

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
- (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

- (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 subparagraph (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:

- (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.
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