



Social Security (International Agreements) Act 1999 Amendment Regulations 2004 (No. 1)¹

Statutory Rules 2004 No. 19²

I, PHILIP MICHAEL JEFFERY, 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*.

Dated 19 February 2004

P. M. JEFFERY
Governor-General

By His Excellency's Command

KAY PATTERSON
Minister for Family and Community Services

1 Name of Regulations

These Regulations are the *Social Security (International Agreements) Act 1999 Amendment Regulations 2004 (No. 1)*.

2 Commencement

These Regulations commence on 1 July 2004.

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

Schedule 1 amends the *Social Security (International Agreements) Act 1999*.

Schedule 1 Amendment
(regulation 3)

[1] **Before Schedule 17**
insert

Schedule 16 — Croatia
Note: See section 5.

**AGREEMENT
BETWEEN
AUSTRALIA
AND
THE REPUBLIC OF CROATIA
ON SOCIAL SECURITY**

Australia and the Republic of Croatia (hereinafter “the Parties”),

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

Resolved to cooperate in the field of social security;

Have agreed as follows:

PART I - GENERAL PROVISIONS

ARTICLE 1

Definitions

1. In this Agreement the terms below have the following meanings:
 - (a) **"Croatia"** means the Republic of Croatia;
 - (b) **"benefit"** means, in relation to a Party, any of the benefits, pensions or allowances listed in paragraph 1 of Article 2, and includes any amount, increase or supplement that is payable in addition to that benefit, pension or allowance to a person who is qualified for that amount, increase or supplement under the legislation of that Party, but for Australia does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;
 - (c) **"Competent Authority"** means,

in relation to Australia:

the Secretary of the Department responsible for the application of the legislation in subparagraph 1(a)(i) of Article 2 of this Agreement except in relation to the application of Part III of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner, and

in relation to Croatia:

the Ministry of Labour and Social Welfare;

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- (d) **"Competent Institution"** means,
- in relation to Australia:
- the institution or agency which has the task of implementing the applicable Australian legislation, and
- in relation to Croatia:
- the Croatian Pension Insurance Institute;
- (e) **"legislation"** means:
- in relation to Australia:
- the laws specified in subparagraph 1(a)(i) of Article 2 except in relation to the application of Part III of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the law specified in subparagraph 1(a)(ii) of Article 2; and
- in relation to Croatia:
- laws, regulations and other provisions relating to benefits specified in sub-paragraph 1(b) of Article 2;
- (f) **"period of Australian working life residence"** means, in relation to a person, the period defined as such under the legislation of Australia but does not include any period deemed pursuant to Article 13 to be a period in which that person was an Australian resident;
- (g) **"period of insurance"** means any period of contribution and any other period taken into account under Croatian legislation;
- (h) **"territory"** means,
- in relation to Australia:
- Australia as defined in the legislation of Australia; and

in relation to Croatia:

the territory of the Republic of Croatia;

- (i) **“employee”** means, in relation to Croatia, a worker, as defined by the legislation stated in paragraph (1)(b) of Article 2, and by the Croatian labour laws.

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

ARTICLE 2

Legislative Scope

- 1. Subject to paragraph 2, this Agreement shall apply to the legislation effective at the date of signature of this Agreement, and to any legislation that subsequently amends, supplements, supersedes or replaces it:
 - (a) in relation to Australia:
 - (i) the Acts and regulations forming the social security law in so far as the law provides for, applies to or affects the following benefits:
 - age pension;
 - disability support pension for the severely disabled;
 - (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, Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Regulations, only in relation to the application of Part III of this Agreement;

and

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- (b) in relation to Croatia, the legislation that governs Pension Insurance, including:
 - (i) old-age pension;
 - (ii) anticipatory pension;
 - (iii) disability pension;
 - (iv) survivor's pension (widows, widowers, children and other family members entitled to this pension); and

all other benefits covered under the Pension Insurance legislation.
 - 2. This Agreement shall apply to legislation that extends the existing legislation to other categories of beneficiaries if the Competent Authority of the Party concerned gives notice to that effect within six months from the official publication of that legislation, and if the Competent Authority of the other Party does not express its disapproval within six months from the receipt of the notice.
 - 3. For the purposes of reciprocating Croatian survivor's pension, when payable outside Australia by virtue of this Agreement, Australian age and disability support pension shall include additional child amounts for dependent children, if applicable.
 - 4. Notwithstanding the provisions of paragraph 1, the legislation of the Parties shall not include treaties or other international agreements concluded between either of them and a third State, except as otherwise provided in this Agreement.

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

- (a) is or has been an Australian resident; or
- (b) is or has been subject to the legislation of Croatia.

ARTICLE 4

Equality Of Treatment

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

PART II – COMMON PROVISIONS RELATING TO BENEFITS

ARTICLE 5

Export of Benefits

1. The benefits that are payable by one Party on the basis of the legislation of that Party or by virtue of this Agreement shall be payable in the territory of the other Party.
2. Where there is a time limit on the continued qualification for an Australian benefit for a person who leaves Australia, then the same time limit shall apply to that benefit for a person who leaves Croatia.

3. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Parties.
4. If a Party imposes legal or administrative restrictions on the transfer of currency outside of its territory, that Party shall implement measures as soon as practicable to guarantee the payment and delivery of benefits payable under the legislation of that Party or by virtue of this Agreement. The measures shall operate retrospectively to the time when the restrictions were imposed.
5. While the measures in paragraph 4 are being implemented, the Party not imposing the restrictions set out in paragraph 4 may impose restrictions on the payment of its benefits paid under the Agreement in the territory of the other Party, until the other Party has lifted all such restrictions. On the lifting of the restrictions by the other Party and the payment and delivery of arrears by that other Party then the first Party shall also pay arrears of its benefits in relation to the entire time during which the first Party's restrictions were imposed.
6. Where a Party has imposed legal or administrative restrictions on the transfer of its currency outside of its territory as mentioned in paragraph 5, it shall inform the other Party of those restrictions within one calendar month of their imposition and shall implement the measures described in that paragraph within 3 months of the imposition of the restrictions. A failure to comply with either requirement may be treated by the other Party as a material breach of the Agreement for the purposes of Article 60 of the Vienna Convention on the Law of Treaties.
7. Benefits paid by a Party outside its territory shall be paid in an internationally convertible currency.

8. A benefit payable by a Party by virtue of this Agreement or under its legislation shall be paid by that Party without deduction of administrative fees and charges by the government or the corresponding Competent Institution for processing and paying that benefit, whether the person qualifying for the benefit is in the territory of the other Party or in a third country.
9. For Australia, the provisions of this Article shall not apply to rent assistance, pharmaceutical allowance or any other allowance that is not payable indefinitely outside Australia.

ARTICLE 6

Medical Examinations

1. For the purposes of assessing a person's degree of disability or the person's ability to work where this is relevant for a claim for a benefit or for continued payment of a benefit, the Competent Institution of a Party shall apply the legislation of that Party.
2. To assist in the assessment referred to in paragraph 1, the Competent Institution of the Party in whose territory the person resides shall, at the request of the Competent Institution of the other Party forward to the latter free of charge any existing relevant medical reports and documents that it may have available.

PART III

PROVISIONS FOR AVOIDING DOUBLE COVERAGE

ARTICLE 7

Purpose of Part

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

ARTICLE 8

Application of 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 Parties in respect of work of the employee or remuneration paid for the work.

ARTICLE 9

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 10

Application of Legislation

1. Unless otherwise provided in paragraphs 2 or 3, if an employee works in the territory of one Party, 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 Party.
2. If an employee:
 - (a) is covered by the legislation of one Party; and
 - (b) was sent, whether before, on or after the entry into force of this Agreement, by an employer who is subject to the legislation of that Party to work in the territory of the other Party; and
 - (c) is working in the territory of the other Party in the employment of the employer or a related entity of that employer; and
 - (d) was sent to work in the territory of the other Party and a period of 4 years has not elapsed from that time; and
 - (e) is not working permanently in the territory of the other Party;

the employer and employee shall be subject only to the legislation of the Party from which the employee was sent in respect of the work and the remuneration paid for the work. 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.

3. If the employer for the purposes of paragraph 2 of this Article is, in relation to Australia, a Governmental body, a political subdivision or local authority, or in relation to Croatia, a Governmental body, then the time limit specified in subparagraph 2(d) shall not apply.

ARTICLE 11

Exception Agreements

1. The Competent Authorities may for the purposes of this Part by agreement in writing:
 - (a) extend the period of 4 years referred to in subparagraph 2(d) of Article 10 for any employee; or
 - (b) provide that an employee is taken to work in the territory of a particular Party or to work on a ship or aircraft in international traffic under the legislation of a particular Party and is covered only by the legislation of that Party.
2. Any agreement made under paragraph 1 may apply to:
 - (a) a class of employees; and/or
 - (b) particular work or particular type of work (including work that has not occurred at the time the agreement is made).

PART IV – PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 12

Residence or presence in Croatia or a Third State

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

- (a) is an Australian resident or a resident of Croatia (or a third State with which Australia has concluded an agreement on social security which includes provision for co-operation in

the assessment and determination of claims for benefits and which includes that category of benefit); and

(b) is in Australia, or the territory of Croatia or that third State,

that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that day.

ARTICLE 13

Totalisation for Australian Benefits

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 referred to in paragraph 3; and
 - (c) a period of insurance in Croatia;

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

2. For the purpose of this Article, where a person has a period as an Australian resident and a period of insurance in Croatia, any period of overlap shall be taken into account once only by Australia as a period as an Australian resident.

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3. 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 purpose of an Australian benefit claimed by a person residing outside Australia, the minimum period required shall be 12 months, of which at least six months must be continuous; and
 - (b) for the purpose of an Australian benefit claimed by an Australian resident, no minimum period shall be required.

ARTICLE 14

Calculation of Australian Benefits

1. Subject to paragraph 2, where an Australian benefit is payable by virtue of this Agreement to a person outside Australia, the rate of that benefit shall be determined according to the legislation of Australia.
2. The provisions in paragraph 1 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
3. Subject to the provisions of paragraph 4 and 5, where an Australian benefit is granted by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:
 - (a) deducting the amount of the Croatian benefit which that person is entitled to receive from the maximum rate of Australian benefit;
 - (b) calculating that person's income according to the legislation of Australia but disregarding in that calculation the Croatian benefit to which that person or the partner of that person is entitled to receive, if applicable; and

- (c) applying to the remaining benefit obtained under subparagraph (a) the relevant rate calculator set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph (b).
- 4. The provisions in paragraph 3 shall continue to apply for 26 weeks where a person temporarily leaves Australia.
- 5. Where a member of a couple is, or both that person and his or her partner are entitled to a Croatian benefit or benefits, each of them shall be deemed, for the purpose of paragraph 3 and for the legislation of Australia, to be in receipt of half of either the amount of that benefit or the total of both those benefits as the case may be.

PART V

PROVISIONS RELATING TO CROATIAN BENEFITS

ARTICLE 15

Totalisation for Croatian Benefits

- 1. If a person does not fulfil the requirements for pension solely on the basis of completed periods of insurance, the entitlement to a benefit shall be established on the basis of totalising the periods of insurance and Australian working life residence provided these periods do not overlap.
- 2. If a person qualifies for a benefit under Croatian legislation without the need for totalisation of the periods completed in the territories of both Parties, the Croatian Competent Institution shall grant the benefit according to its own legislation.
- 3. If the period of insurance amounts to less than 12 months no benefit shall be granted. This does not apply if there is entitlement to a benefit only on the basis of that lesser period of insurance.

4. Notwithstanding the provision of paragraph 4 of Article 2, where based on the provisions of paragraph 1 of this Article a person does not satisfy conditions for the benefit, the competent institution of Croatia shall take into account periods of insurance or periods of residence completed by Croatian nationals in a third State to which Croatia is bound by an agreement on social security which provides for the totalisation of periods of insurance or residence, respectively.

ARTICLE 16

Calculation of Croatian Benefits

1. If a person qualifies for a benefit under Croatian legislation only by the application of the totalisation provisions contained in paragraph 1 of Article 15, the Croatian Competent Institution shall calculate the amount of the benefit according to the Croatian legislation.
2. If the amount of the benefit under Croatian legislation cannot be calculated according to paragraph 1 of this Article, the Croatian Competent Institution shall calculate it in the following way:
 - (a) it shall first calculate a theoretical amount of a benefit which would be payable if all totalised periods (being periods of insurance and periods of Australian working life residence) were completed under Croatian legislation;
 - (b) on the basis of this theoretical amount, it shall then calculate the actual amount of the benefit which is payable according to the ratio of the period of insurance and the totalised periods.
3. Paragraph 1 of this Article shall not apply if the amount of Croatian pension calculated under that paragraph is less than the amount determined in accordance with paragraph 2 of this Article.

PART VI
MISCELLANEOUS 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 the other Party in accordance with the Administrative Arrangement made pursuant to Article 20 at any time after the Agreement has come into force.
2. For the purpose 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 Party shall be considered as the date of lodgement of that document with the Competent Institution of the other Party. The Competent Institution to which a claim, notice or appeal is lodged shall refer it without delay to the Competent Institution of the other Party.
3. The reference in this Article to an appeal is an appeal that may be made to an administrative body or a corresponding body of either Party that has been established by, or for the purposes of, the legislation of each Party.
4. Any exemption granted in the territory of one of the Parties from payment of taxes or 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 the certificates and documents which, for the purpose of this Agreement, have to be submitted to the Competent Authorities or Competent Institutions of the other 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 18

Recovery of Overpayments

1. Where:
 - (a) an amount of arrears of benefit is paid or payable to a person by the Competent Institution of one Party whether by virtue of this Agreement or under the legislation of that Party; and
 - (b) for all or part of the relevant period, the other Party has paid to that person a benefit under its legislation; and
 - (c) the amount of the benefit paid by that other Party would have been reduced had the benefit paid or payable by the Competent Institution of the first Party been paid during that period;then
 - (d) the amount that would not have been paid by the other Party had the benefit described in subparagraph (a) been paid on a periodical basis throughout that past period, shall be a debt due by that person to the other Party and may be recovered by that Party.
2. Australia may recover all or part of that debt referred to in paragraph 1 under the provisions of the Acts forming the social security laws of Australia.
3. Where the Competent Institution of one Party has not yet paid the benefit described in subparagraph 1(a) to that person:
 - (a) that Competent Institution shall, at the request of the Competent Institution of the other Party, pay the amount of the benefit necessary to meet the debt described in paragraph 1 to the Competent Institution of that Party and shall pay any excess to that person; and

- (b) any shortfall may be recovered by the Competent Institution of the other Party.
- 4. A reference in paragraph 1 to a benefit means, for Australia, a pension, benefit or allowance payable under the social security laws of Australia and, for Croatia, a pension, benefit or allowance payable under the Pension Insurance legislation.

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 the legislation they administer:
 - (a) subject to paragraphs 3 and 4, communicate to each other any information necessary for the application of this Agreement;
 - (b) lend their good offices and furnish assistance to one another (including the communication to each other of any necessary information) with regard to the determination or payment of any benefit under this Agreement or under the social security laws of either Party as if the matter involved the application of their own legislation;
 - (c) communicate to each other, as soon as possible, all information about the measures taken by them for the application of the Agreement;
 - (d) at the request of one to another, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 20; and

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- (e) advise each other of any laws which amend, supplement, supersede or replace their respective legislations and which are relevant to the operation of this Agreement promptly after those laws are made.
 - 2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any Administrative Arrangement made in accordance with Article 20.
 - 3. Unless disclosure is required under the legislation of a Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or Competent Institution of that Party is confidential and shall only be used for purposes of implementing this Agreement and the social security laws of either Party.
 - 4. Notwithstanding any laws or administrative practices of a Party, no personal data which is received by that Party from the other Party shall be transferred or disclosed to any other country or to any other organisation within that other country without the prior written consent of that other Party.
 - 5. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the Competent Authority or Institution of a Party the obligation:
 - (a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party; or
 - (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Party.
 - 6. Communications between Competent Authorities, Competent Institutions and persons to whom this Agreement applies may be made in any of the official languages of the Parties.

ARTICLE 20

Administrative Arrangement

1. The Competent Authorities of the Parties shall, by means of an Administrative Arrangement, make whatever arrangements are necessary in order to implement this Agreement.
2. The Competent Authorities shall appoint liaison bodies in the Administrative Arrangement.

ARTICLE 21

Recognition of Prior Periods and Events

1. In determining the qualification for a benefit of a person or the amount of benefit payable to a person, by virtue of this Agreement, any events or facts and any period:
 - (a) as an Australian resident;
 - (b) of Australian working life residence; and
 - (c) of insuranceshall, subject to this Agreement, be taken into account in so far as those periods, events or facts are applicable in regard to that person regardless of when they occurred or were accumulated.
2. No provision of this Agreement shall confer on a person any right to receive payment of a benefit in relation to a period before the date on which this Agreement comes into force.

ARTICLE 22

Resolution of Difficulties

The Competent Authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.

ARTICLE 23

Review of Agreement

Where a Party requests the other to meet to review this Agreement the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise agree, their meeting shall be held in the territory of the Party to which the request was made.

PART VII

TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 24

Entry into Force and Termination

1. This Agreement shall enter into force on the first day of the month following the month in which notes are exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Agreement have been accomplished.
2. This Agreement shall remain in force indefinitely or until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating the intention of the other Party to terminate this Agreement.

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who:
- (a) at the date of termination, are in receipt of its benefits; or
 - (b) prior to the expiry of the period referred to in paragraph 2, have lodged claims for, and would be entitled to receive benefits;
- by virtue of this Agreement or
- (c) immediately before the date of termination, are subject only to the legislation of one Party as mentioned in and by virtue of paragraph 2 of Article 10 or Article 11, but only for so long as the Agreement would have continued to apply to the employee had the Agreement not been terminated.

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

DONE in two original copies at ZAGREB this THIRTEENTH day of MAY TWO THOUSAND AND THREE in the English and the Croatian languages, both texts being equally authoritative.

FOR AUSTRALIA

Neil Francis
Australian Ambassador to Croatia

FOR THE REPUBLIC OF
CROATIA

Davorko Vidović
Minister of Labour and Social
Welfare

Notes

1. These Regulations amend Act No. 173, 1999, as amended by Act Nos. 45, 94 and 138, 2000; Statutory Rules 2000 Nos. 104, 105 and 165; 2001 Nos. 215 (repealed by SR 2002 No. 34) and 245 (repealed by SR 2002 No. 34); 2002 Nos. 31, 32 (as amended by 2002 Nos. 164 and 225), 33 (as amended by 2002 No. 210) and 165; Act No. 30, 2003; Statutory Rules 2003 Nos. 207 (as amended by 2003 No. 374) and 374.
2. Notified in the *Commonwealth of Australia Gazette* on 26 February 2004.