

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: 5

SUBMITTER

Hugh Borrowman

**Submission to the Enquiry by the
Senate Community Affairs Committee
into the
Families, Housing, Community Services and Indigenous Affairs and Other Legislation
Amendment (Budget and Other Measures) Bill 2010 (Changes to Disability Support Pension)**

1. This submission is made on behalf of our 28 year old son. He is congenitally intellectually disabled as a result of a rare genetic syndrome. Being genetic, this will not change - he will not be rehabilitated. He spent his school life in special schooling and now works two half days in a supported work environment (formerly known as a sheltered workshop). He is a vital, loving and highly active young man who engages fully with life, but who cannot read or write, use money or telephones or be allowed out without supervision, except under very tightly controlled circumstances, and is highly vulnerable. He cannot prepare food, wash or dress without assistance. He requires constant care and attention.
2. By order of the Guardianship and Management of Property Tribunal of the ACT, we have been appointed as his plenary guardians. The guardianship order is issued "in recognition of the Tribunal being satisfied that [he] is suffering from an impaired decision making capacity in matters relating to his health or welfare". Guardianship orders are not issued lightly and only after a close examination by the Tribunal of all the relevant circumstances including medical history, family circumstances and alternative options.
3. He is classified as severely disabled under Australian social security practice. He is also categorised as a "manifest case" given his life history. He has been in receipt of the relevant disability support allowance from the Australian Government since his disability was first recognised some 27 years ago. While he was a minor, this allowance was paid to us as his parents. Since he has become an adult, he is in receipt of a disability support pension (DSP) *in his own right*, without regard to our situation or income.
4. I am employed in a career which requires me to live overseas from time to time. Our son necessarily accompanies us when we do so: he has no independent living capacity. But if he were to go overseas with us for more than 13 weeks, he would lose his status as a pensioner and thus his pension¹. When we return, he would have to reapply for a pension from scratch (of course, we would have to do so on his behalf). Centrelink cautions us against assuming that he would requalify, despite his level and history of disability and his status as a manifest case. If he did requalify, were he then to leave the country with us again within two years, no pension at all would be payable, wherever he went with us or for how long.
5. After my working life is finished, the same rules would prevent us travelling overseas for more than 13 weeks, for example to visit or support family members overseas.
6. Social security practice treats our son as making a decision to move overseas and penalises him for it. But as is evidenced by the guardianship order, he has no capacity to make such a decision.
7. We believe this situation to be fundamentally and morally wrong and to discriminate against a member of one of the most vulnerable groups of society, the intellectually disabled.
8. When last offered an overseas position, Centrelink invited us to utilise the provision which

¹ . There are 19 or so countries with which Australia has an International Social Security Agreement (ISSA) where the pension could be paid. But they are not necessarily countries where I might be posted by my employer; ISSA negotiated since 2004 do not cover disability; and there is a process of renegotiating existing ISSA, in the process of which their current disability provisions are to be removed.

is due to be abolished by the amendment in question in order to preserve our son's pension. We declined to utilise it on the basis of both practicality and probity.

9. We wish however to take the opportunity of the Committee's enquiry to draw attention to the situation our son finds himself in as a result of current portability rules and to seek a change.
10. The Committee has previously addressed concern about the implications of restricting portability for severely disabled DSP recipients – see for example the June 2000 Report of the Senate Standing Committee on Community Affairs on the *Social Security and veterans/entitlements legislation amendments (Miscellaneous matters) Bill 2000*. Before 2004, severely disabled DSP recipients did in fact have unlimited portability. The Bill that finally removed it does not appear to have been referred to committee.
11. We believe there is a very simple way to address this problem. Current Social Security legislation provides an exemption to the portability rule to cover the case of a person leaving the country with a terminal illness. Because of this, the Act already contains a structure which contemplates exemptions. It would be a simple matter to insert an additional exemption to cover persons subject to a guardianship order issued by a competent judicial authority. A draft amendment is attached.
12. There would be no additional cost to the Commonwealth through such an exemption: by definition, affected persons would already be receiving DSP - it does not create a new category of recipient. And on this model, because the assessment of guardianship is carried out independently by the courts, there is an existing compliance mechanism in place.
13. The number of affected persons is likely to be very small. We understand that only about 1.5% of DSP recipients are categorised as severely disabled, and those under guardianship would be a small percentage of that number. We understand however that there are other carers in this situation, for example members of the ADF.
14. We see this issue as fundamentally about our son's rights, but it also goes to our role as carers. As such, the change we propose would be consistent with the Carer Recognition Bill 2010, which was introduced to the Parliament on 17 March 2010. In her Second Reading Speech of the same date, the Hon Jenny Macklin MP, Minister for Health, said "*The Statement contains ten key principles that set out how carers should be treated and considered in policy development and program and service delivery. This includes the fundamental principle that all carers should have the same rights, choices and opportunities as other Australians.*"
15. The current situation results in additional stress on family life by limiting the carer's career options; and in turn limits the assets which can be established for the care of the disabled person after the carer's death.
16. It might be objected that so small a number of persons affected does not warrant a specific exemption – but the number of terminally ill DSP recipients departing the country must be similarly small. In both cases, the rationale for the exemption is surely that it is the right thing to do.
17. We would be happy to appear before the Committee to expand on this submission if required.

Attachment: Suggested Amendment to the Social Security Act shown **in bold**.

Part 4.2—Overseas portability

Subdivision B—Exceptions to Subdivision A rules

1218AA Extended portability period for disability support pension

(1) The Secretary may determine that a particular person's maximum portability period for disability support pension is an unlimited period, if all of the following circumstances (the qualifying circumstances) exist:

- (a) the person is severely disabled (see subsection 23(4B)); and
- (b) the person is receiving disability support pension; and

either

- (c) the person is terminally ill; and
- (d) the person's absence from Australia is or will be permanent; and
- (e) the purpose of the person's absence is:
 - (i) to be with or near a family member of the person (see subsection 23(14)); or
 - (ii) to return to the person's country of origin.

or

(f) the person is subject to a guardianship order issued by the competent authorities of any state or territory of the Commonwealth.

(2) The Secretary may revoke the determination if any of the qualifying circumstances ceases to exist.

(3) If the Secretary revokes the determination, this Part has effect after the first time at which one of the qualifying circumstances does not exist as if the person's maximum portability period for the pension were 13 weeks starting at that time.