

**AGREEMENT ON SOCIAL SECURITY BETWEEN  
THE GOVERNMENT OF AUSTRALIA AND  
THE GOVERNMENT OF MALTA  
(VALLETTA, 16 JUNE 2004)  
[2004] ATNIF 8**

**Documents tabled on 8 February 2005:**

- **National Interest Analysis [2005] ATNIA 1  
with attachment on consultation**
- **Text of the proposed treaty action**

**Background Information:**

- **Political and Country Brief - Malta**
- **List of othe treaties with Malta**
- **List of Social Security treaties with other countries**

# NATIONAL INTEREST ANALYSIS - CATEGORY 1 TREATY

## SUMMARY PAGE

### **Agreement on Social Security between the Government of Australia and the Government of Malta (Valletta, 16 June 2004) [2004] ATNIF 8**

#### **Nature and timing of proposed treaty action**

1. It is proposed that Australia enter into a new Social Security Agreement with Malta. The new Agreement was signed on 16 June 2004.
2. When this Agreement enters into force, the Agreement between Australia and Malta on Social Security done at Canberra on 15 August 1990 ([1991] ATS 26) will terminate in accordance with the provisions of Article 18(1) of the new Agreement. This Article preserves the entitlements of those persons receiving benefits under the current Agreement.
3. In accordance with Article 19, the Agreement shall enter into force on the first day of the month after the exchange of notes by the Parties, through the diplomatic channel, notifying each other that all constitutional or legislative matters as are necessary to give effect to the Agreement have been finalised. It is proposed that the exchange of notes will take place in June 2005 to enable entry into force on 1 July 2005.

#### **Overview and national interest summary**

4. Australia's international social security Agreements are bilateral treaties which close gaps in social security coverage for people who migrate between countries. They do this by overcoming barriers to pension payment in the domestic legislation such as requirements on citizenship, minimum contributions record, past residence record and the current country of residence.
5. Australia's current Agreement with Malta ensures that both countries share responsibility for providing long-term social security coverage for people who move between these countries. The new Agreement does not significantly change the nature of the current Agreement. It makes a limited number of amendments to the current Agreement by:
  - a. replacing references to 'invalid pension' with 'disability support pension' and limiting payment to people who are severely disabled in line with Australia's other social security agreements; and
  - b. inserting provisions that allow for the greater portability of benefits.
6. The new Agreement will continue to bring economic and political benefits to Australia. Not only will it assist in maximising the foreign income of Australian residents, and the flow-on effect of these funds into the Australian economy, it will also serve to reinforce Australia's political, business and strategic interests. The Agreement will strengthen bilateral relations, facilitate further people-to-people contact and exchanges and provide choices in retirement for individuals who have migrated, or who will migrate, to Australia or Malta during their working lives.
7. The new Agreement provides for access to certain Australian and Maltese social security benefits and limited portability of these benefits between the countries. Portability of benefits allows for the payment of a benefit from one country into another country and is an underlying principle of Australia's bilateral agreements on social security where the responsibility for providing benefits is shared. Under the new Agreement, residents of Australia and Malta will be able to move between Australia and Malta with the knowledge that their right to benefits is recognised in both countries.

## **Reasons for Australia to take the proposed treaty action**

8. Australia's network of social security agreements improves access to income support for people whose adult lives are split between Australia and the other country that is a party to the Agreement. Most people benefiting from these agreements are age pensioners.

9. The revised Agreement with Malta incorporates the same general principles as the previous Agreement and a number of other agreements Australia has on social security, including those with Austria, Belgium, Canada, Chile, Croatia, Cyprus, Denmark, Germany, Ireland, Italy, the Netherlands, New Zealand, Portugal, Slovenia, Spain and the United States. A key element in the new Agreement and these other social security agreements is the sharing of responsibility between the Parties in providing adequate social security coverage for former residents of their countries.

10. As at December 2004 the Australian Government currently pays benefits under the existing Agreement to a total of 3,162 people. There are 3,142 of these people in Malta, 13 are in Australia and seven are in third countries. As at December 2003 the Maltese Government has advised that it pays 3,167 pensions into Australia.

11. The current Agreement has been in force since 1 July 1991. It has worked well for the last 13 years but substantial changes to both countries' social security systems have necessitated the updating of the Agreement. Australia was keen to revise the Agreement because it was out of step with the Australian Government's policy on Disability Support pensions. The change is in line with the approach taken in all our new agreements.

12. For Australia, the new Agreement will cover access to age pensions, disability support pensions (DSP) for the severely disabled and pensions payable to widows (includes Parenting Payment (single) for widows with dependent children and Bereavement Allowance). For Malta, it will cover contributory pensions in respect of:

- retirement;
- invalidity;
- widowhood; and
- non-contributory assistance and pension.

13. The new Agreement continues to ensure that both countries will share the financial responsibility for providing these benefits. Both the current and new Agreement provide that an individual 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 life. Residents of Australia and Malta will be able to continue to move between Australia and Malta knowing that their right to benefits is recognised in both countries and that each country will contribute fairly to support those who have spent part of their working lives in both countries.

14. The key differences between the new Agreement and the current Agreement are as follows:

- DSP is restricted to people who are considered to be severely disabled, that is, people assessed as having no capacity to work or no prospects for rehabilitation within two years of being granted DSP. This change to DSP will bring the Agreement into line with Australia's other agreements;
- When a person comes to Australia on a temporary basis, their rate of benefit will remain the same for the first 26 weeks. Similarly, when a person departs Australia, on

a temporary basis, their rate will remain the same for the first 26 weeks of the absence. This will simplify administrative processes and also reduce the number of overpayments incurred by pensioners who move between the two countries temporarily; and

- New transitional provisions have been inserted and several provisions that are now dealt with by Australian domestic legislation are no longer included. For example, the provision in the current Agreement relating to Comparable Foreign Payment (Article 12 paragraph 3) has been removed, as it is no longer necessary.

15. The new Agreement with Malta is one of a number of Australia's existing bilateral social security agreements that have been revised. The others are the Agreements with Austria, Canada, the Netherlands, Portugal and Spain. We are currently also revising our Agreements with Ireland and Italy.

### **Obligations**

16. Article 1 defines terms used in the Agreement and in some cases limits Australia's obligations under it. In the case of payments to widows, these will only be paid where the individual is a *de jure* widow.

17. Article 2 sets out the scope of social security benefits covered by the new Agreement. For Australia, these benefits are age pension, disability support pension for the severely disabled, pensions payable to widows and wife pension for people already in receipt of this pension. The Maltese benefits that apply under the new Agreement are contributory pensions in respect of retirement, contributory pensions in respect of invalidity, contributory pensions in respect of widowhood and non-contributory assistance and pension.

18. Article 3 describes the group of people to whom the Agreement applies. It provides that the Agreement shall apply to any person who is or has been an Australian resident or is or has been an insured person under the legislation of Malta. However, actual eligibility for payment is dealt with in Article 7 and Article 9.

19. Article 4 is a statement of principle, common to all bilateral social security agreements. It ensures that all persons to whom this Agreement applies shall be treated equally in regard to rights and obligations derived from relevant Australian or Maltese legislation.

20. Article 5 deems a person in Malta to be an Australian resident and in Australia for the purposes of lodging a claim.

21. Article 6 deals with partner related Australian benefits. This Article provides that where the partner of a person entitled to a partner related benefit receives a benefit under the Agreement then the partner related benefit is deemed also to be received by virtue of the Agreement. This provision is designed to ensure that the partner will not become considered for benefits under Australian legislation independently of the Agreement.

22. Article 7 establishes the circumstances in which periods of contributions in Malta can be used to satisfy the minimum residence requirements for an Australian benefit stipulated in the *Social Security Act 1991*. Under this Article, the claimant is able to add these 'deemed' periods to actual periods of residence in Australia in order to qualify for an Australian benefit. Article 9 imposes a similar obligation on Malta to treat the relevant periods of residence in Australia as periods of contribution in Malta.

23. The method of calculating the rate of Australian benefits is set out in Article 8. This Article obliges Australia, when calculating a person's entitlement, to modify the method of calculation under the domestic social security law, both inside and outside Australia. Paragraph 1 specifies that certain Maltese benefits paid to Australian pensioners outside Australia will attract concessional treatment under the Australian income test. This is consistent with concessions given in other agreements and with the principle of shared-responsibility. Paragraphs 3 and 7 specify that the rate paid will remain unchanged for the first 26 weeks of a temporary visit to or from Australia.

24. Articles 9 and 10 relate to corresponding obligations for Malta as outlined in Articles 7 and 8 in assessing periods of contributions and the rate of payable Maltese benefits.

25. Article 11 deals with the lodgement of claims and enables the lodgement of social security claims, notices or appeals in either country in accordance with administrative arrangements to be put in place under Article 15.

26. Article 12 provides that, when determining the eligibility or entitlement of a person to a benefit under the Agreement, all events and periods that have a bearing on the entitlement are to be taken into account. Paragraph 2 ensures that benefits granted under the Agreement will not be paid in respect of any period prior to the date of implementation of the Agreement. The Article also provides a mechanism by which a Party may recover overpayment of a benefit resulting from the subsequent grant (with arrears) of an equivalent benefit from the other Party. Such a provision is particularly necessary for Australia's income tested social security system and is a standard provision in Australia's bilateral agreements on social security.

27. Article 13 ensures the portability of benefits under this Agreement and specifies that neither country will deduct administrative costs for the transfer of benefits or impose restrictions on currency transfer.

28. Article 14 sets out the means, subject to relevant domestic laws, regulations and policies, through which the relevant authorities are to cooperate in order to implement the Agreement and ensure its effective operation. It also provides for the free exchange of information so that the Agreement can be applied.

29. Article 15 provides for the parties to make the necessary Administrative Arrangements to implement the Agreement.

30. Article 16 provides for the resolution of any difficulties in the interpretation or application of the Agreement. In the first instance, all such disputes are to be resolved by the competent authorities of the Parties. Where the competent authorities are not able to resolve a particular dispute, the Parties shall be submitted to arbitration, in order to settle the matter.

31. Article 17 sets out the means where either party may request a review of the Agreement.

32. Article 18 ensures that a person's qualification to receive a benefit under the current Agreement will not be affected by the terms of the new Agreement. People already receiving benefits under the existing Agreement will continue to receive those payments on the basis of that agreement. The new Agreement will only determine claims lodged after the new Agreement comes into force.

## **Implementation**

33. A new Schedule containing the full text of the new Agreement will be added to the *Social Security (International Agreements) Act 1999*. The regulation making powers contained in Sections 8 and 25 of that Act will be used to implement the Agreement.

34. Article 15 specifies that the Agreement will be implemented in accordance with separate administrative arrangements. The administrative arrangements were also signed on 16 June 2004.

### **Costs**

35. The Agreement is expected to result in savings of \$0.68 million in administered outlays in the forward estimates period. Departmental costs of \$0.47 million in the forward estimates period represent the costs of the implementation of the Agreement, including the costs of changes required to administrative processes such as new forms and staff training as well as system enhancements. The Agreement is expected to achieve savings of \$0.2 million over the forward estimates period.

### **Regulation Impact Statement**

36. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

### **Future treaty action**

37. The Agreement does not specifically provide for the negotiation of any future legally binding instruments although Article 17 obliges the Parties to review the Agreement when requested to do so by either Party. While the Agreement does not specifically deal with amendments, it may be amended at any time by agreement between the Parties.

38. Future treaty action is subject to Australia's domestic treaty process, including tabling and consideration by the Joint Standing Committee on Treaties (JSCOT).

### **Withdrawal or denunciation**

39. Article 20(1) provides that the Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating its intention to terminate the Agreement. In the event of termination, Article 20(2) preserves the rights of those people who are receiving benefits or who have lodged claims and would have been entitled to receive benefits under the Agreement.

40. Any withdrawal by Australia from this treaty would be subject to Australia's domestic treaty process.

### **Contact Details**

International Agreements  
International Branch  
Department of Family and Community Services

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**CONSULTATION**

1. Three separate groups (listed below) were contacted as part of the treaty process. These were Maltese Community groups (12), Welfare organisations (20) and State/Territory Governments (8).
2. Letters and an information sheet outlining the changes to the new Agreement were sent to each group in mid-November 2004 seeking their views and asking for a response by 10 December 2004.
3. The Western Australian Government and the Queensland Government have formally responded and do not have any comments. No responses have been received from any of the other groups contacted.

The Maltese Community Organisations consulted were:

<b>Maltese Community</b>
Gold Coast Phoenician Multicultural Association
La Vallete Social Centre (NSW)
Mackay Maltese Club Inc
Maltese Association of Western Australia Inc
Maltese Australian Association of Queensland Inc
Maltese Australian Gold Coast Association Inc
Maltese Australian of Canberra and Queanbeyan Inc
Maltese Community Council of New South Wales
Maltese Community Council of South Australia
Maltese Community Council of Victoria Inc
Maltese Cultural Association of Victoria
Maltese Professional & Business Association of Western Australia

The Welfare Organisations consulted were:

<b>Welfare</b>	<b>Welfare</b>
ACROD (National Office)	Ethnic Communities' Council of Western Australia
ACT Multicultural Community Council	Federation of Ethnic Communities Councils of Australia (FECCA)
Association of Independent Retirees	Multicultural Communities Council of SA
Australian Council of Social Service (ACOSS)	Multicultural Council of NT
Combined Pensioners and Superannuants Association	Multicultural Council of Tasmania
COTA National Seniors	National Ethnic Disability Alliance
Council of Intellectual Disability Agencies	National Seniors Association
Council of the Ageing (Australia)	Physical Disability Council of Australia Ltd
Ethnic Communities' Council of NSW	Southern Cross Group
Ethnic Communities' Council of QLD	Welfare Rights Centre
Ethnic Communities' Council of Victoria	

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The State and Territory Governments Contacted were:

<b>State/Territory Governments</b>
Australian Capital Territory - Chief Minister's Department
New South Wales - Intergovernmental & Regulatory Reform Branch (Cabinet Office)
Northern Territory - Department of Chief Minister
Queensland - Department of Premier & Cabinet
South Australia - Department of Premier & Cabinet
Tasmania - Department of Premier & Cabinet
Victoria - Department of Premier & Cabinet
Western Australia - Department of Federal Affairs



## **Political Brief - Malta**

***Bilateral Relations:*** Australia and Malta have a strong and co-operative relationship underpinned by past migration. The Maltese community in Australia is the largest outside Malta and is estimated at 180,000. Over 70 per cent of Malta-born residents have taken up Australian citizenship. Australia and Malta have bilateral agreements covering immigration (1970), double taxation (1985), health services (1988), social security (1991, revised 2004), working holiday maker scheme (1996) and air services (1996). High level visits to Australia by Maltese leaders have been regular.

***Trade and Investment:*** Although the domestic market is small by world standards, as a member of the EU, Malta is in the European single market that comprises 456 million consumers. Over the last five years total two-way merchandise trade has increased by 33 per cent to \$A22.8 million in 2003. Australian exports to Malta fell from \$A14.9 million in 2001 to \$A12.1 million in 2003. Major Australian exports to Malta were dairy products, margarine and meat, while Australian wine exports are steadily increasing and have potential for significant growth. Australian imports from Malta in 2003 were valued at \$A10.7 million. Major Australian imports were integrated circuits, electrical machinery and equipment for circuits and computers.

***Political Overview:*** Malta became an independent State within the Commonwealth in September 1964 (having been under British rule since 1800). In 1974 it became a republic. The Head of State is the President, whose duties are largely ceremonial. Legislative power is held by the unicameral House of Representatives (65 members excluding the Speaker). Members are elected for a period of five years. The President is elected for a five-year term by the House and appoints the Prime Minister. **Maltese domestic politics** are dominated by the two main parties - the Nationalist Party (PN) and the Malta Labour Party (MLP). The PN defeated the opposition MLP in the national election held on 12 April 2003. On 23 March 2004 former Deputy Prime Minister, Dr Lawrence Gonzi, succeeded Dr Edward Fenech Adami as Prime Minister of Malta. Dr Adami was elected on 4 April 2004 as the President of Malta. On 1 May 2004 Malta became a member of the European Union. Malta remains a member of the Commonwealth and will host the next Commonwealth Heads of Government Meeting (CHOGM) in November 2005. Maltese government policy priorities will be dominated by administrative, economic and legal issues relating to its accession to the EU. Malta's **foreign policy** reflects its central geographical position as a small island state in the Mediterranean. The government is expected to maintain an active Mediterranean policy and to continue providing support for the Euro-Mediterranean process, in which it will seek to play a facilitating role where it can, and consolidation of relations with North African countries.

***Economic Indicators:*** The average annual GDP per capita in Malta in 2003 was US\$10,140, ranking it 18<sup>th</sup> in the 25 member EU. Malta's GDP in real terms (1995 prices) declined by 1.7 per cent in 2003 but is forecast to record slight positive growth in 2004. Improvement in the economy is expected to be largely export-led, arising mainly from economic recovery in the euro area. The annual rate of inflation in Malta was estimated to have been 2 per cent in 2003 and is forecast to rise to 2.3 per cent in 2004. In March 2004, the unemployment rate stood at 5.8 per cent (cf. 5.2 per cent in March 2003).



# MALTA

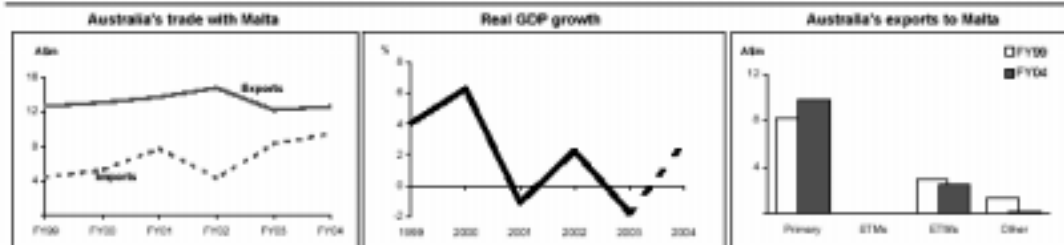
Fact Sheet

## General information:

<b>Capital:</b>	Valletta	<b>Head of State:</b>	H.E. President Dr Fenech Adami KUOM BA LLD
<b>Surface area:</b>	316 sq km	<b>Head of Government:</b>	Prime Minister The Hon Dr Lawrence Gonzi KUOM LLD MP
<b>Official languages:</b>	Maltese, English		
<b>Population:</b>	0.4 million (2003)		
<b>Exchange rate:</b>	A\$1 = 0.2431 Lira (Jun 2004)		

## Recent economic indicators:

	1999	2000	2001	2002	2003(a)	2004(b)
<b>GDP (US\$bn):</b>	3.6	3.6	3.6	3.9	4.5	4.2
<b>GDP per capita (US\$):</b>	9,349	9,130	9,292	9,984	11,362	10,679
<b>Real GDP growth (% change YOY):</b>	4.1	6.3	-1.1	2.3	-1.7	2.6
<b>Current account balance (US\$m):</b>	-122	-470	-165	-46	-271	-145
<b>Current account balance (% GDP):</b>	-3.3	-13.2	-4.6	-1.2	-6.0	-3.5
<b>Goods &amp; services exports (% GDP):</b>	88.8	100.6	85.8	87.3	83.0	n.a.
<b>Inflation (% change YOY):</b>	2.1	2.4	2.9	2.2	0.5	2.1
<b>Unemployment rate (%):</b>	5.8	5.0	5.1	4.8	5.6	5.5



## Australia's trade relationship with Malta:

<b>Major Australian exports, 2003-2004 (A\$m):</b>		<b>Major Australian imports, 2003-2004 (A\$m):</b>	
Cheese and curd	6	Other electrical machinery	3
Margarine & shortening	1	Integrated circuits	3
Ships, boats & floating structures	1	Electrical equipment for circuits	1
Meat (excl. bovine)	1	Computers	1

<b>Australian merchandise trade with Malta, 2003-2004:</b>		<b>Total share:</b>	<b>Rank:</b>	<b>Growth (yo/y):</b>
Exports to Malta (A\$m):	13	0.0%	103rd	3.0%
Imports from Malta (A\$m):	9	0.0%	75th	14.2%
Total trade (exports + imports) (A\$m):	22	0.0%	97th	7.5%
Merchandise trade surplus with Malta (A\$m):	3			

<b>Australia's trade in services with Malta, 2003:</b>		<b>Total share:</b>
Exports of services to Malta (A\$m):	n.a.	n.a.
Imports of services from Malta (A\$m):	n.a.	n.a.
Services trade balance with Malta (A\$m):	n.a.	

## Malta's global trade relationships:

<b>Malta's principal export destinations, 2003:</b>			<b>Malta's principal import sources, 2003:</b>		
1	Singapore	17.9%	1	Italy	17.7%
2	United States	12.0%	2	France	12.6%
3	United Kingdom	9.7%	3	South Korea	11.6%
4	Germany	9.1%	4	United Kingdom	7.8%
5	France	7.7%	5	Germany	6.0%
29	Australia	0.2%	42	Australia	0.1%

Compiled by the Market Information and Analysis Section, DFAI, using the latest data from the ABS, the IMF and various international sources.

(a) all recent data subject to revision; (b) IMF forecast.

n.a. Data not available.

Fact sheets are updated biannually; next update: May 2005

### **List of other Treaties between Australia and Malta**

- Assisted Passage Migration Agreement with the Government of Malta  
**[1970] ATS 18**
- Agreement with Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income.  
**[1985] ATS 15**
- Agreement on Health Services with Malta  
**[1988] ATS 13**
- Agreement with Malta on Social Security.  
**[1991] ATS 26**
- Agreement with Malta relating to Air Services  
**[1996] ATS 21**
- Exchange of Letters amending Articles 1, 2 & 3 of the Agreement on Health Services with Malta, of 6 July 1988  
**[1998] ATS 15**
- Agreement with the Government of the Republic of Malta on Social Security  
**[1994] ATNIF 8**

### **List of Bilateral Social Security Treaties Australia has with other countries**

1. Agreement with the Republic of Austria on Social Security **[1992] ATS 35**
2. Agreement on Social Security with Canada **[2003] ATS 4**
3. Agreement on Social Security with the Republic of Chile **[2004] ATS 18**
4. Agreement with the Republic of Croatia on Social Security **[2004] ATS 19**
5. Agreement on Social Security with the Republic of Cyprus **[1993] ATS 5**
6. Agreement with the Kingdom of Denmark on Social Security. **[2001] ATS 2**
7. Agreement on Social Security with the Federal Republic of Germany, **[2003] ATS 7**
8. Agreement with Ireland on Social Security **[1992] ATS 9**
9. Agreement on Social Security with the Republic of Italy **[2000] ATS 29**
10. Agreement with Malta on Social Security. **[1991] ATS 26**
11. Agreement with the Kingdom of the Netherlands on Social Security **[2003] ATS 12**
12. Agreement on Social Security with New Zealand **[2002] ATS 12**
13. Agreement with Portugal on Social Security **[2002] ATS 21**
14. Agreement on Social Security with Slovenia **[2004] ATS 2**
15. Agreement between Australia and Spain on Social Security **[2003] ATS 3**
16. Agreement with the United State of America on Social Security **[2002] ATS 18**
17. Agreement on Social Security with the Kingdom of Belgium **[2002] ATNIF 31**  
(not yet in force)