

**Documents tabled on 16 September 2008:**

**National Interest Analysis [2008] ATNIA 29  
with attachment on consultation**

**Agreement between Australia and the Republic of Finland on Social Security  
Done at Helsinki, 10 September 2008 ([2008] ATNIA 15)**



# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### **Agreement between Australia and the Republic of Finland on Social Security done at Helsinki, 10 September 2008 ([2008] ATNIF 15)**

#### **Nature and timing of proposed treaty action**

1. It is proposed that Australia enter into a Social Security Agreement with the Republic of Finland. The Agreement was signed in Helsinki on 10 September 2008.
2. Pursuant to Article 25, the Agreement shall enter into force on the first day of the second month following the month in which notes are exchanged by Australia and Finland through diplomatic channels stating that all domestic processes necessary to bring the Agreement into force are finalised. It is proposed that, subject to the completion of necessary domestic processes, the exchange of notes will take place in May 2009 to enable entry into force on 1 July 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. They do 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 Finnish 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 Finland will be able to move between Australia and Finland with the knowledge that their rights to benefits are recognised in both countries.
5. The Agreement also deals with 'double coverage' of superannuation, exempting employers in one country, who send employees to work temporarily in the other country, from paying superannuation contributions in the other country, provided they continue to make contributions in their home country. These provisions also apply where employees are required to make superannuation contributions.
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 Finland and provide choices in retirement for individuals who have migrated (or will migrate) to Australia or Finland 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 with Finland incorporates the same principles as Australia's other agreements on social security. A key element of this 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 Finland will be able to move between Australia and Finland knowing that their right to benefits is recognised in both countries.
10. In October 2007, the Australian Government was paying pensions under the *Social Security Act 1991* (the Act) to 2,395 Finnish-born pensioners, the vast majority of whom are resident in Australia. As at 22 July 2008, under domestic portability provisions in the Act, Australia was paying pensions to 78 people (not necessarily Finnish-born) residing in Finland.
11. The Department of Families, Housing, Community Services and Indigenous Affairs estimates that, through the Agreement, approximately 2,000 people residing in Australia and Finland will benefit when the Agreement comes into force, in the first full year, by being able to claim payments from Australia and Finland to which they currently do not have access.
12. Provisions to avoid double coverage have also been included to ensure that Australian and Finnish employers do not have to make compulsory (superannuation type) 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 Finnish 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/pension scheme in their home country. The provisions on double coverage of superannuation will reduce costs for businesses operating in Australia and Finland.

## Obligations

13. Part I of the Agreement (Articles 1 to 5) sets out the scope of the Agreement, and some general principles of application. Article 2 sets out the scope of the legislation covered by the Agreement. For Australia, the Agreement applies to social security law relating to age pension, and the law concerning the Superannuation Guarantee. For Finland, the Agreement applies to age pension benefits provided for by the Earnings-Related Pension Scheme, the National Pensions Act and the Employer's Social Security Contributions Act. Article 3 provides that the Agreement applies to any person who is or has been an Australian resident or subject to the relevant legislation of Finland. A general statement of principle in Article 4 ensures that all persons covered by the Agreement shall be treated equally with respect to the payment of benefits, and Article 5 removes restrictions on the payment of benefits based on residency in the other country.
14. Part II (Articles 6 to 11) is aimed at avoiding double coverage of superannuation. It establishes an arrangement to ensure that when an employee is sent to work temporarily in the other country, an employer will only have to make contributions for superannuation and similar liabilities (eg certain social security contributions) for the employee in their home country (Article 9(2) and Article 9(3)).
15. Article 10 provides that the Competent Authorities may agree to make exceptions to the double coverage provisions in Part II for a particular person or category of persons. This provision is designed to permit the Competent Authorities to correct anomalous coverage situations that may arise, or to eliminate double coverage in unforeseen circumstances.
16. Part III (Articles 12 to 14) applies to benefits paid by Australia. It obliges Australia to accept claims from former Australian residents living in Finland, and to count periods of insurance in Finland towards the minimum qualifying residence requirements for Australian Age Pension (Articles 12 and 13). It also sets out the method of calculating such benefits that Australia must utilise for people covered by the Agreement (Article 14).
17. Part IV (Articles 15 and 16) applies to benefits paid by Finland, such as their National and Earnings Related Pensions. However these Articles create no obligations for Australia.
18. Parts V (Articles 17 to 23) and VI (Articles 24 and 25) set out various administrative obligations, and transitional and final provisions, 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 17)
  - procedures for recovering overpayments (Article 18)
  - a general obligation to communicate to each other any information necessary for the application of the Agreement, and to comply with confidentiality requirements for information received (Article 19)
  - to exempt documents submitted pursuant to the Agreement from fees and certification requirements (Article 20), and

- for the ‘Competent Authority’ of each Party to conclude an administrative arrangement to establish the administrative measures necessary for the application of the Agreement and to appoint liaison bodies (Article 21).
19. Dispute settlement under the Agreement is by consultation (Article 22), and either Party may request a review of the Agreement at any time (Article 23). Article 24 sets out the application of the Agreement with regard to periods preceding its entry into force.

### **Implementation**

20. The *Social Security (International Agreements) Act 1999* gives effect in domestic law to relevant provisions of social security agreements that are scheduled to the Act. A new Schedule containing the full text of the Agreement will be added to that Act, and the regulation making powers contained in sections 8 and 25 of the Act will be used to implement the Agreement.
21. 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. 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**

22. The Agreement is expected to result in a saving in administered outlays of \$4 million (cumulative savings) over the period to 2011-2012. The Department of Families, Housing, Community Services and Indigenous Affairs, and Centrelink departmental costs of \$2.6 million (cumulative) over the same period represent the cost of implementing this Agreement.

### **Regulation Impact Statement**

23. The Office of Best Practice Regulation, Department of Finance and Deregulation has been consulted and confirms that a Regulation Impact Statement is not required.

### **Future treaty action**

24. The Agreement does not specifically provide for the future negotiation of any related legally binding instruments although, as noted above, Article 23 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 21 will be an instrument of less than treaty status, and therefore will not be subject to Australia’s domestic treaty-making process.

25. While the Agreement does not specifically provide for an amendment process, 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 1969*. 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**

26. Article 25 provides that the 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 diplomatic channels indicating its intention to terminate the Agreement. In the event of termination, Article 25 also preserves the rights of those people who are receiving benefits under the Agreement, or who have lodged claims and would have been entitled to receive benefits under the Agreement, and those people affected by the double coverage provisions of Part II.
27. 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, Housing, Community Services and Indigenous Affairs.



## ATTACHMENT ON CONSULTATION

### Agreement between Australia and the Republic of Finland on Social Security done at Helsinki, 10 September 2008 ([2008] ATNIF 15)

#### CONSULTATION

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

29. FaHCSIA sent letters and an information sheet explaining the Agreement to each group on 18 August 2008 seeking their views and asking for a response by 28 August 2008. Finland agreed to FaHCSIA providing copies of the Agreement text before its signature to interested community groups on request. The Agreement text is available on FaHCSIA's website.

30. One formal response was received. The Southern Cross Group, representing expatriate Australians worldwide, advised they were pleased to learn that the Agreement will be signed soon and they passed on the FaHCSIA letter to a number of Australians living in Finland in their network.

31. The Finnish community groups consulted were:

Finnish Community Groups	
Australasian Federation of Finnish Societies and Clubs Inc.	Adelaide Finnish Society
Brisbane Finnish Society	Canberra Finnish Society Inc.
Finnish Society of Sydney Inc.	Gold Coast Finnish Society
Gold Coast Finnish Sports Club Inc.	Gosford Finnish Society
Melbourne Finnish Society	Mt Isa Finnish Society
Perth Finnish Golf Club	Sunshine Coast Finnish Social Club
Townsville Finnish Sport Club	Tully Finnish Society
West Sydney Finnish Club	Wollongong Region Finnish Society
Lions Club of Brisbane Finlandia Inc.	Self-Help Society (Sydney)
Finnish War Veterans Australia Inc	

32. The welfare organisations consulted were:

Welfare	
ACROD (National Office)	ACT Multicultural Community Council
Association of Independent Retirees	Australian Council of Social Services
Combined Pensioners & Superannuants Association	COTA National Seniors
Council of Intellectual Disabilities Agencies	Ethnic Communities' Council of NSW
Ethnic Communities' Council of QLD	Ethnic Communities' Council of Victoria

Ethnic Communities' Council of West Australia	FECCA
Multicultural Council of NT Inc	Multicultural Council of Tasmania
National Ethnic Disability Alliance	National Seniors Association
Physical Disability Council of Australia Ltd	Southern Cross Group
Welfare Rights Centre	Multicultural Communities' Council of SA

33. 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

34. Treasury sent letters and an information sheet explaining the Agreement to each organisation on 20 August 2008 seeking their views and asking for a response by 28 August 2008. No formal responses were received by Treasury.

35. The organisations Treasury consulted 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

36. Since negotiations commenced in 1990, this Agreement has been included on the schedule of treaties under negotiation, consideration or review by the Australian Government which the Department of Prime Minister and Cabinet distributes twice a year to representatives of the Commonwealth-State/Territory Standing Committee on Treaties.