

Agreement between Australia and the Slovak Republic on Social Security

Introduction

- 2.1 The proposed *Agreement between Australia and the Slovak Republic on Social Security* (Agreement with the Slovak Republic) will allow for payment of social security entitlements accrued by individuals who have migrated between the party nations.¹
- 2.2 Social security bilateral agreements generally aim to close gaps in social security coverage for such people. These gaps may arise because of domestic eligibility obligations, such as legal requirements for citizenship, minimum contributions, past residence history or current country of residence.² At present Australia has 24 similar agreements in place.³
- 2.3 The proposed Agreement with the Slovak Republic incorporates substantially the same principles as those in existing shared responsibility social security agreements held by Australia.⁴

1 *National Interest Analysis* (NIA) [2011] ATNIA 1, Agreement between Australia and the Slovak Republic on Social Security, done at New York on 21 September 2010 [2010] ATNIF 42, paras 3 and 7.

2 NIA, para. 3.

3 Mrs Michalina Stawyskyj, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, Canberra, 25 February 2011, p. 14.

4 Mrs Stawyskyj, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, Canberra, 25 February 2011, p. 12.

- 2.4 Under the Agreement, residents of Australia and the Slovak Republic will be able to move between both countries with the knowledge that their rights to benefits are recognised in both countries. The Agreement will streamline the trans-national assessment processes, facilitate portability of pensions and accrued benefits, and provide greater choice to recipients in retirement.⁵
- 2.5 This Agreement covers the Australian and Slovak age pensions, and Slovak invalidity and survivors benefits. It also contains provisions to avoid 'double coverage' (exemptions for superannuation and pension requirements) for employees seconded for work in the other country.⁶
- 2.6 The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) estimates that the proposed Agreement with the Slovak Republic will provide substantial increases in foreign income to Australia. Specifically, this is because of the disparity between Slovak and Australian residency numbers and corresponding pension entitlements:

We are expecting around 520 Australian residents to claim a Slovakian pension and around 60 Slovak residents to claim an Australian pension, a total of about \$80,000 a year compared to a total of \$1.1 million for people claiming a Slovak Republic pension.⁷

Benefits of the Agreement

- 2.7 Australia's social security laws stipulate that all claimants of pensions must take reasonable action to claim any foreign pension entitlement they may have.⁸
- 2.8 The proposed Agreement would establish a formal arrangement whereby such claims can be registered and overseen by Centrelink through its international branch in Hobart:

5 NIA, paras 4–6.

6 Mrs Stawyskyj, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, Canberra, 25 February 2011, p. 12, and see NIA para. 5.

7 Mrs Stawyskyj, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, Canberra, 25 February 2011, p. 12, and see NIA, para. 10.

8 Mr Hutchinson, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, Canberra, 25 February 2011, p. 12.

The claims, which might come from all over Australia, are sent through to Hobart and they are processed there and then forwarded to their counterparts in Slovakia. The usual arrangement is that the Slovakian authorities will notify both the individual concerned of the grant or rejection of the pension and also Centrelink.⁹

- 2.9 Department representatives estimated that Centrelink will be able to identify and assist roughly half of the 1 000 Slovakian-born people living in Australia and receiving the aged pension to access a Slovak pension. At present there are only 34 people able to obtain these entitlements.¹⁰
- 2.10 The agreement framework also contains dispute resolution provisions and those for termination of the Agreement if disputes are not resolved.¹¹
- 2.11 The Committee was informed that Centrelink International has well tested procedures in place to address problems, for example, if payments are not made. These include specialised language services, with liaison for these processes formalised under a signed agreement between the Parties appended to the formal document.¹²
- 2.12 For those individuals moving between the party nations for employment, the Agreement's 'double coverage' provisions will ensure that pensions and superannuation contributions are not required under both systems at the same time:

In the Australian context, the Agreement will exempt employers and/or employees from making compulsory social security contributions in the Slovak Republic if superannuation guarantee contributions continue to be made in Australia. Similarly, Slovak employers will be exempt from making superannuation guarantee contributions for employees sent to work temporarily in Australia provided contributions continue to be made in the Slovak Republic.¹³

- 2.13 In addition to maximising the income accessible to individuals on retirement, these 'double coverage' exemptions may also be expected to provide benefits to the Australian economy, supporting the development

9 Mr Hutchinson, *Committee Hansard*, Canberra, 25 February 2011, pp. 12–13.

10 Mr Hutchinson, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, Canberra, 25 February 2011, p. 12.

11 Dispute Resolution Articles 24 and 25, Termination at Article 28.

12 Mrs Stawyskyj, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, Canberra, 25 February 2011, pp. 13–15.

13 NIA, para. 5.

of business links between the two countries and removing unnecessary costs.¹⁴

- 2.14 The Committee notes that the Slovak Republic is one of the best performing economies in the European Union, but that Australia's trade engagement with Slovakia is largely undeveloped at this stage.¹⁵

Obligations

- 2.15 The general obligations of the Parties are in Part I (Articles 1 to 5) of the Agreement, which requires equal treatment of all eligible persons (Article 4) and removes restrictions based on residence in the other country (Article 5).
- 2.16 The Agreement creates obligations for Australia in relation to:
- social security law as it applies to or affects the age pension; and
 - the law concerning the superannuation guarantee.¹⁶
- 2.17 For the Slovak Republic it covers legislation regarding:
- age pensions;
 - invalidity pensions; and
 - pensions for widows, widowers and orphans.¹⁷
- 2.18 Part II of the Agreement (Articles 6 to 10) addresses 'double coverage' of exemptions for employers and employees. Article 8 specifies that only the legislation of the home country, with respect to compulsory pension or superannuation contributions, should apply where an employee is temporarily seconded to work in the other country.
- 2.19 Under Part III, key provisions establish the entitlements of split and former residents of the Slovak Republic to benefits payable by Australia, so that:
- Australia must regard residents of the Slovak Republic as Australian residents, and Australian residents temporarily in the Slovak Republic
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14 NIA, para. 6.

15 Department of Foreign Affairs and Trade, *Slovak Republic Country Brief*, pp. 1, 2.

16 Article 1 (a) (i); &(ii) covering the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Regulations*.

17 Article 1 (b) (i), (ii), (iii) respectively.

as present in Australia, for the purpose of claiming the Australian age pension (Article 11); and

- ‘creditable periods’ in the Slovak Republic (periods for which contributions were paid and periods related to those contributions) are to be regarded as periods of residence in Australia, so as to meet the ten year qualifying period for the Australian age pension (Article 12).¹⁸

2.20 Article 13 specifies that benefits shall be paid in accordance with Australian legislation, after a qualifying period of 26 weeks. Part payment shall be made on the pension as calculated by:

...deducting the amount of the Slovak Republic benefit which that person is entitled to receive from the maximum rate of that Australian benefit.¹⁹

2.21 Part III Chapter 2 covers the reciprocal obligations of the Slovak Republic, based on creditable periods of ‘Australian working life residence.’ In particular:

- Article 14 provides that the eligibility of a person for a benefit be determined by totalising of Australian and Slovak creditable periods, and that these must not overlap; and
- Article 15 provides for calculation of benefits in the Slovak Republic if no totalisation occurs and if totalisation is required, with benefits not to be awarded for periods of less than 12 months.²⁰

2.22 Part IV (Articles 16 to 25) sets out the administrative obligations, including requirements for lodgement of documents, payment of benefits, and recovery of overpayments. Exchange of Information and Mutual Assistance arrangements are established under Article 20, and provision for dispute resolution and review of the Agreement are at Articles 24 and 25 respectively.

2.23 Part V provides that the Agreement is entered into for an unlimited amount of time, but may be subject to termination by notification (Article 28 (3)).

18 NIA, para. 13.

19 Article 13 (3) (b).

20 Article 14, then Article 15 (1) and for calculation, Article 15 (2) and (3) respectively.

Implementation

- 2.24 The Agreement with the Slovak Republic will enter force on the first day of the third month in which diplomatic notes are exchanged with the parties.²¹ The proposed commencement date, subject to Committee approval, is 1 January 2012.²²
- 2.25 Implementation will follow introduction of a new Schedule into the *Social Security (International Agreements) Act 1999*, which gives effect in domestic law to the relevant provisions of the Agreement. The Schedule will contain the full text of the Agreement pursuant to Sections 8 and 25 of the current Act.²³
- 2.26 Cost estimates in the *National Interest Analysis* indicate there will be a shortfall in funding for implementation of the Agreement in Australia initially. In 2009–10, \$2.4 million was allocated, with outgoing pensions to be reduced by \$0.6 million in the first year. Forward cost estimates are of a total of \$2.171 million, with set up-costs included.²⁴

Conclusion

- 2.27 The Committee supports the proposed social security agreement with the Slovak Republic. 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, increase retirement incomes and potentially facilitate family reunion.
- 2.28 The Agreement with the Slovak Republic may also create opportunities for greater economic engagement between our two nations. The Committee has noted that, among Europe Union nations transitioning from a controlled economy, the Slovak Republic has performed strongly, opening new opportunities for Australian businesses and investors.

21 NIA, para. 2.

22 Mrs Stawyskyj, Department of Families, Housing, Community Services and Indigenous Affairs, *Committee Hansard*, Canberra, 25 February 2011, pp. 11, 12.

23 NIA, para. 17.

24 NIA, para. 19.

Recommendation 1

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

