

DOCUMENTS TO BE TABLED ON 9 MARCH 2010:

- **National Interest Analysis [2010] ATNIA 5**
with attachment on consultation

- **Agreement between Australia and the Czech Republic on Social Security, done at Canberra on 16 September 2009**
[2009] ATNIF 27

NATIONAL INTEREST ANALYSIS – CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between Australia and the Czech Republic on Social Security, done at Canberra on 16 September 2009 [2009] ATNIF 27

Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force the *Agreement between Australia and the Czech Republic on Social Security* (the Agreement). The Agreement was signed in Canberra on 16 September 2009.

2. Pursuant to Article 25, the Agreement will enter into force on the first day of the third month following the month in which notes have been exchanged by Australia and the Czech Republic (the Parties) through the diplomatic channel stating that all matters as are necessary to bring the Agreement into force have been finalised. The proposed timeframe for an exchange of notes is October 2010 to enable entry into force on 1 January 2011.

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. Such agreements achieve this by overcoming barriers to pension payment in the domestic legislation of each country, such as requirements on citizenship, minimum contributions record, past residence record and current country of residence.

4. The Agreement provides for enhanced access to Australian and Czech retirement benefits and greater portability of these benefits between the two countries. For the Czech Republic, the Agreement also covers invalidity and survivors' benefits. 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 Czech Republic will be able to move between Australia and the Czech Republic with the knowledge that their rights to benefits are recognised in both countries.

5. Double coverage provisions have also been included to ensure that Australian and Czech employers do not need to make compulsory pension/superannuation contributions into both countries' systems when an employee is seconded to work in the other country temporarily. Under current arrangements the employer may be required to make contributions under both Australian and Czech legislation. The Agreement will provide that, generally, where compulsory contributions are required, the employee and/or their employer need to contribute only to the relevant pension/superannuation scheme in their home country. The provisions on double coverage will reduce the costs of doing business in both Australia and the Czech Republic.

6. The Agreement will bring economic and political 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 thereby serve to reinforce Australia's political, business and strategic interests. It will also further strengthen bilateral relations between Australia and the Czech Republic and provide choices in retirement for individuals who migrate to Australia or the Czech 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 the Czech Republic. Those who benefit from these agreements are mostly age pensioners.
8. The Agreement incorporates the same principles as Australia's other agreements on social security. 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 Czech Republic will be able to move between these countries knowing that their rights to benefits are protected.
10. The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) estimates that, through the Agreement, approximately 2,000 people residing in both countries will benefit when the Agreement comes into force, by being able to claim payments from Australia and the Czech Republic to which they currently do not have access.

Obligations

11. Part I (Articles 1 to 5) of the Agreement sets out the general obligations of the Parties under the Agreement, outlines 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 residency in the other country (Article 5). For Australia, the Agreement covers the age pension. For the Czech Republic, the Agreement covers age, invalidity and survivors' benefits.
12. Part II (Articles 6 to 9) provides that where an employee has been temporarily seconded to work in the other country, the employee and/or their employer will only be subject to the legislation of the employee's home country with respect to compulsory contributions. This arrangement is restricted to five years for private sector employees.
13. Chapter 1 of Part III (Articles 10 to 12) applies to benefits payable by Australia. This:
 - obliges Australia to regard residents of the Czech Republic, and residents of certain third countries with which Australia has a social security agreement, as Australian residents for the purpose of claiming and qualifying for Australian age pension, provided the person lived in Australia for at least one year (pursuant to Australian legislation this period must accrue while the person is between the ages of 16 and age pension age (Articles 10 and 11));
 - provides that creditable periods in the Czech Republic (periods of insurance/pension contributions), substitute periods and equivalent periods completed under Czech law will be regarded as periods of residence in Australia for the purpose of meeting the ten year qualifying period of residence for age pension (Article 11);

- sets out the formula for calculating the rate of Australian age pension that is payable only by virtue of the Agreement (Article 12). For persons inside Australia, the amount of any Czech pension received is deducted from the maximum Australian pension on a dollar for dollar basis. Once a person has been an Australian resident for 10 years, Article 12 will no longer apply and any Age Pension entitlement will be payable under Australian domestic law. For persons outside Australia, by reference to the legislation of Australia, Australian age pensions in the Czech Republic will be based on a person's period of 'Australian Working Life Residence' (the period between age 16 and Australian Age Pension age) over a denominator of 25 years.

14. Chapter 2 of Part III (Articles 13 and 14) applies to benefits under Czech legislation, and therefore creates no obligations for Australia. The provisions are reciprocal to Australia's in that claims for the Czech age pension will be able to be lodged in Australia. Certain periods of residence in Australia, as well as creditable periods completed in certain third countries with which the Czech Republic has an agreement, will be counted as creditable periods for the purpose of meeting minimum requirements for a Czech age pension. The rate of Czech age pension will generally be based on a person's creditable period and their pensionable earnings in the Czech Republic.

15. Part IV (Articles 15 to 23) sets out various administrative obligations, including:

- for the 'Competent Authorities' of both Parties to conclude an Administrative Arrangement and designate liaison agencies to implement and administer the Agreement (Article 15);
- to regard the date of claim in one country as the date of claim in the other and, in certain circumstances, to regard a claim for a pension in one country as a claim for the corresponding pension from the other country (Article 16);
- to guarantee payments in the event that currency controls are imposed, to guarantee payment without deductions for government fees or charges, and to exempt documents from fees and certification requirements (Articles 17 and 18);
- a general obligation for the Parties to assist each other in implementing the Agreement, by exchanging information, protecting the confidentiality of personal data, and communicating with each other in either of the official languages of both Parties (Articles 19, 20 and 21);
- provision to resolve disputes by consultation and to meet to review the Agreement upon request by either Party (Article 22); and
- provision to review the Agreement where a Party requests such review (Article 23).

16. Part V (Articles 24 to 26) provides for transitional arrangements, ratification, entry into force, duration, modification and termination of the Agreement. Article 24 ensures that periods of residence in Australia and creditable periods in the Czech Republic will be taken into account in determining entitlement to benefits in accordance with the Agreement. The Agreement does not create entitlement to benefits for any period prior to the entry into force of the Agreement, and existing rights at the commencement of this Agreement are also protected. Article 25 provides that the Parties must notify each other in writing of the completion of domestic requirements necessary for the entry into force of the Agreement. The Agreement

will enter into force on the first day of the third month following the month in which notes are exchanged by the Parties.

Article 26 provides that:

- the Agreement may be amended in the future by supplementary agreements;
- where terminated by either Party in writing through the diplomatic channel, the Agreement will remain in force for a period of 12 calendar months following the month in which written notice of termination is received; and
- in the event of termination, existing rights that have been acquired under the Agreement will be retained.

Implementation

17. The implementation of the Agreement will require amendment to the *Social Security (International Agreements) Act 1999* to give the Agreement the force of law in Australia. 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.

18. Provisions relating to double superannuation coverage are automatically given effect in domestic law once the Agreement is scheduled to the *Social Security (International Agreements) Act 1999*. This is pursuant to the *Superannuation Guarantee (Administration) Act 1993* (paragraph 27(1)(e)) and the *Superannuation Guarantee (Administration) Regulations 1993* (regulation 7AC), which have the effect 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.

Costs

19. The Agreement was funded in the 2009-10 Budget and is expected to reduce administered outlays by \$0.638 million over the forward estimates period to 2012-13. Departmental costs for implementing and administering the Agreement total \$2.795 million over the same period, being \$0.227 million for FaHCSIA, \$2.369 million for Centrelink and \$0.199 million for the Australian Taxation Office.

Regulation Impact Statement

20. The Department of Finance and Deregulation has assessed the implementation of the Agreement against criteria in *The Best Practice Regulation Handbook*. This regulatory option will have a low impact on business and individuals or on the economy and a Regulation Impact Statement or Business Cost Calculator Report is not required.

Future treaty action

21. As noted above, Article 23 obliges the Parties to meet to review the Agreement when requested by either Party. An Administrative Arrangement to establish the measures necessary to implement the Agreement will be entered into by the Competent Authorities

pursuant to Article 15. This Arrangement will not have treaty status and will therefore not be subject to Australia's treaty-making process.

22. The Agreement may be amended at any time by agreement between the Parties, pursuant to Article 26 and in accordance with Article 39 of the *Vienna Convention on the Law of Treaties*. Any such amendment would constitute a treaty action, and would therefore be subject to Australia's domestic treaty-making process, including tabling and consideration by the Joint Standing Committee on Treaties (JSCOT).

Withdrawal or denunciation

23. Article 26 provides that the Agreement shall remain in force until the expiration of 12 months from the last day of the month in which either Party receives from the other a note through diplomatic channels indicating its intention to terminate the Agreement. In the event of termination, Article 26 also 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 employer affected by the double coverage provisions of Part II.

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

Contact details

International Agreements
International Branch
Department of Families, Housing, Community Services and Indigenous Affairs

CONSULTATION

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CONSULTATION

25. Five different groups were consulted by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and The Treasury: relevant community groups, welfare organisations, State and Territory Governments, employer groups and the superannuation industry.

26. On 18 September 2009 FaHCSIA wrote to 13 Czech community groups and 20 welfare groups across Australia, in addition to all State and Territory Governments, to provide information and to invite their views and comments by 23 October 2009. FaHCSIA also wrote to the Southern Cross Group, a lobby group representing the needs of the Australian expatriate community.

27. Responses were received from one correspondent, with no concerns raised.

28. Community organisations consulted were:

Beseda, the Czechoslovak Australian Association of Canberra and Region, Inc.	Sokol Sydney Gymnastic Association, Ltd
Czechoslovakian Country Club, Kemp Creek, NSW	Czechoslovak Ex-servicemen Association of NSW
Czechoslovak Ex-servicemen's Association NSW Division	Czechoslovak Ex-Servicemen's Association South Pacific Executive Committee
Sokol Melbourne, Inc. National House of Czech and Slovaks	Czechoslovak Ex-servicemen Association of Victoria
Czechoslovakian Club in Queensland, Inc.	Czech Association of Australia, Inc.
Czechoslovak Club in SA, Inc.	The Czech and Slovak Association in WA, Inc.
The Czech and Slovak Association of Tasmania, Inc.	

29. Welfare 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
Ethnic Communities' Council of Victoria	National Seniors Association
Physical Disability Australia	National Ethnic Disability Alliance

Council of Intellectual Disability Agencies	Association of Independent Retirees
National Disability Services	Combined Pensioners and Superannuants Association
COTA National Seniors	

30. 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

31. Treasury sent letters and an information sheet explaining the Agreement to the organisations listed below on 28 September 2009 seeking their views and asking for a response by 23 October 2009. No formal responses were received.

32. Organisations consulted by Treasury 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