

The Southern Cross Group

Promoting Mobility in the Global Community
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Submission to the Joint Standing Committee on Treaties
Parliament of Australia

**Proposed Agreements on Social Security
with Canada, The Netherlands, Spain, Portugal and Germany,
and Protocol to Existing Agreement with Austria**

Brussels and Washington DC

31 August 2001

The Southern Cross Group is an international non-profit advocacy organisation seeking to speak for and work with the million-odd members of the Australian Diaspora world-wide.

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This submission by the Southern Cross Group (SCG) is in response to the public notices of 11 and 25 August 2001 by the Joint Standing Committee on Treaties of the Parliament of Australia, inviting comments on whether it is in Australia's interests to be bound by the terms of a number of proposed international treaties.

The SCG provides the following remarks on the proposed agreements on social security with Canada, The Netherlands, Spain, Germany and Portugal, and the Protocol to the existing social security agreement with Austria.

1. General Comments

1.1 Consultation of and Communication with Australian Citizens Resident Overseas

As an international organisation representing the interests of Australian citizens who reside overseas, the Southern Cross Group welcomes the Government's initiative on these agreements. Our members, who contribute to the various national social security schemes in their many respective host countries, are directly impacted and benefited by these bilateral agreements.

The SCG notes from an examination of the Attachments to the National Interest Analysis documents accompanying these draft treaties that the Department of Family and Community Services (DFACS), International Branch, has not consulted with any Australian expatriate organisations, anywhere in the world. In fact, all the Community Groups listed as having been consulted are in Australia and it appears that no attempt has been made to seek out Australian groups overseas.

The SCG hopes that in future, this oversight can be remedied. There are a significant number of Australian chambers of commerce and Australian residents groups of various natures around the globe that would have welcomed information and the opportunity to provide comments on these proposed Agreements. It should be noted that the Australian Department of Foreign Affairs and Trade (DFAT) estimates that there are now some 820,000 Australians overseas. These people represent a significant percentage of the total number of individuals who stand to ultimately benefit from these agreements, and similarly these individuals will suffer detriment where they are living and working in countries with which Australia still has no such agreement.

In preparing this submission, our Group sought the views of the some 1,000 expatriate Australians around the world currently on our mailing list. From the responses received, it is clear that the vast majority of Australians overseas have no knowledge at all of Australia's network of social security agreements.

As a result of our e-bulletin on this subject to our members, we have received many enquiries from individuals wanting to know whether and how they will be covered when they retire. Many are unaware of the gaps in coverage which will affect them negatively where no agreement exists with a particular country. In our experience, many people realise to their personal detriment only too late that they will not be covered. For this reason, the Southern Cross Group would like to see improved information on particular difficulties which Australians can expect to encounter with respect to the domestic social security legislation of countries where there is no agreement made available on the DFACS website and through Australian missions overseas so that Australian expatriates in these countries can better plan for retirement. It is submitted that the Department may well already have built up an inventory of country-specific difficulties as a result of contacts with individual Australians over a number of years.

In its submission on citizenship to the Australian Department of Immigration and Multicultural Affairs (DIMA) of 6 July 2001, the Southern Cross Group made a series of eleven recommendations to Government.¹ The final two recommendations in that paper are relevant in this context and have not yet been acted upon. The SCG would like to see the Government establish an Australia-based agency or group within DIMA to act as a focal point for the dissemination of Government information to Australians living overseas and to ensure that Government services are more accessible to Australians overseas. Further, the SCG renews its call for a dialogue to be commenced in which ways for achieving better representation of expatriate Australians in Australia, as well as initiatives for allowing Australians overseas to contribute more effectively back into Australia can be developed.

1.2 Dual Citizenship and Improved Social Security Coverage

It is noted that some, although not all, of the gaps in social security coverage as they affect individuals, which these agreements seek to remedy, are due to the fact that many Australian citizens overseas have been dissuaded over the years from taking out the citizenship of their host country due to the continued existence of Section 17 of the *Australian Citizenship Act 1948*. This provision means that Australians forfeit their Australian citizenship on acquisition of another citizenship. The SCG welcomes the Government's decision of 3 August 2001 to repeal Section 17, and notes that a bill to amend the *Citizenship Act* to this effect was introduced into the House of Representatives on 23 August 2001. The Group urges the speedy passage of this legislation so that no further Australians will lose their Australian citizenship once it comes into force.

¹ Available in pdf format from the Position Papers and Press Releases section of the SCG website at www.southern-cross-group.org.

Where there is no bilateral social security agreement between Australia and a certain country, and that country makes the payment of a social security benefit in some way dependent on a person holding the citizenship of that country, it should be noted that the repeal of Section 17 will not remove all gaps in coverage for many Australians overseas. In particular, Australian citizens resident in countries which still do not recognise dual citizenship are not likely to apply for citizenship of that country, even if they have fulfilled the respective permanent residency criteria for citizenship. Countries which do not recognise dual citizenship include Austria, Belgium, Brunei, Chile, China, Denmark, Ecuador, Fiji, Finland, Germany, Iceland, India, Indonesia, Iran, Japan, Kenya, Kiribati, Malaysia, Mauritius, Nepal, Norway, Papua New Guinea, Peru, Philippines, Poland, Romania, Singapore, Solomon Islands, Thailand, Vietnam, Venezuela, and Zimbabwe.

1.3 Difficulties for Australians in Countries Where Australia has no Agreement

The SCG would like to take this opportunity to urge the Australian Government to pursue the speedy conclusion of social security agreements with further countries where no bilateral arrangement currently exists. In particular, countries where there are significant Australian expatriate populations should be looked at as a matter of priority. Our Group welcomes the fact that an agreement with the US is currently scheduled for signing in October 2001 and will probably come into effect in mid 2002. There are approximately 100,000 Australians in the United States, and approximately 40 percent of all Southern Cross Group members are in the United States.

As stated by Mr Barson during the Committee Hearing of 20 August 2001, Australia is the net beneficiary in financial terms from these agreements, with agreement countries currently paying around \$A356 million in pensions into Australia while Australia pays about \$146 million in pensions to agreement countries.²

Other countries where action would be particularly helpful in terms of the sheer numbers of Australians resident include Greece (approximately 130,000 Australians), Turkey (approximately 10,000 Australians), Lebanon (approximately 25,000 Australians), and Hong Kong (approximately 46,000 Australians). In addition, the SCG would like to see a replacement arrangement with the United Kingdom following the termination of the old agreement by Australia in March this year. There are at least 250,000 Australians in the United Kingdom. We can expect that the United Kingdom will continue to host the largest Australian expatriate community in the world in coming years.

² Proof Committee Hansard, Joint Standing Committee on Treaties, Monday 20 August 2001, TR 1.

Even in countries where there are not large numbers of Australian expatriates, the benefits of such an agreement are undisputed. Where an opportunity for an agreement may exist with another country, it is submitted that all possibilities should be explored, because every single agreement will benefit individual Australians.

A real example of the sorts of difficulties which arise for Australian citizens in countries with which Australia has no bilateral social security agreement can be seen with regard to Australian citizens who have lived and worked in Belgium for a number of years. The Southern Cross Group has been made aware by several Australian citizens in Belgium that the lack of a social security agreement between Australia and Belgium is causing significant financial hardship for those coming up to retirement or who have recently retired. Belgian social security law prevents the payment of a Belgian pension to an Australian citizen resident in Australia. An Australian citizen who has made compulsory contributions to the Belgian state social security system for a number of years must remain in Belgium to receive a pension.

For several individuals, this fact was not discovered until their decision to retire had been made, and notice had been given to their employer to cease employment. One Australian woman, who had worked in Belgium for 25 years as an employee under Belgian law, returned to Australia to live last year effectively forfeiting her Belgian pension rights. She faced a difficult decision on learning of this gap in coverage: remain in Belgium in retirement, where she has no family, or return to Australia to be close to family, but forego years of significant social security contributions. This distressing choice should not have to be faced by expatriate Australians.

The Southern Cross Group has made a number of representations to the Australian Ambassador to Belgium, HE the Hon Joanna Hewitt, and is encouraged that Embassy officials in Brussels have recently pursued a dialogue on this issue with relevant officials in Canberra and on the Belgian side. The SCG hopes that negotiations with Belgium for a social security agreement can be opened and completed without further delay. Approximately 500 Australians are resident in Belgium.

Another difficulty which should not be overlooked is the fact that Australians who turn 65 while resident in a country with which Australia has no agreement cannot claim the Australian age pension unless they return to Australia. The SCG was recently made aware of the hardship suffered by an Australian citizen who has just turned 65 and lives in Brazil. Centrelink rejected his application for the age pension because he was not resident in Australia to make the application. For this individual, returning to Australia is not possible for economic reasons. It is

noted that, even if this person could afford to fly back to Australia for a visit in order to lodge their application, this would not suffice - residence in Australia is required.

1.4 Discrimination in EU Social Security Legislation

With regard to Belgium, and the fourteen other EU countries, it should be noted that the plight of expatriate Australian social security contributors in the EU is not helped by the fact that EU-level legislation on the portability of social security benefits³ within the EU does not currently cover non-EU nationals legally living and working and contributing to the various national social security schemes there. This means, for example, that a German national paying into the French social security system could choose to take his pension in Spain. An Australian national paying into the system in Belgium cannot take a Belgian pension in Australia or in any other EU country.

The Southern Cross Group will continue to advocate changes to the relevant EU legislation with the EU institutions in Brussels, but would also encourage the Australian Government to more actively pursue this change through diplomatic channels. Such representations could be made in conjunction with other non-EU countries which have nationals resident in the EU, such as Canada, the United States, and New Zealand. Approximately half of all Australians overseas are resident in the EU, and there are 13 million non-EU nationals living in the EU. Were EU legislation to be amended so that Australians and other non-EU nationals were covered, Australia would stand to gain economically, because Australians who have been forced to return to Australia in retirement for financial reasons and in order to benefit from the Australian age pension would instead have the option of taking pensions due from EU countries in other EU countries, even where Australia has no bilateral social security agreement with the EU country concerned.

2. Comments on the Proposed Treaties

2.1 Agreement with Canada

Although the Australian Government currently pays benefits under the existing Agreement with Canada to a total of only 871 people, the SCG notes that there are presently approximately 42,000 Australians resident in Canada, and that this is an aging population. It is to be expected that the number of beneficiaries on both sides of the Pacific will increase in time, and as such, the new agreement with Canada is a welcome development.

³ Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving with the Community.

2.2 Agreement with The Netherlands

There are approximately 8,800 Australian citizens resident in The Netherlands. Australia pays out benefits under the existing agreement with The Netherlands to 4,030 people, of whom 3,979 are in the Netherlands.

The new agreement with The Netherlands is particularly welcomed because it is the first Australia will enter into which includes provisions to avoid the double coverage of seconded workers.

2.3 Agreement with Spain

The Australian Government currently pays benefits to 3,285 people in Spain including 2,353 people that are paid under the existing agreement. There are around 2,000 Australians currently resident in Spain. Some of these can be expected to take out Spanish citizenship once Section 17 of the *Australian Citizenship Act 1948* has been repealed, and these people will become dual citizens. The Southern Cross Group welcomes this new agreement.

2.4 Protocol to Existing Agreement with Austria

The Australian expatriate community in Austria is around 1,400. Under the unamended agreement with Austria, Australia currently pays benefits to a total of 794 people, of whom 779 people are in Austria. It should be noted that Austrian citizenship law does not recognise dual citizenship. Australians resident in Austria long enough to qualify for Austrian citizenship are unlikely to take Austrian citizenship because Austria will not recognise them as dual citizens. For this reason in particular, an improved agreement with Austria is very welcome.

2.5 Agreement with Germany

There are approximately 7,000 Australians in Germany, and Germany does not recognise dual citizenship. In addition, Germany has strenuous qualifying periods for naturalisation, longer than almost every other Western nation. The SCG notes that at present, German pensions paid in Australia are generally reduced by around 30 percent if the beneficiary is not a German citizen, either because they were never German, or because they lost their German citizenship under German law on becoming Australian.

As this agreement is the first with Germany on social security, it is a very positive development, particularly as an estimated 3,500 former Australian residents, many of these Australian citizens, now living in Germany, can be expected to benefit from the agreement.

2.6 Agreement with Portugal

The Southern Cross Group has no information on the number of Australians presently resident in Portugal, but notes that the Australian Government currently pays benefits under the existing Agreement with Portugal to a total of 371 people, 359 of whom are in Portugal.

The double coverage provisions which ensure that Australian and Portuguese employers do not have to make two superannuation contributions when an employee is seconded to work in the other country are particularly welcome.

3. Conclusion

The Southern Cross Group welcomes the six proposed treaties on social security and believes that it is in Australia's interests to enter into these Agreements.

The SCG urges the Government to conclude further agreements on social security with countries where no arrangement is currently in place as a matter of urgency.

Finally, the Australian expatriate community would welcome increased opportunities to consult with the Joint Standing Committee on Treaties and Australian Government Departments in the future on proposed agreements which impact the Australian diaspora.