

Appendix 3

Correspondence



The Hon Christian Porter MP
Minister for Social Services

MC16-003039

The Hon Philip Ruddock MP
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

15 APR 2016

Dear ~~Mr Ruddock~~ Philip

Thank you for your letter of 16 March 2016 regarding the Social Services Legislation Amendment (Enhanced Welfare Payment Integrity) Bill 2016 and the restrictive approach of a Departure Prohibition Order (DPO) on a person's right to freedom of movement.

The Parliamentary Joint Committee on Human Rights – Human rights scrutiny report of 16 March 2016 notes that the Committee has assessed the proposed powers to issue DPOs against article 12 of the International Covenant on Civil and Political Rights (right to freedom of movement) and considers it raises questions as to whether the measure adopts the least rights restrictive approach.

The Committee states that the proposed powers to issue DPOs engage and limit the right to freedom of movement and is seeking advice as to whether the limitation is a reasonable and proportionate measure for the achievement of the stated objective, in particular, whether the measure is sufficiently circumscribed to ensure it operates in the least rights restrictive manner.

This Bill provides for the Secretary to make a DPO prohibiting a person from departing Australia for a foreign country if the person has one or more debts to the Commonwealth and there are no satisfactory arrangements in place for one or more of the debts to be wholly repaid. This is consistent with the treatment of people with child support and taxation debts.

The Australian Government will only target people with a social welfare payment debt who refuse to enter into, or honour, an acceptable repayment arrangement, and who have the means to repay their debts to the Commonwealth. The Government believes it is not appropriate for an individual to travel overseas when they have the means to fund that travel but have not set up any arrangement to repay their outstanding debt to the Commonwealth.

The principle of mutual obligation is at the heart of our welfare system in Australia. Mutual obligation is based on the concept that welfare assistance funded through the taxpayer should involve some return responsibilities for the recipient. Where payments have been made that are greater than the recipient was entitled to receive and a debt is incurred, it is reasonable that the Government recover those debts. This Bill incentivises debtors to take responsibility for paying their debts in a timely manner where they have the financial capacity to do so.

The Bill (Section 102A) outlines when the Secretary can make a DPO prohibiting a person from departing from Australia for a foreign country. Firstly, the person must have one or more debts to the Commonwealth under the relevant provisions in the Social Security Law, Family Assistance Law, Paid Parental Leave Act and Student Assistance Act, which also provide for debtor rights of review and appeal against a debt liability.

The Secretary will not make a DPO unless they believe on reasonable grounds it is desirable to make the order to ensure the person does not leave Australia for a foreign country without having wholly paid the debt, or there being satisfactory arrangements in place to repay the debt. What constitutes a satisfactory arrangement will depend on the facts of the case.

While the Bill does not set out minimum thresholds on the amount of outstanding debt or the length of time that a debt remains unpaid, these factors will be considered. The following sets out the factors that the Secretary must have regard to before making an order:

- the person's capacity to pay the debt – people with debts are encouraged to talk to Centrelink about their ability to pay off their debt over time. In cases of severe financial hardship, a thorough review of a debtor's capacity to repay will be undertaken, and debtors will be given a reasonable amount of time to repay their debt;
- whether any debt recovery action has been taken and the outcome of the recovery action – the making of a DPO will be a debt recovery method of 'last resort' (as is the case with child support debts) once other viable debt recovery mechanisms have been exhausted and the debtor has continually, without reasonable grounds, failed to make a satisfactory arrangement;
- the length of time the debts have remained unpaid – as previously indicated, a DPO will be issued as a 'last resort' and therefore it is anticipated that the debt will have been overdue for a considerable amount of time; and
- any other matters the Secretary considers appropriate – these matters are not defined, and relate to the circumstances of the particular case. It is expected that the value of the debt would be a key factor for consideration. It should also be noted that provisions already exist to waive low-value debts. For example, under the Social Security Law, debts less than \$200 may be waived where it is not cost-effective for the Commonwealth to recover. It is expected than any factors considered relevant to the decision, and the impact it has on the decision, would be clearly documented.

This system will closely align with the existing DPO system in place for child support debtors under the *Child Support (Registration and Collection) Act 1988*. As at January 2016, of approximately 120,000 child support debtors, around 2,100 or less than 2 per cent had been issued with a DPO. As is the case with child support, it is expected that DPOs will only be issued to a very small number of social welfare payment debtors as a debt recovery method of last resort. It should also be noted that the Secretary has delegated his powers to the Chief Executive of Centrelink, who will only authorise Senior Executive Officers with the power to issue a DPO.

In the case that a DPO is issued, the Government is mindful of reasons why people may be required to travel overseas, and procedures will be put in place to issue a Departure Authorisation Certificate (DAC) allowing people subject to a DPO to travel overseas in certain circumstances. A DAC may be granted on humanitarian grounds or where the person's travel may be in Australia's best interests.

I recognise that the Bill engages and limits the right to freedom of movement. However, I consider that the restriction on rights is both proportionate and reasonable to protect the integrity of welfare payments which is vital for ensuring a fair and sustainable welfare system.

It is important to remember that debt only arises where a person receives a payment to which they are not entitled and it is essential that debtors repay their debts where they have the financial capacity to do so in order to protect the rights of all social welfare payment recipients.

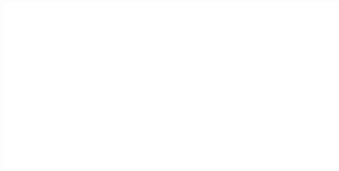
We must ensure that those most in need do not miss out on financial support at the hands of people who owe money to the Commonwealth and have the funds to travel overseas.

Given that an individual can avoid a DPO by entering into a payment arrangement to repay their debt where they have the financial capacity to do so, and that the decision to issue a DPO will not be taken lightly as per the conditions and criteria outlined previously, I consider that the Bill sufficiently meets the least rights restrictive approach test.

It is important to note that people who owe money to the Commonwealth, and have entered into a satisfactory repayment arrangement, will not be issued with a DPO. I consider that where debtors refuse to repay their debt, it is both reasonable and proportionate for a DPO to be considered to protect the rights of other welfare recipients in need of financial support.

Thank you again for bringing the Committee's concerns to my attention.

Yours sincerely



The Hon Christian Porter MP
Minister for Social Services



**THE HON PETER DUTTON MP
MINISTER FOR IMMIGRATION
AND BORDER PROTECTION**

Ref No: MS16-001134

The Hon Philip Ruddock MP
Chair
Parliamentary Joint Committee on Human Rights
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Philip
Dear Mr Ruddock

Thank you for your letter of 16 March 2016 in which the Parliamentary Joint Committee on Human Rights requested further information in relation to the *Migration Amendment (Resolving the Asylum Legacy Caseload) Regulation 2015*.

My response to the request for further information is attached.

Thank you for raising this matter.

Yours sincerely

PETER DUTTON

27/04/16

Right to Freedom of Movement

The committee's assessment of the measure against article 12 of the International Covenant on Civil and Political Rights (right to freedom of movement) is that it limits the right to freedom of movement and raises questions as to whether this limitation is justifiable.

1.113 The Minister for Immigration and Border Protection's response does not provide any assessment as to whether the limitation on the right to freedom of movement is justifiable. The committee reiterates its request for advice from the Minister for Immigration and Border Protection as to:

- whether there is a rational connection between the limitation and the objective sought to be achieved; in particular, how does denying access to travel to Safe Haven Enterprise Visa, or former, Safe Haven Enterprise Visa holders to any country further the objective of maintaining the integrity of the protection visa regime; and**
- whether the limitation is a reasonable and proportionate measure for the achievement of that objective; in particular, whether it is the least rights restrictive approach; and why it is necessary to entirely prohibit access to Bridging Visa B for all Safe Haven Enterprise Visa, or former Safe Haven Enterprise Visa, holders**

The Government maintains its position that the removal of access to Bridging visa Bs for SHEV holders or former SHEV holders is not a restriction against article 12 of the ICCPR or any other international human right.

In relation to the additional concerns the committee has raised in regards to former SHEV holders ability to obtain travel documents for the purpose of leaving Australia, anyone in Australia or its territories who is not an Australian citizen, and is unable to obtain a travel document from their country of nationality can obtain a travel document through the Department of Foreign Affairs and Trade (DFAT). However any such document, issued to a former SHEV holder, would not confer any right to return to Australia.

As former SHEV holders will have access to travel documents the Government does not consider that the removal of access to Bridging visas Bs will either limit their ability to leave Australia (Art12(2)), or to enter the SHEV-holder's own country (Art12(4)).

