



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

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

MONDAY, 15 NOVEMBER 2010

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**SENATE COMMUNITY AFFAIRS**

**LEGISLATION COMMITTEE**

**Monday, 15 November 2010**

**Members:** Senator Moore (*Chair*), Senator Siewert (*Deputy Chair*) and Senators Adams, Boyce, Carol Brown and Furner

**Participating members:** Senators Abetz, Back, Barnett, Bernardi, Bilyk, Birmingham, Bishop, Boswell, Brandis, Bob Brown, Bushby, Cameron, Cash, Colbeck, Coonan, Cormann, Crossin, Eggleston, Faulkner, Ferguson, Fierravanti-Wells, Fielding, Fifield, Fisher, Forshaw, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Macdonald, McEwen, McGauran, Marshall, Mason, Milne, Minchin, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Stephens, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

**Senators in attendance:** Senators Adams, Boyce, Fifield, Furner, Moore and Siewert

**Terms of reference for the inquiry:**

To inquire into and report on: Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010

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**Committee met at 4.03 pm****KACZOREK, Ms Sibylle, Executive Officer, National Ethnic Disability Alliance**

**CHAIR (Senator Moore)**—I declare open this public hearing. The committee is commencing its inquiry into schedule 2 of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010. I welcome the National Ethnic Disability Alliance. Ms Kaczorek, you understand the information on parliamentary privilege and the protection of witnesses. I will ask you to make an opening statement and then we will go to questions.

**Ms Kaczorek**—Yes, please. First of all, for those unaware of NEDA, the National Ethnic Disability Alliance, we are a national peak body representing the rights and interests of people from non-English speaking backgrounds with disability, their families and carers. We are FaHCSIA funded. Early next year we will be celebrating our 15th anniversary. So we have a little bit of experience behind us.

The changes as proposed in the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Budget and Other Measures) Bill 2010 are very disappointing to NEDA and we feel like they should not be supported. The rationale that we believe is underpinning the proposed amendments is one of economics rather than human rights, which we believe is contrary to the UN Convention on the Rights of Persons with Disabilities, as ratified by the Australian government in 2008. We also believe that the central approach of economics is based on false accounting. Further, the proposed amendments are inconsistent to approaches taken in other scenarios, which makes them, we believe, inequitable in nature and thus discriminatory.

I would like to highlight in more detail some of the points that I have touched on. I will start with human rights. On the Department of Immigration and Citizenship website, one comes across the five freedoms guaranteed to all Australians. This includes the freedom of movement, including the quote: ‘We can leave and return to Australia at any time.’ While it may not be intentional, the amendments as proposed restrict this freedom in a negative way. Human rights are firm on the basis of the UN Convention on the Rights of Persons with Disabilities—and I would like to raise the question at this point as to whether the amendments conform with the rights as embedded in the convention. From our perspective, we would like to see some legal advice on this.

I would now like to talk about inconsistency and inequity. The amendments are inconsistent with other approaches the Australian government takes for other population groups. For instance, they do not apply to aged pensioners. In no way is NEDA proposing that the amendments should therefore be applied to aged pensioners. Quite to the contrary, the view that is put forward here is that the approach taken should be one to support human rights and quality of life, especially for those whose quality of life is already compromised due to disability, ill health or age related restrictions.

Further, it is argued that the assumption should be that the people affected by the amendments as they are now proposed are people who have themselves and/or their families paid taxes in Australia and have contributed to the economic and social make-up of our multicultural society. The Australian government puts no restriction on other citizens with regard to their lives, temporary or permanent overseas. Such people may well earn interest in Australia, for instance, equally magnifying the financial contribution to Australia but are still treated differently in comparison to the amendments as proposed. It is thus disappointing that the amendments target some of the most vulnerable people in our society, despite this being quite contrary when compared to the treatment of others.

I would now like to make a few comments with respect to the underlying assumptions and language. It was disappointing for us to read the media release of 20 October 2010 relating to the proposed amendments. It is not clear to us why emotional language such as ‘loopholes’ and ‘cracking down’ is used when referring to the lives of a very small number of people on the disability support pension. NEDA’s work is to highlight issues of discrimination and the negative impact of policies and legislation. As part of this work, NEDA is informed about impacts that may not appear discriminatory on face value but impact disproportionately in a negative way on people from a non-English speaking background.

There is an underlying assumption with the proposed amendments that the majority of people affected by the changes are people of this background. The emotive language would support such an assumption in the context of the very emotive discourse in Australia at the moment on migration and refugees. NEDA believes that, together with government and non-government organisations, it is imperative to work with the Aboriginal

community to counter stereotypes and fears of this kind. NEDA believes that the amendments are contrary to such imperatives.

Rather than discussing matters in emotive language, NEDA believes it is critical to have informing data which tells the story of people's lives. For instance, do we know how many of the 154 DSP recipients who spent less than eight weeks in Australia over 2007-08 were born in Australia or overseas? It is said that the amendments will not affect some groups of DSP recipients. Do we know how many of the 154 would not be affected?

Now I would like to address the question of false accounting. NEDA would be interested to hear how the projected figure of \$3 million in savings is calculated, as we do not believe that the figure is correct. In fact, we believe that the changes, if accepted, would create an additional cost to taxpayers. We believe that what has been forgotten in the costing is the additional expenses for people on the DSP who are residing in Australia. This may include a combination of things, which I will list—and I might warn you that this list is rather long. We question whether the costing includes consideration for carer allowance; carer payment; utility allowance; rail concessions; national partnership agreement concessions such as the reciprocal transport concessions or compensation through Treasury for concessions on services such as municipal and water rates, utilities, motor vehicle registration and public transport; the National Mental Health and Disability Employment Strategy; Australian Disability Enterprises; Disability Employment Network; postal concessions for the blind; print disability services; disability parking permit scheme; National Companion Card; rent assistance and public housing; and home and community care services. This list could probably be extended even further.

Having talked about the economic aspects, I do wish to end this introductory statement with some critical considerations for the quality of life of people who may be affected by these amendments if they are to be accepted. I believe that often people have very valid and legitimate reasons for wanting or needing to reside in other countries, and I think these reasons can be multiple and come from circumstances and perspectives that we may not even consider right now. I think that unless we can actually make an assessment of what has led to these people being in the circumstances that they are in, it would be absolutely wrong to go ahead with amendments in the context of not really knowing what would be affected and what kind of negative impact people would experience.

I want to give one example to highlight that we may well be talking about people who are not necessarily born overseas but born in Australia. For instance, let us take a family where children have moved overseas for personal, economic or family related reasons. They have married somebody from an overseas country and their parent, for instance, is on a DSP pension and really wants to be united with their son or daughter who is now living overseas. Why should it be impossible for that person do that, to have the right to that freedom of movement, if the motivations are very clear, very human and very much able to be related to anybody's circumstances? I will leave it at that for the moment. If you want to ask me any questions, please go ahead.

**Senator SIEWERT**—In terms of your approach to this bill, what particular amendments would you suggest would improve some of the issues you have just raised?

**Ms Kaczorek**—I cannot see a rationale for the amendments in the first place.

**Senator SIEWERT**—So you would just say, 'Don't go ahead with the amendment; don't try and amend it'?

**Ms Kaczorek**—Yes. It is unclear to me. Given that the crux of the argument is financial—which I think is bad in the first place because we are talking about human lives, about people with their own histories and stories. Given that the economic approach is being taken, we question whether that economic approach is correctly costed. If that in fact is not the case, I cannot see any motivation for those amendments to go ahead. So there is no improvement from those amendments, as such.

**Senator BOYCE**—Ms Kaczorek, you spoke about some of the emotive language that was used around closing loopholes and the like. The government has said that this is primarily designed to stop people who live overseas permanently coming back to Australia every 13 weeks so that they can keep the disability support pension for one or more of their family members. What would be your response be to that?

**Ms Kaczorek**—It is a bit questionable to me how it is proposed to assess what living permanently overseas means. Does that mean over the last 12 months, does it mean over the last 24 months or does it mean over the last five years? First of all, I think it is very difficult to make that judgment. As it is, many Australians live overseas for periods of their life and then they return, and then they have different intentions at different points. Often people say they are going overseas for a year but they stay on for longer. I am not sure how that

assessment would come about. In terms of the general approach, I do not know why it is a problem to Australia, to the government, that there are 154 people who access the DSP but who do not permanently stay in Australia. There are other people in Australia on the age pension or who are working and travel overseas and remain overseas for periods of time as well. I do not know why it is necessary to put a stop to that, given that the numbers are so incredibly low.

**Senator BOYCE**—The department, in its submission to us, has said that the purpose of disability support pension is to ‘assist people with the cost of living in Australia’. Are you aware of that definition of disability support pension?

**Ms Kaczorek**—I am aware, but this is what I was trying to say in my submission. I believe that there is a false economy there, because when you go on the DSP you also have to live somewhere. You also have to access services and often that means that the cost to the government for that person would actually be higher than if that person were living overseas. Often people living overseas have a substantially cheaper lifestyle than people living in Australia, so in fact the government, I would argue, is probably saving money with these people not living in Australia but permanently living overseas—if that is the definition of permanence we use.

**Senator BOYCE**—Because they do not have to supply all the other subsidies and supports that you read out earlier.

**Ms Kaczorek**—Exactly.

**Senator BOYCE**—You spoke at some length about what you said were the human rights aspects of this, including the fact that it does not apply to age pensioners and others. What do you think could be the consequence if this legislation were passed?

**Ms Kaczorek**—I think, if we are talking about quality of life, that potentially a significant number of the 154—obviously I do not know how many—may end up in Australia removed from family and support systems, removed from any kind of supportive context and possibly unable to access services and equipment they may need to be reasonably independent because they have to wait for those services and equipment to become accessible for them. I think we would end up with these people being in Australia and suffering major mental health impacts because of the potentially fraught situation that they are being put into by being required to live back in Australia without having any of those supports around. I think in terms of human rights it is the wrong move to make.

**Senator BOYCE**—I have one last question. It has been suggested that perhaps the legislation could be changed to exempt families where there is a guardianship order held for one or more of the members of the family, who are the people with disabilities in that family. What is your view on that suggestion?

**Ms Kaczorek**—I would support that; however, I do not think it goes far enough. I presume you are talking about a situation where the family who has guardianship has moved overseas and the person under the order is the recipient of the DSP.

**Senator BOYCE**—That is right.

**Ms Kaczorek**—Of course I would support a safeguard like that. I think that would be critical because otherwise, of course, the person under the guardianship order would suffer even more. However, as I said, I do not think an amendment as such would go far enough.

**Senator FIFIELD**—I would like your thoughts as to why it is not appropriate for there to be a residency requirement for the DSP whereas it is appropriate for there to be a residency requirement for carer payment, Newstart allowance and youth allowance. Do you accept the rationale for a residency requirement for those other payments, or don't you think there should be one?

**Ms Kaczorek**—I do not think that people with disabilities who are recipients of the DSP are necessarily in a position to make the same choices that other people have in their lives. So in that respect I do not think people on disability support pension should have an additional restriction on their rights and freedoms. In that sense I do believe that there is a difference when it comes to the residency requirements, especially if living overseas would mean a substantive improvement in quality of life for that person. Given that difference in terms of the limitations on options, I do think that is a justifiable distinction.

**Senator FIFIELD**—So your issue is not so much with the concept of having a residence requirement for a working age payment; it is more that it is an additional difficulty hurdle or hassle for someone on the DSP?

**Ms Kaczorek**—If you want to put it that way, yes.

**Senator BOYCE**—Going back to the question Senator Fifield asked on the residency requirement for the DSP versus the others: am I correct in thinking that a lot of the things on the list that you read out would be income or asset tested whereas the DSP is not? I am thinking carer payment, for example.

**Ms Kaczorek**—Some of the things that I read out would be but others would not. I guess that goes back to what I was trying to say with my submission as well. Really we do not have enough information about the 154 people we are talking about who would be affected by these amendments. If anything, the best thing right now would be to actually try to find out and get a bit of an understanding about the circumstances, social and economic, that these people are affected by and then use that to inform any kind of future decision making. But really at this moment we do not know that. The list that I read out is not even comprehensive. I guess I qualify that by saying there could be any combination of those services that may or may not be acceptable for people if they were to stay in Australia as opposed to living overseas.

**Senator BOYCE**—Sorry; I somewhat misphrased that question. The disability support pension is income and asset tested for the individual but not for the assets of other family members, as some of the other payments are.

**Ms Kaczorek**—Okay. I see what you mean now.

**Senator BOYCE**—I elided it a little too much.

**CHAIR**—I have a couple of questions. One is with regard to your information about what is happening with other countries, because I know that there is a kind of international network. Are you aware of any other country that actually has a welfare payment that is portable in this way for disability pension?

**Ms Kaczorek**—No, I have no information on that. I simply do not know.

**CHAIR**—We will check with the department, but what is before us is a residency process. There is an expectation that people who are receiving a payment from the Australian welfare system will be resident in Australia for most of the time. The separate issue is the ability to take your pension or payment overseas, which is the portability issue.

I also want to take up your issue about emotional language. I read that media release and, with the word ‘loophole’, the department was making the point in that media release—and this is my understanding; I will raise it with them later—that this is the only current payment, except for age pension, that does have this provision to have overseas residence and receive it. From the Australian welfare system’s point of view, it is bringing this payment in line with all the others, and that is why the term ‘loophole’ was mentioned. Is that an argument that you accept?

**Ms Kaczorek**—I make it very clear that that is not what I am advocating, but it still does not explain why the age pension is not affected in the same way.

**CHAIR**—There are provisions around the age pension to do with portability. It is a confusing circumstance, but it is about being able to take your age pension with you. This afternoon, we will get the department to spell out the arrangements around all the payments. The disability support pension is a payment for people of working age. Once a person reaches retirement age, they are then assessed under the age pension provisions.

**Ms Kaczorek**—I do understand that. The media release from the department says that there are also some portability arrangement for the DSP in addition to the age pension. They also talk about other scenarios and those circumstances would not be affected by the legislation as it is proposed. My question is: do we actually know how many of the 154 that we are talking about would not be affected as it is proposed by the department? It is important to have that knowledge and make an informed decision.

**CHAIR**—Because of your organisation’s great interest in this area, have you raised these issues with the department?

**Ms Kaczorek**—Not at this stage because we were waiting for this inquiry to go ahead first.

**CHAIR**—When were you first aware that these provisions were being considered?

**Ms Kaczorek**—Probably towards the end of October.

**CHAIR**—I will clarify that point with the department as to when these issues were raised. I thought it was a budget issue which would have made it earlier in the year. There are no further questions. I have made a note of your questions and we will ask the department later today each of the questions you have raised. It will all be on the *Hansard* and when it is on the committee’s website you will be able to read the answers.

**Ms Kaczorek**—Excellent.

**CHAIR**—Thank you for your time.

**Ms Kaczorek**—No problem. Thank you very much for hearing me.

[4.34 pm]

**BORROWMAN, Mr Hugh, Private capacity**

**CHAIR**—Welcome. Thank you for coming to talk with the committee and for your submission. Do you have any comments to make on the capacity in which you appear?

**Mr Borrowman**—I am appearing on the basis of a submission made by me and my spouse, Suzanne Marley in respect of our adult disabled son for whom we are the legal guardians.

**CHAIR**—Thank you very much. I know you have information on parliamentary privilege and the protection of witnesses. We have your submission. Thank you. If you would like to make an opening statement and then we will go to questions. We have plenty of time.

**Mr Borrowman**—I would like to make an opening statement. Thank you for giving me this opportunity. As you said, you have my submission. I would now like to invite the committee to consider one overriding question and that is: is it right that a person in my son's situation should lose his rights when he travels overseas with us? That situation is of a person who is fully dependent on other people for his daily care and needs and whom the law recognises has limited decision-making capacity. If, as I suspect and hope, the answer to that question is no, it is not right, then the question becomes: what can the committee do about it? Obviously you know your own powers and prerogatives far better than I do, and I am not presuming to tell you, but what I would very much hope for is a strong multiparty recommendation to government to address this situation, or indeed a direct amendment of the bill.

It is our very strong view that resolving the issue that we are addressing is a matter of political will and direction. The Department of FaHCSIA has made its position very clear. It opposes not only the use of guardianship but also—although it states this less clearly—the validity of the case because of the issue of residency. What we think is needed is a political decision that the case should be addressed, and once that is agreed the rest of it becomes a matter of administration. We are not wedded to the particular mechanism that we have suggested. We believe it is not a bad one—and I will come back to that in a minute—but I am sure there are other possible mechanisms. The point I would like to make is that the mechanism is secondary to the will. That is what I seek to persuade you of.

We believe that the political will is present. Everybody that we have spoken to, on any side of politics represented in the Australian parliament or none, has supported our case. In the context of the present government, my wife and I met with Bill Shorten on 19 November last year, having written to him on 19 May, and in that meeting Mr Shorten supported our position that there should be a solution to this problem. We wrote to him again on 19 May this year to request an update and in his response saying the matter was under consideration he annotated by hand the response, 'We shall keep trying.' I am happy to make that letter available if you wish. We would also acknowledge the support we have received from a number of people we have written to—Annette Ellis, as our former member, Senator Fifield and a number of others.

That is the specific case. In the general case, I referred in my submission to the fact that the committee had looked at the question of reduced portability back in 2000 in the Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Bill. There was in fact a minority Labor report there that stated:

It is of great concern that the government should seek to use what is otherwise a noble exercise to reduce the entitlements of some pensioners.

When the Senate debated the bill which actually removed the previous position of unlimited portability, the Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003, Senator Mark Bishop stated:

Labor has consistently opposed the government's attempts to reduce or eliminate portability provisions in the social security legislation.

Our sense is very much that there is support for our position. I would like to invite you to consider what the alternatives are for people in our situation. Is it to give up our son's care to the state? Clearly, that is not a possibility, but I would invite you to consider the economic and social cost of actually doing that. Is it not to follow the career option that I have chosen? I do not know how that squares with modern sentiments about carers in our community, as exemplified in my submission and in the Carer Recognition Bill 2010, which includes 'the fundamental principle that all carers should have the same rights, choices and opportunities as other Australians'. Should DFAT, the defence forces, BHP, anybody operating in an international environment add a rider to their job ads saying, 'Carers need not apply'? Should, in my case, I go abroad as an Australian

ambassador and have to say, 'This is my disabled son—the Australian government does not recognise his existence.'

We also do not understand what is served by the FaHCSIA position. As we note, no new applicants will be created by our argument. They are very concerned to emphasise the residence requirement that has applied since 1909, but I would make a number of responses to that. In 1909 my son would have been institutionalised for life. In 2010 we have a different view. We have care provided by families and we have administrative systems that deal with the complications that this introduces for family life. In 1909 residence naturally meant physical presence. In the globalised world of 2010 with an internationalised economy and international responsibilities, this is a much more complex equation. FaHCSIA says the Social Security Act takes account of various factors to determine whether a person is residing in Australia, such as domestic, financial and family ties to Australia, but this is a test so inflexible that Australian government personnel serving overseas, despite being deemed Australian residents for tax purposes, are not considered residents for social security purposes.

FaHCSIA also places great stress in its submission on the need to be present in Australia to strengthen workforce participation to minimise the effects of an ageing population and to enhance economic and social participation including, to us, the frankly insulting observation 'the intention has never been for taxpayers to subsidise a prolonged overseas stay for a person of workforce age', as if our proposal is somehow to rot the system. We are talking about people who do not have the opportunity to make the choice to go or stay overseas. It seems to us that FaHCSIA is saying the lives of others should be disadvantaged in order to pay lip-service to this principle. It is silly to suppose the economic contribution of the people that we are talking about will have any beneficial effect on the economic wellbeing of Australia.

As for the question of social participation, I am not sure how to begin to answer this. Our son gives to the extent of his ability in the community every day. He is a vital, well-known and popular member of a small Canberra community on the buses, in shops and in the Meals on Wheels community. But to suggest that he and we remain here in recompense for his pension is more akin to a form of social hostage taking than social security, in our view, and it completely ignores the fact that the only way that he can achieve this social inclusion is because my partner has given her life and given up the opportunity of a career to facilitate that social integration. Again, it seems to us that FaHCSIA is using the least capable in our community to defend a putative principle of residency.

FaHCSIA's position also discounts the fact that some pensions are payable without residence, after qualification, most notably the age pension. We would submit that our son and those like him are in fact much more analogous to someone on the age pension than someone of workforce age. This is because, like a pensioner, he has achieved an irreversible threshold qualification in the age pension: that is age; in his case it is being congenitally genetically disabled.

We do not seek to create a loophole by which people can become permanently expatriated on a disability pension. We, like our other colleagues in the disability community, and more than most, have a vested interest in the system being as efficient and fair as possible so as to provide for those who most need it, but when people should so obviously be at the centre of a situation like this, like our son, it must surely be within the administrative capacity of the government to deal with that.

I am not going to deal at length with FaHCSIA's other arguments against guardianship. I do not find them very compelling. I have prepared some direct responses to them that I have submitted to the committee, which I think you have. It has been suggested in FaHCSIA's submission that residence and portability are separate and distinct concepts. I submit they are two sides of the same coin, and in supporting that I would note that the last time this came up for me, when I was in fact appointed as Ambassador to Sweden, Centrelink invited us to use this provision to maintain the pension. As I said, this is something that we declined on the basis of practicality. In Sweden it is hardly practical to come back to this side of the world. Our son cannot do it on his own and certainly in the position of Australian Ambassador I did not feel that it was an appropriate thing to be doing, given that it was clearly seen as a loophole. FaHCSIA also offered me, via my then department, a package to compensate us for the perceived loss. That is something that we declined on the basis that we were not prepared to accept a solution that was particular to us rather than other people in our situation, that was particular to that time and offer, and that was ad hoc rather than systemic. I would also submit that this indicates FaHCSIA's recognition of the nature of the problem at hand and I am therefore somewhat puzzled as to their declining to recognise it now.

In conclusion, I note that I am authorised to say that Carers Australia supports our position and I come back to the beginning. What I invite the committee to do is consider: is this right? I think that is the most important

question. If it is not right, then there are all sorts of systems and experts who can find ways to deal with it. Thank you very much.

**CHAIR**—Thank you, Mr Borrowman. Senator Boyce.

**Senator BOYCE**—I should put on record at this stage that I have a daughter with an intellectual disability who is 26, but we are both quite firmly Queensland residents at the moment, given my position. You may have heard my asking the question earlier regarding FaHCSIA's definition of the disability support pension, the purpose of which, they say, is to assist people with the cost of living in Australia and to engage people of workforce age in activities in Australia that will lead to greater levels of economic and social participation. Could you comment on that definition? Were you aware that it was only to help with the cost of living in Australia?

**Mr Borrowman**—In the version that I have, FaHCSIA says that is the main purpose of DSP, and I fully accept that is the main purpose of DSP, but it seems to me, as I said before, the kind of people we are talking about are precisely the people who should be at the centre of the system rather than, as they seem to be under FaHCSIA's approach, at the periphery. As an administrator I can fully understand that the system has to cope with a large number of people, and that is designed to look at workforce participation and reintegration, but again there is a category of people for whom participation is always going to be limited by reason of their disability, for whom DSP is going to be their sole source of income, who will never be Australian taxpayers and who in our case have no choice or any concept of the choice that we are talking about here.

**Senator BOYCE**—The department has also come up with quite a list of other government allowances et cetera that are not subject to the portability provisions, but you have made the point that you see the age pension as more analogous to the disability support pension than some of these other allowances that have been spoken of. Could you just perhaps flesh out a little more why you see those two as more comparable than other payments?

**Mr Borrowman**—I see them as comparable in the case of the very small number of people who are categorised as severely disabled. What is it about the age pension that makes you qualify? You have reached the age of—whatever it is—65, I think, and you can never go back from that condition and you qualify in Australia. With the bulk of people on DSP who are of workforce age the DSP is of a temporary nature, it is occupational health and safety whereby they will re-enter the workforce, and it is a temporary process. People of the sort I am talking about have reached a threshold condition of a congenital intellectual disability, like an age threshold of the age pension. That is never going to change. It cannot go backwards. They are not going to get better. That is why I say that that category of people is more analogous to people who are on an age pension. They are not going to be reintegrated into the workforce. They are not going to get better. They are going to spend their lives in a sheltered workshop if they are lucky. Obviously there are lots of people who do not even have that degree of capacity. But there is that very small part of the DSP community who, as I say, we feel should be at the core but, because of the necessity of administration, tend to find themselves at the periphery.

**Senator BOYCE**—Could I take you to mean that people who are defined as severely disabled Australians who have a disability support pension should have portability but not other recipients of the disability support pension?

**Mr Borrowman**—I do not want to make an argument that—

**Senator BOYCE**—I know you do not want to exclude, but do you want to particularly include?

**Mr Borrowman**—Include, yes. But it seems to me that this is the attraction of using a guardianship order, whether in this way or another way. In preparing our submission, another way occurred to me. For example, in section 7 of the act you could define 'residence' to include—and this is a legislative definition; define it whichever way you want—people under guardianship. That might even be neater. The social security system deems my son as making a choice to go and live somewhere else. He cannot make that choice. The law recognises that. He has no concept of that choice. It is just not a meaningful concept and yet he is being penalised for it because in pursuit of our lives, which are all bound up, we would need to take him with us or not go. That was to me the attraction of guardianship, that there is a court system which is obviously impartial and separate. It is reviewable. Guardianship orders are reviewed every three years. It is a tough process. I do not know whether you have personally been through it, but it is not an attractive process. It explores all sorts of opportunities. Somebody else has made the determination that these people cannot make this choice. This is

why it seems to me to be a neater way of doing it. But, yes, to answer your question more specifically, I think that group of people should, as they did before 2004, have unlimited portability.

**Senator BOYCE**—In relation to that question of guardianship, you will have read what the department had to say. I have not seen your subsequent response to it, but very few people with disabilities have formal guardianship provisions made in the current situation. In fact, most of the state and territory laws would mitigate that by suggesting that informal and flexible arrangements are preferable to reflect the way groups of people, families, conduct their relationships and their lives. What you would require here would be a significant shift in the current philosophy of guardianship in Australia?

**Mr Borrowman**—No, I think FaHCSIA misunderstands our argument there. We are not suggesting that informal care structure needs to change at all, unless you happen to be somebody who wants or needs to go overseas and take the person of whom you have care. In that case you might need to get a guardianship order, but we are talking about an extremely small number of people here. If you are continuing to live your life wherever it is and you are not intending to go overseas for more than a 13-week period, there is no reason that anyone should change the existing arrangements. They seem to imply that we were suggesting that everyone should have to get guardianship orders. We are not suggesting that at all. We are simply suggesting that if you do want to have unlimited portability that is a convenient way to do it.

**Senator BOYCE**—Would not the idea of people who meet the definition of ‘severely disabled’ having access to unlimited portability achieve the same aim?

**Mr Borrowman**—It could. I guess the question there sort of gets into philosophical questions that I do not know how much you and I need to take a view on. You could, for example, be severely physically disabled and perfectly mentally competent and express a wish that you do not want to go overseas. In that case I think there would be a strong case to say, ‘Well, how could you support that person going overseas?’ The situation I am talking about is people who do not have the—

**Senator BOYCE**—But do we not have criminal laws to cover people being taken out of the country against their will?

**Mr Borrowman**—Exactly; so it would not arise. If the person has the intellectual capacity to say, ‘I don’t want to go,’ that is the end of the story. In that case you could not get a guardianship order to take them out of the country.

**Senator BOYCE**—It would simply be in the situation where people with a severe disability chose to go or needed to go to have their care maintained, so to speak, wouldn’t it? We are basically talking about people with intellectual disabilities, impaired decision-making capacity.

**Mr Borrowman**—Exactly, impaired decision-making capacity. As I say, if you were physically impaired but intellectually perfectly capable you should make your own decision.

**Senator BOYCE**—Absolutely.

**Mr Borrowman**—I am not suggesting for a moment of course that that should happen. But if on the case you are putting they themselves wanted to go overseas for a particular form of treatment, well, there is another case that I had not thought of where a severely disabled person, it seems to me, should reasonably be able to go overseas and have extended portability.

**Senator BOYCE**—So someone with a severe disability, because of their physical disability, should also have that ability to—

**Mr Borrowman**—I would not object to that. Until you raised it, it is not a case that I had turned my mind to. But I do not have a problem with that.

**Senator BOYCE**—In your submission you stated that Centrelink cautions us against assuming that your son would requalify for the pension, despite his level and history of disability and his status as a manifest case, should you lose the pension, so to speak, by being away for more than 13 weeks. Could you explain that a little more to us?

**Mr Borrowman**—That came up specifically in the context of notifying Centrelink that we were going to Sweden and then how this situation unfolded. Those were in effect precisely the words that were used by Centrelink to us: ‘If you go, you will lose it and don’t think you will get it back again.’ As you know, of course, he is going to get it back because he is congenitally intellectually disabled. He is a manifest case. I think they are just reading out of their handbook. Just on this aspect dealing with Centrelink. I am sure you are aware of Annette Ellis’s report last year *Who cares?* in terms of dealing with Centrelink.

One of the big downsides to us of losing the pension if you go overseas is that the law has already been changed, by eliminating unlimited portability, to disadvantage severely disabled people. Who is to say it is not going to happen again? It is not a status that you want to lose. Acquiring it again is a very—in a sense, as it should be—difficult procedure, but it is very emotionally challenging. It is very upsetting. It is that constant sense of having to convince anonymous bureaucrats that you have a disabled child and they are not going to get better. There is also the provision, as you are aware, that should you lose it and come back and get it again you are then precluded from leaving the country at all—for any period at all—for two years, not even for a day.

**Senator BOYCE**—I was not aware of that.

**Mr Borrowman**—For example, had we gone to Sweden, lost the pension, come back and got it back, we cannot then leave the country for a single day, for two years. You then lose it again completely.

**Senator BOYCE**—That would be continued by this legislation, as far as you are concerned?

**Mr Borrowman**—Yes, this would not be affected by this legislation, because this is in a sense to the side of this, but I do not accept FaHCSIA's argument that they are separate and distinct concepts. As I say, that is evidenced by the fact that they have themselves offered it as a solution to our situation.

**Senator BOYCE**—Your concern there is not so much that, particularly in your own case, your son would not qualify for the pension again but that there is that uncertainty around how the qualifications might change whilst you are overseas?

**Mr Borrowman**—There is just that sense that it is just not right. That is the overriding thing. It is less the concern that something else will happen, although something has happened so one cannot predict the future. But, thirdly, there is also that not at all insignificant fact of having to go through this again. We have been going through it for 28 years. You have been going through it for 26. Other people have been going through it for 55. You just read the stories in the submission, and if there is one thing that brings all of our members to tears it is not the level of disability they are dealing with, it is dealing with Centrelink.

**Senator BOYCE**—And filling in another form.

**Mr Borrowman**—Yes.

**Senator FIFIELD**—I think you mentioned that FaHCSIA offered to create a particular package, a particular arrangement, for your circumstance. That was FaHCSIA rather than Centrelink that offered—

**Mr Borrowman**—The offer was made to me through PM&C from FaHCSIA, because PM&C was my then employer.

**Senator FIFIELD**—Are you in a position to detail what that particular—

**Mr Borrowman**—The offer was of the moneys that would have been lost and what was referred to as a fiche on our file—on our son's file—

**Senator FIFIELD**—A fiche?

**Mr Borrowman**—Yes, a fiche—so that we would not have to go through the process when we got back.

**CHAIR**—It is like a freezing of the file.

**Mr Borrowman**—Thank you. That was not made clear to us at the time. As I said, it was a one-off. I took some advice about the status of a fiche, and certainly if I had opened a file three years down the track when everybody had moved on which said, 'This person does not have to follow this particular set of legal requirements,' I would certainly be looking at it rather askance.

**Senator FIFIELD**—'Fred doesn't work here anymore.'

**Mr Borrowman**—Yes, exactly. Also, as I say, it was very particular to us. We are members of a disability community of all sorts of people who are not exactly similar, but we all have problems of not having the opportunity to have people step in and deliver these kinds of solutions. Also, we felt it would compromise our ability to seek what should be a more systemic solution because, as I say again, it just ain't right.

**Senator FIFIELD**—Is that something within the discretion of the secretary?

**Mr Borrowman**—I think you would have to direct that question to the secretary. I took it in good faith and declined it. I was grateful for the offer and the endeavours that were made.

**Senator FIFIELD**—I was just wondering whether there is some mechanism or discretion that is currently there that can be accessed. Obviously you do not want it to be something that is deployed for a particular

individual. You would want it at least to be something that could be used on a case-by-case basis. But that was the purpose of asking. I guess we can explore that when FaHCSIA is here later today.

**Mr Borrowman**—We had interpreted it as essentially an ex gratia payment, and certainly in my own professional experience those are extremely rarely given. Then the second component was the fiche aspect, which left us feeling very uncomfortable.

**Senator FIFIELD**—I was wondering whether the fiche came under, say, the secretary's discretion.

**Mr Borrowman**—I cannot say.

**Senator FIFIELD**—We can certainly explore that. I was interested in your submission at point 14, where you cited the Carers Recognition Bill, which has recently been through the parliament. When that was in the Senate I noted that while we can all affirm the carer statement within the bill it did not convey particular rights and, in fact, the bill specifically stated that it did not create rights which are enforceable.

**Mr Borrowman**—Yes, I understand that.

**Senator FIFIELD**—Your thinking here by citing that is that the government could be mindful of its own carer recognition legislation?

**Mr Borrowman**—Absolutely, and I understand and acknowledge that even assuming that it passes into law it will not create legal rights or obligations, but surely it is a statement of the principles; something has to attach to that.

**Senator FIFIELD**—This could be the first instance where the government formally refers to its own legislation and its own carer statement to see if it is going to change the way that it conducts itself. We shall see. I would like to explore the use of the guardianship orders. FaHCSIA, in its submission, stated:

The 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 and territory responsibility.

FaHCSIA is presenting that as though it creates a problem, the fact that they are time limited, but you see the fact that they are time limited as a positive, as one of the reasons why using guardianship orders would be a good mechanism.

**Mr Borrowman**—That is correct, because they are reviewed every three years. Therefore, in addition to the fact that it is independent and authoritative, the situation of the person under guardianship is reviewed, so there is no question of just extending out into an unlimited amount of time. Centrelink could be certain of that every three years and if, for example, they wanted to make this happen in Australia then I would not see a problem with that. As I said, there is no intention here that we are supporting permanent expatriation. Yes, I see it as a strength because it means the order is consistently kept under review and so Centrelink can be satisfied that the payment is being made for the purposes for which it was intended.

**Senator FIFIELD**—Thank you. FaHCSIA is saying that guardianship is being used as a method of determining a person's qualifications for DSP overseas and it would be complex for Centrelink to administer. Centrelink seems to specialise in complexity. In your view, this would not be any more complex than anything else that Centrelink currently has to do?

**Mr Borrowman**—That is right. I said that in the adjunct paper that I tabled. I do not think it is any more complex than anything else they do. I think their argument about having to look behind the various state and territory based responsibilities and types of orders really overstates the case. On their own acknowledgement of the number of people travelling here, fewer than 10 people travelled overseas for more than 13 weeks in the last year. I think the number is very small, and my view would be that to go behind a guardianship order issued by the competent state or territory authority is really just making it much more difficult than it needs to be. They also said it might require them to look at overseas guardianship orders. Again, we are making no suggestion whatsoever about overseas guardianship orders. We are very happy that there be a retention of the connection with Australia through an Australian guardianship order. Also, like the age pension, which is only portable once it is granted in Australia, I would see no problem with requiring it to be granted in Australia first and then become portable for an extended period.

**Senator FIFIELD**—You mentioned that applying for guardianship was a bit of an ordeal, stressful and not a pleasant experience. What are the elements of application which are difficult?

**Mr Borrowman**—Perhaps it was our experience on the day. The process is obviously an extensive set of documentation of life and medical history, which is then vetted by the relevant social security department. You

have interviews with social security personnel, the case file is then prepared, and you then have to appear before the guardianship tribunal—the former Chief Justice of the ACT, who stepped down recently, sitting in his capacity as master of that court. It was a very formal procedure. It was in a room three times this size, with the board sitting up that end and us sitting down this end. I am pretty familiar with this kind of environment. It was a challenging and, frankly, unfriendly environment. On the day, people were talking about you in the third person despite the fact that you were sitting there. You get used to this as the parent of a disabled child, but it is that constant reiteration of how incapable a person is.

**Senator FIFIELD**—We appreciate that it is always very difficult and close to home when it is a family member and you are trying to do the best for them.

**Mr Borrowman**—For a whole variety of reasons it is a challenging procedure. It is not something we particularly sought. It was necessitated by the requirement of medical treatment and medical personnel saying: ‘This is an adult. You haven’t got the authority to do it.’ This goes to the question we talked about in formal care arrangements. It is all well and good when they work—and obviously they do work a lot of the time—but it is often in those difficult if not crisis situations where somebody else can intervene if you do not have that order. A hospital visitor can step in and override your wishes.

**Senator FIFIELD**—As has been acknowledgement in the FaHCSIA submission, where there is a reluctance on the part of some people who are in a position of a carer to go through that sort of process. I guess you do not want to unless you have to, because of a range of reasons. In your view, it is still the cleanest and clearest mechanism to have as the criterion for seeking to have portability for people in your son’s situation?

**Mr Borrowman**—As I said, it seems to us to be a ready-made criterion that has the advantage of being administered independently and reviewed independently, so there is no compliance workload for Centrelink. As I said, there may well be other mechanisms. I am not an expert in the Social Security Act, so in that sense I do not hold it up as the Holy Grail. As we have experience of it, it seemed like one way through the issue.

On your earlier point, to say ‘fully support’, I think it depends on where you live. Obviously in the ACT, being the kind of community it is, people are much more focused on rules than perhaps in other parts of Australia. Certainly I know friends and colleagues can deal with these situations on a much more informal bases elsewhere in Australia, which is well and good, because that is the best way to do it, but sometimes you cannot.

**Senator FIFIELD**—Hopefully in other places the experience of seeking guardianship is no more unpleasant than going to the dentist. Thank you.

**Senator FURNER**—I would like to apologise for not being here at the commencement of your evidence. I was in the chamber. Forgive me if I go over some old ground.

**Mr Borrowman**—Of course.

**Senator FURNER**—Firstly, in your submission, you indicate that 1.5 per cent of DSP recipients will be affected by this change. Is that consistent with the department’s figure of 150?

**Mr Borrowman**—In my submission at what point?

**Senator FURNER**—At point 13.

**Mr Borrowman**—That was not my source for that. It was a different source. That was my understanding of the total number of recipients who were categorised as severely disabled. I do not know what that translates into for a number, but of that proportion an even smaller proportion would be subject to guardianship for some of the reasons that we have discussed.

**Senator FURNER**—You also indicated that you are aware of some effects on ADF personnel. Can you elaborate on that a little bit more and possibly provide an idea of numbers and where they may be affected?

**Mr Borrowman**—I can elaborate, but I cannot answer the question. That came to us from our meeting with Senator Shorten, the parliamentary secretary, as he then was.

**Senator FURNER**—We do not want to elevate him.

**Mr Borrowman**—I will not comment on that. When we met him, he said that members of the ADF had raised this with him on a number of occasions. That was the source of that comment.

**Senator FURNER**—Maybe we need to ask the department about that.

**Mr Borrowman**—This comes up in another part of their submission, where they state that none of the 1,000 DSP recipients who travelled overseas regularly would benefit. They will not have any measure of the number of people who might otherwise be affected because, by definition, it would seem to me that they are not travelling. I suppose they would have numbers of people who might have lost their DSP, but you can ask them that.

**Senator FURNER**—I am unfamiliar with the international social security agreements. Have you ever had cause to seek to apply for one of those or are you aware of people that may have applied and how they come into operation? That appears to be one opportunity where people can continue their DSP payments when they are overseas, if they are able to access those arrangements.

**Mr Borrowman**—That is correct. That is the way they can do it but, as I noted in my submission, FaHCSIA is removing those provisions. They are going around turning off the lights on the DSP in all those agreements. As to the first part of your question about the practicality of applying, I have not had to do that because it has not arisen for me in the case of a country where there was such an agreement.

**Senator FIFIELD**—Are you saying with the social security treaties which Australia has that the government is seeking to remove DSP—

**Mr Borrowman**—That is correct. I have been advised by FaHCSIA that, to be consistent with the position they are taking here, in their renegotiation of international social security agreements they will remove the existing provisions on portability of disability pensions. That number of 19 or so will decrease over time.

**Senator FIFIELD**—Thank you.

**Senator FURNER**—Senator Fifield commented on the complexity of Centrelink and certainly in the department's arguments that across jurisdictions and also where recipients are overseas it would be a difficult opportunity to secure those arrangements. Is that a plausible proposition that they are indicating here, of grounds of how it would be complex in terms of meeting those arrangements?

**Mr Borrowman**—It seems to me that they are misinterpreting or overinterpreting what we are proposing. We are proposing that Australian orders are recognised for portability and not that the overseas orders should be recognised. In that sense there is no complexity. It is simply as with the age pension where you qualify in Australia and then you have portability.

**Senator FURNER**—Thank you.

**CHAIR**—I have a question about the way that anything could operate in terms of the process with the department. In their submission they have looked at different examples of how this would be too complex or too difficult. At the moment they already have a number of provisions where people can be excluded from this, and they itemise those in their process. To be clear, what you are saying is that, for a limited time, whilst people are posted overseas, they would be able to be exempt from this provision? I think you said in your previous evidence that you were not talking about permanent repatriation. This was for the period that people had to leave for work?

**Mr Borrowman**—That is correct; for the people who had to leave with their guardians for the period that the guardians are at work. In respect of the first part of your question, I am not certain as to which part you are referring to.

**CHAIR**—The department responded specifically to the guardianship process and they also responded to a couple of other things, saying that these things could not work. The particular process of just an exclusion clause was not referred to.

**Mr Borrowman**—That is correct. They have devoted all their energy to say—

**CHAIR**—I am fascinated by the guardianship process. I can see that in your submission.

**Mr Borrowman**—But the only other way that you can currently have extended portability, as you know, is if you are terminally ill.

**CHAIR**—That is right, and you are needing—

**Mr Borrowman**—Returning to a country of origin to be with your family.

**CHAIR**—That is right. That is already specifically there in the exclusion?

**Mr Borrowman**—That is specifically there and that is the only exclusion.

**CHAIR**—Is there anything else that we have not asked you about that you want to put on record?

**Mr Borrowman**—No, I do not think there is.

**CHAIR**—I think you have covered it very well. Thank you very much for your time and your ongoing interest.

[5.17 pm]

**BEAUMONT, Ms Kate, Vice-President, National Welfare Rights Network**

**THOMAS, Mr Gerard, Policy Officer, National Welfare Rights Network**

*Evidence was taken via teleconference—*

**CHAIR**—Welcome. I know you have information about parliamentary privilege and the protection of witnesses. Would you like to make an opening statement? Then we will go to questions from the various senators.

**Ms Beaumont**—Is Gerard Thomas on the line, because he is also giving evidence?

**CHAIR**—No, he is not. Where was he going to be giving evidence from?

**Ms Beaumont**—From Sydney.

**CHAIR**—I do not think he is on our list. We may well be able to link him in. Are you happy to make an opening statement while we are getting him in?

**Ms Beaumont**—I am fine to do that, if that is okay.

**CHAIR**—I think that is a better use of our time rather than just sitting around waiting for the phone to answer.

**Ms Beaumont**—I wish to thank the committee for inviting us to talk to you today. We are appearing on behalf of the National Welfare Rights Network, a national network of 14 community legal centres that specialise in delivering information and advice about social security law and policy to clients all around Australia.

This committee is examining schedule II of the bill, which relates to limiting the capacity of those on disability support pension who move permanently overseas but return to Australia every 13 weeks within the current portability provisions to retain eligibility for disability support pension. Our network is opposed to the changes, which have the potential to curb the free movement of people with disabilities. This goes against the human rights convention on the rights of people with disabilities.

Whilst the government has spuriously characterised the change as the closing of a loophole, we see it as a scapegoating of a particularly disadvantaged group of Australians with disabilities who have established lives outside of the country under the current rules and who are now going to be left without support with the passage of this legislation. The target of these changes, according to FaHCSIA, are 1,000 individuals who regularly leave and return to this country and particularly the 150 individuals who, according to exchange of data between FaHCSIA and the department of immigration, spend less than eight weeks in any year in Australia.

We can see no justification to further restrict the rights of those on disability support pension and would question the savings intended to be made as a result of these changes. Is it that these 150 individuals who will potentially be impacted by this change will not return to Australia immediately to ensure the continuity for what is for many their sole means of support? With any return to Australia there will be the additional cost to the department associated with increased rates of payment, such as rent assistance, pharmaceutical allowance and other add-on payments not paid for those who are overseas. Additionally, there are the other associated costs of accessing the public health system and pharmaceutical health costs, as well as costs to their families in Australia who may have to step up and provide other support and auxiliary assistance.

We are concerned also for the dependants of these individuals, including spouses and children of these 150 individuals, who may potentially have their relationships torn asunder by this legislative change, as disability support pensioners are forced to leave their families to return to Australia to protect their social security entitlement. Has there been any consideration of the additional cost to the Australian taxpayer if these families in turn apply for residency for spouses and children and the associated costs to support these dependants onshore?

The idea that people receiving the disability support pension should have different rights from people on the age pension seems patently unfair. Whilst it seems popular to attack the unemployed and those on disability support pension, we see the difficulties which occur for those trying to both access and retain disability support pension. They go through a rigorous process to qualify for that payment, with regular medical reviews of their ongoing entitlement and capacity for work.

Although those on disability support pension are deemed to be on working-age pension payments, there are no legislative requirements for this group to participate in the workforce under current rules. Whilst we have seen the government embark on pilot programs with new entrants to disability support pension about employment participation, these are entirely voluntary. To say that participation is a requisite to retain eligibility for disability support pension is not true.

If we look more closely at some current statistics about those on disability support, we see that the average time on this payment is nine years. It is not a short-term payment. Less than eight per cent of those on disability support pension have income from employment in a given year, and only 1.2 per cent move off disability support into the workforce each year.

FaHCSIA in their submission to this inquiry have indicated that 38 per cent of the disability support population, or 300,000, will be classified as severely disabled and have capacity for less than eight hours work per week in the next two years. It would be interesting to find out how many amongst the 150 or 1,000 impacted by these new provisions would be categorised for social security purposes as being severely disabled, and thus have even less chance of participating in employment whether they were located in Australia or overseas.

In terms of the individuals who will be impacted by these changes, whilst there has been some media in March 2010 and again at the time of the introduction of this bill on 20 October, we question whether anything has been done to inform them of these changes, which will take effect from 1 January 2011. Whilst obviously Centrelink systems have been put in place to allow this change, what sort of action has been taken by FaHCSIA and Centrelink to ensure that those impacted currently and into the future will be informed?

We anticipate that there will be significant costs for Centrelink as a result of appeals and litigation as it is likely that much agency time will be taken up by those challenging decisions about the question of whether or not a person satisfies section 7, part 3 of the Social Security Act and is residing in Australia.

We would argue against the passage of this bill as there is no safety net provided for those adversely impacted by the bill. In the past when such significant changes have been introduced in relation to portability there have been grandfathering provisions provided to protect those who have made decisions prior to a legislative change. There continue to be protections for those on disability support pension who are deemed severely disabled and were overseas on a permanent basis prior to the changes on 1 July 2004. It is unfair that the group impacted by these impending changes will have fewer protections. Thank you.

**CHAIR**—We still do not have Mr Thomas on the line. We will resume when we overcome that problem.

**Proceedings suspended from 5.26 pm to 5.41 pm**

**CHAIR**—We now have Mr Thomas on the line. We apologise for the technical difficulty. Ms Beaumont has given us her opening statement. Mr Thomas, do you wish to make an opening statement or go straight to questions?

**Mr Thomas**—I think we will go straight to questions, although I would like to share the concerns of my colleague about the time frames for these changes. Essentially, people who might be affected by these changes are going to have 42 days to consider the consequences for themselves, their families and perhaps their children. It is a very unfair and invidious situation for those people to be in.

**CHAIR**—Certainly Ms Beaumont alluded to that. Ms Beaumont made a number of statements against the legislation, but you are adding that, should the legislation proceed, you would like a longer lead time?

**Mr Thomas**—Certainly. I do not think that very many people affected by these rules would be aware of them. We have made some efforts to contact one of our clients who is a blind pensioner who lives in Indonesia to inform him through his brother about these impending changes. That is just one out of essentially 1,000 or so people that, according to FaHCSIA, would be affected by these changes. I do not think there is a great deal of awareness. Whilst there were the media statements from the minister and a media story in March which got a little bit of publicity, most people would not be aware of the implications of these changes or when they are due to start.

**Senator BOYCE**—Ms Beaumont, you alluded to some perceived savings and cost benefits that were not really reflected, in your view, in the government's line on this piece of legislation. We have already had evidence earlier today from the National Ethnic Disability Alliance on the same topic. Could you expand a little bit more on why you think the government's view on the savings that they will make by this move would be under- or over-estimated?

**Ms Beaumont**—From our perspective we think that there has been an overestimation about the savings. It may be that there will be some savings in the FaHCSIA portfolio, but whether or not there will be savings in other portfolios is one of our questions. We are not sure how many people will remain overseas when these changes come in or whether or not people will return to Australia. There are additional costs if someone returns to Australia because the rate payable would be higher than the rate which is payable when they are overseas. There are also costs associated with them accessing health services. Similarly, there are pharmaceuticals and those sorts of things and even concessions that, in a way, they do not have access to because they are overseas. There is that aspect of it.

We are quite concerned that there will be a high number of appeals in this area because we only have to look at the Administrative Appeals Tribunal cases related to portability, residence and returning residence, which causes quite a headache for Centrelink and also people challenging decisions that are made because they regard that, as they are an Australian citizen or they have Australian residency, they should be eligible for all of the payments and things like that. We can see that there will be those sorts of costs.

A lot of the clients that we see who are going backwards and forwards between other countries and Australia have got new families and often dependants and there are the issues that will raise if all of a sudden there is no payment of disability support pension to the primary person who is an Australian citizen; there will be more applications for residency for spousal visas and also visas for children to come to Australia and the associated support that will go hand in hand with that, because these people are disability support pensioners, so there is the issue of whether or not there will be that capacity for a spouse to actually earn money and those types of things. We see that there will be longer-term costs that have not necessarily been factored in.

**Mr Thomas**—As well as the cost that NEDA talked about in relation to carer payments, utility and mobility allowance and so on, there are things like hospital health related costs, home care costs for individuals and there could be costs for people in aged care in hostels, for example. There is a significant cost to the taxpayer that has not really been accounted for. I think there is also the denial of important social support and companionship. Obviously that is a lot harder to put a dollar value on, but it is certainly important to a person's quality of life. We think that is one of the things which could be negatively affected by these changes, but there are also things like education, schooling and those sorts of things which are not currently costs borne by Australian taxpayers for these individuals and their families.

**Senator BOYCE**—The suggestion has been made that the legislation would be fairer if it were amended to exempt people with severe disabilities who had insufficient decision-making capabilities such that they were subject to a guardianship order. Would you like to comment on that idea?

**Ms Beaumont**—With the inclusion of extra provisions, that would potentially protect a small proportion. If it is that a person has to have a severe disability and a guardianship order—and I know that there have been particular submissions that were made—then obviously that would be a step in the right direction, but we do not necessarily know whether or not those who are just severely disabled should also be covered by any of these provisions as well. We do not know what proportion of those that are living permanently elsewhere and coming back to Australia every 13 weeks and are severely disabled will be impacted by these provisions. FaHCSIA suggested it is 38 per cent of the general DSP population, but we do not know whether or not that will impact in the same way with this particular group. I guess they have less capacity to participate because it is a decision that is made that someone is severely disabled and they have less than eight hours per week capacity to do paid work and that is likely to be for the next two years. We would see that would probably help to ameliorate some of the aspects of it, but we do not think that there is a need for this legislation, full stop.

**Senator BOYCE**—Thank you.

**CHAIR**—In terms of your knowledge of international welfare systems, is there any country that provides a welfare payment that is automatically portable?

**Mr Thomas**—I cannot say that I am aware of any. That does not mean that they do not exist. I would imagine that FaHCSIA would be able to answer that question.

**CHAIR**—I will be asking FaHCSIA as well.

**Mr Thomas**—While we know about the Australian social security system, I am not aware of all of the details of other countries.

**Ms Beaumont**—Our social security system allows people on age pensions to have portability of payment whilst overseas on a permanent basis. For people who are overseas on disability support pension before July 2004 there was that permission for people to be overseas if they had a severe disability. In a way we are

changing the goalposts with each of these changes and it is the protections that are there for groups who have already made decisions. I think the difficulty that we have is that the goalposts keep on being changed to less and less and we cannot necessarily see that these supposed savings will actually be helpful; they could be potentially detrimental as well. We do not think that it necessarily goes against how social security law has worked in Australia.

**Mr Thomas**—Previously, as you are aware, the rule was 26 weeks; that was changed in 2003. Previously it was 52 weeks.

**CHAIR**—That is right.

**Mr Thomas**—As Ms Beaumont said, the goalposts are constantly changing. Traditionally when governments have made these sorts of changes they have introduced grandfathering or savings provisions. They introduced those with the plans to increase the age pension age. That is happening way into the future. The 2003 changes to the residency rules for DSP included grandfathering provisions, but it is not proposed at the moment to have any savings provisions with these changes.

**CHAIR**—Certainly the argument from the department is to have standard arrangements for payments. The argument that they are putting is that, with the exception of the age pension, all other payments below retirement age have an overseas limitation of 13 weeks.

**Mr Thomas**—In one sense that is a bit of a false construct. We only had this notion of working age payments in 2005 or 2006 when FaHCSIA and DEEWR were split and there were different portfolio responsibilities. Before then we did not see the need for the one-size-fits-all approach. One of the things that many people like about the Australian social security system is that you do not need to have a one-size-fits-all system. We do not have to all wear black.

**CHAIR**—I can remember seeing many submissions from welfare rights over the years calling for a simpler social security system.

**Mr Thomas**—This does not mean that we supported an unfair social security system. There are certainly trade-offs.

**CHAIR**—To be very clear, I did not say ‘unfair’ at all and infer that you said that. I was just quoting back the numerous times that welfare rights had asked for a simpler system. The department has actually claimed in its submission that what it is doing is putting a standard provision for a number of payments. I was asking your opinion as to whether you agreed that was their premise or not.

**Mr Thomas**—They are certainly arguing in this instance that a more consistent approach to the treatment of everyone on so-called working age payments would be ideal from their point of view, but we have always seen—and I think our submissions over the years would have said—that there are always trade-offs between fairness and simplicity. It is like when we argue for increases to social security payments; we do not call for reducing disability pension down to Newstart, we prefer to argue for raising the bar for the Newstart allowance.

**CHAIR**—What is the National Welfare Rights Network’s position on the portability of welfare payments?

**Ms Beaumont**—In relation to portability payments where we commented on the 13 weeks, I know one of the arguments around changing and having extra provisions to do with guardianship orders and the severely disabled is that it is very restrictive in the way that it works at the moment in regard to any sort of extension of portability period, and I know the difficulties our clients experience in trying to get extensions of portability periods. It is only in a restricted number of circumstances that discretion can be exercised and often clients have to go through appeal systems to be able to argue their case about why there should be an extension of portability period. We would see that the way that it is is probably too restrictive and there should be a little bit more discretion than is provided and which is not necessarily there in the system at the moment.

**CHAIR**—So you think that the link that the department makes between residence and receiving social welfare payments should be more flexible?

**Ms Beaumont**—Yes. I think there should be a greater degree of flexibility because it can be very difficult for clients to get over the bars that are set for things like residing in Australia, but it is also about extensions of portability. I think some of the characterisation of people’s absences for 13 weeks overseas is that sometimes people want to be able to go and visit family and things like that and it may not be that they are residing overseas on a permanent basis. It is that difficulty and the call about what is a temporary absence and what is a permanent absence. I know that there are lots of appeals in relation to that issue with the other payments.

**CHAIR**—Thank you, Mr Thomas and Ms Beaumont. I again apologise for the disruption in your evidence with the technical difficulties.

**Proceedings suspended from 5.58 pm to 6.11 pm**

**HATCH, Mr Andrew, Section Manager, DSP Policy and Review, Department of Families, Housing, Community Services and Indigenous Affairs**

**MOUFARRIGE, Mr Philip, Section Manager, International Policy, Department of Families, Housing, Community Services and Indigenous Affairs**

**STAWYSKYJ, Ms Michalina, Branch Manager, International Branch, Department of Families, Housing, Community Services and Indigenous Affairs**

**CHAIR**—Welcome. As departmental officers, you will not be asked to give opinions on matters of policy, although this does not preclude questions asking for explanations of policy or factual questions about when and how policies were adopted. We have your submission; thank you very much. If any or all of you would like to make an opening statement, you may do so. We have made notes of a number of questions that the previous witnesses have put which we will ask you and then I presume other senators will have other questions.

**Ms Stawyskyj**—I would like to say that we are very aware that policies that are made impact on individuals and the individuals can be those directly impacted, taxpayers or other people who have an interest in some of these matters.

By way of background, I would like to say that Australia's social security system is a taxpayer funded and supported system. I am just setting the scene in terms of the thinking. I am sure all of you are aware of these features. It is a non-contributory system, unlike most other countries, where contributions are tied to the contributions a person makes during their working life. It is needs based and means-tested. A person does not have to have paid taxes to be eligible but at the same time paying taxes does not create an entitlement. Our system is also a residence based system; that is, the person needs to be a permanent resident and residing in Australia for most benefits.

As outlined in the department's submission to the inquiry, schedule 2 of the bill makes amendments to the Social Security Act 1991. This schedule will introduce an ongoing residence requirement to qualify for the disability support pension. The proposed amendments will bring DSP into line with other workforce age payments, all of which have an ongoing residence requirement. The proposed amendments are consistent with the purpose of DSP, which is primarily to assist people with the cost of living in Australia and to engage people of workforce age in activities in Australia that will lead to greater levels of economic and social participation. The requirement to be a permanent Australian resident to qualify for a social security payment is and has been a fundamental element of Australia's non-contributory taxpayer funded social security system for some time.

We hold that the issue before the committee is different from the proposed amendments that you have asked us to look at. The changes proposed in the bill relate to residence requirements for DSP, while the issue that the committee is examining is one of continued payment of DSP whilst overseas, and that is a matter of portability. We would argue that residence and portability are two distinct and separate concepts under social security law. The bill does not affect the current portability entitlements of DSP recipients. They will remain the same; that is, up to 13 weeks absence is available.

Any changes to DSP portability policy obviously require careful consideration and should be balanced against the purpose of the payment, which is to assist people with the cost of living in Australia to encourage, as we have said, both social and economic participation. Supporting workforce participation is seen as critical to minimise the impact of Australia's intergenerational issues. The government has introduced a number of initiatives to boost broader labour force participation, such as increases in the childcare rebate and the introduction of paid parental leave. Any new policy would therefore need to consider the impact on the broader objective of participation decisions to ensure that they support and encourage and do not compromise some of the broader, I suppose, agenda.

As to government priorities for disabilities, the government has a strong agenda in the disabilities area to support people with a disability to address barriers and to encourage participation rehabilitation which would have physical and economic benefits for the individual and the taxpayer as well as social benefits and positive life outcomes. Increasing participation rates across areas has been identified in both the intergenerational report and the tax review as crucial for economic development and sustainability.

A priority of the government is a 10-year national disability strategy to provide a national framework to drive future reforms in both mainstream systems and the disability service system for people with disability,

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their families and carers. The strategy includes an inquiry into the National Disability Long-term Care Support scheme, early intervention through the government's Better Start for Children, establishment of a new capital fund of \$60 million over four years to build innovative community based supported accommodation places, with Australian Disability Enterprises releasing a vision for the supported employment sector and the National Disability Agreement with states and territories.

In addition, since September 2009 with the pension reforms the government has supported the disability support pension with a range of increases since that time of around \$115 per fortnight for singles and \$97 for couples combined. The government is also investing \$1.7 billion into disability employment services developed in consultation with participants, industry groups, job seekers, employees and employment service providers. This initiative commenced on 1 March with the aim of supporting people with a disability to realise their potential. Improving the job capacity assessment process to ensure that people receive appropriate employment services and income is also something that is under consideration and development. In the future these policies will provide a platform for further reforms.

As to the issue of portability of guardianship orders that we raised in the submission, we believe that this guardianship mechanism to allow portability is probably a narrow mechanism and an inappropriate one. There are approximately 300,000, or about 38 per cent of DSP population, that may be considered severely disabled. Many would not have legal guardianship orders in the very severe category but may have a similar level of disability to those with guardianship orders. This would result in some inequities across the system. Some may have capacity for work with appropriate support—

**Senator BOYCE**—What sort of inequities?

**Ms Stawyskyj**—It would result in inequities in that there would be a broader category of people who may have a severe disability of the same level as those people with a guardianship order but have not sought that formal mechanism. I think in the submission we have also raised that—

**Senator BOYCE**—Sorry, it was the word before 'inequities', that is all.

**Ms Stawyskyj**—Limiting portability to those people who have legal guardianship will not recognise, as so many others are aware, their non-formal care and decision-making arrangements, and from what we have researched they appear to be the majority. It may encourage people, or force people or whatever, to seek formal guardianship arrangements where previously they would not have deemed that it was necessary or wanted. As I said, guardianship orders are also used in a fairly limited way in Australia, given that it would also place perhaps administrative burdens on state and territory governments as well as the individuals in seeking to get a guardianship order.

It would cause some administrative complexity for Centrelink to manage and would require changes to Centrelink procedures and systems. Given that recipients may already be overseas, Centrelink may be required to assess guardianship orders or their equivalent issued in another country and deal with orders that have not been renewed, which again can cause issues for individuals.

**Senator BOYCE**—This would be Australian citizens with guardianship orders in other countries for people with children who are Australian citizens?

**Ms Stawyskyj**—Yes. Similarly, a guardianship order is limited and may expire while a person is overseas and there would obviously be a need for a tracking mechanism, but there may also be gaps between renewals or other matters. We think the issue of portability before the committee is quite separate to the residency bill. However, any changes to the portability rule would require careful consideration by government to ensure policy settings were right and would balance the needs and support that people with a disability may have and also would encourage greater social participation. I think we recommended in our submission that the residence part of the bill that we would like to see go forward does go forward as it is quite separate to the whole portability issue.

**CHAIR**—From the department's point of view—because you know what the witnesses have said—what does this bill do?

**Ms Stawyskyj**—The bill introduces the requirement for people who are on disability support to qualify for disability support to be Australian permanent residents to maintain their qualification for the disability pension.

**Mr Moufarrige**—Presently you need to be an Australian resident to be eligible for DSP but once you have obtained a disability support pension there is no ongoing residency requirement. This bill will introduce an

ongoing requirement that a person continues to be an Australian resident under the Social Security Act for the purposes of continuing to seek a disability support pension.

**Ms Stawyskyj**—As we have said in the submission, it would therefore also align it to other payments of what we call the working-age category.

**CHAIR**—Which effectively means you cannot have any more than 13 weeks overseas and keep your payment?

**Ms Stawyskyj**—If you are deemed by Centrelink under the residence section of the Social Security Act to no longer be a resident then certainly your DSP would be cancelled and you would only have 13 weeks portability. It would be cancelled at that point.

**Mr Moufarrige**—You are still entitled to the 13-week portability period and you could perhaps go overseas for 13 weeks, come back to Australia, perhaps go overseas again, but at some point your assessment of where you are actually residing would be made by Centrelink. Under section 7 of the Social Security Act there is a residency test which takes into account a number of factors such as employment, where you are residing, your frequency overseas, ties to Australia or overseas and any other relevant factor and an assessment is eventually done on a person's residency through that.

**Senator SIEWERT**—Bearing in mind the issues that were raised in the submission in terms of guardianship which has been raised several times—and I appreciate the issues that you raise—have you given any thought to any other ways of dealing with the issues that have been brought up? I am sure you have seen the other submissions addressing matters where there are extenuating circumstances for a dependent who is taken overseas with their parents. Have you given any other thought to how that could be dealt with?

**Ms Stawyskyj**—We can only talk about current policy. It is not for me to respond on whether or not government would like to consider other matters. I should think that if I give a view on what other mechanisms are available I would be leading to policy.

**CHAIR**—There is nothing in current policy which would address that case?

**Ms Stawyskyj**—No. There are three exceptions in the portability rule. In 2004, when the changes were made to bring it into 13 weeks, the only exception that was made was for a person who was terminally ill and diagnosed by their doctor to have only two years to live and who was returning overseas either for care, to family or other things. That is the only exception that the rules allow at this stage. There is no scope within it. There are other people who are grandfathered from previous decisions and also those who may be covered by social security agreement, but even in terms of the social security agreements since that policy change of government in relation to reducing the portability period, we no longer include disability in our Social Security Act.

**Senator SIEWERT**—You picked up on the issue around guardianship that has been raised. Has the issue of whether you are a guardian or not or whether you are dependent on somebody else who has moved overseas for work been raised?

**Ms Stawyskyj**—In the time that I have been in this position the issue has been raised a number of times, but not consistently or in large numbers.

**Senator SIEWERT**—I am being careful not to ask you for policy advice. Did you provide advice to the government on how to deal with that issue?

**Ms Stawyskyj**—When the issues are raised, that is if we have letters to the minister on it, the minister has always responded around what the current legislation allows; there have been no other responses to those people, except to say that the current legislation does not allow for this.

**Senator SIEWERT**—Has anybody written to the government, besides the submissions, around the issues that we are talking about now.

**Ms Stawyskyj**—Has anyone else written?

**Senator SIEWERT**—Yes.

**Ms Stawyskyj**—On guardianship specifically?

**Senator SIEWERT**—No, generally. I appreciate the issue that you raised. I understand that is a shortcoming in some of the suggestions that are made in the submissions, which is that they may not be granted formal guardianship, the very issues that you have raised.

**Ms Stawyskyj**—There have been people who have written saying they would like the minister to use any discretionary power that there is to allow for a longer portability. There would have been a number of those and the minister has responded but, of course, the current minister does not have discretion.

**Senator SIEWERT**—I understand that. In terms of the current amendments that are proposed—you have heard the concerns and I am sure you are aware of them—have you provided advice to the government about how those issues could be dealt with? I have had emails and the submissions are certainly raising issues around potential hardship for people who are dependent on others for their care who have to go overseas for work related purposes and therefore the proposition that is being put is that the person that they are caring for has to travel as well.

**Ms Stawyskyj**—I know you are being very careful, but as soon as you ask me have we provided advice, then that is going to policy matters.

**Senator SIEWERT**—You can say yes or no. There is nothing to stop you from saying yes or no. It is very clear under the guidelines of the committee that you do not provide the details of the advice.

**Ms Stawyskyj**—Yes, we have provided some advice around a range of ways of dealing with cancellation and other matters.

**Senator SIEWERT**—Thank you.

**Senator BOYCE**—I would like to talk firstly about the definition that you have used on page 21 of your submission stating:

The purpose of a disability support pension is to assist people with the cost of living in Australia and to engage people of workforce age in activities in Australia that will lead to greater levels of economic and social participation.

Could you give me a reference for that definition?

**Mr Hatch**—Not that exact wording.

**Ms Stawyskyj**—We do not have it with us, but it is the second reading speech when the 2004 changes were introduced.

**Senator BOYCE**—It is the second reading speech made in 2004?

**Ms Stawyskyj**—When the portability changes were made.

**Senator BOYCE**—Do you believe that to be word for word from that speech?

**Ms Stawyskyj**—I cannot say word for word, but I believe it to be a pretty fair and true account.

**Senator BOYCE**—I would like to look at the idea of the disability support pension being to assist people with the cost of living in Australia, and specifically in Australia. In your view, is it included in that speech?

**Mr Moufarrige**—Yes, to my recollection. It was at the time when the portability period was being reduced from 26 weeks to 13 weeks and unlimited portability was ceasing, except for those people who were terminally ill.

**CHAIR**—Can we put that on notice? We need questions on notice by Thursday. It would be very useful for the committee to have the reference source for that definition.

**Ms Stawyskyj**—Yes.

**Senator BOYCE**—You have made the point here that you estimate that about 300,000 people on the current disability support pension could be classified as severely disabled, but you make the point that only 39 travelled overseas for more than 13 weeks during 2009-10. I presume those figures are from the department of immigration, is that the case?

**Mr Moufarrige**—No, they are from Centrelink. I must state that people on disability support pension are not necessarily classified as severely disabled.

**Senator BOYCE**—I realise that, yes. You are saying that 38 per cent of people on DSP would be classified as severely disabled.

**Mr Moufarrige**—Yes, and of those people that were classified as severely disabled, there is that number of 39.

**Senator BOYCE**—Out of roughly 100,000 people or 85,000 people, 39 went overseas for more than 13 weeks?

**Mr Moufarrige**—Yes.

**Senator BOYCE**—I am trying to make sense of why you said only 39 travelled overseas here, as though this means this is an issue not worth considering or a minor issue. Your submission suggests that is a minor issue. It would seem to me that, given that it is such a small number, making particular rules for that group would not be particularly difficult.

**Ms Stawyskyj**—The issue would not be that you would be making it for 39 people. The issue would be that the group that may be classified as severely disabled could be a lot greater than the number that is currently going overseas. People who may be severely disabled may be severely disabled for a short period of time and may have some capacity for participation and can, therefore, be assisted and perhaps have some access to work. The issue is, of course, if you grant unlimited portability to a group of people that may include a very broad category of people, it may be difficult for us to continue to monitor their improvement or whether or not they are still eligible for disability payments and/or for extended portability. One of the reasons for the 2004 changes was that there was a growing number of people who were perhaps coming into those categories and the government was looking to assist them into work at that stage.

**Mr Moufarrige**—Another important point that we have mentioned is that people with a severe disability do not necessarily travel, because they cannot afford to stay outside of Australia for greater than 13 weeks and not have an income, so we do not think there would be a large number of people outside of Australia who have given up their disability support pension. On the other hand, if there is a mechanism that allows extended portability then we would expect that a large number that presently do not travel because they would lose their disability support pension after 13 weeks would potentially take that up.

**Senator BOYCE**—Let us work on the theory of a bit more than 100,000 people. Have you done any projections on what you think might happen there if it was to be unlimited?

**Mr Moufarrige**—We know that prior to 2004, when there was unlimited portability for severely disabled DSP recipients, around 1,800 to 2,000 severely disabled DSP recipients took up the unlimited portability option per year.

**Senator BOYCE**—So less than 10 per cent of those people?

**Mr Moufarrige**—Yes.

**Senator BOYCE**—You have 300,000 currently severely disabled with 1,800 to 2,000 that go overseas. Is that right?

**Mr Moufarrige**—Yes.

**Senator BOYCE**—So we are down to around five or six per cent.

**Mr Moufarrige**—We looked at the last three years of overseas travel when DSP had an unlimited portability provision.

**Senator BOYCE**—Are you able to give us the figures on people within that category of severely disabled who have the potential to get into jobs and be rehabilitated to join the workforce or training?

**Mr Hatch**—The severely disabled test considers whether or not a person could be assisted back to work with vocational rehabilitation. The fact that they are found to be severely disabled would mean that they could not be assisted back to work at that point of time.

**Senator BOYCE**—We just talked about the fact that ‘severely disabled’ covers people for short or long periods of time.

**Ms Stawyskyj**—The term ‘severely disabled’ is used in relation to assessment for social security agreements and it is for people who will not be able to work for more than 15 hours in the next two years.

**Mr Moufarrige**—Eight hours.

**Senator BOYCE**—Eight hours in the next two years?

**Ms Stawyskyj**—Yes.

**Senator BOYCE**—Would you have any statistics on how many people that were in that category in, say, 2008 that are no longer there? We have said here that large numbers of severely disabled people are people such as you described who would have the capacity to get back into the workforce over an extended period of time. There are also large numbers in this group who are never going to join the workforce, who are never going to have the decision-making abilities to care for themselves or make decisions about their own futures, aren't there?

**Ms Stawyskyj**—Yes, there would be.

**Senator BOYCE**—What is that percentage?

**Mr Hatch**—I do not have those figures with me.

**Ms Stawyskyj**—We do not have the figure here, but we can try to get that for you.

**Senator BOYCE**—It would be good to get that as a question on notice because the levels of people that we are talking about here are reasonably relevant to the issue. You would know that earlier suggestions were made around the \$3 million savings that the department claimed. People suggested that those figures might be wrong. Can you tell us a little bit about how you arrived at the figures?

**Mr Moufarrige**—The estimates that we came up with are based on approximately 1,000 DSP recipients travelling three or more return trips to Australia per year.

**Senator BOYCE**—Because that was what was happening?

**Mr Moufarrige**—That was what was happening. We looked at that specific cohort of people who were regularly flying out of Australia and back into Australia. We looked at—

**Senator FIFIELD**—That was return trips three times?

**Mr Moufarrige**—Three or more times a year. In that category there was at least one DSP recipient that had nine return trips outside Australia.

**Senator BOYCE**—And there were 1,000—

**Mr Moufarrige**—There were 1,000 with three or more return trips; that is six international flights.

**Senator BOYCE**—Is that exactly 1,000?

**Ms Stawyskyj**—Around 1,000.

**Mr Moufarrige**—I think it was a little bit over 1,000. We looked at the time they were spending outside Australia and the time that they were spending inside Australia. The group of approximately 150 represent those DSP recipients that were flying more than three times a year outside Australia and spending less than eight weeks of the year in Australia.

**Senator BOYCE**—Why did you make that distinction?

**Mr Moufarrige**—In the estimating process that we were going through we were looking at what point would we consider someone was spending so much time out of Australia that they would not necessarily be actually residing in Australia or spending so much time out of Australia that their life was predominantly based somewhere else and if the rules were to change would they consider actually coming back to Australia. We took eight weeks—and eight weeks was the limit—but out of that 150 there were people in that group who were spending less than that, only a couple of weeks out of the year, in Australia. Our estimates were based on those 150 people making a decision either not to return to Australia and give up their DSP because their life was predominantly in another country or if they did come back to Australia they may in fact fail a residency assessment under section 7 of the Social Security Act applied by Centrelink.

**Senator BOYCE**—That is the two years?

**Mr Moufarrige**—No, that is a different rule. The proposed amendment in this bill is the ongoing residency requirement. A person would be assessed on where they were actually residing. There is a test that Centrelink goes through and looks at, I think it is, six elements to determine where a person is actually residing.

**Senator BOYCE**—An argument was put by a number of witnesses that this \$3 million saving that you are talking about here from these 150 fly-in, fly-out pensioners—for want of a better word—does not take into account the carer's payment, care allowance, rent assistance, medical costs et cetera. Certainly not all those costs are FaHCSIA borne costs but they are nevertheless costs across society. What compensations did you allow for the fact that they are not being paid for the 46 or so weeks that these people are not in Australia?

**Mr Moufarrige**—We did look at that but, given the residency factor is not part of Centrelink's assessment for those people at the moment, many of those people may actually be classed as Australian residents and are receiving some of those payments now.

**Senator BOYCE**—For the entire time they are overseas?

**Mr Moufarrige**—Yes.

**Ms Stawyskyj**—Once they come back they renew their disability and all other—

**Senator BOYCE**—Would they be eligible for carer payment?

**Ms Stawyskyj**—No, the individual would not be—

**Mr Moufarrige**—The basis of the carer payment is both the carer and the care recipient being Australian residents. If the care recipient of the DSP, the person receiving the disability support pension, was still an Australian resident although spending a lot of time out of the country, they may potentially be eligible under the residency rules. But given ongoing residency is not currently an assessment criteria for Centrelink, that is the amendment—

**Senator BOYCE**—But is the effect of this not that if those people had a family member receiving a carer payment they will no longer receive the carer payment?

**Ms Stawyskyj**—Carer payment is only portable for 13 weeks anyway. That is the limit on carer payment. The current portability rule for carer payment is 13 weeks out of Australia.

**CHAIR**—And has been since when?

**Mr Moufarrige**—Since 2004.

**CHAIR**—That was the standard—

**Ms Stawyskyj**—Yes. So carer payment is portable for only 13 weeks.

**Senator BOYCE**—But if as a result of this change on residency people choose not to return to Australia at all, will not the savings on the system be not just the disability support pension savings but also the savings of all those ancillary services, allowances and pensions that their family would receive and the medical services that they would receive?

**Mr Moufarrige**—We did look at that. We did look specifically at medical and pharmaceutical expenditure, not of individuals, just as broad groups.

**Senator BOYCE**—I presume there is an average figure for someone with a severe disability or something?

**Mr Moufarrige**—Yes, and it is a common perception that if a person living overseas on a disability they save the Australian taxpayer money in terms of medical costs. We found that if a DSP recipient were given unlimited portability their access to Australian pharmaceutical benefits, the PBS and the MBS, was substantially reduced. However, if they were only leaving Australia under portability provisions—that is the 13-week arrangement—there was no real change in their usage patterns.

**Senator BOYCE**—But we are now talking about the fact that a significant number of these people are expected to choose not to live in Australia; is that correct?

**Mr Moufarrige**—That is correct, yes.

**Ms Stawyskyj**—No. They may choose to do that but they may choose to either reside permanently in Australia or permanently outside Australia.

**Senator BOYCE**—Will not the ones who choose to now reside permanently in Australia cost us more than they did when they were going backwards and forwards and will not the ones who choose to reside permanently outside Australia cost us less?

**Ms Stawyskyj**—It is likely to cost the same because their portability will continue and their payments that they have, as we have mentioned—

**Mr Moufarrige**—They will still have access to the same level of services.

**Senator BOYCE**—The ones who choose to reside permanently in Australia?

**Ms Stawyskyj**—And the ones who maintain a 13-week portability without a residence qualification.

**Senator BOYCE**—I am sorry if I misunderstood you but I understood you to say that there are 150 people there that you are basically expecting to move out of Australia or to choose to live permanently in Australia; is that right?

**Mr Moufarrige**—Yes.

**Ms Stawyskyj**—Or they may have already moved. If we apply the section 7 test they may actually already have chosen to move out of Australia permanently but return to Australia every 13 weeks to renew their eligibility for disability pension.

**Senator BOYCE**—But this will no longer be possible; is that correct?

**Ms Stawyskyj**—If the legislation is passed, Centrelink will contact the number of people that have been identified with three-plus trips and will apply section 7, the current rules that apply to other working age payments, to determine whether they are any longer eligible for DSP because they are no longer residents of Australia.

**Senator BOYCE**—As a result of that you think some people may go and live in another country permanently, or take up permanent residence outside Australia?

**Ms Stawyskyj**—It may be argued they already are. I suppose that is what we are saying. If the test is applied to this particular group of people a number of them will already have established that they have severed their connection to Australia in the way—

**Senator BOYCE**—I am trying to understand the basis for the \$3 million savings figure and I am having difficulty understanding where the costs are in someone who chooses to reside permanently outside Australia?

**Mr Moufarrige**—At the moment those people that are travelling outside Australia, as an Australian resident, still have access to the full sweep of social security benefits.

**Senator BOYCE**—But they will not have if this legislation is passed?

**Mr Moufarrige**—Yes. That is where some of the savings derive from—from them not being eligible for the pension.

**Senator BOYCE**—As you said, some of those people currently have access to the pension. But they also have access to this whole other suite of measures. Why are the savings not increased by that?

**Ms Stawyskyj**—There certainly are potential savings but in the current costing model we do not include any government programs or the add-on costs or the other costs that are outside our portfolio.

**Senator BOYCE**—Is the \$3 million only FaHCSIA payments?

**Ms Stawyskyj**—Yes.

**Senator BOYCE**—People would characterise them as Centrelink payments?

**Ms Stawyskyj**—Yes.

**Senator BOYCE**—Are you able to give us a list of the workings of that, what you took into account, the payments that you did take into account and so forth?

**Ms Stawyskyj**—Yes. Perhaps if I could just add in relation to the costs, if we allow people to permanently take that disability support pension overseas, whilst they may not be getting a lot of their add-ons it is also almost impossible then to determine if their condition changes or alters. They may improve. As we said, the current definition states two years and that a person cannot work for more than eight hours. That may be due to a range of factors that are not necessarily—

**Senator BOYCE**—You would not currently need to assess people who are overseas for more than two years, would you?

**Ms Stawyskyj**—No.

**CHAIR**—Would those people now be affected? Aren't they still grandparented before 2004?

**Ms Stawyskyj**—Sorry?

**CHAIR**—The people from before 2004, are they not still grandparented—

**Ms Stawyskyj**—Yes, they are—

**CHAIR**—so nothing happens to them? The only people you have data on are pre-2004?

**Ms Stawyskyj**—Yes.

**CHAIR**—So that is a difficulty for people who are already overseas?

**Senator FIFIELD**—You said that you could not entertain ways of addressing this particular issue of portability for people who may be in a guardianship situation. You could not entertain alternative ways because that would go to policy and your role is merely to articulate the policy as it currently stands.

**Ms Stawyskyj**—I think the question was: was there any mechanism within the current framework of the legislation that may allow—

**Senator FIFIELD**—Yes. Senator Siewert asked you if you had given any thought to other mechanisms which could address that issue and you said, ‘No, we have not. We just talk to policy as it is.’ That is what you said in reply to Senator Siewert. This is about 30 or 40 minutes ago.

**Ms Stawyskyj**—I do not think we were asked whether or not—

**CHAIR**—Senator Siewert asked two questions. One was: had you given any thought to ways that particular situation could be fixed? And you said that you could not answer because that would be on policy. Then we asked whether under the current policies were there any ways that it could work and you said, ‘No.’

**Ms Stawyskyj**—Under the current policy, no.

**Senator FIFIELD**—Under the current policy, no, there was not. But you were asked if there were other mechanisms to address that issue that you had looked at.

**CHAIR**—That is where the officer said that was going into advice that they could not share with us.

**Senator FIFIELD**—So you did not say that you had not.

**CHAIR**—No; in fact, they said yes, they had provided, but they cannot give us the detail.

**Senator FIFIELD**—I misheard. I thought you said that, with things such as letters that had gone to the parliamentary secretary, advice had been provided around current policy.

**CHAIR**—Around current policy, yes.

**Senator FIFIELD**—If you said that you had not entertained alternative mechanisms or could not entertain alternative mechanisms, I was going to say that you already have entertained them in your submission to this committee, because you make a range of comments around how guardianship is not an appropriate way to determine the eligibility for portability of people on the DSP who have severe disabilities. In your submission you have already canvassed alternatives by virtue of the fact that you have given reasons why a mechanism is not appropriate and would not work.

**Ms Stawyskyj**—We commented that it was a narrow mechanism and it, in itself, would narrowly define the group that would be affected.

**Senator FIFIELD**—Yes. My point is that in so doing you are canvassing alternatives and their relative merits, which is something that you said you are unable to do. Can I ask you further about alternative mechanisms?

**Ms Stawyskyj**—No, I am sorry.

**Senator FIFIELD**—Why is that, given you have already canvassed them?

**Ms Stawyskyj**—The submission certainly raises the fact that we thought guardianship had some inherent issues that would cause some difficulties. One of them was that it was very narrow, used very rarely and that it would also not apply to a large group of people and may force a range of people to seek guardianship where they now have other informal arrangements that satisfy their current duties and responsibilities.

**Senator FIFIELD**—Why are you concerned that guardianship is a narrow way to determine portability when your objective is to eliminate portability?

**Ms Stawyskyj**—No. The objective of the legislation—

**Senator FIFIELD**—Let us just forget the legislation. The intent of the policy of the government is to narrow the number of people who can be overseas on DSP. That is the objective of the policy. My question is: why are you concerned that this is a narrow way to determine the issue?

**Mr Moufarrige**—We have outlined in our submission that it is an inequitable narrowing of the current—

**Senator FIFIELD**—But it is the policy that is too narrow.

**Ms Stawyskyj**—In putting forward that legislation it was not looking to narrow portability. Portability rules would stay exactly the same—that is, 13 weeks would be available.

**Senator FIFIELD**—Let me rephrase it: those people who can be overseas and in receipt of this payment.

**Senator BOYCE**—The legislation is trying to narrow the number of people who can live overseas and be in receipt of the payment.

**Ms Stawyskyj**—The changes that were brought in in 2004 and that were set in the participation agenda, which is fairly important, were to narrow the people who would be overseas for long periods of time or never

return and have payments guaranteed for long periods of time without being able to be assessed as to whether or not their disability had improved, changed, or whether they had capacity to participate.

**Mr Moufarrige**—The legislative proposal is not suggesting to change portability. The people that it will affect already have—

**Senator FIFIELD**—You may have gathered that through this hearing we are trying to look at issues which are broader than the legislation and broader than the bill which is before the parliament. That is why we are talking about these things.

**Ms Stawyskyj**—Yes, we appreciate that. When those changes were brought in it was decided at that point—and to move any further would be a matter for government—that there would be one exception and that was for a person who was terminally ill who had no more than two years to live and could be reunited. That is a particular case for someone who is terminally ill, and it is very difficult to compare such a person to other circumstances. On those grounds it was seen to be a compassionate exercise.

**Senator FIFIELD**—So guardianship is a narrow and inequitable way, in your view, to determine portability. You are suggesting that there should be a wider definition.

**Ms Stawyskyj**—It is a matter for government to decide what is appropriate in its broader framework of policy. I am sorry I cannot give a personal opinion.

**Senator FIFIELD**—I know, but I am perplexed as to why you are prepared to offer a view as to the relative merits of one particular measure and then say, ‘Sorry, we can’t talk about the relative merits of alternative measures.’

**Ms Stawyskyj**—The committee is examining guardianship and we focused on guardianship being a very narrow thing.

**Senator FIFIELD**—My point is that rather than telling us what cannot be done and why it cannot be done, it might be to the benefit of the committee if you could talk to us about how something could be done, given you have said this is not the way to go about it, if that was the policy intent.

**Ms Stawyskyj**—I do not know the quick answer.

**CHAIR**—That goes very close to the paragraph we have that says you cannot give opinions on matters of policy.

**Senator FIFIELD**—I know, but the officers at the table have already given opinions.

**CHAIR**—We understand the point you are making.

**Ms Stawyskyj**—We have given an opinion on what you were examining.

**Senator FIFIELD**—That is right.

**CHAIR**—What the officers have done—and they did it in their submission—was to have responded specifically to something that was in another submission, and that was at our request. That was to give an answer to a question about somebody else’s submission as to what could happen. That was within quite tight time frames. To ask for further information about what could happen takes it to another level and the officers, quite rightly, have said that change of policy is a matter for government.

**Senator FIFIELD**—Of course it is.

**Ms Stawyskyj**—The submission addressed what the committee asked us to address.

**Senator FIFIELD**—In future I will make sure that references on schedules in bills which are referred to committees are excruciatingly detailed and long so that we do not have this ridiculous situation where witnesses at the table are not able to be of assistance.

**CHAIR**—That is not a fair statement.

**Senator FIFIELD**—I am not being critical.

**CHAIR**—The guidelines to what can be and cannot be discussed in these committees have been around for a very long time. We are not starting new rules. The whole focus around legislation is to make it as detailed as possible so you can have the discussion. If you want to move on to an area which is either in a submission or a specific question on what is before us then that is fine, but the officers cannot give opinion on what could happen.

**Senator FIFIELD**—Heaven forbid that a parliamentary committee might actually want to look at what could happen to address and identify a problem. Where would we be?

**CHAIR**—Heaven has forbidden that in the standing orders for how this operates. Are there any further questions?

**Senator FIFIELD**—I am trying to think of what could usefully be asked in this situation. We heard from Mr Borrowman earlier that FaHCSIA had offered a particular solution for his particular circumstances. I am wondering if any officers at the table—I know this is going back a year or so—were involved in those discussions or in looking for a solution to Mr Borrowman's particular situation?

**Ms Stawyskyj**—No, we were not involved in that.

**Senator FIFIELD**—Were any officers at the table subsequently asked by Mr Shorten or another member of the executive over the last 12 months to see if there are solutions to address this particular circumstance that we have been talking about?

**Ms Stawyskyj**—Again, these were discussions in Mr Shorten's office. We were asked to look at whether there were mechanisms to assist with extending the suspension—that a person might have suspension of pension rather than cancellation of pension.

**Senator FIFIELD**—Could you elaborate on 'extending the suspension'?

**Ms Stawyskyj**—In terms of the way in which there is a 13-week portability period, once a person exceeds that 13-week portability period obviously Centrelink suspends payments because they have exceeded that limit.

**Mr Moufarrige**—But they remain eligible.

**Ms Stawyskyj**—They will remain eligible for the disability support pension. After 26 weeks the person is cancelled, so they would then need to reapply for the pension and go through a process. We looked at whether there was a mechanism to extend the period in which they remained eligible and we are not cancelling.

**Senator FIFIELD**—Was extending that period the only thing that was looked at to seek to address this particular situation?

**Ms Stawyskyj**—We provided advice, yes, but that advice is something that is for government.

**Senator FIFIELD**—I am pursuing the advice because you have opened up and discussed one element of the advice that is provided.

**Ms Stawyskyj**—Perhaps I should not have, and I apologise.

**CHAIR**—I was very careful not to intrude in it, but that referred specifically to evidence that Mr Borrowman gave about the situation that he was provided. I think what you just described was the 'fiche', which was the process of remaining eligible without having your pension ceased.

**Senator BOYCE**—Is that what a fiche is?

**CHAIR**—Mr Borrowman described in his evidence—you will be able to look at *Hansard*—the situation that he was offered.

**Mr Moufarrige**—It may be a Centrelink term but I have never heard of the term 'fiche'.

**Senator FIFIELD**—Is that to what you were referring?

**CHAIR**—That is how I took it in terms of the way you described that the option of the eligibility remaining open, the process being suspended rather than cancelled, which would mean that when someone returned—

**Senator FIFIELD**—But before you said that you were not involved in—

**Ms Stawyskyj**—No, I was not involved in the broad package of discussion that I believe, from what I heard on the television before we came, Mr Borrowman was referring to; I was not involved in any way.

**Senator BOYCE**—I may have been wrong, but I got the impression from the evidence that Mr Borrowman gave us, that this 'fiche', or freeze, on eligibility was for the duration of his period overseas irrespective of whether this was 26 weeks or three or four years. Is there capacity for you to do that?

**CHAIR**—Under the current terms can you have a suspension for that period of time?

**Mr Hatch**—The decision about whether or not to suspend or cancel is in some cases arbitrary. In some cases cancellations are specified within social security law; in other circumstances the legislation says you can suspend or cancel as long as you are not paying the person; that is the important point.

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**Senator BOYCE**—Does that apply to the disability support pension?

**Mr Hatch**—Yes.

**Senator BOYCE**—Who makes that arbitrary decision?

**Mr Hatch**—There are decisions that are—it specifies if they are made by the computer system. The system itself builds those in and those are valid decisions. The cancellation that happens is automatically computer generated. Once somebody has been suspended for a certain period of time, the system itself says ‘it has now been that length of time’ and it flicks over from a suspension to a cancellation.

**Senator BOYCE**—So, then it would take human intervention for the cancellation not to occur; is that correct?

**Mr Hatch**—Yes, it does.

**Senator BOYCE**—At 26 weeks?

**Mr Hatch**—Yes.

**Senator BOYCE**—So, if we had evidence that an offer was made for it not to occur at 26 weeks then there must have been a human decision involved in this.

**Mr Hatch**—Yes, it would be.

**Ms Stawyskyj**—I cannot speak on whether an offer was made that a suspension would occur, but I think Mr Borrowman said that we looked at whether that was possible.

**Senator FIFIELD**—Things are hard sometimes.

**Ms Stawyskyj**—Very hard.

**Senator FIFIELD**—Things are unnecessarily hard sometimes. We are just senators; we are not federal people who find themselves in the situation of dealing with Centrelink and seeking to do what is right for their kids and for the people whom they care for. I think the best thing for me at this stage is to pursue these matters in the Senate chamber itself.

**CHAIR**—I have got some quite specific questions from previous witnesses. The first witness asked whether you had sought any legal advice on human rights processes in bringing in this legislation.

**Ms Stawyskyj**—No.

**Mr Moufarrige**—No.

**CHAIR**—Had the issue of breaching of human rights law on the rights of people with disabilities been raised at all in the discussions about this legislation?

**Ms Stawyskyj**—No.

**Mr Moufarrige**—No.

**CHAIR**—In terms of consultation that the department did with various agencies and bodies, the first witnesses from the National Ethnic Disability Alliance said that they had not heard of this change until the media release on 20 October. Had the department, because it was a budget initiative, done any form of consultation and advice with groups that could be impacted after the budget decision was announced?

**Mr Moufarrige**—No. There was a much earlier media release—in March of this year—by the minister for FaHCSIA.

**Ms Stawyskyj**—Minister Macklin or Minister Shorten?

**Mr Moufarrige**—Minister Shorten. So, there have been two media releases—one in March and one in October—but there has not been any formal consultation on the initiative.

**CHAIR**—Has there been any request or have any agencies or groups raised concerns about this legislation after those media releases?

**Ms Stawyskyj**—Not to our knowledge; there have been no requests for consultation on it.

**CHAIR**—Of the around 154 that you identified could be impacted immediately by this legislation, do you have any data on how many of those were born in Australia or not born in Australia?

**Mr Moufarrige**—No, we do not have any on hand.

**CHAIR**—Did you seek that information?

**Mr Moufarrige**—No.

**Senator BOYCE**—Would you be able to get that information?

**Mr Moufarrige**—Yes.

**CHAIR**—What is the definition of ‘living permanently overseas’? I believe this is a Centrelink definition but that was a particular question raised by the witness.

**Ms Stawyskyj**—Section 7 of the Social Security Act does list a number of factors and criteria that Centrelink uses to determine whether a person is an Australian permanent resident. Therefore, it is whether or not they are a permanent Australian resident, rather than—

**CHAIR**—Section 7 of the Social Security Act?

**Ms Stawyskyj**—Yes.

**Mr Moufarrige**—It looks at the nature of accommodation used by the person in Australia; it looks at the nature of extended family relationships a person has in Australia; it looks at the nature and extent of the person’s employment, business or financial ties with Australia; the nature and extent of a person’s assets located in Australia; the frequency and duration of a person’s travel outside of Australia; and any other matter relevant to determining whether the person intends to remain permanently in Australia.

**CHAIR**—That is actually from the Social Security Act?

**Mr Moufarrige**—Yes. So, it is a decision about where a person is currently residing, based on those factors.

**CHAIR**—There was comment made about social security treaties and the portability arrangements in treaties. I think you have mentioned earlier in your evidence—and I just want to have it clarified— that since 2004 disability support pensioners are not part of those portability negotiations.

**Ms Stawyskyj**—Since 2004 we have had agreements that had started in negotiation and that some agreements obviously already had commenced before 2004 and the agreement had gone considerably down the track. We did not go and revise the treaty, we did not extend the portability, so in a way it is a grandfathering for those agreements that already had existed.

**Senator BOYCE**—Is that specific to the disability support pension?

**Ms Stawyskyj**—Yes.

**CHAIR**—Can we get a list of those?

**Ms Stawyskyj**—Yes, we can. There were about 19 early countries that were negotiated that have them, but it is again limited to only those with severe disability.

**CHAIR**—Okay. It would just be useful to have that defined in terms of which covers what. That would be great.

**Senator BOYCE**—Could I just get another list on that basis: what is portable and what is not in Australian pensions?

**Ms Stawyskyj**—In terms of portability, the only pension that has indefinite portability is the age pension. All other pensions, payments and allowances have portability restrictions—

**Senator BOYCE**—I had a couple of questions around that, too.

**Ms Stawyskyj**—or no portability. For example, Newstart has no portability.

**Senator BOYCE**—Yes. Could we have a list of portable, limited portable and not portable? Is that doable?

**CHAIR**—In terms of payment type?

**Senator BOYCE**—Yes.

**Mr Moufarrige**—Yes.

**Ms Stawyskyj**—Yes, it is.

**Senator BOYCE**—The welfare rights people were concerned that if this bill is passed in the next period and comes into effect on 1 January 2011, there will be very limited time to let people know for them to make choices about what they can and cannot do and also to have any kind of an awareness information campaign. Does the department have plans for how they will advise people about where they fit and what their options are, and is there any consideration to the time frame involved?

**Mr Moufarrige**—Given the small number of people involved, Centrelink plan to actually contact people individually, people that they believe may be affected by this change.

**Senator BOYCE**—Immediately affected, but have we not said that we have over 100,000 people who could potentially be affected?

**Ms Stawyskyj**—As we said, there have already been two media releases, so there has been some publicity and awareness. There will be further publicity in a general sense and obviously Centrelink will, in its way, publicise the eligibility and qualifying rules for disability support pension. What Mr Moufarrige is talking about is those that will be immediately affected will be immediately contacted by Centrelink.

**CHAIR**—These people would automatically be coming back into Australia within periods of 13 weeks now, would they not?

**Ms Stawyskyj**—Yes.

**Mr Moufarrige**—Yes.

**CHAIR**—We had a particular case raised by welfare rights that actually talked about a blind pensioner in Indonesia and they were desperately trying to contact the person to let them know that these things could be happening. My understanding, unless that person was a pre-2004 person who is not affected anyway, is that person would have to be returning to Australia every 13 weeks to remain eligible currently for the payment; is that accurate?

**Ms Stawyskyj**—That is true; that is what they are doing.

**Mr Moufarrige**—They would have to notify Centrelink on arrival in Australia.

**CHAIR**—Yes.

**Senator BOYCE**—How long would they have to get their affairs in order, to make that decision about whether to become permanent Australians or live overseas permanently?

**Mr Moufarrige**—To a certain extent that is down to the Centrelink assessment process and the timing of the legislative change.

**Senator BOYCE**—But we are talking about this potentially coming into effect on 1 January, are we not?

**Mr Moufarrige**—That is right.

**Senator BOYCE**—So, do they have to decide on 1 January or how long after 1 January?

**CHAIR**—Would that depend on what stage they are at in their cycle of attendance in Australia?

**Mr Moufarrige**—It does. If they have started a 13-week cycle before 1 January, they will complete that 13-week cycle under previous legislation.

**Senator BOYCE**—But people would potentially need to sell property or make other arrangements; would they? What allowances are there for that?

**CHAIR**—Is there any discretion at all in the legislation for these personal circumstances to be considered?

**Mr Moufarrige**—Yes. Centrelink will still have to go through the process under section 7 of assessing this person's residency status, which will take some time; it is not a cut and dried arrangement.

**CHAIR**—That seems to be a major concern of some of the welfare organisations, that even though this particular change has been in the wind for a long time there does not seem to be a lot of awareness around it. The public process seems to be two media releases and I am not sure how actively people are seeking those media releases, particularly if they are overseas. So, there would be personal contact but I think the concern is that if someone is very much in a split resources situation in terms of making that degree of commitment either way, there would need to be some support for that. Can we find out from Centrelink—if you could pass that on as they are your payment arm—whether there is consideration for those situations available in the current operations and the flexibility that is available, because each case will be different?

**Senator BOYCE**—Would that flexibility or the lack of it not simply be what you have directed them to have? Will Centrelink's criteria not be the ones you have given them?

**Ms Stawyskyj**—There would be some transition.

**Mr Moufarrige**—There will be at least three months. Given the current portability arrangements allow for 13 weeks, there will be at least a three-month window in which assessments will take place.

**Ms Stawyskyj**—Centrelink will contact each of the people who may be in that category, who have been travelling frequently back to Australia to renew their disability support pension eligibility. That will take time and take into consideration a range of factors, but there is a minimum of three months. We will also get back to you with information after we have talked to our Centrelink colleagues.

**Senator BOYCE**—As I said, that does not seem to be a lot of time to perhaps arrange the sale of a property and settle all your affairs if you have chosen to return to Australia permanently on the basis of this piece of legislation.

**Ms Stawyskyj**—We will seek advice on that and provide it.

**Senator BOYCE**—We were talking earlier about the definition of disability support pension. There was evidence from a large number of submitters and from every witness this afternoon, other than yourselves, suggesting that really the comparison of the disability support pension should be with the age pension and not with other workforce and age related payments, and that we have, perhaps, gotten ourselves in the somewhat unfortunate position where ‘severely disabled’ includes people who are expected to recover and also includes a significant number of people who have a chronic long-term disability, whether that be an intellectual one at birth or one that has been acquired later on. Could you tell me how you are currently working and handling those definitions and why you perceive disability support to be in a different category entirely from the age pension?

**Ms Stawyskyj**—Disability support pension is seen to be a working age payment and therefore be lined up—

**Senator BOYCE**—Yes, we have talked about that, but I meant it is clear that the age of a lot of the people who receive the disability support pension is irrelevant to their disability. They have a disability, therefore they receive a pension. It is not age related; it is not related to the fact that they are of working age; that is what I am saying?

**Ms Stawyskyj**—It could be for a large number of people.

**Senator BOYCE**—But it is not for all of them?

**Mr Hatch**—DSP is income support for people who cannot support themselves through employment.

**Ms Stawyskyj**—DSP is income support for those who cannot support themselves through employment. Now, that may be for a short time or it may be for a longer period of time, but again I think it is a matter for government where that definition of ‘disability’ comes and it is currently considered in line with other working age payments.

**Senator BOYCE**—Perhaps you could define the age pension for me. What is it?

**Ms Stawyskyj**—It is a payment that a person receives when they reach, for women, 64 and a half, and men, 65, which had been deemed to be the age at which they are no longer required to look for work and participate in the workforce, though as we know a large number of people still continue to do that.

**Senator BOYCE**—I guess just using your term there of ‘required to look for work’, there are a large number of people who are on the disability support pension who are also not ‘required to look for work’ because we know they would not have the ability to undertake work. I have concerns around the definition.

**CHAIR**—Thank you very much. We require the answers on notice by Thursday as this bill has, from our perspective, got to be tabled on Monday. Thank you very much for your time. That brings to an end our hearing on the FaHCSIA this evening, so thank you very much, thank you to the secretariat and thank you to Hansard.

**Committee adjourned at 7.27 pm**