

**AGREEMENT BETWEEN AUSTRALIA
AND
THE FEDERAL REPUBLIC OF GERMANY
ON
SOCIAL SECURITY TO GOVERN PERSONS
TEMPORARILY EMPLOYED IN THE TERRITORY OF THE
OTHER STATE ("SUPPLEMENTARY AGREEMENT"),
CONCLUDING PROTOCOL AND IMPLEMENTATION
ARRANGEMENT**

Berlin, 9 February 2007

Not yet in force
[2007] ATNIF 6

**Agreement between Australia and the Federal Republic of Germany on Social Security
to govern persons temporarily employed in the territory of the other State
("Supplementary Agreement")**

Australia and the Federal Republic of Germany,

Desiring to strengthen the existing friendly relations between the two States and resolved to expand their mutual cooperation in the field of social security and to facilitate the performance of work in the other State and in particular, to avoid that an employee is subject to the legislation of both States at the same time have agreed upon the following to supplement the Agreement on Social Security between Australia and the Federal Republic of Germany of 13 December 2000:

**Article 1
Definitions**

1. For the purposes of this Supplementary Agreement,
 - (a) "territory" means,
 - as regards the Federal Republic of Germany,
the territory of the Federal Republic of Germany;
 - as regards Australia,
the territory of Australia;
 - (b) "legislation" means,
 - as regards the Federal Republic of Germany,
the laws, regulations and other general legislative acts related to the branches of social security covered by the scope of this Supplementary Agreement (paragraph 1(a) of Article 2);
 - as regards Australia,
the laws covered by the scope of this Supplementary Agreement (paragraph 1(b) of Article 2);
 - (c) "competent authority" means,
 - as regards the Federal Republic of Germany,
the Federal Ministry of Labour and Social Affairs
(*Bundesministerium für Arbeit und Soziales*);
 - as regards Australia,
the Commissioner of Taxation or an authorised representative of the Commissioner;

(d) "institution" means,

as regards the Federal Republic of Germany,
the insurance institution responsible for the implementation of the legislation
specified in paragraph 1 (a) of Article 2 and the body designated by the
competent authority;

as regards Australia,
the Commissioner of Taxation or an authorised representative of the
Commissioner.

2. Any term not defined in paragraph 1 has the meaning assigned to it in the applicable legislation.

Article 2 Legislative scope

1. This Supplementary Agreement shall apply to the following legislation:

- (a) as regards the Federal Republic of Germany,
the legislation concerning the Statutory Pension Insurance;
- (b) as regards Australia,
the legislation concerning the Superannuation Guarantee.

2. This Supplementary Agreement shall also apply to laws, regulations and other general legislative acts in so far as they amend, supplement or replace the legislation of the Contracting States.

Article 3 Personal scope

This Supplementary Agreement shall apply in respect of all persons who are ordinarily resident or employed in the territory of either Contracting State.

Article 4 Applicable legislation for employees

1. Unless otherwise provided in this Supplementary Agreement, an employee shall be subject to the legislation of the Contracting State in whose territory he is actually performing the work.

2. Paragraph 1 shall apply analogously to self-employed persons.

Article 5
Applicable legislation in case of detachment

When an employee who is employed in one Contracting State is sent by his employer, who ordinarily engages in considerable business activities in the sending State, to the territory of the other Contracting State in the context of that employment to perform services there for this employer that are known to be time-limited beforehand, then, provided that the employee concerned continues to be subject to the legislation of the first Contracting State in relation to that employment, only the legislation of the first Contracting State shall continue to apply with regard to that employment during the first forty-eight calendar months as though the employee were still employed in the territory of the first Contracting State. The period of forty-eight calendar months shall start on the first day of the calendar month in which the employee takes up employment in the territory of the other Contracting State.

Article 6
Applicable legislation on board sea-going vessels

This Supplementary Agreement shall not affect the application of the national legislation of the two Contracting States for persons who work on board a sea-going vessel.

Article 7
Applicable legislation for persons employed with diplomatic missions or consular posts

Nothing in this Supplementary Agreement shall affect the application of the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or of the Vienna Convention on Consular Relations of 24 April 1963.

Article 8
Exceptions from the provisions on the applicable legislation

1. At the joint request of the employee and the employer or at the request of a self-employed person, the competent authorities of the Contracting States or the bodies designated by them may, by mutual agreement, derogate from the provisions of this Supplementary Agreement in relation to the applicable legislation provided that the person concerned continues to be subject or will be subjected to the legislation of either Contracting State. In this regard, the nature and the circumstances of the employment shall be taken into account.
2. The application shall be filed in the Contracting State whose legislation is to apply.

Article 9
Administrative assistance

The competent authorities and the institutions of the Contracting States shall provide mutual assistance to each other in the implementation of this Supplementary Agreement as if they were applying their own legislation. The assistance shall be provided free of charge.

Article 10
Languages of communication, service and legalisation

1. In implementing this Supplementary Agreement, the competent authorities and the institutions of the Contracting States may communicate in their respective official languages directly with each other as well as with persons concerned and their representatives. Documents may be served on a person who is staying in the territory of the other Contracting State directly and by registered mail with acknowledgment of receipt.
2. Documents, especially applications and certifications, may not be rejected because they are written in the official language of the other Contracting State.
3. Documents, especially certifications, to be submitted in application of this Supplementary Agreement shall not require legalisation or any other similar formality.

Article 11
Data protection

1. Where personal data is transmitted under this Supplementary Agreement, the following shall apply whilst the laws applicable to each Contracting State shall be duly observed:
 - (a) The data may, for the purposes of implementing this Supplementary Agreement and the legislation to which it applies, be transmitted to the competent bodies in the receiving State. The receiving body may only use the data for these purposes. The passing on of this data to other bodies within the receiving State or the use of this data in the receiving State for other purposes is permissible in the framework of the law of the receiving State provided this serves social security purposes including related judicial proceedings. However, the foregoing shall not prevent the passing on of that data in cases where doing so is mandatory under the laws and regulations of the receiving State for the interests protected by criminal law or for the purposes of taxation. In all other cases the passing on to other bodies shall be only permissible upon prior consent of the transmitting body.
 - (b) In individual cases the recipient of the data shall, at the request of the transmitting body, inform that body of the use of the transmitted data and the results obtained thereof.
 - (c) The transmitting body shall ensure that the data to be transmitted is correct and that its transmission is necessary and proportionate with regard to the purposes pursued with the transmission of the data. In this context, any prohibition to transmit data under the respective national law has to be respected. Data shall not be transmitted if the transmitting body reasonably assumes that doing so would violate the purpose of a national law or injure any interests of the person concerned that are worthy of protection. If it becomes evident that incorrect data or data the transmission of which was not permissible under the law of the transmitting State has been transmitted, the receiving body has to be immediately notified of this fact. The receiving body is obliged to correct or delete this data without delay.

- (d) Upon request, the person concerned shall be informed of any personal data transmitted and the intended use of that data. In all other cases, the right of the person concerned to receive information about any personal data held in relation to that person shall be determined by the national law of the Contracting State whose body requests the information.
 - (e) Transmitted personal data shall be deleted as soon as it is no longer required for the purpose for which it was transmitted, and if there is no reason to assume that social security interests of the person concerned which are worthy of protection will be affected by the deletion of the data.
 - (f) The transmitting and the receiving bodies shall record the transmission and the receipt of personal data.
 - (g) The transmitting and the receiving bodies shall protect transmitted personal data effectively against unauthorized access, unauthorized modification and unauthorized disclosure.
2. The provisions of paragraph 1 shall apply analogously to business and industrial secrets.

Article 12

Implementing arrangements

1. The Governments of the Contracting States or the competent authorities may conclude arrangements necessary for the implementation of this Supplementary Agreement. The competent authorities shall inform each other of any amendments and additions to their legislation which is covered by the scope of this Supplementary Agreement (paragraph 1 of Article 2).
2. The liaison agencies hereby set up for the implementation of this Supplementary Agreement are:
- (a) in the Federal Republic of Germany,
German Liaison Agency Health Insurance – International (*Deutsche Verbindungsstelle Krankenversicherung – Ausland (DVKA), Bonn;*
 - (b) in Australia,
the Australian Taxation Office.
3. The liaison agencies may, within their respective areas of jurisdiction and with the participation of the competent authorities, agree upon the administrative measures necessary and appropriate for the implementation of this Supplementary Agreement. However, the provisions of paragraph 1 shall remain unaffected.

Article 13
Settlement of disputes

1. Disagreements between the two Contracting States regarding the interpretation or application of this Supplementary Agreement shall be settled, as far as possible, by the competent authorities.
2. If a disagreement cannot be settled in this way, it shall, if necessary, be settled by a joint ad hoc commission set up by mutual agreement.

Article 14
Concluding provision

This Supplementary Agreement shall not affect the Agreement on Social Security between the Federal Republic of Germany and Australia of 13 December 2000.

Article 15
Concluding Protocol

The attached Concluding Protocol shall form an integral part of this Supplementary Agreement.

Article 16
Ratification and entry into force

1. This Supplementary Agreement shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible in Canberra.
2. This Supplementary Agreement shall enter into force on the first day of the second month following the month in which the instruments of ratification have been exchanged.

Article 17
Duration of the Supplementary Agreement

1. This Supplementary Agreement shall be concluded for an indefinite period of time. Either Contracting State may terminate it through diplomatic channels at the end of the calendar year giving three months' written notice. The relevant date for calculating the period of notice shall be the day on which the notice is received by the other Contracting State.
2. This Supplementary Agreement shall also cease to be in force if the Agreement on Social Security between the Federal Republic of Germany and Australia of 13 December 2000 ceases to be in force.

3. In the event that this Supplementary Agreement shall cease to be in force in accordance with paragraph 1 or 2, the Supplementary Agreement shall continue to have effect in relation to all persons who immediately before the date of termination, are subject only to the legislation of one Contracting State by virtue of Article 5 or 8 provided the person continues to meet the corresponding requirements.

In witness whereof, the undersigned, being duly authorized thereto, have signed this Supplementary Agreement.

Done at Berlin on the ninth day of February 2007, in duplicate in the English and German languages, each text being equally authentic.

**For the Government of
Australia:**

Alexander Downer

**For the Government of the
Federal Republic of Germany:**

Dr Franz-Walter Steinmeier

Concluding Protocol
to
the Supplementary Agreement between Australia and the Federal Republic of Germany
on Social Security to govern persons temporarily employed in the territory of the other
State

At the time of signing the Supplementary Agreement between Australia and the Federal Republic of Germany on Social Security to govern persons temporarily employed in the territory of the other State concluded this day, the plenipotentiaries of both Contracting States stated that they are in agreement on the following points:

1. With reference to paragraph 1(a) of Article 2 of the Supplementary Agreement:
 - (a) If, by virtue of Articles 4, 5 and 8 of the Supplementary Agreement, German legislation applies to a person working in the territory of Australia, the German laws and regulations in the field of employment promotion shall also be applicable to this person and his employer in the same way.
 - (b) If, by virtue of Articles 4, 5 and 8 of the Supplementary Agreement, Australian legislation applies to a person working in the territory of the Federal Republic of Germany, the German laws and regulations in the field of employment promotion shall not be applicable to this person and his employer.
2. With reference to Articles 4 to 8 of the Supplementary Agreement:

Persons to whom German legislation applies shall also include those who, under German legislation, are insurance-free or exempted from insurance.
3. With reference to Article 5 of the Supplementary Agreement:
 - (a) It shall not be considered a case of detachment to the other Contracting State in particular when:
 - the work of the detached employee does not correspond to the employer's business operations in the sending State;
 - the employer of the detached employee ordinarily does not engage in considerable business activities in the sending State;
 - the person recruited for the purpose of detachment is not ordinarily resident in the sending State at that time;
 - this constitutes illegal labour leasing under German law; or
 - the employee has worked in the sending State for less than two months after termination of the last period of detachment.
 - (b) For persons who are already detached on the day of entry into force of the Supplementary Agreement the specified period shall begin on that date.

- (c) Article 5 of the Supplementary Agreement shall apply analogously to a self-employed person who ordinarily engages in considerable business activities in the territory of the Federal Republic of Germany if that person temporarily works in the territory of Australia on a time limited basis. In this situation only the legislation of the Federal Republic of Germany shall continue to apply with regard to that work during the first forty-eight calendar months as though the self-employed person were still working in the territory of the Federal Republic of Germany. The period of forty-eight calendar months shall start on the first day of the calendar month in which the self-employed person takes up work in the territory of Australia. Item 3 (b) shall apply analogously.

4. With reference to Article 8 of the Supplementary Agreement:

- (a) Where, in application of Article 8 of the Supplementary Agreement, German legislation applies to a person, the person shall be deemed to be employed or to work at the place where he or she was last employed or working; however, a different arrangement resulting from the previous application of Article 5 of the Supplementary Agreement shall continue to be effective. When he or she was previously not employed or working in the territory of the Federal Republic of Germany, he or she shall be deemed to be employed or working at the place where the competent German authority has its seat.
- (b) Article 8 of the Supplementary Agreement shall apply in particular to an employee of an enterprise located in one Contracting State who is temporarily employed in the other Contracting State by an associated enterprise and, during this period, receives remuneration in the state of employment at the expense of the associated enterprise.

5. With reference to paragraphs 1(a) and (e) of Article 11 of the Supplementary Agreement:

With regard to Australia, the term “social security” shall also include the Superannuation Guarantee.

ARRANGEMENT FOR THE IMPLEMENTATION OF THE SUPPLEMENTARY AGREEMENT OF 9 FEBRUARY 2007 BETWEEN AUSTRALIA AND FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY TO GOVERN PERSONS TEMPORARILY EMPLOYED IN THE TERRITORY OF THE OTHER STATE

The Government of Australia and the Government of the Federal Republic of Germany, on the basis of paragraph 1 of Article 12 of the Agreement of 9 February 2007 between Australia and the Federal Republic of Germany on Social Security to govern persons temporarily employed in the territory of the other State,

hereinafter referred to as the "Supplementary Agreement"

have agreed as follows:

Part I
General provisions

Article 1
Definitions

Where terms which appear in the Supplementary Agreement are used in this Arrangement, they shall have the same meaning as they have in the Supplementary Agreement.

Article 2
Duty to inform

The liaison agencies set up pursuant to paragraph 2 of Article 12 of the Supplementary Agreement and the bodies designated by the competent authorities pursuant to Article 8 of the Supplementary Agreement shall, within their respective areas of jurisdiction, be responsible for generally informing the persons concerned about the Supplementary Agreement.

Article 3
Duty to communicate facts

1. The bodies referred to in paragraph 2 of Article 12, in Article 8 and in Article 9 of the Supplementary Agreement shall, within their respective areas of jurisdiction, communicate to each other and to the persons concerned the facts and transmit the evidence necessary to secure the rights and obligations that follow from the legislation specified in paragraph 1 of Article 2 of the Supplementary Agreement and the Supplementary Agreement and this Arrangement.

2. Where a person is obliged, under the legislation specified in paragraph 1 of Article 2 of the Supplementary Agreement, under the Supplementary Agreement or under this Arrangement, to communicate to the institution or another body, certain facts, this obligation shall also apply with regard to corresponding facts obtaining in the territory of the other Contracting State or under its legislation. This shall also apply if a person has to transmit certain evidence.

3. Article 11 of the Supplementary Agreement shall also be applied to the duty to communicate facts under paragraphs 1 and 2.

Article 4 Certificate on the applicable legislation

1. In the circumstances described in Articles 5 and 8 of the Supplementary Agreement, the competent authority or the competent body of the Contracting State whose legislation is applicable shall, on request, issue a certificate stating, in respect of the employment in question, that this legislation is applicable to the employee and the employer. A specific period of validity must be given on the certificate.

2. Where German legislation is applicable, the certificate shall, in the circumstances described in Article 5 of the Supplementary Agreement, be issued by the health insurance institution to which the pension contributions are paid, and by the *Deutsche Rentenversicherung Bund*, Berlin, in any other case. In the circumstances described in Article 8 of the Supplementary Agreement, the *Deutsche Verbindungsstelle Krankenversicherung - Ausland* (DVKA) - (German Liaison Agency Health Insurance- International), Bonn, shall issue the certificate.

3. Where Australian legislation is applicable, the certificate shall be issued by the Commissioner of Taxation, or an authorised representative of the Commissioner.

4. If there are doubts as to whether the legislation referred to in the certificate is actually applicable, or if the facts certified therein differ from the actual circumstances, the body that has issued the certificate shall, on request, review and correct it, if necessary.

Part II Final Provision

Article 5 Entry into force and duration of the Arrangement

1. This Arrangement shall enter into force on the date on which both Governments have informed each other that the national requirements for such entry into force have been fulfilled. The relevant date shall be the day on which the last notification is received.

2. This Arrangement is to be applied from the date of the entry into force of the Supplementary Agreement and shall have the same period of duration.

Done at Berlin on the ninth February 2007 in duplicate in the English and German languages, each text being equally authentic.

**For the Government of
Australia:**

Alexander Downer

**For the Government of the
Federal Republic of Germany:**

Dr Franz-Walter Steinmeier