

National Interest Analysis [2011] ATNIA 32

with attachment on consultation

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

done at Riga on 7 September 2011

[2011] ATNIF 18

NATIONAL INTEREST ANALYSIS – CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between Australia and the Republic of Latvia on Social Security done at Riga on 7 September 2011 [2011] ATNIF 18

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 Latvia on Social Security* done at Riga on 7 September 2011 ('the proposed Agreement').
2. Pursuant to its Article 22, the proposed Agreement will enter into force on the first day of the second month following the month in which the last notification is exchanged by Australia and Latvia notifying each other that all matters necessary to give effect to the proposed Agreement have been finalised. This is expected to occur in the second half of 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 proposed Agreement provides for enhanced access to Australian and Latvian retirement benefits for people in Australia and Latvia 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 proposed Agreement, residence in one Party's territory will not affect a person's entitlement to benefits under the legislation of the other Party. People who move between Australia and Latvia will be able to do so in the knowledge that their rights to benefits are recognised in both countries. For Australia, the proposed Agreement covers the Age Pension. For Latvia, the proposed Agreement covers old age and survivor's pensions and death benefits.
5. The proposed Agreement will facilitate business between Australia and Latvia 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 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 proposed Agreement will exempt employers and/or employees already making superannuation guarantee contributions in Australia, from making compulsory social security contributions in Latvia. Similarly, Latvian employers will be exempt from making superannuation guarantee contributions for employees sent to work temporarily in Australia, provided they continue to make contributions in Latvia.
6. The proposed 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 proposed Agreement will serve to reinforce Australia's political, business and strategic interests. It will also further strengthen bilateral relations between Australia and Latvia and provide choices in retirement for individuals who migrate to Australia or Latvia 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 proposed Agreement incorporates the same principles as Australia's other social security agreements. A key element of the proposed 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 proposed 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 Latvia will be able to move between these countries knowing that their rights to benefits are protected.

10. The proposed 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 proposed Agreement, approximately 2,000 people living in Australia and Latvia will claim an Australian and/or Latvian pension. This is expected to increase ongoing Latvian pension flows into Australia by around \$4.3 million per year and increase ongoing Australian pension flows into Latvia by approximately \$0.2 million per year, resulting in a reduction of ongoing Australian pension outlays by around \$1.1 million over the forward estimates period.

Obligations

11. Part I (Articles 1 to 5) of the proposed Agreement sets out general provisions (Article 1) and defines the scope of the proposed Agreement (Articles 2 and 3). Article 4 obliges the Parties to ensure equal treatment of people covered by the proposed Agreement, with respect to eligibility for and payment of benefits. Article 5 provides that benefits are payable to persons who are residents of, or in, the territory of either Party.

12. Part II (Articles 6 to 9) concerns provisions on applicable legislation, and includes provisions to avoid double liability. Article 8 provides that where a person whose employment is subject to the laws of one Party is temporarily seconded to work in the territory of the other Party, the person and/or their employer will be subject only to the legislation of the first Party.

13. Part III (Articles 10 to 12) applies to benefits payable by Australia and:

- a) obliges Australia to regard residents of Latvia, and Australian residents who are temporarily in Latvia, 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 10);
- b) provides that insurance periods in Latvia (being periods of contributions used to acquire the right to a benefit under Latvian legislation, or periods deemed equivalent) will be regarded as periods of residence in Australia for the purpose of meeting any minimum qualifying period of residence for the Australian Age Pension (Article 11); and
- c) specifies how the rate of the Australian Age Pension will be calculated under the proposed Agreement and how this applies to a person who is living inside or outside Australia. (Article 12).

14. Part IV (Articles 13 and 14) applies to benefits payable by Latvia. Periods of Australian working-life residence and Australian residence will be taken into account in Latvia for the purpose of meeting minimum insurance periods under Latvian legislation, provided the periods do not overlap with the person's insurance period accumulated in Latvia (Article 13). The rate of pension from Latvia will generally be based on a person's insurance period accumulated in Latvia (Article 14).

15. Part V (Articles 15 to 20) 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 corresponding payment from the other country (Article 15);
 - b) to guarantee payment of benefits in the event that currency controls are imposed by either country and without deductions for government fees or charges, and precluding payment for any date prior to the date on which the proposed Agreement enters into force (Article 16);
 - c) for the Competent Authorities and Competent Institutions of each Party to assist each other to exchange information and to protect the confidentiality of personal data, and to communicate and accept documents in any of the official languages of either country (Article 17);
 - d) for the Competent Authorities to conclude an Administrative Arrangement and appoint liaison bodies to implement the proposed Agreement (Article 18);
 - e) to resolve any disputes which may arise in interpreting or applying the proposed Agreement and to meet to review the proposed Agreement upon request by either Party (Articles 19 and 20).

16. Part VI (Articles 21 to 23) concerns transitional and final provisions. Article 21 ensures that Latvian insurance periods and periods of Australian residence completed before the proposed Agreement enters into force will be taken into consideration. It also provides that Article 8 of the proposed Agreement applies from the date of entry into force of the proposed Agreement, even if an employee from one Party was seconded to work in the territory of the other before the proposed Agreement entered into force. Articles 22 and 23 respectively set out the arrangements for the entry into force of the proposed 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 proposed Agreement will be added to the *Social Security (International Agreements) Act 1999* pursuant to regulations made under 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 section 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 relevant scheduled social security agreement is in place.

Cost

19. The proposed Agreement was funded in the 2009-10 Budget at a net cost of \$1.3 million over the forward estimates period. It is expected to reduce ongoing pension outlays by around \$1.1 million. Departmental costs incurred by the Department of Families, Housing, Community Services and Indigenous Affairs, the Department of Human Services (Centrelink) and the Australian Taxation Office total \$2.4 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 been consulted and has advised that a Regulation Impact Statement is not required.

Future treaty action

21. The proposed Agreement does not provide for amendments or for the negotiation of future legally binding instruments. In the absence of specific procedures, the Parties may amend the proposed Agreement by mutual consent at any time in accordance with Article 39 of the *Vienna Convention on the Law of Treaties*. Article 20 of the proposed Agreement obliges the Parties to meet to review the proposed Agreement at the request of either Party.

22. Any future amendments to the proposed Agreement would be subject to Australia's domestic treaty-making process.

Withdrawal or denunciation

23. Article 23 of the proposed Agreement provides that it will remain in force until terminated by either Party giving twelve months' written notice to the other through diplomatic channels. In the event of termination, Article 23 also preserves the rights of those who are receiving benefits under the proposed Agreement, those who have lodged claims and would have been entitled to receive benefits under the proposed Agreement, and employees and/or their employers affected by the double liability provisions of Part II of the proposed Agreement (Articles 8 and 9).

24. Any termination of the proposed Agreement by Australia would be subject to Australia's domestic treaty-making process.

Contact details

International Agreements

International Branch

Department of Families, Housing, Community Services and Indigenous Affairs

ATTACHMENT ON CONSULTATION

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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 26 September 2011 FaHCSIA wrote to the President and seven Vice Presidents of the Latvian Federation of Australia and New Zealand and 18 welfare groups across Australia, in addition to all State and Territory Governments, to provide information and seek their views and comments on the proposed Agreement by 31 October 2011. The proposed Agreement text and information about the proposed Agreement are available on FaHCSIA's website.
27. 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	(COTA) National Seniors
National Ethnic Disability Alliance	Association of Independent Retirees
Physical Disability Council of Australia Ltd	National Disability Services
Federation of Ethnic Communities' Councils of Australia (FECCA)	
Combined Pensioners and Superannuants Association	

28. 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

29. No responses were received.

30. Treasury wrote to the organisations listed below on 22 September seeking their views and asking for a response by 28 October. Organisations consulted were:

Institute of Chartered Accountants in Australia
Australian Chamber of Commerce and Industry
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

31. One response supporting the double liability aspects of the proposed Agreement was received.