



Social Security (International Agreements) Act 1999

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Volume 1: sections 1–25
Schedules

Volume 2: Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Social Security (International Agreements) Act 1999* that shows the text of the law as amended and in force on 20 March 2020 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to give effect to international social security agreements, and for related purposes

Part 1—Preliminary

1 Short title

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.

4A Norfolk Island

This Act extends to Norfolk Island.

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

Section 11

- (d) the person would qualify for parenting payment if the following provisions had not been enacted:
 - (i) paragraph 500(1)(b) or (c) of the *Social Security Act 1991*;
 - (ii) subparagraph 500(1)(d)(ii) of that Act;
 - (iii) subsection 5(21), (23) or (24) of that Act;

then:

- (e) in determining whether the person is qualified for parenting payment, assume that the provisions referred to in paragraph (d) had not been enacted; 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 if subparagraph 500(1)(d)(ii) of the *Social Security Act 1991* had not been enacted;

then:

- (d) in determining whether the person is qualified for parenting payment, assume that subparagraph 500(1)(d)(ii) of the *Social Security Act 1991* had not been enacted; 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.

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.

Additional child amounts		
Item	Family situation	Additional child amount
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 and 21, 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.

21 Australian working life residence: recipient of pension PP (single)

If:

- (a) a person is receiving a pension PP (single); and
- (b) the person became qualified for the pension 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).

Division 3—Residence factor

23 Residence factor: Australian working life residence of 35 years or more

If a person's period of Australian working life residence is 420 months (35 years) or more, the person's residence factor is 1.

24 Residence factor: Australian working life residence of less than 35 years

If a person's period of Australian working life residence is less than 420 months (35 years), the person's residence factor is the fraction represented by:

$$\frac{\text{Person's period of Australian working life residence}}{420}$$

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.

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:

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;

- (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.

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.

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.

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

- (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:

- (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.

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]

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

Schedule 3 New Zealand

WISHING to modify and replace the Agreement providing for matters relating to social security entered into at Canberra on 28 March 2001, as amended on 21 February 2002

HAVE agreed as follows:

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 department for the time being responsible for the implementation of the *Social Security Act 2016* and in relation to Australia, the Secretary of the Australian Government department responsible for the legislation specified in Article 2(1)(a);
 - (d) “competent institution”, in relation to a Party, means the institution or institutions that are responsible for the administration or implementation of the social security law of that Party;
 - (e) “date of severe disablement” means the date a person who applies for a disability support pension or supported living payment was first assessed as meeting the criteria for a disability support pension or supported living payment under this Agreement or, where evidence supports an earlier date, the competent institutions may agree on an earlier date;
 - (f) “legislation” in relation to a Party, means the laws, orders and regulations of that Party specified in Article 2;
 - (g) “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;
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- (h) “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;
- (i) “New Zealand resident” has the meaning given to it under Article 5;
- (j) “pension age”, means the qualifying age for New Zealand superannuation or the qualifying age for the Australian age pension, whichever is the higher age at the relevant time. For the avoidance of doubt, the “pension age” so determined will operate as the qualifying age wherever the “pension age” is referred to in this Agreement, irrespective of whether it is in the Australian or New Zealand context;
- (k) “permanent resident of Australia” has the meaning given to it under Article 5;
- (l) “present long term” means when a person is physically present in the territory of either Party and either has been in the territory of that Party for at least 26 weeks, or intends to remain in the territory of that Party for one year or more;
- (m) “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:
 - (ii) to work for at least the next 2 years; and
 - (iii) unable to benefit within the next 2 years from participation in a program of assistance or a rehabilitation program; or
 - (iv) is permanently blind;For the avoidance of doubt, a person can be severely disabled even if they are not of working age.
- (n) “social security law” means,
 - (i) in relation to Australia, the *Social Security Act 1991*, the *Social Security (Administration) Act 1999* and the *Social Security (International Agreements) Act 1999*; and

-
- (ii) in relation to New Zealand the *New Zealand Superannuation and Retirement Income Act 2001*, the *Social Security Act 2016* and the Orders in Council and Regulations made under those Acts;
- (o) “supported living payment” means a New Zealand payment on the grounds of sickness, injury, disability, or total blindness but does not include a payment on the grounds of caring for a person requiring full-time care;
- (p) “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;
- (q) “third country” means a country other than Australia or New Zealand;
- (r) “third country pension” in relation to New Zealand, means an overseas pension as defined in the social security law of New Zealand and, in relation to Australia, means a comparable foreign payment as defined in the social security law of Australia;
- (s) “third country residence” has the meaning given to it under Article 5;
- (t) “working age residence” has the meaning given to it under Article 5;
- (u) “year” means 12 calendar months;
- (v) “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;
- (w) “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); and
- (x) “2001 Agreement” means the Agreement on social security between the Government of Australia and the Government of New Zealand, signed on the twenty-eighth day of March 2001 as amended by an Exchange of Notes completed on the
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twenty-first day of February 2002 (entered into force 1 July 2002).

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 law and the Veteran's Support Act 2014 insofar as they provide for, apply to or affect the following benefits:
 - (i) New Zealand superannuation;
 - (ii) veteran's pension; and
 - (iii) supported living payment.
 2. For the purposes of this Agreement an Australian disability support pension and a New Zealand supported living payment 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 they became severely disabled; 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.
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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 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 on a special category visa. 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, 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 of Australia” means a person who resides in Australia and is one of the following:
- (a) an Australian citizen;
 - (b) the holder of a permanent visa; or
 - (c) a protected special category visa holder as defined under the social security law 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” means a period of residence in the territory of a Party from the age of 20 until the qualifying age for age pension in Australia or the qualifying age for New Zealand Superannuation, whichever is relevant, (up to a maximum of 45 years). It does not include any period deemed pursuant to Article 8 or Article 12 to be a period in which a person was an Australian resident or a New Zealand resident. For the purposes of Articles 9, 10 and 13, if a person’s period of working age residence would, apart from this point, be a number of whole months, or 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.

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 and 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 either:
 - (i) ordinarily resident and present in Australia; or
 - (ii) present long term in Australia; and
 - (b) has been a New Zealand resident at any time in his or her life for a continuous period of at least one year since attaining the age of 20 years; and
 - (c) in the case of New Zealand superannuation or a veteran's pension, has reached pension age under this Agreement.
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 ordinarily resident and present in Australia.
3. For the purposes of this Part, if a person who is ordinarily resident in Australia 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. In the case of a person who has reached pension age under this Agreement, New Zealand superannuation or a veteran's pension 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 with the intention of becoming ordinarily resident in Australia and applies to receive New Zealand superannuation or veteran's pension under the Agreement within 26 weeks of that person's departure from New Zealand .

5. A supported living payment which would otherwise be payable to New Zealand shall continue to be payable for up to 4 weeks after the person's departure from New Zealand if that person departs New Zealand with the intention of becoming ordinarily resident in Australia and applies to receive a supported living payment under the Agreement within 4 weeks of that person's departure from New Zealand.
6. If an application referred to in paragraphs 4 and 5 is granted under the Agreement, the rate of 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.
7. 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.
8. Except as provided in paragraph 9, a person who is ordinarily resident in Australia is not entitled to receive, or to continue to receive , a supported living payment if the person:
 - (a) reaches pension age under this Agreement; and
 - (b) is entitled to receive New Zealand superannuation or a veteran's pension, under this Article or otherwise.
9. A person who is ordinarily resident in Australia and is married, in a civil union, or in a de facto relationship, is not entitled to receive, or continue to receive, a supported living payment if both the person and his or her spouse or partner have reached pension age.

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 present in New Zealand on that date if he or she:
 - (a) is present long term in New Zealand;
 - (b) qualifies for an Australian benefit that is payable at a rate prescribed under Article 13; and
 - (c) in the case of New Zealand superannuation or a veteran's pension, has reached pension age under this Agreement.
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 a supported living payment, 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 in Australia to be taken into account for the purposes of:

- (a) paragraph 1, shall be 12 months working age residence, of which 6 months must be continuous; and
 - (b) paragraph 2, shall be 12 months residence, of which 6 months must be continuous.
5. This Article shall not apply to a claimant for New Zealand superannuation or a veteran's pension who has not reached pension age under this Agreement.

ARTICLE 9

Rate of New Zealand Superannuation and Veterans' Pensions in Australia

1. Except as provided in paragraph 3, where a person in Australia 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:

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

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 person who is married, in a civil union or in a de facto relationship, 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 person who is married, in a civil union or in a de facto relationship 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 for a third country pension taken into account under subparagraph (e), or as provided for in paragraph 3 of this Article, 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 third country pension that is payable under the legislation of a third country unless paragraph 2 applies.
2. Where a person in Australia receives a New Zealand benefit payable under this Agreement and 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.
 3. 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 pension that would have been payable to that person if he or she was entitled to receive an Australian pension but was not entitled to receive New Zealand superannuation or a veteran's pension.

ARTICLE 10

Rate of New Zealand Supported Living Payment in Australia

1. Except as provided in paragraph 2, when a person in Australia is entitled to receive New Zealand supported living payment under Article 6, the amount of that benefit shall be calculated in accordance with the following formula:
number of whole months of

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

Where 'Y' equals the aggregate of the periods of working age residence in Australia and New Zealand at the date of severe disablement 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 (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) of benefit that the person would be entitled to receive under the social security law of New Zealand before any abatement on account of income;
 - (ii) in the case of a person who is married, in a civil union or in a de facto relationship, the maximum rate (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) of benefit that the person would be entitled to receive under the social security laws of New Zealand before any abatement on account of income;
 - (c) in no case shall the rate of benefit exceed 100% of the maximum benefit rate as defined in subparagraph (b);
 - (d) except for a third country pension taken into account under subparagraph (e), or 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 third country pension if that person is a permanent resident of Australia.
2. The rate of supported living payment for a person who qualifies 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 a supported living payment;
or

- (b) in the case of a person who is married, in a civil union or in a de facto relationship, the aggregated amount of Australian disability support pension and carer payment that would have been payable if that person was entitled to an Australian disability support pension and his or her spouse or partner was entitled to a carer payment and that person had not been entitled to receive a supported living payment.

PART III
PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 11

Residence or Presence in Australia or New Zealand

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 New Zealand resident; and
 - (b) is present long term in Australia or 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 of pension age under this Agreement to be able to obtain the benefit of this Article.
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.

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 for that benefit under the legislation of Australia;
 - (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 legislation 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.
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 present long term in New Zealand, the minimum period shall be one year of which at least six months must be continuous; but
 - b. for the purposes of an Australian benefit payable to a person present long term in Australia there will be no minimum period.
4. A claimant for an age pension under this Agreement must be of pension 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, if the person is an Australian or New Zealand resident, while the person is in Australia or New Zealand or for the period of a temporary absence in a third country, or if the person resides in a third country and an Australian benefit is deducted from the rate of benefit payable by New Zealand. In all other situations, any New Zealand benefit received will be assessed 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 present long term 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 and, where applicable, any third country pension as provided in paragraph 7;
 - (b) applying the income test to the maximum rate of benefit as set out in the social security law of Australia, using as the person's income, the amount calculated under subparagraph (a); then
 - (c) deducting the amount of the New Zealand benefit or benefits, and where applicable any third country pension as provided in paragraph 7, received by that person from the rate of Australian benefit worked out under subparagraph (b).
3. A benefit paid under paragraph 2 shall continue to be calculated in the same way if the person goes to New Zealand and is not present long term there.
4. Where a member of a couple is, or both that person and his or her partner are, entitled to:
- (a) a New Zealand benefit or benefits; and/or
 - (b) any third country pension;
- then 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.
5. (a) Where an age pension is payable, by virtue of this Agreement or otherwise, to a person who is present long term 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 present long term 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.

6. Subject to paragraph 1, where a disability support pension is payable, by virtue of this Agreement or otherwise, to a person who is present long term 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.

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.

7. For the purposes of:
- (a) paragraph 2, where the pensioner is in Australia, but not a permanent resident of Australia;
 - (b) subparagraph 5(a); and
 - (c) paragraph 6, where the pensioner has less than 10 years as a New Zealand resident,
- any third country pension 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.
9. A benefit paid under paragraphs 5, 6, or 8 shall continue to be calculated in the same way if the person goes to Australia and is not present long term there.
10. A benefit paid under paragraphs 2, 5, 6, or 8 shall continue to be calculated in the same way if the person goes to a third country temporarily. A benefit which is payable otherwise than by virtue of this Agreement shall be subject to the proportional calculation rules in the social security law of Australia for any period of temporary absence in a third country in excess of the period allowed for the payment of a benefit under this Agreement in Article 14. For a benefit which is payable otherwise than by virtue of this Agreement, the provisions regarding the assessment of any New Zealand benefit, and where applicable, any third country pension from the rate of Australian benefit, shall continue to apply as if the person was in Australia or New Zealand, as the case may be, for the period that the New Zealand benefit is payable under this Agreement in a third country.

PART IV
COMMON PROVISIONS ON ELIGIBILITY

ARTICLE 14
Export of Benefits

1. A benefit payable by a Party under this Agreement shall, subject to other provisions of this Agreement, continue to be payable to a person who goes to the territory of the other Party.
2. A person who is ordinarily resident in New Zealand and:
 - (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 of New Zealand if he or she is entitled to receive that benefit under a reciprocal social security agreement that New Zealand has entered into with that third country.
3. Where a person, who is ordinarily resident in Australia and is entitled to a benefit by virtue of this Agreement, 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 as if the person was a New Zealand resident at the time he or she departed for the third country; and
 - (b) in the case where the person intends to be or is absent from Australia for a period which exceeds 26 weeks, a New Zealand benefit shall cease to be payable from the date of departure.
4. For the purposes of a New Zealand benefit, if a person who has been ordinarily resident in Australia either intends to be or is absent from Australia for a period which exceeds 26 weeks, that person shall cease to

be considered ordinarily resident in Australia on the date of his or her departure from Australia.

5. Where a person, who is in receipt of an Australian age pension by virtue of this Agreement, goes to a third country temporarily that benefit shall continue to be payable for the period that the social security law of Australia provides that a person who is absent from Australia remains entitled to the Australian age pension, before which the rate of age pension becomes calculated on a proportional basis. At that time, payment of the age pension by virtue of this Agreement will cease entirely. Age pension will cease to be payable by virtue of this Agreement from the date of departure if the absence is permanent.
6. Where a person, who is in receipt of an Australian disability support pension by virtue of this Agreement, goes to a third country temporarily, that benefit shall continue to be payable for the period that the social security law of Australia provide that a person who is absent from Australia remains entitled to the disability support pension (disregarding any exceptions and circumstances where the period is unlimited). At that time, payment of the disability support pension by virtue of this Agreement will cease. Disability support pension will cease to be payable by virtue of this Agreement from the date of departure if the absence is permanent.
7. Where a person, who is in receipt of an Australian carer payment by virtue of this Agreement, goes to a third country temporarily, that benefit shall continue to be payable for the period that the social security law of Australia provides that a person who is absent from Australia remains entitled to the carer payment, disregarding any exceptions . At that time payment of the carer payment by virtue of this Agreement will cease. Carer payment will cease to be payable by virtue of this Agreement from the date of departure if the absence is permanent.

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.

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2. Where an Australian resident becomes entitled to receive a New Zealand benefit under this Agreement,
 - (a) 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;
 - (b) no payment shall be made in advance of any number of instalments of that benefit, or part of it, not yet due.
 3. Where an Australian resident qualifies for an Australian benefit under this Agreement or otherwise but the person's rate of Australian benefit is zero solely due to the operation of subparagraph 2(c) of Article 13, that person shall be deemed to be receiving an Australian benefit, as defined in Article 1(1)(b) and shall therefore be eligible to receive relevant and applicable concessions under the social security law of Australia.
 4. Where a person outside of Australia is entitled to receive an Australian benefit under this Agreement, the amount of that benefit shall not include any supplementary benefit or allowance, except as payable to a person outside of Australia as provided by the social security law of Australia.

ARTICLE 16

Residence 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.
4. The date on which a claim for a benefit under the legislation of one Party is lodged with the competent institution of that Party shall be considered to be the date on which a claim for the corresponding benefit under the legislation of the other Party was lodged if:
 - (a) the claimant provides information at the time of the initial claim indicating that he or she has completed a period of working age residence in the other country; and
 - (b) the competent institution of the other Party receives the claim for that corresponding benefit within 12 months of the date of lodgement of the initial claim; and
 - (c) if the claimant is applying for an age pension or New Zealand superannuation, he or she has reached pension age under this Agreement.

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 or that they are lawfully able to obtain 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 competent institution shall supply that information in the manner specified in the administrative arrangements made pursuant to Article 21. 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 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.
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 their possession or that they are lawfully able to obtain, that is 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 subject to the terms and conditions set out in Part A of the Schedule of this Agreement, and free of charge except where specified in the Schedule or in the administrative arrangements made pursuant to Article 21.
6. Unless disclosure is required and is permitted under the laws of both Parties, then, except as provided in Part A of the Schedule of this Agreement, 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, in accordance with Part A of the Schedule of this Agreement:
 - (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;
 - (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.

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9. No term in this Article shall affect the obligations of the Parties under Article 24.

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.

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 4 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.

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

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

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.

ARTICLE 24

Review of the Agreement

1. The Parties may agree at any time to review any of the provisions of this Agreement. 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 unless otherwise agreed.
2. If a meeting is requested under paragraph 1 then the requesting Party agrees to travel to the territory of the other Party, unless otherwise agreed.

ARTICLE 25

Schedule to the Agreement

The Schedule of this Agreement is an integral part of this Agreement.

ARTICLE 26

Transitional Provisions

1. Subject to this Agreement, when this Agreement enters into force pursuant to Article 27, the 2001 Agreement shall terminate and persons who were receiving benefits by virtue of the 2001 Agreement shall receive those benefits by virtue of this Agreement.

2. Notwithstanding paragraph 1, 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 Article 12(4) or 14(2) of the 2001 Agreement; or
 - (b) is qualified to receive a benefit referred to in subparagraph (a) and has lodged a claim for that benefit;

no provision of this Agreement shall affect that person's qualification to receive that benefit.
3. Any person who is in receipt of 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.
4. A person who is in receipt of a benefit under the 1994 Agreement shall not be required to claim a benefit from the other Party under this Agreement, whether or not legislation of the first Party obliges him or her to do so.

ARTICLE 27

Entry into Force and Termination

1. The Agreement shall enter into force on 1 July 2017 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 third 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 Wellington on this 8th day of December 2016.

FOR THE GOVERNMENT
OF AUSTRALIA

FOR THE GOVERNMENT
OF NEW ZEALAND

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Schedule

Part A

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 law 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).

Part B

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
 - 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.

PART B

EXCHANGE OF NOTES AMENDING THE AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND, DONE AT WELLINGTON ON 8 DECEMBER 2016

New Zealand initiating note

NOTE NUMBER: NZHC 2017 024

The New Zealand High Commission, Canberra 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 Wellington on 8 December 2016 (hereinafter referred to as “the Agreement”) and to subsequent discussions between the two Governments over correction of errors in the text.

The High Commission has the further honour to propose that, on the basis of the aforementioned discussions, the following corrections to the Agreement be made in accordance with Article 79(1)(b) of the Vienna Convention on the Law of Treaties:

1. Article 1(c) and 1(n)(ii) of the Agreement are corrected by deleting the references to the year “2016” and replacing it with the year “1964” so that both references now read the “Social Security Act 1964”.
2. Article 6 of the Agreement is corrected by inserting in paragraph 5, after the words “payable to”, the words “a person in”.

The High Commission has the honour to propose that, if the forgoing is acceptable to the Government of Australia, this note, and the Department’s note in reply, shall together constitute an Exchange of Notes Correcting Errors in the Agreement. The corrected text will replace the defective text.

The New Zealand High Commission, Canberra takes 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

24 March 2017

Australian note in reply

N° 17/PAD 09

The Department of Foreign Affairs and Trade presents its compliments to the New Zealand High Commission in Canberra and has the honour to refer to the latter's note, NZHC 2017 024 seeking corrections to the *Agreement on Social Security between the Government of Australia and the Government of New Zealand* (the "agreement") done at Wellington on 8 December.

The Department of Foreign Affairs and Trade of Australia has the further honour to advise that the request 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 correcting errors in the agreement.

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

CANBERRA

11 April 2017

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;

“**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.

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 Statethat 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

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- (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
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- (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:
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- (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:
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- (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;
 - (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.

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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 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.

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
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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.

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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.
 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;
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- (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.

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 26th 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

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.

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.

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.

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.

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.

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.

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.

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:
 - (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.

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.

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

FOR THE GOVERNMENT OF
SPAIN

Alexander Downer

Josep Piqué i Camps

[Signatures omitted]

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.

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.

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:
 - (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 22nd 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 22nd 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:

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

but that pension shall not be payable if the formula

$$\frac{(\underline{\text{T1}} + \underline{\text{T2}})}{\frac{(\underline{\text{Y}} - 10)}{2}}$$

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
- 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.
6. In this Article 'reckonable contribution' and 'reckonable year' shall have the meanings given to them in the legislation of Malta.

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;

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.

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]

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.

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.

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
 - 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 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

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.

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:

A = rate of Australian benefit payable;

Q	=	number of months of the period of residence in Australia of the person or 300 whichever is the lower;
R	=	maximum rate of Australian benefit;
NP	=	Netherlands' benefit excluding AOW toeslag;
I	=	income within the meaning of Australian legislation excluding Netherlands' benefit and any payments according to the Algemene Bijstandswet;
F	=	free area under the Australian income test;
T	=	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.

**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.

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.

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.

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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.
 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
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- 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.
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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 2nd 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.

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.

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

- (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;
 - (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;
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- (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 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.

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.

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.

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

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- (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.
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ARTICLE 17

Payment of Benefits

1. Benefits 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. 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.

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

FOR THE

AUSTRALIA

GOVERNMENT OF
IRELAND

Dr John Herron

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;

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:

- (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.

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.

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.

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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 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.
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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.

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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.
 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.

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.

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.
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

- (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 sections 5 and 8.

**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,

Considering it appropriate to review and replace the Social Security Agreement between Australia and Austria done on 1 April 1992, the Protocol to the Agreement between Australia and the Republic of Austria on Social Security done on 26 June 2001 and the Second Protocol to the Agreement between Australia and the Republic of Austria on Social Security signed on 17 February 2010,

And

Resolved to co-operate in the field of social security;

Have agreed as follows:

PART I – 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)(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 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 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 or an authorised representative of the Commissioner; and,

in relation 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 a Party, the institution or agency responsible for the administration of all or part of that Party’s legislation;

(e) “**competent institution**” means, in relation to a Party, the institution competent under the legislation of that Party;

(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 11 to be a period in which that person was an Australian resident;

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- (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 but for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;
- (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;
- (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;
- (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;
- (m) “**Australia**” means Australia as defined in the legislation of Australia;
- (n) “**Austria**” means the Republic of Austria;
- (o) “**Government**” for the purposes of Article 9 includes, in relation to Australia, a political subdivision or local authority of Australia;
- (p) “**Party**” means Australia or Austria as the context requires.

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:
 - (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;
 - (C) carer payment;
 - (D) benefits payable to widowed persons; and
 - (E) double orphan pension.
 - (ii) with regard to Part II only, the law concerning the superannuation guarantee: 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; and
 - (b) in relation to Austria:
 - (i) the legislation concerning pension insurance with the exception of the insurance for notaries; and
 - (ii) with regard to Part II only, the legislation concerning sickness insurance and accident insurance.
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, the legislation of Australia shall not include treaties or other international agreements on social security that may be concluded between Australia and a third Party.

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, the following persons shall, in the application of the legislation of one Party, receive equal treatment with the nationals of this other Party regarding eligibility for and payment of benefits:

- (a) nationals of the other Party;
- (b) refugees, ordinarily resident in the territory of one Party;
- (c) stateless persons, ordinarily resident in the territory of one 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. In relation to Austria paragraph 1 shall also apply to any person covered by the principle of free movement under EU-law.

4. Paragraph 1 shall not apply to the provisions of the Austrian legislation concerning the apportionment of insurance burdens resulting from agreements with third States.

5. 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 one Party which requires that entitlement to or the payment of benefits is dependent on residence or presence in the territory of that Party shall not be applicable to persons, who reside or stay in the territory of the other 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 not apply to any additional amount, increase or supplement such as rent assistance which is intended to assist Australian pensioners with certain additional living costs and which is not payable indefinitely outside Australia. Such amounts shall be payable outside the territory of Australia only to the extent provided by the legislation of Australia.

(b) Paragraph 1 shall not apply to a claimant for a carer payment who has never been an Australian resident.

(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, 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.

(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.

5. As regards the Austrian legislation, paragraph 1 shall not apply to the compensatory supplement (Ausgleichszulage).

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 longer than the period specified in the social security legislation of Australia to a person who is not severely disabled while that person is outside Australia.

PART II – PROVISIONS RELATING TO APPLICABLE LEGISLATION

Provisions relating to applicable legislation

Article 6 General provisions

1. Subject to Articles 7 to 10 a person who is employed or self-employed in the territory of one Party shall be subject only to the legislation of that Party with regard to that activity. In relation to employment in Austria, this shall also apply if the employer's place of business is in the territory of the other Party.
2. 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 7 Special Provisions

1. An employed person who, usually is employed by an employer with an office in the territory of one of the Parties, is posted by this employer to the territory of the other Party to work on its account or for a related entity, shall be subject only to the legislation of the former Party as if the person continued to be employed in the territory of the former Party, on the condition that the person's work does not exceed five years.
2. For the purposes of paragraph 1 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 8 Members of Diplomatic Missions and Consular Posts

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 9
Government Officials

Government officials and equivalent personnel who are sent by the government of a Party to the territory of the other Party are subject only to the legislation of the first mentioned Party. These persons are, for this purpose, considered to be resident in the territory of this Party, even if they are located in the territory of the other Party.

Article 10
Exceptions

In the interest of certain persons or certain categories of persons covered by this Part, the competent authorities can, by agreement in writing, specify exceptions to the provisions of Articles 6 to 9.

PART III – PROVISIONS CONCERNING AUSTRALIAN BENEFITS

Article 11
Totalisation for Australian benefits

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.

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 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 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 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. The provisions in paragraphs 4 and 5 shall continue to apply for 26 weeks where a person temporarily leaves Australia.

7. Where a member of a couple 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.

8. 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.

9. In paragraphs 1 and 4 of this Article references to Australian benefits do not include double orphan pension.

PART IV – PROVISIONS CONCERNING AUSTRIAN BENEFITS

Article 13 Totalisation for Austrian benefits

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 due to gainful activity.

5. The periods of coverage of a person completed in a third country, with which Austria has a Social Security Agreement of the same kind, shall also be taken into account for the purpose of acquiring entitlement to a benefit under Austrian legislation.

Article 14 **Calculation of Austrian Benefits**

1. Where entitlement to a benefit exists under the Austrian legislation without the application of Article 13, 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 Austrian legislation only by totalising periods under Article 13, the competent institution for Austria shall determine the amount of the benefit in accordance with Regulation (EC) No. 883/2004, with periods of Australian working life residence, to be deemed periods of insurance in another Member State of the European Union.

3. As an exception from paragraph 2 of this Article, child raising periods shall be taken into account for the determination of the benefit only in accordance with the Austrian legislation.

4. 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.

PART V – MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 15 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. The date on which a claim for a benefit under the legislation of a Party is lodged with the competent institution of that Party shall be considered to be the date on which a claim for the corresponding benefit under the legislation of the other Party was lodged if:

(a) the applicant provides information at the time of the original 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

(b) a claim for the corresponding benefit is received by the competent institution of the other Party within 12 months of the lodgement of the original claim.

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 16 **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 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 17 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 18 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 of 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.

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4. 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.
 5. 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.
 6. 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 19 **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 20 **Data Protection**

1. Insofar as personal data is communicated pursuant to this Agreement and is subject to domestic laws of the Parties, the following provisions shall apply, taking into consideration other binding provisions of the Parties:
 - (a) For the implementation of this Agreement and the legislation referring thereto personal data may be communicated to the competent bodies of the receiving Party. The receiving body shall not use the data for any purpose other than for that which it was originally communicated. Onward transmission of personal data within the

territory of the receiving Party to other bodies is admissible in conformity with the domestic law of the receiving Party insofar as it serves social security purposes or the purposes of the legislation specified in subparagraph 1(a)(ii) of Article 2 including related court procedures. Even in the case of disclosure of information in public court proceedings or in judicial decisions personal data shall be treated as confidential unless its disclosure is necessary to safeguard overriding the legitimate interests of another person or overriding substantial public interests.

(b) Any personal data communicated in whatsoever form between the responsible authorities, institutions or any other bodies concerned pursuant to this Agreement or to any arrangement implementing this Agreement shall be treated as confidential in the same manner as like information obtained under the domestic law of the receiving Party. These obligations shall apply to all persons fulfilling tasks under this Agreement and to persons otherwise bound by the obligation of confidentiality relating to personal data.

(c) In specific cases the receiving body shall give information upon request of the communicating body about both the use of the personal data received and the results which had been achieved through the use of this personal data.

(d) The communicating body shall ensure that personal data communicated pursuant to this Agreement is accurate and up-to-date. Before initiating any communication of personal data the communicating body shall examine whether or not the communication is necessary and proportionate with regard to the purpose of the communication in question. This is to be done with due consideration to prohibitions on communication existing in the relevant domestic law. In the case of communication of inaccurate data or data which was not permitted to have been communicated under the domestic law of the communicating Party the receiving body must be informed thereof without undue delay. The latter shall carry out the necessary deletion or correction of the data immediately. If the receiving body has reason to suppose that communicated data might be inaccurate or should be deleted, this body shall immediately inform the communicating body thereof without undue delay.

(e) A person whose personal data has been communicated pursuant to the Agreement, who proves their identity in an appropriate manner, shall, upon request of that person, be provided by the body responsible for processing with information about the data relating to them which has been communicated or processed, the origin of the data as far as possible, the recipients or categories of recipients of communications, the intended purpose of the use of data and the legal basis of the communication of the data in a generally understandable form. This information shall be given without undue delay and, in principle, free of charge. Moreover the person concerned shall have the right to have incomplete or inaccurate data corrected and unlawfully processed data deleted. Further procedural details relating to the enforcement of these rights are subject to domestic law.

(f) The Parties shall provide every data subject whose rights to information, correction and deletion have been violated with the right to have the matter decided by an independent authority. Furthermore, the Parties shall ensure that any data subject who has suffered damage as a result of an unlawful processing of data is entitled to receive compensation for the damage suffered from the body responsible for processing the data in accordance with the respective Party's domestic law.

(g) Personal data communicated shall be deleted, if found to be inaccurate, or unlawfully obtained or communicated, or if lawfully communicated data are to be deleted at a later date pursuant to the domestic law of the communicating Party, or if data is no longer needed for the purpose for which it was communicated and if there is no reason to suppose that the deletion could affect interests deserving protection of the person in the field of social security or the legislation specified in subparagraph 1(a)(ii) of Article 2 of the Agreement.

(h) Both the communicating body and the receiving body shall record the reason, contents and date of any communication or receipt of personal data as well as the communicating and receiving body. Data communicated online shall be logged using automated processes. The records and logs shall be stored for at least three years and may only be used for the purpose of monitoring compliance with the applicable provisions on data protection.

(i) Both the communicating body and the receiving body shall effectively protect communicated personal data against accidental or unauthorised destruction, accidental loss, unauthorised access, unauthorised or accidental modification and unauthorised disclosure.

2. The provisions of paragraph (1) of this Article shall apply accordingly to trade and business secrets.

Article 21 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.

3. Paragraph 2 does not apply in relation to the application of Part II of this Agreement.

PART VI – TRANSITIONAL AND FINAL PROVISIONS

Article 22 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.

4. Subject to this Agreement, when this Agreement comes into force, the previous Agreement shall terminate in accordance with Article 24 and persons who were receiving benefits by virtue of that Agreement shall receive those benefits by virtue of this Agreement.

5. 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 and the rate of that benefit.

Article 23 **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.

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 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 calendar months following the month in 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.

4. The entry into force of this Agreement shall terminate:

- a) the Agreement between Australia and the Republic of Austria on Social Security done at Canberra on the first day of April 1992, as amended by the Protocol done at Vienna on the twenty-sixth day of June 2001 and the Second Protocol done at Vienna on the seventeenth day of February 2010;
- b) the Administrative Arrangement for the application of the Agreement between Australia and the Republic of Austria on Social Security signed at Canberra on the first day of April 1992 and the Supplementary Administrative Arrangement for the application of the Agreement between Australia and the Republic of Austria on Social Security signed at Canberra on the fifth day of October 2011.

5. In the event that this Agreement is terminated, Part II of this 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 Party by virtue of that Part of this Agreement, provided that the person concerned continues to satisfy the criteria of that Part.

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

DONE in two copies at Canberra this twelfth day of August 2015 in the English and German languages, each text being equally authoritative.

For Australia:

For the Republic of Austria:

The Hon. Scott John Morrison MP,
Minister for Social Services

Helmut Böck
Ambassador Extraordinary and
Plenipotentiary of the Republic of Austria to
Australia

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 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.

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

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- 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.
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.

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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.

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 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 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

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- (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 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

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- 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.
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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.
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

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;

- (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.

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;

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.

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.

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.

Schedule 12 Denmark

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

- 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.
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.

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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 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.

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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.
 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:
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- (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).

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),
- 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
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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.

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.

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.

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.

Schedule 13 United States of America

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.

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4. The Agency of the Party with which an application for benefits has been filed shall verify the information pertaining to the applicant and 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

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.
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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.

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.

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*).

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5. The provisions in paragraphs 1, 2 and 4 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
 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.

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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 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.

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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 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

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- 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 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.
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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]

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 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:
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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;
- (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,

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.

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.

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.

- (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

Schedule 14 Germany

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:**

Schedule 15—Chile

Note: See section 5.

PART A

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 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.

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.

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.
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,

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.

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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
 - (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

Social Security (International Agreements) Act 1999

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Compilation No. 53

Compilation date: 20/03/2020

Registered: 02/04/2020

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.

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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, Invalidation 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.
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.

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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.
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

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- (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.
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

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- (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 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 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

PART B

Amended text as agreed by an exchange of letters between Australia and the Republic of Chile

Note: The amended text is paragraph 1 of Article 17.

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);
 - (b) periodical monthly mercy payments made under Chilean Law number 19.234;
 - (c) payments made under Chilean law number 19.992 (annual mercy pensions); and
 - (d) any other payments of a similar character, granted under laws made later than those listed in subparagraphs (a), (b) and (c) above, and jointly approved in writing by the Competent Authorities,

shall not be included for the purpose of assessing the rate of that Australian benefit.

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;

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- (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;

(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.
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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.

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).

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.

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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,
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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.

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.

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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

Davorko 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;

- (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.

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 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.

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.

Schedule 17 Slovenia

DONE in duplicate at Vienna on this 19th 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.

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.

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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.

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.

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.

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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

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.

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

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;

- (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;

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- (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.

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 Norwayprior 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;
- (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.

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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.

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 Norwaythen 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
- (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, 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.

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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,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
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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.
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.

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

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;

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- (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;
- (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*.

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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 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

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- 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.
- (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.
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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.

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.

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.

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.
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.

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
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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
 - (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).

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;

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- (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.

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.

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.
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

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.

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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.
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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 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:
 - (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.

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 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:

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- 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.
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 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.

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.

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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 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
 - 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:
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- 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 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.
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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.

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

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- 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;
 - (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 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.

Schedule 22 Hellenic Republic

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

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,
 - 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,
- 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;

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- (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);
- (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, 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.

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;

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 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 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 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.

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.

Schedule 23 Japan

For Australia:	For Japan:
Hon Mal Brough Minister for Families, Community Services and Indigenous Affairs	HE Hideaki Ueda Ambassador

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

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

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 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.

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

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
 - 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.

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.
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:

- (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

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.

**FOR THE GOVERNMENT OF
AUSTRALIA:**

**FOR THE GOVERNMENT OF THE
REPUBLIC OF FINLAND:**

.....
**HOWARD BROWN
AMBASSADOR**

.....
**LIISA HYSSÄLÄ
MINISTER OF SOCIAL AFFAIRS
AND HEALTH**

Schedule 25 — Republic of Poland

Note: See section 5.

AGREEMENT BETWEEN AUSTRALIA AND THE REPUBLIC OF POLAND ON SOCIAL SECURITY

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

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

and

Being desirous of regulating their mutual relations with respect to social security benefits and compulsory coverage,

Have agreed as follows,

PART I

GENERAL PROVISIONS

ARTICLE 1

Definitions

1. For the purposes of this Agreement,
 - (1) “legislation” means,
 - (a) in relation to Australia, the laws specified in subparagraph 1(1)(a) of Article 2 except in relation to the application of Part II of this Agreement (including the application of other Parts of this Agreement as they affect the application of that Part) where it means the laws specified in subparagraph 1(1)(b) of Article 2,
 - (b) in relation to the Republic of Poland the laws and other regulations specified in subparagraph 1(2) of Article 2;

-
- (2) “Competent Authority” means,
- (a) in relation to Australia, the Secretary to the Commonwealth Department responsible for the legislation specified in subparagraph 1(1)(a) of Article 2, except in relation to the application of Part II of this Agreement (including the application of other Parts of this Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner,
 - (b) in relation to Republic of Poland, the Minister responsible for Social Security;
- (3) “Competent Institution” means, the institution responsible for applying the legislation;
- (4) “Liaison Institution” means the institution which ensures coordination and exchange of information between the institutions of both Parties, which participates in applying this Agreement;
- (5) “benefit” means a pension or other benefit specified in Article 2 including any additional amount, increase or supplement which is payable to a qualified person but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;
- (6) “period of insurance” means in relation to the Republic of Poland, period of contributions, equivalent period and non-contributory period;
- (7) “period of Australian working life residence” means a period defined as such in the legislation of Australia but does not include any period deemed pursuant to Article 11 to be a period in which that person was an Australian resident;
- (8) “public servant” means,
- (a) in relation to Australia, an employee of a government of Australia. For this purpose, government includes a political subdivision or local authority of Australia,
 - (b) in relation to the Republic of Poland, an employee of public administration.
-

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.

ARTICLE 2 **Material Scope**

1. This Agreement shall apply to the following laws:

- (1) in relation to Australia,
 - (a) the Acts forming the social security law in so far as the law provides for, applies to or affects age pension,
 - (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*;
- (2) in relation to the Republic of Poland, legislation on the compulsory coverage and the following benefits within social insurance and social insurance for farmers:
 - (a) Age pensions, disability pensions, survivors pensions,
 - (b) Work accidents and occupational diseases compensation and pensions,
 - (c) Funeral benefits.

2. This Agreement is also applied to laws and regulations which amend, supplement or replace the legislation specified in paragraph 1.

3. Notwithstanding the provisions of paragraph 1, the legislation referred to in this Article shall not include treaties or other international agreements on social security that may be concluded between one Party and a third State.

4. 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 within 3 months of the

entry into force of such legislation.

ARTICLE 3
Personal Scope

This Agreement shall apply to any person who:

- (1) is or has been an Australian resident, or
 - (2) is or has been subject to the legislation of the Republic of Poland
- and, where applicable, to other persons in regard to the rights they derive from the person described above.

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 rights and obligations regarding eligibility for and payment of benefits which arise under the social security law of Australia or the legislation of the Republic of Poland or by virtue of this Agreement.

ARTICLE 5
Export of Benefits

1. Unless otherwise provided in this Agreement, benefits of one Party when payable by virtue of this Agreement shall be payable also to persons who are residents of , or in, the territory of either Party.

2. In relation to Australia, for the purposes of paragraph 1, any additional amount, increase or supplement that is payable under this Agreement, shall be payable to a person outside Australia only for the period specified in the provisions of the *Social Security Act 1991*. The reference to the *Social Security Act 1991* includes any laws that subsequently amend, supplement or replace that Act.

3. With regard to the Republic of Poland, paragraph 1 does not apply to benefits granted under special procedures or in exceptional cases.

PART II APPLICABLE LEGISLATION

ARTICLE 6 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 in respect of the work of the employee or remuneration paid for the work.

ARTICLE 7 General principle

Persons to whom this Agreement applies are subject to the legislation of the Party, in whose territory they are working, unless otherwise provided in Article 8.

ARTICLE 8 Special Principles and Exceptions

1. With regard to the principle described in Article 7, the following special principles and exceptions are provided for:

- (1) a person employed by an employer in the territory of a Party, who has been sent by that employer to the territory of the other Party in

order to perform work of a temporary character for that employer, continues to be subject only to the legislation of the first Party, provided that the period of secondment does not exceed 60 months. This subparagraph shall also apply to an employee who has been sent by an employer in the territory of Australia to the related entity of the employer in the territory of the Republic of Poland. 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;

- (2) public servants of a Party, who are sent to the territory of the other Party in order to perform work of a temporary character are subject to the legislation of the Party whose administration is employing them.

2. The Competent Authorities of the Parties or institutions designated by them may, upon mutual agreement and in the interest of a person or group of persons, provide different special principles and exceptions or alter those which have been provided for in paragraph 1.

ARTICLE 9

Vienna Conventions

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.

PART III

PROVISIONS RELATING TO BENEFITS

CHAPTER 1

Provisions Concerning Australian Benefits

ARTICLE 10

Residence or Presence in the Republic of Poland

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,

- (1) is an Australian resident or a resident of the Republic of Poland, and
- (2) is in Australia or the Republic of Poland,

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**

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated,

- (1) a period as an Australian resident that is less than the period required to qualify that person under the legislation of Australia for that benefit, and
- (2) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 4 for that person, and
- (3) a period of insurance under the legislation of the Republic of Poland,

then, for the purposes of a claim for that Australian benefit, that period of insurance in the Republic of Poland 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,

- (1) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit, and

- (2) has accumulated a period of insurance under the legislation of the Republic of Poland in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (1),

the total of the periods of insurance under the legislation of the Republic of Poland 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 the Republic of Poland 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,

- (1) 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,
- (2) for the purposes of an Australian benefit that is payable to an Australian resident, there shall be no minimum period.

ARTICLE 12

Calculation of Australian Benefits

1. Subject to paragraphs 2 & 3, where an Australian benefit is payable only by virtue of this Agreement to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia but on the basis that the additional child amount rate is nil.

2. When an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is a resident of the Republic of Poland, Australia shall disregard, when assessing the income of that person any non-contributory supplement paid to that person in the Republic of Poland to increase that person's Polish benefit to the minimum level guaranteed under the legislation of the Republic of Poland.

3. Paragraphs 1 & 2 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,

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

5. 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 benefit or benefits under the legislation of the Republic of Poland, 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.

CHAPTER 2

Provisions concerning benefits of the Republic of Poland

ARTICLE 13

Totalisation

Where the legislation of the Republic of Poland makes the acquisition, retention or recovery of the right to benefits subject to the completion of a period of

insurance, the Competent Institution shall take into account, when necessary, periods of Australian working life residence as long as these periods do not coincide.

ARTICLE 14 **Calculation of Benefits**

1. If in accordance with the legislation of the Republic of Poland the right to benefits arises without the need to totalise with periods of Australian working life residence, the Competent Institution shall determine the right to benefits and calculate the amount only on the basis of periods of insurance accumulated in accordance with the legislation of the Republic of Poland, unless the amount of benefit calculated according to paragraph 2 is more favourable.

2. If, in accordance with the legislation of the Republic of Poland, the right to benefits arises only after taking into account periods of Australian working life residence, the Competent Institution shall:

- (1) determine a notional amount of the pension as it would apply if all periods of insurance are accumulated in accordance with the legislation of the Republic of Poland, and
- (2) on the basis of that notional amount, referred to in subparagraph (1), determine the actual amount of benefits based on the proportion of the period of insurance accumulated in accordance with the legislation of the Republic of Poland up to the total of all periods.

3. When determining the basis for benefits the Competent Institution shall take into consideration only the earned income and contributions paid in accordance with the legislation of the Republic of Poland.

4. Entitlement to benefits for work accidents and occupational diseases under the legislation of the Republic of Poland shall be established only when the insured person was subject to the legislation of the Republic of Poland at the time of the work accident or while performing the work as a result of which the occupational disease arose.

5. If the period of insurance accumulated in accordance with the legislation of the Republic of Poland is less than 12 months, and no entitlement to benefit arises, the Competent Institution is not obliged to grant this benefit.

6. If the right to disability or survivor's pension arises only by virtue of this Agreement, the existence of this right is conditional upon the residence in the Republic of Poland.

7. If no Australian benefit is paid, the guarantee of minimum total amount of Polish and foreign benefits does not apply.

PART IV MISCELLANEOUS PROVISIONS

ARTICLE 15 Administrative Arrangement

1. The Competent Authorities of the Parties are authorised to enter into an Administrative Arrangement necessary for the purpose of implementing this Agreement.
2. The Competent Authorities shall appoint Liaison Institutions which are to be listed in the Administrative Arrangement.

ARTICLE 16 Exchange of Information and Mutual Assistance

1. The Competent Authorities, Liaison Institutions and Competent Institutions responsible for the application of this Agreement shall to the extent permitted by their national laws:
 - (1) communicate to each other any information necessary for the application of this Agreement or their legislation,
 - (2) provide assistance to one another, with regard to the determination or payment of any benefit under this Agreement or under the legislation to which this Agreement applies as if applying their
-

own legislation,

- (3) communicate to each other, without delay, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation insofar as these changes affect the application of this Agreement.
2. This assistance shall be free of charge subject to exceptions to be agreed in an Administrative Arrangement made pursuant to Article 15.
 3. In no case shall the provisions of paragraph 1 be construed so as to impose on the Competent Authority, Liaison Institution or Competent Institution of a Party the obligation to:
 - (1) carry out administrative measures at variance with the laws or the administrative practice of that or the other Party, or
 - (2) supply particulars which are not obtainable under the laws or in the normal course of the administration of that or the other Party.

ARTICLE 17 **Protection of Personal Data**

1. If, in accordance with this Agreement, the Competent Authority, Liaison Institution or Competent Institution of a Party transfers personal data to the Competent Authority, Liaison Institution or Competent Institution of the other Party, then such transfers are subject to the privacy legislation applicable in the territory of the Party providing the data. All such data is subject to the privacy legislation applicable in the territory of the Party receiving the data.
2. Any information about an individual which is transmitted in accordance with this Agreement to the Competent Authority, Liaison Institution or Competent Institution of that Party by the Competent Authority, Liaison Institution or Competent Institution of the other Party is confidential and shall be used only for the purposes of implementing this Agreement and the legislation to which this Agreement applies.
3. 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.

ARTICLE 18
Language

1. In the application of this Agreement, the Competent Authority, Liaison Institution or Competent Institution of a Party may communicate with the Competent Authority, Liaison Institution or Competent Institution of the other Party in any of the official languages of the Parties.
2. Applications, appeals or other documents may not be rejected on the grounds that they were prepared in the official language of the other Party.

ARTICLE 19
Lodgement of Documents

1. A claim or appeal concerning a benefit may be lodged in the territory of either Party in accordance with the Administrative Arrangement made pursuant to Article 15 at any time after this Agreement enters into force.
2. The date on which a claim or appeal referred to in paragraph 1 is lodged with the Competent Authority, Liaison Institution or Competent Institution of one Party shall be considered as the date of lodgement of that document with the Competent Authority, Liaison Institution or Competent Institution of the other Party. The Competent Authority, Liaison Institution or Competent Institution with which a claim or appeal is lodged shall refer it without delay to the Competent Authority, Liaison Institution or Competent Institution of the other Party.
3. A claim for a benefit under the legislation of one Party shall be considered as a claim for the corresponding benefit under the legislation of the other Party if the claimant has indicated in that claim that the person was covered by the social security system of that other Party and provided the other Party receives this request within 6 months.
4. In relation to Australia, the reference in paragraphs 1 and 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 20
Payment of Benefits

1. Competent Institutions of each Party shall pay benefits by virtue of this Agreement directly to entitled persons who are residents of, or in, the territory of the other Party in the official currency of that country, or in another convertible currency.
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. 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.

ARTICLE 21
Exemption from Fees and Authentication

1. 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, Liaison Institutions 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, Liaison Institutions and Competent Institutions in the territory of the other Party.
2. Documents and certificates required for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

ARTICLE 22
Resolution of Disputes

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 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 as soon as possible 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 V
TRANSITIONAL AND FINAL PROVISIONS

CHAPTER 1
Transitional Provisions

ARTICLE 24
Recognition of Prior Events and Periods

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 benefits for any period prior to its coming into force.
3. The application of the provisions of paragraph 1 shall not affect qualification for benefits for the period prior to entry into force of this Agreement.

4. Periods as an Australian resident, periods of Australian working life residence and periods of insurance completed under the legislation of the Republic of Poland prior to the date on which this Agreement comes into force shall be taken into consideration in determining entitlement to any benefit in accordance with the provisions of this Agreement.
5. Subparagraphs (1) and (2) of paragraph 1 of Article 8 apply, from the date of commencement of this Agreement, even if the person was sent by their employer before commencement of this Agreement. For this purpose, the period of secondment is taken to start on the commencement of this Agreement.

CHAPTER 2 Final Provisions

ARTICLE 25 Duration and Termination

1. This Agreement shall remain in force for an unlimited period of time. It may be terminated at any time by either Party giving 12 months notice in writing to the other Party through the diplomatic channel.
2. In the event of termination, this Agreement shall continue to apply to all persons who:
 - (1) at the date on which termination takes effect, are in receipt of benefits, or
 - (2) prior to that date have lodged claims for, and would be entitled to receive, benefits by virtue of this Agreement, or
 - (3) immediately before the date of termination are subject only to the legislation of one Party by virtue of subparagraphs (1) and (2) of paragraph 1 of Article 8 of Part II of this Agreement, provided the employee continues to satisfy the criteria of that Article.

ARTICLE 26
Entry into Force

The Parties shall notify each other in writing of the completion of their respective statutory and constitutional procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the third month following the month during which the last notification occurs.

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

DONE in two originals at Warsaw this 7th day of October two thousand and nine in the English and the Polish languages, each text being equally authoritative.

FOR AUSTRALIA:

FOR THE REPUBLIC OF POLAND:

Stephen Smith
Minister for Foreign Affairs

Jolanta Fedak
Minister of Labour and Social Policy

Schedule 26 — Former Yugoslav Republic of Macedonia

Note: See section 5.

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA ON SOCIAL SECURITY

The Government of Australia and the Government of the former Yugoslav Republic of Macedonia, hereinafter “the Contracting Parties”,

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

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

Have agreed to conclude the following Agreement:

PART I GENERAL PROVISIONS

Article 1 Definitions

1. In this Agreement, unless the context otherwise requires:
 - (1) “**benefit**” means a benefit, pension or allowance that is payable under the legislation of a Contracting Party and includes any additional amount, increase or supplement that is payable but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;
 - (2) “**Competent Authority**” means:

in relation to Australia, the Secretary of the Australian Government Department responsible for the legislation specified in Article 2.1.1.1, except in Part II of the Agreement, and other Parts of the Agreement as they affect that Part, where it means the Commissioner of Taxation or an authorised representative of the Commissioner; and

in relation to the former Yugoslav Republic of Macedonia, the Ministry of Labour and Social Policy;

(3) “**Competent Institution**” means:

in relation to Australia, the institution or agency which has the task of implementing the applicable legislation; and

in relation to the former Yugoslav Republic of Macedonia, the Pension and Disability Insurance Fund;

(4) “**insurance periods**” means, in relation to the former Yugoslav Republic of Macedonia, periods for which contributions are paid and periods related to such contributions;

(5) “**legislation**” means:

in relation to Australia, the laws specified in Article 2.1.1.1, except in Part II of the Agreement, and other Parts of the Agreement as they affect that Part, where it means the laws specified in Article 2.1.1.2; and

in relation to the former Yugoslav Republic of Macedonia, the legislation specified in Article 2.1.2;

(6) “**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.

2. Unless the context otherwise requires, any term not defined in this Agreement shall have the meaning assigned to it in the applicable legislation.

Article 2
Legislation

1. Subject to paragraph 2 and 3 of this Article, 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:

1.1 in relation to Australia:

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

1.1.2 the law concerning the superannuation guarantee (which at the time of signature of this Agreement is contained in the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Regulations*);

1.2 in relation to the former Yugoslav Republic of Macedonia, the *Law on Pension and Disability Insurance* regarding:

1.2.1 old age pension;

1.2.2 disability pension;

1.2.3 survivor pension (widows, widowers, children and other members of the family who have rights to benefits) and other pension and disability insurance benefits of the former Yugoslav Republic of Macedonia.

2. Unless otherwise provided in this Agreement, the legislation referred to in this Article shall not include treaties on social security entered into by either Contracting Party with a third State.

3. This Agreement shall apply to future legislation which extends the existing legislation of either Contracting Party to new categories of beneficiaries only if the Competent Authorities so agree in writing.

Article 3
Personal Scope

This Agreement shall apply to any person who is or has been an Australian resident, or is or has been subject to the legislation of the former Yugoslav Republic of Macedonia and, where applicable, to other persons in regard to the rights they derive from a person described above.

Article 4
Equality of Treatment

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

PART II
PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

Article 5
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 the former Yugoslav Republic of Macedonia do not have a double liability under the legislation of Australia and the former Yugoslav Republic of Macedonia, in respect of the same work of an employee and the remuneration paid for the work.

Article 6
Application of this Part

This Part only applies if an employee and/or their employer would, apart from this Part, be subject to the legislation of both Contracting Parties in respect of work of the employee and 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.

Article 8
Avoidance of Double Coverage

1. Unless otherwise provided in this Part, if an employee works in the territory of one Contracting Party, the employee and their employer shall in respect of the work and the remuneration paid for the work be subject only to the legislation of that Contracting Party.

2. If an employee:

- 2.1 is covered by the legislation of one Contracting Party ('the first Contracting Party'); and
- 2.2 was sent, whether before, on or after the commencement 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
- 2.3 is working in the territory of the second Contracting Party in the employment of the Government of the first Contracting Party; and
- 2.4 is not working permanently in the territory of the second Contracting Party;

the employee and their employer 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, "Government" includes, in relation to Australia, a State or Territory Government or local authority of Australia.

3. If an employee:

- 3.1 is covered by the legislation of one Contracting Party ('the first Contracting Party'); and
- 3.2 was sent, whether before, on or after the commencement of this Agreement, by an employer who is subject to the legislation of

- the first Contracting Party to work in the territory of the other Contracting Party ('the second Contracting Party'); and
- 3.3 is working in the territory of the second Contracting Party in the employment of the employer or a related entity of that employer; and
- 3.4 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
- 3.5 the employee is not working permanently in the territory of the second Contracting Party;

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

4. For the purposes of subparagraph 3.3 of this Article an entity is a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group.

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

Article 9 **Exception agreements**

1. The Competent Authorities of the Contracting Parties may for the purposes of this Part agree:

- 1.1 to extend the period of 4 years referred to in subparagraph 3.4 of Article 8 for any employee; or
- 1.2 that an employee working in the territory of a particular Contracting Party or working on a ship or aircraft in international traffic under the legislation of a particular Contracting Party is subject only to the legislation of that Contracting Party.

2. Any agreement made under paragraph 1 of this Article may apply to:

- 2.1 a class of employees; and/or
- 2.2 particular work or particular types 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 former Yugoslav Republic of Macedonia

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:

- (1) is an Australian resident or a resident of the former Yugoslav Republic of Macedonia; and
- (2) is in Australia, or the territory of the former Yugoslav Republic of Macedonia,

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

Combining qualifying periods for Australian benefits

- 1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:
 - 1.1 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
 - 1.2 a period of Australian working life residence equal to or greater than the period specified in paragraph 4 of this Article for that person; and

- 1.3 an insurance period under the legislation of the former Yugoslav Republic of Macedonia;

then, for the purposes of a claim for that Australian benefit, that insurance period under the legislation of the former Yugoslav Republic of Macedonia shall be deemed to be a period in which that person was an Australian resident, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia.

2. For the purposes of paragraph 1 of this Article, where a person:

2.1 has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and

2.2 has accumulated two or more separate insurance periods that equal or exceed in total the minimum period referred to in subparagraph 2.1 of this Article;

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

3. For the purposes of this Article, where a period by a person as an Australian resident and an insurance period under the legislation of the former Yugoslav Republic of Macedonia coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 of this Article shall be:

4.1 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

4.2 for the purposes of an Australian benefit that is payable to an Australian resident, no minimum period.

5. For the purpose of this Article, an insurance period under the legislation of the former Yugoslav Republic of Macedonia shall be deemed as a period as an Australian resident only if that insurance period is certified by the Competent

Institution of the former Yugoslav Republic of Macedonia.

Article 12
Calculation of Australian Benefits

1. Subject to paragraphs 2, 3 and 4 of this Article, 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. Subject to paragraphs 3 and 4 of this Article, 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:

- 2.1 calculating that person's income according to the legislation of Australia, including any benefit payable under the legislation of the former Yugoslav Republic of Macedonia which that person or the partner of that person is entitled to receive, if applicable;
- 2.2 applying to the maximum rate of Australian benefit the relevant rate calculator set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph 2.1 of this Article; and
- 2.3 proportionalising, if applicable, the amount of benefit calculated under subparagraph 2.2 of this Article 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 of this Article and the person again becomes an Australian resident, the rate of benefit shall continue to be determined according to paragraph 2 of this Article, subject to paragraph 6 of this Article where applicable, if the person

subsequently leaves Australia within two years of the date the person again became an Australian resident.

4. Where a person comes temporarily to Australia, paragraphs 1 and 2 of this Article shall continue to apply for 26 weeks from the date of their arrival in Australia.

5. Subject to paragraph 6 of this Article, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:

5.1 calculating that person's income according to the legislation of Australia but disregarding in that calculation any benefit under the legislation of the former Yugoslav Republic of Macedonia which that person or the partner of that person is entitled to receive if applicable; and

5.2 deducting the amount of the benefit under the legislation of the former Yugoslav Republic of Macedonia which that person is entitled to receive from the maximum rate of that Australian benefit; and

5.3 applying to the remaining benefit obtained under subparagraph 5.2 of this Article the relevant rate calculation set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph 5.1.

6. Where a person departs temporarily from Australia, paragraph 5 of this Article shall continue to apply for 26 weeks from the date of their departure from Australia.

7. Where a member of a couple is, or both that person and his or her partner are, entitled to a benefit or benefits under the legislation of the former Yugoslav Republic of Macedonia 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 RELATING TO BENEFITS OF THE FORMER
YUGOSLAV REPUBLIC OF MACEDONIA

Article 13
Calculation of periods for benefits of the former Yugoslav Republic of
Macedonia

1. If a person does not meet the benefit requirements due to the insurance periods provided according to the legislation of the former Yugoslav Republic of Macedonia, the entitlement to pensions shall be determined by adding insurance periods and periods of Australian working life residence, unless such periods overlap.
2. If a person meets the pension requirements without adding periods according to the legislation of both Contracting Parties, the Competent Institution of the former Yugoslav Republic of Macedonia shall recognise the entitlement to a pension according to their legislation.
3. Entitlements to pension shall not be recognised on the basis of periods shorter than 12 months in the former Yugoslav Republic of Macedonia, unless entitlement to such benefits exists solely on the basis of the given periods.
4. If after applying paragraph 1 of this Article, a person is not entitled to a benefit, the Competent Institution of the former Yugoslav Republic of Macedonia shall also take into account periods of insurance or residence completed by its citizens in a third country that has concluded an agreement on social security with the former Yugoslav Republic of Macedonia, which includes provision to combine insurance periods.

Article 14
Determination of Benefits for the former Yugoslav Republic of Macedonia

1. For a person who meets the requirements for benefits under the legislation of the former Yugoslav Republic of Macedonia solely under the provisions of paragraph 2 of Article 13, the Competent Institution of the former Yugoslav Republic of Macedonia in charge shall define the benefit amount under the legislation of the former Yugoslav Republic of Macedonia.

2. If according to the legislation of the former Yugoslav Republic of Macedonia the entitlement to benefits arises solely under the provisions of paragraph 1 of Article 13, the Competent Institution of the former Yugoslav Republic of Macedonia shall provide such benefits as follows:

- 2.1 a theoretical amount of the benefit shall be established, to which the person would be entitled as if the total accumulated periods (insurance periods and periods of Australian working life residence) were fulfilled under the legislation of the former Yugoslav Republic of Macedonia;
- 2.2 on the basis of this theoretical amount, the actual amount shall be established according to the periods of insurance as a proportion of the total accumulated periods;
- 2.3 if the total accumulated periods exceed the maximum period provided under the legislation of the former Yugoslav Republic of Macedonia, only that maximum period shall be taken into account.

PART V

COMMON PROVISIONS FOR BENEFITS

Article 15

Payment of Benefits Abroad

1. Benefits of one Contracting Party, when payable by virtue of this Agreement, or under the legislation of either Contracting Party, shall be payable to persons who are residents of, or in, the territory of either Contracting Party.

2. The Competent Institutions of each Contracting Party shall pay benefits by virtue of this Agreement directly to entitled persons residing in the territory of the other Contracting Party in the official currency of that country, or in another convertible currency.

3. 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 for the period specified in the *Social Security Act 1991*. The reference to the *Social Security Act 1991* includes any laws that subsequently amend, supplement or replace that Act.

4. In relation to the former Yugoslav Republic of Macedonia, the provisions of this Article shall not apply to the guaranteed minimum pension.

Article 16
Medical Examinations

1. The Competent Institution of a Contracting Party will apply its own legislation to determine capacity for work, or capacity for independent life and work, when this is required to determine a right to benefit or for extending the payment of the benefit.

2. To assist the determination of working capacity according to paragraph 1 of this Article the Competent Institution of the Contracting Party where the person is resident will, on the request of the Competent Institution of the other Contracting Party, send to that Contracting Party, without charge, all relevant medical reports and documentation that are available.

PART VI
MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 17
Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Contracting Party in accordance with the Administrative Arrangement made pursuant to Article 21 of this Agreement.

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

3. A claim for a benefit from one Contracting Party shall be considered as a claim for the corresponding benefit from the other Contracting Party so long as the claimant has indicated in that claim that there is, or there was, an affiliation with the social security system of that other Contracting Party and

provided that other Contracting Party receives this request within 12 months of the lodgement of the original claim.

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

Article 18 Payment of Benefits

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

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

3. Any exemption granted in the territory of one of the Contracting 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, need to be submitted to the other Contracting 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 19 Recovery of overpayments

1. Where:

- 1.1 arrears of a benefit are paid or payable by a Contracting Party (the first Contracting Party); and
- 1.2 for all or part of that period, the other Contracting Party (the second Contracting Party) has paid a benefit to that person; and

-
- 1.3 the amount of benefit paid by the second Contracting Party would have been reduced had the benefit payable by the first Contracting Party been paid periodically during that past period; then
 - 1.4 the amount that would not have been paid by the second Contracting Party shall be a debt due by that person to the other Contracting Party.
2. Where the Competent Institution of the first Contracting Party has not yet paid the arrears described in subparagraph 1.1 to the person, that Contracting Party shall, at the request of the second Contracting Party, pay the amount of the debt described in subparagraph 1.4 to the second Contracting Party and shall pay the remainder to the person.
3. A reference in paragraphs 1 and 2 of this Article 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 the former Yugoslav Republic of Macedonia a pension that is payable according to the *Law on Pension and Disability Insurance*.

Article 20 **Exchange of Information and Mutual Assistance**

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement shall, to the extent permitted by their national laws:
 - 1.1 communicate to each other any information necessary for the application of this Agreement or the social security law of Australia or the legislation of the former Yugoslav Republic of Macedonia;
 - 1.2 provide assistance to each other, including the communication 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;
 - 1.3 communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation in so

far as these changes affect the application of this Agreement;
and

1.4 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 Contracting Party with third States, to the extent and in the circumstances specified in the Administrative Arrangement pursuant to Article 21.

2. The assistance referred to in paragraph 1 of this Article shall be provided free of charge, unless otherwise provided for in the Administrative Arrangement pursuant to Article 21.

3. Unless otherwise provided under the national laws of a Contracting Party, any information about a person which is transmitted in accordance with this Agreement by one Contracting Party to the other Contracting Party is confidential and shall be used only for the purposes of implementing this Agreement and the legislation to which this Agreement applies.

4. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on a Contracting Party the obligation to:

4.1 carry out administrative measures at variance with the laws or the administrative practice of either Contracting Party; or

4.2 supply information which is not ordinarily obtainable under the laws or in the usual administrative practice of either Contracting Party.

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

6. A claim, appeal or other document may not be rejected by a Competent Authority or Competent Institution solely because it is in the language of the other Contracting Party.

Article 21 **Administrative Arrangement**

1. The Competent Authorities of the Contracting Parties shall conclude an Administrative Arrangement for the implementation of this Agreement.
2. The liaison bodies shall be nominated in the Administrative Arrangement.

Article 22
Resolution of Disputes

1. The Competent Authorities of the Contracting Parties shall seek to resolve any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.
2. The Contracting Parties shall consult promptly at the request of either Contracting Party concerning matters which have not been resolved by the Competent Authorities in accordance with paragraph 1 of this Article.

Article 23
Review of Agreement

Where a Contracting Party requests the other to meet to review this Agreement, the Contracting Parties shall meet for that purpose as soon as possible after that request was made and, unless the Contracting Parties otherwise agree, their meeting shall be held in the territory of the Contracting Party to which that request was made.

PART VII
TRANSITIONAL AND FINAL PROVISIONS

Article 24
Transitional Provisions

1. This Agreement shall not establish any right to a benefit for any period before the date of entry into force of this Agreement.
2. In determining entitlement to a benefit under this Agreement, periods as an Australian resident, periods of Australian working life residence and insurance periods under the legislation of the former Yugoslav Republic of Macedonia completed before the date of entry into force of this Agreement shall also be taken into consideration.

3. Paragraphs 2 and 3 of Article 8 apply from the date of entry into force of this Agreement, even if the person was sent by his or her employer before that date. For this purpose, the period of secondment is taken to start on the date of entry into force of this Agreement.

Article 25
Entry into Force, Modification 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 Contracting Parties through the diplomatic channel notifying each other that all internal constitutional and legislative conditions that are necessary for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall be concluded for an indefinite period and can be modified by agreement in writing between the Contracting Parties.

3. Either Contracting Party can terminate this Agreement by written notice submitted to the other Contracting Party through the diplomatic channel. In the case of termination, this Agreement shall remain in force until the expiration of 12 months from the date of receipt of the notification by the other Contracting Party.

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

- 4.1 at the date on which termination takes effect, are in receipt of benefits; or
- 4.2 prior to that date have lodged claims for, and would be entitled to receive, benefits by virtue of this Agreement; or
- 4.3 immediately before the date of termination are subject to the legislation of only one Contracting Party by virtue of Articles 8 or 9 of Part II of this 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 at Canberra on this 26th day of October 2009 in two originals, in the official languages of Australia and the former Yugoslav Republic of Macedonia, each text being equally authoritative.

FOR THE GOVERNMENT OF
AUSTRALIA

FOR THE GOVERNMENT OF THE
FORMER YUGOSLAV REPUBLIC
OF MACEDONIA

Schedule 27 — Czech Republic

Note: See section 5.

AGREEMENT BETWEEN AUSTRALIA AND THE CZECH REPUBLIC ON SOCIAL SECURITY

Australia and the Czech Republic (hereinafter “the Contracting States”),

Wishing to strengthen the existing friendly relations between the two Contracting States,

and

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

Have agreed as follows:

PART I GENERAL PROVISIONS

Article 1 Definitions

1. In this Agreement:
 - (a) “benefit” means a benefit, pension or allowance as well as any additional amount, increase or supplement payable under the legislation of that Contracting State 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 Part II of the

Agreement, and other Parts of the Agreement as they affect that Part, where it means the Commissioner of Taxation or an authorised representative of the Commissioner, and,

in relation to the Czech Republic, the Ministry responsible for the legislation in subparagraph 1 (b) of Article 2;

- (c) “Competent Institution” means the institution or agency which has the task of implementing the applicable legislation;
- (d) “legislation” means,
 - in relation to Australia, the laws specified in subparagraph 1(a)(i) of Article 2 except in Part II of the Agreement, and other Parts of the Agreement as they affect that Part, where it means the laws specified in subparagraph 1(a)(ii) of Article 2, and,
 - in relation to the Czech Republic, the legislation specified in subparagraph 1(b) of Article 2;
- (e) “creditable period ” means a period of insurance, substitute period and equivalent period completed under the legislation of the Czech Republic;
- (f) “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.

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

Article 2 **Legislative Scope**

- 1. This Agreement shall apply to the following legislation:
 - (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 the Czech Republic: the Pension Insurance Act and related acts.

2. Notwithstanding the provisions of paragraph 1, unless otherwise provided in this Agreement, the legislation referred to in this Article shall not include treaties or other international agreements on social security that may be concluded between one Contracting State and a third party.

3. Except as provided in paragraph 4, this Agreement shall also apply to future legislation which amends, supplements or replaces the legislation specified in paragraph 1.

4. This Agreement shall not apply to future legislation which extends the existing legislation of either Contracting State to new categories of beneficiaries or new benefits unless the Competent Authorities of both Contracting States agree otherwise.

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 the Czech Republic

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

Article 4 Equality of Treatment

All persons to whom this Agreement applies shall be treated equally by a Contracting State in regard to rights and obligations which arise under the social security law of Australia in so far as the law applies to or affects the age pension, the legislation of the Czech Republic or by virtue of this Agreement.

Article 5
Export of Benefits

1. Unless otherwise provided in this Agreement, benefits of one Contracting State, when payable by virtue of this Agreement, shall be payable to persons who are residents of, or in, the territory of either Contracting State.

2. Where the legislation of a Contracting State provides that a benefit is payable in a third State, then that benefit, when payable by virtue of this Agreement, is also payable in that third State.

PART II
PROVISIONS ON COVERAGE

Article 6
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 Contracting States in respect of work of the employee or remuneration paid for the work.

Article 7
Avoidance of Double Coverage

1. Unless otherwise provided in 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.

2. An employee employed in the territory of one Contracting State by an employer having a place of business in that territory, who is posted to work for that employer, or a related entity, in the territory of the other Contracting State, shall be subject to the legislation of only the first Contracting State, as if the

employee were employed in its territory, provided that the period of posting is not expected to exceed 5 years. If this period exceeds 5 years, paragraph 1 applies from that time. For the purpose of this paragraph, the related entity is a member of the same wholly or majority owned group as the employer.

3. 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 State in which the employee is a resident.

Article 8

Diplomatic and Consular Relations and Government Employment

1. 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.

2. Employees who are sent by the Government of one Contracting State to work temporarily in the territory of the other Contracting State but to whom the Conventions mentioned in paragraph 1 of this Article do not apply shall be subject to the legislation of only the first Contracting State. For the purpose of this paragraph, employment by the Government of a Contracting State includes employment by an instrumentality thereof and also, in relation to Australia, a political subdivision or local authority of Australia.

Article 9

Exceptions

At the request of an employee and/or an employer, the Competent Authorities of the two Contracting States, or 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.

PART III
PROVISIONS RELATING TO BENEFITS

Chapter 1
Australian Benefits

Article 10
Residence or Presence in the Czech Republic 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 the Czech Republic or a third State with which Australia has concluded an agreement on social security which includes provision for cooperation in the acceptance of claims for benefits and which includes that category of benefit; and
- (b) is in Australia, or the Czech Republic 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 11
Totalisation

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:

- (a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, under the legislation of Australia for that benefit; and
- (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 4 for that person; and

- (c) a creditable period completed under the legislation of the Czech Republic;

then, for the purposes of a claim for that Australian benefit, that creditable period completed under the legislation of the Czech Republic 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 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 creditable period completed under the legislation of the Czech Republic in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a);

the total of the creditable periods completed under the legislation of the Czech Republic 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 creditable period completed under the legislation of the Czech Republic 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 12
Calculation of Benefits

1. Subject to paragraph 2, where an Australian benefit is payable only by virtue of this Agreement to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia.
2. Paragraph 1 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
3. Subject to paragraph 4, 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 Czech Republic benefit which that person or the partner of that person is entitled to receive if applicable; and
 - (b) deducting the amount of the Czech Republic 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).
4. Paragraph 3 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
5. Where a member of a couple is, or both that person and his or her partner are, entitled to a Czech Republic benefit or benefits, 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.
6. Australian age pension shall include additional amounts for dependent children, if applicable, when payable outside Australia under this Agreement. Other additional amounts or supplements to a benefit shall be payable outside

Australia only for the period specified in the *Social Security Act 1991*. The reference to the *Social Security Act 1991* includes any laws that subsequently amend, supplement or replace that Act.

Chapter 2
Czech Republic Benefits

Article 13
Totalisation

1. Unless otherwise provided in this Agreement, if a person is not eligible for a benefit because he or she has not completed sufficient creditable periods under the legislation of the Czech Republic, the eligibility of that person for that benefit shall be determined by totalising these creditable periods and periods of Australian working life residence, provided those periods do not overlap.
2. For eligibility for the benefit, the Competent Institution of the Czech Republic shall take into account also creditable periods completed under the legislation of a third State, with which the Czech Republic is bound by social security instruments which provide for the totalising of creditable periods.

Article 14
Calculation of benefits

1. If, under the legislation of the Czech Republic, the conditions for entitlement to benefits are satisfied without taking into account periods of Australian working life residence, the Competent Institution of the Czech Republic shall determine the benefit:
 - (a) on the basis of the creditable periods completed exclusively under its legislation, and at the same time
 - (b) according to the rules provided by paragraph (2), with the exception when the result of this calculation is equal to or lower than the result of the calculation under subparagraph (a).
 2. If, under the legislation of the Czech Republic, the right to benefits can be acquired only with regard to periods of Australian working life residence, or creditable periods completed under the legislation of a third State, then the Competent Institution of the Czech Republic shall:
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- (a) calculate the theoretical amount of the benefit which could have been claimed if all these periods had been completed under the legislation of the Czech Republic and
 - (b) then – on the basis of the theoretical amount calculated in accordance with sub-paragraph (a) – shall determine the amount of the benefit payable by applying the ratio of the duration of the creditable periods completed under the legislation of the Czech Republic to the total combined periods.

In order to determine the basis for calculation of the benefit, the Competent Institution of the Czech Republic shall – in applying the provision of subparagraph (a) of this paragraph – take into account only income gained during the creditable periods completed under the legislation which it applies. This income – indexed according to Czech legislation – will be considered as gained during the periods that are taken into account for the calculation of the theoretical amount of the benefit.

3. The person concerned shall be entitled to the highest amount calculated in accordance with paragraphs 1 and 2 from the Competent Institution of the Czech Republic.

4. If the creditable period completed under the legislation of the Czech Republic is less than 12 months and does not result in any right to benefits, then the Competent Institution of the Czech Republic will not award the benefit.

5. Events and facts that have legal effect on entitlement, reduction, suspension or benefit amount, and which occurred in the territory of Australia, shall be taken into account as if they had taken place in the territory of the Czech Republic. However, the Czech Competent Authority may, in the interest of categories of beneficiaries, limit the application of this provision.

6. A person whose disability began before reaching the age of 18 and who has not participated in the insurance scheme for the necessary period shall have the right to a disability benefit provided this person is a resident of the Czech Republic. This condition shall also apply to invalidity and survivors' benefits, where such entitlement, or benefits from which they are derived, can be acquired only with regard to provisions of this Agreement.

PART IV

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 15 **Administrative Arrangement**

1. The Competent Authorities of the Contracting States 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 16 **Lodgement of Documents**

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Contracting State.
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 Contracting State shall be considered as the date of lodgement of that document with the Competent Institution of the other Contracting State. The Competent Institution with which a claim, notice or appeal is lodged shall refer it without delay to the Competent Institution of the other Contracting State.
3. A claim for a benefit from one Contracting State shall be considered as a claim for the corresponding benefit from 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 that other Contracting State and provided the other Contracting State receives this request within 12 months.
4. The reference in paragraph 1 to an appeal is a reference to an appeal that may be made to an administrative body established by, or administratively for the purposes of, the respective legislation.

Article 17
Exemption from Fees and Authentication

1. Where the laws of a Contracting State provide that any document which is submitted to the Competent Authority or the Competent Institution of that Contracting State 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 the Competent Institution of the other Contracting State in the application of this Agreement.

2. Documents and certificates which are presented for the purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular authorities.

Article 18
Payment of Benefits

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

2. The Competent Institutions of the Contracting States shall pay their benefits under this Agreement without any deduction for their administrative expenses.

Article 19
Exchange of Information and Mutual Assistance

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement shall to the extent permitted by their national laws:

- (a) communicate to each other any information necessary for the application of this Agreement or the social security law of Australia or the legislation of the Czech Republic;

- (b) provide assistance to one another, including 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 applying their own legislation; and
- (c) communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation insofar as these changes affect the application of this Agreement.

2. The assistance referred to in paragraph 1 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 pursuant to Article 15.

3. In no case shall the provisions of paragraph 1 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 or the administrative practice of that or the other Contracting State; 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 State.

Article 20 **Protection of Personal Data**

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

Article 21
Language

1. In the application of this Agreement, the Competent Authority and the Competent Institution of a Contracting State may communicate with the other in any of the official languages of the Contracting States.
2. A claim, appeal or other document may not be rejected by a Competent Authority or Competent Institution solely because it is in the language of the other Contracting State.

Article 22
Resolution of Disputes

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the Competent Authorities.

Article 23
Review of Agreement

Where a Contracting State requests the other to meet to review the Agreement, the Contracting States shall meet for that purpose as soon as possible.

PART V
TRANSITIONAL AND FINAL PROVISIONS

Article 24
Transitional Provisions

1. This Agreement shall not establish any right to a benefit for any period before the date of the entry into force of this Agreement.
2. In determining entitlement to a benefit under this Agreement, periods as an Australian resident, periods of Australian working life residence and creditable periods completed under the legislation of the Czech Republic before the entry into force of this Agreement shall also be taken into consideration.
3. Determinations concerning entitlement to benefits which were made

before the entry into force of this Agreement shall not affect rights arising under it.

4. Benefits determined before the entry into force of this Agreement may be newly determined upon application.

5. Articles 7 (2) and 8 (2) apply from the date of entry into force of this Agreement, even if the person was sent by his or her employer before this date. For this purpose, the period of secondment is taken to start on the entry into force of this Agreement.

Article 25 **Ratification and Entry into Force**

1. This Agreement is subject to ratification.

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 Contracting States through the diplomatic channel notifying each other that all matters as are necessary for the entry into force of this Agreement have been finalised.

Article 26 **Duration, Modification and Termination**

1. This Agreement shall remain in force without any limitation on its duration.

2. 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.

3. This Agreement shall remain in force and effect until the last day of the twelfth month following the month in which either Contracting State gives the other Contracting State written notification through diplomatic channels of its termination.

4. If this Agreement is terminated, rights acquired under it shall be retained and claims for benefits lodged prior to the date of termination shall be determined under this Agreement.

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

DONE at Canberra on this sixteenth day of September 2009 in two originals in the English and Czech languages, the two texts being equally authentic.

FOR AUSTRALIA:

FOR THE CZECH REPUBLIC:

.....
Hon Jenny Macklin
Minister for Families, Housing
Community Services and Indigenous
Affairs

.....
HE Dr Juraj Chmiel
Ambassador Extraordinary and
Plenipotentiary

Schedule 28 — Slovak Republic

Note: See sections 5 and 8.

AGREEMENT BETWEEN AUSTRALIA AND THE SLOVAK REPUBLIC ON SOCIAL SECURITY

Australia and the Slovak Republic (hereinafter “the Contracting Parties”),
Wishing to strengthen the existing friendly relations between the two countries,
and

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

Have agreed as follows:

PART I GENERAL PROVISIONS

Article 1

Definitions

1. In this Agreement, unless the context otherwise requires:
 - (a) “benefit” means a benefit, pension or allowance as well as any additional amount, increase or supplement payable under the legislation of that Contracting Party but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;
 - (b) “Competent Authority” means, in relation to Australia: the Secretary 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 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 Slovak Republic the Ministry of Labour, Social Affairs and Family of the Slovak Republic responsible for the application of the legislation specified in subparagraph 1(b) of Article 2;

-
- (c) “Competent Institution” means the institution or agency which has the task of implementing the applicable legislation specified in Article 2;
 - (d) “legislation” means, in relation to Australia, the laws specified in subparagraph 1(a)(i) of Article 2 except in Part II of the Agreement (and other Parts of the Agreement as they affect that Part) where it means the laws specified in subparagraph 1(a)(ii) of Article 2, and in relation to the Slovak Republic, the legislation specified in subparagraph 1(b) of Article 2;
 - (e) “creditable period ” means a period of insurance, substitute period or equivalent period completed under the legislation of the Slovak Republic;
 - (f) “period of Australian working life residence” means a period defined as such in the legislation of Australia but does not include any period deemed pursuant to Article 12 to be a period in which that person was an Australian resident;

2. Any term not defined in this Article has the meaning assigned to it in the applicable legislation.

Article 2

Material Scope

1. This Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, 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 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 the Slovak Republic the legislation regarding:
 - (i) old age pensions;
 - (ii) invalidity pensions; and
 - (iii) pensions for widows, widowers and orphans.

2. Notwithstanding the provisions of paragraph 1, the legislation of either Contracting Party shall not, unless otherwise specified in this Agreement, include treaties or any other agreement on social security entered into by either Contracting Party with a third State.

3. This Agreement shall not apply to future legislation which extends the existing legislation of either Contracting Party to new categories of beneficiaries unless the Competent Authorities agree otherwise in writing.

Article 3

Personal Scope

This Agreement shall apply to any person who:

(a) is or has been an Australian resident; or

(b) is or has been subject to the legislation of the Slovak Republic

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

Article 4

Equality of Treatment

Unless otherwise provided in this Agreement, all persons to whom this Agreement applies shall be treated equally by a Contracting Party in regard to rights and obligations which arise whether directly under the social security laws of Australia or the Slovak Republic or by virtue of this Agreement.

Article 5

Export of Benefits

1. Unless otherwise provided in this Agreement, benefits of one Contracting Party when payable by virtue of this Agreement are payable to persons who are residents of, or in, the territory of either Contracting Party.

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

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 Australia or the Slovak Republic do not have a double liability under the legislation of Australia and the Slovak Republic, 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 Contracting Parties in respect of work of the employee or remuneration paid for the work.

Article 8

Avoidance of Double Coverage

1. Unless otherwise provided in this Part, if an employee works in the territory of one Contracting 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 Contracting Party.
2. If an employee:
 - (a) is covered by the legislation of one Contracting Party;
 - (b) was sent, whether before, on or after the commencement of this Agreement, by an employer who is subject to the legislation of that Contracting Party to work in the territory of the other Contracting Party;
 - (c) is working in the territory of the other Contracting 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 other Contracting Party has not elapsed; and
- (e) is not working permanently in the territory of the other 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 performed and the remuneration paid for that work after the commencement of this Agreement.

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. 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.

Article 9

Diplomatic and Consular Relations and Government Employment

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

2. Employees who are sent by the Government of one Contracting Party to work temporarily in the territory of the other Contracting Party shall be subject to the legislation of only the first Contracting Party. For the purposes of this paragraph, "Government" includes in relation to Australia, a political subdivision or local authority.

Article 10

Exception agreements

The Competent Authorities or agencies designated by them, may agree in writing to make exceptions to the provisions in Articles 8 and 9.

PART III**PROVISIONS RELATING TO BENEFITS****Chapter 1****Australian Benefits****Article 11****Residence or Presence in the Slovak Republic**

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 the Slovak Republic; and
 - (b) is in Australia, or the Slovak Republic,
- 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 12**Totalisation**

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:
- (a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, under the legislation of Australia for that benefit; and
 - (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 4 for that person; and
 - (c) a creditable period under the legislation of the Slovak Republic;
- then, for the purposes of a claim for that Australian benefit, that creditable period 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 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 two or more separate creditable periods that equal or exceed in total the minimum period referred to in subparagraph (a);
- the total of the creditable periods completed under the legislation of the Slovak Republic 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 creditable period completed under the legislation of the Slovak Republic 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 13

Calculation of Benefits

1. Where an Australian benefit is payable only by virtue of this Agreement to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia. The additional child amount shall not be included in the calculation of such benefits.
2. Where a person comes temporarily to Australia, paragraph 1 shall continue to apply for 26 weeks from the date of their arrival in 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:

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- (a) calculating that person's income according to the legislation of Australia but disregarding in that calculation any Slovak Republic benefit which that person or the partner of that person is entitled to receive if applicable; and
 - (b) deducting the amount of the Slovak Republic 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).

4. Where a person departs temporarily from Australia, paragraph 3 shall continue to apply for 26 weeks from the date of their departure from Australia.

5. Where a member of a couple is, or both that person and his or her partner are, entitled to a Slovak Republic benefit or benefits, 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 that benefit or one half of the total of both benefits, as the case may be.

Chapter 2

Slovak Republic Benefits

Article 14

Totalisation

Unless otherwise provided in this Agreement, if a person is not eligible for a benefit because he or she has not completed sufficient creditable periods under the legislation of the Slovak Republic, the eligibility of that person for that benefit shall be determined by totalising these creditable periods and periods of Australian working life residence, provided those periods do not overlap.

Article 15

Calculation of Benefits

1. If, under the legislation of the Slovak Republic, a person or the survivors of that person are eligible for a benefit without the need to totalise

with periods of Australian working life residence and by only taking into account creditable periods completed under the legislation of the Slovak Republic, the Competent Institution of the Slovak Republic shall determine the amount of that benefit exclusively on the basis of that creditable period.

2. If, under the legislation of the Slovak Republic, a person or the survivors of that person are eligible for a benefit only by totalising periods completed under the legislation of both Contracting Parties, the amount of that benefit shall be determined as follows:

- (a) the Competent Institution of the Slovak Republic shall first determine whether, under the legislation of the Slovak Republic, the person satisfies the conditions for eligibility by taking into account the totalised periods;
- (b) if the benefit is payable in accordance with sub-paragraph (a), the Competent Institution of the Slovak Republic shall first calculate the theoretical amount of the benefit payable as if the totalised periods completed under the legislation of both Contracting Parties had been completed under the legislation of the Slovak Republic alone;
- (c) based on the theoretical amount of the benefit, the institution shall determine the amount of the benefit payable by calculating the proportion corresponding to the actual creditable periods completed under the legislation of the Slovak Republic and the totalised periods completed under the legislation of both Contracting Parties.

3. If the creditable periods completed under the legislation of the Slovak Republic are less than 12 months, no benefit under this Agreement shall be paid. The preceding sentence shall not apply if a benefit is payable based on those creditable periods alone.

4. If, under the legislation of the Slovak Republic, the Competent Institution can determine the amount of benefit only on the basis of creditable periods acquired according to the legislation of the Slovak Republic, the provisions of paragraph 2 shall not apply.

5. An invalidity pension for a person whose disability arose when the person was a dependent child, or while studying for a doctoral degree and under 26 years of age, shall be payable disregarding the length of the creditable period only if it concerns a person who is a permanent resident of the Slovak Republic.

PART IV
MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 16

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Contracting Party.
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 Contracting Party shall be considered as the date of lodgement of that document with the Competent Institution of the other Contracting Party. The Competent Institution with which a claim, notice or appeal is lodged shall refer it without delay to the Competent Institution of the other Contracting Party.
3. A claim for a benefit in accordance with the legislation of one Contracting Party, submitted after this Agreement has entered into force, shall be deemed to be a claim for a corresponding benefit in accordance with the legislation of the second Contracting Party in these instances:
 - a) if a person requests that it be considered a claim under the legislation of the second Contracting Party; or
 - b) if a person has stated in the claim that they had an affiliation with the social security system of the second Contracting Party.
4. In relation to Australia, paragraph 3 shall only apply if the corresponding claim is received by the Competent Institution within twelve months of the lodgement of the original claim.
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 17

Payment of Benefits

In the event that a Contracting Party imposes currency controls, that Contracting Party shall, without delay, take suitable 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 territory of the other Contracting Party.

Article 18

Exemption from Fees and Authentication

1. Where the laws of a Contracting Party provide that any document which is submitted to the Competent Authority or the Competent Institution 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 Competent Institution of the other Contracting Party in the application of this Agreement.
2. Documents and certificates which are presented for the purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular authorities.
3. The Competent Institutions of the Contracting Parties shall pay benefits under this Agreement without any deduction for their administrative expenses or for government administrative fees and charges for processing and paying that benefit.

Article 19

Recovery of overpayments

1. If a Competent Institution of a Contracting Party has overpaid a benefit, or paid a benefit which was not due, to any person because of the simultaneous payment of a benefit for all or part of the same period by the Competent Institution of the other Contracting Party, under this Agreement or the legislation of either Contracting Party, the amount of the overpayment may be deducted in favour of that Competent Institution from arrears of a benefit to which there is entitlement under the legislation of the other Contracting Party.

2. In relation to Australia a reference in paragraph 1 to a benefit means a pension, benefit or allowance payable under the Acts forming the social security law of Australia as amended from time to time.

Article 20

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 their social security laws;
- (b) provide assistance to one another with regard to the determination or payment of any benefit under this Agreement or under the legislation to which this Agreement applies;
- (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 21.

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 pursuant to Article 21.

3. If the Competent Institution of a Contracting Party requires that a claimant or a beneficiary who resides in the territory of the other Contracting Party undergo a medical examination, the Competent Institution of the latter Contracting Party, at the request of the Competent Institution of the first Contracting Party, shall make arrangements for carrying out this examination. If the medical examination is exclusively for the use of the institution which requests it, that Competent Institution shall reimburse the Competent Institution of the other Contracting Party for the costs of the examination. However, if the

medical examination is for the use of both Competent Institutions, there shall be no reimbursement of costs.

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

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

Article 21

Administrative Arrangement

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

2. The Competent Authorities shall appoint liaison bodies which are to be listed in the Administrative Arrangement.

Article 22

Protection of Personal Data

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

Article 23

Language

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

2. An application or document may not be rejected by a Competent Authority or Competent Institution solely because it is in the language of the other Contracting Party.

Article 24

Resolution of Disputes

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by mutual agreement between the Competent Authorities.

Article 25

Review of Agreement

Where a Contracting Party requests the other to meet to review this Agreement, the Contracting Parties shall meet for that purpose as soon as possible 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 V

TRANSITIONAL AND FINAL PROVISIONS

Article 26

Transitional Provisions

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 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. In determining entitlement to a benefit under this Agreement, periods as an Australian resident, periods of Australian working life residence and creditable periods completed under the legislation of the Slovak Republic before the entry into force of this Agreement shall also be taken into consideration.

3. 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.

4. Articles 8 & 9 apply from the date of entry into force of this Agreement, even if the person was sent by their employer before this date. For this purpose, the period of secondment is taken to start on the date this Agreement entered into force.

Article 27

Entry into Force

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 Contracting Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Agreement have been finalised.

2. 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.

Article 28

Termination

1. This Agreement has been entered into for an unlimited period of time.

2. Subject to paragraph 3, this Agreement shall remain in force until the last day of the twelfth month following the month in which either Contracting Party receives from the other a note through the diplomatic channel giving notice of termination of this Agreement.

3. 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 Articles 8,

9 or 10 of Part II of the Agreement, provided the employee continues to satisfy the criteria of those Articles.

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

DONE in two originals at New York this 21st day of September, two thousand and ten in the English and Slovak languages, each text being equally authoritative.

FOR AUSTRALIA:

FOR THE SLOVAK REPUBLIC:

Kevin Rudd

Mikuláš Dzurinda

.....

.....

Schedule 29 — Republic of Hungary

Note: See sections 5 and 8.

AGREEMENT BETWEEN AUSTRALIA AND THE REPUBLIC OF HUNGARY ON SOCIAL SECURITY

Australia and the Republic of Hungary, hereinafter “the Contracting Parties”,
Wishing to strengthen the existing friendly relations between the two countries,
and

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

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Definition of terms

1. In this Agreement:
 - (a) “**benefit**” means a pension or allowance that is payable under the applicable legislation of a Contracting Party, including any increase or supplement that is payable 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 Government Department responsible for the social security law specified in Article 2, except in Part II of the Agreement, and other Parts of the Agreement as they affect that Part, where it means the Commissioner of Taxation or an authorised representative of the Commissioner; and,
in relation to the Republic of Hungary, the ministers, ministries or other relevant authorities responsible for systems regulated by the legislation referred to in Article 2.1.(b);

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- (c) **“Competent Institution”** means, in relation to Australia, the institution or agency which has the task of implementing the applicable legislation; and, in relation to the Republic of Hungary, the responsible institution where the person is or has been insured;
 - (d) **“creditable period”** means, in relation to Australia, a period of residence used to qualify for a benefit under the social security law of Australia; and, in relation to the Republic of Hungary, a period of contributions under legislation of the Republic of Hungary, or a period deemed equivalent to, or considered as, a period of contributions under that legislation;
 - (e) **“eligible person”** means a person who has acquired eligibility for benefits under the social security legislation specified in Article 2 of this Agreement;
 - (f) **“legislation”** means the laws and regulations specified in Article 2 of this Agreement;
 - (g) **“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 13 to be a period in which that person was an Australian resident;
 - (h) **“residence”** means a place where the person concerned has permanent residence in accordance with the applicable laws of the Contracting Party;

2. Any term not defined in this Article shall have the meaning assigned to it in the applicable legislation of the Contracting Parties.

Article 2

Legislative Scope

This Agreement shall apply to the following legislation:

- (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) in relation to Part II of the Agreement and other Parts of the Agreement as they affect that Part, 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 Republic of Hungary, to the laws and regulations concerning:
 - (i) the insurance obligation and the payment of contribution covering social insurance benefits and benefits paid in case of unemployment; and
 - (ii) the social insurance pension benefits.

2. Subject to Article 2.4, this Agreement shall also apply to laws and regulations which amend, supplement, consolidate or supersede the legislation specified in paragraph 1.

3. Unless otherwise provided in this Agreement, the legislation referred to in this Article shall not include any treaty or any other agreement on social security entered into by either Contracting Party with a third party.

4. This Agreement shall also apply to laws and regulations of a Contracting Party which define new schemes or branches of social security, subject to written notification thereof by the Competent Authority of a Contracting Party to the Competent Authority of the other Contracting Party. Unless the Competent Authority of the other Contracting Party objects within 3 months of the date of such notification, the material scope of this Agreement will include the content of the notification from a date mutually agreed by the Competent Authorities of the Contracting Parties.

Article 3

Personal Scope

This Agreement shall apply to:

- (a) any person who is or has been covered by the legislation of one or both of the Contracting Parties;
- (b) any person who is or has been an Australian resident; and

- (c) other persons to the extent they derive rights under the applicable legislation from the persons described in sub-paragraph (a).

Article 4

Equality of Treatment

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

Article 5

Export of Benefits

1. Unless otherwise provided in this Agreement, benefits payable under the legislation of a Contracting Party to any person described in Article 3, including benefits acquired by virtue of this Agreement, shall not be subject to any reduction, modification, suspension, cancellation or confiscation by reason only of the fact that the person resides in the territory of the other Contracting Party, and these benefits shall be paid when that person is a resident of, or in, the territory of either Contracting Party.

2. In relation to Australia, for the purposes of Article 5.1, any increase or supplement that is payable under this Agreement, shall be payable to a person outside Australia only for the period specified in the *Social Security Act 1991*. The reference to the *Social Security Act 1991* includes any laws that subsequently amend, supplement or replace that Act.

PART II

PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

Article 6

General provisions

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

2. This Part only applies if an employee and/or their employer would, apart from this Part, be subject to the legislation of both Contracting Parties in respect of work of the employee or remuneration paid for the work.

3. Subject to this Part of the Agreement, if an employee works in the territory of a Contracting Party, the employee and their employer shall, in respect of that work, be subject only to the legislation of that Contracting Party.

Article 7

Secondment

1. If a person who is subject to the legislation of a Contracting Party and who is employed by an employer registered under the laws of that Contracting Party is sent, in the course of that employment, to work for that employer or a related entity of that employer in the territory of the other Contracting Party, that person and their employer shall, in respect of that work, be subject only to the legislation of the first Contracting Party as though that work was performed in its territory.

2. For the purposes of paragraph 1, a related entity, registered in the territory of the other Contracting Party, is:

- (a) the subsidiary or the majority owner of the employer; or
- (b) an associated enterprise of the employer, where both are majority owned by the same enterprise.

3. Paragraph 1 shall not apply to a secondment of more than 48 months without the prior consent of the Competent Authorities of both Contracting Parties or their delegated institutions or agencies.

Article 8

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 9

Government employment

A person engaged in Government employment for a Contracting Party who is sent to work in the territory of the other Contracting Party shall, in respect of

that employment, be subject only to the legislation of the first Contracting Party. For Australia, “Government” includes a political subdivision or local authority of Australia.

Article 10

Exception agreements

The Competent Authorities of the Contracting Parties or their delegated institutions or agencies may, upon the request of the employer, or in regards to the Republic of Hungary upon the request of the employer and the employee, provide by mutual consent for further exceptions to the general provisions on applicable legislation of this Agreement, provided the person concerned continues, or shall come, to be covered by the legislation of either Contracting Party.

Article 11

Certificates

Where the legislation of one Contracting Party is applicable in accordance with any of the provisions of this Part, the Competent Authorities of the Contracting Parties or their delegated institutions or agencies shall issue, upon the request of the employer, a certificate stating that the employee is subject to the legislation of that Contracting Party and indicating the duration for which the certificate shall be valid. The employee concerned as well as the employer and the delegated institutions or agencies of the other Contracting Party shall be entitled to receive a copy upon request.

PART III

PROVISIONS RELATING TO AUSTRALIAN BENEFITS

Article 12

Residence or Presence in the Republic of Hungary

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 the Republic of Hungary; and

(b) is in Australia, or the territory of the Republic of Hungary, that person, so long as he or she has been a resident of Australia 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

Totalization 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 that benefit; and
- (b) a period of Australian working life residence equal to or greater than the period specified in Article 13.4 for that person; and
- (c) a creditable period under the legislation of the Republic of Hungary;

then that creditable period completed under the legislation of the Republic of Hungary shall be deemed to be a period in which that person was an Australian resident for the purposes of meeting any minimum qualifying periods for that benefit.

2. For the purposes of Article 13.1, 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 creditable periods under the legislation of the Republic of Hungary that equal or exceed in total the minimum period referred to in Article 13.2(a);

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

3. For the purposes of this Article, where a period by a person as an Australian resident and a creditable period completed under the legislation of the Republic of Hungary 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 Article 13.1 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 six months must be continuous; and
- (b) for the purposes of an Australian benefit that is payable to an Australian resident, there is no minimum period.

5. For the purpose of this Article, a creditable period completed under the legislation of the Republic of Hungary shall be deemed as a period as an Australian resident only if that creditable period is certified by the Competent Institution of the Republic of Hungary.

Article 14

Calculation of Australian Benefits

1. Subject to Article 14.2, where an Australian benefit is payable only by virtue of this Agreement to a person outside Australia, the rate of that benefit shall be determined according to the legislation of Australia, and proportionalised where applicable, but on the basis that the additional child amount is nil.

2. Where a person comes temporarily to Australia, Article 14.1 shall continue to apply for 26 weeks from the date of their arrival in Australia.

3. Subject to Article 14.4, 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 benefit under the legislation of the Republic of Hungary 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 the Republic of Hungary which that person is entitled to receive from the maximum rate of that Australian benefit; and
- (c) applying to the remaining benefit obtained under Article 14.3(b) the relevant rate calculation set out in the legislation of

Australia, using as the person's income the amount calculated under Article 14.3(a).

4. Where a person departs temporarily from Australia, Article 14.3 shall continue to apply for 26 weeks from the date of their departure from Australia.

5. Where a member of a couple is, or both that person and his or her partner are, entitled to a benefit or benefits under the legislation of the Republic of Hungary 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 RELATING TO BENEFITS UNDER THE LEGISLATION OF THE REPUBLIC OF HUNGARY

Article 15

Residence in Australia may qualify a person for Hungarian benefits (Totalization)

1. Where the legislation of the Republic of Hungary makes the acquisition, maintenance or recovery of eligibility for a benefit conditional upon the accumulation of creditable periods, if the criteria of eligibility for a benefit are not met solely under the legislation of the Republic of Hungary, the Competent Institution of the Republic of Hungary shall take into account the creditable periods completed under the legislation of Australia as if these periods were completed under its own legislation, provided that such creditable periods do not overlap.

2. Where the legislation of the Republic of Hungary makes the granting of certain benefits conditional upon the creditable periods completed only in an occupation which is subject to a special scheme, or the eligibility to these benefits is subject to condition of creditable periods completed in specific occupations or employment, periods completed under the legislation of Australia shall only be taken into account for the granting of these benefits if these were completed under a corresponding scheme or, for lack of this scheme, in similar occupation or employment. If the totalization of creditable periods does not establish eligibility to a benefit within the specific scheme of benefits, these creditable periods shall be totalized within the general scheme of insurance.

3. Where eligibility to a full benefit is acquired under the legislation of the Republic of Hungary without the application of paragraphs 1 and 2 of this Article, the benefit shall be defined by the Competent Institution of the Republic of Hungary only on the basis of creditable periods completed under the legislation which it applies.

4. Once the Hungarian pension has been awarded the accumulation of additional creditable periods under the legislation of Australia shall not result in the revision of the Hungarian pension.

Article 16

Calculating the amount of Hungarian partial benefits

Where a person is entitled to a full benefit under the legislation of the Republic of Hungary only on the basis of totalising creditable periods, the Competent Institution of the Republic of Hungary shall calculate the amount of pension to be paid, as if all creditable periods acquired under the legislation of both Contracting Parties were taken into account for the establishment of the pension. The Competent Institution of the Republic of Hungary shall pay only the proportion of the pension calculated by this calculating method that corresponds to the ratio of creditable periods completed under the legislation of the Republic of Hungary to the total creditable periods under the legislation of both Contracting Parties.

Article 17

The basis of calculation of benefits

Where under the legislation of the Republic of Hungary the benefits are calculated on the basis of income and contributions paid, the Competent Institution of the Republic of Hungary shall take into account only the income or contributions paid under the legislation which it applies.

Article 18

Creditable period less than 1 year

Where the total creditable periods completed under the legislation of the Republic of Hungary is less than 365 days, provided that no eligibility to benefits is established only on the basis of this creditable period, the Competent Institution of the Republic of Hungary shall not apply totalisation and shall not grant any benefit for a period shorter than 365 days.

Article 19

Concurrence of benefits

1. In relation to the Republic of Hungary, the legislation which excludes or limits eligibility to benefits or benefits in the case of concurrence of eligibility, benefits or incomes, shall be applied as appropriate to cases arising from the application of the legislation of Australia.
2. In relation to the Republic of Hungary, it shall not be possible to acquire or to maintain eligibility to several benefits or incomes of similar type based on the same mandatory insurance period in keeping with this Agreement. This shall not apply to benefits for invalidity, old age or death.

PART V

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 20

Lodgement of Documents

1. A claim, appeal or other documentation concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Contracting Party in accordance with the Administrative Arrangement made pursuant to Article 22 at any time after the Agreement enters into force.
2. The date on which a claim, appeal or other documentation referred to in Article 20.1 is lodged with the Competent Institution of one Contracting Party shall be considered as the date of lodgement of that claim, appeal or other documentation with the Competent Institution of the other Contracting Party. The Competent Institution with which a claim, appeal or other documentation is lodged shall refer it without delay to the Competent Institution of the other Contracting Party.
3. A claim for a benefit from one Contracting Party shall be considered as a claim for the corresponding benefit from the other Contracting Party so long as the claimant has indicated in that claim that there is, or there was, an affiliation with the social security system of that other Contracting Party. For Australia, this provision shall not be applied if the completed claim for Australian benefit is not received by the Australian Competent Institution within 12 months of the date of lodgement of the claim for the Hungarian benefit.

4. A claim, appeal or other documentation may not be rejected by a Competent Authority or Competent Institution solely because it is in the language of the other Contracting Party.

5. The reference in Article 20.1 to an appeal is a reference to an appeal that may be made to an administrative body under the legislation of either Contracting Party.

Article 21

Payment of Benefits

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

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

3. Payments made under the scope of this Agreement shall be carried out on the basis of rules which are in force in the territory of the Contracting Parties at the date of such payments.

4. Any exemption granted from fees and duties in respect of certificates and documents required to be submitted to the Competent Authorities and Competent Institutions of one Contracting Party, shall also apply to certificates and documents which, for the purposes of this Agreement, need to be submitted to the competent Authority or Competent Institution of the other Contracting 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 22

Administrative Arrangement

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

2. The Competent Authorities shall appoint Liaison Agencies which are to be listed in the Administrative Arrangement.

3. Without prejudice to the provisions laid down in paragraph 1, the Liaison Agencies and the Competent Institutions, shall be entitled, with the involvement of the Competent Authorities, to agree on measures that are necessary and appropriate for the implementation of this Agreement, including the procedures of reimbursement and payment of benefits.

Article 23

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 the social security law of Australia or the legislation of the Republic of Hungary;
- (b) provide assistance to each other with regard to the determination or payment of any benefit under this Agreement 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 affect the application of this Agreement; and
- (d) assist each other, at the request of the claimant, in relation to the implementation of agreements on social security entered into by either Contracting Party with third States.

2. The Competent Institution of a Contracting Party will, to the extent permitted by the legislation which it administers, provide, upon request, to the Competent Institution of the other Contracting Party such medical information and documentation as are available concerning the disability of a claimant or beneficiary.

3. If the Competent Institution of a Contracting Party requires that a claimant or beneficiary who resides in the territory of the other Contracting Party to undergo a medical examination, the Competent Institution of the latter

Contracting Party, at the request of the Competent Institution of the first Contracting Party, will make arrangements for carrying out this examination.

4. The assistance referred to in Article 23.1-23.3 shall be provided free of charge, unless otherwise provided for in the Administrative Arrangement pursuant to Article 22.

5. In no case shall the provisions of Article 23.1 be construed so as to impose on a Contracting Party the obligation to:

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

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

7. The Competent Institution of the Republic of Hungary may mail decisions by recorded delivery with request of a return receipt, and other documents in registered mail, directly to the person who is present in the territory of either Contracting Party.

8. Claims for benefits, appeals, any related documents and any notification or other communication by a person will be lodged with the Competent Institution of either Contracting Party.

9. The Liaison Agencies of the Contracting Parties will supply to each other in an agreed format relevant information, such as death, change of address, change of relationship status and changes in the amount of benefits for mutual beneficiaries as they occur.

Article 24

Data protection

Where on the basis of this Agreement and in accordance with the national laws of both Contracting Parties, personal data is transferred, the following provisions shall be applied:

- (a) For the purpose of implementing this Agreement, only personal data necessary for providing benefits or otherwise necessary for

the purposes specified in Article 23.1 of this Agreement may be disclosed by one Contracting Party to the Competent Institution of the other Contracting Party. The receiving Contracting Party may process and use this data for such purposes. In all other cases, data may be disclosed to other institutions exclusively with the prior consent of the transmitting Competent Institution and in accordance with the national laws applicable to such institutions;

- (b) The Competent Institution receiving such data shall, upon request and in individual cases, inform the Competent Institution providing the data of the purpose for which it has used the data disclosed and the results of such use;
- (c) The Competent Institution providing data must ensure that the data to be disclosed is accurate, and is necessary and proportional from the point of view of the purpose of data disclosure. At the same time, all valid data provision prohibitions must be taken into consideration, pursuant to the national legislation of that Contracting Party. If it becomes evident that the data disclosed is incorrect, or data has been supplied that may not have been disclosed under the legislation of the Contracting Party providing the data, the receiving Competent Institution shall be notified without delay. The receiving Competent Institution shall correct or delete such data, as appropriate;
- (d) The Competent Institution as well as the Competent Authority shall inform the person concerned upon their request, on the data about him and the purpose of using such data, on the legal basis for and the duration of the use of the data, and on who and for what purpose has received or shall receive such data. In other respects, the rights of the person concerned with regard to being informed of data held about him/her shall be subject to the national legislation of the Contracting Party whose Competent Institution or Competent Authority was requested to provide the information;
- (e) If a Competent Institution of one Contracting Party has disclosed personal data under this Agreement, the receiving Competent Institution of the other Contracting Party, within its responsibility under the domestic legislation applicable to it,

may not argue against the person concerned that the data provided was incorrect. Payment of compensation for damages due to incorrect provisioning of data shall be governed by the laws of the Contracting Party which provided incorrect information;

- (f) Personal data received shall be deleted without delay when it is no longer required for the purpose of disclosure;
- (g) The transmission and receipt of personal data shall be recorded both by the transmitting and by the receiving Competent Institutions;
- (h) Both the transmitting and the receiving Competent Institutions shall ensure the effective protection of personal data from unauthorized access, illegal alterations and unauthorized disclosure.
- (i) On the request of the person concerned, both the receiving and the transmitting Competent Institutions shall correct the incorrect data handled by it or delete data handled illegally. The other Competent Institution shall be immediately informed of such correction or deletion;
- (j) The Contracting Parties shall ensure that, in case of the infringement of the rights related to their personal data protection, the persons concerned may seek remedy under the laws of the Contracting Party which infringed the person's rights;
- (k) Data processed under this Agreement shall be subject to independent oversight according to the national law of the Contracting Parties.

Article 25

Resolution of Disputes

1. The Competent Authorities of the Contracting Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.
 2. The Contracting Parties shall consult promptly at the request of either Contracting Party concerning matters which have not been resolved by the Competent Authorities in accordance with Article 25.1.
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Article 26

Review of Agreement

Where a Contracting Party requests the other to meet to review this Agreement, the Contracting Parties shall meet for that purpose within six months after that request was made and, unless the Contracting Parties otherwise agree, their meeting shall be held in the territory of the Contracting Party to which that request was made.

Article 27

The right of representation of diplomatic and consular missions

The officials of diplomatic and consular missions of the Republic of Hungary functioning in the territory of Australia, upon the request of eligible persons, and without a specific authorisation, in order to ensure and maintain the rights of its nationals, may represent before the Competent Institutions, the Competent Authorities and the related bodies of Australia, taking into consideration the effectual practice and procedural rules of Australia, if the eligible persons are not able to represent their rights and interests appropriately due to their absence or any other reason.

PART VI

TRANSITIONAL AND FINAL PROVISIONS

Article 28

Transitional and eligibility provisions

1. This Agreement shall not establish any right to a benefit for any period before the date of entry into force of this Agreement.
2. In determining entitlement to a benefit under this Agreement, periods as an Australian resident, periods of Australian working life residence and creditable periods completed under the legislation of the Republic of Hungary before the entry into force of this Agreement shall also be taken into account.
3. Articles 7 and 9 apply from the date of entry into force of this Agreement, even if the employee was sent by his or her employer before that date. For this purpose, the period of secondment is taken to start on the entry into force of this Agreement.

Article 29

Obligation of the Republic of Hungary relating to this Agreement

The present agreement shall in no way prejudice the obligations of the Republic of Hungary as a member state of the European Union. Consequently the provisions of the present Agreement shall not be invoked or interpreted in such a way as to invalidate or otherwise affect the obligations of the Republic of Hungary imposed by the Treaties on which the European Union is founded.

Article 30

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 treaty and legislative requirements as are necessary to give effect to this Agreement have been satisfied.

Article 31

Termination

1. Subject to Article 31.2, this Agreement shall remain in force until the expiration of 12 months from the date on which either Contracting Party receives from the other Contracting Party 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 Articles 7, 9 or 10 of Part II of this 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 Gödöllő on this 7th day of June two thousand and eleven in the English and Hungarian languages, each text being equally authoritative.

Kevin Rudd
FOR AUSTRALIA

Dr János Martonyi
FOR THE REPUBLIC OF
HUNGARY

Schedule 30—Republic of Latvia

Note: See sections 5 and 8.

AGREEMENT BETWEEN AUSTRALIA AND THE REPUBLIC OF LATVIA ON SOCIAL SECURITY

PREAMBLE

Australia and the Republic of Latvia (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:

as regards Australia,
a pension or any other benefit under the Acts specified in
subparagraph 1(a)(i) of Article 2, including any additional amount,
increase or supplement, which is payable to a person under those Acts;

as regards the Republic of Latvia,
a pension or any other benefit under the Acts specified in
subparagraph 1(b) of Article 2, including any additional amount,
increase or supplement, which is payable to a person under those Acts.

“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 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 Republic of Latvia, the Ministry of Welfare;

“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 the Republic of Latvia, the institution which is responsible for providing benefits under the legislation of the Republic of Latvia;

“insurance period” means, in relation to the Republic of Latvia, a period of contributions used to acquire the right to a benefit under the legislation of the Republic of Latvia, including a period deemed as equivalent to an insurance period;

“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;

in relation to the Republic of Latvia, the laws 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 a person was an Australian resident;

“residence” and **“resides”** mean, in relation to the Republic of Latvia, that a person has his or her place of actual residence in the territory of the Republic of Latvia, including a person who has a temporary or permanent residence permit to stay in the Republic of Latvia.

2. In the application of this Agreement by a Party, any term not defined 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 legislation:
 - (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;

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 Republic of Latvia:

- (i) the Law on State Social Insurance, but only to the extent that it applies to the pension insurance;
 - (ii) the Law on State Pensions, but only to the extent that it applies to the old age pension and the survivor's pension, death grant and allowance for the deceased's spouse;
 - (iii) the Law on State Funded Pensions, but only to the extent that it applies to the old age pension and the survivor's pension; and
 - (iv) the Law on State Social Allowances, but only to the extent that it applies to the state social security benefit in cases of old age and the survivors.
2. Subject to paragraphs 4 and 5, this Agreement shall also apply to laws and regulations which amend, supplement, consolidate or supersede the legislation specified in paragraph 1.
3. Notwithstanding the provisions of subparagraph 1(a), this Agreement shall apply to women who are receiving an Australian wife pension at the date this Agreement comes into force and are the wives of persons receiving an Australian age pension.
4. Notwithstanding the provisions of paragraph 1, the legislation referred to in this Article shall not include treaties or other international agreements on social security that may be concluded between one Party and a third party.
5. This Agreement shall not apply to future legislation which extends the existing legislation of either Party to new categories of beneficiaries unless both Parties agree otherwise.

Article 3

Personal Scope

This Agreement shall apply to any person residing in the territory of either Party who:

- (a) is or has been an Australian resident; or
- (b) is or has been subject to the legislation of the Republic of Latvia that is specified in subparagraph 1(b) of Article 2;

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

Article 4

Equality of Treatment

1. 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 under the legislation of that Party or by virtue of this Agreement.
2. Paragraph 1 shall not apply to the transitional provisions of the Law on State Pensions of the Republic of Latvia regarding insurance periods accumulated prior to 1 January 1991 outside the Republic of Latvia.

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, for the purposes of paragraph 1, any additional amount, increase or supplement that is payable under this Agreement, shall be payable to a person outside Australia only for the period specified in the provisions of the Social Security Act 1991. The reference to the Social Security Act 1991 includes any laws that subsequently amend, supplement or replace that Act.
3. In relation to Latvia, notwithstanding any other provision in this Agreement, state social security benefit and supplement to the old age pension shall be paid to a person who is outside the Republic of Latvia only to the extent permitted by the legislation of the Republic of Latvia.

PART II

PROVISIONS ON APPLICABLE LEGISLATION

Article 6

Application of this Part

This Part only applies if:

- (a) an employee and/or their employer 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;
- (b) an employee or self-employed person from the Republic of Latvia is sent to work in Australia and would otherwise come to be covered by the legislation of Australia and not remain covered by the legislation of the Republic of Latvia; or

- (c) a self-employed person in the Republic of Latvia is simultaneously employed in Australia.

Article 7

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.

Article 8

Applicable 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.
 2. 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) 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) the employee is not working permanently in the territory of the second Party;
-

then the employer and their employee shall be subject only to the legislation of the first Party in respect of the work performed after the commencement of this Part and the remuneration paid for that work.

3. 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;

then the employer and employee shall be subject only to the legislation of the first Party in respect of the work performed after the commencement of this Part and the remuneration paid for that work. For the purposes of this paragraph, "Government" includes in relation to Australia a political subdivision or local authority of Australia.

4. For the Republic of Latvia, if a self-employed person:

- (a) is covered by the legislation of the Republic of Latvia;
- (b) is working in the territory of Australia;
- (c) a period of four years from the time the self-employed person commenced working in Australia has not elapsed; and
- (d) is not working permanently in the territory of Australia,

then the self-employed person shall be subject only to the legislation of the Republic of Latvia in respect of the work performed and the remuneration paid for that work after the commencement of this Part.

5. 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.

Article 9

Exception agreements

1. The Competent Institutions of the Parties 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 8 for any employee; or
 - (b) provide that an employee is deemed 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).

PART III

PROVISIONS RELATING TO BENEFITS UNDER THE LEGISLATION OF AUSTRALIA

Article 10

Residence or Presence in the Republic of Latvia

1. 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 resides in the Republic of Latvia; and
 - (b) is in Australia or the Republic of Latvia,

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 purpose of subparagraph 1(a), a person who resides in the Republic of Latvia shall be limited to persons who permanently reside in the Republic of Latvia.

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) an insurance period under the legislation of the Republic of Latvia

then, only for the purpose of meeting any minimum qualifying period for that benefit set out in the legislation of Australia, the insurance period accumulated under the legislation of the Republic of Latvia shall be deemed 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 an insurance period under the legislation of the Republic of Latvia in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a);

the total of the insurance periods under the legislation of the Republic of Latvia 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 an insurance period under the legislation of the Republic of Latvia coincide, then this period 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 purposes of this Article, an insurance period under the legislation of the Republic of Latvia shall be deemed to be a period as an Australian resident only if that insurance period is certified by the Competent Institution of the Republic of Latvia.

Article 12

Calculation of Australian Benefits

1. Subject to paragraph 2, where an Australian benefit is payable only by virtue of this Agreement to a person who is outside Australia, the amount of that benefit shall be determined according to the legislation of Australia, but on the basis that the additional child amount is nil.
2. Where a person comes temporarily to Australia, paragraph 1 shall continue to apply for 26 weeks from the date of their arrival in Australia.
3. Subject to paragraph 4, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the amount 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 benefit under the legislation of the Republic of Latvia 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 the Republic of Latvia which that person is entitled to receive from the maximum amount of that Australian benefit; and
 - (c) applying to the remaining benefit obtained under subparagraph (b) the relevant calculation method set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph (a).
4. Where a person departs temporarily from Australia, paragraph 3 shall continue to apply for 26 weeks from the date of their departure from Australia.

5. Where a member of a couple is, or both that person and his or her partner are, entitled to a benefit or benefits under the legislation of the Republic of Latvia, 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 RELATING TO BENEFITS UNDER THE LEGISLATION OF THE REPUBLIC OF LATVIA

Article 13

Totalisation

1. Unless otherwise provided in this Agreement, if a person is not eligible for a benefit because he or she has not accumulated sufficient insurance periods under the legislation of the Republic of Latvia, the eligibility of that person for that benefit shall be determined by totalising these periods and those specified in paragraphs 2 and 3, provided the periods do not overlap.
2. For the purpose of determining eligibility for an old age pension or survivor's pension under the Law on State Pensions, a period of Australian working life residence shall be considered as an insurance period under the legislation of the Republic of Latvia only if that period is certified by the Competent Institution of Australia.
3. For the purpose of determining eligibility for a state social security benefit under the Law on State Social Allowances, Australian residence periods shall be considered as insurance periods under the legislation of the Republic of Latvia provided that in the case of a benefit for old age, the person concerned has resided in the Republic of Latvia for the 12 continuous months immediately before claiming the benefit.

4. For the purposes of this Article, where an insurance period under the legislation of the Republic of Latvia and a period by a person as an Australian resident coincide, then this period shall be taken into account once only by the Republic of Latvia as a period of Latvian insurance.
5. Notwithstanding any other provision in this Agreement, if the total duration of the insurance periods accumulated by a person under the legislation of the Republic of Latvia is less than one year and if, taking into account only those periods, no right to a benefit exists under the legislation of the Republic of Latvia, the Competent Institution of the Republic of Latvia shall not be required to pay a benefit to that person in respect of those periods by virtue of this Agreement.

Article 14

Calculation of the amount of Benefit Payable

1. If, under the legislation of the Republic of Latvia, the conditions of eligibility for a benefit are met without the need for the totalisation provisions in Article 13, the Competent Institution of the Republic of Latvia shall determine the amount of that benefit exclusively on the basis of the insurance periods accumulated under its legislation.
2. If, under the legislation of the Republic of Latvia, eligibility for a benefit can be established only through the application of the totalisation provisions in Article 13, the Competent Institution of the Republic of Latvia shall establish eligibility for the benefit but grant the benefit only on the basis of insurance periods accumulated in the Republic of Latvia.
3. Death grant and allowance for the deceased's spouse shall be calculated according to the legislation of the Republic of Latvia.

PART V

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 15

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 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 Competent Institution of the other Party receives the claim within 12 months of the lodgement of the original claim.
4. The reference in paragraph 1 to an appeal is a reference to an appeal that may be made to an administrative body established by, or administratively for the purposes of, the respective legislation.

Article 16

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. The Parties will prevent any legal or administrative restrictions on the transfer of currency outside their territory to guarantee the rights to payment and delivery of benefits payable under their legislation or by virtue of this Agreement.
3. A benefit payable by a Party by virtue of this Agreement shall be paid without deduction for government administrative fees and government charges for processing and paying that benefit.

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 all available information necessary for the application of this Agreement or the social security laws of Australia and the Republic of Latvia;
 - (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 or under the legislation to which this Agreement applies, as if applying their own legislation;

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- (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 to the extent that 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 arrangement reached between the Competent Authorities and Competent Institutions for the reimbursement of certain types of expenses.
3. 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, need 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.
4. 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 the purposes of implementing this Agreement and the legislation to which this Agreement applies.
5. In no case shall the provisions of paragraphs 1 and 4 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.

6. 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 any other country without the prior written consent of that other Party.
7. In the application of this Agreement, the Competent Authority and the Competent Institution of a Party may communicate with the other Party in any of the official languages of the Parties.
8. An application or document may not be rejected by a Competent Authority or Competent Institution solely because it is in an official language of the other Party.

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

Dispute Settlement

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, whether through diplomatic channels or otherwise, 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 insurance periods under the legislation of the Republic of Latvia, and any fact or event relevant to that entitlement completed before the entry into force of this Agreement shall also be taken into consideration.
2. In relation to the Republic of Latvia, paragraph 1 shall not apply where a benefit has already been awarded under the legislation of the Republic of Latvia for periods prior to the commencement of this Agreement.
3. 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.

4. Article 8, paragraphs 2, 3 and 4 shall apply from the date of entry into force of this Agreement, notwithstanding that the work undertaken by reference to these paragraphs may have commenced before this Agreement entered into force.

Article 22

Entry into Force

This Agreement is concluded for an indefinite period and shall enter into force on the first day of the second month following the month in which the last written notification is 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 written notice through the diplomatic channel giving notice of termination of this Agreement.
2. In the event of termination, this Agreement shall continue to apply 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 Party by virtue of paragraph 2, 3 or 4 of Article 8 or Article 9 of Part II of the Agreement, provided the employee or self-employed person continues to satisfy the criteria of that paragraph.

Social Security (International Agreements) Act 1999

685

Compilation No. 53

Compilation date: 20/03/2020

Registered: 02/04/2020

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

DONE in two originals at RIGA this 7th day of September, two thousand and eleven in the English and Latvian languages, each text being equally authoritative.

Signed by Dr Russel Trood
Special Envoy to Eastern Europe

Iona Jursevska
Minister of Welfare

FOR AUSTRALIA

FOR THE REPUBLIC OF LATVIA

Schedule 31—Republic of India

Note: See sections 5 and 8.

AGREEMENT BETWEEN

AUSTRALIA

AND

THE REPUBLIC OF INDIA

ON SOCIAL SECURITY

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

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

and

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

Have agreed as follows:

PART I GENERAL PROVISIONS

Article 1 Definitions

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

Social Security (International Agreements) Act 1999

687

Compilation No. 53

Compilation date: 20/03/2020

Registered: 02/04/2020

- (a) **“benefit”** means, in relation to a Contracting Party, a benefit, pension or allowance for which provision is made in the legislation of that Contracting Party, and includes any additional amount, increase or supplement that is payable in addition to that benefit, pension or allowance under the legislation of that Contracting Party, but for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;
- (b) **“Competent Authority”** means, in relation to Australia, the Secretary to the Commonwealth Department responsible for the legislation specified in subparagraph 1(a)(i) of Article 2, except in relation to the application of Part II of the Agreement (including other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner; and, in relation to India, the Ministry of Overseas Indian Affairs;
- (c) **“Competent Institution”** means, in relation to Australia, the institution or agency which has the task of implementing the applicable legislation; and in relation to India, the Employees Provident Fund Organization;
- (d) **“Government”** in relation to paragraph 2 of Article 7 includes, for Australia, a political subdivision or local authority of Australia, and includes for India quasi-government authorities, public sector undertakings and wholly owned undertakings;
- (e) **“legislation”** means, in relation to Australia, the laws specified in subparagraph 1(a)(i) of Article 2 except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the laws specified in subparagraph 1(a)(ii) of Article 2; and in relation to India, the laws and regulations specified in subparagraph 1(b) of Article 2;
- (f) **“period of insurance”** means, in relation to India, any period of contributions under the legislation of India, as well as any period recognised as equivalent to a period of contribution under that legislation;
- (g) **“period of Australian working life residence”** means a period defined as such in the legislation of Australia and accrued on or after 16 November 1995;

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

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

Article 2 Legislative Scope

1. This Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:

(a) in relation to Australia:

- (i) the Acts forming the social security law in so far as the law provides for, applies to or affects age pension;
- (ii) the law concerning the superannuation guarantee (which at the time of signature of this Agreement is contained in the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Regulations 1993*);

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

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

2. Except as otherwise provided in this Agreement, the legislation of either Contracting Party shall not include any other agreement on social security entered into by either Contracting Party with a third state.

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

Article 3

Personal Scope

This Agreement shall apply to any person who:

- (a) is or has been an Australian resident; or
- (b) is or has been subject to the legislation of Australia; or
- (c) is or has been subject to the legislation of India

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

Article 4 Equality of Treatment

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

Article 5 Export of Benefits

1. Benefits of one Contracting Party, when payable by virtue of this Agreement, are payable to persons who are residents of, and in the territory of either Contracting Party.
2. In relation to Australia, for the purposes of paragraph 1 of this Article, any additional amount, increase or supplement that is payable under this Agreement, shall be payable to a person outside Australia only for the period specified in the provisions of the Social Security Act 1991.

PART II PROVISIONS ON COVERAGE

Article 6 Purpose and Application

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

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

Article 7 **Diplomats and Government Employees**

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

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

Article 8 **Avoidance of Double Coverage**

1. Unless otherwise provided in paragraphs 2 or 4 of this Article, if an employee works in the territory of one Contracting Party, the employer and the employee shall in respect of the work and the remuneration paid for the work, be subject only to the legislation of that Contracting Party.

2. If an employee:

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

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

(c) is working in the territory of the second Contracting Party in the employment of the employer or a related entity of that employer; and

(d) is not working permanently in the territory of the second Contracting Party; and

(e) a period of 5 years from the time the employee was sent to work in the territory of the second Contracting Party has not elapsed;

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

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

4. For the purposes of subparagraph 2(c) of this Article an entity is a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group.

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

Article 9

Secondment from third states

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

Article 10

Exceptions

The Competent Authorities or the Competent Institutions designated by them may agree in writing to modify the application of the provisions of this Part in respect to a particular person or particular category of persons.

Article 11 Certificate on Coverage

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

PART III PROVISIONS RELATING TO AUSTRALIAN BENEFITS

Article 12 Residence or Presence in India

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

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

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

Article 13 Totalisation

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:

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

(b) a period of Australian working life residence that is equal to or greater than the period identified in accordance with paragraph 4 of this Article for that person; and

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

then for the purposes of a claim for that Australian benefit, that period of insurance completed under the legislation of India shall be deemed to be a period in which that person was an Australian resident only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia.

2. For the purposes of paragraph 1 of this Article, where a person:

(a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and

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

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

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

4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 of this Article shall be 12 months, of which at least 6 months must be continuous, providing that all such periods are accrued before the person reaches retirement age as specified in the Employees' Pension Scheme under the legislation of India.

Article 14 **Calculation of Australian Benefits**

1. Subject to paragraph 2 of this Article, where an Australian benefit is payable only by virtue of this Agreement to a person who is outside Australia, the rate of that benefit shall be determined by:

- (a) calculating that person's income according to the legislation of Australia, including any benefit payable under the legislation of India which that person or the partner of that person is entitled to receive, if applicable;
- (b) applying to the maximum rate of Australian benefit the relevant rate calculator set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph (a); and
- (c) proportionalising, if applicable, the amount of benefit calculated under subparagraph (b) by multiplying that amount by the person's period of Australian working life residence (up to a maximum of 540 months) over a denominator of 540 months (45 years).

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

3. Subject to paragraph 4 of this Article, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:

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

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

(c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph (a).

4. Paragraph 3 of this Article shall continue to apply for 26 weeks where a person departs temporarily from Australia.

5. Where a member of a couple is, or both that person and his or her partner are, entitled to a benefit or benefits under the legislation of India each of them shall be deemed, for the purposes of this Article and of the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of those benefits, as the case may be.

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

PART IV PROVISIONS RELATING TO BENEFITS OF INDIA

Article 15 Totalisation of Insurance Period

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

Article 16 Calculation of Indian benefits

1. If a person is entitled to a benefit under the Indian legislation without necessarily proceeding to totalisation, the Competent Institution in India shall

calculate the benefit entitlement directly on the basis of the period of insurance completed in India and only under the Indian legislation.

2. If a person is entitled to a benefit by virtue of the Indian legislation, with his right being created solely by taking the totalisation of the periods of Australian working life residence into account pursuant to Article 15, the following rules apply:

(a) the Competent Institution shall calculate the theoretical amount of the benefit due as if all the periods completed according to the two Contracting States' legislation were exclusively completed under the Indian legislation; and

(b) the Competent Institution shall then calculate the amount due, on the basis of the amount specified under (a), in proportion to the duration of the periods under its legislation, in relation to the duration of all periods accounted under (a).

3. If the duration of insurance periods completed under the legislation of India is less than twelve months, the Competent Institution of India shall not be required to use totalisation provided for in Article 15.

4. Lump sum payments and withdrawals shall be granted to Australian nationals as provided for the International Workers in accordance with the legislation of India.

PART V MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 17 Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Contracting Party in accordance with the Administrative Arrangement made pursuant to Article 20 of this Agreement.

2. The date on which a claim, notice or appeal referred to in paragraph 1 of this Article is lodged with the Competent Institution of one Contracting Party shall be considered as the date of lodgement of that document with the

Competent Institution of the other Contracting Party. The Competent Institution with which a claim, notice or appeal is lodged shall refer it without delay to the Competent Institution of the other Contracting Party.

3. A claim for a benefit from one Contracting Party shall be considered as a claim for the corresponding benefit from the other Contracting Party so long as the claimant has indicated in that claim that there is, or there was, an affiliation with the social security system of that other Contracting Party and provided the other Contracting Party receives the completed claim form for the corresponding benefit within 12 months of the lodgement of the initial claim.

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

Article 18 **Payment of Benefits**

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

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

3. Where, under the legislation of one Contracting Party, documents submitted to a Competent Authority or Competent Institution of that Contracting Party are partly or fully exempt from administrative charges, including consular fees, this exemption shall also apply to documents which are submitted to a Competent Authority or Competent Institution of the other Contracting Party in accordance with its legislation.

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

Article 19

Exchange of Information and Mutual Assistance

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement shall to the extent permitted by their national laws:

(a) communicate to each other any information necessary for the application of this Agreement or for the purposes of their legislation;

(b) provide assistance to one another, including the communication to each other of any information necessary, with regard to the determination or payment of any benefit under this Agreement or under the legislation to which this Agreement applies as if the matter involved the application of their own legislation; and

(c) communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation insofar as these changes affect the application of this Agreement.

2. The assistance referred to in paragraph 1 of this Article shall be provided free of charge, subject to the Administrative Arrangement made pursuant to Article 20 of this Agreement.

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

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

(a) to carry out administrative measures at variance with the laws or the administrative practice of either Contracting Party; or

(b) to supply information which is not ordinarily obtainable under the laws or in the normal administrative practice of either Contracting Party.

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

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

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

Article 20 Administrative Arrangement

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

Article 21 Exchange of Statistics

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

Article 22
Resolution of Disputes

1. The Competent Authorities of the Contracting Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.
2. The Contracting Parties shall consult promptly at the request of either Contracting Party concerning matters which have not been resolved by the Competent Authorities in accordance with paragraph 1 of this Article.

Article 23
Review of Agreement

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

PART VI
TRANSITIONAL AND FINAL PROVISIONS

Article 24
Transitional Provisions

1. This Agreement shall not establish any right to a benefit for any period before the date of the entry into force of this Agreement.
2. Except as otherwise provided in this Agreement, when determining entitlements to benefits under this Agreement, periods of residence in Australia, periods of Australian working life residence and periods of insurance in India completed before the entry into force of this Agreement shall be taken into account.

3. This Agreement shall not apply in respect to periods of insurance which were liquidated by the granting of a lump sum payment or the reimbursement of contributions.

4. Paragraph 2 of Article 7 and paragraph 2 of Article 8 shall apply from the date of entry into force of this Agreement, even if the employee was sent by their employer before this date. For this purpose, the period of secondment is taken to start on the date of entry into force of this Agreement.

Article 25

Entry into Force

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

Article 26

Termination

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

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

(a) at the date on which termination takes effect, are in receipt of benefits; or

(b) prior to that date have lodged claims for, and would be entitled to receive, benefits by virtue of this Agreement; or

(c) immediately before the date of termination are subject only to the legislation of one Contracting Party by virtue of paragraph 2 of Article 7 and paragraph 2 of Article 8 of Part II of the Agreement, provided the employee continues to satisfy the criteria of those Articles.

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

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

FOR AUSTRALIA
(Kevin Andrews, Minister for
Social Services)

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

Schedule 32—Republic of Estonia

Note: See sections 5 and 8.

AGREEMENT BETWEEN
AUSTRALIA
AND
THE REPUBLIC OF ESTONIA
ON SOCIAL SECURITY

Australia and the Republic of Estonia (hereinafter “the Contracting 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

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1. In this Agreement, unless the context otherwise requires:
- (a) “**benefit**” means, in relation to a Contracting Party, a pension for which provision is made in the legislation of that Contracting Party, and includes any additional amount, increase or supplement that is payable 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 sub-paragraph 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 that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner; and,
- in relation to the Republic of Estonia, the Ministry of Social Affairs, except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect that Part) where it means the Ministry of Finance;
- (c) “**Competent Institution**” means the institution or agency which has the task of implementing the applicable legislation;
- (d) “**insurance period**” under the legislation of the Republic of Estonia means a period of payment of social tax, residence or employment and periods deemed as such according to the legislation;
- (e) “**legislation**” means,
- in relation to Australia, the laws specified in sub-paragraph 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 that Part) where it means the laws specified in sub-paragraph 1(a)(ii) of Article 2 of this Agreement; and,
- in relation to the Republic of Estonia, the laws specified in sub-paragraph 1(b)(i) of Article 2 of this Agreement except in relation to the application of Part II of this Agreement (including the application of
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other Parts of the Agreement as they affect that Part) where it means the laws specified in sub-paragraph 1(b)(ii) of Article 2 of this Agreement;

- (f) “**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 of this Agreement to be a period in which that person was an Australian resident.

2. Unless the context otherwise requires, any term not defined in this Agreement shall have the meaning assigned to it in the applicable legislation and national laws.

Article 2 **Legislative Scope**

1. This Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that amend, supplement or replace them:

(a) in relation to Australia:

- (i) the Acts forming the social security law in so far as the law provides for, applies to or affects age pension;
- (ii) the law concerning the superannuation guarantee (which at the time of signature of this Agreement is contained in the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Regulations*);

(b) in relation to the Republic of Estonia:

- (i) the legislation governing mandatory state pension insurance in case of old-age and loss of provider except pension rights provided to persons repressed and payment of mandatory funded pensions;

- (ii) legislation governing the payment of social tax, the contributions of mandatory funded pensions and the unemployment insurance premiums;
- (iii) notwithstanding sub-paragraph 1(b)(ii) of this Article, this Agreement shall not apply to the unemployment benefits.

2. Unless otherwise provided in this Agreement, the legislation of either Contracting Party shall not include any other agreement on social security entered into by either Contracting Party with a third party.

3. This Agreement shall apply to future legislation which extends the existing legislation of either Contracting Party to new categories of beneficiaries only if the Competent Authorities so agree in writing.

Article 3 Personal Scope

This Agreement shall apply to any person who:

- (a) is or has been an Australian resident; or
- (b) is or has been an Estonian resident and subject to the legislation of the Republic of Estonia.

Article 4 Equality of Treatment

Unless otherwise provided in this Agreement, all persons to whom this Agreement applies shall be treated equally by a Contracting Party in regard to rights and obligations regarding eligibility for and payment of benefits, irrespective of whether such rights and obligations arise 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, benefits of one Contracting Party shall be payable to persons who are residents of, and physically present in, the territory of either Contracting 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 for the period specified in the *Social Security Act 1991*.
3. In relation to the Republic of Estonia, the national pension shall be awarded and paid only to persons residing in the territory of the Republic of Estonia.

PART II

PROVISIONS ON COVERAGE

Article 6
Application of this Part

This Part only applies if an employee and/or the employer would, apart from this Part, be subject to the legislation of both Contracting Parties in respect of the work of the employee and 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.

Article 8
Avoidance of Double Coverage

1. Unless otherwise provided in this Part, if an employee works in the territory of one Contracting Party, the employee and their employer shall in respect of the work and the remuneration paid for the work be subject only to the legislation of that Contracting Party.

2. If an employee:

- (a) is covered by the legislation of one Contracting Party ('the first Contracting Party'); and
- (b) was sent, 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'); 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 employee and employer shall be subject only to the legislation of the first Contracting Party in respect of the work performed after the commencement of this Part and the remuneration paid for that work. For the purposes of this paragraph, "Government" includes in relation to Australia a political subdivision or local authority of Australia and in relation to the Republic of Estonia, a government authority as defined in the Government of the Republic Act or a local government as defined in the Local Government Organisation Act.

3. 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 commencement of this Part, by an employer who is subject to the legislation of the first Contracting Party

to work in the territory of the other Contracting Party ('the second Contracting Party'); and

- (c) is working in the territory of the second Contracting Party in the employment of the employer or a related entity of that employer; and
- (d) is not working permanently in the territory of the second Contracting Party and 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;

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

4. For the purposes of sub-paragraph 3(c) of Article 8 of this Agreement 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 9 Exception Agreements

The Competent Authorities or the Competent Institutions designated by them may agree in writing to modify the application of the provisions of this Part in respect to a particular person or particular category of persons.

PART III

PROVISIONS RELATING TO AUSTRALIAN BENEFITS

Article 10 Residence or Presence in the Republic of Estonia

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 or an Estonian resident; and
- (b) is in Australia, or in the Republic of Estonia,

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 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 identified in accordance with paragraph 4 of this Article for that person; and
- (c) an insurance period under the legislation of the Republic of Estonia;

then, for the purposes of a claim for that Australian benefit, that insurance period under the legislation of the Republic of Estonia shall be deemed, only for the purpose of meeting any minimum qualifying periods for that benefit set out in the relevant legislation of Australia, to be a period in which that person was an Australian resident.

2. For the purposes of paragraph 1 of this Article, where a person:

- (a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and

- (b) has accumulated an insurance period under the legislation of the Republic of Estonia in two or more separate periods that equals or exceeds in total the minimum period referred to in sub-paragraph 2(a) of this Article;

then the total of the insurance periods under the legislation of the Republic of Estonia 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 an insurance period under the legislation of the Republic of Estonia coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 of this Article shall be 12 months, of which at least six months must be continuous.

Article 12 **Calculation of Australian Benefits**

1. Subject to paragraph 2, where an Australian benefit is payable only by virtue of this Agreement to a person who is outside Australia, the amount of that benefit shall be determined according to the legislation of Australia.

2. Where a person comes temporarily to Australia, paragraph 1 shall continue to apply for 26 weeks from the date of their arrival in Australia.

3. Subject to paragraph 4, 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 benefit under the legislation of the Republic of Estonia 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 the Republic of Estonia which that person is entitled to receive from the maximum rate of that Australian benefit; and

- (c) applying to the remaining benefit obtained under sub-paragraph 3(b) of this Article the relevant rate calculation set out in the legislation of Australia, using as the person's income the amount calculated under sub-paragraph 3(a) of this Article.
4. Where a person departs temporarily from Australia, paragraph 3 of this Article shall continue to apply for 26 weeks from the date of their departure from Australia.
5. Where a member of a couple is, or both that person and the person's partner are, entitled to a benefit or benefits under the legislation of the Republic of Estonia, 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 that benefit or one half of the total of both benefits, as the case may be.
6. For the purposes of paragraph 1, a benefit shall not include additional child amount.

PART IV

PROVISIONS RELATING TO ESTONIAN BENEFITS

Article 13 Totalisation for Estonian Benefits

1. If entitlement to a benefit under the legislation of the Republic of Estonia arises without taking into account a period of Australian working life residence, the Republic of Estonia shall award the benefit only for insurance periods taken into account under its own legislation.

2. If a person is not entitled to a benefit on the basis of insurance periods under the legislation of the Republic of Estonia, then the Estonian insurance periods shall be totalised with periods of Australian working life residence to determine entitlement to Estonian benefits on the condition that these periods do not overlap in part or in full. The Republic of Estonia shall calculate the amount of a benefit and pay it in accordance with Estonian insurance periods completed on its own territory.

3. If a person is not entitled to a benefit under a specific law applying to work in a certain area of speciality, in certain conditions, or in special services, these insurance periods shall be taken into account as general insurance periods.

4. If the total insurance period under the legislation of the Republic of Estonia is less than 12 months, the Competent Institution of the Republic of Estonia shall disregard this period in awarding and paying a benefit.

Article 14 **Payment of Survivor's Pension**

1. The Republic of Estonia shall award a survivor's pension only for insurance periods completed under its own legislation.

2. The Republic of Estonia shall not award a survivor's pension to a person who receives an old-age pension or pension for incapacity for work from another Contracting Party. If the other Contracting Party awards an old-age pension or pension for incapacity for work, the awarded Estonian survivor's pension shall be discontinued.

PART V

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 15 **Lodgement of Documents**

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Contracting Party, in accordance with the Administrative Arrangement made pursuant to Article 18 of this Agreement, 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 one Contracting Party shall be considered as the date of lodgement of that document with the Competent Institution of the other Contracting Party. The Competent Institution with which a claim, notice or appeal is lodged shall refer it without delay to the Competent Institution of the other Contracting Party.
3. In relation to Australia, the reference in paragraphs 1 and 2 to an 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 16 **Payment of Benefits**

1. The Competent Institutions of each Contracting Party shall pay benefits by virtue of this Agreement directly to entitled persons residing in the territory of the other Contracting Party in the official currency of that Contracting Party or in another internationally convertible currency.
2. A benefit payable by a Contracting Party by virtue of this Agreement shall be paid by that Contracting Party, whether the beneficiary is in the territory of that Contracting Party or the other Contracting Party, without deduction for government administrative fees and charges for processing and paying that benefit.
3. Any exemption granted in the territory of one of the Contracting 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, need to be submitted to the Competent Authorities and Competent Institutions in the territory of the other Contracting 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 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 and the social security law of Australia or the legislation of the Republic of Estonia;
- (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 implementation of this Agreement or about changes in their respective legislation insofar as the changes affect the application of this Agreement.

2. The assistance referred to in paragraph 1 shall be provided free of charge, unless otherwise provided for in the Administrative Arrangement made pursuant to Article 18.

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 is confidential and shall be used only for the purposes of implementing this Agreement and the legislation to which this Agreement applies.

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

- (a) to carry out administrative measures at variance with the laws or the administrative practice of either Contracting Party; or
 - (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of either Contracting Party.
5. In the application of this Agreement, the Competent Authority and the Competent Institution of a Contracting Party may communicate with the other in any of the official languages of the Contracting Parties.
6. The Competent Institutions of the Contracting Parties will supply to each other, according to an agreed schedule and format, relevant information including, but not limited to, death, change of address, change of relationship status and changes in the amount of benefits for mutual beneficiaries.

Article 18 **Administrative Arrangement**

1. The Competent Authorities of the Contracting Parties shall establish, by means of an Administrative Arrangement, the measures necessary for the implementation of this Agreement.
2. The Competent Authorities shall appoint liaison agencies which are to be listed in the Administrative Arrangement to facilitate the implementation of this Agreement.

Article 19 **Resolution of Disputes**

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

Article 20 **Review of Agreement**

Where a Contracting Party requests the other to meet to review this Agreement, the Contracting Parties shall meet for that purpose no later than six months after that request was made and, unless the Contracting Parties otherwise agree, 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 21 Transitional Provisions

1. This Agreement shall not establish any right to a benefit for any period prior to the date of its entry into force.
2. In determining entitlement to a benefit under this Agreement, periods as an Australian resident, periods of Australian working life residence and insurance periods under the legislation of the Republic of Estonia completed before the entry into force of this Agreement shall also be taken into consideration.
3. Paragraphs 2 and 3 of Article 8 apply from the date of entry into force of this Agreement, even if the person was sent by his or her employer before this date. For this purpose, the period of secondment is taken to start on the date of the entry into force of this Agreement.
4. If a person who was awarded the pension for incapacity for work by the Republic of Estonia when he or she was residing in the territory of the Republic of Estonia moves his or her place of residence to the territory of Australia, the Republic of Estonia shall continue to pay the pension for incapacity for work until the expiry of the determined term of the permanent incapacity for work or, if the person's category of disability or permanent incapacity for work has been determined for an unspecified term, until the person reaches the national pensionable age of the Republic of Estonia.

Article 22
Entry into Force

This Agreement shall enter into force on the first day of the third month following the month in which the last written notification is exchanged by the Contracting Parties through the diplomatic channel notifying each other that all conditions as are necessary for the entry into force of this Agreement have been fulfilled.

Article 23
Duration, Modification and Termination

1. This Agreement is concluded for an indefinite period and can be modified by agreement in writing between the Contracting Parties.
2. Subject to paragraph 3 of this Article, this Agreement shall remain in force until the expiration of 12 months from the date on which either Contracting Party receives from the other a note through the diplomatic channel giving notice of termination of this Agreement.
3. 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 to the legislation of only one Contracting Party by virtue of Articles 8 or 9 of Part II of this Agreement, provided the employee continues to satisfy the criteria of these Articles.

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

DONE in two originals at Tallinn on this 14th day of September 2015 in the English and Estonian languages, each text being equally authoritative.

FOR AUSTRALIA
Gerald Thomson
Australian Ambassador to Sweden

FOR THE REPUBLIC OF ESTONIA
Margus Tsahkna
Minister for Social Protection