

Agreement between Australia and the Republic of Latvia on Social Security

Introduction

- 6.1 On 22 November 2011, the *Agreement between Australia and the Republic of Latvia on Social Security done at Riga on 7 September 2011* was tabled in the Commonwealth Parliament.
- 6.2 Under the proposed Agreement, individuals may be eligible for benefits from both countries if they meet certain criteria and have lived and/or worked in both countries. Residents of Australia and Latvia will be able to move between these countries knowing that their rights to benefits are protected.¹

Background

- 6.3 Australia's social security agreements are bilateral treaties which close gaps in social security coverage for people who migrate between countries. The agreements do this by overcoming barriers to pension payment in the domestic legislation of each country, such as requirements on citizenship, minimum contributions or past residence history, and current country of residence.²
- 6.4 Australia's network of bilateral social security agreements improves access to income support for people whose adult lives are, or have been, split

1 National Interest Analysis [2011] ATNIA 32 with attachment on consultation *Agreement between Australia and the Republic of Latvia on Social Security done at Riga on 7 September 2011* [2011] ATNIF 18, (Hereafter referred to as 'NIA'), para 9.

2 NIA, para 3.

between Australia and another country. Most beneficiaries are age pensioners.³

- 6.5 This Agreement incorporates the same principles as Australia's other social security agreements. A key element of this Agreement, as with other social security agreements, is the sharing of responsibility between both countries in providing adequate social security coverage for current and former residents.⁴
- 6.6 This treaty action follows on from a series of similar bilateral social security agreements. Recent agreements have centered on Eastern European countries, from which Australia accepted a significant number of refugees in the decades following the Second World War.⁵ The countries have included:
- Hungary (examined by the Committee in *Report 120*);
 - Austria (see *Report 115*);
 - The Czech Republic (see *Report 112*);
 - the Former Yugoslav Republic of Macedonia (see *Report 112*);
 - Poland (see *Report 108* and *Report 110*); and
 - Slovakia (see *Report 117*).
- 6.7 The agreement is an important addition to this existing network of social security agreements. Currently Australia has 28 agreements and this would be the 29th agreement when implemented.⁶ Currently, inside Australia there are about 145,000 people receiving a foreign pension entitlement through an agreement. Australian pays nearly 60,000 people overseas an agreement pension.⁷

Overview and national interest summary

- 6.8 The proposed Agreement provides for improved access to Australian and Latvian retirement benefits and greater portability of these benefits
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3 NIA, para 7.

4 NIA, para 8.

5 Mr Peter Hutchinson, Section Manager, Agreements, International Branch, Department of Families, Housing, community Services and Indigenous Affairs, *Committee Hansard*, 12 September 2011, p. 6.

6 Mrs Michalina Stawyskyj, Branch Manager, Social Security Relationships and International Branch, Social Policy Group, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 6 February 2012, p. 21.

7 Mr Darrin Smith, Assistant Section Manager, Social Security Relationships and International Branch, Social Policy Group, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 6 February 2012, p. 21.

between the two countries. Improved access to benefits is an underlying principle of bilateral social security agreements where the responsibility for providing benefits is shared. Under this Agreement, residence in one Party's territory will not affect a person's entitlement to benefits under the legislation of the other Party. People who move between Australia and Latvia will be able to do so in the knowledge that their rights to benefits are recognised in both countries.⁸

- 6.9 The proposed Agreement will facilitate business by ensuring employers and employees do not have 'double liability' in respect of the same work of an employee. For example, when an employee from one Party is temporarily seconded to work in the other, the employee and/or their employer will not need to make compulsory pension or superannuation contributions in both countries. In the Australian context, the proposed Agreement will exempt employers and/or employees already making superannuation guarantee contributions in Australia, from making compulsory social security contributions in Latvia and vice-versa.⁹
- 6.10 The proposed Agreement will bring economic and social benefits to Australia and facilitate business links by reducing costs. It will help to maximise the foreign income of Australian residents and there will be flow-on effects within the Australian economy. The Agreement will serve to reinforce Australia's political, business and strategic interests. It will also further strengthen bilateral relations between Australia and Latvia and provide choices in retirement for individuals who migrate to Australia or Latvia during or after their working lives.¹⁰

Reasons for Australia to take the proposed treaty action

- 6.11 The Agreement will provide substantial net pension flows into Australia. The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) estimates that, in the first year approximately 2,000 people in both countries will claim an Australian and/or Latvian pension. This is expected to increase ongoing Latvian pension flows into Australia by around \$4.3 million per year and increase ongoing Australian pension flows into Latvia by approximately \$0.2 million per year. This will result in Australian pension outlays decreasing by around \$1.1 million over the forward estimates period.¹¹

8 NIA, para 4.

9 NIA, para 5.

10 NIA, para 6.

11 NIA, para 10.

Obligations

- 6.12 Part I sets out general provisions and defines the scope of the proposed Agreement. Parties are obliged to ensure equal treatment of people covered by the proposed Agreement, with respect to eligibility for and payment of benefits.¹²
- 6.13 Part II concerns provisions on applicable legislation, and includes provisions to avoid double liability.¹³
- 6.14 Part III applies to benefits payable by Australia and:
- a) obliges Australia to regard residents of Latvia, and Australian residents who are temporarily in Latvia, as Australian residents and as being present in Australia, for the purpose of claiming the Australian Age Pension, provided the person has been a resident of Australia at some time;
 - b) provides that insurance periods in Latvia (being periods of contributions used to acquire the right to a benefit under Latvian legislation, or periods deemed equivalent) will be regarded as periods of residence in Australia for the purpose of meeting any minimum qualifying period of residence for the Australian Age Pension and;
 - c) specifies how the rate of the Australian Age Pension will be calculated under the proposed Agreement and how this applies to a person who is living inside or outside Australia.¹⁴
- 6.15 Part IV applies to benefits payable by Latvia. Periods of Australian working-life residence and Australian residence will be taken into account in Latvia for the purpose of meeting minimum insurance periods under Latvian legislation, provided the periods do not overlap with the person's insurance period accumulated in Latvia. The rate of pension from Latvia will generally be based on a person's insurance period accumulated in Latvia¹⁵
- 6.16 Part V sets out various administrative obligations.¹⁶
- 6.17 Part VI concerns transitional and final provisions.¹⁷

12 NIA, para 11.

13 NIA, para 12.

14 NIA, para 13.

15 NIA, para 14.

16 NIA, para 15.

17 NIA, para 16.

Implementation

- 6.18 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 Agreement's full text will be added to the *Social Security (International Agreements) Act 1999* pursuant to that Act's regulations.¹⁸
- 6.19 Provisions of social security agreements relating to double superannuation coverage are automatically given effect in domestic law once agreements are scheduled to the *Social Security (International Agreements) Act 1999*. This happens pursuant to section 27(1)(e) of the *Superannuation Guarantee (Administration) Act 1992* and regulation 7AC of the *Superannuation Guarantee (Administration) Regulations 1993*, which together provide 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 relevant scheduled social security agreement is in place.¹⁹

Costs

- 6.20 The proposed Agreement was funded in the 2009-10 Budget at a net cost of \$1.3 million over the forward estimates period. It is expected to reduce ongoing pension outlays by around \$1.1 million. Departmental costs incurred by FaHCSIA, the Department of Human Services (Centrelink) and the Australian Taxation Office (ATO) total \$2.4 million over the forward estimates period, and are primarily one-off set-up costs.²⁰ FaHCSIA explained:

The start-up costs involve FaHCSIA costs for negotiating the agreement for monitoring and going through the processes, Treasury costs for the double coverage area and of course the Department of Human Services through Centrelink for processing all of the claims and contacting people and also carrying out investigations into those claims.²¹

18 NIA, para 17

19 NIA, para 18.

20 NIA, para 19.

21 Mrs Michalina Stawyskyj, Branch Manager, Social Security Relationships and International Branch, Social Policy Group, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 6 February 2012, p. 22.

- 6.21 FaHCSIA also noted that while agreements between Australia and different countries may be similar, the bureaucratic mechanisms are not, and this may result in different start up costs for different agreements.

There is additional staff depending on the size of the agreement and the number of people who were required to process the new claims. Obviously Centrelink would need to make adjustments to their IT infrastructure with each new agreement coming on-stream. There are different forms that are required and there are different issues because the systems are different. They are not the same system. It is not as though we are just plugging them into every European country. Every country has slightly different quirks to the system. It is not as easy as just saying, 'Here is another agreement; switch it on.'²²

Conclusion

- 6.22 The Committee supports the proposed social security agreement with Latvia. Bilateral agreements of this type provide reciprocal benefits to individuals with ties to both nations, whether gained through permanent migration or temporary secondment. The Agreement would optimise choice in retirement and increase retirement incomes and may also create opportunities for greater economic engagement between our two nations.

Recommendation 8

The Committee supports the *Agreement between Australia and the Republic of Latvia on Social Security done at Riga on 7 September 2011* and recommends that binding treaty action be taken.

22 Mrs Michalina Stawyskyj, Branch Manager, Social Security Relationships and International Branch, Social Policy Group, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, 6 February 2012, p. 22.