

Warsaw, 7 October 2009

AGREEMENT BETWEEN
AUSTRALIA
AND
THE REPUBLIC OF POLAND
ON SOCIAL SECURITY

Not yet in force
[2009] ATNIF 28

Australia and the Republic of Poland (hereinafter “the Parties”),

Wishing to strengthen the existing friendly relations between the two countries,

and

Being desirous of regulating their mutual relations with respect to social security benefits and compulsory coverage,

Have agreed as follows,

PART I

GENERAL PROVISIONS

Article 1 Definitions

1. For the purposes of this Agreement,
 - (1) “legislation” means,
 - (a) in relation to Australia, the laws specified in subparagraph 1(1)(a) of Article 2 except in relation to the application of Part II of this Agreement (including the application of other Parts of this Agreement as they affect the application of that Part) where it means the laws specified in subparagraph 1(1)(b) of Article 2,
 - (b) in relation to the Republic of Poland the laws and other regulations specified in subparagraph 1(2) of Article 2;
 - (2) “Competent Authority” means,
 - (a) in relation to Australia, the Secretary to the Commonwealth Department responsible for the legislation specified in subparagraph 1(1)(a) of Article 2, except in relation to the application of Part II of this Agreement (including the application of other Parts of this Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner,
 - (b) in relation to Republic of Poland, the Minister responsible for Social Security;
 - (3) “Competent Institution” means, the institution responsible for applying the legislation;
 - (4) “Liaison Institution” means the institution which ensures coordination and exchange of information between the institutions of both Parties, which participates in applying this Agreement;
 - (5) “benefit” means a pension or other benefit specified in Article 2 including any additional amount, increase or supplement which is payable to a qualified person but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;
 - (6) “period of insurance” means in relation to the Republic of Poland, period of contributions, equivalent period and non-contributory period;
 - (7) “period of Australian working life residence” means a period defined as such in the legislation of Australia but does not include any period deemed pursuant to Article 11 to be a period in which that person was an Australian resident;
 - (8) “public servant” means,
 - (a) in relation to Australia, an employee of a government of Australia. For this purpose, government includes a political

- subdivision or local authority of Australia,
- (b) in relation to the Republic of Poland, an employee of public administration.

2. In the application by a Party of this Agreement, any term not defined shall, unless the context otherwise requires, have the meaning which it has under the legislation of that Party.

Article 2

Material Scope

1. This Agreement shall apply to the following laws:
 - (1) in relation to Australia,
 - (a) the Acts forming the social security law in so far as the law provides for, applies to or affects age pension,
 - (b) the law concerning the superannuation guarantee, which at the time of signature of this Agreement is contained in the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Regulations*;
 - (2) in relation to the Republic of Poland, legislation on the compulsory coverage and the following benefits within social insurance and social insurance for farmers:
 - (a) Age pensions, disability pensions, survivors pensions,
 - (b) Work accidents and occupational diseases compensation and pensions,
 - (c) Funeral benefits.
2. This Agreement is also applied to laws and regulations which amend, supplement or replace the legislation specified in paragraph 1.
3. Notwithstanding the provisions of paragraph 1, the legislation referred to in this Article shall not include treaties or other international agreements on social security that may be concluded between one Party and a third State.
4. This Agreement shall not apply to future legislation which extends the existing legislation of one Party to new categories of beneficiaries unless the Competent Authorities of the Parties agree otherwise within 3 months of the entry into force of such legislation.

Article 3

Personal Scope

This Agreement shall apply to any person who:

(1) is or has been an Australian resident, or
(2) is or has been subject to the legislation of the Republic of Poland
and, where applicable, to other persons in regard to the rights they derive from the
person described above.

Article 4

Equality of Treatment

Unless otherwise provided in this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations regarding eligibility for and payment of benefits which arise under the social security law of Australia or the legislation of the Republic of Poland or by virtue of this Agreement.

Article 5

Export of Benefits

1. Unless otherwise provided in this Agreement, benefits of one Party when payable by virtue of this Agreement shall be payable also to persons who are residents of , or in, the territory of either Party.
2. In relation to Australia, for the purposes of paragraph 1, any additional amount, increase or supplement that is payable under this Agreement, shall be payable to a person outside Australia only for the period specified in the provisions of the *Social Security Act 1991*. The reference to the *Social Security Act 1991* includes any laws that subsequently amend, supplement or replace that Act.
3. With regard to the Republic of Poland, paragraph 1 does not apply to benefits granted under special procedures or in exceptional cases.

PART II

APPLICABLE LEGISLATION

Article 6

Application of this Part

This Part only applies if an employee and/or the employer of the employee would, apart from this Part, be subject to the legislation of both Parties in respect of the work of the employee or remuneration paid for the work.

Article 7

General principle

Persons to whom this Agreement applies are subject to the legislation of the Party, in whose territory they are working, unless otherwise provided in Article 8.

Article 8

Special Principles and Exceptions

1. With regard to the principle described in Article 7, the following special principles and exceptions are provided for:
 - (1) a person employed by an employer in the territory of a Party, who has been sent by that employer to the territory of the other Party in order to perform work of a temporary character for that employer, continues to be subject only to the legislation of the first Party, provided that the period of secondment does not exceed 60 months. This subparagraph shall also apply to an employee who has been sent by an employer in the territory of Australia to the related entity of the employer in the territory of the Republic of Poland. An entity is a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group;
 - (2) public servants of a Party, who are sent to the territory of the other Party in order to perform work of a temporary character are subject to the legislation of the Party whose administration is employing them.

2. The Competent Authorities of the Parties or institutions designated by them may, upon mutual agreement and in the interest of a person or group of persons, provide different special principles and exceptions or alter those which have been provided for in paragraph 1.

Article 9

Vienna Conventions

This Agreement shall not affect the application of the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or the Vienna Convention on Consular Relations of 24 April 1963.

PART III

PROVISIONS RELATING TO BENEFITS

Chapter 1

Provisions Concerning Australian Benefits

Article 10

Residence or Presence in the Republic of Poland

Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for an Australian benefit except for not being an Australian resident and in Australia on the date on which the claim for that benefit is lodged, but,

- (1) is an Australian resident or a resident of the Republic of Poland, and
- (2) is in Australia or the Republic of Poland,

that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purpose of lodging that claim, to be an Australian resident and in Australia on that date.

Article 11 Totalisation

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated,

- (1) a period as an Australian resident that is less than the period required to qualify that person under the legislation of Australia for that benefit, and
- (2) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 4 for that person, and
- (3) a period of insurance under the legislation of the Republic of Poland,

then, for the purposes of a claim for that Australian benefit, that period of insurance in the Republic of Poland shall be deemed to be a period in which that person was an Australian resident only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia.

2. For the purposes of paragraph 1, where a person,

- (1) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit, and
- (2) has accumulated a period of insurance under the legislation of the Republic of Poland in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (1),

the total of the periods of insurance under the legislation of the Republic of Poland shall be deemed to be one continuous period.

3. For the purposes of this Article, where a period by a person as an Australian resident and a period of insurance under the legislation of the Republic of Poland coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows,

- (1) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least six months must be continuous,
- (2) for the purposes of an Australian benefit that is payable to an Australian resident, there shall be no minimum period.

Article 12

Calculation of Australian Benefits

1. Subject to paragraphs 2 & 3, where an Australian benefit is payable only by virtue of this Agreement to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia but on the basis that the additional child amount rate is nil.
2. When an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is a resident of the Republic of Poland, Australia shall disregard, when assessing the income of that person any non-contributory supplement paid to that person in the Republic of Poland to increase that person's Polish benefit to the minimum level guaranteed under the legislation of the Republic of Poland.
3. Paragraphs 1 & 2 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
4. Subject to paragraph 5, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by,
 - (1) calculating that person's income according to the legislation of Australia but disregarding in that calculation any benefit under the legislation of the Republic of Poland which that person or the partner of that person is entitled to receive if applicable, and
 - (2) deducting the amount of benefit under the legislation of the Republic of Poland which that person is entitled to receive from the maximum rate of that Australian benefit, and
 - (3) applying to the remaining amount of benefit obtained under subparagraph (2) the relevant rate calculation set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph (1).
5. Paragraph 4 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
6. Where a member of a couple is, or both that person and his or her partner are, entitled to a benefit or benefits under the legislation of the Republic of Poland, each of them shall be deemed, for the purposes of this Article and of the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

Chapter 2

Provisions concerning benefits of the Republic of Poland

Article 13

Totalisation

Where the legislation of the Republic of Poland makes the acquisition, retention or recovery of the right to benefits subject to the completion of a period of insurance, the Competent Institution shall take into account, when necessary, periods of Australian working life residence as long as these periods do not coincide.

Article 14 **Calculation of Benefits**

1. If in accordance with the legislation of the Republic of Poland the right to benefits arises without the need to totalise with periods of Australian working life residence, the Competent Institution shall determine the right to benefits and calculate the amount only on the basis of periods of insurance accumulated in accordance with the legislation of the Republic of Poland, unless the amount of benefit calculated according to paragraph 2 is more favourable.
2. If, in accordance with the legislation of the Republic of Poland, the right to benefits arises only after taking into account periods of Australian working life residence, the Competent Institution shall:
 - (1) determine a notional amount of the pension as it would apply if all periods of insurance are accumulated in accordance with the legislation of the Republic of Poland, and
 - (2) on the basis of that notional amount, referred to in subparagraph (1), determine the actual amount of benefits based on the proportion of the period of insurance accumulated in accordance with the legislation of the Republic of Poland up to the total of all periods.
3. When determining the basis for benefits the Competent Institution shall take into consideration only the earned income and contributions paid in accordance with the legislation of the Republic of Poland.
4. Entitlement to benefits for work accidents and occupational diseases under the legislation of the Republic of Poland shall be established only when the insured person was subject to the legislation of the Republic of Poland at the time of the work accident or while performing the work as a result of which the occupational disease arose.
5. If the period of insurance accumulated in accordance with the legislation of the Republic of Poland is less than 12 months, and no entitlement to benefit arises, the Competent Institution is not obliged to grant this benefit.
6. If the right to disability or survivor's pension arises only by virtue of this Agreement, the existence of this right is conditional upon the residence in the Republic of Poland.
7. If no Australian benefit is paid, the guarantee of minimum total amount of Polish and foreign benefits does not apply.

PART IV

MISCELLANEOUS PROVISIONS

Article 15

Administrative Arrangement

1. The Competent Authorities of the Parties are authorised to enter into an Administrative Arrangement necessary for the purpose of implementing this Agreement.
2. The Competent Authorities shall appoint Liaison Institutions which are to be listed in the Administrative Arrangement.

Article 16

Exchange of Information and Mutual Assistance

1. The Competent Authorities, Liaison Institutions and Competent Institutions responsible for the application of this Agreement shall to the extent permitted by their national laws:
 - (1) communicate to each other any information necessary for the application of this Agreement or their legislation,
 - (2) provide assistance to one another, with regard to the determination or payment of any benefit under this Agreement or under the legislation to which this Agreement applies as if applying their own legislation,
 - (3) communicate to each other, without delay, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation insofar as these changes affect the application of this Agreement.
2. This assistance shall be free of charge subject to exceptions to be agreed in an Administrative Arrangement made pursuant to Article 15.
3. In no case shall the provisions of paragraph 1 be construed so as to impose on the Competent Authority, Liaison Institution or Competent Institution of a Party the obligation to:
 - (1) carry out administrative measures at variance with the laws or the administrative practice of that or the other Party, or
 - (2) supply particulars which are not obtainable under the laws or in the normal course of the administration of that or the other Party.

Article 17

Protection of Personal Data

1. If, in accordance with this Agreement, the Competent Authority, Liaison Institution or Competent Institution of a Party transfers personal data to the Competent Authority, Liaison Institution or Competent Institution of the other Party, then such transfers are subject to the privacy legislation applicable in the territory of the Party providing the data. All such data is subject to the privacy legislation applicable in the territory of the Party receiving the data.
2. Any information about an individual which is transmitted in accordance with this Agreement to the Competent Authority, Liaison Institution or Competent Institution of that Party by the Competent Authority, Liaison Institution or Competent Institution of the other Party is confidential and shall be used only for the purposes of implementing this Agreement and the legislation to which this Agreement applies.
3. Notwithstanding any laws or administrative practices of a Party, no information concerning a person which is received by that Party from the other Party shall be transferred or disclosed to any other country or to any organisation within that other country without the prior written consent of that other Party.

Article 18

Language

1. In the application of this Agreement, the Competent Authority, Liaison Institution or Competent Institution of a Party may communicate with the Competent Authority, Liaison Institution or Competent Institution of the other Party in any of the official languages of the Parties.
2. Applications, appeals or other documents may not be rejected on the grounds that they were prepared in the official language of the other Party.

Article 19

Lodgement of Documents

1. A claim or appeal concerning a benefit may be lodged in the territory of either Party in accordance with the Administrative Arrangement made pursuant to Article 15 at any time after this Agreement enters into force.
2. The date on which a claim or appeal referred to in paragraph 1 is lodged with the Competent Authority, Liaison Institution or Competent Institution of one Party shall be considered as the date of lodgement of that document with the Competent Authority, Liaison Institution or Competent Institution of the other Party. The Competent Authority, Liaison Institution or Competent Institution with which a claim or appeal is lodged shall refer it without delay to the Competent Authority, Liaison Institution or Competent Institution of the other Party.
3. A claim for a benefit under the legislation of one Party shall be considered as a claim for the corresponding benefit under the legislation of the other Party if the claimant has indicated in that claim that the person was covered by the social security system of that other Party and provided the other Party receives this request within 6 months.

4. In relation to Australia, the reference in paragraphs 1 and 2 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by, or administratively for the purposes of, the social security laws of Australia.

Article 20

Payment of Benefits

1. Competent Institutions of each Party shall pay benefits by virtue of this Agreement directly to entitled persons who are residents of, or in, the territory of the other Party in the official currency of that country, or in another convertible currency.
2. If a Party imposes legal or administrative restrictions on the transfer of currency outside of its territory, that Party shall implement measures as soon as practicable to guarantee the rights to payment and delivery of benefits payable under the legislation of that Party or by virtue of this Agreement. The measures shall operate retrospectively to the time when the restrictions were imposed.
3. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party, whether the beneficiary is in the territory of that Party or the other Party without deduction for government administrative fees and charges for processing and paying that benefit.

Article 21

Exemption from Fees and Authentication

1. Any exemption granted in the territory of one of the Parties from stamp duty, notarial or registration fees in respect of certificates and documents required to be submitted to the Competent Authorities, Liaison Institutions and Competent Institutions in the same territory, shall also apply to certificates and documents which, for the purposes of this Agreement, have to be submitted to the Competent Authorities, Liaison Institutions and Competent Institutions in the territory of the other Party.
2. Documents and certificates required for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

Article 22

Resolution of Disputes

The Competent Authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its fundamental principles.

Article 23
Review of Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose as soon as possible after that request was made and, unless the Parties otherwise arrange, their meeting shall be held in the territory of the Party to which that request was made.

PART V
TRANSITIONAL AND FINAL PROVISIONS

Chapter 1
Transitional Provisions

Article 24
Recognition of Prior Events and Periods

1. This Agreement shall also apply to events which occurred prior to its coming into force.
2. This Agreement shall not create any entitlement to benefits for any period prior to its coming into force.
3. The application of the provisions of paragraph 1 shall not affect qualification for benefits for the period prior to entry into force of this Agreement.
4. Periods as an Australian resident, periods of Australian working life residence and periods of insurance completed under the legislation of the Republic of Poland prior to the date on which this Agreement comes into force shall be taken into consideration in determining entitlement to any benefit in accordance with the provisions of this Agreement.
5. Subparagraphs (1) and (2) of paragraph 1 of Article 8 apply, from the date of commencement of this Agreement, even if the person was sent by their employer before commencement of this Agreement. For this purpose, the period of secondment is taken to start on the commencement of this Agreement.

Chapter 2
Final Provisions

Article 25
Duration and Termination

1. This Agreement shall remain in force for an unlimited period of time. It may be terminated at any time by either Party giving 12 months notice in writing to the other Party through the diplomatic channel.
2. In the event of termination, this Agreement shall continue to apply to all persons

who:

- (1) at the date on which termination takes effect, are in receipt of benefits, or
- (2) prior to that date have lodged claims for, and would be entitled to receive, benefits by virtue of this Agreement, or
- (3) immediately before the date of termination are subject only to the legislation of one Party by virtue of subparagraphs (1) and (2) of paragraph 1 of Article 8 of Part II of this Agreement, provided the employee continues to satisfy the criteria of that Article.

Article 26 **Entry into Force**

The Parties shall notify each other in writing of the completion of their respective statutory and constitutional procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the third month following the month during which the last notification occurs.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in two originals at Warsaw this seventh day of October, two thousand and nine in the English and the Polish languages, each text being equally authoritative.

FOR
AUSTRALIA

FOR
THE REPUBLIC OF POLAND

