

## Agreement between Australia and the Hellenic Republic on Social Security (Canberra, 23 May 2007)

### Introduction

- 4.1 The Social Security Agreement with the Hellenic Republic (Greece) will improve income support for people who have lived in Australia and Greece, allowing people who live in either country to claim their entitlement to pensions from both countries. All of the people benefiting from this Agreement are age pensioners.
- 4.2 The Greek presence in Australia is quite large, due primarily to the number of Greeks who migrated to Australia during the 1950s and 1960s. The 2001 Census records 116,431 Greece-born migrants and 375,703 people of Greek ancestry living in Australia. The Greek population is centred in Melbourne (47%) and Sydney (29%).
- 4.3 In March 2007, the Australian government was paying the Age Pension to 56,328 Greek-born born pensioners. As at 26 June 2007, there were 5,750 residents of Greece, not necessarily Greek-born, receiving the Australian Age Pension.<sup>1</sup>
- 4.4 It is estimated that approximately 50,000 people residing in Australia and Greece will benefit when the Agreement comes into force by

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<sup>1</sup> NIA, para. 10.

being able to claim payments from Australia and Greece to which they currently do not have access.<sup>2</sup>

- 4.5 Australia has bilateral social security agreements in place with Austria, Belgium, Canada, Chile, Croatia, Cyprus, Denmark, Germany, Ireland, Italy, Japan, the Republic of Korea, Malta, the Netherlands, New Zealand, Norway, Portugal, Slovenia, Spain, the Swiss Confederation, and the United States of America. The Agreement with Greece incorporates the same principles as Australia's other social security agreements, including the key element of the sharing of responsibility between the Parties in providing adequate social security coverage for current and former residents of both countries. There is one particular difference between this Agreement and Australia's other social security agreements:

The agreement with Greece is dissimilar to most of Australia's other agreements inasmuch as there is a unique formula for calculating the rate of the Australian age pension for those who return to live permanently in Greece without the age pension before the agreement comes into force. This formula was discussed for many years and was formally accepted by the Greek government through the signing of a memorandum of understanding in October 2005 after consultation with community representatives.<sup>3</sup>

## Obligations

- 4.6 To qualify for an Australian pension people normally have to be Australian residents and in Australia on the day a claim for the pension is lodged. Further, certain periods of residence (10 years for an age pension) are required before an Australian pension can be granted. Most payments are not payable outside Australia except for temporary absences.
- 4.7 The Social Security Agreement with the Hellenic Republic modifies these rules so that:

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2 NIA, para. 11.

3 Ms Michalina Stawyskyj, *Transcript of Evidence*, 13 August 2007, p. 2.

- Australia will treat someone who is resident in Greece as being a resident of Australia and present in Australia, so that the person can lodge a claim for an Australian pension (Article 10);
- Australia will add the person's period of insurance in Greece to his or her Australia residence so that the person can meet the minimum residence qualifications to get an Australian pension (Article 11); and
- Australia will pay benefits covered by the Agreement indefinitely in Greece, as long as the person otherwise remains qualified.

## Australian Pensions

- 4.8 People who live in Australia but do not have ten years residence in Australia can count their Greek 'periods of insurance' to qualify for an Australian pension, subject to the means test. 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 Greek pension. That is, the Greek pension would be topped up to the rate of Australian pension they would receive if they had no Greek pension.
- 4.9 Australian pensions for Australian residents who return to live permanently in Greece will be based on the person's period of 'Australian working life residence' – this is the period between age 16 and Australian Age Pension age. A full pension, subject to the means test, is payable to a person with 25 years Australian working life residence.<sup>4</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 Greece. No pension is paid overseas if a person has less than 12 months Australian working life residence.
- 4.10 For the first time, former Australian residents already living permanently in Greece without the Australian Age Pension will be able to claim the Age Pension upon commencement of the Agreement.

The agreed formula means that people currently residing in Greece without a pension may receive a different rate than those who return to Greece after the agreement commences,

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<sup>4</sup> This is the same formula for calculating the pension as applies to most of Australia's other social security Agreements.

depending on their Australian working life residence. However, the agreement will, for the first time, enable all Greek residents to claim an Australian age pension without leaving Greece.<sup>5</sup>

4.11 Again, the rate of the pension will be based on the person's period of 'Australian working life residence'. In this case, a full pension is payable to a person with 44 years Australian working life residence. Using the above example, a man who has lived in Australia from age 30 to age 50 who then moves to Greece and relinquishes his Australian residency may, at age 65, be paid 20/44ths of a means tested Australian age pension in Greece. Again, no pension is paid overseas if a person has less than 12 months Australian working life residence.

4.12 The rationale for the different formulas was explained by representatives from the Department of Families, Community Services and Indigenous Affairs (FaCSIA):

The first thing to recognise is that the Australian system is a non-contributory system, so the government, I suspect, would have taken into account any proposal or agreement had to be an appropriate and affordable agreement in terms of the overall flow of benefits. Australia is already paying almost \$90 million a year into Greece in pensions under our domestic portability laws. So it was a compromise proposal, in terms of the cost of the agreement, that was put to the Greek community by the Greek government. The Hellenic Council in Australia were well aware of the agreement and, to my knowledge, supported the offer. The Greek community in Greece, which is the community principally affected by the different formula, advised the Greek government that they would accept it. The Greek government advised the Australian government that it was acceptable, the MOU was signed, and we proceeded to negotiate the rest of the terms of the agreement.<sup>6</sup>

4.13 The Australian age pension is subject to an income and an assets test and individuals have a general obligation to declare all income that they receive from sources in Australia or any other country and any

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5 Ms Michalina Stawyskyj, *Transcript of Evidence*, 13 August 2007, p. 2.

6 Mr Peter Hutchinson, *Transcript of Evidence*, 13 August 2007, p. 9.

assets they hold in any country.<sup>7</sup> Centrelink forms for claiming a pension are also clear on this requirement.<sup>8</sup> Information exchange between Centrelink and Australia's bilateral social security partner will also assist in ensuring that the correct Australian pension is received.<sup>9</sup> Public information provided in relation to Australia's social security agreements states that:

All pension claimants, whether in Australia or overseas, need to declare details of their income and assets to Centrelink.<sup>10</sup>

## Greek Pensions

4.14 Claims for the Greek old age pension will use new rules similar to those outlined above for the Australian Age Pension, so that many Greek-Australians living in Australia will be able to claim a Greek pension. The Greek pension will be based on the period of insurance the person has completed in Greece. Article 13 applies to benefits payable under Greek legislation, imposing obligations on Greece reciprocal to those imposed on Australia:

- Claims for the Greek old age pension will be able to be lodged in Australia;
- Certain periods of residence in Australia will be counted as periods of insurance in Greece;
- The rate of the Greek pension will generally be based on a person's period of insurance and their pensionable earnings in Greece.

## Other obligations

4.15 Part II of the Agreement contains double coverage provisions. These are included to ensure that Australian and Greek 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. 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 6-9)

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7 Mr Peter Hutchinson, *Transcript of Evidence*, 13 August 2007, p. 8.

8 Correspondence received from FacSIA, 22 August 2007.

9 See Mr Peter Hutchinson, *Transcript of Evidence*, 13 August 2007, p. 8.

10 FaCSIA, *Exhibit 1*, p. 2.

- 4.16 Part V (Articles 14 to 20) sets out various administrative obligations, including:
- 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 age pension in one country as a claim for the equivalent payment in the other (Article 14);
  - to guarantee payments in the event that currency controls are imposed, and to guarantee payment without deductions for government fees or charges (Article 15);
  - to assist each other in the recovery of a debt owed to one Party, where arrears are owed by the other (Article 16);
  - 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 17);
  - for the 'Competent Authority' of both Parties to conclude an administrative arrangement and designate liaison agencies to implement and administer the Agreement (Article 18); and
  - provision to resolve disputes and review the Agreement upon request by either Party (Articles 19 and 20).

## Implementation

- 4.17 The full text of the Agreement will be implemented as a new Schedule to the *Social Security (International Agreements) Act 1999* (Cth). The double superannuation provisions are given effect automatically once the Agreement is scheduled.<sup>11</sup>

## Costs

- 4.18 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 an increase in administered outlays of around \$143.7 million (cumulative cost) over the period 2008-2011.

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<sup>11</sup> NIA, paras 18 & 19.

FaCSIA and Centrelink departmental costs of \$21.5 million (cumulative) over the period 2007-2011 represent the cost of implementing the Agreement.<sup>12</sup>

- 4.19 According to representatives from FaCSIA, the \$21.5 million administrative cost:

is much higher than the usual cost, or the cost of agreements we have come before the committee with in recent years. But the numbers [of beneficiaries] are significantly higher than we have had in previous agreements.<sup>13</sup>

## Consultation

- 4.20 According to the NIA, negotiations for the Agreement with Greece commenced in the early 1990s.<sup>14</sup> Representatives from FaCSIA explained why the Agreement took so long to negotiate and bring to fruition:

I am not exactly sure when it started, but it is probably close to 20 years. I think the main issue – and it is acknowledged on both sides – has been the formula for calculating the rate of the Australian pension. Both sides were unable to agree on that for a long time, until the signing of the MOU in October 2005.<sup>15</sup>

- 4.21 As part of the Consultation process, FaCSIA and the Department of the Treasury wrote to a number of relevant community groups, welfare organisations, State and Territory Governments, employer groups and the superannuation industry as part of the consultation for this Agreement.<sup>16</sup>
- 4.22 FaCSIA wrote to provide information and invite comments from 382 Greek community groups across Australia, including the peak group the Australian Hellenic Council and the World Council of Hellenes Abroad. FaCSIA officials also met with representatives from the

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12 NIA, para. 20.

13 Mr Peter Hutchinson, *Transcript of Evidence*, 13 August 2007, p. 3.

14 NIA, Consultation, para. 4.

15 Mr Peter Hutchinson, *Transcript of Evidence*, 13 August 2007, p. 4.

16 NIA, Consultation, para. 1.

Australian Hellenic Council and, at their request, addressed members of the Greek Orthodox community in Sydney.<sup>17</sup>

- 4.23 Responses were received from four correspondents: two in Australia and two in Greece. While generally supportive, there was concern about the formula for calculating the rate of the Australian Age Pension for former Australian residents who returned to live permanently in Greece before qualifying for Age Pension and before the Agreement commences (i.e. the 44 year 'Australian working life residence' formula). Clarification was also sought about the impact on pension entitlement, health and pharmaceutical benefits for people dividing their time between the two countries.<sup>18</sup>

## Entry into force and withdrawal

- 4.24 Under Article 22, the Agreement shall enter into force on the first day of the second month following the month of exchange of notes by the Parties. The NIA notes that the earliest realistic timeframe for exchange of notes is May 2008, which would enable the Agreement to enter into force on 1 July 2008.<sup>19</sup>

- 4.25 The payment of pensions under the Agreement may start from the date the Agreement enters into force, providing a person lodges a claim for the Australian Age Pension on that date. Claims will not be backdated to the date the Agreement enters into force unless that is also the date of lodgement:

Pensions cannot start earlier than the start date of the agreement, but the typical rule – for Australian claims in any case – is that a benefit can be paid from the date of lodgement or the date you qualify, whichever is later.<sup>20</sup>

- 4.26 Under Article 23, the Agreement will remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through diplomatic channels indicating its intention to terminate the Agreement. The rights of people receiving benefits, as well as those who have lodged a claim and would be

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17 NIA, Consultation, para. 2.

18 NIA, Consultation, para. 3.

19 NIA, para. 2.

20 Mr Peter Hutchinson, *Transcript of Evidence*, 13 August 2007, p. 7.



entitled to receive benefits, are preserved in the event of termination.<sup>21</sup>

## **Future Treaty Action**

- 4.27 Under Article 20, the Parties are obliged to meet to review the Agreement within six months of a request to review by either Party.
- 4.28 The Agreement may be amended at any time by agreement between the Parties. Such a treaty action would be subject to Australia's usual treaty-making processes.<sup>22</sup>

## **Conclusion**

- 4.29 The Committee supports the Social Security Agreement with the Hellenic Republic and has recommended in Report 88 that binding treaty action be taken.<sup>23</sup> Report 88 is reproduced at Appendix D.
- 4.30 The Committee also encourages the Government to act quickly to implement the Agreement to ensure that any Australians who may access the provisions of the Agreement once it has entered into force will have the opportunity to do so as soon as possible.

**Dr Andrew Southcott MP**

**Committee Chair**

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21 NIA, para. 24.

22 NIA, para. 23.

23 Joint Standing Committee on Treaties Report 88, see Appendix D.

