

FaCHSIA's argues that the use of Guardianship Orders to allow portability would be restrictive and not appropriate. This table summarises their arguments and presents some responses.

FaCHSIA Argument	Response
<p>Many people with impaired decision-making capacity are cared for by family and friends with support by Government and non-Government organisations without the need for a legal Order.</p> <p>Supported and substituted decision-making arrangements do not require a formal guardian appointed by order of a tribunal or court.</p> <p>Limiting portability to those people that have a legal guardian will not recognise these non-formal care arrangements and may force people to seek formal arrangements where previously they were not deemed necessary.</p>	<p>Acknowledged; but unless such persons intend to go overseas for an extended period, these arrangements need not change.</p> <p>Too broad. Depends on what decision-making process is in question: for example, medical and surgical procedures, at least in the ACT, do require such authority. Special Schools sponsor seminars, attended by Centrelink, <i>encouraging</i> people to apply for orders where appropriate.</p> <p>We are not proposing that portability be limited to those under guardianship: normal 13 week portability would apply to those not under guardianship. The only necessity to seek guardianship would be if it was considered necessary to apply for extended portability. Nobody is forced to do anything. There would be no change to 'recognition' or otherwise of non-formal care arrangements.</p>
<p>Such a requirement would be perceived as unfair to the large population of Severely Disabled DSP recipients in non-formal care arrangements and may place a further burden on the often fragile care arrangements.</p> <p>The Government values the enormous social and economic contribution of carers all over Australia and would not seek to place unnecessary pressure on them.</p>	<p>Our position has the support of Carers Australia, who do not perceive it to be unfair. FaCHSIA has advanced no argument as to why it would be, or would be perceived to be, unfair. Our proposal would only apply to those very limited group of persons seeking extended portability. Others would be unaffected.</p> <p>The current arrangements places very significant unnecessary pressure on this pair of carers at least.</p>
<p>The use of Guardianship Orders in this way may work contrary to the principles of State/Territory Guardianship Tribunals. Tribunals actively encourage the use of non-formal arrangements and seek to explore and work within non-formal care to provide the least restrictive outcome for the person with disabilities. Formal Orders are</p>	<p>Agree completely that guardianship orders <i>are</i> a last resort – which is precisely why the Social Security system needs to provide treatment for those for whom they are a necessity and not try to shoehorn them into a system designed for the greater majority of clients.</p>

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seen as a last resort arrangement.	
<p>If portability for DSP recipients with a severe disability and a legal guardian was included in the Bill before the Committee it is estimated that none of the 1,000 DSP recipients who travel overseas regularly would benefit.</p>	<p>Surely the whole point of the Bill before the Committee is that <i>none</i> of the current recipients benefit: it is designed to <i>limit</i> benefits. But more pertinently to our case, this comment does not contemplate those additional people who might in fact benefit from the changes we propose.</p>
<p>If Guardianship was used as a method of determining a person’s qualification for DSP overseas, it would be complex for Centrelink to administer and require changes to Centrelink assessment processes.</p> <p>This would include more than just acknowledgement that a Guardianship Order existed for the DSP recipient. Guardianship is a State/Territory based responsibility and different types of Orders occur across jurisdictions. It will be difficult for Centrelink to make consistent and equitable assessments nationally.</p> <p>Given that DSP recipients may already be overseas, Centrelink may be required to also assess Guardianship Orders or their equivalent issued by another country.</p>	<p>No more complex than many other Centrelink processes or requirements.</p> <p>Overstates the degree of complexity for what would be expected, on the Department's own figures, to be a negligible number of cases. Centrelink doesn't have to make assessments: to go behind Guardianship Orders issued by the court system completely over-regulates the process.</p> <p>We make <i>no</i> suggestion that overseas guardianship orders should be contemplated: restricting the question to Australian guardianship orders provides precisely the Australian connection that FaCHSIA wishes to preserve.</p> <p>We would have no objection to, like the Aged Pension, requiring that the pension first be granted in Australia.</p>
<p>Guardianship Orders are granted for a limited time. This would require Centrelink to track changes or variations to current orders as these will now impact on a severely disabled recipient’s eligibility for payment overseas noting that the Guardianship Orders are a State</p>	<p>Limited time is a <i>strength</i> of using Guardianship Orders: it means the process is subject to continuing, independent, review in Australia. Centrelink tracks all sorts of changing circumstances. This would be no different and would be an extremely small number of cases.</p>

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<p>and Territory responsibility.</p> <p>This mechanism is not focussed on the level of disability or their potential to re-engage economically or socially.</p>	<p>Insofar as we are talking about guardianship in respect of disability (not, for example, in respect of minors), of course it relates to the level of disability: the very rationale of the order is that the person is in some sense incapable.</p>
<p>As mentioned above Guardianship Orders are not recorded by Centrelink, however it is estimated that less than 10,000 are granted annually across Australia, with most for people above 65 years of age with age related mental illnesses.</p>	<p>....and if carers are prepared to take these people with them on an overseas absence in order to continue to care for them, what is served by taking away the cared for person's pension rights?</p>
<p>The main purpose of DSP is to assist people with the cost of living in Australia and support their social and economic participation. If a DSP recipient is living overseas then the DSP payments funded by Australian taxpayers are not helping them in this way.</p>	<p>This may indeed be the <i>main</i> purpose of DSP: but is it the only purpose? Surely people under care of the sort we are considering are <i>precisely</i> those who should be at the centre or a disability support system, not those marginalised by it?</p>
<p>The 13 week portability rules allow DSP recipients sufficient time to attend to personal business that might be arise from time to time overseas or to holiday. Current exemptions provide a sound basis for ensuring that the social security system is fair and equitable to all.</p>	<p>To attend to overseas business? To take a holiday?? This persists in completely ignoring the fact that the people we are talking about have no capacity, either physical or legal, to undertake such activities. It applies completely inappropriate and erroneous judgements to the case at hand.</p>