

Legislation

Reciprocal agreement with Italy

Last February we noted that the Government had foreshadowed a new system for paying pensions overseas: 29 SSR 367. This system is to be based on agreements with other countries, under which residents and citizens of each country will be given equal access to each country's social security system.

The first of the new agreements was signed by Australia and Italy in April this year; and legislation to implement the agreement was introduced into the Commonwealth Parliament on 20 August 1986. The *Social Security (Reciprocity with Italy) Act* endorses the agreement between the two countries and declares that, when the agreement has been ratified, its provisions will (in effect) amend the *Social Security Act*.

The agreement supplements, rather than displaces, the proportional portability rules introduced at the end of 1985. Those rules affect people who become residents of Australia after 8 May 1985. They provide that full rate pensions and supporting parents' benefits are only payable outside Australia to those persons who have accumulated 25 years residence in Australia (between the ages of 16 and 65 years); and persons who leave Australia (for more than 12 months) with a shorter period of accumulated residence will only qualify, while outside Australia, for a proportional pension or supporting parent's benefit: see s.83AC(1) and (3) of the *Social Security Act*.

This system, as we pointed out last February, does not address the problems of those people whose claims for Australian or foreign pensions are defeated by complex residence and contribution rules. Their problems are, it seems, to be dealt with on a country-by-country basis under the new reciprocal agreements. Introducing the Bill to endorse the agreement with Italy, Social Security Minister Howe said that the agreement 'specifically addresses the rights of the following groups of people:

- . those who have resided in Australia and cannot claim Australian pension entitlement because they now reside in Italy;

- . those who ceased contributions to the Italian social security scheme when they migrated to Australia and who now cannot claim Italian pension entitlement; and

- . those from Italy who are now in Australia and do not have access to Australian pensions because they have not resided here long enough.'

Once the agreement is ratified (possibly in 1987), these problems will be removed for most, but not all, people. For example, while the agreement applies to all age and invalid pensions, it only applies to widows' pensions payable to 'de jure widows' (article 1.1(p)) - a restriction which excludes women who would qualify on the basis of desertion, divorce or the death of a *de facto* husband; and the agreement does not apply to supporting parent beneficiaries: article 1(a).

Apart from these glaring omissions, the agreement adopts a simple and sensible approach to the problem of co-ordinating the Italian and Australian social security systems. (The essential difficulty in achieving that co-ordination has been that the Australian system is based on residence, while the Italian system is based on contributions.)

For example, article 5 treats a person residing or physically present in Italy as if he or she were residing or physically present in Australia, where the person is otherwise qualified for an Australia pension. This will mean that a woman who migrates to Australia from Italy at the age of (say) 62 will be able to qualify for an Australian age pension upon her arrival here - rather than having to wait for 10 years.

The agreement also allows periods of residence in Australia to be treated as periods of 'credited contributions' in Italy, and *vice versa*, so that a person with a history of mixed Australian residence and Italian contributions can qualify for either an Australian or an Italian pension (if otherwise qualified): article 7.1. This will mean that an Italian man, who migrated to Australia and worked here for (say) 30 years before returning to Italy at the age of 50, will be able to qualify for an Australia age pension when he turns 65

without the necessity of first returning to Australia and staying here for 12 months (see, for example, *Tolomeo* (1984) 22 SSR 256).

Other articles of the agreement deal with such complex questions as the calculation of 'pro rata benefits' (articles 8 and 9), the determination of claims (article 16) and appeals (article 21).

The Government is to be congratulated for pressing ahead with the introduction of this much-needed, although still incomplete, reform. Already, we understand, negotiations have commenced with some 15 other countries to develop similar agreements.

The Government's apparent enthusiasm for reform in this area may owe something to the estimated financial impact of the agreement. According to the explanatory memorandum which accompanied the Bill, the agreement will see nett savings to the Government's budget of \$0.2 million over the 3 years from 1987 to 1990 (largely because of increased taxation revenues on the incomes of Australians receiving Italian pensions); and there will be a nett inflow to Australia from Italy of \$109.6 million over the same period.