

**AGREEMENT ON SOCIAL SECURITY
BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE REPUBLIC OF KOREA**

Canberra, 6 December 2006

Not yet in force
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AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF KOREA

The Government of Australia and the Government of the Republic of Korea (hereinafter referred to as the “Contracting Parties”),

Being desirous of regulating the relationship between their two countries in the field of social security and coverage,

Have agreed as follows:

PART I General Provisions

Article 1 Definitions

1. For the purposes of this Agreement:

- (a) **“national”** means, as regards the Republic of Korea (hereinafter referred to as “Korea”), a national of Korea as defined in the Nationality Law, as amended, and as regards Australia, a citizen of Australia;
- (b) **“legislation”** means, in relation to Korea, the laws and regulations specified in paragraph 1(a) of Article 2, and in relation to Australia, the laws specified in paragraph 1(b)(i) of Article 2 except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the laws specified in paragraph 1(b)(ii) of Article 2;
- (c) **“Competent Authority”** means, as regards Korea, the Minister of Health and Welfare, and as regards Australia, the Secretary to the Commonwealth Department responsible for the legislation specified in paragraph 1(b)(i) of Article 2, except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner;
- (d) **“agency”** means, as regards Korea, the National Pension Service, and, as regards Australia, the institution or agency which has the task of implementing the Australian legislation;
- (e) **“period of coverage”** in relation to Korea means a period of contributions under the legislation of Korea and any other period taken into account under that legislation for establishing an entitlement to benefits or for calculating the amount of benefits;
- (f) **“period of Australian working life residence”** means, unless otherwise provided in this Agreement, a period defined as such in the legislation of Australia but does not include any period deemed pursuant to Article 16 to be a period in which that person was an Australian resident;
- (g) **“benefit”** means, in relation to Korea, any benefit provided for in the legislation specified in paragraph 1(a) of Article 2 and in relation to Australia, a benefit, pension or allowance

for which provision is made in the Australian legislation as specified in paragraph 1(b)(i) of Article 2, and includes any additional amount, increase or supplement that is payable in addition to that benefit, pension or allowance to or in respect of a person who qualifies for that additional amount, increase or supplement under the Australian legislation as specified in paragraph 1(b)(i) of Article 2 but, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee as specified in paragraph 1(b)(ii) of Article 2.

2. Any term not defined in this Article shall have the meaning assigned to it in the legislation of the Contracting Parties specified in Article 2.

Article 2 Legislative Scope

1. This Agreement shall apply to the following legislation:
 - (a) As regards Korea,
 - (i) the National Pension Act and enforcement rules and regulations thereof; and
 - (ii) with regard to benefits under the Agreement, the provisions of the legislation under the preceding sub-paragraph (a)(i) concerning old age pension and lump-sum refund;
 - (b) As regards Australia,
 - (i) the Acts forming the social security law in so far as the law provides for, applies to or affects, age pension; and
 - (ii) the law concerning the superannuation guarantee: the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Regulations.
2. Unless otherwise provided in this Agreement, the legislation referred to in paragraph 1 of this Article shall not include treaties or other international agreements on social security that may be concluded between one Contracting Party and a third State.
3. This Agreement shall also apply to future legislation which amends, supplements, consolidates or supersedes the legislation specified in paragraph 1 of this Article. However, this Agreement shall not apply to the future legislation which extends the existing legislation of one Contracting Party to new categories of beneficiaries unless the Competent Authorities of the Contracting Parties agree otherwise.

Article 3 Personal Scope

This Agreement shall apply to any person who:

- (a) is or has been an Australian resident; or
- (b) is or has been subject to the legislation of Korea;

and, where applicable, to other persons in regard to the rights derived from the person described above.

Article 4 Equality of Treatment

Unless otherwise provided in this Agreement, all persons to whom this Agreement applies in accordance with Article 3 shall be treated equally by a Contracting Party in the application of its legislation regarding eligibility for and payment of benefits which arise whether directly under the legislation of that Contracting Party or by virtue of this Agreement.

Article 5 Export of Benefits

1. Unless otherwise provided in this Agreement, any provision of the legislation of one Contracting Party which restricts entitlement to or payment of cash benefits solely because the person resides outside or is absent from the territory of that Contracting Party shall not be applicable to the persons who reside in the territory of the other Contracting Party.
2. Where the legislation of a Contracting Party provides that a benefit is payable outside the territory of that Contracting Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Contracting Parties.
3. In relation to Australia, any additional amount, increase or supplement that is payable in addition to a benefit under this Agreement, as defined in Article 1, shall be payable outside the territory of Australia only according to the provisions of the Acts specified in paragraph 1(b)(i) of Article 2.

PART II Provisions on Coverage

Article 6 Purpose of this Part

The purpose of this Part is to ensure that employers and employees who are subject to the legislation of Korea or Australia do not have a double liability under the legislation of Korea and Australia in respect of the same work of an employee.

Article 7 Application of this Part

1. This Part applies if an employee and/or the employer of the employee would, apart from this Part, be subject to the legislation of both Parties in respect of the work of the employee or remuneration paid for the work.
2. For the purposes of Articles 6, 7, and 11, the legislation includes, with regards to Korea, the statutory pension scheme for civil servants.

Article 8 General Provisions

1. Except as otherwise provided in this Part, a person employed within the territory of one Contracting Party and the person's employer shall, with respect to that employment, be subject only to the legislation of that Contracting Party.
2. A person, who is a resident of Korea and is engaged in self-employment in the territory of either Contracting Party in respect of that self-employment, shall be subject only to the legislation of Korea.
3. This Agreement shall not preclude the possibility for a person to be voluntarily insured under the Korean legislation.

Article 9

Seconded Workers

1. If an employee:
 - (a) is covered by the legislation of one Contracting Party (the first Contracting Party); and
 - (b) was sent, whether before, on or after the entry into force of this Agreement, by an employer who is subject to the legislation of the first Contracting Party to work in the territory of the other Contracting Party (the second Contracting Party); and
 - (c) is working in the territory of the second Contracting Party in the employment of the employer or a related entity of that employer; and
 - (d) has been in the territory of the second Contracting Party for a period not exceeding 5 years after being sent to work in that territory by the employer; and
 - (e) is not working permanently in the territory of the second Contracting Party;

the employer of the employee and the employee shall be subject only to the legislation of the first Contracting Party in respect of the work and the remuneration paid for the work.
2. In case the duration for which the employee is working continues beyond the period specified in paragraph 1 (d) of this Article, the legislation of the first Contracting Party shall continue to apply, provided that the Competent Authorities of both Contracting Parties or the agencies designated by them consent upon the joint request of the employee and the employer.
3. For the purposes of paragraph 1(c) of this Article, an entity is a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group.

Article 10
Mariners and Aircraft Crew

If an employee is working in the employment of an employer on a ship or aircraft in international traffic, the employer of the employee and the employee shall in respect of the employment and the remuneration paid for that employment be subject only to the legislation of the Contracting Party of which the employee is a resident.

Article 11
Member of Diplomatic Mission and Civil Servants

1. Nothing in this Agreement shall affect the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or of the Vienna Convention on Consular Relations of 24 April 1963.
2. If an employee:
 - (a) is covered by the legislation of one Contracting Party (the first Contracting Party); and
 - (b) was sent, whether before, on or after the entry into force of this Agreement, by the Government of the first Contracting Party to work in the territory of the other Contracting Party (the second Contracting Party); and
 - (c) is working in the territory of the second Contracting Party in the employment of the Government of the first Contracting Party; and
 - (d) is not working permanently in the territory of the second Contracting Party;

the employer of the employee and the employee shall be subject only to the legislation of the first Contracting Party in respect of the work and the remuneration paid for the work. For the purposes of this paragraph, the term "Government" includes a political subdivision or local authority or any entity treated as such by either Contracting Party.

Article 12
Modification Provision

The Competent Authorities of both Contracting Parties or the agencies designated by them may agree to grant an exception to the provisions of this Part with respect to particular persons or categories of persons provided that any affected person shall be subject to the legislation of one Contracting Party.

PART III
Provisions relating to Korean Benefits

Article 13
Totalisation and Calculation of Pensions

1. For the purposes of this Article a period of Australian working life residence means a period:
 - (a) defined as such in the legislation of Australia; and
 - (b) during which the person was employed or self-employed or the person's employer was subject to the legislation specified in paragraph 1(b)(ii) of Article 2.
2. When periods of coverage have been completed under the legislation of Korea, the agency of Korea shall, in determining eligibility for benefits under the legislation which it applies, take into account, if necessary, periods of Australian working life residence, provided that such periods do not overlap with periods of coverage under the legislation of Korea.
3. The calculation of the pension shall be determined by the legislation of Korea unless otherwise provided in this Agreement.
4. Where periods of Australian working life residence are taken into account to establish eligibility for benefits under the legislation of Korea in accordance with paragraph 2 of this Article, the benefit due shall be determined as follows:
 - (a) the agency of Korea shall first compute a pension amount equal to the amount that would have been payable to the person if the total of the periods of Australian working life residence and periods of coverage in Korea had been completed under the legislation of Korea. To determine the pension amount, the agency of Korea shall take into account the person's average standard monthly income while covered under the legislation of Korea; and
 - (b) the agency of Korea shall calculate the partial benefit to be paid in accordance with the legislation of Korea based on the pension amount calculated according to the preceding subparagraph, in proportion to the ratio of the duration of the periods of coverage taken into consideration under the legislation of Korea to the total duration of the periods of Australian working life residence and periods of coverage taken into consideration under the legislation of Korea.

Article 14
Special Provisions

1. Lump-sum refunds shall be granted to Australian nationals under the same conditions as they are granted to Korean nationals in accordance with the legislation of Korea. Notwithstanding Article 4 of this Agreement, lump-sum refunds shall be paid to nationals of a third State only in accordance with the legislation of Korea.

2. For the purposes of Parts III and IV, the periods of coverage for which contributions have been refunded in lump-sum shall not be certified by the agency of Korea as creditable in totalizing periods to determine entitlement to a benefit, unless such lump-sum refunds have been paid back to the agency of Korea in accordance with the legislation of Korea.
3. Notwithstanding any other provision of this Agreement, if the total duration of the creditable periods of coverage accumulated by a person under the legislation of Korea is less than one year, the agency of Korea shall not be required to apply Article 13 of this Agreement.

PART IV
Provisions relating to Australian Benefits

Article 15
Residence or Presence in Korea or a Third State

Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for an Australian benefit except for not being an Australian resident and in Australia on the date on which the claim for that benefit is lodged, but:

- (a) is an Australian resident or a resident of Korea or a third State with which Australia has concluded an agreement on social security that includes provision for cooperation in the lodgment, assessment and determination of claims for benefits; and
- (b) is in Australia, or Korea or that third State,

that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purpose of lodging that claim, to be an Australian resident and in Australia on that date.

Article 16
Totalisation for Australia

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:
 - (a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, under the legislation of Australia for that benefit; and
 - (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 4 for that person; and
 - (c) a period of coverage in Korea,

then, for the purposes of a claim for that Australian benefit, that period of coverage in Korea shall be deemed to be a period in which that person was an Australian resident:

- only if that period of coverage in Korea is certified by the agency of Korea at the request of the Australian agency; and
- only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia.

2. For the purposes of paragraph 1, where a person:
 - (a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and
 - (b) has accumulated a period of coverage in Korea in two or more separate periods that equals or exceeds in total the minimum period referred to in the preceding subparagraph (a);the total of the periods of coverage in Korea shall be deemed to be one continuous period.
3. For the purposes of this Article, where a period by a person as an Australian resident and a period of coverage in Korea coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.
4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:
 - (a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least six months must be continuous; and
 - (b) for the purposes of an Australian benefit that is payable to an Australian resident, there shall be no minimum period.

Article 17

Calculation of Australian Benefits

1. Subject to paragraph 2 and 3, where an Australian benefit is payable by virtue of this Agreement or otherwise to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia. When assessing the income of that person for the purpose of calculating the rate of that benefit under the legislation of Australia, only a proportion of any benefit under the legislation of Korea paid to that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of Australian working life residence (not exceeding 300) by the amount of that benefit under the legislation of Korea and dividing that product by 300.
2. A person referred to in paragraph 1 of this Article shall be entitled to receive the assessment of income described in that paragraph only for any period during which the rate of that person's benefit under the legislation of Australia is proportionalised under the legislation of Australia.
3. The provision in paragraph 1 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
4. Subject to paragraph 5, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:
 - (a) calculating that person's income according to the legislation of Australia but disregarding in that calculation any Korean benefit which that person or the partner of that person is entitled to receive if applicable; and

- (b) deducting the amount of the Korean benefit which that person is entitled to receive from the maximum rate of that Australian benefit; and
 - (c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph (a).
5. The provisions in paragraph 4 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
 6. Where a member of a couple is, or both that person and his or her partner are, entitled to a Korean benefit or benefits, each of them shall be deemed, for the purposes of this Article and the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

PART V
Miscellaneous Provisions

Article 18
Administrative Arrangement

1. The Competent Authorities of the Contracting Parties shall conclude an Administrative Arrangement that sets out the measures necessary for the implementation of this Agreement.
2. The liaison agencies of each Contracting Party shall be designated in the Administrative Arrangement.

Article 19
Exchange of Information and Mutual Assistance

1. The Competent Authorities and agencies of the Contracting Parties shall, within the scope of their respective authorities:
 - (a) communicate to each other, to the extent permitted by their national laws and regulations, any information necessary for the application of this Agreement;
 - (b) assist each other with regard to the determination of entitlement to, or payment of, any benefit under this Agreement, or the legislation to which this Agreement applies;
 - (c) communicate to each other, as soon as possible, information concerning the measures taken by them for the application of this Agreement and of any changes in their respective legislation which may affect the application of this Agreement;
 - (d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with paragraph 1 of Article 18.
2. The assistance referred to in paragraph 1(b) of this Article shall be provided free of charge, subject to any exceptions to be agreed upon in the Administrative Arrangement concluded pursuant to paragraph 1 of Article 18.

Article 20
Confidentiality of Information

Unless otherwise required by the national laws and regulations of a Contracting Party, information about an individual which is transmitted in accordance with this Agreement to the Competent Authority or agency of that Contracting Party by the Competent Authority or agency of the other Contracting Party shall be used exclusively for purposes of implementing this Agreement and the legislation to which this Agreement applies. Such information received by a Competent Authority or agency of a Contracting Party shall be governed by the national laws and regulations of that Contracting Party for the protection of privacy and confidentiality of personal data.

Article 21
Exemption from Fees and Certification of Documents

1. Where the legislation of a Contracting Party provides that any document which is submitted to the Competent Authority or agency of that Contracting Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or agency of the other Contracting Party in the application of this Agreement.
2. Documents and certificates which are presented by the Competent Authority or the agency of either Contracting Party for purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular authorities.
3. Copies of documents which are certified as true and exact copies by an agency of one Contracting Party shall be accepted as true and exact copies by an agency of the other Contracting Party, without further certification.

Article 22
Language of Communications

1. The Competent Authorities and agencies of the Contracting Parties may correspond directly with each other and with any person, wherever that person may reside, whenever it is necessary to do so for the application of this Agreement or the legislation to which this Agreement applies. The correspondence may be in any official language of either Contracting Party.
2. An application or document may not be rejected by a Competent Authority or agency of a Contracting Party solely because it is in an official language of the other Contracting Party.

Article 23
Lodgment of Claims, Notices or Appeals

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of a Contracting Party which should, for the purposes of that legislation, have been lodged within a prescribed period to a Competent Authority or agency of that Contracting Party, but which is lodged within the same period to a Competent Authority or agency of the other Contracting Party, shall be treated as if it had been lodged to the Competent Authority or agency of the first Contracting Party.
2. The date on which a claim, notice or appeal concerning the determination or payment of a benefit under the legislation of one Contracting Party is lodged with the Competent Authority or agency of the other Contracting Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgment of that document with the Competent Authority or agency of the first Contracting Party.

3. If, after the entry into force of this Agreement, a person files a written application for benefits with the agency of a Contracting Party under the legislation of that Contracting Party, and if that person has not explicitly requested that the application be restricted to benefits under that legislation, the application shall also protect the rights of that person to corresponding benefits under the legislation of the other Contracting Party, provided that the person at the time of application:
 - (a) is entitled on age grounds to lodge a valid claim for a benefit of the other Contracting Party; and
 - (b) requests that it be considered as an application under the legislation of the other Contracting Party; or
 - (c) provides information indicating that periods of coverage have been completed under the legislation of the other Contracting Party.
4. In any case to which paragraphs 1, 2 or 3 applies, the Competent Authority or agency to which the claim, notice or appeal has been submitted shall indicate the date of receipt of the document and transmit it without delay to the Competent Authority or agency of the other Contracting Party.
5. In relation to Australia, the reference in paragraph 1 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by, or administratively for the purposes of, the social security laws of Australia.

Article 24

Currency

1. The agency of a Contracting Party may pay benefits in accordance with this Agreement in the currency of that Contracting Party.
2. In the event that a Contracting Party imposes currency controls or other similar measures that restrict payments, remittance or transfers of funds or financial instruments to persons who are outside that Contracting Party, it shall, without delay, take appropriate measures to ensure the payment of any amount that must be paid in accordance with this Agreement to persons described in Article 3 who reside in the other Contracting Party.

Article 25

Payment of Benefits

1. This Agreement shall not establish any right to payment of a benefit for any period before the date of the entry into force of this Agreement.
2. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:
 - (a) a period as an Australian resident and a period of coverage in Korea; and
 - (b) any event or fact which is relevant to that eligibility or entitlement;

shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred. However, the agency of neither Contracting Party shall be required to take into account periods of coverage or residence which occurred prior to the earliest date for which periods of coverage or residence may be credited under its legislation.

3. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia becoming again an Australian resident, and lodges a claim for an Australian benefit and again leaves Australia within a specified period of time.

Article 26

Resolution of Disputes

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the Competent Authorities of the Contracting Parties.

Article 27

Review of Agreement

Where a Contracting Party requests the other Contracting Party to meet to review this Agreement, the Contracting Parties shall meet for that purpose on a date to be agreed between the Contracting Parties and, unless the Contracting Parties otherwise arrange, their meeting shall be held in the territory of the Contracting Party to which that request was made.

PART VI

Transitional and Final Provisions

Article 28

Transitional Provisions

1. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.
2. In applying Article 9 in case of persons who were sent to a Contracting Party prior to the date of entry into force of this Agreement, the periods of employment referred to in that Article shall be considered to begin on that date.
3. The provisions of Parts III and IV shall apply only to benefits for which an application is filed on or after the date this Agreement enters into force.

Article 29

Entry into Force

This Agreement shall enter into force on the first day of the third month following the month in which notes are exchanged by the Contracting Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalised.

Article 30
Period of Duration and Termination

1. Subject to paragraph 2, this Agreement shall remain in force until the expiration of 12 months from the date on which either Contracting Party receives from the other a note through the diplomatic channel giving notice of termination of this Agreement.
2. In the event of termination, this Agreement shall continue to have effect in relation to all persons who:
 - (a) at the date on which termination takes effect, are in receipt of benefits; or
 - (b) prior to that date have lodged claims for, and would be entitled to receive, benefits by virtue of this Agreement; or
 - (c) immediately before the date of termination are subject only to the legislation of one Contracting Party by virtue of Article 9 and paragraph 2 of Article 11 of Part II of the Agreement, provided the employee continues to satisfy the criteria of that Article.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, by their respective Governments, have signed this Agreement.

DONE in duplicate at Canberra on the sixth day of December TWO THOUSAND AND SIX, in the English and Korean languages, each text being equally authentic.

**FOR THE GOVERNMENT OF
AUSTRALIA**

**FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA**

Alexander Downer
Minister for Foreign Affairs

Song, Min-soon
Minister for Foreign Affairs