

Temporary partner visas – changes needed to make sure new families get the help they need

The first step for many partners of Australian citizens or permanent residents who want to migrate to Australia is to obtain a temporary visa, on the basis of their relationship, allowing them to live and work or study in Australia while waiting for the grant of a permanent visa. Their Australian partner sponsors them.

The first years for new migrants to Australia and their families are often very challenging, even more so if they have a young family and / or have come as refugees. It is very important that they get as much support as possible at this time.

The 2012 changes to the social security entitlements of partner visa holders

From 1 January 2012 changes were made to the social security entitlements of temporary partner visa holders (sub-classes 309, 310, 820 and 826).

Before that date, someone holding one of these visas was generally unable to get most social security payments for two years unless an exemption applied. There are a number of potential exemptions, but in practice the most important one was the exemption from the two year waiting period for the special benefit payment¹ as the family member of an Australian citizen or permanent resident.² For low income families this “family member” exemption was important. It meant, for example, that in many cases both members of the family could be on an income support payment and, if they had children, receive family assistance payments as well.

But after 1 January 2012 the family member exemption was removed, although the other exemptions from the two year waiting period for special benefit still applied. This meant that generally temporary partner visa holders could only get special benefit during their first two years in Australia if they suffered a substantial change in their circumstances beyond their control and were in financial hardship. Also from 1 January 2012 and beneficially, the Assurance of Support requirement for these visas was removed.

¹ A discretionary payment for people not qualified for the usual income support payments, generally paid at the same rate as newstart allowance for unemployed people looking for work.

² The Australian citizen or permanent resident had to themselves been residents for at least a continuous two year period.

This paper looks at two systemic administrative problems the Welfare Rights Centre has identified from its casework for spouses arriving after these changes of 1 January 2012 and their Australian sponsors. The solutions to these problems may lie in part outside social security law and practice, so we intend to seek input from agencies and organisations who work with new migrants about the most effective solutions.

Social security recipients not testing their eligibility for a higher rate of payment during the two year waiting period

Centrelink's policy is to pay a person the higher, single rate of payment, if their partner is not entitled to a social security payment and the couple are in hardship.³

This policy could be beneficial to many low income Australian citizens or permanent residents who sponsor their partners to come to Australia on a temporary partner visa, as they could at least be paid the higher single rate of payment during the two year waiting period. This can make a substantial difference to family income; for example, the difference between the base single rate of disability support pension and the partner rate is about \$220/fortnight.⁴

Our Centre's casework suggests, unfortunately, that many low income families may be missing out. We are seeing clients who, having been told that their partner cannot get any payments for two years, do not approach Centrelink about this. Instead they struggle to make ends meet on one income support payment paid at the couple rate. If they do approach Centrelink or their partner does apply for special benefit, Centrelink will usually assess whether they should be paid the higher single rate, but they will not generally be backpaid for any entitlements they have missed out on.⁵

Example: Greg receives Newstart Allowance. He sponsors his wife to come to Australia on a temporary visa. He and his wife Noula have been told that Noula will have no social security for her first two years of residence unless there is a substantial change in circumstances. Noula does not claim social security payments and Greg continues to receive Newstart Allowance at the lower couples rate. When Noula claims payments after two years in Australia as a permanent resident, they learn when speaking to our Centre that Greg has been underpaid for two years.

³ Guide to Social Security Law 2.2.5.50 at http://guidesacts.fahcsia.gov.au/guides_acts/ssg/ssguide-2/ssguide-2.2/ssguide-2.2.5/ssguide-2.2.5.50.html (accessed 15 July 2013). The legal basis for this policy is in s 24 of the *Social Security Act 1991* (Cth) which gives Centrelink the discretion to pay a person who has a partner as though single.

⁴ As at 30 June 2013.

⁵ Generally under social security law, changes to a person's rate triggered by a change in their circumstances only take effect from the date Centrelink is told.

We believe Centrelink need to review their processes for identifying this group of people and assessing their entitlement to a higher rate of payment. Centrelink will already be in possession of information strongly indicating that it may be appropriate to apply the policy to them. It will be aware, for example, if a person has become partnered and that the partner is not receiving an income support payment or earning income. A process needs to be developed for triggering a review of the person's entitlement with the aim of preventing underpayment.

Other changes may also reduce the risk of underpayment to this group of people. There may need to be better information sharing with the Department of Immigration and Citizenship and the information provided to applicants for a temporary spouse visa may need to be amended to include advice to approach Centrelink for assessment.

The application of other exemptions from the two year waiting period not being considered

Although the family member exemption for holders of temporary partner visas was removed from 1 January 2012, other exemptions from the two year waiting period may still apply.

One of those exemptions is for a person who is a family member of a refugee or humanitarian visa holder, or was a family member of a former refugee or humanitarian visa holder at the time the former refugee or humanitarian visa holder entered Australia.⁶

Our Centre continues to see clients with temporary partner visas whose special benefit claims have been rejected by Centrelink, despite this exemption applying to them. There is a lack of knowledge about this exemption, and we suspect this is compounded by the message which has now been conveyed about temporary partner visa holders, which is that they cannot get special benefit anymore during the first two years unless they have a substantial change in their circumstances beyond their control.

Example: Ali is accepted as a refugee and is granted an 866 permanent protection visa. He sponsors his wife Parastou to come to Australia on a 309/100 spouse visa application. When she arrives, she is told that as the holder of a 309 visa she must wait two years before she can access social security in Australia and does not lodge a claim. Two years later, she discovers that as the spouse of the holder of an 866 visa, she was entitled to payments from arrival in Australia.

Centrelink have recently improved the guidance it gives to its decision-makers, by amending the list of exemptions it gives in the Guide to Social Security Law to include

⁶ Guide to Social Security Law at 3.1.2.70. The legal basis for this is s 739A(8) of the *Social Security Act 1991* (Cth).

these exemptions.⁷ However, we believe that the guidance can be improved by amending the sections of the Guide to Social Security Law which deal specifically with each of the temporary partner visas (subclasses 309, 310, 820 and 826)⁸, directing the decision-maker expressly to consider whether any exemptions apply.

It is also important for information about these exemptions for partners of refugees or former refugees to be disseminated more widely throughout the Department of Immigration and Citizenship and to refugee advocacy groups and settlement services officers. There may be a need for the information provided by the Department of Immigration and Citizenship to be reviewed and amended to make sure the vulnerable refugees are aware of this exemption.

We welcome feedback on this paper and look forward to a positive response from the Department of Human Services, including any suggestions for working with Department of Immigration / settlement services. These kinds of issues are an opportunity for the Department to demonstrate a commitment to identifying and minimising under-claiming of entitlements among the most vulnerable members of our community.

Welfare Rights Centre

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⁷ Guide to Social Security Law at 3.1.2.70 (accessed 15 July 2013).

⁸ See, for example, 9.2.5.60 as it currently stands (accessed 15 July 2013).