effect on older people and people with disability but that the right to equality and non-discrimination ‘was not addressed in the statement of compatibility’ and, therefore, no assessment was made as to the compatibility of the measure with this right.²⁴ The Committee sought the Minister for Social Services’ advice on both these issues.

The Minister’s response argued that the measure was aimed at the legitimate objectives of ‘ensuring a sustainable and well-targeted payments system into the future’, encouraging migrants

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20. Explanatory Memorandum, Social Services Legislation Amendment (Payment Integrity) Bill 2017, [p. 2].
21. The Statement of Compatibility with Human Rights can be found at page 16 of the Explanatory Memorandum to the Bill. Explanatory Memorandum, Social Services Legislation Amendment (Payment Integrity) Bill 2019, [pp. 16–24].
24. Ibid., p. 78.
to be more self-supporting, and strengthening the notion that the retirement costs of a person should be fairly distributed between countries where the person has lived and worked during their working life. In arguing for the proportionality of the measure, the Minister stated that 98 per cent of Age Pension and Disability Support Pension claimants would be unaffected, and that a number of safeguards were in place:

- some migrants would be able to access pensions in Australia or another country under the provisions contained in one of the 30 bilateral International Social Security Agreements Australia has made
- periods where a person was in receipt of an income support payment while under an Assurance of Support arrangement would not be included in an assessment of periods in receipt of working-age income support under the proposed measure
- individuals ineligible for an Age Pension or Disability Support Pension as a result of the measure might be able to access the Special Benefit (a lower rate payment for those in financial hardship who do not qualify for other income support payments) and
- individuals with dependent children could access Family Tax Benefit to assist with the costs of raising those children. The Committee found that, in light of the safeguards identified in the Minister’s response, the measure ‘appears likely to be compatible with the right to social security and the right to an adequate standard of living’. However, the committee did not comment on the issue it had raised regarding the right to equality and non-discrimination and the fact that the Statement of Compatibility did not address this issue.

Schedule 1—Enhanced residency requirements for pensioners

Schedule 1 will amend the residency requirements for Age Pension and Disability Support Pension (DSP) so that, in order to qualify for these payments, a new claimant from 1 January 2020 must have:

- ten years continuous residency in Australia including at least five years during the person’s working life (age 16 to age pension age) or
- ten years continuous residency in Australia and the person must not have been in receipt of an allowance or student income support payment for a period or combined periods exceeding five years when they were aged at least sixteen years (whether or not these periods in receipt of income support occur during the ten year qualifying residency period) or
- 15 years continuous residency in Australia.

The measure will extend the current residency requirements by five years for those without five years working life residency or for those who have been in receipt of an allowance or student payment for more than five years during their working life.

The proposed changes are expected to provide savings of $32.3 million over the forward estimates and will primarily affect older migrants to Australia.

25. Ibid., pp. 78–79.
27. Ibid., p. 81.
28. Explanatory Memorandum, Social Services Legislation Amendment (Payment Integrity) Bill 2019, [p. 2].
Background

The Australian social security system differs from most other developed countries (except for New Zealand) in that payments are flat-rate and paid from general government revenue. Qualification requirements primarily rest on Australian residency and means testing—with the specific category and rate of payment dependent on other factors such as age, disability or family circumstances. Most other developed countries have in place contributory social insurance systems for the provision of unemployment benefits, sickness and disability benefits and for retirement pensions. Eligibility for and rates of payment are linked to the length of time and amount of contributions paid into the scheme (often paid through specific payroll taxes) and to previous earnings. In these countries, only a minimal level of social assistance is offered to those in need of income support who are not covered by the social insurance schemes.

The design of Australia’s social security system is focused on protection against poverty while other developed countries’ systems are focused on income maintenance across a person’s life-cycle (with poverty relief an additional objective). As the Australian system is not based around contributions, the residency requirements play an important role in determining who is eligible for assistance.

Current residency requirements

One of the current qualification requirements for Age Pension and DSP is for at least ten continuous years of Australian residency, or for multiple periods exceeding ten years with at least one period of five years duration or more. There is an exemption from this requirement for refugees or former refugees who reside in Australia and, for DSP, for those who are Australian residents at the time their disability arises.

To be an Australian resident a person must reside in Australia and be an Australian citizen, the holder of a permanent visa or a New Zealander with a Special Category Visa who was in Australia on, just before, or just after 26 February 2001.

Other payments, such as Newstart Allowance and Youth Allowance, require a person to be an Australian resident in order to be eligible but do not have qualifying residency period requirements. Instead, these payments have a newly arrived residency waiting period requirement of four years—meaning that an individual must be resident in Australia for four years before they can start receiving the payment unless an exemption applies. Carer Payment has a newly arrived resident waiting period of two years.

30. Ibid.
32. DSS, ‘3.1.1.10 residence requirements’, Social security guide, DSS website, last reviewed 12 August 2019.
33. DSS, ‘1.1.N.70 newly arrived resident’s waiting period (NARWP)’, Social security guide, DSS website, last reviewed 2 January 2019.
34. Ibid.
Short history of Age Pension residency requirements

When the Age Pension was introduced in 1909, the residency requirement was for 20 years continuous residence (with absences of up to one tenth of total residency allowed).\(^\text{35}\)

This was amended in 1952 so those with 18 years of residence could be deemed to have been resident during occasional absences totalling two years (plus six months for each year of residence exceeding 18 years).\(^\text{36}\)

This requirement was further reduced in 1962 to ten years continuous residence or, when continuous residence was at least five years, the ten year requirement was reduced by all periods of residence totalling in excess of ten years.\(^\text{37}\)

Most of the current requirements were introduced in 1985.\(^\text{38}\) However, in 1987, the requirements were changed to exclude temporary residents and prohibited non-citizens.\(^\text{39}\)

Refugees applying for pensions were made exempt from length of residence requirements from 1995.\(^\text{40}\)

Short history of Disability Support Pension residency requirements

When DSP (known as the Invalid Pension prior to 1991) was introduced in 1910, the residency requirement was for five years continuous residence (absences up to one tenth of the total residency period were allowed).\(^\text{41}\) A claimant was required to have become permanently incapacitated while in Australia.

In 1912, those who were blind or those permanently incapacitated as a result of a birth defect and who were brought to Australia before the age of three years old could be considered eligible for DSP.\(^\text{42}\) In 1923, those not born in Australia, who were blind or were permanently incapacitated as result of a birth defect, and who arrived after turning three years old, could become eligible for DSP after 20 years continuous residence in Australia.\(^\text{43}\)

From 1947 eligibility was broadened so that incapacity or blindness that occurred during temporary absence from Australia did not disqualify a claimant. Any incapacity that had occurred outside of Australia did not disqualify a claimant if they arrived in Australia before the age of three years or had resided continuously in Australia for 20 years.\(^\text{44}\)

In 1952, residence requirements were eased so that where a claimant had resided in Australia for periods totaling 18 years they could be deemed to have been resident during occasional absences totaling two years plus six months for each year of residence in excess of 18 years.\(^\text{45}\)

\(^{35}\) Daniels, *Social security payments for the aged, people with disabilities and carers 1909 to 2010*, Background note, Parliamentary Library, Canberra, 21 February 2011, p. 5.

\(^{36}\) Social Services Consolidation Act 1952.

\(^{37}\) Social Services Act 1962.

\(^{38}\) Daniels, *Social security payments*, op. cit., p. 8.

\(^{39}\) Social Security and Veterans’ Entitlements Amendment Act 1987.


\(^{41}\) Daniels, *Social security payments*, op. cit., p. 11.

\(^{42}\) Invalid and Old-age Pensions Act 1912.

\(^{43}\) Invalid and Old-age Pensions Act 1923.

\(^{44}\) Social Services Act 1947.

\(^{45}\) Social Services Consolidation Act 1952.
In 1962, the residence requirements were modified so that permanent incapacity or blindness which occurred outside of Australia did not disqualify a person from eligibility for DSP if continuous residence at any time exceeded ten years.\(^{46}\) Where continuous residence was at least five years, the ten-year continuous residency requirement was reduced by all periods of residence totalling in excess of ten years.

In 1974, people who became permanently incapacitated for work in Australia, no longer had to satisfy a period of residence requirement.\(^{47}\)

In 1985, the current residency requirements were introduced for those who were not incapacitated while an Australian resident. A claimant had to have been resident for ten years at least five of which had to be for a continuous period.\(^{48}\) In 1987, the requirements were changed to exclude temporary residents and prohibited non-citizens.\(^{49}\)

Refugees applying for pensions were made exempt from length of residence requirements from 1995.\(^{50}\)

**Policy position of non-government parties/independents**

**Australian Labor Party**

In their Dissenting Report to the Senate Community Affairs Legislation Committee’s report on the 2017 Bill, Australian Labor Party (Labor) Senators rejected the Committee’s recommendation that the Bill be passed.\(^{51}\) The Dissenting Report noted concerns raised by submitters regarding the impact of Schedule 1 on older migrants.\(^{52}\) Labor Senators also noted the concerns of the Scrutiny of Bills Committee regarding the impact of the measures on those who had arranged their affairs based on the current eligibility criteria.\(^{53}\)

**Australian Greens**

In their Dissenting Report to the Senate Community Affairs Legislation Committee’s report on the 2017 Bill, Australian Greens Senators also rejected the Committee’s recommendation that the Bill be passed. In regards to the amendments in Schedule 1, the Dissenting Report stated:

> The Australian Greens do not support the increased residency requirements, which will disproportionately impact older migrants who face additional barriers to finding employment. We are concerned that the Government is relying on an inadequate, discretionary payment of last resort – the Special Benefit – to bridge any gap created by this measure. We also have serious concerns regarding the establishment of a precedent that evaluates an individual’s income support history as part of their current eligibility for income support.\(^{54}\)

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46. [Social Services Act 1962](#).
47. [Social Services Act (No. 3) 1974](#).
48. [Social Security and Repatriation Legislation Amendment Act 1985](#).
49. [Social Security and Veterans’ Entitlements Amendment Act 1987](#).
52. Ibid., p. 18.
53. Ibid., p. 19.
Centre Alliance
Media reports quoted Centre Alliance MP Rebekha Sharkie saying that she did not support the measures in the Bill that would disproportionately affect older people: ‘I just think these are mean-spirited plans by government and now they are making such a big deal of us running a budget surplus, where is the need for these cuts from the most vulnerable?’\(^{55}\)

Position of major interest groups

Federation of Ethnic Communities’ Councils of Australia
The Federation of Ethnic Communities’ Councils of Australia (FECCA) previously criticised the proposed changes stating that the measures ‘will have a disproportionate impact on Australia’s migrant communities’.\(^{56}\) FECCA’s statement in response to the Budget said: ‘FECCA believes that migrant Australians should not be punished in their older age or because they require support for living with a disability’.\(^{57}\)

National Social Security Rights Network
The National Social Security Rights Network (NSSRN) is opposed to the measure:

It affects relatively few people. However, in the NSSRN’s view, there is no justification for tightening the residence requirements for age pension and DSP. The measure would achieve a small saving, but is likely to cause severe financial hardship to some very vulnerable elderly Australians.

It is likely that this measure will result in more elderly migrants over age pension age relying on the poverty level special benefit payment for extended periods, rather than age pension. This includes some elderly victims of violence, abuse and neglect.\(^{58}\)

The NSSRN noted that the existing residency requirements result in elderly migrants relying on Special Benefit, particularly migrants who have arrived in Australia under the contributory parent visa scheme.\(^{59}\) Under this scheme, migrants must have an assurer ‘who guarantees to provide financial support or repay any recoverable social security payments made to the migrant during their first 10 years of Australia residence’ (the assurance of support scheme).\(^{60}\)

The NSSRN is concerned that some elderly migrants who need to access income support as a result of violence, neglect or abuse by their assurer or another family member will only be able to access lower rate Special Benefit rather than a pension payment. It notes that under the assurance of support scheme, any Special Benefit paid to these migrants can be recovered from the assurer. The NSSRN has recommended that victims of violence, abuse and neglect should be exempt from the residency requirements and that the assurance of support scheme be extended so that pensions can be recoverable amounts under the scheme.\(^{61}\)

56. Federation of Ethnic Communities’ Councils of Australia (FECCA), FECCA concerned about impact of key budget measures on migrant Australians, media release, 9 May 2017.
57. Ibid.
59. Ibid.
60. Ibid.
61. Ibid.
In its submission to the Senate Community Affairs Legislation Committee’s inquiry into the 2017 Bill, the NSSRN raised issue with the use of Special Benefit to support older migrants:

Special Benefit is a last resort, discretionary payment intended for people who are ineligible for another payment, generally only for short periods. Although paid at the same basic rate as Newstart Allowance, it is often paid at a lower rate because it is subject to a much harsher means test, including a dollar for dollar deduction for any dollar of income from any source. It is inappropriate for any Australian to end up on this payment for an extended period of time, let alone an older person with significant health problems who is unable to work.\(^\text{62}\)

**Australian Council of Social Service**

The Australian Council of Social Service (ACOSS) has stated that it ‘strongly opposes this cut to pensions’.\(^\text{63}\) ACOSS stated concerns that the amendments could mean that someone trying to access the Age Pension could have to wait until they were 80 to be eligible.

ACOSS’s submission to the Senate Community Affairs Legislation Committee’s inquiry into the 2017 Bill stated:

> The other deeply concerning element of this schedule is denying a pension to people on the basis of having previously received an activity-tested payment for five years or more.

> ...

> We strongly oppose basing eligibility for income support on previous receipt of payment.

> Unemployment is a structural issue, not an individual issue. The proposal will disadvantage people who live in areas of high unemployment or who have been retrenched. It will also penalise people who have undertaken study.\(^\text{64}\)

**Chinese Australian Services Society Limited**

The Chinese Australian Services Society (CASS) is a Sydney-based community services organisation with many clients with Chinese, Korean, Indonesian and Vietnamese backgrounds. In its submission to the Senate Community Affairs Legislation Committee’s inquiry into the 2017 Bill, CASS stated:

> We believe the proposed changes are unreasonable and are not compatible with human rights. The new requirements will particularly disadvantage people with disability and senior migrants with financial difficulties.

> ...

> Many elderly migrants may be helping in domestic chores after migrating to Australia. They may get themselves involved in voluntary work – which we often come across in our community. So, they are contributing to Australia but their efforts are not getting any payment as all the work they do is not a paid employment. After 10 years of being here, it is time for the Australian community to show support


\(^{63}\) Australian Council of Social Service (ACOSS), Submission to the Senate Community Affairs Legislation Committee, *Inquiry into the Social Services Legislation Amendment (Payment Integrity) Bill 2017*, [Submission no. 6], 4 August 2017, p. 1.

\(^{64}\) Ibid., p. 2.
to them. Prolonging the eligibility criteria from 10 years to 15 years is a punishment on them and ignore their contribution.65

**Key issues and provisions**

**Rationale for the measure**

In explaining the rationale for the measure, the Minister for the National Disability Insurance Scheme and Government Services Stuart Robert stated:

Currently, to qualify for the age pension or DSP, a person must be an Australian resident for a total of 10 years, with at least five of those years being continuous. However, there is no requirement for those 10 years to be during a person’s working life—that is, between 16 years of age and age-pension age—or for a person to demonstrate self-sufficiency during that time.

... The community reasonably expects that people choosing to migrate to Australia, including those who come later in life, should be self-sufficient to the greatest extent possible. It is estimated that less than one per cent of the people applying for the age pension or DSP will be impacted by this measure.66

In introducing the 2017 Bill, then Minister for Social Services Christian Porter compared Australia’s residency requirements with those for contributory pension schemes in other developed countries:

The current residency requirements are generous when compared to the qualifying contribution periods required to receive a pension in other countries. A number of OECD countries require greater than 10-years contributions in order to receive even a part pension.67

The former Minister stated Australia’s social security system is based on the principles of need and residency and argued that the measures will ‘reinforce and strengthen the residence connection’.68

**Changes introduce a contributory element to the social security system**

The former Minister’s rationale aligned working life residency with the contribution periods used to determine qualification for and rates of pensions in overseas schemes. As noted above, these social insurance schemes are very different to Australia’s social security system.

Social insurance schemes are funded—at least partly—by direct contributions usually collected through specific payroll taxes. Australia’s social security system is funded from general government revenue. While Australia had a period where a component of income tax was known as the ‘social services contribution’, eligibility for social security payments was never dependent on a person having paid income tax and there was no direct link between the revenue from this contribution and social security expenditure.69 As a system designed to act as a safety net and

68. Ibid., p. 7197.
focused on poverty alleviation, it would be ineffective to link contributions to government revenue with eligibility for payments as some individuals will never be able to contribute or will contribute very little. This could arise for a range of reasons including disability, illness, carer responsibilities or other barriers to earning income.

The residency requirements could be viewed as implicitly requiring some sort of contribution to Australia in order to qualify for pension payments—as most migrants will contribute to government revenue during their residency period (on top of visa fees and taxes other than income tax). In fact, this was the reason cited by Robert Menzies in 1961 in announcing the policy to reduce the Age Pension residency requirement from 20 years to ten years:

The great stream of migration since the War, so valuable to Australia, has produced its own problems. One of them has been that it is felt by elderly migrants, who have worked and paid taxes in Australia for long periods falling short of 20 years, that it is unreasonable that they should not qualify for age pension. We have examined this matter. We attach great importance to family migration, since it helps assimilation in the new country. We will legislate to reduce the 20 years period to 10.70

However, despite the suggestion that migrants will have worked and paid taxes, there was no requirement for migrants to have actually done so in order to qualify for the pension.

The proposed changes indicate a significant shift in the principles underlying Australia’s social security system, despite only affecting a small number of people. By setting a lower residency requirement for those with residence in Australia during their working life and those without long periods of income support receipt compared to those who do not fit these criteria, the measure adds an explicit link between working or paying income tax and qualification for a pension payment.

Waiting periods and Assurance of Support Scheme require self-sufficiency

The social security system already has in place a number of requirements to ensure new migrants are self-sufficient and will not be reliant on government except in special circumstances: waiting periods and the Assurance of Support Scheme.

The newly arrived residents waiting period that applies to working-age payments such as Newstart Allowance and Youth Allowance prevents most new migrants from accessing any income support until they have been resident in Australia for four years.71

Under the Assurance of Support Scheme, migrants with a high likelihood of requiring income support to hold an assurance of financial support by an Australian resident.72 Under the Scheme, an assurer assumes financial responsibility for the new arrival (the assuree) for the duration of the assurance of support period, and responsibility for the repayment of any recoverable social security payments received by the assuree during the assurance of support period. Assurance of support requirements are separate from any visa fees or other visa conditions. Recoverable social security payments are primarily working-age payments such as Newstart Allowance, Youth Allowance, Parenting Payment and Special Benefit as well as relevant supplements. In some cases, assurers must lodge a security in the form of a bank guarantee.73

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71. DSS, “1.1.N.70 newly arrived resident’s waiting period (NARWP)”, op. cit.
72. DSS, “9.4.1.10 introduction to the AoS Scheme”, Social security guide, DSS website, last reviewed 20 March 2019
73. Ibid.
The assurance of support period commences the day the person is granted the visa or the day they enter Australia, whichever is later. The duration will depend on the visa subclass:

- for contributory parent visas (subclass 143 and subclass 864), the period is ten years
- for a subclass 202 (Global Special Humanitarian) visa under the Community Support Programme, the period is 12 months
- for a subclass 115 or 835 (Remaining Relative) visa and subclass 117 or 837 (Orphan Relative) visa, the period is two years
- for all other visas, the period is four years.\(^{74}\)

Both waiting periods and the Assurance of Support Scheme are a means of ensuring new migrants are not able to access financial support from the Australian Government unless there are exceptional circumstances.\(^{75}\) In the case of Assurance of Support Scheme, even when such exceptional circumstances exist, the assurer must repay any income support received during the assurance of support period.

Together with the ten year residency requirements for the Age Pension and DSP, waiting periods and the Assurance of Support Scheme set a general standard for migrants to Australia that they must be self-sufficient for a significant period of their initial residency in Australia. The proposed changes to residency requirements add another layer to this standard, primarily targeted at older migrants.

**Measure primarily affects older migrants**

At the time the measure was announced, the Government estimated that around 2,390 pension claimants would be affected by the change each year—2,300 will be delayed from claiming a pension due to the new requirement to have at least five years of the ten-year continuous residence requirement as a resident during the person’s working life (aged 16 to pension age), and an estimated 90 people a year on parent or partner visas who have been in receipt of an income support payment for longer than five years would have to wait an additional five years before claiming an Age Pension.\(^{76}\)

Of those affected by the measure each year, the Department of Social Services estimated that less than half would receive the Special Benefit instead: 670 who would have been eligible for the Age Pension and 300 who would have been eligible for DSP in 2019–20.\(^{77}\)

While some expatriate Australians who have not spent much of their working life in Australia may be affected, the majority of those affected are likely to be older migrants who move to Australia late in their lives and will have to wait a longer time before they are able to access the Age Pension.

Some younger migrants whose disability occurred prior to moving to Australia may have to wait longer before they can access DSP, particularly if they have had periods in receipt of another

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74. DSS, ‘9.4.1.60 AoS Scheme from 1 January 2019’, Social security guide, DSS website, last reviewed 2 January 2019.
75. DSS, ‘3.1.2.70 exemptions from waiting periods’, Social security guide, DSS website, last reviewed 20 March 2019.
77. Senate Community Affairs Legislation Committee, Answers to Questions on Notice, Social Services Portfolio, Inquiry into the Social Services Legislation Amendment (Payment Integrity) Bill 2017, 5 September 2017, Question no. 3.
payment such as Newstart Allowance or Youth Allowance (which can generally be accessed by migrants after serving a four-year Newly Arrived Residents Waiting Period).

**Key provisions**

**Part 1—Social Security Act 1991**

The Age Pension qualification requirements are set out in section 43 of the SS Act. Paragraph 43(1)(a) provides that one criterion for qualification, where the person has reached pension age, is that they have ten years qualifying Australian residence (other criteria are that the person has a qualifying residence exemption, or that the person was previously in receipt of one of a number of specified payments prior to reaching pension age). Qualifying Australian residence is defined at section 7.

**Item 1 of Schedule 1** substitutes paragraph 43(1)(a) so that the criterion refers to the person meeting the residency requirements set out by **proposed section 43A** (inserted by item 4). New section 43A sets out the proposed new qualifying residency requirements for the Age Pension.

The new requirements are that a person must have been an Australian resident for a continuous period of at least 15 years; unless they satisfy **proposed subsections 43A(2) or (3)** in which case the requirement is for a period of at least ten years. Proposed subsections 43A(2) and (3) provide the criteria for needing only a period of ten years continuous residency:

- 43A(2)—if at least five years of the residency period was during a period where the person was aged at least sixteen but before they reach pension age (currently 65 years and six months)
- 43A(3)—if, for a period that exceeds five years, or for two or more periods that in aggregate exceed five years (whether or not these periods are during the qualifying continuous residency period), the person:
  - was not receiving a payment of Austudy Payment, AUSTUDY Allowance, Newstart Allowance (or previous payments the Job Search Allowance or Unemployment Benefit), Youth Allowance or a Youth Training Allowance, or Special Benefit (under the current SS Act or the previous Social Security Act 1947)
  - was aged at least 16 years during the period or periods and
  - was an Australian resident during the period or periods.

**Proposed subsection 43A(4)** provides that periods when an assurance of support is in force for an individual and they are receiving one of the payments listed above are not to be considered periods where a person was receiving a payment (for the purposes of subsection 43A(3)).

Section 94 of the SS Act sets outs the qualification requirements for DSP. **Item 6** substitutes **subparagraph 94(1)(e)(ii)** (which sets the requirement for ten years qualifying Australian residence or a qualifying residence exemption) with **new subparagraphs 94(e)(ii) and (iia)**. These new subparagraphs require a person to either meet the qualifying residency requirements set out at **proposed section 95A** (inserted by **item 10**) or have a qualifying residency exemption.

The residency requirements set out in proposed section 95A are the same as those in proposed subsection 43A (set out above).

The application provisions for Schedule 1 of the Bill state that the amendments apply in relation to claims for the Age Pension or DSP made on or after commencement or for claims made before commencement where the person does not qualify for the relevant pension before commencement. The amendments do not apply to a person who was in receipt of the Age Pension or DSP prior to commencement if they later made a claim for the same payment. That is, those already in receipt of the Age Pension or DSP prior to commencement will not be subject to the
proposed new requirements if they lose eligibility for the payment and then make a new claim at a later date.

Part 2—New Skilled Regional Visas (Consequential Amendments) Act 2019

At the time of writing, the New Skilled Regional Visas (Consequential Amendments) Bill 2019 is currently before the Parliament. If passed, the New Skilled Regional Visas (Consequential Amendments) Act 2019 would amend various social services Acts to treat holders of proposed Provisional Skilled Regional Visas as permanent residents for social security and other purposes.

**Item 12** amends paragraph 31(2)(d) of Schedule 1 to New Skilled Regional Visas (Consequential Amendments) Act 2019 to insert references to paragraphs 43A(1)(a) or (b) and paragraphs 95A(1)(a) or (b) of the Social Security Act 1991 (as inserted by items 4 and 10). This amendment would mean that periods where a holder of a Subclass 491 (Skilled Work Regional (Provisional)) visa or a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa resided in Australia would be counted towards periods of Australian residence for the purposes of the Age Pension and DSP residency requirements.

**Schedule 2—Stopping the payment of pension supplement after six weeks overseas**

Schedule 2 will limit the portability of the pension supplement so it can only be received during temporary absences overseas for a maximum of six weeks. The measure was announced in the 2016–17 MYEFO and was previously included in the Social Services Legislation Amendment (Omnibus Savings and Child Care Reform) Bill 2017 and the 2017 Payment Integrity Bill. The measure is expected to provide savings of $154.4 million over the forward estimates (Department of Social Services administered savings only).

**Background**

The pension supplement is a payment provided in addition to certain income support payments including the Age Pension, Veterans’ Service Pension, Carer Payment and DSP.

People who leave Australia temporarily for fewer than six weeks typically continue to receive the same rate of pension supplement during their travel period. Currently, those who leave Australia permanently or for more than six weeks and remain eligible for their qualifying payment (such as the Age Pension) receive a reduced rated of pension supplement, known as the basic amount.

The annual pension supplement rate for singles is $1,791.40 (basic amount $621.40) and for members of a couple is $1,349.40 (basic amount $512.20). Parenting Payment (Single) recipients under Age Pension age receive the pension supplement basic amount. The pension supplement is...
paid fortnightly, or a recipient can elect to receive a reduced fortnightly rate and a quarterly payment of the ‘minimum pension supplement amount’.  

The pension supplement is subject to the pension income and assets test but the minimum pension supplement amount is the last component of the pension rate to be reduced when the income test is applied. The minimum pension supplement amount remains payable if any pension supplement is payable after the application of the income and assets test.

History of the pension supplement

The current pension supplement was created as part of a major pension reform in 2009 from a combination of existing supplements and allowances and an additional increase. These included the GST pension supplement, which had been introduced in 2000 to compensate for the reduced purchasing power of the pension, and ‘was structured as a supplement so as to ensure that the value of the compensation for the GST was always preserved as an amount additional to the pension rate’. Other payments bundled together in the pension supplement were:

- the Utilities Allowance, introduced in 2004 as a twice yearly payment to assist with utility bills
- the Telephone Allowance, introduced in 1992 as a payment for pensioners with a telephone account and
- the Pharmaceutical Allowance, introduced in 1990 to compensate pensioners for reduced entitlements to free pharmaceuticals.

Policy position of non-government parties/independents

Australian Labor Party

The Australian Labor Party has been opposed to this measure since it was first announced in the 2016–17 MYEFO. Former Shadow Minister for Families and Social Services Jenny Macklin described the measure as ‘stripping pensioners of the pension supplement’ and part of a broader sweep of pension ‘cuts’.

Shadow Minister for Families and Social Services, Linda Burney, noted in April 2019 that the measure was still included in the Budget and stated ‘Labor has fought cuts to pensions at every turn’.

Australian Greens


84.  The annual rate of the pension supplement is the same regardless of how the recipient elects to receive the payment. DSS, ‘3.12.1 pension supplement: qualification and payability’, op. cit.; DSS, ‘1.2.10.10 pension supplement: description’, Social security guide, DSS website, last reviewed 1 July 2013.
85.  DSS, ‘1.2.10.10 pension supplement: description’, op. cit.
89.  Macklin, Liberals are the party of pension cuts, op. cit.
90.  L Burney (Shadow Minister for Families and Social Services), Morrison still cutting the pension, media release, 3 April 2019.
Care Reform) Bill 2017, stated that they were opposed to the measure. The Greens reiterated this opposition in their Dissenting Report to the inquiry into the 2017 Bill stated that they were ‘concerned it particularly disadvantages CALD [Culturally and Linguistically Diverse] Australians’.  

**Centre Alliance**

As in the section on Schedule 1, media reports quoted Centre Alliance MP Rebekha Sharkie saying that she did not support the measures in the Bill that would disproportionately affect older people.  

**Position of major interest groups**

**National Social Security Rights Network**

In its submission to the Senate Community Affairs Inquiry into the 2017 Bill, the NSSRN stated:

> The NSSRN opposes this measure. Our system has always recognised that pensioners have a right to choose their permanent place of residence on retirement. This cut undermines that principle. A preferable reform would be to roll the current pension supplement into the basic rate of pension as a one-off increase, leaving it then to be subject to the normal indexation and portability rules to which the basic amount of pension is subject.  

In its submission to the Senate Community Affairs Legislation Committee inquiry into the Social Services Legislation Amendment (Omnibus Savings and Child Care Reform) Bill 2017, the NSSRN stated:

> The rules concerning payment of income support overseas (known as portability) have been progressively tightened over a number of years, especially since 2004. We consider that the rules already place great weight on the principle of residence and this further tightening is unjustified because it does not give enough weight to the importance of travel overseas, especially for the many older Australians who are migrants and have strong ties to family and communities overseas.  

The NSSRN was particularly concerned that the measure would affect those already overseas stating:

> Individuals already overseas have always been protected from the potential detrimental impact of portability changes ... [the measure] departs from this principle unacceptably, as it applies to all pensioners whether overseas on date of commencement or not. Many of these pensioners will have already exercised the right they have under Australian social security law to choose their country of retirement and this will cut their incomes even though they may be unable to do anything about it.  

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93. Sharkie, quoted in Martin, ‘“Mean spirited”: plan to make people with savings wait longer for welfare criticised’, op. cit.  
96. Ibid.
Social Services Legislation Amendment (Payment Integrity) Bill 2019

Australian Council of Social Service

In its submission to the Senate Community Affairs Legislation Committee inquiry into the 2017 Bill, ACOSS stated that it was opposed to the measure. It suggested that the base rate of the supplement (the GST supplement component) should be rolled into the base rate of the pension.

Catholic Social Services Australia

In its submission to the Senate Community Affairs Legislation Committee inquiry into the 2017 Bill, Catholic Social Services Australia (CCSA) stated that it was not opposed to this measure ‘as long as there are safeguards in place for people who can apply for exemptions where circumstances permit’. It was unclear what kind of circumstances CSSA envisaged would allow for exemptions.

Refugee Council of Australia

The Refugee Council of Australia, in its submission to the Senate Community Affairs Legislation Committee inquiry into the 2017 Bill, stated that it was opposed to the measure as it would ‘unfairly impact refugee community members who may be required to travel overseas for extended periods of time, such as those who need to visit sick or dying family members in countries of asylum’. The Council argued: ‘By further limiting access to income support, especially for those who travel overseas, this amendment serves to compound the hardships of those who are already most vulnerable’.

Key issues and provisions

Rationale for the measure

The Government has stated that ‘the intent of the Pension Supplement is to assist with specific cost of living pressures for pensioners living in Australia’. The Explanatory Memorandum to the Bill notes that the pension supplement basic amount is equivalent to the former GST supplement and argues ‘pensioners who leave Australia permanently or who are temporarily absent from Australia for more than six weeks are unlikely to be impacted by the Australian GST and it is therefore not appropriate to continue to pay them the pension supplement basic amount’.

Measure reduces payment rates for those taking long trips or who live overseas

While the pension supplement’s historical components may have initially been for the purpose of specific costs, it has essentially become an income supplement for certain income support recipients. The rate of the supplement and its indexation arrangements are not directly linked to any specific costs.

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97. ACOSS, Submission to the Senate Community Affairs Legislation Committee, Inquiry into the Social Services Legislation Amendment (Payment Integrity) Bill 2017, op. cit., p. 2.
98. Ibid., p. 3.
100. Refugee Council of Australia, Submission to the Senate Community Affairs Legislation Committee, Inquiry into the Social Services Legislation Amendment (Payment Integrity) Bill 2017, [Submission no. 9], 4 August 2017, p. 1.
101. Ibid.
103. Explanatory Memorandum, Social Services Legislation Amendment (Payment Integrity) Bill 2019, [p. 10].
While it is arguable that those travelling or living overseas no longer need this income supplement, many pensioners already living overseas will have come to rely on the additional income and planned their finances accordingly.

**Numbers affected**

When first announced, the Department of Social Services estimated that 175,000 pensioners would be affected by the measure in the first year and an additional 80,000 recipients each year afterwards. The Department stated in an Answer to a Question on Notice in 2018 that in 2016–17 there were 490,012 overseas departures by Age Pension recipients and 81,453 by DSP recipients. Of these, 78,887 Age Pension recipients and 10,016 DSP recipients were outside Australia for more than six weeks.

**Key provisions**

Schedule 2 amends the *SS Act* and the *VE Act* to stop payment of the pension supplement for those who leave Australia permanently or who are temporarily absent from Australia for a continuous period exceeding six weeks.

The main amendments are to the rate calculators for various payments setting out the new residency conditions for receipt of the pension supplement. The amendments specify that a pension supplement amount can be added to a person’s maximum basic rate if the person is residing in Australia and is either:

- in Australia or
- temporarily absent and has been for a continuous period not exceeding six weeks.

Table 2 sets out which payment calculators are affected by which amendment.

**Table 2: payment calculators amended by Schedule 2**

<table>
<thead>
<tr>
<th>Item numbers</th>
<th>Amended calculator</th>
<th>Pension type affected</th>
<th>Amended Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>3–6</td>
<td>Pension rate calculator A</td>
<td>Age Pension, Carer Payment, Disability Support Pension and Wife Pension</td>
<td><em>SS Act</em></td>
</tr>
<tr>
<td>8–11</td>
<td>Pension rate calculator B</td>
<td>Age Pension and Disability Support Pension for permanently blind people aged 21 and older</td>
<td></td>
</tr>
<tr>
<td>13–16</td>
<td>Pension rate calculator C</td>
<td>Bereavement Allowance and Widow B Pension</td>
<td></td>
</tr>
<tr>
<td>18–22</td>
<td>Parenting Payment rate calculator</td>
<td>Parenting Payment Single</td>
<td></td>
</tr>
<tr>
<td>34–37</td>
<td>Rate calculator</td>
<td>Service Pension</td>
<td><em>VE Act</em></td>
</tr>
</tbody>
</table>

Source: Explanatory Memorandum, Social Services Amendment (Payment Integrity) Bill 2019, [pp. 11–13].

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Items 24 and 25 respectively repeal the current method statements in the SS Act for calculating the transitional maximum pension payment rate for single people and couples outside Australia for longer than six weeks. These items also insert new method statements which do not include the step of calculating and adding the pension supplement for the person, because Schedule 2 renders them ineligible for the pension supplement. Items 29 and 30 similarly amend method statements in the VE Act.

The application provision at item 26 provides for the amendments to the SS Act to apply in relation to temporary or permanent absences from Australia that begin before, on or after the day of commencement. This means that those living overseas or those who leave Australia temporarily prior to commencement (and remain overseas for longer than six weeks) will lose the pension supplement. Item 38 is an identical application provision for the amendments to the VE Act.

Schedule 3—Liquid assets test waiting period

Schedule 3 proposes to extend the maximum liquid assets waiting period (LAWP) from 13 weeks to 26 weeks. The measure was announced in the 2017–18 Budget.\(^\text{106}\) It is expected to provide savings of $104.8 million over the forward estimates (Department of Social Services savings only).\(^\text{107}\)

**Background**

A LAW can apply to all Youth Allowance, Austudy, Newstart Allowance and Sickness Allowance claimants whose liquid assets exceed a certain amount.\(^\text{108}\)

**Liquid assets**

The term ‘liquid assets’ refers to any cash or readily realisable assets a person can draw on to support themselves as an alternative to receiving income support. It includes any such assets belonging to the person’s partner and any such assets owned by both the person and their partner. Examples of liquid assets include:

- cash on hand (including borrowed money)
- shares and debentures, term deposits
- ten year insurance bonds
- amounts deposited or lent to banks or other financial institutions, whether or not the amount can be withdrawn or repaid immediately (excluding bonds or bank guarantees for the purposes of an assurance of support)
- assets given to a son or daughter (in certain circumstances)
- loans to other people
- unencumbered proceeds from the sale of a business
- money in trust funds, bank accounts including mortgage offset accounts (not balances of mortgage redraw accounts)
- compensation payments and

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108. The *Farm Household Support Amendment Act 2017* removed the liquid assets waiting period provisions that previously applied to recipients of the Farm Household Allowance. DSS, ‘3.1.2.20 liquid assets waiting period’, *Social security guide*, DSS website, last reviewed 20 September 2018.
• some payments made or due by a person’s previous employer.109

Certain assets are not considered liquid. These can include proceeds from the sale of a person’s home (in some circumstances); draw down loan facilities, mortgage redraw account balances or credit card limits; the value of a person’s investment in a first home saver account; the surrender value of a life insurance policy; National Disability Insurance Scheme (NDIS) amounts and returns on NDIS amounts; and superannuation and termination payments that have been rolled over or are going to be rolled over directly from the person’s employer.110

Full-time tertiary students claiming Youth Allowance or Austudy can have their liquid assets reduced for reasonable expenditure incurred or likely to be incurred on purchases directly related to their course of study (including fees, text books and equipment).111

Liquid assets waiting periods

Currently, if an individual’s liquid assets exceed certain limits, then a liquid assets waiting period (LAWP) of between one and 13 weeks can apply. They will not receive income support while serving this LAWP as the person is expected to draw on their assets to support themselves.

The current limit, or reserve amount, of liquid assets a single person without dependent children can hold before they are subject to a LAWP is $5,000. For a person who is a member of a couple and/or has a dependent child, the reserve amount is currently $10,000.112

The length of the LAWP, in weeks, is worked out as follows:

• for a single person without dependent children: the value of their liquid assets minus the reserve amount, divided by $500

• for a person who is a member of a couple and/or has a dependent child: the value of their liquid assets minus the reserve amount divided by $1,000.113

If the result of this calculation is less than one week then no LAWP is served. If the result is less than 13 whole weeks then it will be the whole number of weeks, with fractions rounded down to the nearest whole week. If the result is 13 or more weeks then the LAWP is 13 weeks.114

The LAWP will generally commence on the day after the individual or their partner ceases work/study or, if incapacitated, the day the person became incapacitated.115

Exemptions or waivers from the LAWP are available in certain circumstances including where the person is transferring from another social security payment, is in severe financial hardship due to unavoidable or reasonable expenditure, or where they have recently served a LAWP.116

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110. Ibid.
111. Ibid.
112. DSS, ‘3.1.20 liquid assets waiting period’, op. cit.
113. Ibid.
114. Ibid.
115. Ibid.
Policy position of non-government parties/independents

Australian Labor Party

Labor opposed the 2017 Bill which included this measure. In their Dissenting Report to the Senate Community Affairs Legislation Committee inquiry into the 2017 Bill, Labor Senators noted that evidence to the Committee showed that ‘extending the liquid assets waiting period would push vulnerable Australians further into financial hardship’.117

Australian Greens

In their Dissenting Report to the Senate Community Affairs Legislation Committee inquiry into the 2017 Bill, the Australian Greens stated that they were opposed to the measure.118

Centre Alliance

Media reports quoted Centre Alliance MP Rebekha Sharkie describing the measure as ‘short-sighted’ and ‘mean’ and that it would discourage people from creating a ‘nest egg’.119

Policy position of major interest groups

National Social Security Rights Network

The NSSRN stated that it was opposed to this measure when it was first announced in the 2017–18 Budget.120 The NSSRN holds that the liquid assets test can undermine a person’s financial stability:

... because it puts them in a position where they may be unable to meet an unanticipated substantial one-off expense (e.g. car repairs) or ride out a period of unemployment without major disruption to their lives (e.g. moving house). It can therefore compound the effect of insecure employment for people without job security, or with irregular or unstable working hours, who are more likely to access income support. The greatest impact tends to be on more vulnerable people with less capacity to access additional support when needed such as single parents (who do not have a partner with a second income) or new migrants with fewer ties in the community.121

The NSSRN also raised concerns that the provisions for waivers/exemptions are too restrictive:

A liquid assets waiting period may be waived if someone is in severe financial hardship, but only if they have depleted their savings through unavoidable or reasonable expenditure. Although this may sound like a reasonable test, in practice it is not. The main reason is that under the current law any weekly expenditure above the poverty level Newstart allowance is deemed to be unreasonable. In effect, most of an ordinary person’s normal expenses are deemed to be unreasonable.122

The NSSRN stated that the LAWP can lead to ‘arbitrary and inequitable’ differences in treatment for social security recipients as result of small differences in savings.123

The NSSRN has recommended removing the LAWP.124

119. Sharkie, quoted in Martin, “Mean spirited”: plan to make people with savings wait longer for welfare criticised, op. cit.
120. NSSRN, Budget 2017: increase to the maximum liquid assets waiting period, NSSRN, June 2017, p. 2.
121. Ibid.
122. Ibid.
123. Ibid.
124. Ibid.
**Australian Council of Social Service**

In its submission to the Senate Community Affairs Legislation Committee inquiry into the 2017 Bill, ACOSS said that it ‘strongly oppose[s] this cut’.\(^{125}\) ACOSS stated:

> Lengthening the period of time someone must wait for income support will see them deplete modest savings. This reduces their capacity to manage unexpected costs

...  

Social security law stipulates that a reduction or waiver of the LAWP may apply when someone draws down on their liquid assets to meet ‘reasonable costs’. ‘Reasonable costs’, however, is defined as expenses amounting to the level of the relevant income support payment. Newstart is currently $267 per week, so any expense over this level would not be considered reasonable.

This is a completely unreasonable rule. It would be difficult to find rental accommodation in Sydney or Melbourne for $267 a week, let make that amount cover food, travel and other living expenses as well.\(^{126}\)

**St Vincent de Paul Society**

The St Vincent de Paul Society has criticised the measure. National Council Chief Executive Officer Toby O’Connor stated:

> The measures will contribute to deeper poverty and financial instability by forcing people to deplete modest savings, or go into debt before being able to access income support.

> Making it more difficult for people who have fallen on hard times will not account for the fact that there are not enough jobs to go around, especially for particular groups of people.\(^{127}\)

**Key issues and provisions**

The proposed measure will raise the maximum number of weeks an LAWP can last from 13 weeks to 26 weeks. The method for calculating the LAWP will otherwise remain the same.

The new maximum LAWP would apply to those single people without dependent children with more than $18,000 in liquid assets; and to partnered people or single people with dependent children with more than $36,000 in liquid assets.

**Rationale**

In his second reading speech on the Bill, Minister for the National Disability Insurance Scheme and Government Services Stuart Robert stated the measure would ‘increase self-reliance’ and that the increased maximum period ‘better reflects the current profile of claimants and their capacity to support themselves’.\(^{128}\)

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124. Ibid.  
125. ACOSS, Submission to the Senate Community Affairs Legislation Committee, Inquiry into the Social Services Legislation Amendment (Payment Integrity) Bill 2017, op. cit., p. 3.  
126. Ibid., p. 4.  
127. St Vincent de Paul Society, *At what price this surplus?*, media release, [24 September 2019].  
In its submission to the Senate Community Affairs Legislation Committee’s inquiry into the 2017 Bill, the Department of Social Services stated that the average amount of liquid assets held by claimants subject to an LAWP was around $31,000 in 2008–09 and that this had increased to $47,500 in 2015–16. The Department stated that the average value of liquid assets held by those serving the 13-week maximum LAWP was $63,000 and that 12.4 per cent of this group held liquid assets above $100,000.129

**Numbers affected**

In regards to the 2017 Bill, the Department of Social Services estimated around 13,800 claimants would be affected by the measure annually.130 Around 2,800 claimants would have their LAWP extended by 1–12 weeks and around 11,000 would see their LAWP reach the new 26 week limit. On average, the Department estimated that affected claimants would be required to wait ten additional weeks before they would start receiving their payment.131

**Measure affects those with significant savings or resources**

The measure will only affect those with significant levels of readily available financial resources. The new maximum LAWP of 26 weeks will only apply to those with liquid assets at a level much higher than the annual rates of the allowance payments the waiting period applies to. This is consistent with the principles of Australia’s social security system which encourages individuals to provide for themselves and to only seek income support when necessary.

The measure may not be consistent with other objectives raised by the community sector—such as individuals being able to save for a home or retirement, or protecting themselves against insecure employment. However, the means tested nature of Australia’s social security system means that it is not designed to assist income support recipients to secure these kinds of objectives.

The reserve amounts will continue to allow claimants to keep some resources on-hand for large expenses.

**Key provisions**

*Items 1–4 replace ‘13’ with ‘26’ at paragraphs 549C(1)(a) and (b); paragraphs 575C(1)(a) and (b); subsection 598(2B); and subsection 676(3B) of the SS Act to increase the maximum period a LAWP can apply for. The provisions amended provide for the working out of a LAWP for claimants of Youth Allowance, Austudy, Newstart Allowance and Sickness Allowance, respectively.*

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130. Ibid.

131. Ibid.