

SENATE STANDING COMMITTEE ON COMMUNITY AFFAIRS

LEGISLATION COMMITTEE

Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010 (Changes to Disability Support Pension)

SUBMISSION

SUBMISSION NUMBER: 7

SUBMITTER

Name and Address Withheld

Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010

Submission to the Community Affairs Committee regarding Schedule 2 of the bill.

Dear Committee members,

There is no loophole. The dictionary I just looked up says a loophole is “ a means of evading an obligation, a law etc.” I have previously seen loophole described as something unintended. Certainly the wording of the media releases and introduction to the bill attempt to ensure the reader believes those disability pensioners who spend a lot of time outside Australia are doing the wrong thing, and that the legislation never intended for them to be able to do it.

This is not correct. The original portability legislation in 1973 was NOT written to only allow travel from **time to time** for pensioners **permanently residing in Australia**. In fact, it specifically allowed for pensioners who become non residents to continue to receive the Disability Support Pension (here after referred to as DSP) as well as others such as the Old Age Pension . The 13 week rule is a matter of payability, not qualification.

I expect some-one else will probably point all this out, but just in case I will tell you what I believe is the history of the legislation, then I will tell you what I have personally been told, and relied upon, by Centrelink.

When the general portability legislation was introduced in 1973 there were a lot of social security payments that were given portability. Two of the aspects considered regarding absences from Australia were:

- (1) The nature of the absence ie **temporary** or **any** and
- (2) The period of time the payment would be continued for. (The maximum portability period.)

Initially the DSP, like many other payments such as the Old Age Pension, was granted portability for **any** absence and for an indefinite period of time i.e. **unlimited** portability. Over the years, many of the portability rules for most payments have been changed. With regards to DSP I am not sure when or even if, the maximum payability (portability) period was limited to 52 weeks, but in Sept 2000 I believe it was limited to 26 weeks then in 2004 this was reduced to 13 weeks. Forgive me if I have the dates wrong, but my point is **at no time was the legislation changed with regards to the type of absence.** i.e. DSP remained payable for **any** absence. If the 13 week rule was in fact intended (designed) only for ongoing permanent residents then surely there would have been amendments made to the legislation with regards to the **nature of the absence**.

Refer to Part 4 of the Act , there is a table in Div 2 s1217 (4). This shows the distinction between allowable absences and maximum portability periods. (See example at the end of this submission.)

The Act also defines temporary.

1212C Meaning of *temporary absence*

For the purposes of this Part, a person’s absence from Australia is temporary if, throughout the absence, the person does not cease to reside in Australia (within the meaning of subsection 7(3)).

The introduction to the inquiry page includes this statement.

"The 13-week portability period is designed to allow disability support pensioners who reside permanently in Australia sufficient time to deal with personal matters that may arise from time to time overseas.

I am confused about why the 13 week rule and current legislation is being promoted as intending to apply to the above ie short, infrequent **temporary** absences (ie which do not give rise to becoming non – resident). The only thing I can think of is, when the maximum portability period was reduced for many payments to 13 weeks, I think DSP was the only one that was for any absence, all the others being temporary absences. The Old Age Pension remains portable indefinitely and I believe the other remaining payments payable for any absence were being phased out. So, possibly there had been an intention to change the allowable absence for DSP to temporary then, but it wasn't done. Hard to imagine that could be overlooked, and for such a long period of time. However, this is irrelevant. Who knows what the legislators intended back then. It is what they did that is relevant, and what they did is; they reduced the maximum portability period for DSP for **any** absence to 13 weeks.

I will discuss the media reports later but I will bring one item to your attention now. Bill Shorten 28/03/2010

"The 13 week **temporary absence** rule will **remain** to allow DSP recipients to **legitimately** travel overseas for short periods."

This statement is incorrect. The **temporary** absence rule for DSP cannot **remain**, as it does not currently exist. The **any** absence rule exists.

I take strong exception to the use of the word legitimately. It certainly implies, in the strongest possible terms, that those "travelling" overseas for long periods, or often, are not travelling legitimately. In fact, it would be hard to reach any other conclusion. Not only is this inflammatory and derogatory, it is factually incorrect.

Returning back to the "design" or intention of the 13 week rule

If in fact the present situation was a loophole, it would be a very strange one indeed. Surely the government employees in Centrelink who give advice to DSP recipients would have been told the "correct" information to tell customers. Surely the guides and procedure manuals would have been updated to reflect this intention. But they were not. Not in the least.

When I made inquiries in late 2006 regarding how long I could go overseas for and how long I would be paid for, I was told, (and subsequently given) the following. (Bold emphasis is mine)

Multiple absences from Australia

If the customer repeatedly goes overseas for long periods with short returns to renew their portability, it **may** indicate that the person is actually residing overseas. **Customers receiving** Age pension, **DSP**, WP, WidB pension or Bereavement Allowance **do not need to remain Australian residents to continue to be entitled to payment**. The customer **does not have to remain in Australia for any minimum period of time before payment is portable again** and, where the customer is paid a proportional rate, their rate will increase from the date of their return to Australia.

In other words, I was told my DSP was safe, regardless.

Am I now to believe, the intention was to limit DSP's travel to short periods from time to time, but "we'll" not tell them that. Instead, we will tell them something altogether different. Then when they do what "we" tell them they can do, "we" will change the rules, and cut them off.

Even now the information being provided to the public is :-

A customer does **not** need to remain an Australian resident to qualify for DSP unless they are receiving payment because they are a refugee.

I am quite certain others were told the same. We did not go looking for ways to rout the system, in some sneaky way. I can assure you it never once occurred to me to find the relevant legislation let alone look for loopholes.

I have had many difficult decisions to make; medical, emotional and financial. All of them were made on the basis that regardless of how much time I spent overseas or in Australia, I was not told, but **assured**, that my pension, which I depend upon, would be safe. I acted in good faith

I am clearly not alone. If the media statements are correct, there are some who spend almost no time in Australia and are going to struggle to meet any of the residency requirements. Surely there are some who have already been declared non- residents and are ok with the decision on the basis that, for what ever reason, the decision to be living where they are at the moment is in their best interests and their DSP is secure.

They too would have acting in good faith. Many may have made significant personal and financial commitments that cannot be easily cancelled or altered, but will be unable to be met if their DSP is cancelled from January 1st 2011. Even if they return to Australia as returning residents to keep the pension, they would then have existing financial commitments (that are likely hard enough to meet) but then have to incur more in Australia. Especially at short notice.

Not to mention the personal trauma this legislation will cause if passed. Maybe not to everyone affected but I am sure this will cause heartache. There will be those that will say, "Well, it's their own fault for doing the wrong thing." But as you can see from what I was told, they aren't. It did not even cross my mind there was anything wrong. The tone and manner used suggested nothing along the lines of "Well these are the rules but it's just not right!" One of the men at Centrelink that I spoke to said, "You can come back for just one day and leave again. Nothing wrong with that." He also told me that it was a shame I hadn't gone overseas before such and such a date 'cos I could have gone for a year. Also, that Old Age Pensioners can go for as long as they like. I do remember wondering why that was, but it was of no consequence to me.

I am not comfortable disclosing my very private details for publication. I have not decided to leave Australia permanently and my reasons for being overseas (travel gives the wrong impression – implies holiday jaunts around the world. I wish!) are many and complicated. If I am put in a position where to continue my behaviour is deemed to make me a non-resident, and this legislation goes through, my already difficult existence will be thrown into complete disarray. I am quite certain I am not alone, and we do not deserve it. Just as we do not deserve to be disabled.

It was recently said to me, "You can't expect the government to be happy paying pensions to people who effectively live overseas." I replied, "Why not? They pay OAP's and they can stay away as long as they like." Their response you ask? "Yes, but they deserve to enjoy their retirement. They have worked hard all their lives." Just to be clear. I do not mean "we" (as in the disabled) do not deserve to have rules that limit the amount of time we are out of the country and that DSP would only be payable to continuing residents. For future disabled the rules are the rules. You get told the rules and you make your decisions based on those rules. I refer to current DSP recipients who have made past and present decisions based on the rules they were given. I believe we do not deserve to have the rug pulled out from under our feet. The social security system is supposed to provide security and support to those who cannot support themselves. We should feel secure in the knowledge that we can rely on the information we receive and not be fearful of being cut off when the rules change and we cannot change the past decisions and the commitments we made.

Speaking personally, being dependent upon anyone, let alone "the state" came as a terrifying shock to me. The knowledge that my financial welfare was totally out of my hands is something that cannot be described to someone who has not experienced that. Even as a school kid I had a part

time job and saved up. I always had money aside for a rainy day and was very careful with my spending. I cannot tell you how sick I felt at first every time I saw that distinctive Centrelink letter in it's envelope. Terrified that for some unknown reason I was about to be told I would not receive any more payments. It was not rational. I had not heard of anyone who had ever had that happen to. But scared I was. Eventually I settled down a bit, but even now there is that flutter. My sense of security was helped greatly by some of the Centrelink staff I dealt with, but it took a lot for me to trust the system. That trust has evaporated. Even if this legislation doesn't go through, I will never get all of that trust back. Having said that, it is nice to see the system does have some safeguards, as evidenced by this inquiry.

Take the following example. (Fiction, to the best of my knowledge, but could easily be true.) Widowed woman with older child in university in Australia, and two small school aged children. Due to her disability she is barely able to look after herself, let alone the kids. Her parents are living overseas; let's say Jakarta. Her mother is not working, and whilst her parents were not too happy to have them live with them, they did agree that if they lived nearby, the mother would look after the children most of the time. The woman needs the DSP to pay for her and the children, so returns to Australia every 3 months. Whilst she is there, she spends time with her older child. They have been in Jakarta for 4 years now and the children are well settled in school, have many friends and belong to various sporting clubs.

What is the proposed legislation going to do to her and her family? She cannot stay there, so she has to take them away from the life they have lived for most of their short lives? Yes, this does happen. People make those choices. But that is the point, they make the choices. Not the government. Who exactly is going to look after her kids back in Australia? When she and her parents discussed them accepting the 7 year contract, they all assumed she could be there most of the time to see her children, while they looked after them. Meetings with Centrelink confirmed she would continue to receive her pension, even if she subsequently became a non-resident. Does she have no choice but return to Australia and leave her parents to raise her children for the next 3 years?

It is not just the recipients of DSP that are affected. It is the rest of their families, their carers etc Worst than that, she may have no idea what destruction is headed her way.

I am concerned that there are DSP recipients that are completely unaware of this proposed change. There were a couple of media releases in March. If they were overseas at the time, they possibly may not have read an Australian paper that day. Sure enough it was in the budget, if you knew where to go looking for it. Centrelink's web site, where one would go to keep abreast of matters, contains no mention of the proposed legislation. I would have thought it would be appropriate to include such a significant change in the "What's New ?" section. Fair enough it is not legislation yet, but it still qualifies. Certainly in the past, other proposed changes to legislation have been posted on the web site long before being passed. And before you think that on her most recent visit to "get her DSP renewed" Centrelink staff would warn her, think again.

Is this because the government wants to "catch them" unawares ?

Or is it because they want as little of the people about to be affected to be aware and perhaps lodge protests and submissions ?

When previous changes were made to the portability of DSP there were savings and grandfathering provisions. I don't really know what that means, but I do know it meant that people who made travel decisions based on previous laws were protected from the new ones, under certain conditions.

For example:
Sept 2000

Customers already overseas at the time of introduction of new portability rules were **protected against any possible detrimental effects of the changes**. Customers in receipt of pensions such as Age, Disability Support, Wife and Widow B pension were subject to old rules until they returned to Australia for longer than 26 weeks. Other customers overseas were subject to old rules until they returned to Australia.

July 2004

DSP recipients who were outside Australia immediately before 1 July 2004 with unlimited portability may keep that unlimited portability for any departure on or after 1 July 2004 providing they have not returned to Australia for permanent residence.

There are no such provisions being proposed for this legislation. Why not ? Is it because the current DSP recipients “living” overseas are being viewed as benefit cheats ? I don’t know the discrimination laws or human rights and the such, but I would have thought if there was a precedent for having some protection provided to recipients acting under current law, when changes are made, perhaps there would be a case to argue that the current recipients about to be affected should also be afforded some protection. Certainly seems there is some inconsistency in this regard.

To return to the woman in Jakarta. If the legislation had in fact been that only temporary absences were allowed, she and her family would have known the current arrangement would not be achievable. Likely as not, her parents would have said no to the contract and remained in Australia to continue looking after the kids.

Fair enough if the government wants to change the rules for all future recipients, but not those already receiving it. When the rules about how many hours a person could work and still qualify for the pension changed from 30 hours, this change applied only to new recipients. Everyone receiving DSP at the time of the change are still assessed under their previous rules.

The Media Release March 2010

So much of this was makes it sound like the people it refers are benefit cheats, ripping off the innocent taxpayers (who also make up the majority of the voting public.)
Look at some of the words I have put in bold and comments added.

The Australian Government will **crack down** on people on the Disability Support Pension (DSP) who **live permanently overseas** but return to Australia every 13 weeks in order to retain their pension

Crack down? Obvious what that implies. Also, this proposed legislation will affect all non-residents. It is certainly possible to be a non-resident for some time, without having left permanently, just as it is possible to live some-where for some time without becoming a non resident. .

The Government will close this **loophole** to ensure the system is **fair** and effective.

Fair to whom exactly? Who is it being unfair to at present? It most certainly won’t be fair to those who about to lose their pensions. If it is unfair to the taxpayer, do they all know that OAPs can travel to their hearts content all year, every year?

An additional rule will be introduced to require Australia to be a DSP recipient's permanent place of residence. This change will bring DSP into line with other **workforce age payments**.

Initially I was baffled about the relevance of being in line with other workforce age payments, until a member of Centrelink suggested it was because lots of the so called disabled

work on the side and if people are getting the DSP and are overseas, the government can't catch them as easily.

Point taken. But we are talking about a total of 154 people that were identified as likely to be non residents because they spent less than 8 weeks in Australia over a year. I say likely because this was only over 1 year. There could any number of reasons why that would occur, and maybe hardly ever again. Would have to occur over a number of years and there are other factors to consider regarding residence. So, of those 154 people, who are actually non residents, does the government really think are working on the side? Certainly a lot less than the rest in Australia.

If this is part of a "hidden agenda" why not atleast exempt those DSP's who cannot work?

These changes have been made possible through a new data exchange process between Centrelink and the Immigration Department that started in 2008.

Implies those identified were "caught out" by the new data exchange and that they would not have provided that information to Centrelink themselves. In other words, benefit cheats.

This change is expected to save taxpayers around \$3 million a year when fully operational.

Does the minister and secretary seriously believe that all those about to be affected will just give up their DSP's? Even 154 at \$700 a fortnight is only just over 2.8 million so she must be assuming all of them will give it up. What does she think they will live on? It is far more likely that they will remain / return to Australia and not only receive the same DSP (and therefore no savings) but place a further burden upon the system by way of health care, rental assistance etc

Yours sincerely,

Anon

Example of Table showing different types of absences and maximum portability periods.

Portability of social security payments				
Column 1 Item	Column 2 Payment	Column 3 Person	Column 4 Absence	Column 5 Maximum portability period
1	Age pension	All persons	Any absence	Unlimited period
3	Disability support pension	All persons	Any absence	13 weeks (but see also section 1218AA)
4	Wife pension	Entitled person	Any absence	Unlimited period
5	Wife pension	Person other than entitled person	Any absence	13 weeks
6	Carer payment	All persons	Any temporary absence	13 weeks
7	Bereavement allowance	All persons	Any absence	Unlimited period
8	Widow B pension	Entitled person	Any absence	Unlimited period

Portability of social security payments				
Column 1 Item	Column 2 Payment	Column 3 Person	Column 4 Absence	Column 5 Maximum portability period
9	Widow B pension	Person other than entitled person	Any absence	13 weeks
10	Widow allowance	All persons	Any temporary absence	13 weeks