



Social Security (International Agreements) Act 1999 Amendment Regulations 2011 (No. 2)

Select Legislative Instrument 2011 No. 154

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 17 August 2011

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

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

1 Name of Regulations

These Regulations are the *Social Security (International Agreements) Act 1999 Amendment Regulations 2011 (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 to be fixed by legislative instrument made by the Minister — Schedule 1.
- (2) A legislative instrument made under paragraph (1) (b) 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 sunset).

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] After Schedule 27

insert

Schedule 28 — Slovak Republic

Note: See sections 5 and 8.

AGREEMENT BETWEEN AUSTRALIA AND THE SLOVAK REPUBLIC ON SOCIAL SECURITY

Australia and the Slovak Republic (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 as follows:

PART I GENERAL PROVISIONS

Article 1

Definitions

1. In this Agreement, unless the context otherwise requires:
 - (a) “benefit” means a benefit, pension or allowance as well as any additional amount, increase or supplement payable under the legislation of that Contracting Party 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 of the Commonwealth Department responsible for the legislation specified in subparagraph 1(a)(i) of Article 2, except in relation to the application of Part II 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 the Slovak Republic the Ministry of Labour, Social Affairs and Family of the Slovak Republic

responsible for the application of the legislation specified in subparagraph 1(b) of Article 2;

- (c) “Competent Institution” means the institution or agency which has the task of implementing the applicable legislation specified in Article 2;
- (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 Slovak Republic, the legislation specified in subparagraph 1(b) of Article 2;
- (e) “creditable period ” means a period of insurance, substitute period or equivalent period completed under the legislation of the Slovak 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 12 to be a period in which that person was an Australian resident;

2. Any term not defined in this Article has the meaning assigned to it in the applicable legislation.

Article 2

Material Scope

1. 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:

- (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 the age pension;

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- (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 Slovak Republic the legislation regarding:
- (i) old age pensions;
- (ii) invalidity pensions; and
- (iii) pensions for widows, widowers and orphans.
2. Notwithstanding the provisions of paragraph 1, the legislation of either Contracting Party shall not, unless otherwise specified in this Agreement, include treaties or any other agreement on social security entered into by either Contracting Party with a third State.
3. This Agreement shall not apply to future legislation which extends the existing legislation of either Contracting Party to new categories of beneficiaries unless the Competent Authorities agree otherwise in writing.

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 the Slovak Republic

and, to other persons in regard to the rights they derive from the 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 which arise whether directly under the social security laws of Australia or the Slovak Republic or by virtue of this Agreement.

Article 5

Export of Benefits

1. Unless otherwise provided in this Agreement, benefits of one Contracting Party when payable by virtue of this Agreement are payable to persons who are residents of, or in, the territory of either Contracting Party.
2. In relation to Australia, for the purposes of paragraph 1, any additional amount, increase or supplement that is payable under this Agreement, shall be payable to a person outside Australia only for the period specified in the provisions of the *Social Security Act 1991*. The reference to the *Social Security Act 1991* includes any laws that amend, supplement or replace that Act.

PART II

PROVISIONS ON COVERAGE

Article 6

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 Slovak Republic do not have a double liability under the legislation of Australia and the Slovak Republic, in respect of the same work of an employee.

Article 7

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

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

the employer of the employee and the employee shall be subject only to the legislation of the first Contracting Party in respect of the work performed and the remuneration paid for that work after the commencement of this Agreement.

3. For the purposes of subparagraph 2(c) 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.

4. 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 Party of which the employee is a resident.

Article 9

Diplomatic and Consular Relations and Government Employment

1. 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.

2. Employees who are sent by the Government of one Contracting Party to work temporarily in the territory of the other Contracting Party shall be subject to the legislation of only the first Contracting Party. For the purposes of this paragraph, "Government" includes in relation to Australia, a political subdivision or local authority.

Article 10

Exception agreements

The Competent Authorities or agencies designated by them, may agree in writing to make exceptions to the provisions in Articles 8 and 9.

PART III

PROVISIONS RELATING TO BENEFITS

Chapter 1

Australian Benefits

Article 11

Residence or Presence in the Slovak Republic

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 Slovak Republic; and
- (b) is in Australia, or the Slovak Republic,

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 12

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

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

then, for the purposes of a claim for that Australian benefit, that creditable period 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 two or more separate creditable periods that equal or exceed in total the minimum period referred to in subparagraph (a);

the total of the creditable periods completed under the legislation of the Slovak 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 Slovak 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 13

Calculation of Benefits

1. 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. The additional child amount shall not be included in the calculation of such benefits.
2. Where a person comes temporarily to Australia, paragraph 1 shall continue to apply for 26 weeks from the date of their arrival in Australia.
3. 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 Slovak Republic benefit which that person or the partner of that person is entitled to receive if applicable; and
 - (b) deducting the amount of the Slovak 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. Where a person departs temporarily from Australia, paragraph 3 shall continue to apply for 26 weeks from the date of their departure from Australia.
5. Where a member of a couple is, or both that person and his or her partner are, entitled to a Slovak 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 that benefit or one half of the total of both benefits, as the case may be.

Chapter 2

Slovak Republic Benefits

Article 14

Totalisation

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 Slovak 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.

Article 15

Calculation of Benefits

1. If, under the legislation of the Slovak Republic, a person or the survivors of that person are eligible for a benefit without the need to totalise with periods of Australian working life residence and by only taking into account creditable periods completed under the legislation of the Slovak Republic, the Competent Institution of the Slovak Republic shall determine the amount of that benefit exclusively on the basis of that creditable period.
2. If, under the legislation of the Slovak Republic, a person or the survivors of that person are eligible for a benefit only by totalising periods completed under the legislation of both Contracting Parties, the amount of that benefit shall be determined as follows:
 - (a) the Competent Institution of the Slovak Republic shall first determine whether, under the legislation of the Slovak Republic, the person satisfies the conditions for eligibility by taking into account the totalised periods;
 - (b) if the benefit is payable in accordance with sub-paragraph (a), the Competent Institution of the Slovak Republic shall first calculate the theoretical amount of the benefit payable

as if the totalised periods completed under the legislation of both Contracting Parties had been completed under the legislation of the Slovak Republic alone;

- (c) based on the theoretical amount of the benefit, the institution shall determine the amount of the benefit payable by calculating the proportion corresponding to the actual creditable periods completed under the legislation of the Slovak Republic and the totalised periods completed under the legislation of both Contracting Parties.

3. If the creditable periods completed under the legislation of the Slovak Republic are less than 12 months, no benefit under this Agreement shall be paid. The preceding sentence shall not apply if a benefit is payable based on those creditable periods alone.

4. If, under the legislation of the Slovak Republic, the Competent Institution can determine the amount of benefit only on the basis of creditable periods acquired according to the legislation of the Slovak Republic, the provisions of paragraph 2 shall not apply.

5. An invalidity pension for a person whose disability arose when the person was a dependent child, or while studying for a doctoral degree and under 26 years of age, shall be payable disregarding the length of the creditable period only if it concerns a person who is a permanent resident of the Slovak Republic.

PART IV

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

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 Party.

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 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 in accordance with the legislation of one Contracting Party, submitted after this Agreement has entered into force, shall be deemed to be a claim for a corresponding benefit in accordance with the legislation of the second Contracting Party in these instances:

- a) if a person requests that it be considered a claim under the legislation of the second Contracting Party; or
- b) if a person has stated in the claim that they had an affiliation with the social security system of the second Contracting Party.

4. In relation to Australia, paragraph 3 shall only apply if the corresponding claim is received by the Competent Institution within twelve months of the lodgement of the original claim.

5. In relation to Australia, the reference in paragraph 1 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by, or administratively for the purposes of, the social security laws of Australia.

Article 17

Payment of Benefits

In the event that a Contracting Party imposes currency controls, that Contracting Party shall, without delay, take suitable measures to ensure the payment of any amount that must be paid in accordance with this Agreement to persons described in Article 3 who reside in the territory of the other Contracting Party.

Article 18

Exemption from Fees and Authentication

1. Where the laws of a Contracting Party provide that any document which is submitted to the Competent Authority or the Competent Institution of that Contracting Party 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 Competent Institution of the other Contracting Party 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.
3. The Competent Institutions of the Contracting Parties shall pay benefits under this Agreement without any deduction for their administrative expenses or for government administrative fees and charges for processing and paying that benefit.

Article 19

Recovery of overpayments

1. If a Competent Institution of a Contracting Party has overpaid a benefit, or paid a benefit which was not due, to any person because of the simultaneous payment of a benefit for all or part of the same period by the Competent Institution of the other Contracting Party, under this Agreement or the legislation of either Contracting Party, the amount of the overpayment may be deducted in favour of that Competent Institution from arrears of a benefit to which there is entitlement under the legislation of the other Contracting Party.
2. In relation to Australia a reference in paragraph 1 to a benefit means a pension, benefit or allowance payable under the Acts forming the social security law of Australia as amended from time to time.

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:
 - (a) communicate to each other any information necessary for the application of this Agreement or their social security laws;
 - (b) provide assistance to one another with regard to the determination or payment of any benefit under this Agreement or under the legislation to which this Agreement applies;
 - (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; and
 - (d) 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 of the Contracting Parties with third states, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 21.
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 21.
3. If the Competent Institution of a Contracting Party requires that a claimant or a beneficiary who resides in the territory of the other Contracting Party undergo a medical examination, the Competent Institution of the latter Contracting Party, at the request of the Competent Institution of the first Contracting Party, shall make arrangements for carrying out this examination. If the medical examination is exclusively

for the use of the institution which requests it, that Competent Institution shall reimburse the Competent Institution of the other Contracting Party for the costs of the examination. However, if the medical examination is for the use of both Competent Institutions, there shall be no reimbursement of costs.

4. 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 Party the obligation:

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

Article 21

Administrative Arrangement

1. The Competent Authorities of the Contracting Parties 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 22

Protection of Personal Data

Unless otherwise provided under the laws of a Contracting Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or a Competent Institution of a Contracting Party by a Competent Authority or a Competent Institution of 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.

Article 23**Language**

1. 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.
2. An application or 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 24**Resolution of Disputes**

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

Article 25**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 and, unless the Contracting Parties otherwise arrange, their meeting shall be held in the territory of the Contracting Party to which that request was made.

PART V
TRANSITIONAL AND FINAL PROVISIONS

Article 26
Transitional Provisions

1. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Contracting Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.
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 Slovak Republic before the entry into force of this Agreement shall also be taken into consideration.
3. Where, on the date on which this Agreement enters into force, a person is in receipt of a benefit under the legislation of either Party, no provision of this Agreement shall affect that person's qualification to receive that benefit.
4. Articles 8 & 9 apply from the date of entry into force of this Agreement, even if the person was sent by their employer before this date. For this purpose, the period of secondment is taken to start on the date this Agreement entered into force.

Article 27
Entry into Force

1. 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 Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Agreement have been finalised.

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.

Article 28

Termination

1. This Agreement has been entered into for an unlimited period of time.
2. Subject to paragraph 3, this Agreement shall remain in force until the last day of the twelfth month following the month in which either Contracting Party receives from the other a note through the diplomatic channel giving notice of termination of this Agreement.
3. In the event of termination, this Agreement shall continue to have effect in relation to all persons who:
 - (a) at the date on which termination takes effect, are in receipt of benefits; or
 - (b) prior to that date 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 Contracting Party by virtue of Articles 8, 9 or 10 of Part II of the Agreement, provided the employee continues to satisfy the criteria of those Articles.

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

DONE in two originals at New York this 21st day of September, two thousand and ten in the English and Slovak languages, each text being equally authoritative.

FOR AUSTRALIA:

FOR THE SLOVAK REPUBLIC:

Kevin Rudd

Mikuláš Dzurinda

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