

Report 89

Treaties tabled on 7 August 2007

Agreement between Australia and Japan on Social Security
(Canberra, 27 February 2007)

Agreement between the Government of Australia and the Government of the
Republic of the Philippines concerning the Status of Visiting Forces of Each
State in the Territory of the Other State (Canberra, 31 May 2007)

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

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Resolution of appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report upon:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and

such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

ACS	The Australian Customs Service
ADF	Australian Defence Force
ATO	Australian Taxation Office
Cth	Commonwealth
FaCSIA	Department of Families, Community Services and Indigenous Affairs
JSCOT	Joint Standing Committee on Treaties
MBS	Medical Benefits Scheme
MOU	Memorandum of Understanding
NIA	National Interest Analysis
SCOT	Commonwealth-State/Territory Standing Committee on Treaties
SOVFA	The Status of Visiting Forces Agreement



List of recommendations

2 Social Security Agreement with Japan

Recommendation 1

The Committee supports the *Social Security Agreement with Japan* and recommends that binding treaty action be taken

3 Status of Visiting Forces Agreement with the Philippines

Recommendation 2

The Committee supports the *Status of Visiting Forces Agreement with the Philippines* and recommends that binding treaty action be taken

Introduction

Purpose of the report

- 1.1 This report contains advice to Parliament on the review by the Joint Standing Committee on Treaties of three treaty actions tabled in Parliament on 7 August 2007. These treaty actions are:
- *Agreement between Australia and Japan on Social Security (Canberra, 27 February 2007)*
 - *Agreement between the Government of Australia and the Government of the Republic of the Philippines concerning the Status of Visiting Forces of Each State in the Territory of the Other State (Canberra, 31 May 2007)*
 - *Agreement between Australia and the Hellenic Republic on Social Security (Canberra, 23 May 2007)*

Briefing documents

- 1.2 The advice in this Report refers to the National Interest Analysis (NIA) prepared for the proposed treaty actions. This document is prepared by the Government agency (or agencies) responsible for the administration of Australia's responsibilities under each treaty. Copies of the NIA may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/7august2007/tor.htm

- 1.3 Copies of treaty actions and NIAs may also be obtained from the Australian Treaties Library maintained on the internet by the Department of Foreign Affairs and Trade. The Australian Treaties Library is accessible through the Committee's website or directly at:

www.austlii.edu.au/au/other/dfat/

Conduct of the Committee's review

- 1.4 The review contained in this report was advertised on the Committee's website.¹ Invitations to lodge submissions were also sent to all State Premiers, Chief Ministers, Presiding Members of Parliament and to individuals who have expressed an interest in being kept informed of proposed treaty actions. Submissions received and their authors are listed at Appendix A.

- 1.5 The Committee also received evidence at a public hearing held on 13 August 2007 in Canberra. A list of witnesses who appeared before the Committee at the public hearings is at Appendix B. Transcripts of evidence from public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website at:

www.aph.gov.au/house/committee/jsct/7august2007/hearings.htm

1 Members of the public were advised on how to obtain relevant information and invited to submit their views to the Committee via the Committee's website.

Social Security Agreement with Japan

Introduction

- 2.1 The Social Security Agreement with Japan¹ coordinates the social security systems of Australia and Japan to provide improved access to pensions for people who move between the two countries. The Agreement also includes provisions to prevent 'double coverage' in relation to compulsory superannuation contributions.

Background

- 2.2 Australia has bilateral social security agreements with 18 other countries: Austria, Belgium, Canada, Chile, Croatia, Cyprus, Denmark, Germany, Ireland, Italy, Malta, the Netherlands, New Zealand, Norway, Portugal, Slovenia, Spain and the United States of America.² In addition to the Social Security Agreement with Japan, Australia has also signed social security agreements with Korea, Switzerland and Greece but these have not entered into force.

1 Full title: *Agreement between Australia and Japan on Social Security*, done at Canberra on 27 February 2007.

2 See the Department of Families, Community Services and Indigenous Affairs website for further information relating to these agreements:
<www.facsia.gov.au/internet/facsinternet.nsf/international/agreements-current.htm>

The Social Security Agreement with Japan

- 2.3 The Social Security Agreement with Japan will provide improved access to the age pension for people who have moved between Australia and Japan during their working life. It is based on the same principles as Australia's other bilateral social security agreements, including the principle of shared responsibility.³ Part I of the Agreement, which sets out the general obligations, obliges both Australia and Japan to treat people covered by the Agreement equally with respect to the payment of benefits and to remove restrictions on the payments of benefits based on residency in the other country.⁴
- 2.4 In practice, this Agreement is similar to Australia's other bilateral social security agreements with some minor exceptions. One of the key differences relates to totalising, which is adding the relevant periods in each country together for the purpose of qualifying for a pension from either country:
- Japan insisted on totalising with employment related periods of Australian working life residence as distinct from just residence in Australia, but that springs primarily from the fact that theirs is a contributory system and qualification for a pension is related to employment in Japan.⁵
- 2.5 Under the Agreement, Australia is obliged to treat residents of Japan as Australian residents for the purpose of claiming and qualifying for an Australian age pension.⁶ Periods of coverage in Japan will be counted as periods of residence in Australia for the purpose of meeting the ten year qualifying period of residence for an Australian age pension. However, the person must have lived in Australia for at least one year between the age of 16 and age pension age.⁷
- 2.6 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 assets they hold in any country.⁸ Centrelink forms for claiming a pension are also clear on this requirement.⁹ Information exchange
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3 NIA, para. 8.

4 Articles 4 and 5 of the Agreement, respectively. NIA, para. 13.

5 Mr Peter Hutchinson, *Transcript of Evidence*, 13 August 2007, pp 11-12.

6 Article 14 of the Agreement, NIA, para. 15.

7 Article 15 of the Agreement, NIA, para. 15.

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

9 Correspondence received from FacSIA, 22 August 2007.

between Centrelink and Australia's bilateral social security partner will also assist in ensuring that the correct Australian pension is received.¹⁰ 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.¹¹

2.7 Part V of the Agreement sets out some administrative obligations. These include accepting, for the purposes of lodgement deadlines, the date a document is lodged in the other country as the relevant lodgement date,¹² exempting documents submitted pursuant to the Agreement from fees and legalisation requirements,¹³ and a general obligation for Australia and Japan to assist each other in implementing the Agreement, to communicate with each other, to exchange information and for the protection of confidentiality of personal data.¹⁴

2.8 Australian citizens who have worked in Japan and paid contributions into the Japanese pension system are currently eligible for a limited refund of the contribution of up to three years of contribution. The Committee was informed that:

If you are working in Japan, you have to work there and make contributions for 25 years to qualify for a pension. Japan gives people a limited refund of up to three years of contributions. So, if you have worked in Japan for five years, when you leave you can get up to three years of your contributions back. But that is it. That feature will remain under the agreement so people will have a choice, if they have worked in Japan for seven years, of leaving those seven years in the Japanese system and taking a part-pension based on seven years contributions, or taking three years contributions and claiming the other four years as a part-pension or a mixture. Otherwise, it is very much the same as our other agreements.¹⁵

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

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

12 Article 20 of the Agreement.

13 Article 22 of the Agreement.

14 Article 23 of the Agreement.

15 Mr Peter Hutchinson, *Transcript of Evidence*, 13 August 2007, p. 12.

- 2.9 The Social Security Agreement with Japan also includes 'double coverage' provisions to ensure that Australia and Japanese 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, in Articles 6 to 13, that an employer and employee will only be subject 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. This arrangement is restricted to five years for private sector employees.¹⁶

Implementation and costs

- 2.10 The Social Security Agreement with Japan will be implemented through the *Social Security (International Agreements) Act 1999* (Cth) ('the Act').¹⁷
- 2.11 The cost of the Agreement is expected to be \$0.297 million over the period 2008-2010 in administrative outlays and \$1.646 million in implementation costs.¹⁸ The Committee queried whether a cost benefit analysis had been undertaken in relation to Australia's 18 bilateral social security agreements. FaCSIA informed the Committee that:

It is a difficult thing to do in terms of specifics because you need to look at an individual record to work out, for example, how much Australia is saving in pension outlays because somebody gets a foreign pension for the first time. There are many variables involved. If the foreign pension is less than the free area, then the Australian pension is not affected. If the person has other income, then the foreign pension might affect the Australian pension immediately. To do it on an individual basis is a complex exercise, but in broad terms we have figures which show that the 18 agreement countries at the moment currently pay approximately \$370 million into Australia per annum, and we are paying approximately \$175

16 NIA, para. 13.

17 NIA, para. 19.

18 NIA, para. 21.

million per annum into those countries. In that broader sense it is in Australia's favour.¹⁹

Consultation

2.12 FaCSIA and the Department of the Treasury sent information relating to the Social Security Agreement with Japan to Japanese community groups, welfare groups, State and Territory governments and a collection of industry and business groups.²⁰ No comments were received.

Conclusion and Recommendation

2.13 The Committee supports Australia's bilateral social security agreements as they provide appropriate access to income support for people who have spent part of their working life in another country and are based on the principle of shared responsibility. The Committee also notes that, in general terms, Australia's bilateral social security agreements provide a financial benefit, not cost, to Australia.

Recommendation 1

The Committee supports the *Social Security Agreement with Japan* and recommends that binding treaty action be taken

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

20 For a complete list of the groups consulted see NIA, 'Consultation' Annex.

Status of Visiting Forces Agreement with the Philippines

Introduction

- 3.1 The Status of Visiting Forces Agreement with the Philippines¹ was signed on 31 May 2007 by the Australian Minister for Defence, the Hon. Dr Nelson MP, and the Philippines Secretary of National Defense, the Hon. Hermogenes E. Ebdane, Jr, during the visit of President Gloria Macapagal-Arroyo to Australia.² It is a reciprocal document affording the same rights to Australian Defence Force (ADF) personnel in the Philippines and armed forces of the Philippines personnel in Australia.³

Background

- 3.2 Defence engagement with the Philippines is currently covered by the Memorandum of Understanding (MOU) between the Philippines and Australia on Cooperative Defence Activities, which came into effect on 22 August 1995. It does not make provision for the status of forces in a host country and is not legally binding in international law.⁴ The

1 Full title: *Agreement between the Government of Australia and the Government of the Republic of the Philippines concerning the Status of Visiting Forces of Each State in the Territory of the Other State.*

2 Mr Ben Coleman, *Transcript of Evidence*, 13 August 2007, p. 15.

3 Mr Ben Coleman, *Transcript of Evidence*, 13 August 2007, p. 16.

4 NIA, para 5.

Status of Visiting Forces Agreement (SOVFA) will be binding in international law and help to strengthen Australia's already strong defence relationship with the Philippines.⁵

- 3.3 Australia and the Philippines have a long history of defence cooperation dating back as far as World War II. More recently, Australia and the Philippines have worked together successfully in coalition operations, such as in East Timor.⁶

Our defence ties extend from the 1940s, when President Manuel L Quezon established his government-in-exile in Australia during the Japanese occupation of the Philippines. During the campaign to liberate the Philippines in 1944-45, over 4,000 Australians fought alongside their Philippines counterparts.⁷

Purpose of the Agreement

- 3.4 The Agreement sets the legal framework, rights, responsibilities and procedures between the visiting forces and the host government on matters including: what occurs in the event that a criminal act is committed by a member of the visiting force, the circumstances in which a uniform is worn, taxation and customs relief, environmental protection requirements, immigration procedures and liability issues. The Agreement affords the same rights to the armed forces of each country when in the other country. It will not authorise either country to deploy troops or conduct operations in the other's territory, but will establish the status of such forces when Australia and the Philippines arrange to send and receive forces to the other country.⁸
- 3.5 The proposal to negotiate a SOVFA was made by the Philippines in February 2004. The Agreement is significant because it will allow Australia's defence cooperation with the Philippines to deepen, particularly in the area of combined exercises. The Australia-Philippines Defence Cooperation relationship has been growing in recent years, with a focus on counter-terrorism, maritime security, and assistance to the Philippines Defence Reform program.⁹

5 NIA, para 6.

6 NIA, para 7.

7 Mr Ben Coleman, *Transcript of Evidence*, 13 August 2007, p. 16.

8 NIA, para 8 and see Mr Ben Coleman, *Transcript of Evidence*, 13 August 2007, p. 16.

9 NIA, para 9.

The Philippines noted that a SOVFA was essential for it to broaden its defence engagement with Australia, as its constitution requires a treaties-status agreement before allowing Australia to undertake more extensive defence activities in Philippines territory. Article 18 of the Philippines constitution states that foreign military bases, troops or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the senate, and recognised as a treaty by the other contracting state. This treaty will allow our defence cooperation with the Philippines to deepen, particularly in the area of combined exercises.¹⁰

Obligations

- 3.6 The provisions in the Agreement are similar to those contained in other SOVFAs to which Australia is a party. The Agreement sets out standard conditions concerning the rights and obligations of forces of the Philippines or Australia and the status of those forces when in the country of the other. These conditions include the following matters:¹¹
- Respect for local laws (Article 2): Members of the visiting force must respect local laws and abstain from activity inconsistent with the Agreement.
 - Notification of size of force (Article 3): The Sending State must notify the Receiving State the size of, and if practicable the names of members of the visiting force.
 - Entry and departure (Article 4):
 - ⇒ Members of the visiting force are exempt from visa requirements but must have a passport, photo identity card and travel orders.
 - ⇒ Members of the visiting force are exempt from regulations on the registration and control of non-citizens and are also exempt from emigration clearance certificate requirements of the Receiving State.
 - ⇒ The Agreement provides for the removal of an individual at the request of the Receiving State or of an individual who ceases to be a member of the visiting force.

10 Mr Ben Coleman, *Transcript of Evidence*, 13 August 2007, p. 16.

11 NIA, para 13 and Articles 2-25 of the Agreement.

- ⇒ The Agreement contains procedures for entry of military aircraft, motor vehicles or vessels including presentation of declarations of health and quarantine inspections.
- ⇒ The Receiving State may prevent a member of the visiting force from leaving by issuing a hold departure order in connection with a civil, criminal or administrative inquiry.
- Training (Article 5): The visiting force may use mutually determined land and sea areas, air space or facilities for combined training, exercises, etc.
- Use of public services and facilities (Article 6): Visiting forces may use areas and facilities as mutually determined. Visiting forces may use public services and facilities on no less favourable terms than those available to others in like circumstances.
- Movement of forces, vessels, aircraft and motor vehicles (Article 7):
 - ⇒ The visiting force and its aircraft, vessels and vehicles have freedom of ingress to and egress from land and sea areas, air space and facilities subject to the Receiving State's right to prescribe the routes. Vessels of the visiting force may visit ports with the Receiving State's consent, with movement in accordance with international practice. Members of the visiting force have freedom of movement for the purpose of lawful activities.
 - ⇒ With prior consent of the Receiving State, the Sending State may transport explosives (including ammunition) through the territory of the Receiving State, in compliance with applicable laws. The Sending State indemnifies port authorities and the Receiving State in respect of claims arising out of transportation or storage of explosives, and must pay compensation for damage.
 - ⇒ The visiting forces, aircraft, vessels and vehicles may move through the Receiving State under comparable conditions to forces of the Receiving State in respect of pilotage, harbour charges and tolls, etc.
- Mortuary affairs (Article 7A): The Sending State may take charge of all matters relating to identification, processing, repatriation and disposal of the remains of a deceased member of the visiting forces subject to the Receiving State's laws, policies and procedures including coronial proceedings.

- Uniforms (Article 8): Visiting forces may wear national uniform on duty and wear civilian dress under the same conditions as forces of the Receiving State.
- Carriage of arms (Article 9): Members of the visiting force are entitled to possess and carry arms when authorised by their orders, and where permitted by the Receiving State's authorities. Carriage of arms outside training facilities and areas used by the force are to be mutually determined.
- Security (Article 10): The visiting force may maintain service police for the maintenance of discipline and may take reasonable measures, consistent with the law of the Receiving State, to protect the security of the force.
- Criminal jurisdiction (Article 11):
 - ⇒ The authorities of the Receiving State have jurisdiction over visiting forces with respect to offences committed within the Receiving State and punishable by the law of the Receiving State. Concurrently, service authorities of the Sending State have the right to exercise all criminal and disciplinary jurisdiction conferred on them by the law of the Sending State over all personnel subject to the service law of the Sending State.
 - ⇒ Where there is concurrent jurisdiction the Sending State has the primary right to exercise jurisdiction in relation to offences solely against its own property or security, offences solely against the person or property of another member of the visiting forces, or offences in the course of official duty. The Receiving State has primary jurisdiction over all other offences. There are procedures for waiver of primary jurisdiction and a requirement for sympathetic consideration of a request for waiver.
 - ⇒ There are procedures for co-operation, subject to the laws of the parties, in the arrest of offenders, investigation of offences, collection and production of evidence and custody, detention and confinement of personnel. The parties must notify each other of the arrest or detention of personnel. Persons taken into custody, detained or prosecuted will be afforded all procedural safeguards established by the law of the jurisdiction.
 - ⇒ Visiting personnel will not be subject to trial in military or religious courts of the Receiving State. Visiting personnel will not be subject to the service law of the Receiving State unless mutually determined. A sentence of death will not be carried out by either party.

- Environmental protection (Article 12): The parties commit to environmental protection measures and there is a requirement on the Sending State to remedy contamination caused by visiting forces.
- Importation and exportation (Article 13):
 - ⇒ The customs and taxation laws and regulations of the Receiving State will apply to members of the visiting force.
 - ⇒ Official documents under official seal are exempt from customs inspection and there are exemptions from import and export duties for equipment, material, motor vehicles, etc. intended for official use. There are procedures for disposition of items imported free of duty.
 - ⇒ The service authorities of the Sending State are exempt from import and export duties for all fuel, oil and lubricants intended for exclusive use in official motor vehicles, aircraft and vessels. Visiting personnel may import military uniforms free of import duties.
- Classified information (Article 14): Classified information is to be dealt with in accordance with each party's national security laws and procedures. There are procedures specified for protection of classified information and a requirement to investigate suspected cases of loss or unauthorised disclosure of classified information.
- Communications (Article 15): Visiting forces may only use frequencies allocated by the Receiving State. Items are not to be posted in contravention of the postal laws of the Receiving State.
- Motor vehicles (Article 16): Official motor vehicles, excluding hired vehicles, must carry a distinctive nationality mark, a registration number issued in the Sending State, be registered if required and are not exempt from payment of toll fees or taxes. Privately owned motor vehicles are to be registered under and subject to local law.
- Driving licences and laws (Article 17): The Receiving State will accept driving permits or licences issued by the Sending State, for visiting forces driving official motor vehicles in the course of official duty. Local laws will apply in all other respects to the driving of motor vehicles.
- Local purchases (Article 18): The Sending State commits to purchase local goods and commodities.

- Employment of local civilians (Article 19): The Sending State commits to employing local labour, if available and suitably qualified and to employ in accordance with local labour laws.
- Personal taxation (Article 20): Liability of personnel for any taxes and duties will be determined by existing agreements in relation to taxes and duties.
- Claims (Article 21):
 - ⇒ Government-to-government claims are waived for: damage arising from the performance of official duties to property used by the forces of either party, maritime salvage for vessels and cargo used in connection with activities under the Agreement, and injury or death suffered by a member of the visiting forces while engaged in performance of official duties.
 - ⇒ Claims for loss or damage of property not used by forces of either party arising from the performance of official duties, or maritime salvage for vessels and cargo not used in connection with activities under the Agreement, will be borne according to a mutually determined apportionment of liability.
 - ⇒ Third party claims are to be handled under the laws of the Receiving State with respect to claims arising from activities of visiting personnel, unless mutually determined otherwise.
 - ⇒ The Sending State must assist the Receiving State to take possession of any property of the visiting forces which is subject to levy under the law of the Receiving State and within an area or facility used by the visiting personnel.
 - ⇒ The parties must cooperate in procurement of evidence for a fair hearing and disposal of claims. The Sending State may not request immunity from the civil jurisdiction of courts for visiting forces.
- Exchange control (Article 22): The foreign exchange regulations of both parties apply concurrently for acts done in the territory of the Receiving State.
- Abuse of privileges (Article 23): The Sending State is to cooperate to prevent abuse or misuse of privileges and ensure proper discharge of obligations.
- Dispute resolution and consultation (Articles 24 and 25): Disputes are to be settled amicably by consultation and negotiation.

- 3.7 The Agreement does not differ significantly from other SOVFAs Australia has in place with other countries although there are some minor differences.

...there is an article about environmental protection and I suppose that just reflects the modern world where people are more aware of the environment and environmental issues...that and the mortuary affairs would be the only substantially new articles.¹²

Issues raised in Submissions

- 3.8 The Committee received two submissions on the Agreement from the Hon. Paul Lennon, Premier of Tasmania, and Dr Ben Saul, Director, Sydney Centre for International and Global Law. The Committee held an additional hearing on the Agreement on 17 September 2007 to seek the Commonwealth Government's response to the issues raised in each submission.
- 3.9 The Premier of Tasmania's submission raised a specific issue in relation to Article 11 of the Agreement recommending "that a provision be included in paragraph 10(h) to provide that the court may close the court if the relevant legislation permits or requires the court to be closed to the public."¹³ The Attorney-General's Department informed the Committee that Article 11 of the Agreement, which deals with criminal jurisdiction, does not contain any provisions that would prevent a court applying legislation that permitted or required a court to be closed to the public in certain circumstances and that it would be entirely consistent with the Agreement for a court to be closed to the public in accordance with relevant legislation of the jurisdiction.¹⁴
- 3.10 Dr Ben Saul raised a number of issues, principally around affirming respect for and observance of human rights in the Agreement. The Government representatives informed the Committee that the preamble to the Agreement acknowledges all of Australia's and the Philippine's existing international commitments including commitments under the International Covenant on Civil and Political

12 Ms Marianne Martin, *Transcript of Evidence*, 13 August 2007, p. 16.

13 Premier of Tasmania, *Submission 3*.

14 Ms Kerin Leonard, *Transcript of Evidence*, 17 September 2007, p. 33.

Rights (ICCPR). The Committee was also explicitly informed that there are no provisions in the Agreement which would limit either country's existing international obligations and that it is not necessary to restate obligations under international law in the Agreement because they continue to apply.¹⁵

- 3.11 In respect of some of the specific issues raised by Dr Saul, the Committee was informed that:
- there is nothing in the Status of Visiting Forces Agreement which contradicts provisions of the *Migration Act 1958* and therefore would prevent a member of visiting Philippine forces making a claim for refugee status;
 - the Philippines is a party to the ICCPR which would oblige it to observe certain minimum standards in respect of the detention of ADF personnel in the Philippines and that Australia would raise non-compliance with these standards with the Philippines; and
 - the Australian Government expects that were Australia to make any representations to the Philippines under the Agreement that the Philippines would take Australia's representations very seriously.¹⁶
- 3.12 Having sought additional input from the Government on the issues raised in the submissions the Committee is satisfied that the suggested amendments to the Agreement are not necessary.

Costs

- 3.13 Article 7 clauses (6)(a) and (b) of the Agreement provide for Australia to indemnify the Philippines against any legally enforceable claims arising from the transportation or storage of ADF explosives or damage to property of the port authorities or Government of the Philippines arising from any detonation of such explosives. Article 21 of the Agreement contains a reciprocal procedure for handling claims under which Australia assumes a contingent liability under certain circumstances.¹⁷

15 Dr Sheridan Kearnan, *Transcript of Evidence*, 17 September 2007, p. 31.

16 Ms Kerin Leonard, *Transcript of Evidence*, 17 September 2007, p. 32.

17 NIA, para 15.

- 3.14 Defence has conducted a risk assessment on the likelihood that the indemnities will become actual liabilities. However, the probable amount payable if these risks occurred cannot be determined as there is no data on which to base an assessment. However, Defence has assessed that the benefits of the Agreement outweigh the risks of the contingent liabilities which the Commonwealth would be assuming.¹⁸

Entry into force and withdrawal

- 3.15 Article 28 of the Agreement provides that it will enter into force when Australia and the Philippines notify each other in writing that all procedures for entry into force have been completed. Article 28 also provides that the Agreement can be terminated on 180 days' written notice by either Party. In the event that the Agreement is terminated, under Article 26 those provisions that confer rights or impose obligations on the Parties concerning claims, indemnities, the protection of classified information or private rights remain in force.¹⁹

Legislation

- 3.16 No new primary legislation is required. The matters which require legislation are primarily addressed in the *Defence (Visiting Forces) Act 1963* (Cth) which governs the legal status of certain foreign military forces whilst in Australia. The Act allows the military authorities of visiting foreign forces to apply their military law to their personnel whilst in Australia and provides for a corresponding suspension of Australian jurisdiction over such personnel in certain circumstances. The Australian Customs Service (ACS) has advised that some amendment to by-laws under the *Customs Tariff Act 1995* (Cth) is required and the Department of Defence has requested that those amendments be made. The Agreement will not change the existing roles of the Commonwealth and the States and Territories.²⁰

18 NIA, para 16.

19 NIA, paras 1 and 19.

20 NIA, para 14.

Consultation

- 3.17 The States and Territories were notified of the Agreement through the Standing Committee on Treaties. The Departments of Foreign Affairs and Trade, Justice and Customs, Immigration and Citizenship, Finance and Administration, Communications, Information Technology and the Arts, Environment and Water Resources, Agriculture, Forestry and Fisheries, Employment and Workplace Relations, Transport and Regional Services, Treasury and the Attorney-General's Department were consulted when drafting the text. All agencies cleared the text, and it was subsequently endorsed by all relevant Ministers. The text of the Agreement was agreed by the Executive Council on 23 May 2007.²¹

Similar Agreements

- 3.18 Australia has treaties of the same type with France, the Kyrgyz Republic, Malaysia, New Zealand, Papua-New Guinea, Singapore, and the United States of America, as well as the Agreement between the Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga concerning the Operations and Status of the Police and Armed Forces and Other Personnel deployed to the Solomon Islands.

Conclusions and recommendation

- 3.19 The Committee is very supportive of increased defence cooperation with the Philippines, particularly in the areas of counter terrorism and maritime security contemplated by the Agreement. The Agreement will allow Australia and the Philippines to undertake joint exercises and provide an internationally recognised means to resolve any disputes that may arise from the presence of one country's forces in the territory of the other.

²¹ NIA, consultation statement, paras, 1&2.

Recommendation 2

The Committee supports the *Status of Visiting Forces Agreement with the Philippines* and recommends that binding treaty action be taken

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.¹
- 4.4 It is estimated that approximately 50,000 people residing in Australia and Greece will benefit when the Agreement comes into force by

¹ NIA, para. 10.

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

- 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.³

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:

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.⁴ 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,

⁴ 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.⁵

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.⁶

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

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.⁷ Centrelink forms for claiming a pension are also clear on this requirement.⁸ Information exchange between Centrelink and Australia's bilateral social security partner will also assist in ensuring that the correct Australian pension is received.⁹ 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.¹⁰

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)

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.¹¹

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.

¹¹ 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.¹²

- 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.¹³

Consultation

- 4.20 According to the NIA, negotiations for the Agreement with Greece commenced in the early 1990s.¹⁴ 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 2005.¹⁵

- 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.¹⁶
- 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

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.¹⁷

- 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.¹⁸

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 2008.¹⁹

- 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.²⁰

- 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

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.²¹

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.²²

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.²³ 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.

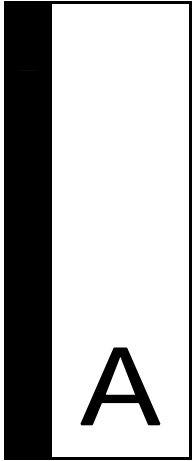
Dr Andrew Southcott MP

Committee Chair

²¹ NIA, para. 24.

²² NIA, para. 23.

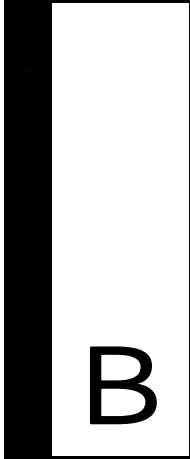
²³ Joint Standing Committee on Treaties Report 88, see Appendix D.



Appendix A - Submissions

Treaties tabled on 7 August 2007

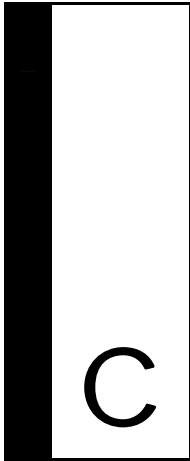
- 1 Australian Patriot Movement
- 1.1 Australian Patriot Movement
- 2 Dr Ben Saul
- 3 Tasmanian Government



Appendix B – Exhibits

Treaties tabled on 7 August 2007

- 1 Department of Family and Community Services & Indigenous Affairs
Fact sheets - Social security information for people who migrate between Australia and Greece (English and Greek language)



Appendix C - Witnesses

Monday, 13 August 2007 - Canberra

Attorney-General's Department

Ms Kerin Leonard, Principal Legal Officer, Office of International Law

Mr Steven Marshall, Assistant Secretary, International Crime
Cooperation Division

Department of Defence

Mr Ben Coleman, Assistant Secretary, South East Asia

Ms Marianne Martin, Senior Legal Officer

Commander, RFD RANR David Thorley, Deputy Director, Military
Discipline Law (Operations), Directorate of Military Justice, Legal
Division

Department of Family and Community Services & Indigenous Affairs

Ms Michalina Stawyskyj, Branch Manager, International Branch

Department of Family and Community Services and Indigenous Affairs

Mr Peter Hutchinson, Section Manager, International Agreements
Section, International Branch

Department of Foreign Affairs and Trade

Mr Paul Grigson, First Assistant Secretary, South East Asia Division

Mr Warren King, Director, Japan Section

Mr David Mason, Executive Director, Treaties Secretariat, Legal Branch

Mr Glenn White, Director, Southern Europe Section, Europe Division

Mr Justin Whyatt, Executive Officer, International Law Section

Department of the Treasury

Mr Leon Latimore, Analyst, Superannuation, Personal and Retirement Income Division

Mr Nigel Murray, Manager, Superannuation, Personal and Retirement Income Division

Monday, 17 September 2007 - Canberra

Attorney-General's Department

Ms Kerin Leonard, Principal Legal Officer, Office of International Law

Mr Steven Marshall, Assistant Secretary, International Crime Cooperation Division

Department of Defence

Ms Marianne Martin, Senior Legal Officer

Commander, RFD RANR David Thorley, Deputy Director, Military Discipline Law (Operations), Directorate of Military Justice, Legal Division

Brigadier Paul Symon, Director General Personnel, Army

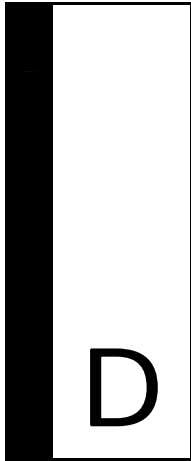
Dr Sheridan Kearnan, Acting Assistant Secretary, South East Asia Branch, International Policy Division

Department of Foreign Affairs and Trade

Mr Doug Trappett, Director, Thailand and Philippines Section

Mr Michael Bliss, Director, International Law Section

Mr David Mason, Executive Director, Treaties Secretariat, Legal Branch



Appendix D – Report 88

Report 88

Treaty Tabled on 7 August 2007

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

August 2007
Canberra

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Treaty Tabled on 7 August 2007

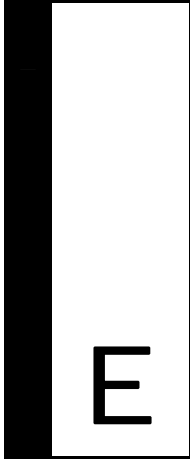
In order to facilitate the timely implementation of the *Agreement between Australia and the Hellenic Republic on Social Security (Canberra, 23 May 2007)* (the Agreement) the Committee resolved to report its recommendation on the treaty to the Parliament immediately and will provide a more detailed report on the provisions of the Agreement at a later date.

Recommendation 1

The Treaties Committee supports the *Agreement between Australia and the Hellenic Republic on Social Security (Canberra, 23 May 2007)* and recommends that binding treaty action be taken

Dr Andrew Southcott MP

Committee Chair



Appendix E – Category 3 Treaty Actions

Category 3 treaty actions are identifiably minor treaty actions (mainly minor/technical amendments to existing treaties) which do not impact significantly on the national interest. Category 3 treaty actions are tabled with a one-page explanatory statement. The Treaties Committee has the discretion to formally inquire into Category 3 treaty actions or indicate its acceptance of them without a formal inquiry and report.

The following Category 3 treaty actions have been considered by the Treaties Committee on the dates indicated. The Committee determined not to hold formal inquiries and agreed that binding treaty action on each one may be taken.

Treaties tabled on 15 August 2007

Considered by the Committee on 11 September 2007

- Amendment, Adopted at Christchurch in November 2006, to Annex 1 of the Agreement on the Conservation of Albatrosses and Petrels (ACAP) of 19 June 2001
- Amendments, done at Anchorage, Alaska 28-31 May 2007, to the Schedule to the International Convention for the Regulation of Whaling, done at Washington on 2 December 1946
- Amendment, Adopted at Paris on 7 February 2007, to Annex 1 of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport of 19 October 2005

- Amendment to Annex 2-B (United States Tariff Schedule) of the Australia-United States Free Trade Agreement (AUSFTA) of 18 May 2004

Treaties tabled on 18 September 2007

Considered by the Committee on 18 September 2007

- Amendments, Adopted at London in July 2007, to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78)