



Social Security (International Agreements) Act 1999 Amendment Regulations 2008 (No. 1)¹

Select Legislative Instrument 2008 No. 107

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* and the *Legislative Instruments Act 2003*.

Dated 19 June 2008

P. M. JEFFERY
Governor-General

By His 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 2008 (No. 1)*.

2 Commencement

- (1) These Regulations commence as follows:
 - (a) on the day after they are registered — regulations 1 to 3;
 - (b) on a day fixed by legislative instrument made by the Minister — Schedule 1.
- (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 sunseting).

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 20

insert in correct numerical position

Schedule 23 — Japan

Note: See section 5.

**AGREEMENT BETWEEN AUSTRALIA AND JAPAN ON
SOCIAL SECURITY**

Australia and Japan,

Being desirous of regulating the relationship between them in the field of social security,

Have agreed as follows:

**PART I
GENERAL PROVISIONS**

**Article 1
Definitions**

1. For the purpose of this Agreement,
 - (a) “territory” means,
 - as regards Japan,
the territory of Japan,
 - as regards Australia,
the territory of the Commonwealth of Australia excluding all external territories other than those external territories that are:
 - (i) included in the definition of ‘Australia’ in the legislation of Australia; and
 - (ii) one of the following external territories: the Territory of Cocos (Keeling) Islands, the Territory of Christmas Island, the Territory of Norfolk Island, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory;
 - (b) “national” means,
 - as regards Japan,

a Japanese national within the meaning of the national statute on nationality of Japan,

as regards Australia,
a citizen within the meaning of the law on citizenship of Australia;

- (c) “legislation” means,

as regards Japan,
the national statutes and regulations of Japan concerning the Japanese pension systems specified in paragraph 2 of Article 2,

as regards Australia,
the Acts specified in subparagraph 1(a) of Article 2 except in relation to the application of Articles 6 to 13 of this Agreement (including the application of other Articles of this Agreement as they affect the application of those Articles) where it means the law specified in subparagraph 1(b) of Article 2,

however, the treaties or other international agreements on social security concluded between Australia and a third state shall not be included;

- (d) “competent authority” means,

as regards Japan,
any of the Governmental organisations competent for the Japanese pension systems specified in paragraph 2 of Article 2,

as regards Australia,
the Secretary of the Commonwealth Department responsible for the Acts specified in subparagraph 1(a) of Article 2 in relation to the application of those Acts, and the Commissioner of Taxation or an authorised representative of the Commissioner in relation to the application of the law specified in subparagraph 1(b) of Article 2;

- (e) “competent institution” means,

as regards Japan,

any of the insurance institutions, or any association thereof, responsible for the implementation of the Japanese pension systems specified in paragraph 2 of Article 2,

as regards Australia,
the institution or agency which has the task of implementing the applicable legislation of Australia;

- (f) “period of coverage under the legislation of Japan” means,

a period of contribution under the legislation of Japan and any other period taken into account under that legislation for establishing entitlement to benefits,

however, a period which shall be taken into account, for the purpose of establishing entitlement to benefits under the legislation of Japan, pursuant to other agreements on social security comparable with this Agreement shall not be included;

- (g) “period of Australian working life residence” means,

unless otherwise provided in this Agreement, a period defined as such in the legislation of Australia, during which a person was employed or self-employed,

however, any period of coverage under the legislation of Japan deemed pursuant to Article 15 to be a period in which that person was an Australian resident shall not be included;

- (h) “benefit” means,

as regards Japan,
a pension or any other cash benefit under the legislation of Japan,

as regards Australia,
a pension or any other benefit under the Acts specified in subparagraph 1(a) of Article 2, including any additional amount, increase or supplement, which is payable to a person who qualifies under those Acts.

2. For the purpose of this Agreement, any term not defined in this Agreement shall have the meaning assigned to it under the respective legislation of either Party.

Article 2 Matters Covered

1. As regards Australia, this Agreement shall apply to the following Acts and law effective at the date of entry into force of this Agreement, and to any Acts and law that subsequently amend, consolidate, supplement or replace them:

- (a) the Acts forming the social security law insofar as the law provides for, applies to or affects age pension; and
- (b) the law concerning the superannuation guarantee, which is contained in the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Regulations,

however, for the purpose of this Agreement, Articles 6 to 13, 18, 19 and paragraph 3 of Article 29 shall not apply to the Acts referred to in subparagraph (a) and Articles 4, 5, 14 to 21, 29 (except paragraph 3) and paragraph 2 of Article 31 shall not apply to the law referred to in subparagraph (b).

2. As regards Japan, this Agreement shall apply to the following Japanese pension systems:

- (a) the National Pension (except the National Pension Fund);
- (b) the Employees' Pension Insurance (except the Employees' Pension Fund);
- (c) the Mutual Aid Pension for National Public Officials;
- (d) the Mutual Aid Pension for Local Public Officials and Personnel of Similar Status (except the pension system for members of local assemblies); and
- (e) the Mutual Aid Pension for Private School Personnel;

(the Japanese pension systems specified in (b) to (e) shall hereinafter be referred to as the “Japanese pension systems for employees”);

however, for the purpose of this Agreement, the National Pension shall not include the Old Age Welfare Pension or any other pensions which are granted on a transitional or complementary basis for the purpose of welfare and which are payable wholly or mainly out of national budgetary resources.

Article 3 Persons Covered

This Agreement shall apply to any person who is or has been an Australian resident, whose employer is or has been subject to the law specified in subparagraph 1(b) of Article 2 in respect of that person, or who is or has been subject to the legislation of Japan and, where applicable, to other persons who derive rights from such person.

Article 4 Equality of Treatment

The persons specified in Article 3, who ordinarily reside in the territory of one Party, shall receive equal treatment with nationals of that Party in the application of the legislation of that Party in regard to entitlement to and payment of benefits.

However, the foregoing shall not affect the provisions on complementary periods for Japanese nationals on the basis of ordinary residence outside the territory of Japan under the legislation of Japan.

Article 5 Payment of Benefits to Beneficiaries Abroad

1. Any provision of the legislation of one Party which restricts entitlement to or payment of benefits solely because the person ordinarily resides outside or is absent from the territory of that Party shall not be applicable to persons who ordinarily reside in the territory of the other Party.

However,

- (a) as regards Japan, the foregoing shall not affect the provisions of the legislation of Japan which require a person who is aged 60 or over but under 65 on the date of

the first medical examination or of death to reside ordinarily in the territory of Japan for the acquisition of entitlement to the Disability Basic Pension or the Survivors' Basic Pension; and

- (b) as regards Australia, any additional amount, increase or supplement mentioned in subparagraph 1(h) of Article 1 shall only be payable outside the territory of Australia to the extent provided by the legislation of Australia.

2. Where the legislation of a Party provides or allows that a benefit is payable in the territory of a third State, then that benefit, when payable by virtue of Articles 14 to 17 or Articles 18 and 19, is also payable in the territory of that third State.

PART II PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

Article 6 Application of this Part

This Part (except for paragraph 1 of Article 9) shall apply only if an employee 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 7 General Provisions

Unless otherwise provided in this Agreement, a person who works as an employee in the territory of one Party or the employer of that employee shall, with respect to the work or the remuneration paid for that work, be subject only to the legislation of that Party.

Article 8 Special Provisions

1. Where an employee who is covered under the legislation of one Party and employed in the territory of that Party by an employer with a place of business in that territory, is sent by that employer from that territory to work temporarily in the territory of the other Party, the employee and the employer of that employee shall, with respect to that employment, be subject only to the legislation of the first Party until the

expiration of a period of five years from the date that employee is sent, as if that employee were working in the territory of the first Party. If the period continues beyond five years, the competent authority or competent institution of the second Party may, with the prior concurrence of the competent authority or competent institution of the first Party, grant further exemption of the employee from the legislation of the second Party.

2. As regards Australia, for the purpose of paragraph 1 of this Article, in the case of an employee who is sent from the territory of Australia by an employer in that territory to the territory of Japan, that employer and a related entity of the employer shall be considered one and the same. For the purpose of this Article, an entity shall be deemed a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group.

Article 9 **Civil Servants, Members of Diplomatic Missions and** **Members of Consular Posts**

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

2. Subject to paragraph 1 of this Article, where an employee who is covered under the legislation of Australia and employed by the Government of Australia, including a political subdivision or local authority of Australia, is sent by the Government of Australia from the territory of Australia to work in the territory of Japan, the employee and the employer of that employee shall, with respect to that employment, be subject only to the legislation of Australia.

3. Subject to paragraph 1 of this Article, where any civil servant of Japan or any person treated as such under the legislation of Japan is sent to work in the territory of Australia, that person shall be subject only to the legislation of Japan.

Article 10 **Persons sent from a Third State**

Paragraph 1 of Article 8 or paragraphs 2 and 3 of Article 9 shall apply where a person who has been sent by an employer from the territory of one Party to the territory of a third State is subsequently sent by that employer from the territory of the third State to the territory of the other Party.

Article 11
Exceptions to Articles 7 to 10

The competent authority or competent institution of Japan and the competent authority of Australia may agree to grant an exception to the provisions of Articles 7 to 10 in the interest of particular persons or categories of persons, provided that such persons or categories of persons shall be subject to the legislation of one of the Parties.

Article 12
Accompanying Spouse and Children

As regards the spouse or children who are specified in the legislation of Japan as the accompanying spouse or children of a person who works in the territory of Japan and who is subject to the legislation of Australia in accordance with Article 8, paragraph 2 of Article 9 or Article 11,

- (a) In cases in which such accompanying spouse or children are persons other than Japanese nationals, the legislation of Japan shall not apply to them. However, when such accompanying spouse or children so request, the foregoing shall not apply.
- (b) In cases in which such accompanying spouse or children are Japanese nationals, the exemption from the legislation of Japan shall be determined in accordance with the legislation of Japan.

Article 13
Compulsory Coverage

Articles 7 to 10 and 12 shall apply, as regards Japan, only to compulsory coverage under the legislation of Japan.

PART III
PROVISIONS CONCERNING AUSTRALIAN BENEFITS

Article 14
Residence or Presence in the Territory of Japan
or a Third State

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

- (a) is an Australian resident or a resident of Japan or a third State with which Australia has concluded an agreement on social security that includes provision for cooperation in the lodgement, assessment and determination of claims for benefits; and
- (b) is in the territory of Australia, Japan 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 the territory of Australia on that date.

Article 15
Totalisation for Australian Benefits

1. Where a person to whom this Agreement applies has claimed a 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;
- (b) a period of Australian working life residence equal to or greater than the minimum period identified in accordance with paragraph 4 of this Article for that person; and
- (c) a period of coverage under the legislation of Japan;

then, that period of coverage under the legislation of Japan shall be deemed to be a period in which that person was an Australian resident only if that period of coverage under the legislation of Japan is certified by the competent institution of Japan and only for the purpose of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia.

2. For the purpose of paragraph 1 of this Article, where a person:
- (a) has been an Australian resident for one 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 period of coverage under the legislation of Japan in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a) of this paragraph;

the total of the periods of coverage under the legislation of Japan shall be deemed to be one continuous period in which that person was an Australian resident.

3. For the purpose of this Article, where a period as an Australian resident and a period of coverage under the legislation of Japan coincide, the period of coincidence shall be taken into account once only by the competent institution of Australia as a period as an Australian resident.

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

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

Article 16 Calculation of Australian Benefits

1. Subject to paragraphs 2 and 3 of this Article, where a benefit under the legislation of Australia is payable by virtue of this Agreement or otherwise, to a person who is outside the territory of Australia the rate of that benefit shall be determined according to the legislation of Australia but, when assessing the income of that person for the purpose of calculating the rate of the benefit under the legislation of Australia, only a proportion of any benefit under the legislation of Japan paid to that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of Australian working life residence (not exceeding 300) by the amount of that benefit under the legislation of Japan and dividing that product by 300.
2. A person referred to in paragraph 1 of this Article shall be entitled to receive the assessment of income described in that paragraph only for any period during which the rate of that person's benefit under the legislation of Australia is proportionalised under the legislation of Australia.
3. Paragraph 1 of this Article shall continue to apply for 26 weeks where a person returns temporarily to Australia.
4. Subject to paragraphs 5 and 6 of this Article, where a benefit under the legislation of Australia is payable only by virtue of this Agreement to a person who is in the territory of Australia, the rate of that benefit shall be determined as follows:
 - (a) calculating that person's income according to the legislation of Australia but disregarding in that calculation any benefit under the legislation of Japan which that person or the partner of that person is entitled to receive if applicable;
 - (b) deducting the amount of benefit under the legislation of Japan which that person is entitled to receive from the maximum rate of that benefit under the legislation of Australia; 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) of this Article.

5. Paragraph 4 of this Article shall continue to apply for 26 weeks where a person departs temporarily from Australia.

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

Article 17 **Australian Working Life Residence**

Notwithstanding paragraph 1(g) of Article 1, for the purpose of Articles 15 and 16, a period of Australian working life residence in relation to a person means a period defined as such in the legislation of Australia.

PART IV **PROVISIONS CONCERNING JAPANESE BENEFITS**

Article 18 **Totalisation for Japanese Old-age Benefits**

1. Where a person does not have sufficient periods of coverage to fulfill the requirements for entitlement to old-age benefits under the legislation of Japan, the competent institution of Japan shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of Australian working life residence insofar as they do not coincide with the periods of coverage under the legislation of Japan.

However, this paragraph shall not apply to the additional pension for specified occupations under the mutual aid pensions.

2. In applying paragraph 1 of this Article, periods of Australian working life residence shall be taken into account as periods of coverage under the legislation of Japan pursuant to the Japanese pension systems for employees and as corresponding periods of coverage under the legislation of Japan pursuant to the National Pension.

Article 19
Calculation of Japanese Old-age Benefits

1. Where entitlement to an old-age benefit under the legislation of Japan is established by virtue of paragraph 1 of Article 18, the competent institution of Japan shall calculate the amount of that benefit in accordance with the legislation of Japan, subject to paragraph 2 of this Article.

2. With regard to the Additional Pension for Spouses which is included in the Old-age Employees' Pension and any other old-age benefits that may be granted as a fixed sum in cases where the period of coverage under the legislation of Japan pursuant to the Japanese pension systems for employees equals or exceeds the specified period determined by the legislation of Japan, if the requirements for receiving such benefits are fulfilled by virtue of paragraph 1 of Article 18, the amount to be granted shall be calculated according to the proportion of the periods of coverage under the legislation of Japan pursuant to the Japanese pension systems for employees from which such benefits will be paid to that specified period.

PART V
MISCELLANEOUS PROVISIONS

Article 20
Applications, Appeals and Declarations

1. When a written application for benefits, an appeal or any other declaration under the legislation of one Party is submitted to a competent authority or competent institution of the other Party which is competent to receive similar applications, appeals or declarations under the legislation of that other Party, that application, appeal or declaration shall be deemed to be submitted on the same date to the competent authority or competent institution of the first Party and shall be dealt with according to the procedure and legislation of the first Party.

2. In any case to which this Article applies, the competent authority or competent institution of one Party to which the application for benefits, appeal or any other declaration has been submitted shall transmit it without delay to the competent authority or competent institution of the other Party.

3. In relation to a decision made by the competent institution of Australia, an appeal document in paragraph 1 of this Article means a document concerning an appeal that may be made to an administrative body established by, or be made administratively for the purpose of, the legislation of Australia.

Article 21 Payment of Benefits

1. Payment of benefits under this Agreement may be made in the currency of either Party.
2. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party, whether the beneficiary is in the territory of the other Party or outside the respective territories of both Parties, without deduction for government administrative fees and charges for processing and paying that benefit.
3. In case provisions for restricting the exchange of currencies or remittance are introduced by either Party, the Governments of the two Parties shall immediately consult on the measures necessary to ensure the payment of benefits by either Party under this Agreement.

Article 22 Charges or Fees and Legalisation

1. Insofar as the legislation of one Party, and in the case of Japan, other national statutes and regulations, contain provisions on an exemption or reduction of administrative charges or consular fees for documents to be submitted under the legislation of that Party, those provisions shall also apply to documents to be submitted in the application of this Agreement and the legislation of the other Party.
2. Documents which are presented for the purpose of this Agreement and the legislation of a Party shall be exempted from requirements for legalisation or any other similar formality by diplomatic or consular authorities.

Article 23 Mutual Assistance and Protection of Information

1. The competent authorities and competent institutions of the two Parties, within the scope of their respective authorities and administrative practice, shall assist each other in implementing this Agreement. This assistance shall be free of charge.

2. The competent authorities or competent institutions of one Party shall, in accordance with its national statutes and regulations, send to the competent authorities or competent institutions of the other Party information about an individual collected under its legislation insofar as that information is necessary for the implementation of this Agreement.

3. The competent authorities of the Parties shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement and about changes in their respective legislation insofar as these changes affect the application of this Agreement.

4. Unless otherwise required by the national statutes and regulations of one Party, information about an individual which is transmitted in accordance with this Agreement to that Party by the other Party shall be used exclusively for the purpose of implementing this Agreement. Such information received by a Party shall be governed by the national statutes and regulations of that Party for the protection of confidentiality of personal data.

Article 24

Languages of Communication

1. The competent authorities and competent institutions of the Parties may communicate directly with each other and with any concerned person wherever the person may reside whenever it is necessary for the administration of this Agreement. The communication may be in the respective languages of the Parties.

2. In implementing this Agreement, the competent authorities and competent institutions of one Party may not reject applications or any other documents for the reason that they are written in the language of the other Party.

Article 25

Administrative Arrangement and Liaison Agencies

The competent authorities of the two Parties shall:

- (a) agree on the administrative arrangements necessary for the implementation of this Agreement; and
- (b) designate liaison agencies for the implementation of this Agreement.

Article 26
Resolution of Disagreement

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

Article 27
Review of Agreement

Where a Party gives the other Party a written request through diplomatic channels to meet to review this Agreement, the Parties shall meet for that purpose as soon as practicable after that request was made and, unless the Parties otherwise arrange, their meeting shall be held in the territory of the Party to which that request was made.

Article 28
Headings

The headings of Parts and Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

PART VI
TRANSITIONAL AND FINAL PROVISIONS

Article 29
Transitional Provisions

1. This Agreement shall not establish any entitlement to benefits for any period prior to its entry into force.
2. In the implementation of this Agreement, periods of coverage under the legislation of Japan, and periods as an Australian resident and other legally relevant events occurring before its entry into force shall also be taken into account.
3. Paragraph 1 of Article 8 and paragraphs 2 and 3 of Article 9 shall also apply to the employees who are sent before the date of entry into force of this Agreement. In applying paragraph 1 of Article 8 in the case of persons who have been working in the territory of a Party prior to the entry into force of this Agreement, the period referred to in paragraph 1 of Article 8 shall be considered to begin on the date of entry into force of this Agreement.

4. Decisions made before the entry into force of this Agreement shall not affect any rights to be established by virtue of this Agreement.

Article 30 Entry into Force

This Agreement shall enter into force on the first day of the month following the month in which the Parties shall have completed an exchange of diplomatic notes informing each other that their respective statutory and constitutional requirements necessary to give effect to this Agreement have been fulfilled.

Article 31 Duration and Termination

1. This Agreement shall remain in force and effect until the last day of the twelfth month following the month in which either Party gives the other Party written notification through diplomatic channels of its termination.

2. If this Agreement is terminated in accordance with paragraph 1 of this Article, rights regarding entitlement to and payment of benefits acquired under it shall be retained, in respect of a person who submits an application for those benefits and who fulfills the requirements for entitlement to those benefits prior to the date of termination.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done at Canberra on the twenty seventh day of February two thousand and seven in duplicate in the English and Japanese languages, the two texts being equally authentic.

For Australia:	For Japan:
Hon Mal Brough Minister for Families, Community Services and Indigenous Affairs	HE Hideaki Ueda Ambassador

Note

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