
The Parliament of the Commonwealth of Australia

Report 33

**Social Security Agreement with Italy and New Zealand Committee
Exchange**

Joint Standing Committee on Treaties

June 2000

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ISBN



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Membership of the Committee

Chair	The Hon Andrew Thomson MP	
Deputy Chair	Senator Barney Cooney	
Members	The Hon Dick Adams MP	Senator Andrew Bartlett
	The Hon Bruce Baird MP	Senator Helen Coonan
	Kerry Bartlett MP	Senator Joe Ludwig
	Anthony Byrne MP	Senator Brett Mason
	Kay Elson MP	Senator the Hon Chris Schacht
	Gary Hardgrave MP	Senator Tsebin Tchen
	De-Anne Kelly MP	
	Kim Wilkie MP	

Committee Secretariat

Secretary	Grant Harrison
Inquiry Secretary	Susan Redman
Administrative Officer	Lisa Kaida



Recommendations

Agreement on Social Security between Australia and Italy

The Committee supports the *Agreement on Social Security with Italy* and recommends that binding treaty action be taken (paragraph 2.16).

The Committee supports the proposed *Exchange of Notes constituting an Agreement with Italy, amending and clarifying the Agreement on Social Security*, and recommends that binding treaty action be taken (paragraph 2.17).

Introduction

Purpose of the report

- 1.1 This Report contains advice to Parliament from the Joint Standing Committee on Treaties on two matters.
- 1.2 In Chapter 2 we report on our review of:
 - the *Agreement on Social Security with Italy* (the 1993 Agreement); and
 - an *Agreement with Italy, amending and clarifying the Agreement on Social Security* (the Amendment).
- 1.3 In Chapter 3 we report on our visit to New Zealand in March as part of the parliamentary committee exchange program sponsored by the Parliaments of Australia and New Zealand.

Availability of documents

- 1.4 Our advice on the two proposed treaty actions refers to, and should be read in conjunction with, the National Interest Analysis (NIA) prepared for the proposed treaty. The Department of Family and Community Services prepared the NIA and is responsible for the administration of the current Social Security Agreement with Italy. The NIA was tabled in Parliament on 4 April 2000 and a copy is at Appendix B.¹

1 Tabling references: Senate Journal No. 107, 4 April 2000, p 2527; House of Representatives, *Votes and Proceedings*, No 101, 4 April 2000, pp. P1350.

- 1.5 Copies of the treaty actions and the NIA can be obtained from the Treaties Library maintained on the Internet by the Department of Foreign Affairs and Trade (DFAT). The Treaties library is accessible through the Committee's website at www.aph.gov.au/house/committee/jsct. Copies of the treaty actions can also be obtained from the Committee Secretariat.

Conduct of the Committee's review

- 1.6 Our review of the proposed treaty actions was advertised in the national press, in two Italian language newspapers and on our web site.² A number of submissions were received in response to the invitation to comment in the advertisement. A list of those submissions is at Appendix C.
- 1.7 We also gathered evidence at a public hearing on 8 May 2000. Appendix D lists the witnesses who gave evidence at this hearing.
- 1.8 A transcript of the evidence taken at this hearing can be obtained from the database maintained on the Internet by the Department of the Parliamentary Reporting Staff at www.aph.gov.au/hansard/joint/committee/comjoint.htm, or from the Committee Secretariat.
- 1.9 We always seek to consider and report on each proposed treaty action within 15 sitting days of it being tabled in Parliament. In the case of the proposed treaty actions tabled on 4 April 2000, the 15 sitting day period expires on 19 June 2000.

2 Our advertisement featured in *The Weekend Australian* on 15/16 April 2000 and in two Italian language newspapers, *Il Globo* and *La Fiama*, on 21 April 2000.

Social Security Agreement with Italy

Proposed treaty actions

- 2.1 The proposed 1993 Agreement will replace the present 1986 Agreement between Australia and Italy, which provides for reciprocity in matters relating to social security. The proposed Amendment clarifies and amends the 1993 Agreement.
- 2.2 The 1986 Agreement with Italy is Australia's largest shared responsibility social security agreement, benefiting about 41,000 former Italian residents in Australia and about 15,000 former Australian residents now living in Italy. It was Australia's first shared responsibility agreement, an approach that has now been replicated in agreements with Canada, Spain, Malta, the Netherlands, Ireland, Portugal, Austria and Cyprus.
- 2.3 The 1993 Agreement updates the original agreement, taking account of changes in policy and legislation in both countries since 1986.
- 2.4 The social security benefits covered under the 1993 Agreement include age pension, disability support pension, wife pension, pensions payable to widows, widowed person allowance (now know as bereavement allowance), spouse carer pension (now carer payment), double orphan pension and supplements for children paid under the *Social Security Act 1991*. The Italian benefits reciprocate, either directly or generally, the Australian benefits in the 1993 Agreement.

Evidence Presented

Changes to the current Agreement

2.5 The major changes proposed in the 1993 Agreement are:

- the disability support pension is limited to severely disabled people, as defined in the *Social Security Act 1991* (people with no capacity to work or no prospects of rehabilitation within the following two years);
- the spouse carer pension is extended to partners of either sex (previously restricted to a legal husband caring for his wife);
- the income test concession on Italian contributory pensions is extended to people who receive their pension without the help of the Agreement, and to income received by non-pensioner partners;
- the portability provisions for pensions align with Australian domestic law; and
- the payments to certain widows, whose payments were cancelled in 1992 because of changes in Australian domestic legislation, will be restored.¹

2.6 The Amendment caters for terminology changes since the text of the 1993 Agreement was finalised and clarifies the operation of income testing provisions. It contains the following changes:

- the welfare supplement that Italy introduced in 1995 will continue to be disregarded from the Australian income test; and
- the Australian benefit, paid to people outside Australia who enjoy an income test concession on benefits they receive from Italy, will not exceed the rate that could be payable if they were in Australia.²

2.7 In evidence at our hearing, the Director of Co.As.It. (an Italian community assistance organisation) spoke of the success of the current social security agreement with Italy and urged the Government to ensure the speedy implementation of both the 1993 Agreement and the Amendment.³

1 Jeff Whalan (Department of Family and Community Services), *Transcript of Evidence*, 8 May 2000, p. TR2.

2 NIA for Agreement on Social Security treaty between Australian and Italy, p. 4.

3 Giancarlo Martini-Piovano (Co.As.It), *Transcript of Evidence*, 8 May 2000, p. TR3. INCA-CGIL (National (Italian) Trade Union Welfare Institute) and Mr Mareovic also supported the proposed treaty actions and urged their rapid implementation. (see Department of Family and Community Services, *Submission No. 1*, p. 7 and Daribor Mareovic, *Submission No. 4*, p. 1).

- 2.8 We also received a written submission from the Western Australian Government supporting the revised agreement and stating that the provisions pertaining to carer payments, the disability support pension, the extension of the income test concession to non-pensioner partners and the restoration of certain widow's payments were positive developments.⁴ The South Australian Government stated in its submission that it was happy with the content of the treaty.⁵

Costs and savings

- 2.9 The Department of Family and Community Services claimed that the 1986 Agreement has worked well in providing welfare protection to people who move between countries. Under the 1986 Agreement, Italy pays about A\$166m into Australia, while Australia pays about A\$48m a year into Italy.⁶
- 2.10 The Director of Co.As.It. stated that the Italian government also contributes about \$2m per year to Australian based Italian welfare organisations (known as Patronati) to provide assistance to Italian pensioners, thus reducing the pressure on social security offices. He also claimed that the Australian government receives a benefit of between \$10m and \$20m per year due to the reduction in Australian pensions as a result of the means test and increased personal tax payments.⁷
- 2.11 The expected increase in costs to Australia is \$A2.555m in the first year, A\$0.422m in 2001-02, A\$0.366 in 2002-03 and A\$0.386m in 2003-04. The first year cost is primarily due to the cost of restoring and paying arrears of widow B pensions to widows whose pensions were cancelled in 1992. It is estimated that between 70 and 80 widow pensions will be backdated to 1993 and paid out in a lump sum. Australia does not intend to make payments to the estates of deceased widows.⁸

Consultation

- 2.12 The Italian community has been kept informed about the progress of the treaty through Patronati. In December 1999 an information paper was sent to Patronati representatives throughout Australia, a range of other

4 Department of Family and Community Services, *Submission No. 1*, p. 6; Western Australian Government, *Submission No. 3*, p. 1.

5 South Australian Government, *Submission No. 5*, p. 1.

6 Jeff Whalan (Department of Family and Community Services), *Transcript of Evidence*, 8 May 2000, p. TR2.

7 Giancarlo Martini-Piovano (Co.As.It), *Transcript of Evidence*, 8 May 2000, p. TR4.

8 Peter Hutchinson, *Transcript of Evidence*, 8 May 2000, p. TR6.

community organisations and state and territory governments. No negative comments on the new agreement were received.⁹

- 2.13 The Director of Co.As.It. stated that the Patronati around Australia consult regularly with the Department of Family and Community Services, particularly with the international office in Hobart. The Patronati are supportive of the proposed changes in the 1993 Agreement and the Amendment.¹⁰

Conclusions and Recommendations

- 2.14 As noted in our *Report 32, Six Treaties Tabled on 7 March 2000* (May 2000), when commenting on a proposed Social Security Agreement with Denmark, we support the principle of establishing a network of bilateral agreements to give better welfare protection to people who move between countries. Such agreements are to the benefit of the individuals and the governments involved in these schemes.
- 2.15 The current 1986 Agreement appears to have been working well. The changes proposed by the 1993 Agreement and the Amendment are relatively minor; many reflecting changes in policies and the legislation of each country.

Recommendation 1

- 2.16 **The Committee supports the *Agreement on Social Security with Italy* and recommends that binding treaty action be taken.**

Recommendation 2

- 2.17 **The Committee supports the proposed *Exchange of Notes constituting an Agreement with Italy, amending and clarifying the Agreement on Social Security*, and recommends that binding treaty action be taken.**

9 Jeff Whalan (Department of Family and Community Services), *Transcript of Evidence*, 8 May 2000, p. TR2.

10 Giancarlo Martini-Piovano (Co.As.It), *Transcript of Evidence*, 8 May 2000, p. TR6.

New Zealand Committee Exchange

Introduction

- 3.1 In the period Monday 28 March to Thursday 30 March 2000 a delegation from the Committee visited New Zealand as part of a parliamentary committee exchange program sponsored by the Australian and New Zealand Parliaments.
- 3.2 The visit provided us with an opportunity to meet with a range of people and organisations with an interest in parliamentary review of treaty making. A list of the Committee members who made the visit and a copy of our itinerary for the visit are at Appendix E.
- 3.3 The centrepiece of the visit was a meeting, on Thursday 30 March, with the Foreign Affairs, Defence and Trade Select Committee of the New Zealand Parliament.

Meeting with the NZ Foreign Affairs, Defence and Trade Select Committee

- 3.4 Discussion at our meeting with the New Zealand Parliament's Foreign Affairs, Defence and Trade Select Committee¹ ranged over a wide variety of topics, including:

1 The following members of the NZ Foreign Affairs, Defence and Trade Select Committee were present at the meeting: Graham Kelly (Chairperson), Chris Carter (Deputy Chairperson), Harry Duynhoven, Marie Hasler, Keith Locke, John Luxton, Ross Robertson and Dr Wayne Mapp. His Excellency Mr Robert Cotton, the Australian High Commissioner in New Zealand, also attended the meeting.

- economic, social and defence relations between Australia and New Zealand;
- matters of mutual diplomatic interest, such as relations with Taiwan and China, with Indonesia and East Timor, and with the Asia-Pacific region in general; and
- the approach that our respective parliaments take to considering proposed treaty actions.

3.5 Our discussion on the last point, the processes of parliamentary consideration of proposed treaties, was especially valuable. We were able made a presentation on the treaty reforms introduced in May 1996 and on scrutiny role now played by the Treaties Committee on behalf of the Australian Parliament. Similarly, the members of the New Zealand Committee explained to us the history of the New Zealand Parliament's consideration of this issue and the new treaty review processes implemented in 1999.

3.6 Key stages in the New Zealand Parliament's consideration of a potential role in treaty review have been:

- the publication in 1996 of a paper by the Clerk of the House of Representatives *Treaties and the House of Representatives*, in which he recommended a greater role for Parliament in treaty making;
- a report from the Foreign Affairs, Defence and Trade Select Committee in 1997, which endorsed the call for a greater role for Parliament;
- the adoption of House Sessional Orders in May 1998, which required the Government to present proposed new treaties (and explanatory national interest statements) to Parliament and allowed relevant select committees to review and report of the proposed actions within 35 calendar days of presentation;
- a 1999 review by the Foreign Affairs, Defence and Trade Select Committee of the operation of the Sessional Orders, which resulted in recommendations to refine the process; and finally
- in late 1999, an amendment to Standing Orders formalising the Parliament's treaty review role and accepting the Select Committee's recommended refinements.

- 3.7 The Standing Orders of the New Zealand now make explicit provision for the presentation and referral of proposed treaty actions in the following terms:

INTERNATIONAL TREATIES

386E Presentation and referral of treaties

- (1) The Government will present the following international treaties to the House -
 - (a) any treaty that is to be subject to ratification, accession, acceptance or approval by New Zealand;
 - (b) any treaty that has been subject to ratification, accession, acceptance or approval on an urgent basis in the national interest;
 - (c) any treaty that has been subject to ratification, accession, acceptance or approval and that is to be subject to withdrawal or denunciation by New Zealand;
 - (d) any major bilateral treaty of particular significance, not otherwise covered by subparagraph (a), that the Minister of Foreign Affairs and Trade decides to present to the House.
- (2) A national interest analysis for the treaty, which addresses all the matters set out in Standing Order 368F, will be presented at the same time as the treaty.
- (3) Both the treaty and the national interest analysis stand referred to the Foreign Affairs, Defence and Trade Committee.

386F National interest analysis

- (1) A national interest analysis must address the following matters -
 - (a) the reasons for New Zealand becoming party to the treaty;
 - (b) the advantages and disadvantages to New Zealand of the treaty entering into force for New Zealand;
 - (c) the obligations which would be imposed on New Zealand by the treaty, and the position in respect of reservations to the treaty;
 - (d) the economic, social, cultural and environmental effects of the treaty entering into force for New Zealand, and of the treaty not entering into force for New Zealand;

- (e) the costs to New Zealand of compliance with the treaty;
 - (f) the possibility of any subsequent protocols (or other amendments) to the treaty, and of their likely effects;
 - (g) the measures which could or should be adopted to implement the treaty, and the intentions of the Government in relation to such measures, including legislation;
 - (h) a statement setting out the consultations, which have been undertaken or are proposed with the community and interested parties in respect of the treaty;
 - (i) whether the treaty provides for withdrawal or denunciation.
- (2) In the case of a treaty that has been subject to ratification, accession, acceptance or approval on an urgent basis in the national interest, the national interest analysis must also explain the reasons for the urgent action taken.
 - (3) In the case of a treaty that has been subject to ratification, accession, acceptance or approval and that is to be subject to withdrawal or denunciation by New Zealand, the national interest analysis must address the matters set out in paragraph (1) to the full extent applicable to that proposed action.

386G Select committee consideration of treaties

- (1) The Foreign Affairs, Defence and Trade Committee may itself examine a treaty referred to it or refer the task of examining the treaty to any other select committee.
- (2) If the Foreign Affairs, Defence and Trade Committee is not due to meet within seven days of the presentation of a treaty, and the subject area of the treaty is clearly within the terms of reference of another select committee, the chairperson may refer the treaty to that committee for examination and report to the House.

386H Reports by select committees on treaties

- (1) A select committee must report to the House on any treaty that has been referred to it.
- (2) In examining a treaty and the accompanying national interest analysis, the committee considers whether the treaty ought to be drawn to the attention of the House.

- (3) The committee must include the national interest analysis as an appendix to its report.
- 3.8 There are many similarities in the treaty review processes adopted by the Australian and New Zealand Parliaments: the tabling of proposed treaty actions before binding treaty action is taken; the presentation of national interest analyses describing the purpose and impact of the proposed action; the Executive's reserve power to take urgent treaty action in circumstances where such action is determined to be in the national interest; and the expectation that committees will report on proposed treaty actions within 15 sitting days.
- 3.9 The main points of difference are that:
- in Australia, both multilateral and bilateral treaty actions are presented to Parliament, whereas in New Zealand there is apparently a limitation on the extent to which bilateral treaty actions are presented (see Standing Order 386E (1) (d) above); and
 - in Australia, the Treaties Committee reviews and reports on all proposed treaty actions, whereas in New Zealand the Foreign Affairs, Defence and Trade Select Committee may either examine a treaty itself or refer the task to any other select committee (see Standing Order 386G (1) above).
- 3.10 We were told that the Foreign Affairs, Defence and Trade Select Committee refers treaties to other select committees where it considers that a subject specific select committee is better placed than itself to deal with the technical issues canvassed in a treaty. For example, air services and aviation agreements would typically be referred to the Transport and Industrial Relations Select Committee rather than being considered by the Foreign Affairs, Defence and Trade Committee.
- 3.11 We were particularly interested to note the comment made by members of the Foreign Affairs, Defence and Trade Committee that the parliamentary review processes were introduced in response to general community concern about the closed nature of treaty making. This sense of treaty making being conducted behind closed doors, without the involvement of elected parliaments, was also one of the main reasons for the 1996 Australian treaty making reforms.

Other meetings

- 3.12 The other highlights of our participation in the exchange program were meetings with:

- the Clerk of the House of Representatives, David McGee, and staff of the House of Representatives Select Committee Office;
- the President of the Law Commission of New Zealand, the Hon Justice David Baragwanath, and Douglas Dugdale, Denese Henare and Paul Heath, all of whom are members of the Law Commission;
- the Speaker of the House of Representatives, the Rt Hon Jonathan Hunt; and
- the Rt Hon Justice Sir Kenneth Keith, Judge of the New Zealand Court of Appeal and former President of the Law Commission.

3.13 Each of these meetings was valuable.

Meeting with the Clerk of the House of Representatives

3.14 The meeting with Mr McGee and his staff was an opportunity for us to learn more of the treaty review work of select committees in the New Zealand Parliament and respond to questions about our own review practices and procedures.

Meeting with the Law Commission

3.15 Our meeting with Justice Baragwanath and his fellow Commissioners provided a New Zealand perspective on the impact of international law on domestic law and on the role that small and medium sized nations can play in developing international law.

3.16 We heard of the role being played by the Commission in the work of the United Nations Commission on International Trade Law (UNCITRAL). The Commission believes it is crucially important for countries like New Zealand (and Australia) to be actively involved in developing model laws in the areas of cross-border insolvency, electronic commerce and computer crime. The consequences of not being involved in such debates are that domestic law may have to bend to fit international law, rather than international law being made to reflect domestic priorities.

3.17 A related debate in which the Commission is involved is how best to resolve the conflicts that will arise between the laws of different countries as electronic commerce proliferates. The Commission foresees that resolving conflict of laws problems, and perhaps harmonising international conflict of laws rules, will be one of the most significant issues to be addressed by the international community over the coming years.

- 3.18 We also discussed the possibility that the Commission may seek to encourage the integration of Maori law, the jurisprudence arising from the Treaty of Waitangi and common law notions of equity and property law. This new body of law could be used in the Maori Land Courts to help resolve Treaty of Waitangi-related land and fishing rights claims.

Meeting with the Speaker of the House of Representatives

- 3.19 After attending Question Time in the House of Representatives on Wednesday 29 March, we met with the Speaker, the Rt Hon Jonathan Hunt. Our discussion canvassed a wide range of issues, including:
- some of the unique aspects of New Zealand's parliamentary procedures (supplementary questions to Ministers in Question Time, questions to Committee Chairs and the fact that there are very few divisions in the Chamber);
 - the role and operation of select committees;
 - female representation in the New Zealand Parliament (said to be 30% representation, the 4th highest proportion in the world); and
 - the operation of the mixed member proportional (MMP) electoral system.

Meeting with Sir Kenneth Keith

- 3.20 Sir Kenneth Keith, an eminent jurist, gave us a fascinating insight into the impact of international law on domestic law.
- 3.21 Sir Kenneth observed that:
- New Zealand has a statutory, non-entrenched Bill of Rights, which draws on the International Covenant on Civil and Political Rights;
 - many Court of Appeal cases now involve references to international law and standards and to decisions in international tribunals;
 - international law is also being referred to in Treaty of Waitangi cases before the Maori Land Court;
 - in practical terms, ready access to the Internet means that more international case law is available to lawyers and judges than ever before; and
 - international law is often constructed in broadly aspirational terms and does not usually contain the sort of detail that can help resolve difficult cases – it can provide useful statements of general principle but is rarely decisive.

- 3.22 The theme of Sir Kenneth's comments was that the old certainties about parliaments and judges being the source of our law have shifted dramatically. Matters that were formerly in the political and diplomatic realm are now being drawn into the law. He cited, for example, the weight now being given to the decisions from dispute resolution bodies established by the World Trade Organisation.
- 3.23 Sir Kenneth concluded by noting that governments need to strive to maintain a balance between universality, nationality and local diversity. There are some common trans-national standards, but communities must decide how far down these principles should be projected.

Acknowledgments

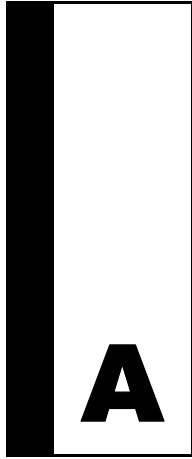
- 3.24 Our participation in the committee exchange program gave us a valuable opportunity to meet with fellow parliamentarians and international law experts.
- 3.25 We would like to thank the Speaker of the New Zealand House of Representatives, the Rt Hon Jonathan Hunt, for hosting our visit; the members and staff of the Foreign Affairs, Defence and Trade Committee (particularly the Chairperson of the Committee, Graham Kelly) for exchanging their thoughts and experiences with us; and the many people with whom we met for giving freely of their time and expertise.
- 3.26 We also greatly appreciate the assistance we received from the Australian High Commissioner and his staff (for providing us with a comprehensive briefing at the beginning of our visit and co-hosting a reception at the High Commission), and from Max Simmons in the New Zealand Department of Internal Affairs (for ensuring that all the administrative and logistic arrangements proceeded smoothly).
- 3.27 All of the discussions we had confirmed our view that parliamentary consideration of proposed treaty actions is an essential part of a modern democracy.
- 3.28 The scope and impact of international law is growing at a pace that is not likely to diminish. It is vital that national governments participate in the development of this law. It is equally vital that parliamentarians represent the interests of their communities in this process. The challenge for governments, parliaments and communities around the world is to ensure that international law develops in a way that reflects and promotes local priorities.

- 3.29 It is perhaps not surprising, given our place in the world and our shared history, that the Australian and New Zealand Parliaments have a common understanding of these issues and have developed similar responses.
- 3.30 We are grateful to have had the opportunity to learn more about the New Zealand Parliament's response to these challenges. We are also grateful that we had the opportunity to debate and reflect upon on emerging issues in treaty making in a way that our day to day work does not allow.

ANDREW THOMSON MP

Committee Chairman

30 May 2000



Appendix A - Extract from Resolution of Appointment

The Resolution of Appointment for 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 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, or
 - (ii) a Minister; and
- (c) 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.



Appendix B - National Interest Analysis

Agreement on Social Security between Australia and Italy and Exchange of Notes constituting an Agreement between Australia and Italy, amending and clarifying the Agreement on Social Security

Date of Proposed Binding Treaty Action

There are two treaty actions proposed: one is lodgement of Australia's instrument of ratification to bring into force the Agreement on Social Security with the Republic of Italy, which was signed on 13 September 1993 ('the 1993 Agreement'); and the other an exchange of Notes constituting an Agreement between Australia and the Republic of Italy to amend and clarify the 1993 Agreement ('the Amendment'). Unless otherwise indicated this NIA will describe the provisions of the 1993 Agreement only.

In accordance with Article 23(1), the 1993 Agreement will enter into force on the first day of the month following that in which instruments of ratification are exchanged. The Amendment will enter into force at the same time. It is proposed that exchange of Notes and lodgement of instruments of ratification take place before the end of July to enable entry into force on 1 August 2000.

When the 1993 Agreement enters into force, the present Agreement between Australia and the Republic of Italy providing for reciprocity in matters relating to Social Security of 23 April 1986 (the 1986 Agreement), shall terminate in accordance with the provisions of Article 23(2) of the 1993 Agreement. Article 23(3) preserves qualification for people receiving benefits under the 1986 Agreement.

Date of Tabling of the Proposed Treaty Action

4 April 2000 – National Interest Analysis and the Amendment.

The text of the 1993 Agreement was tabled in both Houses of the Commonwealth Parliament on 23 November 1993.

Tabling of the exchange of Notes constituting the Amendment prior to exchange has been agreed with the Republic of Italy.

Reasons for Australia to take the Proposed Treaty Action

Background

The 1986 Agreement has been in force since 1988. It was the first of Australia's new style agreements that shared the responsibility for income support (primarily retirement) for people who have moved between Australia and Italy. It replaced the 1972 Agreement, which became redundant when Australia unilaterally made all pensions payable overseas indefinitely in 1973.

As with all Australia's shared responsibility social security Agreements, the 1986 Agreement with Italy provides better welfare protection to people who move between the two countries. The 1986 Agreement benefits about 41,000 former Italian residents in Australia, as well as approximately 15,000 former Australian residents now living in Italy.

In accordance with the provisions of the 1986 Agreement the Parties reviewed that Agreement in light of changes in policy and legislation in both countries. The text of a revised Agreement was signed in 1993. Italy advised in 1999 that its domestic requirements had been met for formal ratification to proceed.

The 1993 Agreement will bring economic and political benefits to Australia, similar to the 1986 Agreement, as well as offering better social welfare protection to people who move between the two countries. At present, Italy is paying into Australia a total of A\$229m a year in pensions. Australia pays A\$71m a year in pensions into Italy, of which A\$47m is paid under the 1986 Agreement, and the balance is paid under Australian domestic portability law.

Changes in the 1993 Agreement

In summary, the major changes proposed in the 1993 Agreement are:

Article 1(1)(f) is clear in limiting payment of Disability support pension (DSP) under the 1993 Agreement to people who are considered to be severely disabled, ie people assessed as having no capacity to work or no prospects for rehabilitation within the next two years. This differs from the 1986 Agreement which included payment of DSP for the non-severely disabled. This is in line with the general restriction on payment overseas of DSP for the non-severely disabled introduced from November 1991 in the *Social Security Act 1991* and reflects the growing focus in Australia on rehabilitation, something that is not possible to administer overseas. However, people who are in receipt of DSP under the 1986 Agreement will continue to qualify for that pension.

- Article 1(1)(m) extends the coverage of spouse carer pension to the partner (legal or de facto spouse) of either sex who is caring for a recipient of a DSP

or of an age pension. Under the 1986 Agreement payment is restricted to a legal husband caring for his wife. Italy asked for the extension on the grounds that Italian legislation provides for the payment of invalidity attendance allowance in similar circumstances.

- Article 8(1) extends the income test concession on Italian contributory pensions contained in the 1986 Agreement to income received by non-pensioner partners and to Italian pensions granted independent of the 1986 Agreement. This concession is contained in all Australia's shared responsibility Agreements and helps to offset the combined effect of Australia's income testing and proportional portability, which would otherwise result in Australia not sharing fairly in the support of people who have spent part of their working life here. The article also provides that Italian welfare payments and supplements designed to ensure people receive minimum incomes are not income tested by Australia. This is also in keeping with Australia's other Agreements.
- Article 18 aligns the portability provisions for pensions with Australian domestic law. This ensures that pensions granted under the 1993 Agreement have the same portability rights and restrictions as if they were granted in Australia under domestic law.
- Article 23(5) provides for the restoration of pension payments to certain widows whose payments were cancelled in 1992 because of changes in Australian domestic legislation. Italy saw this as an essential condition of finalising the new Agreement.

Changes in the Amendment

The unratified 1993 Agreement was reviewed in 1997 to cater for terminology changes and to clarify the operation of the income testing provisions. The two changes proposed in the Amendment which are not solely related to terminology are:

- Under amendment 2, the welfare supplement that Italy introduced in 1995 for pensions paid under the 1986 Agreement, and which is disregarded from the Australian income test under the 1986 Agreement, will continue to be disregarded from the Australian income test under the 1993 Agreement; and
- Under amendment 5, the rate of Australian benefits to be paid under the Agreement to people who are outside Australia, and enjoy an income test concession on the contributory benefits they receive from Italy, will in no case exceed the rate that could otherwise be payable if these people were in Australia and had met the residential requirements for that benefit - this is consistent with the arrangements under the 1986 Agreement.

Obligations

Article 1(1)(f) limits Australia's obligations in regard to payment of disability support pension under the Agreement to people who are severely disabled.

Article 1(1)(m) limits Australia's obligations in regard to payment of spouse carer pension to the partner (legal or de facto spouse) of either sex who is caring for an age pensioner or severely disabled disability support pensioner partner of the opposite sex. There is no such requirement under the *Social Security Act 1991* (the Act) for the carer's partner to be in receipt of a pension.

Article 2 - Legislative Scope - specifies the social security benefits covered by the 1993 Agreement. For Australia, age pension, disability support pension, wife pension, pensions payable to widows (now only parenting payment single), widowed person allowance (now known as bereavement allowance), spouse carer pension (now carer payment), double orphan pension and supplements for children paid under the Act are covered. The Italian benefits reciprocate, either directly or generally, the Australian benefits in the Agreement.

Article 4 - Equality of Treatment – provides that persons to whom this Agreement applies shall be treated equally by both countries in regard to entitlements and obligations derived from the legislation. It also protects citizens of both countries against discriminatory treatment on the basis of nationality, should either country decide to impose further restrictions upon social security benefits based on citizenship or nationality.

Article 5 - Residence or Presence in Italy or in a Third Country - is a standard article in Australia's shared responsibility agreements. It is unilateral for Australia and overcomes the requirement to be an Australian resident and in Australia in order to lodge a claim for benefit. Under Article 5, a person who is a resident of Australia, Italy or a third country with which Australia has an appropriate Agreement (currently Spain, Malta, Ireland, Austria, The Netherlands, Canada, Portugal or Cyprus), and is in Australia, Italy or that third country, will be able to lodge a claim for an Australian pension providing they have been an Australian resident at some time.

The Article also makes clear that the requirement to have been an Australian resident at some time does not apply to a person who claims a double orphan pension. The reason that double orphan pension is excluded from that requirement is that payment is made on behalf of the child (not the claimant). Thus, even while the child must have been an Australian resident when its sole surviving parent died, under the Agreement the claimant need never have been an Australian resident.

While this article allows someone to claim a carer payment outside Australia, subsection 198(4) of the Act also requires that they be in Australia to continue to qualify for payment. This is overcome by Article 9(2) for people in Italy.

Article 6 - Partner-related Australian Benefits - is a standard article, unilateral to Australia. It ensures that, if a person who is qualified to receive an Australian benefit (eg wife pension) because his/her partner receives a benefit under the Agreement, the rate of that person's benefit will be calculated (like the partner's) in accordance with the provisions of the Agreement. This means that direct deductions would apply in Australia and proportional portability would operate from the first day of absence from Australia.

Article 7 - Totalisation for Australia - is a standard article in shared responsibility agreements. Agreements of this kind allow claimants to meet the minimum qualifying period (in this instance periods as an Australian resident) for the benefits of one country by totalising with the social security periods of the other (in this case periods of credited contributions in Italy). Italy's corresponding provision is in Article 11.

The rules for using this provision and the extent to which it may be used are modified in subsequent paragraphs of this Article. Article 7(1)(b) stipulates that the provision can be used only by people with the minimum period of Australian working life residence (the Agreement minimum) specified in Article 7(4).

Article 7(2) reflects the fact that Australian law requires certain continuous periods of residence in addition to the minimum qualifying periods for pensions. For example, while a person needs ten years as an Australian resident for age pension, and that ten year period can be an accumulation of separate periods during a person's life, a period of five continuous years also must be present within the ten year total to meet the Australian residence requirement. This added requirement for a continuous period is an existing feature of Australia's residence-based system.

Under contributory systems, such as Italy's, the individual runs a risk of having continuity of the contribution record interrupted even while still a resident of the country - eg periods of unemployment. The 1993 Agreement acknowledges the disparity between the schemes by deeming all periods of contribution to be continuous in order to overcome Australia's continuity rule.

Article 7(3) is a standard provision and addresses the occurrence of overlapping or coinciding periods when an individual may be accruing a residence and a contribution record in both countries at the same time. For example, an Australian resident paying voluntary contributions to Italy's social security system would be in that situation. This paragraph ensures that when this situation is present, there will not be double counting for totalisation. Australia will count periods of residence as such and ignore in the totalisation process any Italian contributions paid during those periods.

Article 7(4) reflects Australia's standard approach under totalisation agreements, setting a minimum period of 12 months Australian working life residence before a former resident may use the totalisation provisions. The reason for this is to avoid

the incidence of very small payments overseas. For example, a person with Australian working life residence of 6 months might be able to gain entitlement to Australian age pension by combining 9 1/2 years of Italian contributions with that 6 months. If the person were in Italy, this could produce 1/50th of a means-tested Australian pension. On current maximum rates, an individual in that position would get a payment from Australia of approximately \$190 a year or \$15 each four weeks. However, a more likely scenario, where a person has contributed to another country's system for the bulk of working life, would see a yearly Australian rate well below the maximum being paid, resulting in minuscule four weekly cheques. To avoid these administrative costs and problems, Australia sets a minimum of 12 months Australian working life residence (on which a resulting overseas rate would be based) before an individual outside Australia can use periods of credited contributions in Italy as periods as an Australian resident. However, for an Australian resident, Australia will allow an individual to totalise from zero Australian working life residence in order that the new settler can be integrated into the Australian system immediately.

Article 7(5) eases access to Agreement benefits for widows. Traditionally, those women who worked in the home and did not acquire employment histories and consequent contribution records like their male counterparts have been disadvantaged under contributory social security systems. Australia's universal, residence-based system avoids this inequity. Contributory systems compensate for such disadvantages through reversionary pensions. Under Italy's system, a survivor's pension will flow to a widow who has no contribution record, based solely on her late husband's contribution record.

The Australian system does not have reversionary or survivor pensions. A widow, for example, must acquire entitlement to an Australian pension based on her own residence. The history of Italian emigration to Australia features many cases where a husband has spent long periods in Australia and his wife has little, if any, residence in Australia. The situation would not be uncommon where a widow in Italy would not qualify for an Australian pension even though her late husband was an Australian resident for most of his working life.

To ease this situation for women, and to acknowledge the basic differences in the social security systems of Australia and Italy, Australia will allow a widow who meets the Agreement minimum to use her late husband's periods of credited contributions for totalisation. If the widow has periods of credited contributions during the same period as the husband, her periods will be counted only. This provision appears in later Agreements.

The rate of any benefit to which access is gained because of Article 7 is not influenced by any provision of the Article.

Article 8 – Calculation of Australian Benefits - greatly simplifies the rate calculation provisions present in the current Agreement. There are no longer

comparisons of inside and outside Australia rates, and proportional portability rate calculations and savings provisions have been removed as the latter have been included in Australian legislation since the 1986 Agreement was negotiated.

Article 8(1) prescribes how Italian benefits shall be assessed in relation to the calculation of Australian pensions (excluding double orphan pension) under the 1993 Agreement or under Australian legislation for someone outside Australia. Paragraph 8 (1)(a) extends the income test disregard under the 1986 Agreement (which already included the Italian integration) to the Italian social supplement and to the component of family benefit for dependants of pensioners.

Article 8(1)(b) provides for the Italian social pension to be disregarded from the income test. This is in keeping with Australia's other Agreements in which income tested welfare pensions are disregarded from the Australian income test. The Italian social pension is paid to residents of Italy only. This approach avoids circularity in income testing and ensures that Italy's intention to maintain people above the poverty line in Italy is not undermined by Australia clawing back disposable income.

Article 8(1)(c) refers to the income test concession originally developed in the 1986 Agreement with Italy and since extended to other Agreements. It is applied to the contributory component of Italian pension when assessing the Australian rate for people overseas. It is designed to reduce the combined effect of Australia's income testing and proportional portability so that Australia contributes fairly to the support of people in the Agreement country who have spent part of their working life in Australia. The 1993 Agreement extends the concession to people who qualify without the aid of the Agreement (autonomous pensioners), which will achieve consistency with Australia's other Agreements.

Article 9 - Double Orphan Pension and Spouse Carer pension - is needed to overcome restrictions on the grant and payment of a double orphan pension and spouse carer pension to residents of Italy.

Article 9(1) ensures that, when a child is orphaned in Australia, the guardian shall have access to double orphan pension for that child while the guardian and the child live in Italy. Unlike all other Australian benefits in the 1993 Agreement, qualification hinges on the residence of someone other than the claimant.

Article 9(2) deems a person who is in Italy to be in Australia for the purposes of meeting the requirement in subsection 198(4) of the *Social Security Act 1991* for the person to be in Australia for ongoing qualification for carer payment. This is necessary because the Agreement's claim lodgement provisions (Article 5) are only sufficient to enable the person to lodge a claim.

Article 10 - Exclusion of Specified Italian Payments from the Australian Income Test - replaces Article 17 of the 1986 Agreement. It details the components of Italian benefit, which are to be disregarded from the income test when assessing

the rate of Australian Agreement and autonomous pensions. The paragraph is made subject to Article 8(3) to reinforce the intention not to exclude these payments from the Italian benefit when establishing the new maximum rate of Australian benefit for people in Australia claiming under the 1993 Agreement.

Article 10 (2) formalises the way in which the 1986 Agreement was administered. It specifically extends the concessions of Article 10 to newstart and sickness allowance.

Article 11 - Totalisation for Italy - is the Italian version of Article 7.

Article 11(1) provides that Italy will count periods of Australian working life residence as periods of credited contributions, subject to minimum contribution periods required by Italian legislation, for the purposes of qualifying for Italian benefits.

Article 11(2) specifies the minimum contribution requirements for each Italian payment. Unlike Australia's social security system, a rate of benefit under Italy's contributory system can be calculated only when there are periods of contributions. Accordingly, these minimums apply regardless of whether the claimant is inside or outside Italy.

Article 11(3) extends the totalisation provisions to benefits derived from voluntary contributions, subject to a minimum of 1 year's actual contributions.

Article 12 - Italian Pro-Rata Benefits - is the standard pro-rata formula for calculating Agreement benefits.

The amount of Italian benefit payable is calculated according to the ratio of the period of credited contributions and the sum of the period of credited contributions and the period of Australian working life residence for that person.

Article 12(2) limits the denominator of the factor for the pro-rata calculation in subparagraph 1(b) to the maximum contributory period under Italian legislation (currently 40 years).

Article 12(3) is necessary because Italian pensions are salary related. Italy specifies here that it will use Italian salaries only to calculate rates under 1993 Agreement.

Article 13 - Exclusion of Specified Australian Payments from the Italian Income Test - is Italy's reciprocating on income test concessions. The Italian integration, the Italian social supplement and Italian family allowance for the dependants of pensioners and social pension are all income tested by Italy. This Article provides that Australia's supplements for children will not be taken into account as income in that process.

Article 14 - Unemployment Allowance - restricts the application of Article 11 in regard to eligibility for Italian unemployment allowance. Periods of actual

employment in Australia rather than periods of Australian working life residence will be used only.

Article 15 – Family Benefits – provides that Italy will pay family benefits to Australian residents and Australia will not disqualify claimants for Australian family benefits solely because of the receipt of Italian family benefits.

Article 16 - Lodgement of Claims – Article 16(1) prevents the lodgement of claims before the date of entry into force of the 1993 Agreement.

Article 16(2) ensures that the date on which a claim for benefit from one country is lodged in the other or in a third country described in Article 5 will be accepted as the valid date of lodgement for the purposes of the claim.

Article 17 - Determination of Claims - Article 17(1) ensures that events which have a bearing on qualification and which occurred before the date of entry into force of the 1993 Agreement are admissible.

Article 17(2) stipulates the start date for benefits. In Australia's case, the start date will be the payday following the date of lodgement of the claim or the date on which eligibility begins, whichever is later after the 1993 Agreement enters into force. For Italy, the start date will be the date from which eligibility begins so long as that date does not precede the entry into force of the Agreement.

Article 17(5) is a standard embargo provision. It is designed to cover situations where one country may be tardy in determining and granting a benefit and that causes the other to pay a higher rate of income tested benefit in the meantime. The provision will allow the country which has advanced entitlements to recover that advance from the arrears of benefit eventually paid by the other. The provision is in keeping with the shared-responsibility principle of the Agreement.

Article 18 - Portability of Benefits - Article 18(1) provides that all the benefits listed in the legislative scope (Article 2) can be paid in the territories of Italy and Australia without restriction, whether paid under the Agreement or autonomously.

Article 18(2) aligns the wider portability of Agreement benefits with the arrangements under the respective domestic laws of each country.

Article 18(3) provides that if there are time limits on portability of benefits then those time restrictions also apply to people who are absent from the other country.

Article 18(4) is a standard provision in Australia's agreements to ensure that neither country will deduct administrative costs for paying their pensions overseas.

Article 19 - Administrative Arrangements - provides for the Parties to the Agreement to make a less than treaty status document, called an Administrative Arrangement, to implement and administer the Agreement. These working rules

for agreements usually need periodic amendment when either or both parties change their administrative practices. The necessary changes can occur more easily if these rules are kept apart from the main treaty.

Article 20 - Exchange of Information and Mutual Assistance - is a standard article on information exchange and mutual assistance. Australia and Italy agree to help each other in claim processing, information exchange, administrative arrangements and dealing with inquiries from the public so that the Agreement can be administered properly.

Article 20(1) sets out the mechanisms to ensure the effective implementation of the Agreement and its continued operation. For example, Australia will accept claims for Italian benefits from Australian residents who wish to claim through the 1993 Agreement or an agreement Italy has with another country.

Article 20(2) obliges Australia and Italy to provide their assistance without imposing fees, unless the authorities of both countries decide otherwise in the Administrative Arrangements.

Australian and Italian laws protect the privacy of information collected for social security purposes and Articles 20(3) and (4) preserve this protection. It also makes sure that neither country will use the Agreement to ask the other for administrative assistance or information, which is contrary to its law or practices.

Article 21 - Appeals - is a standard article to ensure that appeal rights normally available to all social security claimants are extended to Agreement claimants and beneficiaries. Article 21(4) makes it clear that the Article does not create jurisdiction in tribunals outside the ambit of Australian social security legislation.

Article 22 - Review of Agreement - allows for the review of the whole or any part of the 1993 Agreement. Article 22(2) provides the Parties shall consult regarding a review after the Agreement has been in force for 4 years. Article 23(3) provides that the Parties shall consult if one Party requests it as a result of a legislative change.

Article 23 - Entry into Force and Transitional Provisions - contains the provisions for bringing the 1993 Agreement into force and protecting entitlements under the 1986 Agreement.

Article 23(1) provides that the Agreement shall be ratified by both Parties and shall enter into force on the first day of the month following that in which there has been an exchange of instruments of ratification.

Article 23(2) provides for the termination of the 1986 Agreement on the entry into force of the 1993 Agreement.

Article 23(3) protects qualification for benefits under the 1986 Agreement.

Article 23(4) provides that the rate of benefits payable to people whose qualification is preserved under Article 23(3) shall, subject to the 1993 Agreement, be in accordance with the legislation of the relevant Party.

Article 23(5) provides for the restoration of payment to a small number of widows whose pensions were cancelled in 1992. All were former recipients of widow B pension who had never been Australian residents but had the pensions granted as a result of an anomaly in the 1986 Agreement which, unlike later Agreements, did not specifically exclude from the application of the lodgement Article, people who have never been Australian residents. Section 1215 of the *Social Security Act 1991*, effective from 1 July 1992, excludes women who have never been Australian residents from widow B pension, hence the specific reference to that section in this paragraph to clarify that these widows' pensions will be continued despite the legislative amendment.

The Amendment obliges Australia to disregard from the Australian income test, the welfare supplement Italy introduced in 1995. This supplement is disregarded under the broader definition of Italian supplement in the 1986 Agreement. However, the definition of Italian integration in the 1993 Agreement is very specific and does not include this payment. Without the Amendment there would be no legal basis on which to continue to disregard this payment.

The Amendment also ensures that the rate of Australian benefits to be paid under the Agreement to people who are outside Australia, and enjoy an income test concession on the contributory benefits they receive from Italy, will in no case exceed the rate that could otherwise be payable if these people were in Australia and had met the residential requirements for that benefit. This is consistent with the arrangements under the 1986 Agreement.

Costs

The 1993 Agreement once in force is expected to result in a marginal increase in costs for Australia of A\$2.555m in the first year, A\$0.422m in 2001-02, A\$0.366 in 2002-03 and A\$0.386m in 2003-04. The first year cost is primarily because of the cost of restoring and paying arrears of widow B pensions to widows whose pensions were cancelled in 1992. There will also be some costs involved in the administration of the program and system changes (see table below). However, as mentioned earlier, the 1986 and 1993 Agreements are of significant benefit to Australia overall, with Italy paying approximately A\$229m per year in pensions into Australia and Australia only paying about A\$71m per year into Italy.

Savings from restricting future grants of disability support pension to the severely disabled will not be significant in the first few years.

Financial Implications for the Department of Family and Community Services

1993 Agreement with Italy	2000-2001	2001-2002	2002-2003	2003-2004	Total
	A\$m	A\$m	A\$m	A\$m	A\$m
Administrative	1.298	0.330	0.274	0.294	2.196
Departmental	1.257	0.92	0.92	0.92	1.533
Total	2.555	0.422	0.366	0.386	3.729

Future Protocols, Annexes, and other legally binding Instruments

The 1993 Agreement does not provide for future protocols.

Article 22(1) allows either party to review the whole or any part of the Agreement. Article 22(2) provides that the 1993 Agreement shall be reviewed four years after it has entered into force. Article 22(3) provides that the Parties shall consult as to the need for an amendment of the Agreement as a result of a legislative change if one Party so requests.

Implementation

A new Schedule, containing the full text of the 1993 Agreement and the Amendment will be added to the *Social Security (International Agreements) Act 1999* and will replace the 1986 Agreement. The regulation-making powers contained in sections 8 and 25 of that Act will be used to implement the 1993 Agreement.

The text of the 1993 Agreement was inserted into the *Social Security Act 1991* (the Act) by the *Social Security Legislation Amendment Act 1994*. However, because Part 4.1 of the Act, International Agreements, was repealed with the introduction of the *Social Security (International Agreements Act) 1999*, it is now necessary to table regulations to include the 1993 Agreement as a new Schedule and to repeal the 1986 Agreement.

Consultation

State and Territory Governments were advised of the 1993 Agreement through the Standing Committee on Treaties 'Schedule of Treaties Action'.

The Commonwealth Department of Family and Community Services sought the views of the following community groups, representatives of the Italian community and state and territory governments.

Community Groups

ACROD – the National Industry Association for Disability Services

Association of Independent Retirees

Association of Superannuation Funds of Australia

Australian Catholic Social Welfare Commission

Australian Council of Retiree Organisations

Australian Council of Social Services ACOSS

Australian Pensioners and Superannuants Federation

Australian Red Cross Society

Australian Retirement Incomes Streams Assoc

The Brotherhood of St Laurence

Combined Pensioners & Superannuants Assoc

COTA

Federation of Ethnic Community Councils of Australia

National Ethnic Disability Alliance

National Seniors Association

National Welfare Rights Network

St Vincent de Paul Society, National Council

The Salvation Army

Representatives of the Italian community

Italian “Patronati” Organisations (Patronati are welfare agencies funded by the Italian government to provide services to Italian unemployed and retired. They exist in Italy and in other countries with a large Italian community in residence. To a large extent the services provided by Patronati involve assisting with the completion of forms and mediating with bureaucracy on behalf of customers).

ITAL-UIL - Institute of Assistance, Italian Union of Labour

ACLI-UIPI

ENASCO - Italian National Institute for Social Assistance

EPASA

INAS-CSIL - National Institute of Social Assistance

CO-AS-IT - Comitato Assistenza Italiano

INCA-CGIL - National (Italian) Trade Union Welfare Institute

State and Territory governments

Senior Adviser, Government Branch VIC

Principal Project Officer, Intergovernmental and Regulatory Reform Branch NSW

Director, Policy Division TAS

Director, Intergovernmental Relations QLD

Director, Federal and Constitutional Affairs WA

Director, Social Policy and Intergovernmental Relations SA,

Department of the Chief Minister, NT

Intergovernmental Relations ACT

The following organisations, which responded to our consultation process, were all supportive of the 1993 Agreement.

Community Groups

Association of Independent Retirees

National Seniors Association

Representatives of the Italian community

CO-AS-IT - Comitato Assistenza Italiano

INCA-CGIL - National (Italian) Trade Union Welfare Institute

State and Territory governments

Senior Adviser, Government Branch VIC

Director, Intergovernmental Relations QLD

Director, Federal and Constitutional Affairs WA

No negative comments were received.

Withdrawal or Denunciation

Article 24 specifies that either Party can terminate the 1993 Agreement.

Termination would occur 12 months after written notice of termination is received by one party through the diplomatic channel. The 1993 Agreement shall continue to have effect for all those people receiving benefits under the Agreement at the date of termination or who have claimed and are entitled to receive benefits before termination becomes effective.

Contact Details

International Branch

Department of Family and Community Services

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT, DONE AT
CANBERRA ON 2000, AMENDING AND CLARIFYING THE
AGREEMENT ON SOCIAL SECURITY BETWEEN AUSTRALIA AND THE
REPUBLIC OF ITALY OF 13 SEPTEMBER 1993

The Department of Foreign Affairs and Trade presents its compliments to the Embassy of Italy and has the honour to refer to the Agreement on Social Security between Australia and the Republic of Italy, done at Rome on 13 September 1993 (“the Agreement”) and to recent discussions between the relevant authorities of Australia and the Republic of Italy.

The Department notes that since the agreement was signed there have been changes to the legislation of both Parties which affect the interpretation and implementation of the Agreement.

Therefore the Department has the honour to propose the following amendments to, and clarifications of the Agreement:

1. The definition in Article 1.1(g) of the Agreement shall be read as follows:
“(g) *institution* – means an institution apart from the competent authority, which is responsible for the application of this Agreement as specified in the administrative arrangements for this Agreement.”
2. The definition in Article 1.1(h) of “Italian integration” shall be read so as to include also the differential amount according to Law 335/95 of Italy in addition to that which is already covered in that definition.
3. The benefit referred to as “carer pension” in Article 1.1(m) shall read “carer payment”.
4. The benefit referred to as “widowed person allowance” in sub-paragraph (v) of Article 2.1(a) shall read “bereavement allowance”.
5. In the interpretation of Article 8.1 where reference is made to the rate of the benefit being determined under Australian legislation, that rate shall always be read so as not to exceed the rate payable to the relevant person if that person were in Australia and had met the residential requirements for that benefit.

If the foregoing proposal is acceptable to the Embassy of Italy, the Department of Foreign Affairs and Trade has the honour to propose that this Note and the reply from the Embassy of Italy to that effect, shall constitute an agreement between the Government of Australia and the Government of the Republic of Italy, which shall enter into force on the same day as the Agreement enters into force.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the Embassy of Italy the assurance of its highest consideration.

The Embassy of Italy presents its compliments to the Department of Foreign Affairs and Trade and has the honour to refer to the Department's Note No. xx of xx xxx 2000 which reads as follows:

"The Department of Foreign Affairs and Trade presents its compliments to the Embassy of Italy and has the honour to refer to the Agreement on Social Security between Australia and the Republic of Italy, done at Rome on 13 September 1993 ("the Agreement") and to recent discussions between the relevant authorities of Australia and the Republic of Italy.

The Department notes that since the Agreement was signed there have been changes to the legislation of both Parties which affect the interpretation and implementation of the Agreement.

Therefore the Department has the honour to propose the following amendments to and clarifications of the Agreement:

1. The definition in Article 1.1(g) of the agreement shall be read as follows: "(g) *institution* – means an institution apart from the competent authority which is responsible for the application of this Agreement as specified in the administrative arrangements for this Agreement,"
2. The definition in Article 1.1(h) of "Italian integration" shall be read so as to include also the differential amount according to Law 335/95 of Italy in addition to that which is already covered in that definition.
3. The benefit referred to as "carer pension" in Article 1.1(m) shall read "carer payment".
4. The benefit referred to as "widowed person allowance" in subparagraph (v) of Article 2.1(a) shall read "bereavement allowance".
5. In the interpretation of Article 8.1 where reference is made to the rate of the benefit being determined under Australian legislation, that rate shall always be read so as not to exceed the rate payable to the relevant person if that person were in Australia and had met the residential requirements for that benefit.

If the foregoing proposal is acceptable to the Embassy of Italy, the Department of Foreign Affairs and Trade has the honour to propose that this Note and the reply from the Embassy of Italy to that effect, shall constitute an agreement between the Government of Australia and the Government of the Republic of Italy, which shall enter into force on the same day as the Agreement enters into force.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the Embassy of Italy the assurance of its highest consideration.”

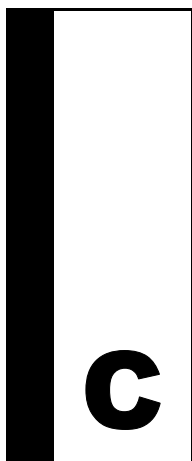
The Embassy of Italy has the honour to confirm that the foregoing is acceptable to the Government of the Republic of Italy and that the Department’s Note and this reply shall together constitute an agreement between the Government of the Republic of Italy and the Government of Australia which shall enter into force on the date the Agreement enters into force.

The Embassy of Italy avails itself of this opportunity to renew to the Department of Foreign Affairs and Trade the assurances of its highest consideration.

Embassy of Italy

Canberra

2000



Appendix C - Submissions

Proposed Agreement on Social Security between Australia and the Republic of Italy

Submission No.	Organisation / Individual
1	Department of Family and Community Services
2	D Knoch, President, ALMA Art Society
3	WA Ministry of the Premier and Cabinet
4	Daribor Maroevic
5	South Australian Government



Appendix D - Witnesses at Public Hearing

Monday, 8 May 2000, Canberra

Proposed Agreement on Social Security between Australia and the Republic of Italy

Department of Family and Community Affairs

Mr Jeff Whalan, Deputy Secretary, Community and Business Strategy

Mr John McWilliam, Assistant Secretary, International Branch

Mr Peter Hutchinson, Director, International Agreements 2

Co.As.It (Italian Assistance Association)

Mr Giancarlo Martini-Piovano, Director

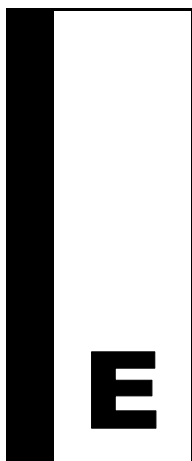
Department of Foreign Affairs and Trade

Mr David Mason, Executive Director, Treaties Secretariat, International Organisations and Legal Division

Attorney-General's Department

Ms Sama Payman, Principal Legal Officer

Ms Mary Wood, Legal Officer



Appendix E – Delegation to New Zealand

Members of the delegation

Hon Andrew Thomson MP (Chairman)

Senator Barney Cooney (Deputy Chairman)

Senator Helen Coonan

Senator Joe Ludwig

Hon Dick Adams MP

Mrs Kay Elson MP

Mr Gary Hardgrave MP

Mr Kim Wilkie MP

Program

Tuesday 28 March 2000

2.55pm Arrive Wellington

4.15pm Briefing from the His Excellency Mr Robert Cotton
(Australian High Commissioner) and staff of the
Australian High Commission

Wednesday 29 March 2000

- | | |
|---------|--|
| 9.00am | Meeting with David McGee (Clerk of the House of Representatives) and staff of the Select Committee Office |
| 11.00am | Meeting with Hon Justice David Baragwanath (President of the New Zealand Law Commission) and Douglas Dugdale, Denise Henare and Paul Heath (Commissioners of the Law Commission) |
| 2.00pm | Attendance at Question Time |
| 3.15pm | Meeting with Rt Hon Jonathan Hunt (Speaker of the House of Representatives) |
| 4.30pm | Meeting with Rt Hon Justice Sir Kenneth Keith |
| 6.00pm | Reception for invited guests at the Australian High Commission (jointly hosted by the delegation and the Australian High Commissioner) |
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Thursday 30 March 2000

- | | |
|---------|---|
| 10.00am | Tour of Te Papa Tongarewa, Museum of New Zealand |
| 11.30am | Meeting with the New Zealand Foreign Affairs, Defence and Trade Select Committee |
| 12.30pm | Lunch with the New Zealand Foreign Affairs, Defence and Trade Select Committee, also attended by Hon Phil Goff (the Minister for Foreign Affairs and Trade and Minister for Justice) and Rt Hon Jonathan Hunt (Speaker of the House of Representatives) |
| 3.50pm | Depart Wellington |
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