SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE

Consideration of Legislation Referred to the Committee

SOCIAL SECURITY AND VETERANS' ENTITLEMENTS LEGISLATION AMENDMENT (MISCELLANEOUS MATTERS) BILL 2000

JUNE 2000

ISSN 1440-2572

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THE INQUIRY

1.1 The Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Bill 2000 (the Bill) was introduced into the House of Representatives on 16 March 2000 and into the Senate on 10 April 2000. On 12 April 2000, the Senate, on the recommendation of the Selection of Bills Committee (Report No. 6 of 2000), referred the Bill to the Committee for report by 5 June 2000.

1.2 The Bill gives effect to a range of 1999 Budget and related matters. However, the Committee was only asked to examine a specific aspect of the Bill – namely the impact of the proposed common international portability rules for DFaCS pension and allowance recipients.

1.3 The measures in the Bill relating to international portability aim to simplify current portability rules with a view to streamlining their administration. They include standardisation of the portability rules; consolidating working life residence rules; phasing out of special needs pensions; and extending to two years the short residence rule.

1.4 The Committee received submissions from the National Welfare Rights Network and the Department of Family and Community Services relating to the portability issue. The Committee agreed that rather than hold a formal public hearing, it would seek a written response from the Department to the issues raised in the Welfare Rights Network's submission. The submissions and Department's response may be accessed through the Committee's web site at: http://www.aph.gov.au/senate_ca.

1.5 Issues raised by the National Welfare Rights Network (see Attachment 1) included:

- Reduction of the maximum portability period for Disability Support Pension (DSP) for non-severely disabled persons from 1 year to 26 weeks would have a detrimental effect on migrants who want to return to their country of origin;
- Reduction of maximum portability period for Wife and Widow B pensions from 1 year to 26 weeks is unwarranted;
- The underlying rationale of the extension of the non-portability period for former residents from 1 to 2 years and repeal of the discretionary provision;
- Reduction of the non-proportional period for long-term travellers from 1 year to 26 weeks may well act as a disincentive for people who would otherwise return to their country of origin; and
- The removal of specific references to visa types that attract eligibility for various payments.

1.6 The Department responded to the issues raised by the National Welfare Rights Network (see Attachment 2) by advising that:

- The standardisation and simplification of portability rules will benefit around 90 000 recipients, including the majority of pension and allowance recipients who travel overseas. The small number of adversely affected recipients will, however, benefit from the introduction of portability for ancillary payments such as Rent Assistance, Pharmaceutical Allowance and Telephone Allowance;
- The exemption of particular payments from the standardised portability rules would increase legislative complexity without adding much value for customers;
- The proposed changes to the non-portability period of former residents are consistent with the residency principles of the Australian social security system. Retention of the discretionary provision would continue to leave the system open to abuse;
- The shortening of the non-proportional period is consistent with the standardisation and simplification of the portability rules and there is no evidence that it will have a detrimental effect on migrant communities. The addition of ancillary benefits will benefit all recipients, including migrants; and
- The amendments will make life easier for all concerned by providing a single point of reference for the listed visas.

RECOMMENDATION

1.7 The Committee reports to the Senate that it has considered the Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Bill 2000 and **recommends** that the Bill proceed.

Senator Sue Knowles
Chairman
June 2000

MINORITY REPORT

AUSTRALIAN LABOR PARTY

SOCIAL SECURITY AND VETERANS' ENTITLEMENTS LEGISLATION AMENDMENT (MISCELLANEOUS MATTERS) BILL 2000

1. Proposed common international portability rules – areas of concern

Many of the proposals regarding international portability contained in this legislation will benefit individuals receiving social security payments travelling overseas and streamline administrative arrangements. It is not Labor's intention to examine these matters.

However, a number of measures relating to portability will leave Centrelink customers worse off. These are discussed below.

1.1 Reduction in Portability for Disability Support, Wife and Widow B pensions

The legislation proposes to reduce portability of pensions from 12 months to 26 weeks for people those receiving Disability Support Pensions who are not categorised as 'severely disabled' (ie those unable to work at least eight hours per week). It also proposes the same reduction for Wife and Widow Pensioners whose pensions are not permanently portable (ie 'entitled persons').

Disability Support Pension

The Department of Family and Community Services (FACS) argues in its submission that few Disability Support Pensioners travel overseas for periods longer than twelve weeks and therefore the numbers affected by limiting portability to 26 weeks would not be great. Such an argument provides a rationale for the adoption of a longer period such as twelve months. If, as the FACS argues, the numbers taking advantage of more generous portability are few, there is little chance retention of portability of twelve months is likely to see a flood of individuals using the provisions to relocate overseas for periods of time. Equally, FACS should be concerned to limit the administrative burden placed on those who, for good reason, need to remain overseas beyond the 26-week limit proposed. In this light the provision of a clause allowing people to extend their stay beyond 26 weeks seems overly bureaucratic.

FACS argues that Disability Support Pensioners who have an ability to work at least some of the time are increasingly being expected to participate either socially or economically. It therefore argues that these individuals should be expected to remain in Australia in order to fulfil these commitments. Again on the Department's own evidence there does appear to be widespread deviation from the principle that Disability Support Pensioners remain and participate where possible in Australia.

Further, one of the tenets of welfare reform debate to date is a concern to be more responsive to individual needs and life events. Retaining a more generous portability provision, particularly one that does not appear to be being abused would be consistent with such an approach.

Finally, the legislation appears to be structured to ensure that people's participatory obligations override portability. As such, changes to Disability Support Pension activity levels would not seem to be jeopardised by the retention of a longer portability period.

In its submission, The National Welfare Rights Network argues that for some, particularly aging disability support pensioners, there are valid reasons for return for periods of time to countries of origin:

> the person may have children and grandchildren in Australia, yet the needs of aged, frail parents, and siblings may also draw them to spend large amounts of time in their country of origin. In a sense they have a foot in each country.

It should also be remembered that increasing numbers of older workers are claiming Disability Support Pensions. This reflects both changes in the structure of the workforce, which has left many low skilled workers without employment or future prospects of employment. Many of these individuals are eligible for Disability Support Pensions as a result of injuries related to the type of work they have performed. Migrant workers are likely to be over-represented amongst this group.

Additionally, the changes do not take into account the need in certain circumstances for people with disabilities to seek medical treatment overseas. In such cases the shorter portability arrangements would be unfair.

Wife and Widow B Pension

The proposals that seek to reduce entitlements for many Wife and Widow B Pensioners do not appear to be underpinned by strong logic. Because both payments are currently being phased out, the demand for consistency is not as strong as maintaining certainty of entitlements for the few affected.

Those currently receiving either of the above pensions who travel overseas understand their entitlements provide them with twelve month's portability. To remove this entitlement would create confusion and stress for those affected.

FACS claims less than 100 pensioners are affected by this proposal. Given this group is likely to rapidly diminish it will not be a great deal of time before the class of persons is nil. Until that time, the fact that only a few are affected does not represent a valid argument for reducing their entitlement.

1.2 Extension of the waiting period

The proposal to extend the period before which a person re-entering the country can be eligible for further portability from one year to two years is represents another reduction in entitlement. Further, the elimination of the opportunity for people to return overseas within the proscribed period due to unforseen circumstances removes a measure of flexibility from the system.

FACS contends this measure is a guard against people abusing the integrity of the social security system, which rests on its targeting to people who are residents. FACS believes that some people manipulate the current system in order to gain access to payments with indefinite portability before leaving the country permanently.

The National Welfare Rights Network counters that proportionality rules protect against such an abuse.

In Labor's view, the present system provides an adequate test of a person's commitment to this country. Given the small number of individuals (FACS estimates around 10 people each year), it does not appear the system is currently being abused.

FACS argues the removal of the exemption from the proscribed period is due in part to the need for an individual to evince an unequivocal desire to remain a resident of this country. There is little evidence of individuals who need for this to be reinforced.

FACS also argues it is difficult to determine the veracity of claims for the proscribed period to be reduced given evidence must usually be obtained from overseas. This is hardly a compelling case for the withdrawal of a mechanism that allows flexibility in circumstances where an individual may need to travel overseas unexpectedly.

The retention of a mechanism to waive the proscribed period would allow individuals to continue to travel overseas when a family member is ill or dies.

FACS argues that Centrelink has reported a high rate of attempted abuse of the provision with two genuine claims out of 16 total claims. Further, FACS argues that *such a high attempted rate of abuse deserves a swift response.* What is more illuminating about these facts are that the system appears capable of detecting 'abuse' from 'legitimate cases.' Given the measure has fundamental merit (ie it allows discretion on humanitarian grounds), it is a low volume transaction (ie only 16 cases in a year) and it is being enforced stringently, there would appear to be few reasons to remove the provision.

1.3 Proportionality – long term travellers

The proposal to reduce proportional portability from one year to 26 weeks for long term travellers who receive Age Pension and Disability Support Pension (severely disabled) will reduce the entitlements of a small number of customers.

While FACS claims many people will not be affected by these provisions due to their residency or other qualifying circumstances, it remains the case that some will. The National Welfare Rights Network argues that for these individuals difficulties may arise in their ability to settle in another country.

The National Welfare Rights Network also contends that many of these individuals will save Australia moneys through their relocation, as they would otherwise have drawn full pensions until their deaths.

Given the small numbers affected, the desire to retain maximum flexibility within the system to meet individual needs, and the sound economic arguments for erring on the side of generosity, Labor supports the view that proportionality remain at one year for the above-mentioned payments.

2. Conclusion

The stated aims of the Social Security and Veterans Entitlement Legislation Amendment (Miscellaneous Matters) Bill 2000 are commendable. The streamlining of provisions into a central area of the legislation will no doubt improve the accuracy of decision making and make easier for all concerned, the task of determining entitlements.

It is also commendable that through this process, there is a recognition that certain ancillary payments be made portable. This reflects the reality that many domestic financial commitments do not cease when an individual must travel overseas.

However, it is of great concern that the Government should seek to use what is an otherwise noble exercise, to reduce the entitlements of some customers. The Government has provided little justification for this proposed reduction of entitlements, beyond noting that few will be hurt. However in our view, the cumulative impact of four years of Coalition social security legislation in which allegedly few are hurt is now substantial.

There remain compelling reasons for offering greater flexibility of portability to customers of Centrelink than the Government is offering in this legislation. For this reason Labor believes the measures that diminish current entitlements should be amended to preserve current entitlements while allowing for the consolidation of portability rules to be centralised for administrative ease.

3. Recommendation

It is recommended that the provisions relating to International Portability that diminish the entitlements of Centrelink customers be amended to ensure no one is worse off.

Senator Chris Evans
(ALP, Western Australia)

Senator Kay Denman
(ALP, Tasmania)

June 2000

ATTACHMENT 1

SUBMISSION BY NATIONAL WELFARE RIGHTS NETWORK

8 May 2000

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Mr Elton Humphery
Secretary
Australian Senate Community Affairs Committee
Parliament House
CANBERRA ACT 2600

by email: community.affairs.sen@aph.gov.au

Dear Mr Humphery,

Social Security and Veterans Entitlement Legislation Amendment (Miscellaneous Matters) Bill 2000

We thankyou for providing the National Welfare Rights Network the opportunity to raise our concerns with the proposals contained in the Social Security and Veterans Entitlement Legislation Amendment (Miscellaneous Matters) Bill 2000.

Schedule 1
Part 1 Beneficiaries leaving Australia
New Division 2 Portability of social security payments
Subdivision A Basic portability provisions

The proposed s1217 of the Act sets out the maximum portability period for portable social security payments.

Whilst there are some commendable changes with the lengthening of portability periods for some payments, the portability periods for other payments have been reduced from twelve to six months. We oppose these reductions.

Disability Support Pension (Item 3 of the Table at the end of the proposed s1217 of the Act)

It is proposed that the maximum portability period for Disability Support Pension where the person has not been determined to be severely disabled (i.e. capable of less than eight hours of work per week), be reduced from twelve months to 26 weeks.

This proposal does not take into account that most Disability Support Pensioners who leave Australia for extended periods are migrants to Australia who for a variety of reasons, ranging from the practical to the sentimental, wish to return to their country of origin. The decision as to whether to resume residence in their country of origin is a difficult one, particularly as a person ages or is forced to come to terms with the effect of disability. The person may have

children and grandchildren in Australia, yet the needs of aged, frail parents, and siblings, may also draw them to spend large amounts of time in their country of origin. In a sense they have a foot in each country. The fact that they may have minimal or no social security entitlements in their country of origin (particularly if most of their working life was in Australia), means that without their Australian pension a permanent return to their country of origin would be prohibitive. The alternative is to spend long periods out of Australia meeting their responsibilities to extended family, and also meeting personal needs associated with aging, living with a disability (and homesickness).

We propose that the current twelve month maximum portability period for Disability Support Pensioners who are not severely disabled is reasonable, and should remain in place.

Wife pension and Widow B pension

It is proposed that the maximum portability period for both wife pension and widow B pension, where these pensions are not permanently portable (entitled persons), be reduced from twelve months to 26 weeks. Considering that both wife pension and widow B pension are being phased out, with no new grants, we propose that the change is unwarranted. The intention is evidently for consistency with other pensions as it would be an insignificant savings measure, yet even with the savings provisions (clause 128ff), this would cause confusion on the part of wife and widow pensioners who understand their pensions to be portable for twelve months. We are aware that there are currently some wife pensioners who live overseas with partners whose pensions are permanently portable, who return to Australia annually to retain their own pension entitlement. This practice will phase out as these pensioners reach Age Pension age.

Items 117 to 120 proposed amendments to s1220 of the Act

These amendments affect people who have been granted pension after having resumed Australian residence following a period of residence overseas (returning non-residents). Currently, pensions are generally not portable for returning non- residents unless they have resided back in Australia for at least twelve months. The exception from this requirement is where the person's reasons for leaving Australia before the end of the 12 month period arose from circumstances that could not have been reasonably foreseen when the person returned to Australia.

The amendments would increase the proscribed period of residence back in Australia for pension to be portable from one year to two years. The exception for people whose reasons for returning overseas could not have been reasonably foreseen would be removed.

We strongly oppose these amendments, particularly the removal of the unforeseen exception. We cannot accept the underlying rationale as logical.

The amendments are apparently intended to minimise the possibility of people returning to Australia and remaining for twelve months in order to secure a permanently portable pension.

We consider that even if there were a significant number of people who each year return to Australia from residing overseas purely to garner a pension to take back overseas as soon as legally possible (and we would dispute that this so), it is important to recognise that people in this position are subject to the proportional portability provisions contained in Chapter 4 of the Act. Under these provisions, only people with at least 20 years working life residence

receive maximum rate pension after a year overseas; people with less working life residence receiving a proportion of the pension based on their length of working life residence. Thus, the only people who are entitled to substantial pensions during indefinite periods of residence overseas, have resided in Australia for substantial periods of time.

It should be noted that people who are not returning non-residents (i.e. who have not resided outside Australia within the previous twelve months), have fully portable pensions the day from which payment is granted. There is no restriction based on length of receipt of the pension. It is difficult to understand the rationale behind imposing a length of receipt of pension requirement for returning non-residents in addition to the requirement that the person intends to remain in Australia indefinitely at the time of claiming.

It should also be noted that people who receive a pension overseas and turn age pension age while still overseas, do not need to return to Australia to claim Age Pension. It would clearly be unreasonable to compel people in this position to resume residence in Australia in order to qualify for Age Pension. It is thus difficult to understand the rationale behind requiring people who have been residing overseas without an Australian pension to resume Australian residence in order to qualify.

As with the other portability amendments in this Bill, the proposal does not take into account that most pensioners who would be affected are migrants to Australia who have had, and continue to have, ties to two countries Australia and their country of origin. The impact of these competing ties become more complex with aging.

We propose that it is unreasonable to restrict pension portability in this way for returning non-residents. We propose that the returning non-residence provisions be repealed. In the alternative, we propose that the unforeseen exemption remain in the legislation.

Items 121 to 126: Proportionality age, disability, wife and widow B pension rate proposed amendments to ss1220A, 1220B & 1221

These amendments would impose proportional portability on age pensioners after six months absence from Australia.

We oppose this amendment. For people taking up residence in another country, receipt of pension at the maximum rate for a period of twelve months before proportional portability cuts in, assists the person to settle.

It should be noted, in relation to all of the above matters, that the proposed changes may well act as a disincentive for people who would otherwise return to their country of origin. This might have the result of reducing the savings to Australia arising from a pensioners decision to return to their country of origin. If a person who qualifies for a pension in Australia chooses to remain here they are likely to continue receiving the full rate of pension for the remainder of their lives, rather than just during the first twelve months of their absence. Furthermore, many of these people will continue to rely on other government funded services such as Medicare and public housing while they remain here.

Items 141 et seq

These amendments would remove specific references to visa types which attract eligibility for various payments, either by virtue of extending eligibility to cover that visa sub-class, or by virtue of exempting the holder from a residential qualification criterion, or by exempting the person from a newly arrived residents waiting period. The amendment would mean that rather than continuing the dual approach of some visa types being specified in the Act and some in Ministerial determinations made via a disallowable instrument, the Ministerial determination would be the sole means of approving visas.

We oppose these amendments on the grounds that not only would the insertion of visas be solely by Disallowable Instrument, but also their removal. We acknowledge that the current dual situation has some drawbacks in that the Act at any point in time may include references to defunct visa types, but this is not a problem in practice. Centrelink officers administering the Acts residential and newly arrived residents waiting period do not generally refer to the legislation and the Ministerial determinations anyway; they generally refer to the Guide to the Administration of the Act which is on Centrelinks intranet and is under constant review and update. High level Centrelink and Department of Family and Community Services staff certainly know to refer to both the Act and the Ministerial determinations when researching cases or policy issues, as do community legal workers.

In our view any proposal to remove a current visa type from an approved list should be subject to the full scrutiny of Parliament rather than to the less rigorous Disallowable Instrument process. We propose that rather than removing the statutory provisions specifying visa types, the current dual system should remain in place. Further, we propose that greater emphasis be given on amending the legislation so as to incorporate in the Act visas declared by the Minister from time to time via Ministerial instrument.

If the proposals, as discussed above, are approved by Parliament we stress the need for these changes to be conveyed to the community far in advance of the date of effect. We believe that the date of effect of 20 September 2000 does not provide the community adequate notice.

Finally, we ask that the Department provide a breakdown of the projected savings for the International Portability and related provisions contained in the Bill.

If you wish to clarify any of the issues raised please contact Linda Forbes on 9211 5389.

Yours faithfully,

Jackie Finlay,
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ATTACHMENT 2

RESPONSE BY DEPARTMENT OF FAMILY AND COMMUNITY SERVICES TO THE SUBMISSION BY NATIONAL WELFARE RIGHTS NETWORK

Submission to the Community Affairs Legislation Committee on the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Bill 2000.*

Response to the issues raised in the National Welfare Rights Network's submission.

The standardisation and simplification of portability rules will have a very positive impact on the majority of pension and allowance recipients who travel overseas. Extended portability of many payments and the introduction of portability of ancillary payments such as Rent Assistance, Pharmaceutical Allowance and Telephone Allowance will benefit more than 90,000 customers. An even greater number of customers will benefit from simplification of the legislation, improved service delivery and removal of unnecessary red tape.

The National Welfare Rights Network submission has raised a number of issues in relation to the proposed amendments of portability and residence provisions in the *Social Security Act.* The Department of Family and Community Services (FaCS) will respond to those issues in the order of their appearance in the submission. Our first submission to the Committee addresses some of these issues as well.

Issue: *Reduction of the maximum portability period for Disability Support Pension for non-severely disabled persons from 1 year to 26 weeks.*

Response: The Bill proposes to standardise the short-term portability period for Disability Support Pension (DSP) for non-severely disabled persons to 26 weeks, in line with other short-term portable payments. The National Welfare Rights Network submission argues that this standardisation would have a detrimental effect on migrants who want to return to their country of origin permanently.

Depending on the level of disability, DSP has two different portability periods. Customers who are severely disabled, that is, who cannot work for more than 8 hours a week, have an indefinite portability period. However, DSP recipients who are assessed as non-severely disabled are considered able to work for up to 30 hours a week and, in view of this, are encouraged to participate actively in the community. The current review of the welfare system is examining ways in which people on DSP can increase their economic and social participation. Indefinite portability is allowed only in respect of payments for the long-term contingencies of life such as age and severe disability. Accordingly, DSP for non-severely disabled customers cannot be paid to customers who decide to leave Australia permanently.

Within the group of customers going overseas temporarily, most go for less than 26 weeks (on average 12 weeks). The same applies to overseas-born recipients of DSP. Of those going for longer than 26 weeks, the great majority are assessed as severely disabled and, therefore, eligible for permanent portability. The reduction of maximum short-term portability for DSP will therefore affect a small number of customers (the Department's first submission refers at page 3).

Most customers, including those affected by the standardisation of the short-term portability period will benefit from the introduction of portability for ancillary payments such as Rent Assistance, Pharmaceutical Allowance and Telephone Allowance. Ever since the introduction of portability, many customers have complained that they have had to shorten their overseas absence because they have to meet their ongoing financial commitments in Australia such as paying rent, telephone or pharmaceutical bills. New, simplified portability rules will make those ancillary payments available for up to 26 weeks of temporary overseas absence. This will help migrants to visit their country of origin without incurring additional costs in Australia.

The simplified and standardised portability rules also include a new discretionary provision allowing for the extension of the portability period under specified conditions (s1218C). This will reduce the risk that customers overseas in need, who could not return due to reasons beyond their control, would be left without income support. Under current rules, no such discretion is available.

Finally, DSP customers who are already overseas will have their payments portable under the old rules until they return and stay in Australia for a period longer than 26 weeks (s128).

Summary: The majority of DSP customers will not be affected by the standardised 26 weeks portability period. Portability of ancillary benefits such as Rent Assistance, Pharmaceutical Allowance and Telephone Allowance will, in fact, greatly benefit most DSP customers who travel overseas. Severely disabled DSP customers will not be affected by the standardisation of the short-term portability period. There is no particular reason why non-severely disabled recipients of DSP should have a longer short-term portability period than recipients of other short-term portable payments.

Issue: *Reduction of maximum portability period for Wife and Widow B pensions from 1 year to 26 weeks*.

Response: The Bill proposes to standardise the portability period for Wife and Widow B pensions to 26 weeks, in line with other short-term portable payments. The National Welfare Rights Network proposes to save these pensions from standardisation rules because no new pensions are granted.

The exemption of these payments from the standardised portability rules would increase legislative complexity without adding much value for customers.

Wife and Widow B pensions are payments that are not portable indefinitely. There are provisions for some Wife and Widow B pension recipients to be allowed indefinite portability under "entitled persons" provisions of the Act. This will continue.

Within the group of Wife and Widow B customers going overseas temporarily, most go for less than 26 weeks. Less than 100 Wife and Widow B pensioners go overseas for longer than 26 weeks. Most customers, including those affected by the standardisation of the short-term portability period will benefit from the introduction of portability for ancillary payments such as Rent Assistance, Pharmaceutical Allowance and Telephone Allowance.

Simplification of portability rules is one of the major objectives of this Bill. A saving provision for a small group of affected customers would represent a departure from the simplification objective of the Bill.

Another point raised in the Welfare Rights submission was that some wife pensioners who live overseas with their partners will be affected by this measure since they currently have to return to Australia annually to retain their own pension entitlement.

This group of customers will not be affected since Wife and Widow B pensioners who are already overseas will have their payments portable under the old rules until they return and stay in Australia for a period longer than 26 weeks (s128).

Summary: The majority of Wife and Widow B customers will not be affected by the standardisation of the short-term portability period. Most customers, including those affected by the standardisation, will benefit from the introduction of portability of ancillary payments. Customers already overseas will continue to be subject to the old portability rules. There is no particular reason why Wife and Widow B pensions should have a longer short-term portability period than other short-term portable payments. This would increase legislative complexity and would represent a departure from the simplification objective of the Bill.

Issue: *Extension of the non-portability period for former residents to 2 years and repeal of the discretionary provision*.

Response: The Bill proposes to extend the non-portability period for former residents to 2 years and to repeal the discretionary provision. The National Welfare Rights Network's submission questions the underlying rationale of this proposition.

A fundamental qualification criterion of all Australian social security payments requires that applicants are Australian residents. Once granted, some payments (eg, Age Pension) are portable indefinitely. Former residents who return to Australia have to establish their Australian residency before they can be granted a payment. It is always difficult to assess whether a former resident's claim to have resumed Australian residency is genuine. This is particularly so when a former resident claims a payment within a short period after their return to Australia. To prevent the situation where former residents come to Australia only to obtain an indefinitely portable pension and return overseas, it is proposed that the current 12 months non-portable period be extended to two years. This proposal is consistent with the residence principles of the Australian social security system.

The Welfare Rights submission further argues that proportional portability provisions provide enough of a safeguard against increased expenditure on returning former residents. The proportional rate of Age and Disability Support Pensions applies to all customers who have less than 25 years of Australian working life residence, regardless of whether they are former residents or not. The main objective of the extension of the non-portable period for former residents is to uphold the integrity of the residence-based Australian social security system.

There is a very real difference between Australian residents who have not severed their ties with Australia and those who have resided in Australia for a period of time and then ceased to be Australian residents. As previously emphasised, it is fundamentally important that social security claimants are Australian residents. For these reasons, former residents have to manifest their commitment to stay in Australia. This is only fair and equitable and is consistent with community expectations. The only way to establish this commitment, in the case of a former resident claiming an indefinitely portable payment, is to prevent portability for a sufficiently long period after the former resident returns to Australia.

Customers overseas who receive a social security payment can be transferred to Age Pension when they reach Age Pension age and satisfy other qualification criteria. There is a major

difference between these customers and returning former residents. Customers overseas who are not former residents have either: already been in receipt of an indefinitely portable payment (eg DSP for severely disabled) and been transferred to a more appropriate indefinitely portable payment (eg Age Pension); or, their Australian residency was established at the time of claiming the first payment.

The proposed change to extend the non-portability rule is not detrimental to the migrant community because it does not prevent migrants from commuting between their country of birth and Australia. It simply requires a former resident to manifest his/her commitment to resume residence in Australia.

The discretionary provision allows for the exemption from the non-portability rule where the reason for leaving Australia, before the end of the 12 month period, arose from circumstances that could not have been reasonably foreseen when the person returned to Australia. This discretionary provision can lead former residents to believe that the commitment to Australian residence does not have to be unequivocal. Also, evidence about unforeseen circumstances usually comes from overseas sources, the reliability of which is difficult to assess. During the last 12 months, 16 former residents claimed unforeseen circumstances within the non-portable period. Centrelink advises that just two of these 16 cases were legitimate cases. Such a high rate of attempted abuse of the discretionary power requires a swift response.

Summary: The proposed changes to the non-portability period of former residents are consistent with the residency principles of the Australian social security system. Retention of the discretionary provision would continue to leave the system open to abuse.

Issue: *Reducing the non-proportional period for long-term travellers from 1 year to 26 weeks.*

Response: The Bill proposes that the non-proportional period for Age Pension, Disability Support Pension for severely disabled people and Wife and Widow B pensions for entitled persons be shortened to match the standard 26 week short-term portability period. The current one year non-proportional period reflects the current one year short-term portability period for Disability Support Pension for non-severely disabled, Wife and Widow B pensions. The National Welfare Rights Network argues that these amendments may well act as a disincentive for people who would otherwise return to their country of origin. This might result in reduced savings to Australia.

There is no evidence to suggest that the shortening of the non-proportional period would have a detrimental effect on customers wanting to settle in their country of origin. Australia has a number of social security agreements with migrant source countries. One of the main objectives of these agreements is to help migrants who wish to return to their country of origin. Under the portability rules of these agreements, a proportional rate of pension starts to be paid immediately after a customer leaves Australia. FaCS data on overseas agreement customers show that this rule has not had any effect on the number of customers wanting to settle in agreement countries.

The non-proportional portability period enables Australian residents to travel overseas for a short period of time and have a full rate of Australian pension paid. In addition, under the proposed portability rules customers will also be paid ancillary payments that will help them to meet their financial commitments in Australia. Thus, for migrants who have not made up

their mind whether to settle permanently in their country of origin, the proposed rules will enable travel for up to 26 weeks without incurring any additional costs in Australia.

Summary: The shortening of the non-proportional period is consistent with the standardisation and simplification of the portability rules and there is no evidence that it will have a detrimental effect on migrant communities. The addition of ancillary benefits will benefit all customers, including migrants.

Issue: *The date of effect of 20 September 2000 does not provide the community with adequate notice.*

Response: After the legislation is approved by the Parliament, Centrelink will inform customers of the details of the legislation. Changing the implementation date would be costly.

Summary: The 20 September 2000 implementation date should remain intact. Centrelink is ready to advise customers on any changes when Parliament approves the legislation.

Issue: *Removing specific references to visa types that attract eligibility for various payments*.

Response: The Bill amends the Act in relation to several provisions that contain references to visas. These amendments are made at Items 141, 156, 158, 159, 160, 161 and 162 of Schedule 1 to the Bill.

At present the Act refers to certain visa holders by listing in the Act the type of visa held by that person. The Act contains a provision to enable the Minister to make a determination adding further classes of visa to this list. However, this approach has its drawbacks, as it requires the casual reader to consult both the Act and any published determinations, and it requires the legislation to be periodically updated (as listed classes of visa become defunct, etc).

To avoid this, the Bill amends the Act so that in the future the list of visas will be contained solely in a determination made by the Minister.

The Explanatory Memorandum makes it clear that the first determination made will include those visas which are presently listed (unless of course they become defunct in the interim) and includes a list of those visas.

The National Welfare Rights Network suggests in its submission that the scrutiny applied to a disallowable instrument is "less rigorous" than that applied to an Act. FACS does not agree with this assertion; in fact, the requirement to table disallowable instruments in the House of Representatives and in the Senate for 15 sitting days is precisely the same process which applies to Regulations made by the Governor-General under almost all Commonwealth Acts, and can be viewed as no less stringent than that and other legislative processes.

The submission from the National Welfare Rights Network suggests that there is no need to make these amendments because it "is not a problem in practice". They say that "Centrelink officers ... do not generally refer to the legislation ...they generally refer to the Guide to the Administration of the Act". They go on to say that "High level Centrelink and Department of Family and Community Services staff certainly know to refer to both the Act and the Ministerial Determinations when researching cases or policy issues, as do community workers".

While the extent to which any individual person relies on the legislation (as opposed to the Guide) may vary, it should be emphasised that these amendments are not directed toward the benefit of any single group; their purpose is to make it easier for all users of the legislation to quickly determine what visas are prescribed for the purposes of the relevant provisions of the Act. The term "all users" embraces not just the customer, but also members of Courts and Tribunals, community workers, and indeed those very Centrelink officers whose job it is to ensure that this is "not a problem in practice".

Summary: The Bill will make life easier for all concerned by providing a single point of reference for the listed visas.

Issue: *A Request for the breakdown of the projected savings for the international portability and related provisions contained in the bill.*

Response:

Outcome	**1999-00 $m**	**2000-01 $m**	**2001-02 $m**	**2002-03 $m**
Portability Simplification[1]				
Administered	0.000	-0.459	-0.578	-0.553
Departmental	0.237	2.136	-0.367	-0.367
Comparable Foreign Payments				
Administered	0.000	-4.214	-9.448	-9.779
Departmental	0.745	5.371	2.062	1.570
Simplification of Qualifying Residence				
Administered	negligible	negligible	negligible	Negligible
Departmental	negligible	negligible	negligible	Negligible

[1] Includes the expenditure on the extension of portability of some payments and introduction of portability of ancillary payments such as Rent Assistance, Pharmaceutical Allowance and Telephone Allowance. It also includes savings on reduced short-term portability, reduced non-proportional period for long-term portable payments and extension of the non-portable period for former residents.