

**National Interest Analysis [2023] ATNIA 9  
with attachment on consultation**

**Agreement between Australia and the Republic of Serbia  
on Social Security**

**done at Belgrade on 20 January 2023**

**[2023] ATNIF 9**

## NATIONAL INTEREST ANALYSIS – CATEGORY 2 TREATY

### SUMMARY PAGE

#### **Agreement between Australia and the Republic of Serbia on Social Security done at Belgrade on 20 January 2023 [2023] ATNIF 9**

##### **Nature and timing of proposed treaty action**

1. The treaty action being proposed is to bring into force the *Agreement between Australia and the Republic of Serbia on Social Security* done at Belgrade on 20 January 2023 ('the proposed Agreement').
2. Under **Article 24**, the proposed Agreement will enter into force on the 'first day of the third month following the month' in which diplomatic notes are exchanged by Australia and the Republic of Serbia ('Serbia') notifying each other all matters necessary to give effect to the proposed Agreement have been finalised. This is expected to occur later in 2023 following tabling and consideration by the Joint Standing Committee on Treaties (JSCOT). The tabling of the Agreement in Parliament prior to exchange of notes is being done with the agreement of both parties.
3. Given the timing of the signature of the Agreement at the beginning of the 2023 Parliamentary year, the 2023 Autumn Parliamentary sittings provide the earliest opportunity to table this National Interest Analysis (NIA).

##### **Overview and national interest summary**

4. Australia's social security agreements are bilateral treaties, which close gaps in social security coverage for people who migrate between countries. The social security agreements do this by overcoming barriers to benefit payments in the domestic legislation of each country, such as requirements on minimum contributions, past residence history, and current country of residence.
5. The proposed Agreement provides for enhanced access to certain Australian and Serbian benefits for people in Australia and Serbia and greater portability of these benefits between the two countries. Enhanced access to benefits is an underlying principle of bilateral social security agreements where the responsibility for providing benefits to people who move between countries is shared. Portability of benefits allows for the payment of a benefit from one country to a person in another country.
6. Under the proposed Agreement, residence in one country will not affect a person's entitlement to relevant benefits under the legislation of the other country. People who move between Australia and Serbia will be able to do so in the knowledge their entitlement to benefits is recognised in both countries. For Australia, the proposed Agreement covers the Age Pension and Superannuation Guarantee. For Serbia, the proposed Agreement covers pension and disability insurance.
7. The proposed Agreement will facilitate business between Australia and Serbia by ensuring employers and employees do not have 'double liability' in respect of the same work of an employee. This means, for example, when an employee from one country is temporarily seconded to work in the other country, the employer and/or their employee will not need to make compulsory pension or superannuation contributions in both countries, only in their home country.
8. The proposed Agreement will serve to reinforce Australia's political, business and strategic interests and will bring economic and social benefits to Australia. It will facilitate business links between Australia and Serbia by reducing costs and help to maximise the income of Australian residents, which will have positive flow-on effects within the Australian economy. It will also further strengthen bilateral relations between Australia and Serbia and provide choices in retirement for individuals who migrate between Australia and Serbia during or after their working lives.

## Reasons for Australia to take the proposed treaty action

9. The proposed Agreement incorporates the same principles as Australia's 31 other bilateral social security agreements. Consistent with these other agreements, it will enable Australia and Serbia to share the responsibility and cost of providing increased social security coverage for current and former residents of both countries.

10. Under the proposed Agreement, individuals may be eligible for relevant benefits from both countries if they meet certain criteria.

- a) People in either country will be able to combine periods of residence in Australia with periods of contribution in Serbia to meet the minimum 10-year residence requirement for the Age Pension and/or the minimum contribution requirements for Serbian pensions. This will enable them to access these benefits earlier than they would otherwise be able to. For example, a person with 5 years residence in Australia and at least 5 years of insurance contributions in Serbia would be able to combine those periods to meet the 10-year residence requirement to qualify for the Age Pension, rather than having to wait until they have 10 years residency in Australia.
- b) Eligible individuals will also be able to lodge a claim for a pension in either Australia or Serbia. Without the proposed Agreement, former Australian residents in Serbia would need to return to Australia to live if they wish to claim the Age Pension, as is currently the case.

11. Australian residents who wish to move to Serbia in their retirement (including those born in Serbia or with Serbian ancestry), Australian residents who have previously worked in Serbia, and former Australian residents living in Serbia will all be able to benefit under the proposed Agreement, depending on their individual circumstances. As at the 2021 census, Australia has around 25,000 Serbian-born residents and 94,997 people with Serbian ancestry. The number of Australians currently residing in Serbia is not readily available, as this data is not captured by Australia.

12. The Department of Social Services (DSS) estimates there will be almost 1,000 new Australian Age Pensions paid to people living in Australia and Serbia in the first three years of the proposed Agreement.

13. New Serbian pensions will also be payable in Australia under the proposed Agreement but it is difficult to estimate the number, as eligibility is a matter for Serbia. The additional Serbian pension inflows into Australia will benefit not only the recipients of these pensions but the Australian economy more broadly.

14. The proposed Agreement will also benefit Australian businesses operating in Serbia by reducing the costs they might otherwise incur. The proposed Agreement will exempt Australian employers whose workers are temporarily seconded to Serbia from having to pay compulsory Serbian insurance contributions in addition to the Australian superannuation contributions they already pay. Similarly, Serbian employers will not have to pay superannuation contributions in Australia for workers seconded to Australia if they are already paying insurance contributions in Serbia. The provisions in the proposed Agreement to remove double liability for superannuation contributions for Serbian businesses operating in Australia is expected to have a negligible impact on taxation revenue over the forward estimates.

## Obligations

15. **Part I** (Articles 1 to 5) of the proposed Agreement sets out general provisions. **Article 1** of the proposed Agreement contains definitions. **Article 2** sets out the legislative scope of the Agreement. The Agreement applies to Australia's social security law insofar as it relates to the age pension, and the law concerning the superannuation guarantee, and to Serbia's legislation concerning pension and disability insurance. **Article 3** sets out the personal scope of the Agreement. It applies to any person who is or has been an Australian resident, or is or has been subject to the legislation of Australia or Serbia. **Article 4** obliges the Parties to ensure equal treatment of people covered by the proposed Agreement, in regard to rights and obligations regarding eligibility for and payment of benefits. **Article 5** provides that benefits

payable by virtue of the proposed Agreement shall be paid to persons in the territory of either Contracting Party.

16. **Part II** (Articles 6 to 10) of the proposed Agreement concerns coverage including provisions to avoid double liability for superannuation or insurance contributions in respect of the same work of an employee. **Article 6** (Purpose and Application) sets out the purpose of this Part, which is to ensure that employers and employees are subject to the legislation of only one Contracting Party in respect of the same work. **Article 7** (Diplomats and Consular Relations) provides that the proposed Agreement will not affect the provisions of either the *Vienna Convention on Diplomatic Relations* or the *Vienna Convention on Consular Relations*. **Article 8** (Avoidance of Double Coverage) provides that where a person whose employment is subject to the laws of one Contracting Party is temporarily working in the territory of the other Contracting Party, in the employment of the Government of the first Contracting Party or in the employment of the employer or a related entity of that employer, the person and/or their employer will be subject only to the legislation of the first Contracting Party in respect of the work performed and remuneration paid for that work. In relation to a non-Government employee, the double coverage provision applies where the employee has not been in the territory of the second Contracting Party, in relation to the work for which the employee was sent, for a period exceeding three years. **Article 9** (Exceptions) allows the relevant government authority of each Contracting Party, defined in **Article 1(1)(2)** (Definitions) of the proposed Agreement (the Competent Authorities), or institutions they have designated, defined in **Article 1(1)(3)** (the Competent Institutions), to agree in writing to modify the application of **Article 8**. **Article 10** (Certificate on Coverage) requires the Competent Authority or Competent Institution of a Contracting Party to issue, upon request of an employer, a certificate specifying the employee is subject to the legislation of that Contracting Party and the duration for which the certificate is valid.

17. **Part III** (Articles 11 to 13) of the proposed Agreement applies to benefits under the legislation of Australia. Under **Article 1** of the Agreement, a benefit is defined as ‘a benefit, pension or allowance’ provided for in the legislation of a Contracting Party, excluding in the case of Australia ‘any benefit, payment or entitlement under the law concerning the superannuation guarantee’. For the purposes of **Article 11**, Part III of the Agreement only applies to Australian social security law related to the Age Pension.

18. **Part III:**

- a) obliges Australia to regard residents of Serbia, and Australian residents who are in Serbia, as Australian residents and as being present in Australia, for the purpose of lodging a claim for a benefit (Age Pension), provided the person has been a resident of Australia for at least 12 months at some time in his or her working life, (**Article 11**); and
- b) provides that, with certain conditions, periods of insurance in Serbia (defined in Article 1(1)(6) as being periods of paid contributions and equal periods regarded as such under the legislation of Serbia) will be regarded as periods of residence in Australia for the purpose of meeting any minimum qualifying period of residence for claiming a benefit (Age Pension), provided a period of insurance does not overlap with the person’s periods of Australian working-life residence (**Article 12**); and
- c) specifies how the rate of a benefit (Age Pension) will be calculated under the proposed Agreement and how this applies to a person who is inside or outside Australia (**Article 13**). For persons outside Australia, the benefit (Age Pension) is determined by calculating the person’s income according to the legislation of Australia and including any Serbian benefit the person or their partner is entitled to receive, applying the person’s rate of benefit under the relevant rate calculator in the legislation of Australia, and proportionalising the result based on the person’s period of Australian working life residence (where that period is less than 45 years). For persons inside Australia, the benefit (Age Pension) is determined by deducting any amount of Serbian benefit payable from the maximum rate of Australian benefit and then applying the relevant rate

calculator in the legislation of Australia to the remaining amount of benefit (but disregarding any Serbian benefit from the income used in that calculation).

19. **Part IV** (Articles 14 and 15) of the proposed Agreement applies to benefits under the legislation of Serbia. Certain periods of Australian working-life residence will be taken into account by Serbia for the purpose of meeting minimum insurance periods under Serbian legislation, provided the periods do not overlap with the person's periods of insurance accumulated in Serbia (**Article 14**). **Article 15** specifies how the amount of benefit is calculated. Where a person is entitled to a benefit under the legislation of Serbia without the application of **Article 14**, the amount of benefit is determined solely under the legislation of Serbia. Where a person is entitled to the benefit solely by virtue of **Article 14**, the Competent Institution of Serbia will determine the benefit amount according to the ratio of the person's period of insurance accumulated in Serbia and the total period accumulated under the legislation of Serbia and the legislation of Australia (**Article 15**).

20. **Part V** of the proposed Agreement (Articles 16 to 22) sets out various obligations relating to the administration of the proposed Agreement, including:

- a) for claims, notices and appeals concerning a benefit from either Contracting Party to be lodged in the territory of either Contracting Party (**Article 16(1)**);
- b) for the Contracting Parties to consider the date a claim, notice or appeal is lodged in one country as the date of lodgement in the other country (**Article 16(2)**);
- c) for the Contracting Parties to guarantee payment of benefits in the event currency transfer controls are imposed by either country (**Article 17(2)**) and without deductions for government administrative fees or charges (**Article 17(3)**);
- d) for the Competent Authorities and Competent Institutions of the Contracting Parties to assist each other, including the communication of information with regard to the determination or payment of relevant benefits, to protect the confidentiality of personal data, and to communicate and accept documents in any of the official languages of either Contracting Party (**Article 18**);
- e) for the Competent Authorities to establish an Administrative Arrangement to implement the proposed Agreement (**Article 19**);
- f) for the Competent Authorities or Competent Institutions to exchange annual statistics on the payments granted under the proposed Agreement (**Article 20**); and
- g) for the Competent Authorities to resolve, to the extent possible, any difficulties which arise in interpreting or applying the proposed Agreement according to its spirit and fundamental principles (**Article 21**) and for the Contracting Parties to meet to review the proposed Agreement upon request by either Contracting Party (**Article 22**).

21. **Part VI** (Articles 23 to 25) of the proposed Agreement contains transitional and final provisions. **Article 23** does not establish a right to a benefit for any period prior to the date on which the proposed Agreement enters into force (**Article 23(1)**), but ensures Serbian periods of insurance, periods of Australian residence and periods of Australian working life residence completed before the proposed Agreement enters into force will be taken into account when determining entitlements to benefits under the proposed Agreement (**Article 23(2)**).

22. **Article 23** also provides that the proposed Agreement will not apply in respect to periods of insurance which were liquidated by the granting of a lump sum payment or the reimbursement of contributions (**Article 23(3)**) and that the double superannuation liability provisions of **Articles 8(2)** and **(3)** (Avoidance of Double Coverage) of the proposed Agreement apply from the date of entry into force of the proposed Agreement, even if an employee from one Contracting Party was sent to work in the territory of the other before the proposed Agreement entered into force (**Article 23(4)**).

23. **Article 24** sets out the arrangements for the entry into force of the proposed Agreement. **Article 25** sets out the duration of the proposed Agreement and arrangements for continued entitlement to benefits under the proposed Agreement in the event of its termination.

### Implementation

24. The *Social Security (International Agreements) Act 1999* (Cth) ('the Act') gives effect in domestic law to Australia's bilateral social security agreements, which are set out in Schedules 2-32 of the Act. A new Schedule containing the full text of the proposed Agreement will be added to the Act as a legislative instrument pursuant to regulations made under **Sections 8 and 25** of the Act following the tabling of the proposed Agreement and consideration by JSCOT.

25. Pursuant to **Section 27(e)** of the *Superannuation Guarantee (Administration) Act 1992* (Cth) and **Regulation 12** of the *Superannuation Guarantee (Administration) Regulations 2018* (Cth), the provisions of Australia's bilateral social security agreements relating to double superannuation coverage are automatically given effect in Australian domestic law once the relevant agreement is added as a separate Schedule to the Act. The combined effect of **Section 27(c)** and **Regulation 12** is that payment of salary or wages to an employee who has been sent temporarily to work in Australia will not give rise to a superannuation guarantee obligation for the overseas employer, provided a relevant scheduled social security agreement is in place.

### Cost

26. The proposed Agreement was funded in the 2021-22 Federal Budget at an administered cost of approximately **\$9 million** over the forward estimates period from 2021-22 to 2024-25. This cost was based on an indicative 1 January 2023 start date, which was considered the earliest possible start date at the time, pending further engagement with Serbia. The actual administered cost of the proposed Agreement will depend on the final start date achieved once all treaty processes are completed but is not expected to vary significantly from the 2021-22 Budget figure over an equivalent four-year period.

27. Departmental costs incurred by DSS and Services Australia total **\$9.8 million** over the forward estimates period from 2021-22 to 2024-25, primarily for one-off set-up costs, noting this figure covers departmental costs for both the proposed Agreement and another social security agreement announced in the 2021-22 Federal Budget (costs for the proposed Agreement alone cannot be disaggregated).

### Future treaty action

28. The proposed Agreement does not contain a specific provision in relation to amendment of the proposed Agreement or for the negotiation of future legally binding instruments. In the absence of specific procedures, the Contracting Parties may amend the proposed Agreement by mutual agreement at any time in accordance with **Article 39** of the *Vienna Convention on the Law of Treaties*.

29. Nevertheless, **Article 22** of the proposed Agreement obliges the Contracting Parties to meet to review the proposed Agreement within six months of the request of either Contracting Party.

30. Any future amendments to the proposed Agreement, whether arising out of review of the proposed Agreement by the Contracting Parties under **Article 22** or arising out of ad hoc mutual agreement to change the proposed Agreement under **Article 39** of the *Vienna Convention on the Law of Treaties* would be subject to Australia's domestic treaty-making process.

### Withdrawal or denunciation

31. The proposed Agreement contains no specific provisions for withdrawal from or denunciation of the proposed Agreement by either Party, but contains instead a termination provision (**Article 25**).

32. **Article 25(1)** of the proposed Agreement provides it will remain in force until terminated by either Contracting Party giving 12 months' written notice to the other through the diplomatic channel.

33. Any termination of the Agreement by Australia would be subject to Australia's domestic treaty-making process.

34. In the event of termination, **Article 25(2)** preserves the rights of those who are receiving benefits under the proposed Agreement, those who have lodged claims and would have been entitled to receive benefits under the proposed Agreement, and certain employees and/or employers to whom the double superannuation liability provisions of **Articles 8(2)** and (3) of the proposed Agreement apply.

**Contact details**

Residency and International Payments  
International Payments and Compliance Branch  
Department of Social Services

## ATTACHMENT ON CONSULTATION

### Agreement between Australia and the Republic of Serbia on Social Security [2023] ATNIF 9

#### CONSULTATION

1. The Department of Social Services (DSS) and the Treasury consulted with a range of stakeholders, including state and territory governments, welfare, seniors and multicultural organisations, the superannuation industry, business groups, and relevant community groups, in relation to Australia's proposed entry into the *Agreement between Australia and the Republic of Serbia on Social Security* ('the proposed Agreement').
2. Between 1 February 2023 and 7 February 2023, DSS sent letters to all state and territory governments, 5 Serbian community groups across Australia, 12 welfare, seniors and multicultural organisations, and 9 financial services organisations, business and union groups. Organisations had until 13 February 2023 to provide feedback. The letters outlined key aspects of the proposed Agreement, provided a link to view both the English and Serbian language versions of the proposed Agreement, and invited stakeholder views and comments.
3. The state and territory government organisations consulted by DSS were:
  - ACT Chief Minister, Treasury and Economic Development Directorate
  - NSW Department of Premier and Cabinet
  - NT Department of the Chief Minister and Cabinet
  - QLD Department of the Premier and Cabinet
  - SA Department of the Premier and Cabinet
  - TAS Department of Premier and Cabinet
  - VIC Department of Premier and Cabinet
  - WA Department of the Premier and Cabinet
4. DSS received one response to this consultation, which noted no concerns.
5. Welfare, seniors and multicultural organisations consulted by DSS were:

<ul style="list-style-type: none"><li>• Federation of Ethnic Communities' Councils of Australia</li><li>• Ethnic Communities Council of Queensland</li><li>• Ethnic Communities' Council of NSW</li><li>• Ethnic Communities' Council of Victoria</li><li>• Multicultural Communities Council of South Australia</li><li>• Multicultural Council of Tasmania</li></ul>	<ul style="list-style-type: none"><li>• Australian Council of Social Service</li><li>• Economic Justice Australia</li><li>• National Seniors Association</li><li>• COTA Australia</li><li>• Association of Independent Retirees</li><li>• Combined Pensioners and Superannuants Association</li></ul>
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6. DSS received three responses to this consultation, all of which welcomed the proposed Agreement.



7. The response from COTA Australia noted the proposed Agreement does not cover the Australian Disability Support Pension (but does cover Serbian disability insurance) and has no specific wording in relation to the indexation of Serbian benefits paid in Australia. DSS replied to COTA Australia and advised it is a matter for each country to determine which of its payments it wishes to cover and, since 2004, Australia's position has been to include only the Australian Age Pension in new social security agreements. DSS also advised Serbia indexes Serbian pensions paid to people in Serbia and abroad, including in Australia, through domestic legislation and this will continue to be the case for Serbian pensions paid under the proposed Agreement (similarly, Australian Age Pensions paid under the proposed Agreement will be indexed in line with Australia's domestic indexation provisions).

8. Superannuation and financial services, organisations, business and union groups consulted were:

- Australian Institute of Superannuation Trustees
- Association of Superannuation Funds of Australia
- Financial Services Council
- Chartered Accountants Australia & New Zealand
- CPA Australia
- Institute of Public Accountants
- Australian Chamber of Commerce and Industry
- Council of Small Business Organisations Australia
- Australian Council of Trade Unions

9. One response was received to this consultation, which raised no concerns with the proposed Agreement.

10. The Serbian community groups consulted were:

- Serbian Council of Australia
- Serbian Community Association of Australia
- Australian Serbian Commerce Chamber
- Australian Serbian Organisation of Professionals
- Tesla Forum of W.A. Inc.

11. Three responses were received to this consultation, which all welcomed the proposed Agreement.

12. The response from the Serbian Council of Australia noted the proposed Agreement does not cover Serbians who were born or worked in the Republic of Montenegro and also does not cover the Australian Disability Support Pension. The Council also noted appropriate information and support services for Serbian Australians to understand the benefits of the proposed Agreement would enhance its positive impact. DSS replied to the Council and advised Australia's social security agreements are bilateral treaties, designed to assist people who have moved between Australia and the other country that is party to the agreement. DSS further advised it is a matter for each country to determine which of its payments it wishes to cover and, since 2004, Australia's position has been to include only the Australian Age Pension in new social security agreements. DSS also advised appropriate information and support will be provided through Services Australia to enable eligible persons to understand their entitlements under the proposed Agreement.