

**National Interest Analysis [2011] ATNIA 19**

**with attachment on consultation**

**Agreement between Australia and the Republic of Hungary  
on Social Security**

**(done at Gödöllő on 7 June 2011)**

**[2011] ATNIF 12**

# NATIONAL INTEREST ANALYSIS – CATEGORY 2 TREATY

## SUMMARY PAGE

### **Agreement between Australia and the Republic of Hungary on Social Security (done at Gödöllő on 7 June 2011) [2011] ATNIF 12**

#### **Nature and Timing of Proposed Treaty Action**

1. The treaty action proposed is to bring into force the *Agreement between Australia and the Republic of Hungary on Social Security* done at Gödöllő on 7 June 2011 (the Agreement).
2. Pursuant to Article 30 of the Agreement, the Agreement will enter into force on the first day of the third month following the month in which Australia and Hungary exchange diplomatic notes notifying each other that all matters necessary to give effect to the Agreement have been finalised. This is expected to occur in April 2012.

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

3. Australia's social security agreements are bilateral treaties which close gaps in social security coverage for people who migrate between countries. The agreements do this by overcoming barriers to pension payment in the domestic legislation of each country, such as requirements on citizenship, minimum contributions or past residence history, and current country of residence.
4. The Agreement provides for enhanced access to Australian and Hungarian retirement benefits for people in Australia and Hungary 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. Under the Agreement, residence in one Contracting Party's territory will not affect a person's entitlement to benefits under the legislation of the other contracting Party. People who move between Australia and Hungary will be able to do so in the knowledge that their rights to benefits are recognised in both countries. For Australia, the Agreement covers the Age Pension. For Hungary, the Agreement covers age, disability and survivors' benefits.
5. The Agreement will facilitate business between Australia and Hungary by ensuring employers and employees do not have double liability in respect of the same work of an employee. This means, for example, that when an employee from one Contracting Party is temporarily seconded to work in the other, the employee and/or their employer will not need to make compulsory pension or superannuation contributions in both countries. In the Australian context, the Agreement will exempt employers and/or employees already making superannuation guarantee contributions in Australia, from making compulsory social security contributions in Hungary. Similarly, Hungarian employers will be exempt from making superannuation guarantee contributions for employees sent to work temporarily in Australia, provided they continue to make contributions in Hungary.
6. The Agreement will bring economic and social benefits to Australia and facilitate business links between the two countries by reducing costs. It will help to maximise the foreign income of Australian residents and there will be flow-on effects within the Australian economy. The Agreement will serve to reinforce Australia's political, business and strategic interests. It will also further strengthen bilateral relations between Australia and Hungary and provide choices in retirement for individuals who migrate to Australia or Hungary during or after their working lives.

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

7. Australia's network of bilateral social security agreements improves access to income support for people whose adult lives are, or have been, split between Australia and the other country. Most people who benefit from these agreements are age pensioners.
8. The Agreement incorporates the same principles as Australia's other social security agreements. A key element of the Agreement, as with other social security agreements, is the sharing of responsibility between the Contracting Parties in providing adequate social security coverage for current and former residents of both countries.
9. Under the Agreement, individuals may be eligible for benefits from both countries if they meet certain criteria and have lived and/or worked in both countries during their working lives. Residents of Australia and Hungary will be able to move between these countries knowing that their rights to benefits are protected.
10. The Agreement will provide substantial benefits in net pension flows to Australia. The Department of Families, Housing, Community Services and Indigenous Affairs estimates that, in the first year of the Agreement, approximately 5,000 people living in Australia will claim a Hungarian pension and around 40 people in Hungary will claim an Australian pension. This will increase ongoing Hungarian pension flows into Australia by around \$5 million per year and increase ongoing Australian pension flows into Hungary by approximately \$0.32 million per year.

## **Obligations**

11. Part I (Articles 1 to 5) of the Agreement sets out general obligations, defines the scope of the Agreement (Articles 2 and 3), and obliges the Contracting Parties to ensure equal treatment of people covered by the Agreement, with respect to eligibility for and payment of benefits (Article 4). Article 5 prohibits Contracting Parties from placing restrictions on the payment of benefits a person is entitled to under legislation of one Contracting Party solely on the basis that the person resides in the territory of the other Contracting Party. For Australia, the Agreement covers the Age Pension. For Hungary, the Agreement covers age, disability and survivors' benefits.
12. Part II (Articles 6 to 11) includes provisions to avoid 'double liability'. Article 7 provides that where a person whose employment is subject to the laws of one Contracting Party is temporarily seconded to work in the other Contracting Party, the person and/or their employer will be subject only to the legislation of the first Contracting Party.
13. Part III (Articles 12 to 14) applies to benefits payable by Australia and:
  - a) obliges Australia to regard residents of Hungary, and Australian residents who are temporarily in Hungary, as Australian residents and as being present in Australia, for the purpose of claiming the Australian Age Pension, provided the person has been a resident of Australia at some time (Article 12);
  - b) provides that creditable periods in Hungary (periods of contributions or periods deemed equivalent) will be regarded as periods of residence in Australia for the purpose of meeting the 10 year qualifying period of residence for Australian Age Pension (Article 13); and
  - c) specifies how the rate of Australian Age Pension will be calculated under the Agreement outside and inside Australia. (Article 14).
14. Part IV (Articles 15 to 19) applies to benefits paid by Hungary. The provisions are similar to Australia's in that periods will be taken into account in Hungary for the purpose of meeting minimum qualifying requirements, provided the creditable periods do not overlap. The rate of pension from Hungary will generally be based on a person's creditable period and their pensionable earnings.

15. Part V (Articles 20 to 27) sets out various administrative obligations, including:
- a) to regard the date of claim lodgement in one country as the date of lodgement in the other country and, in certain circumstances, to regard a claim for pension from one country as a claim for the equivalent payment from the other country (Article 20);
  - b) to guarantee payment of benefits in the event that currency controls are imposed by either country (Article 21);
  - c) to guarantee payment of benefits without deductions for government fees or charges and to apply reciprocal exemptions from fees and duties that may apply to submission of documents (Article 21);
  - d) for the Competent Authorities of each Contracting Party to conclude an administrative arrangement and designate liaison bodies to implement and administer the Agreement (Article 22);
  - e) for the Competent Authorities to communicate with each other, to exchange information and to generally assist each other in implementing the Agreement (Article 23);
  - f) an obligation on both the transmitting and receiving body of each Contracting Party to only provide personal data that is necessary for the payment of benefits or otherwise for the purpose of the Agreement, to ensure the data is accurate, to inform the people concerned upon receiving a request on the data about the person and the purpose of using such data, and to protect the data (Article 24); and
  - g) to resolve disputes and review the Agreement upon request by either Party (Articles 25 and 26).
16. Part VI (Articles 28 to 31) contains transitional and final provisions. Article 28 ensures creditable periods and periods of residence completed before the Agreement commences will be taken into consideration, but provides that benefits will not be paid for any period before the Agreement commences. It also provides that Articles 7 and 9 of the Agreement apply from the date of entry into force of the Agreement, even if an employee from one Contracting Party was seconded to work in the territory of the other before the Agreement entered into force. Articles 30 and 31 respectively set out the arrangements for the commencement of the Agreement and its termination.

### **Implementation**

17. 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 the *Social Security (International Agreements) Act 1999* pursuant to sections 8 and 25 of that Act.

18. Provisions of social security agreements relating to double superannuation coverage are automatically given effect in domestic law once agreements are scheduled to the *Social Security (International Agreements) Act 1999*. This happens pursuant to paragraph 27(1)(e) of the *Superannuation Guarantee (Administration) Act 1992* and regulation 7AC of the *Superannuation Guarantee (Administration) Regulations 1993*, which together provide that payment of salary or wages to an employee who has been sent temporarily to work in Australia will not give rise to a superannuation guarantee obligation for the overseas employer, provided that a scheduled social security agreement is in place.

## **Cost**

19. The Agreement was funded in the 2011-12 Budget at a cost of \$3.8 million over the forward estimates period. It is expected to reduce ongoing pension outlays by around \$1.3 million in the first full year. Departmental costs incurred by the Department of Families, Housing, Community Services and Indigenous Affairs, Centrelink and the Australian Taxation Office, total \$5.1 million over the forward estimates period, and are primarily one-off set-up costs.

## **Regulation Impact Statement**

20. The Office of Best Practice Regulation within the Department of Finance and Deregulation has advised that a Regulation Impact Statement is not required.

## **Future Treaty Action**

21. The Agreement does not provide for amendments or for the negotiation of future legally binding instruments. In the absence of specific procedures, the Contracting Parties may amend the Agreement by mutual consent at any time in accordance with Article 39 of the *Vienna Convention on the Law of Treaties*. Article 26 of the Agreement obliges either Party to review the Agreement when requested by the other.

22. Any future amendments to the Agreement would be subject to Australia's domestic treaty-making process, including tabling and consideration by the Joint Standing Committee on Treaties.

## **Withdrawal or denunciation**

23. Article 31 of the Agreement provides that the Agreement will remain in force indefinitely, unless terminated by either Contracting Party giving twelve months' written notice to the other through diplomatic channels. In the event of termination, Article 31 also preserves the rights of those who are receiving benefits under the Agreement, those who have lodged claims and would have been entitled to benefits under the Agreement, and employees and/or their employers affected by the double liability provisions of Part II of the Agreement (Articles 7, 9 or 10).

24. Any termination of the Agreement by Australia would be subject to Australia's domestic treaty-making process, including tabling and consideration by the Joint Standing Committee on Treaties.

## **Contact Details**

International Agreements

International Branch

Department of Families, Housing, Community Services and Indigenous Affairs

## ATTACHMENT ON CONSULTATION

### Agreement between Australia and the Republic of Hungary on Social Security (done at Gödöllő on 7 June 2011) [2011] ATNIF 12

#### CONSULTATION

25. The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Treasury consulted with relevant community groups, welfare organisations, State and Territory Governments, employer groups and the superannuation industry.
26. On 27 June 2011 FaHCSIA wrote to seven Hungarian community groups and 19 welfare groups across Australia, in addition to all State and Territory Governments, to provide information and seek their views and comments by 25 July 2011. The Agreement text and information about the Agreement are available on FaHCSIA's website.
27. Hungarian community groups consulted were:

Hungarian Council of New South Wales Marrickville NSW	Tasmanian Hungarian Association Lenah Valley TAS
Council of Hungarian Associations in South Australia Inc. Norwood SA	Hungarian Cultural and Welfare Association Tanah Merah QLD
Hungarian Community Centre Wantirna VIC	Federal Council of Hungarian Associations in Australia and New Zealand Inc. Monash ACT
South Hungarian Association Limited Acacia Gardens NSW	

28. Welfare and other organisations consulted were:

Ethnic Communities Council of QLD	ACT Multicultural Community Council
Ethnic Communities Council of WA	Australian Council of Social Services
Multicultural Council of NT Inc	Southern Cross Group
Welfare Rights Centre	Ethnic Communities Council of NSW
Multicultural Communities Council of SA	Ethnic Communities Council of Victoria
Multicultural Council of Tasmania	FECCA
National Seniors Association	COTA National Seniors
National Ethnic Disability Alliance	Council of Intellectual Disability Agencies
Physical Disability Council of Australia Ltd	Association of Independent Retirees
Combined Pensioners and Superannuants Association	

29. State/Territory Governments consulted were:

ACT Chief Minister's Department
QLD Department of Premier and Cabinet
VIC Department of Premier and Cabinet
NT Department of Chief Minister
SA Department of Premier and Cabinet
TAS Department of Premier and Cabinet
WA Department of Premier and Cabinet
NSW The Cabinet Office, Inter-Governmental & Regulatory Reform Branch

30. No formal responses were received.

31. Treasury wrote to the organisations listed below on 28 June 2011 seeking their views and asking for a response by 29 July 2011. Organisations consulted were:

Institute of Chartered Accountants in Australia
Australian Chamber of Commerce and Industry
Industry Funds Forum Inc
A.C.T.U.
Council of Small Business Organisations of Australia
Association of Superannuation Funds of Australia
Investment and Financial Services Association
CPA Australia
National Institute of Accountants

32. To date, no responses have been received.