

DOCUMENTS TABLED ON 25 NOVEMBER 2009:

- **National Interest Analysis [2009] ATNIA 25**
with attachment on consultation

- **Agreement between Australia and the Republic of Poland on Social Security**
(Warsaw, 7 October 2009)
[2009] ATNIF 28

NATIONAL INTEREST ANALYSIS – CATEGORY 1 TREATY

SUMMARY PAGE

Agreement between Australia and the Republic of Poland on Social Security (Warsaw, 7 October 2009) [2009] ATNIF 28

Nature and timing of proposed treaty action

1. The treaty action proposed is to bring into force the Agreement between Australia and the Republic of Poland on Social Security (the Agreement). The Agreement was signed in Warsaw on 7 October 2009.
2. Pursuant to Article 26, the Agreement will enter into force once notes have been exchanged by Australia and Poland 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 third month following the month in which the last notification occurs. The proposed timeframe for an exchange of notes would be April 2010 to enable entry into force on 1 July 2010.

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. Such agreements do this by overcoming barriers to pension payment in the domestic legislation of each country, such as requirements on citizenship, minimum contributions record, past residence record and current country of residence.
4. The Agreement provides for enhanced access to Australian and Polish retirement benefits 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 Poland will be able to move between Australia and Poland with the knowledge that their rights to retirement benefits are recognised in both countries. For Poland, the Agreement also covers disability and survivors pensions, as well as funeral benefits and compensation for work accidents and occupational diseases (for residents of Poland only).
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 both Australian and Polish legislation may be required. The Agreement will provide that, generally, where compulsory contributions are required, the employer and/or the employee need to contribute only to the relevant pension/superannuation scheme in their home country. The provisions on double coverage will reduce costs of doing business in both Australia and Poland.
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 Poland and provide choices in retirement for individuals who have migrated (or will migrate) to Australia or Poland 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 agreements on social security. 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 Poland 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 11,000 people residing in both countries will benefit when the Agreement comes into force, by being able to claim payments from Australia and Poland to which they currently do not have access.

Obligations

11. Part I (Articles 1 to 5) of the Agreement sets out general obligations, defines the scope of the Agreement (Articles 2 and 3), ensures that people covered by the Agreement will be treated equally in respect of the payment of benefits (Article 4) and removes restrictions on the payment of benefits based on residency in the other country (Article 5). For Australia the Agreement covers Age Pension. For Poland, the Agreement covers age, disability and survivor's pensions, as well as funeral benefits and compensation for work accidents and occupational diseases.

12. Part II (Articles 6 to 9) provides that an employee and/or their employer will be subject only to the legislation of their home country with respect to compulsory contributions where the employee has been temporarily seconded to work in the other country. For private sector employees, this arrangement is restricted to a period of secondment that does not exceed five years.

13. Chapter 1 of Part III (Articles 10 to 12) applies to benefits payable by Australia and it:

- obliges Australia to regard residents of Poland as Australian residents for the purpose of claiming and qualifying for Australian Age Pension, provided the person has lived in Australia at some time;
- provides that 'insurance periods' (pension contributions periods, equivalent periods, and non-contributory periods under the legislation of Poland) in Poland will be regarded as periods of residence in Australia for the purpose of meeting the 10 year qualifying residence period for Age Pension (Article 11); and
- specifies how the rate of Australian Age Pension will be calculated when it is payable only by virtue of the Agreement (Article 12). For persons outside Australia that is by reference to the legislation of Australia, which provides that Australian Age Pensions are based on a person's period of 'Australian Working Life Residence' (the period between age 16 and Australian Age Pension age) over a denominator of 25 years. For persons inside Australia, the same calculation applies as for all other pensioners, except that any Polish benefit is directly deducted from the rate of Australian Age Pension (until the person has 10 years Australian residence).

14. Chapter 2 of Part III (Articles 13 and 14) applies to benefits under Polish legislation, and therefore creates no obligations for Australia. The provisions are reciprocal to Australia's in that claims for the Polish age pension will be able to be lodged in Australia and certain periods of residence in Australia will be counted as insurance periods in Poland for the purpose of meeting minimum qualifying insurance periods for Polish benefits. The rate of Polish pension will generally be based on a person's insurance period and their pensionable earnings in Poland. Article 14 restricts the payment of Polish disability and survivor's pensions, under the Agreement, to Polish residents and restricts the paying of the guarantee of minimum total amount of Polish and foreign benefits to Australian benefit recipients only.

15. Part IV (Articles 15 to 23) sets out various administrative obligations, including:

- for the 'Competent Authorities' of both Parties to conclude an administrative arrangement and designate 'Liaison Institutions' to implement and administer the Agreement (Article 15);
- obligations regarding how the Parties will assist each other in implementing the Agreement, to exchange information and to protect the confidentiality of personal data, and to communicate and accept documents in any of the official languages of either country (Articles 16, 17 and 18);
- to regard the date of claim in one country as the date of claim in the other and, in certain circumstances, to regard a claim for a pension in one country as a claim for the corresponding pension from the other country (Article 19);
- to guarantee payments in the event that currency controls are imposed, to guarantee payment without deductions for government fees or charges and to allow corresponding exemptions from fees for submitting documents or certificates (Articles 20 and 21);
- provisions to resolve disputes by consultation and to meet to review the Agreement upon request by either Party (Articles 22 and 23).

16. Part V (Articles 24 to 26) provides for transitional arrangements, termination and entry into force of the Agreement. Article 24 ensures that events, periods of residence in Australia and insurance periods in Poland, whether or not occurring before the Agreement comes into force, will be taken into account in determining entitlement to benefits in accordance with the Agreement. The Agreement does not create entitlement to benefits for any period prior to the entry into force of the Agreement, and rights to benefits which existed prior to the commencement of this Agreement are protected.

Article 25 provides that the Agreement will remain in force for an indefinite period and that it may be terminated by either Party giving 12 months notice in writing through the diplomatic channel. In the event of termination, the Article also sets out the circumstances in which the Agreement will continue to apply.

Article 26 provides that Parties must notify each other in writing of the fulfilment of domestic requirements necessary for the entry into force of the Agreement. The Agreement will enter into force on the first day of the third month following the month in which the last notification occurs.

Implementation

17. 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.

18. 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

19. The Agreement was funded in the 2008-09 Budget and is expected to reduce administered outlays by \$19.721 million over the forward estimates period to 2012-13 (based on the original expected start date of 1 July 2009). Departmental costs for implementing and administering the Agreement total \$8.178 million over the same period, for the Department of Families, Housing, Community Services and Indigenous Affairs and Centrelink.

Regulation Impact Statement

20. The Department of Finance and Deregulation has assessed the implementation of the Agreement against criteria in *The Best Practice Regulation Handbook*. This regulatory option 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

21. As noted above, Article 23 obliges the Parties to meet to review the Agreement when requested by either Party. Any future amendment of the Agreement would be subject to Australian treaty processes. An 'Administrative Arrangement' entered into by the Competent Authorities pursuant to Article 15, of less than treaty status, will not be subject to Australia's treaty-making process.

Withdrawal or denunciation

22. 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.

23. Any termination of this Agreement by Australia would be subject to Australia's domestic treaty-making process, including tabling and consideration by the Joint Standing Committee on Treaties.

Contact details

International Agreements, International Branch
Department of Families, Housing, Community Services and Indigenous Affairs.

ATTACHMENT ON CONSULTATION

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CONSULTATION

24. 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.

25. FaHCSIA sent letters and an information sheet explaining the Agreement to each group on 9 October 2009 seeking their views and asking for a response by 30 October 2009. The Agreement text is available on FaHCSIA's website.

26. The Polish community groups consulted by FaHCSIA were: The Polish Community Council of Australia and New Zealand, and the Council of Polish Organisations in the ACT Inc.

27. The welfare organisations consulted by FaHCSIA 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	

28. The State/Territory Governments consulted by FaHCSIA 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 Federal Affairs
NSW The Cabinet Office, Inter-Governmental & Regulatory Reform Branch

29. One formal response was received. The Tasmanian Department of Premier and Cabinet advised they consulted with relevant agencies and that Tasmania has no comments to make on the Agreement.

30. Treasury sent letters and an information sheet explaining the Agreement to the organisations listed below on 8 October 2009 seeking their views and asking for a response by 30 October 2009. No formal responses were received by Treasury.

31. The organisations consulted by Treasury 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