



Social Security (International Agreements) Amendment (Republic of Serbia) Regulations 2023

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 31 August 2023

David Hurley
Governor-General

By His Excellency's Command

Amanda Rishworth
Minister for Social Services

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1 Name

This instrument is the *Social Security (International Agreements) Amendment (Republic of Serbia) Regulations 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 5 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	2 September 2023
2. Schedule 1	The later of: (a) the day after this instrument is registered; and (b) the day the Agreement Between Australia and the Republic of Serbia on Social Security, done at Belgrade on 20 January 2023, comes into force for Australia. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. The Minister must announce, by notifiable instrument, the day the amendments come into force for Australia.	1 February 2024 (F2024N00105) (paragraph (b) applies)

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsection 8(1) of the *Social Security (International Agreements) Act 1999*.

4 Repeal of this instrument

This instrument is repealed on the day after Schedule 1 commences.

5 Schedules

Legislation that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Social Security (International Agreements) Act 1999

1 At the end of the Act

Add:

Schedule 33—Republic of Serbia

Note: See sections 5 and 8.

AGREEMENT BETWEEN
AUSTRALIA
AND
THE REPUBLIC OF SERBIA
ON SOCIAL SECURITY

Australia and the Republic of Serbia (hereinafter “the Contracting Parties”),

Wishing to strengthen the existing friendly relations between the two countries,

and

Being desirous of regulating the relationship between their two countries with respect to social security benefits and coverage,

Have agreed as follows:

PART I
GENERAL PROVISIONS

Article 1
Definitions

(1) In this Agreement, unless the context otherwise requires:

1. “**benefit**” means, in relation to a Contracting Party, a benefit, pension or allowance for which provision is made in the legislation of that Contracting 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 Contracting Party, but for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;

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2. “**Competent Authority**” means, in relation to Australia, the Secretary to the Commonwealth Department responsible for the legislation specified in subparagraph 1 of paragraph 1 of Article 2, except in relation to the application of Part II of the Agreement (including other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner; and, in relation to the Republic of Serbia, the Ministry responsible for the application of the legislation specified in subparagraph 2 of paragraph 1 of Article 2;
3. “**Competent Institution**” means, in relation to Australia, the institution or agency which has the task of implementing the applicable legislation; and in relation to the Republic of Serbia, the Republic Fund for Pension and Disability Insurance;
4. “**Government**” in relation to paragraph 2 of Article 8 includes, for Australia, a political subdivision or local authority of Australia;
5. “**legislation**” means, in relation to Australia, the laws specified in subparagraph 1.1. of paragraph 1 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 1.2. of paragraph 1 of Article 2; and in relation to the Republic of Serbia, the laws, by-laws and statutes and other general acts, related to the legislation referred to in subparagraph 2 of paragraph 1 of Article 2;
6. “**period of insurance**” means, in relation to the Republic of Serbia, a period of paid contributions and equal periods regarded as such under the legislation of the Republic of Serbia; and
7. “**period of Australian working life residence**” means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 12 of this Agreement to be a period in which that person was an Australian resident.

(2) Any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the applicable legislation.

Article 2 **Legislative Scope**

(1) This Agreement shall apply to the legislation effective at the date of entering into force of this Agreement, and to any legislation that subsequently amends, supplements or replaces it:

1. in relation to Australia:

1.1 the Acts forming the social security law in so far as the law provides for, applies to or affects the age pension;

1.2 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 1993*);

2. in relation to the Republic of Serbia, the legislation concerning pension and disability insurance.

(2) Unless otherwise provided in this Agreement, this Agreement does not apply to any agreement on social security entered into by either Contracting Party with a third state.

(3) This Agreement shall apply to laws which extend the legislation of either Contracting Party to new categories of beneficiaries only if the Contracting Parties agree in writing.

Article 3 Personal Scope

This Agreement shall apply to any person who:

1. is or has been an Australian resident; or
 2. is or has been subject to the legislation of Australia; or
 3. is or has been subject to the legislation of the Republic of Serbia;
- and to other persons in regard to the rights they derive from the person described above.

Article 4 Equality of Treatment

Unless otherwise provided, all persons to whom this Agreement applies shall be treated equally by a Contracting Party in regard to rights and obligations regarding eligibility for and payment of benefits which arise whether directly under the legislation of that Contracting Party or by virtue of this Agreement.

Article 5 Export of Benefits

(1) Benefits payable by virtue of this Agreement shall also be paid in the territory of the other Contracting Party.

(2) In relation to Australia, for the purposes of paragraph 1 of this Article, any additional amount, increase or supplement that is payable under this Agreement, shall be paid to a person outside Australia only for the period specified in the provisions of the *Social Security Act 1991*.

(3) In relation to the Republic of Serbia, paragraph 1 of this Article shall not refer to the difference between the established amount of pension and the lowest amount of the pension, if the established amount of pension is lower than the lowest amount of pension; cash compensation for body impairment, long term care, and funeral expenses.

PART II PROVISIONS ON COVERAGE

Article 6 Purpose and Application

(1) The purpose of this Part is to ensure that employers and employees are subject to the legislation of only one Contracting Party in respect of the same work.

(2) This Part applies only where an employee or the employer would otherwise be subject to the legislation of both Contracting Parties in respect of the work of the employee or remuneration paid for the work.

Article 7
Diplomats and Consular Relations

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

Article 8
Avoidance of Double Coverage

(1) Unless otherwise provided in paragraphs 2, 3 or 5 of this Article, if an employee works in the territory of one Contracting Party, the employer and the employee shall in respect of the work and the remuneration paid for the work, be subject only to the legislation of that Contracting Party.

(2) If an employee:

1. is covered by the legislation of one Contracting Party; and
2. was sent, whether before, on or after the commencement of this Agreement, by the Government of the first Contracting Party, including as a civil or public servant, to work in the territory of the second Contracting Party; and
3. is working in the territory of the second Contracting Party in the employment of the Government of the first Contracting Party, including as a civil or public servant; and
4. is not working permanently in the territory of the second Contracting Party;

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

(3) If an employee:

1. is covered by the legislation of one Contracting Party; and
2. was sent, whether before, on or after the commencement of this Agreement, by an employer who is subject to the legislation of the first Contracting Party to work in the territory of the second Contracting Party; and
3. is working in the territory of the second Contracting Party in the employment of the employer or a related entity of that employer; and
4. is not working permanently in the territory of the second Contracting Party and has not been in the territory of the second Contracting Party, in relation to the work for which the employee was sent, for a period exceeding three years,

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

(4) For the purposes of subparagraph 3 of paragraph 3 of this Article 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.

(5) If an employee is working in the employment of an employer on a ship or aircraft in international traffic, the employer and the employee shall in respect of the employment and the remuneration paid for that employment be subject only to the legislation of the Contracting Party of which the employee is resident.

Article 9 Exceptions

The Competent Authorities, or the Competent Institutions designated by them, may agree in writing to modify the application of the provisions of Article 8 of this Agreement.

Article 10 Certificate on Coverage

Where the legislation of one of the Contracting Parties is applicable in accordance with any of the provisions of this Part, the Competent Authority or the Competent Institution of the Contracting Party shall issue, upon request of the employer, a certificate stating that the employee is subject to the legislation of that Contracting Party and indicating the duration for which the certificate shall be valid.

PART III PROVISIONS FOR BENEFITS UNDER THE LEGISLATION OF AUSTRALIA

Article 11 Residence or Presence in the Republic of Serbia

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 not in Australia on the date on which the claim for that benefit is lodged, but:

1. is an Australian resident or a resident of the Republic of Serbia; and
2. is in Australia or the Republic of Serbia,

that person, so long as he or she has a minimum of 12 months Australian working life residence, shall be deemed, for the purpose of lodging that claim, to be an Australian resident and in Australia on that date.

Article 12 Totalisation

(1) Where a person to whom this Agreement applies has claimed a benefit under Australian legislation and has accumulated:

1. a period as an Australian resident that is less than the period required to qualify that person, under the legislation of Australia for that benefit; and

2. a period of Australian working life residence that is equal to or greater than the period identified in accordance with paragraph 4 of this Article; and

3. a period of insurance under the legislation of the Republic of Serbia,

then, that period of insurance completed under the legislation of the Republic of Serbia 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 of this Article, where a person:

1. 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 to a benefit; and

2. has accumulated a period of insurance under the legislation of the Republic of Serbia in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph 1 of this paragraph;

then the total of the periods of insurance completed under the legislation of the Republic of Serbia shall be deemed to be one continuous period.

(3) For the purposes of this Article, where a period as an Australian resident and a period of insurance under the legislation of the Republic of Serbia 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 of this Article shall be 12 months, of which at least six months must be continuous.

Article 13 **Calculation of Benefits**

(1) Subject to paragraph 2 of this Article, 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 by:

1. calculating that person's income according to the legislation of Australia, including any benefit payable under the legislation of the Republic of Serbia which that person or the partner of that person is entitled to receive;

2. applying to the maximum rate of Australian benefit the relevant rate calculator set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph 1 of this paragraph; and

3. proportionalising the amount of benefit calculated under subparagraph 2 of this paragraph by multiplying that amount by the person's period of Australian working life residence (up to a maximum of 540 months) over a denominator of 540 months (45 years).

(2) Paragraph 1 of this Article shall continue to apply for 26 weeks where a person comes temporarily to Australia.

(3) Subject to paragraph 4 of this Article, 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:

1. calculating the person's income according to the legislation of Australia but disregarding in that calculation any benefit under the legislation of the Republic of Serbia which that person or the partner of that person is entitled to receive; and
2. deducting the amount of that benefit under the legislation of the Republic of Serbia which that person is entitled to receive from the maximum rate of Australian benefit; and
3. applying to the remaining benefit obtained under subparagraph 2 of this paragraph the relevant rate calculation set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph 1 of this paragraph.

(4) Paragraph 3 of this Article shall continue to apply, for the period specified in the *Social Security Act 1991* before which a person's pension becomes subject to proportionality, 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 benefit or benefits under the legislation of the Republic of Serbia 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 those benefits, as the case may be.

(6) For the purposes of paragraphs 1 and 2 of this Article, the Additional Child Amount shall be nil.

PART IV PROVISIONS FOR BENEFITS UNDER THE LEGISLATION OF THE REPUBLIC OF SERBIA

Article 14 Totalisation

(1) Where a person to whom this Agreement applies has claimed a benefit under the legislation of the Republic of Serbia and has accumulated:

1. a period of insurance completed under the legislation of the Republic of Serbia that is less than the period required to qualify for that benefit under the legislation of the Republic of Serbia; and
2. a period of Australian working life residence

then that period of Australian working life residence shall be deemed to be a period of insurance completed under the legislation of the Republic of Serbia only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of the Republic of Serbia.

(2) For the purposes of this Article, when a period of insurance completed under the legislation of the Republic of Serbia and a period of Australian working life residence

coincide, the period of coincidence shall be taken into account once only by the Republic of Serbia as a period completed under the legislation of the Republic of Serbia.

(3) The minimum period of insurance completed under the legislation of the Republic of Serbia to be taken into account for the purposes of paragraph 1 of this Article shall be 12 months.

Article 15

Calculation of Benefits

(1) If the right to benefit is provided for under the legislation of the Republic of Serbia without application of Article 14 of this Agreement, the amount of the benefit shall be determined solely under the legislation of the Republic of Serbia.

(2) If the right to benefit is determined solely by virtue of the application of Article 14 of this Agreement, the Competent Institution of the Republic of Serbia shall:

1. calculate a theoretical benefit amount that would be paid if the total period accumulated under the legislation of the Republic of Serbia and Australian legislation had been completed solely under the legislation of the Republic of Serbia, and
2. on the basis of this theoretical benefit amount, shall determine an actual benefit amount payable, according to the ratio between the period completed under the legislation of the Republic of Serbia and the total period accumulated under the legislation of the Republic of Serbia and Australian legislation.

PART V

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 16

Lodgement of Documents

(1) A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Contracting Party in accordance with the Administrative Arrangement made pursuant to Article 19 of this Agreement.

(2) The date on which a claim, notice or appeal referred to in paragraph 1 of this Article is lodged with the Competent Institution of one Contracting Party shall be considered as the date of lodgement of that document with the Competent Institution of the other Contracting Party. The Competent Institution with which a claim, notice or appeal is lodged shall refer it without delay to the Competent Institution of the other Contracting Party.

(3) Any exemption from payment of fees relating to certificates and documents submitted to a Competent Authority or the Competent Institution of a Contracting Party shall be applicable to the certificates and documents which, for the purpose of enforcement of this Agreement, shall be submitted to a competent authority or competent institution of the other Contracting Party. The certificates and documents issued for the purpose of enforcement of this Agreement shall be exempt from authentication by the diplomatic and consular missions.

Article 17

Payment of Benefits

(1) The Competent Institutions of each Contracting Party shall pay benefits by virtue of this Agreement directly to entitled persons residing in the territory of the other Contracting Party in a convertible currency.

(2) If a Contracting Party imposes legal or administrative restrictions on the transfer of currency outside of its territory, that Contracting Party shall implement measures as soon as practicable to guarantee the rights to payment and delivery of benefits payable under the legislation of the Contracting Party or by virtue of this Agreement. The measures shall operate retrospectively to the time the restrictions were imposed.

(3) Both Contracting Parties shall pay benefits without deduction for government administrative fees and charges for processing.

Article 18 **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:

1. communicate to each other any information necessary for the application of this Agreement or for the purposes of their social security laws; and
2. provide assistance to one another, including the communication to each other of 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 the matter involved the application of their own legislation; and
3. 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 of this Article shall be provided free of charge, subject to the Administrative Arrangement made pursuant to Article 19 of this Agreement.

(3) If the Competent Institution of a Contracting Party requires the applicant or beneficiary who is resident in the territory of the other Contracting Party to undergo a medical examination, the Competent Institution of the other Contracting Party shall, upon the request of the Competent Institution of the first Contracting Party, undertake measures for conducting such examination. If the medical examination is conducted solely at the request of the Competent Institution of one Contracting Party, that Competent Institution shall reimburse the cost of the examination to the Competent Institution of the other Contracting Party. However, if the medical examination is required by both Competent Institutions, the costs shall not be reimbursed.

(4) Any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or a Competent Institution of a Contracting Party by a Competent Authority or a Competent Institution of the other Contracting Party is confidential and shall be used only for the purposes of implementing this Agreement and the legislation to which this Agreement applies unless otherwise provided for in their respective national laws.

(5) In no case shall the provisions of paragraphs 1 and 4 of this Article be construed so as to impose on the Competent Authority or Competent Institution of a Contracting Party the obligation:

1. to carry out administrative measures at variance with the laws or the administrative practice of either Contracting Party; or
2. to supply information which is not ordinarily obtainable under the laws or in the normal administrative practice of either Contracting Party.

(6) In the application of this Agreement, the Competent Authority and the Competent Institution of a Contracting Party may communicate with the other in any of the official languages of the Contracting Parties.

(7) Documents submitted to a Competent Authority or Competent Institution of a Contracting Party shall not be rejected solely on the ground that they are written in the official language of the other Contracting Party.

(8) The Competent Institutions of the Contracting Parties shall supply to each other, according to an agreed schedule and format, relevant available information such as date of death, change of address, change of marital or relationship status and changes in the amount of benefits for beneficiaries.

Article 19 Administrative Arrangement

(1) The Competent Authorities of the Contracting Parties shall establish, by means of an Administrative Arrangement, the measures necessary for the implementation of this Agreement.

(2) The Competent Authorities shall appoint liaison bodies to facilitate the implementation of this Agreement.

Article 20 Exchange of Statistics

The Competent Authorities or Competent Institutions of the Contracting Parties shall exchange annual statistics on the payments granted to beneficiaries pursuant to this Agreement. These statistics shall include the number of beneficiaries and total amount of benefits paid and shall be furnished in an agreed format.

Article 21 Resolution of Disputes

The Competent Authorities of the Contracting Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.

Article 22 Review of Agreement

Where a Contracting Party requests the other to meet to review this Agreement, the Contracting Parties shall meet for that purpose no later than six months after that request was

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

DONE in two originals at on this day of, two thousand and in English and Serbian languages, each version being equally authentic.

FOR AUSTRALIA

FOR THE REPUBLIC OF SERBIA