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Submission to the Senate Community Affairs Legislation Committee inquiry into the *Social Security and Other Legislation Amendment (2012 Budget and Other Measures) Bill 2012*

by the

National Welfare Rights Network (NWRN)

13 June 2012

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About the NWRN

The National Welfare Rights Network (NWRN) is a network comprised of 16 community legal services throughout Australia which specialise in social security and family assistance law and its administration by Centrelink. Based on the experience of clients of NWRN members, the Network develops policy and advocates for law reform. We also seek improvements in how services are delivered and how information is communicated to people about their obligations and their rights.

NWRN member organisations provide casework assistance to their clients and provide training and education sessions for community workers. They also produce publications to help social security recipients and community organisations understand the system.

SCHEDULE 2: ADJUSTMENT TO PORTABILITY: PAYMENTS WHILE OVERSEAS

Reduction in portability of payments for temporary absences from 13 to six weeks

Many income support payments can only be paid for a **maximum of 13 weeks** of any **temporary absence** from Australia. During the 13 week periods that the person receives their payment overseas, they must remain qualified for their payment (for example, remaining involved in the care of a dependent child, providing care to a person with a disability). The person must also remain qualified as an Australian resident which means that they continue to regard Australia as their settled home. Extensions beyond 13 weeks are only possible where a person cannot return to Australia due to limited specific circumstances beyond their control.

From 1 January 2013 the period of time that people who travel overseas for any temporary absence can continue to receive payment is proposed to be **reduced from 13 weeks to six weeks**.

This measure will affect the portability of the following payments: Disability Support Pension, Parenting Payment, Carer Payment, Carer Allowance, Widow B Pension, Wife Pension, Widow Allowance, Partner Allowance, Youth Allowance (student), Austudy, Mobility Allowance, Telephone Allowance, Pension Supplement, Utilities Allowance, Seniors Supplement, Clean Energy Supplement, Low Income Supplement, Concession cards, Family Assistance and Paid Parental Leave.

Family Tax Benefit Part A above the base rate will be reduced to the base rate after six weeks of a temporary absence from Australia. People who are outside Australia on 1 January 2013 will retain the 13 week portability of their payment until their return to Australia.

As a general rule, people on ‘working age’ participation payments, like Newstart Allowance, Youth Allowance and Special Benefit are not able to be paid overseas except in very limited circumstances.

Financial impact of the proposal

These changes are expected to result in government savings of $127.2 million over four years from 2012-13. Unfortunately, there is no statement about the numbers of people projected to be affected by this proposed change. Data on the current use of the portability provisions would enable a more informed discussion of these proposals, as would additional details explaining how the Government anticipates that it will save $127 million from these policy reforms.

Experiences of Australian's with the existing portability requirements

The members of the National Welfare Rights Network are often contacted by clients who have experience with the current portability rules. The following de-identified case studies document difficult family circumstances which we believe would be exacerbated by any reduction to the existing portability rules.

Families in Refugee Camps

Many people who came to Australia under Humanitarian programs were dislocated from their families but, after coming to Australia, have with the help of various community agencies found their family members in refugee camps. In a lot of cases it is unlikely that the family members will ever be able to come to Australia thus the only alternative is for the people to visit their family members.

Mrs A

Mrs A and her children came to Australia from a refugee camp under the Humanitarian program. When civil war broke out in her country Mrs A was forced to flee after she saw a number of the male members of her family killed. Mrs A did not know what had happened to the rest of her family. After spending a number of years in a refugee camp in Kenya she and her children were granted refugee status by the United Nations and came to Australia.

Mrs A initially found it very difficult adjusting to life in Australia but after learning English has adapted and she and her children are Australian citizens. She never stopped searching for her family and with the help of Red Cross she managed to locate her sister and elderly mother who are both in different refugee camps in Africa.

Initially Mrs A was concerned as to whether she would be safe visiting her family but was assured that as an Australian citizen she would be safe. She borrowed money to go to Africa to see her mother and sister, she was appalled at the conditions they are living in and hoped to bring both of them to Australia. She has been advised that because she was receiving a Centrelink payment, she would be unable to sponsor them. She had hoped that once her children finished studying and started working they would be able to sponsor them but has been advised that due to their serious health issues that this will never happen.

Mrs A has been trying to visit her sister and mother every couple of years even though it has been difficult to save the money to pay for the airfares and associated travel costs. Whilst she is there she also has to pay for food, accommodation and tries to provide some basic necessities that they do not have as well as pay her rent and utilities at home. Mrs A has significant health problems herself and is receiving Disability Support Pension and thus has a limited income.

The impact of the changes to the portability from 13 weeks to 6 weeks will affect Mrs A because it means that she may only have time to see one of her family as she will not be able to afford stay longer when she is not receiving income support.

Frail and Elderly Parents - Mr and Mrs B

Mr and Mrs B try to visit their elderly parents every couple of years. Mr B was injured in an industrial accident many years ago and is on Disability Support Pension and his wife is on Carer Payment. Although they own their own home they have high medical costs and thus it is difficult to save money to pay for airfares to visit their frail and elderly parents overseas.

Mr and Mrs B would like to spend more time with their parents before their parents die but cannot afford to be without an income. They find the long haul travel difficult.

They are concerned that the changes to the portability rules will limit the quality time they are able to have with their parents. They were already concerned with the increasing cost of daily living and the length of time it was taking them to save up for the airfares and now feel that it will it will not be very economical to only be able to stay 6 weeks.

A father with children overseas

Gary is on a Disability Support Pension and has a medical condition meaning he is not able to work at all. His wife recently died. He has three children living overseas. His youngest child (age 2) has a life threatening condition which means regular hospital visits for the child. He has advised Centrelink about his family situation and whereabouts and has been allowed to visit his family regularly.

On a recent return to Australia Gary was told he could not leave Australia again and if he did his Disability Support Pension would be cancelled. His child was sick at the time and he was extremely distressed about this. He wasn't told about the emergency portability provisions. When he was informed about them, by a Welfare Rights Centre, he was asked by Centrelink to provide documents such as hospital records. These documents were unable to be obtained from Australia, and even if they had been obtained, they would have been in a foreign language.

How changes to portability will affect Gary

If Portability is reduced to six weeks this will restrict Gary's ability to visit his children and it will affect his ability to look after his sick son. Gary has already been adversely impacted by the changes to the residence requirements for Disability Support Pension introduced from 1 July 2012 which severely limits the ability for those on Disability Support Pension from regular overseas travel.

Medical treatment and portability

Kate is on a Disability Support Pension and has been advised by her treating medical doctor that the cold weather where she lives is exacerbating her medical condition. The treating medical doctor has recommended she spend periods of time in a warm climate to alleviate her symptoms. She has been going overseas regularly, and Centrelink recently determined she was not an Australian resident. Kate appealed this and was successful, however Kate is now reluctant to go overseas again in case this jeopardises her pension.

How changes to Portability will affect Kate

If portability were reduced to 6 weeks it would reduce Kate's ability to undertake this kind of treatment.

Family tragedy overseas

Jim is on a Disability Support Pension and was recently overseas on a holiday visiting family, including his infant son. An earthquake hit the area he was staying, killing his son and destroying the village. He contacted Centrelink in a highly distressed state and asked for an extension on his portability period.

Jim was informed that he would need to provide evidence, even though this earthquake had been widely reported in the media. Jim was told he could not extend his portability. This meant he had to pay to get himself airlifted out of the village to meet his flight back to Australia. When he arrived (some days later) Centrelink asked for a death certificate for his child, which he could not provide. Death certificates are not routinely issued in this country. He was in an emotional state, had no money and nowhere to stay. When he asked for an urgent payment at Centrelink he was refused.

How changes to portability will affect Jim

If portability were reduced to six weeks it would reduce Jim's contact with his family and his ability to deal with the ongoing difficulties arising from his son's death.

Comments by the National Welfare Rights Network

In the second reading speech on *Social Security Legislation Budget and Other Measures Amendment Bill 2012* on 24 May 2012 the Minister for Families, Housing and Community Services explained the rationale behind these changes:

> *"Many Australians have strong family and friendship connections overseas and it is appropriate to provide a limited portability period for government welfare payments.*
>
> *"However, we believe that people of working age should be in Australia participating in the community and preparing to return to work if they can.*
>
> *"Six weeks is a reasonable period of time for an Australian resident to manage family or personal matters that may arise from time to time overseas and have their overseas stay funded by the Australian taxpayer.*

> *"There is also discretion to extend portability periods in genuine exceptional circumstances, such as when a person falls ill overseas and cannot return."* [1]

In the following discussion we will briefly respond to the Ministers comments.

The 2012-13 Federal Budget proposes an additional reduction in the period a person can receive an Australian income support payment while temporarily overseas: from 13 weeks down to six weeks. Portability allows most income support and supplement payments to continue being paid where a person is temporarily absent from Australia. Where a person leaves Australia permanently, and their payment is not payable overseas, payment is stopped on departure. The proposed reduction needs to be viewed in the context that up until 30 June 2004 the portability provisions allowed overseas travel of 26 weeks and so with the most recent change we will see that capacity further diminished.

NWRN understands that the matter of overseas travel can be a complex and perhaps, controversial issue in the view of some people in the community. Portability is an interesting issue as this raises the question - how can people receiving income support afford to travel overseas? Is it cash income, is it family help from abroad, has the person borrowed from family or friends, taken out a loan or used a credit card? If there are cases where frequency of travel is seen as an indicator of undisclosed means then this is a separate matter that the Department of Human Services has existing compliance programs to deal with.

The NWRN is concerned about the impact that this change may have upon some people who for personal emergencies or other difficult family circumstances, may need to stay overseas for more than six weeks. We note that the capacity for exemptions and extensions to stay more than six weeks will be available. Our experience is that people experience considerable practical difficulty in meeting the hurdles and administrative processes that are often demanded by Centrelink before they will grant an extension to the 13 week portability period. Regularly we see people having to use the external appeal and review process to challenge these portability decisions. In the interim these people can be left stranded overseas without any means of support.

Most commonly we deal with overseas portability cases involving trips overseas for ill and traumatised relatives, frail elderly people, dying parents or recently deceased relatives.

The two groups of people that will be adversely affected the most are:

(1) Refugees / former refugees with family spread all over the globe (accepted in differing third countries). These people often ask Centrelink for permission to go overseas to visit a relative who is dying and are refused or granted approval for just one week's payment (on Newstart Allowance). A reduction of the portability period to six weeks is a very short time to travel, visit someone who may pass away and then attend a funeral.

(2) People with medical conditions who go overseas for either remedial treatments which are much cheaper or to go climates which their doctor recommends (but not enough to get over the hurdle of being a treatment not available in Australia). Again 6 weeks

[1] Macklin, J. Minister for Families, Housing, Community Services and Indigenous Affairs, House of representatives, *Social Security Legislation Budget and Other Measures Amendment Bill 2012, Second Reading Speech,* 24 May 2012.

is a short time for these people to have to pay to go overseas for such a brief period of time.

A rationale for maintaining the current 13 week provisions is that 6 weeks is too short to adequately deal with the personal care and support and address the needs of people who are in frail age and ill health. Locating appropriate aged care and other supports can be a difficult and prolonged exercise – as is dealing with an unexpected or sudden bereavement or complex family estate matter.

Often people who access the portability provisions want to be able to stay with close relatives such as parents or children. The person needing to travel may be frail of have severe ill-health. This is particularly important for people who do not have family members in Australia and the restrictions in this Bill would limit their ability to spend some quality time with their parent(s) or closed member of their family.

Similarly, six weeks may not be sufficient time for those seeking cheaper or alternative medical treatment.

Taking into account Australia's history as a nation built on immigration, the economic contribution of migration policies and the distance of Australia from other countries, the proposals to limit portability is problematic. Furthermore, considering how much it costs to go overseas, being only able to stay overseas for six weeks seems unfair.

An additional concern is that if a person is not receiving income support they are at risk of not being able to pay rent and therefore they may lose their accommodation in Australia.

In considering the proposal to further tighten the portability requirements it may be useful to document briefly for the Committee some practical examples of difficulties Welfare Rights advocates experience with the administration of the existing rules for extensions of the portability period by the Department of Human Services.

The requirement that a family members' illness must also have quickly become severe or serious, rather than just being an illness which is a continuation of a chronic condition, has been an area of major disputation and confusion. As a result of client's problems with this requirement, a Network Member Centre has developed a letter that is included in the *Online Independent Social Security Handbook* so that people can get seek to obtain arrears. Unfortunately, Centrelink was denying people payment because the illness was chronic as opposed to one that quickly became severe (see Attachment A for a copy of this letter).

In relation to extending the portability period, our casework experience is that the proof of "hospitalisation of the person or a family member" is too strictly applied. For example, a client went overseas to see his elderly mother who was suffering serious health problems. The mother had only been in hospital for a week or so but was sent home under the care of her treating doctor. Centrelink refused the extension of time on the grounds that the frail elderly mother was not hospitalised for the whole time. Whether care was being provided in a hospital or home setting should be irrelevant in the context of an Australian citizen providing support and being close to his mother in her last days. Plans to further restrict portability to six weeks only would be devastating for these families. The discretion should not include the requirement for the relative to be hospitalisatised in situations such as this.

Conclusion

Welfare Rights considers that the current 13 weeks portability period is already extremely restrictive.

The portability of most income support payments was reduced from 26 weeks to 13 weeks from 1 July 2004. This proposed initiative is similar to the previous reductions in the portability periods.[2]

Over the years these rules have been tightened: from 12 months to 26 weeks, then 13 weeks, and now the proposed 6 weeks.

We urge the Committee to reject this schedule.

[2] The *Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003.*

SCHEDULE 3. RESTRICTIONS TO INCOME SUPPORT FOR SOME YOUNG PEOPLE AND THEIR FAMILIES

Changes to the eligibility age for Family Tax Benefit A

Currently, to qualify for Family Tax Benefit Part A (FTB Part A) a person must have:

- a dependent child under 16; or
- a dependent child aged 16 to 20 who has completed year 12 or equivalent, or who is studying full-time leading to completing year 12 or equivalent, or exempt from this requirement;
- or a dependent full-time student aged 21.

From the start of this year, the Federal Government introduced changes which made FTB Part A the main source of support for families of school age children, when it phased out Youth Allowance for most young people living at home, studying full-time at secondary school and under 18.

At the same time the rate of FTB Part A increased.

Once they turned 18 young people looking for work or studying could claim Youth Allowance or their parents could continue to receive FTB Part A.

From 1 January 2013 the maximum age of the dependent child for FTB Part A eligibility will **reduce from 21 to 17**, or to the end of the calendar year in which they turn 19 if they are still completing high school.

In short, Youth Allowance will in most cases become the only payment for young people who turn 18 who need support and are studying or looking for work.

Impact of the proposal

Savings from these changes are expected to be $360.9 million over four years from 2012-13.

The Budget does not provide exact details of the numbers of young people who may be affected by this change. However, there are an estimated 43,000 people aged over 18 and under 21 who will be impacted by this change, according to officials from the Department of Families, Housing, Community Services and Indigenous Affairs.[3] A family with one child would cease to be eligible for any Youth Allowance when the family income reaches around $70,000 per annum.

However, reform will create a new gap in the social security safety net. Food, clothing and shelter are not less expensive if a young person swaps a text book for newspaper advertising employment opportunities for someone looking for work.

Many young people will be no longer eligible for payment via the application of the Youth Allowance Parental Income Test. The rate reduces if parent's income exceeds a threshold of $46,355.[4] In contrast, Family Tax Benefit Part A's income test cut-out point is much higher, with Family Tax Benefit Part A reducing by 30 cents for every dollar over $94,316 plus $3,796 for every Family Tax Benefit Child after the first, until payment reaches zero.

[3] Senate Community Affairs Legislation Committee, *Estimates*, Tuesday 29 May 2012, p. 14.
[4] The rate reduced by 20 cents for each $1,000 over the threshold.

Some other key differences between Family Tax Benefit and Youth Allowance a person should be aware of when assessing a young person's possible eligibility for Youth Allowance for when this change takes effect include:

- income testing of the young person's own income will be different under the Youth Allowance's income test including the student income bank;
- Family Tax Benefit for a person over 16 is only payable where the young person is classified as a dependent young person. Where the young person earns more than about $13,361 in a particular calendar year, the young person cannot be classified as dependent for Family Tax Benefit purposes;
- Youth Allowance isn't shared between parents according to the percentage of care, unlike Family Tax Benefit;
- the rate of Youth Allowance is ordinarily greater than the rate of Family Tax Benefit;
- child support income affects FTB(A) but not Youth Allowance; and
- Youth Allowance isn't shared between parents according to the percentage of care.
- Youth Allowance child support income is not included in parental income test. On FTB A it is subject to the Maintenance Income Test (MIT) which reduces FTB at 50c in the dollar above the free area of around $26 per week.

Only young people who are considered independent or who are required to live away from home will be able to access Youth Allowance.

Comments from the National Welfare Rights Network

According to the Explanatory Memorandum, a young person who no longer attracts eligibility for FTB Part A may be eligible to receive Youth Allowance. As we have notes earlier, however, there are major differences in qualifications and practically in terms of the difference between these payments. Most obvious, in terms of eligibility, is that the Parental Income Test (PIT) will act to disqualify many young people from any entitlement. This could result in the young person having no visible, or actual means of support. The young person may need to make a claim for Youth Allowance under the 'unreasonable to live at home' requirements, though there are very strict criteria attached to the granting of this payment.

Parents may be unwilling, or unable to financially support young people. Some young people find that they are simply unsuited to further education and a school environment. They may experience significant mental health problems or mild intellectual disabilities, yet they are now supposed to fend for themselves under these new arrangements.

The loss of family income may create or exacerbate family tensions or neglect, and could also place vulnerable young people at risk of homelessness.

NWRN is concerned about these changes. The Government has indicated that it is committed to assisting young people to either earn or learn. In order to do so they must be provided with an adequate income. If the government persists with this measure, the NWRN believes that it should use the savings from this measure to address the problems with the adequacy of Youth Allowance that we identify in the following section.

Inadequacy of Youth Allowance

Payments for young people in receipt of Youth Allowance are already low and inadequate to meet basic living costs. It is appropriate to detail here our concerns with the existing payments for young people, and in particular, the current inadequacies of Youth Allowance.

There are many problems with the rate of Youth Allowance including:

- inadequacy: rates are well below the poverty line and well below other allowances[5]
- indexation arrangements
- taper rates and inadequacy of free area thresholds for unemployed
- overly restrictive criteria for independence
- inadequacy of Rent Assistance rate and the disproportionate effect of the " two thirds" rule contained in the rent assistance "sharers" provisions

Youth Allowance and Abstudy are indexed once annually in line with the annual CPI increase. An "indexation lag" of up to 18 months can occur.

The rate of Youth Allowance is grossly inadequate, falling far short of the widely accepted poverty line figure. Youth Allowance payment rates for people aged 18 and over at the 'away from home' rate are just $402 per fortnight while the rate for those aged over 18 and 'at home' rate is just $265 per fortnight.

Income free areas and taper rates for youth allowees who are unemployed are considerably harsher than they are for full-time students. The high impact reduction that earnings have on Youth Allowance create disincentives to work and can result in poverty traps.

Full time students receiving Youth Allowance may earn up to $236 per fortnight before their rate of Youth Allowance begins to reduce under the income test. This is known as the income free area. In July 2012 the income free area is set to rise from $236 to $400 per fortnight.

However, unemployed young people receiving Youth Allowance may only earn $62 per fortnight before their payment begins to reduce under the income test. The income free areas for pension payments in the Australian social security system are indexed in line with the CPI in July each year, yet the free area for job seekers and students is not. The income test facing young people has been increased by just $1 a week on the last 30 years.

The amount that a person can have before payment is withdrawn has declined significantly in real terms because of the current indexation arrangements. In 1986 the allowance free area was 31 per cent of the lower single rate of allowance. By 1995 this had fallen to 20 per cent and is currently 14 per cent. The recent report into Australia's tax and transfer system by the Secretary of the Treasury concluded that "it is difficult to see a rationale for these outcomes".[6]

[5] For poverty line see: *Poverty Lines: Australia*, Melbourne Institute of Applied Economic and Social Research, June Quarter 2010 ISSN 14480530 Table 4. For rates of Youth Allowance see *A Guide to Australian Government Payments*, published quarterly by Centrelink and published at Hwww.centrelink.gov.auH
[6] Report to the Treasurer, *Australia's future tax system*, December 2009, p. 520.

NWRN, along with a broad range of business, union and community sector organisations have called for the Government to increase the rate of Youth Allowance by $50 per week.

The living standards of many young people and their families will be reduced if the planned changes to family assistance changes proceed.

We recommend that the Committee reject Schedule 3 of the Bill.

Other issues

Additional proposals before the Committee are aimed at correcting an inequity in relation to whether reasonable maintenance action is considered to have been taken in certain cases where child support is privately collected. An additional amendment seeks to address changes to care arrangements in exceptional circumstances, including where there is evidence of violence or other unexpected behaviour.

NWRN does not oppose these schedules.

Attachment A

Information on letter for clients on portability and the rules re: extension of portability (from the Online Independent Social Security Handbook)

Table 43.2 Sample letter to a doctor while visiting an ill family member
[Date] Dear Doctor **[Your name]** I receive a social security payment in Australia. I can be paid this payment overseas for up to 13 weeks if I am visiting a family member who is: - critically ill; or - hospitalised with a serious illness. My family member's illness must also have quickly become severe or serious, rather than be an illness which is a continuation of a chronic condition. It would be helpful if you could write a brief letter that addressed my situation including: - whether in your opinion my relative is either critically ill or hospitalised with a serious illness; - the dates which my relative entered hospital or has been in your care; and - whether my relative's current condition quickly became severe or more serious, (as distinct from a chronic condition which has been the case for some time). Please address the letter "to whom it may concern" as I will likely be forwarding this letter to the Department of Human Services and / or the Social Security Appeals Tribunal. I thank you sincerely for your time and assistance in this matter. Yours faithfully, [signature and name].