

DOCUMENTS TO BE TABLED ON 16 MARCH 2010:

- **National Interest Analysis [2010] ATNIA 7**
with attachment on consultation

- **Agreement between the Government of Australia and the
Government of the former Yugoslav Republic of Macedonia
on Social Security
(Canberra, 26 October 2009)**
[2009] ATNIF 29

NATIONAL INTEREST ANALYSIS – CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the former Yugoslav Republic of Macedonia on Social Security (Canberra, 26 October 2009) [2009] ATNIF 29

Nature and timing of proposed treaty action

1. The treaty action proposed is to bring into force the *Agreement between the Government of Australia and the Government of the former Yugoslav Republic of Macedonia on Social Security* (the Agreement). The Agreement was concluded in Canberra on 26 October 2009.
2. Pursuant to Article 25, the Agreement will enter into force once notes have been exchanged by Australia and the former Yugoslav Republic of Macedonia through the diplomatic channel stating that all domestic processes necessary to bring the Agreement into force have been finalised. The Agreement will enter into force on the first day of the second month following the month in which the exchange of notes is completed. This is expected to occur in the first half of 2011.

Overview and national interest summary

3. Australia's social security agreements are bilateral treaties which close gaps in social security coverage for people who migrate between countries. The agreements do this by overcoming eligibility barriers to pension payment in the domestic legislation of each country, such as citizenship, minimum contributions or residence requirements and restrictions on claiming from outside the country.
4. The Agreement provides for enhanced access to retirement benefits for people in Australia and the former Yugoslav Republic of Macedonia and greater portability of these benefits between the two countries. Portability of benefits allows for the payment of a benefit from one country into another country. Enhanced access to benefits is an underlying principle of bilateral social security agreements where the responsibility for providing benefits is shared. Under the Agreement, residents of Australia and the former Yugoslav Republic of Macedonia will be able to move between both countries with the knowledge that their rights to benefits are recognised in both countries. For Australia, the Agreement covers Age Pensions. For the former Yugoslav Republic of Macedonia, the Agreement covers old age, disability and survivor pensions.
5. Double coverage provisions have also been included to ensure that compulsory pension/superannuation contributions do not need to be made into both countries' systems when an employee is seconded to work in the other country temporarily. Under current arrangements, contributions under the legislation of both Australia and the former Yugoslav Republic of Macedonia may be required. The Agreement will reduce costs of doing business in both countries by providing that, generally, the employer or the employee (or both) need to contribute only to the relevant pension/superannuation scheme in their home country.

6. The Agreement will bring economic and political benefits to Australia. It will help to maximise the foreign income of Australian residents and there will be flow-on effects within the Australian economy. The double coverage provisions will facilitate business links between the two countries by removing unnecessary costs. The Agreement will serve to reinforce Australia's political, business and strategic interests. It will also further strengthen bilateral relations between Australia and the former Yugoslav Republic of Macedonia and provide choices in retirement for individuals who have migrated (or will migrate) to Australia or the former Yugoslav Republic of Macedonia during or after their working lives.

Reasons for Australia to take the proposed treaty action

7. Australia's network of bilateral social security agreements improves access to income support for people whose adult lives are, or have been, split between Australia and the other country. Most people who benefit from these agreements are age pensioners.

8. The Agreement incorporates the same principles as Australia's other social security agreements. A key element of the Agreement, as with other social security agreements, is the sharing of responsibility between the Parties in providing adequate social security coverage for current and former residents of both countries.

9. Under the Agreement individuals may be eligible for benefits from both countries if they meet certain criteria and have lived and/or worked in both countries during their working lives. Residents of Australia and the former Yugoslav Republic of Macedonia will be able to move between these countries knowing that their rights to benefits are protected.

10. The Department of Families, Housing, Community Services and Indigenous Affairs estimates that, through the Agreement, approximately 4,000 people in total will benefit in both countries when the Agreement comes into force, by being able to claim payments from Australia and the former Yugoslav Republic of Macedonia to which they currently do not have access.

Obligations

11. Part I (Articles 1 to 4) of the Agreement sets out general obligations, defines the scope of the Agreement (Articles 2 and 3) and ensures that people covered by the Agreement will be treated equally in respect of the payment of benefits (Article 4).

12. Part II (Articles 5 to 9) includes provision for the avoidance of 'double coverage' (Article 8) which ensures that an employer and/or their employee will be subject only to the legislation of their home country with respect to compulsory pension/superannuation contributions where the employee has been temporarily seconded to work in the other country.

13. Part III (Articles 10 to 12) applies to benefits payable by Australia and:

- a) obliges Australia to regard residents of the former Yugoslav Republic of Macedonia as Australian residents and Australian residents who are temporarily in the former Yugoslav Republic of Macedonia as being present in Australia, for the purpose of claiming Australian Age Pension (Article 10);
- b) provides that insurance periods in the former Yugoslav Republic of Macedonia (periods for which contributions were paid and periods related to those contributions), will be regarded as periods of residence in Australia for the purpose of meeting the 10 year qualifying period of residence for Australian Age Pension (Article 11); and
- c) specifies how the rate of Australian Age Pension will be calculated (Article 12).

14. Part IV (Articles 13 and 14) applies to benefits paid by the former Yugoslav Republic of Macedonia. The provisions are reciprocal to Australia's in that periods of 'Australian working life residence' will be regarded as insurance periods in the former Yugoslav Republic of Macedonia for the purpose of meeting minimum qualifying requirements. The rate of pension from the former Yugoslav Republic of Macedonia will generally be based on a person's insurance period and their pensionable earnings.

15. Part V (Article 15) sets out common provisions for the payment of benefits directly to entitled persons residing in the territory of the other Party in the official currency of the country of residence or in another convertible currency. Article 16 provides that each Party will apply its own legislation in determining capacity for work, where this is required, and upon request will send relevant available medical reports for persons who reside in its territory.

16. Part VI (Articles 17 to 23) sets out various administrative obligations, including:

- a) to regard the date of claim lodgement in one country as the date of lodgement in the other and in certain circumstances to regard a claim for pension in one country as a claim for the equivalent payment in the other (Article 17);
- b) to guarantee payment of benefits in the event that currency controls are imposed and to guarantee payment without deductions for government fees or charges (Article 18);
- c) to assist each other in the recovery of a debt owed to one Party because of the payment of arrears of a benefit by the other Party (Article 19);
- d) a general obligation for the Parties to assist each other in implementing the Agreement, to communicate with each other, to exchange information and to protect the confidentiality of personal data (Article 20);
- e) for the 'Competent Authority' of both Parties to conclude an administrative arrangement and designate liaison bodies to implement and administer the Agreement (Article 21); and
- f) to resolve disputes and review the Agreement upon request by either Party (Articles 22 and 23).

17. Part VII (Articles 24 and 25) contains transitional and final provisions. Article 24 ensures relevant insurance periods and periods of residence completed before the Agreement commences will be taken into consideration.

Implementation

18. A new Schedule containing the full text of the Agreement will be added to the *Social Security (International Agreements) Act 1999*. The regulation making powers contained in sections 8 and 25 of that Act will be used to implement the Agreement.

19. Provisions relating to double coverage are automatically given effect in domestic law once the Agreement is scheduled to the *Social Security (International Agreements) Act 1999*. This is pursuant to the *Superannuation Guarantee (Administration) Act 1993* (paragraph 27(1)(e)) and the *Superannuation Guarantee (Administration) Regulations 1993* (regulation 7AC), which have the effect 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 that a scheduled social security agreement is in place.

Costs

20. The Agreement is expected to increase administered outlays by \$1.459 million over the forward estimates period (based on a start date of 1 January 2011). Departmental costs for implementing and administering the Agreement total \$4.19 million over the same period, for the Department of Families, Housing, Community Services and Indigenous Affairs, Centrelink and the Australian Taxation Office.

Regulation Impact Statement

21. The Department of Finance and Deregulation has assessed the implementation of the Agreement against criteria in *The Best Practice Regulation Handbook*. This Agreement will have a low impact on business and individuals or on the economy and a Regulation Impact Statement or Business Cost Calculator Report is not required.

Future treaty action

22. Article 23 obliges either Party to review the Agreement when requested by the other Party. Article 25 provides that the Agreement can be modified by agreement in writing. Any future amendments of the Agreement would be subject to Australia's treaty making process, including tabling and consideration by the Joint Standing Committee on Treaties (JSCOT). An 'Administrative Arrangement' of less-than-treaty status entered into by the Competent Authorities pursuant to Article 21 will not be subject to Australia's treaty-making process.

Withdrawal or denunciation

23. Article 25 provides that the Agreement will remain in force indefinitely, unless it is terminated by either Party giving 12 months notice through the diplomatic channels. In the event of termination, Article 25 also preserves the rights of those who are receiving benefits under the Agreement or who have lodged claims and would have been entitled to benefits under the Agreement, and employees and/or their employers affected by the double coverage provisions of Part II.

24. Any termination of this Agreement by Australia would be subject to Australia's domestic treaty-making process, including tabling and consideration by the JSCOT.

Contact details

International Branch

Department of Families, Housing, Community Services and Indigenous Affairs

ATTACHMENT ON CONSULTATION

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CONSULTATION

25. The following groups were consulted by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and The Treasury: relevant community groups, welfare organisations, State and Territory Governments, employer groups and the superannuation industry.

26. On 1 February 2010 FaHCSIA sent letters and an information sheet explaining the Agreement to 13 community groups and 19 welfare groups across Australia, in addition to all State and Territory Governments, to provide information and seek their views and comments by 26 February 2010. The Agreement text and information about the Agreement is available on FaHCSIA's website.

27. Community groups consulted were:

Macedonian Australian Welfare Association of Sydney, Rockdale, NSW	Macedonian Australian Pensioners Association, Rockdale, NSW
Macedonian Orthodox Community of Sydney, Rosebery, NSW	Macedonian Community Welfare Association Mcwa, St Albans, VIC
Aegean Macedonian Association of Australia, Kingsgrove, NSW	Macedonian Women's Pensioners Association of Footscray, Yarraville, VIC
Macedonian Pensioners Association, Broadmeadow, NSW	Australian Macedonian Disability Pension Group "VARDAR", Preston, VIC
Macedonian Pensioners Association, Cabramatta, NSW	Australian Macedonian Pensioners Group, Reservoir, VIC
Macedonian Pensioners Association, Bankstown, NSW	Macedonian Community of WA (Inc.)
Macedonian Welfare Centre, Port Kembla, NSW	

28. Welfare organisations consulted were:

Ethnic Communities Council of QLD	ACT Multicultural Community Council
Ethnic Communities Council of WA	Australian Council of Social Services
Multicultural Council of NT Inc	Southern Cross Group
Welfare Rights Centre	Ethnic Communities Council of NSW
Multicultural Communities Council of SA	Ethnic Communities Council of Victoria
Multicultural Council of Tasmania	FECCA
National Seniors Association	COTA National Seniors
National Ethnic Disability Alliance	Council of Intellectual Disability Agencies
Physical Disability Council of Australia Ltd	Association of Independent Retirees
Combined Pensioners and Superannuants Association	

29. State/Territory Governments consulted were:

ACT Chief Minister's Department
QLD Department of Premier and Cabinet
VIC Department of Premier and Cabinet
NT Department of Chief Minister
SA Department of Premier and Cabinet
TAS Department of Premier and Cabinet
WA Department of Premier and Cabinet
NSW The Cabinet Office, Inter-Governmental & Regulatory Reform Branch

30. The ACT Chief Minister's Department responded in support of the Agreement. No concerns about the Agreement were received.

31. Treasury sent letters and an information sheet explaining the Agreement to the organisations listed below on 18 November 2009 seeking their views and asking for a response by 9 December 2009.

32. Organisations consulted were:

Institute of Chartered Accountants in Australia
Australian Chamber of Commerce and Industry
Industry Funds Forum Inc
A.C.T.U.
Council of Small Business Organisations of Australia
Association of Superannuation Funds of Australia
Investment and Financial Services Association
CPA Australia
National Institute of Accountants

33. One response was received from the ACTU supporting the Agreement.