

# Social Security Agreement with the Swiss Confederation

## Introduction

- 2.1 On 9 October 2006, Australia signed a Social Security Agreement (the Agreement) with the Swiss Confederation (Switzerland). The Agreement is expected to begin operation in 2008, after the relevant legislation is passed and other necessary changes have been made in both countries.<sup>1</sup>
- 2.2 Australia's social security agreements are bilateral treaties which close gaps in social security coverage for people who migrate between countries. They 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.<sup>2</sup>
- 2.3 The Agreement provides for enhanced access to certain Australian and Swiss social security benefits and greater portability of most of these benefits between 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

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1 Information Sheet from the FACSIA website, accessed 15 May 2007: <[www.facs.gov.au/internet/facsinternet.nsf/VIA/international\\_ssa/\\$File/InfoSheetSwitzerland.rtf](http://www.facs.gov.au/internet/facsinternet.nsf/VIA/international_ssa/$File/InfoSheetSwitzerland.rtf)>

2 National Interest Analysis (NIA), para. 3.

benefits is shared. Under the Agreement, residents of Australia and Switzerland will be able to move between Australia and Switzerland with the knowledge that their right to benefits is recognised in both countries.<sup>3</sup>

## The Agreement

- 2.4 To qualify for an Australian pension people normally have to be Australian residents and in Australia on the day a claim for pension is lodged, and certain periods of residence (10 years for an age pension) are required before an Australian pension can be granted. Also, most payments are not payable outside Australia except for temporary absences.<sup>4</sup>
- 2.5 The Social Security Agreement with the Swiss Confederation modifies these rules so that:
- Australia will treat someone who is resident in Switzerland as being a resident of Australia and present in Australia, so that the person can lodge a claim for an Australian pension (Article 17);
  - Australia will add the person's period of insurance in Switzerland to his or her Australian residence so that the person can meet the minimum residence qualifications to get an Australian pension (Article 18); and
  - Australia will pay benefits covered by the Agreement indefinitely in Switzerland, as long as the person otherwise remains qualified.<sup>5</sup>
- 2.6 Under the Agreement, Australian nationals will receive the same treatment as Swiss nationals and will be able to have their Swiss social insurance system benefits paid abroad (Article 4).<sup>6</sup>
- 2.7 Australian nationals will continue to be able to receive refunds of their contributions instead of a Swiss pension, when they leave Switzerland, after the Agreement commences. However people who receive a refund will not be able to receive a Swiss pension and will

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3 NIA, para. 4.

4 Information Sheet from the FACSIA website, see note 1 above.

5 Information Sheet from the FACSIA website, see note 1 above.

6 Information Sheet from the FACSIA website, see note 1 above.

not be able to use their periods of insurance in Switzerland to help them qualify for an Australian pension (Article 16).<sup>7</sup>

## Australian Pensions

- 2.8 People who live in Australia but do not have ten years residence in Australia can count their Swiss periods of insurance to qualify for an Australian pension, subject to the means test.<sup>8</sup> During this time (until they have ten years residence in Australia) they will be paid the normal income-tested pension rate less the amount of any Swiss pension. That is, the Swiss pension would be topped up to the rate of Australian pension they would receive if they had no Swiss pension.<sup>9</sup>
- 2.9 Australian pensions in Switzerland will be based on the person's period of 'Australian working life residence' – this is the period between age 16 and age pension age. A full pension, subject to the means test, is payable to a person with 25 years Australian working life residence.<sup>10</sup> For example, under the Agreement, a man who has lived in Australia from age 30 to age 50 may, at age 65 be paid 20/25ths of a means tested Australian age pension in Switzerland. No pension is paid overseas if a person has less than 12 months Australian working life residence.<sup>11</sup>

## Swiss Pensions

- 2.10 The Swiss pension will be based on the period of insurance the person has completed in Switzerland.<sup>12</sup>
- 2.11 Where a partial pension is equivalent to less than 10% of the corresponding full pension, an Australian national or their survivor who does not reside in Switzerland or who is permanently leaving Switzerland will receive a lump sum payment.<sup>13</sup>
- 2.12 Where a partial pension is equivalent to more than 10% but not more than 20% of the corresponding full pension, an Australian national or their survivor who does not reside in Switzerland or who is

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7 Information Sheet from the FACSIA website, see note 1 above.

8 Information Sheet from the FACSIA website, see note 1 above.

9 Information Sheet from the FACSIA website, see note 1 above.

10 Information Sheet from the FACSIA website, see note 1 above.

11 Information Sheet from the FACSIA website, see note 1 above.

12 Information Sheet from the FACSIA website, see note 1 above.

13 Information Sheet from the FACSIA website, see note 1 above.

permanently leaving Switzerland may opt between having the pension paid or a lump sum (Article 14).<sup>14</sup>

- 2.13 Double coverage provisions are included to ensure that Australian and Swiss employers do not have to make compulsory superannuation contributions into both countries' systems when an employee is seconded to work in the other country temporarily.<sup>15</sup> The Agreement provides that, generally the employer, and employee, where compulsory employee contributions are required, need to contribute only to the relevant superannuation scheme in their home country (Articles 6-11).<sup>16</sup>
- 2.14 Income tested Swiss benefits will be disregarded under the Australian income test for persons residing in Switzerland or third countries and vice versa.<sup>17</sup> This is consistent with concessions given in other social security agreements and with the principle of shared responsibility (Article 20).<sup>18</sup>
- 2.15 Any information transmitted under the Agreement in relation to an individual is to be treated as confidential and used only for the purposes of implementing the Agreement or the social security laws of Australia and Switzerland.<sup>19</sup> Article 23 specifies that the Agreement shall in no case oblige a Competent Authority or Competent Institution to carry out administrative measures or supply details in a manner contrary to that Party's laws, regulations and administrative practices.<sup>20</sup>

## **Purpose of the Agreement**

- 2.16 The Social Security Agreement with the Swiss Confederation will improve income support for people who have lived in Australia and Switzerland. Most of the people benefiting from this agreement are age pensioners.<sup>21</sup>

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14 Information Sheet from the FACSIA website, see note 1 above.

15 Information Sheet from the FACSIA website, see note 1 above.

16 Information Sheet from the FACSIA website, see note 1 above.

17 NIA, para. 26.

18 NIA, para. 26.

19 NIA, para. 28.

20 NIA, para. 28.

21 NIA, para. 7.

- 2.17 In 2006, the Australian government was paying pensions to approximately 1,500 Swiss born pensioners, most of whom reside in Australia and \$0.32 million annually to 38 people (not necessarily Swiss born) residing in Switzerland. Switzerland was paying 1,339 pensions into Australia, with an annual value of \$6.4 million.<sup>22</sup>
- 2.18 It is estimated that approximately 1000 people residing in Australia and Switzerland will benefit when the Agreement comes into force by being able to claim payments from Australia or Switzerland to which they currently do not have access.<sup>23</sup>
- 2.19 The Agreement also deals with 'double coverage' of superannuation, exempting employers in one country, who send employees to work temporarily in the other country, from paying superannuation contributions in the other country, provided they continue to make contributions in their home country. These provisions also apply where employees are required to make superannuation contributions.<sup>24</sup>
- 2.20 The Agreement will bring economic and political benefits to Australia. It will assist in maximising the foreign income of Australian residents and there will be flow-on effects of these funds into the Australian economy. <sup>25</sup> The Agreement will also further strengthen bilateral relations between Australia and Switzerland and provide choices in retirement for individuals who have migrated (or will migrate) to Australia or Switzerland during or after their working lives. The provisions on double coverage of superannuation will reduce costs of doing business in both Switzerland and Australia.<sup>26</sup>

## Other social security agreements

- 2.21 Australia has bilateral social security agreements in place with Austria, Belgium, Canada, Chile, Croatia, Cyprus, Denmark, Ireland, Italy, Malta, the Netherlands, New Zealand, Portugal, Slovenia, Spain

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22 NIA, para. 9.

23 NIA, para. 11.

24 Information Sheet from the FACSIA website, see note 1 above..

25 NIA, para. 6.

26 NIA, para. 6.

and the United States of America.<sup>27</sup> Treaties have been signed with Germany and Korea, but have yet to enter into force.

- 2.22 Currently Australia is negotiating or starting to negotiate similar treaties with the Czech Republic, Poland, Finland, Latvia, the Slovak Republic, France, Hungary, Sweden and Greece.<sup>28</sup>
- 2.23 The Committee was interested in the progress of the proposed Social Security Agreement with Greece which has been in negotiation for several years.
- 2.24 The Department stated that it was near completion on a Social Security Agreement with Greece and that this agreement would impact on a large number of Australians.<sup>29</sup>
- 2.25 Since these public hearings a Social Security Agreement with Greece has been signed during the recent visit by the Greek Prime Minister in May 2007.

## Consultation

- 2.26 The Department of Families, Community Services and Indigenous Affairs (FACSA) wrote to a number of Swiss community groups, welfare organisations and State and Territory governments as part of the consultation for this Agreement. No formal responses were received.<sup>30</sup>

## Costs

- 2.27 Both countries will share the financial responsibility for providing benefits covered by the Agreement. The NIA states that the Agreement is expected to result in a reduction in administered outlays of around \$1.4 million over the period ending 2009-2010.<sup>31</sup> FACSA informed the Committee:

Broadly speaking, we expect to pay about \$1.1 million worth of pensions per annum into Switzerland to people entitled to

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27 NIA, Social Security Agreements with other Countries Attachment.

28 Correspondence from FACSA, 26 April 2007.

29 Mr Peter Hutchinson, *Transcript of Evidence*, 26 March 2007, pp.4 and 5.

30 NIA, Consultation Annex.

31 NIA, para. 41.

Australian pensions in Switzerland, so there is a cost up-front for us of approximately \$1 million a year. We expect people living in Australia who have worked and contributed to the Swiss system to be entitled to Swiss pensions. It is very difficult to estimate these things, but we are estimating that something like \$3 million to \$3 ½ million a year in Swiss pensions will come into Australia. Because we mean to test our pensions, a proportion of the Swiss pension money that comes in will cause reductions in Australian pension outlays, and we think that it is slightly more than our initial outlays into Switzerland, which will produce some minor savings over the first few years of the agreement. But it is a very marginal thing.<sup>32</sup>

- 2.28 FACSIA and Centrelink departmental costs of \$2.466 million over the same period represent the cost of implementing this Agreement and the Agreement with Norway.<sup>33</sup>

## Entry into force and withdrawal

- 2.29 This Agreement will enter into force on the first day of the month following the month in which notes are exchanged by the Contracting States notifying each other that all domestic requirements have been finalised.
- 2.30 The Agreement is concluded for an indefinite period.<sup>34</sup> However, termination of the Agreement is possible under Article 60 of the *Vienna Convention on the Law of Treaties*, or after 12 months from the date on which either Party receives from the other written intention to terminate the Agreement.<sup>35</sup>

## Legislation

- 2.31 The *Social Security (International Agreements) Act 1999 (Cth)* (the SSIA Act) gives effect in domestic law to relevant provisions of social security agreements that are scheduled to the Act. A new schedule

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32 Mr Peter Hutchinson, *Transcript of Evidence*, 26 March 2007, pp. 3-4.

33 NIA, para. 41.

34 Text of the Agreement, Article 34.

35 NIA, para. 45; Article 34 of the Agreement.

containing the full text of the Agreement will be added to the SSIA Act pursuant to sections 8 and 25 of that Act.<sup>36</sup>

- 2.32 Relevant provisions of social security agreements relating to double superannuation coverage are automatically given effect, in domestic law, once the agreement is scheduled to the SSIA Act.<sup>37</sup> This is pursuant to the *Superannuation Guarantee (Administration) Act 1993 (Cth)* (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.<sup>38</sup>

## Conclusion and recommendation

- 2.33 It is the considered view of the Committee that the new agreement with Switzerland will be of benefit to individuals and to Australia therefore the Committee supports the agreement.
- 2.34 In addition, however, it would be of benefit to the Committee if further information could be provided by the relevant government agencies on the criteria that they employ when prioritising the negotiation of such agreements.

### Recommendation 1

**The Committee supports the *Agreement on Social Security between the Government of Australia and the Swiss Confederation (Canberra, 9 October 2006)* and recommends that binding treaty action be taken.**

36 NIA, para. 39.

37 NIA, para. 40.

38 NIA, para. 40.