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The Parliament of the Commonwealth of Australia  
Joint Standing Committee on Treaties

# Report 158

**Treaty tabled on 10 November 2015**

Agreement between Australia and the Republic of Estonia on Social Security (Tallinn,  
14 September 2015)

2016 Amendments to Annex I of the Convention Against Doping in Sport

February 2016  
Canberra

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## Membership of the Committee

Chair            Mr Angus Taylor MP

Deputy Chair   The Hon Kelvin Thomson MP

Members	Mr Andrew Broad MP	Senator Chris Back
	Mr Ken O'Dowd MP	Senator David Fawcett
	The Hon Melissa Parke MP	Senator the Hon David Johnston
	The Hon Dr Sharman Stone MP <i>(until 11/11/2015)</i>	Senator Sue Lines
	Mr Tim Watts MP	Senator the Hon Joe Ludwig
	Mr Brett Whiteley MP	Senator Glenn Sterle
	Mrs Lucy Wicks MP	Senator Peter Whish-Wilson

## Committee Secretariat

Secretary	Lynley Ducker
Inquiry Secretary	Dr Narelle McGlusky
Senior Researcher	Kevin Bodel
Researcher	Belynda Zolotto
Administrative Officer	Cathy Rouland



## Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
  - (i) either House of the Parliament;
  - (ii) a Minister; or
  - (iii) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



## List of abbreviations

DHS	Department of Human Services
DSS	Department of Social Services
NIA	National Interest Analysis
RIS	Regulation Impact Statement
WADA	World Anti-Doping Agency





## List of recommendations

### 2 Agreement between Australia and the Republic of Estonia on Social Security

#### Recommendation 1

The Committee supports the *Agreement between Australia and the Republic of Estonia on Social Security* and recommends that binding treaty action be taken.



## Introduction

### **Purpose of the report**

- 1.1 This report contains the Joint Standing Committee on Treaties' review of the *Agreement between Australia and the Republic of Estonia on Social Security*.
- 1.2 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become signatory, on the treaty being tabled in Parliament.
- 1.3 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.
- 1.4 Prior to tabling, major treaty actions are subject to a *National Interest Analysis* (NIA), prepared by Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.
- 1.5 A *Regulation Impact Statement* (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. The Treaty examined in this report did not require a RIS.
- 1.6 The Committee takes account of these documents in its examination of the Treaty text, in addition to other evidence taken during the inquiry program.

- 1.7 Copies of the Treaty considered in this report and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:
- [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Treaties/10\\_November\\_2015/Treaty\\_being\\_considered](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/10_November_2015/Treaty_being_considered).

## **Conduct of the Committee's review**

- 1.8 The Treaty action reviewed in this report was advertised on the Committee's website from the date of tabling. Submissions for the Treaty were requested by 20 November 2015.
- 1.9 Invitations were made to all State Premiers, Territory Chief Ministers and to the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the Treaty under review.
- 1.10 The Committee held a public hearing into the Treaties in Canberra on 30 November 2015.
- 1.11 The transcripts of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website under the Treaty's tabling date, 10 November 2015.
- 1.12 A list of witnesses who appeared at the public hearing is at Appendix A.

# Agreement between Australia and the Republic of Estonia on Social Security

## Introduction

- 2.1 This Report considers the *Agreement between Australia and the Republic of Estonia on Social Security* (the proposed Agreement).
- 2.2 Australia has 30 bilateral social security agreements,<sup>1</sup> which serve to coordinate pension payments between the signatories, and avoid double liability payments for persons working in both countries.<sup>2</sup>

## The Agreement

- 2.3 Under the proposed Agreement, residence in one of the parties will not affect a person's entitlement to benefits in the other party.<sup>3</sup>
- 2.4 For Australians, the proposed Agreement covers the Australian age pension and the superannuation guarantee.<sup>4</sup>
- 2.5 In other words:
- a person living in Estonia who is eligible for the Australian pension or superannuation can receive that entitlement; and

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1 Ms Mary McLarty, Branch Manager, Eligibility and Participation Policy Branch, Social Policy Group, Department of Social Services (DSS), *Committee Hansard*, Canberra 30 November 2015, p 6.

2 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 1.

3 National Interest Analysis, [2015] ATNIA 19, *Agreement between Australia and the Republic of Estonia on Social Security* (Tallinn, 14 September 2015) [2015] ATNIF 25, (hereafter referred to as the NIA), para 5.

4 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 1.

- an Australian employer making a superannuation guarantee payment to an employee working temporarily in Estonia will be exempt from any obligation to make pension insurance payments in Estonia.<sup>5</sup>
- 2.6 For Estonia, the proposed Agreement covers mandatory state insurance pensions for old age and survivor pension.<sup>6</sup>
- 2.7 People in Australia who are eligible for either of these Estonian pensions will be able to receive that pension.

## Pension coordination

- 2.8 In relation to the coordination of pensions, the Department of Social Services (DSS) advised that:
- ... the proposed agreement will allow people living in either country to claim a pension from either or both countries. It will overcome restrictions on the payment of those pensions into either country and provide avenues for mutual assistance and cooperation in determining people's correct entitlement.<sup>7</sup>

## Avoidance of double liability

- 2.9 On the avoidance of double coverage, the DSS advised that:
- ... the proposed agreement will facilitate business between Australia and Estonia by ensuring employers and employees do not have a double liability in respect of the same work of an employee.<sup>8</sup>
- 2.10 According to the DSS, double liability can arise when an employee is sent from one country to another to work temporarily and there are compulsory contributions to be paid in both countries.<sup>9</sup>
- 2.11 In Australia's case this can affect the superannuation guarantee. So at present, if an employee of an Australian company works for a short time in Estonia, contributions to the Estonian social security system are required in addition to the superannuation contribution under the Australian superannuation guarantee scheme.<sup>10</sup>

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5 NIA, para 6.

6 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 1.

7 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 1.

8 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 1.

9 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 1.

10 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 1.

## Specific provisions

2.12 Specifically, the proposed Agreement:

- provides that a person who is eligible for a benefit in one party but is resident in the other must be paid that benefit;<sup>11</sup>
- prevents employers from being liable for contributions in both Australia and Estonia for the same work done by an employee;<sup>12</sup>
- obliges Australia to regard residents of Estonia, and Australian residents who are temporarily in Estonia, as Australian residents for the purposes of claiming a benefit, provided they have been resident in Australia at some time in their lives;<sup>13</sup>
- provides that the period of residence in Australia will be included as part of the time required to obtain a benefit under Estonian law;<sup>14</sup>
- obliges Estonia to regard residents of Australia, and Estonian residents temporarily in Australia, as Estonian residents for the purposes of claiming a benefit, provided they have been resident in Estonia at some time in their lives;<sup>15</sup>
- requires the governments of both parties to refrain from charging fees on benefits paid to an eligible person in the other party;<sup>16</sup> and
- permits the authorities of each party to resolve any differences that arise in applying the provisions of the proposed Agreement.<sup>17</sup>

## Numbers involved

2.13 The National Interest Analysis (NIA) states that Australia has the sixth largest expatriate Estonian community in the world. In real terms, the numbers involved are quite small. In the 2011 census, 2,000 people indicated that they were born in Estonia.<sup>18</sup>

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11 *Agreement between Australia and the Republic of Estonia on Social Security* (Tallinn, 14 September 2015) [2015] ATNIF 25, (hereafter referred to as the proposed Agreement), Article 5.

12 The proposed Agreement, Article 8.

13 The proposed Agreement, Article 8.

14 NIA, para 17.

15 NIA, para 18.

16 The proposed Agreement, Article 16.

17 The proposed Agreement, Article 20.

18 NIA, para 10.

- 2.14 According to the DSS:
- The agreement is advantageous for the small Estonian community in Australia... of whom around 66 per cent are over 65 years of age.<sup>19</sup>
- 2.15 The proposed Agreement also applies to those who move between the two countries temporarily for work. The NIA indicates, for example, that Monash University is developing an exchange agreement with the Estonian Business School, which may result in the provisions of the proposed Agreement being applied.<sup>20</sup>
- 2.16 Given Estonia's history, it is possible that a small number of people in Australia may identify as Estonian but will not be eligible for the Estonian pensions covered by the proposed Agreement.
- 2.17 In the last 100 years, for example, Estonia has been:
- an independent country from 1918 - 1940;
  - part of the Soviet Union from 1940-1941;
  - part of the territory occupied by Nazi Germany from 1941 - 1944;
  - part of the Soviet Union from 1944 to 1991; and
  - an independent country from 1991.<sup>21</sup>
- 2.18 The country retains a significant ethnic Russian population, constituting 25 per cent of the total population. A number of these ethnic Russians are considered stateless, as Estonia requires ethnic Russians to pass Estonian language and citizenship tests before being granted citizenship, even if they were born in what is now Estonia.<sup>22</sup>
- 2.19 However, under the proposed Agreement, eligibility for the Estonian pension will be determined by Estonia alone, so that Australia will not be required to determine the eligibility of persons affected by Estonia's historical circumstances.<sup>23</sup>

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19 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 1.

20 NIA, para 13.

21 CIA, *World Fact Book: Estonia*, < <https://www.cia.gov/library/publications/the-world-factbook/geos/en.html> > accessed on 24 November 2015.

22 CIA, *World Fact Book: Estonia*, < <https://www.cia.gov/library/publications/the-world-factbook/geos/en.html> > accessed on 24 November 2015.

23 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 3.



## Costs

- 2.20 The method for calculating the rate of an Australian benefit paid to an eligible person in Estonia is set out in Article 12 of the proposed Agreement.<sup>24</sup>
- 2.21 People in Australia receiving the Estonian pension may be eligible for additional Australian pension payments, depending on the quantum of their Estonian pension payments.<sup>25</sup>
- 2.22 In real terms, the sum of pensions being received from Estonia by people in Australia will be higher than the sum being paid by Australia to people in Estonia.<sup>26</sup>
- 2.23 The DSS expects that in the first year, 1,000 Estonians in Australia will receive an Estonian pension. The sum of money expected to be received from the Estonian Government in the first year is \$1 million.<sup>27</sup>
- 2.24 The NIA indicates that the proposed Agreement will have a net cost to the Australian budget of \$4.2 million over the forward estimates, including an incurred cost of \$4.6 million, and a saving of \$0.43 million.<sup>28</sup>
- 2.25 The \$4.2 million net cost relates to the implementation and management of the proposed Agreement. These costs are split between the DSS (\$0.44 million) and the Department of Human Services (DHS) (\$4.17 million).<sup>29</sup>
- 2.26 The DSS will be responsible for managing the proposed Agreement, with the process expected to be complete by the 2018-2019 financial year.<sup>30</sup>
- 2.27 The DHS costs will cover:
- ...systems changes, setting up for the agreement, translating documents for people to claim the pensions and then ongoing processing of claims.<sup>31</sup>
- 2.28 The costs will also involve providing assistance to people wishing to establish a claim to an Estonian pension.<sup>32</sup>

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24 The proposed Agreement, Article 12.

25 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 2.

26 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 2.

27 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 3.

28 NIA, paras 26-28.

29 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 2.

30 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 2.

31 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 2.

32 Ms McLarty, DSS, *Committee Hansard*, Canberra 30 November 2015, p 5.

- 2.29 The Committee notes that in the four year forward estimates, the proposed Agreement appears to be costing more to administer than is being saved as a result of pension payments from Estonia.
- 2.30 The DSS notes that:
- Long term, it is a winner because those costs are only in the first four years – the estimates periods – and then there are only very minor costs to continue... overall, agreements do bring positive flows into Australia.<sup>33</sup>
- 2.31 Nevertheless, the Committee is concerned about whether some social security agreements, which involve small numbers of eligible persons, constitute value for money. The Committee is also concerned that the cost of administering a social security agreement seems large given the work involved. The Committee will continue to consider these issues when examining future bi-lateral social security agreements.

## Implementation

- 2.32 The full text of the proposed Agreement will need to be inserted as a schedule to the *Social Security (International Agreements) Act 1999* (the Act). This will be done by legislative instrument.<sup>34</sup>
- 2.33 No legislative amendment will be required as a result of the new superannuation obligations under the proposed Agreement, as these are automatically given effect by the addition of the relevant schedule to the Act.<sup>35</sup>

## Conclusion

- 2.34 As indicated above, the Committee has some general concerns about the value for money social security agreements represent.
- 2.35 Notwithstanding this, the Committee supports Australia's ratification of the *Agreement between Australia and the Republic of Estonia on Social Security* and recommends that binding treaty action be taken.

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33 Ms Peta Murray, Assistant Manager, International Agreements Section, Eligibility and Participation Policy Branch, Social Policy Group, DSS, *Committee Hansard*, Canberra 30 November 2015, p 5.

34 NIA, para 23.

35 NIA, para 24.

**Recommendation 1**

- 2.36 **The Committee supports the *Agreement between Australia and the Republic of Estonia on Social Security* and recommends that binding treaty action be taken.**



## Minor Treaty Action

### Introduction

- 3.1 Minor treaty actions are generally technical amendments to existing treaties which do not impact significantly on the national interest.
- 3.2 Minor treaty actions are presented to the Committee with a one-page explanatory statement and are listed on the Committee's website. The Committee has the discretion to formally inquire into these treaty actions or indicate its acceptance of them without a formal inquiry and report.

### **2016 Amendments to Annex I of the Convention against Doping in Sport**

- 3.3 The proposed minor treaty action contains the 2016 Amendment to Annex I of the *International Convention against Doping in Sport* of 19 October 2005.
- 3.4 The Convention was adopted in 2005 as a method of harmonising anti-doping rules across sports and international boundaries. The intent is to ensure that all competitors in a particular sport are covered by the same anti-doping rules.
- 3.5 Amongst other things, the Convention contains two annexes. Annex I, entitled *Prohibited List-International Standard*, identifies the substances and methods of doping which are prohibited. Annex II, entitled *International Standard for Therapeutic Use Exemptions*, outlines the means by which

athletes can use medicines on the Prohibited List to treat legitimate medical conditions.

- 3.6 Annex I of the Convention is reviewed annually by the World Anti-Doping Agency (WADA) to ensure the list of prohibited substances is up to date. The amended list is released to the parties to the Convention in September each year, and comes into effect on 1 January the following year.
- 3.7 Annual amendments to Annex I have routinely been treated by the Committee as minor treaty actions.
- 3.8 The Committee determined not to hold a formal inquiry into these amendments, and agreed that binding treaty action may be taken.

Mr Angus Taylor MP

Chair

1 February 2015



## Appendix A - Witnesses

Monday, 30 November 2015 – Canberra

### Department of Social Services

Ms Mary McLarty, Branch Manager, Eligibility and Participation Policy Branch, Social Policy Group

Ms Peta Murray, Assistant Manager, International Agreements Section, Eligibility and Participation Policy Branch, Social Policy Group

### The Treasury

Ms Heather Sturgiss, Analyst, Personal and Retirement Income Division

### Department of Foreign Affairs and Trade

Mr David Mason, Executive Director, Treaties Secretariat, International Legal Branch