



28 May 2020

Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
By email: [covid.sen@aph.gov.au](mailto:covid.sen@aph.gov.au)

Dear Committee Secretary,

### **Economic Justice Australia submission to Senate Select Committee on COVID-19**

1. Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice to people on their social security issues and rights. Our members across Australia have provided people with free and independent information, advice, education and representation in the area of social security for over 30 years.
2. EJA provides expert advice to government on social security reform to make it more effective and accessible. Our law and policy reform work:
  - Strengthens the effectiveness and integrity of our social security system;
  - Educates the community; and
  - Improves people's lives by reducing poverty and inequality.
3. EJA welcomes the opportunity to provide this submission to the Senate Select Committee on COVID-19 on the Australian Government's response to the COVID-19 pandemic.
4. Our submission makes recommendations in relation to the exercise of Ministerial power granted to the Minister for Social Services by the Coronavirus Economic Response Package Omnibus Act 2020 ("Omnibus Act"). Schedule 11 of the Omnibus Act provides a social security supplement for persons receiving certain social security payments.
5. EJA has long advocated for the level of income support provided in Australia to be consistent with the right to social security and provide an adequate standard of living,

in compliance with Australia's obligations under Articles 9 and 11 of the International Covenant on Social, Economic and Cultural Rights<sup>1</sup>.

6. EJA commends the provision of additional financial assistance to many Australians financially impacted by COVID-19 via the Omnibus Act, which promotes the rights to an adequate standard of living and social security for those eligible to receive the Coronavirus Supplement. However, as the Coronavirus Supplement does not apply to all social security payments, we are concerned that the legislation and its implementation constitute unjustifiable discrimination.
7. EJA acknowledges that the rights to an adequate standard of living, social security, and equality and non-discrimination, may be subject to permissible limitations if they are shown to be reasonable, necessary and proportionate. As the groups which have been excluded from social security support are among those most vulnerable and desperately in need, it is difficult to see how the limitation to exclude them can be assessed as reasonable, necessary and proportionate.
8. EJA notes that the Parliamentary Joint Committee on Human Rights in its 29 April 2020 report,<sup>2</sup> has sought the Treasurer's advice as to the compatibility of this measure with the rights to an adequate standard of living, social security and equality and non-discrimination.
9. In the meantime, EJA makes the following urgent recommendations to address the humanitarian and human rights concerns arising from the exclusion of the most vulnerable groups affected by COVID-19 from the coronavirus income support measures. Without support, these people are at risk of extreme poverty. Due to the pandemic and their precarious financial and living situations, their health and safety is also at risk. See more information below under "background".

## **EJA recommendations**

10. Amendments made under the Coronavirus Economic Response Package Omnibus Act 2020 empower the Minister for Families and Social Services to change social security settings via legislative instrument.
11. **We propose that the Minister exercise this power to expand access to Special Benefit as payment of last resort for those most vulnerable**, as follows:

**Recommendation 1:** Provide all New Zealand citizens living in Australia with access to Special Benefit

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<sup>1</sup> International Covenant on Economic, Social and Cultural Rights, articles 9 and 11.

<sup>2</sup> Parliamentary Joint Committee on Human Rights, Coronavirus Economic Response Package Omnibus Bill 2020, Report 5 of 2020; [2020] AUPJCHR 74, 1.102

**Recommendation 2:** Extend the list of visa sub-classes which attract Special Benefit, with extended coverage including:

- Bridging Visas, all sub-classes
- Student Visa
- Temporary Resident (Skilled Employment) Visa
- Pacific and Seasonal Worker Visa
- Temporary Graduate Visa

**Recommendation 3:** Amend s737(1) of the Social Security Act to enable full-time students to access Special Benefit. In the alternative, we propose that policy guidelines regarding administration of section 729 of the Social Security Act be amended by the Secretary of the Department of Social Services to enable full-time students holding a Safe Haven Enterprise Visa access to Special Benefit.

## Background

### Visa sub-classes attracting Social Security income support

12. Under the Social Security Act, a person must generally be a permanent resident of Australia in order to qualify for Social Security income support. The exception is Special Benefit, a discretionary payment only paid in cases of financial hardship, and subject to a dollar-for-dollar income test.
13. A person on a proscribed temporary visa can qualify for Special Benefit. Proscribed visas currently attracting Special Benefit are:
  - a. subclass 820 – Partner
  - b. subclass 309 – Partner (Provisional)
  - c. subclass 785 – Temporary Protection
  - d. subclass 786 – Temporary (Humanitarian Concern)
  - e. subclass 790 – Safe Haven Enterprise
  - f. subclass 449 – Humanitarian Stay (Temporary)
  - g. CJSV (9.2.14) – issued specifically for the purpose of assisting in the administration of criminal justice in relation to an offence of trafficking in persons, slavery or slavery like practices
  - h. subclass 060 – Bridging F, and
  - i. subclass 070 – Bridging (Removal Pending).

### The cohort in urgent need

14. There is a cohort of people who have been residing in Australia for some time, many for a number of years, who have lost employment/cannot work due to the COVID-19 public health restrictions but are not covered by the social security measures introduced as part of the Omnibus Act; and are not able to access Special Benefit. These people may have been in Australia for rolling periods of 3 to 5 years (or in the case of New Zealand citizens, for many years), and have worked/paid tax and effectively settled here.
15. If the Coronavirus temporary measures are to address the hardship faced by Australia's workforce, Special Benefit needs to be accessible to all people on long-stay temporary

visas. The Government has stated that Temporary Visa Holders who are not eligible for JobKeeper or Social Security payments can simply return to their home countries; however, with border closures and limited flights, this is no longer an option.

16. Red Cross emergency relief and recently announced state/territory government packages targeting asylum seekers are welcome, as are support packages being offered to overseas students by some universities; however, these measures constitute ad hoc charitable relief rather than secure income support entitlements adequate for meeting the cost of housing, food, utilities, etc., until resumption of work is possible.
17. New Zealanders' eligibility for Social Security income support, including JobSeeker Payment and Special Benefit, depends on the date from which a person commenced to reside on Australia. New Zealanders living in Australia who arrived after 26 February 2001 may qualify for JobSearch Payment, time-limited to six months, but they do not qualify for Special Benefit. This means that there are New Zealanders who have lived in Australia for up to 19 years, working and many raising families, who have lost work and are in severe hardship.
18. People living in Australia on skilled or seasonal employment visas have been living in Australia because they were encouraged to do so, applying for visas that are specifically intended to address labour shortages. Most people in this cohort have necessarily been self-supporting until losing work/access to work due to COVID-19. They have contributed to the economy and Australia's tax system – some over many years. People on these visas who cannot access sufficient work due to COVID-19 are in extreme hardship, and unable to return to their home country for financial and practical reasons, including COVID-19 travel restrictions and closing of borders.
19. Although Safe Haven Enterprise Visa (SHEV) holders can attract Special Benefit, under section 731(1) of the Social Security Act Special Benefit is not payable to a person who is enrolled in a full-time course of education or vocational training. This places students on SHEVs who have lost work and means of support in an invidious position – either continue full-time study, with no access to Special Benefit; or discontinue study so as to attract Special Benefit. Many students are choosing to stay in study, fearing that ceasing study and claiming Special Benefit will mean that they will be denied a further five-year SHEV or a Temporary Protection Visa.
20. The plight of overseas students remaining in Australia has been well documented, with some universities providing limited support to some students. Whatever the merits of arguments that they should return home, many overseas students who are still here and now unable to return home are in extreme hardship.

### **Contact for this submission**

EJA would welcome the opportunity to provide further feedback to the Committee on our submission.

Linda Forbes  
Policy and Law Reform Officer  
Economic Justice Australia

T: 0448 007 428 | E: linda@ejaustralia.org.au