

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

**Agreement on Social Security between the Government of Australia and the
Government of Malta**

(Valletta, 16 June 2004)

Not yet in force
[2004] ATNIF 8

The Government of Australia and the Government of Malta (hereinafter “the Parties”),

Wishing to strengthen the existing friendly relations between the two countries, Desiring to review the Agreement on Social Security between the Government of Australia and the Government of Malta signed on 15 August 1990¹, and

Acknowledging the need to co-ordinate further the operation of their respective social security systems so far as to ensure access by people who move between Australia and Malta;

Have agreed as follows:

PART 1 – GENERAL PROVISIONS

ARTICLE 1

Interpretation

1. In this Agreement, unless the context otherwise requires:

“applicable rate” means, in relation to Malta, the rate that would otherwise have been payable to a claimant had the number of totalised contributions been all paid or credited under the legislation of Malta;

“benefit” means, in relation to a Party, a benefit for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable, in addition to that benefit, to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

“Competent Authority” means, in relation to Australia, the Secretary of the Department responsible for the application of the legislation in subparagraph 1 (a) of Article 2 and, in relation to Malta the Director of Social Security;

“Competent Institution” means, in relation to Australia the institution or agency which has the task of implementing the applicable Australian legislation and, in relation to Malta, the Competent Authority for Malta;

¹ Reference: [1991] ATS 26

“legislation” means, in relation to Australia, the laws specified in subparagraph 1 (a) of Article 2 and in relation to Malta, the laws specified in subparagraph 1 (b) of Article 2;

“period of insurance” means, the period of contributions or any equivalent period which has been or can be used to acquire the right to a benefit under the legislation of Malta, but does not include any period deemed pursuant to Article 9 to be a period of insurance;

“period of Australian working life residence”, in relation to a person, means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 7 to be a period in which that person was an Australian resident;

“previous Agreement” means the Agreement on Social Security between the Government of Australia and the Government of Malta signed on 15 August 1990;

“territory” means, in relation to Australia, Australia as defined in the legislation of Australia and in relation to Malta, Malta as defined in the Constitution of Malta; and

“widow” means, in relation to Australia, a *de jure* widow but does not include a woman who has a partner.

2. In the application by a Party of this Agreement any term not defined in it shall, unless the context otherwise requires, have the meaning which it has under the legislation of that Party.

ARTICLE 2

Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:
 - (a) in relation to Australia: the Acts referred to as “the social security law” in the *Social Security Act 1991*, and any regulations made under any such Act in so far as those Acts or regulations provide for, apply to or affect the following benefits:
 - (i) age pension;
 - (ii) disability support pension for the severely disabled; and
 - (iii) pensions payable to widows; and

- (b) in relation to Malta: the Social Security Act (Cap 318) as it provides for, applies to or affects the following benefits:
 - (i) contributory pensions in respect of retirement;
 - (ii) contributory pensions in respect of invalidity;
 - (iii) contributory pensions in respect of widowhood; and
 - (iv) non-contributory assistance and pension.

- 2. Notwithstanding the provisions of paragraph 1(a) this Agreement shall apply to women who are receiving wife pension and who are wives of
 - (a) persons receiving age pension; or
 - (b) persons receiving disability support pension for the severely disabled.

- 3. Notwithstanding the provisions of paragraph 1 the legislation of either Party shall not include any other Agreement on social security entered into by either Party.

- 4. This Agreement shall apply to laws which extend the legislation of either Party to new categories of beneficiaries only if the two Parties so agree in a Protocol to this Agreement.

- 5. In respect of non-contributory assistance and pensions payable under the legislation of Malta, a citizen of Australia shall have the same rights as a citizen of Malta.

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 an insured person under the legislation of Malta,

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

ARTICLE 4

Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

PART II – PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 5

Residence or Presence in Malta or a Third State

Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except that he or she is not 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 residing in the territory of Malta or a third State with which Australia has implemented an agreement on social security that includes provision for co-operation in the lodgement and determination of claims for benefits; and
- (b) is in Australia, or the territory of Malta 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 6

Partner Related Australian Benefits

For the purposes of this Agreement, a person who receives an Australian wife pension due to the fact that the partner of that person receives, by virtue of this Agreement, another Australian benefit shall be deemed to receive that first-mentioned benefit by virtue of this Agreement.

ARTICLE 7

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 minimum period identified in accordance with paragraph 4; and
 - (c) a period of insurance in Malta,

then that period of insurance shall be deemed, to be a period in which that person was an Australian resident

- only if that Maltese period of insurance is considered by Malta to continue to be a Maltese period of insurance at the time of totalisation; 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 the entitlement of that person to a benefit; and
 - (b) has accumulated a period of insurance in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a),

the total of the periods of insurance shall be deemed to be one continuous period.

3. For all purposes of this Article, where a period by a person as an Australian resident and a period of insurance 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 which a person must have accumulated before paragraph 1 applies shall be as follows:
 - (a) for the purpose of an Australian benefit claimed by a person residing outside Australia, the minimum period required shall be one year, of which at least 6 months must be continuous; and
 - (b) for the purposes of an Australian benefit claimed by an Australian resident, no minimum period shall be required.
5. For the purposes of a claim by a person for a pension payable to a widow, that person shall be deemed to have accumulated a period of insurance for any period for which her partner accumulated a period of insurance but any period during which the person and her partner both accumulated periods of insurance shall be taken into account once only.
6. Where a person receives in Malta a contributory pension in respect of retirement by virtue of this Agreement, Australia shall, for the purposes of this Article, regard the period during which that person receives that pension, up to the age of 65, as a period of insurance.

ARTICLE 8

Calculation of Australian Benefits

1. Subject to paragraph 2, where an Australian benefit is payable, whether 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 but when assessing the income of that person for the purposes of calculating the rate of the Australian benefit only a proportion of any Maltese contributory pension in respect of retirement, invalidity or widowhood which is received by 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 residence in Australia (not exceeding 300) by the amount of that Maltese benefit and dividing that product by 300.
2. A person referred to in paragraph 1 shall only be entitled to receive the concessional assessment of income described in that paragraph for any period during which the rate of that person's Australian benefit is proportionalised under the legislation of Australia.
3. The provisions in paragraph 1 and 2 shall continue to apply for 26 weeks where a person comes temporarily to Australia.

4. Where an Australian benefit is payable, whether by virtue of this Agreement or otherwise to a person who is resident in the territory of Malta, Australia shall disregard, when assessing the income of that person any non-contributory assistance and pension paid to that person by Malta.
5. Subject to paragraph 6, 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 the Maltese benefit received by that person;
 - (b) deducting the amount of the Maltese benefit received by that person 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).
6. Where a married person is, or both that person and his or her partner are, in receipt of a Maltese benefit or benefits, each of them shall be deemed, for the purpose of paragraph 5 and for 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.
7. The provisions in paragraph 5 shall continue to apply for 26 weeks where a person departs temporarily from Australia.

PART III – PROVISIONS RELATING TO MALTESE BENEFITS

ARTICLE 9

Totalisation for Malta

1. Where this Agreement applies and there is a period of insurance that is:
 - (a) less than the period necessary to give a claimant entitlement to the benefit claimed under the legislation of Malta; and
 - (b) equal to or greater than the minimum period mentioned in paragraph 3 for that benefit,

then any period of Australian working life residence by the contributor to whom that period of insurance was credited shall be deemed to be a period of insurance.

2. For the purposes of this Article, where a period of insurance and a period of Australian working life residence coincide, the period of coincidence shall be taken into account once only as a period of insurance.
3. The minimum period of insurance to be taken into consideration for purposes of paragraph 1 shall be 52 paid contributions. However, subject to paragraph 5, where the period of insurance, not being less than 52 paid contributions, does not entitle a person to a Maltese benefit, but the period of insurance in Malta and the period of Australian working life residence together entitle such person to a Maltese benefit, they shall be taken into account.
4. The provisions of this Article shall not apply in the case of a Two-Thirds Pension (Retirement) or a Survivor's Pension (Widowhood) unless:
 - (a) in the case of a Two-Thirds Pension, the person concerned has paid at least 156 contributions under the legislation of Malta after the 22nd January, 1979; and
 - (b) in the case of a Survivor's Pension, the husband of the widow concerned has paid at least 156 contributions under the legislation of Malta after the 22nd January, 1979.
5. For the purposes of a claim by a person for a contributory widow's pension the contributor, provided the contributor meets the requirements of subparagraph 1(b), shall be deemed to have also accumulated a period of residence in Australia for any period for which the claimant accumulated a period of Australian working life residence but any period during which the contributor and the claimant both accumulated periods of Australian working life residence shall be taken into account once only.

ARTICLE 10

Calculation of Maltese Benefits

1. Where Malta pays non-contributory assistance or pension by virtue of this Agreement, the rate of that benefit shall be determined according to the legislation of Malta.
2. Where a contributory benefit is payable by Malta to a claimant by virtue of this Agreement the rate of that benefit shall be calculated as follows:
 - (a) in the case of a pension in respect of retirement other than a Two-Thirds Pension, by multiplying the applicable rate of that pension attributable to the claimant by the number of reckonable contributions on which that pension would have otherwise been calculated under the legislation of Malta and dividing the product by the number of totalised contributions aggregated under Article 9;
 - (b) in the case of a Two-Thirds Pension, the rate of that pension shall be calculated according to the following formula:

$$\text{P.I.} \times 2 \times \frac{(\text{T1} + \text{T2}) \times (\text{C1} + \text{C2})}{(\text{Y} - 10) \times (\text{T1} + \text{T2})}$$

600

but that pension shall not be payable if the formula

$$\frac{(\text{T1} + \text{T2})}{(\text{Y} - 10)}$$

2

gives a result that is less than 15

where:

P.I. = the claimant's pensionable income or re-assessed pensionable income (as the case may be) according to the legislation of Malta;

C1 = the number of reckonable contributions (not exceeding 1000) during any period prior to the last 10 calendar years immediately before retirement;

C2 = the number of reckonable contributions (not exceeding 500) within the last 10 calendar years immediately before retirement;

T1 = the number of totalised contributions (not exceeding 1000) aggregated under Article 9 during any period prior to the last 10 calendar years immediately before retirement;

T2 = the number of totalised contributions (not exceeding 500) aggregated under Article 9 within the last 10 calendar years immediately before retirement; and

Y = the number of reckonable years (not exceeding 20) prior to the last 10 calendar years immediately before retirement.

- (c) in the case of a pension in respect of invalidity, by multiplying the applicable rate of that pension attributable to the claimant by the number of reckonable contributions on which that pension would have otherwise been calculated under the legislation of Malta and dividing the product by the number of reckonable totalised contributions aggregated under Article 9;
 - (d) in the case of a pension in respect of widowhood other than a Survivor's Pension by multiplying the applicable rate of that pension attributable to the claimant by the number of reckonable contributions on which that pension would have otherwise been calculated under the legislation of Malta relating to her late husband and dividing the product by the number of totalised contributions aggregated under Article 9; and
 - (e) in the case of Survivor's Pension at 5/6 of the rate of pension arrived at in accordance with the provisions of paragraph 2(b).
3. Any statutory pension additional rates that are applicable to certain benefits covered by this Agreement that are payable under the legislation of Malta, payment of which is also linked to a yearly contribution average, shall be calculated in the same manner as that indicated in paragraph 2, as the case may require.
 4. Where Malta pays a Maltese benefit to a person only by virtue of the Agreement it shall deduct any statutory pension deductions that would be deducted if those pensions were paid solely under the legislation of Malta provided that any service pension for war service or wife's service pension paid to that person by Australia as defined in and payable under its *Veteran's Entitlement Act 1986* shall not for the purposes of this Agreement or otherwise under the legislation of Malta be treated as a service pension as defined in the legislation of Malta.
 5. Any pension arrived at in accordance with paragraphs 2, 3 and 4 shall be rounded up to the nearest whole cent.

6. In this Article ‘reckonable contribution’ and ‘reckonable year’ shall have the meanings given to them in the legislation of Malta.

PART IV – MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 11

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Party in accordance with an Administrative Arrangement made pursuant to Article 15 at any time after the Agreement enters into force.
2. For the purpose of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of one Party, shall be considered as the date of lodgement of that document with the Competent Institution of the other Party. The Competent Institution with which a claim, notice or appeal is lodged shall refer it without delay to the Competent Institution of the other Party.
3. In relation to Australia, the reference in paragraph 2 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 purpose of, the social security laws of Australia as amended from time to time.
4. In relation to Malta, the reference in paragraph 2 to an appeal document is a reference to a document concerning an appeal that may be made to the Umpire for the purposes of the Social Security Act (Cap 318) of Malta as amended from time to time.

ARTICLE 12

Determination of Claims

1. 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 insurance; and
 - (b) any event or fact which is relevant to that 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.

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.

3. Where:

(a) a benefit is paid or payable by a Party to a person in respect of a past period

(b) for all or part of that period, the other Party has paid to that person a benefit under its legislation; and

(c) the amount of the benefit paid by that other Party would have been reduced had the benefit paid or payable by the first Party been paid during that period;

then

(d) the amount that would not have been paid by the other Party had the benefit described in subparagraph (a) been paid throughout that past period shall be a debt due by that person to the other Party; and

(e) the other Party may determine that the amount, or any part, of that debt may be deducted from future payments of a benefit payable by that Party to that person.

4. Where the first Party has not yet paid the arrears of benefit described in subparagraph 3(a) to the person:

(a) that Party shall, at the request of the other Party, pay the amount of the debt described in subparagraph 3(d) to the other Party and shall pay any excess to the person; and

(b) any shortfall in those arrears may be recovered by the other Party under subparagraph 3(e).

5. The Competent Institution receiving a request under paragraph 4 shall take the action set out in an Administrative Arrangement made pursuant to Article 15, to recoup the amount of the overpayment and to transfer it to the other Competent Institution.

6. A reference in paragraph 3 and 4 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the social security laws of Australia as amended from time to time, and in relation to Malta, means any pension, benefit, allowance or assistance that is payable under the Social Security Act (Cap 318) of Malta.

ARTICLE 13

Payment of Benefits

1. Subject to paragraphs 3 and 4, the benefits payable under the legislation of a Party or by virtue of this Agreement are also payable in the territory of the other Party.
2. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Parties.
3. Notwithstanding any provision of this Agreement, non-contributory assistance and pension specified in subparagraph 1(b)(iv) of Article 2 shall not be paid outside the territory of Malta.
4. In relation to Australia, any additional amount, increase or supplement that is payable in addition to a benefit under this Agreement shall be payable outside the territory of Australia only if it would be so payable if that benefit was payable independently of this Agreement.
5. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to prevent those restrictions hindering payment of benefits derived under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.
6. A party that imposes restrictions described in paragraph 5 shall inform the other Party of those restrictions within one calendar month of their imposition and shall adopt the measures described in paragraph 5 within 3 months of the imposition of those restrictions. If the other Party is not so informed or if the necessary measures are not adopted within the set time the other Party may treat such a failure as a material breach of the Agreement for the purposes of Article 60 of the Vienna Convention on the Law of Treaties.
7. A benefit payable by a Party by virtue of this Agreement to a person outside the territory of that Party shall be paid without deduction for

government administrative fees and charges for processing and paying that benefit.

8. 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 14

Exchange of Information and Mutual Assistance

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement:
 - (a) shall communicate to each other any information necessary for the application of this Agreement or of the Social Security laws of the Parties;
 - (b) shall lend their good offices and furnish assistance to one another with regard to the determination or payment of any benefit under this Agreement or the legislation to which this Agreement applies as if the matter involved the application of their own legislation;
 - (c) shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation in so far as these changes affect the application of this Agreement; and
 - (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 an Administrative Arrangement made pursuant to Article 15.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any Administrative Arrangement made pursuant to Article 15.
3. Unless disclosure is required under the laws of a Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or a Competent Institution of that

Party by a Competent Authority or a Competent Institution of the other Party is confidential and shall be used for purposes of implementing this Agreement and the legislation to which this Agreement applies.

4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the Competent Authority or Competent Institution of a Party the obligation:
 - (a) to carry out administrative measures at variance with the laws or administrative practice of the Party or the other Party; or
 - (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that Party or the other Party.
5. In the application of this Agreement, the Competent Authority and the Competent Institution of a Party may communicate with the other in the official language of the Party.

ARTICLE 15

Administrative Arrangement

The Competent Authorities of the Parties shall make whatever Administrative Arrangement is necessary from time to time in order to implement this Agreement.

ARTICLE 16

Resolution of Difficulties

1. The Competent Authorities of the Parties shall resolve, to the extent possible, any difficulties which may arise in interpreting or applying this Agreement according to its spirit and fundamental principles.
2. The Parties shall consult promptly at the request of either Party concerning matters which have been resolved by the Competent Authorities in accordance with paragraph 1.
3. Any dispute between the Parties concerning the interpretation of this Agreement which has not been resolved or settled by consultation in accordance with paragraph 1 or 2 shall, at the request of either Party, be submitted to arbitration.

4. Unless the Parties mutually determine otherwise, the arbitral tribunal shall consist of three arbitrators, of whom each Party shall appoint one and the two arbitrators so appointed shall appoint a third who shall act as President; provided that if the two arbitrators fail to agree, the President of the International Court of Justice shall be requested to appoint the President.
5. The arbitrators shall determine their own procedures.
6. The decision of the arbitrators shall be final and binding.
7. Unless the Parties otherwise agree, the place of arbitration shall be in the territory of the Party which did not raise the matter in dispute.

ARTICLE 17

Review of Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after request was made and, unless the Parties otherwise arrange, their meeting shall be held in the territory of the Party to which that request was made.

PART V – TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 18

Transitional Provisions

1. Subject to this Agreement, when this Agreement comes into force, the previous agreement shall terminate and persons who were receiving benefits by virtue of that agreement shall receive those benefits by virtue of this Agreement.
2. Where, on the date on which this Agreement enters into force, a person:
 - (a) is in receipt of a benefit by virtue of the previous Agreement; or
 - (b) is qualified to receive a benefit referred to in subparagraph (a) and, where a claim for that benefit is required, has claimed that benefit,

no provision of this Agreement shall affect that person's qualification to receive that benefit.

ARTICLE 19

Entry into Force

This Agreement shall enter into force on the first day of the month after the exchange of notes by the Parties through the diplomatic channel that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalised.

ARTICLE 20

Termination

1. Subject to paragraph 2, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating the intention of the other Party to terminate this Agreement.
2. In the event of termination, this Agreement shall continue to have effect in relation to all persons who by virtue of this Agreement:
 - (a) at the date of termination, are in receipt of benefits; or
 - (b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits.

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

DONE in 2 copies at Valletta this 16th day of June
TWO THOUSAND AND FOUR in the English language.

FOR THE GOVERNMENT OF
AUSTRALIA:

Richard Palk
High Commissioner

FOR THE GOVERNMENT
OF MALTA:

Joseph Ebejer
Permanent Secretary
Department of the Family and
Social Solidarity