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Report 97

Treaties tabled on 16 September 2008

Agreement between Australia and the Republic of Finland on Social Security
(Helsinki, September 2008)

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Canberra

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Membership of the Committee

Chair	Mr Kelvin Thomson MP	
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	Mr Jamie Briggs MP (from 10/11/08)	Senator Michaelia Cash
	Mr John Forrest MP	Senator Don Farrell
	Ms Jill Hall MP	Senator Scott Ludlam
	Ms Belinda Neal MP	Senator Louise Pratt
	Ms Melissa Parke MP	Senator Dana Wortley
	Mr Luke Simpkins MP	
	Mr Chris Trevor MP	
	Ms Maria Vamvakinou MP	

Committee Secretariat

Secretary	Jerome Brown (from 24/11/08)
	Russell Chafer (until 21/11/08)
Inquiry Secretaries	Kevin Bodel
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	Julia Searle
Research Officer	Geoff Wells
Administrative Officers	Emma Martin
	Dorota Cooley



Resolution of Appointment

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

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements 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

NIA National Interest Analysis



List of recommendations

2 Agreement between Australia and the Republic of Finland on Social Security

Recommendation 1

The Committee supports the *Agreement between Australia and the Republic of Finland on Social Security done at Helsinki, 10 September 2008* 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 one treaty action tabled in Parliament on 16 September 2008:¹
 - *Agreement between Australia and the Republic of Finland on Social Security (Helsinki, 10 September 2008)*
- 1.2 The Report refers frequently to the National Interest Analysis (NIA) prepared for the proposed treaty action. This document is prepared by the Government agency or agencies responsible for the administration of Australia's responsibilities under each treaty. A copy 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/16september2008/tor.htm
- 1.3 A copy of the treaty action and NIA 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/

1 Australia, House of Representatives 2008, *Votes and Proceedings*, No. 43, p. 527, Australia, Senate 2008, *Journal*, No. 30, p. 847.

Conduct of the Committee's Review

- 1.4 The review contained in this report was advertised in the national press and on the Committee's website.² 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 on 10 November 2008 in Canberra. A list of witnesses who appeared before the public hearing 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/16september2008/hearings.htm

2 The Committee's review of the proposed treaty actions was advertised in *The Australian* on 15 October 2008. Members of the public were advised on how to obtain relevant information both in the advertisement and via the Committee's website, and invited to submit their views to the Committee.

Agreement between Australia and the Republic of Finland on Social Security

Introduction

- 2.1 It is proposed that Australia enter into a Social Security Agreement with the Republic of Finland (the Agreement). The Agreement was signed in Helsinki on 10 September 2008.
- 2.2 The Agreement is designed to overcome barriers to pension payment in the domestic legislation of Australia and Finland, such as requirements on citizenship, minimum contributions record, past residence record and current country of residence. Most of the people benefiting from the Agreement will be aged pensioners.¹
- 2.3 The Finnish presence in Australia is quite small. It is estimated there are around 17,000 people in Australia of Finnish descent, of whom 8,600 were born in Finland reflecting a wave of migration following the Second World War. There are over 500 Australians registered as living in Finland.²
- 2.4 In October 2007, the Australian Government was paying pensions under the *Social Security Act 1991* (the Act) to 2,395 Finnish-born pensioners, the vast majority of whom are residents in Australia. As at 22 July 2008, under domestic portability provisions in the Act,

1 NIA, paras 3 and 7.

2 NIA, Political Brief.

Australia was paying pensions to 78 people (not necessarily Finnish-born) residing in Finland.³

- 2.5 The Department of Families, Housing, Community Services and Indigenous Affairs estimates that, through the Agreement, approximately 2,000 people residing in Australia and Finland will benefit from the Agreement by being able to claim payments from Australia and Finland to which they currently do not have access.⁴

Reasons for Agreement

- 2.6 Australia's social security agreements are bilateral treaties which close gaps in social security coverage for people who migrate between countries. As stated above, they do this by overcoming barriers to pension payment in the domestic legislation of each country, such as requirements on citizenship, minimum contributions record, past residence record and current country of residence.⁵
- 2.7 Australia has 21 bilateral social security agreements in force. These agreements are with: Austria, Belgium, Canada, Chile, Croatia, Cyprus, Denmark, Germany, Greece, Ireland, Italy, Republic of Korea, Malta, the Netherlands, New Zealand, Norway, Portugal, Slovenia, Spain, Switzerland and the United States.⁶
- 2.8 A new social security agreement has been signed with Japan (to be implemented on 1 January 2009). Counting the agreement with Japan and the proposed agreement with Finland, Australia will have 23 bilateral social security agreements.⁷
- 2.9 The Agreement with Finland is a shared responsibility agreement through which both countries will:
- ... address gaps in social security coverage for people who have moved between Australia and Finland, help people to maximise their income and allow greater choice in where they live in their retirement years and strengthen Australia's bilateral relationship with Finland.⁸
-

3 NIA, para 10.

4 NIA, para 11.

5 NIA, para 3.

6 Question on Notice.

7 Question on Notice

8 Ms Michalina Stawyskyj, Transcript of Evidence, p. 2.

- 2.10 The Agreement provides for enhanced access to Australian and Finnish retirement benefits and greater portability of these benefits between the two countries. Portability of benefits allows for the payment of a benefit from one country into another country. Enhanced access to benefits is an underlying principle of bilateral social security agreements where the responsibility for providing benefits is shared.⁹ The Committee was told:
- The proposed agreement will allow people living in one country to lodge a claim for a pension from the other country, will help people get pensions from both countries by totalising to meet minimum qualification periods, overcome restrictions on portability of payments for people residing in either country and provide avenues for mutual assistance to ensure people are paid their correct entitlements. The agreement covers age pensions, and Finland will reciprocate through their national pensions act and earnings related pension scheme.¹⁰
- 2.11 The Agreement also deals with ‘double coverage’ of superannuation, exempting employers in one country (who send employees to work temporarily in the other country) from paying superannuation contributions in the other country, provided they continue to make contributions in their home country. These provisions also apply where employees are required to make superannuation contributions.¹¹
- 2.12 It is argued that the Agreement will bring economic and political benefits to Australia. The National Interest Analysis suggests it will assist in maximising the foreign income of Australian residents and there will be flow-on effects of these funds into the Australian economy. The Agreement will also further strengthen bilateral relations between Australia and Finland and provide choices in retirement for individuals who have migrated (or will migrate) to Australia or Finland during or after their working lives.¹²
- 2.13 Under the Agreement individuals may be eligible for benefits from both countries if they meet certain eligibility criteria and they have lived and/or worked in both countries during their working lives. A

9 NIA, para 4.

10 Ms Michalina Stawyskyj, Transcript of Evidence, p. 2.

11 NIA, para 5.

12 NIA, para 6.

witness from the Department of Families, Housing, Community Services and Indigenous Affairs told the Committee that:

The agreement will cover people who perhaps came out to Australia in the fifties and sixties from Finland, as a lot of migrants did, and may have stayed for 10 years and worked on the Snowy River scheme, and decided to go back to Finland well before they reached retirement age. It will enable those people who have worked here for various periods during their working lives to claim an Australian pension without having to return to Australia to reside. On the other side, it will allow all those Finnish born residents of Australia to claim a part-Finnish pension in respect of their periods of work and residence in Finland.¹³

Obligations

- 2.14 For Australia, the Agreement applies to social security law relating to the aged pension, and the law concerning the Superannuation Guarantee.¹⁴
- 2.15 For Finland, the Agreement applies to age pension benefits provided for by the Earnings-Related Pension Scheme, the National Pensions Act and the Employer's Social Security Contributions Act.¹⁵
- 2.16 Key provisions of the Agreement are as follows:
- Article 3 provides that the Agreement applies to any person who is or has been an Australian resident in or subject to the relevant legislation of Finland.
 - Article 5 removes restrictions on the payment of benefits based on residency in the other country.
 - Part II (Articles 6 to 11) is aimed at avoiding double coverage of superannuation. It establishes an arrangement to ensure that when an employee is sent to work temporarily in the other country, an employer will only have to make contributions for superannuation and similar liabilities (eg certain social security contributions) for the employee in their home country (Article 9(2) and Article 9(3)).

13 Mr Peter Hutchinson, Transcript of Evidence, p. 3.

14 NIA, para 13

15 NIA, para 13

- Article 10 provides that Competent Authorities may agree to make exceptions to the double coverage provisions in Part II for a particular person or category of persons.¹⁶
- Part III (Articles 12 to 14) applies to benefits paid by Australia. It obliges Australia to accept claims from former Australian residents living in Finland, and to count periods of insurance in Finland towards the minimum qualifying residence requirements for Australian Age Pension (Articles 12 and 13). It also sets out the method of calculating such benefits that Australia must utilise for people covered by the Agreement (Article 14).
- Part IV (Articles 15 and 16) applies to benefits paid by Finland, such as their National and Earnings Related Pensions. However these Articles create no obligations for Australia.
- Dispute settlement under the Agreement is by consultation (Article 22), and either Party may request a review of the Agreement at any time (Article 23).¹⁷

Implementation

- 2.17 Pursuant to Article 25, it is proposed that the Agreement shall enter into force on the first day of the second month following the month in which notes are exchanged by Australia and Finland stating that all domestic processes necessary to bring the Agreement into force are finalised. It is proposed that the exchange of notes will take place in May 2009 to enable entry into force on 1 July 2009.¹⁸
- 2.18 The *Social Security (International Agreements) Act 1999* gives effect in domestic law to relevant provisions of social security agreements that are scheduled to the Act. A new Schedule containing the full text of the Agreement will be added to that Act, and the regulation making powers contained in sections 8 and 25 of the Act will be used to implement the Agreement.¹⁹

16 This provision is designed to permit the Competent Authorities to correct anomalous coverage situations that may arise, or to eliminate double coverage in unforeseen circumstances.

17 NIA, paras 13-19.

18 NIA, para 2.

19 NIA, para 20.

- 2.19 Relevant provisions of social security agreements relating to double superannuation coverage are automatically given effect, in domestic law, once the agreement is scheduled to the Social Security (International Agreements) Act.²⁰
- 2.20 Any withdrawal by Australia from this treaty would be subject to Australia's domestic treaty-making process.²¹

Costs

- 2.21 The Agreement is expected to result in a saving in administered outlays of \$4 million (cumulative savings) over the period to 2011-2012. The Department of Families, Housing, Community Services and Indigenous Affairs, and Centrelink departmental costs of \$2.6 million (cumulative) over the same period represent the cost of implementing this Agreement.²²

It is expected that something like 400 Australian pensions will be paid into Finland as a result of the agreement, but that some 1,800 people will receive a pension from Finland. These are additional pensions that would not have been paid without the agreement.²³

- 2.22 In addition the Committee noted evidence that the Agreement:
- ... may reduce the Australian contribution because our age pension system is related to an income and assets test. If the pension amount is significant, it can affect the amount of pension Australia pays but overall, generally, our social security agreement exchange is very favourable in terms of money coming into Australia in pensions that are paid to foreign nationals who have moved.²⁴

20 NIA, para 21.

21 NIA, para 27.

22 NIA, para 22.

23 Ms Michalina Stawyskyj, Transcript, p. 3

24 Ms Michalina Stawyskyj, Transcript, p. 5

Consultation

- 2.23 Four separate groups including community groups, welfare groups, the State/Territory governments and stakeholder organisations were consulted by the Department of Families, Housing, Community Services and Indigenous Affairs and the Department of the Treasury as part of the treaty process.²⁵
- 2.24 The Committee notes that the one formal response received from these consultations from a group representing Australian expatriates worldwide was supportive and that no concerns were raised.²⁶

Conclusion and recommendations

- 2.25 The Committee notes that the Australian Government is currently negotiating Social Security Agreements with Poland, the Czech Republic, the Slovak Republic, and Latvia. It is further understood that the Government has commenced some discussion with the Former Yugoslav Republic of Macedonia and has had a preliminary exchange of information with India.²⁷
- 2.26 The Committee considers that the proposed Agreement with the Republic of Finland on Social Security will bring economic and political benefits to Australia as well as being of benefit to Australian and Finnish retirees. The Committee consequently recommends that binding treaty action be taken.

Recommendation 1

The Committee supports the *Agreement between Australia and the Republic of Finland on Social Security done at Helsinki, 10 September 2008* and recommends that binding treaty action be taken.

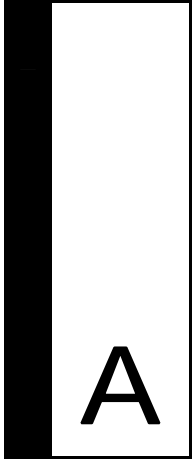
²⁵ NIA, para 28.

²⁶ NIA, para 30.

²⁷ Questions on Notice.

Kelvin Thomson MP
Committee Chair

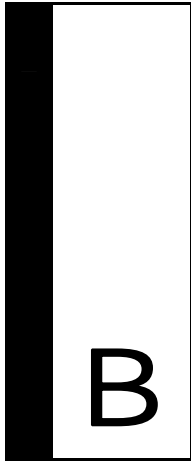
November 2008



Appendix A - Submissions

Treaties tabled 16 September 2008

- 1 Australian Patriot Movement



Appendix B - Witnesses

Monday, 10 November 2008 - Canberra

Department of Families, Housing, Community Services and Indigenous Affairs

Mr Peter Hutchinson, Manager Agreements, International Branch

Ms Michalina Stawyskyj, Branch Manager, International Branch

Department of Foreign Affairs and Trade

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

Mr Ben Milton, Director, International Law Section, International Legal Branch, International Legal Division

Department of the Treasury

Mr Nigel Murray, Manager, Contributions Unit, Personal & Retirement Income Division