

No. 47182

**Australia
and
Republic of Korea**

Agreement on social security between the Government of Australia and the Government of the Republic of Korea. Canberra, 6 December 2006

Entry into force: *1 October 2008 by notification, in accordance with article 29*

Authentic texts: *English and Korean*

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**Australie
et
République de Corée**

Accord de sécurité sociale entre le Gouvernement de l'Australie et le Gouvernement de la République de Corée. Canberra, 6 décembre 2006

Entrée en vigueur : *1^{er} octobre 2008 par notification, conformément à l'article 29*

Textes authentiques : *anglais et coréen*

Enregistrement auprès du Secrétariat des Nations Unies : *Australie, 19 février 2010*

[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF KOREA

The Government of Australia and the Government of the Republic of Korea (hereinafter referred to as the “Contracting Parties”),

Being desirous of regulating the relationship between their two countries in the field of social security and coverage,

Have agreed as follows:

PART I General Provisions

Article 1 Definitions

1. For the purposes of this Agreement:

- (a) **“national”** means, as regards the Republic of Korea (hereinafter referred to as “Korea”), a national of Korea as defined in the Nationality Law, as amended, and as regards Australia, a citizen of Australia;
- (b) **“legislation”** means, in relation to Korea, the laws and regulations specified in paragraph 1(a) of Article 2, and in relation to Australia, the laws specified in paragraph 1(b)(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 paragraph 1(b)(ii) of Article 2;
- (c) **“Competent Authority”** means, as regards Korea, the Minister of Health and Welfare, and as regards Australia, the Secretary to the Commonwealth Department responsible for the legislation specified in paragraph 1(b)(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;
- (d) **“agency”** means, as regards Korea, the National Pension Service, and, as regards Australia, the institution or agency which has the task of implementing the Australian legislation;
- (e) **“period of coverage”** in relation to Korea means a period of contributions under the legislation of Korea and any other period taken into account

under that legislation for establishing an entitlement to benefits or for calculating the amount of benefits;

- (f) **“period of Australian working life residence”** means, unless otherwise provided in this Agreement, a period defined as such in the legislation of Australia but does not include any period deemed pursuant to Article 16 to be a period in which that person was an Australian resident;
 - (g) **“benefit”** means, in relation to Korea, any benefit provided for in the legislation specified in paragraph 1(a) of Article 2 and in relation to Australia, a benefit, pension or allowance for which provision is made in the Australian legislation as specified in paragraph 1(b)(i) of Article 2, and includes any additional amount, increase or supplement that is payable in addition to that benefit, pension or allowance to or in respect of a person who qualifies for that additional amount, increase or supplement under the Australian legislation as specified in paragraph 1(b)(i) of Article 2 but, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee as specified in paragraph 1(b)(ii) of Article 2.
2. Any term not defined in this Article shall have the meaning assigned to it in the legislation of the Contracting Parties specified in Article 2.

Article 2

Legislative Scope

1. This Agreement shall apply to the following legislation:
- (a) As regards Korea,
 - (i) the National Pension Act and enforcement rules and regulations thereof; and
 - (ii) with regard to benefits under the Agreement, the provisions of the legislation under the preceding sub-paragraph (a)(i) concerning old age pension and lump-sum refund;
 - (b) As regards Australia,
 - (i) the Acts forming the social security law in so far as the law provides for, applies to or affects, age pension; and
 - (ii) the law concerning the superannuation guarantee: the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Regulations.

2. Unless otherwise provided in this Agreement, the legislation referred to in paragraph 1 of this Article shall not include treaties or other international agreements on social security that may be concluded between one Contracting Party and a third State.
3. This Agreement shall also apply to future legislation which amends, supplements, consolidates or supersedes the legislation specified in paragraph 1 of this Article. However, this Agreement shall not apply to the future legislation which extends the existing legislation of one Contracting Party to new categories of beneficiaries unless the Competent Authorities of the Contracting Parties agree otherwise.

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 Korea;

and, where applicable, to other persons in regard to the rights derived from the person described above.

Article 4

Equality of Treatment

Unless otherwise provided in this Agreement, all persons to whom this Agreement applies in accordance with Article 3 shall be treated equally by a Contracting Party in the application of its legislation 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. Unless otherwise provided in this Agreement, any provision of the legislation of one Contracting Party which restricts entitlement to or payment of cash benefits solely because the person resides outside or is absent from the territory of that Contracting Party shall not be applicable to the persons who reside in the territory of the other Contracting Party.
2. Where the legislation of a Contracting Party provides that a benefit is payable outside the territory of that Contracting Party, then that benefit, when payable

by virtue of this Agreement, is also payable outside the territories of both Contracting Parties.

3. In relation to Australia, any additional amount, increase or supplement that is payable in addition to a benefit under this Agreement, as defined in Article 1, shall be payable outside the territory of Australia only according to the provisions of the Acts specified in paragraph 1(b)(i) of Article 2.

PART II

Provisions on Coverage

Article 6

Purpose of this Part

The purpose of this Part is to ensure that employers and employees who are subject to the legislation of Korea or Australia do not have a double liability under the legislation of Korea and Australia in respect of the same work of an employee.

Article 7

Application of this Part

1. This Part 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.
2. For the purposes of Articles 6, 7, and 11, the legislation includes, with regards to Korea, the statutory pension scheme for civil servants.

Article 8

General Provisions

1. Except as otherwise provided in this Part, a person employed within the territory of one Contracting Party and the person's employer shall, with respect to that employment, be subject only to the legislation of that Contracting Party.
2. A person, who is a resident of Korea and is engaged in self-employment in the territory of either Contracting Party in respect of that self-employment, shall be subject only to the legislation of Korea.
3. This Agreement shall not preclude the possibility for a person to be voluntarily insured under the Korean legislation.