



Social Security (International Agreements) Amendment (Republic of India) Regulation 2015

Select Legislative Instrument No. 89, 2015

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),
Governor-General of the Commonwealth of Australia, acting with the
advice of the Federal Executive Council, make the following regulation.

Dated 17 June 2015

Peter Cosgrove
Governor-General

By His Excellency's Command

Scott Morrison
Minister for Social Services

OPC61297 - A

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1 Name

This is the *Social Security (International Agreements) Amendment (Republic of India) Regulation 2015*.

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.	23 June 2015
2. Schedule 1	A single day to be fixed by the Minister by notice in the Gazette.	1 January 2016

Note: This table relates only to the provisions of this instrument as originally made.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 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This instrument is repealed on the day after Schedule 1 commences.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Legislation that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 31—Republic of India

Note: See sections 5 and 8.

AGREEMENT BETWEEN

AUSTRALIA

AND

THE REPUBLIC OF INDIA

ON SOCIAL SECURITY

Australia and the Republic of India (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:

(a) **“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;

(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 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 India, the Ministry of Overseas Indian Affairs;

(c) **“Competent Institution”** means, in relation to Australia, the institution or agency which has the task of implementing the applicable legislation; and in relation to India, the Employees Provident Fund Organization;

(d) **“Government”** in relation to paragraph 2 of Article 7 includes, for Australia, a political subdivision or local authority of Australia, and includes for India quasi-government authorities, public sector undertakings and wholly owned undertakings;

(e) **“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 India, the laws and regulations specified in subparagraph 1(b) of Article 2;

(f) **“period of insurance”** means, in relation to India, any period of contributions under the legislation of India, as well as any period recognised as equivalent to a period of contribution under that legislation;

(g) **“period of Australian working life residence”** means a period defined as such in the legislation of Australia and accrued on or after 16 November 1995;

(h) **“territory”** means, in relation to Australia, Australia as defined in the legislation of Australia; and, in relation to India, the territory of the Republic of India.

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 following laws, as amended at the date of signature of this Agreement, and to any laws 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 1993*);

(b) in relation to India, to all legislation concerning:

- (i) old-age and survivors' pension for employed persons;
- (ii) the Permanent Total Disability pension for employed persons.

2. Except as otherwise provided in this Agreement, the legislation of either Contracting Party shall not include any other 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 two Contracting Parties agree in writing.

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 Australia; or
- (c) is or has been subject to the legislation of India

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 of one Contracting Party, when payable by virtue of this Agreement, are payable to persons who are residents of, and in the territory of either 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 payable to a person outside Australia only for the period specified in the provisions of the Social Security Act 1991.

PART II PROVISIONS ON COVERAGE

Article 6 Purpose and Application

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

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 Government Employees

1. 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.

2. Employees of the Government, or persons treated as such according to the legislation of one Contracting Party, to whom paragraph 1 of this Article does not apply and who are sent by the Government to work in the territory of the other Contracting Party, are subject only to the legislation of the first Contracting Party.

Article 8

Avoidance of Double Coverage

1. Unless otherwise provided in paragraphs 2 or 4 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:

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

(b) was sent by an employer who is subject to the legislation of the first Contracting Party to work in the territory of the other Contracting Party ('the second Contracting Party'); and

- (c) is working in the territory of the second Contracting Party in the employment of the employer or a related entity of that employer; and
- (d) is not working permanently in the territory of the second Contracting Party; and
- (e) a period of 5 years from the time the employee was sent to work in the territory of the second Contracting Party has not elapsed;

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. The period of five years referred to in subparagraph 2(d) of this Article may be extended with the mutual consent of the Competent Authorities of both Contracting Parties.

4. For the purposes of subparagraph 2(c) 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. Employees on board vessels flying the Indian flag or working for an Indian airline company shall be subject to Indian legislation, as applied. However, if the employee is an Australian resident working for an Australian resident employer, then Australian legislation shall also apply. Exceptions to avoid double coverage may be made under Article 10.

Article 9

Secondment from third states

Paragraph 2 of Article 7 and paragraph 2 of Article 8 shall apply where a person who has been sent by his or her employer from the territory of one Contracting 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 Contracting Party.

Article 10

Exceptions

The Competent Authorities or the Competent Institutions 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 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 of the Contracting Party or their Competent Institution 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. The Competent Institution of the other Contracting Party shall be entitled to receive a copy on request.

PART III PROVISIONS RELATING TO AUSTRALIAN BENEFITS

Article 12 Residence or Presence in India

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 in Australia on the date on which the claim for that benefit is lodged, but:

- (a) is an Australian resident or a resident of India; and
- (b) is in Australia or India,

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 13 Totalisation

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 that benefit; and

(b) 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 for that person; and

(c) a period of insurance in the Employees' Pension Scheme, 1995 of India accrued after the date of commencement of this Agreement;

then for the purposes of a claim for that Australian benefit, that period of insurance completed under the legislation of India 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:

(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 under the legislation of India, after this Agreement commences, in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a);

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

3. For the purposes of this Article, where a period by a person as an Australian resident and a period of insurance under the legislation of India 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 6 months must be continuous, providing that all such periods

are accrued before the person reaches retirement age as specified in the Employees' Pension Scheme under the legislation of India.

Article 14 **Calculation of Australian 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:

(a) calculating that person's income according to the legislation of Australia, including any benefit payable under the legislation of India which that person or the partner of that person is entitled to receive, if applicable;

(b) 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 (a); and

(c) proportionalising, if applicable, the amount of benefit calculated under subparagraph (b) 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:

(a) calculating the person's income according to the legislation of Australia but disregarding in that calculation any benefit under the legislation of India which that person or the partner of that person is entitled to receive if applicable; and

(b) deducting the amount of that benefit under the legislation of India which that person is entitled to receive from the maximum rate of 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).

4. Paragraph 3 of this Article shall continue to apply for 26 weeks 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 India 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 RELATING TO BENEFITS OF INDIA

Article 15 Totalisation of Insurance Period

Where the legislation of India makes the acquisition, retention or recovery of the right to benefits subject to the completion of periods of insurance, periods of Australian working life residence accrued after the commencement of this Agreement and before the person reaches retirement age as specified in the Employees' Pension Scheme 1995 of India shall be taken into account, when necessary, as long as these periods do not overlap with periods of insurance.

Article 16 Calculation of Indian benefits

1. If a person is entitled to a benefit under the Indian legislation without necessarily proceeding to totalisation, the Competent Institution in India shall calculate the benefit entitlement directly on the basis of the period of insurance completed in India and only under the Indian legislation.

2. If a person is entitled to a benefit by virtue of the Indian legislation, with his right being created solely by taking the totalisation of the periods of

Australian working life residence into account pursuant to Article 15, the following rules apply:

- (a) the Competent Institution shall calculate the theoretical amount of the benefit due as if all the periods completed according to the two Contracting States' legislation were exclusively completed under the Indian legislation; and
 - (b) the Competent Institution shall then calculate the amount due, on the basis of the amount specified under (a), in proportion to the duration of the periods under its legislation, in relation to the duration of all periods accounted under (a).
3. If the duration of insurance periods completed under the legislation of India is less than twelve months, the Competent Institution of India shall not be required to use totalisation provided for in Article 15.
 4. Lump sum payments and withdrawals shall be granted to Australian nationals as provided for the International Workers in accordance with the legislation of India.

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 Contracting Party in accordance with the Administrative Arrangement made pursuant to Article 20 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. A claim for a benefit from one Contracting Party shall be considered as a claim for the corresponding benefit from the other Contracting Party so long as the claimant has indicated in that claim that there is, or there was, an

affiliation with the social security system of that other Contracting Party and provided the other Contracting Party receives the completed claim form for the corresponding benefit within 12 months of the lodgement of the initial claim.

4. The reference in paragraphs 1 and 2 of this Article to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by, or administratively for the purposes of, the respective legislation.

Article 18 **Payment of Benefits**

1. 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 that Contracting Party or by virtue of this Agreement. The measures shall operate retrospectively to the time when the restrictions were imposed.

2. A benefit payable by a Contracting Party by virtue of this Agreement shall be paid by that Contracting Party without deduction for government administrative fees and charges for processing and paying that benefit.

3. Where, under the legislation of one Contracting Party, documents submitted to a Competent Authority or Competent Institution of that Contracting 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 Contracting Party in accordance with its legislation.

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

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 or for the purposes of their legislation;
- (b) 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
- (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 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 20 of this Agreement.

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

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

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

5. 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.

6. 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.

7. The Competent Institutions of the Contracting Parties will supply to each other, on a schedule as agreed, in an agreed format, relevant information, including but not limited to, death, change of address, change of relationship status and changes in the amount of benefits for mutual beneficiaries.

Article 20

Administrative Arrangement

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

Article 21

Exchange of Statistics

The 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 a form to be agreed upon by the Competent Institutions.

Article 22

Resolution of Disputes

1. 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.

2. The Contracting Parties shall consult promptly at the request of either Contracting Party concerning matters which have not been resolved by the Competent Authorities in accordance with paragraph 1 of this Article.

Article 23

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 made and, unless the Contracting Parties otherwise arrange, their meeting shall be held in the territory of the Contracting Party to which that request was made.

PART VI TRANSITIONAL AND FINAL PROVISIONS

Article 24 Transitional Provisions

1. This Agreement shall not establish any right to a benefit for any period before the date of the entry into force of this Agreement.
2. Except as otherwise provided in this Agreement, when determining entitlements to benefits under this Agreement, periods of residence in Australia, periods of Australian working life residence and periods of insurance in India completed before the entry into force of this Agreement shall be taken into account.
3. This Agreement shall not apply in respect to periods of insurance which were liquidated by the granting of a lump sum payment or the reimbursement of contributions.
4. Paragraph 2 of Article 7 and paragraph 2 of Article 8 shall apply from the date of entry into force of this Agreement, even if the employee was sent by their employer before this date. For this purpose, the period of secondment is taken to start on the date of entry into force of this Agreement.

Article 25 Entry into Force

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

Article 26
Termination

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

2. In the event of termination, this Agreement shall continue to have effect in relation to all persons who:

(a) at the date on which termination takes effect, 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 Contracting Party by virtue of paragraph 2 of Article 7 and paragraph 2 of Article 8 of Part II of the Agreement, provided the employee continues to satisfy the criteria of those Articles.

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

DONE in two originals at Canberra on this 18th day of November, two thousand and fourteen in the English and Hindi languages, each version being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR AUSTRALIA
(Kevin Andrews, Minister for
Social Services)

FOR THE REPUBLIC OF INDIA
(Biren Nanda, High Commissioner)