



# **Social Security (International Agreements) Act 1999**

**Act No. 173 of 1999 as amended**

This compilation was prepared on 5 January 2009 taking into account amendments up to Act No. 108 of 2006 and SLI 2008 No. 265

**Volume 1** includes: Sections 1–25  
Schedules 1–22

The text of any of those amendments not in force on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

**Volume 2** includes: Note 1  
Table of Acts  
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# **An Act to give effect to international social security agreements, and for related purposes**

## **Part 1—Preliminary**

### **1 Short title** [*see* Note 1]

This Act may be cited as the *Social Security (International Agreements) Act 1999*.

### **2 Commencement**

This Act commences on 20 March 2000.

### **3 Interpretation**

- (1) Unless a contrary intention appears, an expression that is used in the *Social Security Act 1991* has the same meaning, when used in this Act, as in the *Social Security Act 1991*.
- (2) A reference in this Act (other than the reference in section 4) to the social security law is a reference to this Act, the *Social Security Act 1991* and any other Act that is expressed to form part of the social security law.
- (3) A reference in this Act to a provision of the social security law is a reference to a provision of this Act, the *Social Security Act 1991* or any other Act that is expressed to form part of the social security law.

### **4 Social security law**

This Act forms part of the social security law.

## **Part 2—International social security agreements**

### **5 Scheduled international social security agreements**

- (1) For the purposes of a provision of the social security law, an agreement is a scheduled international social security agreement if:
  - (a) the agreement is between Australia and another country; and
  - (b) the agreement relates to reciprocity in social security or superannuation matters; and
  - (c) the text of the agreement is set out in a Schedule to this Act.
- (2) The reference in subsection (1) to a scheduled international social security agreement includes a reference to such an agreement as amended, or otherwise affected in its operation, by a further agreement or further agreements between Australia and the other country concerned.

### **6 Overriding of social security law by scheduled international social security agreements**

- (1) The provisions of a scheduled international social security agreement have effect despite anything in the social security law.
- (2) Subsection (1) applies to a provision of an agreement only in so far as the provision is in force and affects the operation of the social security law.
- (3) If:
  - (a) immediately before he or she reaches pension age, a person is receiving a social security payment (other than age pension) solely because of the operation of a scheduled international social security agreement; and
  - (b) on reaching pension age, the person becomes qualified for age pension because of the operation of paragraph 43(1)(c) of the *Social Security Act 1991*;the age pension is taken to be payable to the person under the agreement referred to in paragraph (a).

**7 Amendment of Schedules by regulations**

- (1) The regulations may make provision amending a Schedule to this Act so as to set out in the Schedule the text of an agreement (the ***amending agreement***) that amends, or otherwise affects the operation of, another agreement set out in the Schedule.
- (2) Regulations making provision by virtue of subsection (1) must not come into operation on a day earlier than the day on which the amending agreement comes into force for Australia.

**8 Addition of new scheduled international social security agreements**

- (1) The regulations may add to this Act a Schedule setting out the terms of an agreement between Australia and another country if the agreement relates to reciprocity in social security or superannuation matters.
- (2) Regulations made by virtue of subsection (1) must not come into operation on a day earlier than the day on which the agreement concerned comes into operation for Australia.

**9 Repeal of Schedule**

The regulations may repeal a Schedule to this Act.

**10 Parenting payment claimed under agreement**

- (1) If:
  - (a) a scheduled international social security agreement authorises a person who is outside Australia to lodge a claim for parenting payment; and
  - (b) the person, while outside Australia, lodges a claim for parenting payment; and
  - (c) the person is not a member of a couple; and
  - (d) the person would qualify for parenting payment but for the operation of:
    - (i) paragraph 500(1)(b) or (c) of the *Social Security Act 1991*; or

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- (ii) subparagraph 500(1)(d)(ii) of that Act to the extent that it requires a person to have been in Australia for the period specified in the subparagraph; or
- (iii) subsection 5(21), (23) or (24) of that Act;

then:

- (e) the provisions referred to in paragraph (d) do not apply to the person; and
- (f) if parenting payment is payable to the person, it is taken to be payable to the person under the scheduled international social security agreement.

(2) If:

- (a) a person who is in Australia lodges a claim for parenting payment; and
- (b) the person is not a member of a couple; and
- (c) the person would qualify for parenting payment under a scheduled international social security agreement but for the operation of subparagraph 500(1)(d)(ii) of the *Social Security Act 1991* to the extent it requires a person to have been in Australia for the period specified in the subparagraph;

then:

- (d) that requirement of subparagraph 500(1)(d)(ii) does not apply to the person; and
- (e) if parenting payment is payable to the person, it is taken to be payable to the person under the scheduled international social security agreement.

### **11 Portability of international agreement pension or allowance**

A social security payment payable under a scheduled international social security agreement is not payable to a person for a period when the person is outside Australia unless the agreement provides that the pension or allowance is payable outside Australia.

### **12 Rate of pension or allowance payable under agreement where rate to be determined under law of Australia**

(1) If:

- (a) a social security payment is payable to a person under a scheduled international social security agreement; and



- (b) the person is outside Australia; and
  - (c) the agreement provides for the rate of the social security payment to be determined according to the law of Australia; the rate of the social security payment is the person's international agreement portability rate worked out in accordance with Part 3.
- (2) A reference in the agreement to a person's period of residence in Australia is to be taken to be a reference to the period of the person's Australian working life residence for the purposes of this Act.

### **12A Saving in respect of United Kingdom agreement**

On and after 1 March 2001, the social security law has effect, in relation to a person who last became an Australian resident on or before 1 March 2000, as if the agreement the text of which is set out in Schedule 1 had not been terminated.

## Part 3—Calculation of international agreement portability rates

### Division 1—Overall rate calculation process

#### 13 Overall calculation process

- (1) A person's international agreement portability rate is worked out as follows:
  - (a) the period of the person's Australian working life residence in Australia (the *residence period*) is worked out according to Division 2;
  - (b) the person's residence factor is worked out according to Division 3;
  - (c) the person's notional agreement pension rate is worked out by calculating the rate that would be the person's social security payment rate if this section did not apply to the person but taking into account section 14;
  - (d) if the person's notional agreement pension rate is nil, the international agreement portability rate is also nil;
  - (e) if the person's notional agreement pension rate is not nil, add the additional child amount or amounts (that are applicable in accordance with section 14A) to the person's notional agreement pension rate. This new amount is the person's *total notional rate*;
  - (f) multiply the person's total notional rate by the person's residence factor: the result is the person's *international agreement portability rate*.
- (2) If a person's international agreement portability rate as calculated under subsection (1) would exceed the rate (the *notional rate*) that would be the person's notional agreement pension rate under that subsection if the person had a residence factor of 1, the person's international agreement portability rate is the rate that equals the notional rate.

## 14 Amounts to be treated as income

- (1) If a scheduled international social security agreement provides that certain amounts are to be treated as income of a person—those amounts are to be treated as income of the person for the purposes of this Part.
- (2) If a scheduled international social security agreement provides that certain amounts are to be treated as not being income of a person—those amounts are to be treated as not being income of the person for the purposes of this Part.

### 14A Additional child amounts

For the purpose of the step in the calculation of a person's international agreement portability rate that is described in paragraph 13(1)(e), the additional child amounts that may be applicable are set out in the following table. They are annual amounts. The amount in item 3 is only applicable if an amount in item 1 or 2 is to be paid to a person without a partner.

<b>Additional child amounts</b>		
<b>Item</b>	<b>Family situation</b>	<b>Additional child amount</b>
1	For each dependent child under 13 years of age	\$1,957.80
2	For each dependent child who has reached 13, but is under 16, years of age	\$2,732.60
3	For a person without a partner	\$962.00

Note: Additional child amounts are indexed annually in line with CPI increases (see sections 1190 and 1191 of the *Social Security Act 1991*).

## **Division 2—Australian working life residence**

### **15 Working life**

For the purposes of this Division, a person's working life is the period beginning when the person turns 16 and ending when the person reaches pension age.

### **16 Australian working life residence generally**

Subject to sections 17 to 22, a person's period of Australian working life residence at a particular time is the number of months in the period, or the aggregate of the periods, during the person's working life during which the person has, up to that time, been an Australian resident.

### **17 Calculation of period of residence**

- (1) If a person's period of Australian working life residence would, apart from this subsection, be a number of whole months, the period is to be increased by one month.
- (2) If a person's period of Australian working life residence would, apart from this subsection, be a number of whole months and a day or days, the period is to be increased so that it is equal to the number of months plus one month.

### **18 Australian working life residence: age or disability support pensioner couple**

If:

- (a) a person is receiving an age or disability support pension; and
- (b) the person is a member of a couple; and
- (c) the person's partner is receiving an age or disability support pension; and
- (d) the partner's period of Australian working life residence is longer than the period that would be the person's period of Australian working life residence under section 17;

the person's period of Australian working life residence is to be equal to the partner's period of Australian working life residence.

**19 Australian working life residence: member of former age or disability support pensioner couple**

If:

- (a) a person is receiving an age or disability support pension; and
- (b) the person is a member of a couple; and
- (c) the person ceases to be a member of a couple; and
- (d) immediately before the person ceases to be a member of a couple:
  - (i) the person was receiving an age or disability support pension; and
  - (ii) the partner was receiving an age or disability support pension; and
- (e) the partner's period of Australian working life residence (immediately before the person ceases to be a member of a couple) is longer than the period that would now be the person's period of Australian working life residence under section 17;

the person's period of Australian working life residence is to be equal to the partner's period of Australian working life residence (immediately before the person ceases to be a member of a couple).

**20 Australian working life residence: wife pensioner**

If a person is receiving a wife pension, the person's period of Australian working life residence is equal to the period of Australian working life residence of the person's partner.

**21 Australian working life residence: recipient of pension PP (single), bereavement allowance or widow B pension**

If:

- (a) a person is receiving a pension PP (single), bereavement allowance or widow B pension; and
- (b) the person became qualified for the pension or allowance because the person's former partner died; and
- (c) the partner's period of Australian working life residence (immediately before the partner's death) is longer than the period that would now be the person's period of Australian working life residence under section 17;

the person's period of Australian working life residence is to be equal to the partner's period of Australian working life residence (immediately before the partner's death).

**22 Australian working life residence: carer payment**

If a person is receiving a carer payment, the person's period of Australian working life residence is equal to the Australian working life residence of the person for whom the person is providing care.

### **Division 3—Residence factor**

#### **23 Residence factor: Australian working life residence of 25 years or more**

If a person's period of Australian working life residence is 300 months (25 years) or more, the person's residence factor is 1.

#### **24 Residence factor: Australian working life residence of less than 25 years**

If a person's period of Australian working life residence is less than 300 months (25 years), the person's residence factor is the fraction represented by:

$$\frac{\text{Person's Australian working life residence}}{300}$$

## **Part 4—Regulations**

### **25 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient for carrying out or giving effect to this Act.



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## **Schedule 1—United Kingdom**

Note: See section 5.

### **PART A**

#### **AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND**

The Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland,

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

Having established reciprocity in the field of social security by means of an Agreement signed by the Parties at Canberra on 29 January 1958, which was amended by a further Agreement signed at Canberra on 16 August 1962 and by other Agreements set out in Exchanges of Notes at Canberra on 6 March 1975 and at London on 29 and 31 December 1986;

Wishing to consolidate the above Agreements and their extensions and modifications into a single document; and

Wishing to extend and modify the scope of that reciprocity and to take account of changes in their legislation;

Have agreed as follows:

**PART I—GENERAL PROVISIONS**

ARTICLE 1

Definitions

1. For the purpose of this Agreement, unless the context otherwise requires:

“benefit” means pension, allowance or benefit payable under the legislation of one (or the other) Party and includes any increase payable for a dependant;

“competent authority” means, in relation to the territory of the United Kingdom, the Secretary of State for Social Security for Great Britain, the Department of Health and Social Services for Northern Ireland, the Department of Health and Social Security of the Isle of Man, the Social Security Committee of the States of the Island of Jersey or the States of Guernsey Insurance Authority, as the case may require, and, in relation to Australia the Secretary to the Department of Social Security;

“competent institution” means the institution from which the person concerned is entitled to receive benefit or would be entitled to receive benefit if he were resident in the territory of the Party where that institution is situated;

“contribution”, in relation to the legislation of the United Kingdom, does not include a reduced rate contribution payable by a married woman or a widow, or a graduated contribution within the meaning of that legislation;

“employed person” means a person who, in the applicable legislation, comes within the definition of an employed earner or of an employed person or is treated as such and the words “person is employed” shall be construed accordingly;

“employment” means employment as an employed person and the words “employ”, “employed” or “employer” shall be construed accordingly;

“equivalent period” means, in relation to the United Kingdom, a period for which contributions appropriate to the benefit in question have been credited under the legislation of that Party;

“family allowance”, in relation to the United Kingdom, includes child benefit payable under the legislation of the United Kingdom, and, in relation to Australia means family allowance payable under the legislation of Australia;

“former Agreement” means the Agreement on Social Security signed at Canberra on 29 January 1958, on behalf of the Parties, as amended by the Agreement on Social Security signed at Canberra on 16 August 1962 and by the Agreements set out in the Exchanges of Notes at Canberra on 6 March 1975 and at London on 29 and 31 December 1986;

“full standard rate” means, in relation to any benefit payable under the legislation of the United Kingdom, the rate at which the beneficiary would be qualified to receive that benefit if the relevant contribution conditions were fully satisfied;

“gainfully occupied” means employed or self-employed;

“Guernsey” means the Islands of Guernsey, Alderney, Herm and Jethou;

“income support” means income support payable under the legislation of Great Britain and Northern Ireland and supplementary benefit payable under the legislation of the Isle of Man;

“legislation” means the legislation specified in Article 2 which, in relation to the United Kingdom, is in force in any part of the territory of the United Kingdom and, in relation to Australia, is in force in Australia;

“means test” means any provision of the legislation of Australia which affects the payment or rate of a benefit on account of income or property;

“qualified to receive” means, in relation to the United Kingdom, entitled to receive subject to any disqualification or any provision about

claiming, hospital treatment or overlapping benefits which may be appropriate;

“retirement pension” means retirement pension or old age pension payable under the legislation of the United Kingdom and includes a contributory old age pension under that legislation and any graduated retirement benefit constituted by an increase in the weekly rate of retirement pension under that legislation, but excludes additional (earnings-related) pension payable under that legislation;

“self-employed person” means a person who, in the applicable legislation, comes within the definition of a self-employed earner or of a self-employed person or is treated as such, and the words “person is self-employed” shall be construed accordingly;

“spouse carer’s pension” means a carer’s pension payable to a husband under the legislation of Australia;

“territory” means in relation to the United Kingdom, Great Britain, Northern Ireland and also the Isle of Man, the Island of Jersey and Guernsey;

“widow” means, in relation to Australia, a de jure widow but does not include a woman who is the de facto spouse of a man;

“widow’s benefit” means, in relation to the United Kingdom, widow’s allowance, widow’s payment, widowed mother’s allowance (including any graduated retirement benefit constituted by an increase in the weekly rate of widowed mother’s allowance), widowed father’s allowance or widow’s pension under the legislation of any part of the United Kingdom.

2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning ascribed to it in the legislation of the Parties or, in the event of a conflict of meaning, by whichever of the legislation of the Parties is the more applicable to the circumstances of that person.
3. Any reference in this Agreement to “Article” means an Article of this Agreement, and any reference to a “paragraph” is a reference to a paragraph of the Article in which the reference is made, unless it is stated to the contrary.

ARTICLE 2

Scope of legislation

1. The provisions of this Agreement shall apply:
    - (a) in relation to the territory of the United Kingdom, to:
      - (i) the Social Security Acts 1975 to 1989 and the Social Security (Northern Ireland) Acts 1975 to 1989;
      - (ii) the Social Security Acts 1975 to 1989 (Acts of Parliament) as those Acts apply to the Isle of Man by virtue of Orders made, or having effect as if made, under the Social Security Act 1982 (an Act of Tynwald);
      - (iii) the Social Security (Jersey) Law, 1974;
      - (iv) the Social Insurance (Guernsey) Law, 1978;
      - (v) the Child Benefit Act 1975, the Child Benefit (Northern Ireland) Order 1975 and the Child Benefit Act 1975 (an Act of Parliament) as that Act applies to the Isle of Man by virtue of Orders made, or having effect as if made, under the Social Security Act 1982 (an Act of Tynwald); the Family Allowances (Jersey) Law, 1972 and the Family Allowances (Guernsey) Law, 1950;

and to the legislation which was repealed or consolidated by those Acts, Laws or Orders or repealed by legislation consolidated by them; and
    - (b) in relation to Australia, to the Social Security Act 1947.
  2. Subject to the provisions of paragraphs (3) and (4) this Agreement shall apply also to any laws, orders and regulations which supersede, replace, amend, supplement or consolidate the legislation specified in paragraph (1).
  3. This Agreement shall not affect any benefits payable under the legislation of either Party except in the manner set out in this Agreement.
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4. This Agreement shall not apply to legislation on social security of the Institutions of the European Communities or to any convention or agreement on social security which either Party has concluded with a third party or to any laws, orders or regulations which amend the legislation specified in paragraph (1) for the purpose of giving effect to such a convention or agreement but shall not prevent either Party from taking into account under its legislation the provisions of any other convention or agreement which that Party has concluded with a third party.
5. Subject to the provisions of paragraph (2), this Agreement shall apply, unless the Parties agree otherwise, only to benefits described in the legislation specified in paragraph (1) at the date of coming into force of this Agreement and for which specific provision is made in this Agreement.

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**PART II—RETIREMENT PENSIONS, AGE PENSIONS AND  
BENEFITS FOR WIDOWS**

ARTICLE 3

Retirement pensions

1. For the purpose of determining entitlement to retirement pension under the legislation of any part of the territory of the United Kingdom, a person who is permanently resident in that part of the territory shall be treated as if he or she, or, in the case of a claim made by a married woman or a widow by virtue of her husband's insurance, her husband, had paid contributions under the legislation of that part of the territory for any period during which that person or that person's husband, as the case may be:
  - (a) was resident in Australia and had attained the age of sixteen years; and
  - (b) being a woman had not attained the age of sixty years, or sixty-five years in the case of Guernsey or Jersey, or being a man had not attained the age of sixty-five years.
  
2. Where:
  - (a) a woman claiming retirement pension by virtue of her own insurance had been, but is not at the time of the claim, married, and chooses to have her former husband's contributions taken into account for the purpose of her claim; and
  - (b) her former husband had been resident in Australia for any period between the ages of sixteen years and sixty-five years;her former husband shall be treated, for the purpose of her claim, as if he had paid contributions under the legislation of the territory of the United Kingdom for any period referred to in sub-paragraph (b).
  
3. Where a person who is permanently resident in any part of the territory of the United Kingdom was receiving an age pension, otherwise than by virtue of this Agreement or the former Agreement, at the time when he or she was last in Australia, and was over pensionable age at that time, he or she shall, if not qualified by virtue of the preceding paragraphs of this Article to receive retirement pension at the full standard rate under

the legislation of that part of the territory of the United Kingdom, be treated as if he or she satisfied the contribution conditions for such a pension.

4. Any pension which is awarded by virtue of this Article shall continue to be payable if the pensioner ceases to be permanently resident in one part of the territory of the United Kingdom and becomes permanently resident in another part of the territory of the United Kingdom, and the competent authority of the latter part of the territory of the United Kingdom shall not determine entitlement under this Article.
5. Any pension which is awarded by virtue of this Article shall cease to be payable if the pensioner ceases to be permanently resident in the territory of the United Kingdom.
6. Where a person is entitled to receive a benefit by virtue of the provisions of this Article, the rate of benefit which he or she would otherwise be entitled to receive, but for this paragraph, shall be reduced by the amount of benefit which is payable by virtue of the legislation of Australia in accordance with the provisions of Article 8(7).

#### ARTICLE 4

##### Age pensions

1. Where a person is qualified to receive an age pension under the legislation of Australia otherwise than by virtue of the provisions of this Agreement, or the former Agreement, that pension shall be payable and the provisions of this Article shall not apply under that legislation.
2. For the purpose of any claim by a person to receive an age pension under the legislation of Australia, that person shall be treated as an Australian resident for any period prior to that person's last arrival in Australia for which:
  - (a) that person; or
  - (b) if that person is a woman who is or has been married, her husband,

paid contributions, or had earnings or contributions credited under the legislation of the United Kingdom.



3. For the purpose of applying paragraph (2), any period during which the person (being a woman) and her husband both paid contributions or had earnings or contributions credited to them shall be counted only once.
4. For the purpose of applying paragraph (2), a period when the person or, if the person is a woman who is or has been married, her husband paid contributions or had earnings or contributions credited, which coincided with a period in which that person was an Australian resident, shall be counted only once.
5. A person who receives from Australia a wife's pension or a spouse carer's pension by virtue of the fact that the spouse of that person receives an age pension by virtue of this Article, shall, for the purpose of this Agreement, be deemed to receive that pension by virtue of this Agreement.

#### ARTICLE 5

##### UK Benefits for Widows

1. For the purpose of determining entitlement to widow's benefit under the legislation of any part of the territory of the United Kingdom, a widow who is permanently resident in that part of the territory shall be treated as if her husband had paid contributions under the legislation of that part of the territory for any period during which he was resident in Australia between the ages of sixteen years and sixty-five years.
2. Where a widow who is permanently resident in any part of the territory of the United Kingdom was receiving a pension payable to widows under the legislation of Australia, otherwise than by virtue of this Agreement or the former Agreement, at the time when she was last in Australia, and is not qualified by virtue of paragraph (1) to receive widow's allowance, widowed mother's allowance or widow's pension at the full standard rate under the legislation of that part of the territory of the United Kingdom where she is permanently resident, she shall be qualified under that legislation to receive at the full standard rate:
  - (a) widow's allowance if she had been receiving a pension payable to widows under the legislation of Australia for less than one

- year in the case of Jersey and 26 weeks in the case of Guernsey;  
or
- (b) widowed mother's allowance if she is not qualified to receive widow's allowance or if she has ceased to be qualified to receive widow's allowance, and if she has a child in her family or if she has residing with her a person under the age of nineteen years or sixteen years in the case of Jersey or eighteen years in the case of Guernsey, and the pension payable to widows which she was receiving at the time when she was last in Australia was being paid to her on the basis that that child or person was her dependent child; or
  - (c) widow's pension or retirement pension, as the case may require, if she is not qualified to receive widow's allowance, or widowed mother's allowance but had reached the age of fifty-five years or forty years where that widow is permanently resident in Jersey or Guernsey, either before she last left Australia or when she ceased to be qualified to receive widow's allowance or widowed mother's allowance.
3. Any pension which is awarded by virtue of this Article shall continue to be payable if the pensioner ceases to be permanently resident in one part of the territory of the United Kingdom, and becomes permanently resident in another part of the territory of the United Kingdom, and the competent authority of the latter part of the territory of the United Kingdom shall not determine entitlement under this Article.
  4. Any widow's benefit which is awarded by virtue of this Article shall cease to be payable if the widow ceases to be permanently resident in the territory of the United Kingdom.
  5. Where a person is entitled to receive a benefit by virtue of the provisions of this Article, the rate of benefit which she would otherwise be entitled to receive, but for this paragraph, shall be reduced by the amount of benefit which is payable by virtue of the legislation of Australia in accordance with the provisions of Article 8(7).
  6. The provisions contained in this Article shall apply, in an equal and opposite way to widowed father's allowance under the legislation of Jersey.

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7. In the case of widows' benefit payable under the legislation of Jersey, contribution credits shall only be awarded to widows permanently resident in Jersey.
  8. In the case of widow's benefit payable under the legislation of Guernsey:
    - (a) Class 3 contributions shall be credited only to a widow who is permanently resident in Guernsey;
    - (b) where Class 3 contributions have not been credited to a widow under the provisions of sub-paragraph (a) above and the rate of old age pension which would be payable is less than the rate of widow's benefit payable immediately before pension age is attained the rate of old age pension shall be adjusted so that it is equal to the rate of widow's benefit which was payable, or which would be payable, if widow's benefit were payable beyond pension age.

#### ARTICLE 6

##### UK Widowed Mother's Allowance—Child in Australia

Where a woman would be qualified under the legislation of the United Kingdom, otherwise than by virtue of this Agreement or the former Agreement, to receive widowed mother's allowance, including an allowance for a child, if her child were in the territory of the United Kingdom, she shall be qualified to receive that allowance for any period during which the child is in Australia.

#### ARTICLE 7

##### Australian Benefits for Widows

1. Where a person is qualified to receive a pension payable to widows under the legislation of Australia otherwise than by virtue of the provisions of this Agreement or the former Agreement, that pension shall be payable and the provisions of this Article shall not apply under that legislation.
2. For the purpose of any claim to receive a pension payable to widows under the legislation of Australia, a widow shall be treated as if she had

been an Australian resident during any period for which her husband (or her last husband if more than one) had paid contributions or had had earnings or contributions credited to him under the legislation of the United Kingdom.

3. For the purpose of applying paragraph (2), any period when the widow was an Australian resident which coincided with a period when her husband (or her last husband if more than one) had paid contributions or had earnings or contributions credited to him shall be counted only once.

## ARTICLE 8

### Conversion of Australian Residence

1. For the purpose of calculating entitlement under the legislation of Great Britain, Northern Ireland or the Isle of Man, to any benefit in accordance with Articles 3 and 5, periods of residence in Australia before 6 April 1975 shall be treated as if they had been contribution or equivalent periods completed under that legislation.
2. For the purpose of calculating entitlement under the legislation of Great Britain, Northern Ireland or the Isle of Man, to any benefit in accordance with Articles 3 and 5, periods of residence in Australia on or after 6 April 1975 shall be treated as if a Class 3 contribution had been paid under that legislation for each week of residence.
3. Notwithstanding the provisions of paragraph (2), where residence in Australia during any tax year beginning on or after 6 April 1975 is for a period of less than the complete tax year then for each week of that period during which a person satisfies the competent authority that he or she was employed in Australia:
  - (a) for each week up to 5 April 1987, a person shall be treated as having paid a contribution as an employed earner on earnings equivalent to two-thirds of that year's upper earnings limit under the legislation of Great Britain, Northern Ireland or the Isle of Man;
  - (b) for each week commencing on or after 6 April 1987, a person shall be treated as having earnings on which primary Class 1 contributions have been paid under the legislation of Great

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Britain, Northern Ireland or the Isle of Man; these earnings shall be treated as equivalent to two-thirds of that year's upper earnings limit.

4. For the purpose of calculating entitlement under the legislation of Guernsey to any benefit in accordance with Articles 3 and 5, residence in Australia between the ages of sixteen years and sixty-five years shall be treated as if a Class 3 contribution had been paid under the legislation of Guernsey for each week of residence.
5. For the purpose of calculating entitlement under the legislation of Jersey to any benefit in accordance with Articles 3 and 5, a person shall be treated:
  - (a) for each week completed during residence in Australia between the ages of sixteen years and sixty-five years, being a week in the relevant quarter, as having paid contributions which derive a quarterly contribution factor of 0.077 for that quarter;
  - (b) for each week completed during residence in Australia between the ages of sixteen years and sixty-five years, being a week in a relevant year, as having paid contributions which derive an annual contribution factor of 0.0193 for that year.
6. Where it is not possible to determine accurately the periods of time in which certain insurance periods were completed under the legislation of the United Kingdom, such periods shall be treated as if they did not overlap with periods of residence in Australia, and they shall be taken into account to the best advantage of the beneficiary.
7. For the purpose of calculating the rate of any benefit payable to a person under the legislation of the United Kingdom in accordance with the provisions of Articles 3, 5 or 13, the amount of any Australian benefit to be taken into account shall be initially the rate which that person is receiving at the date of entitlement to the United Kingdom benefit, and thereafter the rate which that person is receiving:
  - (a) on the date on which the latest uprating order, made by the Secretary of State for Social Security under section 63 of the Social Security Act 1986, came into effect; or
  - (b) in respect of Guernsey, on the date on which the latest Ordinance made under Section 19 of the Social Insurance (Guernsey) Law, 1978 came into effect; or

- (c) in respect of Jersey, annually on 1 October in accordance with Article 13 of the Social Security (Jersey) Law 1974.
8. Notwithstanding the provisions of paragraph (7), where a person referred to in that paragraph has the rate of that Australian benefit reduced under the legislation of Australia upon being absent from Australia for 12 months, the benefit payable to that person under the legislation of the United Kingdom shall be adjusted upon that reduction occurring.

#### ARTICLE 9

##### Conversion of UK earnings factors or contribution factors

In order to convert to a period of contributions or credits for the purposes of Articles 4 and 7:

- (a) the competent authority of Great Britain, Northern Ireland or the Isle of Man shall divide any earnings factor achieved in any tax year commencing after 5 April 1975 under its legislation, by that year's lower earnings limit;
- (b) the competent authority of Jersey shall multiply any contribution factor achieved by a person under its legislation:
  - (i) by thirteen in the case of a quarterly contribution factor; and
  - (ii) by fifty-two in the case of an annual contribution factor.

The result shall be expressed as a whole number, any remaining fraction being ignored. The figure so calculated, subject to a maximum of the number of weeks during which the person was subject to that legislation in a quarter or in a year, shall be treated as representing the number of weeks of contributions or credits completed under that legislation.

**PART III—UK FAMILY ALLOWANCE AND GUARDIAN’S  
ALLOWANCE**

**ARTICLE 10**

**Family Allowance**

1. Where a person who has been resident in Australia becomes permanently resident in the territory of the United Kingdom, the period during which that person was resident in Australia shall be treated, for the purpose of a claim by the person for family allowance under the legislation of the United Kingdom, as a period during which that person was resident in that territory.
2. For the purpose of any claim to family allowance under the legislation of Guernsey, a person whose place of birth is in Australia shall be treated as if his or her place of birth was in Guernsey.
3. In the case of Jersey, family allowance shall only be paid in respect of a child who is ordinarily resident in Jersey.

**ARTICLE 11**

**Guardian’s Allowance**

1. Where a person who is permanently resident in the territory of the United Kingdom claims guardian’s allowance under the legislation of any part of that territory for a child who is permanently resident there, each complete week during which either parent of that child was resident in Australia after reaching sixteen years of age shall be treated as if that week had been a complete week of residence in that part of the territory of the United Kingdom or as if that parent had been an insured person under the legislation of Guernsey.
2. If either parent of a child referred to in paragraph (1) was born in Australia, that parent shall be treated as if he or she had been born in the United Kingdom.

**PART IV—SICKNESS BENEFITS AND INVALIDITY BENEFITS**

ARTICLE 12

Australian Sickness Benefit

Where a person who is temporarily absent from any part of the territory of the United Kingdom and who is legally in Australia claims sickness benefit under the legislation of Australia, that person shall, for the purpose of that claim, be deemed to be an Australian resident.

ARTICLE 13

UK Sickness Benefit and Invalidity Benefit

1. Where a person who is permanently resident in the territory of the United Kingdom and is ordinarily gainfully occupied, or would be, but for his or her incapacity for work, claims sickness or invalidity benefit under the legislation of the relevant part of that territory, then, for the purpose of calculating entitlement to those benefits, periods during which that person was in Australia shall be treated in accordance with the provisions of this Article.
2. For the purpose of calculating entitlement under the legislation of Great Britain, Northern Ireland or the Isle of Man to sickness or invalidity benefit:
  - (a) periods of gainful occupation completed in Australia before 6 April 1975 shall be treated as if they had been contribution or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man; and
  - (b) periods completed as a self-employed person in Australia after 5 April 1975 shall be treated as if they have been contribution periods completed as a self-employed person or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man.
3. For the purpose of calculating an earnings factor for assessing entitlement to sickness or invalidity benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man, a person shall be



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treated for each week beginning in a relevant tax year, during which he or she was an employed person in Australia, as follows:

- (a) for each week commencing on or after 6 April 1975 and up to 5 April 1987, as having a contribution paid as an employed earner on earnings equivalent to two-thirds of that year's upper earnings limit; and
  - (b) for each week beginning in a relevant tax year commencing on or after 6 April 1987, as having earnings on which primary Class 1 contributions have been paid. These earnings shall be treated as equivalent to two-thirds of that year's upper earnings limit.
4. For the purpose of calculating entitlement under the legislation of Guernsey to sickness or invalidity benefit:
- (a) periods during which a person was gainfully occupied as an employed person in Australia shall be treated as if they had been contribution or equivalent periods completed as an employed person under the legislation of Guernsey; and
  - (b) periods during which a person was gainfully occupied as a self-employed person in Australia shall be treated as if they had been contribution or equivalent periods completed as a self-employed person under the legislation of Guernsey.
5. For the purpose of calculating entitlement under the legislation of Jersey to any benefit in accordance with this Article, a person shall be treated:
- (a) for each week completed during residence in Australia between the ages of sixteen years and sixty-five years being a week in the relevant quarter, as having paid contributions which derive a quarterly contribution factor of 0.077 for that quarter;
  - (b) for each week completed during residence in Australia between the ages of sixteen years and sixty-five years being a week in a relevant year, as having paid contributions which derive an annual contribution factor of 0.0193 for that year.
6. For the purpose of calculating entitlement under the legislation of the relevant part of the territory of the United Kingdom to sickness or invalidity benefit, a person shall be treated as if he or she had had earnings or contributions credited to him or her:
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- (a) as an employed person for any week during which he or she was in Australia and was unemployed and available for work or was incapable of work, if that week was part of a period during which he or she was or would ordinarily have been employed; and
  - (b) as a self-employed person for any other week during which he or she was in Australia and was incapable of work, if that week was part of a period during which he or she was or would ordinarily have been self-employed.
- 7. Where a person who is permanently resident in the territory of the United Kingdom was receiving a sickness benefit, an invalid pension, a sheltered employment allowance or a rehabilitation allowance under the legislation of Australia when he or she was last in Australia and is incapable of work at the time when he or she arrives in the territory of the United Kingdom, he or she shall be treated under the legislation of the United Kingdom as if, at that time and for so long as he or she continues from that time to be incapable of work, he or she satisfied the contribution conditions under which sickness or invalidity benefit is payable.
- 8. For the purpose of any claim to invalidity benefit under the legislation of the United Kingdom, any period in respect of which a person received sickness benefit or an invalid pension under the legislation of Australia shall be treated as if it were a period of entitlement to sickness benefit or invalidity benefit completed under the legislation of the United Kingdom.
- 9. Nothing in this Article shall diminish any right which a person has, apart from this Agreement, to receive sickness or invalidity benefit under the legislation of the United Kingdom.
- 10. Where a person is entitled to receive a benefit by virtue of the provisions of this Article, the rate of benefit which he or she would otherwise be entitled to receive, but for this paragraph, shall be reduced by the amount of benefit which is payable by virtue of the legislation of Australia in accordance with the provisions of Article 8(7).

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**PART V—UK UNEMPLOYMENT BENEFIT****ARTICLE 14**

1. Where a person who is permanently resident in the territory of the United Kingdom except for Jersey claims unemployment benefit under the legislation of any part of that territory, then, for the purpose of calculating entitlement to that benefit, periods during which that person was in Australia shall be treated in accordance with the provisions of this Article.
2. Periods of gainful occupation as an employed person in Australia before 6 April 1975 shall be treated as if they had been contribution or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man.
3. For the purpose of calculating an earnings factor for assessing entitlement to unemployment benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man, a person shall be treated for each week beginning in a relevant tax year, during which he or she was an employed person in Australia, as follows:
  - (a) for each week commencing on or after 6 April 1975 and up to 5 April 1987, as having a contribution paid as an employed earner on earnings equivalent to two-thirds of that year's upper earnings limit; and
  - (b) for each week beginning in a relevant tax year commencing on or after 6 April 1987, as having earnings on which primary Class 1 contributions have been paid. These earnings shall be treated as equivalent to two-thirds of that year's upper earnings limit.
4. For the purpose of calculating entitlement to unemployment benefit under the legislation of Guernsey, periods during which a person was gainfully occupied as an employed person in Australia shall be treated as if they had been contribution or equivalent periods completed as an employed person under the legislation of Guernsey.
5. A person shall be treated as if he or she had had earnings or contributions credited to him or her as an employed person for any week during which he or she was in Australia and was unemployed and

available for work or was incapable of work, if that week was part of a period during which he or she was or would ordinarily have been gainfully occupied under a contract of service.

6. Nothing in this Article shall diminish any right which a person has, apart from this Agreement, to receive unemployment benefit under the legislation of the United Kingdom.
7. The provisions of this Article shall not apply to a person who claims unemployment benefit under the legislation of Guernsey and who has not paid 26 contributions as an employed person under that legislation.

**PART VI—MISCELLANEOUS PROVISIONS**

ARTICLE 15

Temporary Absences

1. A benefit which is payable to a person by Australia under Part II of this Agreement shall not cease to be payable solely where the person is absent from Australia and the competent authority of Australia is satisfied that the absence is temporary. After the person has been temporarily absent from Australia for a period of 12 months at any one time that person shall then be deemed to have departed permanently from Australia.
2. Where a person, who is qualified to receive any benefit under the legislation of the United Kingdom, would be qualified to receive also an increase of that benefit for a dependant if the dependant were in that territory, he or she shall be qualified to receive that increase while the dependant is temporarily in Australia.

ARTICLE 16

Calculation of Australian Benefits

1. Subject to paragraph (5), the provisions of this Article shall apply, in relation to the territory of the United Kingdom, only to retirement pensions and widows' benefits, and, in relation to Australia only to age pensions, wives' pensions, spouse carer's pensions and pensions payable to widows, being benefits payable under the legislation of Australia solely by virtue of this Agreement; and, for the purpose of applying those provisions, the effect of any provision of the legislation of any part of the territory of the United Kingdom which concerns overlapping benefits shall be disregarded.
2. Subject to the provisions of paragraph (3), where a person who is qualified to receive an Australian benefit also receives a United Kingdom benefit, the rate of that Australian benefit shall be set by:

- (a) calculating that person's income according to the legislation of Australia but disregarding in that calculation the United Kingdom benefit received by that person;
  - (b) deducting the amount of the United Kingdom benefit received by that person from the maximum rate of that Australian benefit; and
  - (c) applying to the remaining benefit obtained under sub-paragraph (b) the relevant rate calculation set out in the legislation of Australia using as the person's income the amount calculated under sub-paragraph (a).
3. Where a married person is, or both that person and his or her spouse are, in receipt of a United Kingdom benefit or benefits, each of them shall be deemed, for the purpose of paragraph (2) and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.
4. If a person would receive an Australian benefit except for the operation of paragraph (2) or except for that person's failure to claim the benefit, then for the purpose of a claim by that person's spouse for a payment under the legislation of Australia that person shall be deemed to receive that benefit.
5. The reference in paragraph (4) to a payment under the legislation of Australia to the spouse of a person is a reference to a payment of:
  - (a) an age pension;
  - (b) an invalid pension;
  - (c) an unemployment benefit;
  - (d) a sickness benefit;
  - (e) a sheltered employment allowance; or
  - (f) a rehabilitation allowance,under that legislation, whether payable by virtue of this Agreement or otherwise.
6. For the purpose of this Article "benefit" includes any additional earnings-related pension, incremental addition, invalidity allowance and age addition payable with the benefit.

ARTICLE 17

Dual Entitlement in Australia

Where:

- (a) a claim is made for a benefit payable by Australia, by virtue of this Agreement; and
- (b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or otherwise, to a benefit that is payable under the legislation of the United Kingdom and that, if paid, would affect the amount of the first-mentioned benefit,

that first-mentioned benefit shall not be paid until a claim is duly lodged for payment of the second-mentioned benefit and the first-mentioned benefit shall not continue to be paid if the claim for the second-mentioned benefit is not actively pursued.

ARTICLE 18

Dual Entitlement in UK

Where a person is qualified to receive a benefit under the legislation of the United Kingdom pursuant to Articles 3, 5 or 13 and is also qualified to receive an Australian benefit, the rate of that Australian benefit shall be determined under the legislation of Australia but in that determination the amount of the benefit payable under the legislation of the United Kingdom shall be disregarded in the computation of that person's income.

ARTICLE 19

Recovery of Benefit

1. Where a benefit is payable by a Party to a person in respect of a past period (in this Article referred to as "the first benefit"), and
  - (a) for all or part of that same period, the other Party has paid to that person a benefit under its legislation (in this Article referred to as "the second benefit"); and

- (b) the amount of the second benefit would have been reduced had the first benefit been paid during that period, the competent authority of the former Party, at the request of the competent authority of the latter Party, shall:
- (c) deduct from the first benefit an amount equal to the amount of the second benefit that would not have been paid had the first benefit been paid on a periodical basis throughout that past period; and
- (d) transmit any sum deducted in accordance with sub-paragraph (c) above to the competent authority of the latter Party.

Any balance shall be paid by the former Party direct to the person.

2. Where the United Kingdom has paid a benefit to a person in respect of a past period and:
  - (a) for all or part of that same period, Australia has paid to that person a benefit under its legislation; and
  - (b) the amount of the benefit paid by Australia would have been reduced had the United Kingdom paid its benefit during that period, the competent authority of Australia may determine that:
  - (c) the amount of its benefit which would not have been paid had the United Kingdom paid its benefit on a periodical basis throughout that period is a debt due by that person to Australia; and
  - (d) the amount, or any part, of that debt may be recovered from future benefits which Australia may pay under its legislation to that person.
3. A reference in paragraphs (1) or (2) to a payment under the legislation of a Party means a benefit payable whether by virtue of this Agreement or otherwise.
4. Where a person has received income support under the legislation of Great Britain, Northern Ireland or the Isle of Man for a period for which that person subsequently becomes entitled to any benefit under the legislation of Australia, the competent institution of Australia, at the request of and on behalf of the competent institution of Great Britain, Northern Ireland or the Isle of Man, shall withhold from the benefit due for that period the amount by which the income support paid exceeded



what would have been paid had the benefit under the legislation of Australia been paid before the amount of income support was determined, and shall transmit the amount withheld to the competent institution of Great Britain, Northern Ireland or the Isle of Man.

#### ARTICLE 20

##### Meaning of Permanently Resident

For the purpose of applying the provisions of this Agreement, a person shall be treated as permanently resident in the territory of the United Kingdom if he or she is ordinarily resident in that territory and the competent authority of that territory is satisfied that it is that person's intention to remain so resident permanently.

#### ARTICLE 21

##### Gainful occupation in Australia

For the purpose of Articles 13 and 14, a person shall be treated as having been gainfully occupied in Australia during:

- (a) any period of service, whether in Australia or elsewhere, in the Defence Force of Australia; and
- (b) any period of absence from Australia during which that person was an employee and was treated as being a resident of Australia within the meaning of any Act relating to the imposition, assessment and collection of a tax upon incomes in force in Australia.

## PART VII—ADMINISTRATION

### ARTICLE 22

#### Administrative Arrangements

The competent authorities of the United Kingdom of Great Britain and Northern Ireland and the Secretary to the Department of Social Security for the Government of Australia shall make whatever administrative arrangements are necessary from time to time in order to implement this Agreement.

### ARTICLE 23

#### Disclosure of Information

1. The competent authorities may supply to each other such information as is necessary for the operation of this Agreement or of the legislation of each territory to which this Agreement applies as if the matter involved the application of their own legislation.
2. Any information received by a competent authority pursuant to paragraph (1) shall be protected in the same manner as information obtained under the legislation of that territory and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with matters, including the determination of appeals, arising under the provisions of this Agreement and of the legislation to which this Agreement applies and shall be used only for those purposes.
3. In no case shall the provisions of paragraphs (1) and (2) be construed so as to impose on the competent authority of either Party the obligation:
  - (a) to carry out administrative measures which are at variance with the laws or the administrative practice of either Party; or
  - (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of either Party.
4. The competent authorities shall notify each other of legislation that supersedes, amends, supplements or replaces the legislation within the

scope of this Agreement in relation to their respective Parties, promptly after the first-mentioned legislation is enacted.

5. The appropriate competent authority shall also provide copies of the relevant legislation and of related explanatory material and any further amplification or clarification that the other competent authority may request.

**PART VIII—TRANSITIONAL AND FINAL PROVISIONS**

ARTICLE 24

Transitional Provisions

1. No provision of this Agreement shall confer any right to receive any payment of a benefit for a period before the date of the entry into force of this Agreement.
2. Any contribution which a person has paid or earnings or contributions credited under the legislation of the United Kingdom before the date of the entry into force of this Agreement, and any period during which a person was resident in Australia before that date, shall be taken into account for the purpose of determining the right to receive a benefit in accordance with the provisions of this Agreement under the legislation of Australia and under the legislation of the United Kingdom respectively.
3. Subject to paragraph (4), where, on the date on which this Agreement enters into force, a person:
  - (a) is in receipt of a benefit under the legislation of either Party by virtue of the former Agreement; or
  - (b) is qualified to receive a benefit referred to in sub-paragraph (a) and, where a claim for that benefit is required, has claimed that benefit,

no provision of this Agreement shall affect the entitlement to receive that benefit.
4. The rate of a benefit which is payable by virtue of paragraph (3) shall, subject to this Agreement, be assessed in accordance with the provisions of the legislation of the relevant Party.

ARTICLE 25

Entry into Force

1. The Agreement shall enter into force on a date to be specified in Notes exchanged by the Parties through the Diplomatic channel notifying each other that all matters as are necessary to give effect to this Agreement have been finalised.
2. Subject to the provisions of Article 24, the former Agreement shall terminate on the date of entry into force of this Agreement.

ARTICLE 26

Termination Provisions

1. Subject to paragraph (2), this Agreement shall remain in force until the expiration of twelve months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of the other Party to terminate this Agreement.
2. In the event that this Agreement is terminated in accordance with paragraph (1), the Agreement shall continue to have effect in relation to all persons who by virtue of this Agreement:
  - (a) at the date of termination, are in receipt of benefits; or
  - (b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits.

**Schedule 1** United Kingdom

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In witness whereof the undersigned, duly authorised by their respective Governments, have signed this Agreement.

Done in duplicate at London this 1st day of October 1990.

For the Government of  
Australia:

For the Government of the  
United Kingdom of Great  
Britain and Northern Ireland:

Graham Richardson

Caithness

[Signatures omitted]

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**PART B**

NOTES DATED 22 APRIL 1992 AND 23 APRIL 1992 BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF AUSTRALIA AGREEING TO THE DATE THAT THE AGREEMENT ON SOCIAL SECURITY SIGNED AT LONDON ON 1 OCTOBER 1990 ENTERS INTO FORCE.

**Note No. 29**

The British High Commission present their compliments to the Department of Foreign Affairs and Trade and have the honour to refer to the Agreement on Social Security Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia signed at London on 1 October 1990 and, in accordance with Article 25(1) of that Agreement, to notify the Department of Foreign Affairs and Trade that the Government of the United Kingdom has completed the constitutional and administrative requirements necessary for its implementation.

The High Commission have the honour to propose that, if the Government of Australia has similarly completed its constitutional and administrative requirements, the Agreement shall enter into force on 29 June 1992.

The High Commission avail themselves of this opportunity to renew to the Department of Foreign Affairs and Trade the assurance of their highest consideration.

22 April 1992  
British High Commission  
CANBERRA

**Note No. 312327**

The Department of Foreign Affairs and Trade presents its compliments to the British High Commission and has the honour to refer to the High Commission's Note No. 29 of 22 April 1992, which reads as follows:

“The British High Commission present their compliments to the Department of Foreign Affairs and Trade and have the honour to refer to the Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia signed at London

on 1 October 1990 and, in accordance with Article 25(1) of that Agreement, to notify the Department of Foreign affairs and Trade that the Government of the United Kingdom has completed the constitutional and administrative requirements necessary for its implementation.

The High Commission have the honour to propose that, if the Government of Australia has similarly completed its constitutional and administrative requirements, the Agreement shall enter into force on 29 June 1992.”

The Department has the honour to advise that the constitutional and administrative arrangements necessary for the implementation of the said Agreement by the Government of Australia have been completed. The Department further has the honour to confirm that the foregoing is acceptable to the Government of Australia and that the Agreement shall enter into force on 29 June 1992.

CANBERRA  
23 April 1992.



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**PART C**

NOTES DATED 22 APRIL 1992 BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF AUSTRALIA AMENDING THE AGREEMENT ON SOCIAL SECURITY SIGNED AT LONDON ON 1 OCTOBER 1990.

**Note No. 30**

The British High Commission present their compliments to the Department of Foreign Affairs and Trade and have the honour to refer to the Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia signed at London on 1 October 1990 (which in this letter is referred to as “the Agreement”) and to recent discussions between the Departments of Social Security of the United Kingdom and Australia concerning the need to amend the Agreement, so as to make provision for increases of United Kingdom benefits in respect of dependants to be paid in certain circumstances, for any period during which such dependant is in Australia.

The British High Commission now have the honour to propose the following amendments to the Agreement:

- (a) Articles 6 and 15(2) of the Agreement shall be deleted;
- (b) The following shall be inserted after Article 15 of the Agreement.

**“ARTICLE 15A****UK INCREASES FOR DEPENDANTS**

Where a person who is qualified to receive any benefit under the legislation of the United Kingdom, other than a retirement pension or a widowed mother’s allowance payable by virtue of this or the former Agreement, would be qualified to receive also an increase of that benefit for a dependant if the dependant were in that territory, he or she shall be qualified to receive that increase while the dependant is in Australia”.

If the foregoing proposals are acceptable to the Government of Australia, the High Commission have the honour to propose that this Note and the Department of Foreign Affairs and Trade’s reply to that effect, shall constitute

an Agreement between the government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia which shall enter into force on 29 June 1992.

The British High Commission avail themselves of this opportunity to renew to the Department of Foreign Affairs and Trade the assurance of their highest consideration.

22 April 1992  
British High Commission  
Canberra

**Note No. 312326**

The Department of Foreign Affairs and Trade presents its compliments to the British High Commission and has the honour to refer to the High Commission's Note No. 30 of 22 April 1992, which reads as follows:

“The British High Commission present their compliments to the Department of Foreign Affairs and Trade and have the honour to refer to the Agreement on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia signed at London on 1 October 1990 (which in this letter is referred to as “the Agreement”) and to recent discussions between the Departments of Social Security of the United Kingdom and Australia concerning the need to amend the Agreement, so as to make provision for increases of United Kingdom benefits in respect of dependants to be paid in certain circumstances, for any period during which such dependant is in Australia.

The British High Commission now have the honour to propose the following amendments to the Agreement:

- (a) Articles 6 and 15(2) of the Agreement shall be deleted;
- (b) The following shall be inserted after Article 15 of the Agreement.

**“ARTICLE 15A**

**UK INCREASES FOR DEPENDANTS**

Where a person who is qualified to receive any benefit under the legislation of the United Kingdom, other than a retirement pension or a widowed mother's

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allowance payable by virtue of this or the former Agreement, would be qualified to receive also an increase of that benefit for a dependant if the dependant were in that territory, he or she shall be qualified to receive that increase while the dependant is in Australia.

If the foregoing proposals are acceptable to the Government of Australia, the High Commission have the honour to propose that this Note and the Department of Foreign Affairs and Trade's reply to that effect, shall constitute an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia which shall enter into force on 29 June 1992."

The Department has the honour to confirm that the foregoing is acceptable to the Government of Australia and that the High Commission's Note and this reply shall together constitute an Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland which shall enter into force on 29 June 1992.

CANBERRA  
22 April 1992.

## Schedule 2—Italy

### PART A

Note: See section 5.

#### AGREEMENT ON SOCIAL SECURITY BETWEEN AUSTRALIA AND THE REPUBLIC OF ITALY

Australia and the Republic of Italy,

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

Desiring to review the Agreement providing for reciprocity in matters relating  
to Social Security signed on 23 April 1986, and

Acknowledging the need to co-ordinate further the operation of their respective  
social security systems and to enhance the equitable access by people who  
move between Australia and Italy to social security benefits provided for under  
the laws of both countries,

Have agreed as follows:

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**PART I — INTERPRETATION AND SCOPE**

ARTICLE 1

Interpretation

1. In this Agreement, unless the context otherwise requires:
  - (a) “supplement for children” means, in relation to Australia, the additional family payment and, if applicable, the guardian allowance that would be payable to a person in addition to a benefit under the legislation of Australia if that person were an Australian resident in Australia and qualified for that payment and, if applicable, that allowance;
  - (b) “Australian resident” means an Australian resident as defined in the legislation of Australia;
  - (c) “benefit” means, in relation to a Party, a pension or allowance for which provision is made in the legislation of that Party and includes any additional amount, increase or supplement payable in addition to that pension or allowance to a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;
  - (d) “competent authority” means,  
  
in relation to Australia:  
the Secretary to the Department of Social Security; and,  
  
in relation to Italy:  
the Ministry of Labour and Social Welfare;
  - (e) “dependants” means, in relation to Italy, persons who are within the categories of family members of an insured person or pensioner under the legislation of Italy and who are recognised by that legislation as the dependants of that person or pensioner;

- (f) “disability support pension” means, in relation to Australia, the payment made under the legislation of Australia to people who are considered to be severely disabled under that legislation;
- (g) “institution” means,
  - in relation to Australia:  
the Department of Social Security; and
  - in relation to Italy:  
an institution, apart from the competent authority, which is responsible for the application of this Agreement as specified in the administrative arrangements for this Agreement;
- (h) “Italian integration” means the integrazione al minimo paid to increase the amount of a benefit derived from contributions or otherwise to the minimum amount specified under the legislation of Italy;
- (i) “Italian social supplement” means that welfare benefit granted in addition to the pensions of those people who have incomes lower than the amount fixed by Italian legislation;
- (j) “legislation” means the laws specified in Article 2;
- (k) “period of Australian working life residence” means a period defined as such in the legislation of Australia;
- (l) “period of credited contributions” means a period or the total of two or more periods of contributions used to acquire an entitlement to a benefit and any period deemed to be a period of contributions under the legislation of Italy;
- (m) “spouse carer pension” means a carer pension payable, under the legislation of Australia, to the partner of a person who is in receipt of a disability support pension or of an age pension;

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- (n) “survivors” means, in relation to Italy, persons who are within the categories of family members of a person who was insured or was a pensioner under the legislation of Italy and is now deceased, and who are recognised by that legislation as survivors of that person or pensioner;
  - (o) “widow” means a de jure widow;

2. In the application of this Agreement by a Party, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the legislation within the scope of this Agreement, in relation to that Party, by virtue of Article 2.

## ARTICLE 2

### Legislative Scope

1. Subject to paragraph 2, 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: the *Social Security Act 1991* in so far as the Act provides for, applies to or affects the following benefits:
  - (i) age pension;
  - (ii) disability support pension
  - (iii) wife pension;
  - (iv) pensions payable to widows;
  - (v) widowed person allowance;
  - (vi) spouse carer pension;
  - (vii) double orphan pension; and
  - (viii) supplements for children.

- (b) in relation to Italy: the legislation in force at the date of signature of this Agreement and any legislation that subsequently amends, supplements or replaces that legislation, concerning the compulsory general insurance scheme for employees in regard to invalidity, old age and survivors; special insurance schemes for self-employed persons and other categories of workers; family benefits for dependants of pensioners and unemployment insurance and, in particular, the following benefits:
- (i) old age pensions;
  - (ii) seniority pensions;
  - (iii) anticipated pensions;
  - (iv) invalidity allowances;
  - (v) inability pensions;
  - (vi) privileged invalidity allowances;
  - (vii) privileged inability pensions;
  - (viii) invalidity attendance allowance;
  - (ix) survivors' pensions;
  - (x) family benefit for dependants of pensioners; and
  - (xi) unemployment allowances.

2. Notwithstanding the provisions of paragraph 1, and unless otherwise specified in this Agreement, the legislation of Australia and Italy shall not include any laws made at any time for the purpose of giving effect to any agreement on social security.

3. The competent authorities of the Parties shall advise each other of legislation that amends, supplements or replaces the legislation within the scope of this Agreement promptly after the first-mentioned legislation is enacted.



ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

- (a) is or has been an Australian resident; and/or
- (b) has credited contributions under the legislation of Italy,

and, where applicable, to dependants and survivors in regard to entitlements they may derive from the person mentioned in this Article.

ARTICLE 4

Equality of Treatment

1. The citizens of each of the Parties shall be treated equally in the application of the legislation of Australia and of Italy respectively and, in any case where qualification for a benefit under the legislation of a Party depends, in whole or in part, on citizenship of that Party, a person who is a citizen of the other Party shall, for the purposes of a claim for that benefit, be deemed to be a citizen of the first mentioned Party.
2. All persons to whom this Agreement applies shall be treated equally by the Parties in regard to entitlements and obligations derived from the legislation of the Parties and from this Agreement.
3. A Party shall not be required to apply paragraphs 1 and 2 of this Article to a person who is present in the territory of that Party without lawful authority.

**PART II — PROVISIONS RELATING TO BENEFITS**

**AUSTRALIAN BENEFITS**

ARTICLE 5

Residence or Presence in Italy or in a Third Country

1. Subject to paragraph 2, where a person would be qualified for a benefit under the legislation of Australia or under this Agreement 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 residing in the territory of Italy or of a third country with which Australia has implemented an agreement that includes provision for co-operation in the lodgement and determination of claims for benefits, and
- (b) is in Australia, the territory of Italy or the territory of that third country,

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.

2. The requirement for a person to have been an Australian resident at some time shall not apply to a person who claims a double orphan pension in accordance with Article 9.

ARTICLE 6

Partner-related Australian benefits

A person who receives or is qualified to receive a benefit under the legislation of Australia due to the fact that his or her partner receives or is qualified to receive an Australian benefit by virtue of this Agreement, shall receive a rate calculated under this Agreement.

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ARTICLE 7

Totalisation of Periods of Residence and Periods of Contributions

Totalisation for Australia

1. Where a person to whom this Agreement applies 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
  - (b) a period of Australian working life residence equal to or greater than the minimum period identified for that person in paragraph 4; and
  - (c) a period of credited contributions in Italy;

then that period of credited contributions shall be deemed, only for the purposes of meeting any minimum qualifying period for that benefit set out in the legislation of Australia, to be a period when 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 period of continuous residence required by the legislation of Australia for entitlement of that person to a benefit; and
  - (b) has accumulated a period of credited contributions in Italy in 2 or more separate periods that equals or exceeds in total the period referred to in sub-paragraph (a);

the total of the periods of credited contributions 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 credited contributions 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 sub-paragraph 1(b) shall be as follows:

- (a) for the purposes of an Australian benefit payable to a person outside Australia: 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 payable to an Australian resident in Australia: no minimum period of Australian working life residence shall be required.

5. For the purposes of paragraphs 1 and 2 and for the purpose of a claim by a woman for a pension payable to a widow, that woman shall be deemed to have accumulated a period of credited contributions for any period her late husband accumulated a period of credited contributions, but any period during which the woman and her late husband both accumulated periods of credited contributions shall be taken into account once only.

## ARTICLE 8

### Calculation of Australian Benefits

1. Subject to the provisions of this Article, where an Australian benefit, other than a double orphan pension, is payable under this agreement or otherwise to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia but, when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, benefits paid or due under the legislation of Italy shall be assessed in the following way:

- (a) any Italian integration and/or social supplement and family benefit for the dependants of pensioners included in the total amount of that Italian benefit shall be disregarded;

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- (b) the social pension paid by Italy as non-contributory welfare support shall be disregarded; and
  - (c) only a proportion of any other Italian benefit shall be assessed by multiplying the number of whole months of Australian working life residence used for that person (but not exceeding 300) by the amount of that other Italian benefit and by dividing the result by 300.

2. A person referred to in paragraph 1 shall be entitled to receive the concessional treatment of income described in sub-paragraph (c) only for any period during which the rate of that person's Australian benefit is proportionalised.

3. Subject to the related provisions in this Article, where an Australian benefit, other than a double orphan pension, is payable under this agreement to a person who is an Australian resident and 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 any Italian benefit (including any Italian integration and/or social supplement and family benefit for dependants of pensioners) to which that person is entitled;
- (b) deducting that Italian benefit (including any Italian integration and/or social supplement and family benefit for dependants of pensioners) from the maximum rate of the Australian benefit; and
- (c) applying to the Australian benefit remaining, after the application of sub-paragraph (b), the relevant rate calculation set out in the legislation of Australia, using as the person's income the result from the application of sub-paragraph (a).

4. For the purposes of this Article and for the application of the legislation of Australia, where a member of a couple is, or both his or her partner are, entitled to receive an Italian benefit or benefits, each of them shall be deemed to be in receipt of one half of either the amount of that benefit or of the total of the benefits, as the case may be.

ARTICLE 9

Double Orphan Pension and Spouse Carer pension

1. Where a double orphan pension would be payable to a person under the legislation of Australia, in respect of a young person whose sole surviving parent died while that young person was an Australian resident, if that person and that young person were inhabitants of Australia, that pension shall, subject to the provisions of those laws, be payable while that person and that young person are residents of Italy.
2. For the purposes of qualification for a spouse carer pension under this Agreement, a person who is in Italy shall be regarded as being in Australia.

ARTICLE 10

Exclusion of Specified Italian Payments from the Australian Income Test

1. Subject to paragraph 3 of Article 8 and paragraph 2 of this Article, where a person receives or is entitled to receive a benefit under the legislation of Australia by virtue of this Agreement or otherwise and that person and or that person's partner receive an Italian benefit or benefits which include Italian integration and/or Italian social supplement and/or family benefits for dependants of pensioners, that integration, social supplement and family benefits for dependants of pensioners shall not be included as income for the purposes of assessing the rate of that Australian benefit.
2. For the purposes of this Article only, the term "benefit" shall include job search, newstart and sickness allowances payable under the social security laws of Australia.

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ITALIAN BENEFITS

ARTICLE 11

Totalisation of Periods of Contributions and Periods of Residence

Totalisation for Italy

1. Where a person to whom this Agreement applies has accumulated:
  - (a) a period of credited contributions in Italy that is less than the period required to qualify that person under the legislation of Italy for a benefit; and
  - (b) a period of credited contributions equal to or greater than the minimum period identified for that benefit for that person in paragraph 2; and
  - (c) a period of Australian working life residence;

then that period of Australian working life residence shall be deemed, for the purposes of meeting any minimum qualifying period for that benefit set out in the legislation of Italy, to be a period of credited contributions.

2. The minimum period of credited contributions in Italy to be taken into account for the purposes of paragraph 1 shall be as follows:
  - (a) for old age pension: 1 year;
  - (b) for anticipated pension: 1 year;
  - (c) for seniority pension: 15 years;
  - (d) for invalidity allowance: 1 year;
  - (e) for inability pension: 1 year;
  - (f) for privileged invalidity pension allowance: 1 year;
  - (g) for privileged inability pension: 1 year; and

(h) for survivor's pension: 1 year.

3. For the purposes of voluntary insurance under the legislation of Italy, a period of credited contributions in Italy in relation to a person shall be combined, where necessary, with any period of Australian working life residence accumulated by that person, provided the first-mentioned period totals at least one year.

4. For all purposes of this Article, where a period of credited contributions and a period of Australian working life residence coincide, the period of coincidence shall be taken into account once only by Italy as a period of contributions.

## ARTICLE 12

### Italian Pro-Rata Benefits

1. The amount of Italian benefit payable to a person through the application of Article 11 shall be determined as follows:

- (a) the amount of the theoretical benefit to which the person concerned would be entitled shall be established as if the period of credited contributions in Italy, and the period of Australian working life residence referred to in sub-paragraph 1(c) of Article 11, and accumulated to the date from which the benefit would be payable to that person, had accumulated under the legislation of Italy; and
- (b) the amount of benefit payable shall be that amount which bears to the amount referred to in sub-paragraph (a) the same ratio as that period of credited contributions bears to the sum of that period of credited contributions and that period of Australian working life residence for that person.

2. If the sum of the periods referred to in sub-paragraph 1(b) exceeds the maximum period provided for by the legislation of Italy for entitlement to the maximum rate of the benefit concerned, the maximum period shall be substituted for that sum in calculations made in accordance with that sub-paragraph.



3. The calculation of a rate in relation to a person in accordance with paragraph 1 shall take into account only the salary or income of that person which was subject to contributions under the legislation of Italy.

4. If a person resides in Italy and is entitled to benefits under the legislation of both Parties and the total of these benefits is less than the minimum pension amount (trattamento minimo di pensione) specified under the legislation of Italy, the Italian institution shall pay, in addition to its benefit, the Italian integration needed to reach the said minimum pension amount.

#### ARTICLE 13

##### Exclusion of Specified Australian Payments from the Italian Income Test

Where a person receives or is entitled to receive a benefit under the legislation of Italy by virtue of this Agreement or otherwise and that benefit includes an Italian integration, Italian social supplement and or family allowance for dependants of pensioners, any supplements for children paid to that person and or that person's partner under the social security laws of Australia shall not be included as income for the purposes of assessing the rate of that Italian integration, Italian social supplement and or family benefit.

#### ARTICLE 14

##### Unemployment Allowance

For the purposes of eligibility by a citizen of Australia or of Italy for unemployment allowance under the social security laws of Italy, any periods of employment accumulated in Australia by that person, other than periods of self-employment, shall be totalised with periods of credited contributions in Italy for that person, if those last-mentioned periods total one year or more.

ARTICLE 15

Family Benefits

Family benefits payable under the legislation of Italy:

- (a) shall be payable under this Agreement to Australian residents who are receiving an Italian benefit payable under the social security laws of Italy, whether those persons are citizens of Australia or of Italy; and
- (b) shall not preclude the payment of family payments under the social security laws of Australia, including those laws as modified or adapted by laws giving effect to an agreement on social security with a third country,

and shall, for the purpose of reciprocity under this Agreement, be regarded as the Italian benefit equivalent to those Australian benefits described as:

- (c) wife pension;
- (d) spouse carer pension; and
- (e) supplements for children.

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**PART III — MISCELLANEOUS PROVISIONS**

**ARTICLE 16**

Lodgement of Claims

1. A claim for benefit, under this Agreement or otherwise, may be lodged:
  - (a) in the territory of either Party in accordance with the administrative arrangements for this Agreement; or
  - (b) in a third country if that country is of the kind referred to in Article 5,

at any time after the Agreement enters into force.

2. Where a claim for a benefit of a Party is lodged in the territory of the other Party or in a third country in accordance with paragraph 1, the date on which the claim is lodged shall be the date of lodgement of the claim for all purposes relating to the claim.

**ARTICLE 17**

Determination of Claims

1. In determining the entitlement of a person to a benefit under this Agreement:
  - (a) a period of Australian residence and a period of credited contributions; and
  - (b) any event relevant to that entitlement,

shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person and whether they were accumulated or occurred before or after the date on which this Agreement enters into force.

2. The start date for the payment of a benefit under this Agreement shall be determined by the legislation of the Party concerned and in no case shall that date be a date earlier than the entry into force of this Agreement.

3. Where:

- (a) a claim is made for a benefit payable by one of the Parties, whether by virtue of this Agreement or otherwise; and
- (b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or otherwise, to a benefit (in this Article called “assumed benefit”), that is payable by the other Party and that, if paid, would affect the amount of the first-mentioned benefit,

that claim may be determined by the first-mentioned Party as if the assumed benefit were in fact being paid to that claimant.

4. Where a claim for a benefit is determined in accordance with the preceding paragraph 3 and it is subsequently established that the amount of the assumed benefit in relation to that person was not in fact paid, any deficiency in the payment of the first-mentioned benefit shall be adjusted retrospectively.

5. Where:

- (a) it appears that a person who is entitled to the payment of a benefit by one of the Parties might also be entitled to the payment of a benefit by the other Party, in either case whether by virtue of this Agreement or otherwise;
- (b) the amount of the benefit that might be paid by that other Party would affect the amount of the benefit payable by the first-mentioned Party; and
- (c) the amount that could be due in respect of the benefit by that other Party, whether by virtue of this Agreement or otherwise, is likely to include an adjustment for arrears of that benefit,

then

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- (d) that other Party shall, if the first-mentioned Party so requests, pay the amount of those arrears to the first-mentioned Party;  
and
- (e) the first mentioned 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.

#### ARTICLE 18

##### Portability of Benefits

1. Benefits of one Party are also payable in the territory of the other Party.
2. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable under this Agreement, is also payable outside the territories of both Parties.
3. Where qualification for a benefit of one Party is subject to limitations as to time, then references to that Party in those limitations shall be read also as references to the territory of the other Party.
4. A benefit payable by a Party under this Agreement shall be paid by that Party without deduction for government administrative fees and charges for processing and paying that benefit whether paid in the territory of the other Party or outside the respective territories of both Parties.

#### ARTICLE 19

##### Administrative Arrangements

The competent authorities of the Parties shall make whatever administrative arrangements are necessary to implement this Agreement.

ARTICLE 20

Exchange of Information and Mutual Assistance

1. The competent authorities and institutions responsible for the application of this Agreement:
    - (a) shall communicate to each other any information necessary for the application of this Agreement and of their respective social security laws;
    - (b) shall lend their good offices and furnish 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 or under the social security laws of either Party as if the matter involved the application of their own legislation;
    - (c) shall 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 those changes affect the application of this Agreement; and
    - (d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the parties with third countries, to the extent and in the circumstances specified in the administrative arrangements for this Agreement.
  2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any administrative arrangements made pursuant to Article 19.
  3. Any information about a person transmitted under this Agreement to an institution shall be protected in the same manner as information obtained under the legislation of that Party.
  4. In no case shall the provisions of paragraph 1 be construed so as to impose on the competent authority or the institution of a Party the obligation:
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- (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 the other Party.

5. In the application of the Agreement, the competent authorities and the institutions of a Party may communicate in its official language with the other Party.

## ARTICLE 21

### Appeals

1. Any person affected by a determination, direction, decision or approval made or given by the competent authority or institution of a Party, in relation to a matter arising under this Agreement, shall have the same rights to a review by administrative and judicial bodies of that Party of that determination, direction, decision or approval as are provided under the laws of that Party.

2. An appeal and documents related to an appeal in accordance with paragraph 1, may be lodged in the territory of either Party in line with the administrative arrangements for this agreement.

3. Subject to paragraph 4, the date on which appeals and related document are lodged in accordance with paragraph 2 with the institution of one Party shall be regarded as the date of lodgement of those appeals and related documents with the institution of the other Party.

4. In relation to Australia, the reference in 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 the social security laws of Australia.

ARTICLE 22

Review of Agreement

1. The Parties may agree at any time to review the whole or any part of this Agreement.
2. Subject to paragraph 1, the Parties shall consult regarding a review of this Agreement and its implementation after the Agreement has been in force for 4 years.
3. Where a party amends, supplements or replaces its legislation, the Parties shall, if one Party so requests, consult on any consequences of that change to the legislation and on the continuing implementation of the Agreement including on whether an amendment to the Agreement is necessary.



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**PART IV — FINAL PROVISIONS**

**ARTICLE 23**

**Entry into Force and Transitional Provisions**

1. This Agreement shall be ratified by both Parties in accordance with their respective procedures and shall enter into force on the first day of the month following that in which there has been an exchange of instruments of ratification.
2. When this Agreement enters into force the Agreement between Australia and the Republic of Italy on Social Security signed on 23 April 1986 shall, subject to paragraph 3, terminate.
3. Subject to paragraph 4, where, on the date on which this Agreement enters into force, a person:
  - (a) is in receipt of a benefit under the legislation of either Party by virtue of the Agreement which was signed on 23 April 1986; or
  - (b) is qualified to receive a benefit referred to in subparagraph (a) and, where a claim for that benefit is required, has claimed that benefit,no provision of this Agreement shall affect that person's qualification to receive that benefit.
4. The rate of a benefit for which a person is qualified by virtue of paragraph 3 shall, subject to this Agreement, be assessed in accordance with the provisions of the legislation of the relevant Party.
5. Where a resident of Italy:
  - (a) was in receipt of a widow B pension from Australia and had that pension cancelled because of the enactment of section 1215 of the *Social Security Act 1991*; or

- (b) had applied for a widow B pension on or before 30 June 1992 but that application had not been determined by that date,

then that cancelled pension shall be reinstated back to the date of cancellation or that application shall be determined as if section 1215 had not been enacted. The rate of the reinstated widow B pension or of the widow B pension paid under any successful application shall be calculated under the provisions of the Agreement mentioned in paragraph 2 of this Article until this Agreement comes into force and thereafter shall be calculated under this Agreement.

#### ARTICLE 24

##### Termination

1. Subject to paragraph 2, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention to terminate this Agreement.

2. In the event this Agreement is terminated in accordance with paragraph 1, the Agreement shall continue to have effect in relation to all persons who:

- (a) at the date of termination, are in receipt of benefits under this Agreement; or
- (b) before the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits under this Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

Done in duplicate at Rome the thirteenth day of September 1993, in the English and Italian languages, both texts being equally authoritative.

FOR AUSTRALIA

FOR THE REPUBLIC  
OF ITALY

[Signatures omitted]

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**PART B****EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT, DONE AT CANBERRA ON 31 MAY 2000, AMENDING AND CLARIFYING THE AGREEMENT ON SOCIAL SECURITY BETWEEN AUSTRALIA AND THE REPUBLIC OF ITALY OF 13 SEPTEMBER 1993**

The Department of Foreign Affairs and Trade presents its compliments to the Embassy of Italy and has the honour to refer to the Agreement on Social Security between Australia and the Republic of Italy, done at Rome on 13 September 1993 (“the Agreement”) and to recent discussions between the relevant authorities of Australia and the Republic of Italy.

The Department notes that since the agreement was signed there have been changes to the legislation of both Parties which affect the interpretation and implementation of the Agreement.

Therefore the Department has the honour to propose the following amendments to, and clarifications of the Agreement:

1. The definition in Article 1.1(g) of the Agreement shall be read as follows:

“(g) *institution* – means an institution apart from the competent authority, which is responsible for the application of this Agreement as specified in the administrative arrangements for this Agreement.”

2. The definition in Article 1.1(h) of “Italian integration” shall be read so as to include also the differential amount according to Law 335/95 of Italy in addition to that which is already covered in that definition.
3. The benefit referred to as “carer pension” in Article 1.1(m) shall read “carer payment”.
4. The benefit referred to as “widowed person allowance” in sub-paragraph (v) of Article 2.1(a) shall read “bereavement allowance”.
5. In the interpretation of Article 8.1 where reference is made to the rate of the benefit being determined under Australian legislation, that rate shall always be read so as not to exceed the rate payable to the relevant person if that person were in Australia and had met the residential requirements for that benefit.

If the foregoing proposal is acceptable to the Embassy of Italy, the Department of Foreign Affairs and Trade has the honour to propose that this Note and the reply from the Embassy of Italy to that effect, shall constitute an agreement between the Government of Australia and the Government of the Republic of Italy, which shall enter into force on the same day as the Agreement enters into force.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the Embassy of Italy the assurance of its highest consideration.

The Embassy of Italy presents its compliments to the Department of Foreign Affairs and Trade and has the honour to refer to the Department's Note No. LGB 00/838 of 31 May 2000 which reads as follows:

“The Department of Foreign Affairs and Trade presents its compliments to the Embassy of Italy and has the honour to refer to the Agreement on Social Security between Australia and the Republic of Italy, done at Rome on 13 September 1993 (“the Agreement”) and to recent discussions between the relevant authorities of Australia and the Republic of Italy.

The Department notes that since the Agreement was signed there have been changes to the legislation of both Parties which affect the interpretation and implementation of the Agreement.

Therefore the Department has the honour to propose the following amendments to and clarifications of the Agreement:

1. The definition in Article 1.1(g) of the agreement shall be read as follows: “(g) *institution* – means an institution apart from the competent authority which is responsible for the application of this Agreement as specified in the administrative arrangements for this Agreement,”
2. The definition in Article 1.1(h) of “Italian integration” shall be read so as to include also the differential amount according to Law 335/95 of Italy in addition to that which is already covered in that definition.
3. The benefit referred to as “carer pension” in Article 1.1(m) shall read “carer payment”.

4. The benefit referred to as “widowed person allowance” in sub-paragraph (v) of Article 2.1(a) shall read “bereavement allowance”.
5. In the interpretation of Article 8.1 where reference is made to the rate of the benefit being determined under Australian legislation, that rate shall always be read so as not to exceed the rate payable to the relevant person if that person were in Australia and had met the residential requirements for that benefit.

If the foregoing proposal is acceptable to the Embassy of Italy, the Department of Foreign Affairs and Trade has the honour to propose that this Note and the reply from the Embassy of Italy to that effect, shall constitute an agreement between the Government of Australia and the Government of the Republic of Italy, which shall enter into force on the same day as the Agreement enters into force.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the Embassy of Italy the assurance of its highest consideration.”

The Embassy of Italy has the honour to confirm that the foregoing is acceptable to the Government of the Republic of Italy and that the Department’s Note and this reply shall together constitute an agreement between the Government of the Republic of Italy and the Government of Australia which shall enter into force on the date the Agreement enters into force.

The Embassy of Italy avails itself of this opportunity to renew to the Department of Foreign Affairs and Trade the assurances of its highest consideration.

Embassy of Italy  
Canberra  
31 May 2000

## Schedule 3—New Zealand

Note: See section 5.

### PART A

#### AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND

The Government of Australia, and

The Government of New Zealand

Referred to in this Agreement as “the Parties”

WISHING to strengthen the existing friendly relations between the two countries, and

DESIRING to coordinate the operation of their respective social security systems and to enhance the equitable access by people covered by this Agreement to specified social security benefits provided for under the laws of both countries, and

WISHING to modify and replace the Agreement providing for matters relating to social security entered into at Wellington on 19 July 1994 as amended on 7 September 1995 and 2 July 1998,

HAVE agreed as follows:

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**PART I**  
**DEFINITIONS AND SCOPE**

**ARTICLE 1**  
**Definitions**

1. In this Agreement unless the context otherwise requires:
- (a) “Australian resident” has the meaning given to it under Article 5;
  - (b) “benefit”, in relation to a Party, means the benefits as listed and defined in Article 2 and unless otherwise stated includes any amount, increase or supplement that is payable in addition to that benefit or in respect of a person who is eligible for that amount, increase or supplement under the social security law of that Party;
  - (c) “competent authority”, in relation to New Zealand, means the Chief Executive of the Ministry of Social Policy and in relation to Australia, the Secretary of the Department of Family and Community Services;
  - (d) “competent institution”, in relation to a Party, means the institution or institutions that are responsible for the administration of the social security law of that Party;
  - (e) “CPI” means the Consumer Price Index (All Groups) Australia wide, kept by the Australian Statistician and published from time to time by the Australian Bureau of Statistics, and in the event of the CPI being discontinued or abolished then such price index as the Australian Statistician substitutes for it;
  - (f) “date of severe disablement” means the date a person who applies for a disability support pension or invalid’s benefit was first assessed as meeting the criteria for a disability support pension or invalid’s benefit under this Agreement or, where evidence supports an earlier date, the competent institutions may agree on an earlier date;
  - (g) “financial year” means the period from 1 July of any year to 30 June of the next year;
  - (h) “living alone”, in relation to New Zealand superannuation or veteran’s pension, has the meaning given to it under the social

- security law of New Zealand; and “not living alone” has a corresponding meaning;
- (i) “month”, in relation to New Zealand, means a calendar month, but where fractions of a month are to be aggregated, a month means 30 days;
  - (j) “New Zealand resident” has the meaning given to it under Article 5;
  - (k) “permanent resident” has the meaning given to it under Article 5;
  - (l) “severely disabled” means a person who:
    - (i) has a physical impairment, a psychiatric impairment, an intellectual impairment, or two or all of such impairments, which makes the person, without taking into account any other factor, totally unable:
      - (aa) to work for at least the next 2 years; and
      - (bb) unable to benefit within the next 2 years from participation in a program of assistance or a rehabilitation program; or
    - (ii) is permanently blind;
  - (m) “social security law”, in relation to a Party, means the laws of that Party specified in Article 2;
  - (n) “territory”, in relation to New Zealand, means: New Zealand only and not the Cook Islands, Niue or Tokelau; and, in relation to Australia, means: Australia as defined in the social security law of Australia; and references to “New Zealand”, “Australia” or the “territory” of either shall be read accordingly;
  - (o) “third country residence” has the meaning given to it under Article 5;
  - (p) “working age residence” has the meaning given to it under Article 5;
  - (q) “year” means 12 calendar months;
  - (r) “1994 Agreement” means the Agreement on Social Security between the Government of New Zealand and the Government of Australia done at Wellington on 19 July 1994, as amended on 7 September 1995 and 2 July 1998; and
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- (s) “1994 Agreement benefit” means a benefit defined in the 1994 Agreement in Article 2, paragraph 1, subparagraphs (a)(i), (ii), (iii), (iv), (v), (vi) and (vii).
2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the social security law of either Party.

## **ARTICLE 2**

### **Legislative Scope**

1. Except as provided under paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any legislation that subsequently amends, supplements, consolidates or replaces them:
- (a) in relation to Australia: the Acts forming the social security law in so far as those Acts provide for, apply to or affect the following benefits:
- (i) age pension;
  - (ii) disability support pension;
  - (iii) carer payment in respect of the partner of a person who is in receipt of a disability support pension; and
- (b) in relation to New Zealand: the *Social Security Act 1964* and the *Social Welfare (Transitional Provisions) Act 1990* in so far as they provide for, apply to or affect the following benefits:
- (i) New Zealand superannuation;
  - (ii) veteran’s pension; and
  - (iii) invalid’s benefit.
2. For the purposes of this Agreement an Australian disability support pension and a New Zealand invalid’s benefit shall be limited to cases where:
- (a) the person is severely disabled;
  - (b) the person was a resident of one of the Parties at the date of severe disablement; and
  - (c) the person, prior to the date of severe disablement, was residing in the territory of the other Party for a period of not less than one year at any time.

### **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 a New Zealand resident.

### **ARTICLE 4**

#### **Equality of Treatment**

Except as provided for in this Agreement, the persons to whom this Agreement applies shall be treated equally by each of the Parties in regards to rights and obligations that arise under the social security law of that Party or as a result of this Agreement.

### **ARTICLE 5**

#### **Residence Definitions**

1. “Australian resident” has the meaning given to that term in the social security law of Australia but for the purposes of the Agreement also includes a New Zealand citizen who is not the holder of an Australian permanent visa but is lawfully residing in Australia. In deciding whether a person is residing in Australia, regard must be had to the following factors:
  - (a) the nature of the accommodation used by the person in Australia;
  - (b) the nature and extent of the family relationships the person has in Australia;
  - (c) the nature and extent of the person’s employment, business or financial ties with Australia;
  - (d) the nature and extent of the person’s assets located in Australia;
  - (e) the frequency and duration of the person’s travel outside Australia; and
  - (f) any other matter relevant to determining whether the person intends to remain permanently in Australia;and “residence in Australia” has a corresponding meaning.
2. “New Zealand resident” means, in relation to New Zealand, a person who has or had New Zealand as their principal place of residence except where that person was unlawfully resident or present in New

Zealand or lawfully resident or present in New Zealand only by virtue of:

- (a) a visitor's permit;
- (b) a temporary work permit; or
- (c) a permit to be in New Zealand for the purposes of study at a New Zealand school or university or other tertiary educational establishment;

and "residence in New Zealand" has a corresponding meaning.

- 3. "permanent resident" in relation to Australia means a person who is a citizen of Australia or who holds a permanent visa under the *Migration Act 1958* of Australia.
- 4. "third country residence" means a period of residence when a person was not either an Australian resident or a New Zealand resident.
- 5. "working age residence" in relation to a person means a period of residence between the ages of 20 and 64 years inclusive (being a maximum of 45 years) but does not include any period deemed pursuant to Article 8 or Article 12 to be a period in which that person was an Australian resident or a New Zealand resident.

**PART II**  
**PROVISIONS RELATING TO NEW ZEALAND BENEFITS**

**ARTICLE 6**

**Residence in Australia**

1. Where a person would be entitled to receive a benefit under the social security law of New Zealand (including a person who would be entitled under Article 8) except that he or she is not ordinarily resident or resident and present in New Zealand on the date of application for that benefit, that person shall be deemed, for the purposes of that application, to be ordinarily resident and resident and present in New Zealand on that date, if he or she:
  - (a) is present either in Australia or New Zealand;
  - (b) is an Australian resident, including a person who has the intention of remaining an Australian resident for at least one year or has been residing in Australia for at least 26 weeks;
  - (c) has been a New Zealand resident at any time in his or her life for a continuous period of at least 1 year since attaining the age of 20 years; and
  - (d) in the case of New Zealand superannuation or a veteran's pension, is over the age of 65.
2. Subject to this Agreement, where a person is entitled to receive a benefit under the social security law of New Zealand (including a person who is entitled under paragraph 1, or Article 7, or both) but payment of that benefit is conditional on presence in New Zealand, that person shall be deemed, for the purpose of the payment of that benefit, to be present in New Zealand, if he or she is an Australian resident, and present either in Australia or New Zealand.
3. For the purposes of this Part, if a person who is an Australian resident is temporarily absent from Australia for a continuous period that does not exceed 26 weeks, the period of temporary absence from Australia shall not be considered as interrupting that person's residence in Australia.
4. Where a person is receiving a benefit by virtue of this Agreement and that person departs for a third country:
  - (a) a New Zealand benefit shall continue to be payable in accordance with the provisions for temporary absences under the social security law of New Zealand if the person was a New

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- Zealand resident at the time he or she departed for the third country; and
- (b) in all other cases a benefit shall continue to be payable for a period of 26 weeks.
5. No New Zealand benefit shall be granted to a person who is in receipt of a benefit under the 1994 Agreement at the time that this Agreement comes into force unless that person ceases to be in receipt of that 1994 Agreement benefit.

#### **ARTICLE 7**

##### **Presence in New Zealand**

1. Where a person would be entitled to receive a benefit under the social security law of New Zealand (including a person who would be entitled under Article 8) except that he or she is not ordinarily resident and present in New Zealand on the day of the application for that benefit, that person shall be deemed, for the purposes of that application, to be ordinarily resident and resident and present in New Zealand on that date if he or she:
- (a) is present in New Zealand;
  - (b) has the intention of remaining in New Zealand for at least one year, or has been present in New Zealand for at least 6 months;
  - (c) qualifies for an Australian benefit that is payable at a rate prescribed under Article 13; and
  - (d) in the case of New Zealand superannuation or a veteran's pension, is over the age of 65.
2. Where a person is entitled to receive a New Zealand benefit under paragraph 1, the amount payable shall be calculated in accordance with, and subject to the conditions of, the social security law of New Zealand.

#### **ARTICLE 8**

##### **Totalisation for New Zealand**

1. In determining whether a person meets the residential qualifications for a New Zealand superannuation or a veteran's pension, the competent institution of New Zealand shall deem a period of Australian working age residence to be a period during which that person was both a New Zealand resident and present in New Zealand.

2. In determining whether a person meets the residential qualifications for an invalid's benefit, the competent institution of New Zealand shall deem a period as an Australian resident to be a period during which that person was both a New Zealand resident and present in New Zealand.
3. For purposes of paragraphs 1 and 2, where a period of residence in New Zealand and a period of residence in Australia coincide, the period of coincidence shall be taken into account only once as a period of residence in New Zealand.
4. The minimum period of working age residence in New Zealand to be taken into account for the purposes of paragraph 1 shall be 12 months, of which at least 6 months must be continuous.
5. This Article shall not apply to a claimant for New Zealand superannuation or a veteran's pension who is under the age of 65 years.

#### ARTICLE 9

##### **Rate of New Zealand Superannuation and Veterans' Pensions in Australia**

1. Except as provided in paragraph 4, where an Australian resident is entitled to receive New Zealand superannuation or a veteran's pension under Article 6, the amount of that benefit shall be calculated in accordance with the following formula:

$$\frac{\text{number of whole months of working age residence in New Zealand} \times \text{maximum benefit rate}}{540}$$

subject to the following provisions:

- (a) all periods of working age residence in New Zealand shall be aggregated;
- (b) the maximum benefit rate shall be:
  - (i) in the case of a single person, the maximum rate of benefit (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) payable under the social security law of New Zealand to a single person who is not living alone; and
  - (ii) in the case of a married person, the maximum rate of benefit (less a percentage agreed in writing from time to time by the competent authorities and published in the

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New Zealand Gazette) payable under the social security law of New Zealand to a married person whose spouse also qualifies for New Zealand Superannuation or a veteran's pension in his or her own right;

- (c) in no case shall the rate of benefit exceed 100% of the maximum benefit rate as defined in subparagraph (b);
  - (d) except as provided in paragraph 4, no account shall be taken of any benefit that is payable under the social security laws of Australia; and
  - (e) no account shall be taken of any benefit that is payable under the legislation of a third country unless paragraph 3 applies.
2. Where a married person, who is entitled to receive New Zealand superannuation or a veteran's pension, was an Australian resident and in receipt of an invalid's benefit immediately prior to becoming entitled to receive New Zealand superannuation or a veteran's pension, that person shall be entitled to receive the rate payable as provided in paragraph 1 to a person with a spouse who does not qualify for New Zealand superannuation or a veteran's pension in his or her own right.
  3. If an Australian resident is not a permanent resident of Australia, periods of working age residence in a third country shall be deemed for the purposes of this Article to be periods of working age residence in New Zealand.
  4. Where a person is entitled to receive New Zealand superannuation or a veteran's pension under Article 6, the rate of New Zealand superannuation or veteran's pension shall be calculated under paragraph 1 but the amount the person is entitled to receive shall not exceed the amount of Australian age pension that would have been payable to that person if he or she was entitled to receive an Australian age pension but was not entitled to receive New Zealand superannuation or a veteran's pension.

#### **ARTICLE 10**

##### **Rate of New Zealand Invalid's Benefit in Australia**

1. Except as provided in paragraph 2, when an Australian resident is entitled to receive New Zealand invalid's benefit under Article 6, the amount of that benefit shall be calculated in accordance with the following formula:

$$\frac{\text{number of whole months of} \\ \text{New Zealand working age residence} \times \text{maximum benefit rate}}{Y}$$

Where 'Y' equals the aggregate of the periods of working age residence in Australia and New Zealand at the date of severe disablement by which the person became severely disabled and subject to the following provisions:

- (a) all periods of working age residence in New Zealand shall be aggregated;
  - (b) the maximum benefit rate shall be:
    - (i) in the case of a single person, the maximum rate of benefit (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) payable under the social security law of New Zealand to a single person; and
    - (ii) in the case of a married person, the maximum rate of benefit (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) payable under the social security law of New Zealand to a married person;
  - (c) in no case shall the rate of benefit exceed 100% of the maximum benefit rate as defined in subparagraph (b);
  - (d) except as provided in paragraph 2, no account shall be taken of any benefit that is payable under the social security law of Australia; and
  - (e) no account shall be taken of any benefit that is payable under the social security law of a third country if that person is a permanent resident of Australia.
2. The rate of invalid's benefit that a person who qualifies for an invalid's benefit under Article 6 shall be calculated under paragraph 1, but the amount the person is entitled to receive, shall not exceed:
- (a) in the case of a single person, the amount of Australian disability support pension that would have been payable if that person was entitled to receive an Australian disability support pension but not entitled to receive an invalid's benefit; or
  - (b) in the case of a married person, the aggregated amount of Australian disability support payment and carer payment that would have been payable if that person was entitled to an



Australian disability support pension and his or her spouse was entitled to a carer payment and that person had not been entitled to receive an invalid's benefit.

**PART III**  
**PROVISIONS RELATING TO AUSTRALIAN BENEFITS**

**ARTICLE 11**

**Residence or Presence in New Zealand**

1. Where a person would not qualify for a benefit under the social security law of Australia or by virtue of this Agreement only because he or she was not an Australian resident and present in Australia on the date on which the claim for that benefit would be lodged but that person:
  - (a) is an Australian resident or a New Zealand resident; and
  - (b) is physically present in Australia, or in New Zealand;that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.
2. A claimant for an age pension must be at least 65 years of age to be able to obtain the benefit of this Article.

**ARTICLE 12**

**Totalisation for Australia**

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 social security law of Australia for a benefit;
  - (b) a period of working age residence in Australia equal to or greater than the period identified in accordance with paragraph 3; and
  - (c) a period of working age residence in New Zealand.then:

That period of working age residence in New Zealand 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 social security law of Australia.
2. Where a person's period of working age residence in Australia and a period of working age residence in New Zealand coincide, the period of coincidence shall be taken into account once only by Australia for the purposes of this Article as a period as an Australian resident.

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3. The minimum period of working age residence in Australia to be taken into account for the purposes of subparagraph 1(b) shall be 12 months, of which at least 6 months must be continuous.
  4. No person shall be entitled to claim a disability support pension under this Agreement unless he or she has accumulated an aggregate of more than 10 years of residence in Australia and/or New Zealand.
  5. A claimant for an age pension must be at least 65 years of age to be able to obtain the benefit of this Article.

### **ARTICLE 13**

#### **Calculation of Australian Benefits**

1. Where an Australian benefit is payable to a person, whether by virtue of the Agreement or otherwise, the rate of that benefit shall be determined under the social security law of Australia but when assessing the income of that person, no New Zealand benefit paid to that person shall be regarded as income.
2. Subject to paragraph 3, where an Australian benefit is payable, by virtue of this Agreement or otherwise, 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 social security law of Australia but disregarding in that calculation the New Zealand benefit or benefits received by that person;
  - (b) deducting the amount of the New Zealand benefit or benefits 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 social security law of Australia, using as the person's income, the amount calculated under subparagraph (a).
3. Where a member of a couple is, or both that person and his or her partner are, entitled to a New Zealand benefit or benefits, each of them shall be deemed, for the purpose of this Article and for the social security law of Australia, to receive one half of either the amount of that benefit or the total of both of those benefits, as the case may be.
4. (a) Where an age pension is payable, by virtue of this Agreement or otherwise, to a person who is in New Zealand and who has less than 10 years as a New Zealand resident, then the rate of that age

pension shall be determined (subject to paragraph 1) in accordance with the following formula:

$$A = \frac{(540 - Z) \times R}{540}$$

where,

A = rate payable.

Z = period in months of working age residence in New Zealand.

R = the rate that would have been payable if that person had been in Australia and was qualified under the social security law of Australia to receive age pension.

- (b) Where an age pension is payable, by virtue of this agreement or otherwise, to a person who is in New Zealand and who has more than 10 years as a New Zealand resident, then the rate of age pension shall be determined (subject to paragraph 1) in accordance with the following formula:

$$A = \frac{W \times R}{540}$$

where,

A = rate payable.

W = period in months of working age residence in Australia with a minimum period of 12 months.

R = the rate that would have been payable if that person had been in Australia and was qualified under the social security law of Australia to receive age pension.

5. Subject to paragraph 1, where a disability support pension is payable, by virtue of this Agreement or otherwise, to a person who is in New Zealand, that pension shall be determined in accordance with the following formula:

$$A = \frac{L \times R}{N + L}$$

where,

A = rate payable.

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L = period in months of working age residence in Australia between age 20 and the date of severe disablement with a minimum number of 12 months.

N = period of working age residence in New Zealand between age 20 and the date of severe disablement.

R = the rate that would have been payable if that person had been in Australia and was qualified under the social security law of Australia to receive that disability support pension.

6. Paragraphs 4, 5 and 8 do not apply to an Australian resident who was granted and received the relevant pension without use of the Agreement for a period of 26 weeks from departure from Australia.

7. For the purposes of:

(a) paragraph 2, where the pensioner is in Australia, but not a permanent resident;

(b) subparagraph 4(a); and

(c) paragraph 5, where the pensioner has less than 10 years in New Zealand,

any pension received from a third country will be disregarded in the assessment of the pension and directly deducted from the rate of Australian pension.

8. Subject to paragraph 1, where a carer payment is payable, by virtue of this Agreement or otherwise, to a person who is in New Zealand or to a person caring for a person who receives his or her disability support pension by virtue of this Agreement, the rate of that carer payment shall be the same proportion of the maximum carer payment as the proportion of the maximum disability support pension that is received by the person for whom the care is being given.

**PART IV**  
**COMMON PROVISIONS ON ELIGIBILITY**

**ARTICLE 14**

**Residence in Third Countries**

1. A person who:
  - (a) is entitled to receive a benefit solely through the application of the totalising provisions of Article 8; and
  - (b) either:
    - (i) departs New Zealand with the intention of residing in a third country for a period which exceeds 26 weeks; or
    - (ii) resides in a third country for a period which exceeds 26 weeks;

shall only be entitled to receive a benefit while outside Australia or New Zealand if he or she is entitled to receive that benefit under a reciprocal social security agreement that the Party paying that benefit has entered into with that third country.
2. Where a person, who is in receipt of an Australian benefit by virtue of this Agreement, goes to a third country that benefit shall continue to be payable for 26 weeks.

**ARTICLE 15**

**Payment of Supplementary Benefits and Allowances**

1. Where a New Zealand resident becomes entitled to receive a New Zealand benefit under Article 8, the competent institution of New Zealand shall also pay to that person any supplementary benefit or allowance under the social security law of New Zealand for which that person is qualified.
2. Where an Australian resident becomes entitled to receive a New Zealand benefit under this Agreement, the amount of that benefit shall not include any supplementary benefit or allowance which would be payable under the social security law of New Zealand if that person were a New Zealand resident.
3. Where an Australian resident becomes entitled to receive an Australian benefit under Article 12, the amount of that benefit shall include any

supplementary benefit or allowance under the social security law of Australia for which that person is qualified.

4. Where a New Zealand resident becomes entitled to receive an Australian benefit under this Agreement, the amount of that benefit shall not include any supplementary benefit or allowance which would be payable under the social security law of Australia if that person were an Australian resident.

#### **ARTICLE 16**

##### **Residency Issues**

1. Where there is doubt after having applied the definitions in Article 5 as to whether a person is a resident of Australia or New Zealand, the competent institutions of the Parties shall consult on the issue and shall decide in writing the country of residence of that person.
2. Upon the decision being made under paragraph 1, that person shall be deemed to be a resident of that country.
3. If the facts on which a decision was made under paragraph 1 change in regard to the person, the competent institution of a Party may initiate action under paragraph 1 on the basis that there is new doubt as to the residency of the person.

**PART V**  
**COMMON PROVISIONS RELATING TO BENEFIT PAYMENTS**

**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 administrative arrangements made pursuant to Article 21 at any time after the Agreement enters into force.
2. For the purpose of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the competent institution of one Party shall be considered as the date of lodgement of that document with the competent institution of the other 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 Party.
3. The reference in paragraph 2 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, their respective legislation.

**ARTICLE 18**

**Exchange of Information**

1. The competent authorities shall advise each other:
  - (a) of laws that amend, supplement or replace the legislation of their respective Parties for the application of this Agreement, promptly after the first-mentioned laws are made;
  - (b) directly of internal action to implement this Agreement and any administrative arrangements made for its implementation; and
  - (c) of any technical problems encountered when applying the provisions of this Agreement or of any administrative arrangements made for its implementation.
2. The competent institutions shall supply each other with any information in their possession that may assist with verification of the country or countries in which an applicant for benefit to which this Agreement applies has acquired periods of working age residence and each



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- competent institution shall supply that information in the manner specified in the administrative arrangements made pursuant to Article 21.
3. The competent institutions shall communicate to each other, as soon as possible, in relation to each benefit granted by the other Party, all information in its possession required:
    - (a) to verify that the person in receipt of that benefit is eligible to receive it under the social security law of the Party granting the benefit;
    - (b) to verify the amount of benefit payable; and
    - (c) for the recovery of any social security debt under this Agreement.
  4. The competent institutions shall, on request, assist each other in relation to the implementation of Agreements on social security entered into by either of the Parties with third countries, to the extent and in the circumstances specified in the administrative arrangements made pursuant to Article 21.
  5. The assistance referred to in paragraphs 2 to 4 shall be provided free of charge except where specified in the administrative arrangements made pursuant to Article 21.
  6. Unless disclosure is required and is permitted under the laws of both Parties, any information about an individual that is transmitted in accordance with this Agreement to a competent authority or a competent institution by the competent authority or competent institution of the other Party is confidential and shall be used only for the purposes of implementing this Agreement and the social security law of either Party.
  7. Where an exchange of information authorised under this Article is of a kind to which Part X of the *New Zealand Privacy Act 1993* or the *Privacy Act 1988 of Australia* would apply, the administrative arrangements shall:
    - (a) include provisions that ensure, in relation to New Zealand, that the safeguards that are required under New Zealand privacy laws in information matching agreements are complied with and that the arrangements are consistent with the information matching rules under New Zealand privacy laws;
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- (b) include provisions that ensure, in relation to Australia, that the safeguards that are required under Australian privacy laws in information matching agreements are complied with and that the arrangements are consistent with the information matching rules under Australian privacy laws; and
  - (c) list the items of information that each Party may request under this Article.
- 8. Any information transmitted in accordance with this Agreement to a competent institution shall be protected in the same manner as information obtained under the social security law of the receiving Party.
- 9. No term in this Article shall affect the obligations of the Parties under Article 25.

#### **ARTICLE 19**

##### **Recovery of Overpayments**

- 1. For Australia where:
  - (a) a benefit is paid or payable by New Zealand to a person in respect of a past period;
  - (b) for all or part of that period, Australia has paid to that person a benefit under its legislation; and
  - (c) the amount of the benefit paid by Australia would have been reduced had the benefit paid or payable by New Zealand been paid during that period.then:

The amount that would not have been paid by Australia 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 Australia.
- 2. A reference to a benefit in this Article, in relation to Australia, means a pension, benefit or allowance that is payable under the Acts forming the social security law of Australia as amended from time to time, and in relation to New Zealand means any pension, benefit, allowance or advance made by a competent institution including overpayments which arise because of the payment of Australian and New Zealand benefits.

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***Recovery from arrears***

3. Where:
- (a) it appears that a person who is entitled to the payment of a benefit by one of the Parties might also be entitled to the payment of a benefit by the other Party, in either case whether by virtue of this Agreement or otherwise;
  - (b) the amount of the benefit that might be paid by that other Party would affect the amount of the benefit payable by the first-mentioned Party; and
  - (c) the amount that could be due in respect of the benefit by that other Party, whether by virtue of this Agreement or otherwise, is likely to include an adjustment for arrears of that benefit.
- then:
- (i) That other Party shall, if the first-mentioned Party so requests, pay the amount of those arrears to the first-mentioned Party; and
  - (ii) the first-mentioned 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.

***Recovery by instalment or lump sum***

4. Where an amount paid by one of the Parties to a person in respect of a benefit exceeds the amount, if any, that was properly payable, whether by virtue of this Agreement or otherwise, in respect of that benefit, the competent institution of that other Party shall, if requested by the other competent institution to do so, and in accordance with this Article, deduct amounts totalling the excess payment referred to from the regular payments due in respect of the last-mentioned benefit.
5. The amount of an excess payment referred to in paragraph 3 shall be the amount determined by the competent institution of the Party by whom the excess payment was made.
6. The rate of deductions to be made in accordance with paragraph 3 from the amount due in respect of a benefit, and any incidental or related matters, shall be determined by the competent institution of the Party to whom the debt relates, in accordance with the social security law or administrative practice of that Party.

7. The competent institution that is making deductions or is about to make deductions under paragraph 4 shall also accept any regular or lump sum payment from the person concerned for the purposes of repaying the excess benefit received by that person.

***Restitution***

8. The amounts deducted or received by the competent institution of one of the Parties in accordance with paragraphs 3, 4 or 7 shall be remitted to the other competent institution as agreed between the competent institutions or in administrative arrangements made pursuant to Article 21.

**ARTICLE 20**

**Limitations**

In no case shall the provisions of this Part be construed so as to impose on the competent institution of a Party the obligation to carry out administrative measures at variance with the laws or the administrative practices of that or the other Party.

**ARTICLE 21**

**Administrative Arrangements**

The competent authorities of the Parties shall establish by means of administrative arrangements the measures necessary for the implementation of this Agreement.

**ARTICLE 22**

**Currency**

1. Payments under this Agreement may be made validly in the currency of the Party making the payment.
2. Money transfers made under this Agreement shall be made in accordance with any relevant arrangements in effect between the Parties at the time of transfer.
3. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.

4. A Party that imposes restrictions described in paragraph 3 shall inform the other Party of those restrictions within one calendar month of their imposition and shall adopt the measures described in paragraph 3 within three months of the imposition of those restrictions. If the other Party is not so informed, or if the necessary measures are not adopted within the set time, the other Party may treat such a failure as a material breach of the Agreement and as sufficient justification for termination or suspension of the Agreement between the Parties.
5. A benefit payable by a Party by virtue of this Agreement to a person outside the territory of that Party shall be paid without deduction for government administrative fees and charges for processing and paying that benefit.

**PART VI**  
**MISCELLANEOUS PROVISIONS**

**ARTICLE 23**  
**Exchange Rates**

Where the rate of benefit a person is entitled to receive under this Agreement, is affected by a benefit payable by the other Party or by a social security pension payable by a third country, the competent institutions shall use common exchange rates as prescribed in administrative arrangements made pursuant to Article 21 to calculate the value of those benefits or pensions.

**ARTICLE 24**  
**Settlement of Disputes**

1. The competent authorities of the Parties shall settle, to the extent possible, any disputes that arise in interpreting or applying the provisions of this Agreement having regard to its spirit and fundamental principles.
2. The Parties shall consult promptly at the request of either concerning matters which have not been settled by the competent authorities in accordance with paragraph 1.
3. Any dispute between the Parties concerning the interpretation or application of the provisions of this Agreement which has not been settled by consultation in accordance with paragraph 1 or 2 shall, at the request of either Party, be submitted to arbitration by an arbitral tribunal.
4. Unless the Parties mutually determine otherwise, the arbitral tribunal shall consist of three arbitrators, of whom each Party shall appoint one and the two arbitrators shall appoint a third who shall act as President provided that if the two arbitrators fail to agree the President of the International Court of Justice shall be requested to appoint the President.
5. The arbitral tribunal shall determine its own procedures.
6. The decision of the arbitral tribunal shall be final and binding.

**ARTICLE 25**

**Review of the Agreement**

1. The Parties may agree at any time to review any of the provisions of this Agreement.
2. If a Party wishes to amend, supplement or replace its legislation, in a way that would affect the provisions of this Agreement, it shall, prior to enactment of any such legislation, seek the agreement of the other Party to such amendment of this Agreement, as may be necessary to maintain consistency between that Party's legislation and the provisions of this Agreement.
3. If a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than six months after that request was made.

**ARTICLE 26**

**Transitional Provisions**

1. Subject to this Agreement and to Article 22(3) of the 1994 Agreement, when this Agreement comes into force pursuant to Article 28, the 1994 Agreement shall terminate.
2. Part II, Part III and Part IV of this Agreement shall apply to any person who claims a benefit after 1 July 2002. Any person who, at the date of termination of the 1994 Agreement is in receipt of a benefit under the 1994 Agreement or who has lodged a claim for, and would be entitled to receive a benefit under the 1994 Agreement, shall continue to be entitled to receive that benefit in accordance with the provisions of Part II of the 1994 Agreement, as if the 1994 Agreement remained in force, for so long as that person remains continuously in receipt of a benefit under the 1994 Agreement.
3. A person who is in receipt of a benefit from one Party at the date of termination of the 1994 Agreement shall not be required to claim a benefit from the other Party under this Agreement after that date, whether or not legislation of the first Party obliges him or her to do so.

**ARTICLE 27**

**Reimbursements under the Transitional Provisions**

1. Except as provided in paragraph 2, the Government of New Zealand shall continue to reimburse the Government of Australia for benefits for

which it agreed to reimburse the Government of Australia under the 1994 Agreement and which were reimbursable at 1 July 2002 by payment of the following amounts in Australian dollars which will be adjusted annually for movements in the CPI:

- (a) in the financial year beginning 1 July 2002, \$101.74 million;
  - (b) in the financial year beginning 1 July 2003, \$86.55 million;
  - (c) in the financial year beginning 1 July 2004, \$76.11 million;
  - (d) in the financial year beginning 1 July 2005, \$66.77 million;
  - (e) in the financial year beginning 1 July 2006, \$58.39 million;
  - (f) in the financial year beginning 1 July 2007, \$50.90 million;
  - (g) in the financial year beginning 1 July 2008, \$44.19 million;
  - (h) in the financial year beginning 1 July 2009, \$38.21 million;
  - (i) in the financial year beginning 1 July 2010, \$32.90 million;
  - (j) in the financial year beginning 1 July 2011, \$28.19 million;
  - (k) in the financial year beginning 1 July 2012, \$17.35 million;
  - (l) in the financial year beginning 1 July 2013, \$14.44 million;
  - (m) in the financial year beginning 1 July 2014, \$11.92 million;
  - (n) in the financial year beginning 1 July 2015, \$9.75 million;
  - (o) in the financial year beginning 1 July 2016, \$7.89 million;
  - (p) in the financial year beginning 1 July 2017, \$6.30 million;
  - (q) in the financial year beginning 1 July 2018, \$4.96 million;
  - (r) in the financial year beginning 1 July 2019, \$3.86 million;
  - (s) in the financial year beginning 1 July 2020, \$2.94 million;
  - (t) in the financial year beginning 1 July 2021, \$2.21 million; and
  - (u) in the financial year beginning 1 July 2022, \$1.63 million.
2. In the first financial year that the reimbursable amount, as adjusted for movements in the CPI, is less than 10 million Australian dollars, the Government of New Zealand shall reimburse the Government of Australia that adjusted reimbursable amount for that year together with an amount equal to the aggregate reimbursable amounts for the next 5 financial years (but with no adjustment for movements in the CPI for those 5 financial years) and no further amount shall be reimbursable under this Article.
3. For each financial year the reimbursable amount, or in the financial year referred to in paragraph 2, the total amount payable shall be paid, in
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arrears, in equal quarterly instalments on 1 October, 1 January, 1 April of that financial year and 1 July of the next financial year or, if those dates are not banking days, on the first banking day thereafter.

## **ARTICLE 28**

### **Entry into Force and Termination**

1. The Agreement shall enter into force on 1 July 2002 provided that the Parties have notified each other by notes exchanged through the diplomatic channel that all matters necessary to give effect to this Agreement have been completed; otherwise it shall come into force on the first day of the second month following the date of the last such notification.
2. Subject to paragraph 3, this Agreement shall remain in force until either:
  - (a) the expiration of 12 months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of either Party to terminate the Agreement; or
  - (b) the date of entry into force of a later treaty between the Parties relating to the same subject matter as this Agreement, and which the Parties intend shall govern that same subject matter in place 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 by virtue of this Agreement:
  - (a) at the date of termination, are in receipt of benefits; or
  - (b) prior to the expiry of the period referred to in subparagraph (a), have lodged claims for, and would be entitled to receive, benefits.

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

DONE in two copies in the English language at Canberra on this twenty-eighth day of March 2001.

FOR THE GOVERNMENT  
OF AUSTRALIA

AMANDA VANSTONE

FOR THE GOVERNMENT  
OF NEW ZEALAND

SIMON PETER MURDOCH

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**PART B****EXCHANGE OF NOTES AMENDING THE AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND, DONE AT CANBERRA ON 28 MARCH 2001****New Zealand initiating note**

A/NZ/2/4/2

The New Zealand High Commission presents its compliments to the Department of Foreign Affairs and Trade of Australia and has the honour to refer to the Agreement on Social Security between the Government of Australia and the Government of New Zealand, done at Canberra on 28 March 2001 (hereinafter referred to as “the Agreement”) and to subsequent discussions between the two Governments over its amendment.

The High Commission has the further honour to propose that, on the basis of the aforementioned discussions, the following amendments to the text of the Agreement be agreed:

1 Article 2 of the Agreement is amended by inserting the words “the *New Zealand Superannuation Act 2001*,” after “New Zealand:” in paragraph 1(b).

2 Article 6 of the Agreement is amended by renumbering paragraph 5 as paragraph 7, and by inserting new paragraphs 5 and 6 as follows:

- “5. A New Zealand benefit which would otherwise be payable to a person in New Zealand shall continue to be payable for up to 26 weeks after the person’s departure from New Zealand if that person departs New Zealand to reside in Australia and:
- (a) applies to receive New Zealand superannuation under the Agreement within 26 weeks of arrival in Australia; or
  - (b) applies to receive an invalid’s benefit under the Agreement within 4 weeks of arrival in Australia.

“6. If an application referred to in paragraph 5 is granted under the Agreement, the rate of the New Zealand benefit payable after the date of grant shall be the rate payable in accordance with the Agreement. If the application is declined, the New Zealand benefit first referred to in that paragraph shall only be payable in Australia after the date of that decision if the person is entitled to receive that payment under New Zealand domestic law.”

3 Article 8 of the Agreement is amended by deleting paragraph 4, and substituting the following paragraph:

“4. The minimum period in Australia to be taken into account for the purposes of:

- (a) paragraph 1, shall be 12 months working age residence, of which at least 6 months must be continuous; and
- (b) paragraph 2, shall be 12 months residence, of which at least 6 months must be continuous.”

4 Article 9 of the Agreement is amended by deleting paragraph 2; and renumbering paragraphs 3 and 4 as 2 and 3 respectively.

5 Article 11 of the Agreement is amended by adding as paragraphs 3 and 4 the following paragraphs:

“3. If a person applies for a carer payment under this Agreement, references to Australia in the provisions of the social security law of Australia relating to qualification for carer payment shall be read also as references to New Zealand.

“4. If a person is qualified for a carer payment under this Agreement, that person can receive that payment if that person has an aggregate period of residence of at least 2 years in Australia and/or New Zealand.”

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6 Article 12 of the Agreement is amended by deleting paragraph 3, and substituting the following paragraph:

- “3. The minimum period of Australian working age residence to be taken into account for the purposes of paragraph 1(b) shall be as follows:
- (a) for the purposes of an Australian benefit payable to a person residing outside Australia, the minimum period shall be one year of which at least 6 months must be continuous; but
  - (b) for the purposes of an Australian benefit payable to an Australian resident, there will be no minimum period.”

7 Article 17 of the Agreement is amended by adding a new paragraph that shall read as follows:

- “4. After the entry into force of this Agreement, a claim by a person for a benefit under the social security law of one Party shall be deemed to be a claim for the corresponding benefit under the social security law of the other Party provided that:
- (a) if the claimant is applying for an age pension or New Zealand superannuation, he or she is over 65 years of age;
  - (b) the claimant:
    - (i) requests that the claim be considered an application under the social security law of the other Party; or
    - (ii) provides information at the time of the application indicating that he or she has completed a period of working age residence in the other country; and
  - (c) the competent institution receiving the claim forwards the claim for that corresponding benefit to the other competent institution within three months of receiving that claim.”

8 Article 18 of the Agreement is amended:

- (a) by inserting in paragraph 2, after the word “possession”, the words “or that they are lawfully able to obtain”;
- (b) by adding to the end of paragraph 2 the words “The information supplied may include information that identifies any person, including the person’s name, date of birth, sex, passport number, country of citizenship, the date or dates on which the person arrived in or departed from Australia or New Zealand,

- and information identifying the aircraft or ship on which he or she arrived or departed, as the case may be.”;
- (c) by inserting in paragraph 3, after the word “possession”, the words “or that it is lawfully able to obtain, that is”;
  - (d) by inserting in paragraph 5, after the word “provided”, the words “subject to the terms and conditions set out in Part B of the Schedule of this Agreement, and”;
  - (e) by inserting in paragraph 5, after the words “specified in the”, the words “Schedule or in the”;
  - (f) by inserting in paragraph 6, after the word “Parties,”, the words “ then, except as provided in Part B of the Schedule of this Agreement,”;
  - (g) by inserting in paragraph 7, after the word “shall”, the words “, in accordance with Part B of the Schedule of this Agreement,”; and
  - (h) by omitting from paragraph 9 the expression “25”, and substituting the expression “24”.

9 Article 19 of the Agreement is amended by adding the following paragraph:

- “9. Recovery of overpayments by either Party under this Agreement shall be subject to the terms and conditions set out in Part A of the Schedule of this Agreement.”

10 Article 23 of the Agreement is deleted and no substitution for it is made; and the subsequent Articles 24 to 28 are renumbered as 23 to 27.

11 Article 25 of the Agreement (as renumbered) is amended by deleting from paragraph 1 the expression “28”, and substituting the expression “27”.

12 The Agreement is amended by adding at its end as a Schedule of the Agreement, the following Schedule:

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**“Schedule****Part A****Terms and conditions for recovery of social security debts**

- 1 The terms and conditions referred to in Article 19 of the Agreement are:
- (a) assistance to recover any social security debt of a party may be provided by the other party only in respect of a debt:
    - (i) that has been found or determined to be owing in the country concerned by a court or tribunal having jurisdiction in the matter, or by a person, body, or organisation in that country acting administratively within the terms of his, her, or its lawful authorisation; and
    - (ii) in respect of which any right of review or appeal of the determination of the debt, under the law under which the debt was determined (other than a right of judicial review or complaint under laws relating to administrative decisions generally, or under human rights laws),:
      - (A) has been exhausted or has expired; or
      - (B) if there is no time limit for the exercise of any such right, has not been exercised, or has been exercised and the review or appeal has been finally determined; and
    - (iii) that may be lawfully recovered under the laws of that country; and
    - (iv) that was first found or determined to be owing less than 5 years prior to the date that the request for assistance is made, except as provided in clause 2;
  - (b) when providing assistance to recover any social security debt of a party, the party giving the assistance is not required to:
    - (i) give priority to the recovery of social security debts of the other party; and
    - (ii) take any measures for recovery not provided for under the laws relating to the recovery of debts of that party;
  - (c) a party may not seek to recover a social security debt by imprisonment of the individual by whom it is owed or of any other individual;
  - (d) any recovery of a social security debt of a deceased individual is limited to the value of that individual's estate;
  - (e) any institution, court, or tribunal involved in the recovery of a social security debt may defer recovery of the debt, or may order or arrange for the debt to be paid in instalments, if:
    - (i) the institution, court, or tribunal has the power to do so; and
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- (ii) it is its normal practice to do so;
  - (f) a party may give assistance only in respect of a social security debt that the requesting institution has certified is of a kind described in subparagraphs (i) to (iv) of paragraph (a);
  - (g) the party requesting assistance to recover a social security debt must pay the costs of the other party of recovering the debt, including court costs or other fees payable under the laws of that party. For the purposes of this paragraph, “costs of the other party” refer only to costs incurred (such as solicitor’s fees) if court action is taken to recover the debt and do not include the administrative costs of a party.
- 2 For the purpose of clause 1(a)(ii), a right of review or appeal under the law under which a debt was determined has expired:
- (a) if the right has not been exercised within the time limit provided for its exercise; and
  - (b) irrespective of whether the court or tribunal or body or person that would have jurisdiction in respect of the review or appeal, or any other person, retains a discretion (however expressed in that law) to allow the right of review or appeal to be exercised after that time.
- 3 Where any institution, court, or tribunal defers the recovery of a social security debt, or orders or arranges for a social security debt to be paid by instalments, the 5-year period referred to in clause 1(a)(iv) is extended by the period of deferral or, as the case requires, the period over which the debt is to be paid by instalments.



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**Part B****Terms and conditions for exchange of information  
for social security purposes**

- 1 The terms and conditions referred to in Article 18 of the Agreement are—
- (a) a request for information relating to an individual may be made only for social security purposes;
  - (b) the requested institution of a party may supply to the requesting institution such information on the person to whom the request relates as it holds or is lawfully able to obtain;
  - (c) the requesting institution of a party (the “requesting party”) to whom information is supplied by the requested institution of the other party may supply that information to the taxation authorities of the requesting party for either or both of the following purposes:
    - (i) making an assessment of the tax due by any person under the laws of the requesting party relating to taxation;
    - (ii) detecting tax fraud or tax evasion under the laws of the requesting party;
  - (d) every request for and supply of information made by and to the competent institutions of the parties must be made in terms of an agreement between the competent institutions of the parties that:
    - (i) specifies the types of information that the competent institutions may supply to each other; and
    - (ii) limits the supply of information to the types of information specified; and
    - (iii) subject to subparagraph (iv), in relation to New Zealand, contains, with all necessary modifications, the safeguards required to be set out in an information matching agreement within the meaning of section 99 of the Privacy Act 1993; and
    - (iv) in relation to New Zealand, requires the information matching rules set out in clause 4 of the Schedule 4 of the Privacy Act 1993, with all necessary modifications, to be applied; and
    - (v) in relation to New Zealand, has been agreed to by the Privacy Commissioner under the Privacy Act 1993, the Commissioner having had regard to the information matching guidelines in section 98 of that Act;
  - (e) subject to paragraphs (b) and (c), any information supplied by a party to the other party must be subject to the same privacy protections as any other personal information obtained under the social security laws of the other party;

- (f) no party that receives, under the Agreement, personal information about any individual from the competent institution of the other party may supply that information to any other country without the prior written consent of that competent institution or the individual concerned;
  - (g) a party must supply the competent institution of the other party with any information required by that institution to answer any questions or to make any report or return required by a person or body authorised to monitor compliance with that party's privacy laws.
- 2 In relation to New Zealand, section 99(4) of the Privacy Act 1993 applies, with any necessary modifications, to an agreement between the competent institutions of the parties under clause 1(d)."

The New Zealand High Commission has the honour to propose that, if the foregoing is acceptable to the Government of Australia, this note, and the Department's note in reply, shall together constitute an Exchange of Notes Amending the Agreement, which shall enter into force on the date on which the Agreement enters into force.

The New Zealand High Commission avails itself of this opportunity to renew to the Department of Foreign Affairs and Trade of Australia the assurances of its highest consideration.

New Zealand High Commission  
CANBERRA

20 February 2002

**Australian note in reply**

LGB 02/22

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The Department of Foreign Affairs and Trade of Australia presents its compliments to the New Zealand High Commission and has the honour to refer to the latter's note of 20 February 2002, which reads as follows:

The New Zealand High Commission presents its compliments to the Department of Foreign Affairs and Trade of Australia and has the honour to refer to the Agreement on Social Security between the Government of Australia and the Government of New Zealand, done at Canberra on 28 March 2001 (hereinafter referred to as "the Agreement") and to subsequent discussions between the two Governments over its amendment.

The High Commission has the further honour to propose that, on the basis of the aforementioned discussions, the following amendments to the text of the Agreement be agreed:

1 Article 2 of the Agreement is amended by inserting the words "the *New Zealand Superannuation Act 2001*," after "New Zealand:" in paragraph 1(b).

2 Article 6 of the Agreement is amended by renumbering paragraph 5 as paragraph 7, and by inserting new paragraphs 5 and 6 as follows:

- "5. A New Zealand benefit which would otherwise be payable to a person in New Zealand shall continue to be payable for up to 26 weeks after the person's departure from New Zealand if that person departs New Zealand to reside in Australia and:
- (a) applies to receive New Zealand superannuation under the Agreement within 26 weeks of arrival in Australia; or
  - (b) applies to receive an invalid's benefit under the Agreement within 4 weeks of arrival in Australia.
- "6. If an application referred to in paragraph 5 is granted under the Agreement, the rate of the New Zealand benefit payable after the date of grant shall be the rate payable in accordance with the Agreement. If the application is declined, the New Zealand benefit first referred to in that paragraph shall only be payable in Australia after the date of that decision if the person is entitled to receive that payment under New Zealand domestic law."

3 Article 8 of the Agreement is amended by deleting paragraph 4, and substituting the following paragraph:

- “4. The minimum period in Australia to be taken into account for the purposes of:
- (a) paragraph 1, shall be 12 months working age residence, of which at least 6 months must be continuous; and
  - (b) paragraph 2, shall be 12 months residence, of which at least 6 months must be continuous.”

4 Article 9 of the Agreement is amended by deleting paragraph 2; and renumbering paragraphs 3 and 4 as 2 and 3 respectively.

5 Article 11 of the Agreement is amended by adding as paragraphs 3 and 4 the following paragraphs:

- “3. If a person applies for a carer payment under this Agreement, references to Australia in the provisions of the social security law of Australia relating to qualification for carer payment shall be read also as references to New Zealand.
- “4. If a person is qualified for a carer payment under this Agreement, that person can receive that payment if that person has an aggregate period of residence of at least 2 years in Australia and/or New Zealand.”

6 Article 12 of the Agreement is amended by deleting paragraph 3, and substituting the following paragraph:

- “3. The minimum period of Australian working age residence to be taken into account for the purposes of paragraph 1(b) shall be as follows:
- (a) for the purposes of an Australian benefit payable to a person residing outside Australia, the minimum period shall be one year of which at least 6 months must be continuous; but
  - (b) for the purposes of an Australian benefit payable to an Australian resident, there will be no minimum period.”

7 Article 17 of the Agreement is amended by adding a new paragraph that shall read as follows:

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- “4. After the entry into force of this Agreement, a claim by a person for a benefit under the social security law of one Party shall be deemed to be a claim for the corresponding benefit under the social security law of the other Party provided that:
- (a) if the claimant is applying for an age pension or New Zealand superannuation, he or she is over 65 years of age;
  - (b) the claimant:
    - (i) requests that the claim be considered an application under the social security law of the other Party; or
    - (ii) provides information at the time of the application indicating that he or she has completed a period of working age residence in the other country; and
  - (c) the competent institution receiving the claim forwards the claim for that corresponding benefit to the other competent institution within three months of receiving that claim.”

8 Article 18 of the Agreement is amended:

- (a) by inserting in paragraph 2, after the word “possession”, the words “or that they are lawfully able to obtain”;
- (b) by adding to the end of paragraph 2 the words “The information supplied may include information that identifies any person, including the person’s name, date of birth, sex, passport number, country of citizenship, the date or dates on which the person arrived in or departed from Australia or New Zealand, and information identifying the aircraft or ship on which he or she arrived or departed, as the case may be.”;
- (c) by inserting in paragraph 3, after the word “possession”, the words “or that it is lawfully able to obtain, that is”;
- (d) by inserting in paragraph 5, after the word “provided”, the words “subject to the terms and conditions set out in Part B of the Schedule of this Agreement, and”;
- (e) by inserting in paragraph 5, after the words “specified in”, the words “the Schedule or in the”;
- (f) by inserting in paragraph 6, after the word “Parties,”, the words “ then, except as provided in Part B of the Schedule of this Agreement,”;
- (g) by inserting in paragraph 7, after the word “shall”, the words “, in accordance with Part B of the Schedule of this Agreement,”; and

- (h) by omitting from paragraph 9 the expression “25”, and substituting the expression “24”.

9 Article 19 of the Agreement is amended by adding the following paragraph:

- “9. Recovery of overpayments by either Party under this Agreement shall be subject to the terms and conditions set out in Part A of the Schedule of this Agreement.”

10 Article 23 of the Agreement is deleted and no substitution for it is made; and the subsequent Articles 24 to 28 are renumbered as 23 to 27.

11 Article 25 of the Agreement (as renumbered) is amended by deleting from paragraph 1 the expression “28”, and substituting the expression “27”.

12 The Agreement is amended by adding at its end as a Schedule of the Agreement, the following Schedule:

**“Schedule**

**Part A**

**Terms and conditions for recovery of social security debts**

- 1 The terms and conditions referred to in Article 19 of the Agreement are:
- (a) assistance to recover any social security debt of a party may be provided by the other party only in respect of a debt:
    - (i) that has been found or determined to be owing in the country concerned by a court or tribunal having jurisdiction in the matter, or by a person, body, or organisation in that country acting administratively within the terms of his, her, or its lawful authorisation; and
    - (ii) in respect of which any right of review or appeal of the determination of the debt, under the law under which the debt was determined (other than a right of judicial review or complaint under laws relating to administrative decisions generally, or under human rights laws),:
      - (A) has been exhausted or has expired; or
      - (B) if there is no time limit for the exercise of any such right, has not been exercised, or has been exercised

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- and the review or appeal has been finally determined;  
and
  - (iii) that may be lawfully recovered under the laws of that country; and
  - (iv) that was first found or determined to be owing less than 5 years prior to the date that the request for assistance is made, except as provided in clause 2;
  - (b) when providing assistance to recover any social security debt of a party, the party giving the assistance is not required to:
    - (i) give priority to the recovery of social security debts of the other party; and
    - (ii) take any measures for recovery not provided for under the laws relating to the recovery of debts of that party;
  - (c) a party may not seek to recover a social security debt by imprisonment of the individual by whom it is owed or of any other individual;
  - (d) any recovery of a social security debt of a deceased individual is limited to the value of that individual's estate;
  - (e) any institution, court, or tribunal involved in the recovery of a social security debt may defer recovery of the debt, or may order or arrange for the debt to be paid in instalments, if:
    - (i) the institution, court, or tribunal has the power to do so; and
    - (ii) it is its normal practice to do so;
  - (f) a party may give assistance only in respect of a social security debt that the requesting institution has certified is of a kind described in subparagraphs (i) to (iv) of paragraph (a);
  - (g) the party requesting assistance to recover a social security debt must pay the costs of the other party of recovering the debt, including court costs or other fees payable under the laws of that party. For the purposes of this paragraph, "costs of the other party" refer only to costs incurred (such as solicitor's fees) if court action is taken to recover the debt and do not include the administrative costs of a party.
- 2 For the purpose of clause 1 (a) (ii), a right of review or appeal under the law under which a debt was determined has expired:
- (a) if the right has not been exercised within the time limit provided for its exercise; and
  - (b) irrespective of whether the court or tribunal or body or person that would have jurisdiction in respect of the review or appeal, or any other person, retains a discretion (however expressed in that law) to allow the right of review or appeal to be exercised after that time.
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- 3 Where any institution, court, or tribunal defers the recovery of a social security debt, or orders or arranges for a social security debt to be paid by instalments, the 5-year period referred to in clause 1(a)(iv) is extended by the period of deferral or, as the case requires, the period over which the debt is to be paid by instalments.

**Part B**

**Terms and conditions for exchange of information  
for social security purposes**

- 1 The terms and conditions referred to in Article 18 of the Agreement are—
- (a) a request for information relating to an individual may be made only for social security purposes;
  - (b) the requested institution of a party may supply to the requesting institution such information on the person to whom the request relates as it holds or is lawfully able to obtain;
  - (c) the requesting institution of a party (the “requesting party”) to whom information is supplied by the requested institution of the other party may supply that information to the taxation authorities of the requesting party for either or both of the following purposes:
    - (i) making an assessment of the tax due by any person under the laws of the requesting party relating to taxation;
    - (ii) detecting tax fraud or tax evasion under the laws of the requesting party;
  - (d) every request for and supply of information made by and to the competent institutions of the parties must be made in terms of an agreement between the competent institutions of the parties that:
    - (i) specifies the types of information that the competent institutions may supply to each other; and
    - (ii) limits the supply of information to the types of information specified; and
    - (iii) subject to subparagraph (iv), in relation to New Zealand, contains, with all necessary modifications, the safeguards required to be set out in an information matching agreement within the meaning of section 99 of the Privacy Act 1993; and
    - (iv) in relation to New Zealand, requires the information matching rules set out in clause 4 of the Schedule 4 of the Privacy Act 1993, with all necessary modifications, to be applied; and
    - (v) in relation to New Zealand, has been agreed to by the Privacy Commissioner under the Privacy Act 1993, the
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- Commissioner having had regard to the information matching guidelines in section 98 of that Act;
- (e) subject to paragraphs (b) and (c), any information supplied by a party to the other party must be subject to the same privacy protections as any other personal information obtained under the social security laws of the other party;
  - (f) no party that receives, under the Agreement, personal information about any individual from the competent institution of the other party may supply that information to any other country without the prior written consent of that competent institution or the individual concerned;
  - (g) a party must supply the competent institution of the other party with any information required by that institution to answer any questions or to make any report or return required by a person or body authorised to monitor compliance with that party's privacy laws.
- 2 In relation to New Zealand, section 99 (4) of the Privacy Act 1993 applies, with any necessary modifications, to an agreement between the competent institutions of the parties under clause 1(d)."

The New Zealand High Commission has the honour to propose that, if the foregoing is acceptable to the Government of Australia, this note, and the Department's note in reply, shall together constitute an Exchange of Notes Amending the Agreement, which shall enter into force on the date on which the Agreement enters into force.

The New Zealand High Commission avails itself of this opportunity to renew to the Department of Foreign Affairs and Trade of Australia the assurances of its highest consideration.

New Zealand High Commission

CANBERRA

The Department of Foreign Affairs and Trade of Australia has the honour to advise that the foregoing is acceptable to the Government of Australia and that, accordingly, the High Commission's note and this note in reply shall together constitute an Exchange of Notes Amending the Agreement on Social Security between the Government of Australia and the Government of New Zealand,

done at Canberra on 28 March 2001, which shall enter into force the date on which the Agreement enters into force.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the New Zealand High Commission the assurances of its highest consideration.

CANBERRA  
21 February 2002

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## **Schedule 4—Canada**

*Note* See section 5.

### AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF CANADA

THE GOVERNMENT OF AUSTRALIA AND  
THE GOVERNMENT OF CANADA,

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

NOTING the Reciprocal Agreement on Social Security signed on the fourth day  
of July 1988, as amended by a Protocol signed the eleventh day of October  
1990, and

ACKNOWLEDGING the need to reflect, by means of a consolidated  
document, the changes which have taken place in their respective legislation  
since that Agreement and Protocol were signed,

HAVE AGREED AS FOLLOWS:

**PART 1 – INTERPRETATION AND SCOPE**

ARTICLE 1  
*Interpretation*

1. In this Agreement:

“**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, to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

“**Canadian creditable period**” means a period, or the total of two or more periods, of residence or contributions which has been or can be used to acquire the right to a Canadian benefit, but does not include any period considered under paragraph 2 of Article 9 as a Canadian creditable period;

“**carer payment**” means a carer payment payable under the legislation of Australia to the partner of a person in receipt of an Australian pension;

“**competent authority**” means, in relation to Australia, the Secretary to the Department of Family and Community Services and, in relation to Canada, the Minister of Human Resources Development;

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“**competent institution**” means, in relation to Australia, the institution responsible for the administration of the legislation of Australia and, in relation to Canada, the competent authority;

“**disability support pension**” means a disability support pension payable under the legislation of Australia to a person who is severely disabled;

“**legislation**” means, in relation to a Party, the laws specified in Article 2 in relation to that Party;

“**partner**” when used in relation to the grant, payment or calculation of rate of an Australian benefit, means partner as defined in the legislation of Australia.

“**period of Australian working life residence**” means, in relation to a person, a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 6 to be a period in which that person was an Australian resident;

“**previous agreement**” means the *Reciprocal Agreement on Social Security between the Government of Canada and the Government of Australia* signed on the fourth day of July 1988, as amended by a Protocol signed on the eleventh day of October 1990;

“**social security laws**” means:

- (i) in relation to Australia, the Acts forming the social security law, including regulations made thereunder, as amended; and
- (ii) in relation to Canada, the laws specified in subparagraph 1 (b) of Article 2;

“**widowed person**” means, in relation to Australia, a person who stops being a partnered person because of the death of the person’s partner, but does not include a person who has a new partner.

2. In the application by a Party of this Agreement to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the social security laws of either Party or, in the event of a conflict of meaning, by whichever of those laws is the more applicable to the circumstances of that person.

ARTICLE 2  
*Legislative Scope*

1. Subject to paragraph 2, 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, the Acts and regulations forming the social security law to the extent they provide for and apply to:
    - (i) age pensions;
    - (ii) disability support pensions;
    - (iii) carer payments;
    - (iv) pensions payable to widowed persons; and
    - (v) additional child amount payable to persons in receipt of the above benefits; and
  - (b) in relation to Canada:
    - (i) the *Old Age Security Act* and the regulations made thereunder; and
    - (ii) the *Canada Pension Plan* and the regulations made thereunder.

2. In relation to Australia, the legislation to which this Agreement applies shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any agreement on social security.
3. This Agreement shall apply to laws of a Party which extend the existing legislation of that Party to new categories of beneficiaries unless the competent authority of that Party communicates in writing an objection in regard to those laws to the competent authority of the other Party within 60 days of the date on which those laws receive Royal Assent.
4. Where, under the legislation of Australia, a new category of beneficiaries has arisen as described in paragraph 3, no qualification for benefits in that category shall exist until the expiration of the period set out in that paragraph.

ARTICLE 3  
*Personal Scope*

This Agreement shall apply to any person who:

- (a) is or has been an Australian resident; or
- (b) is residing or has resided in Canada within the meaning of the *Old Age Security Act* or is making or has made contributions pursuant to the *Canada Pension Plan*

and, where applicable, to any partner, spouse, common-law partner, dependent or survivor of such a person.

ARTICLE 4  
*Equality of Treatment*

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise

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



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**PART II – PROVISIONS RELATING TO AUSTRALIAN BENEFITS**

**ARTICLE 5**

*Residence or Presence in Canada or a Third State*

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except that he or she is not an Australian resident and in Australia on the date on which he or she lodges a claim for that benefit but he or she:
  - (a) is an Australian resident or residing in Canada or a third State with which Australia has concluded an agreement on social security that includes provision for co-operation in the assessment and determination of claims for benefits; and
  - (b) is in Australia, Canada or that third State that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.
2. Paragraph 1 shall not apply to a claimant for a benefit who has never been an Australian resident.

**ARTICLE 6**

*Totalisation for 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, for a benefit under the legislation of Australia; and

- (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 6 for that person,
- and has accumulated a Canadian creditable period, then for the purposes of a claim for that Australian benefit, that Canadian creditable period 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. In the case of a claim by a person for a disability support pension or pension payable to a widowed person, paragraph 1 shall apply only to a Canadian creditable period accumulated by that person under the *Canada Pension Plan*.
3. For the purposes of a claim by a person for a pension payable to a widowed person, that person shall be deemed to have accumulated a Canadian creditable period for any period for which the person's partner accumulated a creditable period under the *Canada Pension Plan* but any period during which the person and the partner both accumulated Canadian creditable periods under the *Canada Pension Plan* shall be taken into account once only.
4. 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 Canadian creditable period in two or more separate periods that exceed in total the minimum period referred to in subparagraph (a),
- the total of the Canadian creditable periods shall be deemed to be one continuous period.
5. For the purposes of this Article:
- (a) where a period of Australian working life residence and a Canadian creditable period coincide, the period of coincidence shall be taken into account once only as a period in which that person was an Australian resident; and
- (b) a Canadian creditable period accumulated under the *Old Age Security Act* which coincides with a Canadian creditable period accumulated under the *Canada Pension Plan* shall be taken into account once only.
6. The minimum period to be taken into account for the purposes of subparagraph 1(b) shall be, for a person who is residing outside Australia, a minimum period of Australian working life residence of one year, of which at least 6 months must be continuous and for an Australian resident, no minimum shall apply.

#### ARTICLE 7

##### *Calculation of Australian Benefits*

1. Subject to paragraph 2, where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside Australia, the rate of that benefit shall be determined according to the social security laws of Australia but:
- (a) disregarding in the calculation of his or her income:

- (i) the guaranteed income supplement under the *Old Age Security Act*;
    - (ii) the portion of the allowance under that Act equivalent to the guaranteed income supplement; and
    - (iii) other Canadian federal, provincial or territorial welfare payments of a similar character which are income or means tested, as mutually agreed by the competent authorities; and
  - (b) by assessing as income of that person and, where applicable that person's partner, only a proportion of any other benefit received by that person and, where applicable that person's partner, under the legislation of Canada calculated by multiplying the number of whole months, plus one, accumulated by that person in a period of Australian working life residence, but not exceeding 300, by the amount of that benefit and dividing that product by 300.
2. A person referred to in paragraph 1 shall only be entitled to receive the concessional assessment of income described in subparagraph 1(b) for any period during which the rate of that person's Australian benefit is proportionalised under the legislation of Australia.
3. 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 Australian legislation but disregarding in that calculation any Canadian benefit to which the person or the person's partner is entitled;

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- (b) deducting that Canadian benefit 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 Australian legislation, using as the person's income the amount calculated under subparagraph (a).
4. Where the rate of a benefit calculated in accordance with paragraph 3 is less than the rate of that benefit which would be payable under paragraph 1 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.
5. For the purposes of paragraph 4, a comparison of the rates of a benefit determined in accordance with paragraphs 1, 2 and 3 shall be made as at:
- (a) the date of the first pension pay-day occurring after the date on which the claim for the benefit was lodged; and
  - (b) each anniversary of that pension pay-day for so long as the person concerned is entitled to the benefit, using, in that comparison, the number of months in the period of Australian working life residence accumulated by the person at the date as at which the comparison is made.
6. For the purposes of paragraph 3, where one or the other, or both, of a person and his or her partner are entitled to receive a Canadian benefit, the total of the Canadian benefits payable to that person and his or her partner shall be apportioned equally between them and disregarded in the calculation of their respective incomes, and the amount so
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apportioned shall be deducted from the amount of Australian benefit that would otherwise be payable to each of them.

ARTICLE 8  
*Recovery of Debts*

1. Where:
  - (a) the competent authority of Canada pays a benefit to a person in respect of a past period;
  - (b) for all or part of that period, the competent institution of Australia has paid to that person a benefit under the legislation of Australia; and
  - (c) the amount of the Australian benefit would have been varied had the Canadian benefit been paid during that period, then
  - (d) the amount that would not have been paid by the competent institution of Australia had the Canadian benefit been paid on a periodical basis from the date to which the arrears of benefit referred to in subparagraph (a) were paid shall be a debt due by that person to Australia; and
  - (e) the competent institution of Australia may determine that the amount, or any part, of that debt may be deducted from future payments of a benefit to that person.
2. In paragraph 1, “benefit” means, in relation to Australia, a pension, benefit or allowance that is payable under the social security laws of Australia.

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**PART III – PROVISIONS RELATING TO CANADIAN BENEFITS****ARTICLE 9***Totalisation for Canadian Benefits*

1. Subject to paragraph 3, if a person is not eligible for a benefit on the basis of his or her Canadian creditable periods, eligibility of that person for that benefit shall be determined by totalising these periods and those specified in paragraph 2.
2. (a) For the purposes of determining eligibility for a benefit under the *Old Age Security Act*, a period of Australian working life residence shall be considered as a period of residence in Canada.  
(b) For the purposes of determining eligibility for a benefit under the *Canada Pension Plan*, a calendar year which includes a period of Australian working life residence of at least 6 calendar months shall be considered as a year for which contributions have been made under the *Canada Pension Plan*.
3. For the purposes of this Article, where a Canadian creditable period and a period of Australian working life residence coincide, the period of coincidence shall be taken into account once only as a Canadian creditable period.

**ARTICLE 10***Benefits under the Old Age Security Act*

1. If a person is eligible for a pension or an allowance solely through the application of the totalising provisions of Article 9, the competent institution of Canada shall calculate the amount of the pension or allowance payable to that person in conformity with the provisions of

the *Old Age Security Act* governing the payment of a partial pension or allowance, exclusively on the basis of the periods of residence in Canada which may be considered under that Act.

2. Paragraph 1 shall also apply to a person outside Canada who would be entitled to the payment of a full pension in Canada but who has not resided in Canada for the minimum period required by the *Old Age Security Act* for entitlement to payment of a pension outside Canada.
3. Notwithstanding any other provision of this Agreement:
  - (a) the competent authority of Canada shall not pay a pension under the *Old Age Security Act* to a person outside Canada unless his or her Canadian creditable period accumulated under that Act and period of Australian working life residence, when totalised as provided in Article 9, are at least equal to the minimum period of residence in Canada required by the *Old Age Security Act* for payment of a pension outside Canada; and
  - (b) an allowance and a guaranteed income supplement shall be paid to a person who is outside Canada only to the extent permitted by the *Old Age Security Act*.

#### ARTICLE 11

##### *Benefits under the Canada Pension Plan*

1. If a person is not eligible for a benefit solely on the basis of the periods creditable under the *Canada Pension Plan*, but is eligible for that benefit through the totalising of periods as provided in Article 9, the competent institution of Canada shall calculate the amount of the earnings-related portion of such benefit under the provisions of the



*Canada Pension Plan*, exclusively on the basis of the pensionable earnings under the *Canada Pension Plan*.

2. The amount of the flat-rate portion of the benefit payable by virtue of this Agreement shall, in a case referred to in paragraph 1, be determined by multiplying:
- (a) the amount of the flat-rate portion of the benefit determined under the *Canada Pension Plan*
  - by
  - (b) the fraction which represents the ratio of the periods of contributions to the *Canada Pension Plan* in relation to the minimum qualifying period required under *the Canada Pension Plan* for eligibility to that benefit,
- but in no case shall that fraction exceed the value of one.

**PART IV – MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

ARTICLE 12

*Lodgement of Documents*

1. 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 authority or 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 that document with the competent authority or competent institution of the first Party.
2. In relation to Australia, the reference in paragraph 1 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by the social security laws of Australia or made to a body established by other means for the purposes of the social security laws of Australia.

ARTICLE 13

*Export of Benefits*

1. Unless otherwise provided in this Agreement, the benefits payable to a person under the legislation of one Party shall also be payable to that person when he or she is in the territory of the other Party.
  2. Where the legislation of a Party provides that a benefit is payable to a person who is outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable when that person is outside the territories of both Parties.
  3. Where qualification for an Australian benefit is subject to limitations as to time, reference to Australia in those limitations shall be read also as references to Canada.
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4. The rights under this Article shall not apply to any rent assistance, pharmaceutical allowance or telephone allowance paid by Australia.
  5. A benefit payable by a Party by virtue of this Agreement or under its legislation shall be paid by that Party without deduction of administrative fees and charges by the government or the corresponding competent authority or competent institution for processing and paying that benefit, whether the person qualifying for the benefit is in the territory of the other Party or in a third State.
  6. If a person is receiving a carer payment under this Agreement, references to Australia in the provisions relating to qualification and payability of carer payment shall also be read as references to Canada.

#### ARTICLE 14

##### *Exchange of Information and Mutual Assistance*

1. The competent authorities and competent institutions shall:
  - (a) notify each other of laws affecting the application of this Agreement that amend, supplement or replace the social security laws of their respective Parties promptly after the former laws are made;
  - (b) unless prohibited by law, communicate to each other any information necessary for the application of this Agreement or of the respective social security laws of the Parties concerning all matters arising under this Agreement or under those laws;
  - (c) lend their good offices and furnish assistance to one another with regard to the determination or payment of any benefit under this Agreement or any other entitlement under the

- respective social security laws as if the matter involved the application of their own laws; and
- (d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in administrative arrangements made in accordance with Article 15.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the competent authorities and/or competent institutions for the reimbursement of certain types of expenses.
3. Any information about a person which is transmitted in accordance with this Agreement to a competent authority or competent institution shall be protected in the same manner as information obtained under the social security laws of that Party and shall be disclosed only in the manner permitted by the laws of that 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 administrative practice of that or the other Party.

ARTICLE 15

*Administrative Arrangements*

The competent authorities of the Parties shall make whatever administrative arrangements are necessary from time to time to implement this Agreement.

ARTICLE 16

*Language of Communication*

In the application of this Agreement, the competent authority or competent institution of a Party may communicate directly with the other competent authority or competent institution in any official language of that Party.

ARTICLE 17

*Understandings with a Province of Canada*

1. The relevant authority of Australia and a province of Canada may conclude understandings concerning any social security matter within provincial jurisdiction in Canada provided that those understandings are not inconsistent with the provisions of this Agreement.
2. If the relevant authority of Australia and a province of Canada conclude such an understanding, then any references in the legislation of Australia to a scheduled international agreement with a foreign country shall be read also as references to a scheduled instrument of understanding between Australia and a province of Canada.

ARTICLE 18

*Resolution of Disputes*

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 concerning matters which have not been resolved by the competent authorities in accordance with paragraph 1.
3. Any dispute between the Parties concerning the interpretation of this Agreement which has not been resolved or settled by consultation in accordance with paragraph 1 or 2 shall, at the request of either Party, be submitted to arbitration.
4. Unless the Parties mutually determine otherwise, the arbitral tribunal shall consist of three arbitrators, of whom each Party shall appoint one and the two arbitrators so appointed shall appoint a third who shall act as president; provided that if the two arbitrators fail to agree, the President of the International Court of Justice shall be requested to appoint the president.
5. The arbitrators shall determine their own procedures.
6. The decision of the arbitrators shall be final and binding.

ARTICLE 19  
*Review of Agreement*

Where a Party requests the other to meet to review this Agreement, representatives of the Parties shall meet no later than 6 months after that request was made and, unless the Parties otherwise mutually determine, their meeting shall be held in the territory of the Party to which that request was made.

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**PART V – FINAL PROVISIONS****ARTICLE 20***Transitional Provisions*

1. Subject to this Agreement, in determining the eligibility of a person for a benefit payable by virtue of this Agreement:
  - (a) a period as an Australian resident and/or a Canadian creditable period; and
  - (b) any event or fact which is relevant to that eligibilityshall be taken into account in so far as those periods or those events are applicable in regard to that person, no matter when they were accumulated or occurred.
2. Subject to paragraphs 4 and 6, the start date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but shall never be earlier than the date on which this Agreement enters into force.
3. Subject to this Agreement, when this Agreement comes into force, the previous agreement shall terminate and persons who were receiving benefits by virtue of that agreement shall receive those benefits by virtue of this Agreement.
4. When a person, due to the operation of paragraph 3 of this Article, receives a carer payment in Australia by virtue of this Agreement, the rate of that carer payment shall be determined according to the legislation of Australia.
5. Where, on the date on which this Agreement enters into force, a person:
  - (a) is in receipt of a benefit under the legislation of either Party by virtue of the previous agreement; or

(b) is qualified to receive a benefit referred to in subparagraph (a) and, where a claim for that benefit is required, has claimed that benefit,

no provision of this Agreement shall affect that person's qualification to receive that benefit.

6. An Australian benefit that is payable only by virtue of the previous agreement to a person who:

(a) was an Australian resident on 8 May 1985; and

(b) commenced to receive that benefit before 1 January 1996 shall be paid, during any absence of that person from Australia that commenced before 1 January 1996, at a rate calculated in accordance with paragraphs 3 and 4 of Article 7 of this Agreement.

7. Where, after the entry into force of this Agreement, a person:

(a) applies for a benefit under the legislation of Canada; and

(b) would have been eligible for that benefit under the provisions of the previous agreement, with a commencement date determined in accordance with the legislation of Canada which is prior to the date of entry into force of this Agreement,

the competent institution of Canada shall pay that benefit to that person with effect from that commencement date. This shall also be the case in regard to an application for a benefit which is received prior to the entry into force of this Agreement but on which the competent institution of Canada has not yet taken a decision when this Agreement enters into force.



8. A death benefit under the *Canada Pension Plan* shall not be paid by virtue of this Agreement in respect of a death which occurred before the date of entry into force of the previous agreement.

ARTICLE 21

*Period of Duration and Termination*

1. Subject to paragraph 2, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of the other Party to terminate this Agreement.
2. In the event that this Agreement is terminated in accordance with paragraph 1, the Agreement shall continue to have effect in relation to all persons who by virtue of this Agreement:
- (a) at the date of termination, are in receipt of benefits; or
  - (b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits.

ARTICLE 22

*Entry Into Force*

This Agreement shall enter into force on a date specified in notes exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Agreement have been finalised.

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

DONE in two copies at Ottawa this 26<sup>th</sup> day of July 2001 in the English and French languages, each text being equally authoritative.

FOR THE GOVERNMENT

OF AUSTRALIA

Frances Lisson

[Signatures omitted]

FOR THE GOVERNMENT

OF CANADA

Paul Migus

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## Schedule 5—Spain

*Note* See section 5.

### AGREEMENT BETWEEN AUSTRALIA AND SPAIN ON SOCIAL SECURITY

The Government of Australia and the Government of the Kingdom of Spain (hereinafter “the Parties”),

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

Considering it appropriate to review and replace the Agreement between Spain and Australia on Social Security signed on 10 February 1990 in order to incorporate current laws, and

Acknowledging the need to coordinate further the operation of their respective social security systems so as to ensure access by people who move between Australia and Spain;

Have agreed as follows:

#### PART I - GENERAL PROVISIONS

##### ARTICLE 1 Definitions

1. In this Agreement, unless the context otherwise requires:

“benefit” means in relation to a Party, a benefit 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, to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

“carer payment” as a benefit under this Agreement means a carer payment for a person in Spain who is caring for a partner who is in receipt of an Australian age pension or disability support pension for the severely disabled and who is also in Spain;

“Competent Authority” means, in relation to Australia, the Secretary to the Department responsible for the legislation in sub-paragraph 1(a) of Article 2, and, in relation to Spain, the Ministry of Labour and Social Affairs;

“Competent Institution” means, in relation to Australia, the institution or agency responsible for the administration of the legislation of Australia and, in relation to Spain, the institution responsible for the application of the legislation of Spain;

“legislation” means, in relation to Australia, the laws specified in subparagraph 1(a) of Article 2 and in relation to Spain, the laws specified in subparagraph 1(b) of Article 2;

“period of Australian working life residence”, in relation to a person, means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 9 to be a period in which that person was an Australian resident;

“Spanish creditable period” means the period defined as such in the legislation of Spain as well as any period considered as such under that legislation as an equivalent period but does not include any period considered under paragraph 1 of Article 11 as a Spanish creditable period;

“spouse”, in relation to Australia, means a partner;

“widowed person” means, in relation to Australia, a de jure widow or widower but does not include a widow or widower who has a partner.

2. In the application of this Agreement by a Party, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the legislation of that Party.

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**ARTICLE 2**  
**Legislative Scope**

1. Subject to paragraph 2, 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:

the Acts forming the social security law in so far as the law provides for and in relation to the following benefits:

- (i) age pension;
- (ii) disability support pension for the severely disabled;
- (iii) wife pension;
- (iv) carer payment;
- (v) pensions payable to widowed persons;
- (vi) double orphan pension;
- (vii) additional child amount; and

- (b) in relation to Spain:

the legislation concerning the social security system in as far as it concerns the following benefits:

- (i) cash benefits for temporary incapacity for work in cases of ordinary illness, or non-work related accident;
- (ii) cash benefits for maternity and risk during pregnancy;
- (iii) benefits for permanent incapacity for ordinary illness and non-work related accident, retirement, death and survivorship;
- (iv) family benefits for a dependent child;

- (v) unemployment benefits; and
  - (vi) work accidents and occupational diseases.
2. Notwithstanding the provisions of paragraph 1 the legislation of Australia shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any reciprocal 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 Spain,

and where applicable, to any spouse, dependant or survivor of such a person.

### **ARTICLE 4 Equality of Treatment**

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

### **ARTICLE 5 Portability of benefits**

1. Subject to paragraph 4, benefits of one Party when payable under this Agreement will be paid in the other Party.
2. Where the legislation of a Party provides or allows that a benefit is payable outside Australia or Spain, as the case may be, then that benefit, when payable by virtue of this Agreement, is also payable in a third country.

3. Where qualification for a benefit of one Party is subject to limitations as to time, then references to that Party in those limitations shall be read also as references to the other Party when that benefit is payable by virtue of this Agreement.
4. Temporary incapacity, maternity and risk during pregnancy benefits, unemployment benefits and non-contributory benefits of the Spanish social security system will be paid to the beneficiaries as long as they reside in Spain.
5. Where a double orphan pension would be payable to a person under the legislation of Australia, in respect of a young person whose sole surviving parent died while that young person was an Australian resident, if that person and that young person were inhabitants of Australia, that pension shall, subject to the provisions of those laws, be payable while that person and that young person are residents of Spain.

**PART II**

**PROVISIONS OF SPANISH APPLICABLE LEGISLATION**

**ARTICLE 6**

**Application of Spanish Legislation**

1. Where an employee or a self-employed worker who is covered by the social security schemes of Spain is sent by his firm, or goes, to undertake temporary work in Australia he or she shall continue to be covered by those social security schemes so long as the period of proposed work does not exceed 5 years.
2. If, owing to unforeseen circumstances, the period of the work extends beyond 5 years, this extension may be recognised by the Competent Authority of Spain.



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**PART III - PROVISIONS RELATING TO AUSTRALIAN BENEFITS**

**ARTICLE 7**

**Residence or Presence in Spain or a Third State**

1. Where a person would be qualified for a benefit under the legislation of Australia or under this Agreement 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 residing in Spain or a third country with which Australia has implemented an agreement that includes provision for cooperation in the lodgement and determination of claims for benefits; and
  - (b) is in Australia, Spain or that third country,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.
2. The requirement for a person to have been an Australian resident at some time shall not apply to a person who claims double orphan pension.

**ARTICLE 8**

**Partner-related Australian Benefits**

1. For the purposes of this Agreement, a person who receives an Australian wife pension due to the fact that the partner of that person receives by virtue of this Agreement another Australian benefit, shall be deemed to receive that wife pension by virtue of this Agreement.
2. If a person is receiving a carer payment under this Agreement, references to Australia in the provisions relating to qualification for and payability of carer payment under the legislation of Australia shall be read also as references to Spain.

**ARTICLE 9**  
**Totalisation for Australia**

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 equal to or greater than the minimum period identified for that person in accordance with paragraph 4; and
  - (c) a Spanish creditable period,then that Spanish creditable period shall be deemed to be a period in which that person was an Australian resident
  - only if that Spanish creditable period is considered by Spain to continue to be a Spanish creditable period at the time of totalisation; and
  - 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, 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 Spanish creditable period in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a),the total of the Spanish creditable periods shall be deemed to be one continuous period.

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3. For all purposes of this Article, where a period by a person as an Australian resident and a Spanish creditable period accumulated by that person 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 as follows:
    - (a) for the purposes of an Australian benefit payable to a person residing outside Australia, the minimum period required shall be one year, of which at least six months must be continuous; and
    - (b) for the purposes of an Australian benefit payable to an Australian resident there shall be no minimum period of residence in Australia.

**ARTICLE 10**  
**Calculation of Australian Benefits**

1. Subject to the provisions of this Article when an Australian benefit other than double orphan pension is payable under the Agreement to a person outside Australia, the rate of that benefit shall be determined according to the legislation of Australia but, when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, benefits paid or due under the legislation of Spain should be assessed in the following way:
  - (a) Australia shall disregard any income-tested:
    - (i) Spanish supplement to the minimum contributory social security pension;
    - (ii) Spanish family payment for dependent children of pensioners;
    - (iii) non-contributory benefits from the Spanish social security system; and
  - (b) only a proportion of any other Spanish benefit shall be assessed as income. That proportion shall be calculated by multiplying the number of whole months of Australian working life residence used

for that person (but not exceeding 300) by the amount of that other Spanish benefit and by dividing the result by 300.

2. A person who is in receipt of an Australian benefit under the legislation of Australia, shall be entitled to the concessional assessment of income set out in paragraph 1 of this Article for any period during which the rate of that person's Australian benefit is proportionalised under the legislation of Australia.
3. The provisions in paragraphs 1 and 2 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
4. Subject to the provisions of this Article, where an Australian benefit other than a double orphan pension is payable only by virtue of this Agreement to a person who is in Australia and until the person becomes eligible under Australian domestic legislation 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 Spanish benefit that person is entitled to receive;
  - (b) deducting the amount of that Spanish benefit which that person is entitled to receive from the maximum rate of that Australian benefit; and
  - (c) applying to the Australian benefit remaining, after the application of sub-paragraph (b), the relevant rate calculation set out in the legislation of Australia using as the person's income the amount calculated under sub-paragraph (a).
5. Where a member of a couple is, or both that person and his or her partner are entitled to a Spanish benefit or benefits, each of them shall be deemed, for the purposes of paragraphs 1 and 4 and for the legislation of Australia, to receive one half of the amount of the benefit or of the total of the two benefits as the case may be.
6. The provisions in paragraph 4 shall continue to apply for 26 weeks where a person departs temporarily from Australia.

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**PART IV – APPLICATION OF SPANISH LEGISLATION**

**ARTICLE 11**  
**Totalisation for Spain**

1. Where this Agreement applies and there is a Spanish creditable period that is:
  - (a) less than the period necessary to give a claimant entitlement to the benefit claimed under Spanish legislation; and
  - (b) equal to or greater than the minimum period mentioned in paragraph 3 for that benefit,then any period of Australian working life residence by the contributor to whom that Spanish creditable period was credited shall be deemed to be a Spanish creditable period.
2. For the purposes of this Article, where a Spanish creditable period and period of Australian working life residence coincide, the period of coincidence shall be taken into account once only as a Spanish creditable period.
3. For the purposes of paragraph 1, at least one day as a Spanish creditable period shall be required.
4. For the purposes of this Article the upper age limit for a woman, set in the definition of a period of Australian working life residence in the legislation of Australia, shall be 65 years for the purposes of claiming a retirement pension under the legislation of Spain.

**ARTICLE 12**  
**Benefits for temporary incapacity and maternity and risk during pregnancy**

For the granting of benefits for the temporary incapacity of a worker or maternity or risk during pregnancy of an employee, the totalisation of periods referred to in Article 11 shall be taken into account, if necessary.

**ARTICLE 13**

**Retirement, permanent incapacity and survivors benefits**

1. Entitlement by virtue of this Agreement to retirement, permanent incapacity and survivors benefits under the legislation of Spain shall be determined as follows:
  - (a) the Competent Institution shall determine, according to its own provisions, the amount of the benefit corresponding to the duration of the Spanish creditable periods completed only under its legislation.
  - (b) the Competent Institution shall also examine the entitlement considering the provisions of Article 11. If, in application of it, entitlement to pension is obtained, the following rules shall apply for the calculation of the amount:
    - (i) the Competent Institution shall determine the theoretical benefit to which the claimant would be entitled as if all the Spanish creditable periods and/or Australian working life residence totalised had been accomplished under its legislation;
    - (ii) the amount of the pension effectively due to the claimant, shall be that obtained after reducing the amount of the theoretical benefit to a pro-rata pension, according to the period of insurance completed exclusively under the legislation of Spain and all the Spanish creditable periods and Australian working life residence completed in the two Parties; and
    - (iii) in no case shall the sum of the Spanish creditable periods and the periods of Australian working life residence be taken to exceed the maximum period established by the legislation of Spain in regard to the benefit in question.
2. Once the entitlement of the claimant has been established according to subparagraphs 1(a) and (b) the Competent Institution shall assign the most favourable benefit.

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**ARTICLE 14****Recognition of insurance periods in specific professions**

If the legislation of Spain provides that in the determination of entitlement to or the granting of certain benefits there is a requirement that the Spanish creditable periods have been completed in a specific activity or specific employment, periods of Australian working life residence shall be taken into account when they have been carried out in a similar activity or employment.

**ARTICLE 15****Determination of Regulating Base**

For the purposes of determining the regulating base to calculate benefits to which the provisions of sub-paragraph 1(b) of Article 13 apply, the Competent Institution will take into account the actual contributions the insured person has credited in Spain during the years immediately preceding the payment of the last contribution to the Spanish Social Security. The amount of the benefit derived will be increased for each successive year by the amount of the increases and revaluations set for benefits of the same kind.

**ARTICLE 16****Specific Conditions for Acknowledging Entitlement**

1. If Spanish legislation conditions the granting of the benefits regulated under this Part to a person's having been subject to that legislation at the time of the event giving rise to a benefit, this condition will be deemed to be fulfilled if, at that time, the person is resident in Australia or, otherwise, is receiving an Australian benefit of the same or different nature but applicable to the beneficiary in his own right.

The same principle will apply for determining entitlement to survivor pensions in order to take into account, if necessary, the resident or pensioner status of the claimant in Australia.

2. If in order to determine entitlement to the Spanish benefit, Spanish legislation requires completion of creditable periods during a prescribed period of time immediately prior to the event giving rise to the Spanish benefit, this condition will be deemed to be fulfilled if the claimant has periods of Australian working life residence of an equivalent duration in the period of time immediately prior to qualifying for the Australian benefit.

3. The reduction, suspension or withdrawal clauses provided for in Spanish legislation in the case of pensioners who engage in a working activity, will affect them even when they carry out such activity in Australia.

#### **ARTICLE 17**

##### **Non-contributory benefits**

1. Non-contributory benefits of Spain's social security system shall be awarded to Australian nationals under the same conditions and with the same requirements as the legislation mentioned provides for Spanish nationals.
2. In awarding the non-contributory benefits referred to in paragraph 1, totalisation of periods of Australian working life residence under paragraph 1 of Article 11 shall not be applied.

#### **ARTICLE 18**

##### **Unemployment Benefits**

For the granting of unemployment benefits the totalisation of periods referred to in Article 11 shall, if necessary, be taken into account.

#### **ARTICLE 19**

##### **Benefits for Accidents at Work and Occupational Diseases**

Benefits related to incapacity due to work-related accidents or occupational diseases according to Spanish legislation shall be paid by the Spanish Competent Institution whenever a person is subject to the legislation applied by it at the time the accident occurred or at the date the occupational disease has been contracted if that person has been pursuing an occupational activity likely to cause that disease according to the legislation of that Party.

#### **ARTICLE 20**

##### **Voluntary Insurance**

Persons to whom this Agreement applies shall be entitled to voluntary insurance under Spain's Social Security system in accordance with Spanish domestic legislation and for this purpose may, if required, totalise periods of Australian working life residence.



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**PART V – COMMON PROVISIONS**

**ARTICLE 21**

**Family Benefits for a Dependent Child and Additional Child Amount**

1. In applying its income test for additional child amount, Australia shall not take into account, as income, Spanish family benefits for a dependent child.
2. In applying its income test for family benefits for a dependent child, Spain shall not take into account, as income, Australian additional child amount.

**PART VI - MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

**ARTICLE 22**

**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 either Party in accordance with administrative arrangements made pursuant to Article 27 at any time after the Agreement enters into force.
2. For the purpose of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of one Party, shall be considered as the date of lodgement of that document with the Competent Institution of the other 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 Party.
3. A claim for a benefit from one Party shall be considered as a claim for the corresponding benefit from the other 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 Party.
4. In relation to Australia, the reference in paragraph 2 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 social security laws of Australia.

**ARTICLE 23**

**Determination of Claims**

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:
  - (a) a period as an Australian resident and a Spanish creditable period; and
  - (b) any event or fact which is relevant to that entitlement,

shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.

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2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.

**ARTICLE 24**  
**Recovery of overpayments**

1. If:
- (a) the Competent Institution of one Party discovers (at the time of settlement or review of a benefit included in Article 2) that a person has been paid a higher benefit over a period than that to which the person was entitled because that person was also entitled over the same period to a benefit from the other Party that was not paid; and
  - (b) the other Party has a provision to pay that person the arrears of the unpaid benefit in the form of a lump sum,
- the first Party may ask the other Party to withhold from those arrears the amount paid in excess of the amount to which the person was entitled and if such a request is made the other Party shall withhold that amount and pay it to the first Party.
2. For the purposes of paragraph 1, no distinction shall be made between benefits paid by virtue of totalisation of periods from the other Party and those paid without the need to use the referred periods.
3. For Australia, where:
- (a) a benefit is paid or payable by Spain to a person in respect of a past period by virtue of this Agreement; and
  - (b) for all or part of that period, Australia has paid to that person a pension, benefit, or allowance under its social security laws; and
  - (c) the amount of the pension, benefit or allowance paid by Australia would have been reduced had the benefit paid or payable by Spain been paid during that period;
- then

- (d) the amount that would not have been paid by Australia 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 Australia and may be recovered by Australia; and
- (e) Australia may determine that the amount or only part of that debt may be deducted from future payments of a pension, benefit or allowance payable by Australia under its social security laws to that person.

**ARTICLE 25**  
**Payment of Benefits**

- 1. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.
- 2. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party, whether the beneficiary is in Spain, Australia or a third country, without deduction for government administrative fees and charges for processing and paying that benefit.

**ARTICLE 26**  
**Exchange of Information and Mutual Assistance**

- 1. The Competent Authorities shall:
  - (a) communicate to each other any information necessary for the application of this Agreement;
  - (b) notify each other of measures taken internally to implement this Agreement and its Administrative Arrangements; and
  - (c) lend their good offices and technical and administrative cooperation to implement this Agreement.
- 2. The Competent Institutions of both Parties shall:

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- (a) communicate to each other whatever information is necessary to implement this Agreement;
    - (b) carry out medical examinations, verify facts and events from which the grant, review, suspension, cancellation or maintenance of their benefit entitlements is derived; and
    - (c) lend their good offices and technical and administrative cooperation to implement this Agreement.
  3. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangements reached between the Competent Authorities and the Competent Institutions for the reimbursement of certain types of expenses.
  4. When the Competent Authority or Competent Institution of one of the Parties forwards personal data to the Competent Authority or Competent Institution of the other Party, the privacy laws on data protection of the Party transmitting the data shall apply. Notwithstanding any laws or administrative practices of a Party, no information concerning a person which is received by that Party from the other Party shall be transferred or disclosed to any other country or to any other organisation within that other country without the prior written consent of that other Party.
  5. In no case shall the provisions of paragraphs 1, 2 and 4 be construed so as to impose on the Competent Authorities or Competent Institutions 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.
  6. The Competent Authorities and the Competent Institutions may communicate with the other in English or Spanish.
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**ARTICLE 27**  
**Administrative Arrangements**

1. The Competent Authorities of the Parties shall make whatever administrative arrangements are necessary in order to implement this Agreement.
2. A Competent Authority of a Party may authorise a Competent Institution of that Party to sign any Administrative Arrangement made under this Agreement.

**ARTICLE 28**  
**Meetings and Review of Agreement**

1. In order to examine and resolve problems which may arise in the application of the Agreement and the Administrative Arrangements, as referred to in Article 27, the Competent Authorities and/or the Competent Institutions may meet as necessary.
2. Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose as soon as possible.

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**PART VII - FINAL PROVISIONS**

**ARTICLE 29**  
**Transitional Provisions**

A person who, at the date of entry into force of this Agreement:

- (a) receives a benefit under the Agreement signed on 10 February 1990; or
- (b) is qualified to receive a benefit referred to in subparagraph (a) and, where a claim for that benefit is required, has claimed that benefit:

shall not receive less favourable treatment through the application of the provisions of this Agreement than he or she would have received under the provisions of that Agreement.

**ARTICLE 30**  
**Entry into Force**

- 1. This Agreement shall enter into force one month after an exchange of notes 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 the provisions of Article 29 the Agreement between Australia and Spain on Social Security signed on 10 February 1990 shall terminate on entry into force of this Agreement.

**ARTICLE 31**  
**Duration of the Agreement**

- 1. The Agreement shall remain in force indefinitely unless terminated by one of the Parties, and that termination shall take effect 12 months from the date of that Party's advice to the other Party through the diplomatic channel.
- 2. In the event that this Agreement is terminated in accordance with paragraph 1, this 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 the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits,

by virtue of this Agreement or the Agreement signed on 10 February 1990.

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

DONE in 2 copies at MADRID this THIRTY-FIRST day of JANUARY, TWO THOUSAND AND TWO in the English and Spanish languages, both texts being equally authoritative.

FOR THE GOVERNMENT OF  
AUSTRALIA

Alexander Downer

FOR THE GOVERNMENT OF  
SPAIN

Josep Piqué i Camps

[Signatures omitted]



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## Schedule 6—Malta

Note: See section 5.

# Agreement on Social Security Between the Government of Australia and the Government of Malta

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

Wishing to strengthen the existing friendly relations between the two countries,  
Desiring to review the Agreement on Social Security between the Government  
of Australia and the Government of Malta signed on 15 August 1990, and

Acknowledging the need to co-ordinate further the operation of their respective  
social security systems so far as to ensure access by people who move between  
Australia and Malta;

Have agreed as follows:

## PART I – GENERAL PROVISIONS

### ARTICLE 1

#### Interpretation

1. In this Agreement, unless the context otherwise requires:

“applicable rate” means, in relation to Malta, the rate that would  
otherwise have been payable to a claimant had the number of totalised  
contributions been all paid or credited under the legislation of Malta;

“benefit” means, in relation to a Party, a benefit 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, to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

“Competent Authority” means, in relation to Australia, the Secretary of the Department responsible for the application of the legislation in subparagraph 1 (a) of Article 2 and, in relation to Malta the Director of Social Security;

“Competent Institution” means, in relation to Australia the institution or agency which has the task of implementing the applicable Australian legislation and, in relation to Malta, the Competent Authority for Malta;

“legislation” means, in relation to Australia, the laws specified in subparagraph 1 (a) of Article 2 and in relation to Malta, the laws specified in subparagraph 1 (b) of Article 2;

“period of insurance” means, the period of contributions or any equivalent period which has been or can be used to acquire the right to a benefit under the legislation of Malta, but does not include any period deemed pursuant to Article 9 to be a period of insurance;

“period of Australian working life residence”, in relation to a person, means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 7 to be a period in which that person was an Australian resident;

“previous Agreement” means the Agreement on Social Security between the Government of Australia and the Government of Malta signed on 15 August 1990;

“territory” means, in relation to Australia, Australia as defined in the legislation of Australia and in relation to Malta, Malta as defined in the Constitution of Malta; and

“widow” means, in relation to Australia, a *de jure* widow but does not include a woman who has a partner.

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2. In the application by a Party of this Agreement any term not defined in it shall, unless the context otherwise requires, have the meaning which it has under the legislation of that Party.

## ARTICLE 2

### Legislative Scope

1. Subject to paragraph 2, 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: the Acts referred to as “the social security law” in the *Social Security Act 1991*, and any regulations made under any such Act in so far as those Acts or regulations provide for, apply to or affect the following benefits:
    - (i) age pension;
    - (ii) disability support pension for the severely disabled; and
    - (iii) pensions payable to widows; and
  - (b) in relation to Malta: the Social Security Act (Cap 318) as it provides for, applies to or affects the following benefits:
    - (i) contributory pensions in respect of retirement;
    - (ii) contributory pensions in respect of invalidity;
    - (iii) contributory pensions in respect of widowhood; and
    - (iv) non-contributory assistance and pension.
2. Notwithstanding the provisions of paragraph 1(a) this Agreement shall apply to women who are receiving wife pension and who are wives of
- (a) persons receiving age pension; or
  - (b) persons receiving disability support pension for the severely disabled.

3. Notwithstanding the provisions of paragraph 1 the legislation of either Party shall not include any other Agreement on social security entered into by either Party.
4. This Agreement shall apply to laws which extend the legislation of either Party to new categories of beneficiaries only if the two Parties so agree in a Protocol to this Agreement.
5. In respect of non-contributory assistance and pensions payable under the legislation of Malta, a citizen of Australia shall have the same rights as a citizen of Malta.

### **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 an insured person under the legislation of Malta,

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

### **ARTICLE 4**

#### **Equality of Treatment**

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

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## **PART II – PROVISIONS RELATING TO AUSTRALIAN BENEFITS**

### **ARTICLE 5**

#### **Residence or Presence in Malta or a Third State**

Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except that he or she is not 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 residing in the territory of Malta or a third State with which Australia has implemented an agreement on social security that includes provision for co-operation in the lodgement and determination of claims for benefits; and
- (b) is in Australia, or the territory of Malta or that third State,

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 6**

#### **Partner Related Australian Benefits**

For the purposes of this Agreement, a person who receives an Australian wife pension due to the fact that the partner of that person receives, by virtue of this Agreement, another Australian benefit shall be deemed to receive that first-mentioned benefit by virtue of this Agreement.

**ARTICLE 7**

**Totalisation for Australia**

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 equal to or greater than the minimum period identified in accordance with paragraph 4; and
  - (c) a period of insurance in Malta,  
then that period of insurance shall be deemed, to be a period in which that person was an Australian resident
  - only if that Maltese period of insurance is considered by Malta to continue to be a Maltese period of insurance at the time of totalisation; and
  - 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, 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 the 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 minimum period referred to in subparagraph (a),

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

3. For all purposes of this Article, where a period by a person as an Australian resident and a period of insurance 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 which a person must have accumulated before paragraph 1 applies shall be as follows:
  - (a) for the purpose of an Australian benefit claimed by a person residing outside Australia, the minimum period required shall be one year, of which at least 6 months must be continuous; and
  - (b) for the purposes of an Australian benefit claimed by an Australian resident, no minimum period shall be required.
5. For the purposes of a claim by a person for a pension payable to a widow, that person shall be deemed to have accumulated a period of insurance for any period for which her partner accumulated a period of insurance but any period during which the person and her partner both accumulated periods of insurance shall be taken into account once only.
6. Where a person receives in Malta a contributory pension in respect of retirement by virtue of this Agreement, Australia shall, for the purposes of this Article, regard the period during which that person receives that pension, up to the age of 65, as a period of insurance.

## **ARTICLE 8**

### **Calculation of Australian Benefits**

1. Subject to paragraph 2, where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who is outside Australia the rate of that benefit shall be determined according to the legislation of Australia but when assessing the income of that person for

the purposes of calculating the rate of the Australian benefit only a proportion of any Maltese contributory pension in respect of retirement, invalidity or widowhood which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of residence in Australia (not exceeding 300) by the amount of that Maltese benefit and dividing that product by 300.

2. A person referred to in paragraph 1 shall only be entitled to receive the concessional assessment of income described in that paragraph for any period during which the rate of that person's Australian benefit is proportionalised under the legislation of Australia.
3. The provisions in paragraph 1 and 2 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
4. Where an Australian benefit is payable, whether by virtue of this Agreement or otherwise to a person who is resident in the territory of Malta, Australia shall disregard, when assessing the income of that person any non-contributory assistance and pension paid to that person by Malta.
5. Subject to 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 Maltese benefit received by that person;
  - (b) deducting the amount of the Maltese 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. Where a married person is, or both that person and his or her partner are, in receipt of a Maltese benefit or benefits, each of them shall be deemed, for the purpose of paragraph 5 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.
  
7. The provisions in paragraph 5 shall continue to apply for 26 weeks where a person departs temporarily from Australia.

## **PART III – PROVISIONS RELATING TO MALTESE BENEFITS**

### **ARTICLE 9**

#### **Totalisation for Malta**

1. Where this Agreement applies and there is a period of insurance that is:
  - (a) less than the period necessary to give a claimant entitlement to the benefit claimed under the legislation of Malta; and
  - (b) equal to or greater than the minimum period mentioned in paragraph 3 for that benefit,then any period of Australian working life residence by the contributor to whom that period of insurance was credited shall be deemed to be a period of insurance.
2. For the purposes of this Article, where a period of insurance and a period of Australian working life residence coincide, the period of coincidence shall be taken into account once only as a period of insurance.
3. The minimum period of insurance to be taken into consideration for purposes of paragraph 1 shall be 52 paid contributions. However, subject to paragraph 5, where the period of insurance, not being less than 52 paid contributions, does not entitle a person to a Maltese benefit, but the period of insurance in Malta and the period of Australian working life residence together entitle such person to a Maltese benefit, they shall be taken into account.
4. The provisions of this Article shall not apply in the case of a Two-Thirds Pension (Retirement) or a Survivor's Pension (Widowhood) unless:

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- (a) in the case of a Two-Thirds Pension, the person concerned has paid at least 156 contributions under the legislation of Malta after the 22<sup>nd</sup> January, 1979; and
    - (b) in the case of a Survivor's Pension, the husband of the widow concerned has paid at least 156 contributions under the legislation of Malta after the 22<sup>nd</sup> January, 1979.
  5. For the purposes of a claim by a person for a contributory widow's pension the contributor, provided the contributor meets the requirements of subparagraph 1(b), shall be deemed to have also accumulated a period of residence in Australia for any period for which the claimant accumulated a period of Australian working life residence but any period during which the contributor and the claimant both accumulated periods of Australian working life residence shall be taken into account once only.

## **ARTICLE 10**

### **Calculation of Maltese Benefits**

1. Where Malta pays non-contributory assistance or pension by virtue of this Agreement, the rate of that benefit shall be determined according to the legislation of Malta.
2. Where a contributory benefit is payable by Malta to a claimant by virtue of this Agreement the rate of that benefit shall be calculated as follows:
  - (a) in the case of a pension in respect of retirement other than a Two-Thirds Pension, by multiplying the applicable rate of that pension attributable to the claimant by the number of reckonable contributions on which that pension would have otherwise been calculated under the legislation of Malta and dividing the product by the number of totalised contributions aggregated under Article 9;
  - (b) in the case of a Two-Thirds Pension, the rate of that pension shall be calculated according to the following formula:

$$\frac{\text{P.I.} \times 2 \times (\text{T1} + \text{T2}) \times (\text{C1} + \text{C2})}{(\text{Y} - 10) \times (\text{T1} + \text{T2}) \times 600}$$

but that pension shall not be payable if the formula

$$\frac{(\text{T1} + \text{T2})}{2}$$

gives a result that is less than 15

where:

**P.I.** = the claimant's pensionable income or re-assessed pensionable income (as the case may be) according to the legislation of Malta;

**C1** = the number of reckonable contributions (not exceeding 1000) during any period prior to the last 10 calendar years immediately before retirement;

**C2** = the number of reckonable contributions (not exceeding 500) within the last 10 calendar years immediately before retirement;

**T1** = the number of totalised contributions (not exceeding 1000) aggregated under Article 9 during any period prior to the last 10 calendar years immediately before retirement;

**T2** = the number of totalised contributions (not exceeding 500) aggregated under Article 9 within the last 10 calendar years immediately before retirement; and

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- Y** = the number of reckonable years (not exceeding 20) prior to the last 10 calendar years immediately before retirement.
- (c) in the case of a pension in respect of invalidity, by multiplying the applicable rate of that pension attributable to the claimant by the number of reckonable contributions on which that pension would have otherwise been calculated under the legislation of Malta and dividing the product by the number of reckonable totalised contributions aggregated under Article 9;
  - (d) in the case of a pension in respect of widowhood other than a Survivor's Pension by multiplying the applicable rate of that pension attributable to the claimant by the number of reckonable contributions on which that pension would have otherwise been calculated under the legislation of Malta relating to her late husband and dividing the product by the number of totalised contributions aggregated under Article 9; and
  - (e) in the case of Survivor's Pension at 5/6 of the rate of pension arrived at in accordance with the provisions of paragraph 2(b).
3. Any statutory pension additional rates that are applicable to certain benefits covered by this Agreement that are payable under the legislation of Malta, payment of which is also linked to a yearly contribution average, shall be calculated in the same manner as that indicated in paragraph 2, as the case may require.
4. Where Malta pays a Maltese benefit to a person only by virtue of the Agreement it shall deduct any statutory pension deductions that would be deducted if those pensions were paid solely under the legislation of Malta provided that any service pension for war service or wife's service pension paid to that person by Australia as defined in and payable under its *Veteran's Entitlement Act 1986* shall not for the purposes of this Agreement or otherwise under the legislation of Malta be treated as a service pension as defined in the legislation of Malta.
5. Any pension arrived at in accordance with paragraphs 2, 3 and 4 shall be rounded up to the nearest whole cent.
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6. In this Article 'reckonable contribution' and 'reckonable year' shall have the meanings given to them in the legislation of Malta.

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## **PART IV – MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

### **ARTICLE 11**

#### **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 an Administrative Arrangement made pursuant to Article 15 at any time after the Agreement enters into force.
2. For the purpose of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of one Party, shall be considered as the date of lodgement of that document with the Competent Institution of the other 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 Party.
3. In relation to Australia, the reference in paragraph 2 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 purpose of, the social security laws of Australia as amended from time to time.
4. In relation to Malta, the reference in paragraph 2 to an appeal document is a reference to a document concerning an appeal that may be made to the Umpire for the purposes of the Social Security Act (Cap 318) of Malta as amended from time to time.

## ARTICLE 12

### Determination of Claims

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:
  - (a) a period as an Australian resident and a period of insurance; and
  - (b) any event or fact which is relevant to that entitlement,shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.
2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.
3. Where:
  - (a) a benefit is paid or payable by a Party to a person in respect of a past period
  - (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 paid by that other Party would have been reduced had the benefit paid or payable by the first Party been paid during that period;



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then

- (d) the amount that would not have been paid by the other Party had the benefit described in subparagraph (a) been paid throughout that past period shall be a debt due by that person to the other Party; and
  - (e) the other Party may determine that the amount, or any part, of that debt may be deducted from future payments of a benefit payable by that Party to that person.
4. Where the first Party has not yet paid the arrears of benefit described in subparagraph 3(a) to the person:
- (a) that Party shall, at the request of the other Party, pay the amount of the debt described in subparagraph 3(d) to the other Party and shall pay any excess to the person; and
  - (b) any shortfall in those arrears may be recovered by the other Party under subparagraph 3(e).
5. The Competent Institution receiving a request under paragraph 4 shall take the action set out in an Administrative Arrangement made pursuant to Article 15, to recoup the amount of the overpayment and to transfer it to the other Competent Institution.
6. A reference in paragraph 3 and 4 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the social security laws of Australia as amended from time to time, and in relation to Malta, means any pension, benefit, allowance or assistance that is payable under the Social Security Act (Cap 318) of Malta.

## ARTICLE 13

### Payment of Benefits

1. Subject to paragraphs 3 and 4, the benefits payable under the legislation of a Party or by virtue of this Agreement are also payable in the territory of the other Party.
2. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Parties.
3. Notwithstanding any provision of this Agreement, non-contributory assistance and pension specified in subparagraph 1(b)(iv) of Article 2 shall not be paid outside the territory of Malta.
4. In relation to Australia, any additional amount, increase or supplement that is payable in addition to a benefit under this Agreement shall be payable outside the territory of Australia only if it would be so payable if that benefit was payable independently of this Agreement.
5. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to prevent those restrictions hindering payment of benefits derived under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.
6. A party that imposes restrictions described in paragraph 5 shall inform the other Party of those restrictions within one calendar month of their imposition and shall adopt the measures described in paragraph 5 within 3 months of the imposition of those restrictions. If the other Party is not so informed or if the necessary measures are not adopted within the set time the other Party may treat such a failure as a material breach of the Agreement for the purposes of Article 60 of the Vienna Convention on the Law of Treaties.
7. A benefit payable by a Party by virtue of this Agreement to a person outside the territory of that Party shall be paid without deduction for

government administrative fees and charges for processing and paying that benefit.

8. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia becoming again an Australian resident, and lodges a claim for an Australian benefit and again leaves Australia within a specified period of time.

#### **ARTICLE 14**

##### **Exchange of Information and Mutual Assistance**

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement:
  - (a) shall communicate to each other any information necessary for the application of this Agreement or of the Social Security laws of the Parties;
  - (b) shall lend their good offices and furnish assistance to one another with regard to the determination or payment of any benefit under this Agreement or the legislation to which this Agreement applies as if the matter involved the application of their own legislation;
  - (c) shall 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; and
  - (d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in an Administrative Arrangement made pursuant to Article 15.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any Administrative Arrangement made pursuant to Article 15.
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 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 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 administrative practice of the Party 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 Party or 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 in the official language of the Party.

## **ARTICLE 15**

### **Administrative Arrangement**

The Competent Authorities of the Parties shall make whatever Administrative Arrangement is necessary from time to time in order to implement this Agreement.

**ARTICLE 16**

**Resolution of Difficulties**

1. The Competent Authorities of the Parties shall resolve, to the extent possible, any difficulties which may 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 been resolved by the Competent Authorities in accordance with paragraph 1.
3. Any dispute between the Parties concerning the interpretation of this Agreement which has not been resolved or settled by consultation in accordance with paragraph 1 or 2 shall, at the request of either Party, be submitted to arbitration.
4. Unless the Parties mutually determine otherwise, the arbitral tribunal shall consist of three arbitrators, of whom each Party shall appoint one and the two arbitrators so appointed shall appoint a third who shall act as President; provided that if the two arbitrators fail to agree, the President of the International Court of Justice shall be requested to appoint the President.
5. The arbitrators shall determine their own procedures.
6. The decision of the arbitrators shall be final and binding.

7. Unless the Parties otherwise agree, the place of arbitration shall be in the territory of the Party which did not raise the matter in dispute.

#### **ARTICLE 17**

##### **Review of Agreement**

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after request was made and, unless the Parties otherwise arrange, their meeting shall be held in the territory of the Party to which that request was made.

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## **PART V – TRANSITIONAL AND FINAL PROVISIONS**

### **ARTICLE 18**

#### **Transitional Provisions**

1. Subject to this Agreement, when this Agreement comes into force, the previous agreement shall terminate and persons who were receiving benefits by virtue of that agreement shall receive those benefits by virtue of this Agreement.
2. Where, on the date on which this Agreement enters into force, a person:
  - (a) is in receipt of a benefit by virtue of the previous Agreement; or
  - (b) is qualified to receive a benefit referred to in subparagraph (a) and, where a claim for that benefit is required, has claimed that benefit,

no provision of this Agreement shall affect that person's qualification to receive that benefit.

### **ARTICLE 19**

#### **Entry into Force**

This Agreement shall enter into force on the first day of the month after the exchange of notes by the Parties through the diplomatic channel that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalised.

**ARTICLE 20**

**Termination**

1. Subject to paragraph 2, 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 indicating the intention of the other Party to terminate this Agreement.
2. In the event of termination, this Agreement shall continue to have effect in relation to all persons who by virtue of this Agreement:
  - (a) at the date of termination, are in receipt of benefits; or
  - (b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits.

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

DONE in 2 copies at Malta this 16th day of June TWO THOUSAND AND FOUR in the English language.

His Excellency Mr R Palk

Mr Joseph Ebejer

FOR THE GOVERNMENT OF  
AUSTRALIA:

FOR THE  
GOVERNMENT OF  
MALTA:

*[Signatures omitted]*



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## Schedule 7—Netherlands

Note: See section 5.

### AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS ON SOCIAL SECURITY

The Government of Australia and the Government of the Kingdom of the Netherlands,

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

Resolved to continue the cooperation in the field of social security, and

Wishing to extend and modify the Agreement between Australia and the Kingdom of the Netherlands on Social Security of 4 January 1991 (the 1991 Agreement);

Have agreed as follows:

#### **PART I      GENERAL PROVISIONS**

##### ARTICLE 1

##### *Definitions*

1. In this Agreement, unless the context otherwise requires:

“**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 for which a beneficiary is qualified under the legislation of that Party but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee and, for the Netherlands, does not include any benefit, payment or entitlement under the Social Security Supplementary Benefits Act (TW);

“**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, Section A 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 the Netherlands: the Minister for Social Affairs and Employment;

**“Competent Institution”** means, in relation to Australia: the institution which has the task of implementing the applicable Australian legislation and in relation to the Netherlands: the institution which is charged with the implementation of the legislation of the Netherlands specified in Article 2 and which is competent under that legislation;

**“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, Section A of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the law specified in subparagraph 1(a)(ii) of Article 2, and, in relation to the Netherlands, the laws, ordinances and administrative regulations relating to the systems and branches of social security specified in subparagraph 1(b) of Article 2 in relation to the Netherlands;

**“period of insurance”** means a period defined as such in the legislation of the Netherlands;

**“period of Australian working life residence”**, in relation to a person, means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 10 to be a period in which that person was an Australian resident;

**“territory”**, means, in relation to Australia, the Commonwealth of Australia, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island, and, in relation to the Kingdom of the Netherlands, the territory of the Kingdom in Europe; and

**“widowed person”**, means in relation to Australia, a de jure widow or widower but does not include one who has a partner;

2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the legislation of either Party.

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ARTICLE 2  
*Legislative Scope*

1. Subject to paragraph 2, 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, consolidate, 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 the following benefits:
      - A) age pensions;
      - B) disability support pension for a person who is severely disabled; and
    - 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 the Netherlands, its legislation on:
    - i) general old age insurance;
    - ii) invalidity insurance for employees and the self-employed;
    - iii) general survivors' insurance;
    - iv) children's allowances;
    - v) sickness insurance (including employers' liability for payment during sickness);and for the application of Part II of the Agreement also its legislation on:
    - vi) unemployment insurance;
2. Notwithstanding the provisions of subparagraph 1(a), this Agreement shall continue to apply to women who are receiving Australian wife pension and are the wives of persons receiving Australian age pension and it shall also apply to women who are receiving Australian wife

pension and are the wives of persons receiving Australian disability support pension for the severely disabled.

3. Notwithstanding the provisions of subparagraph 1(a), the term “benefit” shall include Australian pensions payable to widowed persons and Australian double orphans pensions for the purposes of Article 5.
4. Notwithstanding the provisions of subparagraph 1(a) of this Article, the term “benefit” shall, when the reference is to an Australian benefit, include pensions payable to widowed persons for the purposes of paragraphs 1 and 2 of Article 15.
5. Notwithstanding the provisions of subparagraph 1(a) the legislation of Australia shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any agreement on social security entered into by Australia with other States.
6. This Agreement shall apply to laws that extend the legislation of either Party to new categories of beneficiaries or to new branches or systems of social security only if the two Parties so agree in a Protocol to this Agreement.
7. Except as otherwise provided in this Agreement, this Agreement shall not apply to social and medical assistance schemes, to special schemes for civil servants or persons treated as such, or to benefit schemes for victims of war or its consequences.
8. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic relations of April 18, 1961, or the Vienna Convention on Consular relations of April 24, 1963.

ARTICLE 3  
*Personal Scope*

Subject to other Articles of this Agreement, it 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 the Netherlands, and, where applicable, to other persons in regard to the rights they derive from a person described above.

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ARTICLE 4  
*Equality of Treatment*

1. The citizens of each of the Parties shall be treated equally in the application of the legislation of Australia and of the Netherlands relating to benefits.
2. Subject to this Agreement and unless otherwise provided, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations relating to benefits which arise by virtue of this Agreement.

ARTICLE 5  
*Payment of benefits abroad*

1. Benefits payable whether under this Agreement or otherwise shall not be reduced, modified, suspended or withdrawn on account of the recipient, or members of his or her family, residing in the territory of the other Party.
2. Where continuing qualification or payability of a benefit is subject to limitations as to time, then reference to the territory of a Party in those limitations shall be read also as reference to the territory of the other Party.
3. Where continuing qualification or payability of a benefit is subject to a requirement to be, for an Australian benefit, an Australian resident or, for a Netherlands benefit, a resident of the Netherlands and/or also to be present in Australia or the Netherlands respectively, then in regard to those requirements, a reference to an Australian resident shall be read also as a reference to a resident of the Netherlands and vice versa and a reference to being present in Australia shall be read also as being present in the Netherlands and vice versa.
4. Where a double orphan pension would be payable to a person under the legislation of Australia in respect of a young person whose sole surviving parent died while that young person was an Australian resident, if that person and that young person were residents of Australia, that pension shall, subject to that legislation, be payable while that person and that young person are residents of the Netherlands.

**PART II PROVISIONS ON COVERAGE**

SECTION A

PROVISIONS RELATING TO THE SUPERANNUATION GUARANTEE  
LEGISLATION OF AUSTRALIA AND TO NETHERLANDS'  
LEGISLATION

ARTICLE 6

*Purpose of Section A*

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

ARTICLE 7

*Application of Section A*

Section A only applies where:

- a) without the application of Section A an employee and/or the employer of the employee would otherwise be covered by both the legislation of the Netherlands and Australia; or
- b) without the application of paragraphs 2, 3, 5 or 6 of Article 8 an employee from the Netherlands and/or the employer of that employee would otherwise come to be covered by the legislation of Australia and not remain covered by the legislation of the Netherlands.

ARTICLE 8

*Provisions on coverage*

1. Unless otherwise provided in paragraphs 2, 3 or 4, 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 for the work 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'); and

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- b) was sent, whether before, on or after the commencement of this Part, by the Government of the first Party to work in the territory of the other Party ('the second Party'); and
- 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 and employee shall be subject only to the legislation of the first Party in respect of the work and the remuneration paid for the work.
3. If an employee:
- a) is covered by the legislation of one Party ('the first Party'); and
- b) was sent, whether before, on or after the commencement of this Part, 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'); and
- c) is working in the territory of the second Party in the employment of the employer or a related entity of that employer; and
- d) was sent to work in the territory of the second Party and a period of 5 years has not elapsed from that time; and
- e) is not working permanently in the territory of the second Party;
- the employer and employee shall be subject only to the legislation of the first Party in respect of the work and the remuneration paid for the work. 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.
4. If an employee is working in the employment of an employer on a ship or aircraft in international traffic, the employer and employee shall in respect of the employment and the remuneration paid for that employment be subject only to the legislation of the Party of which the employee is resident.
5. For the purposes of the Netherlands' legislation, a person who is subject to the Netherlands' legislation in accordance with the provisions of this Article shall be considered to be resident in the territory of the Kingdom of the Netherlands.
6. According to the provisions of this Article the Netherlands' legislation shall be applicable if the employer or employee has applied for a certificate of coverage from the Netherlands' authority within three
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months after the first day of secondment under paragraphs 2 or 3 and this certificate has been issued to the person concerned.

ARTICLE 9

*Exception agreements*

1. The competent authority for Australia and the competent institution for the Netherlands may for the purposes of Section A by agreement in writing:
  - a) extend the period of 5 years referred to in subparagraph 3(d) of Article 8 for any employee; or
  - b) agree that an employee is taken to work in the territory of a particular Party or to work on a ship or aircraft in international traffic under the legislation of a particular Party and is subject only to the legislation of that Party.
2. Any agreement made under paragraph 1 may apply to:
  - a) a class of employees; and/or
  - b) particular work or particular type of work (including work that has not occurred at the time the agreement is made).

SECTION B

PROVISIONS RELATING TO AUSTRALIAN LEGISLATION (OTHER THAN THAT RELATING TO THE SUPERANNUATION GUARANTEE) AND TO NETHERLANDS' LEGISLATION

ARTICLE 10

*Partner or Children of Seconded Employees Temporary Absence from Australia*

An Australian resident, who is the partner or child of, and who accompanies to the Netherlands, an employee to which Article 8 paragraph 2 or 3 applies, shall not cease to be regarded as an Australian resident because he or she is temporarily in the Netherlands during the whole or part of the time during which that paragraph applies to that employee.



ARTICLE 11

*Application of Netherlands Legislation to the Partner or Children of Seconded Employees*

1. The partner or child who accompanies to Australia, an employee to whom Article 8 paragraph 2 or 3 applies shall, for any period in which he or she is not working in the territory of Australia, be subject to Netherlands' legislation and be considered to be resident in the territory of the Kingdom of the Netherlands.
2. The partner or child who accompanies to the Netherlands an employee to whom Article 8 paragraph 2 or 3 applies shall not be subject to Netherlands' legislation for any period in which he or she is not working in the territory of the Kingdom of the Netherlands.

**PART III PROVISIONS RELATING TO AUSTRALIAN BENEFITS**

ARTICLE 12

*Residence or Presence in the Netherlands or a Third State*

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

- a) is an Australian resident or residing in the Netherlands or a third State with which Australia has concluded an agreement on social security that includes provision for co-operation in the assessment and determination of claims for benefits, and
- b) is in Australia or the Netherlands or that third State,

that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

ARTICLE 13

*Partner related Australian benefits*

A person who receives from Australia an Australian wife pension under the social security laws of Australia due to the fact that the partner of that person receives, by virtue of this Agreement an Australian benefit, shall be deemed to be receiving that wife pension by virtue of this Agreement.

ARTICLE 14

*Totalisation for Australia*

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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 him or her, on that ground, under the legislation of Australia for that Australian benefit; and
    - b) a period of Australian working life residence equal to or greater than the period identified in paragraph 4 for that person; and
    - c) has accumulated a period of insurance;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 purpose 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 minimum period referred to in subparagraph (a), the total of the periods of insurance shall be deemed to be one continuous period.
  3. For all purposes of this Article, where a period by a person as an Australian resident and a period of insurance accumulated by that person 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 as follows:
    - a) for the purposes of an Australian benefit claimed by a person residing outside Australia, the minimum period required shall be one year, of which at least six months must be continuous, and
    - b) for the purposes of an Australian benefit claimed by an Australian resident there shall be no minimum period of Australian working life residence.
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ARTICLE 15

*Calculation of Australian Benefits*

1. Subject to paragraph 2, where a person who is outside Australia is qualified for an Australian benefit only by virtue of this Agreement, the rate of that benefit shall be determined according to the legislation of Australia but on the basis that the additional child amount rate is nil.
2. When assessing the income of a person who is outside Australia for the purposes of calculating the rate of a benefit whether payable by virtue of this Agreement or otherwise;
  - a) any payment according to the Algemene Bijstandswet to that person under the legislation of the Netherlands shall be disregarded;
  - b) any payment of AOW-toeslag shall be disregarded; and
  - c) if a proportionalised rate of Australian benefit is payable under the legislation of Australia then only a proportion of any other Netherlands' old age benefit which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of residence in Australia (not exceeding 300) by the amount of that Netherlands' benefit and dividing that product by 300.

The calculation described in sub-paragraph c may be expressed as

$$A = \frac{Q}{300} \times \frac{[R - (NP \times Q/300 + I - F)]}{T}$$

where:

<b>A</b>	=	rate of Australian benefit payable;
<b>Q</b>	=	number of months of the period of residence in Australia of the person or 300 whichever is the lower;
<b>R</b>	=	maximum rate of Australian benefit;
<b>NP</b>	=	Netherlands' benefit excluding AOW toeslag;
<b>I</b>	=	income within the meaning of Australian legislation excluding Netherlands' benefit and any payments according

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		to the Algemene Bijstandswet;
<b>F</b>	=	free area under the Australian income test;
<b>T</b>	=	the relevant taper under Australian legislation.

3. The provisions in paragraphs 1 and 2 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
4. Subject to the provisions in paragraphs 5 and 6, where a person who is in Australia is qualified to receive an Australian benefit only by virtue of this Agreement, 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 Netherlands' benefit received by that person; and
  - b) deducting the amount of the Netherlands' 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).
5. The provisions in paragraph 4 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
6. Where a person is, or his or her partner is, or both that person and his or her partner are, in receipt of a Netherlands' benefit or benefits, each of them shall be deemed, for the purpose of paragraph 4 and for the Acts forming the social security law as amended from time to time, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

#### ARTICLE 16

##### *Exclusion of specified Netherlands' payments from the Australian income test*

1. Where a person receives or is entitled to receive a benefit under the social security laws of Australia:
  - a) reimbursement payments for extra medical, nursing and immediately related expenses of a victim of persecution; and

- b) the special allowance covering the extra medical expenses a victim of persecution has, but which are beyond his or her capacity to meet, while maintaining a certain standard of living, made under the *State Assistance Scheme of the 1940-1945 Victims of Persecution* (WUV), shall not be included as income for the purpose of assessing the rate of that Australian benefit.
2. For the purposes of this Article only, the term *benefit* shall include all social security payments under the social security laws of Australia.

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**PART IV PROVISIONS RELATING TO THE NETHERLANDS  
BENEFITS**

**ARTICLE 17**

*Benefits under the General Old Age Pensions Act*

1. The Netherlands' Competent Institution shall determine the old age pension directly and exclusively on the basis of periods of insurance completed under the Netherlands' General Old Age Pensions Act.
2. Subject to paragraph 3, periods before January 1, 1957 during which a national of one Party after reaching the age of fifteen, resided in the territory of the Kingdom of the Netherlands or during which, while residing in another country the person was gainfully employed in the Kingdom of the Netherlands, shall also be considered as periods of insurance if the person does not satisfy the condition of the Netherlands' legislation permitting such periods to be treated for that person as periods of insurance.
3. The periods referred to in paragraph 2 shall be taken into consideration in the calculation of the old age pension only if the person concerned has been insured under the Netherlands' General Old Age Pensions Act and has resided for at least six years in the territory of one or both Parties after reaching the age of fifty-nine and only while the person is residing in the territory of either Party. However, the periods before January 1, 1957 shall not be taken into consideration if they coincide with periods taken into consideration for the calculation of an old age pension under the legislation of a country other than the Kingdom of the Netherlands.

**ARTICLE 18**

*Benefits under the invalidity insurance for employees and the self-employed*

1. A person eligible for a benefit according to subparagraph 1(a)(i)(B) of Article 2 and who was employed and/or self employed in the Netherlands during at least one year shall, subject to paragraphs 2 and 3, be entitled to the Netherlands' invalidity insurance for employees or the self-employed.

2. The benefit shall be determined:
  - a) according to the Netherlands' Disability Act (WAO) in any case where the person was employed, at the moment the incapacity for work followed by invalidity occurred; and
  - b) according to the Netherlands' self-employed persons Disability Benefits Act (WAZ) in any case where the person was, in the year prior to the occurrence of the incapacity for work followed by invalidity, lastly a self-employed person.
3. The benefit established according to this Article shall be multiplied by a factor, of which the numerator consists of the total period in months in which the person was employed and/or self-employed in the Netherlands and the denominator consists of the period in months between the age of 15 and the moment the incapacity for work followed by invalidity occurred.

ARTICLE 19

*Refusal to pay, suspension, withdrawal*

The Competent Institution of the Netherlands may refuse to pay, may suspend or may withdraw a benefit if the applicant or the beneficiary fails to provide prompt and sufficient information necessary for the application or the payment of the benefit, or fails to undergo any examination as required.



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**PART V COMMON PROVISIONS****ARTICLE 20***Common Provisions for the Calculation of Benefits*

1. Where a Party (the first Party) makes a payment under this Agreement or under its social security laws to a person who resides in the territory of the other Party, the first Party will disregard from the application of any income test it applies any income-tested payment made by the other Party under this Agreement or under the other Party's social security laws to that person.
2. For the purposes of this Article, the Netherlands' invalidity benefits under WAO and WAZ shall be deemed to be income-tested benefits and the Netherlands' rent subsidy shall be deemed to be paid under the Netherlands' social security laws.
3. The principles set out in paragraphs 1 and 2 will continue to apply when a beneficiary moves to reside in a third country as if the beneficiary had not moved to that third country, provided that the relevant benefit is payable in that third country.
4. Where a person residing in a third country lodges a valid claim for a benefit, the principles set out in paragraphs 1 and 2 will be applied as if that person was resident in the territory of the Party where he or she was last resident before moving to that third country provided that the relevant benefit is payable in that third country.

**PART VI MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

ARTICLE 21

*Lodgement of Documents*

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of one Party which should for the purposes of that legislation, have been presented within a prescribed period to a Competent Authority, Competent Institution or Tribunal of that Party, but which is presented within the same period to a Competent Authority, Competent Institution or Tribunal of the other Party, shall be treated as if it had been presented to the Competent Authority, Competent Institution or Tribunal of the first Party. The date on which such a claim, notice or appeal was submitted to that Competent Authority, Competent Institution or Tribunal of the first Party shall be considered only for the purposes of assessing entitlement to benefit as the date of its submission to that Competent Authority, Competent Institution or Tribunal of the other Party.
2. A claim for a benefit under the legislation of one Party shall be deemed to be a claim for the corresponding benefit under the legislation of the other Party, provided that the applicant:
  - a) requests that it be considered an application under the legislation of the other Party, or
  - b) provides information at the time of application indicating that periods of residence or periods of insurance have been completed under the legislation of the other Party and the claim is received by the Competent Institution of the other Party within six months from the date of lodgement with the first Party.
3. In any case to which paragraph 1 or 2 applies, the Competent Authority, Competent Institution or Tribunal to which the claim, notice or appeal has been submitted shall transmit it without delay to the Competent Authority, Competent Institution or Tribunal of the other Party.
4. The reference in paragraph 1 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 legislations.

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ARTICLE 22  
*Recovery of overpayments*

1. Where

- a) a benefit under this Agreement is claimed from, or is being paid by, one of the Parties; and
- b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or otherwise, to a benefit from the other Party and that, if paid, would affect the amount of that first-mentioned benefit;

that first-mentioned benefit shall not be paid or continue to be paid if a claim is not duly lodged for payment of the second-mentioned benefit or if that claim is not actively pursued.

2. Where:

- a) a benefit under this Agreement or otherwise is claimed from one of the Parties and, as a result of that claim, a benefit is payable by a Party to a person in respect of a past period and that past period occurred after the entry into force of this Agreement;
- 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 paid by that other Party would have been reduced had the benefit referred to in subparagraph (a) been paid during that past 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 the past period shall, for the purposes of this Article, be referred to as an “overpayment”.

3. A Competent Institution which has made an overpayment of a benefit to a beneficiary may request the other Competent Institution which is required to pay a corresponding benefit to that beneficiary to deduct the amount of the overpayment from any arrears of that corresponding benefit which the latter Competent Institution pays to that beneficiary. The latter Competent Institution shall if so requested deduct the amount of the overpayment from those arrears and transfer it to the former Competent Institution. Where the whole or part of any overpayment

cannot be deducted from any arrears the provisions of paragraph 4 shall apply.

4. Where a Competent Institution of a Party is unable to recover pursuant to paragraph 3 all the amount of an overpayment it has made, it may, within the conditions and limits laid down by the legislation which it applies, request the Competent Institution of the other Party to deduct the unrecovered amount of the overpayment from any pension, benefit or allowance which the latter Competent Institution pays to the beneficiary. The latter Competent Institution shall make the deductions under the conditions and within the limits set out in the legislation which it applies as if it had made the overpayment and shall transfer the amounts deducted to the former Competent Institution.
5. The amount of any overpayment shall be a debt due by the person who received it to the Party that paid it.
6. A Party may determine that the amount, or any part, of the debt owing to it under paragraph 4 may be deducted from future payments of any pension, benefit or allowance payable at any time by that Party to the person owing the debt.
7. The Competent Institution receiving a request under paragraph 3 shall take the action agreed upon between the liaison agencies to recoup the amount of the overpayment and to transfer it to the other Competent Institution.

#### ARTICLE 23

##### *Payments of Benefits*

1. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement or to payment of social security contributions. Those measures shall operate retrospectively to the time the restrictions were imposed.
2. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party, whether the beneficiary is in the territory of the other Party or outside the respective territories of both Parties, without deduction for government administrative fees and charges for processing and paying that benefit.
3. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions

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of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia becoming again an Australian resident, and lodges a claim for an Australian benefit and again leaves Australia within a specified period of time.

4. Any exemption granted in the territory of one of the Parties from stamp duty, notarial or registration fees in respect of certificates and documents required to be submitted to authorities and institutions in the same territory, shall also apply to certificates and documents which, for the purposes of this Agreement, have to be submitted to authorities and institutions in the territory of the other Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic or consular authorities.
5. Where a person is in receipt of a benefit or benefits under this Agreement and is in a third country, the Party paying that benefit or those benefits shall continue to pay that benefit or those benefits if that Party has implemented an agreement on social security with that third country which provides for the portability of that benefit or those benefits.

#### ARTICLE 24

##### *Exchange of Information and Mutual Assistance*

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement shall:
  - a) to the extent permitted by the legislation which they administer, communicate to each other any information necessary for the application of this Agreement;
  - b) lend their good offices and furnish 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;
  - 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;

- d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 25;
  - e) jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the Competent Authorities and Competent Institutions for the reimbursement of certain types of expenses.
  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 legislation to which this Agreement applies.
  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 the other Party.
  5. Notwithstanding any laws or administrative practices of a Party, no information concerning a person which is received by that Party from the other Party shall be transferred or disclosed to any other country or to any organisation within that other country without the prior written consent of that other Party.
  6. In the application of this Agreement, the Competent Authority and the Competent Institutions of a Party may communicate with the other in the official language of that Party.

ARTICLE 25

*Administrative Arrangement*

1. The Competent Authorities of the Parties shall establish, by means of an Administrative Arrangement, the measures necessary for the implementation of this Agreement.
2. Liaison agencies shall be designated to facilitate the implementation of this Agreement.

ARTICLE 26

*Review of the Agreement*

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise arrange, their meeting shall be held in the territory of the Party to which that request was made.

## PART VII TRANSITIONAL AND FINAL PROVISIONS

### ARTICLE 27

#### *Commencement of Benefits*

1. The commencement date for payment of a benefit under this Agreement shall be determined in accordance with the legislation of the Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.
2. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:
  - a) a period as an Australian resident and a period of insurance, and
  - b) any event or fact which is relevant to that entitlement,shall, subject to this Agreement, be taken into account insofar as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.
3. Subject to Article 28 no provision of this Agreement shall confer any right to receive payment of a benefit for a period before the date of entry into force of this Agreement.
4. Subject to Article 28 and to paragraph 3, a person may be qualified to receive a benefit, other than a lump sum payment, under this Agreement in respect of events which happened before the date of entry into force of this Agreement.

### ARTICLE 28

#### *Transitional Provisions*

1. Upon the entry into force of this Agreement the 1991 Agreement shall terminate and shall be replaced by this Agreement.
2. Any right to benefit acquired in accordance with the 1991 Agreement shall be maintained. For the purposes of this paragraph “any right to benefit acquired” includes any right which a person would have had but for his or her failure to claim timeously where a late claim is allowed.
3. Any rights in course of acquisition under the 1991 Agreement at the date of entry into force of this Agreement shall be settled in accordance with the Agreement in force at the date of entitlement.



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4. Where, from the date of entry into force of this Agreement, any claim to benefit has not been determined and entitlement arises before that date, the claim shall be determined in accordance with the 1991 Agreement and shall be determined afresh in accordance with this Agreement from its date of entry into force if this is more favourable than the rate determined under the 1991 Agreement.
  5. Benefits, other than lump sum payments, shall be payable in accordance with this Agreement in respect of events which happened before the date of its entry into force, except that an accident which occurred or a disease which developed before that date shall not, solely by virtue of this Agreement, be treated as an industrial accident or an industrial disease if it would not have been so treated under any legislation or Agreement having effect at the time of its occurrence or development. For the purpose of determining claims in accordance with this Agreement, account shall be taken, where appropriate, of insurance periods and periods of residence, employment or presence, completed before the date of its entry into force.
  6. Paragraph 5 shall not confer any right to receive payment of benefit for any period before the date of entry into force of this Agreement.
  7. For the purpose of applying the first sentence of paragraph 5:
    - a) any right to benefit acquired by a national in accordance with the 1991 Agreement may, at the request of the national concerned, be determined afresh in accordance with this Agreement with effect from the date of entry into force of this Agreement provided that the request has been made within two years of the date it enters into force and, if applicable, benefit awarded at the higher rate from the latter date;
    - b) where the request for the benefit to be determined afresh is made more than two years after the date of entry into force of this Agreement payment of benefit, and the payment of any arrears, shall be made in accordance with the legislation concerned.
  8. No provision of this Agreement shall diminish any rights or benefits which a person has properly acquired under the legislation of either Party before the date of entry into force of this Agreement.
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ARTICLE 29

*Entry Into Force and Termination*

1. Both Parties shall notify each other in writing of the completion of their respective statutory and constitutional procedures required for entry into force of this Agreement and the Agreement shall enter into force on the first day of the third month following the date of the last notification.
2. Until entry into force of this Agreement, the Kingdom of the Netherlands shall apply subparagraph 1(b) of Article 2 and Article 5 from the first day of the second month following signature and also, for the Kingdom of the Netherlands, subparagraph 1(b) of Article 2 and Article 5 shall have retrospective effect to 1 January 2000.
3. Subject to paragraph 4, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives a note from the other through the diplomatic channel giving notice of termination of this Agreement.
4. In the event that this Agreement is terminated in accordance with paragraph 3, this 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 the expiry of the period referred to in that paragraph, 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 paragraph 2 or 3 of Article 8 of Part II, Section A of the Agreement, provided the employee continues to satisfy the criteria of these paragraphs.

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

DONE in duplicate at The Hague this 2<sup>nd</sup> day of July 2001, in the English language.

FOR THE GOVERNMENT OF  
AUSTRALIA

FOR THE GOVERNMENT OF THE  
KINGDOM OF THE  
NETHERLANDS

Peter Hussin  
[Signatures omitted]

J F Hoogervorst

## **Schedule 8—Ireland**

Note: See section 5.

# **Agreement on Social Security Between the Government of Australia and the Government of Ireland**

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

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

Desiring to review the Agreement between Australia and Ireland on Social Security signed on 8 April 1991, and

Acknowledging the need to coordinate the operation of their respective social security systems and to eliminate double 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 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 to or in respect of a person who qualifies for that additional amount, increase or supplement 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 of the Department responsible for the application of the legislation in subparagraph 1 (a) (i) of Article 2 of this Agreement 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 Ireland:

the Minister for Social and Family Affairs;

(c) “Competent Institution” means, in relation to Australia:

the institution or agency which has the task of implementing the applicable Australian legislation;

and in relation to Ireland:

the Department of Social and Family Affairs;

(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 law specified in subparagraph 1 (a) (ii) of Article 2;

and in relation to Ireland:

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

- (e) “period of Australian working life residence”, in relation to a person, means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 11 to be a period in which that person was an Australian resident;
- (f) “Irish period of insurance” means, a period in respect of which qualifying contributions have been paid or a period in respect of which contributions have been treated as paid or credited and which has been or can be used to acquire the right to benefit under the legislation of Ireland, but does not include any period deemed pursuant to Article 13 to be an Irish period of insurance;
- (g) “previous agreement” means, the Agreement between Australia and Ireland on social security signed on 8 April 1991;
- (h) “territory” means, in relation to Australia:

Australia as defined in the legislation of Australia;

and in relation to Ireland:

that part of the island of Ireland which is at present under the jurisdiction of the Government of Ireland;
- (i) “widowed person” means, in relation to Australia, a person who stops being a partnered person because of the death of the person’s partner, but does not include a person who has a new partner.

- 2. In the application by a Party of this Agreement, any term not defined shall, unless the context otherwise requires, have the meaning which it has under the legislation of that Party.

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**ARTICLE 2****Legislative Scope**

1. Subject to paragraph 2, 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, consolidate or replace them:
  - (a) in relation to Australia:
    - (i) the Acts referred to as “the social security law” in the *Social Security Act 1991*, and any regulations made under any such Act, in so far as those Acts or regulations provide for, apply to or affect the following pensions:
      - A) age pension;
      - B) disability support pension for the severely disabled;
      - C) pensions payable to widowed persons; and
    - (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*, *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Regulations*, only in relation to the application of Part II of this Agreement;
  - (b) in relation to Ireland: the Acts referred to as the “Social Welfare Acts” and any regulations made thereunder to the extent that they provide for and apply to:
    - (i) old age (contributory) pension;
    - (ii) retirement pension;
    - (iii) widow’s and widower’s (contributory) pension;

- (iv) invalidity pension;
- (v) orphan's (contributory) allowance;
- (vi) bereavement grant; and
- (vii) the liability for the payment of employment and self-employment contributions.

2. Notwithstanding the provisions of paragraph 1:

in relation to Australia, the legislation of Australia shall not include treaties or other international agreements concluded between it and a third State;

and in relation to Ireland, the legislation of Ireland shall not include the Regulations on Social Security of the Institutions of the European Communities or any treaties or other international agreements on social security that may be concluded between Ireland and a third State or legislation promulgated for their specific implementation.

3. This Agreement shall apply to laws which extend the legislation of either Party to new categories of beneficiaries only if the two Parties so agree.

### 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 Ireland,

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



**ARTICLE 4**

**Equality of Treatment**

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

## **PART II — PROVISIONS FOR AVOIDING DOUBLE COVERAGE**

### **ARTICLE 5**

#### **Purpose of Part**

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

### **ARTICLE 6**

#### **Application of Part**

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 work of the employee or remuneration paid for the work.

### **ARTICLE 7**

#### **Diplomatic 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.

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**ARTICLE 8**

**Application of Legislation**

1. Unless otherwise provided in paragraphs 2, 3, 4 or 5 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 for the work be subject only to the legislation of that Party.
  
2. If an employee:
  - (a) is covered by the legislation of one Party; and
  - (b) was sent, whether before, on or after the entry into force of this Agreement, by an employer who is subject to the legislation of that Party to work in the territory of the other Party; and
  - (c) is working in the territory of the other 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 other Party;

the employer and employee shall, for a period not exceeding 4 years from the time the employee is sent to work in the territory of the other Party, be subject only to the legislation of the Party from which the employee was sent in respect of the work and the remuneration paid for the work. 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.

3. If the employer for the purposes of paragraph 2 of this Article is the Government of a Party, then the time limit specified in paragraph 2 shall not apply. For the purposes of this paragraph, Government includes:

in relation to Australia, a political subdivision or local authority of Australia;

in relation to Ireland, a local authority of Ireland.

4. If an employee is working in the employment of an employer on a ship in international traffic the employer of the employee and employee shall in respect of the employment and the remuneration paid for that employment be subject only to the legislation of the Party of which the employee is resident.
5. A person who is a member of the travelling or flying personnel of a transport undertaking who is employed in the territory of both Parties shall be subject to the legislation of that Party in which the undertaking has its registered office, unless
  - (a) the employee is permanently employed by a branch office or permanent representation of the employer in the territory of the other Party, or
  - (b) the employee is permanently resident in and is mainly employed in the territory of the other Party,

in which case he or she shall be subject to the legislation of the latter Party. In any case, for the purposes of this paragraph, an Australian resident employee working for an Australian resident employer shall be subject to the legislation of Australia.

## ARTICLE 9

### Exception Agreements

1. The Competent Authorities may, for the purposes of this Part, by agreement in writing:
  - (a) extend the period of 4 years referred to in paragraph 2 of Article 8 for any employee; or
  - (b) provide that an employee is taken to work in the territory of a particular Party, or to work on a ship or aircraft in international traffic, under the legislation of a particular Party and is covered only by the legislation of that Party.
2. Any agreement made under paragraph 1 may apply to:

- (a) a class of employees; and/or
- (b) particular work or a particular type of work (including work that has not occurred at the time the agreement is made).

## **PART III — PROVISIONS RELATING TO AUSTRALIAN BENEFITS**

### **ARTICLE 10**

#### **Residence or Presence in the Territory of Ireland or a Third State**

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

- (a) is an Australian resident or residing in the territory of Ireland or a third State with which Australia has concluded an agreement on social security that includes a provision for co-operation in the assessment and determination of claims for benefits; and
- (b) is in Australia, or the territory of Ireland or that third State,

that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

### **ARTICLE 11**

#### **Totalisation for Australia**

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
  - (b) a period of Australian working life residence equal to or greater than the period identified in paragraph 4 ; and

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(c) an Irish period of insurance,

then, that Irish 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 provided that Ireland considers that period to be an Irish period of insurance at the time of totalisation.

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 an Irish period of insurance in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a),

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

3. For all the purposes of this Article, where a period by a person as an Australian resident and an Irish period of insurance coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

4. The period of Australian working life residence to be taken into account for the purposes of subparagraph 1 (b) shall be as follows:

(a) for the purposes of an Australian benefit claimed by a person residing outside Australia, 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 claimed by an Australian resident, no minimum period shall be required.

5. For the purpose of a claim by a person for a pension payable to a widowed person, that person shall be deemed to have accumulated an

Irish period of insurance for any period for which his or her partner accumulated an Irish period of insurance but any period during which the person and his or her partner both accumulated those periods of insurance shall be taken into account once only.

6. For the purpose of converting Irish periods of insurance into periods as an Australian resident in accordance with this Article, one week of an Irish period of insurance shall be deemed to be a period of a week as an Australian resident.

## ARTICLE 12

### Calculation of Australian Benefits

1. Subject to paragraph 2, where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside the territory of Australia, the rate of that benefit shall be determined according to the legislation of Australia, but when assessing the income of that person for the purposes of calculating the rate of the Australian benefit only a proportion of any Irish benefit which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of residence in Australia (not exceeding 300) by the amount of that Irish benefit and dividing that product by 300.
2. A person referred to in paragraph 1 shall only be entitled to receive the concessional assessment of income described in that paragraph for any period during which the rate of that person's Australian benefit is proportionalised under the legislation of Australia.
3. Where an Australian benefit is payable, whether by virtue of this Agreement or otherwise to a person who is resident in the territory of Ireland, Australia shall disregard, when assessing the income of that person, any of the Irish payments listed hereunder:
  - (i) back to education allowance;
  - (ii) back to work allowance;
  - (iii) blind pension;



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- (iv) blind welfare allowance;
  - (v) carer's allowance;
  - (vi) child benefit;
  - (vii) disability allowance;
  - (viii) domiciliary care allowance;
  - (ix) family income supplement;
  - (x) farm assist;
  - (xi) fuel allowance
  - (xii) infectious diseases maintenance allowance;
  - (xiii) mobility allowance;
  - (xiv) old age (non-contributory) pension;
  - (xv) one-parent family payment;
  - (xvi) orphan's (non-contributory) pension;
  - (xvii) pre-retirement allowance;
  - (xviii) rent allowance;
  - (xix) supplementary welfare allowance;
  - (xx) unemployment assistance;
  - (xxi) widow's and widower's (non-contributory) pension;
  - (xxii) any allowance, dependant's allowance, disability pension or wound pension under the *Army Pensions Act 1923 to 1980*;
  - (xxiii) any allowance under Article 14 of the *Child Care (Placement of*
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*Children in Foster Care) Regulations 1995 or Article 15 of the Child Care (Placement of Children with Relatives) Regulations 1995;*

and any other payments of a similar nature proposed by the Competent Institutions specified in Article 1 and jointly approved by the Competent Authorities and listed in the Administrative Arrangement.

4. The provisions in paragraphs 1 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 any Irish benefits received by that person;
  - (b) deducting the amount of any Irish benefits 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. Where a married person is, or both that person and his or her partner are, in receipt of an Irish benefit or benefits, each of them shall be deemed, for the purpose of paragraph 5 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or total of both of those benefits, as the case may be.
7. The provisions in paragraph 5 shall continue to apply for 26 weeks where a person departs temporarily from Australia.

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## **PART IV — PROVISIONS RELATING TO IRISH BENEFITS**

### **ARTICLE 13**

#### **Totalisation for Ireland**

1. Notwithstanding the provisions of paragraphs 2 and 3 of this Article where a person is entitled to an Irish benefit by virtue of his or her Irish periods of insurance alone, that benefit shall be payable and the provisions of paragraph 2 of this Article shall not apply.
2. Subject to paragraph 5, if a person is not entitled to an Irish benefit on the basis of his or her Irish periods of insurance alone, then such periods shall be totalised with periods of residence in Australia, in accordance with the provisions of paragraph 3. The person's entitlement to benefit shall be determined on the basis of the totalised periods in accordance with the statutory contribution conditions provided for under the legislation of Ireland and the amount of Irish benefit payable shall be calculated in accordance with the provisions of Article 14.
3. For the purposes of determining entitlement to an Irish benefit in accordance with the provisions of paragraph 2, each calendar week or part thereof in which a person has a period of Australian working life residence shall be deemed to be a contribution week in respect of which the person has a qualifying contribution under the legislation of Ireland.
4. Where a period of Australian working life residence and an Irish period of insurance coincide, the period of coincidence shall be taken into account once only by Ireland as an Irish period of insurance.
5. For the purpose of determining entitlement to benefits other than bereavement grant or orphan's (contributory) allowance, if the total duration of the Irish periods of insurance completed by the person since his or her entry into insurance under the legislation of Ireland is less than one year and if, taking into account only those periods, no right to a benefit exists under that legislation, the Competent Authority of Ireland will not be required to award benefits in respect of those periods

by virtue of this Agreement.

6. For the purpose of determining entitlement to a bereavement grant or orphan's (contributory) allowance:
  - (a) periods of Australian working life residence shall be taken into account as if they were Irish periods of insurance completed under the legislation of Ireland;
  - (b) periods of Australian working life residence shall be converted into Irish periods of insurance in accordance with the provisions of paragraph 3.
7. For the purposes of determining entitlement of a person to an invalidity pension, any period of continuous incapacity for work which occurs during a period of Australian working life residence by that person shall be deemed to be a period of continuous incapacity in the territory of Ireland.

#### ARTICLE 14

##### Calculation of Irish Benefits

1. Where a person is entitled to an Irish benefit by virtue of the totalisation arrangements prescribed in Article 13, the Competent Institution of Ireland shall calculate the amount of benefit, other than bereavement grant and orphan's (contributory) allowance, as follows:
    - (a) the amount of the theoretical benefit exclusive of any additional amount, or supplement or any increase other than an increase for a qualified adult which would be payable if all the periods of Australian working life residence and all the Irish periods of insurance had been completed under Irish legislation;
    - (b) the proportion of such theoretical benefit which bears the same relation to the whole as the total of Irish periods of insurance completed under the legislation of Ireland bears to the total of all periods of Australian working life residence and Irish periods of insurance.
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The proportionate amount thus calculated plus any additional amount, supplement or increase other than an increase for a qualified adult shall be the rate of benefit actually payable by the Competent Institution of Ireland.

2. Where a period of working life residence in Australia is not counted by the Competent Authority of Australia under the provisions of subparagraph (a) of paragraph 4 of Article 11, the provision of subparagraph (b) of paragraph 1 of this Article will not apply and entitlement to Irish benefits will be calculated on the basis of the totalised period.
3. In the case of bereavement grant and orphan's (contributory) allowance the amount of benefit payable shall be calculated in accordance with the relevant contribution conditions under the legislation of Ireland taking account of the provisions of Article 13 (6).

## **PART V — MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

### **ARTICLE 15**

#### **Lodgement of Documents**

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of either of the Parties in accordance with administrative arrangements made pursuant to Article 19 at any time after the Agreement enters into force.
2. The date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of the other Party shall be treated, for the purposes of assessing entitlement to benefit, as the date of lodgement of that document with the Competent Institution of the first Party. The Competent Institution to which a claim, notice or appeal is lodged shall refer it without delay to the Competent Institution of the other Party.
3. A claim for a benefit from one Party shall be considered as a claim for the corresponding benefit from the other Party if the claimant:
  - (i) so requests; or
  - (ii) provides information at the time of the application indicating that the person had a period of residence or contributions under the social security laws of the other Party.
4. In relation to Australia, the reference in 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 for the purposes of, the social security laws of Australia.

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**ARTICLE 16**

**Determination of Claims**

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:

- (a) a period as an Australian resident and an Irish period of insurance; and
- (b) any event or fact which is relevant to that eligibility or entitlement,

shall, subject to this Agreement, and to the relevant provisions of the social security laws of each Party, be taken into account in so far as those periods or those events or facts are applicable in regard to that person and whether they were accumulated or occurred before or after the date on which this Agreement enters into force.

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but shall never be earlier than the date on which this Agreement enters into force.

3. In the case of contingencies which occurred before the commencement of this Agreement the amount of a benefit under the legislation of Ireland due only by virtue of this Agreement shall be determined from the date of entry into force of the Agreement at the request of the beneficiary.

4. Where:

- (a) a benefit is paid or payable by a Party to a person in respect of a past period;
- (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 paid by that other Party would have

been reduced had the benefit paid or payable by the first Party been paid during that period;

then

- (d) 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; and
  - (e) the other Party may determine that the amount, or any part, of that debt may be deducted from future payments of a benefit payable by that Party to that person.
5. Where the first Party has not yet paid the benefit described in subparagraph 4 (a) to the person:
- (a) that Party shall, at the request of the other Party, pay the amount of the benefit necessary to meet the debt described in subparagraph 4 (d) to the other Party and shall pay any excess to the person; and
  - (b) any shortfall may be recovered by the other Party under subparagraph 4 (e).
6. The Competent Institution receiving a request under paragraph 5 shall transfer the amount of the debt to the Competent Institution making the request.
7. A reference in paragraphs 4 and 5 to a benefit means, in relation to Australia, a pension, benefit or allowance that is payable under the social security laws of Australia and, in relation to Ireland, any pension, benefit or allowance payable under the laws of Ireland.

## ARTICLE 17

### Payment of Benefits

1. Benefits payable by virtue of this Agreement are also payable in the territory of the other Party.
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2. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Parties.
  3. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia, becoming again an Australian resident, and lodges a claim for an Australian benefit and leaves Australia within a specified period of time.

### **ARTICLE 18**

#### **Exchange of Information and Mutual Assistance**

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement:
  - (a) shall communicate to each other any information necessary for the application of this Agreement;
  - (b) shall lend their good offices and furnish assistance to one another with regard to the determination or payment of any benefit under this Agreement or the legislation to which this Agreement applies as if the matter involved the application of their own legislation;
  - (c) shall 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; and
  - (d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in administrative arrangements made in accordance with Article 19.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any administrative arrangements made pursuant to Article 19.
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 legislation to which this Agreement applies.
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 Party 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 Party or 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 in any official language of that Party.

## **ARTICLE 19**

### **Administrative Arrangements**

The Competent Authorities of the Parties shall make whatever administrative arrangements are necessary in order to implement this Agreement.

**ARTICLE 20**

**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 concerning matters which have not been resolved by the Competent Authorities in accordance with paragraph 1.

**ARTICLE 21**

**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 the request was made.

## **PART VI — TRANSITIONAL AND FINAL PROVISIONS**

### **ARTICLE 22**

#### **Transitional provisions**

1. Subject to this Agreement, when this Agreement comes into force, the previous agreement shall terminate and persons who were receiving benefits by virtue of that agreement shall receive those benefits by virtue of this Agreement.
  
2. Where, on the date on which this Agreement enters into force, a person:
  - (a) is in receipt of a benefit by virtue of the previous Agreement; or
  - (b) is qualified to receive a benefit referred to in subparagraph (a) and, where a claim for that benefit is required, has claimed that benefit,

no provision of this Agreement shall affect that person's qualification to receive that benefit.

### **ARTICLE 23**

#### **Entry Into Force**

1. This Agreement is subject to ratification. The instruments of ratification shall be exchanged as soon as possible, after all constitutional and legislative requirements, including administrative arrangements referred to in Article 19 of this Agreement have been fulfilled.
  
2. This Agreement shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.

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**ARTICLE 24**

**Termination**

1. Subject to paragraph 2, 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 indicating the intention of the other Party to terminate this Agreement.
2. In the event that this Agreement is terminated in accordance with paragraph 1, 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 the expiry of the period referred to in that paragraph, 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 as mentioned in and by virtue of paragraph 1 or 2 of Article 8 or Article 9, but only for so long as the Agreement would have continued to apply to the employee had the Agreement not been terminated.

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

DONE in 2 originals at Dublin this ninth day of June two thousand and five.

FOR THE GOVERNMENT OF  
AUSTRALIA

Dr John Herron

FOR THE  
GOVERNMENT OF  
IRELAND

Seamus Brennan

## Schedule 9—Portugal

*Note* See section 5.

### AGREEMENT BETWEEN AUSTRALIA AND THE REPUBLIC OF PORTUGAL ON SOCIAL SECURITY

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

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

Desiring to review the Agreement between Australia and the Republic of  
Portugal on Social Security signed on 30 April 1991, and

Acknowledging the need to coordinate further the operation of their respective  
social security systems so as to ensure access by people who move between  
Australia and Portugal and to eliminate double 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 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, to or in respect of a person who qualifies for that additional amount, increase or supplement 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) “carer payment” means a carer payment for a person in Portugal who is caring for a partner who is in receipt of an Australian age pension or disability support pension for the severely disabled and who is also in Portugal;

(c) “Competent Authority” means:

in relation to Australia: the Secretary to the Department responsible for the application of the legislation in subparagraph 1(a)(i) of Article 2 except in relation to the application of Part III 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 Portugal: the Minister or other corresponding authority responsible for the social security schemes in all or any part of the territory of Portugal;

(d) “Competent Institution” means:

in relation to Australia: the institution or agency responsible for the administration of the legislation; and,

in relation to Portugal:

- (i) the institution with which the person concerned is insured at the time of the application for benefit; or
- (ii) the institution from which the person concerned is entitled or would be entitled to benefits if he or she or a member or members of his or her family were resident in the territory of the Party in which the institution is situated; or
- (iii) the institution designated by the Competent Authority of Portugal;

(e) “Government employment” in relation to Australia includes employment by a political subdivision or local authority of Australia”;

- (f) “legislation” means, in relation to Australia, the law specified in subparagraph 1(a)(i) of Article 2 except in relation to the application of Part III of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the law specified in subparagraph 1(a)(ii) of Article 2; and in relation to Portugal, any laws, regulations and other statutory instruments which are in force in the whole or any part of its territory and which relate to the social security schemes specified in Article 2;
- (g) “period of Australian working life residence”, in relation to a person, means 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;
- (h) “Portuguese insurance period” means the period of contributions or any equivalent period which has been or can be used to acquire the right to a benefit under Portuguese legislation, but does not include any period considered under paragraph 1 of Article 18 as a Portuguese insurance period;
- (i) “previous Agreement” means the Agreement between the Government of Australia and the Government of the Republic of Portugal on Social Security signed on 30 April 1991;
- (j) “territory” means, in relation to Australia, Australia as defined in the legislation of Australia; and, in relation to Portugal, the territory of the Republic of Portugal on the European continent and the archipelagos of the Azores and Madeira;
- (k) “widow” means:
- in relation to Australia:
- a de jure widow; or
  - a woman who was a member of a couple for 3 years immediately before her partner died and was wholly or mainly financially maintained by him;
  - but does not include a woman who has a partner;
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and in relation to Portugal:

- a de jure widow; or
- a legally separated woman or divorced woman entitled to alimony; or
- a person covered by paragraph 1 of Article 2020 of the Civil Law Code.

2. In the application of this Agreement by a Party, any term not defined in it shall, unless the context otherwise requires, have the meaning which it has under the legislation of that Party.

ARTICLE 2  
*Legislative Scope*

1. Subject to paragraph 2, 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 the following benefits:

- age pension;
- disability support pension for the severely disabled;
- wife pension;
- carer payment;
- pensions payable to widows;
- bereavement allowance;
- additional child amount;
- double orphan pension; and

- (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 Portugal:
- (i) the legislation relating to the general scheme (including the voluntary social insurance scheme) and the special schemes (excluding provisions for civil servants or persons treated as such) of the social security system in respect of the following benefits:
    - old age pension;
    - invalidity pension;
    - survivors' pension and death grant;
    - supplement for care;
    - sickness and maternity benefits;
    - unemployment benefit;
    - funeral grant; and
    - family allowance for children and young people of pensioners;
  - (ii) the legislation relating to work injuries and occupational diseases pensions; and
  - (iii) the legislation relating to the non-contributory scheme in respect of old age, invalidity and survivors' pensions and supplement for care.
2. Unless otherwise provided in this Agreement, the laws referred to in paragraph 1 shall not include any treaty or other international Agreement or supra-national legislation on social security which may be in force between either Party and a third State or third States, or laws or regulations promulgated for their specific implementation.
3. This Agreement shall also apply to any laws and regulations which extend the existing legislation to new categories of beneficiaries if the Government of the Party concerned does not notify of an objection in writing to the Government of the other Party within 6 months from the official publication of those laws and regulations.

ARTICLE 3  
*Personal Scope*

This Agreement shall apply to any person who:

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- (a) is or has been an Australian resident; or
  - (b) is or has been subject to the legislation of Portugal;

and, where applicable, to other persons in regard to the rights they derive from the person described in this Article.

ARTICLE 4  
*Equality of Treatment*

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

ARTICLE 5  
*Voluntary Social Insurance*

As soon as an Australian citizen is deemed to be a resident in Portugal that person shall be entitled to register with the voluntary social insurance scheme under the legislation of Portugal on the same basis as a national of Portugal.

ARTICLE 6  
*Export of Benefits*

1. Subject to paragraph 4, benefits of one Party are also payable in the territory of the other Party.
2. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Parties.
3. Where qualification for a benefit of one Party is subject to limitations as to time, then reference to that Party in those limitations shall be read also as references to the territory of the other Party.
4. Notwithstanding any provision of this Agreement, unemployment benefit under the legislation of Portugal and Portuguese pensions specified in subparagraph 1(b)(iii) of Article 2 shall not be paid outside the territory of Portugal.

**PART II – COMMON PROVISIONS ON COVERAGE**

ARTICLE 7

*Application of Legislation*

1. Except as otherwise provided in this Agreement, the persons to whom this Agreement applies shall be covered by:
  - (a) Portuguese legislation if they are employed or resident in Portugal; or
  - (b) Australian legislation if they are Australian residents.
2. Where a person is entitled to claim a benefit under the legislation of a Party that legislation shall also apply to that person.

ARTICLE 8

*Decisions on Social Security Coverage*

The Competent Authorities will, in accordance with their countries' respective legislation, decide on the social security coverage to be applied in the best interests of a person.

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**PART III PROVISIONS FOR AVOIDING DOUBLE COVERAGE****ARTICLE 9***Purpose of Part*

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

**ARTICLE 10***Application of Part*

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 work of the employee or remuneration paid for the work.

**ARTICLE 11***Diplomatic 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 12***Application of legislation*

1. Unless otherwise provided in paragraphs 2, 4 and 5, 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 for the work 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'); and
  - (b) was sent, whether before, on or after the commencement of this Part, 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'); and

- (c) is working in the territory of the second Party in the employment of the employer or a related entity of that employer of the employee; and
- (d) was sent to work in the territory of the second Party and a period of 4 years has not elapsed from that time; and
- (e) is not working permanently in the territory of the second Party;

the employer and employee shall be subject only to the legislation of the first Party in respect of that work occurring after the commencement of this Part and the remuneration paid for such work.

3. For the purposes of subparagraph 2(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.
4. Despite anything in paragraph 2:
  - (a) where an employee is employed in an official administrative service in respect of Portugal and is seconded in the course of that employment to the territory of Australia, the legislation of Australia shall not apply to the employee and the employer in respect of that employment and the employee and employer shall remain subject to the legislation of Portugal in respect of that employment;
  - (b) where an employee is employed in the Government employment in respect of Australia and is seconded in the course of that employment to the territory of Portugal, the legislation of Portugal shall not apply to the employee and the employer in respect of that employment and the employee and the employer shall remain subject to the legislation of Australia in respect of that employment.
5. If an employee is working in the employment of an employer on a ship or aircraft in international traffic, the employer of the employee shall in respect of the employment and the remuneration paid for that employment be subject only to the legislation of the Party of which the employee is resident.

ARTICLE 13  
*Exception agreements*

1. The competent authorities for Australia and Portugal may for the purposes of this Part by agreement in writing:
  - (a) extend the period of 4 years referred to in subparagraph 2(d) of Article 12 for any employee; or
  - (b) provide that an employee is taken to work in the territory of a particular Party or to work on a ship or aircraft in international traffic under the legislation of a particular Party and is subject only to the legislation of that Party.
2. Any agreement made under paragraph 1 may apply to:
  - (a) a class of employees; and/or
  - (b) particular work or particular type of work (including work that has not occurred at the time the agreement is made).

**PART IV- PROVISIONS RELATING TO BENEFITS**

**SECTION I - AUSTRALIAN BENEFITS**

**ARTICLE 14**

*Residence or Presence in Portugal or a Third State*

1. Where a person would not qualify for a benefit under the legislation of Australia or by virtue of this Agreement only because he or she was not an Australian resident and present in Australia on the date on which the claim for that benefit would be lodged but that person:
  - (a) is an Australian resident or a resident of Portugal (or a third country with which Australia has implemented an agreement on social security that includes provision for cooperation in the lodgement and determination of claims for benefits); and
  - (b) is physically in Australia, or in Portugal or that third State;that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.
2. Paragraph 1 shall not apply to a claimant for a carer payment who has never been an Australian resident.
3. For the purposes of qualification for a carer payment as defined in this Agreement, which is payable by virtue of this Agreement, a person who is in Portugal shall be regarded as being in Australia.

**ARTICLE 15**

*Partner Related Australian Benefits*

For the purposes of this Agreement, a person who receives an Australian benefit due to the fact that the partner of that person receives, by virtue of this Agreement, another Australian benefit shall be deemed to receive that first-mentioned benefit by virtue of this Agreement.



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**ARTICLE 16***Totalisation for Australia*

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
  - (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 4; and
  - (c) a Portuguese insurance period,

then that Portuguese insurance period shall be deemed to be a period in which that person was an Australian resident

- only if that Portuguese insurance period has already been used or can be used at the time of totalisation, to obtain a Portuguese benefit, and
- 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, 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 Portuguese insurance period in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a);

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

3. Where a period by a person as an Australian resident and a Portuguese insurance period coincide, the period of coincidence shall be taken into

account once only by Australia for the purposes of this Article as a period as an Australian resident.

4. The period of Australian working life residence (as defined in Article 1) to be taken into account for the purposes of subparagraph 1(b) shall be as follows:
  - (a) for the purposes of an Australian benefit claimed by 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 claimed by an Australian resident, there shall be no minimum period of residence in Australia required.

#### ARTICLE 17

##### *Calculation of Australian Benefits*

1. Subject to paragraphs 2 and 4, where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia but, when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, only a proportion of any Portuguese benefit paid to that person under the legislation specified in subparagraphs 1(b)(i) or (ii) of Article 2 shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of residence in Australia (not exceeding 300) by the amount of that Portuguese benefit and dividing that product by 300.
2. A person referred to in paragraph 1 shall be entitled to receive the concessional assessment of income described in that paragraph only for any period during which the rate of that person's Australian benefit is proportionalised under the legislation of Australia.
3. The provisions in paragraphs 1 and 2 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
4. When an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is resident in the territory of

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Portugal, Australia shall disregard, when assessing the income of that person:

- (a) any benefit paid to that person under the legislation specified in subparagraph 1(b)(iii) of Article 2; and
  - (b) any non-contributory supplement paid to that person by Portugal to bring the amount of that person's Portuguese benefit to the minimum level guaranteed under the legislation of Portugal.
5. Subject to 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 Portuguese benefit or benefits received by that person;
  - (b) deducting the amount of the Portuguese benefit or benefits 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. Where a member of a couple is, or both that person and his or her partner are, entitled to a Portuguese benefit or benefits, each of them shall be deemed, for the purpose of paragraph 5 and for the legislation of Australia, to receive one half of either the amount of that benefit or the total of both of those benefits, as the case may be.
7. The provisions in paragraph 5 shall continue to apply for 26 weeks where a person departs temporarily from Australia.

SECTION II – PORTUGUESE BENEFITS

SUB-SECTION I – OLD-AGE, INVALIDITY AND SURVIVORS’  
PENSIONS

ARTICLE 18

*Totalisation for Portugal*

1. For the purposes of this Agreement, when insurance periods completed under the Portuguese legislation are:
  - (a) less than the period required for the acquisition, retention or recovery of the right to benefits under that legislation, and
  - (b) have the duration of at least one calendar year

then the periods of Australian working life residence shall be deemed as Portuguese insurance periods provided that they do not coincide.

2. For the purposes of this Article the upper age limit for a woman, set in the definition of a period of Australian working life residence in the legislation of Australia, shall be raised to the age pension age for a woman for the purposes of claiming an old age pension under the legislation of Portugal.

ARTICLE 19

*Rules for the Granting of Portuguese Pensions*

1. Subject to paragraph 3, the Portuguese Competent Institution shall determine the rate of Portuguese benefits in accordance with Portuguese legislation and, in relation to old age pension, invalidity pension and survivors’ pension, the calculation shall be based directly and exclusively on Portuguese insurance periods and equivalents completed under Portuguese legislation.
2. If the total of any pensions paid by both Parties to a person residing in Portugal is less than the minimum pension fixed by Portuguese legislation, the Competent Institution of Portugal will pay to that person an amount equal to that difference.

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3. For the purposes of calculating any supplement to be paid by Portugal to an Australian resident to bring Portuguese benefit paid, other than by virtue of this Agreement, to that person to the minimum level fixed by Portuguese legislation, any Australian benefit paid to that person by virtue of this Agreement shall not be taken into account.
  4. Entitlement to Portuguese pensions paid by virtue of this Agreement shall have regard to occupational activity carried out in the territory of Australia as if that activity was carried out in the territory of Portugal.
  5. In the assessment of income for the calculation of the rate of a spouse's supplement under the legislation of Portugal, wife pension payable under the legislation of Australia shall not be taken into account.

#### SUB-SECTION II - OTHER PORTUGUESE BENEFITS

##### ARTICLE 20

##### *Sickness and Maternity Benefits*

Where a person, after his or her last arrival in the territory of Portugal, has accomplished a contribution period under Portuguese legislation for the purposes of eligibility for a sickness or maternity benefit under that legislation, the periods of Australian working life residence shall be deemed as periods accomplished under Portuguese legislation, provided that they do not coincide.

##### ARTICLE 21

##### *Unemployment Benefit*

Where a person, after his or her last arrival in the territory of Portugal, has accomplished a contribution period of at least four weeks under Portuguese legislation for the purposes of eligibility for unemployment benefit under that legislation, the periods of Australian working life residence, during which an occupational activity has been pursued as an employee or Australian newstart allowance has been awarded as a result of no longer being an employee, shall be deemed as periods accomplished under Portuguese legislation, provided that they do not coincide.

ARTICLE 22

*Family benefits for pensioners*

Family allowances for children and young people payable under the legislation of Portugal shall be payable by virtue of this Agreement to pensioners who are residing in Australia and receiving a pension under the legislation of Portugal be they Australian citizens or Portuguese nationals and those family allowances shall for the purposes of reciprocity in relation to this Agreement be regarded as the Portuguese benefit equivalent to Australian additional child amount.

ARTICLE 23

*Pensions for Accidents at Work and Occupational Diseases*

1. Pensions related to incapacity due to work-related accidents or occupational diseases according to Portuguese legislation shall be paid by the competent Portuguese institution whenever a person is subject to the legislation applied by it at the time the accident occurred or at the date the occupational disease has been contracted if that person has been pursuing an occupational activity likely to cause that disease according to the legislation of Portugal.
2. In order to determine the permanent incapacity rate for work-related accidents or occupational diseases under Portuguese legislation, work-related accidents or occupational diseases which qualified a person for a benefit under Australian legislation shall be deemed to have occurred under Portuguese legislation.

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**PART V- MISCELLANEOUS PROVISIONS****ARTICLE 24***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 administrative arrangements made pursuant to Article 28 at any time after the Agreement enters into force.
2. For the purpose of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of one Party shall be considered as the date of lodgement of that document with the Competent Institution of the other 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 Party.
3. The reference in paragraph 2 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 25***Determination of Claims*

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:
  - (a) a period as an Australian resident and a Portuguese insurance period; and
  - (b) any event or fact which is relevant to that entitlement,

shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation

of the Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.

3. Where:

- (a) a benefit is paid or payable by a Party to a person in respect of a past period;
- (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 paid by that other Party would have been reduced had the benefit paid or payable by the first Party been paid 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.

4. Where the first Party has not yet paid the arrears of benefit described in paragraph 3 to the person:

- (a) that Party shall, at the request of the other Party, pay the amount of the debt described in paragraph 3 to the other Party and shall pay any excess to the person in line with the provisions set out in administrative arrangements made in accordance with Article 28; and
- (b) any shortfall in those arrears may be recovered by the other Party.

5. A reference in paragraph 3 or 4 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the Acts forming the social security law of Australia as amended from time to time, and in relation to Portugal means any pension, benefit, allowance or advance made by a Competent Institution including overpayments which arise because of the payment of Portuguese and Australian benefits.

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**ARTICLE 26***Payment of Benefits*

1. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement. Those measures shall operate retrospectively from the time the restrictions were imposed.
2. A Party that imposes restrictions described in paragraph 1 shall inform the other Party of those restrictions within one calendar month of their imposition and shall adopt the measures described in paragraph 1 within three months of the imposition of those restrictions. If the other Party is not so informed or if the necessary measures are not adopted within the set time, the other Party may treat such a failure as a material breach of the Agreement and as sufficient justification for termination or suspension of the Agreement between the Parties.
3. A benefit payable by a Party by virtue of this Agreement to a person outside the territory of that Party shall be paid without deduction for government administrative fees and charges for processing and paying that benefit.

**ARTICLE 27***Exchange of Information and Mutual Assistance*

1. The Competent Authorities shall:
  - (a) advise each other of laws that amend, supplement or replace the legislation of their respective Parties for the application of this Agreement, promptly after the first-mentioned laws are made;
  - (b) advise each other directly of internal action to implement this Agreement and any Administrative Arrangement adopted for its implementation; and
  - (c) advise each other of any technical problems encountered when applying the provisions of this Agreement or of any Administrative Arrangement made for its implementation.

2. The Competent Institutions of both Parties shall:
    - (a) advise each other of any information necessary for the application of this Agreement or of the respective legislation of the Parties concerning all matters within their area of competence arising under this Agreement or under those laws;
    - (b) assist one another in relation to the determination of any benefit under this Agreement or the respective legislation within the limits of and according to their own laws; and
    - (c) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in administrative arrangements made in accordance with Article 28.
  3. The assistance referred to in paragraphs 1 and 2 shall be provided free of charge, subject to any Administrative Arrangement made pursuant to Article 28.
  4. Any information about a person which is transmitted in accordance with this Agreement to a Competent Institution shall be protected in the same manner as information obtained under the legislation of that Party.
  5. Notwithstanding any laws or administrative practices of a Party, no information concerning a person which is received by that Party from the other Party shall be transferred or disclosed to any other country or to any other organisation within that other country without the prior written consent of that other Party.
  6. In no case shall the provisions of paragraphs 1, 2 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.
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7. In the application of this Agreement, the Competent Authority and the Competent Institutions of a Party may communicate with the other in the official language of that Party.
8. In this Article “legislation” means all the laws referred to in Article 2 without any of the restrictions contained in Article 2.

ARTICLE 28

*Administrative Arrangements*

The Competent Authorities of the Parties shall make whatever administrative arrangements are necessary in order to implement this Agreement.

ARTICLE 29

*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 30

*Review of Agreement*

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months 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 VI– TRANSITIONAL AND FINAL PROVISIONS**

ARTICLE 31

*Transitional Provisions*

Where, on the date on which this Agreement enters into force, a person:

- (a) is in receipt of a benefit by virtue of the previous Agreement; or
- (b) is qualified to receive a benefit by virtue of the previous Agreement and, where a claim for that benefit is required, has claimed that benefit,

no provision of this Agreement shall affect that person's qualification to receive that benefit.

ARTICLE 32

*Entry into force*

- 1. This Agreement shall enter into force on the first day of the second month following that in which the Parties notify each other through the diplomatic channel that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalised.
- 2. Subject to the provisions of Article 31, the previous Agreement shall terminate on entry into force of this Agreement.

ARTICLE 33

*Termination*

- 1. Subject to paragraph 2, 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 indicating its intention to terminate 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

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(b) prior to that date have lodged claims for, and would be entitled to receive, benefits,

by virtue of this Agreement or the Agreement signed on 30 April 1991 or

(c) immediately before the date of termination are subject only to the legislation of one Party by virtue of paragraph 2 or 4 of Article 12 provided that the employee continues to satisfy the criteria of that paragraph.

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

DONE in 2 copies at LISBON this THIRD day of SEPTEMBER, TWO THOUSAND AND ONE in the English and Portuguese languages, both texts being equally authoritative.

FOR AUSTRALIA:

FOR THE REPUBLIC OF  
PORTUGAL:

JANET GARDINER  
[Signatures omitted]

JOSÉ SIMÕES DE ALMEIDA

## Schedule 10—Austria

Note: See section 5.

### Part A

#### AGREEMENT BETWEEN AUSTRALIA AND THE REPUBLIC OF AUSTRIA ON SOCIAL SECURITY

AUSTRALIA AND THE REPUBLIC OF AUSTRIA,

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

Resolved to co-operate in the field of social security;

Have agreed as follows:

#### PART I—INTERPRETATION AND SCOPE

##### GENERAL PROVISIONS

##### ARTICLE 1

##### Interpretation

1. In this Agreement:
  - (a) “national” means, in relation to Australia, an Australian citizen; and, in relation to Austria, an Austrian citizen;
  - (b) “legislation” means, in relation to Australia, the law specified in subparagraph 1(a) of Article 2; and, in relation to Austria, the laws, regulations and statutory instruments which relate to the branches of social security specified in subparagraph 1(b) of Article 2;
  - (c) “competent authority” means in relation to Australia, the Secretary to the Department of Social Security; and, in relation

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- to Austria, the Federal Minister responsible for the application of the legislation specified in subparagraph 1(b) of Article 2;
- (d) “institution” means, in relation to Australia, the Department of Social Security; and, in relation to Austria, the institution responsible for the application of the Austrian legislation;
  - (e) “competent institution” means, in relation to Australia, the Department of Social Security; and, in relation to Austria, the institution competent under the Austrian legislation to deal with the matter in question;
  - (f) “period of Australian working life residence”, in relation to a person, means a period defined as such in the legislation of Australia but does not include any period deemed pursuant to Article 6 to be a period in which that person was an Australian resident;
  - (g) “period of insurance in Austria” means a period of insurance defined as such in the Austrian legislation;
  - (h) “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;
  - (i) “carer pension” means, in relation to Australia, a carer pension payable to a partner under the legislation of Australia;
  - (j) “widowed person” means, in relation to Australia, a person who:
    - (i) stops being a married person or becomes a single person because of the death of the person’s husband or wife; or
    - (ii) is a class B widow because of the death of her husband or because she is a dependent female,but does not include a person who has a new partner;
  - (k) “refugee” means a person defined as a refugee in Article 1 of the Convention relating to the Status of Refugees, dated 28 July 1951, and the Protocol to that Convention, dated 31 January 1967;
  - (l) “stateless person” means a person defined as a stateless person in Article 1 of the Convention relating to the Status of Stateless Persons, dated 28 September 1954.
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2. In the application of this Agreement, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it by the legislation of either Party.

## ARTICLE 2

### Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to:
- (a) in relation to Australia: the *Social Security Act 1991* insofar as the Act provides for, applies to or affects:
    - (i) age pensions,
    - (ii) invalid pensions,
    - (iii) wife pensions,
    - (iv) carer pensions; and
    - (v) benefits payable to widowed persons; and
  - (b) in relation to Austria the legislation concerning pension insurance with the exception of the insurance for notaries.
2. Except as otherwise provided in paragraph 3 this Agreement shall also apply to any legislation which supersedes, replaces, amends, supplements or consolidates the legislation specified in paragraph 1.
3. Notwithstanding the provisions of paragraph 1:
- (a) the legislation of Australia shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any agreement on social security; and
  - (b) this Agreement shall not affect any other agreement on social security which Austria has concluded with a third State, except as it contains provisions relating to the apportionment of insurance burdens.



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**ARTICLE 3****Personal Scope**

This Agreement shall apply without any restriction based on nationality to any person who:

- (a) is or has been an Australian resident; or
- (b) is or has been subject to the Austrian legislation,

and where applicable, to any other person with respect to the rights he or she derives from such a person described in subparagraph (a) or (b).

**ARTICLE 4****Equality of Treatment**

1. Unless otherwise provided in this Agreement, nationals of one Party shall, in the application of the legislation of the other Party, receive equal treatment with the nationals of that other Party.
2. Benefits under the legislation of one Party shall be granted to nationals of the other Party resident outside the territories of both Parties, under the same conditions and to the same extent as they are granted to the nationals of the first party who reside outside the territories of the Parties.
3. Paragraph 1 shall not apply to the provisions of the Austrian legislation concerning:
  - (a) the participation of insured persons and employers in the administration of institutions and associations as well as adjudication in the field of social security;
  - (b) the apportionment of insurance burdens resulting from agreements with third States; or
  - (c) the insurance of persons employed at a diplomatic mission or consular post of Austria in a third State or by a member of such a mission or post.
4. Paragraph 1 shall apply with regard to the provisions of Austrian legislation concerning the taking into account of periods of war service

and of periods considered as such only to Australian nationals who were Austrian nationals immediately before 13 March 1938.

## ARTICLE 5

### Equivalence of Territories

1. Unless otherwise provided in this Agreement any provision of the legislation of a Party under which qualification for or payment of a benefit is dependent on a person being a resident of, and/or present in the territory of that Party shall not apply to nationals of either Party, refugees or stateless persons, or other persons who derive rights from the foregoing, who are resident in the territory of either Party and present in the territory of either Party.
2. Benefits of a Party are payable at the request of the beneficiary in the territory of the other Party.
3. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Parties.
4. In relation to Australia:
  - (a) Paragraph 1 shall apply without regard to nationality.
  - (b) Paragraph 1 shall not apply to a claimant for a wife pension or carer pension who has never been an Australian resident or to rental allowance.
  - (c) Where qualification for an Australian benefit is subject to limitations as to time, then references to Australia in those limitations shall be read also as references to the territory of Austria.
  - (d) 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:
    - (i) is an Australian resident or residing in the territory of Austria or a third State with which Australia has

- concluded an agreement on social security that includes provisions for cooperation in the assessment and determination of claims for benefits; and
- (ii) is in Australia, or in the territory of Austria or that third State,

that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

5. As regards the Austrian legislation, paragraph 1 shall not apply to the compensatory supplement (Ausgleichszulage).

**PART II—PROVISIONS CONCERNING AUSTRALIAN BENEFITS**

**ARTICLE 6**

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has, without the application of this Agreement, accumulated:
  - (a) a period as an Australian resident that is less than the period required to qualify him or her, on that ground, under the legislation of Australia for a benefit; and
  - (b) a period of Australian working life residence equal to or greater than the minimum period identified in accordance with paragraph 4 for that person

and has accumulated a period of insurance in Austria, then for the purposes of a claim for that Australian benefit, that period of insurance in Austria shall be deemed, only for the purposes of this Article for meeting any period required for qualification 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 Austria in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a),

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

3. For all purposes of this Article, where a period by a person as an Australian resident and a period of insurance in Austria coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

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4. The minimum period of residence in Australia to be taken into account for the purposes of paragraph 1 shall be as follows:
    - (a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period shall be twelve months of which at least six months must be continuous; and
    - (b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum.
  
  5. For the purposes of a claim by a person for a pension payable to a widowed person, that person shall be deemed to have accumulated a period of insurance in Austria for any period for which his or her partner accumulated a period of insurance in Austria but any period during which the person and his or her partner both accumulated a period of insurance in Austria shall be taken into account once only.

## ARTICLE 7

1. Subject to paragraph 2, where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside the territory of Australia, the rate of that benefit shall be determined according to the legislation of Australia but when assessing the income of that person for the purposes of calculating the rate of the Australian benefit only a proportion of any Austrian benefit which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of Australian working life residence (not exceeding 300) by the amount of that Austrian benefit and dividing that product by 300.
  
2. A person referred to in paragraph 1 shall only be entitled to receive the concessional assessment of income described in that paragraph for any period during which the rate of that person's Australian benefit is proportionalised under the legislation of Australia.
  
3. Where an Australian benefit is payable by virtue of this Agreement or otherwise to a person who is in Austria, any compensatory supplement or social assistance and similar means-tested payment paid by Austria to that person shall be disregarded by Australia in computing that

person's income for the purposes of the legislation of Australia or the application of this Agreement.

4. Subject to the provisions of paragraph 5, 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 Austrian benefit received by that person;
  - (b) deducting the amount of the Austrian 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).
5. Where the rate of a benefit calculated in accordance with paragraph 4 is less than the rate of that benefit which would be payable under paragraphs 1, 2 and 3 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.
6. Where a married person is, or both that person and his or her partner are, in receipt of an Austrian benefit or benefits, each of them shall be deemed, for the purposes of paragraph 4 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or total of both of those benefits, as the case may be.
7. For the purposes of paragraph 5, a comparison of the rates of the benefits shall be made as at:
  - (a) the date of the first pension pay day occurring after the date from which the benefit is payable; and
  - (b) each anniversary of that pension pay day for so long as the person concerned is entitled to the benefit;

using, in that comparison, the number of months of the period of Australian working life residence accumulated by the person at the date as at which the comparison is made.

ARTICLE 8

A person who receives from Australia an Australian benefit due to the fact that the partner of that person receives, by virtue of this Agreement, another Australian benefit shall, for the purposes of this Agreement, be deemed to receive that first-mentioned benefit by virtue of this Agreement.

**PART III—PROVISIONS CONCERNING AUSTRIAN BENEFITS**

ARTICLE 9

If a person has completed periods of insurance in Austria and periods of Australian working life residence, those periods, insofar as they do not overlap, shall be added together for the purpose of qualification for an Austrian benefit.

ARTICLE 10

1. If a person who has completed periods of insurance in Austria and periods of Australian working life residence, or the survivor of such a person, is claiming a benefit, the competent institution for Austria shall determine the amount of the benefit in the following manner:
  - (a) the institution shall determine, in accordance with the Austrian legislation, whether the person concerned has an entitlement to a benefit by adding together the periods as provided in Article 9;
  - (b) if entitlement to a benefit is determined to exist, the institution shall first calculate the theoretical amount of the benefit which would be payable if all the periods completed under the legislation of both Parties had been completed exclusively under the Austrian legislation; in cases where the amount of the benefit is independent of the duration of the period of insurance, this amount shall be taken to be the theoretical amount; and
  - (c) the institution shall then calculate the partial benefit payable on the basis of the amount calculated in accordance with the provisions of subparagraph (b) in proportion to the ratio between the duration of the periods of insurance to be taken into consideration under the Austrian legislation and the total duration of the periods to be taken into consideration under the legislation of both Parties.
2. Where the periods of insurance to be taken into consideration under the Austrian legislation for the purpose of calculating the amount of a benefit are in aggregate less than twelve months, no benefit under that legislation shall be paid. However, the preceding sentence shall not apply if the entitlement to that benefit has been acquired under the



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Austrian legislation exclusively on the basis of periods of insurance completed under that legislation.

#### ARTICLE 11

The competent Austrian institution shall apply Articles 9 and 10 according to the following rules:

1. In determining the institution responsible for paying a benefit, only periods of insurance in Austria shall be taken into consideration.
2. Periods of Australian working life residence, during which the person concerned was employed or self-employed, shall be treated as periods of contributions.
3. Articles 9 and 10 shall apply neither to the conditions of entitlement to nor to the payment of the miners' long service allowance under the miners' pension insurance.
4. For the application of paragraph 1 of Article 10, the following shall apply:
  - (a) periods during which the insured person has been entitled to an age pension or invalid pension under the legislation of Australia shall be treated as if they were neutral periods;
  - (b) the basis of assessment shall be determined exclusively on periods of insurance in Austria;
  - (c) the contributions for supplementary insurance as well as the miners' supplementary benefit, the helpless person's allowance and the compensatory supplement shall be disregarded.
5. For the application of subparagraphs 1(b) and (c) of Article 10, overlapping periods under the legislation of the two Parties shall be taken into consideration as if they did not overlap.
6. If, for the application of subparagraph 1(c) of Article 10, the total duration of the periods to be taken into consideration under the legislation of both Parties exceeds the maximum number of months of insurance specified under the Austrian legislation for the calculation of the rate of increments, the partial pension payable shall be calculated in proportion to the ratio between the duration of the periods of insurance

to be taken into consideration under the Austrian legislation and the above-mentioned maximum number of months of insurance.

7. For the calculation of the helpless person's allowance, subparagraphs 1(b) and (c) of Article 10 shall apply; Article 13 shall apply accordingly.
8. The amount calculated according to subparagraph 1(c) of Article 10 shall be increased, where applicable, by the increments for contributions for supplementary insurance as well as the miners' supplementary benefit, the helpless person's allowance and the compensatory supplement.
9. If the award of benefits under the miners' pension insurance depends on the completion of essentially mining activities, within the meaning of the Austrian legislation, in specific undertakings, then only those periods of Australian working life residence during which the person was employed in a similar occupation in similar undertakings shall be taken into consideration.
10. The special payments shall be payable in the same amount as the Austrian partial benefit; Article 13 shall apply accordingly.

#### ARTICLE 12

1. Where entitlement to a benefit exists under the Austrian legislation without the application of Article 9, the competent Austrian institution shall pay the pension which would be payable exclusively on the basis of the periods of insurance to be taken into consideration under that legislation, provided there is no entitlement to a corresponding benefit under the legislation of Australia.
2. The pension determined in accordance with paragraph 1 shall be recalculated in accordance with the provisions of Article 10 as soon as entitlement arises to a corresponding benefit under the legislation of Australia. This recalculation shall have effect from the date on which the benefit under the legislation of Australia becomes payable. The irrevocability of previous decisions shall not prevent this recalculation.

ARTICLE 13

If a person is entitled to a benefit under the Austrian legislation without the application of Article 9, and if such a benefit would be greater than the total of the Austrian benefit calculated in accordance with subparagraph 1(c) of Article 10 and the corresponding Australian benefit, the competent Austrian institution shall pay, as the partial benefit, its benefit so calculated increased by the difference between such total and the benefit which would be payable if the Austrian legislation alone were applied.

**PART IV—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

ARTICLE 14

Lodgement of documents

1. The date on which a claim, notice or appeal concerning the determination or payment of a benefit under the legislation of a Party is lodged with an authority, institution or other competent body of the other Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgement of that document with an authority, institution or other competent body of the first Party.
2. Any claim for a benefit under the legislation of a Party shall be considered to be a claim for the corresponding benefit under the legislation of the other Party for which the applicant may be qualified if the applicant provides information at the time of claim indicating that the person on whose record benefits are claimed has completed relevant periods of residence or of insurance under the legislation of the other Party and:
  - (a) the claim is lodged with the institution of the other Party; or
  - (b) the claim is lodged with the institution of the first Party and that institution sends the claim within three months of its lodgement with that institution to the competent institution of the other Party.
3. In the case to which paragraphs 1 and 2 of this Article apply, the body to which the submission has been made shall forward the claim, notice or appeal without delay to the corresponding competent body of the other Party.

ARTICLE 15

Advance Payments and Overpayments

1. Where an Austrian institution has made an advance payment to a person for any period and arrears of a corresponding benefit become payable for the same period under the legislation of Australia, the competent institution of Australia shall deduct from those arrears the amount paid
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by way of advance payment and shall transfer the amount so deducted to the Austrian institution. Where an Austrian institution has overpaid a benefit for any period for which the competent institution of Australia afterwards becomes liable to pay a corresponding benefit, the overpayment shall be regarded, for the purpose of the first sentence, as an advance payment.

2. Where

- (a) an Austrian benefit is paid or payable to a person in respect of a past period;
- (b) for all or part of that period, an Australian benefit has been paid to that person; and
- (c) the amount of the Australian benefit would have been reduced had the Austrian benefit been paid during that period;

then

- (d) the amount of the Australian benefit that would not have been paid had the Austrian 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 Commonwealth of Australia; and
- (e) Australia may determine according to the legislation of Australia that the amount or any part of that debt may be deducted from future payments of Australian benefit payable to that person.

3. Where an Austrian institution has not yet paid the benefit described in subparagraph 2(a) to the person:

- (a) the Austrian institution shall, at the request of the competent authority of Australia pay the amount of the benefit necessary to meet the debt described in subparagraph 2(d) to the competent institution of Australia and shall pay any excess to the person; and
- (b) any shortfall may be recovered by the competent authority of Australia under subparagraph 2(e).

ARTICLE 16

Payment of Benefits

1. The benefit-paying institution of a Party may discharge its obligations under this Agreement in the national currency of that Party.
2. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party without deduction for administrative fees and charges.

ARTICLE 17

Administrative Arrangements and Mutual Assistance

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 inform each other of laws that amend, supplement or replace the legislation of their respective Parties.
3. The competent authorities and institutions of the Parties shall assist each other, including by the communication of any information, in applying the legislation specified in Article 2 and this Agreement, as if they were applying their own legislation. With the exception of cash expenditures relating thereto, such assistance shall be provided free of charge.
4. The laws of a Party concerning confidentiality shall apply to any information about an individual which is transmitted in accordance with this Agreement to that Party by the other Party. Such information shall be used only for purposes of applying this Agreement or the legislation of a Party.
5. The competent authorities of the Parties shall, in order to facilitate the application of this Agreement, particularly for the creation of a simple and fast liaison between the institutions concerned, establish liaison agencies.

6. The institutions and the competent authority of one Party may not reject claims or other documents submitted to them by reason only of the fact that they are written in an official language of the other Party.
7. If the competent institution of one Party requires an applicant or beneficiary who lives in the territory of the other Party to undergo a medical examination, such examination shall, at the request of that institution, be arranged or carried out by the institution of the latter Party at its expense.

#### ARTICLE 18

##### Exemption from Taxes and from Authentication

1. Any exemption or reduction provided for in the legislation of one Party for taxes, stamp duty, legal dues or registration fees for certificates or documents which have to be submitted for the application of this legislation shall be extended also to the respective certificates or documents which must be submitted for the application of this Agreement or the legislation of the other Party.
2. Documents and certificates of any kind which must be submitted for the application of this Agreement shall not require authentication.

#### ARTICLE 19

##### Resolution of Difficulties

1. Disagreements arising in connection with the application of this Agreement shall, as far as possible, be resolved by mutual agreement between the competent authorities of the Parties.
2. If any such disagreement has not been resolved within a period of six months, either Party may submit the matter to binding arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Parties.

**PART V—TRANSITIONAL AND FINAL PROVISIONS**

ARTICLE 20

Transitional Provisions

1. This Agreement shall not establish any entitlement to payment of a benefit for a period before its entry into force.
2. In determining entitlement to a benefit under this Agreement, periods of insurance in Austria and periods as an Australian resident completed before the entry into force of this Agreement shall also be taken into consideration.
3. Subject to paragraph 1, this Agreement shall also apply to contingencies which are relevant to an entitlement which occurred before its entry into force, insofar as previously determined entitlements have not been settled by lump-sum payments. If in such cases the claim for a benefit which is payable only by virtue of this Agreement is submitted within one year from the date of entry into force of this Agreement, the benefit shall be determined and paid from that date; otherwise the benefit shall be paid from the date determined under the legislation of each Party.
4. 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.

ARTICLE 21

Protection of Existing Rights

This Agreement shall not affect any existing rights under Austrian legislation of any person who has suffered disadvantages in the field of social security because of political or religious reasons or by reason of descent.



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ARTICLE 22

Entry into Force and Termination

1. This Agreement shall enter into force on the first day of the third month following the month in which notes are exchanged by the Parties through the diplomatic channel notifying each other that all 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 twelve months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of the other Party to terminate 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 the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits;

by virtue of this Agreement.

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

DONE in two copies at Canberra this first day of April, 1992 in the English and German languages, each text being equally authoritative.

FOR AUSTRALIA:

FOR THE REPUBLIC OF  
AUSTRIA:

NEAL BLEWETT

WALTER HIETSCH

[Signatures omitted]

## **Part B**

### **Protocol to the Agreement between Australia and the Republic of Austria on Social Security**

Australia and the Republic of Austria

being desirous of amending and supplementing the Agreement on Social Security between them done at Canberra on the first day of April 1992 have agreed as follows:

#### **Article I**

1. In this Protocol “Agreement” means the Agreement between Australia and the Republic of Austria on Social Security done on the first day of April 1992 at Canberra.
2. In the application of this Protocol any term defined in the Agreement shall, unless the context otherwise requires, have the same meaning.

#### **Article II**

1. (a) In subparagraph 1(c) of Article 1 of the Agreement, the words “the Secretary to the Department of Social Security” shall be deleted and replaced by the words “the Secretary of the department responsible for the legislation in subparagraph 1(a) of Article 2”.
- (b) Subparagraph 1(d) of Article 1 of the Agreement shall be deleted and replaced by the following:
  - “(d) “institution” means, in relation to a Party, the institution or agency responsible for the administration of all or part of that Party’s legislation;”
- (c) Subparagraph 1(e) of Article 1 of the Agreement shall be deleted and replaced by the following:

“(e) “competent institution” means, in relation to a Party, the institution competent under the legislation of that Party;”

(d) Subparagraph 1(i) of Article 1 of the Agreement shall be deleted and replaced by the following:

“(i) “carer payment” means a carer payment payable to a person who is caring for that person’s partner who is in receipt of an Australian disability support pension or age pension;”

(e) Subparagraph 1(j) of Article 1 of the Agreement shall be deleted and replaced by the following:

“(j) “widowed person” means, in relation to Australia, a person who stops being a partnered person because of the death of the person’s partner but does not include a person who has a new partner;”

2. Subparagraph 1(a) of Article 2 of the Agreement shall be deleted and replaced by the following:

“(a) in relation to Australia, the Acts and regulations forming the social security law to the extent they provide for, apply to, or affect:

- (i) age pensions,
- (ii) disability support pensions,
- (iii) wife pensions,
- (iv) carer payments,
- (v) pensions payable to widowed persons, and
- (vii) double orphan pensions; and”

3. Paragraph 3 of Article 2 of the Agreement shall be deleted and replaced by the following:

“(3) Notwithstanding the provisions of paragraph 1, the legislation of Australia shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any agreement on social security.”

4. In subparagraph 4(b) of Article 5 of the Agreement the words “carer pension” and the words “rental allowance” shall be deleted and replaced by the words “carer payment” and the words “rent assistance” respectively.
  5. In paragraph 4 of Article 5 of the Agreement the following new subparagraph (e) shall be inserted:

“(e) Where a double orphan pension would be payable to a person under the legislation of Australia, in respect of a young person whose sole surviving parent died while that young person was an Australian resident, if that person and that young person were residents of Australia, that pension shall, subject to the provisions of the legislation of Australia, be payable while that person and that young person are residents of Austria.”
  6. In Article 5 of the Agreement the following new paragraph (6) and paragraph (7) shall be inserted:

“(6) Australian legislation which provides for, applies to or affects disability support pension for a person who is not severely disabled shall not be affected by paragraph 4(d).

(7) Notwithstanding anything else in this Article, Australian disability support pension shall not be payable for more than 26 weeks to a person who is not severely disabled while that person is outside Australia.”
  7. In paragraph 4 of Article 6 of the Agreement the words “minimum period of residence in Australia” shall be deleted and replaced by the words “minimum period of Australian working life residence”.
  8. In paragraph 6 of Article 7 of the Agreement the words “married person” shall be deleted and replaced by the words “member of a couple”.
  9. In Article 7 of the Agreement the following new paragraph (8) shall be inserted:
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“(8) In paragraphs 1 and 4 of this Article references to Australian benefits do not include double orphan pension.”

10. Article 8 shall be deleted and replaced by the following:

“Article 8

A person who receives an Australian wife pension due to the fact that the partner of that person receives, by virtue of this Agreement, another Australian benefit shall, for the purposes of this Agreement, be deemed to receive that wife pension by virtue of this Agreement.”

11. Article 9 of the Agreement shall be deleted and replaced by the following:

“Article 9

(1) Where the Austrian legislation makes the acquisition, maintenance or recovery of entitlement to benefits conditional upon the completion of periods of insurance in Austria, the institution which applies that legislation shall take account, as far as necessary, of periods of Australian working life residence as if they were periods of insurance in Austria.

(2) Where the Austrian legislation makes the award of certain benefits conditional upon the completion of periods of insurance in Austria in an occupation covered by special schemes or in a specified occupation or employment, then from the periods of Australian working life residence only those periods completed under a corresponding scheme, or, failing that, in the same occupation or, where appropriate, in the same employment, shall be taken into account for the award of such benefits.

(3) Where the Austrian legislation provides that the period of payment of a pension shall prolong the reference period during which periods of insurance in Austria must be completed, periods during which a corresponding benefit has been awarded under the Australian legislation shall prolong the aforesaid reference period.

(4) Periods of Australian working life residence, during which the person concerned was employed or self-employed, shall be treated as periods of contributions of obligatory insurance.”

12. Article 10 of the Agreement shall be deleted and replaced by the following:

“Article 10

“(1) Where entitlement to a benefit exists under the Austrian legislation without the application of Article 9, the competent Austrian institution shall determine the amount of the benefit in accordance with the Austrian legislation on the basis of periods of insurance in Austria exclusively.

(2) Where entitlement to a benefit exists under the Austrian legislation only with the application of Article 9, the competent Austrian institution shall determine the amount of the benefit in accordance with the Austrian legislation on the basis of periods of insurance in Austria exclusively and taking into account the following provisions:

(a) Benefits or parts of benefits the amount of which does not depend on the duration of periods of insurance in Austria shall be calculated in proportion to the ratio of the duration of the periods of insurance in Austria to be taken into account for the calculation under the Austrian legislation and the period of 30 years, but shall not exceed the full amount.

(b) Where periods after the contingency arises are to be taken into account for the calculation of invalidity or survivors’ benefits, such periods shall be taken into account only in proportion to the ratio of the duration of the periods of insurance in Austria to be taken into account for the calculation under the Austrian legislation and two-thirds of the number of full calendar months between the date on which the person concerned reached the age of 16 years and the date on

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which the contingency occurred, but shall not exceed the full period.

(c) Subparagraph (a) shall not apply:

(i) to benefits resulting from supplementary insurance; or

(ii) to means-tested benefits or parts of benefits designed to ensure a minimum income.

(3) Where the periods of insurance in Austria to be taken into account under the Austrian legislation for the calculation of the benefit are in aggregate less than twelve months, and no entitlement to a benefit has been established under the Austrian legislation exclusively on the basis of these periods, no benefit under that legislation shall be paid.”

13. Articles 11, 12 and 13 of the Agreement shall be deleted.

### **Article III**

1. Unless otherwise provided in this Article, this Protocol shall enter into force on the first day of the third month following the month in which the last of the notes are exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Protocol have been finalised.
2. Paragraph 7 of Article 5 of the Agreement as amended by this Protocol shall not apply to the payability of an Australian disability support pension payable to a person in Austria on the day before the date of entry into force of this Protocol.
3. Paragraph 1 of Article 10 of the Agreement as amended by this Protocol, shall have effect from 1 January 1994.
4. Paragraph 2 of Article 10 of the Agreement as amended by this Protocol, shall have effect from 1 January 1997.

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

DONE in two copies at Vienna this twenty-sixth day of June 2001 in the English and German languages, each text being equally authoritative.

For Australia:

Max Hughes  
[Signatures omitted]

For the Republic of Austria:

Christian Prosl



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## Schedule 11—Cyprus

Note: See section 5.

### AGREEMENT ON SOCIAL SECURITY BETWEEN AUSTRALIA AND THE REPUBLIC OF CYPRUS

AUSTRALIA AND THE REPUBLIC OF CYPRUS,

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

Resolved to coordinate their social security systems;

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 to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;
- (b) “carer pension” means a carer pension payable to the partner of a person who is in receipt of a disability support pension for the severely disabled or an age pension where that partner is legally married to that person;
- (c) “Competent Authority” means;

in relation to Australia:  
the Secretary to the Department of Social Security; and,

in relation to Cyprus:  
the Minister of Labour and Social Insurance;

(d) “Competent Institution” means;

in relation to Australia:  
the Department of Social Security; and,  
in relation to Cyprus:  
the Department of Social Insurance Services, Ministry  
of Labour and Social Insurance;

(e) “legislation” means the laws specified in Article 2;

(f) “period of Australian working life residence”, in relation to a  
person, means a period defined as such in the legislation of  
Australia;

(g) “period of insurance” means a period for which contributions  
have been paid or credited or a period of paid or credited  
insurable earnings under the legislation of Cyprus;

(h) “territory” means;

in relation to Australia:  
Australia as defined in the legislation of Australia; and  
in relation to Cyprus:  
the island of Cyprus;

(i) “welfare benefit” means, in relation to Cyprus, any benefit  
payable under the *Public Assistance Law of 1991* and any law  
to provide a similar means tested benefit from public funds that  
subsequently amends, supplements or replaces it and any rent  
allowance payable out of the Fund established under the *Rent  
Control Laws of 1983 and 1991* and any law to provide a  
similar means-tested rent allowance from public funds that  
subsequently amends, supplements or replaces them;

and

(j) “widow” means, in relation to Australia, a de jure widow but  
does not include a woman who has a partner.

2. In the application by a Party of this Agreement in relation to a person,  
any term not defined in this Article shall, unless the context otherwise  
requires, have the meaning assigned to it in the legislation of either

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Party or, in the event of a conflict of meaning, by whichever of those laws is the more applicable to the circumstances of that person.

## ARTICLE 2

### Legislative Scope

1. Subject to paragraph 2, 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: the *Social Security Act 1991* in so far as the Act provides for, applies to or affects the following benefits:
    - (i) age pension;
    - (ii) disability support pension for the severely disabled;
    - (iii) pensions payable to widows;
    - (iv) widowed person allowance; and
    - (v) carer pension; and
  - (b) in relation to Cyprus: the *Social Insurance Laws of 1980 to 1990* in so far as the Laws provide for, apply to or affect social insurance benefits for:
    - (i) age;
    - (ii) invalidity and work-related disablement;
    - (iii) survivorship; and
    - (iv) funerals.
2. Notwithstanding the provisions of paragraph 1, neither the legislation of Australia nor the legislation of Cyprus shall include any laws made at any time for the purpose of giving effect to any agreement on Social Security.
3. This Agreement shall apply to laws which extend the legislation of either Party to new categories of beneficiaries only if the two Parties so agree in a Protocol to this Agreement.

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 Cyprus,

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

ARTICLE 4

Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

ARTICLE 5

Application of the Legislation of Cyprus

1. Subject to the following paragraphs, where a person to whom this Agreement applies is gainfully occupied in the territory of Cyprus the person's liability to be insured under the legislation of Cyprus shall be determined under that legislation, even if the person's place of residence and/or the employer's place of business is in Australia.
2. Where a person insured under the legislation of Cyprus is sent by an employer to work temporarily in Australia the person shall continue to be subject to the legislation of Cyprus during the first 24 months of employment in Australia.

3. A person who is employed as a member of the crew of a seagoing ship flying the Cyprus flag shall be subject to the legislation of Cyprus if the person is ordinarily resident in Cyprus.
4. Subject to the provisions of paragraph 5, a person employed by the Government or other public corporation of Cyprus sent by that Government or corporation to work in Australia shall continue to be subject to the legislation of Cyprus as if employed in Cyprus. A person employed by the Government or other public corporation of Australia in Cyprus shall be subject to the legislation of Cyprus if ordinarily a resident of Cyprus.
5. This Article does not apply to any person who falls within the scope of the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.
6. The Competent Authorities of the two Parties may provide, by agreement with one another, exceptions to the provisions of this Article where this is in the interest of persons affected thereby.
7. Where in accordance with the provisions of this Article a person is insured under the legislation of Cyprus while gainfully occupied in Australia, that legislation shall apply to that person as if he or she were gainfully occupied in Cyprus.

**PART II—PROVISIONS RELATING TO BENEFITS**

AUSTRALIAN BENEFITS

ARTICLE 6

Residence or Presence in Cyprus or a Third State

1. 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 residing in the territory of Cyprus or a third State with which Australia has concluded an agreement on social security that includes provision for co-operation in the assessment and determination of claims for benefits; and
  - (b) is in Australia, or the territory of Cyprus or that third State,that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.
2. Paragraph 1 shall not apply to a claimant for a carer pension who has never been an Australian resident.

ARTICLE 7

Partner related Australian Benefits

A person who receives from Australia any Australian pension, benefit or allowance under the social security laws of Australia due to the fact that the partner of that person receives, by virtue of this Agreement, an Australian benefit, shall be deemed to be receiving that pension, benefit or allowance by virtue of this Agreement but shall cease to qualify for that pension, benefit or allowance, if he or she is not physically present in Australia but, when that person is receiving a carer pension, he or she shall not cease to qualify for that pension while he or she is physically present in Cyprus.

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ARTICLE 8

Totalisation for Australia

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
  - (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 5 for that person; and
  - (c) a period of insurance;

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 converting a person's period of insurance to a period when that person was an Australian resident:
  - (a) each week of insurance completed before 6 October 1980 under the legislation of Cyprus shall be treated as a week when that person was an Australian resident under the legislation of Australia; and

- (b) the insurable earnings for any period of insurance completed from 6 October 1980 under the legislation of Cyprus shall be divided by the weekly amount of the basic insurable earnings applicable in the relevant contribution year. The figure so calculated, subject to the maximum number of weeks during which the person was subject to that legislation in that year, shall be treated as representing the number of weeks in the insurance period. Each week shall be treated as equivalent to one week when that person was an Australian resident.
- 4. For all purposes of this Article, where a period by a person as an Australian resident and a period of insurance coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.
- 5. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:
  - (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 six months must be continuous; and
  - (b) for the purposes of an Australian benefit that is payable to an Australian resident no minimum period shall be required.

## ARTICLE 9

### Calculation of Australian Benefits

- 1. Subject to paragraph 2, where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia but, when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, only a proportion of any Cyprus social insurance benefit received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of residence in Australia (not exceeding 300) by the amount of that Cyprus social insurance benefit and dividing that product by 300.



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2. Only a person receiving a proportionalised Australian benefit under the legislation of Australia shall be entitled to receive the concessional assessment of income described in paragraph 1.
  3. Where an Australian benefit is payable, whether payable by virtue of this Agreement or otherwise, to a person who is a resident of Cyprus, Australia shall disregard, when assessing the income of that person, any welfare benefit paid to that person by Cyprus.
  4. Subject to the provisions of paragraph 5, 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 Cyprus benefit received by that person;
    - (b) deducting the amount of the Cyprus 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).
  5. Where a member of a couple is, or both that member and his or her partner are, in receipt of a Cyprus benefit or benefits, each of them shall be deemed, for the purpose of paragraph 4 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or total of both of those benefits, as the case may be.
  6. If a person would receive an Australian benefit except for the operation of paragraph 4 or except for that person's failure to claim the benefit, then for the purposes of a claim by that person's partner for a payment under the legislation of Australia that person shall be deemed to receive that benefit.
  7. The reference in paragraph 6 to a payment under the legislation of Australia to the partner of a person is a reference to a payment of any pension, benefit or allowance payable under the social security laws of Australia and whether payable by virtue of this Agreement or otherwise.
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**PART III—PROVISIONS RELATING TO CYPRUS BENEFITS**

ARTICLE 10

Totalisation for Cyprus

1. Subject to paragraph 4, if a person is not entitled to benefit on the basis of insurance periods completed under the legislation of Cyprus alone entitlement for that benefit shall be determined by totalising these periods with periods of Australian working life residence to the extent necessary for entitlement to benefit.
2. In applying the provisions of paragraph 1, no account shall be taken of any period of working life residence in Australia completed prior to 7 January 1957.
3. For the purposes of this Article where a period of insurance and a period of Australian working life residence coincide, the period of coincidence shall be taken into account once only as a period of insurance.
4. Paragraph 1 shall not apply if the period of insurance is less than 52 weeks, except where the required period of insurance for entitlement to a benefit under the legislation of Cyprus is less than 52 weeks.
5. For the purpose of converting a period of Australian working life residence into a period of insurance under the legislation of Cyprus, a person shall be treated for each week of working life residence in Australia as having insurable earnings under the legislation of Cyprus equal to the weekly amount of basic insurable earnings.

ARTICLE 11

Calculation of Cyprus Benefits

1. Subject to paragraph 2, the amount of benefit payable under the provisions of Article 10 shall be determined as follows:
  - (a) the Competent Institution of Cyprus shall calculate the theoretical basic benefit that would be payable if the periods of

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- insurance completed under the legislation of Cyprus and the periods of Australian working life residence, totalised as provided in paragraph 1 of Article 10, had been periods of insurance under the legislation of Cyprus alone;
- (b) it shall then prorate the theoretical basic benefit so calculated by the fraction which represents the ratio of the insurance periods completed under the legislation of Cyprus in relation to the total of the insurance periods completed under that legislation and the periods of Australian working life residence which are taken into account; and
- (c) the amount of the supplementary benefit shall be determined exclusively on the basis of periods of insurance completed under the legislation of Cyprus.
2. The amount of the funeral benefit payable under the legislation of Cyprus shall be calculated as if the periods of residence, which are taken into account as provided in paragraph 1 of Article 10, were periods of insurance under the legislation of Cyprus alone.

#### ARTICLE 12

##### Work-related disablement

1. Subject to paragraph 2, pensions for work-related disablement under the legislation of Cyprus shall be paid by virtue of this agreement in respect of disablement which occurs while a person is insured under that legislation and employed in an occupation which is valid for the purposes of that legislation.
2. The rate of a pension for work-related disablement paid by virtue of this Agreement shall be calculated as if the impairment which qualified a person for a benefit under the legislation of Australia had occurred under the legislation of Cyprus.

**PART IV—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

ARTICLE 13

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of the other Party in accordance with the Administrative Arrangement made pursuant to Article 17 at any time after the Agreement enters into force.
2. For the purposes of assessing entitlement to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of a Party shall be treated as the date of lodgement of that document with the Competent Institution of the other.
3. In relation to Australia, the reference in 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 the social security laws of Australia.

ARTICLE 14

Determination of Claims

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:
  - (a) a period as an Australian resident and a period of insurance;  
and
  - (b) any event or fact which is relevant to that entitlement,shall, subject to this Agreement, be taken into account in so far as those periods, events or facts are applicable in regard to that person no matter when they were accumulated or occurred.
2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but shall never be earlier than the date on which

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this Agreement enters into force and a funeral grant under the legislation of Cyprus shall not be made if the relevant death occurred before this Agreement enters into force.

3. Where:

- (a) a benefit payable by virtue of this Agreement by one of the Parties is claimed or is being paid; and
- (b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or otherwise, to a benefit from the other Party and that, if paid, would affect the amount of the first mentioned benefit,

that first mentioned benefit shall not be paid or continue to be paid until a claim is duly lodged for payment of the benefit from the other Party or if the claim for the other Party's benefit is not actively pursued.

4. Where:

- (a) a benefit is paid or payable by a Party to a person in respect of a past period; 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 paid by that other Party would have been reduced had the benefit paid or payable by the first Party been paid during that period;

then

- (d) 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; and
- (e) the other Party may determine that the amount or any part of that debt may be deducted from future payments of a benefit payable by that Party to that person.

5. Where the first Party has not yet paid the benefit described in subparagraph 4(a) to the person:

- (a) that Party shall, at the request of the other Party, pay the amount of the benefit necessary to meet the debt described in

- subparagraph 4(d) to the other Party and shall pay any excess to the person; and
- (b) any shortfall may be recovered by the other Party under subparagraph 4(e).
6. The Competent Institution receiving a request under paragraph 5 shall transfer the amount of the debt to the Competent Institution making the request.
7. A reference in paragraphs 3, 4 and 5 to a benefit, in relation to Australia, means a pension, benefit or allowance payable under the social security laws of Australia and, in relation to Cyprus, means any pension, benefit or allowance payable under the social insurance laws of Cyprus.

## ARTICLE 15

### Payment of Benefits

1. Benefits of one Party, when payable by virtue of this Agreement, are also payable in the territory of the other Party.
2. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Parties.
3. Subject to Article 7, where qualification for a benefit of one Party is subject to limitations as to time, then references to that Party in those limitations shall be read also as references to the territory of the other Party when that benefit is payable by virtue of this Agreement.
4. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.
5. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party without deduction for government administrative fees and charges for processing and paying that benefit whether the beneficiary

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is in the territory of the other Party or outside the respective territories of both Parties.

6. Any exemption granted in the territory of one of the Parties from stamp duty, notarial or registration fees in respect of certificates and documents required to be submitted to the Competent Authorities and Competent Institutions in the same territory shall also apply to certificates and documents which, for the purposes of this Agreement, have to be submitted to the Competent Authorities and Competent Institutions in the territory of the other Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

## ARTICLE 16

### Exchange of Information and Mutual Assistance

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement:
- (a) shall communicate to each other any information necessary for the application of this Agreement;
  - (b) shall lend their good offices and furnish 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 or under the social security laws of either Party as if the matter involved the application of their own legislation;
  - (c) shall 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; and
  - (d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 17.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any Administrative Arrangement made pursuant to Article 17.
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 an Institution of that Party by a Competent Authority or an 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 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 Institutions of a Party may communicate with the Competent Authority and the Institutions of the other Party in the official language of the first Party.

#### ARTICLE 17

##### Administrative Arrangement

The Competent Authorities of the Parties shall make whatever Administrative Arrangement is necessary in order to implement this Agreement.

#### ARTICLE 18

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

#### ARTICLE 19

##### Review of Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months 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 V—TRANSITIONAL AND FINAL PROVISIONS**

ARTICLE 20

Entry Into Force and Termination

1. This Agreement shall enter into force on the first day of the second month after an exchange of notes 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 indicating the intention of the other Party to terminate 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 the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits,

by virtue of this Agreement.

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

DONE in two copies at Nicosia this twelfth day of May 1992,  
in the English and Greek languages.

DAVID SIMMONS

I ARISTIDOU

FOR AUSTRALIA

FOR THE REPUBLIC OF  
CYPRUS

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## **Schedule 12—Denmark**

Note: See section 5.

### AGREEMENT BETWEEN AUSTRALIA AND THE KINGDOM OF DENMARK ON SOCIAL SECURITY

AUSTRALIA AND THE KINGDOM OF DENMARK,

WISHING to strengthen the existing friendly relations between the two  
countries, and

RESOLVED to co-ordinate their social security systems;

HAVE AGREED as follows:

#### **PART I—GENERAL PROVISIONS**

##### ARTICLE 1 Definitions

1. In this Agreement, unless the context otherwise requires:

(a) “territory” means:

in relation to Australia:

Australia as defined in the legislation of Australia; and

in relation to the Kingdom of Denmark:

its national territory, with the exception of Greenland and  
the Faroe Islands;

(b) “legislation” means:

in relation to Australia:

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

in relation to Denmark:

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

- (c) “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 to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

- (d) “Competent Authority” means;

in relation to Australia:

the Secretary to the Department responsible for the application of the legislation in subparagraph 1(a) of Article 2; and

in relation to Denmark:

the Minister of Social Affairs;

- (e) “Competent Institution” means;

in relation to Australia:

the institution responsible for the administration of the legislation; and

in relation to Denmark:

the institution responsible for providing benefits;

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- (f) “period of Australian working life residence” means, in relation to a person, a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 7 to be a period in which that person was an Australian resident;
  - (g) “residence” means, as regards Denmark, habitual residence which is lawfully established; and
  - (h) “widowed person” means, in relation to Australia, a person who stops being a member of a couple because of the death of the person’s partner but does not include a person who has a new partner.

2. Any term not defined in this Article has the meaning assigned to it in the applicable legislation.

## ARTICLE 2 Legislative Scope

1. Subject to paragraph 2, 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: the *Social Security Act 1991* in so far as the Act provides for, applies to or affects the following benefits:
  - (i) age pension;
  - (ii) disability support pension for severely disabled persons; and
  - (iii) parenting payment for widowed persons; and
- (b) in relation to Denmark:
  - (i) *the Social Pensions Act* and the regulations made thereunder; and

- (ii) *the Labour Market Supplementary Pension (ATP) Act* and the regulations made thereunder.

2. Notwithstanding the provisions of paragraph 1, the legislation of Australia shall not include any laws made at any time for the purpose of giving effect to any agreement on Social Security.

3. This Agreement shall apply to laws or regulations which extend the existing legislation to other categories of beneficiaries only if no objection on the part of either Party has been communicated to the other Party within three months of notification of such laws or regulations.

ARTICLE 3  
Personal Scope

This Agreement shall apply to any person who:

- (a) in the case of Australia:
- (i) is or has been an Australian resident; or
  - (ii) is or has been a Danish resident;
- (b) in the case of Denmark is an Australian or Danish national,

and, where applicable, to other persons in regard to the rights derived from the persons referred to in paragraphs (a) and (b) above.

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**PART II—EQUALITY OF TREATMENT AND EXPORT OF BENEFITS**

ARTICLE 4  
Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

ARTICLE 5  
Payment of Benefits Abroad

1. Subject to other provisions of this Agreement, benefits of one Party are also payable in the territory of the other Party.
2. Where qualification for a benefit of one Party is subject to limitations as to time, then reference to that Party in those limitations shall be read also as references to the territory of the other Party.
3. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.
4. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party without deduction for government administrative fees and charges for processing and paying that benefit whether the beneficiary is in the territory of the other Party or outside the respective territories of both Parties.
5. Any exemption granted in the territory of one of the Parties from stamp duty, notarial or registration fees in respect of certificates and documents required to be submitted to the Competent Authorities and Competent Institutions in the same territory shall also apply to certificates and documents

which, for the purposes of this Agreement, have to be submitted to the Competent Authorities and Competent Institutions in the territory of the other Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

6 . A pension under the *Social Pensions Act* shall be payable to an Australian national resident in the territory of Australia only if the person concerned has been an employed or self-employed person in the territory of Denmark for a total of not less than 12 months of the qualifying period provided for in the *Social Pensions Act*.

7 . For the purpose of paragraph 6 of this article, the following provisions shall apply:

- (a) where membership contributions have been paid for one year in respect of a person covered by the *Labour Market Supplementary Pension (ATP) Act* as a result of pursuing an activity as an employed person, the person concerned shall be regarded as having completed a period of employment of 12 months in the territory of Denmark;
- (b) where a person establishes that he or she was employed in the territory of Denmark for any period before 1 April 1964, that period shall also be accepted; and
- (c) where a person establishes that he or she was self-employed in the territory of Denmark for any period, that period shall also be accepted.

8. Where the conditions specified in paragraph 6 of this Article have not been met, a pension awarded to an Australian national residing in the territory of Denmark shall nevertheless continue to be payable in the territory of Australia if, during the qualifying period prescribed in the *Social Pensions Act*, that person has resided in the territory of Denmark for not less than ten years, of which at least five years are immediately preceding application for the pension.



9 . The following supplements, allowances and benefits under the *Social Pensions Act*, shall be payable to a national of a Party resident outside the territory of Denmark only according to the provisions of that Act:

- (a) pensions supplement
- (b) personal allowance
- (c) outside assistance allowance
- (d) constant attendance allowance
- (e) disability benefit.

10 . Notwithstanding any other provision of this Agreement, periods of residence in the territory of Denmark prior to April 1, 1957 shall not be taken into account in the calculation of a benefit under the *Social Pensions Act* payable to an Australian national resident outside the territory of Denmark.

11 . The rights under this Article shall not apply to rent assistance or pharmaceutical allowance.

**PART III—PROVISIONS RELATING TO AUSTRALIAN BENEFITS**

ARTICLE 6

Residence or Presence in the Territory of Denmark

1. 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 residing in the territory of Denmark;  
and
- (b) is in Australia, or the territory of Denmark,

that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

2. Paragraph 1 shall not apply to a person who is a claimant for a parenting payment.

ARTICLE 7

Totalisation for Australia

1. Subject to paragraph 3, 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
- (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 2 for that person;

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and has accumulated a period of residence in Denmark, within the qualifying period specified in the *Social Pensions Act*, then for the purposes of a claim for that Australian benefit, that period of residence in Denmark 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. The minimum period to be taken into account for the purposes of subparagraph 1(b) shall be as follows:

- (a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period of Australian working life residence required shall be 1 year, of which at least 6 months shall be continuous; and
- (b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum is required.

3. Periods of Australian working life residence prior to April 1, 1957 and periods of residence in the territory of Denmark prior to April 1, 1957 shall not be taken into account for the purposes of this Article.

## ARTICLE 8

### Calculation of Australian Benefit

1. Subject to paragraph 2, where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia, but when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, only a proportion of any Danish benefit which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of Australian working life residence (not

exceeding 300) by the amount of that Danish benefit and dividing that product by 300.

2. A person referred to in paragraph 1 shall only be entitled to receive the assessment of income described in that paragraph for any period during which the rate of that person's Australian benefit is proportionalised under the legislation of Australia.

3. Where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who is residing in Denmark, Australia shall disregard, when assessing the income of that person, any personal allowance paid to that person under the *Social Pensions Act* of Denmark, and any other payments of a similar nature as mutually determined from time to time in letters exchanged between the Ministers respectively administering the legislation of Australia and Denmark.

4. As soon as it is practicable after the exchange of letters in which Danish payments are mutually determined for the purposes of paragraph 3, the Minister administering the legislation of Australia shall cause to be published in the Commonwealth of Australia Gazette a notice specifying such Danish payments.

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 Danish benefit received by that person;
- (b) deducting the amount of the Danish 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. Where a member of a couple is, or both that person and his or her partner are, in receipt of a Danish benefit or benefits, each of them shall be deemed, for the purpose of paragraph 5 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or total of both of those benefits, as the case may be.

7. If a person would receive an Australian benefit except for the operation of paragraph 5 or except for that person's failure to claim the benefit, then for the purposes of a claim by that person's partner for a payment under the legislation of Australia that person shall be deemed to receive that benefit.

**PART IV—PROVISIONS RELATING TO DANISH BENEFITS**

ARTICLE 9

General Provisions Governing Residence

1. For the purposes of this Article, the provisions of the Danish legislation that require a person to be permanently resident in the territory of Denmark before that person can be entitled to benefits shall not apply to an Australian resident unless he or she is claiming an anticipatory pension for social reasons.
2. Australian nationals shall be entitled to an anticipatory pension provided that in the qualifying period laid down in the *Social Pensions Act* they have been physically and mentally capable of carrying on their normal occupation for a continuous period of residence of not less than 12 months in the territory of Denmark.
3. Entitlement to anticipatory pension awarded for social reasons in respect of Australian nationals shall be subject to the additional condition that they have been permanently resident in the territory of Denmark for a period of not less than 12 months immediately before the time of submission of the claim for pension and that the need for pension arose while they were resident in the territory of Denmark.
4. Notwithstanding Article 4 of this Agreement, a Danish national resident in the territory of Australia shall not be entitled to the award of an anticipatory pension for social reasons.

ARTICLE 10

Special Residence Requirements

The provisions laid down in the *Social Pensions Act* making periods of residence outside Denmark, for the purpose of training, equivalent to residence in the territory of Denmark in the calculation of the period of residence, shall, notwithstanding the provisions of Article 4, apply only to Danish nationals.

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**PART V—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

**ARTICLE 11**

**Lodgement of Documents**

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of the other Party in accordance with the Administrative Arrangement made pursuant to Article 14 at any time after the Agreement enters into force.
  
2. For the purposes of assessing entitlement to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of the other Party shall be treated as the date of lodgement of that document with the Competent Institution of the first Party.
  
3. In relation to Australia, the reference in 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 the social security laws of Australia.

**ARTICLE 12**

**Determination of Claims**

1. Subject to this Agreement, in determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:
  - (a) a period as an Australian resident and a period of residence in Denmark; and
  
  - (b) any event or fact which is relevant to that entitlement,

shall be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but shall never be earlier than the date on which this Agreement enters into force.

3. Where:

- (a) a benefit is paid by a Party to a person in respect of a past period;
- (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 paid by that other Party would have been reduced had the benefit paid by the first Party been paid during that period;

then

- (d) 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; and
- (e) the other Party may determine that the amount or any part of that debt may be deducted from future payments of a benefit payable by that Party to that person.

4. A reference in paragraph 3 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the social security laws of Australia and, in relation to Denmark, means any benefit as defined under the legislation of Denmark specified in subparagraph 1(b) of Article 2.



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5. A claim submitted to a Competent Institution of a Party for a benefit of that Party shall also be regarded as a claim for a benefit of the other Party. The date of receipt of the claim by the first institution shall be regarded as the date on which the claim was received by the second institution.

### ARTICLE 13

#### Exchange of Information and Mutual Assistance

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement:

- (a) shall communicate to each other any information necessary for the application of this Agreement;
- (b) shall lend their good offices and furnish 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 or under the social security laws of either Party as if the matter involved the application of their own legislation;
- (c) shall 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; and
- (d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 14.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any Administrative Arrangement made pursuant to Article 14.

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 an Institution of that Party by a Competent Authority or an 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 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 Institutions of a Party may communicate with the other in the official language of that Party.

#### ARTICLE 14 Administrative Arrangement

The Competent Authorities of the Parties shall make whatever Administrative Arrangement is necessary in order to implement this Agreement.

#### ARTICLE 15 Resolution of Difficulties

1. The Parties shall interpret this Agreement in good faith in accordance with the ordinary meaning to be given to the terms of the Agreement in their context and in the light of its object and purpose except where this meaning may have been modified by a definition set out in Article 1.

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 16

##### Review of the Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months 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 VI—TRANSITIONAL AND FINAL PROVISIONS**

ARTICLE 17

Entry into Force and Termination

1. Subject to the social security laws 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.
2. This Agreement shall enter into force two months after an exchange of notes 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.
3. Subject to paragraph 4, 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 indicating the intention of the other Party to terminate this Agreement.
4. In the event that this Agreement is terminated in accordance with paragraph 3, 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 the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits,

by virtue of this Agreement.

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

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DONE in two copies at Canberra this first day of July, 1999, in the English and Danish languages, each text being equally authoritative.

FOR AUSTRALIA:

FOR THE KINGDOM OF  
DENMARK:

Jocelyn Newman  
[Signatures omitted]

Kris Lund-Jensen

## Schedule 13—United States of America

Note See section 5.

### AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

#### ON SOCIAL SECURITY

The Government of Australia and the Government of the United States of America (hereinafter “the Parties”),

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. For the purpose of this Agreement:
  - (a) “Agency” means,  
as regards the United States, the Social Security Administration,  
and  
as regards Australia, the institution or agency responsible for  
the administration of the laws;
  - (b) “benefit” means in relation to a Party, a benefit, pension or  
allowance for which provision is made in the laws of that Party,  
and includes any additional amount, increase or supplement for  
which a beneficiary is qualified but, for Australia, does not  
include any benefit, payment or entitlement under the law  
concerning the superannuation guarantee;
  - (c) “carer payment” means, in relation to Australia, a carer  
payment payable to the partner of a person in receipt of an  
Australian benefit;
  - (d) “Competent Authority” means,  
as regards the United States, the Commissioner of Social  
Security, and

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as regards Australia, the Secretary of the Commonwealth Department responsible for the laws specified in subparagraph 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;

- (e) “laws” means,  
as regards the United States, the laws and regulations specified in subparagraph 1(a) of Article 2, and  
as regards Australia, the laws specified in subparagraph 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 subparagraph 1(b)(ii) of Article 2;
- (f) “national” means,  
as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act, as amended, and  
as regards Australia, a citizen of Australia;
- (g) “period of Australian working life residence”, in relation to a person, means, unless otherwise provided in this Agreement, a period:
- (i) defined as such in the laws of Australia; and
  - (ii) during which the person was employed or self-employed or the person’s employer was subject to the laws specified in subparagraph 1(b)(ii) of Article 2;
- but does not include any United States period of coverage deemed pursuant to Article 9 to be a period in which that person was an Australian resident.
- (h) “social security laws” means, in relation to Australia, all the Acts forming the social security law without any limitation, including the limitation imposed by Article 2.
- (i) “United States period of coverage” means a period credited as a quarter of coverage under the laws of the United States, or any equivalent period that may be used to establish the right to a benefit under the laws of the United States;

- (j) “widowed person” means, in relation to Australia, a person who stops being a partnered person because of the death of the person’s partner, but does not include a person who has a new partner.
2. Any term used in this Agreement and not defined in this Article shall have the meaning assigned to it in the applicable laws.

Article 2  
Scope

1. For the purpose of this Agreement, the applicable laws are:
- (a) As regards the United States, the laws governing the Federal old-age, survivors, and disability insurance program:
    - Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections,
    - Chapters 2 and 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters;
  - (b) As regards Australia,
    - (i) the Acts forming the social security law insofar as the law provides for, applies to or affects the following benefits:
      - (A) age pension;
      - (B) disability support pension for the severely disabled;
      - (C) pensions payable to widowed persons; and
      - (D) carer payment.
    - (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).
2. Notwithstanding the provisions of paragraph 1(b), this Agreement shall apply to women who are receiving wife pension at the date this Agreement comes into force and who are the wives of:
- (a) persons receiving age pension; or
  - (b) persons receiving disability support pension for the severely disabled.
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3. Unless otherwise provided in this Agreement, the laws referred to in paragraph 1 shall not include treaties or other international agreements on social security that may be concluded between one of the Parties and a third State, or laws or regulations promulgated for their specific implementation.
4. This Agreement shall also apply to future laws which amend or supplement the laws specified in paragraph 1 of this Article.

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 laws of Australia; or
- (c) is or has been subject to the laws of the United States

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

Article 4

Equality of Treatment

Persons designated in Article 3 who reside in the territory of a Party shall receive equal treatment with nationals of that Party in the application of its laws regarding eligibility for and the payment of benefits.

Article 5

Export of Benefits

1. Unless otherwise provided in this Agreement, any provision of the laws of a Party which restricts entitlement to or payment of benefits solely because the person resides outside or is absent from the territory of that Party shall not be applicable to the persons who reside in the territory of the other Party.
2. Where the laws of a Party provide or allow that a benefit be payable in a third country, then that benefit, when payable by virtue of Part III, is also payable in that third country.
3. Where qualification for an Australian benefit is subject to limitations as to time, then references to Australia in those limitations shall be read also as references to the United States when that benefit is payable by virtue of this Agreement.

4. A benefit payable by a Party by virtue of this Agreement or under its laws shall be paid by that Party without the deduction of administrative fees and charges by the government or the corresponding Competent Authority for processing and paying that benefit, when the person qualifying for the benefit is in the territory of the other Party.
5. Any provisions of Australian laws which prohibit the payment of an Australian benefit to a former Australian resident who:
  - (a) returns to Australia to again become an Australian resident;
  - (b) claims an Australian benefit; and
  - (c) departs Australia within a period specified in that law,shall not apply to a person who receives that benefit by virtue of the Agreement.
6. Section 202(t)(11) (E) of the Social Security Act of the United States shall not apply to an Australian national unless he or she is a resident of the United States, Australia or a third country with which the United States has a Social Security agreement in force concluded pursuant to section 233 of the Social Security Act.

PART II  
Provisions Concerning Applicable Laws

Article 6  
Coverage Provisions

1. This Part only applies, with respect to an employee, or the employer of that employee, where either or both of the following circumstances occur:
  - (a) without the application of this Part an employee or the employer of that employee would otherwise be covered by both the laws of Australia and the United States;
  - (b) the employee has been sent from the territory of the United States to the territory of Australia in accordance with paragraph 3 and, based upon documentation issued by the Agency of the United States, the employee and employer are subject to United States laws.
2. Except as otherwise provided in this Article, a person employed within the territory of one of the Parties and the person's employer shall, with respect to that employment, be subject to the laws of only that Party.
3. Where a person who is normally employed in the territory of one Party by an employer in that territory is sent by that employer to the territory

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- of the other Party for a temporary period, the person and the person's employer shall be subject to the laws of only the first Party as if the employee were employed in the territory of the first Party provided that the period of employment in the territory of the other Party is not expected to and does not exceed 5 years. After 5 years, any further period of employment shall be subject to the laws of the other Party.
4. For the purposes of applying paragraph 3 in the case of an employee who is sent from the territory of the United States by an employer in that territory to the territory of Australia, that employer and an affiliated company of the employer (as defined under the laws of the United States) shall be considered one and the same, provided that the employment would have been covered under United States laws in the absence of this Agreement.
  5. For the purposes of applying paragraph 3 in the case of an employee who is sent from the territory of Australia by an employer in that territory to the territory of the United States, that employer and a related entity of the employer shall be considered one and the same. 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.
  6. Paragraph 3 shall apply where a person who has been sent by his or her employer from the territory of a 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 Party.
  7. Where a person who is a resident of the United States works in the capacity of a self-employed person, the person shall be subject to the laws of only the United States.
  8. Where a national of the United States who is a resident of Australia works in the capacity of a self-employed person, the person shall not be subject to the laws of the United States.
  9. Where the same activity is considered to be self-employment under the laws of one Party and employment under the laws of the other Party, that activity shall be treated according to the provisions of this Article concerning self-employment.
  10. A person, or that person's employer, who would otherwise be covered under the laws of both Parties with respect to employment of that person as an officer or member of a crew on a ship or aircraft shall, with respect to that employment, be subject only to the laws of the Party of which that person is a resident.
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11. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.
12. If an employee:
  - (i) is subject to the laws of one Party (“the first Party”);
  - (ii) was sent, whether before, on or after the entry into force of this Agreement, by the Government of the first Party to work in the territory of the other Party (“the second Party”);
  - (iii) is working in the territory of the second Party in the employment of the Government of the first Party;
  - (iv) is not working permanently in the territory of the second Party; and
  - (v) is not exempt from the laws of the second Party by virtue of the conventions mentioned in paragraph 11;

the Government of the first Party and the employee shall be subject only to the laws of the first Party, and, if the spouse of the employee also meets the conditions specified in subparagraphs (iii)-(v), the spouse and the Government of the first Party shall be subject only to the laws of the first Party for that employment. For the purposes of this paragraph, “Government” includes, in relation to the United States, an instrumentality of the United States and, in relation to Australia, a political subdivision or local authority of Australia.
13. The Competent Authorities of the two Parties may for the purposes of this Article by agreement in writing:
  - (a) extend the period of 5 years referred to in paragraph 3 for any employee; or
  - (b) provide that an employee is deemed to work in the territory of a particular Party or on a ship or aircraft in international traffic under the laws of a particular Party and is subject only to the laws of that Party.
14. Any agreement made under paragraph 13 may apply to either or both of the following:
  - (a) a class of employees;
  - (b) particular work or a particular type of work (including work that has not occurred at the time such agreement is made).

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PART III  
Provisions on Benefits

Article 7  
United States Benefits

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient periods of coverage to satisfy the requirements for entitlement to benefits under United States laws, the Agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of Australian working life residence which do not coincide with periods of coverage already credited under United States laws.
2. In determining eligibility for benefits under paragraph 1 of this Article, the Agency of the United States shall credit one quarter of coverage for every three months of Australian working life residence certified by the Agency of Australia; however, no period of Australian working life residence shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.
3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the Agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on (a) the person's average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person's periods of coverage completed under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.
4. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provision of paragraph 1 of this Article.

Article 8  
Residence or Presence in the United States or a Third State for Australian  
Benefits

1. Where a person would be qualified under the laws 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 residing in the United States or a third State with which Australia has concluded an agreement on social security that includes provision for cooperation in the assessment and determination of claims for benefits; and
  - (b) is in Australia, or the United States or that third State, 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.
2. For the purposes of qualification for a carer payment as defined in this Agreement, which is payable by virtue of this Agreement, a person who is in the United States shall be regarded as being in Australia.

#### Article 9

##### 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, for that benefit under the laws of Australia;
  - (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 United States period of coverage,then for the purposes of a claim for that Australian benefit, that United States period of coverage shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the laws of Australia, to be a period as 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 laws of Australia for entitlement of that person to a benefit; and
  - (b) has accumulated United States periods of coverage in two or more separate periods that equal or exceed in total the period referred to in subparagraph (a),

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the total of the United States periods of coverage shall be deemed to be one continuous period.

3. For all purposes of this Article, where a period as an Australian resident and a United States period of coverage coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident but when it is not possible for the United States Agency to determine the time when specific periods of coverage were completed in any one calendar year, it shall be assumed that those periods of coverage do not coincide with periods in that year as an Australian resident but in no case shall the total of all those periods exceed one calendar year.
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 outside Australia, the minimum period required shall be 12 months, of which at least 6 months must be continuous; and
  - (b) for the purpose of an Australian benefit that is payable to a person who is in Australia, there shall be no minimum period.

#### Article 10

#### Calculation of Australian Pro Rata Benefits

1. Subject to paragraphs 2, 3 and 4, where an Australian benefit is payable by virtue of this Agreement or otherwise, to a person who is outside Australia the rate of that benefit shall be determined according to the laws of Australia but, when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, only a proportion of any United States benefit paid to that person under the laws specified in Article 2(1)(a) shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of working life residence in Australia (not exceeding 300) by the amount of that United States benefit and dividing that product by 300.
2. A person referred to in paragraph 1 shall be entitled to receive the concessional assessment of income described in that paragraph only for any period during which the rate of that person's Australian benefit is proportionalised under the laws of Australia.
3. When an Australian benefit is payable by virtue of this Agreement or otherwise to a person who is outside Australia, benefits payable under

- the Supplemental Security Income program of the United States and other benefits of a similar character payable under the laws of the United States or any political subdivision thereof shall not be counted as income for the purposes of calculating the rate of an Australian benefit.
4. The provisions in paragraphs 1 and 3 shall continue to apply for 26 weeks where a person returns temporarily to Australia.
  5. Subject to the provisions of paragraphs 6 and 7, where an Australian benefit is payable 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 laws of Australia but disregarding in that calculation any United States benefit received by that person and by the partner of that person;
    - (b) deducting the amount of the United States 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 laws of Australia, using as the person's income the amount calculated under subparagraph (a).
  6. The provisions in paragraph 5 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
  7. Where the rate of a benefit calculated in accordance with paragraph 5 is less than the rate of that benefit which would be payable under paragraph 1 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.
  8. Where a member of a couple is, or both that person and his or her partner are, entitled to a United States benefit or benefits, each of them shall be deemed, for the purpose of paragraphs 1 and 5 and for the laws 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.

#### Article 11

#### Australian Working Life Residence

For the purposes of Articles 9 and 10, a period of Australian working life residence in relation to a person means a period defined as such in the laws of Australia.

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PART IV  
Miscellaneous Provisions

Article 12  
Administrative Arrangements

The Competent Authorities of the two Parties shall:

- (a) make all necessary administrative arrangements for the implementation of this Agreement and designate liaison agencies;
- (b) communicate to each other information concerning the measures taken for the application of this Agreement; and
- (c) communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article 13  
Exchange of Information and Mutual Assistance

- 1. The Competent Authorities and the Agencies of the Parties, within the scope of their respective authorities, shall assist each other in implementing this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an administrative arrangement.
- 2. Unless otherwise required by the national statutes of a Party, information about an individual which is transmitted in accordance with the Agreement to that Party by the other Party shall be used exclusively for purposes of implementing the Agreement. Such information received by a Party shall be governed by the national statutes of that Party for the protection of privacy and confidentiality of personal data.
- 3. In no case shall paragraphs 1 or 2 be construed so as to impose on the Competent Authority or an Agency of a Party the obligation:
  - (a) to carry out administrative measures at variance with the statutes or the administrative practice of that or of the other Party; or
  - (b) to furnish information which is not obtainable under the statutes or in the normal course of the administrative practice of that or of the other Party.

Article 14  
Documents

1. Where the laws of a Party provide that any document which is submitted to the Competent Authority or Agency of that Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or Agency of the other Party in the application of this Agreement.
2. Documents and certificates which are presented for purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular authorities.
3. Copies of documents which are certified as true and exact copies by the Agency of one Party shall be accepted as true and exact copies by the Agency of the other Party, without further certification. The Agency of each Party shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 15  
Correspondence

The Competent Authorities and Agencies of the Parties may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement.

Article 16  
Applications for Benefits

1. A written application for benefits filed with the Agency of one Party shall protect the rights of the claimants under the laws of the other Party if the applicant requests that it be considered an application under the laws of the other Party.
2. If an applicant has filed a written application for benefits with the Agency of one Party and has not explicitly requested that the application be restricted to benefits under the laws of that Party, the application shall also protect the rights of the claimants under the laws of the other Party if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods under the laws of the other Party, as defined in subparagraphs 1(g)(i) or 1(i) of Article 1.
3. The provisions of Part III shall apply to benefits under United States laws only if an application is filed on or after the date this Agreement enters into force.

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Article 17  
Determination of Claims

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:
  - (a) a period as an Australian resident and a United States period of coverage; and
  - (b) any event which is relevant to that eligibility or entitlement, shall, subject to this Agreement, be taken into account to the extent that those periods or those events are applicable in regard to that person and whether they were accumulated or occurred before, on or after the date on which this Agreement enters into force. However, neither Party shall take into account such periods of coverage or residence that occurred prior to the earliest date for which periods of coverage or residence may be credited under its laws.
2. Where:
  - (a) a benefit is paid by the United States 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, Australia has paid to that person a pension, benefit or allowance under its social security laws; and
  - (c) the amount of the pension, benefit or allowance paid by Australia would have been reduced had the benefit paid by the United States been paid during that period;then
  - (d) the amount that would not have been paid by Australia 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 Australia and may be recovered by Australia; and
  - (e) Australia may recover all or part of that debt under the provisions of the Acts forming the social security law of Australia.
3. This Agreement shall not establish any claim to payment of a benefit for any period before the date of the entry into force of the Agreement, or to a lump-sum death benefit under United States laws if the person died before the date of entry into force of the Agreement.

Article 18

Prescribed Time Limits and Appeals

1. Any claim, notice or written appeal which, under the laws of one Party, must have been filed within a prescribed period with the Agency of that Party, but which is instead filed within the same period with the Agency of the other Party, shall be considered to have been filed on time.
2. A written appeal against a decision made by the Agency of one Party may be validly filed with the Agency of either Party. The appeal shall be dealt with according to the procedure and laws of the Party whose decision is being appealed.
3. In relation to a decision made by the Agency of Australia, the reference in paragraph 2 to a written appeal 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.

Article 19

Currency

1. Payments under this Agreement may be made in the currency of the Party making the payments.
2. In case provisions designed to restrict the exchange or exportation of currencies are introduced by either Party, the Governments of both Parties shall immediately take measures necessary to ensure the transfer of sums owed by either Party under this Agreement.

Article 20

Resolution of Disputes

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the Competent Authorities.

Article 21

Supplementary Agreements

This Agreement may be amended in the future by supplementary agreements which, from their entry into force, shall be considered an integral part of this Agreement. Such agreements may be given retroactive effect if they so specify.

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Article 22

Review of Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise agree, their meeting shall be held in the country to which that request was made.

PART V

Transitional and Final Provisions

Article 23

Transitional Provisions

1. In applying paragraph 3 of Article 6, in the case of persons who were sent to the territory of a Party prior to the date of entry into force of this Agreement, the period of employment referred to in that paragraph shall be considered to begin on that date.
2. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.

Article 24

Entry into Force and Termination

1. This Agreement shall enter into force on the first day of the third 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 received from the other a note through the diplomatic channel indicating the intention of the other Party to terminate 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 the benefit entitlements of all persons who:
  - (a) at the date of termination, are in receipt of benefits; or
  - (b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits by virtue of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement.

DONE in duplicate at Canberra this twenty seventh day of September 2001

FOR THE GOVERNMENT OF  
AUSTRALIA:

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

AMANDA VANSTONE  
[Signatures omitted]

J. THOMAS SCHIEFFER

ADMINISTRATIVE ARRANGEMENT  
FOR THE IMPLEMENTATION OF THE AGREEMENT  
BETWEEN  
THE GOVERNMENT OF AUSTRALIA AND  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
ON SOCIAL SECURITY

The Competent Authority of Australia and

the Competent Authority of the United States of America,

In conformity with Article 12, paragraph (a), of the Agreement between Australia and the United States of America on Social Security of this date, hereinafter referred to as the “Agreement”, have agreed as follows:

CHAPTER I  
General Provisions

Article 1

The terms used in this Administrative Arrangement shall have the same meaning as in the Agreement.

Article 2

1. The liaison agencies referred to in Article 12, paragraph (a), of the Agreement shall be:
  - (a) for the United States, the Social Security Administration,
  - (b) for Australia, Centrelink, 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 Australian Taxation Office.
2. The liaison agencies designated in paragraph 1 shall agree upon the joint procedures and forms necessary for the implementation of the Agreement and this Administrative Arrangement.

CHAPTER II  
Provisions on Coverage

Article 3

1. Where the laws of a Party are applicable in accordance with any of the provisions of Article 6 of the Agreement, the Agency of that Party, upon request of the employer or self-employed person, shall, in circumstances agreed upon by the Parties, issue a certificate stating that the employee, or the employer with respect to that employee, or self-employed person is subject to those laws and indicating the duration for which the certificate shall be valid. This certificate shall be proof that the named worker and the employer in respect of the named worker are exempt from the laws on compulsory coverage of the other Party.
2. The certificate referred to in paragraph 1 shall be issued:
  - (a) in the United States, by the Social Security Administration; and
  - (b) in Australia, by the Commissioner of Taxation or an authorised representative of the Commissioner.
3. The Agency of a Party which issues a certificate referred to in paragraph 1 shall furnish a copy of the certificate or agreed details of the certificate to the liaison agency of the other Party as needed by the latter Agency.

CHAPTER III  
Provisions on Benefits

Article 4

1. Applications for benefits under the Agreement shall be submitted on forms to be agreed upon by the liaison agencies of the two Parties.
2. The Agency of the Party with which an application for benefits is first filed in accordance with Article 16 of the Agreement shall provide the liaison agency of the other Party with such evidence and other information as may be required to complete action on the claim.
3. The Agency of a Party which receives an application that was first filed with an Agency of the other Party shall without delay provide the liaison agency of that Party with such evidence and other available information as may be required for it to complete action on the claim.
4. The Agency of the Party with which an application for benefits has been filed shall verify the information pertaining to the applicant and



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the applicant's family members. The types of information to be verified shall be agreed upon by the liaison agencies of both Parties.

CHAPTER IV  
Miscellaneous Provisions

Article 5

In accordance with measures to be agreed upon pursuant to Article 2, paragraph 2, of this Administrative Arrangement, the Agency of one Party shall, upon request of the Agency of the other Party, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement.

Article 6

The liaison agencies of the two Parties shall exchange statistics on the number of certificates issued under Article 3 of this Administrative Arrangement and on the payments made to beneficiaries under the Agreement. These statistics shall be furnished annually in a form to be agreed upon.

Article 7

1. Where administrative assistance is requested under Article 13 of the Agreement, expenses other than regular personnel and operating costs of the Agency providing the assistance shall be reimbursed, except as may be agreed to by the Competent Authorities or liaison agencies of the Parties.
2. Upon request, the liaison agency of either Party shall furnish without cost to the liaison agency of the other Party any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.
3. Where the Agency of a Party requires that a person in the territory of the other Party who is receiving or applying for benefits under the Agreement submit to a medical examination, such examination, if requested by that Agency, shall be arranged by the liaison agency of the other Party in accordance with the rules of the Agency making the arrangements and at the expense of the Agency which requests the examination.
4. The liaison agency of one Party shall reimburse amounts owed under paragraph 1 or 3 of this Article upon presentation of a statement of expenses by the liaison agency of the other Party.

Article 8

This Administrative Arrangement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

DONE in duplicate at Canberra this twenty seventh day of September 2001.

For the Competent Authority of  
Australia:

AMANDA VANSTONE  
[Signatures omitted]

For the Competent Authority of  
the United States of America:

J. THOMAS SCHIEFFER

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## Schedule 14—Germany

Note: See section 5.

### PART A

#### AGREEMENT ON SOCIAL SECURITY BETWEEN AUSTRALIA AND THE FEDERAL REPUBLIC OF GERMANY

AUSTRALIA AND THE FEDERAL REPUBLIC OF GERMANY (the  
“Contracting Parties”)

DESIRING to strengthen the existing friendly relations between the two States  
and resolved to regulate their relations in the field of social security:

HAVE AGREED as follows:

#### PART I GENERAL PROVISIONS

##### Article 1 Definitions

1. For the purposes of this Agreement,
  - (a) “national” means,
    - as regards the Federal Republic of Germany, a German citizen within the meaning of the Basic Law (*Grundgesetz*) for the Federal Republic of Germany; and
    - as regards Australia, a citizen of Australia;
  - (b) “legislation” means,
    - as regards the Federal Republic of Germany, the laws, regulations and other general legislative acts related to the branches of social security specified in paragraph 1(a) of Article 2; and
    - as regards Australia, the laws specified in subparagraph 1(b) of Article 2;
  - (c) “competent authority” means,

- as regards the Federal Republic of Germany, the Federal Ministry of Labour and Social Affairs (*Bundesministerium für Arbeit und Sozialordnung*); and
- as regards Australia, the Secretary to the Commonwealth Department responsible for the laws specified in subparagraph 1(b) of Article 2;
- (d) “institution” means,
- as regards the Federal Republic of Germany, the institution or authority responsible for the application of the legislation specified in paragraph 1(a) of Article 2; and
- as regards Australia, the institution or agency responsible for the administration of the laws specified in subparagraph 1(b) of Article 2;
- (e) “German period of coverage” means a period of contributions or any other period insofar as it is, under the German legislation, equivalent to a period of contributions for the purposes of benefit entitlement;
- (f) “period of Australian working life residence” means a period defined as such in the Australian legislation;
- (g) “benefit” means, in relation to a Contracting 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 pension, benefit or allowance;
- (h) “widowed person” means, in relation to Australia, a person who stops being a partnered person because of the death of the person’s partner, but does not include a person who has a new partner;
- (i) “carer payment” means, in relation to Australia a carer payment payable to the partner of a person who is in receipt of an Australian disability support pension or age pension.

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2. Any term not defined in paragraph 1 has the meaning assigned to it in the applicable legislation.

Article 2  
Legislative scope

1. Unless otherwise provided in this Agreement, it shall apply:
- (a) as regards the Federal Republic of Germany, to the legislation concerning:
- (i) Wage Earners' Pension Insurance (*Rentenversicherung der Arbeiter*),
  - (ii) Salaried Employees' Pension Insurance (*Rentenversicherung der Angestellten*),
  - (iii) Miners' Pension Insurance (*Knappschaftliche Rentenversicherung*),
  - (iv) Steelworkers' Supplementary Insurance (*Hüttenknappschaftliche Zusatzversicherung*),
  - (v) Farmers' Old Age Security (*Alterssicherung der Landwirte*); and
- (b) as regards Australia, to the Acts forming the social security law insofar as the law provides for, applies to or affects the following benefits:
- (i) age pension,
  - (ii) disability support pension,
  - (iii) carer payment,
  - (iv) pensions payable to widowed persons, and
  - (v) double orphan pension.
2. Notwithstanding the provisions of paragraph 1(b), this Agreement shall apply to women who are receiving wife pension at the date this Agreement comes into force and who are the wives of:
- (a) persons receiving age pension; or
  - (b) persons receiving disability support pension for the severely disabled.

3. This Agreement shall also apply to laws, regulations and other general legislative acts in so far as they amend, supplement or replace the legislation of the Contracting Parties.
4. Notwithstanding the provisions of paragraph 1, the legislation of the Contracting Parties shall not include any laws made at any time for the purpose of giving effect to any other agreement on social security or any supra-national law.
5. Australian carer payment and double orphan pension are included in this Agreement to reciprocate those proportions of German benefit included to support a spouse and other dependants.

Article 3  
Personal scope

Unless otherwise provided in this Agreement, it shall apply:

- (a) in the operation of the German legislation, to
  - (i) nationals of either Contracting Party;
  - (ii) refugees, within the meaning of Article 1 of the Convention of July 28, 1951 and of the Protocol of January 31, 1967 Relating to the Status of Refugees;
  - (iii) stateless persons, within the meaning of Article 1 of the Convention Relating to the Status of Stateless Persons of September 28, 1954;
  - (iv) other persons to the extent that they derive rights from a national of either Contracting Party, from a refugee or from a stateless person within the meaning of this Article;
  - (v) nationals of a state other than a Contracting Party, unless they are included in the group of persons specified in subparagraph (iv); and
- (b) in the operation of the Australian legislation, to any person who is or has been an Australian resident and, where applicable, to other persons in regard to the rights they derive from the persons described above.

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Article 4  
Equality of treatment

1. Unless otherwise provided in this Agreement:
  - (a) in the application of the German legislation, persons specified in subparagraphs (a)(i), (ii), (iii) and (iv) of Article 3 who ordinarily reside in the territory of either Contracting Party shall be treated equally to German nationals; and
  - (b) in the application of the Australian legislation, persons specified in paragraph (b) of Article 3 shall be treated equally.
2. Unless otherwise provided in this Agreement, benefits under the German legislation shall be awarded to nationals of Australia, who ordinarily reside outside the territories of both Contracting Parties, under the same conditions as they are awarded to German nationals who ordinarily reside outside the territories of the Contracting Parties.

Article 5  
Equivalence of territories

1. Unless otherwise provided in this Agreement, the German legislation which requires that the acquisition of an entitlement to benefits or the payment of benefits be dependent on ordinarily being resident in the Federal Republic of Germany shall not be applicable to the persons specified in subparagraphs (a)(i), (ii), (iii) and (iv) of Article 3 who ordinarily reside in Australia.
2. Subject to paragraph 3, where a person would be qualified for a benefit under the Australian legislation or under this Agreement 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 ordinarily residing in the territory of the Federal Republic of Germany or of a third country with which Australia has implemented an agreement on social security that includes provision for co-operation in the lodgement and determination of claims for benefits; and
  - (b) is in Australia, the territory of the Federal Republic of Germany or the territory of that third country,that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

3. The requirement for a person to have been an Australian resident at some time shall not apply to a person who claims a double orphan pension under this Agreement.

PART II  
PROVISIONS CONCERNING BENEFITS

Article 6  
Totalisation and calculation – German benefits

The following shall apply as regards the German institution:

- (a) When German periods of coverage have been completed, periods of Australian working life residence shall also be taken into account for purposes of determining eligibility for benefits under German legislation, provided that these periods do not coincide with the above mentioned periods of coverage.
- (b) The periods of Australian working life residence to be taken into account under subparagraph (a) shall be assigned to that branch of insurance whose institution is responsible for determining entitlement to a pension as if only the German legislation is applied. If, according to the foregoing, the Miners' Pension Insurance is the competent institution, periods of Australian working life residence shall be taken into account for the Miners' Pension Insurance only if the relevant person was employed in a mining enterprise in underground operations during this time.
- (c) For purposes of determining eligibility for a benefit payable under the German legislation:
  - (i) a month which is recognised as a month in a period of Australian working life residence shall be considered as a month of contributions under the German legislation; and
  - (ii) a year which is recognised as a year in a period of Australian working life residence shall be considered as twelve months of contributions under the German legislation.
- (d) Earnings points shall be determined solely on the basis of pension rating periods to be taken into account under the German legislation in the calculation of German benefits.



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Article 7  
Totalisation – 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 Australian legislation for a benefit;
  - (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 German period of coverage,then for the purposes of a claim for that Australian benefit, that German period of coverage shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the Australian legislation, 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 Australian legislation for qualification of that person for a benefit; and
  - (b) has accumulated a German period of coverage in two or more separate periods that equals or exceeds in total the period referred to in subparagraph (a),the total of the German periods of coverage 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 German period of coverage 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 as follows:
  - (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 six months must be continuous; and

- (b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum period shall be required.
- 5. For the purposes of a claim by a person for a pension payable to a widowed person, that person shall be deemed to have accumulated a German period of coverage for which his or her partner accumulated a German period of coverage but any period during which the person and his or her partner both accumulated German periods of coverage shall be taken into account once only.

Article 8  
Calculation – Australian benefits

- 1. Subject to paragraph 2, where a person who is outside Australia is qualified for an Australian benefit by virtue of this Agreement, other than double orphan pension, the rate of benefit shall be determined according to the Australian legislation.
- 2. Subject to paragraph 3, where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who is outside Australia, the rate of that benefit shall be determined according to Australian legislation but, when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, only a proportion of the German benefit 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 German benefit and dividing that product by 300.
- 3. Only a person receiving a proportionalised Australian benefit shall be entitled to receive the concessional assessment of income described in paragraph 2.
- 4. Where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who ordinarily resides in the Federal Republic of Germany, Australia shall disregard, when assessing the income of that person, any German social assistance and payments of a similar character provided in case of need insofar as they are proposed by the liaison agencies specified in Article 16 and jointly approved by the competent authorities and listed in the Administrative Arrangement (*Verwaltungsvereinbarung*).
- 5. The provisions in paragraphs 1, 2 and 4 shall continue to apply for 26 weeks where a person comes temporarily to Australia.

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6. Subject to the provisions of paragraph 7, where an Australian benefit is payable only by virtue of the 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 Australian legislation but disregarding in that calculation any German benefit to which the person is entitled;
    - (b) deducting that German benefit 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 Australian legislation, using as the person's income the amount calculated under subparagraph (a).
  7. The provisions in paragraph 6 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
  8. Where a member of a couple is, or both that member and his or her partner are, entitled to a German benefit or benefits and/or any payment referred to in this Article, each of them shall be deemed, for the purposes of this Article and of the Australian legislation, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

#### Article 9

##### Payment of Australian benefits overseas

1. Australian benefits are also payable into the territory of the Federal Republic of Germany.
2. Where the Australian legislation provides that a benefit is payable outside the territory of Australia, then that benefit, when payable under this Agreement, is also payable outside the territories of both Contracting Parties.
3. Where qualification for an Australian benefit is subject to limitations as to time, then references to Australia in those limitations shall be read also as references to the territory of the Federal Republic of Germany.
4. Any provisions of Australian legislation which prohibit the payment of an Australian benefit to a former Australian resident who:
  - (a) returns to Australia to again become an Australian resident;
  - (b) claims an Australian benefit; and
  - (c) departs Australia within a period specified in that legislation,

shall not apply to a person who receives that benefit by virtue of the Agreement.

5. Where a double orphan pension would be payable to a person under the social security laws of Australia, in respect of a young person whose sole surviving parent died while that young person was an Australian resident, if that person and that young person were residents of Australia, that pension shall, subject to the provisions of those laws, be payable while that person and that young person are residents of the Federal Republic of Germany.

PART III  
MISCELLANEOUS PROVISIONS

CHAPTER 1  
ADMINISTRATIVE ASSISTANCE

Article 10  
Mutual assistance

1. The institutions, associations of institutions, authorities and competent authorities of the Contracting Parties shall provide assistance to each other in the application of the legislation specified in paragraph 1 of Article 2 and in the implementation of this Agreement, in the same manner in which they apply their own legislation.
2. The institution of one Contracting Party, when requested by the institution of the other Contracting Party, shall, to the extent permitted by its legislation, provide to that institution free of charge any medical data and documents in its possession relating to the general disability of an applicant or beneficiary.
3. If an institution of one Contracting Party requires an applicant or beneficiary who lives in the territory of the other Contracting Party to undergo a medical examination, such examination shall, at the request of that institution, be arranged or carried out by the institution of the latter Contracting Party. The medical examination will be done at the expense of the requesting institution.
4. The agencies referred to in paragraph 1 shall, within their respective areas of jurisdiction and to the extent possible, communicate to each other such information and transmit such documentation as may be required to maintain the rights and obligations of the persons concerned under the legislation specified in paragraph 1 of Article 2 and under this

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Agreement. Such information or documentation regarding a person shall also be transmitted to that person at his or her request.

5. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the competent authorities for the reimbursement of certain types of expenses.

#### Article 11

##### Fees

1. Where, under the legislation of one Contracting Party documents submitted to an authority or 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 an authority or institution of the other Contracting Party in accordance with its legislation.
2. Documents which, in the application of the legislation specified in paragraph 1 of Article 2 and in the implementation of this Agreement, must be submitted to an authority or institution of one Contracting Party, may be submitted to an authority or institution of the other Contracting Party without consular authentication or any other similar formality.

#### Article 12

##### Languages of communication

In the application of the legislation specified in paragraph 1 of Article 2 and in the implementation of this Agreement, the agencies referred to in paragraph 1 of Article 10 may communicate in their respective official languages directly with each other as well as with persons concerned and with their representatives.

#### Article 13

##### Lodgement of documents

1. If a claim for a benefit under the legislation of one Contracting Party has been submitted to an agency of the Contracting Party which, under the legislation of the latter Contracting Party, is competent to receive a claim for a corresponding benefit, that claim shall be deemed to have been submitted to the competent institution of the first Contracting Party on the same date as the claim was lodged with the agency in the other Contracting Party. This provision shall apply, as appropriate, to other claims, notices and appeals.

2. Where a claim, notice or appeal is received by an agency of one Contracting Party, that agency shall ensure it is forwarded without delay to the appropriate liaison agency of the other Contracting Party.
3. In relation to Australia, an appeal means an appeal submitted to a body established under the social security laws of Australia.
4. Subject to paragraph 5, a claim by a person for a benefit from a Contracting Party, whether lodged in the territory of that Contracting Party or of the other Contracting Party, shall be deemed to be a claim for a corresponding benefit from that other Contracting Party if the information disclosed by the person in the original claim indicates that the person may be qualified for corresponding benefit. The foregoing shall not apply if the person is under the normal age pension age of the other Contracting Party and the person explicitly requests that the determination of entitlement to old age benefits acquired under the legislation of the other Contracting Party be deferred.
5. Paragraph 4 shall not apply if the original claim or a copy is not received by the appropriate liaison agency of the other Contracting Party within six months of the lodgement of the original claim.

Article 14  
Recovery of overpayments

1. Where a German institution has made an overpayment of a benefit to a person for any period and the Australian institution is to pay arrears of an Australian benefit for the same period, the Australian institution shall, at the request of that German institution, deduct from those arrears the amount of the overpayment by the German institution and shall transfer the amount so deducted to the German institution.
2. Where:
  - (a) a benefit is paid or payable under German legislation to a person in respect of a past period;
  - (b) for all or part of that period, Australia has paid to that person a benefit under its social security law; and
  - (c) the amount of the benefit paid by Australia would have been reduced had the benefit paid or payable under German legislation been paid during that period;then
  - (d) the amount that would not have been paid by Australia had the benefit described in subparagraph (a) been paid on a periodical

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- basis throughout that past period shall be a debt due by that person and may be recovered by Australia; and
- (e) Australia may determine that the amount or only part of that debt may be deducted from future payments of a benefit payable by Australia to that person.
3. Where a German institution has not yet paid the benefit described in subparagraph 2(a) to the person:
- (a) the German institution shall, at the request of the institution of Australia pay the amount of the benefit necessary to meet the debt described in subparagraph 2(d) to the Australian institution and shall pay any excess to the person; and
  - (b) any shortfall may be recovered by the competent authority of Australia under subparagraph 2(e).
4. In paragraph 2, “benefit” means, in relation to Australia, a pension, benefit or allowance that is payable under the social security law of Australia.

Article 15  
Data protection

1. In providing assistance under Article 10, a Contracting Party shall supply to the other Contracting Party data about a person, particularly about any payments it makes to that person, only where that person:
- (a) wishes to make use of any provision of the Agreement; or
  - (b) claims a benefit from the first Contracting Party after the Agreement enters into force; or
  - (c) is receiving a benefit from the second Contracting Party before the Agreement enters into force and authorises the first Contracting Party to provide the data to the second Contracting Party.
2. Notwithstanding any laws or administrative practices of a Contracting Party, no personal data concerning a person which is received by that Contracting Party from the other Contracting Party shall be transferred or disclosed to any other country or to any organisation within that other country without the prior written consent of that other Contracting Party.
3. The Contracting Parties agree that there is no obligation on any institution to disclose personal data except under paragraph 1.

4. The processing and use of any personal data or any business or industrial secret made in accordance with this Agreement or with any arrangement for the implementation of the Agreement shall be governed by the respective national laws concerning the protection of data. The said data shall be transmitted to the bodies specified in Article 16 only. The recipient of the data shall be obliged to protect the data effectively against unauthorised access, modification and disclosure.
5. Data transmitted in accordance with this Article shall not be disclosed by the recipient without authorisation and shall be processed or used only for the purposes of implementing this Agreement or the legislation to which it applies. The passing on of this data by the recipient for other purposes is permissible in the framework of the law of the Contracting Party receiving the data provided this serves social security purposes including related judicial proceedings. However, the foregoing shall not prevent the Contracting Party receiving the data from passing it on in cases that are mandatory under the laws and regulations of that Party for the interests protected by criminal law or for the purposes of taxation. In all other cases the passing on to bodies other than those specified in Article 16 shall only be permissible upon prior consent of the transmitting bodies.
6. The transmitting body shall ensure that transmitted data is correct and reasonably necessary for the purpose for which the transmission is intended. Should the transmitting body find that data has been transmitted otherwise than in accordance with this paragraph the transmitting body shall notify the recipient immediately. The recipient shall be obliged to correct or delete the data. It shall, at the request of the transmitting body, notify that body of the purposes for which the transmitted data has been used and the results obtained from that usage.
7. The recipient of the data shall, upon the request of a person, provide to that person details of the data transmitted in relation to that person and the uses for which that data is intended to be put. In all other cases, the right of the person concerned to receive details of the data held in relation to that person shall be determined by the national law of the Contracting Party whose body requested the information.
8. A recipient of data transmitted under this Agreement shall delete that data when it ceases to be necessary for the application of this Agreement or the legislation to which the Agreement applies.
9. Should the transmission of incorrect data result in a person receiving a lesser amount of benefit, the agency responsible for paying the benefit



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shall adjust the amount of the benefit and pay any retrospective amounts owing to the person when the correct data is received.

CHAPTER 2  
IMPLEMENTATION AND INTERPRETATION OF THE AGREEMENT

Article 16

Implementation arrangements and liaison agencies

1. The Governments of the Contracting Parties or the competent authorities may conclude arrangements for the implementation of this Agreement. The competent authorities shall keep each other informed about any amendments or additions to their legislation.
2. The following are designated as liaison agencies for the implementation of this Agreement:
  - (a) in the Federal Republic of Germany,  
for the Wage Earners' Pension Insurance,  
the Landesversicherungsanstalt Oldenburg-Bremen, Oldenburg  
for the Salaried Employees' Pension Insurance,  
the Bundesversicherungsanstalt für Angestellte, Berlin  
for the Miners' Pension Insurance,  
the Bundesknappschaft, Bochum  
for the Steelworkers' Supplementary Insurance,  
the Landesversicherungsanstalt für das Saarland, Saarbrücken
  - (b) in Australia,  
the institution responsible for the administration of the laws specified in subparagraph 1(b) of Article 2.
3. Where German legislation does not already make provision to this effect, the liaison agency designated for the Wage Earners' Pension Insurance system shall be responsible, within the scope of that system, for all procedures including the determination and award of benefits, provided that:
  - (a) there are German periods of coverage and periods of Australian working life residence;
  - (b) the person entitled to a benefit ordinarily resides in Australia; or
  - (c) the person entitled to a benefit is an Australian national who ordinarily resides outside the territories of both Contracting Parties.

This paragraph shall not apply to the provision of medical, occupational, and supplementary rehabilitation benefits.

4. The jurisdiction of the Railways Insurance Institution and the Seamen's Insurance Institution shall remain unaffected.
5. The liaison agencies listed in paragraph 2 and the institutions mentioned in paragraph 4 shall, within their respective areas of jurisdiction, be responsible for generally informing the persons concerned about their rights and obligations under this Agreement.
6. The liaison agencies listed in paragraph 2 and the institutions mentioned in paragraph 4, with the participation of the competent authorities, shall conclude an Administrative Arrangement (*Verwaltungsvereinbarung*) setting out the administrative measures required and expedient for implementing this Agreement.
7. As far as possible, the liaison agencies listed in paragraph 2 and the institution mentioned in paragraph 4 shall compile statistics on the payments made under the Agreement for each calendar year. Where possible, these statistics will show the number and total amount of pensions and lump-sum settlements by type of pension. These statistics shall be exchanged.
8. Cash benefits payable to recipients in the territory of the other Contracting Party shall be paid without recourse to a liaison agency in that Contracting Party.

Article 17  
Currency and exchange rate

1. To provide for the effective payment of benefits an institution of a Contracting Party may, at its discretion, pay a benefit to a person in the territory of the other Contracting Party in the currency of:
  - (a) the first Contracting Party;
  - (b) the other Contracting Party; or
  - (c) a third country.
2. If benefits of a German institution are paid in the currency of the other Contracting Party or of a third country, the conversion rate shall be the rate of exchange in effect on the day when the remittance is made.

Article 18  
Resolution of disputes

1. Disagreements between the two Contracting Parties regarding the interpretation or application of this Agreement shall, as far as possible, be settled by the competent authorities.
2. Unless otherwise agreed, if a disagreement cannot thus be resolved it shall, at the request of either Contracting Party, be submitted to an arbitration tribunal whose composition shall be agreed upon by the Contracting Parties in each instance. The arbitration tribunal shall establish its own rules of procedure, including the allocation of costs. The decisions of the arbitration tribunal shall be binding.

PART IV  
TRANSITIONAL AND FINAL PROVISIONS

Article 19  
Consideration of entitlements under the Agreement

1. This Agreement shall not establish any entitlement to benefits for any period prior to its entry into force.
2. Unless otherwise provided in the Agreement, when the Agreement is being implemented and when rights under it (including deciding eligibility for benefits under the Agreement) are being determined, all valid and relevant events including periods of coverage and periods as an Australian resident, no matter when they occurred, shall be taken into consideration.
3. The legal force of former decisions shall not preclude the application of this Agreement.
4. If a benefit has been determined under German legislation with binding force before the entry into force of this Agreement, a review and recalculation under this Agreement of this benefit shall only be carried out if the beneficiary explicitly so requests.

Article 20  
Concluding Protocol

The attached concluding protocol shall form an integral part of this Agreement.

Article 21  
Entry into force

1. This Agreement shall be subject to ratification; the instruments of ratification shall be exchanged in Berlin as soon as possible.
2. This Agreement shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.

Article 22  
Period of the Agreement

1. This Agreement shall be concluded for an indefinite period of time. Either Contracting Party may denounce this Agreement in writing through diplomatic channels at the end of a calendar year by giving three months' notice. This period of notice shall be calculated from the day on which the notice is received by the other Contracting Party.
2. In the event of termination by denunciation, the provisions of this Agreement shall continue to apply in respect of claims to benefits acquired not later than the effective date of that termination; restrictive legislation regarding the exclusion of an entitlement or the suspension or withdrawal of benefits on the grounds of temporary or ordinary residence in another state shall not be applicable to such claims.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Agreement.

DONE at Canberra on this thirteenth day of December 2000 in two copies in the English and German languages, each text being equally authentic.

FOR AUSTRALIA:

FOR THE FEDERAL REPUBLIC OF  
GERMANY:

JOCELYN NEWMAN

Dr HORST BÄCHMANN and  
WALTER RIESTER

[Signatures omitted]

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CONCLUDING PROTOCOL TO THE AGREEMENT BETWEEN  
AUSTRALIA AND THE FEDERAL REPUBLIC OF GERMANY ON  
SOCIAL SECURITY

At the time of signing the Agreement on Social Security concluded this day between Australia and the Federal Republic of Germany, the plenipotentiaries of both Contracting Parties stated that they are in agreement on the following points:

1. With reference to Article 2 of the Agreement:
  - (a) Part II of the Agreement shall not apply to the Steelworkers' Supplementary Insurance and to the Farmers' Old Age Security of the Federal Republic of Germany;
  - (b) subject to paragraph (c), where under the German legislation both the conditions for the application of the Agreement and the conditions for the application of any other convention or supranational arrangement are satisfied, the German institution shall disregard that other convention or supranational arrangement when applying the Agreement; and
  - (c) paragraph 4 of Article 2 and the preceding subparagraph shall not apply if the social security legislation, which arises for the Federal Republic of Germany from international treaties or supranational laws or is designed to implement them, contains provisions relating to the apportionment of insurance burdens.
2. With reference to Article 4 of the Agreement:
  - (a) provisions relating to the apportionment of insurance burdens that may be contained in international treaties between the Federal Republic of Germany and other States shall not be affected;
  - (b) the German legislation guaranteeing the participation of insured people and employers in the self government bodies of the institutions and their associations and in the adjudication of social security matters shall remain unaffected; and
  - (c) Australian nationals who ordinarily reside outside the territory of the Federal Republic of Germany shall be entitled to voluntary coverage under the legislation specified under subparagraphs 1(a)(i), (ii) and (iii) of Article 2 if they have periods of contributions under that legislation for at least sixty

calendar months. This shall also apply to persons specified in subparagraphs (a)(ii) and (iii) of Article 3 who ordinarily reside in the territory of Australia.

3. With reference to Article 5 of the Agreement:
- (a) With respect to contingencies under German Industrial Accident Insurance which occurred prior to 1 January 1997 the following shall apply:  
Article 5 shall apply, as appropriate, to cash benefits payable under German Industrial Accident Insurance to beneficiaries who are Australian nationals and who ordinarily reside in Australia, provided that the applicable law of Australia or of a federal state or territory regarding statutory accident insurance provides for payment of corresponding cash benefits to German nationals who ordinarily reside in the territory of the Federal Republic of Germany. This shall apply, as appropriate, with regard to the persons specified in subparagraphs (a)(ii), (iii) and (iv) of Article 3 who ordinarily reside in Australia, provided that the applicable law of Australia or of a federal state or territory regarding statutory accident insurance provides for the payment of corresponding cash benefits to the persons specified in subparagraphs (a)(ii), (iii) and (iv) of Article 3, who ordinarily reside in the territory of the Federal Republic of Germany;
  - (b) the German legislation regarding cash benefits based on period of coverage completed under laws other than (German) federal law shall not be affected;
  - (c) the German legislation regarding cash benefits in respect of occupational accidents (including occupational diseases) for which the injured party was not insured under (German) federal law at the time the accident occurred shall not be affected;
  - (d) the German legislation regarding medical, occupational and supplementary rehabilitation benefits provided by a pension insurance institution shall not be affected. Australian legislation which provides for, applies to or affects disability support pension for a person who is not severely disabled shall not be affected;
  - (e) with regard to a pension under the German legislation governing reduced earning capacity, Article 5 of the Agreement shall apply to persons who ordinarily reside in Australia only if
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- entitlement exists when the labour market situation is disregarded; and
- (f) the German legislation providing for the suspension of claims under German pension insurance for persons who go abroad to evade criminal proceedings against them shall not be affected.
4. With reference to Article 6 of the Agreement:
- (a) Article 6 shall apply, as appropriate, to benefits which are granted at the discretion of an institution under the German legislation;
- (b) residence periods in Australia during which an employment or self employment was exercised shall be equivalent to the periods of compulsory contributions required under the German legislation for a claim to a pension;
- (c) where the German legislation provides that the entitlement to benefits requires the completion of certain periods of coverage within a specified period and where the legislation also provides that this period is extended by certain circumstances or periods of coverage, periods of coverage under the legislation of the other Contracting Party or comparable circumstances within the territory of the other Contracting Party shall be taken into account for such an extension. Comparable circumstances are periods during which disability or age pensions or benefits on account of sickness, unemployment or industrial accidents (with the exception of pensions) were paid under the Australian legislation as well as periods of child raising in Australia; and
- (d) mining enterprises within the meaning of subparagraph (b) of Article 6 are enterprises which mine minerals or similar substances and those which quarry stone and earth predominantly in underground operations.
5. With reference to Article 9 of the Agreement:  
Australian disability support pension under the Agreement shall not be payable for more than 26 weeks to a person who is not severely disabled while that person is outside Australia.
6. With reference to Article 15 of the Agreement:  
A person who:
- (i) is in receipt of a pension on account of reduced earning capacity from the Federal Republic of Germany at the time the Agreement enters into force;
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- (ii) ceases to be entitled to that pension because of age; and
- (iii) immediately qualifies for an age pension from the Federal Republic of Germany,

shall be deemed not to have claimed that age pension for the purposes of subparagraph 1(b) of Article 15.

7. With reference to Article 16 of the Agreement:

German court decisions and German institutions' notifications may be communicated direct to persons residing in Australia and may be sent by registered mail with acknowledgement of receipt. The first sentence shall also apply to decisions, notifications, and other documents which must be served, issued in connection with the implementation of the German law governing war victims' assistance and those laws which declare the first mentioned law to be applied accordingly.

8. In the implementation of the Agreement, the German legislation, to the extent that it contains more favourable provisions for persons who have suffered because of their political attitude or for reasons of their race, religion or ideology shall not be affected.

DONE at Canberra on this thirteenth day of December 2000 in two copies in the English and German languages, each text being equally authentic.

FOR AUSTRALIA:

FOR THE FEDERAL REPUBLIC OF  
GERMANY:

JOCELYN NEWMAN

Dr HORST BÄCHMANN and  
WALTER RIESTER

[Signatures omitted]

## **PART B**

**Agreement between Australia and the Federal Republic of Germany on  
Social Security to govern persons temporarily employed in the territory of  
the other State  
("Supplementary Agreement")**

Australia and the Federal Republic of Germany,

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**Desiring** to strengthen the existing friendly relations between the two States and resolved to expand their mutual cooperation in the field of social security and to facilitate the performance of work in the other State and in particular, to avoid that an employee is subject to the legislation of both States at the same time have agreed upon the following to supplement the Agreement on Social Security between Australia and the Federal Republic of Germany of 13 December 2000:

**Article 1**  
**Definitions**

1. For the purposes of this Supplementary Agreement,
  - (a) “territory” means,
    - as regards the Federal Republic of Germany,  
the territory of the Federal Republic of Germany;
    - as regards Australia,  
the territory of Australia;
  - (b) “legislation” means,
    - as regards the Federal Republic of Germany,  
the laws, regulations and other general legislative acts related to the branches of social security covered by the scope of this Supplementary Agreement (paragraph 1(a) of Article 2);
    - as regards Australia,  
the laws covered by the scope of this Supplementary Agreement (paragraph 1(b) of Article 2);
  - (c) “competent authority” means,
    - as regards the Federal Republic of Germany,  
the Federal Ministry of Labour and Social Affairs

*(Bundesministerium für Arbeit und Soziales);*

as regards Australia,

the Commissioner of Taxation or an authorised representative of the Commissioner;

(d) “institution” means,

as regards the Federal Republic of Germany,

the insurance institution responsible for the implementation of the legislation specified in paragraph 1 (a) of Article 2 and the body designated by the competent authority;

as regards Australia,

the Commissioner of Taxation or an authorised representative of the Commissioner.

2. Any term not defined in paragraph 1 has the meaning assigned to it in the applicable legislation.

## **Article 2**

### **Legislative scope**

1. This Supplementary Agreement shall apply to the following legislation:

(a) as regards the Federal Republic of Germany,  
the legislation concerning the Statutory Pension Insurance;

(b) as regards Australia,  
the legislation concerning the Superannuation Guarantee.

2. This Supplementary Agreement shall also apply to laws, regulations and other general legislative acts in so far as they amend, supplement or replace the legislation of the Contracting States.

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**Article 3****Personal scope**

This Supplementary Agreement shall apply in respect of all persons who are ordinarily resident or employed in the territory of either Contracting State.

**Article 4****Applicable legislation for employees**

1. Unless otherwise provided in this Supplementary Agreement, an employee shall be subject to the legislation of the Contracting State in whose territory he is actually performing the work.
2. Paragraph 1 shall apply analogously to self-employed persons.

**Article 5****Applicable legislation in case of detachment**

When an employee who is employed in one Contracting State is sent by his employer, who ordinarily engages in considerable business activities in the sending State, to the territory of the other Contracting State in the context of that employment to perform services there for this employer that are known to be time-limited beforehand, then, provided that the employee concerned continues to be subject to the legislation of the first Contracting State in relation to that employment, only the legislation of the first Contracting State shall continue to apply with regard to that employment during the first forty-eight calendar months as though the employee were still employed in the territory of the first Contracting State. The period of forty-eight calendar months shall start on the first day of the calendar month in which the employee takes up employment in the territory of the other Contracting State.

**Article 6**

**Applicable legislation on board sea-going vessels**

This Supplementary Agreement shall not affect the application of the national legislation of the two Contracting States for persons who work on board a sea-going vessel.

**Article 7**

**Applicable legislation for persons employed with diplomatic missions or consular posts**

Nothing in this Supplementary Agreement shall affect the application of the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or of the Vienna Convention on Consular Relations of 24 April 1963.

**Article 8**

**Exceptions from the provisions on the applicable legislation**

1. At the joint request of the employee and the employer or at the request of a self-employed person, the competent authorities of the Contracting States or the bodies designated by them may, by mutual agreement, derogate from the provisions of this Supplementary Agreement in relation to the applicable legislation provided that the person concerned continues to be subject or will be subjected to the legislation of either Contracting State. In this regard, the nature and the circumstances of the employment shall be taken into account.
2. The application shall be filed in the Contracting State whose legislation is to apply.

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**Article 9****Administrative assistance**

The competent authorities and the institutions of the Contracting States shall provide mutual assistance to each other in the implementation of this Supplementary Agreement as if they were applying their own legislation. The assistance shall be provided free of charge.

**Article 10****Languages of communication, service and legalisation**

1. In implementing this Supplementary Agreement, the competent authorities and the institutions of the Contracting States may communicate in their respective official languages directly with each other as well as with persons concerned and their representatives. Documents may be served on a person who is staying in the territory of the other Contracting State directly and by registered mail with acknowledgment of receipt.
2. Documents, especially applications and certifications, may not be rejected because they are written in the official language of the other Contracting State.
3. Documents, especially certifications, to be submitted in application of this Supplementary Agreement shall not require legalisation or any other similar formality.

**Article 11****Data protection**

1. Where personal data is transmitted under this Supplementary Agreement, the following shall apply whilst the laws applicable to each Contracting State shall be duly observed:

- (a) The data may, for the purposes of implementing this Supplementary Agreement and the legislation to which it applies, be transmitted to the competent bodies in the receiving State. The receiving body may only use the data for these purposes. The passing on of this data to other bodies within the receiving State or the use of this data in the receiving State for other purposes is permissible in the framework of the law of the receiving State provided this serves social security purposes including related judicial proceedings.

However, the foregoing shall not prevent the passing on of that data in cases where doing so is mandatory under the laws and regulations of the receiving State for the interests protected by criminal law or for the purposes of taxation. In all other cases the passing on to other bodies shall be only permissible upon prior consent of the transmitting body.

- (b) In individual cases the recipient of the data shall, at the request of the transmitting body, inform that body of the use of the transmitted data and the results obtained thereof.
- (c) The transmitting body shall ensure that the data to be transmitted is correct and that its transmission is necessary and proportionate with regard to the purposes pursued with the transmission of the data. In this context, any prohibition to transmit data under the respective national law has to be respected. Data shall not be transmitted if the transmitting body reasonably assumes that doing so would violate the purpose of a national law or injure any interests of the person concerned that are worthy of protection. If it becomes evident that incorrect data or data the transmission of which was not permissible under the law of the transmitting State has been transmitted, the receiving body has to be immediately notified of this fact. The receiving body is obliged to correct or delete this data without delay.
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- (d) Upon request, the person concerned shall be informed of any personal data transmitted and the intended use of that data. In all other cases, the right of the person concerned to receive information about any personal data held in relation to that person shall be determined by the national law of the Contracting State whose body requests the information.
  - (e) Transmitted personal data shall be deleted as soon as it is no longer required for the purpose for which it was transmitted, and if there is no reason to assume that social security interests of the person concerned which are worthy of protection will be affected by the deletion of the data.
  - (f) The transmitting and the receiving bodies shall record the transmission and the receipt of personal data.
  - (g) The transmitting and the receiving bodies shall protect transmitted personal data effectively against unauthorized access, unauthorized modification and unauthorized disclosure.
2. The provisions of paragraph 1 shall apply analogously to business and industrial secrets.

## **Article 12**

### **Implementing arrangements**

1. The Governments of the Contracting States or the competent authorities may conclude arrangements necessary for the implementation of this Supplementary Agreement. The competent authorities shall inform each other of any amendments and additions to their legislation which is covered by the scope of this Supplementary Agreement (paragraph 1 of Article 2).

2. The liaison agencies hereby set up for the implementation of this Supplementary Agreement are:

- (a) in the Federal Republic of Germany,  
German Liaison Agency Health Insurance – International (*Deutsche Verbindungsstelle Krankenversicherung – Ausland (DVKA), Bonn*;
- (b) in Australia,  
the Australian Taxation Office.

3. The liaison agencies may, within their respective areas of jurisdiction and with the participation of the competent authorities, agree upon the administrative measures necessary and appropriate for the implementation of this Supplementary Agreement. However, the provisions of paragraph 1 shall remain unaffected.

### **Article 13**

#### **Settlement of disputes**

- 1. Disagreements between the two Contracting States regarding the interpretation or application of this Supplementary Agreement shall be settled, as far as possible, by the competent authorities.
- 2. If a disagreement cannot be settled in this way, it shall, if necessary, be settled by a joint ad hoc commission set up by mutual agreement.

### **Article 14**

#### **Concluding provision**

This Supplementary Agreement shall not affect the Agreement on Social Security between the Federal Republic of Germany and Australia of 13 December 2000.



**Article 15**  
**Concluding Protocol**

The attached Concluding Protocol shall form an integral part of this Supplementary Agreement.

**Article 16**  
**Ratification and entry into force**

1. This Supplementary Agreement shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible in Canberra.
2. This Supplementary Agreement shall enter into force on the first day of the second month following the month in which the instruments of ratification have been exchanged.

**Article 17**  
**Duration of the Supplementary Agreement**

1. This Supplementary Agreement shall be concluded for an indefinite period of time. Either Contracting State may terminate it through diplomatic channels at the end of the calendar year giving three months' written notice. The relevant date for calculating the period of notice shall be the day on which the notice is received by the other Contracting State.
2. This Supplementary Agreement shall also cease to be in force if the Agreement on Social Security between the Federal Republic of Germany and Australia of 13 December 2000 ceases to be in force.
3. In the event that this Supplementary Agreement shall cease to be in force in accordance with paragraph 1 or 2, the Supplementary Agreement shall continue to have effect in relation to all persons who immediately before the date of termination, are subject only to the legislation of one Contracting State by virtue

of Article 5 or 8 provided the person continues to meet the corresponding requirements.

**In witness whereof**, the undersigned, being duly authorized thereto, have signed this Supplementary Agreement.

Done at Berlin on the ninth day of February 2007, in duplicate in the English and German languages, each text being equally authentic.

**For the Government of  
Australia:**

**For the Government of the  
Federal Republic of Germany:**

**Concluding Protocol**

**to**

**the Supplementary Agreement between Australia and the Federal Republic of Germany on Social Security to govern persons temporarily employed in the territory of the other State**

At the time of signing the Supplementary Agreement between Australia and the Federal Republic of Germany on Social Security to govern persons temporarily employed in the territory of the other State concluded this day, the plenipotentiaries of both Contracting States stated that they are in agreement on the following points:

1. With reference to paragraph 1(a) of Article 2 of the Supplementary Agreement:

(a) If, by virtue of Articles 4, 5 and 8 of the Supplementary Agreement, German legislation applies to a person working in the territory of Australia, the German laws and regulations in the field of employment promotion shall also be applicable to this person and his employer in the same way.

(b) If, by virtue of Articles 4, 5 and 8 of the Supplementary Agreement, Australian legislation applies to a person working in the territory of the Federal Republic of Germany, the German laws and regulations in the field of employment promotion shall not be applicable to this person and his employer.

2. With reference to Articles 4 to 8 of the Supplementary Agreement:

Persons to whom German legislation applies shall also include those who, under German legislation, are insurance-free or exempted from insurance.

3. With reference to Article 5 of the Supplementary Agreement:

(a) It shall not be considered a case of detachment to the other Contracting State in particular when:

- the work of the detached employee does not correspond to the employer's business operations in the sending State;
- the employer of the detached employee ordinarily does not engage in considerable business activities in the sending State;
- the person recruited for the purpose of detachment is not ordinarily resident in the sending State at that time;
- this constitutes illegal labour leasing under German law; or
- the employee has worked in the sending State for less than two months after termination of the last period of detachment.

- (b) For persons who are already detached on the day of entry into force of the Supplementary Agreement the specified period shall begin on that date.
- (c) Article 5 of the Supplementary Agreement shall apply analogously to a self-employed person who ordinarily engages in considerable business activities in the territory of the Federal Republic of Germany if that person temporarily works in the territory of Australia on a time limited basis. In this situation only the legislation of the Federal Republic of Germany shall continue to apply with regard to that work during the first forty-eight calendar months as though the self-employed person were still working in the territory of the Federal Republic of Germany. The period of forty-eight calendar months shall start on the first day of the calendar month in which the self-employed person takes up work in the territory of Australia. Item 3 (b) shall apply analogously.

4. With reference to Article 8 of the Supplementary Agreement:

- (a) Where, in application of Article 8 of the Supplementary Agreement, German legislation applies to a person, the person shall be deemed to be employed or to work at the place where he or she was last employed or working; however, a different arrangement resulting from the previous application of Article 5 of the Supplementary Agreement shall continue to be effective. When he or she was previously not employed or working in the territory of the Federal Republic of Germany, he or she shall be deemed to be employed or working at the place where the competent German authority has its seat.

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(b) Article 8 of the Supplementary Agreement shall apply in particular to an employee of an enterprise located in one Contracting State who is temporarily employed in the other Contracting State by an associated enterprise and, during this period, receives remuneration in the state of employment at the expense of the associated enterprise.

5. With reference to paragraphs 1(a) and (e) of Article 11 of the Supplementary Agreement:

With regard to Australia, the term “social security” shall also include the Superannuation Guarantee.

**ARRANGEMENT FOR THE IMPLEMENTATION OF THE  
SUPPLEMENTARY AGREEMENT OF 9 FEBRUARY 2007 BETWEEN  
AUSTRALIA AND FEDERAL REPUBLIC OF GERMANY ON SOCIAL  
SECURITY TO GOVERN PERSONS TEMPORARILY EMPLOYED IN  
THE TERRITORY OF THE OTHER STATE**

The Government of Australia and the Government of the Federal Republic of Germany, on the basis of paragraph 1 of Article 12 of the Agreement of 9 February 2007 between Australia and the Federal Republic of Germany on Social Security to govern persons temporarily employed in the territory of the other State,

**hereinafter** referred to as the “Supplementary Agreement”

**have** agreed as follows:

**Part I  
General provisions**

**Article 1  
Definitions**

Where terms which appear in the Supplementary Agreement are used in this Arrangement, they shall have the same meaning as they have in the Supplementary Agreement.

**Article 2**  
**Duty to inform**

The liaison agencies set up pursuant to paragraph 2 of Article 12 of the Supplementary Agreement and the bodies designated by the competent authorities pursuant to Article 8 of the Supplementary Agreement shall, within their respective areas of jurisdiction, be responsible for generally informing the persons concerned about the Supplementary Agreement.

**Article 3**  
**Duty to communicate facts**

1. The bodies referred to in paragraph 2 of Article 12, in Article 8 and in Article 9 of the Supplementary Agreement shall, within their respective areas of jurisdiction, communicate to each other and to the persons concerned the facts and transmit the evidence necessary to secure the rights and obligations that follow from the legislation specified in paragraph 1 of Article 2 of the Supplementary Agreement and the Supplementary Agreement and this Arrangement.
2. Where a person is obliged, under the legislation specified in paragraph 1 of Article 2 of the Supplementary Agreement, under the Supplementary Agreement or under this Arrangement, to communicate to the institution or another body, certain facts, this obligation shall also apply with regard to corresponding facts obtaining in the territory of the other Contracting State or under its legislation. This shall also apply if a person has to transmit certain evidence.
3. Article 11 of the Supplementary Agreement shall also be applied to the duty to communicate facts under paragraphs 1 and 2.

**Article 4**  
**Certificate on the applicable legislation**

1. In the circumstances described in Articles 5 and 8 of the Supplementary Agreement, the competent authority or the competent body of the Contracting State whose legislation is applicable shall, on request, issue a certificate stating, in respect of the employment in question, that this legislation is applicable to the employee and the employer. A specific period of validity must be given on the certificate.

2. Where German legislation is applicable, the certificate shall, in the circumstances described in Article 5 of the Supplementary Agreement, be issued by the health insurance institution to which the pension contributions are paid, and by the *Deutsche Rentenversicherung Bund*, Berlin, in any other case. In the circumstances described in Article 8 of the Supplementary Agreement, the *Deutsche Verbindungsstelle Krankenversicherung - Ausland* (DVKA) - (German Liaison Agency Health Insurance- International), Bonn, shall issue the certificate.

3. Where Australian legislation is applicable, the certificate shall be issued by the Commissioner of Taxation, or an authorised representative of the Commissioner.

4. If there are doubts as to whether the legislation referred to in the certificate is actually applicable, or if the facts certified therein differ from the actual circumstances, the body that has issued the certificate shall, on request, review and correct it, if necessary.

## **Part II Final Provision**

### **Article 5 Entry into force and duration of the Arrangement**

1. This Arrangement shall enter into force on the date on which both Governments have informed each other that the national requirements for such entry into force have been fulfilled. The relevant date shall be the day on which the last notification is received.

2. This Arrangement is to be applied from the date of the entry into force of the Supplementary Agreement and shall have the same period of duration.

Done at Berlin on the ninth February 2007 in duplicate in the English and German languages, each text being equally authentic.

**For the Government of  
Australia:**

**For the Government of the  
Federal Republic of Germany:**



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## Schedule 15—Chile

Note: See section 5.

### AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF CHILE

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

Wishing to strengthen the existing friendly relations between the two countries, and resolved to cooperate in the field of social security and to eliminate double coverage for seconded workers; have agreed as follows:

#### PART 1

#### GENERAL PROVISIONS

#### ARTICLE 1

##### Definitions

1. In this Agreement, unless the context otherwise requires:

(a) **"benefit"** means,

in relation to a Party, any of the benefits, pensions or allowances listed in paragraph 1 of Article 2, and includes any amount, increase or supplement that is payable in addition to that benefit, pension or allowance to a person who is qualified for that amount, increase or supplement under the legislation of that Party but, for Australia, does not include any benefit, pension or allowance under the Australian law concerning superannuation specified in subparagraph 1(a)(ii) of Article 2;

(b) **"Competent Authority"** means,

in relation to Australia:

the Secretary of the Department responsible for the legislation 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 (who is responsible for the legislation in subparagraph 1(a)(ii) of Article 2) or an authorised representative of the Commissioner, and

in relation to the Republic of Chile:  
the Minister of Labour and Social Security;

(c) **"Competent Institution"** means,

in relation to Australia:  
the Institution or Agency which has the task of implementing the legislation in Article 2, and

in relation to the Republic of Chile:  
the Institutions responsible for applying the legislation specified in Article 2;

(d) **"legislation"** means,

in relation to Australia:  
the law 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 law specified in subparagraph 1(a)(ii) of Article 2, and

in relation to the Republic of Chile:  
the laws, regulations and other provisions relating to benefits specified in subparagraph 1(b) of Article 2;

(e) **"period of Australian working life residence"** means, in relation to a person, the period defined as such under the legislation of Australia but does not include any period deemed pursuant to Article 15 to be a period in which that person was an Australian resident;

(f) **"period of insurance"** means, in relation to Chile, any period of contribution, as well as any other period considered as its

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equivalent by the Chilean legislation that forms the basis to acquire the right to a Chilean benefit;

- (g) **"superannuation"** means a system under Australian law where by employers are required to make contributions to an approved fund in order to provide for the employee's retirement, or at the death of this employee;
- (h) **"territory"** means,
  - in relation to Australia:  
Australia as defined in the legislation of Australia; and
  - in relation to the Republic of Chile:  
the scope of application of the Political Constitution of the Republic of Chile;
- (i) **"entity"** means a related entity of an employer for the purposes of Article 8, if the entity and the employer are members of the same wholly or majority owned group.

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

## ARTICLE 2

### Legislative Scope

- 1. Subject to paragraph 2, this Agreement shall apply to the following legislation and to any legislation that subsequently amends, supplements, supersedes or replaces it:
  - (a) in relation to Australia:
    - (i) the Acts and regulations forming the social security law in so far as the law provides for, applies to or affects the following benefits:
      - A) age pension; and
      - B) disability support pension for the severely disabled;

- (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*);
- and
- (b) in relation to the Republic of Chile, the legislation that governs:
    - (i) the *Sistema de Pensiones* for old-age, invalidity and survivors which is based on private individuals' self-financing;
    - (ii) the old-age, invalidity and survivors' pension schemes which are administered by the *Instituto de Normalización Previsional*; and
    - (iii) for the purpose provided in Article 21, the health care benefits regime.
2. This Agreement shall apply to laws or regulations which extend the existing legislation to other categories of beneficiaries only if both Parties so agree in a Protocol to this Agreement.
3. Notwithstanding the provisions of paragraph 1, the legislation of Australia and of the Republic of Chile shall not include treaties or other international agreements concluded between it and a third State.

### ARTICLE 3

#### Personal Scope

This Agreement shall apply to any person who:

- (a) is or has been an Australian resident or a resident of the Republic of Chile;
  - (b) is or has been subject to the legislation of the Republic of Chile; or
  - (c) derives his or her rights from persons described above.
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#### **ARTICLE 4**

##### **Equality of Treatment**

Subject to this Agreement and unless otherwise provided, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the social security law of Australia or the legislation of Chile or by virtue of this Agreement.

#### **PART II**

##### **PROVISIONS RELATING TO APPLICABLE LEGISLATION**

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

#### **ARTICLE 5**

##### **Application of the Part**

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 work of the employee or remuneration paid for the work.

#### **ARTICLE 6**

##### **General Rule**

Unless otherwise provided in Articles 7, 8, 9 or 10 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 for the work be subject only to the legislation of that Party.

**ARTICLE 7**

**Diplomatic and Consular Relations**

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

**ARTICLE 8**

**Workers Sent from One Territory to the Other**

1. If an employee:
  - (a) is covered by the legislation of one Party ('the first Party');
  - (b) was sent, whether before, on or after the commencement of this Part, 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) a period of 4 years from the time the employee was sent to work in the territory of the second Party has not elapsed; and
  - (e) 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 after commencement of this Agreement and the remuneration paid for that work. This is also applicable to an entity.
2. The competent authorities may by agreement in writing extend the period of 4 years referred to in sub-paragraph 1(d) of this Article for any employee by up to 2 years.

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**ARTICLE 9**

**Workers in the Service of the Government**

If an employee:

- (a) is covered by the legislation of one Party ('the first Party');
- (b) was sent, whether before, on or after the commencement of this Part, 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 after commencement of this Agreement and the remuneration paid for that work. For the purposes of this Article, "Government" includes in relation to Australia a political subdivision or local authority of Australia.

**ARTICLE 10**

**Workers on Ships and Aircraft**

1. If an employee is working in the employment of an employer on a ship or aircraft in international traffic, the employer and employee shall in respect of the employment and the remuneration paid for that employment be subject only to the legislation of the Party of which the employee is resident.
2. For the purposes of this Article the Competent Authorities will be able to by means of written agreement establish that an employee on a ship or aircraft in international traffic will be subject to the legislation of a specified Party.

## ARTICLE 11

### Exception Agreements

The Competent Authorities from both Parties will be able to establish, by common accord:

- (a) exceptions to what is stated in Articles 5 through to 10 in favour of determined persons or groups of people, and
- (b) which Party's legislation will apply to those persons or groups of people.

## PART III

### PROVISIONS RELATING TO BENEFITS

## ARTICLE 12

### Export and Payment of Benefits

1. Benefits of a Party which are payable by virtue of this Agreement shall be payable in the territory of the other Party.
2. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territory of both Parties.
3. If in the future, the legislation of Australia provides for a time limit on the continued qualification for an Australian benefit for a person who leaves Australia, then the same time limit shall apply to that benefit for a person who leaves the Republic of Chile.
4. Benefits of a Party shall be payable by that Party on request to the beneficiary in his or her country of residence.
5. If a Party imposes legal or administrative restrictions on the transfer of currency outside of its territory, that Party shall implement measures as soon as practicable to guarantee payment and delivery of benefits payable under the legislation of that Party or by virtue of this Agreement. The measures shall operate retrospectively to the time when the restrictions were imposed.



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6. Where a Party has imposed legal or administrative restrictions on the transfer of its currency outside of its territory as mentioned in paragraph 5, it shall inform the other Party of those restrictions within one calendar month of their imposition and shall implement the measures described in that paragraph within 6 months of the imposition of the restrictions. A failure to comply with either requirement may be treated by the other Party as a material breach of the Agreement for the purposes of Article 60 of the Vienna Convention on the Law of Treaties.
  7. Benefits paid by a Party outside its territory shall be paid in the currency of the United States of America or another internationally convertible currency.
  8. A benefit payable by a Party by virtue of this Agreement or under its legislation shall be paid by that Party without deduction of administrative fees by the Government or the corresponding Competent Institution for processing and paying that benefit, whether the person qualifying for the benefit is in the territory of the other Party or in a third country.
  9. In relation to Australia, the provisions of this Article shall not apply to rent assistance, pharmaceutical allowance or any other allowance payable only within Australia or during a temporary period of absence, according to the social security laws of Australia.

### **ARTICLE 13**

#### **Medical Examinations**

1. For the purposes of assessing a person's degree of disability or the person's ability to work where this is relevant for a claim for a benefit or for continued payment of a benefit, the Competent Institution of a Party shall apply the legislation of that Party.
2. To assist in the assessment referred to in paragraph 1, the Competent Institution of the Party in whose territory the person resides shall, at the request of the Competent Institution of the other Party forward to the latter free of charge any existing relevant medical reports and documents that it may have available.
3. In the case that the Competent Institution in Australia deems it necessary that additional medical examinations be undertaken in Chile, which is

exclusively in Australia's interest, these will be financed and repaid by that institution.

4. On the other hand, if the Chilean Competent Institution deems it necessary that additional medical examinations intended for its sole use be performed in Australia, they shall be financed in accordance with Chilean laws. When the examinations relate to workers affiliated with the *Sistema de Capitalización Individual*, the Chilean Competent Institution shall reimburse the full cost of the examinations to the Australian Competent Institution and shall charge the interested person for the percentage for which he or she is responsible. Nevertheless, the Chilean Competent Institution may deduct the cost for which the interested person is responsible from any pensions owed, or from the balance in the person's individual capitalization account.
5. If the new examinations are requested in connection with an appeal filed against a disability decision issued in Chile, the cost of these examinations shall be financed in the manner described in the preceding paragraph; however, if the appeal has been filed by a Chilean Competent Institution or insurance company such costs shall be financed by the appellant.

#### **PART IV**

#### **AUSTRALIAN BENEFITS**

#### **ARTICLE 14**

#### **Residence or presence in the Republic of Chile or a Third State**

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 day on which the claim is lodged, but:

- (a) is an Australian resident or a resident of the Republic of Chile or a third State with which Australia has concluded an agreement on social security which includes provision for co-operation in the assessment and determination of claims for benefits and which includes that category of benefit; and
- (b) is in Australia, or the territory of the Republic of Chile or that third State,

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that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that day.

## **ARTICLE 15**

### **Totalisation for 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 that benefit; and
  - (b) a period of Australian working life residence equal to or greater than the period referred to in paragraph 3; and
  - (c) a period of insurance in Chile;then, for the purposes of the claim for that Australian benefit, that period of insurance in Chile 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 purpose of this Article, where a person has a period as an Australian resident and a period of insurance in Chile, any period of overlap shall be taken into account once only by Australia as a period as an Australian resident.
3. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:
  - (a) for the purpose of an Australian benefit claimed by a person residing outside Australia, the minimum period required shall be 12 months, of which at least 6 months must be continuous; and
  - (b) for the purpose of an Australian benefit claimed by an Australian resident, no minimum period shall be required.

## ARTICLE 16

### Calculation of Australian Benefits

1. Subject to paragraph 2, where an Australian benefit is payable by virtue of this Agreement to a person outside Australia, the rate of that benefit shall be determined by:
  - (a) calculating that person's income according to the legislation of Australia, including, subject to the provisions of Article 17, any Chilean benefit 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 sub-paragraph (a); and
  - (c) proportionalising, if applicable, the amount of benefit calculated under sub-paragraph (b) according to the person's period of Australian working life residence, by multiplying that amount by the person's residence factor as specified in the legislation of Australia.
2. The provisions of paragraph 1 will continue to apply for 26 weeks when a person temporarily comes to Australia.
3. Subject to the provisions of paragraphs 4 and 5, where an Australian benefit is payable by virtue of this Agreement to a person who is in Australia, and who does not have 10 years Australian residence, the rate of that benefit shall be determined by:
  - (a) subject to the provisions of Article 17, deducting the amount of the Chilean benefit which that person is entitled to receive from the maximum rate of Australian benefit;
  - (b) calculating that person's income according to the legislation of Australia but disregarding in that calculation the Chilean benefit which that person or the partner of that person is entitled to receive, if applicable; and

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- (c) applying to the remaining benefit obtained under subparagraph (a) the relevant rate calculator set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph (b).
4. The provisions of paragraph 3 will continue to apply for 26 weeks when a person temporarily leaves Australia.
  5. Where a member of a couple is, or both that person and his or her partner are in receipt of a Chilean benefit or benefits, each of them shall be deemed, for the purpose of paragraphs 1 and 3 and for the legislation of Australia, to be in receipt of half of either the amount of that benefit or the total of both those benefits as the case may be.
  6. For the purposes of paragraph 1 a benefit, in relation to Australia, does not include rent assistance, pharmaceutical allowance or any other allowance payable only within Australia or during a temporary period of absence according to the social security laws of Australia.

#### ARTICLE 17

##### **Exclusion of Chile's Mercy Payments from the Australian income test**

1. Where a person receives or is entitled to receive a benefit under the social security laws of Australia:
  - (a) monthly payments made under Chilean Law number 19.123 (mercy payments); and
  - (b) periodical monthly mercy payments made under Chilean Law number 19.234 and its amendments,shall not be included for the purpose of assessing the rate of that Australian benefit.
2. For the purposes of this Article only, the term *benefit* shall include all social security payments under the social security laws of Australia.

**PART V**

**CHILEAN BENEFITS**

**ARTICLE 18**

**Totalisation for Chilean Benefits**

1. When under Chilean legislation the acquisition, maintenance or re-establishment of entitlement to old age, invalidity or survivors' benefits requires the completion of certain periods of insurance, a period of Australian working life residence shall be deemed where necessary to be a period of insurance completed in the Republic of Chile.
2. Where a period of insurance completed in the Republic of Chile coincides with a period of Australian working life residence, such a period shall be taken into account once only as a period of insurance.
3. When it is not possible to determine the time when specific periods of insurance were completed under Chilean legislation, it shall be presumed that such periods do not coincide with periods of Australian working life residence.

**ARTICLE 19**

**Old-Age, Invalidity and Survivors' Pensions**

1. The affiliates to a Managed Pension Fund shall finance their pensions in the Republic of Chile with the balance accumulated in their individual capitalisation account. In case such a balance is insufficient to finance a pension at an amount which is at least equal to that of the minimum pension guaranteed by the State, the affiliate has the right, in accordance with Article 18, to aggregate his/her periods of insurance in order to qualify for the minimum old age or invalidity pension. Survivors' pension claimants shall have the same right.
2. For the purposes of determining the fulfilment of the requirements as established in legal Chilean provisions to obtain anticipated pensions under the *Sistema de Capitalización Individual*, the affiliates who have obtained a pension according to Australian legislation shall be considered as pensioners of the pension system as indicated in paragraph 4.

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3. Persons affiliated to the *Sistema de Capitalización Individual* in the Republic of Chile may pay voluntary contributions to that scheme, while self-employed during any period of Australian working life residence. Persons who choose to avail themselves of this option shall be exempted from the obligation to contribute to the health care system of the Republic of Chile.
  4. Likewise, the affiliates of the pension system administered by the *Instituto de Normalización Previsional* shall have the right to aggregate periods of insurance, in accordance with the provisions of Article 18, to qualify for the benefits provided for in the legislation applicable to them.
  5. To qualify for pensions in accordance with the legislation regulating social security schemes managed by the *Instituto de Normalización Previsional*, persons who receive an Australian pension or who have Australian working life residence in accordance with the social security law of Australia, will be considered as current contributors to the relevant social security scheme in Chile.
  6. If a person has insurance periods under Chilean legislation of less than one year, and if, by taking into account only such periods, he or she does not qualify for any benefits under that legislation, the Chilean Competent Institution shall not be obliged to grant any benefits to that person with respect to that period in accordance with this Agreement.

## ARTICLE 20

### Calculation of Chilean Benefits

1. In the cases envisaged in paragraphs 1 and 4 of the preceding Article, the Competent Institution shall determine the right to the Chilean benefit as if all the periods of insurance or periods of Australian working life residence, as the case may be, had been completed under its own legislation and, for the purpose of payment of the benefit, it shall calculate the portion payable by it proportionally between the periods of insurance completed exclusively under such legislation and the total years required under the relevant Chilean legislation.

2. The determination of the right to minimum pensions paid by the *Instituto de Normalización Previsional* will be done in the manner provided in the previous paragraph and, the rate of the payment shall be calculated on the basis of the existing proportion between the periods of insurance completed exclusively in Chile and the total of the periods of insurance in Chile and periods of Australian working life residence. If the sum of the periods mentioned are greater than the period required by Chilean legislation to acquire the right to a full pension, such excess periods will not be taken into account for this calculation.

#### ARTICLE 21

##### Health Care Benefits

Persons who are receiving a pension according to Australian legislation or by virtue of this Agreement and who reside in the Republic of Chile shall have the right to register with the Chilean Health Care Insurance system under the same conditions as Chilean pensioners.

#### PART VI

#### TRANSITIONAL AND FINAL PROVISIONS

#### ARTICLE 22

##### Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or according to the social security law of Australia or the legislation of Chile, may be lodged in the territory of the other Party, in accordance with the Administrative Arrangements made pursuant to Article 25, at any time after the Agreement has come into force.
2. For the purpose of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1, is lodged with the Competent Authority, Competent Institution or liaison body of one Party, shall be considered as the date of lodgement of that document with the Competent Authority, Competent Institution or liaison body of the other Party. The Competent Institution to which a claim, notice or appeal is lodged shall refer it without delay to the Competent Institution of the other Party.



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3. The reference in this Article to an appeal is an appeal that may be made to an administrative body that has been established by, or for the purposes of, the legislation of either Party.
  4. Any exemption granted in the territory of one of the Parties from stamp duty, notarial or registration fees in respect of certificates and documents required to be submitted to the Competent Authorities, Competent Institutions or liaison bodies in the same territory shall also apply to the certificates and documents which, for the purpose of this Agreement, have to be submitted to the Competent Authorities, Competent Institutions or liaison bodies of the other Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

### **ARTICLE 23**

#### **Recovery of Overpayments**

1. Where:
  - (a) an amount of arrears of benefit is paid or payable by the Republic of Chile; and
  - (b) for all or part of the relevant period, Australia has paid to that person a benefit under its legislation; and
  - (c) the amount of the benefit paid by Australia would have been reduced had the benefit paid or payable by the Republic of Chile been paid during that period;then
  - (d) the amount that would not have been paid by Australia 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 Australia and may be recovered by Australia; and
  - (e) Australia may recover all or part of that debt under the provisions of the Acts forming the social security law of Australia.

2. For Australia, a reference in paragraph 1 to a benefit means a pension, benefit or allowance payable under the social security laws of Australia.

#### ARTICLE 24

##### Exchange of Information and Mutual Assistance

1. The Competent Authorities, Competent Institutions and liaison bodies responsible for the application of this Agreement, to the extent permitted by the legislation they administer, shall:
- (a) subject to paragraphs 3 and 4, communicate to each other any information necessary for the application of this Agreement;
  - (b) lend their good offices and furnish 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 or under the social security laws of either Party as if the matter involved the application of their own legislation;
  - (c) communicate to each other, as soon as possible, all information about the measures taken by them for the application of the Agreement;
  - (d) at the request of one to another, assist each other in relation to agreements on social security entered into by either of the Parties with third States, only to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 25; and
  - (e) advise each other of any laws which amend, supplement, supersede or replace their respective legislations and which are relevant to the operation of this Agreement promptly after those laws are made.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any Administrative Arrangements made in accordance with Article 25.

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3. Unless disclosure is required under the legislation of a Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority, Competent Institution or liaison body of that Party is confidential and shall only be used for purposes of implementing this Agreement and the social security laws of either Party. Where disclosure to a third party is required under the legislation or other laws of a Party, the first Party may withhold that information from the other Party.
  4. In no case shall the provisions of this Article be construed so as to impose on the Competent Authority, Competent Institution or liaison body 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. Communications between Competent Authorities, Competent Institutions, liaison bodies and persons to whom this Agreement applies may be made in any of the official languages of the Parties.
  6. The diplomatic and consular authorities of the Parties may represent, without a special Government order, their own nationals to the Competent Authorities, Competent Institutions and liaison bodies in matters of social security of the other Party, at the express request of the interested person only to the effect of facilitating any procedure or the granting of a benefit, not including the payment to such an authority. In regard to the *Sistema de Capitalización Individual*, no representation will be accepted on the part of the authority to the effect that, or in regard to, the choice of the type of pension for which the member may opt.

## **ARTICLE 25**

### **Administrative Arrangements**

1. The Competent Authorities of the Parties shall make whatever Administrative Arrangements are necessary in order to implement this Agreement.

2. The Competent Authorities shall appoint liaison bodies in the Administrative Arrangement.

## **ARTICLE 26**

### **Recognition of Prior Periods and Events**

1. In determining the qualification for a benefit of a person or the amount of benefit payable to a person, by virtue of this Agreement, any events or facts and any period:
  - (a) as an Australian resident;
  - (b) of Australian working life residence; and
  - (c) of insurance

shall, subject to this Agreement, be taken into account in so far as those periods, events or facts are applicable in regard to that person regardless of when they occurred or were accumulated.

2. No provision of this Agreement shall confer on a person any right to receive payment of a benefit in relation to a period before the date on which this Agreement comes into force.

## **ARTICLE 27**

### **Resolution of Difficulties**

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.

## **ARTICLE 28**

### **Review of Agreement**

Where a Party requests the other to meet to review this Agreement the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise agree, their meeting shall be held in the territory of the Party to which the request was made.

**ARTICLE 29**

**Entry into Force and Termination**

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

2. Subject to paragraph 3, this Agreement shall remain in force indefinitely or until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating the intention of the other Party to terminate 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 its benefits; or
  - (b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, its 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 Article 8 or 9 of Part II of the Agreement provided that the person 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 duplicate at Canberra this twenty fifth day of March two thousand and three in the English and Spanish languages, each text being equally authentic.

FOR AUSTRALIA

Senator the Honourable Amanda  
Vanstone  
Minister for Family and Community  
Services

FOR THE REPUBLIC OF CHILE

His Excellency Cristobal Valdez  
Ambassador

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## Schedule 16—Croatia

Note: See section 5.

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

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

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

Resolved to cooperate in the field of social security;

Have agreed as follows:

**PART I—GENERAL PROVISIONS**

**ARTICLE 1**

**Definitions**

1. In this Agreement the terms below have the following meanings:
  - (a) **"Croatia"** means the Republic of Croatia;
  - (b) **"benefit"** means, in relation to a Party, any of the benefits, pensions or allowances listed in paragraph 1 of Article 2, and includes any amount, increase or supplement that is payable in addition to that benefit, pension or allowance to a person who is qualified for that amount, increase or supplement under the legislation of that Party, but for Australia does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;

(c) **"Competent Authority"** means,

in relation to Australia:

the Secretary of the Department responsible for the application of the legislation in subparagraph 1(a)(i) of Article 2 of this Agreement except in relation to the application of Part III 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 Croatia:

the Ministry of Labour and Social Welfare;

(d) **"Competent Institution"** means,

in relation to Australia:

the institution or agency which has the task of implementing the applicable Australian legislation, and

in relation to Croatia:

the Croatian Pension Insurance Institute;

(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 III of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the law specified in subparagraph 1(a)(ii) of Article 2; and

in relation to Croatia:

laws, regulations and other provisions relating to benefits specified in sub-paragraph 1(b) of Article 2;



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- (f) **"period of Australian working life residence"** means, in relation to a person, the period defined as such under 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;
- (g) **"period of insurance"** means any period of contribution and any other period taken into account under Croatian legislation;
- (h) **"territory"** means,
- in relation to Australia:
- Australia as defined in the legislation of Australia; and
- in relation to Croatia:
- the territory of the Republic of Croatia;
- (i) **"employee"** means, in relation to Croatia, a worker, as defined by the legislation stated in paragraph (1)(b) of Article 2, and by the Croatian labour laws.
2. Unless the context otherwise requires, any term not defined in this Agreement has the meaning assigned to it in the applicable legislation.

## ARTICLE 2

### Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to the legislation effective at the date of signature of this Agreement, and to any legislation that subsequently amends, supplements, supersedes or replaces it:
- (a) in relation to Australia:
- (i) the Acts and regulations forming the social security law in so far as the law provides for, applies to or affects the following benefits:
- age pension;
  - disability support pension for the severely disabled;

- (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, Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Regulations, only in relation to the application of Part III of this Agreement;

and

- (b) in relation to Croatia, the legislation that governs Pension Insurance, including:
  - (i) old-age pension;
  - (ii) anticipatory pension;
  - (iii) disability pension;
  - (iv) survivor's pension (widows, widowers, children and other family members entitled to this pension); and

all other benefits covered under the Pension Insurance legislation.

2. This Agreement shall apply to legislation that extends the existing legislation to other categories of beneficiaries if the Competent Authority of the Party concerned gives notice to that effect within six months from the official publication of that legislation, and if the Competent Authority of the other Party does not express its disapproval within six months from the receipt of the notice.
3. For the purposes of reciprocating Croatian survivor's pension, when payable outside Australia by virtue of this Agreement, Australian age and disability support pension shall include additional child amounts for dependent children, if applicable.
4. Notwithstanding the provisions of paragraph 1, the legislation of the Parties shall not include treaties or other international agreements concluded between either of them and a third State, except as otherwise provided in this Agreement.

**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 Croatia.

**ARTICLE 4**

**Equality Of Treatment**

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

**PART II – COMMON PROVISIONS RELATING TO BENEFITS**

**ARTICLE 5**

**Export of Benefits**

1. The benefits that are payable by one Party on the basis of the legislation of that Party or by virtue of this Agreement shall be payable in the territory of the other Party.
2. Where there is a time limit on the continued qualification for an Australian benefit for a person who leaves Australia, then the same time limit shall apply to that benefit for a person who leaves Croatia.
3. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Parties.
4. If a Party imposes legal or administrative restrictions on the transfer of currency outside of its territory, that Party shall implement measures as soon as practicable to guarantee the payment and delivery of benefits payable under the legislation of that Party or by virtue of this Agreement. The measures shall operate retrospectively to the time when the restrictions were imposed.
5. While the measures in paragraph 4 are being implemented, the Party not imposing the restrictions set out in paragraph 4 may impose restrictions on the payment of its benefits paid under the Agreement in the territory of the other Party, until the other Party has lifted all such restrictions. On the lifting of the restrictions by the other Party and the payment and delivery of arrears by that other Party then the first Party shall also pay arrears of its benefits in relation to the entire time during which the first Party's restrictions were imposed.
6. Where a Party has imposed legal or administrative restrictions on the transfer of its currency outside of its territory as mentioned in paragraph 5, it shall inform the other Party of those restrictions within one calendar month of their imposition and shall implement the measures described in that paragraph within 3 months of the imposition of the restrictions. A failure to comply with either requirement may be treated by the other Party as a material breach of the Agreement for the purposes of Article 60 of the Vienna Convention on the Law of Treaties.

7. Benefits paid by a Party outside its territory shall be paid in an internationally convertible currency.
8. A benefit payable by a Party by virtue of this Agreement or under its legislation shall be paid by that Party without deduction of administrative fees and charges by the government or the corresponding Competent Institution for processing and paying that benefit, whether the person qualifying for the benefit is in the territory of the other Party or in a third country.
9. For Australia, the provisions of this Article shall not apply to rent assistance, pharmaceutical allowance or any other allowance that is not payable indefinitely outside Australia.

## **ARTICLE 6**

### **Medical Examinations**

1. For the purposes of assessing a person's degree of disability or the person's ability to work where this is relevant for a claim for a benefit or for continued payment of a benefit, the Competent Institution of a Party shall apply the legislation of that Party.
2. To assist in the assessment referred to in paragraph 1, the Competent Institution of the Party in whose territory the person resides shall, at the request of the Competent Institution of the other Party forward to the latter free of charge any existing relevant medical reports and documents that it may have available.

**PART III**  
**PROVISIONS FOR AVOIDING DOUBLE COVERAGE**

**ARTICLE 7**

**Purpose of Part**

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

**ARTICLE 8**

**Application of Part**

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 work of the employee or remuneration paid for the work.

**ARTICLE 9**

**Diplomatic 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 10**

**Application of Legislation**

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 for the work be subject only to the legislation of that Party.

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2. If an employee:
- (a) is covered by the legislation of one Party; and
  - (b) was sent, whether before, on or after the entry into force of this Agreement, by an employer who is subject to the legislation of that Party to work in the territory of the other Party; and
  - (c) is working in the territory of the other Party in the employment of the employer or a related entity of that employer; and
  - (d) was sent to work in the territory of the other Party and a period of 4 years has not elapsed from that time; and
  - (e) is not working permanently in the territory of the other Party;

the employer and employee shall be subject only to the legislation of the Party from which the employee was sent in respect of the work and the remuneration paid for the work. 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.

3. If the employer for the purposes of paragraph 2 of this Article is, in relation to Australia, a Governmental body, a political subdivision or local authority, or in relation to Croatia, a Governmental body, then the time limit specified in subparagraph 2(d) shall not apply.

## **ARTICLE 11**

### **Exception Agreements**

1. The Competent Authorities may for the purposes of this Part by agreement in writing:
- (a) extend the period of 4 years referred to in subparagraph 2(d) of Article 10 for any employee; or

- (b) provide that an employee is taken to work in the territory of a particular Party or to work on a ship or aircraft in international traffic under the legislation of a particular Party and is covered only by the legislation of that Party.
2. Any agreement made under paragraph 1 may apply to:
- (a) a class of employees; and/or
  - (b) particular work or particular type of work (including work that has not occurred at the time the agreement is made).



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**PART IV – PROVISIONS RELATING TO AUSTRALIAN BENEFITS****ARTICLE 12****Residence or presence in Croatia or a Third State**

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 day on which the claim is lodged, but:

- (a) is an Australian resident or a resident of Croatia (or a third State with which Australia has concluded an agreement on social security which includes provision for co-operation in the assessment and determination of claims for benefits and which includes that category of benefit); and
- (b) is in Australia, or the territory of Croatia or that third State,

that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that day.

**ARTICLE 13****Totalisation for 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 that benefit; and
  - (b) a period of Australian working life residence equal to or greater than the period referred to in paragraph 3; and
  - (c) a period of insurance in Croatia;

then, for the purposes of the 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 purpose of this Article, where a person has a period as an Australian resident and a period of insurance in Croatia, any period of overlap shall be taken into account once only by Australia as a period as an Australian resident.
3. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:
  - (a) for the purpose of an Australian benefit claimed by a person residing outside Australia, the minimum period required shall be 12 months, of which at least six months must be continuous; and
  - (b) for the purpose of an Australian benefit claimed by an Australian resident, no minimum period shall be required.

#### **ARTICLE 14**

##### **Calculation of Australian Benefits**

1. Subject to paragraph 2, where an Australian benefit is payable by virtue of this Agreement to a person outside Australia, the rate of that benefit shall be determined according to the legislation of Australia.
2. The provisions in paragraph 1 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
3. Subject to the provisions of paragraph 4 and 5, where an Australian benefit is granted by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:
  - (a) deducting the amount of the Croatian benefit which that person is entitled to receive from the maximum rate of Australian benefit;
  - (b) calculating that person's income according to the legislation of Australia but disregarding in that calculation the Croatian benefit to which that person or the partner of that person is entitled to receive, if applicable; and
  - (c) applying to the remaining benefit obtained under subparagraph (a) the relevant rate calculator set out in the legislation of Australia,

using as the person's income the amount calculated under subparagraph (b).

4. The provisions in paragraph 3 shall continue to apply for 26 weeks where a person temporarily leaves Australia.
5. Where a member of a couple is, or both that person and his or her partner are entitled to a Croatian benefit or benefits, each of them shall be deemed, for the purpose of paragraph 3 and for the legislation of Australia, to be in receipt of half of either the amount of that benefit or the total of both those benefits as the case may be.

**PART V**

**PROVISIONS RELATING TO CROATIAN BENEFITS**

**ARTICLE 15**

**Totalisation for Croatian Benefits**

1. If a person does not fulfil the requirements for pension solely on the basis of completed periods of insurance, the entitlement to a benefit shall be established on the basis of totalising the periods of insurance and Australian working life residence provided these periods do not overlap.
2. If a person qualifies for a benefit under Croatian legislation without the need for totalisation of the periods completed in the territories of both Parties, the Croatian Competent Institution shall grant the benefit according to its own legislation.
3. If the period of insurance amounts to less than 12 months no benefit shall be granted. This does not apply if there is entitlement to a benefit only on the basis of that lesser period of insurance.
4. Notwithstanding the provision of paragraph 4 of Article 2, where based on the provisions of paragraph 1 of this Article a person does not satisfy conditions for the benefit, the competent institution of Croatia shall take into account periods of insurance or periods of residence completed by Croatian nationals in a third State to which Croatia is bound by an agreement on social security which provides for the totalisation of periods of insurance or residence, respectively.

**ARTICLE 16**

**Calculation of Croatian Benefits**

1. If a person qualifies for a benefit under Croatian legislation only by the application of the totalisation provisions contained in paragraph 1 of Article 15, the Croatian Competent Institution shall calculate the amount of the benefit according to the Croatian legislation.

2. If the amount of the benefit under Croatian legislation cannot be calculated according to paragraph 1 of this Article, the Croatian Competent Institution shall calculate it in the following way:
  - (a) it shall first calculate a theoretical amount of a benefit which would be payable if all totalised periods (being periods of insurance and periods of Australian working life residence) were completed under Croatian legislation;
  - (b) on the basis of this theoretical amount, it shall then calculate the actual amount of the benefit which is payable according to the ratio of the period of insurance and the totalised periods.
3. Paragraph 1 of this Article shall not apply if the amount of Croatian pension calculated under that paragraph is less than the amount determined in accordance with paragraph 2 of this Article.

**PART VI**  
**MISCELLANEOUS 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 the other Party in accordance with the Administrative Arrangement made pursuant to Article 20 at any time after the Agreement has come into force.
2. For the purpose of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of one Party shall be considered as the date of lodgement of that document with the Competent Institution of the other Party. The Competent Institution to which a claim, notice or appeal is lodged shall refer it without delay to the Competent Institution of the other Party.
3. The reference in this Article to an appeal is an appeal that may be made to an administrative body or a corresponding body of either Party that has been established by, or for the purposes of, the legislation of each Party.
4. Any exemption granted in the territory of one of the Parties from payment of taxes or fees in respect of certificates and documents required to be submitted to the Competent Authorities and Competent Institutions in the same territory shall also apply to the certificates and documents which, for the purpose of this Agreement, have to be submitted to the Competent Authorities or Competent Institutions of the other Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

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**ARTICLE 18****Recovery of Overpayments**

1. Where:
  - (a) an amount of arrears of benefit is paid or payable to a person by the Competent Institution of one Party whether by virtue of this Agreement or under the legislation of that Party; and
  - (b) for all or part of the relevant period, the other Party has paid to that person a benefit under its legislation; and
  - (c) the amount of the benefit paid by that other Party would have been reduced had the benefit paid or payable by the Competent Institution of the first Party been paid during that period;then
  - (d) 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 and may be recovered by that Party.
2. Australia may recover all or part of that debt referred to in paragraph 1 under the provisions of the Acts forming the social security laws of Australia.
3. Where the Competent Institution of one Party has not yet paid the benefit described in subparagraph 1(a) to that person:
  - (a) that Competent Institution shall, at the request of the Competent Institution of the other Party, pay the amount of the benefit necessary to meet the debt described in paragraph 1 to the Competent Institution of that Party and shall pay any excess to that person; and
  - (b) any shortfall may be recovered by the Competent Institution of the other Party.

4. A reference in paragraph 1 to a benefit means, for Australia, a pension, benefit or allowance payable under the social security laws of Australia and, for Croatia, a pension, benefit or allowance payable under the Pension Insurance legislation.

## **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 the legislation they administer:
  - (a) subject to paragraphs 3 and 4, communicate to each other any information necessary for the application of this Agreement;
  - (b) lend their good offices and furnish 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 or under the social security laws of either Party as if the matter involved the application of their own legislation;
  - (c) communicate to each other, as soon as possible, all information about the measures taken by them for the application of the Agreement;
  - (d) at the request of one to another, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 20; and
  - (e) advise each other of any laws which amend, supplement, supersede or replace their respective legislations and which are relevant to the operation of this Agreement promptly after those laws are made.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any Administrative Arrangement made in accordance with Article 20.



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3. Unless disclosure is required under the legislation of a Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or Competent Institution of that Party is confidential and shall only be used for purposes of implementing this Agreement and the social security laws of either Party.
  4. Notwithstanding any laws or administrative practices of a Party, no personal data which is received by that Party from the other Party shall be transferred or disclosed to any other country or to any other organisation within that other country without the prior written consent of that other Party.
  5. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the Competent Authority or 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.
  6. Communications between Competent Authorities, Competent Institutions and persons to whom this Agreement applies may be made in any of the official languages of the Parties.

## **ARTICLE 20**

### **Administrative Arrangement**

1. The Competent Authorities of the Parties shall, by means of an Administrative Arrangement, make whatever arrangements are necessary in order to implement this Agreement.
2. The Competent Authorities shall appoint liaison bodies in the Administrative Arrangement.

## ARTICLE 21

### Recognition of Prior Periods and Events

1. In determining the qualification for a benefit of a person or the amount of benefit payable to a person, by virtue of this Agreement, any events or facts and any period:
  - (a) as an Australian resident;
  - (b) of Australian working life residence; and
  - (c) of insuranceshall, subject to this Agreement, be taken into account in so far as those periods, events or facts are applicable in regard to that person regardless of when they occurred or were accumulated.
2. No provision of this Agreement shall confer on a person any right to receive payment of a benefit in relation to a period before the date on which this Agreement comes into force.

## ARTICLE 22

### Resolution of Difficulties

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.

**ARTICLE 23**

**Review of Agreement**

Where a Party requests the other to meet to review this Agreement the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise agree, their meeting shall be held in the territory of the Party to which the request was made.

**PART VII**  
**TRANSITIONAL AND FINAL PROVISIONS**

**ARTICLE 24**

**Entry into Force and Termination**

1. This Agreement shall enter into force on the first day of the month following the month in which notes are exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Agreement have been accomplished.
2. This Agreement shall remain in force indefinitely or until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating the intention of the other Party to terminate 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 its benefits; or
  - (b) prior to the expiry of the period referred to in paragraph 2, 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 as mentioned in and by virtue of paragraph 2 of Article 10 or Article 11, but only for so long as the Agreement would have continued to apply to the employee had the Agreement not been terminated.

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

DONE in two original copies at ZAGREB this THIRTEENTH day of MAY TWO THOUSAND AND THREE in the English and the Croatian languages, both texts being equally authoritative.

FOR AUSTRALIA

Neil Francis  
Australian Ambassador to Croatia

FOR THE REPUBLIC OF  
CROATIA

Davoriko Vidović  
Minister of Labour and Social  
Welfare

## Schedule 17—Slovenia

Note: See section 5.

### AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA

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

Wishing to strengthen the existing friendly relations between the two countries, and resolved to cooperate in the field of social security; have agreed as follows:

#### GENERAL PROVISIONS

#### ARTICLE 1

##### Definitions

1. In this Agreement, unless the context otherwise requires;
  - (a) **"Slovenia"** means the Republic of Slovenia;
  - (b) **"benefit"** means, in relation to a Party, any of the benefits, pensions or allowances listed in paragraph 1 of Article 2, and includes any amount, increase or supplement that is payable in addition to that benefit, pension or allowance to a person who is qualified for that amount, increase or supplement under the legislation of that Party;
  - (c) **"Competent Authority"** means,
    - in relation to Australia:  
the Secretary of the Commonwealth Department responsible for the legislation specified in subparagraph 1(a) of Article 2, and
    - in relation to Slovenia:  
the Ministry of Labour, Family and Social Affairs;

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- (d) **"Competent Institution"** means,
- in relation to Australia: the Institution or Agency which has the task of implementing the applicable Australian legislation, and
- in relation to Slovenia:  
the Institute for Pension and Disability Insurance of Slovenia;
- (e) **"legislation"** means, the laws and other regulations relating to benefits specified in paragraph 1 of Article 2;
- (f) **"period of Australian working life residence"** means, in relation to a person, the period defined as such under the legislation of Australia but does not include any period deemed pursuant to Article 8 to be a period in which that person was an Australian resident;
- (g) **"period of insurance"** means any period of contribution and any other period taken into account under Slovenian legislation; and
- (h) **"territory"** means,
- in relation to Australia:  
Australia as defined in the legislation of Australia; and
- in relation to Slovenia:  
the territory of the Republic of Slovenia.

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

## **ARTICLE 2**

### **Legislative Scope**

1. Subject to paragraph 2, this Agreement shall apply to the legislation effective at the date of signature of this Agreement, and to any legislation that subsequently amends, supplements, supersedes or replaces it:

(a) in relation to Australia, the Acts forming the social security law in so far as the law provides for, applies to or affects the following benefits:

(i) age pension; and

(ii) disability support pension for the severely disabled;

and

(b) in relation to Slovenia, the legislation that governs the Pension and Invalidity Insurance except for the provisions concerning the benefits for residual ability to work.

2. This Agreement shall apply to laws or regulations which extend the existing legislation to other categories of beneficiaries only if both Parties so agree in a Protocol to this Agreement.

3. Notwithstanding the provisions of paragraph 1, the legislation of the Parties shall not include treaties or other international agreements concluded between either of them and a third State, except as otherwise provided in this Agreement.

### 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 Slovenia.



## **ARTICLE 4**

### **Equality of Treatment**

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

## **PROVISIONS RELATING TO BENEFITS**

## **ARTICLE 5**

### **Export of Benefits**

1. Australian benefits which are payable by virtue of this Agreement shall be payable in the territory of Slovenia.
2. Slovenian benefits to which a person is entitled under Slovenian legislation or by virtue of this Agreement shall be paid to that person in the territory of Australia if that person moves to Australia permanently. It shall be considered that a person has moved to the territory of Australia permanently if this person has informed the Competent Institution that he or she will reside in Australia for a period exceeding 12 months.
3. Where there is a time limit on the continued qualification for an Australian benefit for a person who leaves Australia, then the same time limit shall apply to that benefit for a person who leaves Slovenia.
4. Slovenian benefits to which a person is entitled on the basis of Slovenian legislation or acquired by virtue of this Agreement shall be paid to Australian and Slovenian citizens who permanently reside in the territory of a third country.
5. Australian benefits to which a person is entitled under the legislation of Australia or by virtue of this Agreement shall be paid to Slovenian and Australian citizens who permanently reside in the territory of a third country.

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

7. While the measures in paragraph 6 are being implemented, the Party not imposing the restrictions set out in paragraph 6 may impose restrictions on the payment of its benefits paid under the Agreement in the territory of the other Party, until the other Party has lifted all such restrictions. On the lifting of the restrictions by the other Party and the payment of arrears by that other Party then the first Party shall also pay arrears of its benefits in relation to the entire time during which the first Party's restrictions were imposed.

8. Where a Party has imposed legal or administrative restrictions on the transfer of its currency outside of its territory as mentioned in paragraph 6, it shall inform the other Party of those restrictions within one calendar month of their imposition and shall implement the measures described in that paragraph within 3 months of the imposition of the restrictions. A failure to comply with either requirement may be treated by the other Party as a material breach of the Agreement for the purposes of Article 60 of the Vienna Convention on the Law of Treaties.

9. Benefits paid by a Party outside its territory shall be paid in the currency of the United States of America or another internationally convertible currency.

10. A benefit payable by a Party by virtue of this Agreement or under its legislation shall be paid by that Party without deduction of administrative fees and charges by the government or the corresponding Competent Institution for processing and paying that benefit, whether the person qualifying for the benefit is in the territory of the other Party or in a third country.

11. For Australia, the provisions of this Article shall not apply to rent assistance, pharmaceutical allowance or any other allowance which is not payable indefinitely outside Australia.

12. For Slovenia, the provisions of this Article shall not apply to income supplementary allowances, attendance allowance and cash indemnities payable in respect of disability or any other allowance which is not payable outside Slovenia under the legislation of Slovenia.

## **ARTICLE 6**

### **Medical Examinations**

1. For the purposes of assessing a person's degree of disability or the person's ability to work where this is relevant for a claim for a benefit or for continued payment of a benefit, the Competent Institution of a Party shall apply the legislation of that Party.

2. To assist in the assessment referred to in paragraph 1, the Competent Institution of the Party in whose territory the person resides shall, at the request of the Competent Institution of the other Party forward to the latter free of charge any existing relevant medical reports and documents that it has available.

## **AUSTRALIAN BENEFITS**

### **ARTICLE 7**

#### **Residence or presence in Slovenia or a Third State**

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 day on which the claim is lodged, but:

- (a) is an Australian resident or a resident of Slovenia or a third State with which Australia has concluded an agreement on social security which includes provision for co-operation in the assessment and determination of claims for benefits and which includes that category of benefit; and
- (b) is in Australia, or in Slovenia or that third State,

that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that day.

## ARTICLE 8

### Totalisation for 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 that benefit; and
  - (b) a period of Australian working life residence equal to or greater than the period referred to in paragraph 3; and
  - (c) a period of insurance in Slovenia that has already been used or can be used at the time of totalisation, to obtain a Slovenian benefit;

then, for the purposes of the 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 purpose of this Article, where a person has a period as an Australian resident and a period of insurance, any period of overlap shall be taken into account once only by Australia as a period as an Australian resident.
3. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:
  - (a) for the purpose of an Australian benefit claimed by a person residing outside Australia, the minimum period required shall be 12 months, of which at least six months must be continuous; and
  - (b) for the purpose of an Australian benefit claimed by an Australian resident, no minimum period shall be required.

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**ARTICLE 9****Calculation of Australian Benefits**

1. Subject to paragraph 2, where an Australian benefit is payable by virtue of this Agreement to a person outside Australia, the rate of that benefit shall be determined according to the legislation of Australia.
2. The provisions of paragraph 1 will continue to apply for 26 weeks when a person temporarily comes to Australia.
3. Subject to the provisions of paragraphs 4 and 5, where an Australian benefit is granted 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 Slovenian benefit to which that person or the partner of that person is entitled to receive, if applicable;
  - (b) deducting the amount of the Slovenian benefit to 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. The provisions of paragraph 3 will continue to apply for 26 weeks when a person temporarily leaves Australia.
5. Where a member of a couple is, or both that person and his or her partner are in receipt of a Slovenian benefit or benefits, each of them shall be deemed, for the purpose of paragraph 3 and for the legislation of Australia, to be in receipt of half of either the amount of that benefit or the total of both those benefits as the case may be.
6. Benefits referred to in paragraph 1 do not include rent assistance, pharmaceutical allowance or any other allowance which is not payable indefinitely outside Australia.

**BENEFITS ACCORDING TO SLOVENIAN LEGISLATION**

**ARTICLE 10**

**Totalisation for Slovenian Benefits**

1. If a person does not fulfil the requirements for pension solely on the basis of his/her period of insurance, the entitlement to a benefit shall be established on the basis of totalising the period of insurance and that of his/her Australian working life residence provided these periods do not overlap.
2. If a person qualifies for a benefit under Slovenian legislation without the need for totalisation of the periods completed in the territories of both Parties, the Competent Institution shall grant the benefit exclusively on the basis of period of insurance.
3. If the period of insurance in total amounts to less than 12 months no benefit shall be granted. This does not apply if there is entitlement to a benefit only on the basis of that lesser period of insurance.
4. Notwithstanding the provision of paragraph 3 of Article 2, where based on the provisions of paragraph 1 of this Article a person does not satisfy conditions for the benefit, the competent institution of Slovenia shall take into account periods of insurance or periods of residence completed by Slovenian nationals in a third State to which Slovenia is bound by an agreement on social security which provides for the totalisation of periods of insurance or residence, respectively.

## **ARTICLE 11**

### **Calculation of Slovenian Benefits**

1. If a person qualifies for a benefit under Slovenian legislation only by the application of the totalisation provisions contained in Article 10 paragraph 1, the Slovenian Competent Institution shall calculate the amount of the benefit in the following way:
  - (a) it shall first calculate a theoretical amount of a benefit which would be payable if all totalised periods (being periods of insurance and periods of Australian working life residence) were completed under Slovenian legislation; and
  - (b) on the basis of this theoretical amount, it shall then calculate the actual amount of the benefit which is payable according to the ratio of the period of insurance and the totalised periods.
2. If when applying paragraph 1 (b) the totalised periods exceed the longest possible period of insurance defined for the calculation of a benefit under Slovenian legislation, the partial amount payable is calculated according to the ratio of the period of insurance and the longest possible period of insurance.

## **TRANSITIONAL AND FINAL PROVISIONS**

## **ARTICLE 12**

### **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 the other Party, in accordance with the Administrative Arrangement made pursuant to Article 15, at any time after the Agreement has come into force.

2. For the purpose of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1, is lodged with the Competent Institution of one Party, shall be considered as the date of lodgement of that document with the Competent Institution of the other Party. The Competent Institution to which a claim, notice or appeal is lodged shall refer it without delay to the Competent Institution of the other Party.

3. The reference in this Article to an appeal is an appeal that may be made to an administrative body or a corresponding body of either Party that has been established by, or administratively for, the purposes of the legislation of each Party.

4. Any exemption granted in the territory of one of the Parties from payment of taxes or fees in respect of certificates and documents required to be submitted to the Competent Authorities and Competent Institutions in the same territory shall also apply to the certificates and documents which, for the purpose of this Agreement, have to be submitted to the Competent Authorities or Competent Institutions of the other Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

## ARTICLE 13

### Recovery of Overpayments

1. Where:

- (a) an amount of arrears of benefit is paid or payable to a person by the Competent Institution of Slovenia; and
- (b) for all or part of the relevant period, Australia has paid to that person a benefit; and
- (c) the amount of the benefit paid by Australia would have been reduced had the benefit paid or payable by the Competent Institution of Slovenia been paid during that period;

then

- (d) the amount that would not have been paid by Australia had the benefit described in subparagraph (a) been paid on a periodical



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basis throughout that past period, shall be a debt due by that person to Australia and may be recovered by Australia; and

- (e) Australia may recover all or part of that debt under the provisions of the Acts forming the social security law of Australia.

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

- (a) that Competent Institution shall, at the request of the Competent Institution of Australia, pay the amount of the benefit necessary to meet the debt described in subparagraph 1(d) to the Competent Institution of Australia and shall pay any excess to that person; and
- (b) any shortfall may be recovered by Australia under subparagraph 1(e).

3. For Australia, a reference in paragraph 1 to a benefit means a pension, benefit or allowance payable under the social security law of Australia.

#### **ARTICLE 14**

##### **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 the legislation which they administer:

- (a) subject to paragraphs 3 and 4, communicate to each other any information necessary for the application of this Agreement;
- (b) lend their good offices and furnish 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 or under the social security law of either Party as if the matter involved the application of their own legislation;
- (c) communicate to each other, as soon as possible, all information about the measures taken by them for the application of the Agreement;

- (d) at the request of one to another, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 15; and
  - (e) advise each other of any laws which amend, supplement, supersede or replace their respective legislations and which are relevant to the operation of this Agreement promptly after those laws are made.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any Administrative Arrangement made in accordance with Article 15.
3. Unless disclosure is required under the legislation of a Party, personal data which is transmitted in accordance with this Agreement to a Competent Authority or Competent Institution of that Party is confidential and shall only be used for purposes of implementing this Agreement and the social security laws of either Party.
4. Notwithstanding any laws or administrative practices of a Party, no personal data which is received by that Party from the other Party shall be transferred or disclosed to any other country or to any other organisation within that other country without the prior written consent of that other Party.
5. Communications between Competent Authorities, Competent Institutions and persons to whom this Agreement applies may be made in any of the official languages of the Parties.
6. Reimbursements under this Agreement between Competent Institutions shall be made in the currency of the Party receiving those reimbursements.

## ARTICLE 15

### Administrative Arrangement

1. The Competent Authorities of the Parties shall make whatever arrangements are necessary in order to implement this Agreement by means of an Administrative Arrangement.
2. The Competent Authorities shall appoint liaison bodies in the Administrative Arrangement.
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## **ARTICLE 16**

### **Recognition of Prior Periods and Events**

1. In determining the qualification for a benefit of a person or the amount of benefit payable to a person, by virtue of this Agreement, any events or facts and any period;

- (a) as an Australian resident;
- (b) of Australian working life residence; and
- (c) of insurance

shall, subject to this Agreement, be taken into account in so far as those periods, events or facts are applicable in regard to that person regardless of when they occurred or were accumulated.

2. No provision of this Agreement shall confer on a person any right to receive payment of a benefit in relation to a period before the date on which this Agreement comes into force.

## **ARTICLE 17**

### **Resolution of Difficulties**

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.

## **ARTICLE 18**

### **Review of Agreement**

Where a Party requests the other to meet to review this Agreement the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise agree, their meeting shall be held in the territory of the Party to which the request was made.

**ARTICLE 19**

**Entry into Force and Termination**

1. This Agreement shall enter into force on the first day of the month following the month in which notifications are exchanged by the Parties through the diplomatic channel notifying each other that the constitutional requirements for entry into force of this Agreement have been fulfilled.

2. Subject to paragraph 3, this Agreement shall remain in force indefinitely or until the expiration of 6 months from the date on which either Party receives from the other a note through the diplomatic channel indicating the intention of the other Party to terminate 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 its benefits; or
- (b) prior to the expiry of the period referred to in paragraph 2, have lodged claims for, and would be entitled to receive, its benefits

by virtue of this Agreement.

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

DONE in duplicate at Vienna on this 19<sup>th</sup> day of December 2002, in the English and Slovenian languages, each text being equally authoritative.

FOR GOVERNMENT OF  
AUSTRALIA:

AMBASSADOR MAX HUGHES

FOR THE GOVERNMENT OF THE  
REPUBLIC OF SLOVENIA:

AMBASSADOR ERNST PETRIČ

## **Schedule 18—Belgium**

Note: See section 5.

# **AGREEMENT**

## **on social security**

### **between**

## **Australia**

### **and**

## **the Kingdom of Belgium**

Australia and the Kingdom of Belgium, wishing to strengthen the existing friendly relations between the two countries, and desirous of regulating reciprocal relations between the two countries in the area of social security pensions and coverage, have agreed as follows:

**PART I**

**GENERAL PROVISIONS**

Article 1

Definitions

1. For the implementation of this Agreement:
  - a) The term “Belgium” means: the Kingdom of Belgium;  
The term “Australia” means: the Commonwealth of Australia;
  - b) The term “territory” means:  
In relation to Belgium: the territory of the Kingdom of Belgium;  
In relation to Australia: Australia as defined in the legislation of Australia;
  - c) The term “legislation” means:  
In relation to Belgium: the laws and determinations specified in article 2, paragraph 1 A;  
In relation to Australia: the laws specified in article 2, paragraph 1 B;
  - d) The term “competent authority” means:  
In relation to Belgium: the Ministers responsible, as far as they are concerned, for applying the legislation that is the subject of article 2, paragraph 1 A;  
In relation to Australia : the Secretary to the Commonwealth Department responsible for the legislation specified in article 2, subparagraph 1 B a), 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;
  - e) The term “competent institution” means:  
The institution, organisation or authority responsible for applying, in all or in part, the legislation that is the subject of article 2, paragraph 1;

- 
- f) The term “insurance period” means:  
In relation to Belgium: any period recognised as such by the Belgian legislation and similarly any equivalent period recognised by this legislation;  
In relation to Australia: a period of Australian working life residence;
- g) In relation to Australia the term “period of Australian working life residence” means: a period defined as such in the legislation of Australia but does not include any period regarded by article 16 as being a period in which that person was an Australian resident;
- h) The term “pension” means 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 to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;
- i) In relation to Belgium the term “family member” means: any person defined or accepted as a member of the family or designated as a member of the household by the legislation under which the pensions are provided;
- j) In relation to Belgium the term “residence” means: the usual place of residence.
2. Any word not defined in paragraph 1 of this article has the meaning assigned to it by the applicable legislation.

Article 2

Legislative scope

1. This Agreement shall apply:

A. as regards Belgium, to the laws concerning:

- a) old-age and survivors' pensions for salaried persons and self-employed persons;
- b) invalidity insurance for salaried persons, sailors of the merchant marine, mine workers and self-employed persons;

and, as regards Part II only:

- c) social security for salaried persons;
- d) social security for self-employed persons;

B. as regards Australia, to:

- a) the Acts referred to as “the social security law” in the *Social Security Act 1991*, and any regulations made under any such Act, so far those Acts or regulations provide for, apply to or affect the following pensions:
  - (i) age pension;
  - (ii) disability support pension for a person who is severely disabled;



and as regards Part II, only to:

- b) 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*, provided that this Agreement shall not extend the application of that law.
2. This Agreement shall also apply to all acts or regulations which amend, extend or replace the legislation specified in paragraph 1 of this article.
  3. It shall apply to any act or regulation which extends the existing schemes to new categories of beneficiaries unless, in this respect, the contracting Party which has amended its legislation notifies the other contracting Party of its objections within six months of the official publication of the said acts.
  4. Notwithstanding the provisions of paragraph 1, the legislation shall not include any other Agreement on social security entered into by either contracting Party.
  5. This Agreement shall not apply to acts or regulations that establish a new social security sector.

### Article 3

#### Personal scope

This Agreement shall apply to any person who:

- a) is or has been an Australian resident; or is or has been subject to the legislation of Australia;
- or
- b) is or has been subject to the legislation of Belgium,

and, to any other persons in regard to the rights they derive from the person described above.

Article 4

Equality of treatment

Subject to this Agreement and 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 pensions which arise whether directly under the legislation of that contracting Party or by virtue of this Agreement.

Article 5

Export of pensions

1. Unless otherwise specified in this Agreement, pensions acquired under the legislation of either of the contracting Parties cannot be subject to any reduction or modification owing to the fact that the beneficiary stays or resides in the territory of the other contracting Party.
2. Belgian old-age and survivors' pensions shall be paid to Australian nationals residing in the territory of a third country, under the same conditions as if they were nationals of Belgium residing in the territory of that third country.
3. Australian pensions, when payable outside the territory of Australia under the legislation of Australia, shall also be payable outside the territories of both contracting Parties when they are paid under this Agreement.
4. Where qualification for a pension of one contracting Party is subject to limitations as to time, then reference to that contracting Party in those limitations shall be read also as reference to the territory of the other contracting Party.
5. In relation to Australia, any additional amount, increase or supplement that is payable in addition to a pension under this Agreement shall be payable outside the territory of Australia only if it would be so payable if that pension was payable independently of this Agreement.

Article 6

Reduction or suspension clauses

1. Any provision for reduction or suspension of a pension in the legislation of one contracting Party that applies in circumstances where the pension coincides with other social security pensions or with other income, or because of employment or self-employment in the territory of that contracting Party, shall also operate in respect of pensions payable under the legislation of the other contracting Party, or in respect of income earned or profit received from a professional activity as an employee or self-employed person, carried on in the territory of that other contracting Party.
2. Unless otherwise specified in this Agreement, this rule shall not apply when pensions of the same nature coincide.

**PART II**

**PROVISIONS CONCERNING THE APPLICABLE LEGISLATION**

Article 7

In relation to Australia, a reference in this Part to an employee also includes their employer, in respect of work of the employee or remuneration paid for that work.

Article 8

General provisions

1. Subject to articles 9 to 11, the applicable legislation is determined according to the following provisions:
  - (a) a person who is employed or self-employed in the territory of a contracting Party is subject to the legislation of that Party;
  - (b) If an employee is working in the employment of an employer on a ship or aircraft in international traffic, the employer of the employee and 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 a resident.
2. In the event of being simultaneously self-employed in Belgium and employed in Australia, the employment in Australia is considered equivalent to employment in Belgium, in view of the determination of obligations resulting from Belgian legislation concerning the social security of self-employed workers.
3. A person who is self-employed in the territory of each of the contracting Parties is subject exclusively to the legislation of the contracting Party in whose territory he or she has his or her usual place of residence. For the determination of the amount of income to be taken into consideration for the contributions owed under the legislation of this contracting Party, the income earned as a self-employed person in the territory of both contracting Parties is taken into account.

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**Article 9**Special provisions

1. a) An employed person who, being in the service of an enterprise with an office on which that person normally depends in the territory of one of the contracting Parties, is posted by this enterprise to the territory of the other contracting Party to work on its account, shall be subject only to the legislation of the former contracting Party, as if the person continued to be employed in territory of the former contracting Party, on the condition that the foreseeable duration of the person's work does not exceed five years and that he is not sent to replace another person whose posting period has come to an end.
- b) The provisions of subparagraph a) also apply to the family members who accompany that person to the territory of the other contracting Party, unless they are employed or self-employed in the territory of that Party.
2. Subparagraph 1 b) of article 8 does not apply to persons not normally employed at sea who work in the territorial waters or in a harbour of one of the contracting Parties.

**Article 10**Government officials, members of diplomatic missions and consular posts

1. Government officials and equivalent personnel who are sent by the government of a contracting Party to the territory of the other contracting Party are subject only to the legislation of the first mentioned contracting Party. These persons are, for this purpose, considered to be resident in the territory of this contracting Party, even if they are located in the territory of the other contracting Party. For the purposes of this paragraph, "Government officials" includes in relation to Australia officials working for a political subdivision or local authority of Australia.
2. a) Persons sent by the government of a contracting Party to the territory of the other contracting Party as members of a diplomatic

mission or a consular post are subject only to the legislation of the former contracting Party.

- b) Persons engaged by a diplomatic mission or a consular post of one of the contracting Parties in the territory of the other contracting Party are subject only to the legislation of the latter contracting Party.
  - c) When the diplomatic mission or the consular post of one of the contracting Parties employs persons who, pursuant to subparagraph b), are subject only to the legislation of the other contracting Party, the mission or post will fulfill the obligations imposed on the employers under the legislation of this contracting Party.
  - d) The provisions in subparagraphs b) and c) also apply by analogy to persons employed in private service of a person specified in subparagraph a).
  - e) The provisions of subparagraphs a) to d) neither apply to honorary members of a consular post nor persons employed in private service of these persons.
3. The provisions of this article also apply to the family members of the persons referred to in this article, unless they are employed or self-employed in the same territory as those persons are employed.

#### Article 11

##### Exceptions

In the interest of certain persons or certain categories of persons covered by this Part, the competent authorities can, in common agreement, specify exceptions to the provisions of articles 7 to 10.

**PART III**

**PROVISIONS CONCERNING PENSIONS**

**Chapter 1**

**Provisions concerning Belgian old age and survivors' pensions**

Article 12

1.
  - a) Subject to the provisions of paragraph 2, for the acquisition, retention or recovery of the right to a pension, insurance periods completed pursuant to the Australian legislation concerning pensions are totalised, when necessary and to the extent that they do not overlap, with insurance periods completed pursuant to the Belgian legislation.
  - b) When two periods recognised as periods equivalent to an insurance period coincide, only the period completed in relation to the legislation of the contracting Party where the person concerned has worked before this period shall be taken into consideration.
2. If the Belgian legislation subordinates the acquisition, retention or recovery of the right to certain pensions to the condition that the insurance periods are to be completed in a particular occupation, only insurance periods completed in the same occupation in Australia shall be totalised for that purpose.
3. If the Belgian legislation subordinates the acquisition, retention or recovery of the right to certain pensions to the condition that the insurance periods are to be completed in a particular occupation, and when these periods do not result in entitlement to the said pensions, those periods shall be considered valid for the determination of the pensions provided for in the general scheme of salaried persons.

Article 13

1.
  - a) If a person is entitled to a Belgian pension without totalisation, the Belgian competent institution shall calculate the amount of the pension directly on the basis of the insurance periods completed in Belgium and only under the Belgian legislation.
  - b) This institution shall also calculate the amount of the pension that would be obtained by applying the rules specified in paragraph 2. Only the higher of these two amounts shall be used.
2. If a person is entitled to a Belgian pension solely by totalisation of the insurance periods completed in accordance with article 12, the following rules apply:
  - a) the Belgian competent institution shall calculate the amount of the pension that would be due if all the insurance periods completed according to the two contracting Parties' legislation were exclusively completed under the legislation it applies;
  - b) this institution shall then calculate the amount due, on the basis of the amount specified under a), in proportion to the duration of the insurance periods under its legislation, in relation to the duration of all insurance periods accounted under a).

Article 14

1. If, because of the rising cost of living, the variation of wage levels or other causes, the Australian age pensions are changed by a given percentage or amount, it is not necessary to proceed to a new calculation of the Belgian old-age or survivors' pensions.
2. On the other hand, in case of modification of the rules or of the computation process with regard to the establishment of the old-age or survivors' pensions, a new computation shall be performed according to article 13.



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**Chapter 2****Provisions concerning Australian age pensions**

## Article 15

Residence or presence in Belgium or a third State

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

- a) is an Australian resident or a resident of Belgium or a third State with which Australia has concluded an agreement on social security that includes provision for cooperation in the lodgement, assessment and determination of claims for pensions; and
- b) is in Australia, or Belgium or that third State,

that person, so long as he or she has been an Australian resident at any time, shall be deemed, for the purpose of lodging that claim, to be an Australian resident and in Australia on that date.

## Article 16

Totalisation for Australia

1. Where a person to whom this Agreement applies has claimed an Australian pension 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 pension; and
  - 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 in Belgium;

then, for the purposes of a claim for that Australian pension, that period of insurance in Belgium 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 pension set out in the legislation of Australia.

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 pension; and
  - b) has accumulated a period of insurance in Belgium in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph a);

the total of the periods of insurance in Belgium 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 in Belgium 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 as follows:
  - a) for the purposes of an Australian pension that is payable to a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least six months must be continuous; and
  - b) for the purposes of an Australian pension that is payable to an Australian resident, there shall be no minimum period.

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Article 17

Calculation of Australian pensions

1. Subject to paragraph 3, where an Australian pension is payable, whether by virtue of this Agreement or otherwise, to a person who is outside Australia, the rate of that pension shall be determined according to the legislation of Australia. When assessing the income of that person for the purposes of calculating the rate of the Australian pension, only a proportion of any Belgian pension 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 pension by the amount of Belgian pension and dividing that product by 300.
2. Only a person receiving a proportionalised Australian pension shall be entitled to receive the concessional assessment of income in paragraph 1.
3. The provision in paragraph 1 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
4. Subject to paragraph 5, where an Australian pension is payable only by virtue of this Agreement to a person who is in Australia, the rate of that pension shall be determined by:
  - a) calculating that person's income according to the legislation of Australia but disregarding in that calculation any Belgian pension which that person or the partner of that person is entitled to receive if applicable; and
  - b) deducting the amount of the Belgian pension which that person is entitled to receive from the maximum rate of that Australian pension; and
  - c) applying to the remaining pension 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).
5. The provisions in paragraph 4 shall continue to apply for 26 weeks where a person departs temporarily from Australia.

6. Where the rate of a pension calculated in accordance with paragraph 4 is less than the rate of that pension which would be payable under paragraph 1 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.
7. Where a member of a couple is, or both that person and his or her partner are, entitled to a Belgian pension or pensions, 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 pension or the total of both of those pensions, as the case may be.

### Chapter 3

#### **Provisions concerning Belgian invalidity and Australian disability support pensions**

##### Article 18

1. The legislation of the contracting Party which was applicable to the person at the time that the person became, in the case of Belgium, incapacitated, or in the case of Australia, qualified for a disability support pension, shall be used to determine whether the person concerned receives that pension. The insurance periods of both contracting Parties may be totalised where necessary for the acquisition, retention or recovery of the right to that pension.
2. A person who satisfies the conditions referred to in paragraph 1 shall obtain the pension from the competent institution of the aforementioned contracting Party, in accordance with the legislation which it administers.

##### Article 19

The beneficiary of an invalidity pension under the Belgian legislation is still entitled to this pension during a temporary stay in Australia when this temporary stay has first been authorised by the Belgian competent institution. This authorisation can, however, only be refused if the temporary stay takes place in the period during which, by virtue of the Belgian legislation, the Belgian competent institution must estimate or revise the state of invalidity.

**PART IV**

**MISCELLANEOUS PROVISIONS**

Article 20

Responsibilities of the competent authorities

The competent authorities shall:

- a) take, by administrative arrangement, the necessary steps to apply this Agreement and designate the liaison bodies and the competent institutions;
- b) define the procedures for mutual administrative assistance, including the sharing of expenses associated with obtaining medical, administrative and other evidence required for the implementation of this Agreement.

Article 21

Administrative collaboration

1. The competent authorities and competent institutions shall, to the extent permitted by the legislation which they administer:
  - a) communicate to each other any information necessary for the application of this Agreement;
  - b) lend their good offices and furnish assistance to one another, including communication to each other of any information necessary, with regard to the determination or payment of any pension under this Agreement or under the legislation to which this Agreement applies as if the matter involved the application of their own legislation;

- 
- 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; and
    - d) at the request of one to the other, assist each other in relation to the implementation of Agreements on social security entered into by either of the contracting Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with article 20.
  2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the competent authorities and competent institutions for the reimbursement of certain types of expenses.
  3. Unless disclosure is required under the legislation 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 the purpose of implementing this Agreement and the legislation to which this Agreement applies.
  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 contracting Party the obligation:
    - a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other contracting Party; or
    - b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or the other contracting Party.
  5. Notwithstanding any laws or administrative practices of a contracting Party, no information concerning a person which is received by that contracting Party from the other contracting Party shall be transferred or
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disclosed to any other country or to any organisation within that other country without the prior written consent of that other contracting Party.

6. For the application of this Agreement, the competent authorities and the competent institutions of the contracting Parties are authorised to correspond directly with each other and similarly with any person, whether this person is present in Australia, Belgium or a third State. Correspondence may be in one of the official languages of the contracting Parties.

#### Article 22

##### Taxes and exemption from authentication

1. The benefit of exemption from, or reduction in taxes, stamp duty, recording or registration as provided for by the legislation of one of the contracting Parties for the documents and papers required to be produced under the legislation of that contracting Party, is extended to similar documents and papers required to be produced under the legislation of the other contracting Party.
2. All statements and documents required to be produced under this Agreement are exempt from the diplomatic or consular authorities' stamp of authentication.

#### Article 23

##### Claims, notices and appeals

1. (a) Where a claim, notice or appeal under the legislation of one contracting Party has been lodged with an authority, institution or tribunal of the other contracting Party which, under the legislation of the latter contracting Party, is competent to receive an equivalent claim, notice or appeal, such a claim, notice or appeal shall be deemed to have been lodged with the authority, institution or tribunal of the first contracting Party on the same date as the claim, notice or appeal was lodged with the authority, institution or tribunal in the other contracting Party.



- (b) In this case, the receiving authority, institution or tribunal, shall transmit without delay such a claim, notice or appeal to the authority, institution or tribunal of the first contracting Party, either directly or by the intermediary of the competent authorities of the contracting Parties.
2. A claim for a pension from one contracting Party shall be considered as a claim for a corresponding pension 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.
3. A document may not be rejected on the basis of it being written in an official language of the other contracting Party.
4. The reference in paragraph 1 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative institution established by, or administratively for the purposes of, the respective legislation.

#### Article 24

##### Settlement 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 25

##### Review of Agreement

Where a contracting Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than six months after that request was made and, unless the Parties otherwise agree, their meeting shall be held in the territory of the contracting Party to which the request was made.

Article 26

Payment of pensions

1. The commencement date for payment of a pension payable by virtue of this Agreement shall be determined in accordance with the legislation of the contracting Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.
2. The pensions paying institutions may discharge their obligations under this Agreement in their national currency.
3. Transfers resulting from the implementation of this Agreement shall take place pursuant to the Agreements that exist between both contracting Parties.
4. The provisions in the legislation of one of the contracting Parties with regard to exchange control shall not obstruct the free transfer of financial amounts resulting from the implementation of this Agreement.
5. A pension payable by a contracting Party by virtue of this Agreement to a person outside the territory of that Party shall be paid without deduction for government administrative fees and charges for processing and paying that pension.
6. The payment outside Australia of an Australian pension that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a pension to a former Australian resident who returns to Australia becoming again an Australian resident, and lodges a claim for an Australian pension and again leaves Australia within a specified period of time.

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Article 27

Recovery of overpayments

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

then the amount that would not have been paid by the other contracting Party, had the pension 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 and may be recovered by that contracting Party.
2. Where the competent institution of the first contracting Party has not yet paid the arrears of pension described in paragraph 1 to the person:
  - a) that competent institution shall, at the request of the competent institution of the other contracting Party, pay the amount of the debt described in paragraph 1 to the competent institution of the other contracting Party and shall pay any excess to the person, in line with the provisions set out in the Administrative Arrangement made in accordance with article 20; and
  - b) any shortfall in those arrears may be recovered by the other contracting Party.
3. Notwithstanding the definition of “pension” used elsewhere in this Agreement, a reference in paragraphs 1 and 2 to a pension, in relation to Australia, means a pension, benefit or allowance that is payable under the Acts forming the social security law of Australia as amended from time to time.

**PART V**

**TRANSITIONAL AND FINAL PROVISIONS**

Article 28

Possible instances prior to the Agreement coming into force

1. This Agreement shall also apply to events which occurred prior to its coming into force.
2. This Agreement shall not create any entitlement to pensions for any period prior to its coming into force.
3. All insurance periods completed under the legislation of one of the contracting Parties prior to the date on which this Agreement comes into force shall be taken into consideration in determining entitlement to any pension in accordance with the provisions of this Agreement.

Article 29

Revision, proscription, forfeiture

1. Any Belgian pension that was not paid or that was suspended by reason of the nationality of the interested person or by reason of that person's residence in Australia shall, on application by the interested person, be paid or restored from the coming into force of this Agreement.
2. The entitlement of interested persons who, prior to the coming into force of this Agreement, obtained the payment of a Belgian pension or an annuity may be revised upon application by those persons, in accordance with the provisions of this Agreement. In no case shall such a revision result in a reduction of the prior entitlement of the interested persons.
3. If the application referred to in paragraph 1 or 2 of this article is made within two years of the coming into force of this Agreement, any entitlement arising from the implementation of this Agreement shall be effective from the date of coming into force, and the legislation of either contracting Party concerning the forfeiture or the proscription of rights shall not be applicable to such interested persons.

4. If the application referred to in paragraph 1 or 2 of this article is made after two years following the coming into force of this Agreement, the rights which are not subject to forfeiture or which are not proscribed shall be acquired from the date of the application, unless more favourable legislative provisions of the contracting Party concerned are applicable.

Article 30

Term of Agreement

This Agreement is made for an indefinite period. It may be terminated by one of the contracting Parties by written notice delivered to the other Party giving twelve months' notice.

Article 31

Guarantee of rights that are acquired or in the course of acquisition

1. 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 pensions; or
  - (b) prior to that date have lodged claims for, and would be entitled to receive, pensions 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 Part II of the Agreement, provided the persons concerned continue to satisfy the criteria of that Part.
2. The contracting Parties shall continue to collaborate for the purpose of applying paragraph 1.

Article 32

Agreement to come into force

This Agreement will come into force on the first day of the second month that follows the date of receipt of the note by which the last of the two contracting Parties has informed the other contracting Party that the formalities that are legally required for this Agreement to come into force have been completed.

In witness whereof, the undersigned, being duly authorised, signed this Agreement.

Done in two copies at Canberra, on the Twentieth day of November, Two thousand and two, in the English, Dutch and French languages, the three texts being equally authoritative.

FOR AUSTRALIA

FOR THE KINGDOM OF BELGIUM

Amanda VANSTONE

Annemie NEYTS-UYTTEBROECK

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## **Schedule 19—Norway**

Note: See section 5.

### **AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE KINGDOM OF NORWAY ON SOCIAL SECURITY**

The Government of Australia and the Government of the Kingdom of Norway  
and (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 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 pension, benefit or allowance to or in respect of a person who qualifies for that additional pension, benefit 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 of 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 Section A 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 Norway:

the Ministry of Labour and Social Affairs, except in relation to exception agreements in accordance with Article 11, where it means the National Insurance Administration;

(c) “**Competent Institution**” means;

in relation to Australia:

the institution which has the task of implementing the applicable Australian legislation; and

in relation to Norway:

the National Insurance Administration;

(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 Section A 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 Norway:

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

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- (e) **“period of Australian working life residence”**, in relation to a person, means a period defined as such in Australian legislation, but does not include any period deemed pursuant to Article 16 to be a period in which that person was an Australian resident;
- (f) **“period of insurance in Norway”** means the period of contributions or period of residence according to Norwegian legislation;
- (g) **“territory”** means;
- in relation to Australia:
- the Commonwealth of Australia, including the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island; and
- in relation to Norway:
- the territory of the Kingdom of Norway, including Svalbard and Jan Mayen.
2. Other words and expressions which are used in this Agreement shall have the meaning respectively assigned to them in the legislation applied.

## ARTICLE 2

### **Legislative Scope**

1. Subject to paragraph 3, 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 the following benefits:
- A age pension; and
- B disability support 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 Norway:
    - (i) the National Insurance Act of 28 February 1997 in so far as the Act provides for, applies to, or affects the following benefits:
      - A old-age pension, including supplements for supported wife or children;
      - B disability pension, including supplements for supported wife or children;
      - C rehabilitation benefits: and
      - D pensions to survivors;
    - (ii) for the application of Part II also all other provisions of the Act mentioned above and the Family Allowance Act of 8 March 2002.
2. For the purposes of reciprocating Norwegian supplements for supported children, Australian age and disability support pension shall include additional child amounts for dependent children, if applicable, when payable outside Australia under this Agreement.
  3. Notwithstanding the provisions of paragraph 1, the legislation as defined shall not, unless otherwise provided, include any agreement on social security concluded by either Party with another state.
  4. This Agreement shall apply to laws which extend the legislation of either Party to new categories of beneficiaries only if the two Parties so agree.

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**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 Norwegian legislation,

and, where applicable, to other persons in regard to the rights they derive from the persons described above.

**ARTICLE 4****Equality of Treatment**

1. Unless otherwise provided in this Agreement, Norwegian and Australian nationals shall be treated equally in relation to Norwegian legislation in regard to rights and obligations which arise whether directly under Norwegian legislation or by virtue of this Agreement.
2. Unless otherwise provided in this Agreement, all persons to whom this Agreement applies shall be treated equally in relation to Australian legislation in regard to rights and obligations relating to benefits which arise whether directly under Australian legislation or by virtue of this Agreement.

**ARTICLE 5****Payment of Benefits Abroad**

1. Unless otherwise decided in this Agreement, the provisions of the legislation of a Party making the payment of cash benefits conditional upon residence or stay in the territory of that Party, shall not apply to persons who stay or reside in the territory of the other Party.
2. In respect of Australian legislation, rent assistance, pharmaceutical allowance and any other additional amount, increase or supplement payable with a benefit under this Agreement, shall, subject to the

provisions of Article 2 paragraph 2, only be payable outside Australia to the extent provided in Australian legislation.

3. The provisions of this Article do not apply to Australian Disability Support Pensions paid to non-severely disabled persons.
4. In respect of Norwegian legislation, the provisions of this Article shall apply only to disability and old age pensions as designated in Article 2 paragraph 1 subparagraph (b)(i) A and B. However this Article shall not apply to such pensions, or parts of pensions, calculated under the provisions relating to a guaranteed minimum supplementary pension for persons who are born disabled or who become disabled at an early age or under the special provisions governing the calculation of pensions to refugees and stateless persons.
5. In respect of Norwegian legislation, the provisions of this Article shall be applicable only if the person concerned has completed at least
  - (a) one year of occupational activity in Norway, or
  - (b) three years of residence in Norway

prior to the contingency and within the age limits which apply for pension earning in Norway.

**PART II**

**COVERAGE PROVISIONS**

**SECTION A**

**PROVISIONS RELATING TO THE SUPERANNUATION GUARANTEE  
LEGISLATION OF AUSTRALIA EXCLUSIVELY AND TO  
NORWEGIAN LEGISLATION**

**ARTICLE 6**

**Purpose of the Section**

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

**ARTICLE 7**

**Application of the Section**

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

**ARTICLE 8**

**Diplomatic and Consular Relations**

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

## ARTICLE 9

### Avoidance of Double Coverage

1. Unless otherwise provided in paragraphs 2, 3 or 5, 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 for the work be subject only to the legislation of that Party. This shall apply even if the employer or employee is resident in the territory of the other Party.
2. If an employee:
  - (a) is covered by the legislation of one Party ('the first Party');
  - (b) was sent, whether before, on or after the entry into force of this Agreement, 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 after entry into force of this Agreement and the remuneration paid for that work.
3. If an employee:
  - (a) is covered by the legislation of one Party ('the first Party') and in the case of Norway, is on a Norwegian payroll as determined by Norwegian legislation;
  - (b) was sent, whether before, on or after the entry into force of this Agreement, 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;

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(d) has not been in the territory of the second Party more than 3 years after being sent to work on that territory by the employer; and

(e) 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 after entry into force of this Agreement and the remuneration paid for that work.

4. For the purposes of subparagraph 9(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.
5. Employees on board vessels flying the Norwegian flag shall be subject to Norwegian 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 11.
6. Employees working for a Norwegian airline company on board an aircraft in international traffic shall be subject to Norwegian legislation as applied. An employee who is employed by an Australian resident employer as a member of the crew of an aircraft in international traffic shall, in respect of that employment and the remuneration paid for that employment, be subject only to the legislation of Australia if the employee is an Australian resident.

## **ARTICLE 10**

### **Employees on the Continental Shelf**

1. Subject to paragraph 2, employees on installations for the exploration and the exploitation of natural submarine deposits on the Norwegian continental shelf, shall be subject to Norwegian legislation, as applied on the Norwegian continental shelf.
2. The provisions of Article 9(3) shall apply correspondingly to an employee who is seconded to installations as mentioned in paragraph 1 of this Article.

## ARTICLE 11

### Exception agreements

1. The competent authorities may for the purposes of this Part by agreement in writing:
  - (a) extend the period of three years referred to in Article 9(3)(d) for any employee; or
  - (b) provide that an employee is taken to work in the territory of a particular Party or to work on a ship or aircraft in international traffic under the legislation of a particular Party and is covered only by the legislation of that Party.
2. Any agreement made under paragraph 1 may apply to:
  - (a) a class of employees; and/or
  - (b) particular work or particular type of work (including work that has not occurred at the time the agreement is made).

## ARTICLE 12

### Voluntary Insurance

This Agreement shall not preclude the opportunity for a person to be voluntarily insured under the Norwegian National Insurance Scheme.



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**SECTION B**

**PROVISIONS RELATING TO AUSTRALIAN LEGISLATION, THE  
SUPERANNUATION GUARANTEE LEGISLATION OF  
AUSTRALIA EXCLUDED, AND TO NORWEGIAN  
LEGISLATION**

**ARTICLE 13**

**Temporary Absence from Australia**

An Australian resident shall not cease to be regarded as an Australian resident because he or she is staying temporarily in Norway for any reason.

**ARTICLE 14**

**Spouse or Partner and Dependants of Employees**

1. The spouse or partner and dependants who accompany a person mentioned in Article 9 paragraph 2 and Article 9 paragraph 3 to Australia shall be subject to Norwegian legislation for any period in which they are not occupationally active in the territory of Australia.
2. The spouse or partner and children who accompany a person mentioned in Article 9 paragraph 2 and Article 9 paragraph 3 to Norway shall not be subject to Norwegian legislation for any period in which they are not occupationally active in the territory of Norway.

**PART III**

**PROVISIONS RELATING TO AUSTRALIAN BENEFITS**

**ARTICLE 15**

**Residence or Presence in Norway**

1. Where a person would be qualified under Australian legislation 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 residing in the territory of Norway;  
and
- (b) is in Australia, or the territory of Norway,

that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

- 2. Australian legislation which provides for, applies to or affects disability support pension for a person who is not severely disabled shall not be affected by paragraph 1.

#### ARTICLE 16

##### **Totalisation for Australia**

- 1. Where a person to whom this Agreement applies has accumulated:
  - (a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, under Australian legislation, for a benefit; and
  - (b) a period of Australian working life residence equal to or greater than the minimum period identified in accordance with paragraph 4; and
  - (c) a period of insurance in Norway

then that period of insurance shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in Australian legislation, 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 Australian legislation, for entitlement of that person to a benefit; and

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- (b) has accumulated a period of insurance in Norway 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 all purposes of this Article, where a period by a person as an Australian resident and a period of insurance in Norway coincide, the periods of coincidence shall be taken into account once only by Australia.
4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:
- (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, there will be no minimum period.

## ARTICLE 17

### **Calculation of Australian Benefits**

1. Where an Australian benefit is payable, whether by virtue of this Agreement or otherwise to a person who is outside Australia, Australia shall disregard for the purposes of the income test means tested Norwegian benefits and supplements, as well as Norwegian benefits aimed at covering specific costs and any social assistance payable, to that person or that person's partner.
2. Where an Australian benefit is payable, whether by virtue of this Agreement or otherwise to a person inside or outside Australia, Australia shall disregard the following benefits:
- (a) Norwegian War Injury Pensions (NWIPs) paid to the partner of an Australian pensioner, if that partner does not receive, or is not entitled to receive a pension payable under the Social Security

Act 1991 or a service pension payable under the Veteran's Entitlement Act 1986; and

- (b) allowances paid to NWIP pensioners, for specific costs, as specified in the Administrative Arrangement made pursuant to Article 29.
3. Subject to paragraph 5, where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who is outside Australia, the rate of that benefit shall be determined according to Australian legislation. However, when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, only a proportion of the assessable Norwegian benefit which is received by that person, and if applicable by that person's partner, shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months in that person's period of Australian working life residence (not exceeding 300 months) by the amount of the assessable Norwegian benefit and dividing the product by 300.
  4. The provisions of paragraphs 1 and 3 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
  5. A person referred to in paragraph 3 shall only be entitled to receive the concessional assessment of income described in that paragraph for any period during which the rate of that person's Australian benefit is proportionalised under Australian legislation.
  6. Subject to the provisions of paragraph 8, 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 Australian legislation, but disregarding in that calculation the Norwegian benefit received by that person, and, if applicable, by that person's partner;
    - (b) deducting the amount of the Norwegian 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 Australian legislation,
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using as the person's income the amount calculated under subparagraph (a).

7. The provisions of paragraph 6 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
8. If an Australian benefit is only payable by virtue of this Agreement to a person under paragraph 6 and the rate of the benefit calculated is less than the rate of the same benefit which would be payable under paragraph 3, the first-mentioned rate shall be increased to the second-mentioned rate.
9. Where a member of a couple is, or both that person and his or her partner are, in receipt of a Norwegian benefit or benefits, each of them shall be deemed, for the purpose of paragraph 6 and for Australian legislation, to be in receipt of one half of either the amount of that benefit or total of both of those benefits, as the case may be.

#### **PART IV**

#### **PROVISIONS RELATING TO NORWEGIAN BENEFITS**

#### **ARTICLE 18**

#### **Totalisation for Norway**

1. In order to become entitled to a social insurance benefit under Norwegian legislation, periods of Australian working life residence and insurance periods completed under Norwegian legislation shall, if necessary, be totalised, provided that the person concerned has completed at least
  - (a) one year of occupational activity in Norway; or
  - (b) three years residence in Norwayprior to the contingency and within the age limits which apply for pension earning under Norwegian legislation.
2. To become entitled to a supplementary pension under Norwegian legislation, pension points for at least one year must have been

credited. In respect of such pensions, periods of Australian working life residence to be taken into account under the provisions of paragraph 1, shall be periods in which the person concerned was gainfully occupied in Australia.

3. In respect of entitlement to a pension as a surviving spouse or child, the periods to be totalised under paragraphs 1 and 2 shall be the deceased person's periods as mentioned.

## ARTICLE 19

### Calculation of Norwegian Benefits

1. If entitlement to a benefit exists under Norwegian legislation without recourse to the provisions of this Agreement, the benefit shall be calculated in accordance with the provisions of Norwegian legislation.
2. If entitlement to a benefit exists only according to the provisions of this Agreement, the benefit shall be calculated by:
  - (a) determining the benefit which would have been payable if the person's periods of Australian working life residence had been insurance periods in Norway, and
  - (b) multiplying the benefit arrived at under subparagraph (a) by the person's actual insurance periods in Norway and dividing the product by the sum of the person's insurance period in Norway and periods of Australian working life residence.
3. If the person's total insurance period in Norway, or the sum of such periods and periods of Australian working life residence, exceeds 40 years, the actual period, or sum of periods, shall be replaced by the figure "40" for the purposes of paragraph 2.
4. For the purposes of paragraphs 2 and 3, the provisions of Article 18 paragraphs 2 and 3 shall apply correspondingly. A supplementary pension under paragraph 2 shall be calculated on the basis of the average annual pension point figure for the years during which the person concerned has been credited with pension points under Norwegian legislation. If the person has been credited with pension

points for more than 20 years, the basis shall be the average figure for the 20 best years.

5. In respect of pensioners who are resident in Australia, Australian income tested benefits shall not be taken into account for the purpose of the income testing of supplements under Norwegian legislation for supported spouse and/or children

## **ARTICLE 20**

### **Transitional Provisions**

In respect of entitlement to a supplementary pension under Norwegian legislation calculated under the rules of a reduced pension earning requirement for persons born before 1937, only periods of residence in Norway before 1967 may be taken into account.

## **ARTICLE 21**

### **Totalisation concerning Voluntary Membership**

In order to meet the requirement of previous insurance periods for obtaining voluntary membership of the Norwegian social security scheme, periods of Australian working life residence shall be totalised with insurance periods under Norwegian legislation. The requirements for totalisation according to Article 18 paragraph 1 shall apply.

## **PART V**

### **MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

## **ARTICLE 22**

### **Implementation of the Secondment Provisions**

A Party shall provide according to rules to be agreed in the Administrative Arrangement, pursuant to Article 29 of the Agreement, a document showing that a person is covered under Article 9.

## ARTICLE 23

### Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of the other Party in accordance with the Administrative Arrangement made pursuant to Article 29 at any time after the Agreement enters into force.
2. For the purposes of assessing entitlement to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of the other Party shall be treated as the date of lodgement of that document with the Competent Institution of the first Party.
3. In relation to Australia, the reference in 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 the social security laws of Australia.

## ARTICLE 24

### Presentation of Claims

A claim for a benefit presented under the legislation of one Party will be considered as a claim for a similar benefit under the legislation of the other Party provided that the other Party receives this request within 6 months. This is not applicable if the applicant states or if it is otherwise evident that the claim shall only apply to a benefit under the legislation of the former Party.

## ARTICLE 25

### Determination of Claims

1. In determining the eligibility or entitlement of a person for a benefit by virtue of this Agreement:
  - (a) a period as an Australian resident and a period of insurance; and
  - (b) any event or fact which is relevant to that entitlement,



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shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but shall never be earlier than the date on which this Agreement enters into force.

## **ARTICLE 26**

### **Overpayment of Benefits**

1. Where:
  - (a) a benefit is paid or payable by a Party to a person in respect of a past period;
  - (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 paid by that other Party would have been reduced, had the other benefit been paid by the first Party during that period;then
  - (d) 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 first Party has not yet paid the benefit described in subparagraph 1(a) to the person:
  - (a) that Party shall, at the request of the other Party, pay from the arrears of the benefit the amount necessary to meet the debt described in subparagraph 1(d) to the other Party and shall pay any excess to the person; and
  - (b) any shortfall may be recovered by the other Party in accordance with the legislation of that Party.

3. The Competent Institution receiving a request under paragraph 2 shall transfer from the lump sum arrears of its benefit the amount of the debt to the Competent Institution making the request.
4. A reference in paragraphs 1 and 2 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the social security laws of Australia and, in relation to Norway, means any pension, benefit or allowance payable under the National Insurance Act of 28 February 1997 of Norway.
5. A Party to which overpaid benefit is owing shall not, under this Article, seek to have the other Party recover those overpayments from continuing payments of benefit paid by the other Party.

## ARTICLE 27

### Export and Payment of Benefits

1. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under the Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.
2. A Party that imposes restrictions described in paragraph 1 shall inform the other Party of those restrictions within one calendar month of their imposition and shall adopt the measures described in paragraph 1 within three months of the imposition of those restrictions. If the other Party is not so informed or if the necessary measures are not adopted within the set time the other Party may invoke this as a ground for terminating the Agreement or suspending its operation in whole or in part.
3. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party without deduction for government administrative fees and charges for processing and paying that benefit when the beneficiary is in the territory of the other Party. In addition, neither party shall implement measures which would transfer to the beneficiary the costs of paying benefits into the other country.

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4. Any exemption granted in the territory of one of the Parties from stamp duty, notarial or registration fees in respect of certificates and documents required to be submitted to the Competent Authorities and Competent Institutions in the same territory shall also apply to certificates and documents which, for the purposes of this Agreement, have to be submitted to the Competent Authorities and Competent Institutions in the territory of the other Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

## **ARTICLE 28**

### **Exchange of Information and Mutual Assistance**

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement, shall:
- (a) communicate to each other any information necessary for the application of this Agreement;
  - (b) lend their good offices and furnish 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 or under the social security laws of either Party as if the matter involved the application of their own legislation;
  - (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 are relevant to the application of this Agreement; and
  - (d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 29.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to the Administrative Arrangement made pursuant to Article 29.
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 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 in their own official language.

#### **ARTICLE 29**

##### **Administrative Arrangement**

The Competent Authorities of the Parties shall make whatever Administrative Arrangement is necessary in order to implement this Agreement.

#### **ARTICLE 30**

##### **Resolution of Difficulties**

Disputes arising in connection with the application of this Agreement are to be resolved by consultation and negotiations between the Competent Authorities.

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**ARTICLE 31****Review of Agreement**

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months 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 VI****TRANSITIONAL AND FINAL PROVISIONS****ARTICLE 32****Entry into Force and Termination**

1. 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.
2. This Agreement shall enter into force on the first day of the third 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.
3. Subject to paragraph 4, 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 indicating the intention of the other Party to terminate this Agreement.
4. In the event that this Agreement is terminated in accordance with paragraph 3, 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 the expiry of the period referred to in that paragraph, 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 the employee continues to satisfy the criteria of those paragraphs.

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

**DONE** in 2 copies at Canberra on this second day of December two thousand and five in the English and Norwegian languages, each text being equally authoritative.

FOR THE GOVERNMENT OF  
AUSTRALIA

FOR THE GOVERNMENT OF  
THE KINGDOM OF NORWAY

Hon. Kay Patterson  
Minister for Family and  
Community Services

HE Lars Wensell  
Ambassador

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## Schedule 20 — Switzerland

Note: See Section 5.

### AGREEMENT BETWEEN AUSTRALIA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY

The Government of Australia and the Swiss Federal Council, guided by the wish to regulate relations between their two countries in the field of social protection, have agreed to conclude the following Agreement:

#### PART I

#### GENERAL PROVISIONS

##### Article 1 Definitions

1. In this Agreement the following definitions shall apply:
  - (a) **“Contracting States”** means the Swiss Confederation and the Government of Australia;
  - (b) **“territory”** means,
    - (i) in relation to Switzerland, the territory of Switzerland;
    - (ii) in relation to Australia, Australia as defined in the legislation of Australia;
  - (c) **“national”** means,
    - (i) in relation to Switzerland, a Swiss national;
    - (ii) in relation to Australia, an Australian citizen;
  - (d) **“legislation”** means,
    - (i) in relation to Switzerland, the laws specified in subparagraph 1(a) of Article 2; and

- (ii) in relation to Australia, the law specified in subparagraph 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 subparagraph 1(b)(ii) of Article 2;
  - (e) **“Competent Authority”** means,
    - (i) in relation to Switzerland, the Federal Social Insurance Office; and
    - (ii) in relation to Australia, the Secretary of the Department responsible for the application of the legislation in subparagraph 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;
  - (f) **“Competent Institution”** means,
    - (i) in relation to Switzerland, the institution which has the task of implementing the Swiss legislation; and
    - (ii) in relation to Australia, the institution or agency which has the task of implementing the applicable Australian legislation;
  - (g) **“period of Australian working life residence”** means, in relation to a person, the period defined as such under the legislation of Australia but does not include any period deemed pursuant to Article 18 to be a period in which that person was an Australian resident;
  - (h) **“insurance periods”** means, in relation to Switzerland, the contribution periods as well as equivalent periods which are determined or recognised as insurance periods under the Swiss legislation;
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- (i) **“benefit”** means, in relation to a Contracting State, 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, but for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;
  - (j) **“reside”** means, in relation to Switzerland, stay ordinarily;
  - (k) **“domicile”** means, in relation to Switzerland and within the meaning of the Swiss Civil Code, the place in which a person is staying with the intention of living there permanently;
  - (l) **“refugee”** means a refugee as defined by the Convention on the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967 to that Convention;
  - (m) **“stateless person”** means a stateless person as defined by the Convention on the Status of Stateless Persons of 28 September 1954;
  - (n) **“family members and survivors”** means, in relation to Switzerland, family members and survivors, whose rights are derived from a national of a Contracting State, from a refugee or from a stateless person;
  - (o) **“widowed person”** means, in relation to Australia, a person who stops being a member of a couple because of the death of the person’s legal husband or wife, but does not include a person who has a partner.
2. Unless the context otherwise requires, any term not defined in this Agreement has the meaning assigned to it in the applicable legislation.

## **Article 2** **Legislative Scope**

1. Subject to paragraph 2, this Agreement shall apply to the following laws and regulations as amended at the date of signature of this

Agreement, and to any laws and regulations that subsequently amend, supplement, supersede or replace them:

- (a) in relation to Switzerland:
    - (i) the Federal Act on old-age and survivors' insurance;
    - (ii) the Federal Act on disability insurance;
  - (b) in relation to Australia:
    - (i) the Acts referred to as "the social security law" in the *Social Security Act 1991*, and any regulations made under any such Act insofar as those Acts or regulations provide for, apply to or affect the following benefits:
      - A. age pension;
      - B. disability support pension for the severely disabled;
      - C. pensions payable to widowed persons;
      - D. double orphan pension; and
      - E. carer payment;
    - (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*.
2. Notwithstanding the provisions of subparagraph 1(b), this Agreement shall apply to women who are receiving wife pension at the date this Agreement comes into force and who are the wives of:
- (a) persons receiving age pension; or
  - (b) persons receiving disability support pension for the severely disabled.
3. This Agreement shall apply to laws or regulations which extend the existing legislation to other categories of beneficiaries or which involve
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a new branch of social security only if both Contracting States so agree in a Protocol to this Agreement.

4. Laws within the meaning of paragraph 1 shall not include treaties or other international agreements on social security that may be concluded between one of the Contracting States and a third State.

### **Article 3 Personal Scope**

This Agreement shall apply:

- (a) in relation to Switzerland,
  - (i) to the nationals of the Contracting States as well as to their family members and survivors;
  - (ii) to refugees, to stateless persons and to their family members and survivors who reside in the territory of a Contracting State; but not to derogate from more favourable national provisions;
  - (iii) to other persons not listed above for the purposes of Articles 6, 7, 8, 9, 10, 11, 21 to 25 and Articles 27 to 31 of the Agreement;
- (b) in relation to Australia, to any person who is or has been an Australian resident or independently of this Agreement would be subject to the legislation of Australia.

### **Article 4 Equality of Treatment**

1. (a) Subject to this Agreement, Australian nationals as well as their family members and survivors shall, in the application of the Swiss legislation, receive equal treatment with Swiss nationals or their family members and survivors, as the case may be.

- (b) Subparagraph (a) shall not apply to Swiss legislation:
    - (i) on the voluntary old-age, survivors' and disability insurance;
    - (ii) on old-age, survivors', and disability insurance of Swiss nationals who are gainfully occupied abroad in the service of the Swiss Confederation or organisations in the meaning of subparagraph 1(c) of Article 1a of the Federal Law on old-age and survivors' insurance.
2. Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by Australia in regard to rights and obligations which arise whether directly under the Australian legislation or by virtue of this Agreement.

**Article 5**  
**Export of Benefits**

1. Unless provided otherwise in this Agreement,
- (a) benefits payable under the Swiss legislation shall also be paid to nationals of Australia or other persons to the extent that they derive rights from a national of Australia, while the beneficiary is in the territory of Australia;
  - (b) Australian benefits which are payable by virtue of this Agreement shall be payable in the territory of Switzerland.
- 2.
- (a) Benefits payable under the legislation of Switzerland shall be paid to a national of Australia residing in a third State as well as to their family members and survivors with respect to rights they derive from that national, under the same conditions and to the same extent as they would be paid to a Swiss national or to their family members and survivors in respect to rights they derive from a national.

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- (b) Where the legislation of Australia provides that a benefit is payable outside its territory, then that benefit, when payable by virtue of this Agreement, is also payable outside the territory of both Switzerland and Australia.
3. Subparagraph 1(a) shall not apply to ordinary pensions for insured persons with a disability of less than fifty percent provided under Swiss disability insurance or to the extraordinary pensions and helplessness allowances provided under Swiss old age, survivors' and disability insurance.
4. Where qualification for an Australian benefit is subject to limitations as to time, then references to Australia in those limitations shall be read as references to the territory of Switzerland.
5. Where a double orphan pension would be payable to a person under the social security laws of Australia, in respect of a young person whose sole surviving parent died while that young person was an Australian resident, if that person and that young person were residents of Australia, that pension shall, subject to the provisions of those laws, be payable while that person and that young person are residing in the territory of Switzerland.
6. The provisions of this Article shall not apply to carer payment.
7. In relation to Australia, any additional amount, increase or supplement that is payable in addition to a benefit under this Agreement shall be payable outside the territory of Australia only if it would be so payable if that benefit was payable independently of this Agreement.

**PART II**

**PROVISIONS ON COVERAGE**

**PROVISIONS RELATING TO THE SUPERANNUATION GUARANTEE  
LEGISLATION OF AUSTRALIA AND TO SWISS LEGISLATION**

**Article 6  
Application of the Part**

This part applies where:

- (a) without the application of this Part an employee and/or the employer of the employee would otherwise be covered by the legislation of both Contracting States;
- (b) without the application of Article 8 letter B and Article 9 paragraph 1(b) and paragraph 2(b) an employee from Switzerland and/or the employer of the employee would otherwise come to be covered by the legislation of Australia and not remain covered by the legislation of Switzerland;  
or
- (c) without the application of any other provision of this Part an employee would not be covered by the legislation of either Contracting State.

**Article 7  
General Provision**

Subject to the other provisions of this Part, if an employee works in the territory of one Contracting State, the employer of the employee 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 State.

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**Article 8**  
**Secondment****A. Affiliation under the Australian legislation**

1. If an employee:
  - (a) has been covered by the Australian legislation;
  - (b) was sent, whether before, on or after the commencement of this Part, by an employer who is subject to the Australian legislation to work temporarily in the territory of Switzerland;
  - (c) is working temporarily in the territory of Switzerland in the employment of the employer or a related entity of that employer (i.e. the entity and the employer are members of the same wholly or majority owned group); and
  - (d) a period of 5 years from the time the employee was sent to work in the territory of Switzerland has not elapsed;

the employer of the employee and the employee shall be subject only to the Australian legislation in respect of the work performed after entry into force of this Agreement and the remuneration paid for that work.

2. If an employee:
  - (a) has been covered by the Australian legislation;
  - (b) was sent, whether before, on or after the commencement of this Part, by the Australian Government including a political subdivision or local authority of Australia, to work temporarily in the territory of Switzerland; and
  - (c) is working temporarily in the territory of Switzerland in the employment of the Australian Government including a political subdivision or local authority of Australia;

the employer of the employee and the employee shall be subject only to the Australian legislation in respect of the work performed after entry into force of this Agreement and the remuneration paid for that work.

**B. Affiliation under the Swiss legislation**

1. If an employee:

- (a) has been covered by the Swiss legislation;
- (b) was sent, whether before, on or after the commencement of this Part, by an employer who is subject to the Swiss legislation to work temporarily in the territory of Australia;
- (c) is working temporarily in the territory of Australia in the employment of the employer or a related entity of that employer (i.e. the entity and the employer are members of the same wholly or majority owned group); and
- (d) a period of 5 years from the time the employee was sent to work in the territory of Australia has not elapsed;

the employer of the employee and the employee shall be subject only to the Swiss legislation in respect of the work performed after entry into force of this Agreement and the remuneration paid for that work.

2. If an employee:

- (a) has been covered by the Swiss legislation;
- (b) was sent, whether before, on or after the commencement of this Part, by a public service of Switzerland to work temporarily in the territory of Australia; and
- (c) is working temporarily in the territory of Australia in the employment of the Swiss public service;

the employer of the employee and the employee shall be subject only to the Swiss legislation in respect of the work performed after entry into force of this Agreement and the remuneration paid for that work.

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3. The spouse and children accompanying an employee in Australia to whom paragraph 1 or 2 applies shall remain insured under the legislation of Switzerland in so far as they are residing with that employee in Australia and are not gainfully employed or self-employed themselves in Australia.

**Article 9**  
**International Transportation**

- 1.
- (a) Subject to paragraph (b) an employee working for a Swiss airline company as the member of the crew of an aircraft in international traffic shall be subject only to Swiss legislation.
  - (b) An Australian resident who is employed by an Australian resident employer as a member of the crew of an aircraft in international traffic shall be subject only to the legislation of Australia.
- 2.
- (a) Subject to paragraph (b) an employee working as the member of the crew of a vessel flying the Swiss flag shall be subject only to the legislation of the Contracting State of which he is resident.
  - (b) An Australian resident who is employed by an Australian resident employer on board a vessel shall be subject only to the legislation of Australia.

**Article 10**  
**Diplomatic and Consular Relations**

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

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## Article 11

### Exceptions from the Provisions on Coverage

The Competent Authorities of both Contracting States may, by mutual consent, agree to a different application of Articles 7, 8 and 9 with respect to any person or category of persons.

## PART III

### APPLICATION OF SWISS LEGISLATION

## Article 12

### Disability Insurance: Rehabilitation Measures

1. Australian nationals, who, immediately prior to eligibility for rehabilitation measures have been liable to pay contributions to the Swiss old age, survivors' and disability insurance, shall be entitled to such measures as long as they are physically present in Switzerland. Article 13 applies mutatis mutandis to this paragraph.
2. Australian nationals, who, immediately prior to eligibility for rehabilitation measures have not been liable to pay contributions to the Swiss old age, survivors' and disability insurance because of their age, but nevertheless have been insured under this insurance, shall be entitled to such measures as long as they are domiciled in Switzerland, if, immediately prior to eligibility for the measures they have resided in Switzerland without interruption for at least one full year. Minor children shall, moreover also be entitled to such measures if they are domiciled in Switzerland and if they have either been born disabled there or have resided there without interruption since birth.
3. Australian nationals residing in Switzerland who leave Switzerland for a period not exceeding three months shall not be deemed to have interrupted their residence in Switzerland within the meaning of paragraph 2.

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4. A child who is an Australian national and who is born disabled in Australia to a mother who:
- (a) is domiciled and insured in Switzerland; and
  - (b) was absent from Switzerland for not more than 2 months before the birth;

shall be treated as a child born disabled in Switzerland. In the case of a congenitally handicapped child, Swiss disability insurance shall also be responsible for meeting expenses incurred abroad during the first three months after the birth to the same extent as it would have been required to meet these in Switzerland.

5. Paragraph 4 shall apply *mutatis mutandis* to a child born disabled outside the territory of the Contracting States; in such case, the Swiss disability insurance shall be responsible for meeting expenses incurred in the third State only if the measures had to be awarded there on an emergency basis due to the state of health of the child.

### **Article 13** **Continuation of Disability Insurance Coverage**

For the purpose of entitlement to ordinary pensions under Swiss legislation on disability insurance, Australian nationals shall remain insured for one year after the interruption of work resulting in disability, provided that person had to give up their gainful activity in Switzerland due to an accident or illness and that person's disability has been determined in Switzerland. The person must continue to pay contributions to Swiss old age, survivors' and disability insurance as if they had their domicile in Switzerland.

### **Article 14** **Old Age, Survivors' and Disability Insurance: Lump Sum Payments**

1. If an Australian national or their survivor who does not reside in Switzerland is entitled to an ordinary partial pension under the Swiss old age and survivors' insurance which is equal to not more than 10%

of the corresponding ordinary full pension, that person shall be granted instead of the partial pension, a lump sum which corresponds to the capitalised value of the pension payable under Swiss legislation when the insured event occurs. If an Australian national or their survivor, who received such a partial pension, permanently leaves Switzerland, that person shall also be granted a lump sum which corresponds to the capitalised value of that pension at the time of departure.

2. If the ordinary partial pension is equivalent to more than 10% but not more than 20% of the corresponding ordinary full pension, an Australian national or their survivor who does not reside in Switzerland or who is permanently leaving Switzerland may opt between having the pension paid or a lump sum. This option shall be made during the course of the procedure to determine the pension if the entitled person is staying outside Switzerland when the insured event occurs, or when leaving the country, if the entitled person already received a pension in Switzerland.
3. In the case of a married couple where both spouses have been insured under the Swiss insurance, the lump sum is paid to one spouse only when the other spouse is entitled to a pension.
4. When the lump sum has been paid out by the Swiss insurance institution no further claims can be asserted against that institution in respect of previous contributions paid or of corresponding insurance periods.
5. Paragraphs 1 to 4 shall apply mutatis mutandis to ordinary pensions of the Swiss disability insurance provided that:
  - (a) the person, who has entitlement, has achieved the age of 55 years; and
  - (b) the Swiss insurance doesn't require any further verification of the fulfilment of the conditions concerning the disability of that person.

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**Article 15**  
**Extraordinary Pensions**

1. Australian nationals shall under the same conditions as Swiss nationals be entitled to receive a Swiss extraordinary survivors' pension, disability pension or old age pension which replaces a disability or survivors' pension if, immediately before the date from which they claim the pension they have resided in Switzerland for a continuous period of not less than five years.
2. For the purpose of paragraph 1:
  - (a) no account shall be taken of any period during which the persons concerned were exempted of the Swiss old age, survivors' and disability insurance; and
  - (b) a period of residence in Switzerland shall not be regarded as interrupted if the absence from Switzerland is not more than three months in any calendar year. The period of three months may be extended in exceptional cases.

**Article 16**  
**Refund of Contributions**

1. Instead of a Swiss pension, an Australian national who has left Switzerland definitively may, on application, obtain the refund of the contributions paid to the Swiss old-age and survivors' insurance. Their survivor who has left Switzerland and is not a Swiss national may also apply for the refund. The refund is ruled by the Swiss legislation.
2. Once the refund has been paid, no further claims can be asserted against the Swiss old-age, survivors and disability insurance in respect of previous insurance periods.

**PART IV**

**AUSTRALIAN BENEFITS**

**Article 17**

**Residence or Presence in Switzerland or a Third State**

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit, other than a carer payment, except for not being an Australian resident and in Australia on the day on which the claim is lodged, but:
  - (a) is an Australian resident or a resident of Switzerland or a third State with which Australia has concluded an agreement on social security which includes provision for cooperation in the assessment and determination of claims for benefits and which includes that category of benefit; and
  - (b) is in Australia, or the territory of Switzerland or that third State,that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that day.
2. The requirement for a person to have been an Australian resident at some time shall not apply to a person who claims double orphan pension.

**Article 18**

**Totalisation for 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 that benefit; and

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- (b) a period of Australian working life residence equal to or greater than the period referred to in paragraph 3; and
  - (c) insurance periods in Switzerland,

then those insurance periods in Switzerland shall be deemed to be a period in which that person was an Australian resident

- only if those insurance periods in Switzerland have already been used or can be used at the time of totalisation, to obtain a benefit from Switzerland; and
- only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia.

2. For the purpose of this Article, where a person has a period as an Australian resident and insurance periods in Switzerland, any period of overlap shall be taken into account once only by Australia as a period as an Australian resident.
3. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:
  - (a) for the purpose 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 six months must be continuous; and
  - (b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum period shall be required.
4. For the purposes of this Article, an insurance period in Switzerland shall not include a period for which a person has received a refund of contributions under Article 16.

**Article 19**  
**Calculation of Australian Benefits**

1. Subject to paragraph 2, where an Australian benefit other than a double orphan pension is payable, whether by virtue of this Agreement or otherwise, to a person outside the territory of Australia, the amount of the benefit shall be determined according to the legislation of Australia but when assessing the rate of the Australian benefit only a proportion of any Swiss benefit which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of Australian working life residence (not exceeding 300) by the amount of that Swiss benefit and dividing that product by 300.
2. Only a person receiving a proportionalised Australian benefit shall be entitled to receive the concessional assessment of income described in paragraph 1.
3. The provisions in paragraph 1 of this Article and in Article 20 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
4. Subject to the provisions of paragraph 6 where an Australian benefit, other than carer payment and double orphan pension, is granted 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 Swiss benefit received by that person and by that person's partner, if applicable;
  - (b) deducting the amount of the Swiss 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 calculator set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph (a).



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5. Where a member of a couple is, or both members of a couple are in receipt of a Swiss benefit or benefits, each of them shall be deemed, for the purpose of paragraphs 1 and 4 and for the legislation of Australia, to be in receipt of half of either the amount of that benefit or the total of both those benefits as the case may be.
  6. Where the rate of a benefit calculated in accordance with paragraph 4 is less than the rate of that benefit which would be payable under paragraph 1 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.
  7. The provisions of paragraph 4 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
  8. Where a person receives a lump sum payment under Swiss legislation, as described in paragraphs 1 and 2 of Article 14, the amount of the lump sum payment shall be assessed as income for 12 months from the date the lump sum payment is entitled to be received when calculating the rate of the Australian benefit.
  9. For the purposes of paragraph 8 only, for Australia the term Australian benefit shall include all social security payments under the social security laws of Australia.

## **PART V**

### **COMMON PROVISIONS**

#### **Article 20**

##### **Common Provisions for the Calculation of Benefits**

1. Where a Contracting State (the first Contracting State) makes a payment under this Agreement or under its social security laws to a person who resides in the territory of the other Contracting State, the first Contracting State will disregard from the application of any income test it applies, any income-tested payment made by the other

Contracting State under this Agreement or under the other Contracting State's social security laws to that person.

2. The principles set out in paragraph 1 will continue to apply when a beneficiary moves to reside in a third country as if the beneficiary had not moved to that third country, provided that the relevant benefit is payable in that third country.
3. Where a person residing in a third country lodges a valid claim for a benefit, the principles set out in paragraphs 1 will be applied as if that person was resident in the territory of the Contracting State where he or she was last resident before moving to that third country provided that the relevant benefit is payable in that third country.

## **PART VI**

### **MISCELLANEOUS PROVISIONS**

#### **Article 21**

##### **Exchange of Information and Mutual Assistance**

The Competent Authorities and Competent Institutions, to the extent permitted by the legislation they administer, shall:

- (a) make the necessary administrative arrangements required to apply this Agreement;
- (b) subject to Article 23, communicate to each other any information necessary for the application of this Agreement;
- (c) communicate to each other, as soon as possible, all information about the measures taken by them for the application of the Agreement;
- (d) notify each other about all changes to their legislation which may affect the scope and application of this Agreement; and
- (e) designate liaison bodies to facilitate the application of this Agreement.

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**Article 22**

1. Subject to national laws and regulations, when implementing this Agreement the Competent Authorities and Competent Institutions of the Contracting States shall lend their good offices and furnish assistance to one another, as if they were applying their own legislation. Assistance shall as a rule be free of charge; the Competent Authorities may, however, mutually agree to reimburse certain costs.
2. When assessing the degree of disability the Competent Institutions of each Contracting State may, where appropriate, take account of information and medical reports provided by the Competent Institutions of the other Contracting State.

**Article 23**  
**Data Protection**

1. In providing assistance under Article 21, a Contracting State shall supply to the other Contracting State data about a person, particularly about any payments it makes to that person, only where that person:
  - (a) wishes to make use of any provision of the Agreement;
  - (b) claims a benefit from the first Contracting State after the Agreement enters into force; or
  - (c) is receiving a benefit from the second Contracting State before the Agreement enters into force and authorises the first Contracting State to provide the data to the second Contracting State.
2. In no case shall the provisions of this Agreement be construed so as to impose on the Competent Authority or Competent Institution of a Contracting State the obligation:
  - (a) to carry out administrative measures at variance with the laws and regulations or administrative practice of that Contracting State or the other Contracting State; or

- (b) to supply details which are not obtainable under its laws and regulations or in the normal course of the administration of that Contracting State or of the other Contracting State.
- 3. When information is transmitted in accordance with the Agreement, the following provisions are applicable for the processing and protection of that information.
  - (a) The receiving Competent Authority or Competent Institution shall use the information only:
    - (i) for the purpose indicated; or
    - (ii) in accordance with its own legislation, for other purposes concerning social security, including related judicial procedure.
  - (b) The Competent Authority or Competent Institution that provides the information shall ensure that it is accurate and that the contents are for the purpose indicated. In this respect, any restrictions concerning the transmission of information stipulated under the national legislation of that Contracting State must be respected. If inadequate information or information which should not have been transmitted is sent, the receiving Competent Authority or Competent Institution shall be informed by the sending Competent Authority or Competent Institution immediately this is discovered and shall rectify the situation or destroy the information in question.
  - (c) The transmitted information shall be kept only as long as the purpose for which it was transmitted requires. It should be ensured that the destruction of the information relating to social security may not damage the interests of the persons concerned.
  - (d) The Competent Authorities and Competent Institutions shall protect all information provided against any non-authorised access, non-authorised modification or non-authorised communication.

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**Article 24**  
**Lodgement of Documents**

1. Any reduction in or exemption from fees or stamp duties for documents and certificates provided for in the legislation of one Contracting State with respect to the issuing of a certificate or document required in accordance with that legislation, shall be extended to the corresponding certificates or documents required in accordance with the legislation of the other Contracting State or pursuant to this Agreement.
2. Documents and certificates, which are to be produced for the purposes of applying this Agreement, shall not require diplomatic or consular authentication.

**Article 25**

1. The Competent Authorities, courts and Competent Institutions of a Contracting State may not refuse to deal with requests or to take account of other documents because they have been drawn up in an official language of the other Contracting State.
2. When applying this Agreement the Competent Authorities, courts and Competent Institutions of the Contracting States may correspond directly with each other and with the persons affected by this Agreement or their representatives in their official languages.
3. The reference in this Article to a court is a reference to a Swiss court.

**Article 26**

1. A claim, submitted to a Competent Institution in the territory of a Contracting State for a benefit in accordance with the legislation of that Contracting State, shall also be deemed to be an application for a corresponding benefit in accordance with the legislation of the other Contracting State so long as the claimant has indicated in that claim that there is, or there was, an affiliation with the social security system of the other Contracting State. This shall not apply if the claimant declares

that the determination of a benefit pursuant to the legislation of a Contracting State is deferred on the basis of age.

2. The date of receipt of a claim in accordance with paragraph 1 shall be deemed to be the date of lodgement of that claim under the legislation of the first Contracting State.

#### **Article 27**

1. A claim, notice or appeal which is, in accordance with the legislation of a Contracting State, to be submitted to the Competent Authority or Competent Institution of that Contracting State by a prescribed period shall be deemed to have been submitted on time if it is submitted to Competent Authority or Competent Institution of the other Contracting State by that period. The date on which a claim, notice or appeal is lodged with the Competent Authority or Competent Institution of the other Contracting State shall be treated, for the purposes of assessing entitlement to benefit, as the date of lodgement of that document with the Competent Authority or Competent Institution of the first Contracting State.
2. The Competent Authority or Competent Institution to which the claim, notice or appeal has been submitted shall arrange for it to be transmitted to the Competent Authority or Competent Institution of the other Contracting State.
3. The reference in this Article to an appeal document is a document concerning an appeal that may be made to an administrative body established by the social security laws and regulations of either Contracting State.

#### **Article 28**

1. Payments of cash benefits under this Agreement may be made in the currency of the Contracting State whose Competent Institution has to make the payments or other currency as determined by that Contracting State.

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2. If a Competent Institution of one Contracting State has to make payments to a Competent Institution of the other Contracting State, such payments shall be made in the currency of the other Contracting State.
  3. Should a Contracting State make provisions to restrict foreign exchange operations, that Contracting State shall immediately adopt measures to secure the transfer of amounts payable by both sides pursuant to this Agreement.
  4. A benefit payable by a Contracting State by virtue of this Agreement or under its legislation shall be paid by that Contracting State without deduction of administrative fees and charges by the government or the corresponding Competent Institution for processing and paying that benefit, whether the person qualifying for the benefit is in the territory of the other Contracting State or in a third State.

**Article 29**  
**Recovery of Overpayments**

1. If a Competent Institution of a Contracting State has overpaid cash benefits to any person under this Agreement the amount of the overpayment may be deducted in favour of that Competent Institution from arrears of a corresponding benefit to which there is entitlement under the legislation of the other Contracting State, in so far as this is permitted by the legislation of the second Contracting State.
2. In relation to Australia a reference in paragraph 1 to a benefit means a pension, benefit or allowance payable under its social security laws.

**Article 30**  
**Resolution of difficulties**

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

2. If a solution cannot be found in this way, the matter in dispute shall be referred to arbitration which shall settle it within the meaning and spirit of this Agreement. The Contracting States shall provide for the composition and procedure of that arbitration by mutual agreement.
3. Paragraph 2 does not apply in relation to the application of Part II of this Agreement.

## **PART VII**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 31**

##### **Recognition of Prior Periods and Events**

1. This Agreement shall also apply to contingencies which materialised before the date of its entry into force.
2. This Agreement shall not confer any rights to the payment of benefits in respect of periods before its entry into force.
3. For the purposes of determining entitlement of a person to a benefit pursuant to this Agreement:
  - (a) in relation to Switzerland, account shall also be taken of all Swiss insurance periods completed before the entry into force of this Agreement;
  - (b) in relation to Australia, any events or facts and any periods
    - (i) as an Australian resident;
    - (ii) of Australian working life residence; or
    - (iii) of Swiss insurance,



shall, subject to this Agreement, be taken into account in so far as those periods, events or facts are applicable in regard to that person regardless of when they occurred or were accumulated.

4. This Agreement shall not apply to claims which have been settled by a lump sum or the refund of contributions before its entry into force.

### **Article 32**

#### **Decisions And Claims Made Before The Entry Into Force**

1. Decisions made before the entry into force of this Agreement shall not prevent the application of this Agreement.
2. Claims which were determined before the entry into force of this Agreement shall on request be re-examined in accordance with this Agreement.
3. Revisions carried out by virtue of this Article shall not result in a reduction in the amount of benefit being paid before the revisions.
4. Subject to paragraph 2 of Article 31, in the case of claims which are being examined under paragraph 2, the prescribed time limits for lodgement of claims and periods for statute-barring in accordance with the legislations of the Contracting States shall not commence before this Agreement enters into force.

### **Article 33**

#### **Review of Agreement**

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

## Article 34

### Entry Into Force And Termination

1. This Agreement shall enter into force on the first day of the month following the month in which notes are exchanged by the Contracting States 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. The Agreement is concluded for an indefinite period.
2. Except where the Agreement has been terminated under Article 60 of the Vienna Convention on the Law of Treaties of 23 May 1969 and subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party received from the other a note through the Diplomatic channel indicating the intention of the other Party to terminate this Agreement.
3. In the event that this Agreement is terminated in accordance with paragraph 2:
  - (a) the Agreement shall continue to have effect in relation to all persons who:
    - (i) at the date of termination, are in receipt of benefits by virtue of this Agreement;
    - (ii) prior to the expiry of the period referred to in paragraph 2, have lodged claims for, and would be entitled to receive benefits by virtue of this Agreement; or
    - (iii) immediately before the date of termination, are subject only to the legislation of one Contracting State by virtue of Article 8 of this Agreement provided that the employee continues to satisfy the criteria of that Article;
  - (b) entitlements in the process of being acquired pursuant to the provisions of this Agreement may be settled by agreement.

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

**DONE** in two copies at Canberra this ninth day of October, two thousand and six in the English and French languages, both texts being equally authoritative.

FOR THE GOVERNMENT OF  
AUSTRALIA

Mal Brough  
Minister for Families, Community  
Services and Indigenous Affairs

FOR THE SWISS FEDERAL COUNCIL

Pascal Couchepin  
Head of the Federal Department of Home  
Affairs

## Schedule 21 — Republic of Korea

Note: See Section 5.

### 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

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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
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(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.

**Article 9**

**Seconded Workers**

1. If an employee:
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- (a) is covered by the legislation of one Contracting Party (the first Contracting Party); and
  - (b) was sent, whether before, on or after the entry into force of this Agreement, 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) has been in the territory of the second Contracting Party for a period not exceeding 5 years after being sent to work in that territory by the employer; and
  - (e) is not working permanently in the territory of the second Contracting Party;

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

2. In case the duration for which the employee is working continues beyond the period specified in paragraph 1(d) of this Article, the legislation of the first Contracting Party shall continue to apply, provided that the Competent Authorities of both Contracting Parties or the agencies designated by them consent upon the joint request of the employee and the employer.
3. For the purposes of paragraph 1(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.

### **Article 10** **Mariners and Aircraft Crew**

If an employee is working in the employment of an employer on a ship or aircraft in international traffic, the employer of the employee 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 a resident.

### **Article 11**

#### **Member of Diplomatic Mission and Civil Servants**

1. Nothing in this Agreement shall affect the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or of the Vienna Convention on Consular Relations of 24 April 1963.
2. If an employee:
  - (a) is covered by the legislation of one Contracting Party (the first Contracting Party); and
  - (b) was sent, whether before, on or after the entry into force of this Agreement, by the Government 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 Government of the first Contracting Party; and
  - (d) is not working permanently in the territory of the second Contracting Party;

the employer of the employee and the employee shall be subject only to the legislation of the first Contracting Party in respect of the work and the remuneration paid for the work. For the purposes of this paragraph, the term "Government" includes a political subdivision or local authority or any entity treated as such by either Contracting Party.

### **Article 12**

#### **Modification Provision**

The Competent Authorities of both Contracting Parties or the agencies designated by them may agree to grant an exception to the provisions of this Part with respect to particular persons or categories of persons provided that any affected person shall be subject to the legislation of one Contracting Party.

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**PART III**  
**Provisions relating to Korean Benefits**

**Article 13**  
**Totalisation and Calculation of Pensions**

1. For the purposes of this Article a period of Australian working life residence means a period:
  - (a) defined as such in the legislation of Australia; and
  - (b) during which the person was employed or self-employed or the person's employer was subject to the legislation specified in paragraph 1(b)(ii) of Article 2.
2. When periods of coverage have been completed under the legislation of Korea, the agency of Korea shall, in determining eligibility for benefits under the legislation which it applies, take into account, if necessary, periods of Australian working life residence, provided that such periods do not overlap with periods of coverage under the legislation of Korea.
3. The calculation of the pension shall be determined by the legislation of Korea unless otherwise provided in this Agreement.
4. Where periods of Australian working life residence are taken into account to establish eligibility for benefits under the legislation of Korea in accordance with paragraph 2 of this Article, the benefit due shall be determined as follows:
  - (a) the agency of Korea shall first compute a pension amount equal to the amount that would have been payable to the person if the total of the periods of Australian working life residence and periods of coverage in Korea had been completed under the legislation of Korea. To determine the pension amount, the agency of Korea shall take into account the person's average standard monthly income while covered under the legislation of Korea; and
  - (b) the agency of Korea shall calculate the partial benefit to be paid in accordance with the legislation of Korea based on the pension amount calculated according to the preceding subparagraph, in proportion to the ratio of the duration of the

periods of coverage taken into consideration under the legislation of Korea to the total duration of the periods of Australian working life residence and periods of coverage taken into consideration under the legislation of Korea.

**Article 14**  
**Special Provisions**

1. Lump-sum refunds shall be granted to Australian nationals under the same conditions as they are granted to Korean nationals in accordance with the legislation of Korea. Notwithstanding Article 4 of this Agreement, lump-sum refunds shall be paid to nationals of a third State only in accordance with the legislation of Korea.
2. For the purposes of Parts III and IV, the periods of coverage for which contributions have been refunded in lump-sum shall not be certified by the agency of Korea as creditable in totalizing periods to determine entitlement to a benefit, unless such lump-sum refunds have been paid back to the agency of Korea in accordance with the legislation of Korea.
3. Notwithstanding any other provision of this Agreement, if the total duration of the creditable periods of coverage accumulated by a person under the legislation of Korea is less than one year, the agency of Korea shall not be required to apply Article 13 of this Agreement.

**PART IV**  
**Provisions relating to Australian Benefits**

**Article 15**  
**Residence or Presence in Korea or a Third State**

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 Korea or a third State with which Australia has concluded an agreement on social security that includes provision for cooperation in the

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lodgment, assessment and determination of claims for benefits; and

(b) is in Australia, or Korea or that third State,

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 16**  
**Totalisation for Australia**

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 equal to or greater than the period identified in accordance with paragraph 4 for that person; and
  - (c) a period of coverage in Korea,

then, for the purposes of a claim for that Australian benefit, that period of coverage in Korea shall be deemed to be a period in which that person was an Australian resident:

- only if that period of coverage in Korea is certified by the agency of Korea at the request of the Australian agency; and
- 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, 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 coverage in Korea in two or more separate periods that equals or exceeds in total the minimum period referred to in the preceding subparagraph (a);

the total of the periods of coverage in Korea 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 coverage in Korea 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 as follows:
  - (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 six months must be continuous; and
  - (b) for the purposes of an Australian benefit that is payable to an Australian resident, there shall be no minimum period.

#### **Article 17**

#### **Calculation of Australian Benefits**

1. Subject to paragraphs 2 and 3, where an Australian benefit is payable by virtue of this Agreement or otherwise to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia. When assessing the income of that person for the purpose of calculating the rate of that benefit under the legislation of Australia, only a proportion of any benefit under the legislation of Korea paid to that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of Australian working life residence (not exceeding 300) by the amount of that benefit under the legislation of Korea and dividing that product by 300.
2. A person referred to in paragraph 1 of this Article shall be entitled to receive the assessment of income described in that paragraph only for any period during which the rate of that person's benefit under the legislation of Australia is proportionalised under the legislation of Australia.

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3. The provision in paragraph 1 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
  4. Subject to paragraph 5, 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 any Korean benefit which that person or the partner of that person is entitled to receive if applicable; and
    - (b) deducting the amount of the Korean benefit which that person is entitled to receive 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).
  5. The provisions in paragraph 4 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
  6. Where a member of a couple is, or both that person and his or her partner are, entitled to a Korean benefit or benefits, each of them shall be deemed, for the purposes of this Article and the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

**PART V**  
**Miscellaneous Provisions**

**Article 18**  
**Administrative Arrangement**

1. The Competent Authorities of the Contracting Parties shall conclude an Administrative Arrangement that sets out the measures necessary for the implementation of this Agreement.
2. The liaison agencies of each Contracting Party shall be designated in the Administrative Arrangement.

### **Article 19**

#### **Exchange of Information and Mutual Assistance**

1. The Competent Authorities and agencies of the Contracting Parties shall, within the scope of their respective authorities:
  - (a) communicate to each other, to the extent permitted by their national laws and regulations, any information necessary for the application of this Agreement;
  - (b) assist each other with regard to the determination of entitlement to, or payment of, any benefit under this Agreement, or the legislation to which this Agreement applies;
  - (c) communicate to each other, as soon as possible, information concerning the measures taken by them for the application of this Agreement and of any changes in their respective legislation which may affect the application of this Agreement;
  - (d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with paragraph 1 of Article 18.
2. The assistance referred to in paragraph 1(b) of this Article shall be provided free of charge, subject to any exceptions to be agreed upon in the Administrative Arrangement concluded pursuant to paragraph 1 of Article 18.

### **Article 20**

#### **Confidentiality of Information**

Unless otherwise required by the national laws and regulations of a Contracting Party, information about an individual which is transmitted in accordance with this Agreement to the Competent Authority or agency of that Contracting Party by the Competent Authority or agency of the other Contracting Party shall be used exclusively for purposes of implementing this Agreement and the legislation to which this Agreement applies. Such information received by a Competent Authority

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or agency of a Contracting Party shall be governed by the national laws and regulations of that Contracting Party for the protection of privacy and confidentiality of personal data.

### **Article 21**

#### **Exemption from Fees and Certification of Documents**

1. Where the legislation of a Contracting Party provides that any document which is submitted to the Competent Authority or agency of that Contracting Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or agency of the other Contracting Party in the application of this Agreement.
2. Documents and certificates which are presented by the Competent Authority or the agency of either Contracting Party for purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular authorities.
3. Copies of documents which are certified as true and exact copies by an agency of one Contracting Party shall be accepted as true and exact copies by an agency of the other Contracting Party, without further certification.

### **Article 22**

#### **Language of Communications**

1. The Competent Authorities and agencies of the Contracting Parties may correspond directly with each other and with any person, wherever that person may reside, whenever it is necessary to do so for the application of this Agreement or the legislation to which this Agreement applies. The correspondence may be in any official language of either Contracting Party.
2. An application or document may not be rejected by a Competent Authority or agency of a Contracting Party solely because it is in an official language of the other Contracting Party.

**Article 23**

**Lodgment of Claims, Notices or Appeals**

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of a Contracting Party which should, for the purposes of that legislation, have been lodged within a prescribed period to a Competent Authority or agency of that Contracting Party, but which is lodged within the same period to a Competent Authority or agency of the other Contracting Party, shall be treated as if it had been lodged to the Competent Authority or agency of the first Contracting Party.
2. The date on which a claim, notice or appeal concerning the determination or payment of a benefit under the legislation of one Contracting Party is lodged with the Competent Authority or agency of the other Contracting Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgment of that document with the Competent Authority or agency of the first Contracting Party.
3. If, after the entry into force of this Agreement, a person files a written application for benefits with the agency of a Contracting Party under the legislation of that Contracting Party, and if that person has not explicitly requested that the application be restricted to benefits under that legislation, the application shall also protect the rights of that person to corresponding benefits under the legislation of the other Contracting Party, provided that the person at the time of application:
  - (a) is entitled on age grounds to lodge a valid claim for a benefit of the other Contracting Party; and
  - (b) requests that it be considered as an application under the legislation of the other Contracting Party; or
  - (c) provides information indicating that periods of coverage have been completed under the legislation of the other Contracting Party.

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4. In any case to which paragraphs 1, 2 or 3 applies, the Competent Authority or agency to which the claim, notice or appeal has been submitted shall indicate the date of receipt of the document and transmit it without delay to the Competent Authority or agency of the other Contracting Party.
  5. In relation to Australia, the reference in paragraph 1 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 social security laws of Australia.

**Article 24**  
**Currency**

1. The agency of a Contracting Party may pay benefits in accordance with this Agreement in the currency of that Contracting Party.
2. In the event that a Contracting Party imposes currency controls or other similar measures that restrict payments, remittance or transfers of funds or financial instruments to persons who are outside that Contracting Party, it shall, without delay, take appropriate measures to ensure the payment of any amount that must be paid in accordance with this Agreement to persons described in Article 3 who reside in the other Contracting Party.

**Article 25**  
**Payment of Benefits**

1. This Agreement shall not establish any right to payment of a benefit for any period before the date of the entry into force of this Agreement.
2. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:
  - (a) a period as an Australian resident and a period of coverage in Korea; and
  - (b) any event or fact which is relevant to that eligibility or entitlement;

shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred. However, the agency of neither Contracting Party shall be required to take into account periods of coverage or residence which occurred prior to the earliest date for which periods of coverage or residence may be credited under its legislation.

3. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia becoming again an Australian resident, and lodges a claim for an Australian benefit and again leaves Australia within a specified period of time.

#### **Article 26 Resolution of Disputes**

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the Competent Authorities of the Contracting Parties.

#### **Article 27 Review of Agreement**

Where a Contracting Party requests the other Contracting Party to meet to review this Agreement, the Contracting Parties shall meet for that purpose on a date to be agreed between the Contracting Parties 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 28**  
**Transitional Provisions**

1. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.
2. In applying Article 9 in case of persons who were sent to a Contracting Party prior to the date of entry into force of this Agreement, the periods of employment referred to in that Article shall be considered to begin on that date.
3. The provisions of Parts III and IV shall apply only to benefits for which an application is filed on or after the date this Agreement enters into force.

**Article 29**  
**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 constitutional or legislative matters as are necessary to give effect to this Agreement have been finalised.

**Article 30**  
**Period of Duration and Termination**

1. Subject to paragraph 2, 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 Article 9 and paragraph 2 of Article 11 of Part II of the Agreement, provided 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 duplicate at Canberra on the sixth day of December TWO THOUSAND AND SIX, in the English and Korean languages, each text being equally authentic.

**FOR THE GOVERNMENT OF  
AUSTRALIA**

**FOR THE GOVERNMENT OF  
THE REPUBLIC OF KOREA**

Alexander Downer  
Minister for Foreign Affairs

Song Min-soon  
Minister for Foreign Affairs

## **Schedule 22 — Hellenic Republic**

Note: See Section 5.

### **AGREEMENT BETWEEN AUSTRALIA AND THE HELLENIC REPUBLIC ON SOCIAL SECURITY**

The Government of Australia and the Government of the Hellenic Republic  
(hereinafter “the 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:

“**benefit**” means, in relation to Australia, a benefit, pension or allowance for which provision is made in the legislation of Australia, 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 legislation of Australia but, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee; and, in relation to Hellas, the old age pension for which provision is made in the legislation of Hellas, and includes any additional amount, increase or supplements or readjustments that are payable in addition to the amount of the old age pension;

**“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 Hellas, the Minister of Hellas, who has the competency of the social security systems referred to in subparagraph 1(b) of Article 2;

**“Competent Institution”** means, in relation to Australia, the institution or agency which has the task of implementing the applicable Australian legislation; and in relation to Hellas, the social security institution which has the task of implementing the applicable Hellenic legislation which is defined in Article 2;

**“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 Hellas the laws which are specified in subparagraph 1(b) of Article 2;

**“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 11 to be a period in which that person was an Australian resident;

**“period of insurance”** means, in relation to Hellas, each period of paid contributions which gives a right to an entitlement on the basis of Article 2 and each period which is recognized as such, according to this legislation; and, especially for OGA, a period of insurance is also a period of employment in the agricultural sector.

**“territory”** means, in relation to Australia, Australia as defined in the legislation of Australia; and, in relation to Hellas, Hellas as defined in the legislation of Hellas;

2. Unless the context otherwise requires, any term not defined in this Article shall have the meaning assigned to it in the legislation of either contracting Party or in the event of a conflict of meaning, by whichever of those laws is the more applicable to the circumstances of that person.



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**Article 2****Legislative Scope**

1. Subject to paragraph 2, 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, consolidate, 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 Hellas regarding the old age pension:
    - i. the general legislation of social insurance covering the employed and the equivalent to them.
    - ii. the legislation provided under the specific systems of social insurance covering all the categories of the employed.
    - iii. the legislation provided under the system of social insurance covering the self employed.
    - iv. the legislation covering the persons, who are insured under the OGA social security system (Organization of Agricultural Insurance).

This Agreement (other than Part II) shall not apply to the specific social security systems covering the civil servants and the merchant marines who are only subject to the provisions of Article 5 of this Agreement.
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 party.
3. This Agreement shall apply to laws or regulations which extend the existing legislation of either Party to new categories of beneficiaries only if the two Parties so agree in a Protocol to this Agreement.

### **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 Hellas,
- and, where applicable, to other persons in regard to the rights they derive from the person described above.

### **Article 4**

#### **Equality of Treatment**

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

### **Article 5**

#### **Export of Benefits**

1. Benefits of one Party, when payable by virtue of this Agreement, shall be payable to persons who are residents of, or in, the territory 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 outside the territory of Australia only according to the provisions of the Acts forming the social security law.
3. In relation to Hellas, any additional amount, increase or supplement that is payable in addition to a benefit under this Agreement, shall be payable outside the territory of Hellas only according to the Hellenic legislation.

**PART II**  
**PROVISIONS CONCERNING THE APPLICABLE LEGISLATION**

**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 Australia or Hellas do not have a double liability under the legislation of Australia and Hellas, in respect of the same work of an employee.

**Article 7**

**Application of this Part**

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.

**Article 8**

**Provisions related to the affiliation with  
Social Security and Superannuation Guarantee**

1. Unless otherwise provided in this article, an employee working in the territory of one of the contracting Parties will be subject only, in respect of this work, to the legislation of that Party.
2. If an employee:
  - (a) is covered by the legislation of one contracting Party ('the first contracting Party');
  - (b) was sent, whether before, on or after the commencement of this Part, by the Government of the first contracting Party to work in the territory of the other contracting Party ('the second contracting Party');
  - (c) is working in the territory of the second contracting Party in the employment of the Government of the first contracting Party;  
and
  - (d) is not working permanently in the territory of the second contracting Party;

the employer of the employee and employee shall be subject only to the legislation of the first contracting Party in respect of the work performed after the entry into force of this Agreement and the remuneration paid for that work. For the purposes of this paragraph, the term “Government” includes in relation to Australia a political subdivision or local authority of Australia.

3. If a self-employed person:
    - (a) is working in the territory of one contracting Party, he is subject to the legislation of this Party even if he has his residence in the territory of the other contracting Party.
    - (b) is working as an employee in the territory of one contracting Party and at the same time as a self-employed person in the territory of the other contracting Party, he is subject to the legislation of that Party in whose territory he works as an employee.
  4. If an employee:
    - (a) is covered by the legislation of one contracting Party (‘the first contracting Party’);
    - (b) was sent, whether before, on or after the entry into force of this Agreement, by an employer who is subject to the legislation of the first Party to work in the territory of the other contracting Party (‘the second contracting Party’);
    - (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 a period of 4 years from the time the employee was sent to work in the territory of the second contracting Party has not elapsed; and
    - (d) the employee is not working permanently in the territory of the second contracting Party;

the employer of the employee and the employee shall be subject only to the legislation of the first Party in respect of the work performed after the entry into force of this Agreement and the remuneration paid for that work.
  5. For the purposes of subparagraph 4(c) a related entity is an entity of an employer if the entity and the employer are members of the same wholly or majority owned group.
  6. The competent authorities of both contracting Parties may, after a common agreement, modify the implementation of the provisions of this Article with respect to any person or a category of persons.
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**Article 9**

**Diplomatic 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.

**PART III**

**PROVISIONS RELATING TO AUSTRALIAN BENEFITS**

**Article 10**

**Residence or Presence in Hellas**

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 Hellas; and
- (b) is in Australia, or in the territory of Hellas;

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 11**

**Totalisation for Australia**

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 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 Hellas;

then, for the purposes of a claim for that Australian benefit, that period of insurance under the legislation of Hellas 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, where a person:
  - (a) has been an Australian resident for a continuous period which

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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 Hellas in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a);

the total of the periods of insurance under the legislation of Hellas 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 Hellas 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 as follows:
- (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 six months must be continuous; and
- (b) for the purposes of an Australian benefit that is payable to an Australian resident, there shall be no minimum period.
5. For the purpose of this Article, a period of insurance under the legislation of Hellas shall be deemed as a period as an Australian resident only if that period of insurance under the legislation of Hellas is certified by the Competent Institution of Hellas.

## **Article 12**

### **Calculation of Australian Benefits**

1. Subject to paragraphs 2, 3, 4 and 5, where an Australian benefit is payable to a person outside Australia only by virtue of this Agreement, 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 Hellas 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 sub-paragraph (a); and
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- c. proportionalising, if applicable, the amount of benefit calculated under sub-paragraph (b) by multiplying that amount by the person's period of Australian working life residence (up to a maximum of 300 months) over a denominator of 300 months (25 years).
  2. Subject to paragraphs 3, 4 and 5, where an Australian benefit is payable to a person outside Australia only by virtue of this Agreement, and the person had ceased to be an Australian resident on the date of entry into force of this Agreement, 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 Hellas 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 sub-paragraph (a); and
    - c. proportionalising, if applicable, the amount of benefit calculated under sub-paragraph (b) by multiplying that amount by the person's period of Australian working life residence (up to a maximum of 528 months) over a denominator of 528 months (44 years).
  3. Where the rate of an Australian benefit is determined according to paragraph 2 and the person again becomes an Australian resident, the rate of benefit shall continue to be determined according to paragraph 2, subject to paragraph 7 where applicable, if the person subsequently leaves Australia within two years of the date the person again became an Australian resident.
  4. The provisions in paragraphs 1, 2, and 5 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
  5. Where an Australian benefit is payable to a person outside Australia, whether by virtue of this Agreement or otherwise, the following payments under the legislation of Hellas shall be disregarded when assessing the income of that person:
    - Pensioners' Social Solidarity Benefit (EKAS);
    - Uninsured Aged Person's Pension (OGA);
    - benefits for or in respect of dependent children who satisfy the definition of a dependent child under Australian domestic law, but for residence requirements.
  6. Subject to paragraph 7, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that
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benefit shall be determined by:

- (a) calculating that person's income according to the legislation of Australia but disregarding in that calculation any benefit under the legislation of Hellas which that person or the partner of that person is entitled to receive if applicable; and
  - (b) deducting the amount of the benefit under the legislation of Hellas which that person is entitled to receive 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).
7. Paragraph 6 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
  8. 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 Hellas 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 both of those benefits, as the case may be.

#### **PART IV**

### **PROVISIONS RELATED TO BENEFITS UNDER THE HELLENIC LEGISLATION**

#### **Article 13**

##### **Totalisation of insurance periods, residence and calculation of benefits**

1. If a person is entitled to an Hellenic benefit without recourse to the provisions of paragraph 2 and 3 of this Article the amount of the benefit is determined according to the Hellenic legislation on the basis of insurance periods completed under this legislation.
2. Where no entitlement to Hellenic benefit exists on the basis of Hellenic insurance periods, the periods of residence completed under Australian legislation shall be totalized for the acquisition of the rights to old age pension under the Hellenic legislation, provided that these periods do not overlap.
3. Where periods of residence completed under Australian legislation are taken into account for the acquisition of the right according to the previous paragraph the benefit payable under the Hellenic legislation is

determined as follows:

- a. The competent Institution first calculates the amount of the benefit which would have been awarded to the person concerned if the periods completed under Australian legislation and totalized according to the previous paragraph had been completed under its own legislation for the acquisition of the right to old age pension.
  - b. The competent Institution in determining the amount of the benefit takes into consideration the salary (earnings), income or contributions which have been paid during the period completed under the Hellenic legislation.
  - c. where the amount determined as above is less than the minimum benefit provided by the Hellenic legislation then the minimum amount shall substitute the amount determined as above.
4. On the basis of the amount calculated according to the previous paragraph the competent institution determines the amount of the partial benefit payable by it, according to ratio between the length of the periods of insurance completed under its own legislation and the total duration of the periods of insurance and residence which have been taken into account.
  5. If the total length of the periods of insurance which shall be taken into account in accordance with Hellenic legislation for the calculation of the benefit does not attain 300 days (12 months) and provided that no entitlement to a benefit according to the Hellenic legislation exists without applying the previous paragraphs no benefit shall be paid out according to this legislation.
  6. Only Hellenic insurance periods are taken into account when establishing the kind of benefit and the competent institution.
  7. For the purposes of this Article
    - (a) one (1) month of residence in Australia is equivalent to 25 days of insurance in Hellas and
    - (b) one (1) year of residence in Australia is equivalent to 300 days of insurance in Hellas.
  8. For the purpose of this Article, a period of residence in Australia shall be deemed as a period of insurance in Hellas only if that period of residence under the legislation of Australia is certified by the Competent Institution of Australia.
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**PART V**

**MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

**Article 14**

**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 18 at any time after the Agreement enters into force.
2. For the purposes of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of one Party shall be considered as the date of lodgement of that document with the Competent Institution of the other Party. The Competent Institution with which a claim, notice or appeal is lodged shall refer it without delay and, in any case, within 12 months to the Competent Institution of the other Party.
3. A claim for a benefit from one Party shall be considered as a claim for the corresponding benefit from the other 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 Party and provided the other Party receives this request within 12 months.
4. The reference in paragraph 1 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 15**

**Payment of Benefits**

1. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.
2. If a Party imposes legal or administrative restrictions on the transfer of currency outside of its territory, that Party shall implement measures as soon as practicable to guarantee the rights to payment and delivery of benefits payable under the legislation of that Party or by virtue of this Agreement. The measures shall operate retrospectively to the time when the restrictions were imposed.

3. While the measures in paragraph 2 are being implemented, the Party not imposing the restrictions set out in paragraph 2 may impose restrictions on the payment of its benefits paid under the Agreement in the territory of the other Party, until the other Party has lifted all such restrictions. On the lifting of the restrictions by the other Party and the payment of arrears by that other Party then the first Party shall also pay arrears of its benefits in relation to the entire time during which the first Party's restrictions were imposed.
4. Where a Party has imposed legal or administrative restrictions on the transfer of its currency outside of its territory as mentioned in paragraph 2, it shall inform the other Party of those restrictions within one calendar month of their imposition and shall implement the measures described in that paragraph within 3 months of the imposition of the restrictions. A failure to comply with either requirement may be treated by the other Party as a material breach of the Agreement for the purposes of Article 60 of the Vienna Convention on the Law of Treaties of 23 May 1969.
5. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party, whether the beneficiary is in the territory of that Party or the other Party, without deduction for government administrative fees and charges for processing and paying that benefit.
6. Any exemption granted in the territory of one of the Parties from stamp duty, notarial or registration fees in respect of certificates and documents required to be submitted to the Competent Authorities and Competent Institutions in the same territory, shall also apply to certificates and documents which, for the purposes of this Agreement, have to be submitted to the Competent Authorities and Competent Institutions in the territory of the other Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

#### **Article 16**

##### **Recovery of overpayments**

1. Where:
  - (a) an amount of arrears of benefit is paid or payable by a Party; 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 paid by the other party would have been reduced had the benefit paid or payable by the first Party been paid during that period;

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- (d) 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 and may be recovered by that Party.
  2. Where the first Party has not yet paid the arrears of benefit described in subparagraph 1(a) to the person, that Party shall, at the request of the other Party, pay the amount of the benefit necessary to meet the debt described in subparagraph 1(d) to the other Party and shall pay any remainder to the person.
  3. The Competent Institution receiving a request under paragraph 2 shall transfer the amount of the debt to the Competent Institution making the request.

### **Article 17**

#### **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 social security laws;
  - (b) lend their good offices and furnish 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;
  - (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; and
  - (d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 18.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the Competent

Authorities and Competent Institutions for the reimbursement of certain types of expenses that are specified in the Administrative Arrangement made in accordance with Article 18.

3. Unless disclosure is required under the legislation 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 legislation to which this Agreement applies.
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 the other Party.
5. Notwithstanding any laws or administrative practices of a Party, no information concerning a person which is received by that Party from the other Party shall be transferred or disclosed to any other country or to any organisation within that other country without the prior written consent of that other Party.
6. In the application of this Agreement, the Competent Authority and the Competent Institution of a Party may communicate with the other in any of the official languages of the Parties.

#### **Article 18**

##### **Administrative Arrangement**

1. The Competent Authorities of the 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 which are to be listed in the Administrative Arrangement.

#### **Article 19**

##### **Resolution of Disputes**

1. The Competent Authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this
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- 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 20**

##### **Review of Agreement**

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than six months after that request was made and, unless the Parties otherwise arrange, their meeting shall be held in the territory of the Party to which that request was made.

### **PART VI**

#### **TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 21**

##### **Transitional Provisions**

1. In determining entitlement to a benefit under this Agreement, periods as an Australian resident, periods of Australian working life residence and periods of insurance under the legislation of Hellas completed before the entry into force of this Agreement shall also be taken into consideration.
2. Where, on the date on which this Agreement enters into force, a person is in receipt of a benefit under the legislation of either Party, no provision of this Agreement shall affect that person's qualification to receive that benefit.

**Article 22**

**Entry into Force**

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

**Article 23**

**Termination**

1. Subject to paragraph 2, 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.
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;
  - (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 Article 8 of Part II of the Agreement, provided 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 originals at Canberra this twenty-third day of May two thousand and seven in the English and Greek languages, each text being equally authoritative.



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FOR THE GOVERNMENT OF  
AUSTRALIA:

FOR THE GOVERNMENT OF THE  
HELLENIC REPUBLIC:

.....  
Mal Brough  
Minister for Families, Community Services  
and Indigenous Affairs

.....  
Theodora Bakoyannis  
Minister of Foreign Affairs

# **Social Security (International Agreements) Act 1999**

## **Act No. 173 of 1999 as amended**

This compilation was prepared on 5 January 2009 taking into account amendments up to Act No. 108 of 2006 and SLI 2008 No. 265

**Volume 2** includes: Note 1  
Table of Acts  
Table of Instruments  
Act Notes  
Table of Amendments  
Notes 2 and 3

The text of any of those amendments not in force on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section



**Table of Acts****Notes to the *Social Security (International Agreements) Act 1999*****Note 1**

The *Social Security (International Agreements) Act 1999* as shown in this compilation comprises Act No. 173, 1999 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *A New Tax System (Family Assistance and Related Measures) Act 2000*, see Act No. 45, 2000.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Social Security (International Agreements) Act 1999</i>	173, 1999	20 Dec 1999	20 Mar 1999	
<i>A New Tax System (Family Assistance and Related Measures) Act 2000</i>	45, 2000	3 May 2000	Schedule 3 (items 56, 57), Schedules 5 and 6: (a)	Sch. 5 and Sch. 6 [see Note 1]
<i>Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000</i>	94, 2000	30 June 2000	Schedule 9: 1 Aug 2000 (b)	—
<i>Family and Community Services (2000 Budget and Related Measures) Act 2000</i>	138, 2000	24 Nov 2000	Schedule 1 (items 1–19, 22), Schedules 2, 3 and Schedule 4 (item 1): 1 Jan 2001 Schedule 4 (item 2): 1 Mar 2001 Remainder: Royal Assent	—
<i>Family and Community Services Legislation Amendment Act 2003</i>	30, 2003	15 Apr 2003	1 July 2000	—
<i>Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) (Consequential Amendments) Act 2006</i>	64, 2006	22 June 2006	Schedule 14 (item 13): 1 July 2006	—

**Table of Acts**

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Social Security and Family Assistance Legislation Amendment (Miscellaneous Measures) Act 2006</i>	108, 2006	27 Sept 2006	Schedule 5 and Schedule 8 (items 225, 226): Royal Assent	—

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**Table of Instruments**

From 1 January 2005 the Statutory Rules series ceased to exist and is replaced with Select Legislative Instruments (SLI). Numbering conventions remain the same, ie Year and Number.

**Table of Instruments**

Title	Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2000 (No. 1)</i>	2000 No. 104	15 June 2000	1 Oct 2000	
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2000 (No. 2)</i>	2000 No. 105	15 June 2000	1 Jan 2001	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2000 (No. 3)</i>	2000 No. 165	22 June 2000	1 Oct 2000	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2001 (No. 1)</i>	2001 No. 215	17 Aug 2001	1 Jan 2002	—
<b>as repealed by</b> <i>Social Security (International Agreements) Act 1999 Repeal Regulations 2002</i>	2002 No. 34	7 Mar 2002	7 Mar 2002	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2001 (No. 2)</i>	2001 No. 245	14 Sep 2001	1 Jan 2002	—

**Table of Instruments**

Title	Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
<b>as repealed by</b>				
<i>Social Security (International Agreements) Act 1999 Repeal Regulations 2002</i>	2002 No. 34	7 Mar 2002	7 Mar 2002	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2002 (No. 1)</i>	2002 No. 31	7 Mar 2002	1 July 2002	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2002 (No. 2)</i>	2002 No. 32	7 Mar 2002	Schedules 1: 1 Jan 2003 Schedule 3: 1 Apr 2003 Remainder: 1 Oct 2002	R. 2 (am. by 2002 No. 164, Sch. 1 [item 1]; 2002 No. 225, Sch. 1 [item 1])
<b>as amended by</b>				
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2002 (No. 4)</i>	2002 No. 164	27 Jun 2002	27 Jun 2002	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2002 (No. 7)</i>	2002 No. 225	26 Sept 2002	26 Sept 2002	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2002 (No. 3)</i>	2002 No. 33	7 Mar 2002	Schedule 2: 1 Jan 2003 Remainder: 1 Oct 2002	R. 2 (am. by No. 2002, 210, Sch.1 [item 1])
<b>as amended by</b>				
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2002 (No. 6)</i>	2002 No. 210	12 Sep 2002	12 Sep 2002	—

**Table of Instruments**

Title	Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2002 (No. 5)</i>	2002 No. 165	3 Jul 2002	1 Jan 2003	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2003 (No. 1)</i>	2003 No. 207	15 Aug 2003	1 Jan 2004 (c)	—
<b>as amended by</b> <i>Social Security (International Agreements) Legislation Amendment Regulations 2003 (No. 1)</i>	2003 No. 374	23 Dec 2003	R. 3: 23 Dec 2003	—
<i>Social Security (International Agreements) Legislation Amendment Regulations 2003 (No. 1)</i>	2003 No. 374	23 Dec 2003	Rr. 1–3: 23 Dec 2003 Remainder: 1 July 2004	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2004 (No. 1)</i>	2004 No. 19	26 Feb 2004	1 July 2004	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2004 (No. 2)</i>	2004 No. 109	3 June 2004	1 July 2005	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2005 (No. 1)</i>	2005 No. 21	25 Feb 2005	1 July 2005	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2005 (No. 2)</i>	2005 No. 191	22 Aug 2005	1 Jan 2006	—



**Table of Instruments**

Title	Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2006 (No. 1)</i>	2006 No. 149	26 June 2006	1 Jan 2007	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2007 (No. 1)</i>	2007 No. 144	18 June 2007	1 Jan 2008	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2007 (No. 2)</i>	2007 No. 352	22 Oct 2007	Rr. 1–3: 23 Oct 2007 Remainder: 1 Oct 2008	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2008 (No. 1)</i>	2008 No. 107	20 June 2008	Rr. 1–3: 21 June 2008 Remainder: [see Note 2]	—
<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2008 (No. 2)</i>	2008 No. 265	19 Dec 2008	Rr. 1–3: 20 Dec 2008 Remainder: [see Note 3]	—

**Act Notes**

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- (a) The *Social Security (International Agreements) Act 1999* was amended by Schedule 3 (items 56 and 57) only of the *A New Tax System (Family Assistance and Related Measures) Act 2000*, subsection 2(4) of which provides as follows:
- (4) Schedule 2, items 3 to 5 and 15 to 57 of Schedule 3 and Schedules 5 and 6 commence immediately after the commencement of the provisions referred to in subsection 2(2) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.
- The provisions commenced on 1 July 2000.
- (b) The *Social Security (International Agreements) Act 1999* was amended by Schedule 9 only of the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*, subsection 2(9) of which provides as follows:
- (9) Item 123 of Schedule 1, and Schedule 9, commence, or are taken to have commenced, on 1 August 2000.
- (c) The proposed amendments of the *Social Security (International Agreements) Act 1999* made by the *Social Security (International Agreements) Act 1999 Amendment Regulations 2003 (No. 1)* (2003 No. 207) (as amended by the *Social Security (International Agreements) Legislation Amendment Regulations 2003 (No. 1)*) (2003 No. 374) were repealed before a date was fixed for their commencement.



**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 10.....	am. No. 64, 2006
S. 12A .....	ad. No. 138, 2000
S. 13.....	am. Nos. 45 and 94, 2000
S. 14A .....	ad. No. 45, 2000 am. No. 30, 2003; No. 108, 2006
Schedule 2 .....	rs. Statutory Rules 2000 No. 104 am. Statutory Rules 2000 No. 165
Schedule 3 .....	rs. Statutory Rules 2002 No. 31
Schedule 4 .....	rs. Statutory Rules 2001 No. 215 (as rep. by Statutory Rules 2002 No. 34); Statutory Rules 2002 No. 32
Schedule 5 .....	rs. Statutory Rules 2002 No. 165
Schedule 6 .....	rs. SLI 2005 No. 21
Schedule 7 .....	rs. Statutory Rules 2001 No. 215 (as rep. by Statutory Rules 2002 No. 34); Statutory Rules 2002 No. 32 (as rs. by Statutory Rules 2002 No. 225)
Schedule 8 .....	rs. SLI 2005 No. 191
Schedule 9 .....	rs. Statutory Rules 2001 No. 245 (as rep. by Statutory Rules 2002 No. 34); Statutory Rules 2002 No. 32
Schedule 10 .....	am. Statutory Rules 2001 No. 215 (as rep. by Statutory Rules 2002 No. 34); Statutory Rules 2002 No. 32
Schedule 12 .....	ad. Statutory Rules 2000 No. 105
Schedule 13 .....	ad. Statutory Rules 2002 No. 33
Schedule 14 .....	ad. Statutory Rules 2002 No. 33 rs. SLI 2007 No. 352
Schedule 15 .....	ad. Statutory Rules 2003 No. 374
Schedule 16 .....	ad. Statutory Rules 2004 No. 19
Schedule 17 .....	ad. Statutory Rules 2003 No. 207
Schedule 18 .....	ad. Statutory Rules 2004 No. 109
Schedule 19 .....	ad. SLI 2006 No. 149
Schedule 20 .....	ad. SLI 2007 No. 144
Schedule 21 .....	ad. SLI 2007 No. 352
Schedule 22 .....	ad. SLI 2007 No. 352

**Note 2**

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**Note 2**

*Social Security (International Agreements) Act 1999 Amendment Regulations  
2008 (No. 1) (2008 No. 107)*

The following amendment commences on a day fixed by legislative instrument made by the Minister:

**Schedule 1**

**[1] After Schedule 20**

*insert in correct numerical position*

**Schedule 23 — Japan**

Note: See section 5.

**AGREEMENT BETWEEN AUSTRALIA AND JAPAN ON SOCIAL  
SECURITY**

Australia and Japan,

Being desirous of regulating the relationship between them in the field of social security,

Have agreed as follows:

**PART I  
GENERAL PROVISIONS**

**Article 1  
Definitions**

1. For the purpose of this Agreement,
  - (a) “territory” means,  
  
as regards Japan,  
the territory of Japan,

**Note 2**

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as regards Australia,  
the territory of the Commonwealth of Australia excluding all  
external territories other than those external territories that are:

- (i) included in the definition of ‘Australia’ in the  
legislation of Australia; and
- (ii) one of the following external territories: the Territory  
of Cocos (Keeling) Islands, the Territory of Christmas  
Island, the Territory of Norfolk Island, the Territory of  
Ashmore and Cartier Islands, the Territory of Heard  
Island and McDonald Islands, and the Coral Sea  
Islands Territory;

- (b) “national” means,

as regards Japan,  
a Japanese national within the meaning of the national statute  
on nationality of Japan,

as regards Australia,  
a citizen within the meaning of the law on citizenship of  
Australia;

- (c) “legislation” means,

as regards Japan,  
the national statutes and regulations of Japan concerning the  
Japanese pension systems specified in paragraph 2 of Article 2,

as regards Australia,  
the Acts specified in subparagraph 1(a) of Article 2 except in  
relation to the application of Articles 6 to 13 of this Agreement  
(including the application of other Articles of this Agreement as  
they affect the application of those Articles) where it means the  
law specified in subparagraph 1(b) of Article 2,

however, the treaties or other international agreements on social  
security concluded between Australia and a third state shall not  
be included;

- (d) “competent authority” means,

**Note 2**

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as regards Japan,  
any of the Governmental organisations competent for the  
Japanese pension systems specified in paragraph 2 of Article 2,

as regards Australia,  
the Secretary of the Commonwealth Department responsible for  
the Acts specified in subparagraph 1(a) of Article 2 in relation  
to the application of those Acts, and the Commissioner of  
Taxation or an authorised representative of the Commissioner  
in relation to the application of the law specified in  
subparagraph 1(b) of Article 2;

- (e) “competent institution” means,

as regards Japan,  
any of the insurance institutions, or any association thereof,  
responsible for the implementation of the Japanese pension  
systems specified in paragraph 2 of Article 2,

as regards Australia,  
the institution or agency which has the task of implementing the  
applicable legislation of Australia;

- (f) “period of coverage under the legislation of Japan” means,

a period of contribution under the legislation of Japan and any  
other period taken into account under that legislation for  
establishing entitlement to benefits,

however, a period which shall be taken into account, for the  
purpose of establishing entitlement to benefits under the  
legislation of Japan, pursuant to other agreements on social  
security comparable with this Agreement shall not be included;

- (g) “period of Australian working life residence” means,

unless otherwise provided in this Agreement, a period defined  
as such in the legislation of Australia, during which a person  
was employed or self-employed,

however, any period of coverage under the legislation of Japan  
deemed pursuant to Article 15 to be a period in which that  
person was an Australian resident shall not be included;

- (h) “benefit” means,
- as regards Japan,  
a pension or any other cash benefit under the legislation of Japan,
- as regards Australia,  
a pension or any other benefit under the Acts specified in subparagraph 1(a) of Article 2, including any additional amount, increase or supplement, which is payable to a person who qualifies under those Acts.

2. For the purpose of this Agreement, any term not defined in this Agreement shall have the meaning assigned to it under the respective legislation of either Party.

### **Article 2 Matters Covered**

1. As regards Australia, this Agreement shall apply to the following Acts and law effective at the date of entry into force of this Agreement, and to any Acts and law that subsequently amend, consolidate, supplement or replace them:

- (a) the Acts forming the social security law insofar as the law provides for, applies to or affects age pension; and
- (b) the law concerning the superannuation guarantee, which is contained in the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Regulations,

however, for the purpose of this Agreement, Articles 6 to 13, 18, 19 and paragraph 3 of Article 29 shall not apply to the Acts referred to in subparagraph (a) and Articles 4, 5, 14 to 21, 29 (except paragraph 3) and paragraph 2 of Article 31 shall not apply to the law referred to in subparagraph (b).

2. As regards Japan, this Agreement shall apply to the following Japanese pension systems:

- (a) the National Pension (except the National Pension Fund);



**Note 2**

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- (b) the Employees' Pension Insurance (except the Employees' Pension Fund);
- (c) the Mutual Aid Pension for National Public Officials;
- (d) the Mutual Aid Pension for Local Public Officials and Personnel of Similar Status (except the pension system for members of local assemblies); and
- (e) the Mutual Aid Pension for Private School Personnel;

(the Japanese pension systems specified in (b) to (e) shall hereinafter be referred to as the "Japanese pension systems for employees");

however, for the purpose of this Agreement, the National Pension shall not include the Old Age Welfare Pension or any other pensions which are granted on a transitional or complementary basis for the purpose of welfare and which are payable wholly or mainly out of national budgetary resources.

**Article 3  
Persons Covered**

This Agreement shall apply to any person who is or has been an Australian resident, whose employer is or has been subject to the law specified in subparagraph 1(b) of Article 2 in respect of that person, or who is or has been subject to the legislation of Japan and, where applicable, to other persons who derive rights from such person.

**Article 4  
Equality of Treatment**

The persons specified in Article 3, who ordinarily reside in the territory of one Party, shall receive equal treatment with nationals of that Party in the application of the legislation of that Party in regard to entitlement to and payment of benefits.

However, the foregoing shall not affect the provisions on complementary periods for Japanese nationals on the basis of ordinary residence outside the territory of Japan under the legislation of Japan.

**Article 5**  
**Payment of Benefits to Beneficiaries Abroad**

1. Any provision of the legislation of one Party which restricts entitlement to or payment of benefits solely because the person ordinarily resides outside or is absent from the territory of that Party shall not be applicable to persons who ordinarily reside in the territory of the other Party.

However,

- (a) as regards Japan, the foregoing shall not affect the provisions of the legislation of Japan which require a person who is aged 60 or over but under 65 on the date of the first medical examination or of death to reside ordinarily in the territory of Japan for the acquisition of entitlement to the Disability Basic Pension or the Survivors' Basic Pension; and
- (b) as regards Australia, any additional amount, increase or supplement mentioned in subparagraph 1(h) of Article 1 shall only be payable outside the territory of Australia to the extent provided by the legislation of Australia.

2. Where the legislation of a Party provides or allows that a benefit is payable in the territory of a third State, then that benefit, when payable by virtue of Articles 14 to 17 or Articles 18 and 19, is also payable in the territory of that third State.

**PART II**  
**PROVISIONS CONCERNING THE APPLICABLE LEGISLATION**

**Article 6**  
**Application of this Part**

This Part (except for paragraph 1 of Article 9) shall apply only if an employee or the employer of the employee would, apart from this Part, be subject to the legislation of both Parties in respect of work of the employee or remuneration paid for the work.

**Article 7**  
**General Provisions**

Unless otherwise provided in this Agreement, a person who works as an employee in the territory of one Party or the employer of that employee shall,

## **Note 2**

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with respect to the work or the remuneration paid for that work, be subject only to the legislation of that Party.

### **Article 8 Special Provisions**

1. Where an employee who is covered under the legislation of one Party and employed in the territory of that Party by an employer with a place of business in that territory, is sent by that employer from that territory to work temporarily in the territory of the other Party, the employee and the employer of that employee shall, with respect to that employment, be subject only to the legislation of the first Party until the expiration of a period of five years from the date that employee is sent, as if that employee were working in the territory of the first Party. If the period continues beyond five years, the competent authority or competent institution of the second Party may, with the prior concurrence of the competent authority or competent institution of the first Party, grant further exemption of the employee from the legislation of the second Party.

2. As regards Australia, for the purpose of paragraph 1 of this Article, in the case of an employee who is sent from the territory of Australia by an employer in that territory to the territory of Japan, that employer and a related entity of the employer shall be considered one and the same. For the purpose of this Article, an entity shall be deemed a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group.

### **Article 9 Civil Servants, Members of Diplomatic Missions and Members of Consular Posts**

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

2. Subject to paragraph 1 of this Article, where an employee who is covered under the legislation of Australia and employed by the Government of Australia, including a political subdivision or local authority of Australia, is sent by the Government of Australia from the territory of Australia to work in the territory of Japan, the employee and the employer of that employee shall, with respect to that employment, be subject only to the legislation of Australia.

3. Subject to paragraph 1 of this Article, where any civil servant of Japan or any person treated as such under the legislation of Japan is sent to work in

the territory of Australia, that person shall be subject only to the legislation of Japan.

**Article 10**  
**Persons sent from a Third State**

Paragraph 1 of Article 8 or paragraphs 2 and 3 of Article 9 shall apply where a person who has been sent by an employer from the territory of one 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 Party.

**Article 11**  
**Exceptions to Articles 7 to 10**

The competent authority or competent institution of Japan and the competent authority of Australia may agree to grant an exception to the provisions of Articles 7 to 10 in the interest of particular persons or categories of persons, provided that such persons or categories of persons shall be subject to the legislation of one of the Parties.

**Article 12**  
**Accompanying Spouse and Children**

As regards the spouse or children who are specified in the legislation of Japan as the accompanying spouse or children of a person who works in the territory of Japan and who is subject to the legislation of Australia in accordance with Article 8, paragraph 2 of Article 9 or Article 11,

- (a) In cases in which such accompanying spouse or children are persons other than Japanese nationals, the legislation of Japan shall not apply to them. However, when such accompanying spouse or children so request, the foregoing shall not apply.
- (b) In cases in which such accompanying spouse or children are Japanese nationals, the exemption from the legislation of Japan shall be determined in accordance with the legislation of Japan.

**Article 13**  
**Compulsory Coverage**

Articles 7 to 10 and 12 shall apply, as regards Japan, only to compulsory coverage under the legislation of Japan.

**Note 2**

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**PART III  
PROVISIONS CONCERNING AUSTRALIAN BENEFITS**

**Article 14  
Residence or Presence in the Territory of Japan  
or a Third State**

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

- (a) is an Australian resident or a resident of Japan or a third State with which Australia has concluded an agreement on social security that includes provision for cooperation in the lodgement, assessment and determination of claims for benefits; and
- (b) is in the territory of Australia, Japan or that third State,

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 the territory of Australia on that date.

**Article 15  
Totalisation for Australian Benefits**

1. Where a person to whom this Agreement applies has claimed a 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;
- (b) a period of Australian working life residence equal to or greater than the minimum period identified in accordance with paragraph 4 of this Article for that person; and
- (c) a period of coverage under the legislation of Japan;

**Note 2**

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then, that period of coverage under the legislation of Japan shall be deemed to be a period in which that person was an Australian resident only if that period of coverage under the legislation of Japan is certified by the competent institution of Japan and only for the purpose of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia.

2. For the purpose of paragraph 1 of this Article, where a person:
  - (a) has been an Australian resident for one 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 coverage under the legislation of Japan in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a) of this paragraph;

the total of the periods of coverage under the legislation of Japan shall be deemed to be one continuous period in which that person was an Australian resident.

3. For the purpose of this Article, where a period as an Australian resident and a period of coverage under the legislation of Japan coincide, the period of coincidence shall be taken into account once only by the competent institution of Australia as a period as an Australian resident.

4. The minimum period of Australian working life residence to be taken into account for the purpose of paragraph 1 of this Article shall be:
  - (a) for the purpose of a benefit under the legislation of Australia that is payable to a person who is not an Australian resident, the minimum period required shall be twelve months, of which at least six months must be continuous; and
  - (b) for the purpose of a benefit under the legislation of Australia that is payable to an Australian resident, there shall be no minimum period.

**Article 16**  
**Calculation of Australian Benefits**

1. Subject to paragraphs 2 and 3 of this Article, where a benefit under the legislation of Australia is payable by virtue of this Agreement or otherwise, to a

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## Note 2

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person who is outside the territory of Australia the rate of that benefit shall be determined according to the legislation of Australia but, when assessing the income of that person for the purpose of calculating the rate of the benefit under the legislation of Australia, only a proportion of any benefit under the legislation of Japan paid to that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of Australian working life residence (not exceeding 300) by the amount of that benefit under the legislation of Japan and dividing that product by 300.

2. A person referred to in paragraph 1 of this Article shall be entitled to receive the assessment of income described in that paragraph only for any period during which the rate of that person's benefit under the legislation of Australia is proportionalised under the legislation of Australia.

3. Paragraph 1 of this Article shall continue to apply for 26 weeks where a person returns temporarily to Australia.

4. Subject to paragraphs 5 and 6 of this Article, where a benefit under the legislation of Australia is payable only by virtue of this Agreement to a person who is in the territory of Australia, the rate of that benefit shall be determined as follows:

- (a) calculating that person's income according to the legislation of Australia but disregarding in that calculation any benefit under the legislation of Japan which that person or the partner of that person is entitled to receive if applicable;
- (b) deducting the amount of benefit under the legislation of Japan which that person is entitled to receive from the maximum rate of that benefit under the legislation of Australia; 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) of this Article.

5. Paragraph 4 of this Article shall continue to apply for 26 weeks where a person departs temporarily from Australia.

6. 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 Japan, each of them shall be deemed, for the purpose of this Article and of the legislation of

Australia, to be in receipt of one half of either the amount of that benefit or total of both of those benefits, as the case may be.

**Article 17**  
**Australian Working Life Residence**

Notwithstanding paragraph 1(g) of Article 1, for the purpose of Articles 15 and 16, a period of Australian working life residence in relation to a person means a period defined as such in the legislation of Australia.

**PART IV**  
**PROVISIONS CONCERNING JAPANESE BENEFITS**

**Article 18**  
**Totalisation for Japanese Old-age Benefits**

1. Where a person does not have sufficient periods of coverage to fulfill the requirements for entitlement to old-age benefits under the legislation of Japan, the competent institution of Japan shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of Australian working life residence insofar as they do not coincide with the periods of coverage under the legislation of Japan.

However, this paragraph shall not apply to the additional pension for specified occupations under the mutual aid pensions.

2. In applying paragraph 1 of this Article, periods of Australian working life residence shall be taken into account as periods of coverage under the legislation of Japan pursuant to the Japanese pension systems for employees and as corresponding periods of coverage under the legislation of Japan pursuant to the National Pension.

**Article 19**  
**Calculation of Japanese Old-age Benefits**

1. Where entitlement to an old-age benefit under the legislation of Japan is established by virtue of paragraph 1 of Article 18, the competent institution of Japan shall calculate the amount of that benefit in accordance with the legislation of Japan, subject to paragraph 2 of this Article.

2. With regard to the Additional Pension for Spouses which is included in the Old-age Employees' Pension and any other old-age benefits that may be granted as a fixed sum in cases where the period of coverage under the



## **Note 2**

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legislation of Japan pursuant to the Japanese pension systems for employees equals or exceeds the specified period determined by the legislation of Japan, if the requirements for receiving such benefits are fulfilled by virtue of paragraph 1 of Article 18, the amount to be granted shall be calculated according to the proportion of the periods of coverage under the legislation of Japan pursuant to the Japanese pension systems for employees from which such benefits will be paid to that specified period.

### **PART V MISCELLANEOUS PROVISIONS**

#### **Article 20 Applications, Appeals and Declarations**

1. When a written application for benefits, an appeal or any other declaration under the legislation of one Party is submitted to a competent authority or competent institution of the other Party which is competent to receive similar applications, appeals or declarations under the legislation of that other Party, that application, appeal or declaration shall be deemed to be submitted on the same date to the competent authority or competent institution of the first Party and shall be dealt with according to the procedure and legislation of the first Party.

2. In any case to which this Article applies, the competent authority or competent institution of one Party to which the application for benefits, appeal or any other declaration has been submitted shall transmit it without delay to the competent authority or competent institution of the other Party.

3. In relation to a decision made by the competent institution of Australia, an appeal document in paragraph 1 of this Article means a document concerning an appeal that may be made to an administrative body established by, or be made administratively for the purpose of, the legislation of Australia.

#### **Article 21 Payment of Benefits**

1. Payment of benefits under this Agreement may be made in the currency of either Party.

2. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party, whether the beneficiary is in the territory of the other Party or outside the respective territories of both Parties, without deduction for

government administrative fees and charges for processing and paying that benefit.

3. In case provisions for restricting the exchange of currencies or remittance are introduced by either Party, the Governments of the two Parties shall immediately consult on the measures necessary to ensure the payment of benefits by either Party under this Agreement.

**Article 22**  
**Charges or Fees and Legalisation**

1. Insofar as the legislation of one Party, and in the case of Japan, other national statutes and regulations, contain provisions on an exemption or reduction of administrative charges or consular fees for documents to be submitted under the legislation of that Party, those provisions shall also apply to documents to be submitted in the application of this Agreement and the legislation of the other Party.

2. Documents which are presented for the purpose of this Agreement and the legislation of a Party shall be exempted from requirements for legalisation or any other similar formality by diplomatic or consular authorities.

**Article 23**  
**Mutual Assistance and Protection of Information**

1. The competent authorities and competent institutions of the two Parties, within the scope of their respective authorities and administrative practice, shall assist each other in implementing this Agreement. This assistance shall be free of charge.

2. The competent authorities or competent institutions of one Party shall, in accordance with its national statutes and regulations, send to the competent authorities or competent institutions of the other Party information about an individual collected under its legislation insofar as that information is necessary for the implementation of this Agreement.

3. The competent authorities of the Parties shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement and about changes in their respective legislation insofar as these changes affect the application of this Agreement.

4. Unless otherwise required by the national statutes and regulations of one Party, information about an individual which is transmitted in accordance with this Agreement to that Party by the other Party shall be used exclusively

## **Note 2**

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for the purpose of implementing this Agreement. Such information received by a Party shall be governed by the national statutes and regulations of that Party for the protection of confidentiality of personal data.

### **Article 24 Languages of Communication**

1. The competent authorities and competent institutions of the Parties may communicate directly with each other and with any concerned person wherever the person may reside whenever it is necessary for the administration of this Agreement. The communication may be in the respective languages of the Parties.

2. In implementing this Agreement, the competent authorities and competent institutions of one Party may not reject applications or any other documents for the reason that they are written in the language of the other Party.

### **Article 25 Administrative Arrangement and Liaison Agencies**

The competent authorities of the two Parties shall:

- (a) agree on the administrative arrangements necessary for the implementation of this Agreement; and
- (b) designate liaison agencies for the implementation of this Agreement.

### **Article 26 Resolution of Disagreement**

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the Parties.

### **Article 27 Review of Agreement**

Where a Party gives the other Party a written request through diplomatic channels to meet to review this Agreement, the Parties shall meet for that purpose as soon as practicable after that request was made and, unless the Parties otherwise arrange, their meeting shall be held in the territory of the Party to which that request was made.

**Article 28**  
**Headings**

The headings of Parts and Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

**PART VI**  
**TRANSITIONAL AND FINAL PROVISIONS**

**Article 29**  
**Transitional Provisions**

1. This Agreement shall not establish any entitlement to benefits for any period prior to its entry into force.
2. In the implementation of this Agreement, periods of coverage under the legislation of Japan, and periods as an Australian resident and other legally relevant events occurring before its entry into force shall also be taken into account.
3. Paragraph 1 of Article 8 and paragraphs 2 and 3 of Article 9 shall also apply to the employees who are sent before the date of entry into force of this Agreement. In applying paragraph 1 of Article 8 in the case of persons who have been working in the territory of a Party prior to the entry into force of this Agreement, the period referred to in paragraph 1 of Article 8 shall be considered to begin on the date of entry into force of this Agreement.
4. Decisions made before the entry into force of this Agreement shall not affect any rights to be established by virtue of this Agreement.

**Article 30**  
**Entry into Force**

This Agreement shall enter into force on the first day of the month following the month in which the Parties shall have completed an exchange of diplomatic notes informing each other that their respective statutory and constitutional requirements necessary to give effect to this Agreement have been fulfilled.

**Note 2**

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**Article 31**  
**Duration and Termination**

1. This Agreement shall remain in force and effect until the last day of the twelfth month following the month in which either Party gives the other Party written notification through diplomatic channels of its termination.

2. If this Agreement is terminated in accordance with paragraph 1 of this Article, rights regarding entitlement to and payment of benefits acquired under it shall be retained, in respect of a person who submits an application for those benefits and who fulfills the requirements for entitlement to those benefits prior to the date of termination.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done at Canberra on the twenty seventh day of February two thousand and seven in duplicate in the English and Japanese languages, the two texts being equally authentic.

For Australia:	For Japan:
Hon Mal Brough Minister for Families, Community Services and Indigenous Affairs	HE Hideaki Ueda Ambassador

As at 5 January 2009 the amendment is not incorporated in this compilation.

**Note 3**

*Social Security (International Agreements) Act 1999 Amendment Regulations  
2008 (No. 2) (2008 No. 265)*

The following amendment commences on a day fixed by legislative instrument made by the Minister:

**Schedule 1**

**[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**

**Note 3**

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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

**Note 3**

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in relation to Finland:

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

- (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



**Note 3**

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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.

**Note 3**

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**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**

### **Note 3**

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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
- (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

**Note 3**

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- 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.

**Note 3**

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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;
- (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.



**Note 3**

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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:

**Note 3**

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- (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**

**Note 3**

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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.

**Note 3**

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<b>FOR THE GOVERNMENT OF AUSTRALIA:</b>  .....	<b>FOR THE GOVERNMENT OF THE REPUBLIC OF FINLAND:</b>  .....
<b>HOWARD BROWN AMBASSADOR</b>	<b>LIISA HYSSÄLÄ MINISTER OF SOCIAL AFFAIRS AND HEALTH</b>

As at 5 January 2009 the amendment is not incorporated in this compilation.