



Social Security (International Agreements) Act 1999 Amendment Regulations 2010 (No. 2)¹

Select Legislative Instrument 2010 No. 247

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Social Security (International Agreements) Act 1999* and the *Legislative Instruments Act 2003*.

Dated 14 October 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

JENNY MACKLIN
Minister for Families, Housing, Community Services and
Indigenous Affairs

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1 Name of Regulations

These Regulations are the *Social Security (International Agreements) Act 1999 Amendment Regulations 2010 (No. 2)*.

2 Commencement

- (1) These Regulations commence as follows:
 - (a) on the day after they are registered — regulations 1 to 3;
 - (b) on a day fixed by legislative instrument made by the Minister — Schedule 1;
 - (c) on a day fixed by legislative instrument made by the Minister — Schedule 2.
- (2) A legislative instrument made under paragraph (1) (b) or (c) is:
 - (a) prescribed for the table in subsection 44 (2) of the *Legislative Instruments Act 2003* (so that it is not subject to disallowance); and
 - (b) prescribed for the table in subsection 54 (2) of the *Legislative Instruments Act 2003* (so that it is not subject to sunseting).

3 Amendment of *Social Security (International Agreements) Act 1999*

Schedules 1 and 2 amend the *Social Security (International Agreements) Act 1999*.

**Schedule 1 Amendment commencing on
day fixed by legislative
instrument made under
paragraph 2 (1) (b)**
(regulation 3)

[1] After Schedule 25

insert

Schedule 26 — Former Yugoslav Republic of Macedonia

Note: See section 5.

**AGREEMENT BETWEEN THE GOVERNMENT OF
AUSTRALIA AND THE GOVERNMENT OF THE FORMER
YUGOSLAV REPUBLIC OF MACEDONIA ON SOCIAL
SECURITY**

The Government of Australia and the Government of the former
Yugoslav Republic of Macedonia, hereinafter “the Contracting Parties”,

Wishing to strengthen the existing friendly relations between the two
countries,

and

Being desirous of regulating the relationship between their two countries
with respect to social security benefits and coverage,

Have agreed to conclude the following Agreement:

PART I**GENERAL PROVISIONS****Article 1**
Definitions

1. In this Agreement, unless the context otherwise requires:
 - (1) “**benefit**” means a benefit, pension or allowance that is payable under the legislation of a Contracting Party and includes any additional amount, increase or supplement that is payable but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;
 - (2) “**Competent Authority**” means:

in relation to Australia, the Secretary of the Australian Government Department responsible for the legislation specified in Article 2.1.1.1, except in Part II of the Agreement, and other Parts of the Agreement as they affect that Part, where it means the Commissioner of Taxation or an authorised representative of the Commissioner; and

in relation to the former Yugoslav Republic of Macedonia, the Ministry of Labour and Social Policy;
 - (3) “**Competent Institution**” means:

in relation to Australia, the institution or agency which has the task of implementing the applicable legislation;
and

in relation to the former Yugoslav Republic of Macedonia, the Pension and Disability Insurance Fund;
 - (4) “**insurance periods**” means, in relation to the former Yugoslav Republic of Macedonia, periods for which contributions are paid and periods related to such contributions;

(5) **“legislation”** means:

in relation to Australia, the laws specified in Article 2.1.1.1, except in Part II of the Agreement, and other Parts of the Agreement as they affect that Part, where it means the laws specified in Article 2.1.1.2; and

in relation to the former Yugoslav Republic of Macedonia, the legislation specified in Article 2.1.2;

(6) **“period of Australian working life residence”** means a period defined as such in the legislation of Australia but does not include any period deemed pursuant to Article 11 to be a period in which that person was an Australian resident.

2. Unless the context otherwise requires, any term not defined in this Agreement shall have the meaning assigned to it in the applicable legislation.

Article 2 Legislation

1. Subject to paragraph 2 and 3 of this Article, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, consolidate, supplement or replace them:

1.1 in relation to Australia:

1.1.1 the Acts forming the social security law in so far as the law provides for, applies to or affects the age pension;

1.1.2 the law concerning the superannuation guarantee (which at the time of signature of this Agreement is contained in the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Regulations*);

1.2 in relation to the former Yugoslav Republic of Macedonia, the *Law on Pension and Disability Insurance* regarding:

1.2.1 old age pension;

1.2.2 disability pension;

1.2.3 survivor pension (widows, widowers, children and other members of the family who have rights to benefits) and other pension and disability insurance benefits of the former Yugoslav Republic of Macedonia.

2. Unless otherwise provided in this Agreement, the legislation referred to in this Article shall not include treaties on social security entered into by either Contracting Party with a third State.

3. This Agreement shall apply to future legislation which extends the existing legislation of either Contracting Party to new categories of beneficiaries only if the Competent Authorities so agree in writing.

Article 3 Personal Scope

This Agreement shall apply to any person who is or has been an Australian resident, or is or has been subject to the legislation of the former Yugoslav Republic of Macedonia and, where applicable, to other persons in regard to the rights they derive from a person described above.

Article 4 Equality of Treatment

Unless otherwise provided in this Agreement, all persons to whom this Agreement applies shall be treated equally by a Contracting Party in regard to rights and obligations regarding eligibility for and payment of benefits which arise whether directly under the legislation of that Contracting Party or by virtue of this Agreement.

PART II
PROVISIONS CONCERNING THE APPLICABLE
LEGISLATION

Article 5
Purpose of this Part

The purpose of this Part is to ensure that employers and employees who are subject to the legislation of Australia or the former Yugoslav Republic of Macedonia do not have a double liability under the legislation of Australia and the former Yugoslav Republic of Macedonia, in respect of the same work of an employee and the remuneration paid for the work.

Article 6
Application of this Part

This Part only applies if an employee and/or their employer would, apart from this Part, be subject to the legislation of both Contracting Parties in respect of work of the employee and remuneration paid for the work.

Article 7
Diplomatic and Consular Relations

This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or the Vienna Convention on Consular Relations of 24 April 1963.

Article 8
Avoidance of Double Coverage

1. Unless otherwise provided in this Part, if an employee works in the territory of one Contracting Party, the employee and their employer shall in respect of the work and the remuneration paid for the work be subject only to the legislation of that Contracting Party.
2. If an employee:
 - 2.1 is covered by the legislation of one Contracting Party ('the first Contracting Party'); and

- 2.2 was sent, whether before, on or after the commencement of this Agreement, by the Government of the first Contracting Party to work in the territory of the other Contracting Party ('the second Contracting Party'); and
- 2.3 is working in the territory of the second Contracting Party in the employment of the Government of the first Contracting Party; and
- 2.4 is not working permanently in the territory of the second Contracting Party;

the employee and their employer shall be subject only to the legislation of the first Contracting Party in respect of the work and the remuneration paid for the work. For the purposes of this paragraph, "Government" includes, in relation to Australia, a State or Territory Government or local authority of Australia.

- 3. If an employee:
 - 3.1 is covered by the legislation of one Contracting Party ('the first Contracting Party'); and
 - 3.2 was sent, whether before, on or after the commencement of this Agreement, by an employer who is subject to the legislation of the first Contracting Party to work in the territory of the other Contracting Party ('the second Contracting Party'); and
 - 3.3 is working in the territory of the second Contracting Party in the employment of the employer or a related entity of that employer; and
 - 3.4 a period of 4 years from the time the employee was sent to work in the territory of the second Contracting Party has not elapsed; and
 - 3.5 the employee is not working permanently in the territory of the second Contracting Party;

the employee and their employer shall be subject only to the legislation of the first Contracting Party in respect of the work and the remuneration paid for the work.

4. For the purposes of subparagraph 3.3 of this Article an entity is a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group.

5. If an employee is working in the employment of an employer on a ship or aircraft in international traffic, the employee and their employer shall in respect of the work and the remuneration paid for the work be subject only to the legislation of the Contracting Party of which the employee is a resident.

Article 9 **Exception agreements**

1. The Competent Authorities of the Contracting Parties may for the purposes of this Part agree:

1.1 to extend the period of 4 years referred to in subparagraph 3.4 of Article 8 for any employee; or

1.2 that an employee working in the territory of a particular Contracting Party or working on a ship or aircraft in international traffic under the legislation of a particular Contracting Party is subject only to the legislation of that Contracting Party.

2. Any agreement made under paragraph 1 of this Article may apply to:

2.1 a class of employees; and/or

2.2 particular work or particular types of work (including work that has not occurred at the time the agreement is made).

PART III**PROVISIONS RELATING TO AUSTRALIAN BENEFITS****Article 10****Residence or Presence in the former Yugoslav Republic of
Macedonia**

Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for an Australian benefit except for not being an Australian resident and in Australia on the date on which the claim for that benefit is lodged, but:

- (1) is an Australian resident or a resident of the former Yugoslav Republic of Macedonia; and
- (2) is in Australia, or the territory of the former Yugoslav Republic of Macedonia,

that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purpose of lodging that claim, to be an Australian resident and in Australia on that date.

Article 11**Combining qualifying periods for Australian benefits**

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:
 - 1.1 a period as an Australian resident that is less than the period required to qualify that person, on that ground, under the legislation of Australia for that benefit; and
 - 1.2 a period of Australian working life residence equal to or greater than the period specified in paragraph 4 of this Article for that person; and
 - 1.3 an insurance period under the legislation of the former Yugoslav Republic of Macedonia;

then, for the purposes of a claim for that Australian benefit, that insurance period under the legislation of the former Yugoslav Republic of Macedonia shall be deemed to be a period in which that person was an Australian resident, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia.

2. For the purposes of paragraph 1 of this Article, where a person:

2.1 has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and

2.2 has accumulated two or more separate insurance periods that equal or exceed in total the minimum period referred to in subparagraph 2.1 of this Article;

the total of the insurance periods shall be deemed to be one continuous insurance period.

3. For the purposes of this Article, where a period by a person as an Australian resident and an insurance period under the legislation of the former Yugoslav Republic of Macedonia coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 of this Article shall be:

4.1 for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least six months must be continuous; and

4.2 for the purposes of an Australian benefit that is payable to an Australian resident, no minimum period.

5. For the purpose of this Article, an insurance period under the legislation of the former Yugoslav Republic of Macedonia shall be

deemed as a period as an Australian resident only if that insurance period is certified by the Competent Institution of the former Yugoslav Republic of Macedonia.

Article 12

Calculation of Australian Benefits

1. Subject to paragraphs 2, 3 and 4 of this Article, where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person outside Australia, the amount of the benefit shall be determined according to the legislation of Australia but on the basis that the additional child amount rate is nil.

2. Subject to paragraphs 3 and 4 of this Article, where an Australian benefit is payable to a person outside Australia only by virtue of this Agreement, and the person had ceased to be an Australian resident on the date of entry into force of this Agreement, the rate of that benefit shall be determined by:

- 2.1 calculating that person's income according to the legislation of Australia, including any benefit payable under the legislation of the former Yugoslav Republic of Macedonia which that person or the partner of that person is entitled to receive, if applicable;
- 2.2 applying to the maximum rate of Australian benefit the relevant rate calculator set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph 2.1 of this Article; and
- 2.3 proportionalising, if applicable, the amount of benefit calculated under subparagraph 2.2 of this Article by multiplying that amount by the person's period of Australian working life residence (up to a maximum of 528 months) over a denominator of 528 months (44 years).

3. Where the rate of an Australian benefit is determined according to paragraph 2 of this Article and the person again becomes an Australian resident, the rate of benefit shall continue to be determined according to

paragraph 2 of this Article, subject to paragraph 6 of this Article where applicable, if the person subsequently leaves Australia within two years of the date the person again became an Australian resident.

4. Where a person comes temporarily to Australia, paragraphs 1 and 2 of this Article shall continue to apply for 26 weeks from the date of their arrival in Australia.

5. Subject to paragraph 6 of this Article, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:

- 5.1 calculating that person's income according to the legislation of Australia but disregarding in that calculation any benefit under the legislation of the former Yugoslav Republic of Macedonia which that person or the partner of that person is entitled to receive if applicable; and
- 5.2 deducting the amount of the benefit under the legislation of the former Yugoslav Republic of Macedonia which that person is entitled to receive from the maximum rate of that Australian benefit; and
- 5.3 applying to the remaining benefit obtained under subparagraph 5.2 of this Article the relevant rate calculation set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph 5.1.

6. Where a person departs temporarily from Australia, paragraph 5 of this Article shall continue to apply for 26 weeks from the date of their departure from Australia.

7. Where a member of a couple is, or both that person and his or her partner are, entitled to a benefit or benefits under the legislation of the former Yugoslav Republic of Macedonia each of them shall be deemed, for the purposes of this Article and of the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

PART IV**PROVISIONS RELATING TO BENEFITS OF THE FORMER
YUGOSLAV REPUBLIC OF MACEDONIA****Article 13****Calculation of periods for benefits of the former Yugoslav Republic
of Macedonia**

1. If a person does not meet the benefit requirements due to the insurance periods provided according to the legislation of the former Yugoslav Republic of Macedonia, the entitlement to pensions shall be determined by adding insurance periods and periods of Australian working life residence, unless such periods overlap.
2. If a person meets the pension requirements without adding periods according to the legislation of both Contracting Parties, the Competent Institution of the former Yugoslav Republic of Macedonia shall recognise the entitlement to a pension according to their legislation.
3. Entitlements to pension shall not be recognised on the basis of periods shorter than 12 months in the former Yugoslav Republic of Macedonia, unless entitlement to such benefits exists solely on the basis of the given periods.
4. If after applying paragraph 1 of this Article, a person is not entitled to a benefit, the Competent Institution of the former Yugoslav Republic of Macedonia shall also take into account periods of insurance or residence completed by its citizens in a third country that has concluded an agreement on social security with the former Yugoslav Republic of Macedonia, which includes provision to combine insurance periods.

Article 14**Determination of Benefits for the former Yugoslav Republic of
Macedonia**

1. For a person who meets the requirements for benefits under the legislation of the former Yugoslav Republic of Macedonia solely under

the provisions of paragraph 2 of Article 13, the Competent Institution of the former Yugoslav Republic of Macedonia in charge shall define the benefit amount under the legislation of the former Yugoslav Republic of Macedonia.

2. If according to the legislation of the former Yugoslav Republic of Macedonia the entitlement to benefits arises solely under the provisions of paragraph 1 of Article 13, the Competent Institution of the former Yugoslav Republic of Macedonia shall provide such benefits as follows:

- 2.1 a theoretical amount of the benefit shall be established, to which the person would be entitled as if the total accumulated periods (insurance periods and periods of Australian working life residence) were fulfilled under the legislation of the former Yugoslav Republic of Macedonia;
- 2.2 on the basis of this theoretical amount, the actual amount shall be established according to the periods of insurance as a proportion of the total accumulated periods;
- 2.3 if the total accumulated periods exceed the maximum period provided under the legislation of the former Yugoslav Republic of Macedonia, only that maximum period shall be taken into account.

PART V

COMMON PROVISIONS FOR BENEFITS

Article 15

Payment of Benefits Abroad

1. Benefits of one Contracting Party, when payable by virtue of this Agreement, or under the legislation of either Contracting Party, shall be payable to persons who are residents of, or in, the territory of either Contracting Party.
2. The Competent Institutions of each Contracting Party shall pay benefits by virtue of this Agreement directly to entitled persons residing

in the territory of the other Contracting Party in the official currency of that country, or in another convertible currency.

3. In relation to Australia, any additional amount, increase or supplement that is payable in addition to a benefit under this Agreement, shall be payable to a person outside Australia only for the period specified in the *Social Security Act 1991*. The reference to the *Social Security Act 1991* includes any laws that subsequently amend, supplement or replace that Act.

4. In relation to the former Yugoslav Republic of Macedonia, the provisions of this Article shall not apply to the guaranteed minimum pension.

Article 16

Medical Examinations

1. The Competent Institution of a Contracting Party will apply its own legislation to determine capacity for work, or capacity for independent life and work, when this is required to determine a right to benefit or for extending the payment of the benefit.

2. To assist the determination of working capacity according to paragraph 1 of this Article the Competent Institution of the Contracting Party where the person is resident will, on the request of the Competent Institution of the other Contracting Party, send to that Contracting Party, without charge, all relevant medical reports and documentation that are available.

PART VI

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 17

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Contracting Party in accordance with the Administrative Arrangement made pursuant to Article 21 of this Agreement.

2. The date on which a claim, notice or appeal referred to in paragraph 1 of this Article is lodged with the Competent Institution of one Contracting Party shall be considered as the date of lodgement of that document with the Competent Institution of the other Contracting Party. The Competent Institution with which a claim, notice or appeal is lodged shall refer it without delay to the Competent Institution of the other Contracting Party.

3. A claim for a benefit from one Contracting Party shall be considered as a claim for the corresponding benefit from the other Contracting Party so long as the claimant has indicated in that claim that there is, or there was, an affiliation with the social security system of that other Contracting Party and provided that other Contracting Party receives this request within 12 months of the lodgement of the original claim.

4. The reference in paragraph 1 of this Article to an appeal is a reference to an appeal that may be made to an administrative body established by, or administratively for the purposes of, the respective legislation.

Article 18

Payment of Benefits

1. If a Contracting Party imposes legal or administrative restrictions on the transfer of currency outside of its territory, that Contracting Party shall implement measures as soon as practicable to guarantee the rights to payment and delivery of benefits payable under the legislation of that Contracting Party or by virtue of this Agreement. The measures shall operate retrospectively to the time when the restrictions were imposed.

2. A benefit payable by a Contracting Party by virtue of this Agreement shall be paid by that Contracting Party without deduction for government administrative fees and charges.

3. Any exemption granted in the territory of one of the Contracting Parties from stamp duty, notarial or registration fees in respect of certificates and documents required to be submitted to the Competent Authorities and Competent Institutions in the same territory, shall also

apply to certificates and documents which, for the purposes of this Agreement, need to be submitted to the other Contracting Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

Article 19 **Recovery of overpayments**

1. Where:
 - 1.1 arrears of a benefit are paid or payable by a Contracting Party (the first Contracting Party); and
 - 1.2 for all or part of that period, the other Contracting Party (the second Contracting Party) has paid a benefit to that person; and
 - 1.3 the amount of benefit paid by the second Contracting Party would have been reduced had the benefit payable by the first Contracting Party been paid periodically during that past period; then
 - 1.4 the amount that would not have been paid by the second Contracting Party shall be a debt due by that person to the other Contracting Party.

2. Where the Competent Institution of the first Contracting Party has not yet paid the arrears described in subparagraph 1.1 to the person, that Contracting Party shall, at the request of the second Contracting Party, pay the amount of the debt described in subparagraph 1.4 to the second Contracting Party and shall pay the remainder to the person.

3. A reference in paragraphs 1 and 2 of this Article to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the Acts forming the social security law of Australia as amended from time to time, and in relation to the former Yugoslav Republic of Macedonia a pension that is payable according to the *Law on Pension and Disability Insurance*.

Article 20
Exchange of Information and Mutual Assistance

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement shall, to the extent permitted by their national laws:

- 1.1 communicate to each other any information necessary for the application of this Agreement or the social security law of Australia or the legislation of the former Yugoslav Republic of Macedonia;
- 1.2 provide assistance to each other, including the communication of any necessary information, with regard to the determination or payment of any benefit under this Agreement as if the matter involved the application of their own legislation;
- 1.3 communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation in so far as these changes affect the application of this Agreement; and
- 1.4 at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either Contracting Party with third States, to the extent and in the circumstances specified in the Administrative Arrangement pursuant to Article 21.

2. The assistance referred to in paragraph 1 of this Article shall be provided free of charge, unless otherwise provided for in the Administrative Arrangement pursuant to Article 21.

3. Unless otherwise provided under the national laws of a Contracting Party, any information about a person which is transmitted in accordance with this Agreement by one Contracting Party to the other Contracting Party is confidential and shall be used only for the purposes of implementing this Agreement and the legislation to which this Agreement applies.

4. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on a Contracting Party the obligation to:

- 4.1 carry out administrative measures at variance with the laws or the administrative practice of either Contracting Party; or
- 4.2 supply information which is not ordinarily obtainable under the laws or in the usual administrative practice of either Contracting Party.

5. In the application of this Agreement, the Competent Authority and the Competent Institution of a Contracting Party may communicate with the other in any of the official languages of the Contracting Parties.

6. A claim, appeal or other document may not be rejected by a Competent Authority or Competent Institution solely because it is in the language of the other Contracting Party.

Article 21 Administrative Arrangement

- 1. The Competent Authorities of the Contracting Parties shall conclude an Administrative Arrangement for the implementation of this Agreement.
- 2. The liaison bodies shall be nominated in the Administrative Arrangement.

Article 22 Resolution of Disputes

- 1. The Competent Authorities of the Contracting Parties shall seek to resolve any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.
- 2. The Contracting Parties shall consult promptly at the request of either Contracting Party concerning matters which have not been resolved by the Competent Authorities in accordance with paragraph 1 of this Article.

Article 23
Review of Agreement

Where a Contracting Party requests the other to meet to review this Agreement, the Contracting Parties shall meet for that purpose as soon as possible after that request was made and, unless the Contracting Parties otherwise agree, their meeting shall be held in the territory of the Contracting Party to which that request was made.

PART VII
TRANSITIONAL AND FINAL PROVISIONS

Article 24
Transitional Provisions

1. This Agreement shall not establish any right to a benefit for any period before the date of entry into force of this Agreement.
2. In determining entitlement to a benefit under this Agreement, periods as an Australian resident, periods of Australian working life residence and insurance periods under the legislation of the former Yugoslav Republic of Macedonia completed before the date of entry into force of this Agreement shall also be taken into consideration.
3. Paragraphs 2 and 3 of Article 8 apply from the date of entry into force of this Agreement, even if the person was sent by his or her employer before that date. For this purpose, the period of secondment is taken to start on the date of entry into force of this Agreement.

Article 25
Entry into Force, Modification and Termination

1. This Agreement shall enter into force on the first day of the second month following the month in which notes are exchanged by the Contracting Parties through the diplomatic channel notifying each other that all internal constitutional and legislative conditions that are necessary for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall be concluded for an indefinite period and can be modified by agreement in writing between the Contracting Parties.

3. Either Contracting Party can terminate this Agreement by written notice submitted to the other Contracting Party through the diplomatic channel. In the case of termination, this Agreement shall remain in force until the expiration of 12 months from the date of receipt of the notification by the other Contracting Party.

4. In the event of termination, this Agreement shall continue to have effect in relation to all persons who:

- 4.1 at the date on which termination takes effect, are in receipt of benefits; or
- 4.2 prior to that date have lodged claims for, and would be entitled to receive, benefits by virtue of this Agreement; or
- 4.3 immediately before the date of termination are subject to the legislation of only one Contracting Party by virtue of Articles 8 or 9 of Part II of this Agreement, provided the employee continues to satisfy the criteria of that Article.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at Canberra on this 26th day of October 2009 in two originals, in the official languages of Australia and the former Yugoslav Republic of Macedonia, each text being equally authoritative.

FOR THE GOVERNMENT OF
AUSTRALIA

FOR THE GOVERNMENT OF
THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA

**Schedule 2 Amendment commencing on
day fixed by legislative
instrument made under
paragraph 2 (1) (c)**
(regulation 3)

[1] After Schedule 26

insert

Schedule 27 — Czech Republic

Note: See section 5.

**AGREEMENT BETWEEN AUSTRALIA AND THE CZECH
REPUBLIC ON SOCIAL SECURITY**

Australia and the Czech Republic (hereinafter “the Contracting States”),

Wishing to strengthen the existing friendly relations between the two
Contracting States,

and

Being desirous of regulating the relationship between them with respect
to social security benefits and coverage,

Have agreed as follows:

PART I
GENERAL PROVISIONS

Article 1
Definitions

1. In this Agreement:
- (a) “benefit” means a benefit, pension or allowance as well as any additional amount, increase or supplement payable under the legislation of that Contracting State but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;
 - (b) “Competent Authority” means,
in relation to Australia, the Secretary to the Commonwealth Department responsible for the legislation specified in subparagraph 1(a)(i) of Article 2, except in Part II of the Agreement, and other Parts of the Agreement as they affect that Part, where it means the Commissioner of Taxation or an authorised representative of the Commissioner, and,
in relation to the Czech Republic, the Ministry responsible for the legislation in subparagraph 1 (b) of Article 2;
 - (c) “Competent Institution” means the institution or agency which has the task of implementing the applicable legislation;
 - (d) “legislation” means,
in relation to Australia, the laws specified in subparagraph 1(a)(i) of Article 2 except in Part II of the Agreement, and other Parts of the Agreement as they affect that Part, where it means the laws specified in subparagraph 1(a)(ii) of Article 2, and,

in relation to the Czech Republic, the legislation specified in subparagraph 1(b) of Article 2;

- (e) “creditable period ” means a period of insurance, substitute period and equivalent period completed under the legislation of the Czech Republic;
- (f) “period of Australian working life residence” means a period defined as such in the legislation of Australia but does not include any period deemed pursuant to Article 11 to be a period in which that person was an Australian resident.

2. In the application by a Contracting State of this Agreement, any term not defined shall, unless the context otherwise requires, have the meaning which it has under the legislation of that Contracting State.

Article 2 **Legislative Scope**

1. This Agreement shall apply to the following legislation:

- (a) in relation to Australia:
 - (i) the Acts forming the social security law in so far as the law provides for, applies to or affects age pension;
 - (ii) the law concerning the superannuation guarantee (which at the time of signature of this Agreement is contained in the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Regulations*);
- (b) in relation to the Czech Republic: the Pension Insurance Act and related acts.

2. Notwithstanding the provisions of paragraph 1, unless otherwise provided in this Agreement, the legislation referred to in this Article shall not include treaties or other international agreements on social security that may be concluded between one Contracting State and a third party.

3. Except as provided in paragraph 4, this Agreement shall also apply to future legislation which amends, supplements or replaces the legislation specified in paragraph 1.

4. This Agreement shall not apply to future legislation which extends the existing legislation of either Contracting State to new categories of beneficiaries or new benefits unless the Competent Authorities of both Contracting States agree otherwise.

Article 3 Personal Scope

This Agreement shall apply to any person who:

- (a) is or has been an Australian resident, or is or has been subject to the legislation of Australia; or
- (b) is or has been subject to the legislation of the Czech Republic

and to other persons in regard to the rights they derive from the person described above.

Article 4 Equality of Treatment

All persons to whom this Agreement applies shall be treated equally by a Contracting State in regard to rights and obligations which arise under the social security law of Australia in so far as the law applies to or affects the age pension, the legislation of the Czech Republic or by virtue of this Agreement.

Article 5
Export of Benefits

1. Unless otherwise provided in this Agreement, benefits of one Contracting State, when payable by virtue of this Agreement, shall be payable to persons who are residents of, or in, the territory of either Contracting State.
2. Where the legislation of a Contracting State provides that a benefit is payable in a third State, then that benefit, when payable by virtue of this Agreement, is also payable in that third State.

PART II
PROVISIONS ON COVERAGE

Article 6
Application of this Part

This Part only applies if an employee and/or the employer of the employee would, apart from this Part, be subject to the legislation of both Contracting States in respect of work of the employee or remuneration paid for the work.

Article 7
Avoidance of Double Coverage

1. Unless otherwise provided in this Part, if an employee works in the territory of one Contracting State, the employer of the employee and the employee shall in respect of the work and the remuneration paid for the work be subject only to the legislation of that Contracting State.
2. An employee employed in the territory of one Contracting State by an employer having a place of business in that territory, who is posted to work for that employer, or a related entity, in the territory of the other Contracting State, shall be subject to the legislation of only the first Contracting State, as if the employee were employed in its territory, provided that the period of posting is not expected to exceed 5 years. If this period exceeds 5 years, paragraph 1 applies from that time. For the

purpose of this paragraph, the related entity is a member of the same wholly or majority owned group as the employer.

3. If an employee is working in the employment of an employer on a ship or aircraft in international traffic, the employer of the employee and employee shall in respect of the employment and the remuneration paid for that employment be subject only to the legislation of the Contracting State in which the employee is a resident.

Article 8

Diplomatic and Consular Relations and Government Employment

1. This Agreement shall not affect the application of the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or the Vienna Convention on Consular Relations of 24 April 1963.

2. Employees who are sent by the Government of one Contracting State to work temporarily in the territory of the other Contracting State but to whom the Conventions mentioned in paragraph 1 of this Article do not apply shall be subject to the legislation of only the first Contracting State. For the purpose of this paragraph, employment by the Government of a Contracting State includes employment by an instrumentality thereof and also, in relation to Australia, a political subdivision or local authority of Australia.

Article 9

Exceptions

At the request of an employee and/or an employer, the Competent Authorities of the two Contracting States, or agencies designated by them, may agree to grant an exception to the provisions of this Part with respect to particular persons or categories of persons.

PART III
PROVISIONS RELATING TO BENEFITS

Chapter 1
Australian Benefits

Article 10
Residence or Presence in the Czech Republic or a Third State

Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for an Australian benefit except for not being an Australian resident and in Australia on the date on which the claim for that benefit is lodged, but:

- (a) is an Australian resident or a resident of the Czech Republic or a third State with which Australia has concluded an agreement on social security which includes provision for cooperation in the acceptance of claims for benefits and which includes that category of benefit; and
- (b) is in Australia, or the Czech Republic or that third State,

that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purpose of lodging that claim, to be an Australian resident and in Australia on that date.

Article 11
Totalisation

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:

- (a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, under the legislation of Australia for that benefit; and
- (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 4 for that person; and

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- (c) a creditable period completed under the legislation of the Czech Republic;

then, for the purposes of a claim for that Australian benefit, that creditable period completed under the legislation of the Czech Republic shall be deemed to be a period in which that person was an Australian resident only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia.

2. For the purposes of paragraph 1, where a person:

- (a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and
- (b) has accumulated a creditable period completed under the legislation of the Czech Republic in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a);

the total of the creditable periods completed under the legislation of the Czech Republic shall be deemed to be one continuous period.

3. For the purposes of this Article, where a period by a person as an Australian resident and a creditable period completed under the legislation of the Czech Republic coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:

- (a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least six months must be continuous; and
- (b) for the purposes of an Australian benefit that is payable to an Australian resident, there shall be no minimum period.

Article 12
Calculation of Benefits

1. Subject to paragraph 2, where an Australian benefit is payable only by virtue of this Agreement to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia.

2. Paragraph 1 shall continue to apply for 26 weeks where a person comes temporarily to Australia.

3. Subject to paragraph 4, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:

- (a) calculating that person's income according to the legislation of Australia but disregarding in that calculation any Czech Republic benefit which that person or the partner of that person is entitled to receive if applicable; and
- (b) deducting the amount of the Czech Republic benefit which that person is entitled to receive from the maximum rate of that Australian benefit; and
- (c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph (a).

4. Paragraph 3 shall continue to apply for 26 weeks where a person departs temporarily from Australia.

5. Where a member of a couple is, or both that person and his or her partner are, entitled to a Czech Republic benefit or benefits, each of them shall be deemed, for the purposes of this Article and of the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

6. Australian age pension shall include additional amounts for dependent children, if applicable, when payable outside Australia under this Agreement. Other additional amounts or supplements to a benefit shall be payable outside Australia only for the period specified in the *Social Security Act 1991*. The reference to the *Social Security Act 1991* includes any laws that subsequently amend, supplement or replace that Act.

Chapter 2

Czech Republic Benefits

Article 13

Totalisation

1. Unless otherwise provided in this Agreement, if a person is not eligible for a benefit because he or she has not completed sufficient creditable periods under the legislation of the Czech Republic, the eligibility of that person for that benefit shall be determined by totalising these creditable periods and periods of Australian working life residence, provided those periods do not overlap.

2. For eligibility for the benefit, the Competent Institution of the Czech Republic shall take into account also creditable periods completed under the legislation of a third State, with which the Czech Republic is bound by social security instruments which provide for the totalising of creditable periods.

Article 14

Calculation of benefits

1. If, under the legislation of the Czech Republic, the conditions for entitlement to benefits are satisfied without taking into account periods of Australian working life residence, the Competent Institution of the Czech Republic shall determine the benefit:

- (a) on the basis of the creditable periods completed exclusively under its legislation, and at the same time

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- (b) according to the rules provided by paragraph (2), with the exception when the result of this calculation is equal to or lower than the result of the calculation under subparagraph (a).

2. If, under the legislation of the Czech Republic, the right to benefits can be acquired only with regard to periods of Australian working life residence, or creditable periods completed under the legislation of a third State, then the Competent Institution of the Czech Republic shall:

- (a) calculate the theoretical amount of the benefit which could have been claimed if all these periods had been completed under the legislation of the Czech Republic and
- (b) then – on the basis of the theoretical amount calculated in accordance with sub-paragraph (a) – shall determine the amount of the benefit payable by applying the ratio of the duration of the creditable periods completed under the legislation of the Czech Republic to the total combined periods.

In order to determine the basis for calculation of the benefit, the Competent Institution of the Czech Republic shall – in applying the provision of subparagraph (a) of this paragraph – take into account only income gained during the creditable periods completed under the legislation which it applies. This income – indexed according to Czech legislation – will be considered as gained during the periods that are taken into account for the calculation of the theoretical amount of the benefit.

3. The person concerned shall be entitled to the highest amount calculated in accordance with paragraphs 1 and 2 from the Competent Institution of the Czech Republic.

4. If the creditable period completed under the legislation of the Czech Republic is less than 12 months and does not result in any right to benefits, then the Competent Institution of the Czech Republic will not award the benefit.

5. Events and facts that have legal effect on entitlement, reduction, suspension or benefit amount, and which occurred in the territory of Australia, shall be taken into account as if they had taken place in the territory of the Czech Republic. However, the Czech Competent Authority may, in the interest of categories of beneficiaries, limit the application of this provision.

6. A person whose disability began before reaching the age of 18 and who has not participated in the insurance scheme for the necessary period shall have the right to a disability benefit provided this person is a resident of the Czech Republic. This condition shall also apply to invalidity and survivors' benefits, where such entitlement, or benefits from which they are derived, can be acquired only with regard to provisions of this Agreement.

PART IV

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 15

Administrative Arrangement

1. The Competent Authorities of the Contracting States shall establish, by means of an Administrative Arrangement, the measures necessary for the implementation of this Agreement.
2. The Competent Authorities shall appoint liaison bodies which are to be listed in the Administrative Arrangement.

Article 16

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Contracting State.
2. For the purposes of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of one Contracting State shall be considered as

the date of lodgement of that document with the Competent Institution of the other Contracting State. The Competent Institution with which a claim, notice or appeal is lodged shall refer it without delay to the Competent Institution of the other Contracting State.

3. A claim for a benefit from one Contracting State shall be considered as a claim for the corresponding benefit from the other Contracting State so long as the claimant has indicated in that claim that there is, or there was, an affiliation with the social security system of that other Contracting State and provided the other Contracting State receives this request within 12 months.

4. The reference in paragraph 1 to an appeal is a reference to an appeal that may be made to an administrative body established by, or administratively for the purposes of, the respective legislation.

Article 17

Exemption from Fees and Authentication

1. Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or the Competent Institution of that Contracting State shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or the Competent Institution of the other Contracting State in the application of this Agreement.

2. Documents and certificates which are presented for the purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular authorities.

Article 18

Payment of Benefits

1. If a Contracting State imposes legal or administrative restrictions on the transfer of currency outside of its territory, that Contracting State shall implement measures as soon as practicable to guarantee the rights to payment and delivery of benefits payable under the legislation of that

Contracting State or by virtue of this Agreement. The measures shall operate retrospectively to the time when the restrictions were imposed.

2. The Competent Institutions of the Contracting States shall pay their benefits under this Agreement without any deduction for their administrative expenses.

Article 19 **Exchange of Information and Mutual Assistance**

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement shall to the extent permitted by their national laws:

- (a) communicate to each other any information necessary for the application of this Agreement or the social security law of Australia or the legislation of the Czech Republic;
- (b) provide assistance to one another, including any information necessary, with regard to the determination or payment of any benefit under this Agreement or under the legislation to which this Agreement applies as if applying their own legislation; and
- (c) communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation insofar as these changes affect the application of this Agreement.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the Competent Authorities and Competent Institutions for the reimbursement of certain types of expenses that are specified in the Administrative Arrangement pursuant to Article 15.

3. In no case shall the provisions of paragraph 1 be construed so as to impose on the Competent Authority or Competent Institution of a Contracting State the obligation:

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- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Contracting State; or
 - (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or the other Contracting State.

Article 20 **Protection of Personal Data**

Unless otherwise provided under the national laws of a Contracting State, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or a Competent Institution of that Contracting State by a Competent Authority or a Competent Institution of the other Contracting State is confidential and shall be used only for the purposes of implementing this Agreement and the legislation to which this Agreement applies.

Article 21 **Language**

1. In the application of this Agreement, the Competent Authority and the Competent Institution of a Contracting State may communicate with the other in any of the official languages of the Contracting States.
2. A claim, appeal or other document may not be rejected by a Competent Authority or Competent Institution solely because it is in the language of the other Contracting State.

Article 22 **Resolution of Disputes**

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the Competent Authorities.

Article 23
Review of Agreement

Where a Contracting State requests the other to meet to review the Agreement, the Contracting States shall meet for that purpose as soon as possible.

PART V
TRANSITIONAL AND FINAL PROVISIONS

Article 24
Transitional Provisions

1. This Agreement shall not establish any right to a benefit for any period before the date of the entry into force of this Agreement.
2. In determining entitlement to a benefit under this Agreement, periods as an Australian resident, periods of Australian working life residence and creditable periods completed under the legislation of the Czech Republic before the entry into force of this Agreement shall also be taken into consideration.
3. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.
4. Benefits determined before the entry into force of this Agreement may be newly determined upon application.
5. Articles 7 (2) and 8 (2) apply from the date of entry into force of this Agreement, even if the person was sent by his or her employer before this date. For this purpose, the period of secondment is taken to start on the entry into force of this Agreement.

Article 25
Ratification and Entry into Force

1. This Agreement is subject to ratification.

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2. This Agreement shall enter into force on the first day of the third month following the month in which notes are exchanged by the Contracting States through the diplomatic channel notifying each other that all matters as are necessary for the entry into force of this Agreement have been finalised.

Article 26
Duration, Modification and Termination

1. This Agreement shall remain in force without any limitation on its duration.
2. This Agreement may be amended in the future by supplementary agreements which, from their entry into force, shall be considered an integral part of this Agreement.
3. This Agreement shall remain in force and effect until the last day of the twelfth month following the month in which either Contracting State gives the other Contracting State written notification through diplomatic channels of its termination.
4. If this Agreement is terminated, rights acquired under it shall be retained and claims for benefits lodged prior to the date of termination shall be determined under this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Agreement.

DONE at Canberra on this sixteenth day of September 2009 in two originals in the English and Czech languages, the two texts being equally authentic.

FOR AUSTRALIA:

FOR THE CZECH REPUBLIC:

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Hon Jenny Macklin

HE Dr Juraj Chmiel

Minister for Families, Housing
Community Services and
Indigenous Affairs

Ambassador Extraordinary and
Plenipotentiary

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.