

## Second Protocol to the Social Security Agreement with Austria

### Introduction

- 6.1 The proposed Second Protocol will amend the 1992 *Agreement between Australia and the Republic of Austria on Social Security*.
- 6.2 Australia currently has 24 social security agreements in place, mostly with European countries.<sup>1</sup> The purpose of these agreements is to ensure social security coverage for people who move between countries.<sup>2</sup> The agreements overcome barriers to pension payments in each country's domestic legislation, including those relating to citizenship, minimum contribution or residence requirements, and restrictions upon claiming from outside the country.<sup>3</sup>
- 6.3 Under the existing agreement with Austria, over 8,000 pensions are paid by Austria into Australia with a value of approximately \$28 million per annum, while Australia currently pays 1,082 pensions into Austria worth almost \$6 million per annum.<sup>4</sup>

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1 Mr Peter Hutchinson, Department of Families, Housing, Community Services and Indigenous Affairs, *Transcript of Evidence*, 22 November 2010, p. 19.

2 *National Interest Analysis (NIA)*[2010] ATNIA 28, Second Protocol to the Agreement Between Australia and the Republic of Austria on Social Security, done at Vienna on 17 February 2010 [2010] ATNIF 4, para. 4.

3 NIA, para. 3.

4 Mr Hutchinson, Department of Families, Housing, Community Services and Indigenous Affairs, *Transcript of Evidence*, 22 November 2010, p. 18.

## The amendments

- 6.4 The amendments contained in the Second Protocol are intended to:
- facilitate business between Australia and Austria through double coverage provisions, under which an employee seconded to work in the other country temporarily will not have to make compulsory pension/superannuation contributions in both countries;
  - implement European Union standards for data protection;
  - bring the portability period for the Australian Disability Support Pension into line with Australian legislation; and
  - remove unnecessary costs.<sup>5</sup>
- 6.5 Article III contains the substantive amendments to the agreement to clarify the operation of the double coverage provisions, which are in line with Australia's other social security agreements. The definitions and legislative scope now include reference to Australia's superannuation guarantee laws.<sup>6</sup>
- 6.6 The Committee was informed that these amendments are expected to remove financial imposts upon business arising from the need to make contributions into both countries' systems, and make it easier to conduct business.<sup>7</sup>
- 6.7 Article III(2) removes reference (for Australia) to wife pensions as this pension is being gradually phased out.<sup>8</sup>
- 6.8 Article III(3) updates the agreement's provisions on equality of treatment and the agreement has been extended to apply to refugees and stateless persons, as well as to nationals.<sup>9</sup>
- 6.9 The Committee notes that the new provisions relating to data protection are similar to, but more detailed than, those in other agreements with European Union countries.<sup>10</sup> Under the new Article 18a, personal data may be communicated between the parties for the purposes of the

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5 NIA, paras 5–8.

6 NIA, paras 11 and 12.

7 Mr Hutchinson, Department of Families, Housing, Community Services and Indigenous Affairs, *Transcript of Evidence*, 22 November 2010, p. 22.

8 NIA, para. 12.

9 NIA, para. 13.

10 Mr Hutchinson, Department of Families, Housing, Community Services and Indigenous Affairs, *Transcript of Evidence*, 22 November 2010, p. 19.

agreement, but must be treated as confidential in the same manner as information obtained under domestic legislation.<sup>11</sup> The Committee was informed that these provisions are:

...basically consistent with Australia's framework through both the Privacy Act and of course the confidentiality provisions in the social security law.<sup>12</sup>

- 6.10 The new article also provides for freedom of information requests: individuals are able to request information about the data relating to them which has been communicated or processed and have the right to have any inaccurate data corrected.<sup>13</sup>

## Implementation

- 6.11 The agreement will be implemented through the addition of a new schedule to the *Social Security (International Agreements) Act 1999*.
- 6.12 The provisions in the agreement relating to double superannuation coverage are given automatic effect once the agreement is scheduled to this Act.<sup>14</sup>

## Conclusion

- 6.13 The Committee supports the proposed amendments to this agreement to bring it up to date with Australia's other social security agreements and recommends that binding treaty action be taken.

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11 NIA, para. 18.

12 Mr Hutchinson, Department of Families, Housing, Community Services and Indigenous Affairs, *Transcript of Evidence*, 22 November 2010, p. 19.

13 NIA, para. 19.

14 NIA, para. 24.

**Recommendation 8**

**The Committee supports the *Second Protocol to the Agreement Between Australia and the Republic of Austria on Social Security* and recommends that binding treaty action be taken.**