

# Indefinite Portability of Pensions and Former Residents

This Fact Sheet provides information for people who want to live overseas and receive an Australian social security pension.

**I've been living overseas and I want to come back and claim a Centrelink payment but I've been told that I may not be able to be paid straight away. Why?**

To qualify for most social security payments it needs to be that you are an "Australian resident" according to the definition set out in section 7(2) of the Social Security Act.

It is not enough to be an Australian citizen, a permanent resident or a "protected Special Category Visa holder" (see the Social Security payments for New Zealand citizens living in Australia factsheet\*) – you also need to "reside in Australia".

To make a decision about whether you currently "reside in Australia" Centrelink must consider the following:

- The frequency and duration of your travel outside Australia.
- The nature of the accommodation used by you in Australia.
- The nature and extent of the family relationships you have in Australia.
- The nature and extent of your employment, business or financial ties in Australia.
- The nature and extent of your assets located in Australia.
- Any other matter relevant to determining whether you intend to remain permanently in Australia.

This decision should be made based on all the available evidence and no single factor is conclusive on its own. But in the majority of

cases the most weight should be given to the length of time spent in Australia.

If you've been out of Australia for some time, you may need to take some steps to satisfy Centrelink that your intention is to remain in Australia – e.g. signing a lease, opening a bank account or buying a car. Similarly steps you have taken to break your ties overseas such as evidence that you had sold property (house, furniture, car etc.), quit your job or cancelled any other contracts (e.g. a lease or mobile phone contract) can also help. This may take some time. You should not assume that you will be residentially qualified for payment immediately on your return to Australia.

*NB Different residency requirements apply in respect of Family Tax Benefit and other family payments, Special Benefit, payments made under the "Special Rule" for non-protected Special Category Visa holders and payments made under International Social Security Agreements. Contact Centrelink for more information.*

**I thought you could be paid Age Pension outside of Australia for as long as you like but Centrelink say that I won't be able to be paid outside Australia at all if I leave again within two years.**

If Centrelink make a decision that you have ceased to "reside" in Australia, then once you have recommenced "residing" in Australia you will not be able to take your pension outside of Australia within the following 24 months of again becoming an Australian resident – this applies to Age Pension, Disability Support Pension, Wife Pension, Widow B Pension and Bereavement Allowance.

The legislation allows no discretion to grant portability of pensions during the first 24 months after having resumed "residing in

Australia". It is possible to have your payment suspended for short periods while you are outside Australia so that you do not have to reclaim on your return to Australia - your payments can simply resume once you return.

You should note that even if you return to Australia and "resume residing" after receiving Age Pension overseas for years, there is a risk that these provisions could prevent you from being paid outside Australia again.

Centrelink may take the view that you have "resumed residing" in Australia and you would have to continue "residing" in Australia for 2 years before having indefinite portability of your payment. However, if you can show that you only returned to Australia for a visit and never intended to permanently return then the rules would not apply to you.

These provisions do not apply to people who qualify for payment under an International Social Security Agreement.

If you disagree with Centrelink's decision to find that you ceased "residing" in Australia and you were able to successfully appeal that decision then these provisions would not apply to you.

These provisions do not apply to people who are eligible for financial assistance under the Medical Treatment Overseas Program, or to people who need to accompany someone who does.

### **I need to return to Australia to claim a pension and then I'm going to leave again as soon as I can.**

Some people who have been living overseas may wish to return to Australia to claim a pension with unlimited portability with a view to taking it overseas with them again.

You should be aware that a new claim for such a pension can only be successful where on the evidence available there is a clear intention to remain permanently in Australia.

If Centrelink believe that you only intend to return Australia for a 24 month period then they will not be able to find that you "reside in

Australia" and will not be able to grant you payment.

Even if you convince Centrelink and are granted Age Pension you will have it cancelled if you leave within 2 years of being granted (see above).

### **I live outside Australia and I get Disability Support Pension paid to me under the new indefinite portability rules. Will I have to return to Australia to claim Age Pension?**

You can continue to receive Disability Support Pension after you reach Age Pension age if you are already on this payment. The basic rate of Disability Support Pension is the same as Age Pension. You may be able to transfer from Disability Support Pension to Age Pension without making a claim by calling Centrelink. You should speak to Centrelink or the Financial Information Service (132 300) about whether it is better for you to stay on Disability Support Pension or transfer to Age Pension.

### **Centrelink said that after 26 weeks outside the country my rate of Age Pension will go down.**

If, in the years between your 16th birthday and reaching Age Pension age, you lived in Australia for less than 35 years then your payment will be "proportionalised" and you may receive less than the maximum rate.

As a general rule you will be paid a proportion of Age Pension that reflects the number of years you lived in Australia between 16 and Age Pension age. There are some specific exemptions to proportional portability rules.

You should note that supplementary payments like Rent Assistance and Pension Supplement can only be paid outside Australia for limited period where your absence is temporary. If you leave Australia to live overseas permanently you will stop getting Rent Assistance immediately

and your Pension Supplement will reduce to the basic amount after 6 weeks if you receive Age Pension, or 4 weeks if you receive Disability Support Pension and you have indefinite portability. You should speak to Centrelink International Services (131 673) about your rate before you leave and get a receipt number.

### **I'm returning to Australia and my partner is coming with me. Will they be able to get a Centrelink payment as soon as they get permanent residency?**

You should read the Newly Arrived Residents and Social Security factsheet\*. Some spousal visas are not considered to be permanent visas and you should make relevant enquiries.

### **I have a partner who lives with me overseas**

If Centrelink make a decision that you are a "member of a couple", then you will receive a lower, "partnered" base rate of payment and your partner's income and assets will be taken into account when calculating your payment (see the Member of Couple of Single? factsheet\*).

If there is a special reason that places you in financial hardship (for example, you are returning to Australia and your partner is unable to accompany you and they have insufficient financial resources to provide you with any financial support) then you can request that Centrelink consider exercising a discretion found under section 24 of the Social Security Act to treat you as a single person because there is a special reason to do so.

- The section 24 discretion is not exercised regularly but you have a right to request that Centrelink consider whether they can.
- If the answer is no you have a right to appeal to an Authorised Review Officer. You should appeal within 13 weeks of receiving notice of Centrelink's decision in order to

protect your rights to full back pay if your appeal is successful.

- Using the section 24 discretion is considered a last resort – Centrelink will want you to investigate all other options for support before will consider exercising this discretion. Centrelink will be very reluctant to exercise the discretion if they take the view that you have placed yourself in hardship.

For more information on Appealing and the Disability Support Pension please refer to the resources sections on our website for further Fact Sheets.

<http://www.brq.org.au/resources-and-education/>

### **Please Note:**

This Fact Sheet contains general information only. It does not constitute legal advice. If you need legal advice please contact Basic Rights Qld on **3421 2510** or if outside of Brisbane on **1800 358 511**.

Basic Rights Qld is a community legal centre, which provides specialist advocacy and legal services in Social Security and Disability Discrimination in employment law, administration and policy.

We are independent of Centrelink and all assistance is free.

*This Fact Sheet was updated in February 2016*

[www.brq.org.au](http://www.brq.org.au)