

## **NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY**

### **SUMMARY PAGE**

#### **Agreement between Australia and the Republic of Croatia on Social Security, done at Zagreb on 13 May 2003 [2003] ATNIF 8.**

#### **Date of Tabling of Proposed Treaty Action**

1. 17 June 2003.

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

2. The Agreement was signed on 13 May 2003.
3. In accordance with Article 24, the Agreement shall enter into force on the first day of the month following the month in which notes are exchanged by Australia and Croatia notifying that all matters necessary to give effect to this Agreement have been finalised. It is proposed that this exchange of notes will take place in December 2003 with the Agreement entering into force on 1 January 2004.

#### **Overview and National Interest Summary**

4. The Agreement will bring economic and political benefits to Australia. It will assist in maximising the foreign income of Australian residents and there will be a flow-on effect of these funds into the Australian economy. The Agreement will also serve to reinforce Australia's political, business and strategic interests. The Agreement will further strengthen bilateral relations between Australia and Croatia and provide choices in retirement for individuals who have migrated (or will migrate) to Australia or Croatia during their working lives.
5. The Agreement provides for enhanced access to certain Australian and Croatian social security benefits and greater portability of these benefits between the countries. Portability of benefits allows for the payment of a benefit from one country into another country. This is an underlying principle of Australia's bilateral agreements on social security where the responsibility for providing benefits is shared. Under the Agreement, residents of Australia and Croatia will be able to move between Australia and Croatia with the knowledge that their right to benefits is recognised in both countries.

## **Reasons for Australia to Take the Proposed Treaty Action**

6. Australia's network of bilateral 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. Such agreements also improve income support coverage for people with disabilities.

7. The Agreement with Croatia incorporates the same general principles as a number of other agreements that Australia has on social security – (see Annexure E). A key element of this Agreement, and the other social security agreements, is the sharing of responsibility between the parties in providing adequate social security coverage for former residents of their countries.

8. The Australian Government currently pays pensions under the *Social Security Act 1991* (“the Act”) to around 12,250 Croatian-born pensioners, the vast majority of whom are resident in Australia. Under domestic portability provisions in the Act, Australia pays pensions to approximately 1,219 people (not necessarily Croatian-born people) residing in Croatia.

9. Croatian domestic legislation requires a person to have at least 15 years of qualifying periods of insurance to be eligible for a retirement pension. The Agreement will help overcome this restriction.

10. The Department of Family and Community Services estimates that, through the Agreement, over 300 people residing in Australia and Croatia will benefit by being able to claim payments to which they currently do not have access.

11. For Australia, the Agreement will cover access to age pensions and disability support pensions for people who are severely disabled. These pensions will also include additional child amounts if the pensioner has dependant children and is outside Australia. For Croatia, the Agreement will cover old-age pensions, disability pensions and survivor's pensions.

12. The Agreement provides that both countries will share the financial responsibility for providing these benefits. This means that individuals 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 lives. Residents of Australia and Croatia will be able to move between Australia and Croatia 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.

13. Double coverage provisions have also been included to ensure that Australian and Croatian employers do not have to make two superannuation contributions for an employee seconded to work in the other country. Under current arrangements the employer would be required to make contributions under both Australian and Croatian legislation. The new provisions will ensure the employer, and the employee where compulsory employee contributions are required, have to contribute only to the relevant superannuation scheme in their home country.

## **Obligations**

14. The Agreement places equivalent obligations on both Australia and Croatia.

15. Article 2 sets out for both countries the scope of social security benefits covered by the Agreement as described in paragraph 11 of this National Interest Analysis.
16. 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 subject to the legislation of Croatia.
17. Article 4 is a statement of principle, common to all bilateral social security agreements. It requires that all persons to whom the Agreement applies must be treated equally in relation to the application of laws regarding social security benefits.
18. Article 5 of the Agreement deals with export of benefits and provides for the payment of benefits by Australia and Croatia into the other country. The article provides obligations on each country to notify of any legal or administrative restrictions on the transfer of its currency within one calendar month. Neither Australia, nor Croatia, is entitled to charge administrative fees or charges for processing benefits payable under the Agreement.
19. Article 6 refers to medical examinations required in the assessment of claims for Australian disability support pension and Croatian disability pension. Each country is obliged to provide, on request, copies of existing relevant medical reports.
20. Article 10 of the Agreement deals with the situation of employees who are sent from one country to the other to work. This Article is generally aimed at avoiding double coverage of employees or liability of employers in, for example, the case of superannuation. It specifies that in certain circumstances, only one country's legislation relating to coverage will apply.
21. Article 12 concerns a person in Croatia who would have the right to lodge a claim for a benefit - but for the fact that he or she is not an Australian resident and not in Australia. Article 12 allows such a person to lodge a claim.
22. Article 13 establishes the circumstances in which Croatian periods of insurance can be used to satisfy the minimum residence requirements for an Australian benefit stipulated in the Act. Under this Article, claimants are able to add these 'deemed' Croatian periods to actual periods of residence in Australia in order to qualify for an Australian benefit. This means that people who do not meet the minimum period of Australian residence to qualify for payment can add periods of coverage in Croatia to their actual periods of Australian residence in order to qualify for payment. However, the rate of Australian pension will still be based on their actual periods of working life residence in Australia.
23. Article 15 imposes a similar obligation on Croatia to treat relevant periods of residence in Australia as Croatian periods of insurance. This means that individuals who do not satisfy the 15 years of insurance required to qualify for Croatian retirement pension can add those periods of Croatian insurance to their periods of Australian working life residence. However, the rate of Croatian benefit will still be based on Croatian legislation.
24. The method of calculating the rate of Australian benefits is set out in Article 14 of the Agreement. When calculating a person's entitlement Australia is obliged to modify the method of calculation under Australian social security law, both inside and outside Australia. Where an Australian pension is payable to a person outside Australia that pension is determined according to Australian law. Where an Australian benefit is payable to a person

who is in Australia the rate of that benefit is determined by calculating that persons income according to Australian law. The amount of the Croatian benefit received is then deducted from the maximum rate of Australian benefit payable for people in Australia.

25. Article 17 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 20.

26. Article 18 provides a mechanism by which one agreement country may recover overpayment of a benefit resulting from the subsequent grant (with arrears) of a benefit from the other country. 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 19 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 exchange of information so that the Agreement can be applied.

28. Under Article 20 of the Agreement Australia and Croatia must make the necessary administrative arrangements for the implementation of the Agreement and designate liaison agencies

29. Article 21 provides that any period, event or fact relevant to a person's eligibility for benefit under the agreement is to be considered but that the Agreement shall not establish any entitlement to benefits for any period prior to its entry into force.

30. Article 22 obliges Australian and Croatian authorities to resolve, to the extent possible, any disagreement with regard to the interpretation or application of the Agreement.

### **Implementation**

31. A new Schedule containing the full text of the 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. Article 20 of the Agreement specifies that it will be implemented in accordance with a separate Administrative Arrangement.

32. An amendment has been to be made to the *Superannuation Guarantee (Administration) Act Regulations* dealing with bilateral social security agreements to eliminate double superannuation coverage. The Regulations were gazetted on 17 August 2001. The Regulations 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 an appropriate international agreement is in place).

33. No action is required by the States or Territories, and no change to the existing roles of the Commonwealth, the States and Territories in social security matters will arise as a consequence of implementing this Agreement.

### **Costs**

34. The Agreement is expected to result in an increase in administered outlays of A\$2.203m over the forward estimates period to 30 June 2006. Department of Family and Community Services and Centrelink Departmental costs of A\$4.252m over the same period represent the cost of implementing this Agreement and the Agreement with Slovenia ([2002] ATNIF 33), as well as the Agreements with Switzerland and Norway which are under negotiation. This cost includes the development of new computer systems, administrative processes, forms and staff training.

### **Consultation**

35. Annexure A fully documents the consultation process.

### **Regulation Impact Statement**

36. A Regulation Impact Statement is attached.

### **Future treaty action**

37. The Agreement does not specifically provide for the negotiation of any future legally binding instruments although Article 23 obliges the Parties to review the Agreement when requested to do so by either Party.

38. In the absence of a formal amendment procedure in the Agreement, Article 39 of the Vienna Convention on the Law of Treaties applies. This provides that a treaty may be amended by agreement between the parties.

39. Any proposed amendment would have to go through the normal Australian procedures for a treaty action, including scrutiny by the Joint Standing Committee on Treaties.

### **Withdrawal or denunciation**

40. Article 24 (2) provides that the Agreement shall remain in force until the expiration of 12 months from the date either country receives from the other a note through the diplomatic channel indicating its intention to terminate the Agreement.

41. In the event of termination, Article 24 (3) 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.

### **Contact Details**

International Branch  
Department of Family and Community Services