

**National Interest Analysis [2011] ATNIA 1**

**with attachment on consultation**

**Agreement between Australia and the Slovak Republic on Social Security,  
done at New York on 21 September 2010**

**[2010] ATNIF 42**



# NATIONAL INTEREST ANALYSIS – CATEGORY 2 TREATY

## SUMMARY PAGE

### Agreement between Australia and the Slovak Republic on Social Security, done at New York on 21 September 2010

[2010] ATNIF 42

#### Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force the Agreement between Australia and the Slovak Republic on Social Security, done at New York on 21 September 2010 (the Agreement).
2. Pursuant to Article 27, the Agreement will enter into force on the first day of the third month following the month in which diplomatic notes are exchanged by the Slovak Republic and Australia notifying each other that all matters as are necessary to give effect to the Agreement have been finalised. The Agreement is expected to enter into force in early 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 eligibility barriers to pension payment in the domestic legislation of each country, such as requirements on citizenship, minimum contributions, past residence history and current country of residence.
4. The Agreement provides for enhanced access to Australian and Slovak retirement benefits for people in Australia and the Slovak Republic 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, residents of Australia and the Slovak Republic will be able to move between both countries with the knowledge that their rights to benefits are recognised in both countries. For Australia, the Agreement covers age pension. For the Slovak Republic, the Agreement covers old age, invalidity and survivors' pensions.
5. Double coverage provisions have been included to ensure that compulsory pension/superannuation contributions do not need to be made into both countries' systems when an employee is temporarily seconded to work in the other country. In the Australian context, the Agreement will exempt employers and/or employees from making compulsory social security contributions in the Slovak Republic if superannuation guarantee contributions continue to be made in Australia. Similarly, Slovak employers will be exempt from making superannuation guarantee contributions for employees sent to work temporarily in Australia provided contributions continue to be made in the Slovak Republic.
6. The Agreement will bring economic and social benefits to Australia. It will help to maximise the foreign income of Australian residents and there will be flow-on effects within the Australian economy. The double coverage provisions will facilitate business links between the two countries by removing unnecessary costs. The Agreement will serve to reinforce Australia's political, business and strategic interests. It will also further strengthen bilateral relations between Australia and the Slovak Republic and provide choices in retirement for individuals who migrate to Australia or the Slovak Republic 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 another 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 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 the Slovak Republic 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 (FaHCSIA) estimates that, in the first year of the Agreement, approximately 520 people living in Australia will claim a Slovak pension and around 60 people in the Slovak Republic will claim an Australian pension. This will increase ongoing Slovak pension flows into Australia by approximately \$1.1 million per year and increase ongoing Australian pension flows into the Slovak Republic by approximately \$0.08 million per year.

## **Obligations**

11. Part I (Articles 1 to 5) of the Agreement sets out the general obligations of the Parties under the Agreement. It defines the scope of the Agreement (Articles 2 and 3), ensures that all persons to whom the Agreement applies will be treated equally by the Parties with respect to the payment of benefits (Article 4) and removes restrictions on the payment of benefits based on residence in the other country (Article 5).
12. Part II (Articles 6 to 10) includes provisions to avoid 'double coverage'. Article 8 ensures that an employee and/or their employer will be subject only to the legislation of their home country with respect to compulsory pension/superannuation contributions where the employee has been temporarily seconded to work in the other country.
13. Part III, Chapter 1 (Articles 11 to 13) applies to benefits payable by Australia and:
  - a) obliges Australia to regard residents of the Slovak Republic as Australian residents and Australian residents who are temporarily in the Slovak Republic as being present in Australia, for the purpose of claiming Australian age pension (Article 11);
  - b) provides that creditable periods in the Slovak Republic (periods for which contributions were paid and periods related to those contributions) will be regarded as periods of residence in Australia for the purpose of meeting the ten year qualifying period of residence for Australian age pension (Article 12); and
  - c) specifies how the rate of Australian age pension will be calculated (Article 13).
14. Part III, Chapter 2 (Articles 14 and 15) applies to benefits paid by the Slovak Republic. The provisions are reciprocal to Australia's in that periods of 'Australian working life residence' will be regarded as creditable periods in the Slovak Republic for the purpose of meeting minimum qualifying requirements. The rate of pension from the Slovak Republic will generally be based on a person's creditable period and their pensionable earnings.

15. Part IV (Articles 16 to 25) 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 and in certain circumstances to regard a claim for pension in one country as a claim for the equivalent payment in the other (Article 16);
  - b) to guarantee payment of benefits in the event that currency controls are imposed by either country (Article 17);
  - c) to guarantee payment of benefits and submission of documents without deductions for government fees or charges (Article 18);
  - d) to assist each other in the recovery of a debt owed to one Party because of the payment of arrears of a benefit by the other Party (Article 19);
  - e) a general obligation for the Parties to assist each other in implementing the Agreement, to communicate with each other and to exchange information (Article 20);
  - f) for the ‘Competent Authority’ of both Parties to conclude an ‘Administrative Arrangement’ and appoint liaison bodies to implement and administer the Agreement (Article 21);
  - g) an obligation on both the communicating and receiving body to provide effective personal data protection (Article 22);
  - h) to communicate with each other in either of the official languages of both parties (Article 23);
  - i) to resolve disputes and meet to review the Agreement upon request by either Party (Articles 24 and 25).
16. Part V (Articles 26 to 28) contains transitional and final provisions. Article 26 ensures relevant creditable periods and periods of residence completed before the Agreement commences will be taken into consideration. It also provides that Part II of the Agreement applies to an employee who was seconded to work in the other country before the Agreement entered into force.

### **Implementation**

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

18. Provisions relating to double superannuation coverage are automatically given effect in domestic law, once the Agreement is scheduled to the Act. This is 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 2009-10 Budget at a cost of \$2.004 million over the forward estimates period. It is expected to reduce ongoing pension outlays by around \$0.06 million in the first full year. Departmental costs, incurred by FaHCSIA, Centrelink and the Australian Taxation Office, total \$2.171 million over the forward estimates 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 been consulted and advises that a Regulation Impact Statement is not required.

## **Future treaty action**

21. Article 25 of the Agreement obliges the Parties to meet to review the Agreement when requested by either Party. The Agreement may be amended at any time by agreement between the Parties in accordance with Article 39 of the *Vienna Convention on the Law of Treaties*.

22. Any such amendments to the Agreement would be subject to Australia's domestic treaty-making process, including tabling in Parliament and consideration by the Joint Standing Committee on Treaties (JSCOT). An 'Administrative Arrangement' of less-than-treaty status entered into by the 'Competent Authorities' pursuant to Article 21 will not be subject to Australia's treaty-making process.

## **Withdrawal or denunciation**

23. Article 28 provides that the Agreement shall remain in force until the last day of the twelfth month following the month in which either Party receives from the other a diplomatic note giving notice of termination. In the event of termination, Article 28 preserves the rights of those who are receiving benefits under the Agreement or who have lodged claims and would have been entitled to benefits under the Agreement and employees and/or their employers affected by the double coverage provisions of Part II.

24. Any termination of the Agreement by Australia would be subject to Australia's domestic treaty-making process, including tabling in Parliament and consideration by JSCOT.

## **Contact Details**

International Agreements

International Branch

Department of Families, Housing, Community Services and Indigenous Affairs

## ATTACHMENT ON CONSULTATION

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#### CONSULTATION

25. FaHCSIA and The Treasury consulted with relevant community groups, welfare organisations, State and Territory Governments, employer groups and the superannuation industry.

26. On 25 October 2010, FaHCSIA wrote to 8 Slovak community groups and 16 welfare groups across Australia, in addition to all State and Territory Governments, to provide information and seek their views and comments by 1 December 2010. The Agreement text and information about the Agreement is available on FaHCSIA's website.

27. Slovak community groups consulted were:

Beseda - The Czechoslovak Australian Association of Canberra and Region, Inc. ACT	Czechoslovakian Club in Queensland, Inc.
The Czech and Slovak Association in WA, Inc.	Czechoslovak Club in SA, Inc.
The Czech and Slovak Association of Tasmania, Inc.	Slovak. Association of Qld Inc.
Australian Slovak Association in New South Wales	Slovak Catholic Mission of St. Cyrilius and Methodius 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
Combined Pensioners and Superannuants Association	Association of Independent Retirees

29. State and 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 concerns or comments about the Agreement were received.

31. On 21 October 2010, The Treasury wrote to the organisations listed below to seek their views by 18 November 2010.

32. 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

33. No concerns or comments about the Agreement were received.