



Social Security (International Agreements) Act 1999 Amendment Regulations 2008 (No. 2)¹

Select Legislative Instrument 2008 No. 265

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 12 December 2008

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 2008 (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 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 22

insert in correct numerical position

Schedule 24 — Republic of Finland

Note: See section 5.

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

The Government of Australia and the Government of the Republic of Finland (hereinafter “the Parties”),

Wishing to strengthen the existing friendly relations between the two countries and resolved to coordinate their social security systems and to eliminate double coverage for seconded workers;

Have agreed as follows:

PART I

GENERAL PROVISIONS

ARTICLE 1
Definitions

1. In this Agreement, unless the context otherwise requires:
 - (a) “benefit” means, in relation to a Party, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable in addition to that benefit, pension or allowance under the legislation of that 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 to 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 Finland:

the Ministry of Social Affairs and Health;

- (c) “Competent Institution” means,

in relation to Australia:

the institution or agency which has the task of implementing the legislation in subparagraph 1(a) of Article 2; and

in relation to Finland:

an institution or body in charge of the implementation of the legislation and schemes referred to in subparagraph 1(b) of Article 2;

- (d) “legislation” means,

in relation to Australia, the laws specified in subparagraph 1(a)(i) of Article 2 except in relation to the application of Part 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 laws specified in subparagraph 1(a)(ii) of Article 2, and

in relation to Finland:

the laws and schemes specified in subparagraph 1(b) of Article 2;

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- (e) “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 13 to be a period in which that person was an Australian resident;
- (f) “period of insurance” means, in relation to Finland a period of employment or any equivalent period under the Earnings-Related Pension Scheme or a period of residence under the National Pensions Act;
- (g) “residence” means, in relation to Finland, residence as defined in the legislation of Finland;
- (h) “territory” means,
- in relation to Australia:
Australia as defined in the legislation of Australia and
- in relation to Finland:
the territory of Finland.

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

ARTICLE 2

Legislative Scope

1. This Agreement shall apply to the following laws and schemes, as amended at the date of signature of this Agreement, and to any laws and schemes that subsequently amend, 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 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 Finland:

(i) the Earnings-Related Pension Scheme;

(ii) the National Pensions Act in so far as the law provides for, applies to or affects old age pension including early old age pension and the Employer's Social Security Contributions Act in so far as the Act applies to the National Pension Insurance Contribution.

2. This Agreement shall not apply to future legislation which extends the existing legislation of one Party to new categories of beneficiaries unless the Competent Authorities of the Parties agree otherwise.

3. Notwithstanding the provisions of paragraph 1, unless otherwise specified the legislation of either Party shall not include any other agreement on social security entered into by either Party.

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 Finland.

ARTICLE 4 Equality of Treatment

Unless otherwise provided in this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to the rights and obligations regarding eligibility for and payment of benefits

which arise directly under the legislation of that Party or by virtue of this Agreement.

ARTICLE 5
Export of Benefits

1. Unless otherwise provided in this Agreement, benefits of one Party referred to in this Agreement shall be payable to persons who are residents of either Party.
2. In relation to Australia, any additional amount, increase or supplement that is payable in addition to a benefit under this Agreement, shall be payable to a person outside Australia only if it would be so payable if that benefit was payable independently of the Agreement.

PART II
PROVISIONS CONCERNING THE APPLICABLE
LEGISLATION

ARTICLE 6
Application of Part II

This Part only applies if an employee and/or the employer of the employee would, apart from this Part, be subject to the legislation of both Parties in respect of the work of the employee or remuneration paid for the work.

ARTICLE 7
Voluntary insurance under Finnish legislation

This Agreement shall not preclude the opportunity for an employer to voluntarily insure an employee under the Finnish Earnings-Related Pension Scheme.

ARTICLE 8
Diplomatic and Consular Relations

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.

ARTICLE 9
Secondment and Avoidance of Double Coverage

1. Unless otherwise provided in paragraphs 2 or 3, if an employee works in the territory of one Party, the employer of the employee and the employee shall in respect of the work and the remuneration paid, be subject only to the legislation of that Party.

2. If an employee:

- (a) is covered by the legislation of one Party ('the first Party');
- (b) was sent by the Government of the first Party to work in the territory of the other Party ("the second Party");
- (c) is working in the territory of the second Party in the employment of the Government of the first Party; and
- (d) is not working permanently in the territory of the second Party

the employer of the employee and employee shall be subject only to the legislation of the first Party in respect of the work performed and the remuneration paid for that work. In relation to this Article, Government includes, for Australia, a political subdivision or local authority of Australia, and for Finland means the State including organisations where personnel are insured under the State Employees' Pension Act.

3. If an employee:

- (a) is covered by the legislation of one Party ('the first Party');

- (b) was sent by an employer who is subject to the legislation of the first Party to work in the territory of the other Party ('the second Party');
- (c) is working in the territory of the second Party in the employment of the employer or a related entity of that employer;
- (d) is not working permanently in the territory of the second Party; and
- (e) a period of 5 years from the time the employee was sent to work in the territory of the second Party has not elapsed;

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

4. For the purposes of subparagraph 3(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.

ARTICLE 10 **Exception agreements**

The Competent Authorities or the bodies designated by them may agree in writing to modify the application of the provisions of this Part in respect to a particular person or particular category of persons.

ARTICLE 11 **Accompanying Family Members of Seconded Employees**

1. Family members, who accompany an employee sent to Australia to whom paragraphs 2 and 3 of Article 9 or Article 10 apply, shall for any period in which they are not working in the territory of Australia be subject to Finnish legislation.

2. Family members, who accompany an employee sent to Finland to whom paragraphs 2 and 3 of Article 9 or Article 10 apply, shall not be subject to Finnish legislation for any period during which they are not working in the territory of Finland.

3. For the purposes of this Article, family member for Finland means family member as defined in the legislation of Finland.

PART III
PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 12
Residence or Presence in Finland

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

- (a) is an Australian resident or is a Finnish resident, and
- (b) is in Australia, or Finland,

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 13
Totalisation in relation to Australian benefits

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:

- (a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, under the legislation of Australia for a benefit; and

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- (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 period of insurance under the legislation of Finland;

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

2. For the 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 period of insurance in two or more separate periods that equals or exceeds in total the period referred to in subparagraph (a),

the total of the periods of insurance shall be deemed to be one continuous period.

3. For the purposes of this Article, where a person's period as an Australian resident and a period of insurance in Finland 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:

- (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 6 months must be continuous; and

- (b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum period.

ARTICLE 14
Calculation of Australian Benefits

1. Subject to paragraph 2 and 3, where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person outside Australia, the amount of the benefit shall be determined according to the legislation of Australia but on the basis that the additional child amount rate is nil.
2. Where a proportional Australian benefit is paid to a person, only a proportion of any Finnish Earnings-Related pension which is received by that person or by the partner of that person, where applicable, shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months (not exceeding 300) of Australian working life residence used in the assessment of that person's Australian benefit by the amount of that Finnish benefit and dividing that product by 300.
3. When assessing the income of a person who is residing in Finland, Finnish National Pension and other Finnish mean-tested payments shall be disregarded.
4. Paragraphs 1, 2 and 3 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
5. Subject to the provisions of paragraph 6, 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 the Finnish benefit received by that person and by that person's partner, if applicable;

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- (b) deducting the amount of the Finnish benefit received by that person 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).

6. Paragraph 5 shall continue to apply for 26 weeks where a person departs temporarily from Australia.

7. Where a member of a couple is, or both that person and that person's partner are, entitled to a Finnish benefit or benefits, each of them shall be deemed, for the purpose of this Article and for the legislation of Australia, to be entitled to half of either the amount of that benefit or total of both of those benefits, as the case may be.

8. Notwithstanding paragraphs 1-7, when an Australian benefit is payable by virtue of this Agreement or otherwise to a person in Australia or outside Australia any allowance paid by Finland to that person or that person's partner for the purpose of meeting special expenses incurred as a result of illness or injury shall be disregarded by Australia for the purposes of assessing income.

9. For the purpose of calculating benefits payable to a person under the legislation of Australia by virtue of this Agreement:

- (a) if a person is subject to the laws specified in subparagraph 1(a)(ii) of Article 2 during any period he or she lives in the territory of Finland, that period shall be accepted as a period as an Australian resident for that person, and
- (b) if a person is subject to the legislation of Finland during any period in which he or she lives in the territory of Australia, that period shall not be accepted as a period as an Australian resident for that person.

PART IV
PROVISIONS RELATING TO FINNISH BENEFITS

ARTICLE 15
National Pensions

1. Notwithstanding the provisions of Article 4 and Article 5, the entitlement to and payment of a pension under the National Pensions Act shall be determined according to the provisions of this Article.
2. A national of a Party residing in the territory of a Party shall be entitled to an old age pension if he or she has resided in Finland for at least 3 years after having reached the age of 16.
3. If an old-age pension is granted to a national of a Party while residing in Finland, and he or she leaves Finland to become an Australian resident, he or she shall be entitled to receive this pension if he or she had resided in Finland for at least 3 years after having reached the age of 16.
4. When determining the amount of old-age pension payable to a person who is not residing in Finland, the Australian age pension shall not be taken into account.

ARTICLE 16
Earnings-Related Pensions

1. Unless otherwise provided in this Agreement, the entitlement to a Finnish Earnings-Related Pension and the amount of the pension shall be determined according to the legislation of Finland.
2. If the entitlement to a pension requires completion of periods of insurance, the periods of employment completed in Australia shall, to the extent necessary, be taken into account.

PART V
MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 17
Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Party in accordance with the Administrative Arrangement made pursuant to Article 21 at any time after the Agreement enters into force.
2. The date on which a claim, notice or appeal concerning the determination or payment of a benefit under the legislation of one Party is lodged with the Competent Institution of the other Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgement of the claim, notice or appeal with the Competent Institution of the first Party.
3. In relation to Australia, the reference in paragraphs 1 and 2 to an appeal document is a reference to an appeal that may be made to an administrative body established by, or administratively for the purposes of, the social security laws of Australia.
4. A claim for a benefit lodged under the legislation of one Party shall be considered as a claim for the corresponding benefit under the legislation of the other Party so long as the claimant has indicated in that claim that there is, or was, an affiliation with the social security system of that other Party, and provided the Competent Institution of the other Party receives this request within 12 months.
5. In relation to Finland for the purposes of computing an increment for delay in the payment of a pension according to Finnish legislation, a claim shall be deemed to be presented on the date when that claim, along with all necessary enclosures, reaches the Competent Institution in Finland.

ARTICLE 18
Recovery of Overpayments

1. Where

- (a) a benefit is paid or payable by a Party to a person in respect of a past period whether by virtue of this Agreement or otherwise; and
- (b) for all or part of that period, the other Party has paid to that person a benefit under its legislation; and
- (c) the amount of the benefit would have been reduced, had the other benefit been paid by the first Party during that period;

then

the amount that would not have been paid by the other Party had the benefit described in subparagraph (a) been paid on a periodical basis throughout that past period, shall be a debt due by that person to the other Party.

2. Where the Competent Institution of the first Party has not yet paid the benefit described in subparagraph 1(a) to the person:

- (a) the Competent Institution of that Party shall, at the request of the Competent Institution of the other Party, pay the arrears of the benefit to the Competent Institution of the other Party; and
- (b) the Competent Institution of the other Party may deduct from the amount of those arrears any excess amount of the benefit paid by it and shall pay any balance remaining to that person; and
- (c) any shortfall may be recovered by the Competent Institution of the other Party in accordance with the legislation of that Party.

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 and the legislation concerning Finnish and Australian benefits referred to in this Agreement.
- (b) provide assistance to one another, including the communication to each other of any necessary information, with regard to the determination or payment of any benefit under this Agreement as if the matter involved the application of 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 in so far 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 Administrative Arrangement made pursuant to Article 21.

3. Unless disclosure is required under the laws of a Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or a Competent Institution of that Party by a Competent Authority or a Competent Institution of the other Party is confidential and shall be used only for purposes of implementing this Agreement and the social security laws of either Party.

4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the Competent Authority or Competent Institution of a Party the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party; or

- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Party.

5. In the application of this Agreement, the Competent Authority and the Competent Institution of a Party may communicate with the other Party in the official language of that Party.

6. The claims, certificates, appeals or other documents submitted to an authority or to a Competent Institution of a Party with a view to application of this Agreement shall not be rejected on the ground that they are written in the official language of the other Party.

ARTICLE 20

Exemption from Fees and Authentication

1. Where, under the legislation of one Party, documents submitted to a Competent Authority or Competent Institution of that Party are partly or fully exempt from administrative charges, including consular fees, this exemption shall also apply to documents which are submitted to a Competent Authority or Competent Institution of the other Party in accordance with its legislation.

2. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

ARTICLE 21

Administrative Arrangements

1. The Competent Authorities of the Parties shall by means of an Arrangement, establish the administrative measures necessary for the application of this Agreement.

2. The Competent Authorities shall appoint liaison bodies which are to be listed in the Administrative Arrangement.

ARTICLE 22
Resolution of Difficulties

1. The Competent Authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.
2. The Parties shall consult promptly at the request of either Party concerning matters which have not been resolved by the Competent Authorities in accordance with paragraph 1.

ARTICLE 23
Review of Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose as soon as possible after that request was made and, unless the Parties otherwise agree, their meeting shall be held in the territory of the Party to which that request was made.

PART VII
TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 24
Application of Agreement to Periods Preceding its Entry into Force

1. No provision of this Agreement shall confer any entitlement to receive payment of a benefit for a period before the date of entry into force of this Agreement.
2. When determining entitlements to benefits under this Agreement, any period of insurance, period of residence in Finland, period of Australian residence and period of Australian working life residence completed before the entry into force of this Agreement shall be taken into account.

3. This Agreement may be applied even to contingencies that occurred before the entry into force of this Agreement.

4. Benefits granted before the entry into force of this Agreement may upon application by the beneficiary be determined to comply with the provisions of this Agreement. Subject to the legislation of either Party, this Agreement shall not result in any reduction in the amount of any benefit to which entitlement was established prior to its entry into force.

5. In relation to Finland, if an application referred to in paragraph 4 is submitted within two years from the entry into force of this Agreement, entitlements acquired under this Agreement shall apply from that date.

6. In relation to Finland, if an application referred to in paragraph 4 is submitted after the expiry of the two-year period after the entry into force of this Agreement, entitlements acquired under this Agreement shall apply from the date on which the application was submitted.

7. Where the provisions of Part II are applied to a person sent from the territory of one Party to work in the territory of the other Party prior to the entry into force of the Agreement, the employment referred to in the said provisions shall be considered to begin on the date of entry into force of the Agreement, provided that the person, during the employment has been subject to the legislation of the first-mentioned Party.

ARTICLE 25

Entry into Force and Termination

1. This Agreement shall enter into force on the first day of the second month following the month in which notes are exchanged by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalised.

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel giving notice of termination of this Agreement.

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who:

- (a) at the date of termination, are in receipt of 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 Party by virtue of paragraphs 2 or 3 of Article 9 of Part II of the Agreement, provided that the employee continues to satisfy the criteria of that Article.

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

DONE in two copies at Helsinki this tenth day of September two thousand and eight in the English and in the Finnish languages, each text being equally authentic.

**FOR THE GOVERNMENT OF
AUSTRALIA:**

**FOR THE GOVERNMENT OF THE
REPUBLIC OF FINLAND:**

.....
**HOWARD BROWN
AMBASSADOR**

.....
**LIISA HYSSÄLÄ
MINISTER OF SOCIAL AFFAIRS
AND HEALTH**

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>.