# **Documents tabled on 7 August 2007:**

#### National Interest Analysis [2007] ATNIA 23

with attachment on consultation

Agreement between Australia and Japan on Social Security (Canberra, 27 February 2007) [2007] ATNIF 4

**Background information** 

Political brief on Japan and country fact sheet

List of other treaties with Japan

List of Social Security Agreements with other countries

# NATIONAL INTEREST ANALYSIS – CATEGORY 1 TREATY

## SUMMARY PAGE

#### Agreement between Australia and Japan on Social Security (Canberra, 27 February 2007) [2007] ATNIF 4

#### Nature and timing of proposed treaty action

1. It is proposed that Australia enter into a Social Security Agreement with Japan. The Agreement was signed in Canberra on 27 February 2007.

2. Pursuant to Article 30, the Agreement shall enter into force on the first day of the month following the month in which notes are exchanged by Australia and Japan through diplomatic channels. It is proposed that the exchange of notes takes place in December 2008 to enable entry into force on 1 January 2009.

#### **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 overcome 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 Japanese retirement benefits and greater portability of these benefits between 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 Agreement, residents of Australia and Japan will be able to move between Australia and Japan with the knowledge that their right to benefits is recognised in both countries.

5. Double coverage provisions have also been included to ensure that Australian and Japanese employers do not need to make compulsory contributions into both countries' systems when an employee is seconded to work in the other country temporarily. Under current arrangements the employer would be required to make contributions under both Australian and Japanese legislation. The Agreement will provide that, generally, where compulsory contributions are required, the employer, and the employee, need to contribute only to the relevant superannuation scheme in their home country.

6. 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 flow-on effects of these funds into the Australian economy. The Agreement will serve to reinforce Australia's political, business and strategic interests. The Agreement will also further strengthen bilateral relations between Australia and Japan and provide choices in retirement for individuals who have migrated (or will migrate) to Australia or Japan 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 country with which Australia has entered into a social security agreement. Most of the people benefiting from these agreements are Age pensioners.

8. The Agreement incorporates the same principles as Australia's other agreements on social security. A key element of the Agreement, and the other social security agreements, is the sharing of responsibility between the Parties in providing adequate social security coverage for current and former residents of their countries.

9. Under the Agreement 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 Japan will be able to move between Australia and Japan knowing that their right to benefits is recognised in both countries.

10. In March 2007, the Australian Government was paying Age Pension under the *Social Security Act 1991* (the Act) to 537 Japanese-born pensioners, the vast majority of whom reside in Australia. As at 26 June 2007, under domestic portability provisions in the Act, Australia was paying Age Pension to 13 people (not necessarily Japanese born) residing in Japan.

11. The Department of Families, Community Services and Indigenous Affairs estimates that, through the Agreement, approximately 1,050 people residing in Australia and Japan will benefit when the Agreement comes into force, in the first full year, by being able to claim payments from Australia and Japan to which they currently do not have access.

12. Australian citizens who have worked in Japan and paid contributions into the Japanese pension system will continue to be able to receive a limited refund of up to three years of contributions. This will also apply in respect of periods prior to the start of the Agreement (also limited to three years).

# Obligations

13. Part I of the Agreement sets out general obligations, including to treat people covered by the Agreement equally with respect to the payment of benefits (Article 4) and to remove restrictions on the payment of benefits based on residency in the other country (Article 5).

14. Part II (Articles 6 to 13) provides that an employer and employee will be subject only to the legislation of their home country with respect to compulsory contributions where the employee has been temporarily seconded to work in the other country. This arrangement is restricted to five years for private sector employees.

15. Part III (Articles 14 to 17) applies to benefits payable by Australia. It:

- obliges Australia to regard residents of Japan, or a third state with which Australia has concluded a social security agreement, as Australian residents for the purpose of claiming and qualifying for Australian Age Pension (Article 14);
- provides that periods of coverage in Japan will be counted as periods of residence in Australia for the purpose of meeting the ten year qualifying period of residence for 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 (Article 15); and
- provides for the rate calculation of Australian Age Pension that is payable to a person outside Australia or payable only by virtue of the Agreement to a person within Australia (Articles 16 and 17).

16. Part IV (Articles 18 and 19) applies to benefits under Japanese legislation, and therefore creates no obligations for Australia. The provisions are reciprocal to Australia's in that claims for the Japanese pensions will be able to be lodged in Australia and certain periods of residence in Australia will be counted as periods of coverage in Japan for the purpose of meeting minimum qualifying periods of coverage for a Japanese pension.

17. Part V (Articles 20 to 28) sets out various administrative obligations, including:

- to accept, for the purpose of lodgement deadlines, the date a document is lodged in the other country as the relevant lodgement date (Article 20);
- to ensure payment of benefits in the event that currency controls are imposed (Article 21);
- to exempt documents submitted pursuant to the Agreement from fees and legalisation requirements (Article 22);
- a general obligation for the Parties to assist each other in implementing the Agreement, to communicate with each other, to exchange information and for the protection of confidentiality of personal data (Article 23);
- for the 'Competent Authority' of each Party to conclude an administrative arrangement and designate liaison agencies for the implementation of the Agreement (Article 25);
- for resolution of disagreements by consultation between the Parties (Article 26); and

• to enable either Party to request a review of the Agreement at any time (Article 27).

18. Article 29 contains transitional provisions that ensure relevant periods and events completed before the Agreement enters into force will be taken into consideration and protects existing entitlements when the Agreement commences. Article 30 provides that the Agreement will enter into force at the beginning of the month following exchange of diplomatic notes. Article 31 protects existing rights in the event of termination of the Agreement.

# Implementation

19. 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.

20. Relevant provisions of social security agreements 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

21. The Agreement is expected to result in an increase in administered outlays of around \$0.297 million over the period 2008-2010. The Department of Families, Community Services and Indigenous Affairs (FaCSIA), and Centrelink departmental costs of \$1.646 million over the same period represent the cost of implementing this Agreement.

# **Regulation Impact Statement**

22. The Treasury has assessed the implementation of the Treaty against criteria in *The Best Practice Regulation Handbook*. As there is low impact on business, individuals or the economy there is no need to complete any further regulatory analysis.

# **Future treaty action**

23. The Agreement does not specifically provide for the negotiation of any future legally binding instruments although, as noted above, Article 27 obliges the Parties to review the Agreement when requested to do so by either Party. The 'Administrative Arrangement' to be entered into by the relevant Competent Authorities pursuant to Article 25 will be an instrument of less than treaty status, and therefore will not be subject to Australia's domestic treaty-making process.

24. While the Agreement does not specifically deal with amendments, it may be amended at any time by agreement between the Parties 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.

#### Withdrawal or denunciation

25. Article 31 provides that the Agreement shall remain in force until the last date of the twelfth month following 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 31 also 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.

26. Any withdrawal by Australia from this treaty would be subject to Australia's domestic treaty-making process.

# **Contact details**

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

#### Agreement between Australia and Japan on Social Security (Canberra, 27 February 2007) [2007] ATNIF 4

#### CONSULTATION

1. Four separate groups (listed below) were consulted by the Department of Families, Community Services and Indigenous Affairs (FaCSIA) and the Department of the Treasury as part of the treaty process.

2. FaCSIA sent letters and an information sheet outlining the Agreement was sent to each group on 17 April 2007 seeking their views and asking for a response by 12 May 2007.

3. No comments were received.

4. The Japanese community groups consulted were:

Japanese Com	munity Groups	
Agriculture & Livestock Industries Corporation	Japanese Society of Brisbane Inc	
Electric Power Development Co Ltd	Japanese Society of Cairns	
Japan Bank for International Cooperation	Japanese Society of Gold Coast Inc	
The Japan Foundation	Japanese Society of Melbourne Inc	
JETRO Melbourne	Japanese Society of Sydney Inc	
JETRO Sydney	Japanese Society of Adelaide Inc	
Japan International Cooperation Agency (JICA)	Canberra Japan Club	
Japan Local Government Centre Japan Club of Queensland (JCQ)		
Japan National Oil Corporation Japan Club of Sydney Inc		
apan National Tourist Organisation (JNTO) Japan Club of Tasmania		
Japan Racing Association Sydney Office	Japan Club of Victoria Inc (JCV)	
Metal Mining Agency of Japan (MMAJ)	Japan Club of Western Australia Inc (JCWA)	
New Energy & Industrial Technology	National Federation of Australian-Japan	
Development Organisation	Societies	
Japanese Chamber of Commerce & Industry (JCCI)	Australian-Japan Society Adelaide	
Japanese Cairns Association of Tourism	Australian-Japan Society Canberra	
Operators		
JCCI Gold Coast	Australian-Japan Society Coffs Harbour	
JCCI Melbourne	Australian-Japan Society Cowra	
JCCI Perth Inc	Far North Queensland Australian-Japan	
	Society	
JCCI Sydney Inc	The Australian-Japan Society Geraldton	
Sydney Japanese School	Australian-Japan Society Hobart	
The Japanese School of Melbourne	The Australian-Japan Society Geraldton	
The Japanese School of Perth	Australian-Japan Society Hobart	

The welfare organisations consulted were:

We	lfare
ACROD (National Office)	ACT Multicultural Community Council
Association of Independent Retirees	Australian Council of Social Services
Combined Pensioners & Superannuants	COTA National Seniors
Association	
Council of Intellectual Disabilities	Ethnic Communities' Council of NSW
Agencies	
Ethnic Communities' Council of QLD	Ethnic Communities' Council of Victoria
Ethnic Communities' Council of West	Federation of Ethnic Communities Council
Australia	of Australia (FECCA)
Multicultural Council of NT Inc	Multicultural Council of Tasmania
National Ethnic Disability Alliance	National Seniors Association
Physical Disability Council of Australia	Southern Cross Group
Ltd	
Welfare Rights Centre	Multicultural Communities' Council of SA

The State and 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 Federal Affairs
NSW Intergovernmental & Regulatory Reform Branch

Treasury sent letters out to the following organisations on 18 May 2007.

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

5. Since negotiations commenced in 2004, this treaty has been included on the schedule of treaties under negotiation, consideration or review by the Australian Government which schedule the Department of Prime Minister and Cabinet distributes twice a year to representatives of the Commonwealth-State/Territory Standing Committee on Treaties.

# **Political Brief on Japan**

# **Bilateral Relations**

1. Australia-Japan relations are the best they have ever been in the post-war period. The partnership is built on a strong trading and investment relationship and long-established commonalities – we are both industrialised democracies in the same region and key allies of the USA supporting its engagement in Asia-Pacific.

2. Our economic relations are very strong. Japan has been Australia's largest export market for 40 years. Total exports to Japan in 2006 were valued at \$35.3 billion, an 11 per cent increase on 2005. Japan is our top market for primary products overall, and our third-largest source of foreign investment. In April 2007, Australia and Japan commenced negotiations on a Free Trade Agreement to provide a framework that will assist the trade and investment relationship in the future.

3. Our strategic relations are rapidly strengthening. In early 2007 Prime Minister Howard and Japanese Prime Minister Shinzo Abe jointly signed the Australia-Japan Joint Declaration on Security Cooperation in Tokyo, the most significant security arrangement undertaken by Japan apart from the Japan-United States alliance. Australia, Japan and the US have also raised the Trilateral Strategic Dialogue to Foreign-Minister level security cooperation.

4. Australia and Japan have a broad and deep bilateral cultural relationship with around 45,000 Japanese living in Australia, of whom 25,000 are permanent residents.

# **Political Situation**

5. Japanese Prime Minister Mr Shinzo Abe faces an Upper House election on 29 July 2007. The ruling Liberal Democratic Party/New Komeito coalition is widely expected to lose seats, and possibly its 12-seat majority.

6. Abe became Prime Minister of Japan in September 2006 as Japan's youngest post-war prime minister and the first to be born after the war. Since assuming office, Abe has focussed on developing a more assertive international posture for Japan, and vowed to revise the US-drafted Constitution to allow Japan to exercise the right of 'collective self defence' and make it easier to joint armed international peace operations. The public, however, has shown more concern about economic opportunities, welfare and taxes, and, more recently, pension payments. Support for Abe, already in decline since late 2006, recently plunged following the pension payments problem (see below).

7. Politics in Japan takes place in a framework of a parliamentary democracy. The Prime Minister of Japan is the head of government. The Constitution provides for a parliamentary system of government and guarantees certain fundamental rights. Under its terms the Emperor of Japan is "a symbol of the Japanese nation and the unity of its people" and exercises a purely ceremonial role without the possession of sovereignty. Japan's judiciary is independent of the executive and the legislature.

8. Japan's legislature is modelled on the Westminster system. It is a bicameral system, consisting of the House of Representatives (Lower House) and the House of Councillors (Upper House). The House of Representatives has 480 members, elected on the same day for four year terms. Of 480 members, 300 are elected from single seat constituencies under the Single Member Plurality ('first-past-the-post') system, and 180 are elected from eleven separate electoral blocs under the party list system of proportional representation. The House of Councillors has 242

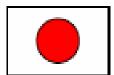
members, of which 144 are elected from 47 prefectural constituencies by means of the Single Non-Transferable Vote. The remaining 98 are elected under the party list system of <u>proportional</u> <u>representation</u>. Upper House members serve six year terms, with alternating halves elected every three years.

# Japan's Pension Payments Problem

9. The Japanese Government operated pension system has been exposed as having as many as 50 million unidentified payment accounts. The problem began in 1997 when the Social Insurance Agency (SIA) made frequent mistakes as it manually input data from premium payment ledgers in to the SIA's the new computerised system. There are a total of 300 million member accounts. Abe has established an investigatory committee to determine the causes of the problem which will issue its report in late 2007. The SIA will likely be privatised as the 'Japan Pension Organisation.'

10. The Social Security Agreement with Japan was signed on 27 February 2007 but is not expected to commence operating until 1 January 2009, subject to all legal and administrative processes being completed in both countries.

11. The Agreement does provide for mutual administrative cooperation between the two countries, and once the Agreement is in force, this may assist people in Australia to ensure that they are receiving their full correct pension entitlements from the SIA. Under the terms of the Agreement, Centrelink will be able to make representations to the SIA, if requested to do so, by individual Australian pensioners. Although the problem is said to affect around 50 million pension records, we believe that the impact on pensioners in Australia will be minimal. Centrelink records show that there are only 88 Japanese pensions being paid to Australian pensioners in Australia and 4 pensions to Australian pensioners residing elsewhere



# JAPAN

2007(b)

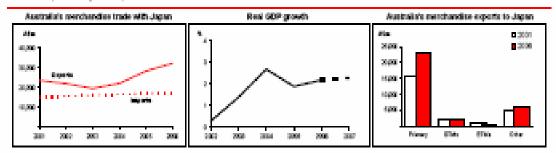
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#### General Information: Feel always are springed Managerby Hay and Ingenesian Tokyo Head of State: Capital: Surface area: 378 thousand sq km H.M. Emperor Akhilo Official language: Japanese Population: 127.7 million (2008) Head of Government: Exchange rate: A\$1 = 94.2258 Yen (Feb 2007) H.E. Prime Minister Mr Shinzo Abe Recent economic indicators: 20032005 2006(a) 20022004 GDP (US\$bn) (current prices): 4,608.1 3,925.1 4,234.9 4,557.1 4,387.5 GDP PPP (US\$bn) (c): 3,413.0 3,547.5 3,732.33,946.1 4,170.5 GDP per capita (US\$): 30,809 33,180 38.078 35.672 34,188

GDP per capita PPP (US\$) (c):	26,789	27,794	29,219	30,889	32,647	34,011
Real GDP growth (% change YOY):	0.3	1.4	2.7	1.9	2.2	2.3
Current account balance (US\$m):	112,607	136,238	172,070	165,890	170,355	166,586
Current account balance (% GDP):	2.9	3.2	3.7	3.6	3.9	3.9
Goods & services exports (% GDP):	11.8	12.4	13.8	14.9	16.1	16.5
Inflation (% change YOY):	-0.9	-0.2	0.0	-0.6	0.2	0.3



#### Australia's trade relationship with Japan (d):

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# **Bilateral treaties with Japan:**

# In force:

- Exchange of Notes regarding the Revival of pre-War Treaties between Australia and Japan [1953] ATS 9
- Agreement on a Provisional Regime to Regulate Pearling by Japanese Nationals Pending the Final Decision of the International Court of Justice in the Dispute concerning the Application to Japanese Nationals of the Australia Pearl Fisheries Act 1952-1953
   [1954] ATS 4
- Agreement [between Australia, Canada, India, New Zealand, Pakistan, South Africa and the United Kingdom, and Japan] Relative to the British Commonwealth War Cemetery in Japan and Exchange of Notes
  [1956] ATS 10
- Agreement with Japan for Air Services, and Exchange of Notes [1956] ATS 6
- Agreement on Commerce, and Four Exchanges of Notes with the Government of Japan [1957] ATS 15
- Protocol amending the Agreement on Commerce with Japan [1964] ATS 11
- Agreement with Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income
   [1970] ATS 9
- Cultural Agreement with the Government of Japan [1976] ATS 3
- Basic Treaty of Friendship and Co-operation [NARA], and Protocol [1977] ATS 19
- Exchange of Notes constituting an Agreement [between Australia, Canada, India, New Zealand, South Africa and the United Kingdom, and Japan] concerning the Commonwealth War Cemetery in Japan
  [1978] ATS 6
- Agreement on Fisheries between with the Government of Japan [1979] ATS 12
- Agreement with Government of Japan on Cooperation in Research and Development in Science and Technology
   [1980] ATS 28
- Agreement with the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment [1981] ATS 6

- Agreement with the Government of Japan for Cooperation in the Peaceful Uses of Nuclear Energy
   [1982] ATS 22
- Exchange of Notes constituting an Agreement extending the Agreement on Co-operation in Research and Development in Science and Technology of 27 November 1980 [1985] ATS 28
- Exchange of Notes constituting an Agreement with the Government of Japan establishing an Implementing Arrangement pursuant to the agreement for Cooperation the Peaceful Uses of Nuclear Energy
   [1990] ATS 27
- Exchange of Letters constituting an Agreement with the Government Japan concerning Cooperation on a Project for a Geostationary Meteorological Satellite-4 System
   [1990] ATS 28
- Exchange of Notes constituting an Agreement with Japan to further amend the Schedule to the Agreement for Air Services of 19 January 1956
  [1993] ATS 22
- Exchange of Notes constituting an Agreement with the Government Japan concerning Cooperation on a Project for a Geostationary Meteorological Satellite-5 System
   [1997] ATS 32
- Exchange of Notes constituting an Agreement with the Government of Japan to amend [by replacing the Delineated and Recorded Japanese Nuclear Fuel Cycle Program] the Agreement for Co-operation in the Peaceful Uses of Nuclear Energy [to amend treaty of 5 March 1982, as amended]
  [2006] ATS 18

# Not yet in force:

• Amendments, agreed in Shanghai on 25 May 2006, to the Annex to the Agreement with the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment of 6 February 1974

August 2007

# Australian Social Security Agreements with Other Countries

- 1. Agreement with the Republic of Austria on Social Security [1992] ATS 35
- 2. Protocol to the Agreement with the Republic of Austria on Social Security of 10 April 1992 [2002] ATS 20
- 3. Agreement on Social Security with the Kingdom of Belgium [2005] ATS 14
- 4. Agreement on Social Security with Canada [2003] ATS 4
- 5. Agreement on Social Security with the Republic of Chile [2004] ATS 18
- 6. Agreement with the Republic of Croatia on Social Security [2004] ATS 19
- 7. Agreement on Social Security with the Republic of Cyprus [1993] ATS 5
- 8. Agreement with the Kingdom of Denmark on Social Security [2001] ATS 2
- 9. Agreement on Social Security with the Federal Republic of Germany [2003] ATS 7
- 10. Supplementary Agreement, Concluding Protocol and Implementing Arrangement on Social Security with the Federal Republic of Germany [2007] ATNIF 6
- 11. Agreement between Australia and the Hellenic Republic on Social Security [2007] ATNIF 13
- 12. Agreement on Social Security with the Republic of Ireland [2005] ATS 26
- 13. Agreement on Social Security with the Republic of Italy [2000] ATS 29
- 14. Exchange of Notes constituting an Agreement with the Republic of Italy amending and clarifying the Agreement on Social Security of 13 September 1992 [2000] ATS 29
- 15. Agreement on Social Security with Korea [2006] ATNIF 27
- 16. Agreement with Malta on Social Security [2005] ATS 16
- 17. Agreement with the Kingdom of the Netherlands on Social Security [2003] ATS 12
- 18. Agreement on Social Security with New Zealand [2002] ATS 12
- Exchange of Notes amending the Agreement on Social Security with New Zealand of 28 March 2001 [2002] ATS 12
- 20. Agreement on Social Security with the Kingdom of Norway [2007] ATS 1
- 21. Agreement with Portugal on Social Security [2002] ATS 21
- 22. Agreement on Social Security with Slovenia [2004] ATS 2
- 23. Agreement between Australia and Spain on Social Security [2003] ATS 3
- 23. Agreement with the Swiss Confederation on Social Security [2006] ATNIF 23
- 24. Agreement with the United States of America on Social Security [2002] ATS 18