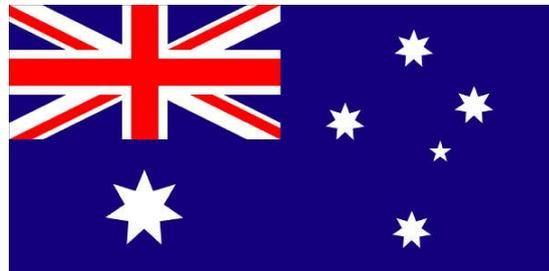


British Australian  
Pensioner  
Association Inc



## NEWSLETTER Number 30 Summer 2009

### FOCUS ON EQUALITY

#### FROM THE PRESIDENT

This is my first President's report since stepping into the breach when James Nelson stood down from the position due to personal reasons late last year. James has agreed to remain on the committee as Vice President on the understanding that he will do only what he is able to do. I thank James for his past leadership and continuing contribution to BAPA. As I am based in the UK I may be away from the action in Australia but I am able to be closer to the action in the UK which sometimes has its benefits.

##### Carson Case Update

The International Consortium of British Pensioners, including several BAPA members, assisted in the preparation of the letters requesting an appeal of the Carson Case to the Grand Chamber (17 members) of the European Court of Human Rights following the 6—1 loss at the original hearing.

The letters were lodged with the ECHR in mid January 2009 and will be considered by a panel of 5 judges to see if they believe there is sufficient merit to go ahead with the Appeal. We are awaiting their deliberations hopefully later in the year.

Work and Pensions Select Committee of the House of Commons

John Markham, Director of Parliamentary Affairs for the ICBP, attended a hearing of the Select committee on 19th January 2009 which was looking at discrimination in the Social Security system. He found that the Select Committee was concentrating on access to services for minority groups, for example, hepatitis B sufferers and there was little or no opportunity to raise the frozen pensions issue. However the Chairman of the Select Committee, Terry Rooney MP, who has never previously been particularly supportive of our campaign, was helpful on this occasion in suggesting that the ICBP

might be interested in providing a submission to the Select Committee later in the year on the pensions issue.

##### The Way Forward

Whatever the eventual outcome of the Carson case, it is clear that the Government use the case as an excuse for sitting on their hands whenever they are questioned about the unfairness of the frozen pensions policy. Neither of the two main political parties in Britain are supportive of our issue in their political manifestos. The Liberal Democrats appear to be the most sympathetic party, however they seem to have a half baked policy of indexation from the current pension level which is unacceptable to all the British overseas pensioner groups.

Peter Morris  
President

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## WHAT IS MALADMINISTRATION?

"Maladministration" is the term used to describe the action or inaction that leads to a failure in the processes of government.

The term is not defined within the Parliamentary Commissioner Act 1967 but the following examples were quoted by Richard Crossman, Leader of the House of Commons, when the Parliamentary Commissioner Bill was taken through Parliament in 1966.

'bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude and arbitrariness"

A fuller interpretation of maladministration was given in the Parliamentary Ombudsman's Annual Report 1993.

Treasury Ministers endorsed the interpretation in November 1994, in evidence to the then Select Committee on the Parliamentary Commissioner for Administration.

The Ombudsman's examples of maladministration are repeated here for ease of reference.

\*rudeness (though this is a matter of degree)

\*unwillingness to treat the complainant as a person with rights.

\*refusal to answer reasonable questions.

\*neglecting to inform a complainant on request on his or her

rights or entitlements.

\*knowingly giving advice which is misleading or inadequate.

\*ignoring valid advice or overruling considerations which would produce an uncomfortable result for the overruler.

\*offering no redress or manifestly disproportionate redress.

\*showing bias, whether because of colour, sex or any other grounds.

\*omission to notify those who thereby lose a right of appeal.

\*refuse to inform adequately of the right of appeal.

\*faulty procedures.

\*failure by management to monitor compliance with adequate procedures.

\*cavalier disregard of guidance which is intended to be followed in the interest of equitable treatment of those who use a service.

\*partiality, and

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\*failure to mitigate the effects of rigid adherence to the letter of the law where that produces manifestly inequitable treatment.

You will have read the article in our Newsletter 27 where I had complained to the Ombudsman of a case when the DWP had failed to

inform me in 1988 that my SERP would be frozen should I retire to Australia. In spite of supplying concrete evidence backing my claim, Ms Abraham rejected it saying she felt that I had not provided sufficient evidence to warrant her intervention. Since then, after a great deal of persuasion and perseverance, Mr Cliff Newman, a high ranking Civil Servant in the DWP sent me an email admitting the DWP had in fact failed to inform me that in the event of retiring to Australia my SERP would be frozen! Armed with this NEW evidence I again approached Ms Abraham with the fact that because of the DWP's failure to inform me I have been left financially embarrassed. One would think such evidence would be sufficient ..... But I am yet to

hear from her. Pensions Minister James Purnell is equally guilty. When I attempt to phone his office there is no reply. One might think the largest of all Government Departments would have someone available to answer. By the way the Commons switchboard gave me the number and put me through so there was no error on my part. Just something a bit fishy methinks.

Derrick Prance

## COMMUNITY CABINET MEETING

The federal cabinet has recently met in country areas and had questions and answers sessions with members of the community. Recently they met in the Geelong area, and Sandy Parker took the opportunity to attend.

He was able to get an interview with Jenny Macklin. He reports that she was

"Sympathetic but not encouraging" She expressed exasperation at the intransigence of the UK government in refusing to seriously consider a new "reciprocal agreement" She had with her the assistant who has been responsible for negotiations. He mentioned that the Australian, Canadian and New Zealand governments are now seeking to

make a joint approach to the UK government.

I also drew Jenny's attention to Gordon Brown's recent remarks about "fairness for all" apropos the Queen's Speech.

Sandy also thanked Jack Stoner for assistance in preparing for this interview.

## A PENSION FOR THE WIFE

A letter in issue 76 of News for Seniors draws attention to the pension which can be paid for a wife even if she is not British born or never worked in the UK. It was supposed to contain the name and phone number and email address of both Jim Tilley and James Nelson. Owing to some technical glitch it contains his name and phone number but no email address, and the BAPA email address with no name and telephone number.

So he gets all the phone enquiries and I get all the email enquiries—lots! I composed a new Pensions Guidelines for the web site. If a man has a basic pension(\*) from the British National Insurance Scheme, he can get an additional pension for his wife. It does not matter if his wife is not British and has never worked in Britain.

If the wife has not yet reached retirement age(\*\*) the pension is an Adult Dependency Increase. It is work tested and income tested. It is paid to the husband

in addition to his own pension.

If the wife has reached retirement age then the pension is called "category B" and is paid to the wife. It is not means tested.

Be aware that the DWP does not automatically convert a dependency supplement to a category B pension, you have to apply.

The pension is in both cases almost 60% of the husband's basic pension.

(\*) Basic pension is part of the total state pension. The husband may have a graduated retirement benefit (grb) and a S2P pension, but neither of these attracts a wife pension.

(\*\*) Retirement age for a woman born before 1950 is 60. For women born after 1955 it is 65. For women born between 1950 and 1955 it is on a sliding scale. DWP will need the

if the wife is not British and has never worked there they will require her to apply for a National Insurance Number.

If the wife has a basic pension in her own right, then her pension and the category B pension will be added together to give a "composite pension", but there is an upper limit; she cannot get more than the category B pension. DWP advise that Adult Dependency Increase will be phased out from 2010. People who get it will still get it but no new awards will be made. They have not made it clear whether men reaching the age of 65 before April 2010 will be able to apply or whether the new rules only apply if you reach the age of 65 after April 2010. So if you are eligible, get on to it straight away.

If people still get the ADI in 2020 it will stop then. Perhaps not many of our male members have very young wives so will not be affected. (^:\*)

The phase-out rules do not affect category B pensions.

James Nelson

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## UK/AUSTRALIAN RECIPROCAL AGREEMENT

Subsequent to the adverse European Court of Human Rights judgment, Jenny Macklin, the Minister for families, Community Services and Indigenous Affairs issued a media release stating that the Australian Government was very disappointed by the ECHR ruling and believes that the UK's policy is discriminatory even if the court found it technically lawful. However, the Australian Government will continue to pursue this matter with the UK Government on behalf of all UK pensioners in Australia. Considera-

tion would also be given to approaching other affected governments to explore working together on this issue and what action, if any, may be possible at the next Commonwealth Heads of Government meeting.

I had previously alerted the Minister of the 484 comments generated by the Weekly Telegraph article regarding the ECHR judgment which was overwhelmingly critical of the Court ruling.

I also commented to the Minister on the one aspect of the Court assessment which emphasized

the need of a reciprocal agreement to secure indexation, and with this in mind, I included some possible inducements for reopening further discussions relating to the previous agreement as it has become patently obvious that some form of compromise will be required to overcome the intransigency of the UK Government. I duly received a thank-you from the Minister, so hopefully these aspects will be considered prior to any future discussions with Rosie Winterton the new UK Pensions Minister. Jack Stoner, Hon Sec

## Written Questions and Answers in the House of Commons UK

"They work for you" is an interesting and informative website for following what MP's discuss. On 8th December 2008, John Baron, Conservative MP Billericay, asked the Secretary of State for Health : "what estimate he has made of the annual savings accruing to his department as a result of expatriates resident in Australia meeting the cost of their healthcare".

Dawn Primarolo, Labour MP Bristol South, Minister of State (Public Health) Department of Health replied "The Department does not hold data on the cost of healthcare for UK expatriates resident in Australia. The UK does not fund the healthcare costs of British citizens resident in non-European countries and therefore does not consider these to be cost savings. It is the responsibility of individuals to make their own healthcare arrangements when they move to Australia."

The above Question and Answer were recorded in Hansard.

To me it was obvious that Dawn Primarolo had not understood the question. I emailed her as follows:

"The question asked by John Baron MP on 8th December 2008 was, I think ,misunderstood. The point I think he was making was that British emigrants living in Australia save the British Government money in many ways and health is one of them. There must be a table showing how much each resident in the UK costs the health service per annum for life. Some will need

more treatment than others and some will live longer than others but there must be an average per capita cost which is calculated by the government actuary? This is the amount John Baron was asking for. It goes without saying that they paid into the National Insurance Fund while working here.

I do not know how many British people of all ages there are in Australia but there are about 500,000 pensioners who have had their pensions frozen from the first day of receiving them in Australia. I was a "frozen pensioner" there for 13 years but have returned to live in the

UK with my husband. We are in our 70s. Since returning our pensions have risen in line with the UK residents' state pensions and we have received added help with house insulation, winter fuel allowance and bus passes. We have not had to use the health service but no doubt at some point we will. Those were further savings to the UK government while we were not living here.

I look forward to your answer to the question."

Imagine my surprise when this reply came, not from the MP but from an assistant asked to reply on her behalf.

"The Department does not have a cost per lifetime per resident figure, as the NHS funding is not provided in this manner. The NHS is an overall cost to the Govern-

ment and therefore no money is saved when residents emigrate to other countries.

I should also clarify that the majority of NHS funding comes from general taxation. National Insurance contributions are used to fund various social security benefits.

I hope this reply is helpful"

So we save them nothing at all!!!!

My reply reflected my surprise:

"Your reply cannot possibly correct! There is no logic in it! I lived in Australia on a frozen pension (money saved by UK there), had several treatments by our local doctor, including flu jabs (more money saved). My husband had a heart operation and spent several days in hospital (more money saved) We were in Australia for 18 years and we DID save the UK government a great deal of money in my unpaid pension indexing for 13 years. Older pensioners living in Australia are saving the country an enormous amount! Your assertion that no money was saved by our stay in Australia is total nonsense and it is worrying that the Health Service talks such nonsense. We are now back in the UK permanently and reaping the benefit of our National Insurance payments. I suspect you may not have been properly briefed and should question those who gave you this information. It is false".

Dian Elvin  
Long Hanborough  
Oxfordshire

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## THE COURT CASE

We lost 6—1

This was the terse SMS I received from Peter Morris just minutes after the verdict was published.

This was followed up quickly by a summary report on the parity web site and then by a full report of the judgment. Reading through the judgment can be very boring. It runs to 30 pages, but a lot of this is taken up with the recital of the litigants circumstances, and a lot with repetition of the judgments of the House of Lords and lower courts.

The only bright spot is the judgment of Lech Garlicki, who was president of the court. He was firmly on our side and has pointed out a number of weaknesses in the arguments advanced by the majority.

We now have to ask what the way ahead might be.

Someone reported recently that a woman had been told by her lawyer "You will not get justice, only law". I think we can extend this to "You will not get justice nor

even logic, only law". The Court seemed to uphold UK law without considering whether it is just. The Consortium lawyers are preparing an appeal, but they first have to go through a legal process to ask for permission to appeal.

Despite my pessimism I think it is better to fight on than to give in. But we need also to consider other ways, perhaps a well organized press campaign appealing to hearts and minds. Not to the hard hearted and narrow minded MP's, but to influential organizations such as Trade Unions. We know we have some support from them.

Here is an e-mail received from a

BAPA

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member.

Besides the arguments used by the dissenting judge the following should be considered:

1. Do other countries have a choice on having a reciprocal agreement with the UK, as the arguments seem to

suggest?

2. No reference appears to have been made to civil servants being exempt from non-indexation.
3. The NIF is seen as merely part of a taxation mix.

It would seem that, barring an appeal, a political approach needs to be tackled, although I have no faith in UK politicians.

Regards

Richard Lane

Comments from other members would be welcomed.

If you have access to the internet, have a look at

[www.pension-parity-uk.com/thejudgment](http://www.pension-parity-uk.com/thejudgment)

After you wade through the boring bits you can then get to the heart of the reasoning of the majority judges. We feel that the reasoning is flawed in many ways, giving rise to the possibility of a challenge. If you can help spot the weaknesses in their argument then you may be able to help.

## PENSION ENQUIRIES

Following the article in News for Seniors, most of the mail enquiries have related to the category B pension. But there has been a handful of other enquiries, all indicating that British migrants are not well informed on their pension rights. Some do not find out until they reach pension age and enquire about an Australian pen-

sion.

On the BAPA web site we cover the kind of questions that people should be asking, but of course people do not know to ask.

So, if you have friends who came from the UK other than as children, it could be a friendly gesture to let them know that they could be eligible. If they think that they

worked for so short a time in the UK that they could not possibly have rights to a pension, it may be worth enquiring, especially if they are not yet at retirement age or are only a year or two past that age. Voluntary contributions can make a big difference.

James Nelson

## PRESIDENCY

Following an accident which has temporarily disabled his wife,

James Nelson decided to retire from the presidency. The new

President is Peter Morris, and James has resumed his former position as Vice President.

# EUROPEAN COURT OF HUMAN RIGHTS —

## Where do we go from here?

We cannot simply ignore the drubbing we received in Strasbourg—the Government will drag it up at every opportunity, so we must seek to neutralize it on the grounds that it was based on a piece of legal frippery. I propose this text, appropriately adapted, should be used.

Begins

British legislators had created many years ago a rickety, convoluted legal structure to give a veneer of legality to what is a shameful, immoral practice, unique in the civilized world, of discriminating between expatriate pensioners on the basis of their country of residence.

The European Court of Human Rights in a blinkered judgment (to be appealed by frozen pensioners to the Grand Chamber) had extended to the United Kingdom a “margin of apprecia-

tion” (allowing them to continue the flagrant injustice) based on this flimsy legal edifice, just as English judges had done, save for Lord Carswell who in a persuasive dissenting opinion had roundly condemned the UK policy as being in breach of the European Convention on Human Rights. This was echoed by Judge Lech Garlicki, President of the Strasbourg Court which heard the pensioner case, when he said

“.....the existing system is not based upon any cogent scheme....This makes the majority’s references to the margin-of-appreciation doctrine (see page 81 of the

judgment) less convincing...the doctrine of margin of appreciation cannot legitimize a situation of an illogical and, therefore, arbitrary nature.....Finally I have complete

respect for the House of Lords position that the matter is more legislative than judicial in nature. However, such an argument, while convincing at the domestic level, cannot prevail before our Court. A violation that results from legislative omissions is still within the reach of European supervision.

But the argument should not turn on abstruse legal constructs. It is a moral issue. Can there be any justification in withholding part of something which has been paid for over a working lifetime? We frozen pensioners are the victims of the mess in British expatriate pension policy, exacerbated by the collapsing pound. We must fight to be heard in the Grand

Chamber where we should base our case on the powerful, persuasive arguments of Judge Garlicki

Brian Havard

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## Grandchildren

A second grader came home from school and said to her Grandmother, “Grandma, guess what? We learned how to make babies today.” The Grandmother, more than a little sur-

prised, tried to keep her cool. “That’s interesting,” she said, “how do you make babies?” “It’s simple,” replied the girl. “You change ‘y’ to ‘l’ and add ‘es’.”

When my Grandson asked me how old I was, I teasingly replied, “I’m not sure”. “Look in your underwear, Grandpa,” he advised, “mine says I’m four to six.”

## TREASURERS REPORT

As Treasurer I am sorry to have to inform members that all our printing and postal costs for the Newsletter have gone up by quite a substantial amount.

As you know we rely on the generosity of members to contribute to the cause and we do not insist on a yearly membership fee as

some of our members finances are very strained. We are, however, reviewing our membership lists and if we have not heard from members for a substantial length of time we may unfortunately have to drop them from our mailing list

If you wish to ensure your copy of

further Newsletters please drop us a line. If you cannot afford to contribute a note of encouragement or perhaps a story or two would be appreciated.

I look forward to hearing from you all.

Barbara Mather